



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 May 2012

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OUTCOME OF PROCEEDINGS

of :	Working Party on Cooperation in Criminal Matters
On :	8 March 2012
No prev doc	7014/12 COPEN 44 EUROJUST 16 EJN 12 CODEC 506
Subject :	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 for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters - Preamble, forms and annex related to Article 29.1

At the Council meeting on 13-14 December 2011 a general approach has been reached on the text of the draft Directive (except for Article 29.2 and the annex related to Article 29.1) and Recitals 10 to 10c, 12a, 12b, 13a, 13b, 14a to 14k, 15a and 17a.

Some delegations maintain parliamentary scrutiny reservations on the draft Directive.

The working party on Cooperation in Criminal Matters examined at its meeting on 8 march 2012 the remaining recitals of the preamble, the forms and the list of provisions of currently existing legal instruments that may be affected by this instrument.. **The current document takes into account the observations made by delegations in a written form and during the above mentioned meeting of the Working Party.**

The text may be further discussed following the negotiations of the proposed Directive with the European Parliament.

**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
for a Directive 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,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) According to Article 82(1) of the Treaty on the Functioning of the European Union, 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/JHA of 22 July 2003 on the execution in the European Union of orders freezing property and evidence,¹ 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 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.
- (4) 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 matters² was adopted to apply the principle of mutual recognition in such respect. However, the European evidence warrant 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 are free to use the new regime or to use mutual legal assistance procedures which remain in any case applicable to evidence falling outside of the scope of the European evidence warrant.
- (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.

¹ OJ L 196, 2.8.2003, p. 45.

² OJ L 350, 30.12.2008, p. 72.

- (6) In the Stockholm programme, which was adopted on 11 December 2009, the European Council decided 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 constitute a fragmentary regime and that a new approach is 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 the Framework Decision on the European evidence warrant, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal.
- (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 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 has a horizontal scope and therefore applies 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 Directive³, existing instruments should therefore continue to apply to this type of measure.

³ DE opposed this addition, claiming its unclarity; NL opposed stating that it would excessively widen the scope of application of the Directive.

- (9) This Directive does not apply to cross-border observations as referred to in Article 40 of the Convention of 19 June 1990 implementing the Schengen Agreement.
- (10) The EIO should focus on the investigative measure which has 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 measure is to be used. However, the executing authority should, wherever possible, use another type of measure if the requested measure does not exist under its national law or would not be available in a similar domestic case. Availability of the measure under the law of the executing State should be assessed by the executing authority only in relation to legal conditions that are essential for the execution of the measure. This does not allow the executing State to assess the underlying reasons for issuing the EIO. Availability refers to occasions where the requested measure exists under the law of the executing State but is only lawfully available in certain situations, for example when the measure can only be carried out for offences of a certain degree of seriousness; against persons for which 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 when it will achieve the same result as the measure provided for in the EIO by means implying less interference on the fundamental rights of the person concerned.

- (10a) 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 proceedings, whether the measure chosen is necessary and proportionate for the gathering of this evidence, and whether, by means of issuing the EIO, another MS should be involved in the gathering of this evidence. The execution of an EIO should not be refused on grounds other than those stated in this Directive, however the executing authority is entitled to opt for a less intrusive measure than the one indicated in an EIO if it makes it possible to achieve similar results.
- (10b) In view of ensuring the transmission of the EIO to the competent authority of the executing State, the issuing authority may make use of any possible/relevant means of transmission, including for example the secure telecommunications system of the European Judicial Network, Eurojust, Interpol or other channels used by judicial or law enforcement authorities. 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.
- (10c) When making a declaration concerning the language regime, Member States are encouraged to include at least one language which is commonly used in the European Union other than their official language(s).
- (10d) To ensure the effectiveness of judicial cooperation in criminal matters, the possibility of refusing to recognise or execute the EIO, as well as the grounds for postponing its execution, should be limited.

(11) (...).⁴

(12) (...)

(12a) The principle of *ne bis in idem* is a fundamental principle of law in the European Union. Therefore the executing authority should be entitled to refuse the execution of an EIO if its execution would be contrary to such principle and it is firmly confirmed that the trial of the person concerned has been finally disposed of for the same facts and under the conditions set out in Article 54 of the Convention of 19 June 1990 implementing the Schengen Agreement. Given the preliminary nature of the proceedings underlying an EIO and the complexity of analysis of the conditions required by Article 54, the executing authority should inform and consult with the issuing authority, which should consider this information and take the necessary measures in relation to the proceedings underlying the issuing of an EIO. Such consultation is without prejudice to the obligation of the executing authority to consult the issuing authority in accordance with Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.⁵

⁴ Deleted following a suggestion by CZ.

⁵ OJ L 328, 15.12.2009, p. 42.

- (12b) It should be possible to refuse an EIO where its recognition or execution in the executing State would involve breaching of an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in the European Union and 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 which would run counter to the obligation to abolish certain grounds for refusal in Article 7 of the Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. This may include as well, 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.
- (13) Time restrictions 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 national case. Deadlines should be provided to ensure a decision or execution within reasonable time or to meet procedural constraints in the issuing State.

- (13a) Legal remedies available against an EIO should be at least equal to those available in the domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of these legal remedies including by informing in due time any interested party about the possibilities and modalities for seeking the legal remedies. In cases where the objections against the EIO are submitted by interested party in the executing State in respect of the substantive reasons for issuing the EIO, it is advisable that information about such challenge is transmitted to the issuing authority and that the interested party is informed accordingly.
- (13b) The expenses incurred in the territory of the executing Member State for the execution of an EIO should be borne exclusively by that Member 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 large police operation or surveillance activities over a large period of time. This should not impede the execution of the EIO and the issuing and executing authorities should seek to establish which expenses are to be considered as exceptionally high. The issue of costs might become subject to consultations between the Member States concerned and they are recommended to resolve this issue during the consultations stage. As the 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 does not constitute an additional ground for refusal, and in any case should not be abused in a way to delay or bar execution of the EIO.

- (14) The EIO provides a single regime for obtaining evidence. Additional rules are however necessary for some types of investigative measures which should be included 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 are covered by the EIO, but (...) whenever necessary practical arrangements should be agreed between the Member States concerned in order to accommodate the differences existing in the national laws of the Member States.
- (14a) This Directive sets 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 with a view to collecting evidence. For example an EIO may be issued for the temporary transfer of the person to the issuing State or for carrying out of a hearing by videoconference. However, where the 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 an European Arrest Warrant should be issued in accordance with the Council Framework Decision 2002/584/JHA.

- (14b) It is up to the issuing authority to consider, in accordance with its law, whether an EIO should be issued for the temporary transfer of the person in custody for the purpose of carrying out of an investigative measure in the executing State. Accordingly, legal conditions, such as e.g. consent of the person are to be determined under the law of the issuing State. As a minimum requirement, the Directive sets an obligation to give the person concerned an opportunity to state their opinion on the temporary transfer and that this opinion be taken into account.
- (14c) With a view to the proportionate use of European Arrest Warrants for the purpose of prosecution, judicial authorities should consider whether issuing an EIO for the hearing of a suspected or accused person via videoconferencing could serve as an effective alternative.
- (14d) An EIO may be issued in order to get evidence concerning the accounts, of whatever nature, held in any bank or any non-banking financial institution by the 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 which such information is found necessary by the competent authorities in the course of criminal proceedings.
- (14e) Where in this Directive a reference is made to the financial institutions this term should be understood according to the relevant definitions of Article 3 of the Directive 2005/60/EC.
- (14f) When an EIO is issued to obtain the ‘particulars’ of a specified account, ‘particulars’ is 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.

- (14g) Possibilities to cooperate under the provisions on interception of telecommunications should not be limited to the content of the telecommunication, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for purposes 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 measure.
- (14h) Where several Member States are in the position to provide the necessary technical assistance, an EIO should be sent to only one of them and priority should be given to the State where the person is located. Member States where the subject is located and from which no technical assistance is needed to carry out the interception should be notified thereof [according to the Article 27d]. Conversely, where the technical assistance may not be received from merely one Member State, an EIO may be transmitted to more than one executing State.
- (14i) 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 the measure would be authorised in a similar national case.
- (14j) 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.

(14k) This directive, because 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. It is important to recognise that the distinction between the two objectives of provisional measures is not always obvious and that the objective of the provisional measure may change in the course of the proceedings. For this reason, it is crucial for future works to maintain a smooth interrelationship between the various instruments applicable in this field. Furthermore, for the same reason, the assessment on whether the item is to be used as evidence and therefore the object of an EIO should be left to the issuing authority.

(15) (...)

(15a) Where reference to mutual assistance is made in relevant international instruments, such as in conventions concluded within the Council of Europe it is understood that this Directive applies between the Member States participating in its adoption in precedence to those conventions.

(15aa) The offences listed in Annex D should be interpreted consistently with their interpretation under the already existing legal instruments on mutual recognition.

- (16) Since the objective of this Directive, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (17) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, notably Title VI thereof. 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.
- (17a) Personal data processed, when implementing this Directive, should be protected in accordance with the provisions on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and with relevant international instruments in this field.
- (18) [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 Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption of this Directive.]
- (19) In accordance with Articles 1 and 2 of Protocol N° 22 on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

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 and that the investigative measures requested could have been ordered under the same conditions in a similar national case. I request that the investigative measure or measures specified below be carried out and the evidence thereafter 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):

Deadlines for execution of the EIO are laid down in the Directive. However, if a shorter or specific deadline is necessary, please provide the date and explain the reason for this:

.....

Section C: Investigative measure to be carried out

1. Describe the assistance / investigative measure required OR indicate if it is one of the below investigative measures:

.....

.....
 Hearing

witness

expert

suspected or accused person

Search and seizure

Temporary transfer of prisoner to the issuing State

Temporary transfer of prisoner 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

Monitoring of the banking or other financial operations

Controlled deliveries

Covert investigations

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

If applicable, indicate if this EIO supplements an earlier EIO. Provide information relevant to identify the previous EIO (the date of issue of such 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 as well if an EIO has already been addressed to another MS
.....

Section E: Identity of the person concerned

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 witness
- Third party
- Other (please specify):

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

3) Provide other information that will assist with the execution of the EIO, if any:

Section F: Type of proceedings for which the EIO has been 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 further 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 why the EIO has been 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) resulting in the EIO and the applicable statutory provision/code:

.....
.....

3. Is the offence in the context of 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 laws 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 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 the person's opinion of the transfer:

.....

Section H2: Video or telephone conference

(1) If **hearing by video or telephone conference** is requested:

Authority that will conduct the hearing (contact details/language): ...

- (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 shall be transferred to the issuing State
- the item shall 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: Banking information

(1) If **information on bank accounts or other financial accounts** that the person holds or controls is requested, please indicate, for each of them, 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 has the power of attorney.
- Information on other financial accounts that the person holds or in respect of which has the power of attorney

.....
.....
.....
.....
(2) If **information on banking operations or other financial operations** is requested, please indicate, for each of them, 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: Covert investigations

If **covert investigation** is requested please indicate, why you consider the measure relevant for the purpose of the criminal proceedings
.....
.....

Section H6: Interception of telecommunications

(1) If **interception of telecommunications** is requested please indicate, why you consider the measure relevant for the purpose of the criminal proceedings
.....
.....

(2) Please provide following information:

(a) information for the purpose of identifying the subject of this 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 authority.

Section H7: Gathering of evidence in real time

If an investigative measure implying **gathering of evidence in real time, continuously and over a certain period of time**, is requested please indicate the type of measure and why you consider the measure relevant for the purpose of the criminal proceedings

.....
.....

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. (...)

3. 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:

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 magistrate
- (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>Competent authority which issued the EIO:</p> <p>File reference:</p> <p>Date of issuing:</p> <p>Date of receipt:</p>
<p>(B) THE AUTHORITY WHICH RECEIVED THE EIO⁶</p> <p>Official name of the competent authority:</p> <p>Name of its representative:</p> <p>Post held (title/grade):</p> <p>Address:</p> <p>Tel. No: (country code) (area/city code)</p> <p>Fax No: (country code) (area/city code)</p> <p>E-mail:</p> <p>File reference</p> <p>Languages in which it is possible to communicate with the authority:</p>

⁶ 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

.....
⁷File 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):

.....
⁷ Addition suggested by DE.

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)⁸ 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)

⁸ The authority which is referred to here is the one which should be contacted in further correspondence with the issuing State.

(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:

(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 fo the legal person:.....

(IV) information regarding the purpose of this interception:

State all information necessary, including a description of the case, in order to enable the notified authority to assess the following:

- whether the interception would be authorised in a similar national 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 (related to Article 10)⁹

⁹ Deleted, since this information is contained already in Annex A.

ANNEX E (related to Article 29.1)¹⁰

¹¹List of provisions of currently existing legal instruments replaced by this Directive on the European investigation order, in respect of the Member States participating to its adoption

<u>EIO Measure</u>	<u>Corresponding provisions in existing instruments</u>
<i>General investigative measures / transfer of evidence</i>	Article 3 CoE 1959 MLA Convention ¹² Article 13 CoE 1959 MLA Convention Art (...) <u>1 and 2</u> of 1978 Additional Protocol to CoE 1959 MLA Convention ¹³ ¹⁴ Articles <u>3, 4 and 6</u> EU 2000 MLA Convention ¹⁵ (...) ¹⁶ (...) <u>Articles 4-9 EU 2001 MLA Protocol</u> ¹⁷ Article 51 Schengen ¹⁸ Convention ¹⁹

¹⁰ This Annex has been amended by the Presidency following the observations made by the delegations and consultation with the CLS. It will be finalised once the text of the directive has been set following the negotiations with the European Parliament.

¹¹ BE commented “*Explicit mention should be done about the fact that other provisions may also be affected while not completely replaced by the draft directive (e.g. Art. 15 and 16 of the EU 2000 MLA Convention, etc*”

¹² Deletion followed by suggestion by SK, CZ

¹³ Modification following suggestion by BE.

¹⁴ CZ proposed to include also reference to Articles 8-10 of the 1959 Convention..

¹⁵ SK, CZ proposes to delete this point.

¹⁶ Reference to the Naples II Convention deleted following the outcome of the discussions at the Council on 13-14 December 2011. BE suggested that an opinion from the Customs Cooperation Working Party, which has already discussed this issue, could be sought before taking a final decision on it. Very strong position of CZ against inclusion of any provisions of Naples Convention. UK/DE/FR favoured the deletion.

¹⁷ Inclusion following suggestion by BE.

¹⁸ CZ suggested “The Schengen implementing Convention”

¹⁹ BE proposes to add also reference to Articles 48, 49, 50 and 53. It is noted however that these provisions are already repealed by the 2000 MLA Convention or do not fall within the scope of this proposal.

<i>Specific investigative measures</i>	
Temporary transfer to the issuing State of persons held in custody for purpose of investigation	Article 11 CoE 1959 MLA Convention as modified by Second Additional Protocol to CoE 1959 MLA Convention ²⁰
Temporary transfer to the executing State of persons held in custody for purpose of investigation	Article 9 EU 2000 MLA Convention Article 13 Second Additional Protocol to CoE 1959 MLA Convention

Hearing by videoconference	Article 10 EU 2000 MLA Convention Article 9 Second Additional Protocol to CoE 1959 MLA Convention
Hearing by telephone conference	Article 11 EU 2000 MLA Convention Article 10 Second Additional Protocol to CoE 1959 MLA Convention
Information on bank account	Article 1 EU 2001 MLA Protocol
Information on banking transactions	Article 2 EU 2001 MLA Protocol
(...)	(...)
(...)	(...)
Investigative measures implying gathering of evidence in real time, continuously and over a certain period of time.	<u>Article 3 EU 2001 MLA Protocol (monitoring of banking transactions)</u> <u>Article 18 Second Additional Protocol to CoE 1959 MLA Convention</u> <u>Article 12 EU 2000 MLA Convention (Controlled deliveries)</u>

²⁰ DE suggests to limit this reference only to Article 3 of the second protocol

<u>Covert investigations</u>	<u>Article 19 Second Additional Protocol to CoE 1959 MLA Convention Article 14 EU 2000 MLA Convention</u>
<u>Interception of communications</u>	<u>Title III EU 2000 MLA Convention</u>
<u>[²¹Preliminary:] Provisional measures preventing the destruction, transformation, moving, transfer or disposal of items that may be used as evidence</u>	<u>[Preliminary:] Articles ... Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence as far as property that could be subject to evidence is concerned</u>

²¹ Addition suggested by DE. However, the Presidency would like to draw the attention of the delegations to the specific wording of Article 29.2 of the present Directive. Therefore, Presidency would like to propose that clarification is introduced into Article 29 (1) last sentence so that it reads as follows: The detailed list of specific provisions of the above mentioned conventions replaced by this Directive is set out in an Annex.