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NOTE

From:	Presidency
To:	Working Party on Judicial Cooperation in Criminal Matters (COPEN)
No. prev. doc.:	12014/16
Subject:	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters - State of play of the implementation process

Following the discussions at the meeting in CATS in September, and as announced at the meeting of CATS in November, the Presidency intends having a discussion on the implementation of the EIO Directive.

Delegations find attached a table, provided by the EJN, setting out the state of implementation of the Directive (situation as per 10 November 2016; Annex I).

Member States are asked to indicate whether

- the table correctly represents the state of play;
- there have been any developments as regards implementation;
- they have any problems to implement the Directive in their national legal orders.

Delegations also find attached a table, provided by the EJTN, setting out the training that has been organised by the EJTN in respect of the EIO Directive in 2016, and the training-activities that are foreseen for 2017 (Annex II). Member States are asked to indicate whether there is a need for any additional training regarding this Directive.

Directive on the European Investigation Order (2014/41/EU)

State of Play of the Implementation¹

MEMBER STATE	IMPLEMENTATION STATUS
Austria	The law-making department at the Ministry of Justice have already drafted the bill of the implementing law. It is envisaged that the EIO shall enter into force by the date of the obligatory implementation in May 2017 at the latest. The bill, however, has not yet been passed over to the Parliament.
Belgium	The office of the Attorney general is currently undergoing the process of establishing which Acts and/or Subsidiary legislation are required to be amended in order to transpose the said Directive into National Legislation.
Bulgaria	On process of implementation of the EIO. Ministry of justice formed a working group and we are discussing the draft of the law implementing the EIO.
Croatia	Directive on the European Investigation Order (2014/41/EU) is still not implemented in the Croatian legislation. The Ministry of Justice shall nominate the Working Group compiled from practitioners and professors that shall be responsible for preparing the draft of the Act on Amendments of the Act on judicial cooperation in criminal matters with Member States of European Union. By this Act the Directive 2014/41/EU shall be implemented in domestic legislation by the expiry of deadline proscribed by the Article 36 of the Directive.
Cyprus	Not yet drafted a Law implementing for its provision. The drafting is under consideration in the Office of the Attorney General of the Republic.
Czech Republic	The draft bill has been approved by the Government in September 2016 and submitted to the Parliament. It is envisaged that the EIO implementing legislation shall enter into force on 22 May 2017.
Denmark	Cannot opt-in to the EIO and will not implement the directive.

¹ Information provided by the National Correspondents of the European Judicial Network. Compilation prepared by the EJM Secretariat.

Estonia	<p>The Penal Law and Procedure Division, the law drafting unit in our ministry, scheduled to implement the Directive in time and EIO will be applicable since 22 May 2017.</p> <p>In the law drafting process appeared some questions and we discussed them with Finnish colleagues who share the same concerns.</p> <p>Firstly, Article 34 (1) of the Directive - As the Directive will replace the three basic instruments mentioned in the Article 34 (1), the wording of this section, particularly meaning of “the corresponding provisions” needs some clarifications. This question was discussed also on Experts Meeting organised by Commission and additional explanations promised by Commission, but so far we have heard nothing.</p> <p>Secondly, the Article 34 (3) - Directive allows to the Member States to continue to apply bilateral or multilateral agreements with other Member States after 22 May 2017 only insofar as these improve the aims of this Directive and contribute to simplifying the procedures for gathering evidence. If two Member States finds the bilateral agreement, regulating besides the evidence gathering also other topics, useful and decide to go on with it and apply this agreement partly, would it be acceptable in the lights of Directive.</p> <p>Hopefully other Member States will support the view that some explanatory report or handbook from Commission would be needed.</p>
Finland	<p>In May 2016 the working group preparing the implementation of the Directive gave its proposal for a draft government proposal (bill) for the implementation legislation. The aim is to give the final proposal to the parliament before the end of the year 2016. The implementing legislation should be in force in time.</p>
France	<p>Working on the draft legislation (called “ordonnance” in France) to transpose the directive on our national legislation. We hope that the draft will be presented and adopted in the Council of ministers at the end of November, and published at the beginning of 2017. The implementing decree could be published during the first quarter of 2017. Then, the “ordonnance” needs to be ratified by a law. We aim to present the ratification law to the Parliament on April 2017.</p>

Germany	Draft law exists and it is expected to pass parliament in time so it will be in force on time.
Greece	A draft law committee has been established at the Hellenic Ministry of Justice, Transparency and Human Rights, preparing the draft law for the incorporation of the Directive into national legislation.
Hungary	The implementation of the EIO is in course but we are in the preparation phase.
Italy	Parliament has recently delegated the Government for the implementation of the EIO Directive. In January a Commission had been designated to propose a draft of the text of the Legislative Decree. On the last week of July, the final draft has been submitted to the competent office in the Ministry of Justice. It is expected to respect the deadline for implementation.
Ireland	Ireland did not take part in the adoption of this Directive, the issue of opting in remains under consideration.
Latvia	Ministry of Justice has prepared the amendments to the Criminal Procedure Law of Latvia to implement the EIO directive. These amendments were supported by the Cabinet of Ministers and sent to the Parliament at the end of September. Our preliminary feelings are that at the beginning of 2017 the amendments will enter in to the force and will be applicable.
Lithuania	Draft laws aimed at implementing the EIO Directive in Lithuania were prepared by the Ministry of Justice and on 27 July 2016 were submitted for public and interinstitutional consultations. After the consultations, they are expected to be submitted to government session.
Luxembourg	There is a working group taking care of the transposition of the Directive on the European Investigation Order (2014/41/EU). A first draft will be available not before end of 2016 or even January 2017.
Malta	The Office of the Attorney General is currently undergoing the process of establishing which Acts and/or Subsidiary Legislation are required to be amended in order to transpose the said Directive into National Legislation.


Poland	Analytical works are being conducted by specialists at the Ministry of Justice on the draft law implementing abovementioned Directive. These works are on an initial phase.
Portugal	According to the Ministry of Justice, the draft law is at the Minister of Justice office.
Romania	A draft bill on EIO was already issued by the Romanian Ministry of Justice and a formal written consultation to seek the views of stakeholders on the options for transposition is currently being carried out. The draft bill will be formally introduced to the Romanian Parliament after the consultation process will be completed (by the end of 2016).
Slovakia	Slovak Republic is currently drafting a text of the bill. According to the legislative working plan, it should be approved during December.
Slovenia	No concrete steps to draft the implementation law (reply from Ministry that for the reason of lack of staff).
Spain	The law- making department at the Ministry of Justice is working on a draft of the text. It seems that the better option is to include the implementation into the national Law 23/2014 on mutual recognition of judicial decision in criminal matters in the European Union that joins up in one law all the instruments on mutual recognition.
Sweden	The Ministry of Justice is currently preparing a government bill regarding the implementation of the Directive on the European Investigation Order (2014/41/EU). The government bill is expected to be presented to the Parliament during spring 2017.
The Netherlands	The Act implementing the EIO will be discussed in Parliament shortly.

United Kingdom	The UK is in the process of implementing the European Investigation Order and we expect to transpose it in time for the May 2017 deadline. The Home Office's policy team are having regular meetings with key stakeholders, which include the Crown Prosecution Service, the Crown Office (i.e. the Scottish Prosecution Service), Serious Fraud Office, police and National Crime Agency.
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European Judicial Training Network
Réseau Européen de Formation Judiciaire



<u>REPORT BY THE EJTN SECRETARIAT</u>	THE EUROPEAN INVESTIGATION ORDER (EIO) IN EJTN SEMINARS	
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I. 2016

a) Overview of activities

The European Investigation Order (EIO) has been a key topic and subject matter to legal discussions within the following seminars:

- **CR-2016-02: Cross-border evidence in practice, 15-16 March 2016 Brussels**

The total amount of participants for the seminar « **Cross-border evidence in practice** » which took place in Brussels 15-16 March 2016 was evaluated at 35 persons. Seven different EU nationalities attended this seminar: Cyprus (3), Czech Republic (5), Hungary (7), Italy (7), Latvia (6), Poland (6) and Malta (1).

Only these countries expressed interest within a call for interest being part of EJTN selection process.

- **CR-2016-08 Barcelona: Cross-border evidence in practice, 29-30 September 2016 Barcelona**

The second EJTN seminar « **Cross-border evidence in practice** » organised in Barcelona on the 29-30 September 2016 was attended by 44 persons from 8 different EU Member States: Austria (6), Bulgaria (6), Spain (4), Germany (6), Hungary (6), Romania (6), Slovenia (5) and Portugal (5).

Only these countries expressed interest within a call for interest being part of EJTN selection process.

NAT.	Brussels - March 2016							Barcelona - September 2016							
	CY	CZ	HR	IT	LT	PL	MT	AT	BG	ES	DE	HU	RO	SI	PT
Number	3	5	7	7	6	6	1	6	6	4	6	6	6	5	5
Total	35							44							
J&P	Judges			Prosecutors			Others	Judges				Prosecutors			
Number	18			13			4	24				20			
Percentage	51,42%			37,14%			11,4%	54,54%				45,45%			

b) Program of the seminars on the EIO in 2016

- The new legal framework of EU cross-border gathering of evidence: which changes with the European Investigation Order
- A standard form to be used by practitioners (Annex A of the European Investigation Order Directive)
- National challenges in the implementation of the European Investigation Order

II. 2017 (planned activities)

The following seminars will be dealing with the EIO as key topic (legal framework/standar form/ national challenges in the implementation of the EIO and/ or practical excercises):

- **CR/2017/02: EU Cross-border evidence in practice, 16-17 March 2017 Barcelona**

Target groups

Judges and prosecutors from Spain, Czech Republic, Italy, Poland, Romania, Finland and Lithuania.
6 per EU Member State (total 42)

- **CR-2017-07: EU Cross-border evidence in practice, 21-22 September 2017 Barcelona**

Target groups

Judges and prosecutors from Austria, Belgium, Germany, Greece, Hungary, Slovenia and Sweden.
6 per EU Member State (total 42)

- **CR-2017-06: Migrant smuggling and international judicial cooperation in criminal matters: EAW and MLA simulations, 13-15 September 2017 Scandicci¹**

Target groups

Judges and prosecutors from Croatia, Finland, and Italy
6 per EU Member State (total 42)

- **CR-2017-08: Counter-terrorism and international judicial cooperation in criminal matters: EAW and MLA simulations, 14-16 November 2017 Madrid²**

Target groups

Judges and prosecutors from the Czech Republic, Portugal, Romania, and Spain.
Minimum of 8 per EU Member State

- **CR-2017-10: Economic crimes, asset recovery and confiscation in the EU, 29-30 November 2017 Leipzig-Saxony**

Target groups

Judges and Prosecutors from all EU Member States, (total 38)

- **Proposal for a webinar on the EIO**

¹ Practical exercises/ content will depend on the current national implementing legislation of the concerned MS after the deadline of the implementation period of the Directive (May 2017)

² See above