



# European Investigation Order (EIO)

# Background

- **Gathering evidence from abroad is challenging: it affects the fundamental rights of an individual and the sovereignty of the foreign state.**
- **Lisbon Treaty has introduced the legal basis for the minimal harmonization necessary for effective mutual recognition of evidence abroad.**
- **Article 82 TFEU (animation to show the article).**



# Directive 2014/41/EU

- **The EIO aims:**
- **To ensure the collection of evidence in real time, in a transnational setting.**
- **To consolidate pre-existing transnational law enforcement and justice provision in a single document.**
  
- **The EIO was proposed in 2010 by a group of MS.**
- **Adopted on March 2014 after lengthy negotiations between the EU institutions.**
- **EIO applies to all MS except IE and DK.**



# Basic principles

- Mutual recognition
- Mutual trust



# What is the EIO?

- **A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State to have one or several specific investigative measure(s) carried out in another Member State to obtain evidence in accordance with Directive 2014/41/EU.**
- **EIO operates using a direct channel of communication between judicial authorities.**



# What types of investigation can be asked for under the EIO?

- **The EIO covers any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ('the Convention') and in Council Framework Decision 2002/465/JHA, other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision.**



# Double criminality

- **No double criminality check for the 32 list offences**
- **EIO can be issued for other offences but then double criminality check**
- **An EIO can be issued if the offence is punishable by a maximum of 3 years and is listed in Annex D of the Directive.**
- **(Animation of Annex D)**



# Who can issue the EIO?

- **EIO Directive takes into account various national systems.**
- **EIO can be issued by a judge, a court, an investigative judge, a public prosecutor or any other competent authority as defined by the issuing State (Art. 2(c) of the Directive).**
- **Art. 1(1) of the Directive highlights that: “EIO is a judicial decision which has been issued or validated by a judicial authority of a Member State”.**





# Who is competent to execute the EIO?

- **An authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case. Such procedures may require a court authorisation in the executing State where provided by its national law.**



# The necessity and proportionality conditions

- **The issuing authority may only issue EIO if the following conditions are met:**
  - 1. The issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person**
  - 2. The investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case**



# Specific provision for certain investigative measures

**Apart from the general rules applicable to all investigative measures, certain investigative measures are subject to additional more specific provisions:**

- temporary transfer to the issuing State of persons held in custody for the purpose of carrying out an investigative measure,
- temporary transfer to the executing State of persons held in custody for the purpose of carrying out an investigative measure,
- information on bank and other financial accounts,
- information on banking and other financial operations,
- interception of telecommunications with technical assistance of another Member State of the EU,
- the European investigation as a provisional measure
- covert investigations.



# Recognition and execution

- **The executing authority shall recognize an EIO, transmitted in accordance with conditions set in Art. 7 of the Directive, without any further formality being required.**
- **It shall be executed in the same manner and under the same modalities as if the investigative measure concerned had been ordered by the executing State.**
- **The issuing state may assist in the execution of the EIO in support to the competent authorities of the executing State.**



# Alternative investigative measures

- **Recourse to an investigative measure other than provided for in the EIO.**
- **Mandatory when the requested measure does not exist or would not be available in a similar domestic case in the executing EU MS**
  - Exceptions!
- **Optional to make recourse to an alternative measure employing less intrusive means.**



# Grounds of refusal

immunity	Investigative measure is restricted to offences other than indicated by the issuing EU MS
limitation of criminal liability relating to freedom of the press and freedom of expression in other media	fundamental rights
<i>National security</i>	relates to acts which would not constitute an offence under the law of the executing State, except for the 32 list offences
<i>ne bis in idem</i>	In case of transfer person does not consent
Territoriality principle	In case of transfer person does not consent



## ■ Annexes A, B and C

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### ANNEX A

#### EUROPEAN INVESTIGATION ORDER (EIO)

This EIO has been issued by a competent authority. The issuing authority certifies that the issuing of this EIO is necessary and proportionate for the purpose of the proceedings specified within it taking into account the rights of the suspected or accused person and that the investigative measures requested could have been ordered under the same conditions in a similar domestic case. I request that the investigative measure or measures specified below be carried out taking due account of the confidentiality of the investigation and that the evidence obtained as a result of the execution of the EIO be transferred.

#### SECTION A

Issuing State: .....

Executing State: .....

#### SECTION B: Urgency

Please indicate if there is any urgency due to

- Evidence being concealed or destroyed
- Imminent trial date
- Any other reason

Please specify below:

Time limits for execution of the EIO are laid down in Directive 2014/41/EU. However, if a shorter or specific time limit is necessary, please provide the date and explain the reason for this:

.....  
.....

#### SECTION C: Investigative measure(s) to be carried out

1. Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures:

.....  
.....  
.....  
.....  
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- Obtaining information or evidence which is already in the possession of the executing authority
- Obtaining information contained in databases held by police or judicial authorities
- Hearing
  - witness
  - expert
  - suspected or accused person
  - victim
  - third party
- Identification of persons holding a subscription of a specified phone number or IP address
- Temporary transfer of a person held in custody to the issuing State
- Temporary transfer of a person held in custody to the executing State

**Thank you!**

