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from: General Secretariat
to: Permanent Representatives Committee/Council
Subject: Proposal for a Directive of the European Parliament and of the Council
regarding the European Investigation Order in criminal matters
- Outcome of the European Parliament's first reading
(Strasbourg, 24 to 27 February 2014)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Mr Nuno MELO (EPP-PT) presented one compromise amendment (amendment 1) to the proposal for a Directive, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 27 February 2014, the plenary adopted the compromise amendment (amendment 1) to the proposal for a Directive. The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first-reading position¹, it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

European Investigation Order *I**

European Parliament legislative resolution of 27 February 2014 on the draft directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (09288/2010 – C7-0185/2010 – 2010/0817(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the initiative emanating from a group of Member States submitted to Parliament and the Council (09288/2010),
 - having regard to Article 76(b) and Article 82(1)(a) of the Treaty on the Functioning of the European Union, pursuant to which the draft act was submitted to Parliament (C7-0185/2010),
 - having regard to Article 294(3) and (15) of the Treaty on the Functioning of the European Union,
 - having regard to the undertaking given by the Council representative by letter of 5 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 44 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0477/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P7_TC1-COD(2010)0817

Position of the European Parliament adopted at first reading on 27 February 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82 (1) (a) thereof,

Having regard to the initiative of the Kingdom of **■** Belgium, **■** the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,¹

¹ Position of the European Parliament of 27 February 2014.

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union **is to** be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union.
- (3) Council Framework Decision 2003/577/JHA¹ addressed the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence. However, **since** that instrument is restricted to the freezing phase, **a** freezing order needs to be accompanied by a separate request for the transfer of the evidence to the State issuing the order ("the issuing State") in accordance with the rules applicable to mutual assistance in criminal matters. This results in a two-step procedure detrimental **to** its efficiency. Moreover, this regime coexists with the traditional instruments of **cooperation** and is therefore seldom used in practice by the competent authorities.

¹ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45.).

- (4) Council Framework Decision 2008/978/JHA¹ concerning *the European evidence warrant (EEW) was adopted to apply the principle of mutual recognition for the purpose of* obtaining ■ objects, documents and data for use in proceedings in criminal matters. However, the EEW is only applicable to evidence which already exists and covers therefore a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Because of its limited scope, competent authorities have been free to use the new regime or to use mutual legal assistance procedures which, in any case, remain applicable to evidence falling outside of the scope of the EEW.
- (5) Since the adoption of Framework Decisions 2003/577/JHA and 2008/978/JHA, it has become clear that the existing framework for the gathering of evidence is too fragmented and ■ complicated. A new approach is therefore necessary.
- (6) In the Stockholm Programme adopted by the European Council of 10-11 December 2009, the European Council considered that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The European Council indicated that the existing instruments in this area constituted a fragmentary regime and that a new approach was needed, based on the principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including Framework Decision 2008/978/JHA , covering as far as possible all types of evidence, containing time-limits for enforcement and limiting as far as possible the grounds for refusal.

¹ Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (*OJ L 350, 30.12.2008, p. 72.*)

- (7) This new approach is based on a single instrument called the European Investigation Order (EIO). An EIO is to be issued for the purpose of having one or several specific investigative measure(s) carried out in the State executing the EIO ("the executing State") with a view to gathering evidence. This includes the obtaining of evidence that is already in the possession of the executing authority.
- (8) The EIO should have a horizontal scope and therefore should apply to **all** investigative measures *aimed at gathering evidence. However, the setting up of a joint investigation team and the gathering of evidence within such a team* require specific rules which are better dealt with separately **. Without prejudice to the application of this Directive, existing** instruments should *therefore* continue to apply to *this type* of investigative measure.
- (9) This Directive should not apply to *cross-border* surveillance as referred to in the Convention implementing the Schengen *Agreement*¹.
- (10) The EIO should focus on the investigative measure to be carried out. The issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which investigative measure is to be used. However, the executing authority should, *wherever possible*, use another type of investigative measure *if* the indicated measure does not exist **under its national law or would not be available in a similar domestic case. Availability should refer to occasions where the indicated** investigative measure exists under the law of the executing State but is only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned. The executing authority may also have recourse to another type of investigative measure where it would achieve the same result as the investigative measure indicated in the EIO by **means** *implying less interference with the fundamental rights of the person concerned.*
- (11) *The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore ascertain whether the evidence sought is necessary and proportionate for the purpose of the proceedings, whether the investigative measure chosen is necessary and proportionate for the gathering of the evidence concerned, and whether, by means of issuing the EIO, another Member State should be involved in the gathering of that evidence. The same assessment should be carried out in the validation procedure, where the validation of an EIO is required under this Directive. The execution of an EIO should not be refused on grounds other than those stated in this Directive. However the executing authority should be entitled to opt for a less intrusive investigative measure than the one indicated in an EIO if it makes it possible to achieve similar results.*
- (12) *When issuing an EIO the issuing authority should pay particular attention to ensuring full respect for the rights as enshrined in Article 48 of the Charter of Fundamental Rights of the European Union (the Charter). The presumption of innocence and the*

¹ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (*OJ L 239, 22.9.2000, p. 19*).

rights of defence in criminal proceedings are a cornerstone of the fundamental rights recognised in the Charter within the area of criminal justice. Any limitation of such rights by an investigative measure ordered in accordance with this Directive should fully conform to the requirements established in Article 52 of the Charter with regard to the necessity, proportionality and objectives that it should pursue, in particular the protection of the rights and freedoms of others.

- (13) *With a view to ensuring the transmission of the EIO to the competent authority of the executing State, the issuing authority may make use of any possible or relevant means of transmission, for example the secure telecommunications system of the European Judicial Network, Eurojust, or other channels used by judicial or law enforcement authorities.*
- (14) *When making a declaration concerning the language regime, Member States are encouraged to include at least one language which is commonly used in the Union other than their official language(s).*
- (15) *This Directive should be implemented taking into account Directive 2010/64/EU of the European Parliament and the Council¹, Directive 2012/13/EU of the European Parliament and the Council², and Directive 2013/48/EU of the European Parliament and of the Council³, which concern procedural rights in criminal proceedings.*
- (16) *Non-coercive measures could be, for example, such measures that do not infringe the right to privacy or the right to property, depending on national law.*
- █
- (17) *The principle of ne bis in idem is a fundamental principle of law in the Union, as recognized by the Charter and developed by the case-law of the Court of Justice of the European Union. Therefore the executing authority should be entitled to refuse the execution of an EIO if its execution would be contrary to that principle. Given the preliminary nature of the proceedings underlying an EIO, its execution should not be subject to refusal where it is aimed to establish whether a possible conflict with the ne bis in idem principle exists, or where the issuing authority has provided assurances that the evidence transferred as a result of the execution of the EIO would not be used to prosecute or impose a sanction on a person whose case has been finally disposed of in another Member State for the same facts.*

¹ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

² Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

³ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

- (18) *As in other mutual recognition instruments, this Directive does not have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union (TEU) and the Charter. In order to make this clear, a specific provision is inserted in the text.*
- (19) *The creation of an area of freedom, security and justice within the Union is based on mutual confidence and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, that presumption is rebuttable. Consequently, if there are substantial grounds for believing that the execution of an investigative measure indicated in the EIO would result in a breach of a fundamental right of the person concerned and that the executing State would disregard its obligations concerning the protection of fundamental rights recognised in the Charter, the execution of the EIO should be refused.*
- (20) *It should be possible to refuse an EIO where its recognition or execution in the executing State would involve a breach of an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in Union law,; the precise definition of these terms is therefore left to national law, which may include protections which apply to medical and legal professions, but should not be interpreted in a way to counter the obligation to abolish certain grounds for refusal as set out in the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union¹. This may also include, even though they are not necessarily considered as privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.*
- (21) Time limits are necessary to ensure quick, effective and consistent cooperation between the Member States in criminal matters. The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the same celerity and priority as for a similar *domestic* case. Time limits should be provided to ensure a decision or execution within reasonable time or to meet procedural constraints in the issuing State.
- (22) *Legal remedies available against an EIO should be at least equal to those available in a domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of such legal remedies, including by informing in due time any interested party about the possibilities and modalities for seeking those legal remedies. In cases where objections against the EIO are submitted by an interested party in the executing State in respect of the substantive reasons for issuing the EIO, it is advisable that information about such challenge be transmitted to the issuing authority and that the interested party be informed accordingly.*

¹ *Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* (OJ C 326, 21.11.2001, p. 2).

- (23) *The expenses incurred in the territory of the executing State for the execution of an EIO should be borne exclusively by that State. This arrangement complies with the general principle of mutual recognition. However, the execution of an EIO may incur exceptionally high costs on the executing State. Such exceptionally high costs may, for example, be complex experts' opinions or extensive police operations or surveillance activities over a long period of time. This should not impede the execution of the EIO and the issuing and executing authorities should seek to establish which costs are to be considered as exceptionally high. The issue of costs might become subject to consultations between the issuing State and the executing State and they are recommended to resolve this issue during the consultations stage. As a last resort, the issuing authority may decide to withdraw the EIO or to maintain it, and the part of the costs which are estimated exceptionally high by the executing State and absolutely necessary in the course of the proceedings, should be covered by the issuing State. The given mechanism should not constitute an additional ground for refusal, and in any event should not be abused in a way to delay or impede the execution of the EIO.*

- (24) The EIO establishes a single regime for obtaining evidence. Additional rules are however necessary for certain types of investigative measures which should be indicated in the EIO, such as *the* temporary transfer of persons held in custody, hearing by video or telephone conference, obtaining of information related to bank accounts or banking transactions, controlled deliveries *or covert investigations*. Investigative measures implying *a* gathering of evidence in real time, continuously and over a certain period of time should be covered by the EIO, but, *where necessary, practical arrangements should be agreed between the issuing State and the executing State in order to accommodate* the differences existing in the national laws of those States.
- (25) *This Directive sets out rules on carrying out, at all stages of criminal proceedings, including the trial phase, of an investigative measure, if needed with the participation of the person concerned with a view to collecting evidence. For example an EIO may be issued for the temporary transfer of that person to the issuing State or for the carrying out of a hearing by videoconference. However, where that person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a European Arrest Warrant (EAW) should be issued in accordance with Council Framework Decision 2002/584/JHA¹.*

¹ 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (26) *With a view to the proportionate use of an EAW , the issuing authority should consider whether an EIO would be an effective and proportionate means of pursuing criminal proceedings. The issuing authority should consider, in particular, whether issuing an EIO for the hearing of a suspected or accused person by videoconference could serve as an effective alternative.*
- (27) *An EIO may be issued in order to obtain evidence concerning the accounts, of whatever nature, held in any bank or any non-banking financial institution by a person subject to criminal proceedings. This possibility is to be understood broadly as comprising not only suspected or accused persons but also any other person in respect of whom such information is found necessary by the competent authorities in the course of criminal proceedings.*
- (28) *Where in this Directive a reference is made to financial institutions, this term should be understood according to the relevant definition of Article 3 of Directive 2005/60/EC of the European Parliament and the Council¹.*

¹ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

- (29) *When an EIO is issued to obtain ‘details’ of a specified account, ‘details’ should be understood to include at least the name and address of the account holder, details of any powers of attorney held over the account, and any other details or documents provided by the account holder when the account was opened and that are still held by the bank.*
- (30) *Possibilities to cooperate under this Directive on the interception of telecommunications should not be limited to the content of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for the purpose of obtaining less intrusive data on telecommunications. An EIO issued to obtain historical traffic and location data related to telecommunications should be dealt with under the general regime related to the execution of the EIO and may be considered, depending on the national law of the executing State, as a coercive investigative measure.*

- (31) *Where several Member States are in a position to provide the necessary technical assistance, an EIO should be sent only to one of them and priority should be given to the Member State where the person concerned is located. Member States where the subject of the interception is located and from which no technical assistance is needed to carry out the interception should be notified thereof in accordance with this Directive . However, where the technical assistance may not be received from merely one Member State, an EIO may be transmitted to more than one executing State.*
- (32) *In an EIO containing the request for interception of telecommunications the issuing authority should provide the executing authority with sufficient information, such as details of the criminal conduct under investigation, in order to allow the executing authority to assess whether that investigative measure, would be authorised in a similar domestic case.*
- (33) *Member States should have regard to the importance of ensuring that technical assistance can be provided by a service provider operating publicly available telecommunications networks and services in the territory of the Member State concerned, in order to facilitate cooperation under this instrument in relation to the lawful interception of telecommunications.*

(34) *This Directive, by virtue of its scope, deals with provisional measures only with a view to gathering evidence. In this respect, it should be underlined that any item, including financial assets, may be subject to various provisional measures in the course of criminal proceedings, not only with a view to gathering evidence but also with a view to confiscation. The distinction between the two objectives of provisional measures is not always obvious and the objective of the provisional measure may change in the course of the proceedings. For this reason, it is crucial to maintain a smooth relationship between the various instruments applicable in this field. Furthermore, for the same reason, the assessment of whether the item is to be used as evidence and therefore be the object of an EIO should be left to the issuing authority.*

(35) *Where reference is made to mutual assistance in relevant international instruments, such as in conventions concluded within the Council of Europe, it should be understood that between the Member States bound by this Directive it takes precedence over those conventions.*

(36) *The categories of offences listed in Annex D should be interpreted consistently with their interpretation under existing legal instruments on mutual recognition.*

- (37) *In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the European Parliament and the Council consider the transmission of such documents to be justified.*
- (38) Since the *objective of this Directive*, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve *that objective*.

¹ OJ C 369, 17.12.2011, p. 14.

- (39) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, ***by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application.*** Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.
- (40) ***The protection of natural persons in relation to the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them.***

- (41) *Member States should, in the application of this Directive, provide for transparent policies with regard to the processing of personal data and for the exercise of the rights of data subjects to legal remedies for the protection of their personal data.*
- (42) *Personal data obtained under this Directive should only be processed when necessary and should be proportionate to the purposes compatible with the prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes.*
- (43) In accordance with Article 3 of Protocol N° 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TEU and the TFEU, the United Kingdom *has* notified *its* wish to take part in the adoption **and application** of this Directive.
- (44) *In accordance with Articles, 1, 2 and 4a(1) of Protocol N° 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.*
- (45) In accordance with Articles 1 and 2 of Protocol N° 22 on the Position of Denmark annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by *it* or subject to its application,
- (46) *The European Data Protection Supervisor delivered an opinion on 5 October 2010¹, based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council²*

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ C 355, 29.12.2010, p. 1,

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (*OJ L 8, 12.1.2001, p. 1*).

CHAPTER I
THE EUROPEAN INVESTIGATION ORDER

Article 1

■ *The European Investigation Order
and obligation to execute it*

1. A European Investigation Order (EIO) is a judicial decision which has been issued *or validated* by a **judicial** authority of a Member State ("the issuing State") to have one or several specific investigative measure(s) carried out in another Member State ("the executing State") to obtain evidence *in accordance with this Directive*.

The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

2. Member States shall execute an EIO on the basis of the principle of mutual recognition and in accordance with this Directive.
3. *The issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure.*
4. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and ■ legal principles as enshrined in Article 6 of the TEU, *including the rights of defence of persons subject to criminal proceedings*, and any obligations incumbent on judicial authorities in this respect shall remain unaffected. ■

Article 2
Definitions

For the purposes of this Directive the following definitions apply:

- (a) *"issuing State" means the Member State in which the EIO is issued;*
- (b) *"executing State" means the Member State executing the EIO, in which the investigative measure is to be carried out;*
- (c) *"issuing authority" means:*
 - (i) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
 - (ii) any other **competent** authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence **■** to order the gathering of evidence in accordance with national law. ***In addition, before it is transmitted to the executing authority the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 6.1, , by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO;***

- (d) "executing authority " means 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.*

Article 3
Scope of the EIO

█ The EIO shall cover 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*¹ ("*the Convention*") and in Council Framework Decision 2002/465/JHA]², *other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision.*

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¹ *OJ C 197, 12.7.2000, p. 3.*

² Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (*OJ L 162, 20.6.2002, p. 1*).

Article 4
Types of proceedings for which the EIO can be issued

An EIO may be issued:

- (a) with respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;
- (b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the *rules* of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters;
- (c) in proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters, and
- (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

Article 5
Content and form of the EIO

1. The EIO in the form set out in Annex A shall be completed, signed, and its content certified as accurate ***and correct*** by the issuing authority.

The EIO shall, in particular, contain the following information:

- (a) data about the issuing authority and, where applicable, the validating authority;***
 - (b) the object of and reasons for the EIO;***
 - (c) the necessary information available on the person(s) concerned;***
 - (d) a description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;***
 - (e) a description of the investigative measures(s) requested and the evidence to be obtained.***
2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used ***for completing*** or translating the EIO when the Member State concerned is the executing State.
3. ***The competent authority of the issuing State shall translate the EIO set out in Annex A into an official language of the executing State or any other language indicated by the executing State in accordance with paragraph 2 of this Article.***

CHAPTER II
PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE

Article 6
Conditions for issuing and transmitting an EIO

1. *The issuing authority may only issue an EIO where the following conditions have been met:*
 - (a) *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; and*
 - (b) *the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.*
2. *The conditions referred to in paragraph 1 shall be assessed by the issuing authority in each case.*
3. *Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.*

Article 7
Transmission of the EIO

1. The EIO **completed in accordance with Article 5** shall be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.
2. Any further official communication shall be made directly between the issuing authority and the executing authority.
3. Without prejudice to Article 2(d), each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist the competent authorities. A Member State may, if necessary due to the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and **receipt** of EIOs, as well as for other official correspondence relating to EIOs.
4. The issuing authority may transmit EIOs via the telecommunications system of the European Judicial Network (EJN), as set up by Council Joint Action. 98/428/JHA¹.
5. If the identity of the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the EJN contact points, in order to obtain the information from the executing State.
6. Where the authority in the executing State which receives the EIO has no **competence** to recognise the EIO or to take the necessary measures for its execution, it shall, *ex officio*, transmit the EIO to the executing authority and so inform the issuing authority .
7. All difficulties concerning the transmission or authenticity of any document needed for the execution of the EIO shall be dealt with by direct contacts between the issuing authority and the executing authority involved or, where appropriate, with the involvement of the central authorities of the Member States.

Article 8
EIO related to an earlier EIO

1. Where an issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO in Section D of the form set out in Annex A.
2. **If** the issuing authority **assists in the execution of the EIO in the executing State**, in accordance with Article 9(4), it may, without prejudice to notifications made under Article 33(1)(c), address an EIO which supplements an earlier EIO directly to the executing authority, while present in that State.

¹ Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

3. *The EIO which supplements an earlier EIO shall be certified in accordance with the first subparagraph of Article 5 (1), and, where applicable, be validated in accordance with Article 2(c).*

CHAPTER III
PROCEDURES AND SAFEGUARDS
FOR THE EXECUTING STATE

Article 9
Recognition and execution

1. The executing authority shall recognise an EIO, transmitted in accordance with **this Directive**, without any further formality being required, and **ensure its** execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non ■-recognition or non ■-execution ■ or one of the grounds for postponement provided for in **this Directive**.
2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.
3. **Where an executing authority receives an EIO which has not been issued by an issuing authority as specified in Article 2(c), the executing authority shall return the EIO to the issuing State.**

4. The issuing authority may request that one or more authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State ***to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measures indicated in the EIO in a similar domestic case.*** The executing authority shall comply with this request provided that such ***assistance*** is not contrary to the fundamental principles of law of the executing State ***or does not harm its essential national security interests.***
5. ***The authorities of the issuing State present in the executing State shall be bound by the law of the executing State during the execution of the EIO. They shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing State and to the extent agreed between the issuing authority and the executing authority.***
6. The issuing ***authority*** and executing ***authority*** may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

Article 10
Recourse to a different type of investigative measure

1. The executing authority ***shall*** have, ***wherever possible***, recourse to an investigative measure other than that provided for in the EIO where:
 - (a) the investigative measure indicated in the EIO does not exist under the law of the executing State, ***or***;
 - (b) the investigative measure indicated in the EIO ***would not be available in a similar domestic case***;

2. ***Without prejudice to Article 11, paragraph (1) does not apply to the following investigative measures, which always have to be available under the law of the executing State:***
 - (a) ***the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;***
 - (b) ***the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;***
 - (c) ***the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;***

- (d) *any non-coercive investigative measure as defined under the law of the executing State;*
 - (e) *the identification of persons holding a subscription of a specified phone number or IP address.*
3. *The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.*
 4. When the executing authority decides to avail itself of the possibility referred to in paragraphs (1) and (3), it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.
 5. *Where, in accordance with paragraph (1), the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.*

Article 11
Grounds for non-recognition or non-execution

1. ***Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:***
 - (a) **█** *there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;*
 - (b) *in a specific case the execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;*
 - █**
 - (c) **█** *the EIO has been issued in proceedings referred to in Article 4 (b) and (c) and the investigative measure would not be authorised under the law of the executing State in a similar domestic case;*
 - (d) *the execution of the EIO would be contrary to the principle of ne bis in idem;*
 - (e) *the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;*

- (f)** *there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;*
- (g)** *the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years; or*
- (h)** *the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.*

2. ***Paragraphs (1)(g) and (1)(h) do not apply to investigative measures referred to in Article 10 (2).***
3. ***Where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.***
4. In the cases referred to in points (a), (b), (d), (e) and (f) of paragraph 1 before deciding not to recognise or not to execute an EIO, either in whole or in part the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.
5. ***In the case referred to in paragraph 1(a) and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.***

Article 12

Time limits for recognition or execution

1. The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar ***domestic*** case and, in any case, within the time limits provided in this Article.
2. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.
3. The executing authority shall take the decision on the recognition or execution of the EIO as soon as possible and, without prejudice to paragraph 5, no later than 30 days after the receipt of the EIO by the competent executing authority.
4. Unless grounds for postponement under Article 15 exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure without delay and without prejudice to paragraph 5, not later than 90 days following the taking of the decision referred to in paragraph 3 .
5. If it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph 3 ***or the specific date set out in paragraph 2***, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken. In such a case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.

6. If it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph 4, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the *issuing* authority on the appropriate timing to carry out the investigative measure.

Article 13

Transfer of evidence

1. The executing authority shall, without undue delay, transfer the evidence obtained ***or already in the possession of the competent authorities of the executing State*** as a result of the execution of the EIO to the issuing State.

Where requested in the EIO and if possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 9(4).

2. ***The transfer of the evidence may be suspended, pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights. However, the transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.***
3. When transferring the evidence obtained, the executing authority shall indicate whether it requires ***the evidence*** to be returned to the executing State as soon as ***it is*** no longer required in the issuing State.
4. ***Where the objects, documents, or data concerned are already relevant for other proceedings, the executing authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.***

Article 14

Legal remedies

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- 1. *Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO.***
- 2. *The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.***
- 3. *Where it would not undermine the need to ensure confidentiality of an investigation under Article 19(1), the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable and in due time to ensure that they can be exercised effectively.***

4. *Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.*
5. *The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.*
6. *A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.*
7. *The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO*

Article 15

Grounds for postponement of recognition or execution

1. The recognition or execution of the EIO may be postponed in the executing State where:
 - (a) its execution might prejudice an ***on-going*** criminal investigation or prosecution, until such time as the executing State deems reasonable; ■
 - (b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose;
2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.

Article 16

Obligation to inform

1. The competent authority in the executing State which receives the EIO shall, without delay, and in any case within a week of the reception of an EIO, acknowledge reception of the EIO by completing and sending the form set out in Annex B.

Where a central authority has been designated in accordance with Article 7(3), this obligation is applicable both to the central authority and to the executing authority which receives the EIO from the central authority.

In the cases referred to in Article 7(6), this obligation applies both to the competent authority which initially received the EIO and to the executing authority to which the EIO is finally transmitted.

2. Without prejudice to Article 10(4) **and (5)** the executing authority shall inform the issuing authority immediately by any means:
 - (a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex A is incomplete or manifestly incorrect;
 - (b) if the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case; or

- (c) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 9.

Upon request by the issuing authority, the information shall be confirmed without delay by any means capable of producing a written record.

- 3. Without prejudice to Article 10(4) *and* (5) the executing authority shall inform the issuing authority without delay by any means capable of producing a written record:
 - (a) of any decision taken pursuant to *Articles 10 or 11* ;
 - (b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Article 17
Criminal liability regarding officials

When present in the territory of the executing State in the framework of the application of this Directive, officials from the issuing State shall be regarded as officials of the executing State with respect to offences committed against them or by them.

Article 18

Civil liability regarding officials

1. Where, in the framework of the application of this Directive, officials of *a Member State* are present in the territory of *another Member State*, the *former Member State* shall be liable for any damage caused by its officials during their operations, in accordance with the law of the *Member State in whose territory they are operating*.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse ■ in full any sums *the latter Member State* has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in cases referred to in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

Article 19

Confidentiality

1. Each Member State shall take the necessary measures to ensure that in the execution of an EIO the issuing **authority** and the executing **authority** take due account of the confidentiality of the investigation.
2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute the investigative measure. If the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority without delay.
3. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, not disclose any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.
4. Each Member State shall take the necessary measures to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the issuing State in accordance with Articles 26 and 27 or that an investigation is being carried out.

Article 20

Protection of personal data

When implementing this Directive, Member States shall ensure that personal data are protected and may only be processed in accordance with Council Framework Decision 2008/977/JHA¹ and the principles of the Council of Europe Convention for the protection of Individuals with regard to the Automatic Processing of Personal Data of 28 January 1981 and its Additional Protocol.

Access to such data shall be restricted, without prejudice to the rights of the data subject. Only authorized persons may have access to such data.

¹ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

Article 21

Costs

1. *Unless otherwise provided in this Directive, the executing State shall bear all costs undertaken on the territory of the executing State which are related to the execution of an EIO.*
2. *Where the executing authority considers that the costs for the execution of the EIO may be deemed exceptionally high, it may consult with the issuing authority on whether and how the costs could be shared or the EIO modified.*

The executing authority shall inform the issuing authority in advance of the detailed specifications of the part of the costs deemed exceptionally high.

3. *In exceptional situations where no agreement can be reached with regard to the costs referred to in paragraph 2, the issuing authority may decide to:*
 - (a) withdraw the EIO in whole or in part; or*
 - (b) keep the EIO, and bear the part of the costs deemed exceptionally high.*

CHAPTER IV
SPECIFIC PROVISIONS FOR
CERTAIN INVESTIGATIVE MEASURES

Article 22

*Temporary transfer to the issuing State of
persons held in custody for the purpose of carrying out an investigative measure*

1. An EIO may be issued for the temporary transfer of a person in custody in the executing State **for the purpose of carrying out** an investigative measure **with a view to gathering evidence** for which the presence of that person on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.
2. In addition to the grounds for **non-recognition or non-execution** referred to in Article 11 the execution of the EIO may also be refused if:
 - (a) the person in custody does not consent; **or**
 - (b) **the** transfer is liable to prolong the detention of the person in custody.
3. **Without prejudice to paragraph 2 (a), where the executing State considers it necessary in view of the person's age or physical or mental condition, the opportunity to state the opinion on the temporary transfer shall be given to the legal representative of the person in custody.**

4. In cases referred to in paragraph 1, transit of the person in custody through the territory of a third Member State ('the Member State of transit') shall be granted on application, accompanied by all necessary documents.
5. The practical arrangements regarding the temporary transfer of the person ***including the details of his custody conditions in the issuing State, and the dates*** by which he must be ***transferred from and*** returned to the territory of the executing ***State*** shall be agreed between the issuing State and the executing State, ***ensuring that the physical and mental condition of the person concerned, as well as the level of security required in the issuing State, are taken into account.***
6. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State of transit, ***for the acts or convictions for which he has been kept in custody in the executing State***, unless the executing State applies for his release.
7. The period of custody in the territory of the issuing State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing State.

8. ***Without prejudice to paragraph 6, a*** transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty ***in the issuing State*** for acts ***committed*** or convictions ***handed down before*** his departure from the territory of the executing State and ***which are*** not specified in the EIO.
9. The immunity referred to in paragraph 8 shall cease to exist if the transferred person, having had an opportunity ***to leave*** for a period of fifteen consecutive days from the date when his presence is no longer required by the ***issuing*** authorities, has either:
 - a) nevertheless remained in the territory, or
 - b) having left it, has returned.
10. Costs ***resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs*** arising from the transfer ***of the person to and from the issuing State which*** shall be borne by ***that*** State.

Article 23
Temporary transfer to the executing State of persons
held in custody for the purpose of carrying out an investigative measure

1. An EIO may be issued for the temporary transfer of a person held in custody in the issuing State **for the purpose of carrying out** an investigative measure **with a view to gathering evidence** for which his presence on the territory of the executing State is required.



2. **Paragraph 2 (a) and** paragraphs 3 to 9 of Article 22 are applicable *mutatis mutandis* to **the temporary transfer under** this Article.
3. Costs **resulting** from the application **of this Article** shall be borne **in accordance with Article 21, except for** the costs arising from the **transfer** of the person concerned **to and from** the executing State **which shall be borne by the issuing State**.

Article 24

Hearing by videoconference or other audio – visual transmission

1. Where a person is in the territory of the executing State and has to be heard as a witness or expert by the **competent** authorities of the issuing State, the issuing authority may issue an EIO in order to hear the witness or expert by videoconference **or other audio-visual transmission** in accordance with paragraphs 5 to 7.

The issuing authority may also issue an EIO for the purpose of hearing a suspected or accused person by videoconference or other audio - visual transmission.

2. *In addition to the grounds for non-recognition or non-execution referred to in Article 11, execution of an EIO may be refused if either:*
 - (a) *the suspected or accused person does not consent; or*
 - (b) *the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing State .*

3. *The issuing authority and the executing authority shall agree the practical arrangements. When agreeing such arrangements, the executing authority shall undertake to:*
- (a) *summon the witness or expert concerned, indicating the time and the venue of the hearing;*
 - (b) *summon the suspected or accused persons to appear for the hearing in accordance with the detailed rules laid down in the law of the executing State and inform such persons about their rights under the law of the issuing State, in such a time as to allow them to exercise their rights of defence effectively;*
 - (c) *ensure the identity of the person to be heard.*

4. If *in circumstances of a particular case* the executing *authority* has no access to technical means for a hearing held by videoconference, such means may be made available to it by the issuing State by mutual agreement.

5. *Where* a hearing is held by videoconference *or other audio – visual transmission*, the following rules shall apply:

- (a) the *competent* authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identity of the person to be heard and respect for the fundamental principles of the law of the executing █ State.

If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing █ State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;

- (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing State and the executing *State*;
- (c) the hearing shall be conducted directly by, or under the direction of, the *competent authority of the issuing State* in accordance with its own laws;
- (d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;

(e) *suspected or accused persons shall be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and the issuing State. Witnesses and experts may claim the right not to testify which would accrue to **them** under the law of either the executing or the issuing █ State **and shall be informed about this right in advance of the hearing.***

6. Without prejudice to any measures agreed for the protection of persons, on the conclusion of the hearing, the executing authority shall draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing █ State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.

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7. Each Member State shall take the necessary measures to ensure that, where *the person is* being heard within its territory in accordance with this Article and *refuses* to testify when under an obligation to testify or *does* not testify █ the truth, its national law applies in the same way as if the hearing took place in a national procedure.

Article 25
Hearing by telephone conference

1. If a person is in *the territory of* one Member State ■ and has to be heard as a witness or expert by *competent* authorities of another Member State, the issuing authority of the latter Member State may, *where it is not appropriate or possible for the person to be heard to appear in its territory in person, and after having examined other suitable means*, issue an EIO in order to hear a witness or expert by telephone conference ■ as provided for in *paragraph 2*.
■
2. ■ Unless otherwise agreed, Article 24(3), (5), (6) and (7) shall apply *mutatis mutandis* to hearings by telephone conference.

Article 26
*Information on bank **and other financial** accounts*

1. An EIO may be issued in order to determine whether **any** natural or legal person subject to **the criminal proceedings** concerned holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State, **and if so, to obtain all the details of the identified accounts.**
2. Each Member State shall take the measures necessary to **enable it** to provide the information referred to in paragraph 1 in accordance with the conditions under this Article..
3. The information referred to in paragraph 1 shall also, if requested in the EIO, **include** accounts for which the person subject to the criminal proceedings concerned has powers of attorney.
4. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.

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5. In the EIO the issuing authority shall **indicate** █ the reasons why it considers that the requested information is likely to be of substantial value for the purpose of the **criminal proceedings concerned and** on what grounds it presumes that banks in the executing █ State hold the account and, to the extent available, which banks may be involved █ . **It shall also include in the EIO** any information available which may facilitate **its** execution █ .
6. ***An EIO may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds one or more accounts, in any non-bank financial institution located on the territory of the executing State. Paragraphs 3 to 5 shall apply mutatis mutandis. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused if the execution of the investigative measure would not be authorised in a similar domestic case.***

Article 27
Information on banking and other financial operations

1. An EIO may be issued in order to obtain the details of specified bank accounts and of banking operations which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.
2. Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.
3. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank in which the account is held.
4. In the EIO the issuing *authority* shall indicate the reasons why it considers the requested information relevant for the purpose of the *criminal proceedings concerned*.
5. *An EIO may also be issued with regard to the information provided for in paragraph 1 with reference to the financial operations conducted by non-banking financial institutions. Paragraphs 3 to 4 shall apply mutatis mutandis. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused where the execution of the investigative measure would not be authorised in a similar domestic case.*

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Article 28

*Investigative measures implying **the** gathering of evidence in real time,
continuously and over a certain period of time*

1. When the EIO is issued for the purpose of executing an investigative measure **█** requiring **the** gathering of evidence in real time, continuously and over a certain period of time, **such as:**
 - (a) *the monitoring of banking or other financial operations that are being carried out through one or more specified accounts;*
 - (b) *the controlled deliveries on the territory of the executing State*

its execution may **█** be refused, in addition to the grounds for **non-recognition and non-execution** referred to in **Article 11**, if the execution of the investigative measure concerned would not be authorised in a similar **domestic** case.

2. *The practical **arrangements regarding the** investigative **measure** referred to in paragraph 1 (b) and wherever else necessary shall be agreed between the issuing State and the executing State .*
3. *The issuing authority shall indicate in the EIO why it considers the information requested relevant for the purpose of the criminal proceedings concerned.*
- █**
4. *The right to act, to direct and to control operations related to the execution of an EIO referred to in paragraph 1 shall lie with the competent authorities of the executing State.*

Article 29
Covert investigations

1. *An EIO may be issued for the purpose of requesting the executing State to assist the issuing State in the conduct of investigations into crime by officers acting under covert or false identity ('covert investigations').*
2. *The issuing authority shall indicate in the EIO why it considers that the covert investigation is likely to be relevant for the purpose of the criminal proceedings. The decision on the recognition and execution of an EIO issued under this Article shall be taken in each individual case by the competent authorities of the executing State with due regard to its national law and procedures.*
3. *In addition to the grounds for non-recognition and non-execution referred to in Article 11, the executing authority may refuse to execute an EIO referred to in paragraph 1, where:*
 - (a) the execution of the covert investigation would not be authorised in a similar domestic case; or*
 - (b) it was not possible to reach an agreement on the arrangements for the covert investigations under paragraph 4.*
4. *Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The right to act, to direct and to control the operation related to the covert investigation shall lie solely with the competent authorities of the executing State. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the issuing State and the executing State with due regard to their national laws and procedures.*

CHAPTER V

INTERCEPTION OF TELECOMMUNICATIONS

Article 30

Interception of telecommunications

with technical assistance of another Member State

1. *An EIO may be issued for the interception of telecommunications in the Member State from which technical assistance is needed.*
2. *Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent only to one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located.*
3. *An EIO referred to in paragraph 1 shall also contain the following information:*
 - (a) *information for the purpose of identifying the subject of the interception;*
 - (b) *the desired duration of the interception; and*
 - (c) *sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.*
4. *The issuing authority shall indicate in the EIO the reasons why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings concerned.*

5. *In addition to the grounds for non-recognition or non-execution referred to in Article 11, the execution of an EIO referred to in paragraph 1 may also be refused where the investigative measure would not have been authorised in a similar domestic case. The executing State may make its consent subject to any conditions which would be observed in a similar domestic case.*

6. *An EIO referred to in paragraph 1 may be executed by:*

(a) *transmitting telecommunications immediately to the issuing State; or*

(b) *intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.*

The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with point (a) or (b).

7. *When issuing an EIO referred to in paragraph 1 or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.*

8. *Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transcription, decoding and decrypting of the intercepted communications which shall be borne by the issuing State.*

Article 31

Notification of the Member State where the subject of the interception is located from which no technical assistance is needed

1. *Where, for the purpose of carrying out an investigative measure, the interception of telecommunications is authorized by the competent authority of one Member State (the 'intercepting Member State') and the communication address of the subject of the interception specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall notify the competent authority of the notified Member State of the interception:*
 - (a) *prior to the interception in cases where the competent authority of the intercepting Member State knows at the time of ordering the interception that the subject of the interception is or will be on the territory of the notified Member State;*
 - (b) *during the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.*
2. *The notification referred to in paragraph 1 shall be made by using the form set out in Annex C.*
3. *The competent authority of the notified Member States may, in case where the interception would not be authorised in a similar domestic case, notify, without delay and at the latest within 96 hours after the receipt of the notification referred to in paragraph 1, the competent authority of the intercepting Member State:*
 - (a) *that the interception may not be carried out or shall be terminated; and,*

(b) where necessary, that any material already intercepted while the subject of the interception was on its territory may not be used, or may only be used under conditions which it shall specify. The competent authority of the notified Member State shall inform the competent authority of the intercepting Member State of reasons justifying those conditions.

4. *Article 5(2) shall be applicable mutatis mutandis for the notification referred to in paragraph 2.*

CHAPTER VI

PROVISIONAL MEASURES

Article 32

Provisional measures

1. *The issuing authority may issue an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence.*
2. *The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the EIO.*
3. *Where a provisional measure referred to in paragraph 1 is requested the issuing authority shall indicate in the EIO whether the evidence is to be transferred to the issuing State or is to remain in the executing State. The executing authority shall recognise and execute the EIO and transfer the evidence in accordance with the procedures laid down in this Directive.*

4. *Where, in accordance with paragraph 3, an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure referred to in paragraph 1, or the estimated date for the submission of the request for the evidence to be transferred to the issuing State.*
5. *After consulting the issuing authority, the executing authority may, in accordance with its national law and practice, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure referred to in paragraph 1 is to be maintained. If, in accordance with those conditions, it envisages lifting the provisional measure, the executing authority shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the executing authority that the provisional measure referred to in paragraph 1 has been lifted.*

CHAPTER VII
FINAL PROVISIONS

Article 33
Notifications

1. By ...* each Member State shall notify the Commission of the following:
 - (a) the authority or authorities which, in accordance with its national law, are competent ***according to*** Article 2 (c) and (d) when this Member State is the issuing State or the executing State;
 - (b) the languages accepted for an EIO, as referred to in Article 5(2);
 - (c) the information regarding the designated central authority or authorities if the Member State wishes to make use of the possibility under Article 7(3). This information shall be binding upon the authorities of the issuing State;

2. Each ***Member State may also provide the Commission the list of necessary documents it would require under Article 22(4).***
3. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraphs 1 and 2.
4. The Commission shall make the information received under this Article available to all the Member States ■ and to the EJM. The EJM shall make the information available on the website referred to in Article 9 of the Council Decision 2008/976/JHA¹.

* ***OJ: Please insert the date: Three*** years from the date of entry into force of this Directive.

¹ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

Article 34

Relations to other legal instruments, agreements and arrangements

1. Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 35, this Directive replaces, as from ...,* the corresponding provisions of the following conventions applicable between the Member States bound by this Directive:
 - (a) European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959, as well as its two additional protocols, and the bilateral agreements concluded pursuant to Article 26 thereof;
 - (b) Convention implementing the Schengen *Agreement*;
 - (c) Convention on Mutual Assistance in Criminal Matters between the *Member* States of the European Union and its protocol¹.
2. Framework Decision 2008/978/JHA is hereby ***replaced for the Member States bound by this Directive. Provisions of Framework Decision 2003/577/JHA are replaced for Member States bound by this Directive as regards freezing of evidence.***

For the Member States ***bound by this*** Directive, references to Framework Decision 2008/987/JHA and, as regards freezing of evidence, to Framework Decision 2003/577/JHA, shall be construed as references to this Directive.

* ***OJ: Please insert the date: Three*** years from the date of entry into force of this Directive.

¹ Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 326, 21.11.2001, p. 2).

3. ***In addition to this Directive***, Member States may ***conclude or*** continue to apply **■** bilateral or multilateral agreements or arrangements ***with other Member States*** after ... * ***only*** insofar as these make it possible to ***further strengthen*** the aims of this Directive and contribute to simplifying or ***further*** facilitating ***the procedures for gathering evidence and provided that the level of safeguards set out in this Directive is respected.***

-
4. Member States shall notify ***to*** the Commission by ... * the existing agreements and arrangements referred to in paragraph 3 which they wish to continue to apply. Member States shall also notify the Commission within three months of ***the*** signing **■** of any new agreement or arrangement referred to ***in*** paragraph 3.
-

* ***OJ: Please insert the date: Three years from the entry into force of this Directive.***

* ***OJ: Please insert the date: Three years after the entry into force of this Directive.***

Article 35
Transitional provisions

1. Mutual assistance requests received before ...* shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. Decisions to freeze evidence by virtue of Framework Decision 2003/577/JHA and received before...* shall also be governed by that Framework Decision.
2. Article 8(1) is applicable *mutatis mutandis* to the EIO following a decision of freezing taken under Framework Decision 2003/577/JHA.

Article 36
Transposition

1. Member States shall take the necessary measures to comply with █ this Directive by ...*.
2. ***When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.***
3. By ...*, Member States shall transmit to the █ Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

█

* ***OJ: Please insert the date: Three*** years after the entry into force of this Directive.
* ***OJ: Please insert the date: Three*** years after the entry into force of this Directive.
* ***OJ: Please insert the date: Three*** years after the entry into force of this Directive.

Article 37
Report on the application

No later than five years after ...^{*}, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, ***including in particular, the evaluation of its impact on the cooperation in criminal matters and the protection of individuals, as well as the execution of the provisions on the interception of telecommunications in light of technical developments***. The report shall be accompanied, if ***necessary***, by proposals for ***amendments to*** this Directive.

Article 38
Entry into force

This Directive shall enter into force on the ***twentieth*** day following its publication in the *Official Journal of the European Union*.

Article 39
Addressees

This Directive ***is addressed to*** the Member States in accordance with the Treaties.

Done at ...,

For the European Parliament

For the Council

The President

The President

^{*} OJ: please insert the ***date of*** entry into force of this Directive

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 .../.../EU* . However, if a shorter or specific time-limit is necessary, please provide the date and explain the reason for this:
.....
.....
.....

* OJ: Please, insert the number of this Directive.

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:

.....
.....
.....
.....
.....
.....
.....
.....

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

Hearing by videoconference or other audio-visual transmission

- witness*
- expert*
- suspected or accused person*

Hearing by telephone conference

- witness*
- expert*

Information on bank and other financial accounts

Information on banking and other financial operations

Investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time

- Monitoring of banking or other financial operations*
- Controlled deliveries*
- Other*

Covert investigation

Interception of telecommunications

Provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence.

Section D: Relation to an earlier EIO

Indicate whether this EIO supplements an earlier EIO. If applicable, provide information relevant to identify the previous EIO (the date of issue of the EIO, the authority to which it was transmitted and, if available, the date of transmission of the EIO, and reference numbers given by the issuing and executing authorities).

.....
.....

If relevant please indicate if an EIO has already been addressed to another Member State in the same case.

.....
.....

Section E: Identity of the person concerned

1. State all information, as far as known, regarding the identity of the (i) natural or (ii) legal person(s) concerned by the investigative measure (if more than one person is concerned, please provide the information for each person):

(i) In the case of natural person(s)

Name:.....

First name(s):.....

Other relevant name(s), if applicable:.....

Aliases, if applicable:

Sex:

Nationality:.....

Identity number or social security number:.....

Type and number of the identity document(s) (ID card, passport), if available:
.....

Date of birth:

Place of birth:.....

Residence and/or known address; if address not known, state the last known address:.....

Language(s) which the person understands:
.....

(ii) In the case of legal person(s)

Name:.....

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:.....

Registered seat:.....

Registration number:

Address of the legal person:.....

Name of the legal person's representative:.....

Please describe the position the concerned person currently holds in the proceedings:

Suspected or accused person

Victim

Witness

Expert

Third party

Other (please

specify):.....

2. If different from the address above, please give the location where investigative measure is to be carried out:

.....
.....

3. Provide any other information that will assist with the execution of the EIO:

.....
.....

Section F: Type of proceedings for which the EIO is issued:

- a) with respect to criminal proceedings brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State; or
- b) proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; or
- c) proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.
- d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

Section G: Grounds for Issuing the EIO

1. Summary of the facts

Set out the reasons why the EIO is issued, including a summary of the underlying facts, a description of offences charged or under investigation, the stage the investigation has reached, the reasons for any risk factors and any other relevant information.

.....
.....

2. Nature and legal classification of the offence(s) for which the EIO is issued and the applicable statutory provision/code:

.....
.....

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,

- *counterfeiting currency, including of the euro,*
- *computer-related crime,*
- *environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,*
- *facilitation of unauthorised entry and residence,*
- *murder, grievous bodily injury,*
- *illicit trade in human organs and tissue,*
- *kidnapping, illegal restraint and hostage-taking,*
- *racism and xenophobia,*
- *organised or armed robbery,*
- *illicit trafficking in cultural goods, including antiques and works of art,*
- *swindling,*
- *racketeering and extortion,*
- *counterfeiting and piracy of products,*
- *forgery of administrative documents and trafficking therein,*
- *forgery of means of payment,*
- *illicit trafficking in hormonal substances and other growth promoters,*
- *illicit trafficking in nuclear or radioactive materials,*
- *trafficking in stolen vehicles,*
- *rape,*
- *arson,*
- *crimes within the jurisdiction of the International Criminal Court,*
- *unlawful seizure of aircraft/ships,*
- *sabotage.*

Section H: Additional requirements for certain measures

Fill out the sections relevant to the investigative measure(s) requested:

Section H1: Transfer of a person held in custody

(1) If a temporary transfer to the issuing State of a person held in custody for the purpose of the investigation is requested, please indicate whether the person consented to this measure:

Yes No I request that the person's consent is sought

(2) If a temporary transfer to the executing State of a person held in custody for the purpose of investigation is requested, please indicate whether the person consented to this measure:

Yes No

Section H2: Video or telephone conference or other audio-visual transmission

(1) If hearing by videoconference or telephone conference or other audio-visual transmission is requested:

Please indicate the name of the authority that will conduct the hearing (contact details/language):.....

Please indicate reasons for requesting this measure:.....

- (a) **Hearing by videoconference or other audio-visual transmission:**
 - The suspected or accused person has given his/her consent*

- (b) **Hearing by telephone conference**

Section H3: Provisional measures

If a provisional measure to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence, is requested, please indicate whether:

- the item is to be transferred to the issuing State**
- the item is to remain in the executing State; please indicate an estimated date:**

for lifting of provisional measure:.....

for the submission of a subsequent request concerning the item

Section H4: Information on bank and other financial accounts

(1) If information on bank accounts or other financial accounts that the person holds or controls is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings and on what grounds you presume that banks in the executing State hold the account:

- Information on bank accounts that the person holds or in respect of which he or she has the power of attorney**
- Information on other financial accounts that the person holds or in respect of which he or she has the power of attorney**

.....
.....
.....
.....

(2) If information on banking operations or other financial operations is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings:

- Information on banking operations**
- Information on other financial operations**

.....
.....
.....
.....

Indicate the relevant period of time and the related accounts

.....
.....

Section H5: Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time

If such investigative measure is requested please indicate the reasons why you consider the requested information relevant for the purpose of the criminal proceedings

.....
.....

Section H6: Covert investigations

If covert investigation is requested please indicate the reasons why you consider the investigative measure likely to be relevant for the purpose of the criminal proceedings

.....
.....

Section H7 Interception of telecommunications

(1) If interception of telecommunications is requested please indicate the reasons why you consider the

investigative measure relevant for the purpose of the criminal proceedings

.....
.....

(2) Please provide following information:

(a) information for the purpose of identifying the subject of the interception:

.....

(b) the desired duration of the interception:

.....

(c) technical data (in particular the target identifier – such as mobile telephone, landline telephone, email address, internet connection), to ensure that the EIO can be executed:

.....

(3) Please indicate your preference concerning the method of execution

Immediate transmission

Recording and subsequent transmission

Please indicate if you also require transcription, decoding or decrypting of the intercepted material*:

.....

***Please be aware that the costs of any transcription, decoding or decrypting must be met by the issuing State.**

Section I: Formalities and procedures requested for the execution

1. Tick and complete, if applicable

It is requested that the executing authority comply with the following formalities and procedures(...):.....

.....

2. Tick and complete, if applicable

It is requested that one or several officials of the issuing State assist in the execution of the EIO in support of the competent authorities of the executing State.

Contact details of the officials:

.....

.....

Languages that may be used for communication:.....

Section J: Legal Remedies

1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

.....
.....

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:

.....

Contact person (if applicable):

.....

Address:

Tel. No: (country code) (area/city code)

.....

Fax No: (country code) (area/city code)

.....

E-mail:

Section K: Details of the authority which issued the EIO

Tick the type of authority which issued the EIO:

- judicial authority**
- *any other competent authority as defined by the law of the issuing State**
***Please also complete section (L)**

Name of authority:

Name of representative / contact point:

File

no.:

Address:

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

E-mail.....

Languages in which it is possible to communicate with the issuing authority:

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of evidence:

Name / Title / Organisation:

Address:

Email / Contact Phone No.:

Signature of the issuing authority and/or its representative certifying the content of the EIO as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

Section L Details of the judicial authority which validated the EIO

Please indicate the type of judicial authority which has validated this EIO:

- (a) judge or court**
- (b) investigating judge**
- (c) public prosecutor**

Official name of the validating authority:

Name of its representative:

.....

Post held (title/grade):

.....

File

no:.....

Address:

.....

Tel. No: (country code) (area/city code)

.....

Fax No: (country code) (area/city

code).....

E-

mail:.....

Languages in which it is possible to communicate with the validating authority:

.....

Please indicate if the main contact point for the executing authority should be the:

- issuing authority*
- validating authority*

Signature and details of the validating authority

Name:

Post held (title/grade):

Date:

Official stamp (if available):

ANNEX B

CONFIRMATION OF THE RECEIPT OF AN EIO

This form has to be completed by the authority of the executing State which received the EIO referred to below.

<p>(A) THE EIO CONCERNED</p> <p>■ Authority which issued the EIO: File reference: Date of issuing: Date of <i>receipt</i>:</p>
<p>(B) THE AUTHORITY WHICH RECEIVED THE EIO⁽¹⁾</p> <p>Official name of the competent authority: Name of its representative: Post held (title/grade): Address: Tel. No: (country code) (area/city code) Fax No: (country code) (area/city code) E-mail: File reference: Languages in which it is possible to communicate with the authority:</p>

¹ This section is to be **completed** by each authority which received the EIO. This obligation falls upon the authority competent to recognise and execute the EIO and, where applicable, upon the central authority or the authority which transmitted the EIO to the competent authority.

(C) (WHERE APPLICABLE) THE COMPETENT AUTHORITY TO WHOM THE EIO IS TRANSMITTED BY THE AUTHORITY UNDER (B)

Official name of the authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

Tel. No: (country code) (area/city code)

.....

Fax No: (country code) (area/city code)

.....

E-mail:

.....

Date of transmission:

.....

File reference:

.....

Language(s) that may be used for communication:

(D) ANY OTHER INFORMATION WHICH MAY BE RELEVANT FOR THE ISSUING AUTHORITY:

.....

.....

.....

(E) SIGNATURE AND DATE

Signature:

Date:.....

Official stamp (if available):

ANNEX C
NOTIFICATION

This form is used in order to notify a Member State about the interception of telecommunication that will be, is or has been carried out on its territory without its technical assistance. I hereby inform(notified Member State) of the interception.

(A)¹ THE COMPETENT AUTHORITY

Official name of the competent authority of intercepting Member State:

.....
Name of its representative:

.....
Post held (title/grade):

.....
Address:

.....
Tel. No: (country code) (area/city code)

.....
Fax No: (country code) (area/city code)

.....
E-mail:

.....
File reference

.....
Date of issuing:

.....
Languages in which it is possible to communicate with the authority:

(B) INFORMATION CONCERNING THE INTERCEPTION

(I) Information about state of play: This notification takes place (please tick)

- prior to the interception*
- during the interception*
- after the interception*

(II) The (anticipated) duration of the interception (as known to the issuing authority):

....., starting from.....

(III) Target of the interception: (telephone number, IP number or e-mail)

.....
(IV) Identity of the persons concerned

State all information, as far as they are known, regarding the identity of the (i) natural or (ii)

legal person(s) against whom the proceedings are/may be/is taking place:

¹ The authority which is referred to here is the one which should be contacted in further correspondence with the issuing State.

(i) In the case of natural person(s)

Name:

First name(s):.....

Other relevant name(s), if applicable:

Aliases, if applicable:.....

Sex:.....

Nationality:.....

Identity number or social security number.....

Date of birth:.....

Place of birth:.....

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

.....

(ii) In the case of legal person(s)

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat:

Registration number:.....

Address of the legal person:

.....

Name and contact details of the representative of the legal person:.....

(V) information regarding the purpose of this interception:

State all information necessary, including a description of the case, legal classification of the offence(s) and the applicable statutory provision/code, in order to enable the notified authority to assess the following:

- **whether the interception would be authorised in a similar domestic case; and**
- **whether the material obtained can be used in legal proceedings;**
- **where the interception has already occurred, whether that material can be used in legal proceedings**

.....
.....
.....
.....
.....

Please note that any objection to the interception or the use of already intercepted material must be made no later than 96 hours after the reception of this notification.

(D) SIGNATURE AND DATE

Signature:

Date:.....

Official stamp (if available):

ANNEX D

The categories of offences referred to in Article 11

- *participation in a criminal organisation,*
- *terrorism,*
- *trafficking in human beings,*
- *sexual exploitation of children and child pornography,*
- *illicit trafficking in narcotic drugs and psychotropic substances,*
- *illicit trafficking in weapons, munitions and explosives,*
- *corruption,*
- *fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,*
- *laundering of the proceeds of crime,*
- *counterfeiting currency, including of the euro,*
- *computer-related crime,*
- *environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,*
- *facilitation of unauthorised entry and residence,*
- *murder, grievous bodily injury,*
- *illicit trade in human organs and tissue,*
- *kidnapping, illegal restraint and hostage-taking,*
- *racism and xenophobia,*

- *organised or armed robbery,*
 - *illicit trafficking in cultural goods, including antiques and works of art,*
 - *swindling,*
 - *racketeering and extortion,*
 - *counterfeiting and piracy of products,*
 - *forgery of administrative documents and trafficking therein,*
 - *forgery of means of payment,*
 - *illicit trafficking in hormonal substances and other growth promoters,*
 - *illicit trafficking in nuclear or radioactive materials,*
 - *trafficking in stolen vehicles,*
 - *rape,*
 - *arson,*
 - *crimes within the jurisdiction of the International Criminal Court,*
 - *unlawful seizure of aircraft/ships,*
 - *sabotage.*
-