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Delegations will find in the Annex the above-mentioned document.



59th Plenary Meeting of the European Judicial Network
Prague, Prague Congress Centre
9 – 11 November 2022

Current issues of EIO
concerning certain investigative measures

**Cross-Border Surveillance of Persons and Items,
Controlled Delivery and Interception of
Telecommunications**

Questionnaire

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1. Background

Cooperation between judicial authorities of EU Member States in criminal proceedings is generally at a very high level. This is facilitated not only by the unification of their cooperation procedures by EU legislation, but also by platforms where specialists in international judicial cooperation in criminal matters can meet on a daily basis. The oldest of these is the European Judicial Network (hereafter EJV), which has served for many years not only to share good practice, but also to discuss problems of this cooperation in an effort to find appropriate solutions.

The Czech Presidency has decided to use this opportunity of co-organizing the 59th EJV Plenary Meeting to discuss some issues of international cooperation in criminal matters in the area of interception of telecommunications and some investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time. It has focused in particular on the issues of cooperation in the field of interception of telecommunications, including cross-border interception of telecommunications, controlled delivery and cross-border surveillance. The Czech Presidency thus follows up on its work started under the previous Presidency of the EU Council in the first half of 2009, where these areas of cooperation were also the topic of the EJV Plenary Meeting.

The objective of this work was to gather as much practical knowledge as possible about the possibilities and experiences of EU Member States in carrying out these investigative measures, which are performed either on the basis of the European Investigation Order ("EIO") or request for mutual legal assistance ("LoR") - as this is a study by the European Judicial Network, which brings together judicial authorities involved in international cooperation in the field of obtaining evidence for criminal proceedings, we are deliberately not dealing here with cross-border surveillance carried out only for operational police purposes. The difficulty of cooperation in this area is dictated mainly by the need to coordinate the activities not only of judicial authorities of different countries that request and decide on these measures, but also of the police authorities that carry them out. Moreover, in many cases these are operations that are very often described as urgent.

The summary and analysis in this area of cooperation has utilized the answers of EU Member States in Fiches Belges concerning these investigative measures (FB A.70, FB A.72, FB A.55, FB A.73, FB A.50 and FB A.51), and also an analysis concerning interception of telecommunications and surveillance carried out by Eurojust in the first half of 2022 (ID 67795), which we thank for agreeing to share its contents with EJV contact points. Taking these documents into account, the Czech Presidency prepared a questionnaire for the EJV contact points, which not only summarized the questions relating to the above-mentioned investigative measures from Fiches Belges, but also the questions of the Czech Presidency from 2009, to which the Czech Presidency has now added a few more questions based on its current experience.

Main issues identified

a) Interception of telecommunications

As far as the area of telecommunications interception is concerned, this is fairly well summarized not only in Fiches Belges, but also in the Eurojust Operational Topic (ID 67795). It appears that so far there is not a uniform definition of "telecommunication traffic" in the EU. There is therefore an uncertainty in what is included under the term "interception of telecommunications". This fact was also stated in the conclusions of the 52nd EJV Plenary Meeting organized in the second half of 2019 by the Romanian Presidency. Its conclusions inter alia provide that one Member State includes under the term interception of telecommunications (and as such also cross-border interception of telecommunications according to Art. 31 of the EIO Directive) also the recording of conversation of two persons

meeting face to face, while other States consider "interception of telecommunications" to only include situations, where the persons involved communicate by the means of a technical device, typically a mobile phone. This issue still remains unresolved.

Nevertheless, the Czech Presidency has focused on a different issue associated with immediate transfer of telecommunications traffic to the issuing State (Art. 30 (6) (a) of the EIO Directive). This issue has remained unnoticed, most likely due to the fact that technical possibilities of many Member States did not allow for such immediate transfer of telecommunications traffic to another Member State. That being said, technical possibilities of Member States evolve rapidly, which is why it would be pertinent to also take into consideration the following issue.

With regard to interception of telecommunications, judicial authorities of Member States verify the conditions for performing the interception in a specific case not only when it is authorized, but in a number of Member States there is an obligation to check the conditions also after the authorization, continuously throughout its duration. This concerns not only reviewing the need to continue the interception itself, but also typically the prohibition to intercept telecommunications between the accused person and their defense counsel. The law of the Member States often stipulates an obligation to erase such portions of the intercepted communication. In some Member States, this obligation extends to a wider range of persons (priests, doctors...). The law of some Member States also stipulates other obligations regarding the review of already performed interception of telecommunications, e.g. an obligations to destroy protocols of the interception in cases, where the interception did not yield facts important for criminal proceedings after a certain period after the interception took place, or an obligation to notify the subject of the interception about the performed interception after the final and effective conclusion of the criminal proceedings, if there is no risk of thwarting criminal proceedings. However, if there is to be an immediate transfer of telecommunications traffic to the issuing State according to Art. 30 (6) (a) of the EIO Directive, the executing State is no longer in a position to carry out this judicial review of the pending or already performed interception. Therefore, the question is, whether the executing state can delegate this judicial review to the issuing State, or as the case may be, impose to it the scope of this judicial review under its own legislation. Can the second sentence of Article 30 (5) of the EIO Directive serve for this purpose?

b) Controlled delivery

As far as controlled delivery is concerned, this act of investigation appears relatively harmonized within the Member States. In practice, a question arises from time to time, whether it is necessary to insist on replacement of the contents of the delivery with harmless items, or conversely, whether it is necessary to always insist on maintaining the original contents of the delivery in view of the evidence procedure.

c) Cross-border surveillance

The most frequently used investigative measure being the subject of this study is cross-border surveillance ("CBS"). Unfortunately, it is precisely in this area of international cooperation that the most ambiguities and problems appear. This measure, which is always realized in real time and is a compensatory measure for the abolition of internal border controls, is carried out in various ways:

1) surveillance carried out in person by law enforcement officers, who cross the border and monitor the movement of the surveilled persons (generally driving in a vehicle) or items without making a technical record thereof (they only make a written record after the surveillance is done),

2) surveillance carried out in person by law enforcement officers, who cross the border and perform the surveillance of persons or items while personally using a camera or an audio/video recording device,

3) surveillance of persons or items carried out exclusively by a technical device that only records the movement of items (typically a vehicle),

4) surveillance of persons or items carried out by a technical device which records not only the movement of the vehicle, but also the conversation of persons traveling inside the vehicle.

When deploying technical means of surveillance under item 3) and 4) above, the law enforcement officers either cross the border or not, and they either need assistance (technical or personal) of the other State or not.

Bilateral treaties between some Member States regulate also cooperation in the performance of CBS realized only by technical means without any technical or personal assistance of the other State. Crossing of the border by the surveillance device is immediately notified to the designated police contact. The judicial authority conducting the criminal proceedings, which has authorized the surveillance in the territory of its State, subsequently without undue delay requests a judicial authority of the other State for consent with using such record as evidence in criminal proceedings. However, some states allow to provide a subsequent consent to use as evidence only a recording that captures solely the movement of the vehicle, not a recording that, in addition to the movement of the vehicle, also records conversation inside the vehicle.¹ These possibilities have already been presented in a number of international meetings or practical exercises. However, the EIO Directive provides for only one case where this form of cooperation is possible (notification of the act and subsequent approval or disapproval of the other State), namely cross-border interception of telecommunication under Article 31. That being said, a vast majority of Member States does not consider surveillance of persons and items by technical means, including the recording of immediate conversation of these persons, to be interception of telecommunications. Therefore, the EIO cannot be the basis for this well-established cooperation model for them. Which is why a number of States use bilateral treaties in these cases of cooperation.

Especially in connection with surveillance by technical means, but also in the case of surveillance carried out in person by law enforcement officers, in practice there is sometimes a tactical need to start monitoring already in the requested/executing State, e.g. a technical device is placed on the vehicle in the requested/executing State, and this surveillance then continues into the State which carries out criminal proceedings and which has requested such cooperation. Such a possibility is not provided for in the EU legislation on surveillance (e.g. Article 40 of the Convention Implementing Schengen Agreement - hereafter referred to as "CISA", or in the EIO Directive).

In practice, there are also situations where the authorities of the requesting/issuing State carry out CBS, which is taken over from them across the border by colleagues from the requested/executing State and they continue it. However, it may not always be possible for the requesting/issuing State, for reasons of capacity, to keep police officers on standby near the border for a full day or more in case the person under surveillance returns to the requesting/issuing State. Therefore, when a person under surveillance returns unexpectedly

¹The rationale is usually that the State does not allow in its national proceedings to give subsequent consent to the performance of such act, which must be authorised by the court. However, in the context of international judicial cooperation in criminal proceedings, it should be pointed out that such act is always authorised by the judicial authority of the issuing/requesting State. Therefore, only the judicial authority of the executing/requested State can give the additional approval or disapproval. This is a concept known from Article 31 of the EIO Directive. Its only shortcoming is that it is limited to cross-border interception of telecommunications (which is always authorised by a court in the issuing/requesting State) and does not include other actions carried out in real time.

to the requesting/issuing State, its officers may not be immediately available to take over the surveillance right at the border. However, it is questionable whether the police officers of the requested/executing State can carry out CBS back to the territory of the requesting/issuing State for the necessary period of time in such cases. Such a possibility is also not provided for in the EU legislation on surveillance (e.g. Article 40 of the CISA, or in the EIO Directive).

A number of Member States are also faced with the issue of the so-called tri-border, where the borders of three countries meet at one point. In these cases, it is not a problem for the person being monitored to cross the territory of three countries within a few minutes. Therefore, bilateral treaties between some States also provide for the possibility of initiating CBS to the territory of the other State not only from the State conducting the criminal proceedings and authorizing the surveillance, but also from a third State.

Already as part of the answers of the Member States to the questionnaire of the Czech Presidency in 2009 it became apparent that a number of States were using surveillance records, including CBS, as evidence in criminal proceedings. Therefore, even in case of CBS performed under Article 40 of the CISA, the request for CBS referred to in this Article was issued by judicial authorities in some States. Since then, the EIO Directive (as opposed to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 – “the 1959 Convention”) has tightened the requirements of judicial control when requesting evidence for criminal proceedings. Under Article 2 (c) (ii) of the EIO Directive, although a police authority may issue an EIO, it must subsequently be confirmed in the issuing State by a judge, court, investigating magistrate or public prosecutor.

Paragraph 9 of the preamble to the EIO Directive states that “This Directive should not apply to cross-border surveillance as referred to in the Convention implementing the Schengen Agreement”. At the same time, however, Article 3 of the EIO Directive states that the EIO applies to all investigative measures except for the establishment of a joint investigation team. The EIO Directive in Article 28 regulates investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time, while it only gives examples of these measures (the monitoring of banking or other financial operations and the controlled deliveries). If CBS is conducted for evidentiary purposes, it is also an investigative measure that is conducted in real time that could be covered by this article.

In case CBS records can be used as evidence in criminal proceedings conducted by Member States, there is a question whether Article 40 of CISA alone provides sufficient legal basis, since it does not unequivocally stipulate a requirement of judicial supervision over the gathering of this type of evidence, like the EIO Directive does.

These doubts are reflected not only by the approach of many Member States, which regularly involve their judicial authorities in this type of cooperation, but also by the above referred analysis of Eurojust, which clearly states: “*In light of this broad scope, the EIO Directive could be applicable to the mentioned surveillance² measures, if the aim of the requested measures is to gather evidence and a judicial authority issued or validated them.*” Similarly, the COUNCIL RECOMMENDATION on operational law enforcement cooperation from 24 May 2022 (Interinstitutional File: 2021/0415 (CNS)) states that: “It is also necessary, *while respecting the competences of judicial authorities of each Member State,* to adjust certain rules of engagement in cross-border law enforcement operations to monitor and detain persons under cross-border surveillance, in cross-border hot pursuits and during joint operations.” Article 1, paragraph c) of this Recommendation provides the following definition of CBS: “cross-border surveillance’ means a law enforcement operation whereby officers of a law enforcement authority of a Member State keep one or more persons under surveillance, as part of a *criminal*

² Surveillance is understood here in the broadest sense as monitoring the movement of persons and objects, covering a wide array of activities and capabilities, as well as methods and techniques, including audio surveillance, visual surveillance, tracking surveillance and data surveillance.

investigation in that Member State, and continue that surveillance on the territory of one or more other Member States, after the person or persons crossed the border”.

However, even in case of States that include CBS under international cooperation in criminal proceedings involving judicial authorities, there is no consensus yet on which legal instrument to use for this cooperation. Judicial authorities of some States continue to request CBS using a LoR (either by reference to a bilateral treaty or the 1959 Convention), others use the EIO (either by reference to the general provisions or by reference to Article 28, exceptionally in some cases to Article 31 of the EIO Directive).

The inconsistent legal regulation of CBS across EU Member States may lead in exceptional cases to fundamental problems in this type of cooperation between, on the one hand, States where surveillance of persons is only possible in criminal proceedings on the basis of an authorization of court or public prosecutor, and on the other hand, States where surveillance of persons is ordered by police authorities only without approval by judicial authority. This substantial difference in the approach to CBS in practice means a fundamental obstacle to the execution of CBS (up to the impossibility of execution CBS at all).

While it is possible to address CBS by concluding bilateral or multilateral agreements even between States applying the EIO Directive, Article 34(3) of the EIO Directive provides that: “In addition to this Directive, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after 22 May 2017 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*.” It follows that if records of CBS are to be used as evidence in criminal proceedings, the question is whether or not the cooperation of solely police authorities in the course of CBS (even if on the part of only one of the neighboring States) provided for by a bilateral treaty would entail a reduction in the level of protection of rights of persons required by the EIO Directive.

The complexity of this issue is also illustrated by the inconsistency in the terminology used regarding CBS.

Article 17 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 8.XI.2001 (application of which was, however, excluded by reservations of a number of States, namely BE, DK, EE, FI, FR, HR, IE, LT, LV, MT, DE, PL, SE) uses the term “cross-border observation”. Article 40 of CISA (and also paragraph 9 of Preamble of the EIO Directive), Art. 21 of the Naples II Convention³ and the above referred COUNCIL RECOMMENDATION from 24 May 2022 use the term ‘cross-border surveillance’.

In both cases the terms describe situations, where law enforcement officers of one State cross the border to another State while conducting the surveillance. There are no details in those provisions concerning the procedure in cases, where the surveillance is conducted merely by technical means, which is understandable, since the pieces of legislation date back to 2001 and 1990 or 1998 respectively.

The most detailed mapping of the situation of various types of surveillance by technical means was done in the Eurojust Topic (ID 67795), which operates with the following terms:

- **GPS tracking** installed in the issuing country and crossing the border (no need for technical assistance)
- **Bugging of a car** – installed in the issuing country and crossing a border (no need for technical assistance)

³ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (OJ C 24 of 23. 1. 1998, p. 2)

- **Surveillance through Trojan horse software** installed on portable electronic devices and crossing the border

- **Audio/video surveillance in a private place** (e.g. inside a vehicle)

For the purpose of this analysis, we have based our deliberations on the division of the following types of surveillance provided in the EJN's Fiches Belges, which we have furnished with definitions to better differentiate the terms used:

- Cross-border observation/surveillance (FB A.70)

Definition: this measure involves either surveillance without any sort of technical record being made, or there is a record being made via a technical device, where the technical monitoring device IS NOT PLACED on the surveilled person or item, but rather held by the officer conducting the surveillance, and this technical device is being deployed by the **issuing/requesting state**, e.g. without technical assistance of the executing/requested state. Therein, the officer conducting the surveillance personally **crosses** the border to another Member State.

It is thus a form of CBS, where officers of the requesting/issuing state cross the border and either make no technical recording at all, or make the technical record themselves (e.g. with a camera or video equipment).

- Cross-border tracking (by placing a beeper on a vehicle or person) (FB A.72)

Definition: A technical record of the surveillance is being made, where the monitoring device IS PHYSICALLY PLACED on the surveilled person or object, whereas the monitoring device is being deployed by the **issuing/requesting State**, e.g. without technical assistance of the executing/requested state. Therein the officer conducting the surveillance **does not** personally cross the border to another Member State.

It is thus a form of CBS, where the surveillance device is placed on the surveilled person or item and it either records only the movement, or also the conversation of the surveilled persons. Law enforcement officers do not cross borders into another country.

The third type of surveillance covered by the Fiches Belges is "Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))", which we defined as follows:

Definition: A technical record of the surveillance is being made, where the monitoring device IS PHYSICALLY PLACED on the surveilled person or item, whereas the monitoring device is being deployed by the **executing/requested state**.

However, this definition in the FB allows for a double interpretation, which also results from the answers of the Member States within the framework of this study.

1) As mentioned above, this can be a form of CBS where the CBS starts in the requested/executing state and continues to the requesting/issuing state.

2) It is a situation, where the requesting/issuing State requests the requested/executing State to perform surveillance of persons and items solely in the territory of the requested/executing State (neither surveillance units nor technology cross any state borders).

As for this second case, when the record of the surveillance serves as evidence in criminal proceedings, there has been no doubt at a number of international meetings and seminars, that this in fact is cooperation of judicial authorities, who request this measure via EIO. All that remains is to add that in this second example of surveillance (only within the territory of one state) and in case of CBS, the same interference with human rights of the person under surveillance occurs. The only significant difference is that in case of CBS, authorities of at least two states are involved.

d) Subsequent consent to the use of information provided by the law enforcement authorities of Member States as evidence in criminal proceedings

In addition to the above-mentioned forms of cooperation, the Czech Presidency focused on another aspect of cooperation between Member States that has not yet been discussed among the EJM contact points. Most Member States entrust the gathering of evidence for criminal proceedings on international level to the competence of judicial authorities. Indeed, the EIO Directive, in Article 2(c)(ii), requires confirmation of an EIO by a judicial authority when the EIO is issued by a police authority.

We deem it essential to make note of the fact that **Art. 1 (4) of the Council Framework Decision 2006/960/JHA**⁴ (hereafter "Swedish Initiative") on the one hand respects the division of powers between judicial and police authorities, but on the other hand it builds a bridge between these two types of cooperation. It allows States that entrust the gathering of evidence for criminal proceedings exclusively to judicial authorities to give consent to the judicial authority of the other State to use as evidence such information that the other State has already obtained through operational cooperation between law enforcement authorities on the basis of this "Swedish initiative". Article 39 (2) of CISA provides for a similar possibility of consent.

This subsequent consent with the use of information already provided can be very useful in practice in cases where the operational information provided is, for example, a footage from a CCTV camera placed in a public area. If it is assessed in the other State, after a certain time, that such a recording is needed to be used as evidence in criminal proceedings, it may no longer be possible to re-request the recording via issuing EIO, as it may no longer exist in the State where the recording was made. The operator of an industrial camera is obliged by EU personal data protection legislation to delete the recording after approximately one week. The law enforcement authority that obtained the recording in the course of its operational activities and forwarded it to the law enforcement authority of the other State for further action may also have already deleted it after assessing that they did not have sufficient grounds to initiate criminal proceedings.

However, this subsequent consent can only be used of the Member State that has implemented Art. 1(4) of this Framework Decision. It is a question whether the EIO could be used to obtain the subsequent consent of the executing state for the issuing state to use as evidence the information that it has already received from the international cooperation of law enforcement authorities. This is why certain States have implemented Art. 1(4) of this Framework Decision, it means the procedure of requesting and granting such consent, as a separate form of judicial cooperation.

⁴ This provision is quoted in the questionnaire under "General Questions".

2. Questionnaire

The first set of questions was imported from this year's update of Fiches Belges, those questions are in plain black and white. Answers to those questions will be inserted here by the CZ Presidency as soon as they become available, presumably by the end of August 2022. However, respondents are encouraged to add any comments or make any updates to their answers provided to the EJM Secretariat to the new version of Fiches Belges, as they see fit in light of the definitions provided in relation to certain measures of cross-border cooperation.

The second set of questions was imported from the 2009 questionnaire conducted by previous CZ Presidency, these questions are **in green**. We would ask each Member State to kindly review these answers and update as necessary, or fill in where empty, as not all measures discussed in this paper were covered by the 2009 questionnaire.

The third set of questions are additional questions of the CZ Presidency clarifying certain underlying issues associated with the relevant measures, those questions are **in orange**. Answers to these questions will be inserted into Fiches Belges to the relevant investigative measures under "Legal Points".

2.1. Cross-border surveillance of persons and items

2.1.1. Cross-border observation/surveillance (FB A.70)

Definition: this measure involves either surveillance without any sort of technical record being made, or there is a record being made via a technical device, where the technical monitoring device IS NOT PLACED on the surveilled person or item, but rather held by the officer conducting the surveillance, and this technical device is being deployed by the **issuing/requesting state**, e.g. without technical assistance of the executing/requested state. Therein, the officer conducting the surveillance personally **crosses** the border to another Member State.

- a) Is the measure possible in your member state under international judicial cooperation?
- b) International legal framework applicable for this measure in your Member State
- c) Competent authority to receive the request/execute the measure
- d) Accepted languages
- e) Execution deadline
- f) Concise legal practical information
- g) Possible subject of observation/surveillance (suspect only, or also other persons)
- h) Conditions under which it is possible to order the measure based on a request/EIO of foreign authority
- i) Competent authority to request the measure abroad
- j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state
- k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.
- l) Can you share any good practice, such as:
 - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?
 - Do you have any legal, organizational or technical measure for urgent cases?

- Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner?
- Any other?

2.1.2. Cross-border tracking (by placing a beeper on a vehicle or person) (FB A.72).⁵

Definition: A technical record of the surveillance is being made, where the monitoring device IS PHYSICALLY PLACED on the surveilled person or object, whereas the monitoring device is being deployed by the **issuing/requesting state**, e.g. without technical assistance of the executing/requested state. Therein the officer conducting the surveillance **does not personally cross** the border to another Member State.

- a) Is the measure possible in your member state under international judicial cooperation?
- b) International legal framework applicable for this measure in your Member State
- c) Competent authority to receive the request/execute the measure
- d) Accepted languages
- e) Execution deadline
- f) Concise legal practical information
- g) Possible subject of observation/surveillance (suspect only, or also other persons)
- h) Conditions under which it is possible to order the measure based on a request/EIO of foreign authority
- i) Competent authority to request the measure abroad
- j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state
- k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.
- l) Can you share any good practice, such as:
 - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?
 - Do you have any legal, organizational or technical measure for urgent cases?
 - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner?
 - Any other?

2.1.3. Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55)).⁶

Definition: A technical record of the surveillance is being made, where the monitoring device IS PHYSICALLY PLACED on the surveilled person or item, whereas the monitoring device is being deployed by the **executing/requested state**.

- a) Measure implementation
- b) Legal framework

⁵ Please answer the additional questions only if the answers are different than under Art. 2.1.1. If the answer is the same, it is sufficient to indicate that the answer is the same as above.

⁶ Please answer the additional questions only if the answers are different than under Art. 2.1.1. or 2.1.2. If the answer is the same, it is sufficient to indicate that the answer is the same as above.

- c) Competent authority to receive the request/execute the measure
- d) Accepted languages
- e) Execution Deadline
- f) Legal information
- g) Possible subject of observation/surveillance (suspect only, or also other persons)
- h) Conditions under which it is possible to order the measure based on a request/EIO of foreign authority
- i) Competent authority to request the measure abroad
- j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state
- k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.
- l) Can you share any good practice, such as:
 - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?
 - Do you have any legal, organizational or technical measure for urgent cases?
 - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner?
 - Any other?

2.2. Controlled delivery (FB A.73)

- a) Is the measure possible in your member state under international judicial cooperation?
- b) International legal framework applicable for this measure in your Member State
- c) Competent authority to receive the request / execute the measure
- d) Accepted languages
- e) Execution deadline
- f) Concise legal practical information
- g) Possible objects of controlled delivery
- h) Conditions under which it is possible to order the measure based on a request/EIO of foreign authority
- i) Competent authority to request the measure abroad
- j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state
- k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents while crossing a border?
- l) Can you share any good practice, such as:
 - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?
 - Do you have any legal, organizational or technical measure for urgent cases?
 - Any other?

2.3. Interception of Telecommunications

2.3.1 Interception, recording and transcription of telecommunications (FB A.50)

- a) Is the measure possible in your member state under international judicial cooperation?
- b) International legal framework applicable for this measure in your Member State
- c) Competent authority to receive the request/execute the measure
- d) Accepted languages
- e) Execution deadline
- f) Concise legal practical information
- g) Conditions under which it is possible to order the measure based on an EIO of foreign authority
- h) Competent authority to request the measure abroad
- i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state
- j) Can you share any good practice, such as:
 - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?
 - Do you have any legal, organizational or technical measure for urgent cases?
 - Any other?

2.3.2. Interception of telecommunication without the technical assistance of another Member State (FB A.51)

- a) Is the measure possible in your member state under international judicial cooperation?
- b) International legal framework applicable for this measure in your Member State
- c) Competent authority to receive the request/execute the measure
- d) Accepted languages
- e) Execution deadline
- f) Concise legal practical information
- g) Conditions under which it is possible to order the measure based on a request/EIO of foreign authority
- h) Competent authority to request the measure abroad
- i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state
- j) Can you share any good practice, such as:
 - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?
 - Do you have any legal, organizational or technical measure for urgent cases?
 - Have you had any real-world experience with application of this measure?
 - Any other?

2.4. General questions

2.4.1 How did you implement article 1 (4)⁷ of the Council Framework Decision 2006/960/JHA (Swedish Initiative)? Example: An industrial camera caught a gas station robbery. The

⁷ Art 1(4): This Framework Decision does not impose any obligation on the part of the Member States to provide information and intelligence to be used as evidence before a judicial authority nor does it give any right to use such information or intelligence for that purpose. Where a Member State has obtained information or intelligence in accordance with this Framework Decision and wishes to use it as evidence

police authorities must immediately secure the recording from this camera, as it would be deleted within a week due to compliance with legal regulations on personal data protection. The police authority immediately forwarded this record to the police authority of another state, from which the suspect comes, and which will continue to conduct criminal proceedings for this crime.

- Is it necessary under the national law of your Member State that provided the information or intelligence according to this FD to give a consent (by judicial or another authority) for using of the provided information as evidence in criminal proceedings?
- if so, which judicial (or other) authority in your country gives such a consent with using a record procured within the frame of police cooperation as evidence in criminal proceedings before a court, and under what conditions?

2.4.2 Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?

before **a judicial authority**, it has to obtain consent of the Member State that provided the information or intelligence, where necessary under the national law of the Member State that provided the information or intelligence, through the use of instruments regarding **judicial cooperation** in force between the Member States. Such consent is not required where the requested Member State has already given its consent for the use of information or intelligence **as evidence** at the time of transmittal of the information or intelligence.

3. Summary of replies

The questionnaire was sent only to contact points of EU Member States. A total of 24 Member States provided their answers before the EJM plenary (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PL, RO, SE, SI and SK). After EJM plenary we received answers also from IE and PT. For EL, which was the only one that did not provide responses to the 2022 questionnaire, we have included only its 2009 responses in the summary of responses. The answers show apparent differences in the approach of Member States to some forms of cooperation. The summary below provides a short overview on some findings emerging from the replies received and focuses in particular on the use of the EIO for the forms of cooperation mentioned in the questionnaire. More detailed information, in particular on the conditions for a specific measure and the authorities in charge can be found in the full responses per country in Chapter 4.

3.1. Cross-border surveillance of persons and items

From the answers it is apparent that different approaches exist in the countries, although in this questionnaire we focused only on the CBS, where the record is intended *to serve as evidence for criminal proceedings*. Below summary focuses *in particular on the possible use of the EIO for the forms of cooperation*.

3.1.1. Cross-border observation/surveillance (FB A.70)

Definition: this measure involves either surveillance without any sort of technical record being made, or there is a record being made via a technical device, where the technical monitoring device IS NOT PLACED on the surveilled person or item, but rather held by the officer conducting the surveillance, and this technical device is being deployed by the **issuing/requesting state**, e.g. without technical assistance of the executing/requested state. Therein, the officer conducting the surveillance personally **crosses** the border to another Member State.

This measure is generally not possible in CY, HR, IE.

In case of this type of CBS, when no technical recording is being made, the following States do not consider this form of CBS as cooperation between judicial authorities, but merely as cooperation between police authorities: SE, PT.

On the contrary, the States referred to below require cooperation of judicial authorities also for this form of CBS, whereas:

- the following States use LoR (and apply either Art. 40 of CISA or the 1959 Convention, including its Second Additional Protocol, or the 2000 Convention, or as the case may be, e.g. the Naples II Convention): BE, BG, DE, DK (surveillance in public areas and observation without technical recording is not explicitly regulated), EE, ES, FR (the request is submitted by the police, gendarmerie or customs service in charge of the case after agreement of the public prosecutor or the investigating judge), IT, LU, RO, SK;
- the following states use EIO (in relation to the states bound by the EIO Directive): AT, CZ, EE, FI (EIO is issued by the head of investigation and validated by a prosecutor), HU, LV, LT, MT, NL (if, apart from the observation, another measure is needed, an EIO is accepted to combine the requested investigative measures), PL, SI (where it is regarded as a general undercover observation),

In case a technical record is being made (photographs, audio/video recording), the following States do not consider this form of CBS as cooperation between judicial authorities, but merely as cooperation between police authorities: SE (with the exception of audio/video recordings –

see below), PT (audio/video record must be authorized by an investigative judge upon prosecutor's request).

On the contrary, the following states require cooperation of judicial authorities also for this form of CBS, whereas:

- these states use LoR (and apply either Art. 40 of CISA or the 1959 Convention, including its Second Additional Protocol, or the 2000 Convention, or as the case may be, e.g. the Naples II Convention): DE, DK, EE, FR (the request is submitted by the police, gendarmerie or customs service in charge of the case after agreement of the public prosecutor or the investigating judge, however, based on a request of another State it is only possible to authorize taking of photographs, audio and video recordings on public roads), RO, SK;
- these states use EIO (in relation to the states bound by the EIO Directive): AT (this is no longer merely an observation but an optical and acoustic surveillance of persons – measure A.56), BE (for covertly intercepting, taking cognizance of, searching and recording communications – for taking pictures of the suspect, of his vehicle etc., no authorization is required), BG (audio record of conversation requires a court order), CZ (if the recording is to be made from inside a vehicle, a court order is necessary), ES (when both audio and image recording is made), FI (EIO is issued by the head of investigation and validated by a prosecutor), HU (if the recording is to be made from inside a vehicle, a court order is necessary), IT (Annex C), LV (if the recording is to be made from inside a vehicle, a court order is necessary), LT, LU (admissible only for cases of terrorism and financing of terrorism), MT, SE (only if audio/video recordings is needed, a court decision on request from a public prosecutor is required), SI (court order is needed),

For the most part, the Member States have stated that LoR or EIO needs to be sent to the Public Prosecutor's Office in whose district the border is most likely to be crossed. The following states have designated only one specialized judicial authority to accept LoR or EIO: CZ, BG, EE, FR, IT, LV, LU, MT, RO, SI, SK.

The following states have stipulated a condition of dual criminality in order to authorize this measure: AT, BE, BG, CZ, EE, ES, FI, IT, RO.

Who may be the subject of surveillance:

- only the suspect: EE, PL
- persons suspected of a punishable offence, or persons who are likely to lead to the identification or tracking-down of such a suspect (and even other persons): AT, BE, BG, CZ, DE, DK, ES, FI, FR, HU, IT, LT, LV, LU, NL, RO, SE, SI, SK.

The following states expressly require a LoR or EIO from the requesting/issuing state: BE (EIO is accepted, however the EIO will be considered as an MLA request, since MLA is free of form, and executed as such (no application of the EIO directive), BG, CZ, DK, DE, HU, IT, LT, LV, NL, RO, SI.

The following states have specifically stated that this type of CBS is ordered by court or public prosecutor: AT (in case of audio/video record), BG (in case of audio record of conversation), CZ (in case of making technical record), DK, ES (in case of technical tracking or audio/video recording), FI, FR, HU (recording inside a vehicle), LV (recording inside a vehicle), LT, NL, PL (audio/video recording in non-public places), PT, RO, SE (audio/video recording), SI.

3.1.2. Cross-border tracking (by placing a beeper on a vehicle or person) (FB A.72)

Definition: A technical record of the surveillance is being made, where the monitoring device IS PHYSICALLY PLACED on the surveilled person or object, whereas the monitoring device is being deployed by the **issuing/requesting state**, e.g. without technical assistance of the executing/requested state. Therein the officer conducting the surveillance **does not personally cross** the border to another Member State.

This measure is generally not possible in CY, HR, IE.

The States have generally stated a different legal framework and conditions of cooperation, depending on whether the surveillance device only records the movement of the surveilled person or item, or whether it also records the conversation of the surveilled persons in the form of audio or video recording.

a) Only the movement of the surveilled person or item is recorded:

The following States do not consider this type of CBS as cooperation between judicial authorities, but merely as cooperation between police authorities: SE (with regard to placing a beeper on a vehicle), FI, PT (however, either an investigative judge or prosecutor will authorize the measure).

On the contrary, States referred to below require cooperation between judicial authorities also for this form of CBS, whereas:

- these States use LoR (and apply either Art. 40 of CISA or the 1959 Convention, including its Second Additional Protocol, or the 2000 Convention): AT, DE, DK, IT, LU (it is possible to place a beeper on a vehicle but not on a person), NL, RO, SK,
- these States use EIO (in relation to the states bound by the EIO Directive): BE, BG, CZ, EE, ES, FR, HU, LT, LV, MT, PL, SI (it is regarded as a general undercover observation),

b) When not only the movement of the surveilled person or item is recorded, but also an audio or video record is being made of the conversation of persons:

These states do not consider this form of CBS as cooperation between judicial authorities, but merely as cooperation between police authorities: FI, PT (audio/video record must be authorized by an investigative judge upon prosecutor's request).

On the contrary, States referred to below require cooperation between judicial authorities also for this form of CBS, whereas:

- These States use LoR (and apply either Art. 40 of CISA or the 1959 Convention, including its Second Additional Protocol, or the 2000 Convention): DE, DK, RO, SK;
- These States use EIO (in relation to the states bound by the EIO Directive): AT (this is no longer merely an observation but an optical and acoustic surveillance of persons – measure A.56), BE, BG (audio record of conversation requires a court order), CZ (If the surveillance device is located inside the vehicle and also records the conversation between persons, the public prosecutor applies for permission to act from court), EE, ES, FR (this measure can only be ordered for certain serious offences listed in the Criminal Procedure Code), HU (if the recording is to be made inside a vehicle, a court order is necessary), LT, LV (court order is necessary), LU (admissible only for cases of terrorism and financing of terrorism), MT, NL, SI (court order is needed), SE (EIO/MLA concerning the interception of communication and/or secret camera surveillance is needed and a Court decision is required).

- these States use or accept Annex C of the EIO Directive (in relation to the states bound by the EIO Directive): BE (however, they expressly stated that the application of annex C expanded beyond telecommunication so that it would also include direct listening devices), BG, IT.

The following States have designated only one specialized judicial authority to accept LoR or EIO: BG, CZ, EE, IT, LV, LU, MT, RO, ES, SK.

The following states have stipulated a condition of dual criminality in order to authorize this measure: AT, BG, CZ, EE, FR, RO.

Who can be the subject of surveillance:

- only the suspect: EE, ES (though other persons present in the vehicle may be affected as well), PL.
- persons suspected of a punishable offence, or persons who are likely to lead to the identification or tracking-down of such a suspect (and even persons): AT, BE, BG, CZ, DE, DK, FI, FR, HU, IT, LT, LV, LU, NL, PT, RO, SE, SI, SK.

The following states expressly require a LoR or EIO from the requesting/issuing state: BE, BG, CZ, DE, DK, HU, IT, LT, LV, NL, RO, SI.

The following states have specifically stated that this type of CBS is ordered by court or public prosecutor: AT (in case audio/video record), BG (in case of audio record of conversation), CZ (prosecutor approves generally any recording, however, if recording is being made inside a vehicle, it has to be ordered by a court), DK, EE, ES (in case of technical tracking or audio/video recording), FR, HU (recording inside a vehicle), LV, LT, NL, PL (audio/video recording in non-public places), PT, RO, SE (audio/video recording), SI.

3.1.3. Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))

Definition: A technical record of the surveillance is being made, where the monitoring device IS PHYSICALLY PLACED on the surveilled person or item, whereas the monitoring device is being deployed by the executing/requested state.

Given the fact that this measure A.55 is not labelled as "cross-border", it could be understood as surveillance only within the territory of the requested/executing State (see p. 8). Several States also considered this measure A.55 as CBS (AT, BE, DK, EE, FI, IT, LU, MT, NL, PL, RO). CZ and SK reflected both of these variants in their answers.

This measure is not regulated in the legislation of PT.

The following States do not consider this form of surveillance as cooperation between judicial authorities, but merely as cooperation between police authorities: SE (with regard to placing a device on a vehicle and with the exception of audio/video recordings – see below), FI, IE.

On the contrary, States referred to below require cooperation between judicial authorities also for this form of CBS, whereas:

- these States use LoR: DK, LU, RO;
- these States use EIO (in relation to the states bound by the EIO Directive): AT (this is no longer merely an observation but an optical and acoustic surveillance of persons – measure A.56), BE, BG, CZ (EIO is always delivered to the Regional Public Prosecutor's

Office, in whose jurisdiction the surveillance is to be performed; if the surveillance breaches the privacy of private residence, including e.g. a vehicle, a court order is necessary, otherwise where any record is made, the measure is authorized by public prosecutor), CY, DE, EE, ES, FR (setting up audio/video recording can only be ordered for certain serious offences listed in the Criminal Procedure Code), HR, HU, IT (Annex C), LT, LV (if an audio/video recording is to be made, a court order is necessary), MT, PL, SE (only if audio/video recordings is needed, a court decision on request from a public prosecutor is required), SI (it is regarded as a general undercover observation), SK.

The following states have stipulated a condition of dual criminality in order to authorize this measure: AT, BG, CZ, CY, EE, HR, RO.

Who can be the subject of surveillance:

- only the suspect: CY, EE, ES (although other persons present in the room/vehicle may be affected as well), HR, PL
- persons suspected of a punishable offence, or persons who are likely to lead to the identification or tracking-down of such a suspect (and even other persons): AT, BE, BG, CZ, DK, DE, FI, FR, HU, IT, LT, LV, LU, NL, RO, SE, SI, SK. IE has stated they will consider each case ad hoc according to the domestic legislation.

The following states have specifically stated that this type of CBS is ordered by court or public prosecutor: AT (in case audio/video record), BG (audio record of conversation requires a court order), CZ (prosecutor approves generally any recording, however, if recording is being made inside a vehicle, it has to be ordered by a court), DK, ES (in case of technical tracking or audio/video recording), FR (surveillance is authorized by prosecutor or investigative judge), HU (recording inside a vehicle), HR, LV (audio/video recording is authorized by court), LT, NL, PL (audio/video recording in non-public places), RO, SE (audio/video recording is authorized by court based on a request of prosecutor), SI, SK.

The FB should probably distinguish more clearly between surveillance, when the tracking device being installed/put by the requested/executing state because the surveillance takes place only on the territory of the requested state, and the situation where the requested/executing state deploys the technical device, because CBS to the requesting state begins in its territory.

In general, when it comes to cross-border surveillance for the purpose of evidence in criminal proceedings, it is obvious that there is a great lack of uniform legal regulation between EU member states. Considering that by its nature it is an investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time in the vast majority of Member States it would deserve explicit legal regulation in the EIO Directive. In a large number of cases, CBS is carried out only with the use of technical means, and the records are checked only afterwards. It is clear that the EIO Directive completely lacks the possibility to subsequently give consent to the use of a CSB record after the police or technical surveillance device have crossed the state border during surveillance in urgent cases without prior consent.

3.2. Controlled delivery (FB A.73)

The majority of States have stated that they have explicit legislation regulating controlled delivery. Only a few States have no such special legal regulation, however, they provide

cooperation in this area while applying provisions concerning agents per analogiam (DK). IE also does not have specific legislation regulating controlled delivery, they treat it as standard customs/police technique.

However, the legal conditions, under which it this measure can be authorized in individual Member States, differ. Some Member States allow this measure in case of criminal offenses, for which a EAW can be issued (AT, PT), or offenses with a minimum threshold of imprisonment (e.g. SI and DK - of 1 year, FR – 2 years, NL – 4 years, BG, LV – 5 years) or only in relation to specific crimes (EE, HR, PL). In case of some States this measure can be performed in criminal proceedings regardless of the term of imprisonment, but it is conditional upon a certain content of the delivery, which is stipulated by their criminal law legislation – typically drugs, weapons, explosives, counterfeits etc. (CZ, CY, DE, ES, IT, NL, SK).

Several Member States have only stated international conventions regulating controlled deliveries as legal basis for cooperation in this area.

A total of 18 Member States (BG, CY, CZ, EE, FI, FR, HU, IT, LT, LU, LV, MT, NL, PL, RO, SE, SI, SK) have expressly stated EIO as the legal basis for cooperation with other Member States.

Some States (CY, FR, IT) have stated that it is necessary to submit to the court the original contents of the delivery in order to be accepted by the court as evidence. LU have stated that they do not allow replacement of the original contents of the delivery. On the other hand, IE insists on replacement of the original contents. However, most States are flexible as far as contents of the delivery are concerned and they proceed according to the practical needs on case by case basis.

Only a couple of States (CZ, LV, PT, RO, SE, SI) have designated a single specialized judicial authority that authorizes this measure based on LoR or EIO. ES has a specialized body for authorizing controlled deliveries only for cases where the controlled delivery concerns drugs or cash in relation money laundering offences, which is the Special Antidrug Prosecution Office (Audiencia Nacional).

RO has offered a good practice in the form of an express possibility to deliver EIO via SIRENE.

It is obvious that there is no uniform legal regulation of the conditions under which controlled delivery can be ordered. Whether it is necessary to insist on preserving the original content (or at least part of it) or, on the contrary, on replacing the contents of the delivery, is based on the rules of evidence before the court in different Member States.

3.3. Interception of Telecommunications

3.3.1. Interception, recording and transcription of telecommunications (FB A.50)

Member States bound by the EIO Directive (Art. 30) regularly apply EIO to this measure. However, only few States have expressly commented on the obligation of judicial authorities to verify the compliance with the conditions for performing the interception **after** it has been authorized.

CZ has specified several obligations stipulated to the judicial authorities after authorization and execution of interception of telecommunications – obligation to erase a part of the intercepted telecommunication concerning a conversation of the accused person and their defense counsel, obligation to constantly evaluate the necessity to perform the interception of telecommunications, obligation to destroy protocols of the intercepted telecommunication, if it

did not provide any findings important for criminal proceedings, 3 years after the interception was performed, the obligation to inform the intercepted person about the interception after the legal termination of the criminal proceedings, if there is no threat of thwarting the criminal proceedings.

DE has stated that interception concerning „core area of private conduct of life“ (there is no legal definition of this phrase) is prohibited. If there are factual indications to assume that this measure will only lead to findings in the core area of the private conduct of life, the measure shall be inadmissible. Recordings of such findings must be deleted without delay. The fact that such findings were made and their deletion shall be documented.

Several States (BE, BG, CZ, ES, DK, FI, FR, IE, IT, LT, LU, NL, PL, PT, RO, SK) have stated that it is expressly prohibited to intercept telecommunications between the accused person and their defense counsel. BE, SE have added that it is inadmissible to intercept telecommunications not only with the defense counsel, but also with a doctor or communications covered by professional secrecy. Some States have referred to legislation concerning the right to refuse to give a statement or testify due to professional or other activities (EE).

ES – Immediate transmission of telecommunications (Art. 30(6)(a) of the EIO Directive), is the preferred option if technically possible, as it allows real-time monitoring of the results and, consequently, the assessment of the necessity and proportionality of a possible extension.

Several States have noted that it is possible to transfer the obligation of subsequent review of the intercepted telecommunication to the issuing State (BE, CZ - possible use of Article 30, paragraph 5, second sentence of the EIO Directive?, DE, ES, IE, NL). On the contrary, IT and SE are of the opinion that transferring this obligation to the issuing State is not supposed to be possible even in cases provided for in Article 30 par. 6 sub-par. a) of the EIO Directive. Also in these cases, indeed, any issue related to the carrying out of the operations should still be up to the executing State. LT has stated that the obligation to review the content of information transmitted via electronic communication networks can be transferred to the officials of another EU Member State who participated in the proceedings specified in the EIO in the territory of the Republic of Lithuania, but only as long as they are in the territory of the Republic of Lithuania.

It is therefore obvious that this aspect of cooperation (the need for subsequent judicial review of the conducted interception) would deserve more precise legal regulation in the future.

3.3.2. Interception of telecommunication without the technical assistance of another Member State (FB A.51) - Art. 31 of the EIO Directive

Member States bound by the EIO Directive regularly use Annex C for this measure, even though there are very few of these cases in practice.

ES has stated that even though Annex C form is applicable, it is almost never being used and when it is, there is usually some important information missing.

This measure is not possible in HR, IE.

DE stated that practical problems are created by the short deadline for the decision according to Art. 31 (3) of the EIO Directive in connection with insufficient information on the facts of the case provided by the issuing state.

Several States (CZ, FR, HU, LV, NL, RO, SE, SK) have designated specialized judicial authorities for receipt of notifications according to Annex C of the EIO Directive which can be considered a good practice given the short deadline stipulated by Art. 31 (3) of the EIO Directive.

4. General questions

4.1. Implementation of article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?

Only few States have stated that their national legislation contains a provision allowing their judicial authorities to request consent with using the information transmitted by law enforcement authorities as evidence in criminal proceedings.

In AT, consent with using such information as evidence is granted by a public prosecutor when the information is exchanged. However, if the information concerned was acquired through an investigative measure requiring an authorization by court, a formal LoR or EIO is required for such consent.

In BG, there is internal legislation Article 118 para 3 of Law on Ministry of Interior) which provides an option to use the information exchanged as evidence in criminal trial after an authorization from the competent authority of the State, which provided the information in question.

In CZ this procedure is regulated by Section 20 of the Act no. 104/2013 Sb. on International Judicial Cooperation in Criminal Matters. This is not an implementation of the EIO Directive, since it does not regulate this type of cooperation, but a special form of cooperation between judicial authorities. The consent on behalf of the Czech Republic is granted by a public prosecutor of the Regional Public Prosecutor's Office, in whose jurisdiction the police authorities have provided the operative information. The consent is requested from another Member State by the public prosecutor performing supervision over the criminal proceedings, within which the operative information is to be used as evidence. Law enforcement authority when transmitting information have to include a notification that it is not permissible to use the information as evidence in court proceedings, unless the prosecutor's office gives the subsequent authorization of the use of such information as evidence.

In DE, Art. 1 (4) of the Swedish Initiative is implemented in Art. 92 (2) of the Act on International Cooperation in Criminal Matters. Police authority when transmitting information have to include a notification that it is not permissible to use the information as evidence in court proceedings, unless the prosecutor's office gives the subsequent authorization of the use of such information as evidence.

In DK, 1 (4) of the Swedish Initiative is implemented by law no. 1559 of 20 December 2006. If Danish authorities wish to use the obtained information or intelligence before a judicial authority, they will request the consent of the Member State that provided the information or intelligence.

In ES, Art. 1(4) of the Swedish initiative was implemented by "*Ley 31/2010, de 27 de julio, sobre simplificación del intercambio de información e inteligencia entre los servicios de seguridad de los Estados miembros de la Unión Europea*", specifically by Articles 7 (4) and 9 (4) regulate in detail the possibility for the Spanish police to exchange information that has or could have judicial relevance as it could be used as evidence, depending on whether the

Spanish LEA are requesting or are requested to provide that information in a police-to-police level (active or passive standpoint).

In IE, there is a request procedure under the domestic MLA legislation, by which any intelligence disseminated by the police authorities to another Member State may be approved for use as evidence in judicial proceedings.

In IT, this provision of the Swedish Initiative is implemented in the Act no. 54 of 23. 4. 2015. In order to render police information procedurally useable as evidence, the tools of international judicial cooperation are used, the authority competent to authorize the use of such evidence is the prosecutor.

In MT, this was transposed in various laws, more specifically, S.L 164.02 which states that where the information or intelligence may, under any relevant provision of Maltese law, be accessed by the Police only pursuant to an agreement or authorization of a judicial authority, the Police shall refrain from communicating the information or intelligence to the state agencies of other Member States having similar powers, unless the Attorney General agrees or authorizes the communication of such information or intelligence. Such agreement or authorization shall always be sought whenever the information or intelligence is required for use as evidence.

In PL, the Act of 16 September 2011 on the exchange of information with law enforcement authorities of the Member States of the European Union, third countries, European Union agencies and international organizations implements the Council Framework Decision 2006/960/JHA. When providing information, the right holder or the contact point shall indicate to the law enforcement authority of a Member State of the EU how it may be used by that authority, in particular whether it may be used in criminal proceedings.

In PT, this provision was transposed by Law. no. 74/2009 of 12 August. Request to use the provided police information as evidence should be delivered to the competent prosecutor or investigative judge.

In SE, such limitation on the use of obtained intelligence information is regulated by law. The Member State that has obtained intelligence information needs to issue an EIO or a request for MLA in order to use it as evidence in judicial proceedings.

In SK, this consent procedure by judicial authorities is possible (even though SK has not implemented Art. 1 (4) of the Swedish Initiative). The consent may be granted by SK judicial authorities in case the information obtained by way of police cooperation meet the criteria to be used as evidence in similar domestic criminal proceedings.

It is therefore clear that only a few states have explicitly implemented this provision of the Swedish initiative, which is a certain form of a "bridge" of cooperation between police cooperation and judicial cooperation between EU Member States. It is a question whether future possible legal regulation of the EIO should not contain the possibility of subsequent consent to the use of operational information as evidence in criminal proceedings according to conditions of the law of the state that provided the information which would greatly speed up and facilitate cooperation.

4.2. Participation of EJM contact points in any regional cross-border meetings (the EJM one or another one) focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications

This question remained mostly unanswered or it was stated that no such meetings were attended. Contact point of only six states have answered that they took part in meetings or conferences aimed at investigative measures being the subject of this questionnaire.

BE has participated in several BES meetings (Bureau of Euregional cooperation, between the Netherlands, Germany and Belgium).

CZ has participated in several regional seminars and training organized by police authorities involved in carrying out the surveillance of persons and things. One of the EJM contact point participated in the INTLI project (International Lawful Interception Project), which was aimed at mapping the legislation and practical practices of eight Member States in the field of interception and was led by the Max Planck Institute in Freiburg (DE).

DK participates in regular regional Nordic meetings in which various topics concerning international cooperation in criminal matters are discussed, i.a. the mentioned topics.

In IE, the police authority (An Garda Síochána) is a member of the European Surveillance Group and participate in cross border meetings and training.

NL - BES Practice 3.0: Intensifying the judicial cross border cooperation in criminal matters through training: Hitchhikers' guide to Cross Border Cooperation.

PL - the Polish and the Czech prosecutors (from central and lower level stages) were involved in the series of bilateral meetings on cross-border observation.

SE has organized a regional meeting focused on controlled delivery in Gothenburg in January 2013. Participating countries were SE, NL, DE, DK and NO.

The participation of judicial authorities in practical exercises and seminars related to these forms of cooperation can be described as very beneficial both for understanding the practical problems encountered by police authorities in their performance and for strengthening the understanding of the legal framework for this cooperation, especially between neighbouring states.

4. Overview of responses

4.1. Austria

Cross-border observation (FB A 70)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Observation is admissible in order to clear up a punishable act or to determine the whereabouts of an accused person.</p> <p>If the observation measure</p> <ol style="list-style-type: none"> 1. is supported by technical aids 2. is to be carried out for a period longer than 48 hours or 3. is to be performed outside of Austrian territory <p>it is admissible only in case of a suspicion of a punishable act, committed with intent, that carries a prison term of more than one year and where it is to be expected, on account of certain facts, that the person observed has committed the crime or will establish contact with the accused or that the whereabouts of a fugitive or absent accused may be determined.</p>
b) International legal framework applicable for this measure in your Member State	Article 40 of the Convention implementing the Schengen Agreement, bilateral agreements on police cooperation and Bilateral Treaties on Police and Judicial Cooperation with several EU-MS; Directive on the EIO.
c) Competent authority to receive the request/execute the measure	<p>If the requesting state considers the measure to be part of police cooperation the Federal Ministry of Interior – General Directorate for Public Security is competent to receive the request. In cases where it is not considered to be part of police cooperation an EIO can be sent to the Public Prosecutor's office in whose court district the border is most likely to be crossed. In the case of an observation by an aircraft flying to Austria, however the Public Prosecutor's Office shall be responsible in whose court district the aircraft is to land. If the competences cannot be determined on the basis of the present provisions, the Public Prosecutor's office in Vienna shall be responsible.</p> <p>The practical execution of the measures is performed by security authorities (police).</p>
d) Accepted languages	German, English, French and - in case of reciprocity, if the requesting state would accept a request in German - also the language of the requesting state.
e) Execution deadline	None (requests in urgent cases shall be marked as urgent).
f) Concise legal practical information	<p>Dual Criminality is required.</p> <p>A request for ordering and performing the investigative measure shall comprise a copy, a certified copy or a photostat copy of the order of the competent authority. If this is not a court order, the authority requesting judicial assistance shall present a statement explaining that the prerequisites required for such measures are met under the law applicable in the requesting State.</p> <p>The intervention of foreign agents is subject to authorization by the competent Public Prosecutor's Office. Observation measures supported by technical aids, enabling, by means of the transmission of signals, the determination of the spatial area in which the supervised person resides, and the opening of vehicles and containers for the purpose of the introduction of such technical aids is permitted in support of the observation, if the observation would otherwise be hopeless or substantially difficult.</p> <p>Observation measures supported by technical aids or for a period longer than 48 hours or outside of Austrian territory may only be ordered for a period of time that is likely to be required in order to fulfill the purpose, but</p>

	<p>in any event no longer than for three months. However, the order may be repeated as far as the requirements are persisting.</p> <p>Observation measures shall be ended when</p> <ol style="list-style-type: none"> 1. their requirements are no longer fulfilled 2. their purpose has been achieved or can no longer be achieved or 3. the public prosecutor orders the termination of the measures. <p>The use of technical aids (also) allowing for the optical and acoustic surveillance is only admissible when the requirements for optical and acoustic surveillance (see measure A.56) are met.</p> <p>There shall be compliance with a request for judicial assistance which requires a procedure that differs from Austrian laws on criminal procedure, if this is compatible with the criminal procedure and its principles.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Observation of persons suspected of a punishable offence, or of persons who are likely to lead to the identification or tracking-down of such a suspect.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Observation is admissible in order to clear up a punishable act or to determine the whereabouts of an accused person.</p> <p>If the observation measure</p> <ol style="list-style-type: none"> 1. is supported by technical aids 2. is to be carried out for a period longer than 48 hours or 3. is to be performed outside of Austrian territory <p>it is admissible only in case of a suspicion of a punishable act, committed with intent, that carries a prison term of more than one year and where it is to be expected, on account of certain facts, that the person observed has committed the crime or will establish contact with the accused or that the whereabouts of a fugitive or absent accused may be determined.</p>
i) Competent authority to request the measure abroad	The Public Prosecutors' Office that is dealing with the case in Austria or police authorities acting on their behalf.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	No special requirements.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>According to Austrian law this is no longer merely an observation but an optical and acoustic surveillance of persons. The use of technical aids (also) allowing for the optical and acoustic surveillance is only admissible when the requirements for optical and acoustic surveillance (see measure A.56) are met.</p> <p>The optical and acoustic surveillance of persons is admissible</p> <ol style="list-style-type: none"> 1. if and for as long as it is urgently suspected that a person affected by the surveillance has kidnapped or otherwise seized another person, and if the surveillance is restricted to processes and comments at the time and location of the deprivation of liberty, 2. if it is restricted to processes and comments that are intended to be brought to the knowledge of an under-cover investigator, or another person informed of the surveillance, or that may be perceived by that person directly, and if it appears to be required in order to clear up a punishable offence carrying a prison term of more than three years, or 3. if the clearing up of a crime carrying a prison term of more than ten years, or of a crime by a criminal organization or terrorist association (§ 278a and § 278b of the Criminal Code), or the clearing up or prevention of a punishable act committed or planned within the framework of such an

	<p>organization or association, or the determination of the whereabouts of the person accused of such a punishable act would otherwise be without prospects of success or be essentially impeded, and</p> <p>a. the person who is the target of the surveillance is urgently suspected of a crime carrying a prison term of more than ten years, or of a crime pursuant to § 278 a or § 278b of the Criminal Code, or</p> <p>b. it is to be expected, on account of certain facts, that a person who is thus urgently suspected will establish contact with the person who is the target of the surveillance.</p> <p>To the extent that this is unavoidable for performing the surveillance pursuant to paragraph (1) item 3, it shall be admissible to penetrate a certain flat or other rooms protected by domestic authority, if it is to be expected, on account of certain facts, that the accused will use the rooms in question.</p> <p>The optical surveillance of persons in the process of clearing up a punishable act is also admissible</p> <p>1. if it is restricted to processes outside of a flat or other rooms protected by domestic authority, and if it is conducted exclusively for the purpose of monitoring objects or premises in order to record the conduct of persons who enter into contact with the objects, or who enter the premises, or</p> <p>2. if it is performed exclusively for the purpose mentioned in item 1 in a flat or other rooms protected by domestic authority, and the clearing up of a punishable act, committed with intent, that carries a prison term of more than one year, would otherwise be essentially impeded, and the proprietor of that flat or those rooms expressly agrees to the surveillance.</p>
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	-
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
<p>a) Is the measure possible in your member state under international judicial cooperation?</p>	<p>The secret cross border tracking of persons or vehicles by placing a beeper, is admissible in order to clear up a punishable act or to determine the whereabouts of an accused person and only in case of a suspicion of a punishable act committed with intent, that carries a prison term of more than one year and where it is to be expected, on account of certain facts, that the person observed has committed the crime or will establish contact with the accused or that the whereabouts of a fugitive or absent accused may be determined.</p> <p>The use of technical means which, by means of the transmission of signals, make it possible to determine the spatial area in which the person under surveillance is located and the opening of vehicles and containers for the purpose of inserting such technical means is permissible in order</p>

	to support the observation, provided that the observation would otherwise be futile or substantially impeded.
b) International legal framework applicable for this measure in your Member State	Article 40 of the Convention implementing the Schengen Agreement
c) Competent authority to receive the request/execute the measure	<p>The Public Prosecutor's officer in whose court district the border is most likely to be crossed. In the case of an observation by an aircraft flying to Austria, however the Public Prosecutor's office shall be responsible in whose court district the aircraft is to land. If the competences cannot be determined on the basis of the present provisions, the Public Prosecutor's office in Vienna shall be responsible.</p> <p>The practical execution of the measures is performed by security authorities (police).</p>
d) Accepted languages	German, English, French and - in case of reciprocity, if the requesting state would accept a request in German language - also the language of the requesting state.
e) Execution deadline	None (requests in urgent cases shall be marked as urgent).
f) Concise legal practical information	<p>Dual Criminality is required. A request for ordering and performing the investigative measure shall comprise a copy, a certified copy or a photostat copy of the order of the competent authority. If this is not a court order, the authority requesting judicial assistance shall present a statement explaining that the prerequisites required for such measures are met under the law applicable in the requesting State.</p> <p>The intervention of foreign agents is subject to authorization by the competent Public Prosecutor's Office.</p> <p>Observation measures supported by technical aids or for a period longer than 48 hours or outside of Austrian territory may only be ordered for a period of time that is likely to be required in order to fulfill the purpose, but in any event no longer than for three months. However, the order may be repeated as far as the requirements are persisting.</p> <p>Observation measures shall be ended when</p> <ol style="list-style-type: none"> 1. their requirements are no longer fulfilled 2. their purpose has been achieved or can no longer be achieved or 3. the public prosecutor orders the termination of the measures. <p>The use of technical aids (also) allowing for the optical and acoustic surveillance is only admissible when the requirements for optical and acoustic surveillance (see measure A.56) are met.</p> <p>There shall be compliance with a request for judicial assistance which requires a procedure that differs from Austrian laws on criminal procedure, if this is compatible with the criminal procedure and its principles.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Observation of persons suspected of a punishable offence, or of persons who are likely to lead to the identification or tracking-down of such a suspect.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Observation is admissible in order to clear up a punishable act or to determine the whereabouts of an accused person.</p> <p>If the observation measure</p> <ol style="list-style-type: none"> 1. is supported by technical aids 2. is to be carried out for a period longer than 48 hours or 3. is to be performed outside of Austrian territory

	it is admissible only in case of a suspicion of a punishable act, committed with intent, that carries a prison term of more than one year and where it is to be expected, on account of certain facts, that the person observed has committed the crime or will establish contact with the accused or that the whereabouts of a fugitive or absent accused may be determined.
i) Competent authority to request the measure abroad	The Public Prosecutor's Office that is dealing with the case in Austria.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No special requirements.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>According to Austrian law this is no longer merely an observation but an optical and acoustic surveillance of persons. The use of technical aids (also) allowing for the optical and acoustic surveillance is only admissible when the requirements for optical and acoustic surveillance (see measure A.56) are met.</p> <p>The optical and acoustic surveillance of persons is admissible</p> <ol style="list-style-type: none"> 1. if and for as long as it is urgently suspected that a person affected by the surveillance has kidnapped or otherwise seized another person, and if the surveillance is restricted to processes and comments at the time and location of the deprivation of liberty, 2. if it is restricted to processes and comments that are intended to be brought to the knowledge of an under-cover investigator, or another person informed of the surveillance, or that may be perceived by that person directly, and if it appears to be required in order to clear up a punishable offence carrying a prison term of more than three years, or 3. if the clearing up of a crime carrying a prison term of more than ten years, or of a crime by a criminal organization or terrorist association (§ 278a and § 278b of the Criminal Code), or the clearing up or prevention of a punishable act committed or planned within the framework of such an organization or association, or the determination of the whereabouts of the person accused of such a punishable act would otherwise be without prospects of success or be essentially impeded, and <ol style="list-style-type: none"> a. the person who is the target of the surveillance is urgently suspected of a crime carrying a prison term of more than ten years, or of a crime pursuant to § 278 a or § 278b of the Criminal Code, or b. it is to be expected, on account of certain facts, that a person who is thus urgently suspected will establish contact with the person who is the target of the surveillance. <p>To the extent that this is unavoidable for performing the surveillance pursuant to paragraph (1) item 3, it shall be admissible to penetrate a certain flat or other rooms protected by domestic authority, if it is to be expected, on account of certain facts, that the accused will use the rooms in question.</p> <p>The optical surveillance of persons in the process of clearing up a punishable act is also admissible</p> <ol style="list-style-type: none"> 1. if it is restricted to processes outside of a flat or other rooms protected by domestic authority, and if it is conducted exclusively for the purpose of monitoring objects or premises in order to record the conduct of persons who enter into contact with the objects, or who enter the premises, or 2. if it is performed exclusively for the purpose mentioned in item 1 in a flat or other rooms protected by domestic authority, and the clearing up of a punishable act, committed with intent, that carries a prison term of more than one year, would otherwise be essentially impeded, and the proprietor of that flat or those rooms expressly agrees to the surveillance.

<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	-
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	<p>Observation is admissible in order to clear up a punishable act or to determine the whereabouts of an accused person.</p> <p>If the observation measure</p> <ol style="list-style-type: none"> 1. is supported by technical aids 2. is to be carried out for a period longer than 48 hours or 3. is to be performed outside of Austrian territory <p>it is admissible only in case of a suspicion of a punishable act, committed with intent, that carries a prison term of more than one year and where it is to be expected, on account of certain facts, that the person observed has committed the crime or will establish contact with the accused or that the whereabouts of a fugitive or absent accused may be determined.</p>
b) Legal Framework	Article 40 of the Convention implementing the Schengen Agreement
c) Competent Authority	<p>The Public Prosecutor's office with competences for the court district in which the act of judicial assistance is to be performed. If the request calls for a cross-border observation, the Public Prosecutor's office shall be responsible in whose court district the border is most likely to be crossed. In the case of an observation by an aircraft flying to Austria, however the Public Prosecutor's office shall be responsible in whose court district the aircraft is to land. If the competences cannot be determined on the basis of the present provisions, the Public Prosecutor's office in Vienna shall be responsible.</p> <p>The practical execution of the measures is performed by security authorities (police).</p>
d) Accepted Languages	German, English, French and - in case of reciprocity, if the requesting state would accept a request in German - also the language of the requesting state.
e) Execution Deadline:	None (requests in urgent cases shall be marked as urgent).
f) Concise legal practical information	<p>Dual Criminality is required. A request for ordering and performing the investigative measure shall comprise a copy, a certified copy or a photostat copy of the order of the competent authority. If this is not a court order, the authority requesting judicial assistance shall present a statement explaining that the prerequisites required for such measures are met under the law applicable in the requesting State.</p> <p>The intervention of foreign agents is subject to authorization by the competent Public Prosecutor's Office.</p>

	<p>Observation measures supported by technical aids or for a period longer than 48 hours or outside of Austrian territory may only be ordered for a period of time that is likely to be required in order to fulfill the purpose, but in any event no longer than for three months. However, the order may be repeated as far as the requirements are persisting.</p> <p>Observation measures shall be ended when</p> <ol style="list-style-type: none"> 1. their requirements are no longer fulfilled 2. their purpose has been achieved or can no longer be achieved or 3. the public prosecutor orders the termination of the measures. <p>The use of technical aids which, by means of the transmission of signals, make it possible to determine the spatial area in which the person under surveillance is located and the opening of vehicles and containers for the purpose of inserting such technical means is permissible in order to support the observation, provided that the observation would otherwise be futile or substantially impeded.</p> <p>The use of technical aids (also) allowing for the optical and acoustic surveillance is only admissible when the requirements for optical and acoustic surveillance (see measure A.56) are met.</p> <p>There shall be compliance with a request for judicial assistance which requires a procedure that differs from Austrian laws on criminal procedure, if this is compatible with the criminal procedure and its principles.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Observation of persons suspected of a punishable offence, or of persons who are likely to lead to the identification or tracking-down of such a suspect.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Observation is admissible in order to clear up a punishable act or to determine the whereabouts of an accused person.</p> <p>If the observation measure</p> <ol style="list-style-type: none"> 1. is supported by technical aids 2. is to be carried out for a period longer than 48 hours or 3. is to be performed outside of Austrian territory <p>it is admissible only in case of a suspicion of a punishable act, committed with intent, that carries a prison term of more than one year and where it is to be expected, on account of certain facts, that the person observed has committed the crime or will establish contact with the accused or that the whereabouts of a fugitive or absent accused may be determined.</p>
i) Competent authority to request the measure abroad	The Public Prosecutor's Office that is dealing with the case in Austria
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No special requirements.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	<p>According to Austrian law, this is no longer merely an observation but an optical and acoustic surveillance of persons. The use of technical aids (also) allowing for the optical and acoustic surveillance is only admissible when the requirements for optical and acoustic surveillance (see measure A.56) are met.</p> <p>The optical and acoustic surveillance of persons is admissible</p> <ol style="list-style-type: none"> 1. if and for as long as it is urgently suspected that a person affected by the surveillance has kidnapped or otherwise seized another person, and if the surveillance is restricted to processes and comments at the time and location of the deprivation of liberty,

	<p>2. if it is restricted to processes and comments that are intended to be brought to the knowledge of an under-cover investigator, or another person informed of the surveillance, or that may be perceived by that person directly, and if it appears to be required in order to clear up a punishable offence carrying a prison term of more than three years, or</p> <p>3. if the clearing up of a crime carrying a prison term of more than ten years, or of a crime by a criminal organization or terrorist association (§ 278a and § 278b of the Criminal Code), or the clearing up or prevention of a punishable act committed or planned within the framework of such an organization or association, or the determination of the whereabouts of the person accused of such a punishable act would otherwise be without prospects of success or be essentially impeded, and</p> <p>a. the person who is the target of the surveillance is urgently suspected of a crime carrying a prison term of more than ten years, or of a crime pursuant to § 278 a or § 278b of the Criminal Code, or</p> <p>b. it is to be expected, on account of certain facts, that a person who is thus urgently suspected will establish contact with the person who is the target of the surveillance.</p> <p>To the extent that this is unavoidable for performing the surveillance pursuant to paragraph (1) item 3, it shall be admissible to penetrate a certain flat or other rooms protected by domestic authority, if it is to be expected, on account of certain facts, that the accused will use the rooms in question.</p> <p>The optical surveillance of persons in the process of clearing up a punishable act is also admissible</p> <p>1. if it is restricted to processes outside of a flat or other rooms protected by domestic authority, and if it is conducted exclusively for the purpose of monitoring objects or premises in order to record the conduct of persons who enter into contact with the objects, or who enter the premises, or</p> <p>2. if it is performed exclusively for the purpose mentioned in item 1 in a flat or other rooms protected by domestic authority, and the clearing up of a punishable act, committed with intent, that carries a prison term of more than one year, would otherwise be essentially impeded, and the proprietor of that flat or those rooms expressly agrees to the surveillance.</p>
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	-
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Upon request by a Member State or in agreement with another Member State a controlled delivery through Austria or from Austria to another Member State is admissible if

	<p>1. the reasons underlying the controlled delivery or the foreign criminal proceedings meet the prerequisites for issuing a European arrest warrant, and</p> <p>2. the controlled delivery will promote the clearing up of such offences or the exploration of a person who is involved in committing the offences in more than a subordinate position.</p> <p>A controlled delivery cannot be granted if</p> <p>1. it might cause a serious risk to the life, health, physical integrity or freedom of a person, on account of the special properties of the goods or the group of offenders,</p> <p>2. it were to violate the prohibition of using evidence obtained as a result of illegal incitement by an agent provocateur, or</p> <p>3. the further surveillance of the transport, as well as access to it does not appear to be secured in the other State.</p>
b) International legal framework applicable for this measure in your Member State	Article 12 EU 2000 Convention on Mutual Legal Assistance in criminal matters; Bilateral Treaties on Police and Judicial Cooperation with several EU-Member States; Directive on the EIO;
c) Competent authority to receive the request / execute the measure	<p>The Public Prosecutor's Office in whose court district the border is most likely to be crossed. In the case of an observation by an aircraft flying to Austria, however the Public Prosecutor's office shall be responsible in whose court district the aircraft is to land. If the competences cannot be determined on the basis of the present provisions, the Public Prosecutor's office in Vienna shall be responsible.</p> <p>The practical execution of the measure is performed by security authorities (police) or fiscal authorities and customs offices.</p>
d) Accepted languages	German, English, French and - in case of reciprocity, if the requesting state would accept a request in German language - also the language of the requesting state.
e) Execution deadline	None (requests in urgent cases shall be marked as urgent).
f) Concise legal practical information	Dual Criminality is required. The intervention of foreign agents is subject to authorization by the competent Public Prosecutor's Office.
g) Possible object of controlled delivery	Prohibited goods or goods subject to a traffic limitation
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Upon request by a Member State or in agreement with another Member State a controlled delivery through Austria or from Austria to another Member State is admissible if</p> <p>1. the reasons underlying the controlled delivery or the foreign criminal proceedings meet the prerequisites for issuing a European arrest warrant, and</p> <p>2. the controlled delivery will promote the clearing up of such offences or the exploration of a person who is involved in committing the offences in more than a subordinate position.</p>
i) Competent authority to request the measure abroad	The Public Prosecutors' Office that is dealing with the proceedings in Austria
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No special requirements
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	-

l) Can you share any good practice, such as:	-
<ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>The surveillance of messages is admissible</p> <ol style="list-style-type: none"> in cases of kidnapping in order to clear up a punishable act, committed with intent, which carries a prison term of more than six months, whenever the owner of the technical equipment agrees to the surveillance, if this appears to be required to clear up a punishable act, committed with intent, that carries a prison term of more than one year, or if the clearing up or prevention of a punishable act, committed or planned within the framework of a criminal or terrorist association or a criminal organisation (§ 278 to § 278b of the Criminal Code) would otherwise be essentially impeded, and <ol style="list-style-type: none"> the owner of the technical equipment, which was or will be the source or target of messages is urgently suspected of a punishable act, committed with intent, that carries a prison term of more than one year, or of a punishable act pursuant to § 278 to § 278b of the Criminal Code, or it is to be expected, on account of certain facts, that a person urgently suspected of the offence (letter a) will use the technical equipment or will establish contact with it; if it is to be expected, on account of certain facts, that the whereabouts of a fugitive or absent accused may be determined, who is urgently suspected of a punishable act, committed with intent, that carries a prison term of more than one year.
b) International legal framework applicable for this measure in your Member State	Directive regarding the European Investigation Order in criminal matters in relation to Member States; otherwise: European Convention on Mutual Assistance in Criminal Matters (20.04.1959); Convention implementing the Schengen Agreement; Convention on Mutual Legal Assistance between Member States of the European Union (29.05.2000)
c) Competent authority to receive the request / execute the measure	The Public Prosecutors' Office with competences for the court district in which the act of judicial assistance is to be performed. The practical execution of the measures is performed by security authorities (police).
d) Accepted languages	German, English, French and - in case of reciprocity, if the requesting state would accept a request in German language - also the language of the requesting state.
e) Execution deadline	None (requests in urgent cases shall be marked as urgent).
f) Concise legal practical information	<p>Dual criminality is required. A request for ordering and performing the investigative measure shall comprise a copy, a certified copy or a photostat copy of the order of the competent authority. If this is not a court order, the authority requesting judicial assistance shall present a statement explaining that the prerequisites required for such measures are met under the law applicable in the requesting State.</p> <p>Investigative measures may only be ordered for such a future period of time that are likely to be required in order to fulfil the purpose. Another order is admissible in every case, whenever it is to be expected on account of certain facts that the further performance of an investigative</p>

	<p>measure will lead to success. Moreover, the investigative measure shall be ended as soon as its requirements have ceased to apply.</p> <p>Orders and court authorizations shall indicate the designation of the proceedings, the name of the accused, the offence of which the accused is suspected of having committed and its statutory designation, as well as the facts from which it results that the order or the authorization is required and proportional in order to clear up the offence. In addition, the order shall also contain the following:</p> <ol style="list-style-type: none"> 1. the name or other identification features of the proprietor of the technical device that was or will be the origin or target of a message communication, or of the person whose surveillance is being ordered, 2. the premises envisaged to carry out the investigative measure, 3. the type of message communication, the technical equipment and the terminal device, or the type of the technical means that is likely to be used for the optical and acoustic surveillance, 4. the time when the surveillance begins and ends 5. the rooms which may be entered based on the order. <p>After the end of the investigative measure, the Public Prosecutor's office shall immediately serve its order to the accused and those affected by the execution of the investigative measure. However, service can be postponed as long as it would jeopardize the purpose of the current or any other criminal proceeding.</p> <p>There shall be compliance with a request for judicial assistance which requires a procedure that differs from Austrian laws on criminal procedure, if this is compatible with the criminal procedure and its principles.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Interception may be authorized, if the proportionality of the measure is preserved:</p> <p>The surveillance of messages is admissible</p> <ol style="list-style-type: none"> 1. in cases of kidnapping 2. in order to clear up a punishable act, committed with intent, which carries a prison term of more than six months, whenever the owner of the technical equipment agrees to the surveillance, 3. if this appears to be required to clear up a punishable act, committed with intent, that carries a prison term of more than one year, or if the clearing up or prevention of a punishable act, committed or planned within the framework of a criminal or terrorist association or a criminal organisation (§ 278 to § 278b of the Criminal Code) would otherwise be essentially impeded, and <ol style="list-style-type: none"> a. the owner of the technical equipment, which was or will be the source or target of messages is urgently suspected of a punishable act, committed with intent, that carries a prison term of more than one year, or of a punishable act pursuant to § 278 to § 278b of the Criminal Code, or b. it is to be expected, on account of certain facts, that a person urgently suspected of the offence (letter a) will use the technical equipment or will establish contact with it; 4. if it is to be expected, on account of certain facts, that the whereabouts of a fugitive or absent accused may be determined, who is urgently suspected of a punishable act, committed with intent, that carries a prison term of more than one year.
h) Competent authority to request the measure abroad	The Public Prosecutors' Office that is dealing with the proceedings in Austria after authorization by the Regional Court (Landesgericht)
i) Conditions of admissibility of outcomes of this measure as evidence in	No special requirements

your country as requesting state	
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	See point g)
k) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	-
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Where for the purpose of a criminal investigation, the interception of telecommunications is authorised by the competent authority of one Member State, the telecommunication address of the subject specified in the interception order is being used on the territory of Austria and no technical assistance is needed to carry out the interception, the intercepting Member State shall inform Austria of the interception according to Art 20 of the MLA Convention.
b) International legal framework applicable for this measure in your Member State	Directive regarding the European Investigation Order in criminal matters in relation to Member States; otherwise: Convention on Mutual Legal Assistance between Member States of the European Union (29.05.2000)
c) Competent authority to receive the request / execute the measure	The Public Prosecutors' office with competences for the court district in which the act of judicial assistance is to be performed.
d) Accepted languages	German, English, French and - in case of reciprocity, if the requesting state would accept a request in German language - also the language of the requesting state.
e) Execution deadline	None (requests in urgent cases shall be marked as urgent).
f) Concise legal practical information	-
g) Conditions under which it is possible to order the measure based on a request of foreign authority	-

h) Competent authority to request the measure abroad	-
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No special requirements.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	-
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	When giving the consent to the exchange of existing information emanating from a domestic criminal proceedings the Public Prosecutor has to give the consent to the foreign authority to use it as evidence before a judicial authority without further request. If the information, however, was retrieved through investigative measures requiring a court's authorization, a formal request for judicial cooperation or an EIO is needed to give the consent. (see section 57a para 1 and 4 of the Federal Law on Judicial Cooperation in Criminal Matters with the Member States of the EU).
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No

4.2. Belgium

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Art. 40 Schengen 1959 Convention on Mutual Assistance in Criminal Matters 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union Extended by bilateral treaties with neighboring countries
c) Competent authority to receive the request/execute the measure	Receive: The letter of request has to be sent to the local public prosecutor's office of the geographical area where the investigating measure has to be executed. If this area is not known, the letter of request has to be sent to the federal prosecutor's office - section of international cooperation. Execute: public prosecutor
d) Accepted languages	Dutch, French, German and English Important remarks: before the execution, the letter of request will be translated by the Belgian prosecutor if the language is not the language of the judicial area where the letter of request has to be executed. It is recommended, when possible, to obtain previously the information about the correct language.
e) Execution deadline	
f) Concise legal practical information	MLA request. In urgent cases authorization can be giving based on an oral request under the condition that the MLA follows without delay. EIO is accepted, however the EIO will be considered as an MLA request (as MLA is free of form) and executed as such (no application of the EIO directive). Duration of the observation is 3 months, but can be prolonged if necessary (a new MLA request is required) A written and confidential report on the observation is drawn up on a regular basis by the police officer responsible for implementing the measure and countersigned by his or her superintendent. This report is sent to the prosecutor specialized in special police techniques. This report must be passed on to the superintendent and subsequently to the prosecutor accompanied by all videotapes or other recordings made in the course of the observation. The prosecutor must also be informed whether or not the person concerned has been the subject of a similar measure before. The confidential report/file will never leave the prosecutor's office. Only the official report (proces-verbal) will be send to the requesting foreign authority.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspects and other persons.
h) Conditions under which it is possible to order the	A written request (MLA) must follow checking the double criminality

measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	Public prosecutor and/or examining magistrate.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	If gathered in a legal way according to foreign legislation, it will be accepted here if it is not against our public order or in breach of fundamental rights.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>Making a video of the observation, is possible. An observation can be done by using technical means/aid, such as a video device. However covertly intercepting, taking cognizance of, searching and recording communications not accessible to the public with technical devices requires the intervention of an investigating judge (Art. 90ter Criminal Ccde). In which case an EIO is required in advance! No authorization for direct listening devices can be granted after the facts.</p> <p>A device used to take photographs is only considered a technical aid within the meaning of the law if it is used to gain visibility inside a house/residence. So no authorization is required to take pictures of the suspect, of his vehicle...</p>
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	Within the police there is a special TBO desk, which proves that centralizing knowledge/specialization is of added value. Especially in combination with the cooperation with the federal public prosecutor's office, which authorizes cross-border observation the cannot be located or where it is unclear where exactly the Belgian border will be crossed.
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for	Directive 2014/41 EIO

this measure in your Member State	
c) Competent authority to receive the request/execute the measure	The local public prosecutor's office of the geographical area where the investigating measure has to be executed. If this area is not known, the letter of request has to be sent to the federal prosecutor's office - section of international cooperation. Execute: public prosecutor
d) Accepted languages	Dutch, French, German and English
e) Execution deadline	
f) Concise legal practical information	No authorization can be given after the crossing of the border has taken place. A request needs to be made before the vehicle or the person crosses the border.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspects and other persons.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	An EIO
i) Competent authority to request the measure abroad	Public prosecutor and/or examining magistrate.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	Covertly intercepting, taking cognizance of, and recording communications not accessible to the public with technical devices requires the intervention of an investigating judge (Art. 90ter Criminal Code). An annex C could be accepted under national law, however the international framework speaks of telecommunication in relation to annex C. Whereas in this situation the communication is intercepted directly, without the use of telecommunication. Please be aware that therefore, no authorization for direct listening devices can be granted after the facts.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or	

<p>technical measure for urgent cases?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Cross-border surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	See above. There is no difference.
b) Legal Framework	
c) Competent Authority	
d) Accepted Languages	
e) Execution Deadline:	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	<p>If such a device is to be installed by Belgium at the request of the issuing state, there is no cross-border surveillance. The device will be installed once all the authorizations have been given (including those of the investigative judge).</p> <p>See FB A 70 K</p>
l) Can you share any good practice, such as:	
<ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one 	

<p>for all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Yes</p> <p>Controlled delivery is a form of observation that consists of allowing the illegal transportation of goods or persons, known to the police authorities, to continue under constant police surveillance, without the police officials transporting and delivering themselves or without providing support, and where police intervention is deferred until the final destination is reached.</p> <p>A controlled delivery where the police carries out the illegal transport is only possible within an infiltration procedure.</p> <p>Alternative measures: Assisted monitored delivery: observation without intervention; Assisted controlled delivery: infiltration without intervention. If there is no intervention at least on the final destination the delivery is forbidden for persons (victims) and only possible for goods after the special authorization of the federal prosecutor.</p>
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request / execute the measure	
d) Accepted languages	Dutch, French, German and English
e) Execution deadline	
f) Concise legal practical information	
g) Possible object of controlled delivery	The illegal transportation of goods or persons, known to the police authorities.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	If there is no intervention at least on the final destination the delivery is forbidden for persons (victims) and only possible for goods after the special authorization of the federal prosecutor.

i) Competent authority to request the measure abroad	Public prosecutor or/and examining magistrate.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	If gathered in a legal way according to foreign legislation, it will be accepted here if it is not against our public order or in breach of fundamental rights.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	From a legal point of view, substitution is not required. From a practical point of view, if there is a risk that the shipment goes lost, the goods will be replaced if possible.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request / execute the measure	Receive: the local public prosecutor's office of the geographical area where the investigating measure has to be executed. if this area is not known, the letter of request has to be sent to the federal prosecutor's office - section of international cooperation. Execute: The investigative judge. Interception of communications is the exclusive competence of the investigating judge who will be charged with the execution
d) Accepted languages	Dutch, French, German and English
e) Execution deadline	
f) Concise legal practical information	Proportionality and subsidiarity need to be examined by the investigative judge. A motivation that this requirement is met, needs to be written down in the decision authorizing the measure.

	The summary of the facts therefore needs to contain concrete information and aspects allowing the investigative judge to do the test.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	This limits of Art 90 III § 2 of the CIC. In cases of flagrante delicto this measure is to be taken for the following offences: hostages taking and aggravated theft. In this case, the measure must be confirmed within 24 hours by an examining magistrate (Art. 90 III § 5 of the CIC).
h) Competent authority to request the measure abroad	The public prosecutor and the examining magistrate.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	If gathered in a legal way according to foreign legislation, it will be accepted here if it is not against our public order or in breach of fundamental rights.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>The measure may concern only the premises used for professional purposes, the residence, means of communication of a lawyer or a doctor if they are themselves suspected of having committed or participated in the commission of one of the offences referred to in Article 90ter, or if precise facts give rise to the suspicion that third parties suspected of having committed one of the offences referred to in Article 90ter are using the lawyer's or doctor's premises, residence, means of communication or IT systems.</p> <p>If this is not the case, Communications not accessible to the public that are covered by professional secrecy shall not be recorded in the police file. These communications shall be filed in a file under sealed cover at the registry of the court (Art. 90sexies §3).</p> <p>In the situation as foreseen in article 30 § 6 a of the EIO Directive, the communication is immediately transmitted to the issuing state and we assume that such confidential communication is filtered out by the issuing state based on the principle of mutual trust.</p> <p>Should there be any concerns, the investigative judge can ask questions.</p> <p>According to Belgian Law the police officers carrying out the measure have to inform the investigative judge at least every 5 days about the progress of the wiretap.</p> <p>The wiretap is ordered for a period of 1 month, it can be renewed with 1 month until a maximum of 6 months.</p> <p>In these two instances an investigative judge can get in contact with the issuing state, should he have doubts of non-compliance with the rules concerning confidential communication. The investigative judge can decide to end the measure or not renew it.</p>
k) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?	<p>If a lawyer who is protected by professional secrecy is a suspect in a criminal case, immediate transmission to the issuing state could be made conditional so that it is in accordance with the requirements of our national law. For example, the president of the Bar association needs to be informed. The investigative judge needs to filter out all the communication that is protected by the professional secrecy.</p> <p>Unless the issuing state has similar regulations in place.</p>

<ul style="list-style-type: none"> • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	Requests for the interception of telecommunication call be made orally, under the condition that an EIO follows as soon as possible. However investigative judges are often hesitant and often require a short email containing a short overview of the facts, the exact phone-number...
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	EIO Directive 2014/41/
c) Competent authority to receive the request / execute the measure	Receive: the local public prosecutor's office of the geographical area where the investigating measure has to be executed. if this area is not known, the letter of request has to be sent to the federal prosecutor's office - section of international cooperation. Execute: The investigative judge. Interception of communications is the exclusive competence of the investigating judge who will be charged with the execution
d) Accepted languages	Dutch, French, German and English
e) Execution deadline	
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	Art 90ter which stipulates the conditions for interception of communications (persons, places, infractions, duration). The investigative judge will verify of the information in annex C meets the requirements.
h) Competent authority to request the measure abroad	Investigating judge
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
j) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? 	No specialized body. It is the competence of the local investigative judge. If there is no territorial link to a specific district, the annex C will be submitted to investigative judge of Brussels. As mentioned above, our national law has a broader field of application than art 31 of the EIO Directive. If an international instrument allows it, an annex C could be accepted for direct listening devices implanted in a vehicle (as this measure also requires no technical intervention of Belgium). Should the application of annex C be expanded beyond telecommunication so that it would also include direct listening devices, this would greatly improve the fight against crime, certainly in border regions.

<ul style="list-style-type: none"> - Have you had any real-world experience with application of this measure? - Any other? 	
General questions	
<p>a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?</p>	<p>Information exchanged between police authorities cannot be used as evidence before court unless the judicial authority has approved the use as evidence.</p> <p>There are two possibilities: Either the receiving state sends us an EIO requesting the information to be used as evidence before court; or The judicial authority authorizes the use as evidence, when the Belgian police sends the information to the foreign police service.</p> <p>In practice, from time to time article 7 of the 2000 Convention is also used to avoid the drafting of an EIO by the foreign authorities.</p>
<p>b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?</p>	<p>Yes several BES – meeting (Bureau of Euregional cooperation, between the Netherlands, Germany and Belgium)</p>

4.3. Bulgaria

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	The measure is possible in the Republic of Bulgaria under international judicial cooperation.
b) International legal framework applicable for this measure in your Member State	Article 40 of the Convention implementing Schengen Agreement 1959 Convention on Mutual Assistance in Criminal Matters and it's protocols (Article 17 of Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters) EIO Directive 2014/41
c) Competent authority to receive the request/execute the measure	The Supreme Cassation Prosecutor's office, International Department when the request is issued from third country. The respective district or military district prosecutor's office is the competent authority to rule on the notification under Article 9, para (1), p.1 of the European Investigation order Act in the course of preliminary proceedings when the EIO is issued from country – member state of EU.
d) Accepted languages	Bulgarian or English languages
e) Execution deadline	None for third countries (request for urgent cases must be listed as urgent). When EIO is applicable the deadlines of EIO Directive are implemented.
f) Concise legal practical information	Dual criminality is required. The MLA request/EIO should be very well motivated and should consists – description the crime, detailed information of person/objects towards whom/which the measure should be applied, explanation why the request is urgent if it is urgent. Duration of the observation can be 2 months and it can be extended if it is needed till 6 mounts. The duration of special intelligence means can be two years plus 1 year prolongation with regard to activities related to protection of national security in the cases of preventing grave intentional criminal offences – such as espionage, terrorism, etc.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person connected with the particular criminal matter.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible only according to serious criminal offences, explicitly listed in article 172 (2) of the Bulgarian criminal code of procedure (criminal offences punishable over 5 years imprisonment) under conditions, where international agreement has been concluded to which the Republic of Bulgaria is party. MLA request or EIO of judicial authority is necessary for this international cooperation.
i) Competent authority to request the measure abroad	Only Bulgarian Supreme Cassation Public Prosecutor's Office can issue MLA requests concerning cross-border observation of person in preliminary proceedings (article 476 (4) of Criminal Procedure Code) to third countries. In case that the request is addressed to member state of the EU, competent to issue the EIO is the prosecutor who is supervising the case.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Prior written permission by the Court of the executive foreign state for appliance of cross-border surveillance of a person connected with serious criminal offence, protocol on course of observation together with video or other records is necessary that the measures could be used as evidence in Bulgarian court.
k) If a technical record is being made not only of the	Bulgarian law doesn't stipulate a different procedure in the case if a technical record is being made only for movement of the surveilled person.

movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	If the wiretapping of the conversations (Article 6 of Law of Special Intelligence Means Law) will be made then court permission for using such type of special intelligence mean is needed.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	<p>The Supreme Cassation Prosecutor's Office is competent to receive the MLA for cross-border observation according Art. 34 m (1) of Law on Special Intelligence Means. There is 24/7 prosecutor on duty concerning crossborder surveillance. After receiving the request the Supreme Cassation Prosecutor's Office shall pronounce with regards to the application and if authorizes its execution, a grounded request for permission shall be submitted to the Chairman of the Sofia City Court or a deputy chairman authorized by him/her. The request shall contain:</p> <ol style="list-style-type: none"> 1. information on the crime the investigation whereof requires cross-border monitoring; 2. information on the persons to be subjected to cross-border monitoring; 3. information on the officers to perform the cross-border monitoring; 4. terms under which the cross-border monitoring is to take place; 5. the period for which the cross-border monitoring is to take place. <p>In emergency cases of crossing the Bulgarian border for the purposes of cross-border supervision, if a permission has not been requested in advance, the employees of a foreign state carrying out the supervision are entitled to go on with it on the territory of the Republic of Bulgaria, where this is provided by an international agreement which has entered into force for the Republic of Bulgaria but competent authority of the foreign state, shall immediately notify the Supreme Prosecutor's Office of Cassation and the Chief Secretary of the Ministry of Interior or an authorized official of the fact that the border has been crossed during the supervision. The Supreme Cassation Prosecutor's Office shall immediately rule on whether the monitoring shall be terminated and shall notify thereof the requesting state and the Secretary General of the Ministry of Interior or an officer authorized by the Commissioner General (Art. 34 m of Law on Special Intelligence Means). The chairperson of Sofia City Court or deputy chair person shall, within five hours after the Bulgarian border is crossed, give a written permission for the cross-border monitoring to be performed, or refuse to give such permission and provide substantiation for such refusal.</p>
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	The measure is possible in the Republic of Bulgaria under international judicial cooperation.
b) International legal framework applicable for this measure in your Member State	<p>EIO Directive 2014/41/EU</p> <p>1959 Convention on Mutual Assistance in Criminal Matters and it's protocols</p> <p>2000 Convention on Mutual Assistance in Criminal Matters between Member States of EU and it's protocol</p>
c) Competent authority to receive the request/execute the measure	<p>The Supreme Cassation Prosecutor's office, International Department when the request is issued from third country.</p> <p>The respective district or military district prosecutor's office is the competent authority to rule on the notification under Article 9, para (1), p.1 of the European Investigation order Act in the course of preliminary proceedings when the EIO is issued from country – member state of EU.</p>

d) Accepted languages	Bulgarian or English languages
e) Execution deadline	None for third countries (request for urgent cases must be listed as urgent). When EIO is applicable the deadlines of EIO Directive are implemented
f) Concise legal practical information	The MLA request/EIO should be very well motivated and should consist – description the crime, detailed information of person/objects towards whom/which the measure should be applied, explanation why the request is urgent if it is urgent. Duration of the special intelligence mean can be 2 months and it can be extended if it is needed till 6 months. The duration of special intelligence means can be two years plus 1 year prolongation with regard to activities related to protection of national security in the cases of preventing grave intentional criminal offences – such as espionage, terrorism, etc.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Possible subjects of observation/surveillance are suspect and according Art.12,(2) of Law of Special Intelligence Means observation/surveillance and other special intelligence means may be used for the protection of the life and the property of persons, who have consented to this in writing or regarding a witness in peral proceedings who has agreed thereof in order to establish criminal activities of other persons pursuant to Article 108a (terrorism offences), Article 143 - 143a (coercion), Article 159a - 159d (trafficking of human beings), Article 301 - 305 (bribe) and Article 321 (foundation and/or participation in organized criminal group) of the Criminal Code.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible only according to serious criminal offences, explicitly listed in article 172 (2) of the Bulgarian criminal code of procedure (criminal offences punishable over 5 years imprisonment) under conditions, where international agreement has been concluded to which the Republic of Bulgaria is party. MLA request or EIO (Annex C of EIO DIR) of judicial authority is necessary to be issued for this international cooperation. The notification must be made in advance during or immediately after the set-off.
i) Competent authority to request the measure abroad	According to Art. 13(2) of Law on Special Intelligence Means competent to request the measure abroad is a supervising prosecutor (from respective regional, district, military district or appeal prosecutor's office) who shall submit to the respective district court a substantiated written request for use of special intelligence means for pretrial proceedings.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The procedure of collecting evidence abroad shall not contradict to the Bulgarian Constitution and main legal principals and the investigative measures and other procedural measures and outcomes that were gathered as a result of these measures, can be carried out under the same conditions according to Bulgarian legislation in a similar case.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	Bulgarian law doesn't stipulate a different procedure in the case if technical device tracking the person can also make audio/video recording. If the wiretapping of the conversations (Article 6 of Law of Special Intelligence Means Law) will be made then court permission for using such type of special intelligence mean is needed.
m) Can you share any good practice, such as:	When the investigative measure – GPS tracking installed in the issuing country and crossing the border (no need for technical assistance) constitutes a form of Cross-border observation (continuing) within the

<ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>meaning of the Second Additional Protocol of European Convention for cooperation on criminal matters the competent body to receive the request is Supreme Cassation prosecutor's office and competent authority to allow such technical observation is Sofia City Court.</p>
Cross-border surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Law of Special Intelligence means and Law of European Investigation order
b) Legal Framework	EIO Directive 2014/41/EU Second Additional Protocol to the 1959 European Convention on Criminal Matters
c) Competent Authority	<p>The Supreme Cassation Prosecutor's office, International Department when the request is issued from third country.</p> <p>Respective district prosecutor's office in the Republic of Bulgaria which has territorial competence depends on location of the surveilled person or items on the basis of EIO.</p>
d) Accepted Languages	Bulgarian and English languages
e) Execution Deadline:	None for third countries (request for urgent cases must be listed as urgent). Deadline stipulated by the EU Directive and the Law of European Investigative order
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Possible subjects of observation/surveillance are suspect and according Art.12, paragraph 2 of Law on Special Intelligence Means observation/surveillance and other special intelligence means may be used for the protection of the life and the property of persons, who have consented to this in writing, or regarding a witness in penal proceedings who has agreed thereof in order to establish criminal activities of other persons pursuant to Article 108a (terrorism offences), Article 143 - 143a (coercion), Article 159a - 159d (trafficking of human beings), Article 301 - 305 (bribe) and Article 321 (foundation and/or participation in organized criminal group) of the Criminal Code.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible only according to serious criminal offences, explicitly listed in article 172 (2) of the Bulgarian criminal code of procedure (criminal offences punishable over 5 years imprisonment) under conditions, where international agreement has been concluded to which the Republic of Bulgaria is party. MLA request or EIO (Annex A of EIO DIR) of judicial authority is necessary to be issued for this international cooperation and competent to allow such measure is the Chairman of respective district or military court.

i) Competent authority to request the measure abroad	According Art. 13(2) of Law on Special Intelligence Means competent to request the measure abroad is a supervising prosecutor (from respective regional, district, military district or appeal prosecutor's office) who shall submit to the district court a substantiated written request for use of special intelligence means for pretrial proceedings.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The procedure of collecting evidence abroad shall not contradict to the Bulgarian Constitution and main legal principals and the investigative measures and other procedural measures and outcomes that were gathered as a result of these measures, can be carried out under the same conditions according to Bulgarian legislation in a similar case.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	Bulgarian law doesn't stipulate a different procedure in the case if technical device tracking the person can also make audio/video recording. If the wiretapping of the conversations (Article 6 of Law of Special Intelligence Means) will be made then court permission for using such special intelligence mean is needed.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	Special intelligence means (in this scope installation of tracking device) are procured and employed only by the State Agency for Technical Operations or the Specialized Technical Operations Directorate of the State Agency for National Security after court permission.
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	The measure is possible in the Republic of Bulgaria under international judicial cooperation. According the Article 10A of Law of Special Intelligence Means a controlled delivery shall be performed by an intelligence body and shall be used by an investigating or body within the limits of their competence in the presence of uninterrupted strict control on the territory of the Republic of Bulgaria or another country within the context of international cooperation, during which a controlled individual shall be import, export, carry or effect transit transportation through the territory of the Republic of Bulgaria of an object, which makes the object of a criminal offence, with a view of detecting those involved in a trans-border crime.
b) International legal framework applicable for this measure in your Member State	EU Directive of the EIO 2014/41 1959 Convention on Mutual Assistance in Criminal Matters and it's first and second protocols 2000 Convention on Mutual Assistance in Criminal Matters between Member States of EU and it's protocol
c) Competent authority to receive the request / execute the measure	The Supreme Cassation Prosecutor's office, International Department when the request is issued or addressed to third country (Article 476, para (4) of Criminal Procedure Code).

	The respective district or military district prosecutor's office is the competent authority to rule on the notification under Article 9, para (1), p.1 of the European Investigation order Act in the course of preliminary proceedings and p.2 respective district or military court in course of trial proceedings on the basis of EIO.
d) Accepted languages	Bulgarian and English languages
e) Execution deadline	None for third countries (request for urgent cases must be listed as urgent). Deadline stipulated by the EIO Directive and the Bulgarian Law of EIO is applicable in the relations with member states of EIO.
f) Concise legal practical information	The EIO should be very well motivated and should consist – description the crime – the objective and subjective elements of the criminal offence, detailed information of reasons why the information requested is considered relevant for the purpose of the criminal proceeding and details about the concerned person towards whom the measure should be applied.
g) Possible object of controlled delivery	All objects of serious criminal offence, explicitly listed in article 172 (2) of the Bulgarian Criminal procedure code (criminal offences punishable over 5 years imprisonment). According to article 10a of the Law on Special Intelligence Means possible object of controlled delivery is an object passing Bulgarian state border of a criminal offence, with a view of detecting persons involved in a trans-border crime.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible only according to serious criminal offences, explicitly listed in article 172 (2) of the Bulgarian criminal code of procedure (criminal offences punishable over 5 years imprisonment) under conditions, where international agreement has been concluded to which the Republic of Bulgaria is party. MLA request or EIO (Annex A of EIO DIR) of judicial authority is necessary to be issued for this international cooperation and competent to allow such measure is always the chairperson or authorized deputy chairperson of respective district or military court .
i) Competent authority to request the measure abroad	According Article 13(2) of Law on Special Intelligence Means competent to request the measure abroad is a supervising prosecutor (from respective regional, district, military district or appeal prosecutor's office) who shall submit to the district court a substantiated written request for use of special intelligence means for pretrial proceedings. Bulgarian Supreme Cassation Public Prosecutor's Office sends requests to third states concerning controlled delivery in preliminary proceedings (Art. 476 (4) of Criminal Procedure Code).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The procedure of collecting evidence abroad shall not contradict to the Bulgarian Constitution and main legal principals and the investigative measures and other procedural measures and outcomes that were gathered as a result of these measures, can be carried out under the same conditions according to Bulgarian legislation in a similar case. Protocol on course of surveillance together with video or other records is necessary so that the measures could be used as evidence in Bulgarian court.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	It is possible to replace or not to replace the content of the controlled consignment. It depends on the agreement reached by the countries.
l) Can you share any good practice, such as:	

<ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	The measure is possible in the Republic of Bulgaria under international judicial cooperation.
b) International legal framework applicable for this measure in your Member State	EU Directive of the EIO 2014/41 1959 Convention on Mutual Assistance in Criminal Matters and it's first and second protocols 2000 Convention on Mutual Assistance in Criminal Matters between Member States of EU and it's protocol
c) Competent authority to receive the request / execute the measure	The Supreme Cassation Prosecutor's office, International Department when the request is issued from third country. The respective district or military district prosecutor's office is the competent authority to rule on the notification under Article 9, para (1), p.1 of the European Investigation order Act in the course of preliminary proceedings and respective district or military district court in course of trial proceedings.
d) Accepted languages	Bulgarian or English languages
e) Execution deadline	None for third countries (request for urgent cases must be listed as urgent). When EIO is applicable the deadlines of EIO Directive are implemented.
f) Concise legal practical information	The EIO should be very well motivated and should consist – description the crime – the objective and subjective elements of the criminal offence, detailed information of reasons why the information requested is considered relevant for the purpose of the criminal proceeding and details about the concerned person towards whom the measure should be applied, the desired duration of the interception, sufficient technical data, in particular the target identifier, to ensure that the European Investigative Order can be executed. Duration of the interception can be 2 months and it can be prolonged if it is necessary till 6 months. The duration of special intelligence means can be two years plus 1 year prolongation with regard to activities related to protection of national security in the cases of preventing grave intentional criminal offences – such as espionage, terrorism matters, etc.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible only according to serious criminal offences, explicitly listed in article 172 (2) of the Bulgarian criminal code of procedure (criminal offences punishable over 5 years imprisonment) under conditions, where international agreement has been concluded to which the Republic of Bulgaria is party. MLA request or EIO (Annex A of EIO DIR) of judicial authority is necessary to be issued for this international cooperation and competent to allow such measure is the Chairman of respective district or military court.

h) Competent authority to request the measure abroad	Respective prosecutor's office (regional, district, appeal) in preliminary stage is competent to request the measure and respective court (regional, district, appeal) in trial stage.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The procedure of collecting evidence abroad shall not contradict to the Bulgarian Constitution and main legal principals and the investigative measures and other procedural measures and outcomes that were gathered as a result of these measures, can be carried out under the same conditions according to Bulgarian legislation in a similar case. Record of interception of telecommunication together with protocol, containing information about place, time, manner and content of record is necessary so that the measure could be used as evidence in Bulgarian court.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	Interception of telecommunication may be implemented to any person connected with the investigating crime, except the communication between suspect and defence lawyer which is forbidden. The measure technically is implemented by the National Agency for Technical Operations.
k) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	The Law of Special Intelligence Means creates the bodies that are obliged to monitor the correct application of the procedure: -National Bureau for controlling on the special intelligence means -State Agency „Technical Operations“ -State Agency for National Security
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	The measure is possible in the Republic of Bulgaria under international judicial cooperation.
b) International legal framework applicable for this measure in your Member State	EU Directive of the EIO 2014/41 2000 Convention on Mutual Assistance in Criminal Matters between Member States of EU and it's protocol
c) Competent authority to receive the request / execute the measure	The Supreme Cassation Prosecutor's office, International Department when the request is issued from third country. The respective district or military district prosecutor's office is the competent authority to rule on the notification under Article 9, para (1), p.1 of the European Investigation order Act in the course of preliminary

	proceedings and p.2 - respective district or military district court in course of trial proceedings.
d) <i>Accepted languages</i>	Bulgarian and English languages
e) Execution deadline	Deadline stipulated by the EIO Directive and the Bulgarian Law of EIO is applicable.
f) Concise legal practical information	According the Article 35 of Bulgarian Law of European Investigative Order the intercepting Member State shall notify the competent authority of the notified Member State of the interception: 1. 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; 2. 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 located on the territory of the notified Member State during the interception.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible only according to serious criminal offences, explicitly listed in article 172 (2) of the Bulgarian criminal code of procedure (criminal offences punishable over 5 years imprisonment) under conditions, where international agreement has been concluded to which the Republic of Bulgaria is party. MLA request or EIO (Annex C of EIO DIR) of judicial authority is necessary to be issued for this international cooperation. The district or military district prosecutor's office is the competent authority to rule on the notification under Article 9, para (1), p.1 of the European Investigation Order Act.
h) Competent authority to request the measure abroad	Respective prosecutor's office (regional, district, appeal) in preliminary stage or court (regional, district, appeal) in trial stage are competent to request the measure.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The procedure of collecting evidence abroad shall not contradict to the Bulgarian Constitution and main legal principals and the investigative measures and other procedural measures and outcomes that were gathered as a result of these measures, can be carried out under the same conditions according to Bulgarian legislation in a similar case.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	Article 118 para 3 of Law on Ministry of Interior provides an option the information exchanged to be used as evidence at the judicial phase of the criminal proceedings in Bulgaria only after receiving an authorization from the competent authorities in a country who provided the information in question.

b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	Till this moment Bulgarian EJM contact points didn't organize or participate in any regional cross-border meetings that was focused on cross-border observation/surveillance, controlled delivery or interception of telecommunications. We declare an interest to be part of such meeting with the participation of another member states or third countries in order to discuss many issues that arise through the process of the implementation of special intelligence means in case of international cooperation.

4.4. Croatia

Cross-border observation (FB A.70)	
m) Is the measure possible in your member state under international judicial cooperation?	No.
n) International legal framework applicable for this measure in your Member State	
o) Competent authority to receive the request/execute the measure	
p) Accepted languages	
q) Execution deadline	
r) Concise legal practical information	
s) Possible subject of observation/surveillance (suspect only, or also other persons)	
t) Conditions under which it is possible to order the measure based on a request of foreign authority	
u) Competent authority to request the measure abroad	
v) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	
w) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
k) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border	

observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
l) Is the measure possible in your member state under international judicial cooperation?	No.
m) International legal framework applicable for this measure in your Member State	
n) Competent authority to receive the request/execute the measure	
o) Accepted languages	
p) Execution deadline	
q) Concise legal practical information	
r) Possible subject of observation/surveillance (suspect only, or also other persons)	
s) Conditions under which it is possible to order the measure based on a request of foreign authority	
t) Competent authority to request the measure abroad	
u) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
v) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
n) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner?	

- Any other?	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
m) Measure implementation	Croatian Act on judicial cooperation in criminal matters with Member States of EU
n) Legal Framework	EIO Directive
o) Competent Authority	County State Attorney's Office
p) Accepted Languages	Croatian, in urgent cases also English
q) Execution Deadline:	
r) Concise legal practical information	
s) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspect only
t) Conditions under which it is possible to order the measure based on a request of foreign authority	This measure is possible under the same conditions as in a similar domestic case, it is always ordered by court. This measure can be ordered in case of crimes listed in Art. 334 of the Criminal Procedure Act.
u) Competent authority to request the measure abroad	County State Attorney's Office issues the EIO
v) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
w) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	
x) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	
Controlled delivery (FB A.73)	
m) Is the measure possible in your member state under	Yes.

international judicial cooperation?	
n) International legal framework applicable for this measure in your Member State	EIO Directive
o) Competent authority to receive the request / execute the measure	County State Attorney's Office / County Court
p) Accepted languages	Croatian, in urgent cases also English
q) Execution deadline	
r) Concise legal practical information	
s) Possible object of controlled delivery	
t) Conditions under which it is possible to order the measure based on a request of foreign authority	This measure is possible under the same conditions as in a similar domestic case, it is always ordered by court. This measure can be ordered in case of crimes listed in Art. 334 of the Criminal Procedure Act.
u) Competent authority to request the measure abroad	County State Attorney's Office issues the EIO
v) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
w) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	
x) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	
Interception, recording and transcription of telecommunications (FB A.50)	
j) Is the measure possible in your member state under international judicial cooperation?	Yes.
k) International legal framework applicable for this measure in your Member State	EIO Directive

l) Competent authority to receive the request / execute the measure	County State Attorney's Office / County Court
m) Accepted languages	Croatian, in urgent cases also English
n) Execution deadline	
o) Concise legal practical information	
p) Conditions under which it is possible to order the measure based on a request of foreign authority	This measure is possible under the same conditions as in a similar domestic case, it is always ordered by court. This measure can be ordered in case of crimes listed in Art. 334 of the Criminal Procedure Act.
q) Competent authority to request the measure abroad	County State Attorney's Office issues the EIO
r) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
l) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	
m) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
k) Is the measure possible in your member state under international judicial cooperation?	Theoretically yes (it is regulated in domestic regulation), although it is not being applied in practice due to technical reasons (when HR is the executing state).
l) International legal framework applicable for	EIO

this measure in your Member State	
m) Competent authority to receive the request / execute the measure	County State Attorney's Office / County Court
n) Accepted languages	Croatian, in urgent cases also English
o) Execution deadline	
p) Concise legal practical information	
q) Conditions under which it is possible to order the measure based on a request of foreign authority	This measure is possible under the same conditions as in a similar domestic case, it is always ordered by court. This measure can be ordered in case of crimes listed in Art. 334 of the Criminal Procedure Act.
r) Competent authority to request the measure abroad	County State Attorney's Office issues the EIO
s) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
t) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	
General questions	
c) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	By the Act on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. In accordance with the mentioned Act it is not possible to give consent for using information or intelligence provided by the FD 2006/960/JHA as evidence in criminal proceedings as it is contrary to the basic principles of Croatian legal order (in accordance with the CPA information/intelligence cannot be used as an evidence and it has to be abstracted from court case file, moreover the information/intelligence cannot become evidence). So, the provided information/intelligence can only be used as a basis for issuance of the EIO /MLA request.
d) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or	No.

interception
telecommunications?

of

4.5. Cyprus

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	N/A
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request/execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this	

type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	N/A
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request/execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can	

also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
m) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Yes
b) Legal Framework	2 nd Additional Protocol to the CofE Convention on Mutual Assistance in Criminal Matters The 2014/40/EU Directive on European Investigation Order
c) Competent Authority	MJPO
d) Accepted Languages	Greek, English
e) Execution Deadline:	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspect only
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Only upon receipt of an MLA and provided the investigation falls under one of the five offences mention at FB A50 section (g) .
i) Competent authority to request the measure abroad	Cyprus Police
j) Conditions of admissibility of outcomes	

of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	Cyprus Police Cyprus Intelligence Service
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	2 nd Additional Protocol to the CofE Convention on Mutual Assistance in Criminal Matters The 2014/40/EU Directive on European Investigation Order
c) Competent authority to receive the request / execute the measure	Cyprus Police
d) Accepted languages	Greek ,English
e) Execution deadline	
f) Concise legal practical information	
g) Possible object of controlled delivery	Drugs, customs related offences

h) Conditions under which it is possible to order the measure based on a request of foreign authority	A written request for assistance
i) Competent authority to request the measure abroad	Cyprus Police
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The originals of the consignment must be presented as evidence at the Court hearing
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	In most cases the contents of the controlled consignment are replaced.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	Cyprus Police Department of Customs
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	YES
b) International legal framework applicable for this measure in your Member State	2 nd Additional Protocol to the CoE Convention on Mutual Assistance in Criminal Matters The 2014/40/EU Directive on European Investigation Order
c) Competent authority to receive the request / execute the measure	Ministry of Justice & Public Order (MJPO)
d) Accepted languages	GREEK, ENGLISH
e) Execution deadline	
f) Concise legal practical information	

g) Conditions under which it is possible to order the measure based on a request of foreign authority	Interference can be deployed only for the following serious offences: (a)premeditated murder or homicide, (b)trafficking in adult or minor human beings and offences relating to child pornography, (c) trade, supply, cultivation or production of narcotic drugs, psychotropic substances or dangerous drugs, (d) offences relating to coin or bank note of the Republic, and (e) offences relating to corruption in respect of which, in case of conviction, a sentence of imprisonment of 5yrs or more is provided.
h) Competent authority to request the measure abroad	Cyprus Police
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	Only upon receipt of an MLA and provided it falls under one of the five offences mention at section (g) above.
m) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	

a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	2 nd Additional Protocol to the CofE Convention on Mutual Assistance in Criminal Matters The 2014/40/EU Directive on European Investigation Order
c) Competent authority to receive the request / execute the measure	MJPO
d) Accepted languages	Greek, English
e) Execution deadline	
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	Only upon receipt of an MLA and provided the investigation falls under one of the five offences mention at FB A50 section (g) above.
h) Competent authority to request the measure abroad	Cyprus Police
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	It was incorporated by decision of the Ministerial Council.

<p>b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?</p>	
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4.6. Czech Republic

Cross-border observation (FB A.70)	
a) Is the measure possible in your Member State under international judicial cooperation?	Yes, it is possible. The purpose of this measure is to allow foreign police authorities conducting observation (surveillance) of persons and items to cross the borders of the Czech Republic on the basis of an authorization granted by the Regional Public Prosecutor's Office in Prague upon an EIO/request for legal assistance. The purpose of this measure is to gather evidence for criminal proceedings. In urgent cases it is possible to proceed without such authorization, but the foreign authorities must inform Czech Police Presidium immediately after crossing the state border and request for legal assistance must be sent without undue delay. The observation must be terminated immediately after the competent Czech authorities request its termination, or in case the authorization is not granted within 5 hours after crossing the state border (the bilateral treaties with DE, AT and SK stipulate longer time limit and these treaties also set the special procedure concerning cross-border surveillance by technical means only).
b) International legal framework applicable for this measure in your Member State	Directive 2014/41/EU regarding the European Investigation Order in criminal matters was implemented in the Czech law and the EIO became effective as of 16 August 2018. It is applicable in relation to the Member States, which have also implemented the EIO Directive. For the countries, which not bound by the EIO Directive, the following legal framework is applicable: European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 and its first and second Additional Protocol of 1978 and 2001 respectively. Convention on Mutual Assistance in Criminal Matters between the Member States of the European union of May 29, 2000 and its Protocol of 2001 - together with Art 40 of the Schengen Implementing Treaty. Bilateral treaties on mutual legal assistance in criminal matters.
c) Competent authority to receive the request/execute the measure	The Regional Public Prosecutor's Office in Prague.
d) Accepted languages	EIO – Czech and Slovak. No reservations to the Article 16 of the European Convention 1959, however CZ applies reciprocity and bilateral treaties.
e) Execution deadline	EIO – deadlines stipulated by the EIO Directive are implemented.
f) Concise legal practical information	Surveillance of persons and items (hereinafter referred to as "surveillance") will be understood as acquiring knowledge on persons and items conducted in a covert manner by technical or other means. This measure may be used only when the purpose in view may not be reached in other ways or if its reaching would otherwise be considerably more complicated. Rights and liberties of persons may be restricted only in an absolutely necessary extent. If a police authority ascertains that the accused person is communicating with his defense counsel, it is obliged to destroy the record containing this communication and not to use facts learned in this connection in any way. The request must be reasoned by a suspicion of a specific criminal activity and if known, also by data on persons or items that are to

	<p>be monitored. The authorization will state a time limit, for which will the surveillance be conducted and that cannot exceed six months. The authority that authorized the surveillance may prolong the time limit by a written order issued on the basis of a new written request, always for a time limit not exceeding six months.</p> <p>Without fulfilling the conditions of the approval of a prosecutor or a judge, the surveillance may be conducted if the person, whose rights and liberties are to be interfered with, grants his explicit consent therewith. If this consent is post facto withdrawn, the surveillance will be immediately terminated.</p> <p>Records made in course of the surveillance and attached protocol may be used as evidence in another criminal case than the case in which the surveillance was authorized by a prosecutor only if proceedings on an intentional criminal activity is conducted in this case or if the person, whose rights and liberties were interfered with, consents with it.</p> <p>EIO or MLA request of judicial authority is necessary for this international cooperation.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person connected with the particular criminal matter.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Essentially the same as under f): The measure can be applied only for intentional crimes - the condition of dual criminality is required. The international treaties can stipulate other limitations (e.g. CISA - extraditable crimes).</p> <p>This measure may be used only when the purpose in view may not be reached in other ways or if its reaching would otherwise be considerably more complicated. Rights and liberties of persons may be restricted only in an absolutely necessary extent.</p>
i) Competent authority to request the measure abroad	Public prosecutor supervising the criminal case.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Protocol on course of surveillance together with video or other records is necessary so that the measure could be used as evidence before court in the Czech Republic.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>When audio, video or other recording is made during the surveillance, an authorization of public prosecutor is necessary.</p> <p>When the surveillance conducted by technical means breaches the privacy of a private residence (including e.g. a vehicle), it may be done only based on a previous consent of a judge.</p>
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this	<p>There is only one public prosecutor's office in the Czech Republic, which authorizes cross-border surveillance – the Regional Public Prosecutor's Office in Prague.</p> <p>Cross-border surveillance without a previous authorization is accepted in the Czech Republic, however, only based on an MLA</p>

<p>type of cooperation (one for all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>request, since the EIO Directive does not allow execution of an investigative action that would only subsequently be approved by a judicial authority in a certain time limit on the basis of EIO.</p> <p>The procedure of cross-border surveillance without technical assistance of the requested state is provided in bilateral treaties with SK, AT and DE. It can be realized either based on an EIO concerning authorization of this type of measure, or there is an option to continue surveillance across the border in urgent cases without a previous consent and a SK, AT or DE judicial authority after that asks the Regional Public Prosecutor's Office in Prague for a consent to use a record on surveillance as evidence in criminal proceedings:</p> <ul style="list-style-type: none"> - the treaty with DE and SK allows officers of one state to continue surveillance of persons or items across the border to the other state without a previous request in urgent cases, whereas the request must be filed immediately thereafter. The surveillance must be terminated, unless the consent is granted within 12 hours after crossing the borders (this time limit does not include hours from 21:00 to 9:00 hours) - the treaty with AT contains the same provision but extends this period to up to 24 hours after crossing the border. <p>The bilateral treaty with DE provides for a possibility for our officers, who have commenced surveillance of a person or object in the territory of a third state, to continue the surveillance across the border to DE (and vice versa), under the above stated conditions. This means that CZ officers, who are performing surveillance e.g. in Austria (based on an EIO or in urgent cases with subsequent MLA request), may continue the surveillance across the border to Germany, in urgent cases even without a previous request/EIO to Germany (as indicated above). The same possibility to continue the surveillance from a third state is stipulated by the bilateral treaty with AT</p>
<p>Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)</p>	
<p>a) Is the measure possible in your Member State under international judicial cooperation?</p>	<p>Yes, it is possible. The purpose of this measure is to allow foreign police authorities conducting observation (surveillance) of persons and items to cross the borders of the Czech Republic on the basis of an authorization granted by the Regional Public Prosecutor's Office in Prague upon an EIO/request for legal assistance. The purpose of this measure is to gather evidence for criminal proceedings. In urgent cases it is possible to proceed without such authorization, but the foreign authorities must inform Czech Police Presidium immediately after crossing the state border and a request for legal assistance must be sent without undue delay. The observation must be terminated immediately after the competent Czech authorities request its termination, or in case the authorization is not granted within 5 hours after crossing the state border (the bilateral treaties with DE, AT and SK stipulate longer time limit and these treaties also set the special procedure concerning cross-border surveillance by technical means only).</p>
<p>b) International legal framework applicable for this measure in your Member State</p>	<p>Directive 2014/41/EU regarding the European Investigation Order in criminal matters was implemented in the Czech law and the EIO became effective as of 16 August 2018. It is applicable in relation to the Member States which have also implemented the EIO Directive. For the countries, which not bound by the EIO Directive, the following legal framework is applicable: European Convention</p>

	on Mutual Assistance in Criminal Matters of April 20, 1959 and its first and second Additional Protocol of 1978 and 2001 respectively. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000 and its Protocol of 2001 - together with Art 40 of the Schengen Implementing Treaty. Bilateral treaties on mutual legal assistance in criminal matters.
c) Competent authority to receive the request/execute the measure	The Regional Public Prosecutor's Office in Prague. If the surveillance device is located inside the vehicle and also records the conversation between persons, the public prosecutor applies for permission to act from the Regional Court in Prague.
d) Accepted languages	EIO – Czech and Slovak. No reservations to the Article 16 of the European Convention 1959, however CZ applies reciprocity and bilateral treaties.
e) Execution deadline	EIO – deadlines stipulated by the EIO Directive are implemented
f) Concise legal practical information	Surveillance of persons and items (hereinafter referred to as "surveillance") will be understood as acquiring knowledge on persons and items conducted in a covert manner by technical or other means. This measure may be used only when the purpose in view may not be reached in other ways or if its reaching would otherwise be considerably more complicated. Rights and liberties of persons may be restricted only in an absolutely necessary extent. If a police authority ascertains that the accused person is communicating with his defense counsel, it is obliged to destroy the record containing this communication and not to use facts learned in this connection in any way. The request must be reasoned by a suspicion of a specific criminal activity and if known, also by data on persons or items that are to be monitored. The authorization will state a time limit, for which will the surveillance be conducted and that cannot exceed six months. The authority that authorized the surveillance may prolong the time limit by a written order issued on the basis of a new written request, always for a time limit not exceeding six months. Without fulfilling the conditions of the approval of a prosecutor or a judge, the surveillance may be conducted if the person, whose rights and liberties are to be interfered with, grants his explicit consent therewith. If this consent is post facto withdrawn, the surveillance will be immediately terminated. Records made in course of the surveillance and attached protocol may be used as evidence in another criminal case than the case in which the surveillance was authorized by a prosecutor only if proceedings on an intentional criminal activity is conducted in this case or if the person, whose rights and liberties were interfered with, consents with it. In legal terms there is no difference between cross-border observation and cross-border tracking by a technical device such as GPS in the Czech Republic, as such, the same conditions apply to both measures. EIO or MLA request of judicial authority is necessary for this international cooperation.
g) Possible subject of observation/surveillance	Any person connected with the particular criminal matter.

(suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Essentially the same as under f): The measure can be applied only for intentional crimes - the condition of dual criminality is required. The international treaties can stipulate other limitations (e.g. CISA - extraditable crimes). This measure may be used only when the purpose in view may not be reached in other ways or if its reaching would otherwise be considerably more complicated. Rights and liberties of persons may be restricted only in an absolutely necessary extent.
i) Competent authority to request the measure abroad	Public prosecutor supervising the criminal case.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Protocol on course of surveillance together with video or other records is necessary so that the measure could be used as evidence before court in the Czech Republic.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	When audio, video or other recording is made during the surveillance, an authorization of public prosecutor is necessary. When the surveillance conducted by technical means breaches the privacy of a private residence (including e.g. a vehicle), it may be done only based on a previous consent of a judge.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	There is only one public prosecutor's office in the Czech Republic, which authorizes cross-border surveillance – the Regional Public Prosecutor's Office in Prague. Cross-border surveillance/tracking without a previous authorization is accepted in the Czech Republic, however, only based on an MLA request, since the EIO Directive does not allow execution of an investigative action that would only subsequently be approved by a judicial authority in a certain time limit on the basis of EIO. The procedure of cross-border surveillance without technical assistance of the requested state is provided in bilateral treaties with SK, AT and DE - there is an option to continue surveillance conducted exclusively by technical means of the requesting state without any assistance of the requested state across the border without a previous consent of this state, however, the bilateral treaties require that the other state be immediately notified thereof. The requesting judicial authority (a prosecutor in the Czech Republic) asks after that without delay for a permission to use a record about the surveillance as evidence in criminal proceedings.
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	It depends on what is meant by the "FB A.55": <u>Option A:</u>

	<p>The monitoring device is physically placed (installed/put) on the surveilled person or item by the executing State on the basis of a request of another (requesting) State for cross-border surveillance, e.g. the requesting State requires that the surveillance, during which the person or item to be surveilled is expected to cross the border, be initiated in the executing State with the technical support of this executing State.</p> <p>The purpose of this measure is to allow foreign police authorities conducting observation (surveillance) of persons and items to cross the borders of the Czech Republic on the basis of an authorization granted by the Regional Public Prosecutor's Office in Prague upon an EIO. The purpose of this measure is to gather evidence for criminal proceedings. In urgent cases it is possible to proceed without such authorization, but the foreign authorities must inform Czech Police Presidium immediately after crossing the state border and a request for legal assistance must be sent without undue delay. The observation must be terminated immediately after the competent Czech authorities request its termination, or in case the authorization is not granted within 5 hours after crossing the state border (the bilateral treaties with DE, AT and SK stipulate longer time limit and these treaties also set the special procedure concerning cross-border surveillance by technical means only). All of these bilateral treaties allow for surveillance to be launched in the requested state that places the surveillance equipment.</p> <p><u>Option B:</u> The monitoring device is physically placed (installed/put) on the surveilled person or item by the executing State on the basis of a request of another (requesting) State for "domestic" surveillance carried out in the territory of the executing State, i. e. the requesting State requires that the surveillance be carried out strictly in the territory of an executing State with the technical support of this executing State (no border crossing is expected).</p> <p>The purpose of this measure is to provide legal assistance consisting of the conducting observation (surveillance) of persons and items strictly in the territory of the Czech Republic on the basis of an EIO of another (issuing State). Standard procedure for recognition and execution of an EIO is applied.</p>
b) Legal Framework	<p><u>Option A:</u> EIO Directive 2014/41/EU (Art. 28); Where the EIO Directive does not apply, the Czech Republic can apply Art. 17 of CoE Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001) and bilateral treaties.</p> <p><u>Option B:</u> EIO Directive 2014/41/EU</p>
c) Competent Authority	<p><u>Option A:</u> If direct contacts are possible, MLA request/EIO <u>concerning cross-border surveillance</u> can be sent only to the Regional Public Prosecutor's Office in Prague.</p> <p><u>Option B:</u></p>

	<p>If direct contacts are possible, EIO concerning surveillance of people and items only within the territory of the Czech Republic can be sent to the Regional Public Prosecutor's Office having the territorial jurisdiction.</p> <p>If the surveillance device is located inside the vehicle and also records the conversation between persons, the public prosecutor applies for permission to act from the court.</p>
d) Accepted Languages	<p>EIO – Czech and Slovak.</p> <p>MLA request – no reservations to the Article 16 of the European Convention 1959, however CZ applies reciprocity and bilateral treaties.</p>
e) Execution Deadline:	EIO – deadlines stipulated by the EIO Directive are implemented.
f) Concise legal practical information	<p>Surveillance of persons and items (hereinafter referred to as "surveillance") will be understood as acquiring knowledge on persons and items conducted in a covert manner by technical or other means.</p> <p>This measure may be used only when the purpose in view may not be reached in other ways or if its reaching would otherwise be considerably more complicated. Rights and liberties of persons may be restricted only in an absolutely necessary extent.</p> <p>If a police authority ascertains that the accused person is communicating with his defense counsel, it is obliged to destroy the record containing this communication and not to use facts learned in this connection in any way.</p> <p>The request must be reasoned by a suspicion of a specific criminal activity and if known, also by data on persons or items that are to be monitored. The authorization will state a time limit, for which will the surveillance be conducted and that cannot exceed six months.</p> <p>The authority that authorized the surveillance may prolong the time limit by a written order issued on the basis of a new written request, always for a time limit not exceeding six months.</p> <p>Without fulfilling the conditions of the approval of a prosecutor or a judge, the surveillance may be conducted if the person, whose rights and liberties are to be interfered with, grants his explicit consent therewith. If this consent is post facto withdrawn, the surveillance will be immediately terminated.</p> <p>Records made in course of the surveillance and attached protocol may be used as evidence in another criminal case than the case in which the surveillance was authorized by a prosecutor only if proceedings on an intentional criminal activity is conducted in this case or if the person, whose rights and liberties were interfered with, consents with it.</p> <p>EIO or MLA request of judicial authority is necessary for this international cooperation.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person connected with the particular criminal matter.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The measure can be applied only for intentional crimes - the condition of dual criminality is required.</p> <p>Otherwise, as described under item f) Concise legal practical information</p>

i) Competent authority to request the measure abroad	Public prosecutor supervising the criminal case.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Protocol on course of surveillance together with video or other records is necessary so that the measure could be used as evidence before court in the Czech Republic.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	When audio, video or other recording is made during the surveillance, an authorization of public prosecutor is necessary. When the surveillance conducted by technical means breaches the privacy of a private residence (including e.g. a vehicle), it may be done only based on a previous consent of a judge.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	There is only one public prosecutor's office in the Czech Republic, which authorizes cross-border surveillance (Option A) – the Regional Public Prosecutor's Office in Prague.
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is possible. Controlling a delivery means secret monitoring of consignments, if there is a reasonable suspicion that they contain drugs, psychotropic substances, precursors, poisons, radioactive material, forged money or securities, guns or weapons of mass destruction, ammunition and explosives or other things requiring a special license for their possession, items intended to be used to commit a crime and items derived from a crime. Czech authorities may arrange that such controlled delivery containing the above - referred dangerous items left / entered the territory of the Czech Republic (under the supervision of customs authorities). Czech authorities have the possibility to allow such delivery containing dangerous items to leave the state borders, if its control is resumed by competent foreign authorities.
b) International legal framework applicable for	Directive 2014/41/EU regarding the European Investigation Order in criminal matters was implemented in the Czech law and the EIO

this measure in your Member State	became effective as of 16 August 2018. It is applicable in relation to the Member States, which have also implemented the EIO Directive. For the countries, which are not bound by the EIO Directive, the following legal framework is applicable: European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 and its first and second Additional Protocol of 1978 and 2001 respectively. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000 and its Protocol of 2001. Bilateral treaties on legal assistance in criminal matters.
c) Competent authority to receive the request / execute the measure	The Regional Public Prosecutor's Office in Prague.
d) Accepted languages	EIO – Czech and Slovak. No reservations to the Article 16 of the European Convention 1959, however CZ applies reciprocity and bilateral treaties.
e) Execution deadline	EIO – deadline stipulated by the EIO Directive are implemented.
f) Concise legal practical information	Section 47 (2) of the Act on Mutual Legal Assistance in Criminal Matters (MLA Act) requires meeting the condition of dual criminality for executing the requests - international treaties may stipulate other conditions.
g) Possible object of controlled delivery	Objects like narcotic substances, psychotropic substances, precursors, poisons, nuclear material, forged money and forged securities, fire-arms or mass-efficient arms, ammunitions and explosives or another thing for possession of which a special permission is required, thing intended for commission of crime, or thing deriving from crime (Section 87a (1) of the Czech Criminal Procedural Code).
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Essentially the same as under item f): National law allows controlled delivery in any criminal case. Section 47 (2) of the Act on Mutual Legal Assistance in Criminal Matters (MLA Act) requires meeting the condition of dual criminality for executing the requests - international treaties may stipulate other conditions.
i) Competent authority to request the measure abroad	Public prosecutor supervising the criminal case.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Protocol on course of controlled delivery together with video or other records is necessary so that the measure could be used as evidence before court in the Czech Republic.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	The controlled delivery can have the original content, however the court, and in pre-trial proceedings the public prosecutor with a consent of the judge, may decide to replace dangerous contents of a delivery (such as drugs, firearms, ammunition, poisonous substances, radioactive material, counterfeit money etc.) for other harmless content. Whether the contents of the controlled delivery will be replaced in international cooperation depends only on the agreement with the other country and the needs of the given case.

<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	<p>There is only one public prosecutor's office in the Czech Republic, which authorizes cross-border surveillance – the Regional Public Prosecutor's Office in Prague.</p> <p>If the other state guarantees to take over the controlled delivery at the border, the control of the delivered item may be transferred to the other state. However, if there is a risk of losing contact with the item, it has to be seized before it crosses the state border.</p>
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your Member State under international judicial cooperation?	<p>Yes. Interception of communication is possible in the extent available to national authorities involved in criminal proceedings pursuant to Section 88 of Code of Criminal Procedure (CPC), e.g. in case of criminal proceedings concerning:</p> <p>a) crimes, for which the Criminal Code prescribes a sentence of imprisonment with the upper limit of 8 or more years,</p> <p>b) crimes stipulated in Section 88a (1) of CPC, related to public tenders, abuse of official powers and economic competition, namely: Machinations in Insolvency Proceedings (Section 226 of Criminal Code), Breach of Regulations on Rules of Economic Competition (Section 248 (1) e, (2) to (4) of CC), Arranging Advantage in Commission of Public Contract, Public Tender and Public Auction (Section 256 of CC), Machinations in Commission of Public Contract and Public Tender (Section 257 of CC), Machinations in Public Auction (Section 258 of CC), Abuse of Power of Public Official (Section 329 of CC), False Accusation (Section 345 (3) to (5) of CC), Perjury (Section 346 (3) to (5) of CC) and False Translation (Section 347 (3) to (5) of CC),</p> <p>c) crimes, prosecution of which is stipulated in international treaties binding the Czech Republic.</p>
b) International legal framework applicable for this measure in your Member State	<p>Directive 2014/41/EU regarding the European Investigation Order in criminal matters was implemented in the Czech law and the EIO became effective as of 16 August 2018. It is applicable in relation to the Member States, which have also implemented the EIO Directive. For the countries, which are not bound by the EIO Directive, the following legal framework is applicable: European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 and its first and second Additional Protocol of 1978 and 2001 respectively. Convention on Mutual Assistance in Criminal Matters between the Member States of the European union of May 29, 2000 and its Protocol of 2001. Bilateral treaties on legal assistance in criminal matters.</p>
c) Competent authority to receive the request / execute the measure	<p>The regional prosecutor's office in whose jurisdiction the operator is based – usually it is the Municipal Public Prosecutor's Office in Prague.</p>
d) Accepted languages	<p>EIO – Czech and Slovak.</p>

	No reservations to the Article 16 of the European Convention 1959, however CZ applies reciprocity and bilateral treaties.
e) Execution deadline	EIO – deadline stipulated by the EIO Directive are implemented.
f) Concise legal practical information	<p>Section 47 (2) of the Act on Mutual Legal Assistance in Criminal Matters (MLA Act) requires meeting the condition of dual criminality for executing requests for interception of communications.</p> <p>There is also a minimum threshold of a sentence of imprisonment imposable for the crime in question, plus there is a list of specific crimes, in relation to which interception of communications may be applied - see. answer no.1.</p> <p>The order for interception of telecommunications must be made in writing and substantiated. It must state the period of interception, which cannot be longer than four months. This period may be extended by additional periods of up to four months, even repeatedly, on the basis of an additional EIO/request.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Essentially as indicated under item f): Section 47 (2) of the Act on Mutual Legal Assistance in Criminal Matters (MLA Act) requires meeting the condition of dual criminality for executing requests for interception of communications. There is also a minimum threshold of a sentence of imprisonment imposable for the crime in question, plus there is a list of specific crimes, in relation to which interception of communications may be applied - see. answer no.1.</p> <p>The order for interception of telecommunications must be made in writing and substantiated. It must state the period of interception, which cannot be longer than 4 months. This period may be extended by additional periods of up to four months, even repeatedly, on the basis of an additional EIO/request.</p>
h) Competent authority to request the measure abroad	Public prosecutor supervising the criminal case is competent to issue EIO/request. Having said that, the order to authorize the measure on a domestic level must be authorized by court upon a petition of the competent public prosecutor.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Record of interception together with protocol containing information about place, time, manner, content of record and the intercepting authority is necessary so that the measure could be used as evidence before court in the Czech Republic
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art.	<p>In the Czech Republic, there are the following obligation stipulated to the judicial authorities <u>after</u> authorization and execution of interception of telecommunications:</p> <ul style="list-style-type: none"> - obligation to erase a part of the intercepted telecommunication concerning a conversation of the accused person and their defense counsel (we not only cannot use this part of the call, we cannot even have it in our possession) – a protocol must be made about the erasure of this data, which will be put on file – Section 88 (1) of CPC - obligation to constantly evaluate the necessity to perform the interception of telecommunications – Section 88 (3) of CPC - obligation to destroy protocols of the intercepted telecommunication, if it did not provide any findings important for criminal proceedings, 3 years after the interception was performed – Section 88 odst. 5 tr. ř. - the obligation to inform the intercepted person about the interception after the legal termination of the criminal proceedings, if there is no threat of thwarting the criminal proceedings in the sense of § 88 paragraphs 8 and 9 tr. (this is also regulated by Article

30(6)(a) of the EIO Directive).	17, paragraph 4 of the bilateral agreement between the Czech Republic and Germany. Transfer of these obligations to the issuing state in case if immediate transmission of telecommunications traffic to the issuing state is not regulated in our legislation. In case of such a request of the issuing state we would most likely first have to request their assurance that they are able to assume these review obligations. It could be a condition set for authorization of interception according to Article 30, paragraph 5, second sentence of the EIO Directive. However, we have not yet encountered this situation in practice.
k) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	There is only one public prosecutor's office in the Czech Republic, which authorizes cross-border surveillance – the Regional Public Prosecutor's Office in Prague.
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your Member State under international judicial cooperation?	Yes, it is possible. There are no special provisions applicable to this situation, therefore the procedure and statutory conditions are the same as in the case of standard interception and recording of communications, for more details see measure 101.
b) International legal framework applicable for this measure in your Member State	Directive 2014/41/EU regarding the European Investigation Order in criminal matters was implemented in the Czech law and the EIO became effective as of 16 August 2018 (Annex C). It is applicable in relation to the Member States, which have also implemented the EIO Directive. For the countries, which not bound by the EIO Directive, the following legal framework is applicable: Art. 20 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European union of May 29, 2000.
c) Competent authority to receive the request / execute the measure	The Regional Public Prosecutor's Office in Prague.
d) Accepted languages	EIO – Czech and Slovak. No reservations to the Article 16 of the European Convention 1959, however CZ applies reciprocity and bilateral treaties.
e) Execution deadline	EIO – deadline stipulated by the EIO Directive are implemented.
f) Concise legal practical information	Section 47 (2) of the Act on Mutual Legal Assistance in Criminal Matters (MLA Act) requires meeting the condition of dual criminality for allowing such interception of communications. There is also a minimum threshold of a sentence of imprisonment impossible for the crime in question, plus there is a list of specific crimes, in relation to which interception of communications may be applied - see. answer no.1.

g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Essentially as indicated under item f): Section 47 (2) of the Act on Mutual Legal Assistance in Criminal Matters (MLA Act) requires meeting the condition of dual criminality for executing requests for interception of communications.</p> <p>There is also a minimum threshold of a sentence of imprisonment imposable for the crime in question, plus there is a list of specific crimes, in relation to which interception of communications may be applied - see. answer no.1.</p> <p>The order for interception of telecommunications must be made in writing and substantiated. It must state the period of interception, which cannot be longer than 4 months. This period may be extended by additional periods of up to four months, even repeatedly, on the basis of a new request.</p>
h) Competent authority to request the measure abroad	Public prosecutor supervising the criminal case is competent to issue EIO request. Having said that, the order to authorize the measure on a domestic level must be authorized by court upon a petition of the competent public prosecutor.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Record of interception together with protocol containing information about place, time, manner, content of record and the intercepting authority is necessary so that the measure could be used as evidence before court in the Czech Republic.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any reaworld experience with application of this measure? - Any other?	<p>There is only one public prosecutor's office in the Czech Republic, which authorizes cross-border interception – the Regional Public Prosecutor's Office in Prague.</p> <p>We have very limited practical experience due to the fact that it is technically almost impossible to carry out this interception of telecommunications in a foreign state. Once the monitored device crosses the state borders (in the vast majority cases, the mobile device being regular GSM device such as a cell phone, not a satellite telephone) and comes to the range of the nearest domestic GSM operator, it automatically switches to that operator, thus effectively terminating the interception of telecommunication. Hence, there is a very narrow window, very close to the border, where it is technically possible to execute interception of telecommunications in the territory of another Member State.</p>
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<p>It is not about the implementation of the EIO directive, as it does not regulate this form of cooperation, but about a special form of cooperation between judicial authorities.</p> <p>We have implemented the consent procedure for using operative information as evidence in court in Section 20 of the Act on Mutual Judicial Cooperation in Criminal Matters (no. 104/2013 Coll.).</p> <p>1)</p> <p>Information acquired within the frame of police cooperation from another EU Member State or an associated state may be used as evidence in criminal proceedings based on a consent of the competent authority of this state.</p> <p>Such consent may be requested by public prosecutor in pre-trial proceedings and by court in trial proceedings. The consent is not</p>

	<p>necessary either in case it was granted as soon as at the moment of transfer of the information, or in case no consent is necessary according to the law of this state.</p> <p>2)</p> <p>In the other direction (information provided by the Czech police to law enforcement authority of another EU Member State or an associated state), such information may be used in criminal proceeding in another EU Member State or an associated state as evidence based on a consent of our judicial authority (the Regional Public Prosecutor's Office in pre-trial proceedings or the Regional Court in trial proceedings).</p> <p>Law enforcement authority, when transmitting information, have to include a notification that it is not permissible to use the information as evidence in court proceedings, unless the public prosecutor's office gives the subsequent authorization of the use of such information as evidence.</p> <p>Information acquired or provided within the frame of cooperation of Czech administrative authorities and authorities of a foreign state may only be used as evidence in criminal proceedings, if such procedure is provided for by an international treaty.</p>
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	<p>Yes, public prosecutors specializing in international judicial cooperation in criminal proceedings, including EJM contact points, have attended regional seminars and trainings of police authorities, which perform surveillance of persons and items in practice.</p> <p>One of the EJM contact point participated in the INTLI project (International Lawful Interception Project), which was aimed at mapping the legislation and practical practices of 8 Member States in the field of interception and was led by the Max Planck Institute in Freiburg (DE).</p>

4.7. Denmark

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Observation in Danish territory should as a rule be carried out by Danish police. The National Commissioner of Police may in special cases allow foreign police officers to carry out observation.
b) International legal framework applicable for this measure in your Member State	Art. 40 and 41 of The Schengen Convention
c) Competent authority to receive the request/execute the measure	The request is made to the National Commissioner's office.
d) Accepted languages	Denmark will receive requests in Danish, Norwegian, Swedish or English but will also receive requests in French and German although translation may be done at sending states expense.
e) Execution deadline	-
f) Concise legal practical information	<p>Any foreign police personnel must adhere to national Danish law when operating on Danish territory. Foreign police personnel must be able to identify themselves at all times. Furthermore, they must at all times be able to document their permission to carry out the cross-border observation.</p> <p>Foreign police may not access places which are not open to the public, and they may not arrest a person in any way. Service arms may be carried by foreign police during a cross-border observation, but the Danish authorities reserve the right to deny foreign police to carry arms. After a cross-border observation the foreign police officers must personally be available to the local police authorities with the purpose of making an adequate report on the operation.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Danish Administration of Justice Act section 791 a merely refers to observations of persons, meaning suspects and others.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>A foreign request for observation (cross-border) must meet the same legal requirements as in a Danish criminal case. A foreign request for observation must be put forward in an MLA.</p> <p>Observations in public areas and observations without any technical means are not regulated by law, whereas observations in non-public areas with camera and binoculars are regulated in the Danish Administration of Justice Act section 791 a, and requires a court order, that has to be renewed at least every 4 weeks. According to the Danish Administration of Justice Act section 791 a, para. 1 and 2, the legal conditions for observations are:</p> <ul style="list-style-type: none"> • The observation is assumed to be of vital importance to the investigation • The investigated crime holds a prison sentence

	If the observation is done by remote controlled cameras etc. the investigated crime must hold a prison sentence of a maximum of 1 year and 6 months.
i) Competent authority to request the measure abroad	<ul style="list-style-type: none"> • Local Police and Prosecution Districts • National Unit for Special Crime
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	No special requirements for admissibility for this measure, but if the rules in the Administration of Justice Act for observations are not observed, the evidence may be ruled inadmissible.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>In regards to video recordings the same procedure and legal requirements as mentioned under h) generally applies. However, if the observation of a person takes place in a residence or house the following requirements applies according to the Danish Administration of Justice Act Section 791 a, para. 3:</p> <ul style="list-style-type: none"> • Specific reasons to believe that evidence in the case can be obtained via this investigative measure • The measure is assumed to be of vital importance to the investigation • The investigated crime holds a prison sentence of a maximum of at least 6 years, and involves danger to people's lives or wellbeing or to substantial societal values. <p>For audio recordings the rules in the Danish Administration of Justice Act Section 780, para. 1, no. 2, cf. Section 781 applies. The rules are quite complex, but the basic requirements are:</p> <ul style="list-style-type: none"> • Specific reasons to believe that communication is made with a suspect in that specific way • The measure is assumed to be of vital importance to the investigation • The investigated crime holds a prison sentence of a maximum of at least 6 years, and involves danger to people's lives or wellbeing or to substantial societal values. <p>Further, the measures have to be proportionate to the purpose of the measure and the importance of the criminal case.</p>
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or	

technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	- The Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union - The Convention of 20 April 1959 on Mutual Assistance in Criminal Matters
c) Competent authority to receive the request/execute the measure	For serious economic offences: the Special Crimes Unit For other offences: the Prosecution service with the district Police
d) Accepted languages	Denmark will receive requests in Danish, Norwegian, Swedish or English but will also receive requests in French and German although translation may be done at sending state's expense.
e) Execution deadline	N/A
f) Concise legal practical information	-
g) Possible subject of observation/surveillance (suspect only, or also other persons)	According to the Danish Administration of Justice Act section 791 a, para. 5, the possible subjects of observation/surveillance are: <ul style="list-style-type: none"> • Suspects • Other persons with a connection to the suspect
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Tracking by using a GPS device requires a court order in Denmark. The order has to be renewed at least every 4 weeks. A foreign request for Tracking by using a GPS device must be put forward in an MLA. The foreign request must meet the same requirements as in a Danish criminal case. According to the Danish Administration of Justice Act Section 791 a, para. 5, the standard requirements are: <ul style="list-style-type: none"> • The tracking is assumed to be of vital importance to the investigation • The investigated crime holds a prison sentence of a maximum of at least 1 year and 6 months
i) Competent authority to request the measure abroad	<ul style="list-style-type: none"> • Local Police and Prosecution Districts • National Unit for Special Crime
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No special requirements for admissibility for this measure, but if the rules in the Administration of Justice Act for GPS tracking are not observed, the evidence may be ruled inadmissible.
k) If the technical device tracking the person can also make an audio/video recording, please clarify,	If the technical tracking device further makes a video recording the rules in the Danish Administration of Justice Act Section 791 a, para. 1 and 2 as mentioned under Cross-border observation section h) applies.

whether your law stipulates a different procedure than indicated above	<p>If the technical device also makes an audio recording the rules in the Danish Administration of Justice Act Section 780, para. 1, no. 2, cf. Section 781 applies. The rules are quite complex, but the basic requirements are:</p> <ul style="list-style-type: none"> • Specific reasons to believe that communication is made with a suspect in that specific way • The measure is assumed to be of vital importance to the investigation • The investigated crime holds a prison sentence of a maximum of at least 6 years, and involves danger to people's lives or wellbeing or to substantial societal values. <p>Further, the measure has to be proportionate to the purpose of the measure and the importance of the criminal case</p> <p>Both video – and audio recording requires a court order in Denmark that has to be renewed at least every 4 weeks.</p>
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	--
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> - The Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union - The Convention of 20 April 1959 on Mutual Assistance in Criminal Matters
c) Competent authority to receive the request/execute the measure	<p>For serious economic offences: the Special Crimes Unit</p> <p>For other offences: the Prosecution service with the district Police</p>

d) Accepted languages	Denmark will receive requests in Danish, Norwegian, Swedish or English but will also receive requests in French and German although translation may be done at sending state's expense.
e) Execution deadline	-
f) Concise legal practical information	-
g) Possible subject of observation/surveillance (suspect only, or also other persons)	In Denmark, the legal requirements for surveillance and tracking are the same regardless of whether the device is installed by the requesting or the executing state. So please refer to the answers given under g) – l) in the previous section on cross-border tracking.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	
Controlled delivery (FB A.73)	

a) Is the measure possible in your member state under international judicial cooperation?	The controlled delivery must concern a crime which is punishable by prison for 12 months in the requesting state and at least 6 months according to Danish law. The circumstances surrounding the controlled delivery must be legal in accordance with Danish law.
b) International legal framework applicable for this measure in your Member State	- The Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union
c) Competent authority to receive the request / execute the measure	The National Commissioner of Police
d) Accepted languages	Denmark will receive requests in Danish, Norwegian, Swedish or English but will also receive requests in French and German although translation may be done at sending state's expense.
e) Execution deadline	N/A
f) Concise legal practical information	-
g) Possible object of controlled delivery	The national law holds no specific requirements as to the object of controlled delivery.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Apart from the provisions in the Danish Administration of Justice Act section 754 a regarding infiltration by undercover agents, Danish law does not contain rules about controlled deliveries and faked purchases. Danish police use controlled deliveries to a certain extent.
i) Competent authority to request the measure abroad	<ul style="list-style-type: none"> - Local Police and Prosecution Districts - National Unit for Special Crime
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No special requirements for admissibility for this measure, but if the rules in the Administration of Justice Act for infiltration by undercover agents are not observed, the evidence may be ruled inadmissible.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	Danish law holds no obligation to replace the content, but the police is allowed to do so, if found appropriate.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or 	--

technical measure for urgent cases? • Any other?	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>The rules about invasion of privacy of communications, including interception, the recording and transcription of telecommunications, and the interception and recording of other means of communications are found in Chapter 71 of the Administration of Justice Act (AJA). The rules also cover the interception of telefax, telex and ongoing e-mail and SMS messages.</p> <p>Section 780 of the AJA sets out the different measures and Section 781, subsection 1 outlines the conditions which, in summary, are as follows:</p> <ul style="list-style-type: none"> • There are specific reasons to presume that messages are given or mail is delivered by the means in questions to or from a suspect • The invasion presumes to be of crucial importance to the investigation, and • The investigation concerns an offense, which under the law can be punished with imprisonment for six years or more; <p>Telephone interception may only take place subject to a (prior) court order. The court order lays down the period of time within which the measure can be implemented. This period shall be as short as possible and must not exceed four weeks. The court may extend the measure for four weeks at a time. A defense lawyer will be assigned by the court. As an exception, the police may decide to undertake telephone interceptions if waiting for a court order would frustrate the purpose of their action (periculum in mora). In such cases the police must, however, refer the matter to the court as soon as possible, and no later than within 24 hours of the implementation of the measure, and the court will then decide if the measure can be approved and if it should be continued, and in which case for how long. As a coercive measure, double criminality is required.</p> <p>Also, please find the Danish Fiches Belges on electronic evidence.</p>
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> - The Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union - The Convention of 20 April 1959 on Mutual Assistance in Criminal Matters
c) Competent authority to receive the request / execute the measure	<p>For serious economic offences: the Special Crimes Unit</p> <p>For other offences: the Prosecution service with the district Police</p>
d) Accepted languages	Denmark will receive requests in Danish, Norwegian, Swedish or English but will also receive requests in French and German although translation may be done at sending states expense.
e) Execution deadline	N/A
f) Concise legal practical information	-

g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Telephone interception requires a court order in Denmark. The court order has to be renewed at least every 4 weeks.</p> <p>A foreign request for interception of telecommunications in Denmark must be put forward in an MLA. The foreign request must meet the same requirements as in a Danish criminal case. The legal framework is rather complex, but according to the Danish Administration of Justice Act Section 781 the standard requirements are:</p> <ul style="list-style-type: none"> • Specific reasons to believe that the telephone is used for communication to or from a suspect • The interception is assumed to be of vital importance to the investigation • The investigated crime holds a prison sentence of a maximum of at least 6 years
h) Competent authority to request the measure abroad	<ul style="list-style-type: none"> • Local Police and Prosecution Districts • National Unit for Special Crime
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No special requirements for admissibility for this measure, but if the rules in the Danish Administration of Justice Act for telephone interceptions are not observed, the evidence may be ruled inadmissible
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>According to the Danish Administration of Justice Act Section 782, para. 2, cf. Section 170 telephone interceptions are not allowed against i.a. defense counsels. This ban applies to all telephone intercepts carried out under Danish jurisdiction, also if the intercept is based on a foreign request.</p> <p>Denmark has opted out in regards to the EIO directive.</p>
k) Can you share any good practice, such as:	Denmark has a centralized office at the National Unit for Special Crime through which all requests to the telecommunications providers are channeled.
<ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or 	

technical measure for urgent cases? • Any other?	
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	As set out in Article 20 of Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, Danish authorities must be notified if interception of telecommunication takes place with regard to a person present in Denmark – also if no technical assistance is required. Denmark has not declared under article 20(7) that it will not be necessary to provide it with information on interceptions as envisaged in this Article.
b) International legal framework applicable for this measure in your Member State	CoE 1959 Convention on Mutual Legal Assistance and the EU 2000 Convention on Mutual Legal Assistance in criminal matters.
c) Competent authority to receive the request / execute the measure	For serious economic offences: the Special Crimes Unit For other offences: the Prosecution service with the district Police
d) Accepted languages	Denmark will receive requests in Danish, Norwegian, Swedish or English but will also receive requests in French and German although translation may be done at sending state's expense.
e) Execution deadline	N/A
f) Concise legal practical information	Special requirements: After receiving notification under Article 20, the Danish authorities will submit the case to the court as soon as possible and at the latest within 48 hours after receiving the notice. The Danish court decides in the form of a court order whether the invasion of the secrecy of communication can take place. The Danish court will determine whether conditions under Danish law are fulfilled, see measure 101. Other useful information: In specific cases, the measure sought should be discussed in detail by the authorities involved. As a general rule, measures may not be taken if – considering the purpose of the measure, the significance of the case and the offence – the inconvenience, which the measure is presumed to cause, would be disproportionate.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	In Denmark, the legal requirements for interception of telecommunication are the same regardless of whether technical assistance is provided by another state or not. So please refer to the answers given under g) – l) in the previous section on interception of telecommunications.
h) Competent authority to request the measure abroad	
i) Conditions of admissibility of outcomes of this measure as	

evidence in your country as requesting state	
j) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other? 	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<p>The Council Framework Decision 2006/960/ was implemented in Denmark by law no. 1559 of 20 December 2006.</p> <p>Denmark exchanges information and intelligence for the purpose of conducting criminal investigations or criminal intelligence operations within the framework of the Council Framework Decision 2006/960/JHA. If Danish authorities wish to use the obtained information or intelligence before a judicial authority, they will request the consent of the Member State that provided the information or intelligence.</p>
b) Did you as EJN contact point organize or participate in any regional cross-border meeting (the EJN one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	<p>Denmark participates in regular regional Nordic meetings in which various topics concerning international cooperation in criminal matters are discussed, i.a. the mentioned topics.</p>

4.8. Estonia

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<i>Directive 2014/41/EU on EIOs; Convention Implementing the Schengen Agreement; EC MLA Convention between Customs Administrations 1998(Naples II).</i>
c) Competent authority to receive the request/execute the measure	Prosecutor General's Office.
d) Accepted languages	Estonian, English
e) Execution deadline	We follow deadlines provided by international treaties.
f) Concise legal practical information	<p><u>Estonian Code of Criminal Procedure</u> <u>§ 472. Cross-border surveillance</u></p> <p>(1) In connection with pre-trial proceedings concerning an extraditable criminal offence and provided the person concerned is being kept under surveillance in relation to being suspected of a criminal offence or in relation to a need to identify a suspected person or ascertain the whereabouts of such a person, the surveillance may be continued in the territory of another Member State that is party to the Convention signed at Schengen on 19 June 1990 to implement the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders (hereinafter, 'Schengen Member State'), provided the latter has authorised such cross-border surveillance in response to a request for assistance that has been made in advance and that states its reasons. Ancillary conditions may be attached to the authorisation.</p> <p>(2) Competence to transmit a request for cross-border surveillance to another Schengen Member State is vested in the Office of the Prosecutor General; in a situation of urgency, a request may be transmitted by a District Prosecutor's Office. Authorization for granting a request for cross-border surveillance transmitted to Estonia is issued by the Office of the Prosecutor General. Conditions may be attached to the granting of the request.</p> <p>(3) Transmitting a request for cross-border surveillance to another Schengen Member State is permitted in relation to pre-trial proceedings concerning the criminal offences specified in subsection 2 of § 126² of this Code. As the state in whose territory the person concerned finds themselves, Estonia may not deny a request if it is presented in connection with a criminal offence which is punishable by at least one year of imprisonment according to both the law of the requesting state and the Penal Code of Estonia.</p> <p>(4) In a situation of urgency, cross-border surveillance as part of pre-trial proceedings may be commenced without prior authorisation from the state in whose territory the person</p>

	<p>concerned finds themselves provided the subject of such proceedings is one of the following criminal offences:</p> <ol style="list-style-type: none"> 1) murder; 2) manslaughter; 3) serious offence of a sexual nature; 4) arson; 5) counterfeiting and forgery of means of payment; 6) aggravated burglary and robbery and receiving stolen goods; 7) extortion; 8) kidnapping and hostage taking; 9) trafficking in human beings; 10) illicit trafficking in narcotic drugs and psychotropic substances; 11) breach of the laws on arms and explosives; 12) destruction through the use of explosives; 13) illicit transportation of toxic and hazardous waste; 14) serious fraud; 15) facilitation of unauthorised entry and residence; 16) money laundering; 17) illicit trafficking in nuclear or radioactive materials; 18) participation in a criminal organisation; 19) terrorism. <p>(5) Where cross-border surveillance has been commenced in a situation of urgency as part of a pre-trial investigation of a criminal offence mentioned in subsection 4 of this section without prior authorisation from the state in whose territory the person concerned finds themselves:</p> <ol style="list-style-type: none"> 1) that state is must be notified without delay of the fact that an employee of the competent judicial authority of the requesting state has crossed the border and has commenced surveillance; 2) a request provided for by subsection 1 of this section must be transmitted without delay to that state, setting out the reasons for the unauthorised crossing of the border. <p>(6) When conducting cross-border surveillance:</p> <ol style="list-style-type: none"> 1) the laws of the state in whose territory the surveillance is conducted and the instructions of the representatives of its authorities are complied with; 2) a document authorising cross-border surveillance is carried, except in a situation provided for by subsection 4 of this section; 3) at the request of a competent authority of the state in whose territory surveillance is conducted, proof is provided of acting in an official capacity; 4) service weapons may be carried with the consent of the state in whose territory the surveillance is conducted, and may be used only for self-defence; 5) private property or any other places not intended for public use may not be entered, and the person under surveillance may not be stopped, questioned or apprehended; 6) the competent judicial authority of the state in whose territory the surveillance is conducted is notified of each surveillance operation and, at the request of the competent judicial authority of the aforementioned state, the officer carrying out such surveillance must appear in person in order to provide explanations; 7) at the request of the competent judicial authority of the state in
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	<p>whose territory the surveillance is conducted, assistance must be provided in the conduct of the relevant criminal proceedings in that state.</p> <p>(7) Cross-border surveillance is terminated:</p> <p>1) when the purpose of the corresponding operation has been achieved;</p> <p>2) at the request of the state in whose territory the surveillance is conducted;</p> <p>3) where, within five hours following the crossing of the border in order to commence cross-border surveillance following the rules prescribed in subsection 5 of this section, the state in whose territory such surveillance is conducted has not granted authorisation for cross-border surveillance.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Only a suspect.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible in proceedings conducted for crimes which is listed in Estonian Code of Criminal Procedure art 126-1.
i) Competent authority to request the measure abroad	Competent prosecutor or court.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	General rules of admissibility of evidence will apply. The measure has to be taken according to law and international treaties.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	No.
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or 	Prosecutor General's Office is the authority competent to receive and execute EIO and MLA requests regarding all types of CBS.

<p>technical measure for urgent cases?</p> <p>- Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner?</p> <p>- Any other?</p>	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<i>Directive 2014/41/EU on EIOs; Convention Implementing the Schengen Agreement; CoE MLA Convention 1959; 2000 MLA Convention</i>
c) Competent authority to receive the request/execute the measure	Prosecutor General's Office.
d) Accepted languages	Estonian, English
e) Execution deadline	We follow deadlines provided by international treaties.
f) Concise legal practical information	<p><u>Code of Criminal Procedure</u></p> <p><u>§ 126¹. General conditions for conduct of surveillance activities</u></p> <p>(2) Surveillance activities are permitted on the bases provided for in this Code if collection of data by other activities or taking of evidence by other procedural operations is impossible, is impossible on time or is especially complicated or if this may prejudice criminal proceedings in the case.</p> <p><u>§ 126². Bases for conduct of surveillance activities</u></p> <p>(1) The Police and Border Guard Board, the Security Police Board, the Tax and Customs Board, the Military Police and the Prisons Department of the Ministry of Justice and prisons (hereinafter <i>surveillance agency</i>) may conduct surveillance activities on the following bases:</p> <p>1) a need to collect information about the preparation of a criminal offence for the purpose of detection and prevention thereof;</p> <p>2) the execution of an order on declaring a person a fugitive;</p> <p>3) a need to collect information in confiscation proceedings pursuant to the provisions of Chapter 16¹ of this Code;</p> <p>4) a need to collect information in criminal proceedings about a criminal offence.</p> <p>(2) On the basis of the provisions of clauses (1) 1) and 4) of this section, surveillance activities may be conducted in the event of criminal offences specified in §§ 89-93¹, 95-97, 99, 100¹, 101-104, 106-108, 110-114, 116, 118 and 120, subsection 121 (2), §§ 133-137, 138¹ and 141-146, § 157³, subsections 151 (2) and (4),</p>

	<p>subsection 161 (2), §§ 162, 163, 172-179, 183-185, 187-190, 194, 195, 199 and 200, subsections 201 (2) and (3), subsections 202 (2) and (3), §§ 204, 206-214, 216¹-217, 217², 222, 227, 231-238, 241, 243, 244, 246, 250, 251, 255 and 256, clause 258 2), §§ 259, 259¹ and 263, subsections 266 (2) and (4), §§ 274, 2901, 291, 291¹, 294, 296, 298-299, 300, 300¹, 302, 303, 310-313 and 315-316¹, subsection 321 (2), §§ 326-328, 331, 331³, 333-334, 335, 336, 340 and 347, subsections 356 (1) and (3), subsections 357 (1) and (3), subsections 361 (1) and (3), subsections 364 (2)-(3), §§ 375-376², 384, 389¹, 391, 393, 394 and 394¹, subsections 398 (2) and (4), subsections 398¹ (2) and (4), §§ 400, 402³, 402⁴, 403-407, 414-416, 418, 418¹, 421¹, 421², 434, 435 and 437-439, subsections 440 (3) and §§ 446 and 449 of the Penal Code.</p> <p>(3) On the basis of this Code, surveillance activities may be conducted in respect of the following persons:</p> <ol style="list-style-type: none"> 1) on the basis specified in clause (1) 1) of this section in respect of the person in the case of whom there are serious reasons to believe that he or she commits the criminal offence specified in subsection (2) of this section; 2) on the basis specified in clause (1) 2) of this section in respect of the person who is declared to be a fugitive; 3) on the basis specified in clause (1) 3) of this section in respect of the person who owns or possesses the assets which are the object of confiscation proceedings; 4) on the basis specified in clause (1) 4) of this section in respect of the person who is a suspect in criminal proceedings or with respect to whom there is justified reason to believe that he or she has committed or commits the specified criminal offence. <p>(4) The surveillance activities conducted on the basis provided for in clauses (1) 2)-4) of this section may be also conducted in respect of the person with regard to whom there is good reason to believe that he or she interacts with the person specified in clauses (3) 2)-4) of this section, communicates information to him or her, provides assistance to him or her or allows him or her to use his or her means of communication, and if the conduct of surveillance activities in respect of such person may provide the data required for the achievement of the objective of the surveillance activities.</p> <p><u>§ 126⁴. Grant of permission for surveillance activities</u></p> <p>(1) Surveillance activities may be conducted with a written permission of the Prosecutor's Office or a preliminary investigation judge. The preliminary investigation judge shall decide the grant of permission by an order on the basis of a reasoned application of the Prosecutor's Office. The preliminary investigation judge shall consider a reasoned request submitted by the Prosecutor's Office without delay and grant or refuse to grant permission for the conduct of the surveillance activities by an order.</p> <p>(2) In cases of urgency, surveillance activities requiring the permission of the Prosecutor's Office may be conducted with the permission of the Prosecutor's Office issued in a format which can be reproduced in writing. A written permission shall be formalised within 24 hours as of the commencement of surveillance activities.</p>
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	<p>(3) In the case of immediate danger to the life, physical integrity or physical freedom of a person or to proprietary benefits of high value and requesting a permission or execution thereof on time is impossible, surveillance activities requiring the permission of a court may be conducted, in cases of urgency, with the permission of the court issued in a format which can be reproduced in writing. A written application and permission shall be formalised within 24 hours as of the commencement of surveillance activities.</p> <p>(4) A permission issued in cases of urgency in a format which can be reproduced in writing shall contain the following information:</p> <ol style="list-style-type: none"> 1) the issue of the permission; 2) the date and time of issue of the permission; 3) surveillance activities for which the permission is issued; 4) if known, the name of the person with regard to whom the surveillance activities are conducted; 5) the term of the permission for surveillance activities. <p>(5) If covert entry into a building, premises, vehicle, enclosed area or computer system is necessary for conduct of surveillance activities or in order to install or remove technical appliances necessary for surveillance, the Prosecutor's Office shall apply for a separate permission of a preliminary investigation judge for such purpose.</p> <p>(6) The duration of surveillance activities conducted with respect to a specific person on the basis provided for in clauses 126² (1) 1), 3) and 4) of this Code in the same proceedings must not exceed one year. In exceptional cases, the Prosecutor General may authorise or apply to a court for authorisation to conduct surveillance activities for more than one year. In a criminal case dealt with under Council Regulation (EU) 2017/1939, the relevant authorization is granted, or application made, by a European Prosecutor or a European Delegated Prosecutor.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspect.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible in proceedings conducted for crimes which is listed in Estonian Code of Criminal Procedure art 126-1.
i) Competent authority to request the measure abroad	Competent prosecutor or court.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	General rules of admissibility of evidence will apply. The measure has to be taken according to law and international treaties.
k) If the technical device tracking the person can also make an audio/video	No.

recording, please clarify, whether your law stipulates a different procedure than indicated above	
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	Prosecutor General's Office is the authority competent to receive and execute EIO and MLA requests regarding all types of CBS.
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Yes.
b) Legal Framework	<i>Directive 2014/41/EU;</i> <i>For non-EU countries Art 17 of CoE Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)</i> 2000 MLA Convention
c) Competent Authority	Prosecutor General's Office
d) Accepted Languages	Estonian, English
e) Execution Deadline:	We follow deadlines provided by international treaties.
f) Concise legal practical information	See answer above (FBA.55).
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspect
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible in proceedings conducted for crimes which is listed in Estonian Code of Criminal Procedure art 126-1.
i) Competent authority to request the measure abroad	Competent prosecutor or court.

j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	General rules of admissibility of evidence will apply. The measure has to be taken according to law and international treaties.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	No.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	Prosecutor General's Office is the authority competent to receive and execute EIO and MLA requests regarding all types of CBS.
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<i>Directive 2014/41/EU;</i> 2000 MLA Convention <i>CoE Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)</i>
c) Competent authority to receive the request / execute the measure	Prosecutor General's Office
d) Accepted languages	Estonian, English
e) Execution deadline	We follow deadlines provided by international treaties.
f) Concise legal practical information	See answer above (FB A.55)

g) Possible object of controlled delivery	No special rules.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible in proceedings conducted for crimes which is listed in Estonian Code of Criminal Procedure art 126-1.
i) Competent authority to request the measure abroad	Competent prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	General rules of admissibility of evidence will apply. The measure has to be taken according to law and international treaties.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	No special requirements.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	No
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes.
b) International legal framework applicable for this measure in your Member State	<i>Directive 2014/41/EU;</i> 2000 MLA Convention <i>CoE Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)</i>
c) Competent authority to receive the request / execute the measure	Prosecutor General's Office
d) Accepted languages	Estonian, English

e) Execution deadline	We follow deadlines provided by international treaties.
f) Concise legal practical information	See answer above (FBA.72)
g) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible in proceedings conducted for crimes which is listed in Estonian Code of Criminal Procedure art 126-1.
h) Competent authority to request the measure abroad	Competent prosecutor or a judge.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	General rules of admissibility of evidence will apply. The measure has to be taken according to law and international treaties.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>No specific obligations while conducting the interception but there are some restrictions to use specific information as evidence.</p> <p><u>Code of Criminal Procedure art 126-7. Secret interception of auditory or visual information</u></p> <p>....</p> <p>(2) Information which is transmitted by a person mentioned in § 72 of this Code or which is transmitted to such a person by another person and which is obtained by secret interception is not used as evidence provided the substance of such information consists in facts that have become known to the person in the course of the person's official or professional activities, unless:</p> <ol style="list-style-type: none"> 1) such a person has already provided a statement or given testimony concerning those facts or if the facts have been made public by any other method; 2) an authorisation for secret interception has been granted with respect to such a person or 3) a secret interception concerning another person shows that the person in question is committing or has committed a criminal offence. <p><u>Code of Criminal Procedure art 72. Refusing to give a statement or testify due to professional or other activities</u></p> <p>(1) A right to refuse to give a statement or testify as a witness concerning circumstances which have become known to the witness in the course of their professional or other activities is vested in:</p> <ol style="list-style-type: none"> 1) a minister of religion of a religious organisation registered in Estonia; 2) the defence counsel and the notary, unless otherwise provided by law; 3) a health care professional and a pharmacist regarding circumstances concerning the descent, artificial insemination, family or health of a person; 3¹) a person processing information for journalistic purposes, regarding information which makes it possible to identify their informant, except in a situation in which the taking of the evidence

	<p>by other procedural operations is precluded or exceedingly complicated and the subject matter of criminal proceedings is a criminal offence for which an imprisonment of at least up to eight years' is prescribed, there is a predominant public interest for the statement or testimony to be given and the person is required to give the statement or testimony on an application or motion of the Prosecutor's Office by order of the pre-trial investigation judge or by court order;</p> <p>4) persons on whom the obligation to maintain a professional secret has been imposed by law.</p> <p>(2) The right to refuse to give a statement or testify also extends to members of the professional support staff of the persons mentioned in clauses 1-3 of subsection 1 of this section.</p>
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	No
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes.
b) International legal framework applicable for this measure in your Member State	<i>Directive 2014/41/EU;</i> 2000 MLA Convention <i>CoE Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001)</i>
c) Competent authority to receive the request / execute the measure	Prosecutor General's Office
d) Accepted languages	Estonian, English
e) Execution deadline	We follow deadlines provided by international treaties.
f) Concise legal practical information	See answer above (FB A.72)
g) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure is possible in proceedings conducted for crimes which is listed in Estonian Code of Criminal Procedure art 126-1.

h) Competent authority to request the measure abroad	Competent prosecutor or a judge.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	General rules of admissibility of evidence will apply. The measure has to be taken according to law and international treaties.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	No
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	No special provisions in Estonian law.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No.

4.9. Finland

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request/execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	<p>According to Finnish Police Act (872/2011) the surveillance can apply to a suspect but also to persons outside domestic premises who can with justifiable cause be suspected of contributing to an offence for which the maximum punishment provided is more severe than six months' imprisonment.</p> <p>Please note that besides the police the Customs and the Border Guard are having their own regulations for preventing and revealing a crime. They are similar to the Finnish Police Act. Later in this form only the Police Act is mentioned related to prevention and revealing a crime. The all these preliminary investigation authorities apply the Coercive Measures Act when investigating a concrete crime.</p>
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>According to Finnish Police Act (872/2011) the police officers of a foreign state applying the Schengen have the right to continue surveillance in the territory of Finland when it takes place for investigating an offence. A further precondition is that Finnish police officers are not immediately able to continue surveillance or technical surveillance in Finland. Of course, the conditions stipulated by Schengen Agreement must be followed. According to our EIO legislation together with the EIO directive, and our national act on international legal assistance in criminal matters the verification of double criminality of the offence is a precondition for using any of coercive measures based on EIO or MLA request.</p> <p>Police officers of a foreign State applying the Schengen acquis who are referred to in Article 40 or 41 of the Schengen Convention have the right to continue surveillance in the territory of Finland or technical surveillance of a person that was started in the territory of the police officer's country and that is taking place for investigating an offence, as provided in the Schengen acquis binding on Finland. A further precondition is that Finnish police officers are not immediately able to continue surveillance or technical surveillance in the territory of Finland.</p> <p>Technical devices that Finnish police officers are authorized to use in accordance with the provisions on technical surveillance may be utilized in surveillance. A report on the surveillance and technical</p>

	surveillance shall be submitted to the district police within whose geographical area of operation most of the measure was taken.
i) Competent authority to request the measure abroad	<p>According to EIO law the order is issued by the prosecutor and if issued by the head of investigation (police, customs or border guard) validated by the prosecutor.</p> <p>In connection with the entry into force of the European Convention on Mutual Assistance in Criminal Matters, Finland delivered a statement thereto, according to which the Police, Customs and Border Guard were judicial authorities and competent to submit a request for legal assistance when carrying out a prejudicial investigation in a criminal case within their sphere of their competence.</p> <p>Under Section 5(1) of the Finnish act on international legal assistance in criminal matters (4/1994) a request for legal assistance may be made by the Ministry of Justice, a court, the prosecuting authority or the authority carrying out the prejudicial investigation.</p> <p>When applying the Schengen Convention, the requests for cross-border surveillance can be made via Sirene Finland office Using of Schengen Convention and Sirene channel (maybe with the cooperation with national Europol Liaison Bureaus) seem to be the most efficient way to act in very urgent situations.</p>
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	In Finland there's a free evaluation of evidence which means that the judge makes the final decision for the value of evidence. As long as the evidence is provided legally it can be brought to the court as an evidence.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	See above the section j)
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border	N/A.

observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request/execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Object of observation/surveillance is a suspect or "other person", regulated in the Finnish Police Act Chapter 5, Section 21 and in our Coercive Measures Act Chapter 10 Section 21.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The suspected crime has a minimum punishment of one year of imprisonment in Finland. In addition, you may hide a device to person's clothing etc. if the severe crime is suspected (determined in Police Act Chapter 5 Section 17 subsection 4 or Coercive Means Act Chapter 10, Section 16 subsection 3. The exception to this rule is a possibility "to secure an acute police measure" by using observation/surveillance. (Coercive Measures Act Chapter 5 Section 21, subsection 4.
i) Competent authority to request the measure abroad	The police officer with the power of arrest (the head of investigation in practice) or Chief Inspector level (or upper) officers at the Finnish Security Intelligence Service (Police Act Chapter 5 Section 22 or Coercive Measures Act Chapter 10 Section 22.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	See the first section j) before.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	See the first section j)
l) Can you share any good practice, such as:	N/A

<ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	
b) Legal Framework	
c) Competent Authority	
d) Accepted Languages	
e) Execution Deadline:	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	See the section g) before
h) Conditions under which it is possible to order the measure based on a request of foreign authority	See the section h) before
i) Competent authority to request the measure abroad	See the section i) before
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	See the first section j)
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a	See the first section k).

different procedure than indicated above.	
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	See the first section l).
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request / execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible object of controlled delivery	<p>There's no limitation in national law for possible objects. In Finland controlled delivery is possible for drugs and other illegal goods and agents.</p> <p>(1) A criminal investigation authority may refrain from intervening in the transport or other delivery of an object, substance or property or transfer such intervention if this is necessary in order to identify persons participating in an offence that is being committed or in order to clarify an offence or larger offence entity that is more serious than the offence that is being committed (controlled delivery).</p> <p>(2) A criminal investigation authority may use controlled delivery if there are grounds to suspect an offence for which the most severe</p>

	<p>punishment provided is imprisonment for at least four years. A further prerequisite is that the delivery can be controlled and, if necessary, intervention in it can take place. In addition, the measure may not cause significant danger to the life, health or freedom of any person or the significant danger of extensive damage to the environment, to property or to assets.</p> <p>(3) What is separately provided in law regarding international controlled delivery applies in addition to international agreements binding on Finland or other obligations binding on Finland relating to international controlled delivery (See Coercive Measures Act Chapter 10 Section 41 and Police Act Chapter 5, Section 43)</p>
h) Conditions under which it is possible to order the measure based on a request of foreign authority	See section g), point no. 2 before. It is also regulated that no matter which authority receives and responsible to execute an international request, an authority in charge (like the Customs on the border crossing point) must be informed that coordinated.
i) Competent authority to request the measure abroad	The police, Customs and Border Guard Officer which is determined and educated beforehand. In case the EIO must be used, it is authorized by the prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	In Finland there's a free evaluation of evidence which means that the judge makes the final decision for the value of evidence. As long as the evidence is provided legally it can be brought to the court as evidence.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	The original content can be replaced.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	N/A.
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	

b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request / execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Legal provisions on telecommunications interception lay down in Finnish Coercive Measures Act (806/2011), Chapter 10, Section 3 and Police Act Chapter 5, Sections 5 – 12.</p> <p>Authorization to listen to, and record a tele message transmitted by a suspect from, or received by him in, a telecommunication connection, e-mail address, or other similar type of teleaddress, or telecommunications terminal in his possession, or in his use may be given, provided that the information can be assumed to be very important in the investigation of a certain serious offence. Precondition for telecommunications interception is that there is reason to suspect a person of a serious crime listed in Chapter 10 Section 3 and 6 in Coercive measures Act.</p> <p>Interception of discussions between the suspect and his defence lawyer or the suspect and a priest is forbidden. In addition, the discussions between the suspect and the persons referred to in the chapter 17 of the Code of Judicial Procedure, Sections 20, 23(1)(3), 24(2) and 24(3) shall not be subjected to telecommunications interception or technical listening unless the pre-trial investigation pertains to an offence punishable by imprisonment for six years or more, or to an attempt of or participation in such an offence.</p>
h) Competent authority to request the measure abroad	<p>The head of investigation usually issues EIO, and the prosecutor validates the order. In connection with the entry into force of the European Convention on Mutual Assistance in Criminal Matters, Finland delivered a statement thereto, according to which the Police, Customs and Border Guard were judicial authorities and competent to submit a request for legal assistance when carrying out a prejudicial investigation in a criminal case within their sphere of their competence.</p> <p>Under Section 5(1) of the Finnish law on legal assistance in criminal matters, a request for legal assistance may be made by the Ministry of Justice, a court, the prosecuting authority or the authority carrying out the prejudicial investigation.</p>
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>In Finland there's a free evaluation of evidence which means that the judge makes the final decision for the value of evidence. As long as the evidence is provided legally it can be brought to the court as an evidence. As mentioned before in the first box (Conditions under which it is possible to order the measure), there are legal provisions that prohibit interception of some discussions. If it becomes apparent during the interception or listening that the discussion is between persons referred before, the measure shall be interrupted and any recordings or notes destroyed at once.</p>

	Obviously, it's also forbidden to use these kinds of records or notes as an evidence.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>They are described in Coercive Measures Act Chapter 10, Section 52 Police Act Chapter 5, Section 50.</p> <p>Yes, obligation can be transferred but normally the telecommunications interception material is so large and therefore the final decisions and definitions of using or not using it, must be made in the requesting state.</p>
k) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	N/A.
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request / execute the measure	
d) Accepted languages	
e) Execution deadline	

f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	See the section g) before.
h) Competent authority to request the measure abroad	See the section h) before.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	See the section i) before..
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	N/A.
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	N/A
b) Did you as EJN contact point organize or participate in any regional cross-border meeting (the EJN one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	N/A

4.10. France

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Cross-border observations enable criminal investigators of foreign authorities who are conducting, on their territory, observation/surveillance of a person believed to have committed an offence, to cross the border from their territory in order to continue their observation on the whole French national territory. There are two types of cross-border observations : ordinary cross-border observations (OTO) and urgent cross-border observations (OTU).</p> <p>Convention implementing the Schengen Agreement :</p> <p>The first type (OTO) involves making a request for authorisation before crossing the border, in cases relating to extraditable offences punishable by the foreign State by a prison sentence of at least one year or where there are substantial grounds for believing that the person observed may assist in the identification or location of such a person for the purposes of a criminal investigation.</p> <p>The second type (OTU) involves making a request for authorisation after crossing the border. Authorisations for urgent cross-border observations (OTU) are limited to the categories of the most serious offences listed at article 40-2 of the Convention implementing the Schengen Agreement.</p> <p>These requests for mutual assistance take a simplified form and are sent via officer-to-officer (law enforcement) cooperation channels. On completion of a cross-border observation operation, the investigators conducting the operation produce a report of the observations carried out on the foreign territory. It usually involves making a summary report, but the French authorities can ask the foreign officers who have entered French territory to remain at their disposal and to contribute to an investigation concerning the operation.</p> <p>Paris Agreement with Switzerland :</p> <p>The first type (OTO) involves making a request for authorisation before crossing the border, in cases relating to offenses punishable under French law by at least one year imprisonment.</p> <p>The second type (OTU) involves making a request for authorisation after crossing the border, in cases limited to specific categories of offenses (article 12 of the Agreement).</p> <p>In customs matters, the Naples II Convention provides at article 3 that the judicial authority conducting a criminal investigation may choose to have recourse either to the provisions governing mutual assistance in criminal matters or those of the Naples II Convention.</p> <p>The conventions set out the terms of engagement of the role of the observing investigators.</p>

b) International legal framework applicable for this measure in your Member State	<p>Convention Implementing the Schengen Agreement of 19 June 1990 : article 40.</p> <p>Paris Agreement with Switzerland of 9 October 2007 : article 12.</p> <p>EC MLA Convention between Customs Administrations of 23 January 1998 (Naples II) : article 21.</p>
c) Competent authority to receive the request/execute the measure	<p>The authorisation to observe (conduct surveillance on) a person on French territory, transmitted by the Central Directorate of the Judicial Police, is issued, in writing, by an agent of the Office for International Mutual Legal Assistance in Criminal Matters (BEPI) of the Directorate of Criminal Affairs and Pardons (DACG), of the ministry of Justice.</p> <p>This authorisation is also granted to the foreign authority on week-ends and in the evenings by the duty magistrate of the DACG.</p> <p>Conditions may be attached to the authorisation. The authorisation applies to the whole of the national territory. The office of the general prosecutor of the jurisdictions concerned is informed of the granting of the authorisation by the DACG.</p>
d) Accepted languages	French
e) Execution deadline	<p>For an ordinary cross-border observation (OTO), it is necessary to send a request for an authorisation in advance, before the border is crossed.</p> <p>Urgent cross-border observations (OTU) must be stopped if France requires this after having been informed of the crossing of the border or after having received the request or if the authorisation was not given within 5 hours of the border being crossed (as required under the Schengen Convention and Naples II Convention) or within 12 hours (as required under the Paris Agreement with Switzerland).</p>
f) Concise legal practical information	<p>The actions that the observing officers are permitted to carry out, while complying with the law of the contracting party on whose territory they are conducting the observation, exclude, in general, any coercive actions. Thus, while they can make various observations, they can conduct surveillance (e.g. following/"tailing" a person or persons), take photographs, gather spontaneous statements or seize items which have been provided on a voluntary basis, they are not permitted to conduct telephone intercepts, to enter places of residence or places that are not accessible to the public or to question or arrest a person who is the subject of the observation. The questioning or the arrest of the person who is the subject of the observation can only be carried out by the French authorities.</p> <p>French officers conducting observations in foreign countries are officers and investigators of the judicial police, of the national police and of the national gendarmerie. In addition, customs officers who have obtained an authorisation in advance from the public prosecutor can exercise this right within the parameters of a judicial investigation relating to the trafficking of drugs, arms or explosives or the illegal transporting of toxic or hazardous waste.</p>

g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person suspected of having participated in or being connected with the offence.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The request for cross-border observation must comply with the conditions set out in Article 40 of the CISA and be sufficiently precise to verify the existence of the criteria set out in that article.
i) Competent authority to request the measure abroad	The police, gendarmerie or customs service in charge of the case after agreement of the public prosecutor or the investigating judge.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	The evidence collected will be valid if the requirements of Section 40 CISA have been met.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	The request for cross-border observation does not allow the implementation of a means of recording like placing a beeper on a vehicle or a person. It is not possible to sound or video system in a private place. These investigates techniques require a request for mutual assistance (EIO). However, foreign investigators can take photographs, audio and video recordings on public roads
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	Requests for cross-border observation are sent by email to the office for international mutual legal assistance in criminal matters (ministry of justice – division of criminal affairs and pardons). During the night and the week-end, a magistrate of the division of criminal affairs and pardons is on duty. If there is an emergency, it is possible to contact these services by phone.
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state	Under French law, the use of a technical device for real-time tracking is governed by articles 230-32 to 230-44 and article 709-

under international judicial cooperation?	<p>1-3 2° of the Criminal code of procedure and article 67 bis-2 of the customs code.</p> <p>Most of the time, tracking measures are limited to the implementation of a technical surveillance, disconnected from any physical surveillance. The location data is obtained in real time and processed immediately or afterwards by the investigators. The crossing of the border cannot always be predicted. The location data, which has taken place on the territory of another State, may only be used in proceedings after the issuing of a mutual legal assistance request, either when the requested State has previously or concomitantly given its consent, or when it has subsequently authorised their use.</p>
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> • EU member states : Directive 2014/41/EU of 3 April 2014 on the European Investigation Order in criminal matters as transposed into the French Code of Criminal Procedure in Articles 694-15 to 694-50 replaces particularly the provisions of The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (and its two additional Protocols) and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (and its Protocol of 16 October 2001) except for Ireland and Denmark. • non-EU countries : the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, or other Convention.
c) Competent authority to receive the request/execute the measure	<p>Request for the purpose of using and exploiting in the proceedings the data obtained in the context of cross-border tracking must be sent to the competent French judicial authority. If the facts of the case for which the cross-border tracking is being requested concerns organised crime (articles 706-73 and 706-74 of the Code of Criminal Procedure), authorisation can be requested from the Specialised Interregional Jurisdictions (JIRS). In other cases, it will be the prosecutor or the investigating judge with territorial jurisdiction at the first point of entry into French territory.</p>
d) Accepted languages	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order : French. • European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 : A translation in French is not required (article 16) but it is nonetheless recommended that a translation be provided, in order to facilitate and expedite the execution of the request for assistance. • Convention of 29 May 2000 complementing this Convention do not raise any question of translation requirements.
e) Execution deadline	<p>Mutual legal assistance request concerning cross-border tracking must be addressed to the prosecution service or the investigating judge of the JIRS (the Specialised Interregional Jurisdiction) or to the prosecution service or the investigating judge with territorial jurisdiction. The matter must be referred to the prosecutor as soon as the tracker has been put in place or as soon as the continued monitoring of a tracking device is envisaged. If it is impossible to request an authorisation to continue monitoring a tracking device before the crossing of the French border, the case can nonetheless be referred to the competent prosecution service or investigating judge to request its authorisation. The fact that the authorisation</p>

	has not been requested in advance will not exempt the competent authority to request the authorisation of using the data after the border has been crossed.
f) Concise legal practical information	<p>Once the authorisation has been given by the French judicial authority, the authorisation is valid for the whole French territory. If it is not known where the point of entry will be, the public prosecutor or the investigating judge of Paris will have jurisdiction.</p> <p>The cross-border tracking may be accompanied by a physical surveillance of the person (cross-border observation). In this case, in addition to the mutual legal assistance request for the purpose of using and exploiting in the proceedings the data obtained, a request for cross-border observation must be made on the basis of the Convention Implementing the Schengen Agreement (Art. 40) and the Paris Agreement (Art. 12). The Office of International Mutual Legal Assistance in Criminal Matters of the Ministry of Justice, which is a central authority and not a judicial authority, issues authorisations for cross-border observations. Please see fiche Belge on cross border observation.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person suspected of having participated in the offence.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The conditions for executing such EIO are the same as in the context of a domestic case.</p> <p>Under French law, the use of a technical device for real-time tracking is governed by articles 230-32 to 230-44 and article 709-1-3 2° of the Criminal code of procedure and article 67 bis-2 of the customs code.</p>
i) Competent authority to request the measure abroad	The public prosecutor and the investigating judge are competent to request the measure abroad.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>Under French law, the use of a technical device for real-time tracking is governed by articles 230-32 to 230-44 and article 709-1-3 2° of the Criminal code of procedure and article 67 bis-2 of the customs code:</p> <ul style="list-style-type: none"> - investigation of an offense punishable by imprisonment for at least three years - investigation in search of the causes of death - investigations relating to the search for a fugitive
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>There is a different procedure to setting up a sound and audio system, in the articles 706-95-11 to 706-95-19 and 706-96 to 706-98 of the Criminal Procedure Code.</p> <p>These investigative measures can only be ordered for certain serious offences listed in the Criminal Procedure Code.</p>
l) Can you share any good practice, such as: - Do you have a specialized body for	In case of emergency, the request can be sent directly by email.

<p>receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
<p>Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))</p>	
<p>a) Measure implementation</p>	<p>Tracking of a person is provided for in French law in the following articles :</p> <ul style="list-style-type: none"> - Articles 230-32 to 230-44 and following of the Code of criminal procedure - Article 709-1-3 of the same code ; - Articles D15-1-5 and D15-1-7 of the same code ; - Article 67 bis-2 of the Customs Code <p>Tracking is the use of any technical means intended to locate in real time a person (without him being informed), a vehicle or any other object (without the consent of its owner or user). Any object can be tracked, either by exploiting its own technology, or through the installation of a tracker. Both the dynamic tracking of any object and the use of a dedicated tracker device placed on a means of transport or any other object are included in the scope of this investigation technique.</p> <p>However, the following are not included in the scope of this investigation technique :</p> <ul style="list-style-type: none"> - Operations allowing to trace (not in real time) the movements of an object or an individual, by the communication of the data (in particular the triggered terminals) by the telecommunication operators or any person or public or private organization ; - the dynamic tracking of a telecommunication terminal, a vehicle or any other object whose owner or legitimate possessor is the missing person or the victim of the crime under investigation, when the purpose of these operations is to find the victim, the object that was stolen from him or her or the missing person. <p>The implementation of this measure of tracking is possible for all investigations concerning a crime or misdemeanour punishable by at least three years of imprisonment ; all investigations in search of the causes of death or disappearance and the procedure for the search for a fugitive.</p>

	<p>The authorization to use a tracking measure always take the form of a written decision, motivated by reference to the elements of fact and law justifying that these operations are necessary. The authorization must also include the following elements : the date of the decision ; the usefu elements to identify the object or vehicle ; the maximum authorized duration of the measure, the framework of the investigations and the targeted offence.</p> <p>In the context of an investigation under the responsibility of the public prosecutor, it is authorized by the public prosecutor and then by the liberty and custody judge if the extension of the measure is required.</p> <p>In the context of a judicial investigation under the responsibility of an investigating judge, t is authorized by the investigating judge.</p> <p>The duration of the measure is different according to the framework of the investigations.</p> <ul style="list-style-type: none"> - Investigation under the responsibility of the public prosecutor : the maximum duration of the measure authorized by the public prosecutor is eight consecutive days (fifteen days for organised crime). Then, the liberty and custody judge, at the request of the public prosecutor, may authorize the extension for a maximum period of one month, renewable under the same conditions. - Judicial investigation under the responsibility of an investigating judge : The maximum duration of the measure authorized by the investigating judge is 4 months renewable under the same conditions of form and duration.
b) Legal Framework	<ul style="list-style-type: none"> • EU countries : Directive 2014/41/EU of 3 April 2014 (EIO), Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000, • Non-EU countries: the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and its protocols or other Convention.
c) Competent Authority	<ul style="list-style-type: none"> • On the basis of the Directive on EIO of 3 April 2014 : According to article 694-30 of the code of criminal procedure, the EIO issued by the authority of another Member State of the European Union is directly transmitted for recognition and execution to : <ul style="list-style-type: none"> - the investigating judge that has territorial jurisdiction, if this decision concerns acts that can only be ordered or carried out during a judicial investigation, or which can only be carried out in the course of an investigation with the authorization of the liberty and custody judge ; - or, the public prosecutor that has territorial jurisdiction, in all other cases. • On the basis of the MLA Convention of 29 May 2000 it is the judicial authority that has territorial jurisdiction which receives the request, namely the public prosecutor or investigating judge who has territorial jurisdiction (articles 695-1 et seq. and 694-1 et seq. of the Code of Criminal Procedure).
d) Accepted Languages	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order : French.

	<ul style="list-style-type: none"> • Convention of 29 May 2000 do not raise any question of translation requirements.
e) Execution Deadline:	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order : The competent authority must execute it as soon as possible and at the latest within 90 days after the decision of recognition of the EIO. • MLA Convention of 29 May 2000 : The requested State executes the request for mutual legal assistance as soon as possible (Art. 4 paragraph 2 Convention of 29 May 2000). There is no deadline for the execution of requests for assistance in French criminal law. However, it is possible, in the body of the request, to ask for a deadline to be observed ; such a deadline will, however, only be regarded as a general guide.
f) Concise legal practical information	N/A
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person suspected of having participated in the offence.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The implementation of this measure of tracking is possible for all investigations concerning a crime or misdemeanor punishable by at least three years of imprisonment ; all investigations in search of the causes of death or disappearance and the procedure for the search for a fugitive.
i) Competent authority to request the measure abroad	<p>In the context of an investigation under the responsibility of the public prosecutor, it is authorized by the public prosecutor and then by the liberty and custody judge if the extension of the measure is required.</p> <p>In the context of a judicial investigation under the responsibility of an investigating judge, this judge authorizes the measure.</p> <p>These authorities can request the measure abroad.</p>
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>The authorization to use a tracking measure always take the form of a written decision, motivated by reference to the elements of fact and law justifying that these operations are necessary. The authorization must also include the following elements: the date of the decision; the useful elements to identify the object or vehicle; the maximum authorized duration of the measure, the framework of the investigations and the targeted offence.</p> <p>The duration of the measure is different, depending of the framework of the investigations.</p> <ul style="list-style-type: none"> - Investigation under the responsibility of the public prosecutor: the maximum duration of the measure authorized by the public prosecutor is eight consecutive days (fifteen days for organized crime). Then, the liberty and custody judge, at the request of the public prosecutor, may authorize the extension for a maximum period of one month, renewable under the same conditions. - Judicial investigation under the responsibility of an investigating judge: The maximum duration of the measure authorized by the investigating judge is 4 months renewable under the same conditions of form and duration.

<p>k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.</p>	<p>There is a different procedure to setting up a sound and audio system, in the articles 706-95-11 to 706-95-19 and 706-96 to 706-98 of the Criminal Procedure Code.</p> <p>These investigative measures can only be ordered for certain serious offences listed in the Criminal Procedure Code.</p>
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>In case of emergency, the request can be sent directly by email.</p>
<p>Controlled delivery (FB A.73)</p>	
<p>a) Is the measure possible in your member state under international judicial cooperation?</p>	<p>Controlled deliveries are provided for in French law in Articles 706-30 et seq. of the Code of Criminal Procedure and Article 67bis of the Customs Code.</p> <p>Concerning the Code of Criminal Procedure :</p> <p>The public prosecutor in whose jurisdiction the operations are likely to begin, as well as the public prosecutor already in charge of the case, must be informed and may object.</p> <p>Controlled deliveries are carried out under the control of the judicial authority.</p> <p>Concerning the Customs Code :</p> <p>Authorised customs officers may carry out surveillance of persons or the transport of goods when there are one or more plausible reasons to suspect the persons under surveillance of being the perpetrators of a customs offence punishable by a sentence of two years or more.</p> <p>The public prosecutor in whose jurisdiction the operations are likely to begin must be informed and may object.</p> <p>In these two cases of controlled deliveries, the investigating authorities may request that the persons under surveillance not be checked and arrested, nor the goods under surveillance be checked and seized, so as not to jeopardise the investigation. In</p>

	<p>the case of judicial proceedings, the request is made to the public prosecutor or investigating judge in charge of the investigations and, in the case of customs proceedings, to the public prosecutor in whose jurisdiction the surveillance operations are likely to begin.</p> <p>The investigating authorities may themselves deliver objects, goods or products in place of postal service providers or freight operators. Authorisation is requested, in the case of judicial proceedings, from the public prosecutor or investigating judge in charge of the investigations and, in the case of customs proceedings, from the public prosecutor in whose jurisdiction the surveillance operations are likely to begin.</p> <p>In matters of international mutual legal assistance, the decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State and shall take place in accordance with the procedures of that Member State.</p> <p>Controlled deliveries are permitted in the framework of criminal investigations into extraditable offences.</p>
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> • Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 : Art. 12 • Second additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (2001): Art. 18 • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order in criminal matters : Art. 28
c) Competent authority to receive the request / execute the measure	<ul style="list-style-type: none"> • Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 : direct transmission to the judicial authority with territorial jurisdiction. More precisely, a request for mutual assistance of this type must be transmitted to the public prosecutor of the location where the goods entered French territory and, where appropriate, to a specialist interregional public prosecution service (for offences relating to organised crime). • In accordance with the declaration made by France to the Second additional Protocol to the Convention of 20 April 1959 : the public prosecutor who has territorial jurisdiction, or failing that, the public prosecutor of Paris. • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order in criminal matters : direct transmission to the judicial authority with territorial jurisdiction.
d) Accepted languages	<ul style="list-style-type: none"> • European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 : A translation in French is not required (article 16) but it is nonetheless recommended that a translation be provided, in order to facilitate and expedite the execution of the request for assistance. • Convention of 29 May 2000 complementing this Convention do not raise any question of translation requirements.

	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order in criminal matters : French
e) Execution deadline	<ul style="list-style-type: none"> • European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and MLA Convention of 29 May 2000 : The requested State executes the request for mutual legal assistance as soon as possible (Art. 1 Second additional Protocol to the Convention of 20 April 1959, Art. 4 paragraph 2 Convention of 29 May 2000). • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order : The competent authority must execute it as soon as possible and at the latest within 90 days after the decision of recognition of the EIO.
f) Concise legal practical information	It is necessary to make a distinction between : a) a request for mutual legal assistance in criminal matters for the purpose of continuing, into France, a controlled delivery operation concerning goods of which the possession, the transport or the sale are prohibited ; and b) a request for the purpose of continuing into France the observation of a person (who may be carrying out the transport of goods). In the second case, and if the person concerned can be clearly identified, a request can be sent on the basis of article 40 of the Convention of 14 June 1985 on the application of the Schengen Agreements or article 12 of the Paris Agreement (cross-border observation). The authorisation for the cross-border observation is given by the French Ministry of Justice (Please see fiche Belge related to it). The request is sent to the French Ministry of Justice by means of a standard form transmitted via officer-to-officer (law enforcement) cooperation channels.
g) Possible object of controlled delivery	There are two possible legal frameworks: (-) framework for drug trafficking (Art. 706-32 of the code of criminal procedure or 67bis of the Customs Code), possibility of acquiring drugs and/or providing legal, financial or even material means, (-) framework for offenses related to organized crime (Art. 706-82 of the code of criminal procedure or 67bis of the Customs Code), same possibility in the context of an undercover operation.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The conditions for executing a request for mutual assistance with the objective of organizing a controlled delivery are the same as the conditions necessary to authorize a controlled delivery in the context of a domestic procedure: (-) the facts that are the subject of the request must fall within the scope of drug trafficking or organized crime offenses as defined in Articles 706-73 and 706-74 of the code of criminal procedure, (-) the prior authorization of the public prosecutor or investigating judge to whom the case is referred is required, (-) the authorized acts may not constitute incitement to commit an offense.
i) Competent authority to request the measure abroad	The public prosecutor or the competent investigating judge.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The conditions for controlled delivery set out in the French Code of Criminal Procedure must be respected

k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	There is no replacement of the contents of the controlled delivery. The consignment need to have the original contents.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	Generally, controlled deliveries are carried out by services specialized in the fight against drug trafficking. In case of emergency, the request can be sent directly by email.
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Under French law the following measures fall into the scope of interceptions of telecommunications and other forms of electronic communications :</p> <ul style="list-style-type: none"> - interception of correspondence emitted by electronic communications : tapping of telephone conversations, SMS, messages left on an answering machine, real-time monitoring of an e-mail, instant messages exchanged between several people by means of a link secured by an encryption device, recording and transcription by the judicial police officer of telephone conversations by affixing a device connected to the handset of the device lived the agreement of one of the correspondents ; - "IMSI catcher": it is a proximity device that makes it possible to obtain data that is difficult to access through the traditional use of simple telephone requisitions ; - remote data capture. <p>The interception may be authorised by the liberty and custody judge upon request of the public prosecutor during the enquiry and by the investigating judge during the judicial information. This measure can only be ordered if the needs of the enquiry require so.</p> <p>1° Interception of correspondence :</p> <ul style="list-style-type: none"> • During the enquiry (under the responsibility of the public prosecutor) : the interception of telecommunication is restricted to offences of a peculiar gravity and complexity. Under Art. 706-95 of the Criminal code of procedure the use of this measure is limited to enquiries relating to infractions mentioned at articles 706-73 and 706-73-1.

	<ul style="list-style-type: none"> • During the judicial information (under the responsibility of the investigating judge) : this measure can only be ordered for crimes or offences punishable by 3 years imprisonment (Art. 100). <p>2° "IMSI catcher" : The use of IMSI catcher is limited to offences listed at articles 706-73, 706-73-1, 706-72, 706-1-1, 706-1-2 and 706-2-2 of the French code of criminal procedure.</p>
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order in criminal matters as transposed into the French Code of Criminal Procedure in Articles 694-15 to 694-50 replaces particularly the provisions of The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (and its two additional Protocols) and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 (and its Protocol of 16 October 2001) except for Ireland and Denmark. - Chapter V "Interception of telecommunications. • Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 : Title III "Interception of telecommunications".
c) Competent authority to receive the request / execute the measure	<ul style="list-style-type: none"> • On the basis of the Directive on EIO of 3 April 2014 : The investigating judge is competent to recognize and execute the EIO in respect of acts which can only be ordered or executed during the judicial investigation or which can only be executed with the authorization of the liberty and custody judge. In other cases, the public prosecutor territorially competent will recognize and execute the EIO. • On the basis of the MLA Convention of 29 May 2000, it is the judicial authority that has territorial jurisdiction which receives the request, namely the public prosecutor or investigating judge who has territorial jurisdiction (articles 695-1 et seq. and 694-1 et seq. of the Code of Criminal Procedure).
d) Accepted languages	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order : Franch. • The Convention of 29 May 2000 do not raise any question of translation requirements.
e) Execution deadline	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order : The competent authority must execute the EIO as soon as possible and at the latest within 90 days after the decision of recognition of the EIO. • MLA Convention of 29 May 2000 : The requested State executes the request for mutual legal assistance as soon as possible (Art. 4 paragraph 2 Convention of 29 May 2000). However, it is possible, in the body of the request, to ask for a deadline to be observed ; such a deadline will, however, only be regarded as a general guide.
f) Concise legal practical information	<p>The measure is executed in accordance with the French Code of Criminal Procedure.</p> <p>It is ordered for a period of one month in an investigation under the responsibility of the public prosecutor in an organised crime case,</p>

	<p>and a period of 4 months in a judicial investigation (under the responsibility of the investigating judge). This decision is renewable once under the same conditions of form and duration. On completion, the recordings are placed under seal. Under French law, there are restrictions when the interceptions concern a lawyer in the exercise of defence rights, a journalist, a parliamentarian or a magistrate (judge or public prosecutor).</p> <p>IMSI catcher : It is ordered for a period of 48 hours.</p> <p>In the absence of a bilateral or multilateral convention which provides to the contrary, the requesting authority can ask for certain particular procedural rules to be followed, in accordance with article 694-3 of the Code of Criminal Procedure, which provides that such rules must not reduce or impair "the rights of the parties or the procedural guarantees provided by the present Code". The request can be refused if it is likely to harm public order or the essential interests of the Nation, as provided by article 694-4 of the Code of Criminal Procedure.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The offence must be punishable by a sentence of three years or more of imprisonment (Art. 100 of the code of criminal procedure)</p> <p>The interception decision must be in writing (Art. 100 of the code of criminal procedure) and must be justified by reference to the facts and law.</p> <p>The interception decision is taken for a maximum of 4 months, renewable under the same conditions. The total duration cannot exceed 1 year. If it is an offence provided for in articles 706-73 and 706-73-1 of the code of criminal procedure (organized crime), the duration of the interception cannot exceed 2 years.</p>
h) Competent authority to request the measure abroad	<p>The public prosecutor and the investigating judge, using a request for mutual legal assistance (EIO).</p>
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>The conditions for the interception of telecommunications set out in the French Code of Criminal Procedure must be respected : a decision to authorize interception by the judicial authority, indicating the reasons and the duration.</p>
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art.	<p>It is not possible to intercept calls on the telephone line of a lawyer's office or home unless there are reasons to suspect that he is involved in an offence.</p> <p>It is also not possible to intercept the communications of a member of parliament without the president of the assembly to which he belongs being informed.</p> <p>Finally, in the case of a magistrate (judge or public prosecutor), the first president of the court of appeal or the general public prosecutor must be informed.</p> <p>Article D 47-1-8 of the code of criminal procedure incorporates article 30 (6) (a) of the EIO Directive.</p>

30(6)(a) of the EIO Directive).	
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	In case of emergency, the request can be sent directly by email.
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>When a Member State does not need the technical assistance of another Member State to intercept the telecommunications of a person in the territory of that other State, no European Investigation Order is required. In this context, the competent authority shall notify the interception to the Member State using Annex C of the EIO or in accordance with Article 20 of the Convention of 29 May 2000 for Member States not applying the Directive 2014/41 on EIO.</p> <p>Under French law the following measures fall into the scope of interception of telecommunication : interception of correspondence emitted by electronic communications, "IMSI catcher", remote data capture.</p>
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 : Art. 31. (annex C) • Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 : Art. 20.
c) Competent authority to receive the request / execute the measure	Directive 2014/41/EU of 3 April 2014 and EU MLA Convention of 29 May 2000 : The authority competent to receive the notification of interception is the Directorate of Criminal Affairs and Pardons (art D.32-2-1 of the French Code of Criminal Procedure), more specifically the Office for mutual legal assistance in criminal matters.
d) Accepted languages	<ul style="list-style-type: none"> • Directive 2014/41/EU of 3 April 2014 on the European Investigation Order : French. • Convention of 29 May 2000 do not raise any question of translation requirements.
e) Execution deadline	<ul style="list-style-type: none"> • The Directive 2014/41 of 3 April 2014 (article 31 3.) provides that the notified State 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, to the competent authority of the intercepting Member State : <ul style="list-style-type: none"> - that the interception may not be carried out or must be terminated ;

	<p>- if necessary, that the data intercepted while the target of the interception was on its territory may not be used or may be used only under such conditions as it specifies.</p> <p>• The Convention of 29 May 2000 (article 20 4.) provides that the notified State shall respond without delay or within a maximum period of 96 hours, period which can be extended to a maximum of 8 days to enable the notified Member State to carry out internal procedures required by its criminal legislation.</p>
f) Concise legal practical information	The rules provided for in Articles 31 of the Directive 2014/41 of 3 April 2014 and 20 of the Convention of 29 May 2000, and set out above, are not applicable to authorisations to use data resulting from the installation of a tracking device or a listening device in a vehicle, which fall under a request for mutual assistance.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Pursuant Article 31 of the EIO directive, the requested State does not have to authorise the interception, which can be ordered by the intercepting State without the assistance of the notified State.</p> <p>The intercepting State notifies the interception to the notified State, which may object if the interception would not be authorised in a similar domestic case (cf supra).</p> <p>The Annex C must include all the elements for identifying the link to be intercepted, the offence for which the interception was requested, and the duration of the interception. Annex C must contain all the information enabling the foreign authority that ordered the measure to be identified.</p>
h) Competent authority to request the measure abroad	The Public prosecutor and the investigating judge.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The conditions for the interception of telecommunications set out in the French Code of Criminal Procedure must be respected.
<p>j) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other? 	<p>Annex C is sent by email to the office for international mutual legal assistance in criminal matters (ministry of justice – division of criminal affairs and pardons). During the night and on the weekend, there is a magistrate of the division of criminal affairs and pardons who is on duty.</p> <p>If there is an emergency, it is possible to contact these services by phone.</p> <p>The office for international mutual legal assistance in criminal matters is regularly the recipient of notifications from foreign states (Annex C).</p>
General questions	

a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	The Council Framework Decision 2006/960/JHA was implemented in the French code of criminal procedure, in article 695-9-31 to 695-9-40.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	

4.11. Germany

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Convention implementing the Schengen Agreement of 19th June 1990, as amended and completed by Council Decision 2003/725/JHA of 2nd October 2003 (Art. 40); Second additional Protocol to the European Convention on mutual assistance in Criminal Matters of 20th April 2001 (Art. 17).
c) Competent authority to receive the request/execute the measure	The public prosecutor's office in whose district the supposed border crossing is located.
d) Accepted languages	In the respective language with a German translation (required), unless a bilateral waiver of translation has been agreed upon.
e) Execution deadline	No deadline
f) Concise legal practical information	<p>Surveillance by police officers beyond state borders of a person suspected of being involved in an extraditable criminal offence.</p> <p>In general cross-border observations have to be authorised on the basis of a request for mutual judicial assistance submitted in advance. If the surveillance is supposed to be executed for a longer period than 24 hours or on more than 2 days, the offence at stake has to be of considerable significance and surveillance is permissible only if other means of investigation would offer much less prospect of success or be much more difficult. In cases of particular urgency, in which prior authorisation cannot be requested, cross-border surveillance is permitted only for serious offences listed in Art. 40 para. 7, of the Convention implementing the Schengen Agreement, and has to be notified immediately, during the surveillance to the Federal Criminal Police Office in Wiesbaden. Furthermore, a request for assistance submitted in accordance with Art. 40 para. 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted immediately.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspected person and other persons connected with the suspected person
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Measure is possible under conditions stipulated by an international treaty (e.g. Art 40 CISA). MLA request of judicial authority is necessary.
i) Competent authority to request the measure abroad	Competent prosecutor's office, (also court - after submission of indictment)
j) Conditions of admissibility of outcomes	There are no special requirements in the penal procedural code.

of this measure as evidence in your country as requesting/issuing state	
<p>k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above</p>	<p>Video recording: Section 100h (1) nr. 1 penal procedural code: Even without the knowledge of the persons concerned 1. photographs or other images may be taken or 2. ... outside of private premises where other means of establishing the facts or determining an accused's whereabouts would offer less prospect of success or would be more difficult. ...</p> <p>Audio recording: Section 100f penal procedural code: Acoustic surveillance outside of private premises</p> <p>(1) Words spoken in a non-public context outside of private premises may be intercepted and recorded by technical means even without the knowledge of the persons concerned if certain facts give rise to the suspicion that a person has, either as an offender or participant, committed one of the offences referred to in section 100a (2), which may in an individual case also be a serious crime or, in cases where there is criminal liability for attempt, has attempted to commit such an offence and other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult.</p> <p>(2) The measure may only be directed against an accused person. Such a measure may only be ordered against other persons if it is to be assumed, on the basis of certain facts, that they are in contact with an accused or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts and other means of establishing the facts or determining an accused's whereabouts would offer no prospect of success or would be much more difficult.</p> <p>(3) The measure may be taken even if it unavoidably affects third parties.</p> <p>(4) ...</p>
<p>m) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? 	<p>There is no specialized body for receiving/executing this type of cooperation.</p> <p>At the prosecutor's offices there is always someone on duty for urgent cases.</p>

- Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Convention implementing the Schengen Agreement of 19th June 1990, as amended and completed by Council Decision 2003/725/JHA of 2nd October 2003 (Art. 40); Second additional Protocol to the European Convention on mutual assistance in Criminal Matters of 20th April 2001 (Art. 17).
c) Competent authority to receive the request/execute the measure	Public Prosecutor's Office in whose district the supposed border crossing is located.
d) Accepted languages	In the respective language with a German translation (required), unless a bilateral waiver of translation has been agreed upon.
e) Execution deadline	No deadline
f) Concise legal practical information	<p>Cross-border observation with the use of technical support is permissible for the investigation of facts and the determination of the whereabouts of the perpetrator in an extraditable criminal offence.</p> <p>The same requirements apply as for the cross-border observation (measure A 70). This means, that in general cross-border observations have to be authorised on the basis of a request for mutual judicial assistance submitted in advance. If the surveillance is supposed to be executed for a longer period than 24 hours or on more than 2 days, the offence at stake has to be of considerable significance and surveillance is permissible only if other means of investigation would offer much less prospect of success or be much more difficult. In cases of particular urgency, in which prior authorisation cannot be requested, cross-border surveillance is permitted only for serious offences listed in Art. 40 para. 7, of the Convention implementing the Schengen Agreement, and has to be notified immediately, during the surveillance to the Federal Criminal Police Office in Wiesbaden. Furthermore, a request for assistance submitted in accordance with Art. 40 para. 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted immediately. This also applies to cases in which it only becomes known later that a border has been crossed. Also in these cases a request must be made immediately after knowledge of the border crossing.</p>
g) Possible subject of observation/surveillance	Suspected person and other persons connected with the suspected person

(suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Measure is possible under conditions stipulated by an international treaty (e.g. Art 40 CISA). MLA request of judicial authority is necessary.
i) Competent authority to request the measure abroad	Competent prosecutor's office, (also court - after submission of indictment)
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	There are no special requirements in the penal procedural code.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>Video recording: Section 100h (1) nr. 1 penal procedural code: Even without the knowledge of the persons concerned</p> <ol style="list-style-type: none"> 1. photographs or other images may be taken or 2. ... <p>outside of private premises where other means of establishing the facts or determining an accused's whereabouts would offer less prospect of success or would be more difficult. ...</p> <p>Audio recording: Section 100f penal procedural code: Acoustic surveillance outside of private premises</p> <p>(1) Words spoken in a non-public context outside of private premises may be intercepted and recorded by technical means even without the knowledge of the persons concerned if certain facts give rise to the suspicion that a person has, either as an offender or participant, committed one of the offences referred to in section 100a (2), which may in an individual case also be a serious crime or, in cases where there is criminal liability for attempt, has attempted to commit such an offence and other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult.</p> <p>(2) The measure may only be directed against an accused person. Such a measure may only be ordered against other persons if it is to be assumed, on the basis of certain facts, that they are in contact with an accused or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts and other means of establishing the facts or determining an accused's whereabouts would offer no prospect of success or would be much more difficult.</p> <p>(3) The measure may be taken even if it unavoidably affects third parties.</p> <p>(4) ...</p>
n) Can you share any good practice, such as:	There is no specialized body for receiving/executing this type of cooperation.

<ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>At the prosecutor's offices there is always someone on duty for urgent cases.</p>
<p>Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))</p>	
<p>a) Measure implementation</p>	<p>A short term surveillance is possible against suspects and contact persons as an low-treshold measure (§ 161 StPO, procedural law). A long-term surveillance (duration longer than 24hrs or to more than 2 days) is possible if other investigation measures not promising success (§ 163 f StPO). Only Offences of major importance (serious crime) justify the planned observation of a suspected person including the use of technical measures like GPS, cameras etc.(Art. 100 h) for a period up to three months. The observation of other persons is permitted if it can be assumed that they are connectec with the suspected person. The term of limitation can be extended. Tracking by technical instruments (§ 100h StPO) f.e. GPS-Tracker or IMSI-Catcher (§ 100i StPO) is possible in both cases.</p>
<p>b) Legal Framework</p>	<p>Directive regarding the European Investigation Order (EIO) in criminal matters in relation to Member Statesd (EU Directive 2014/41/EU from 3rd April 2014). For countries having not implemented the mentioned Directive: Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (29th May 2000); Convention implementing the Schengen Agreement.</p>
<p>c) Competent Authority</p>	<p>The public prosecutor's office with competences for the court district in which the act of judicial assistance is to be executed.</p>
<p>d) Accepted Languages</p>	<p>In the respective language with a German translation (required), unless a bilateral waiver of translation has been agreed upon.</p>
<p>e) Execution Deadline:</p>	<p>Under the European Investigation Order: The decision on the recognition shall be taken within 30 days. The measure shall be carried out within 90 days following the taking of the decision on the recognition. For States not applying the European Investigation Order: No Deadlines.</p>
<p>f) Concise legal practical information</p>	<p>For a long term surveillance and the use of an IMSI-catcher a court decision is necessary. use of an IMSI-catcher is limited to severe criminal offences (listed in § 100a sec. 2 StPO).</p>

g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspected person and other persons connected with the suspected person
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Section 100h (1) nr. 2 penal procedural code: Even without the knowledge of the persons concerned</p> <ol style="list-style-type: none"> 1. ... 2. other special technical devices intended specifically for surveillance purposes may be used <p>outside of private premises where other means of establishing the facts or determining an accused's whereabouts would offer less prospect of success or would be more difficult. A measure under sentence 1 no. 2 shall be admissible only if the subject of the enquiry is an offence of substantial significance.</p>
i) Competent authority to request the measure abroad	Competent prosecutor's office, (also court - after submission of indictment)
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	There are no special requirements in the penal procedural code unless for findings of the core area of the private conduct of life.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	<p>Video recording: Section 100h (1) nr. 1 penal procedural code: Even without the knowledge of the persons concerned</p> <ol style="list-style-type: none"> 1. photographs or other images may be taken or 2. ... <p>outside of private premises where other means of establishing the facts or determining an accused's whereabouts would offer less prospect of success or would be more difficult. ...</p> <p>Audio recording: Section 100f penal procedural code: Acoustic surveillance outside of private premises</p> <p>(1) Words spoken in a non-public context outside of private premises may be intercepted and recorded by technical means even without the knowledge of the persons concerned if certain facts give rise to the suspicion that a person has, either as an offender or participant, committed one of the offences referred to in section 100a (2), which may in an individual case also be a serious crime or, in cases where there is criminal liability for attempt, has attempted to commit such an offence and other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult.</p> <p>(2) The measure may only be directed against an accused person. Such a measure may only be ordered against other persons if it is to be assumed, on the basis of certain facts, that they are in contact with an accused or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts and other means of establishing the facts or determining an accused's whereabouts would offer no prospect of success or would be much more difficult.</p>

	(3) The measure may be taken even if it unavoidably affects third parties.
	(4) ...
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>There is no specialized body for receiving/executing this type of cooperation.</p> <p>At the prosecutor's offices there is always someone on duty for urgent cases.</p>
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Convention of 29th May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (Art. 12); Second additional Protocol to the European Convention on mutual assistance in Criminal Matters of 20th April 2001 (Art. 18); United Nations Convention of 20th December 1988 against Illicit Traffic in Narcotic and Psychotropic Substances (Art. 11); Convention implementing the Schengen Agreement of 19th June 1990, as amended and completed by Council Decision 2003/725/JHA of 2nd October 2003 (Art. 73). See also Cross-border surveillance
c) Competent authority to receive the request / execute the measure	The public prosecutor's office in whose district the supposed border crossing is located, unless investigation proceedings in respect of the offence are already pending at another German public prosecution office.
d) Accepted languages	In the respective language with a German translation (required), unless a bilateral waiver of translation has been agreed upon.
e) Execution deadline	No deadline
f) Concise legal practical information	According to German law controlled deliveries are a special kind of cross-border observation. According to German law controlled transit is the illegal transport of drugs, weapons, stolen property or goods and similar from abroad via Germany to a third country under surveillance. Controlled export is the illegal transport from Germany to foreign countries under surveillance. Controlled import is the

	<p>illegal transport from foreign countries to Germany under surveillance.</p> <p>In addition to the requirements of cross-border surveillance (see measure A 70), controlled deliveries are premissable, if</p> <ul style="list-style-type: none"> - the identities of the persons pulling the strings or the ways of distribution cannot be established by other means, - surveillance guarantees access to the perpetrator and the delivered good at any time, - the states involved consent to controlled import or transit - the foreign state guarantees to control the delivery constantly, to investigate the courier, the persons pulling the strings and customers, to confiscate the delivered goods and to keep the German prosecution service informed constantly.
g) Possible object of controlled delivery	Transit of the illegal transport of drugs, weapons, stolen property or goods and similar (not possible: human beings).
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Controlled deliveries are not regulated in the German code of criminal procedure but in the guidelines for criminal and administrative fine proceedings. Controlled export is the illegal transport from Germany to foreign countries under surveillance. Controlled import is the illegal transport from foreign countries to Germany under surveillance. There are no provisions in the German law stipulating the kind of criminality necessary for a controlled delivery.
i) Competent authority to request the measure abroad	Controlled export: The public prosecution office in whose district the transport begins (or is competent for the national case).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	There are no special requirements in the penal procedural code.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	The delivered goods have to be seized at the end of the delivery.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	<p>There is no specialized body for receiving/executing this type of cooperation.</p> <p>At the prosecutor's offices there is always someone on duty for urgent cases.</p>

Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<p>Directive regarding the European Investigation Order (EIO) in criminal matters in relation to Member Statesd (EU Directive 2014/41/EU from 3rd April 2014).</p> <p>Directive of 11th of December 2018 (EECC, EU Directive 2018/1972/EU).</p> <p>For countries having not implemented the mentioned Directive: Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (29th May 2000); Convention implementing the Schengen Agreement.</p>
c) Competent authority to receive the request / execute the measure	The public prosecutor's office with competences for the court district in which the act of judicial assistance is to be executed.
d) Accepted languages	In the respective language with a German translation (required), unless a bilateral way of translation has been agreed upon.
e) Execution deadline	Under the European Investigation Order: The decision on the recognition shall be taken within 30 days. The measure shall be carried out within 90 days following the taking of the decision on the recognition. For States not applying the European Investigation Order: No Deadlines.
f) Concise legal practical information	<p>Art. 100 a Strafprozessordnung (Procedural Law)</p> <p>The surveillance of all kind of telecommunication is admissible in cases of serious crimes like high treason, murder and homicide as well as offences against personal liberty, offences related to organized crimes, terrorism and others, which are listed under Art. 100 a sec. 2 StPO.</p> <p>The interception of encrypted communication is admissible (§ 100a sec. 1 sentence 2 StPO), if the unencrypted communication could be intercepted by regular wiretapping.</p> <p>a. Special requirements</p> <p>When using an EIO: no special requirements are needed.</p> <p>Otherwise: - There are two options: either the requesting authority states in the request the details of the order to wiretap and that it has been issued OR the court order is enclosed to the request.</p> <p>b. Other useful information</p> <p>Phone surveillance may only be ordered for a period up to three months with the possibility of extension. The extension shall be subject to a new request with new arguments for extension.</p> <p>All data/records have to be deleted/destroyed after finishing the proceedings.</p> <p>It should be noted that the German prosecutor is obliged to inform the affected persons about the measure as soon as it is terminated when the purpose of the investigation, public safety and the life and limb of any person are not endangered and that at the end of a period to be determined, it is assumed that notification may be given if facts that speak against are not communicated before the expiry of that period.</p>

g) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure can be applied against persons of whom certain facts establish suspicion that they have committed, as perpetrators or participants, a severe offence which is listed in a catalogue in the German criminal procedure code. It is only permissible if other means of establishing the facts or identifying the suspect's whereabouts would offer no prospects of success or would be much more difficult.
h) Competent authority to request the measure abroad	Competent prosecutor's office, (also court - after submission of indictment)
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	It is necessary that the conditions for issuing a court order in Germany on the measure are fulfilled.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	Section 100d Core area of private conduct of life; persons authorised to refuse to give evidence (1) If there are factual indications to assume that a measure under sections 100a to 100c will only lead to findings in the core area of the private conduct of life, the measure shall be inadmissible. (2) Findings in the core area of the private conduct of life which are made on the basis of a measure under sections 100a to 100c may not be used. Recordings of such findings must be deleted without delay. The fact that such findings were made and their deletion shall be documented. (3) ... (4) ... (5) ... In principle it's possible to transfer this obligation to the issuing state. Whether this would be sensible depends on the specific case.
k) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other?	There is no specialized body for receiving/executing this type of cooperation. At the prosecutor's offices there is always someone on duty for urgent cases.
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	

a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Directive regarding the European Investigation Order (EIO) in criminal matters in relation to Member States (EU Directive 2014/41/EU from 3rd April 2014) incl. Annex C. For countries having not implemented the mentioned Directive: Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (29th May 2000); Convention implementing the Schengen Agreement.
c) Competent authority to receive the request / execute the measure	For the interception of telecommunication without technical assistance, the responsibilities in the Federal Republic of Germany are distributed as follows: - competent authority for requests from the French Republic, the Kingdom of Spain and the Portuguese Republic is the Amtsgericht Stuttgart, - competent authority for requests from the Italian Republic, the Republic of Croatia, the Republic of Malta, the Republic of Austria and the Republic of Slovenia is the Amtsgericht Muenchen, - competent authority for requests from the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania is the Amtsgericht Tiergarten in Berlin, - competent authority for requests from Republic of Poland the Amtsgericht Potsdam, - competent authority for requests from Ireland is the Amtsgericht Bremen, - competent authority for requests from the Kingdom of Sweden is the Amtsgericht Hamburg, - competent authority for requests from the Republic of Bulgaria and Romania is the Amtsgericht Wiesbaden, - competent authority for requests from the Republic of Finland is the Amtsgericht Schweinfurt, - competent authority for requests from the United Kingdom and Northern Ireland is the Amtsgericht Hannover, - competent authority for requests from the Kingdom of the Netherlands is the Amtsgericht Düsseldorf, - competent authority for requests from the Grand Duchy of Luxembourg is the Amtsgericht Saarbrücken, - competent authority for requests from the Slovak Republic and the Czech Republic is the Amtsgericht Dresden, - competent authority for requests from Hungary is the Amtsgericht Magdeburg, - competent authority for requests from the Kingdom of Denmark is the Amtsgericht Kiel and - competent authority for requests from the Hellenic Republic and the Republic of Cyprus is the Amtsgericht Erfurt.
d) Accepted languages	In the respective language with a German translation (required), unless a bilateral way of translation has been agreed upon.
e) Execution deadline	Under the European Investigation Order: The decision on the recognition shall be taken within 30 days. The measure shall be carried out within 90 days following the taking of the decision on the recognition. For States not applying the European Investigation Order: No Deadlines.

f) Concise legal practical information	<p>The surveillance of telecommunication (§ 100a StPO, procedural law) without German technical assistance is admissible in cases of serious crimes like high treason, murder and homicide as well as offences against personal liberty, offences related to organized crimes, terrorism and others, which are listed under § 100a sec. 2 StPO.</p> <p>A German court order for surveillance is necessary. According to the German procedural law all records and documents related to the phone surveillance must be destroyed when the case is finished. The affected person has to be informed.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The measure can be applied against persons of whom certain facts establish suspicion that they have committed, as perpetrators or participants, a severe offence which is listed in a catalogue in the German criminal procedure code. It is only permissible if other means of establishing the facts or identifying the suspect's whereabouts would offer no prospects of success or would be much more difficult.</p>
h) Competent authority to request the measure abroad	Competent prosecutor's office, (also court - after submission of indictment)
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	It is necessary that the conditions for issuing a court order in Germany on the measure are fulfilled.
j) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other? 	<p>There is no specialized body for receiving/executing this type of cooperation but for each issuing state a specific prosecutor's office is competent (see above under c).</p> <p>Practical problems are created by the short deadline for the decision according to Art. 31 (3) of the EIO Directive in connection with insufficient information on the facts of the case provided by the issuing state.</p>
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<p>Section 92 (2) of the Act on International Cooperation in Criminal Matters:</p> <p>(2) When transmitting information in accordance with subsection (1), notification is to be included that it is not permissible to use the information as evidence in court proceedings, unless the authorising authority which is competent to give decisions on requests under Part 5 has consented to such use as evidence. The</p>

	<p>authority competent to give decisions on requests under Part 5 also decides accordingly on requests for the subsequent authorisation of the use of such information as evidence.</p> <p>Competent authority regarding requests for authorization is the prosecutor's office.</p>
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No

4.12. Greece

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request/execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Only suspects
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Conditions provisioned by Schengen agreement taking into consideration that Greece has not ratified MLA 2000 yet.
i) Competent authority to request the measure abroad	Competent prosecutor or judicial authority (=court or investigating judge)
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Protocol on course of surveillance and its outcome. Summoning of police authorities to appear before the court might also be requested.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical	

measures for cross-border observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request/execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border	

observation/surveillance carried out in this manner? - Any other?	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	
b) Legal Framework	
c) Competent Authority	
d) Accepted Languages	
e) Execution Deadline:	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under	

international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request / execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible object of controlled delivery	Drugs, illicit trafficking of goods (Law 2960/2001), money laundering (Law. 2655/1998), antiquities (Law 3028/2002), guns, munitions, explosives, counterfeit currency (Article 187 par. 1 of the Greek Penal Code)
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Monitoring of the transit via Greece of narcotic drugs and other hallucinogenic substances, if appropriate confiscating or partly replacing the goods transported illegally. Apart from crimes related to narcotic substances, the measure can be taken in crimes related to terrorism as well as in crimes committed by a criminal organisation. MLA request of judicial authority is necessary for the controlled delivery to take place.
i) Competent authority to request the measure abroad	The Public Prosecutor at the Court of Appeal of Athens (Article 15 par. 5 of Law 2331/1995 and article 38 of Law 2145/1993)
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Protocol on course of surveillance and its outcome. Summoning of police authorities to appear before the court might also be requested.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Any other?	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for	

this measure in your Member State	
c) Competent authority to receive the request / execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	Applicable only for reasons of national security or for felonies (major offences with a minimum of five years of imprisonment and a maximum of twenty years of life sentence imprisonment), as provisioned in the Greek Penal Code, article 187 par.1 (criminal organization) and in special penal laws (smuggling, illicit entry by aliens, illicit trafficking in cultural goods, human trafficking, money laundering e.t.c.)
h) Competent authority to request the measure abroad	Competent prosecutor or judicial authority (=court or investigating judge)
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Record of interception including the protocol with the description of the offence as well as the intercepting authority.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns art. 30(6)(a) of the EIO Directive).	
k) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Any other?	
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under	

international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	
c) Competent authority to receive the request / execute the measure	
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	
h) Competent authority to request the measure abroad	
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	

4.13. Hungary

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Yes, it is possible. The legal provisions are determined by the Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States of the European Union (hereinafter: EUJCA) and the Act XC of 2017 on the Code of Criminal Procedure (hereinafter: CCP). CCP is a background act of EUJCA.</p> <p>a) Countries using the European Investigation order (hereinafter: EIO-countries)</p> <p>Art 46 (1)-(3) of EUJCA (1) With the exception contained in Article 42 (6), any procedural act suitable for obtaining evidence requested by a Member State based on an EIO, executable under the CCP, can be carried out if the procedural act could be executed also in a Hungarian criminal proceeding in regard to the criminal offence constituting the basis of the EIO. (2) The procedural act indicated in the EIO shall be carried out – with the exception of paragraph (3) – in accordance with Hungarian legislation. (2a) Based on orders issued by the prosecution office, the investigating authority may carry out the procedural act indicated in the EIO and also participate in any other way in the execution of the EIO. (3) On the request of the Member State authority, the rules and technical method indicated by the Member State authority shall be applied to carry out the procedural act, unless doing so would be incompatible with the basic principles of the Hungarian legal system. Where the court or the prosecution office cannot apply the rules and technical methods indicated by the Member State authority, it shall immediately inform the Member State authority thereof, and indicate the conditions under which execution would be feasible.</p> <p>Art 53 (1) of EUJCA (1) Notwithstanding the provisions of Article 42 (6), the court or the prosecution office may use the EIO to initiate the execution of a procedural act suitable for obtaining the kind of evidence covered in the CCP, if that is necessary and proportionate in the criminal proceedings and in case the procedural act indicated in the EIO could also be executed under Hungarian law according to the conditions set in the EIO.</p> <p>Art 215 (5) of CCP (5) The organ authorised to use covert means may covertly surveil a) a person, home, other room, fenced area, public area, premises open to the public, or vehicle, or b) an object serving as means of physical evidence, that are associated with the criminal offence, and it may collect information on events taking place, and it may use technical means to record such events (hereinafter "covert surveillance").</p>

	<p>b) Countries not using the European Investigation order (hereinafter: non-EIO countries)</p> <p>Art 66/A (1)-(2) of EUJCA</p> <p>(1) Unless otherwise provided by this act, after the initiation of criminal proceedings, the Hungarian judicial authority is directly entitled to receive a request for procedural assistance filed by the judicial authority of the Member State in the course of cooperation in criminal matters according to this chapter; the Member State authority and the Hungarian judicial authority shall maintain the contact with each other directly in the course of the execution of the request for legal assistance.</p> <p>(2) The Hungarian judicial authority may also accept requests for procedural assistance from the law enforcement agencies of the Member State based on international treaty, if the internal law of the Member State allows the law enforcement agency to take part in legal assistance in criminal matters. In such a case, the rules applicable to the judicial authority of the Member State shall apply, <i>mutatis mutandis</i>, to the law enforcement authority of the Member State.</p> <p>Art 67 of EUJCA</p> <p>(1) After the institution of criminal proceedings, the Hungarian judicial authority where the criminal proceedings are in progress is entitled to file a request for procedural assistance directly in the course of cooperation in criminal matters, unless otherwise provided by this Act; the Member State authority and the Hungarian judicial authority shall maintain the contact with each other directly in the course of the execution of the request for legal assistance.</p> <p>(2) A request for procedural assistance may be filed if it is necessary and proportionate in the criminal proceedings and the procedural act indicated in the request could be performed according to the conditions described there, also under Hungarian law.</p> <p>Art 67/A of EUJCA</p> <p>Before the institution of criminal proceedings, the provisions of the Act on the international cooperation of law enforcement agencies shall apply to the request for international cooperation filed by a Hungarian law enforcement agency. Where criminal proceedings are instituted in a case during the execution of a request filed before the institution of the criminal proceedings, subsequent cooperation may only be pursued – except for the direct provision of information – in compliance with this Act.</p> <p>Art 67/C of EUJCA</p> <p>(1) The Hungarian judicial authority may request the judicial authority of the Member State to take Hungarian legislation into consideration and to apply the technical method it has specified while executing the procedural act indicated in a request.</p> <p>(2) In its requests for procedural assistance, the Hungarian judicial authority may set a time limit for executing the procedural act along with an indication of the grounds for doing so. The Hungarian judicial authority may also request the judicial authority of the</p>
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	<p>Member State to execute the procedural act as a matter of urgency or at a specific date.</p> <p>Art 215 (5) of CCP (see above)</p>
b) International legal framework applicable for this measure in your Member State	<p>a) EIO-countries</p> <ul style="list-style-type: none"> - Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters <p>b) non-EIO countries</p> <ul style="list-style-type: none"> - European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters - Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union - 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
c) Competent authority to receive the request/execute the measure	<p>a) EIO countries</p> <p>Art 37 (1)-(5), (7)-(8) of EUJCA</p> <p>(1) Unless otherwise provided by this Act, the district court or the prosecution office with jurisdiction over the criminal offence constituting the basis of the EIO pursuant to the CCP has jurisdiction for the execution of the EIO.</p> <p>(2) Where the jurisdiction of the prosecution office cannot be established based on paragraph (1), jurisdiction for the execution of the EIO shall lie with the local prosecution office.</p> <p>(3) Unless otherwise provided by this Act, the competence of the court or the prosecution office shall be determined by the place of execution of the procedural act indicated in the EIO – thus in particular the place of the real habitual residence or registered seat of the person to be interviewed or heard, the place where the material evidence is located. Where several sites of execution of the procedural act(s) can be established, or the site of the execution of the procedural act cannot be established, the court or the prosecution office that had taken action on the matter previously shall act.</p> <p>(4) Jurisdiction for the execution of EIO filed concerning a legal person shall lie, unless the EIO indicates otherwise, with the court or prosecution office competent by the registered seat or the premises of the legal person.</p> <p>(5) Based on orders issued by the Office of the Prosecutor General or the superior prosecution office, a prosecution office with no jurisdiction or competence based on paragraph (1)-(4) may also take action during execution in the interest of the effective execution of the EIO.</p> <p>(7) If the court or the prosecution office receives from a Member State an EIO that it does not have jurisdiction or competence to execute, it shall forward the EIO without delay to the court or prosecution office with jurisdiction and competence, and inform the</p>

	<p>Member State authority thereof as specified under paragraph (6) above.</p> <p>(8) If immediate action is required – where the action according to paragraph (7) would jeopardise or frustrate the effective execution of the procedural act –, the court or prosecution office without jurisdiction or competence to execute the procedural act indicated in the EIO shall also be entitled to act, but it shall be obliged to inform the court or the prosecution office with jurisdiction and competence simultaneously with its measure according to paragraph (6).</p> <p>Art 38 (5) of EUJCA</p> <p>(5) Unless otherwise provided by this Act, Hungarian judicial authority is entitled to receive directly an EIO issued by the Member State judicial authority; the Member State authority and the Hungarian judicial authority shall maintain the contact with each other directly in the course of the execution of an EIO.</p> <p>Art 46 (2a) of EUJCA</p> <p>(2a) Based on orders issued by the prosecution office, the investigating authority may carry out the procedural act indicated in the EIO and also participate in any other way in the execution of the EIO.</p> <p>b) non-EIO countries</p> <p>Art 66/A of EUJCA</p> <p>(1) Unless otherwise provided by the EUJCA, after the initiation of criminal proceedings, the Hungarian judicial authority is directly entitled to receive a request for procedural assistance filed by the judicial authority of the Member State in the course of cooperation in criminal matters according to this chapter; the Member State authority and the Hungarian judicial authority shall maintain the contact with each other directly in the course of the execution of the request for legal assistance.</p> <p>(2) The Hungarian judicial authority may also accept requests for procedural assistance from the law enforcement agencies of the Member State based on international treaty, if the internal law of the Member State allows the law enforcement agency to take part in legal assistance in criminal matters. In such a case, the rules applicable to the judicial authority of the Member State shall apply, mutatis mutandis, to the law enforcement authority of the Member State.</p> <p>(3) Unless otherwise provided by this Act, the district court, or the prosecution office with jurisdiction according to the CCP over the criminal offence underlying the request shall have the competence to act upon the request for legal assistance.</p> <p>(4) In the case specified in Article 6 (5) of Act XXXVIII of 1996, the district prosecution office shall have jurisdiction for the execution of a request for procedural assistance.</p> <p>(5) The place of executing the procedural act, particularly the real place of habitual residence or the seat of the person to be interviewed or heard, or the place where physical evidence is located determines the competence of the Hungarian judicial</p>
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	<p>authority. Where several or no places of execution can be ascertained, prevention shall be the primary consideration.</p> <p>(6) The Hungarian judicial authority with competence over the seat or premises of the legal person shall be entitled to execute the request for procedural assistance filed in regard to a legal person, unless indicated otherwise in the request.</p> <p>(7) Based on the orders issued by the Office of the Prosecutor General or a superior prosecution office to promote the efficient execution of requests for procedural assistance, prosecution offices that have no jurisdiction and competence based on paragraph (2)-(6) may also act upon requests.</p> <p>(8) If the Hungarian judicial authority receives a request for procedural assistance that it has no jurisdiction or competence to execute, it shall immediately forward the request to the Hungarian judicial authority with jurisdiction and competence. The forwarding Hungarian judicial authority shall inform the judicial authority of the Member State of the transfer of the request – indicating precisely the Hungarian judicial authority concerned.</p> <p>(9) In matters of urgency – where taking the measure referred to in paragraph (8) would jeopardise or frustrate the effective execution of the procedural act – Hungarian authorities with no jurisdiction or competence may also execute the procedural act indicated in the request, but they shall inform the judicial authority with jurisdiction and competence simultaneously with taking the measure foreseen in paragraph (8).</p> <p>Art 66/B of EUJCA Before the institution of criminal proceedings, the provisions of the act on the international cooperation of the law enforcement agencies shall be applied to the receipt and execution of requests for international cooperation sent by the law enforcement agency of the Member State. If the criminal proceedings concerning the case are instituted during the execution of the request for international cooperation issued before the start of the criminal proceedings, cooperation shall continue afterwards – except for direct information – exclusively according to this act.</p>
d) Accepted languages	<p>a) EIO-countries</p> <p>Art 38 (1) of EUJCA: Hungarian, English, French, German (1) EIO may be issued according to the form indicated under Annex 18, in the Hungarian, English, French or German language. EIO may be filed by any means – including the direct transmission made by the Member State authority's member presented in Hungary – allowing to establish the authenticity of the EIO.</p> <p>b) non-EIO countries</p> <p>According to the Reservation made by Hungary concerning Article 16 of European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters, Hungary accepts the request in Hungarian and in official languages of the Council of Europe (English and French).</p>
e) Execution deadline	<p>a) EIO countries</p> <p>Art 46 (4)-(5) of EUJCA</p>

	<p>(4) The procedural act indicated in the EIO shall be executed – with a view to the request of the Member State authority for prioritised execution and the date set for the execution of the procedural act – no later than ninety days after the decision on the execution of the EIO.</p> <p>(5) Where the procedural act cannot be carried out within the time limit defined above, the court or the prosecution office shall inform the Member State authority thereof, specifying the grounds for the delay, indicating the time needed for carrying out the procedural act, and engage in consultation with the Member State authority on the appropriate implementation timetable of the procedural act.</p> <p>b) non-EIO countries</p> <p>Art 66/F (4)-(5) of EUJCA</p> <p>(4) Procedural acts shall be performed with a view to the deadline requested by the judicial authority of the Member State.</p> <p>(5) Where a procedural act cannot be executed by the time limit set in the request for procedural assistance, the Hungarian judicial authority shall immediately inform the judicial authority of the Member State of the period necessary for performing the procedural act, stating the reasons for the delay.</p>
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	<p>According to Art 2 of EUJCA, CCP is a background act of EUJCA. The possible subject of observation/surveillance is determined by CCP.</p> <p>both EIO and non-EIO countries</p> <p>Art 215 (5) of CCP</p> <p>(5) The organ authorised to use covert means may covertly surveil</p> <p>a) a person, home, other room, fenced area, public area, premises open to the public, or vehicle, or</p> <p>b) an object serving as means of physical evidence, that are associated with the criminal offence, and it may collect information on events taking place, and it may use technical means to record such events (hereinafter "covert surveillance").</p>
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>a) EIO countries</p> <p>Art 39 (1) of EUJCA</p> <p>(1) Following receipt of an EIO, the court or the prosecution office shall promptly assess whether the conditions for the execution of the EIO are met under the Hungarian legislation, and take a decision on its execution in a non-conclusive ruling.</p> <p>Art 40 (1) of EUJCA</p> <p>(1) The court or the prosecution office may refuse to execute the EIO if</p> <p>(a) doing so would seriously violate the fundamental rights of the defendants in criminal proceedings, enshrined in international agreements or EU legislative acts,</p>

	<p>(b) execution would harm the essential national security interests of Hungary,</p> <p>(c) execution would compromise the person or activity of the informer, the confidential counsellor, any another person or undercover investigator covertly cooperating with the Hungarian authority,</p> <p>(d) execution would violate the principle of ne bis in idem (dual criminality),</p> <p>(e) the procedural act indicated in the EIO is not known in Hungarian law or the conditions of its execution are not met in Hungarian law,</p> <p>(f) the act constituting the basis of the EIO has been finally disposed of in Hungary or in another Member State, or a resolution has been passed on the merits of a case that precludes – based on the law of the Member State issuing the resolution – the initiation of another criminal proceeding for the same act,</p> <p>(g) the person concerned by the procedural act has exemption based on immunity or international law in Hungary, and his/her immunity or right to exemption has not been suspended by a competent party,</p> <p>(h) the EIO has not been filed properly or not in the Hungarian, English, German or French language,</p> <p>(i) the EIO is incomplete or inaccurate to the extent that makes its execution impossible, and the time limit set for completing or correcting it has expired without effect, or the EIO cannot be executed even after completion or correction.</p> <p>Art 49 (4), (7) of EUJCA</p> <p>(4) It may be set as a condition precedent to transferring evidence that the Member State authority should return the evidence to Hungary unaltered compared to its state at transfer date when it is no longer needed in the Member State.</p> <p>(7) Where the transfer of evidence is postponed, the court or the prosecution office may transfer the evidence also temporarily, for a definite period, to the Member State authority, on condition that the Member State authority shall return the evidence on the date agreed upon jointly.</p> <p>Art 52 (2) of EUJCA</p> <p>(2) Where the execution of the EIO involves significant costs, the court or the prosecution office shall inform the Member State authority of the amount of anticipated costs and it may set as a condition of execution for the Member State authority to reimburse or advance the costs in part or in full. Consultation shall be initiated with the Member State authority on the reimbursement, advancement of the costs associated with execution or the modification of the EIO.</p> <p>b) non-EIO countries</p> <p>Art 66/D (1)-(2) of EUJCA</p> <p>(1) Following receipt of a request for procedural assistance, the Hungarian judicial authority examines whether the conditions of acting upon the request exist under Hungarian law.</p>
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	<p>(2) Where, based on the content of the request for procedural assistance, execution is only possible in part or not at all, the Hungarian judicial authority shall immediately inform the judicial authority of the Member State of this circumstance, and may at the same time indicate the data or documents that need to be known before execution. The Hungarian judicial authority may set a deadline for transferring the data and documents necessary for the fulfilment of the request.</p> <p>Art 66/F (1), (2) of EUJCA</p> <p>(1) When procedural acts indicated in a request for procedural assistance are executed, the provisions of Hungarian law shall apply, except in cases described in paragraph (2)...</p> <p>(2) In the course of executing a procedural act, the Hungarian judicial authority shall proceed according to the rules and by using the technical method requested and indicated expressly by the judicial authority of the Member State, unless doing so is incompatible with the basic principles of the Hungarian legal system. Where the Hungarian judicial authority is prevented from applying the rules and technical methods indicated by the judicial authority of the Member State, it shall immediately inform the judicial authority of the Member State thereof and indicate the conditions of fulfilling the request.</p> <p>Art 66/I (3) of EUJCA</p> <p>(3) It may be set as a condition of the transfer of evidence that the judicial authority of the Member State should return the evidence to Hungary unaltered compared to its state at transfer date when it is no longer needed in the Member State.</p> <p>Art 66/L (2) of EUJCA</p> <p>(2) Where the execution of a request for procedural assistance involves significant costs, the Hungarian judicial authority shall inform the judicial authority of the Member State of the anticipated amount of the costs and may set as a precondition of the execution of the request that the judicial authority of the Member State should advance or reimburse the costs in part or in full. The Hungarian authority shall initiate consultation about the advancement or reimbursement of costs related to the execution of the request or about the modification of the request for procedural assistance.</p>
i) Competent authority to request the measure abroad	<p>a) EIO countries</p> <p>Art 53 (2) of EUJCA</p> <p>(2) EIO may be issued ex officio or on the initiative of the defendant or the defence counsel by the court or prosecution office before which/whom the criminal proceedings are pending.</p> <p>b) non-EIO countries</p> <p>Art 67 (1) of EUJCA</p> <p>(1) After the institution of criminal proceedings, the Hungarian judicial authority where the criminal proceedings are in progress is entitled to file a request for procedural assistance directly in the course of cooperation in criminal matters, unless otherwise</p>

	provided by the EUJCA; the Member State authority and the Hungarian judicial authority shall maintain the contact with each other directly in the course of the execution of the request for legal assistance.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	<p>both EIO and non-EIO countries</p> <p>The evidence has to be obtained in accordance with the provisions of the EUJCA and the CCP.</p> <p>At least written minutes or a memorandum of the procedural act has to be taken according to Chapter LVI of the CCP.</p> <p>Art 167 of CCP has to be applied as the general rules of the assessment of pieces of evidence.</p> <p>(1) Any means of evidence or evidentiary act specified in this Act may be used or applied freely in the criminal proceeding. This Act may also order the use of certain means of evidence.</p> <p>(2) Any means of physical evidence produced or acquired by an authority before, or at the time of, instituting the criminal proceeding in the course of carrying out its statutory tasks may be used in the criminal proceeding.</p> <p>(3) The probative value of individual means of evidence shall not be determined in advance by an Act.</p> <p>(4) The court, the prosecution service, and the investigating authority shall assess pieces of evidence freely both individually and in their totality, and it shall determine the outcome of taking evidence according to its resulting conviction.</p> <p>(5) A fact originating from a means of evidence may not be taken into account as evidence if the court, the prosecution service, the investigating authority, or another authority referred to in paragraph (2) acquired the given means of evidence by way of a criminal offence, a material violation of the procedural rights of a person participating in the criminal proceeding, or in any other prohibited manner.</p>
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>The defining factor is not the recording itself but the subject of the recording.</p> <p>When the subjects of the surveillance and the recording are events taking place <u>inside</u> a home, other room, fenced area, or vehicle – except for public areas, premises open to the public, and means of public transport – a court order (permission of a judge) is needed to conduct the operation. This is called “secret surveillance of a locality” [Art 231 c) and 232 (3) of CCP] and has much stricter rules than “covert surveillance” [Art. 215 (5) of CCP] with which the authorities can only observe/record events taking place outside a home, other room, fenced area, or vehicle.</p> <p>Art 232 (3) of CCP</p> <p>(3) In the course of secret surveillance of a locality, the organ authorised to use covert means may, with permission from a judge, secretly surveil and record events taking place at a home, other room, fenced area, or vehicle, except for public areas, premises open to the public, and means of public transport. For that purpose,</p>

	any necessary technical means may be placed at the place of operation.
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Since a beeper is a device that records location data only, it is possible as covert surveillance</p> <p>a) EIO-countries</p> <p>Please see Art 46 (1)-(3), 53 (1) of EUJCA and Art 215 (5) of CCP as it was mentioned under FB A.70 a).</p> <p>b) non-EIO countries</p> <p>Please see Art 66/A (1)-(2), Art 67-67/A, 67/C of EUJCA and Art 215 (5) of CCP as it was mentioned under FB A.70 a).</p>
b) International legal framework applicable for this measure in your Member State	<p>a) EIO-countries</p> <ul style="list-style-type: none"> - Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters <p>b) non-EIO countries</p> <ul style="list-style-type: none"> - European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters - Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union - 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

c) Competent authority to receive the request/execute the measure	<p>a) EIO countries</p> <p>Please see Art 37 (1)-(5), (7)-(8), Art 38 (5), 46 (2a) of EUJCA as it was mentioned under FB A.70 c).</p> <p>b) non-EIO countries</p> <p>Art 66/A-66/B of EUJCA as it was mentioned under FB A.70 c).</p>
d) Accepted languages	<p>a) EIO-countries</p> <p>Please see Art 38 (1) cf EUJCA as it was mentioned under FB A.70 d).</p> <p>b) non-EIO countries</p> <p>According to the Reservation made by Hungary concerning Article 16 of European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters, Hungary accepts the request in Hungarian and in official languages of the Council of Europe (English and French).</p>
e) Execution deadline	<p>a) EIO countries</p> <p>Please see Art 46 (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p> <p>b) non-EIO countries</p> <p>Please see Art 66/F (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p>
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	<p>both EIO and non-EIO countries</p> <p>Please see Art 215 (5) of CCP as it was mentioned under FB A.70 g).</p>
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>a) EIO countries</p> <p>Please see Art 39 (1), 40 (1), 49 (4), (7), 52 (2) of EUJCA as it was mentioned under FB A.70 h).</p> <p>b) non-EIO countries:</p> <p>Please see Art 66/D (1)-(2), 66/F (1), (2), 66/I (3), 66/L (2) of EUJCA as it was mentioned under FB A.70 h).</p>
i) Competent authority to request the measure abroad	<p>a) EIO countries</p> <p>Please see Art 53 (2) of EUJCA as it was mentioned under FB A.70 i).</p>

	<p>b) non-EIO countries</p> <p>Please see Art 67 (1) of EUJCA as it was mentioned under FB A.70 i).</p>
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>both EIO and non-EIO countries</p> <p>The evidence has to be obtained in accordance with the provisions of the EUJCA and the CCP.</p> <p>At least written minutes or a memorandum of the procedural act has to be taken according to Chapter LVI of the CCP.</p> <p>Please see Art 167 of CCP as it was mentioned under FB A.70 j).</p>
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>both EIO and non-EIO countries</p> <p>The defining factor is not the recording or the placement of the recording device itself, but the place of the recorded events.</p> <p>When the subjects of the surveillance and the recording are events taking place inside a home, other room, fenced area, or vehicle – except for public areas, premises open to the public, and means of public transport – a court order is needed to conduct the operation. This is called “secret surveillance of a locality” [Art 231 c) of CCP] and has much stricter rules than “covert surveillance” [Art. 215 (5) of CCP] with which the authorities can only observe/record events taking place outside a home, other room, fenced area, or vehicle. The device can be placed on a person physically, however the place of the recorded events will determine the appropriate covert means.</p> <p>Please see Art 232 (3) of CCP as it was mentioned under FB A.70 k) and Art 46 (3) of EUJCA as it was mentioned under FB A.70 a).</p>
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner?	

- Any other?	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	<p>If the device records location data only, it is possible as covert surveillance.</p> <p>a) EIO-countries</p> <p>Please see Art 46 (1)-(3), 53 (1) of EUJCA and Art 215 (5) of CCP as it was mentioned under FB A.70 a).</p> <p>b) non-EIO countries</p> <p>Please see Art 66/A (1)-(2), Art 67-67/A, 67/C of EUJCA and Art 215 (5) of CCP as it was mentioned under FB A.70 a).</p> <p>If the device records audio and/or video as well, there are two types of covert means available.</p> <p>The defining factor is not the recording or the placement of the recording device itself, but the place of the recorded events.</p> <p>When the subjects of the surveillance and the recording are events taking place inside a home, other room, fenced area, or vehicle – except for public areas, premises open to the public, and means of public transport – a court order is needed to conduct the operation. This is called "secret surveillance of a locality" [Art 231 c) and 232 (3) of CCP] and has much stricter rules than "covert surveillance" [Art. 215 (5) of CCP] with which the authorities can only observe/record events taking place outside a home, other room, fenced area, or vehicle.</p> <p>The device can be placed on a person physically, however the place of the recorded events will determine the appropriate covert means.</p>
b) Legal Framework	<p>a) EIO-countries</p> <ul style="list-style-type: none"> - Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters <p>b) non-EIO countries</p> <ul style="list-style-type: none"> - European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters - Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union - 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
c) Competent Authority	a) EIO countries

	<p>Please see Art 37 (1)-(5), (7)-(8), Art 38 (5), 46 (2a) of EUJCA as it was mentioned under FB A.70 c).</p> <p>b) non-EIO countries</p> <p>Art 66/A-66/B of EUJCA as it was mentioned under FB A.70 c).</p>
d) Accepted Languages	<p>a) EIO-countries</p> <p>Please see Art 38 (1) of EUJCA as it was mentioned under FB A.70 d).</p> <p>b) non-EIO countries</p> <p>According to the Reservation made by Hungary concerning Article 16 of European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters, Hungary accepts the request in Hungarian and in official languages of the Council of Europe (English and French).</p>
e) Execution Deadline:	<p>a) EIO countries</p> <p>Please see Art 46 (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p> <p>b) non-EIO countries</p> <p>Please see Art 66/F (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p>
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	<p>both EIO and non-EIO countries</p> <p>Art. 232 (3) of CCP</p> <p>(3) In the course of secret surveillance of a locality, the organ authorised to use covert means may, with permission from a judge, secretly surveil and record events taking place at a home, other room, fenced area, or vehicle, except for public areas, premises open to the public, and means of public transport. For that purpose, any necessary technical means may be placed at the place of operation.</p>
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>a) EIO countries</p> <p>Please see Art 39 (1), 40 (1), 49 (4), (7), 52 (2) of EUJCA as it was mentioned under FB A.70 h).</p> <p>b) non-EIO countries:</p> <p>Please see Art 66/D (1)-(2), 66/F (1), (2), 66/I (3), 66/L (2) of EUJCA as it was mentioned under FB A.70 h).</p>

i) Competent authority to request the measure abroad	<p>a) EIO countries</p> <p>Please see Art 53 (2) of EUJCA as it was mentioned under FB A.70 i).</p> <p>b) non-EIO countries</p> <p>Please see Art 67 (1) of EUJCA as it was mentioned under FB A.70 i).</p>
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>both EIO and non-EIO countries</p> <p>The evidence has to be obtained in accordance with the provisions of the EUJCA and the CCP.</p> <p>Please see Art 167 of CCP as it was mentioned under FB A.70 j).</p> <p>Art. 252-254 of the CCP is applicable.</p> <p>252 (1) With the exceptions specified in paragraphs (2) and (3), the result of using a covert means subject to permission of a judge may be used to prove a criminal offence, because of which, and against the person concerned, as regards whom the court permitted the use of the covert means.</p> <p>(2) As regards whom a court permitted the use of covert means subject to permission of a judge, the result of such use may also be used to prove a criminal offence not specified in the permission, provided that the conditions for using such means, as specified in this Act, are met with regard to the latter criminal offence as well.</p> <p>(3) Where the court permitted the use of a covert means subject to permission of a judge to prove a criminal offence, the result of such use may be used against all perpetrators.</p> <p>(4) In a situation described in paragraph (2) or (3), the result of using a covert means may be used where the organ authorised to use covert means orders or initiates launching a preparatory proceeding or investigation, or using such a result in the pending criminal proceeding, regarding the person or criminal offence not specified in the permission within thirty days after finishing the use of a covert means subject to permission of a judge. The organ authorised to use covert means shall, through the prosecution service, notify the court that granted permission to use the covert means about doing so.</p> <p>(5) If the organ authorised to use covert means does not use the covert means itself, the time limit specified in paragraph (4) shall be calculated from the day when every data-storage medium document or an extract thereof containing the results of using the covert means arrives at the organ authorised to use covert means after the use of covert means has been terminated.</p> <p>253 (1) Concerning a criminal offence not specified in the permission committed by a person not specified in the permission, the result of using a covert means subject to permission of a judge may only be used to prove a criminal offence involving the intentional killing of a person; kidnapping; a criminal offence against the State under Chapter XXIV of the Criminal Code that is</p>

	<p>punishable by five or more years of imprisonment; a terrorist act; terrorism financing; or causing public danger intentionally, provided that</p> <p>a) the other conditions of using such means as specified in this Act are met,</p> <p>b) the organ authorised to use covert means orders or initiates a preparatory proceeding or investigation to be launched regarding a criminal offence not specified in the permission committed by a person not specified in the permission, or orders or initiates using such data in a pending criminal proceeding, within eight days after acquiring the data to be used in a criminal proceeding, and</p> <p>c) the court permits, under paragraph (4), the result of using covert means to be used concerning the criminal offence not specified in the permission committed by the person not specified in the permission.</p> <p>(2) The organ authorised to use covert means shall initiate that the use of the result of using covert means be permitted by the prosecution service within three working days after a preparatory proceeding or investigation is instituted under paragraph (1) b) or after using such a result in a pending criminal proceeding. The prosecution service shall file a motion with the court for permission to use the result of using covert means within seventy-two hours after such initiative.</p> <p>(3) The court shall decide within seventy-two hours after the filing of the motion.</p> <p>(4) The court shall permit the result of using covert means to be used concerning a criminal offence not specified in the permission that was committed by a person not specified in the permission if</p> <p>a) the use of the covert means, and the result of such use, meets the conditions specified in paragraph (1), and</p> <p>b) the proceeding of the organ authorised to use covert means and of the prosecution service complies with the provisions laid down in paragraph (2).</p> <p>(5) If the use of a covert means subject to permission of a judge needs to be continued in the course of a preparatory proceeding or investigation ordered under paragraph (1) b) or a criminal proceeding which was already pending due to a criminal offence specified in paragraph (1), permission to use a covert means subject to permission of a judge regarding a criminal offence not specified in the previous permission of a judge that was committed by a person not specified in that permission shall be moved for and granted under Chapter XXXVIII. If the court permits, in accordance with paragraph (4), the result of using covert means to be used concerning the criminal offence not specified in the permission committed by the person not specified in the permission, the period specified in section 239 (2) shall be calculated from the date and time of acquiring, under paragraph (1), the data to be used.</p> <p>(6) If the organ authorised to use covert means does not use the covert means itself, the time limit specified in paragraph (1) b) shall be calculated from the day when the data-storage medium or document containing the results of using the covert means, which are to be used in accordance with paragraph (1), or an extract thereof, arrives at the organ authorised to use covert means.</p>
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	<p>254 (1) The result of using a covert means subject to permission of a judge may not be used as evidence if</p> <p>a) the person concerned is a defence counsel against whom a covert means subject to permission of a judge could not have been used under section 357 or</p> <p>b) the person concerned is a relative against whom a covert means subject to permission of a judge could not have been used under sections 343 or 357.</p> <p>(2) The result of using a covert means subject to permission of a judge may not be used as evidence for any data concerning which the person specified in the permission may not be interrogated as a witness under section 170 (1) b) or d), unless, in the case of the impediment to testifying as a witness specified in section 170 (1) d), the person concerned was discharged from his obligation of confidentiality.</p> <p>(3) The result of using a covert means subject to permission of a judge may not be used as evidence for data concerning which the person specified in the permission may refuse to give witness testimony under section 173 or 174, unless</p> <p>a) the person concerned was interrogated as a witness, and he gave witness testimony regarding the data subject to the obligation of confidentiality,</p> <p>b) for section 173, the person concerned was discharged by the authorised person or entity, or the organ requested to provide data is obliged to transfer the data covered by its obligation of confidentiality, or</p> <p>c) the court ordered a media content provider, or a person who is in an employment relationship or another employment-related relationship with a media content provider, to reveal the identity of a person who provided him with information in relation to his media content provision activities.</p> <p>(4) A restriction provided for under paragraph (2) or (3) shall not prevent the result of using a covert means from being used as evidence for a criminal offence committed by the person specified in the permission.</p>
<p>k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.</p>	<p>both EIO and non-EIO countries</p> <p>The defining factor is not the recording itself but the subject of the recording.</p> <p>When the subjects of the surveillance and the recording are events taking place inside a home, other room, fenced area, or vehicle – except for public areas, premises open to the public, and means of public transport – a court order is needed to conduct the operation. This is called “secret surveillance of a locality” [Art 231 c) of CCP] and has much stricter rules than “covert surveillance” [Art. 215 (5) of CCP] with which the authorities can only observe/record events taking place outside a home, other room, fenced area, or vehicle.</p> <p>Please see Art 232 (3) of CCP as it was mentioned under FB A.70 k) and Art 46 (3) of EUJCA as it was mentioned under FB A.70 a).</p>

	<p>A beeper (e.g. a device incapable of recording audio or video) can be placed on a person, but a device able to record audio and/or video can only be placed at the place of the operation.</p> <p>A person cannot be the place of operation, so the device cannot be placed on them, only at a home, other room, fenced area, or vehicle.</p>
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Controlled delivery (FB A.73)	
<p>a) Is the measure possible in your member state under international judicial cooperation?</p>	<p>Yes, it is.</p> <p>a) EIO-countries</p> <p>Art 64/B-D of EUJCA</p> <p>64/B (1) Competence for the execution of an EIO issued for controlled delivery through the territory of Hungary lies with the county chief prosecution office or the Chief Prosecution Office of the Capital, Budapest.</p> <p>(2) Controlled delivery may be carried out on the basis of an ad hoc agreement concluded with the Member State authority. The ad hoc agreement shall be drafted by the police or a body of the National Tax and Customs Administration designated by legal regulation to execute controlled deliveries.</p> <p>(3) The ad hoc agreement shall contain provisions to cover:</p> <ul style="list-style-type: none"> (a) the content of the delivery, its expected route and expected duration, the mode of delivery, data suitable for identifying the transport vehicle, (b) the person in charge of controlled delivery, (c) the body participating in controlled delivery, (d) the mode of communication between participants, (e) the mode of escorting, (f) the number of persons participating in the escort, (g) the circumstances of the handing-over and receiving the cargo,

	<p>(h) the measures applicable in case of arrest, (i) the measures applicable in case of incident.</p> <p>(4) If immediate action is required – where concluding the ad hoc agreement or its approval by the prosecution office would jeopardise or frustrate the effective execution of controlled delivery – the leader of the police or of the body of the National Tax and Customs Administration designated by law to carry out controlled deliveries shall also be entitled to authorise controlled delivery for twenty-four hours. In such a case, the prosecution office shall be informed of the temporary authorisation of controlled delivery simultaneously with it. Once in possession of the information, the prosecution office shall immediately decide whether to authorise the controlled delivery. Where the prosecution office does not authorise the controlled delivery, the result of controlled delivery carried out on the basis of the temporary authorisation may not be used as evidence.</p> <p>(5) Controlled deliveries carried out in the territory of Hungary, including delivery management and control, shall be governed pursuant to the laws and regulations of Hungary. The body participating in controlled delivery shall cooperate with the Member State authority and other participating bodies. Requests of a body initiating or participating in controlled delivery to carry out controlled delivery may be honoured if it does not run contrary to the basic principles of the Hungarian legal system.</p> <p>(6) A member of the Member State authority holding the authorisation of the prosecution office may also take part in escorting controlled deliveries. An undercover investigator may take part in escorting controlled deliveries subject to the rules pertaining to using an undercover investigator.</p> <p>64/C (1) The prosecution office may issue an EIO for carrying out controlled delivery through the territory of one or several Member States.</p> <p>(2) When controlled delivery affects several Member States, the EIO shall be served on every Member State concerned. The Member State authority shall be notified of all other Member States participating in the controlled delivery.</p> <p>(3) Controlled delivery may be carried out on the basis of an ad hoc agreement concluded with the Member State authority. The ad hoc agreement shall be drafted by the police or a body of the National Tax and Customs Administration designated by legal regulation to execute controlled deliveries.</p> <p>(4) If immediate action is required – where concluding the ad hoc agreement or its approval by the prosecution office would jeopardise or frustrate the effective execution of controlled delivery – the leader of the police or the body of the National Tax and Customs Administration designated by legal regulation to carry out controlled deliveries shall also be entitled to initiate controlled delivery for twenty-four hours. In such a case, the prosecution office shall be informed of the temporary initiation of controlled delivery simultaneously with it. Once in possession of the information, the prosecution office shall immediately decide whether to authorise the initiation of controlled delivery. Where the prosecution office does not initiate controlled delivery, the result of controlled delivery</p>
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	<p>carried out on the basis of the temporary initiation may not be used as evidence.</p> <p>(5) The prosecution office shall indicate in the EIO the underlying reasons why it is reasonable to assume that any other method for obtaining the evidence to be gathered by controlled delivery would be hopeless or would incur disproportionate difficulties.</p> <p>(6) The content of the ad hoc agreement shall be governed by the provisions of Article 64/B (3), the participation of a member of the Hungarian authority or an undercover investigator shall be governed by the provisions of Article 64/B (6) respectively.</p> <p>64/D Where controlled delivery is carried out or initiated, the prosecution office shall inform the Hungarian national member of Eurojust of controlled deliveries affecting at least three states, including at least two Member States, by providing the following data:</p> <ul style="list-style-type: none"> (a) the Member States and authorities with jurisdiction concerned, (b) particulars to identify any persons, groups or organisations subject to criminal proceedings, (c) the type of the delivery, (d) the type of the criminal offence in connection with which controlled delivery is carried out. <p>Please see Art 215 (5) of CCP as it was mentioned under FB A.70 a).</p> <p>b) non-EIO countries</p> <p>Art 69-69/B of EUJCA</p> <p>69 (1) The county chief prosecution office or the Budapest-Capital Chief Prosecution office shall be competent to execute a request for procedural legal assistance for controlled delivery through the territory of Hungary.</p> <p>(2) Controlled delivery may be performed on the basis of an ad hoc agreement with the Member State. This ad hoc agreement shall be prepared by a body within the Police or the National Tax and Customs Administration appointed by the law for the performance of controlled delivery.</p> <p>(3) The ad hoc agreement shall contain provisions concerning the following:</p> <ul style="list-style-type: none"> a) the content of the delivery, its expected itinerary and expected duration, the mode of transport and the identification data of the means of transport, b) the person in charge of controlled delivery, c) the body participating in controlled delivery, d) the mode of communication between participants, e) the mode of escorting, f) the number of persons participating in the escort, g) the circumstances of the handing over and taking over of the delivery, h) the measures applicable in the case of apprehension, i) the measures applicable in the case of an unexpected incident. <p>(4) In cases where delay is inadmissible, if the conclusion of the ad hoc agreement or its approval by the prosecution office would</p>
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	<p>jeopardise or prevent the successful performance of a controlled delivery, the leader of the body within the Police or the National Tax and Customs Administration appointed by the law for the performance of controlled delivery, which is, in view of the criminal offence underlying the request for legal assistance in procedural matters, competent, shall also be eligible to authorise the performance of the controlled delivery for a twenty-four hour period. In this case, upon the authorisation, the prosecution office shall be informed of the provisional authorisation of the controlled delivery. After this information, the prosecution office shall decide on the authorisation of the controlled delivery without delay. If the prosecution office does not authorise the controlled delivery, the outcome of the controlled delivery under the provisional authorisation may not be used as evidence.</p> <p>(5) In the course of the performance of the controlled delivery through the territory of Hungary, including its management and control, the Hungarian law shall apply. The body participating in controlled delivery shall cooperate with the Member State authority and any other participating bodies. Requests of a body initiating or participating in controlled delivery to carry out controlled delivery may be granted if it is not contrary to the principles of the Hungarian legal system.</p> <p>(6) If authorised by the prosecution office, a member of the Member State authority may also take part in escorting a controlled delivery. An undercover investigator may take part in escorting a controlled delivery in accordance with the rules applicable to the use of undercover investigators.</p> <p>69/A (1) The prosecution office may file a request for procedural legal assistance with the view to performing controlled delivery through the territory of one or more Member States.</p> <p>(2) Controlled delivery may be performed on the basis of an ad hoc agreement with the Member State. This ad hoc agreement shall be prepared by a body within the Police or the National Tax and Customs Administration appointed by the law for the performance of controlled delivery.</p> <p>(3) In cases where delay is inadmissible, if the conclusion of the ad hoc agreement would jeopardise or prevent the successful performance of the controlled delivery, the leader of the body within the Police or the National Tax and Customs Administration appointed by the law for the performance of controlled delivery shall also be eligible to initiate the controlled delivery for a twenty-four hour period. In this case, upon the initiation, the prosecution office shall be informed of the provisional initiation of the controlled delivery. After this information, the prosecution office shall decide on the initiation of the controlled delivery without delay. If the prosecution office does not initiate the controlled delivery, the outcome of the controlled delivery under the provisional initiation may not be used as evidence.</p> <p>(4) If a controlled delivery affects several Member States the request for procedural legal assistance shall be sent to all Member States. The Member State shall be informed of the other Member States participating in the controlled delivery.</p> <p>(5) The provisions of article 69 (3) shall apply to the content of the ad hoc agreement, and the provisions of article 69 (6) shall apply</p>
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	<p>to the participation of a member of the investigating authority or an undercover investigator.</p> <p>69/B Where controlled delivery is carried out or initiated, the prosecution office shall inform the Hungarian national member of Eurojust of a controlled delivery affecting at least three states, including at least two Member States, by providing the following data:</p> <p>a) the Member States concerned and the competent authorities concerned,</p> <p>b) identification data of persons, groups or organisations subject to criminal proceedings,</p> <p>c) type of delivery,</p> <p>d) type of the criminal offence in connection with which controlled delivery is carried out.</p> <p>Please see Art 215 (5) of CCP as it was mentioned under FB A.70 a).</p>
b) International legal framework applicable for this measure in your Member State	<p>a) EIO-countries</p> <ul style="list-style-type: none"> - Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters <p>b) non-EIO countries</p> <ul style="list-style-type: none"> - European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters - Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union - 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
c) Competent authority to receive the request / execute the measure	<p>a) EIO-countries</p> <p>Art 64/B (1) of EUJCA</p> <p>(1) Competence for the execution of an EIO issued for controlled delivery through the territory of Hungary lies with the county chief prosecution office or the Chief Prosecution Office of the Capital, Budapest.</p> <p>b) non-EIO countries</p> <p>Art 69 of EUJCA</p> <p>(1) The county chief prosecution office or the Chief Prosecution Office of the Capitol, Budapest shall be competent to execute a request for procedural legal assistance for controlled delivery through the territory of Hungary.</p>
d) Accepted languages	a) EIO-countries

	<p>Please see Art 38 (1) of EUJCA as it was mentioned under FB A.70 d).</p> <p>b) non-EIO countries</p> <p>According to the Reservation made by Hungary concerning Article 16 of European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters, Hungary accepts the request in Hungarian and in official languages of the Council of Europe (English and French).</p>
e) Execution deadline	<p>a) EIO countries</p> <p>Please see Art 46 (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p> <p>b) non-EIO countries</p> <p>Please see Art 66/F (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p>
f) Concise legal practical information	
g) Possible object of controlled delivery	<p>both EIO and non-EIO countries</p> <p>Controlled delivery can be interpreted as a form of covert surveillance under Art 215 (5) of CCP, so the object of controlled delivery is the same as that of covert surveillance.</p> <p>Please see Art 215 (5) of CCP as it was mentioned under FB A.70 g).</p>
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>a) EIO countries</p> <p>Please see Art 39 (1), 40 (1) of EUJCA as it was mentioned under FB A.70 h).</p> <p>Art 64/B (2)-(3) of EUJCA</p> <p>(2) Controlled delivery may be carried out on the basis of an ad hoc agreement concluded with the Member State authority. The ad hoc agreement shall be drafted by the police or a body of the National Tax and Customs Administration designated by legal regulation to execute controlled deliveries.</p> <p>(3) The ad hoc agreement shall contain provisions to cover:</p> <ul style="list-style-type: none"> (a) the content of the delivery, its expected route and expected duration, the mode of delivery, data suitable for identifying the transport vehicle, (b) the person in charge of controlled delivery, (c) the body participating in controlled delivery, (d) the mode of communication between participants, (e) the mode of escorting, (f) the number of persons participating in the escort, (g) the circumstances of the handing-over and receiving the cargo, (h) the measures applicable in case of arrest, (i) the measures applicable in case of incident.

	<p>Art 64/B (5)-(6) of EUJCA</p> <p>(5) Controlled deliveries carried out in the territory of Hungary, including delivery management and control, shall be governed pursuant to the laws and regulations of Hungary. The body participating in controlled delivery shall cooperate with the Member State authority and other participating bodies. Requests of a body initiating or participating in controlled delivery to carry out controlled delivery may be honoured if it does not run contrary to the basic principles of the Hungarian legal system.</p> <p>(6) A member of the Member State authority holding the authorisation of the prosecution office may also take part in escorting controlled deliveries. An undercover investigator may take part in escorting controlled deliveries subject to the rules pertaining to using an undercover investigator.</p> <p>b) non-EIO countries:</p> <p>Please see Art 66/D (1)-(2), 66/F (1), (2) of EUJCA as it was mentioned under FB A.70 h).</p> <p>Art 69 (2)-(3) of EUJCA</p> <p>(2) Controlled delivery may be performed on the basis of an ad hoc agreement with the Member State. This ad hoc agreement shall be prepared by a body within the Police or the National Tax and Customs Administration appointed by the law for the performance of controlled delivery.</p> <p>(3) The ad hoc agreement shall contain provisions concerning the following:</p> <ul style="list-style-type: none"> a) the content of the delivery, its expected itinerary and expected duration, the mode of transport and the identification data of the means of transport, b) the person in charge of controlled delivery, c) the body participating in controlled delivery, d) the mode of communication between participants, e) the mode of escorting, f) the number of persons participating in the escort, g) the circumstances of the handing over and taking over of the delivery, h) the measures applicable in the case of apprehension, i) the measures applicable in the case of an unexpected incident. <p>Art 69 (5)-(6) of EUJCA</p> <p>(5) In the course of the performance of the controlled delivery through the territory of Hungary, including its management and control, the Hungarian law shall apply. The body participating in controlled delivery shall cooperate with the Member State authority and any other participating bodies. Requests of a body initiating or participating in controlled delivery to carry out controlled delivery may be granted if it is not contrary to the principles of the Hungarian legal system.</p> <p>(6) If authorised by the prosecution office, a member of the Member State authority may also take part in escorting a controlled delivery. An undercover investigator may take part in escorting a controlled</p>
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	<p>delivery in accordance with the rules applicable to the use of undercover investigators.</p> <p>The previous regulation (Law LIV of 2002 §§ 17-19) was repealed on July 1, 2018. The new regulation is based on CLXXX of 2012. Act 64/B. §-the. Controlled delivery may be carried out on the basis of a case-by-case agreement concluded with the Member State authority. The case-by-case agreement is prepared by the police or the body of the National Tax and Customs Administration designated by law to carry out controlled transport. The case-by-case agreement must provide for: the content of the shipment, the expected route and the expected duration of the shipment, the method of shipment, data suitable for identifying the means of transport, the person in charge of the controlled shipment, the body involved in the controlled shipment, the method of keeping in touch with the participants, the method of escorting, the on the number of persons participating in the escort, the conditions of delivery and acceptance of the consignment, the measures to be applied in the event of capture, the measures to be applied in the event of an unexpected event.</p>
i) Competent authority to request the measure abroad	<p>a) EIO-countries</p> <p>Art 64/C (1) of EUJCA (1) The prosecution office may issue an EIO for carrying out controlled delivery through the territory of one or several Member States.</p> <p>b) non-EIO countries</p> <p>Art 69/A (1) of EUJCA (1) The prosecution office may file a request for procedural legal assistance with the view to performing controlled delivery through the territory of one or more Member States.</p>
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>both EIO and non-EIO-countries</p> <p>The evidence has to be obtained in accordance with the provisions of the EUJCA and the CCP.</p> <p>Please see Art 167 of CCP as it was mentioned under FB A.70 j).</p> <p>At least written minutes or a memorandum of the procedural act has to be taken according to Chapter LVI of the CCP.</p>
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	
l) Can you share any good practice, such as:	

<ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is.
b) International legal framework applicable for this measure in your Member State	<p>a) EIO-countries</p> <ul style="list-style-type: none"> - Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters <p>b) non-EIO countries</p> <ul style="list-style-type: none"> - European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters - Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union - 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
c) Competent authority to receive the request / execute the measure	<p>a) EIO-countries</p> <p>Art 65/A (1)-(3) of EUJCA</p> <p>(1) The prosecution office executes EIO issued to become aware of and to intercept communication forwarded by the electronic communications service or conducted through an IT system covertly without the knowledge of the person concerned according to the rules of the CCP applicable to the use of covert measures.</p> <p>(2) The county chief prosecution office or the Chief Prosecution Office of the Capital, Budapest has jurisdiction to execute EIO. Where it is impossible to identify the prosecution office competent for the execution of an EIO, the power to execute shall lie with the Chief Prosecution Office of the Capital, Budapest.</p> <p>(3) If the procedural act indicated in an EIO can be executed with the use of covert measures subject to judicial authorisation, an investigating judge has the power to decide on the prosecution office's motion to that effect pursuant to the rules of the CCP. If the investigating judge refuses the motion to order the use of covert</p>

	<p>measures, the prosecution office shall inform the Member State authority that the procedural act indicated in the EIO cannot be executed and may conduct consultation with the Member State authority in order to execute the EIO in another way.</p> <p>b) non-EIO countries</p> <p>Art 69/E (1)-(4) of EUJCA</p> <p>(1) The prosecution office executes requests for procedural assistance issued to inspect and record communication forwarded by electronic communications services or conducted through IT systems covertly without the knowledge of the person concerned according to the rules of the CCP applicable to use of covert measures.</p> <p>(2) The county chief prosecution office or Chief Prosecution Office of the Capital, Budapest has jurisdiction to execute such requests. Where no prosecution office with competence to execute a request for procedural assistance can be identified, the competence for execution shall lie with the Chief Prosecution Office of the Capital, Budapest.</p> <p>(3) The request for procedural assistance can be executed if the Member State authority holds a permit according to the own law of its state.</p> <p>(4) If procedural act indicated in the request for procedural assistance can be executed by using covert measures subject to judicial authorisation, an investigating judge acting upon the prosecution office's motion has the power to authorise the use of covert measures according to the rules of the CCP. If the investigating judge rejects the motion to order the use of covert measures, the prosecution office shall inform the Member State authority to that effect.</p>
d) Accepted languages	<p>a) EIO-countries</p> <p>Please see Art 38 (1) of EUJCA as it was mentioned under FB A.70 d).</p> <p>b) non-EIO countries</p> <p>According to the Reservation made by Hungary concerning Article 16 of European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters, Hungary accepts the request in Hungarian and in official languages of the Council of Europe (English and French).</p>
e) Execution deadline	<p>a) EIO countries</p> <p>Please see Art 46 (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p> <p>b) non-EIO countries</p> <p>Please see Art 66/F (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p>

f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>a) EIO-countries</p> <p>Art 65/A (3) of EUJCA (3) If the procedural act indicated in an EIO can be executed with the use of covert measures subject to judicial authorisation, an investigating judge has the power to decide on the prosecution office's motion to that effect pursuant to the rules of the CCP. If the investigating judge refuses the motion to order the use of covert measures, the prosecution office shall inform the Member State authority that the procedural act indicated in the EIO cannot be executed and may conduct consultation with the Member State authority in order to execute the EIO in another way.</p> <p>b) non-EIO countries</p> <p>Art 69/E (3) of EUJCA (3) The request for procedural assistance can be executed if the Member State authority holds a permit according to the own law of its state.</p> <p>Interception may only be carried out if obtaining evidence by other means reasonably appear to be unlikely to succeed if tried or would involve unreasonable difficulties, and there is probable reason to believe that evidence can be obtained by covert data gathering (Section 202 (6) of CPA). Under Section 201 (1) of CPA interception may be applied if the criminal proceedings are carried out for the suspicion of a criminal offence, or an attempt or a preparation thereof, which a) has been committed intentionally and punishable by five years' or more imprisonment; b) has been committed for profit or within the framework of a criminal organization that is punishable by up to three years imprisonment; c) is related to trafficking in human beings, child pornography, pandering, smuggling of human beings, accessory after the fact, breaching the duty that is punishable by up to three years imprisonment; d) is related to infringement of service secret. Interception can last only 90 days (the period can be prolonged in justified cases).</p> <p>CLXXX of 2012. Act 65/A. Pursuant to §, the public prosecutor's office issued a European investigation decision for the covert investigation and recording of communications carried out via the electronic communication service or information system without the knowledge of the person concerned. It is carried out according to the rules for the use of concealed devices. The county public prosecutor's office or the capital's public prosecutor's office have the authority to execute the European investigation decision. If the prosecutor's office with competence to execute the European investigation decision cannot be established, the Chief Prosecutor's Office of the Capital City has competence for the execution. If the procedural act indicated in the European investigation decision can be carried out using covert means subject to judicial permission, on the motion of the prosecution, the Be. according to its rules, the investigating judge decides. If the</p>

	<p>investigating judge rejects the motion to order the use of covert devices, the public prosecutor's office informs the Member State authority that the procedural act indicated in the European Investigation Order cannot be carried out, and may negotiate with the Member State authority in order to implement the European Investigation Order in another way.</p>
h) Competent authority to request the measure abroad	<p>a) EIO-countries</p> <p>Art 65/B (1)-(4) of EUJCA</p> <p>(1) To become aware of and to intercept communication forwarded by electronic communications services or conducted through an IT system covertly without the knowledge of the person concerned, the prosecution office may issue an EIO to be executed in the Member State.</p> <p>(2) If the procedural act mentioned in paragraph (1) can be carried out by several Member States, the EIO shall be transferred only to the Member State that can carry out most effectively the procedural act indicated therein, if possible, to the one that serves as the real place of habitual residence of the person concerned.</p> <p>(3) An EIO issued to use of covert measures subject to judicial authorisation as defined in paragraph (1) shall be subject to the CCP rules applicable to the authorisation of the use of covert measures subject to judicial authorisation.</p> <p>(4) The mandatory content of EIO is set out in Article 236 (2) of the CCP.</p> <p>b) non-EIO countries</p> <p>Art 69/F (1)-(3) of EUJCA</p> <p>(1) The request for procedural assistance to inspect and record communication forwarded by electronic communications service or conducted through IT systems, to be executed in the Member State, without informing the person concerned, covertly, shall be filed by the prosecution office.</p> <p>(2) The prosecution office may file the request for procedural assistance exclusively after obtaining the judicial authorisation according to the Hungarian legislation.</p> <p>(3) The request for procedural assistance shall contain also what is specified Article 236 (2) of CCP.</p>
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>The evidence has to be obtained in accordance with the provisions of the EUJCA and the CCP.</p> <p>Please see Art 167 of CCP as it was mentioned under FB A.70 j).</p> <p>Please see Art 252-254 of CCP as it was mentioned under FB A.55 j).</p>

<p>j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).</p>	<p>If the public prosecutor intends to use the result of interception as evidence in the criminal proceedings, his motion for receiving the court's permission for interception, the court's permission and the report on the execution of interception shall be attached to the files of the investigation.</p>
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	
<p>Interception of telecommunication without the technical assistance of another Member State (FB A.51)</p>	
<p>a) Is the measure possible in your member state under international judicial cooperation?</p>	<p>Yes, it is.</p>
<p>b) International legal framework applicable for this measure in your Member State</p>	<p>a) EIO-countries</p> <ul style="list-style-type: none"> - Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters <p>b) non-EIO countries</p> <ul style="list-style-type: none"> - European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters - Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union

	<ul style="list-style-type: none"> - 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 -
c) Competent authority to receive the request / execute the measure	<p>a) EIO-countries</p> <p>Art 65/C (1) of EUJCA (1) The Chief Prosecution Office of the Capital, Budapest has jurisdiction and competence to receive notification related to become aware of and to intercept communication forwarded by electronic communications services or conducted through IT systems by a person staying in the territory of Hungary, covertly without the knowledge of the person concerned issued by the Member State authority according to the form indicated in Annex No. 20 in Hungarian language or by using the translation of the form available in the English French or German language.</p> <p>b) non-EIO countries</p> <p>Art 69/G (1) of EUJCA (1) The Chief Prosecution Office of the Capital, Budapest has the jurisdiction and the competence to receive Member State information relating to becoming aware of and intercepting without Hungarian technical assistance communication by a person residing in the territory of Hungary forwarded by electronic communications services or conducted through IT systems covertly without the knowledge of the person concerned.</p>
d) Accepted languages	<p>a) EIO-countries</p> <p>Please see Art 65/C (1) of EUJCA as it was mentioned under point c).</p> <p>b) non-EIO countries</p> <p>According to the Reservation made by Hungary concerning Article 16 of European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters, Hungary accepts the request in Hungarian and in official languages of the Council of Europe (English and French).</p>
e) Execution deadline	<p>a) EIO countries</p> <p>Please see Art 46 (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p> <p>Art 65/C (3) of EUJCA (3) Where the conditions of the procedural act envisaged, conducted or terminated by the Member State authority set out in the CCP rules applicable to the use of covert measures are not met, the prosecution office shall inform the Member State authority no later than ninety-six hours after receipt of the notification indicated in paragraph (1).</p> <p>b) non-EIO countries</p>

	<p>Please see Art 66/F (4)-(5) of EUJCA as it was mentioned under FB A.70 e).</p> <p>Art 69/G (3) of EUJCA (3) Where the conditions of the procedural act envisaged, conducted or terminated by the Member State authority set out in the CCP rules applicable to use of covert measures are not met, the prosecution office shall inform the Member State authority no later than ninety-six hours after receipt of the notification referred to in paragraph (1).</p>
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>a) EIO-countries</p> <p>Art 65/C (2) of EUJCA (2) Following receipt of the notification, the Chief Prosecution Office of the Capital, Budapest shall immediately examine whether the conditions of the procedural act envisaged, conducted or terminated by the Member State authority set out in the CCP rules applicable to the use of covert measures are met.</p> <p>b) non-EIO-countries</p> <p>Art 69/G (2) of EUJCA (2) Following the receipt of information, the Chief Prosecution Office of the Capital, Budapest shall immediately examine whether the conditions of the procedural act envisaged, conducted or terminated by the Member State authority set out in the CCP rules applicable to use of covert measures are met.</p>
h) Competent authority to request the measure abroad	<p>a) EIO-countries</p> <p>Art 65/D (1) of EUJCA (1) If, in a criminal proceedings in progress in Hungary, the person subject to the use of covert measures upon judicial authorisation defined under Article 65/B (1) is not present in the territory of Hungary, but the participation of the Member State with competence over the real place of habitual residence of the person concerned is not necessary for becoming aware of and/or intercepting the forwarded communication, the prosecution office shall immediately notify the Member State authority with competence over the real place of habitual residence of the person concerned according to the form indicated in Annex No. 20 about the execution or envisaged execution of the use of covert measures, by using translation of the form available in an official language of the Member State or the language indicated by the Member State of the use of covert measures envisaged after becoming aware of the real place of habitual residence of the person concerned.</p> <p>b) non-EIO countries</p> <p>Art 69/H (1) of EUJCA</p>

	<p>(1) If, during criminal proceedings in progress in Hungary, the person subject to the use of covert measures upon judicial authorisation is not present in the territory of Hungary, but the participation of the Member State with competence over the real place of habitual residence of the person concerned is not necessary for becoming aware of and/or intercepting the forwarded communication, the prosecution office shall immediately inform the Member State authority with competence over the real place of habitual residence of the person concerned about the execution or envisaged execution of the use of covert measures after becoming aware of the real place of habitual residence of the person concerned.</p>
<p>i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state</p>	<p>a) EIO-countries</p> <p>Art 65/D (2) of EUJCA</p> <p>(2) If the Member State authority informs the prosecution office within ninety-six hours after the receipt of the notification that the use of covert measures may not be authorised under his national law, or the result of the already executed use of covert measures may not be used or may only be used under specific conditions, the prosecution office shall take the necessary measures based on the CCP.</p> <p>b) non-EIO countries</p> <p>Art 69/H S (2) of EUJCA</p> <p>(2) If the Member State authority informs the prosecution office in ninety-six hours after the receipt of the information – or in twelve days if the Member State has recourse to the option to extend the time limit according to Article 69/G (4) – that the use of covert measures may not be authorised under his national law, or the result of the already executed use of covert measures not be used or may only be used under specific conditions, the prosecution office shall take the necessary measures based on the CCP.</p>
<p>j) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other? 	<p>The Chief Prosecution Office of the Capital, Budapest is the specialized authority for this measure.</p>

General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	This concerns police cooperation, the Ministry of Justice is not competent in this respect.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No, we did not have such case.

4.14. Ireland

Cross-border observation (FB A.70)	
l) Is the measure possible in your member state under international judicial cooperation?	There is no current legal framework for cross border observation in this jurisdiction. ⁸ .
m) International legal framework applicable for this measure in your Member State	N/A
n) Competent authority to receive the request/execute the measure	There is no current legal framework for cross border observation in this jurisdiction.
o) Accepted languages	English
p) Execution deadline	N/A
q) Concise legal practical information	N/A
r) Possible subject of observation/surveillance (suspect only, or also other persons)	N/A - There is no current legal framework for cross border observation in this jurisdiction.
s) Conditions under which it is possible to order the measure based on a request of foreign authority	N/A
t) Competent authority to request the measure abroad	There is no current legal framework for cross border observation in this jurisdiction.
u) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	There is no current legal framework for cross border observation in this jurisdiction.
v) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	There is no current legal framework for cross border observation in this jurisdiction.
m) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?	N/A

⁸ Article 40 of the Schengen Convention provides that where law enforcement officers of a Schengen State are keeping a person under surveillance because he is suspected of an extraditable offence or because there is reason to think that he can assist in identifying or tracing such a person, they may expect assistance with the continued surveillance of that person in another Schengen State in the event that he crosses the border into that State. The officers must request such assistance in advance and provide reasons for making the request. The requested State must generally comply with the request, but may attach appropriate conditions allowed for in the Article.

<ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
l) Is the measure possible in your member state under international judicial cooperation?	No - There is no current legal framework for cross border tracking in this jurisdiction.
m) International legal framework applicable for this measure in your Member State	N/A
n) Competent authority to receive the request/execute the measure	N/A
o) Accepted languages	N/A
p) Execution deadline	
q) Concise legal practical information	N/A
r) Possible subject of observation/surveillance (suspect only, or also other persons)	No - There is no current legal framework for cross border tracking in this jurisdiction.
s) Conditions under which it is possible to order the measure based on a request of foreign authority	No - There is no current legal framework for cross border tracking in this jurisdiction.
t) Competent authority to request the measure abroad	No - There is no current legal framework for cross border tracking in this jurisdiction.
u) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No - There is no current legal framework for cross border tracking in this jurisdiction.
v) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	No - There is no current legal framework for cross border tracking in this jurisdiction.
m) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? 	N/A

<ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
m) Measure implementation	If an external State request assistance for surveillance in this jurisdiction, An Garda Síochána (Ireland's national police service) will consider each case on a case by case basis and subject to the provisions of the Criminal Justice (Surveillance) Act 2009
n) Legal Framework	Criminal Justice (Surveillance) Act 2009
o) Competent Authority	An Garda Síochána
p) Accepted Languages	English
q) Execution Deadline:	N/A
r) Concise legal practical information	N/A
s) Possible subject of observation/surveillance (suspect only, or also other persons)	An Garda Síochána will consider each case on a case by case basis and subject to the provisions of the Criminal Justice (Surveillance) Act 2009 and ECHR.
t) Conditions under which it is possible to order the measure based on a request of foreign authority	As above
u) Competent authority to request the measure abroad	An Garda Síochána
v) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Subject to relevant authorisation - Criminal Justice (Surveillance) Act 2009
w) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	As above - all governed by Criminal Justice (Surveillance) Act 2009
x) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? 	N/A

<ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Controlled delivery (FB A.73)	
m) Is the measure possible in your member state under international judicial cooperation?	Yes
n) International legal framework applicable for this measure in your Member State	The Criminal Justice (Mutual Assistance) Act 2008 may be used as supporting legislation to support co-operation between countries. (Consistent with Schengen Convention Article 20 of Schedule 11)
o) Competent authority to receive the request / execute the measure	An Garda Síochána
p) Accepted languages	English
q) Execution deadline	
r) Concise legal practical information	
s) Possible object of controlled delivery	Typically controlled drugs, firearms and other objects can be considered for subject of controlled delivery.
t) Conditions under which it is possible to order the measure based on a request of foreign authority	Controlled deliveries are not covered by specific legislation. It is standard customs/police technique and is operated under accepted guidelines.
u) Competent authority to request the measure abroad	An Garda Síochána
v) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Subject to normal rules of evidence - Prosecutions initiated in this jurisdiction on foot of evidence gathered through controlled delivery.
w) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	Yes
x) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? 	N/A

• Any other?	
Interception, recording and transcription of telecommunications (FB A.50)	
j) Is the measure possible in your member state under international judicial cooperation?	Yes
k) International legal framework applicable for this measure in your Member State	The measure is possible under Section 13 of the Criminal Justice (Mutual Assistance) Act 2008.
l) Competent authority to receive the request / execute the measure	Department of Justice / An Garda Síochána
m) Accepted languages	English and other capabilities are available on a case by case basis
n) Execution deadline	No deadline for execution. It is assessed on a case by case basis
o) Concise legal practical information	Intercepted product in Ireland is not evidenced but is for intelligence purposes only.
p) Conditions under which it is possible to order the measure based on a request of foreign authority	The conduct being investigated in the requesting state would, if it occurred in Ireland, constitute a serious offence under Irish interception legislation. In this regard, "serious offence" means an offence which satisfies both of the following conditions: (a) it is an offence for which a person aged 21 years or over, of full capacity and not previously convicted may be punished by imprisonment for a term of 5 years or more, and (b) it is an offence— (i) that involves loss of human life, serious personal injury or serious loss of or damage to property or a serious risk of any such loss, injury or damage, (ii) that results or is likely to result in substantial gain, or (iii) the facts and circumstances of which are such as to render it a specially serious case of its kind; and includes an act or omission done or made outside the State that would be a serious offence if done or made in the State.
q) Competent authority to request the measure abroad	Minister for Justice.
r) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Information from interceptions is not evidenced and any intention to evidence will have to be discussed on application with the Justice Ministry.
s) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns art.	There are privileges around lawyer / client conversations and if these take place they are sealed and not actioned. In the case of intercepted material for requesting states raw material collected is downloaded and transferred in full to the requesting state. Any obligations in this regard are transferred to the requesting state.

30(6)(a) of the EIO Directive).	
m) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states,)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	<p>The Department of Justice is the specialized body for receiving applications from all States.</p> <p>There are no specific measures for urgent cases. However, these can be actioned quickly in cases of urgency where there is a serious and immediate risk to life subject to the appropriate safeguards.</p>
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
k) Is the measure possible in your member state under international judicial cooperation?	No
l) International legal framework applicable for this measure in your Member State	N/A
m) Competent authority to receive the request / execute the measure	N/A
n) Accepted languages	N/A
o) Execution deadline	N/A
p) Concise legal practical information	N/A
q) Conditions under which it is possible to order the measure based on a request of foreign authority	N/A
r)	
s) Competent authority to request the measure abroad	N/A
t)	
u) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	N/A
v)	
w) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? 	N/A

<ul style="list-style-type: none"> - Have you had any re-world experience with application of this measure? - Any other? 	
General questions	
<p>c) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?</p>	<p>It is recognised within An Garda Síochána that the sharing of criminal intelligence with law enforcement agencies from other Member States is an essential part of law enforcement today. The National Criminal Intelligence Unit (NCIU), within Security & Intelligence, Garda National Crime and Security Intelligence Service, is responsible for assessing and disseminating all criminal intelligence within and external to An Garda Síochána. As part of that process, the NCIU engages with criminal intelligence units/sections from law enforcement agencies in Members States across the European Union and shares criminal intelligence with them.</p> <p>Where intelligence is shared by NCIU with any other Member State it is shared on the proviso that it can only be used as intelligence. Where the Member State wishes to use any part of that intelligence as evidence before a judicial authority, they then undergo a process of making an application by means of Mutual Legal Assistance legislation, which is then processed and considered prior to permission being granted to its use in judicial proceedings.</p>
<p>d) Did you as EJN contact point organize or participate in any regional cross-border meeting (the EJN one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?</p>	<p>An Garda Síochána are members of the European Surveillance Group and participate in cross border meetings and training.</p>

4.15. Italy

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is.
b) International legal framework applicable for this measure in your Member State	1) Convention Implementing the Schengen Agreement (CISA) of 19 June 1990 (Articles 40 and 41), ratified by Law 20 September 1993 n. 388 (Articles 4 and 5). 2) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001 (Article 17), ratified by Law 24 July 2019 n. 88.
c) Competent authority to receive the request/execute the measure	1) The Ministry of Interior (<i>Direzione Centrale della Polizia Criminale – Divisione INTERPOL-SIRENE</i>) is the Italian competent authority to receive the request for cross-border observation. The General Prosecutor Office (GPO) attached to the Court of Appeal in whose district the observation shall be continued is the Italian competent authority to authorize the cross-border observation. The authorization delivered by the competent GPO shall be transmitted by the Italian Ministry of Interior (<i>Direzione Centrale della Polizia Criminale – Divisione INTERPOL-SIRENE</i>). 2) The Ministry of Justice (<i>Direzione Generale degli Affari Internazionali e della Cooperazione Giudiziaria – Ufficio I</i>) is the Italian competent authority to receive the request for cross-border observation. The said observation shall be authorized by the Public Prosecutor Office (PPO) attached to the Court of first instance of the city where is established the Court of Appeal in whose district the observation itself shall be continued.
d) Accepted languages	1) Italian (also English and French, subject to reciprocity, pursuant to the provisions of Article 49 CISA and Article 16 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, where applicable). 2) Apart from Italian, also English and French, subject to reciprocity, pursuant to Article 16 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.
e) Execution deadline	1) As provided for in Articles 40 and 41 of CISA. 2) As provided for in Article 17 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001.
f) Concise legal practical information	None.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	1) Only the suspect, according to Articles 40 and 41 of CISA. 2) The suspect, as well as the person who it is strongly believed will lead to the identification or location of the suspect, according to Article 17 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	There must be an investigation in the Requesting Country on an extraditable criminal offence. Surveillance must be already carried out in the Requesting Country or at least it is going to be carried out. There must be a MLA request. In cases provided for in Article 40 par. 2 and Article 41 of CISA surveillance is possible only for the serious crimes listed in Article 40 par. 7 and Article 41 par. 4 sub-

	par. a), respectively. In cases provided for in Article 17 par. 2 of the above-mentioned Second Additional Protocol surveillance is possible only for the serious crimes listed in the following par. 6.
i) Competent authority to request the measure abroad	In outgoing cases the MLA request provided for in Article 40 par. 1 of CISA shall be made by the Italian Public Prosecutor Office (PPO) carrying out the investigations in respect of which the continuation of the observation abroad is needed. The channel of communication is the Italian Ministry of Interior (<i>Direzione Centrale della Polizia Criminale – Divisione INTERPOL-SIRENE</i>).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	No conditions other than those provided for in Articles 40 and 41 of CISA and in Article 17 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	Where the surveilled person is also audio/video recorded, the different legal provisions regarding interception of communications and telecommunication apply. Therefore, the Requesting Country is supposed to issue a rogatory letter (if it is a Third Country) or transmit the annex C of the Directive 2014/41/EU as provided for in its Article 31 (if it is a EU MS).
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	GPOs are generally organized in such a way to always have a prosecutor on duty for the timely examination of all requests for authorization of cross-border observation.
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	In lack of specific provisions, it could seem reasonable to apply the rules provided for cross-border observation (see FB A.70).
b) International legal framework applicable for	See above.

this measure in your Member State	
c) Competent authority to receive the request/execute the measure	See above.
d) Accepted languages	See above.
e) Execution deadline	See above.
f) Concise legal practical information	See above.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	See above.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	See above.
i) Competent authority to request the measure abroad	See above.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	See above.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	See above.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance	See above.

carried out in this manner? - Any other?	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Yes, it is, according to the general legal provisions mentioned below.
b) Legal Framework	1) Directive 2014/41/EU regarding the European Investigation Order in criminal matters, hereinafter EIO Directive (Articles 3 and 28), implemented by Legislative Decree of 21 June 2017 n. 108 (Articles 1 and 2 par. 1 sub-par. a). 2) Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the EU (Articles 1 and 3), implemented by Legislative Decree of 5 April 2017 n. 102 (Articles 1 and 8) (only with reference to EU MSs that are Parties to the said Convention and have not implemented the EIO Directive, that is with reference to Ireland). 3) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001 (Article 1), ratified by Law 24 July 2019 n. 88 (also with reference to EU MSs that do not participate or have not implemented EIO Directive, and are not Parties and/or have not ratified/implemented the Convention of 29 May 2000, that is with reference to Denmark).
c) Competent Authority	1), 2) and 3) The Public Prosecutor Office (PPO) attached to the Court of first instance of the city where is established the Court of Appeal in whose district the requested activity shall be carried out. When the order/request concerns activities to be carried out in more than one district, the PPO of the district in which the greatest number of activities must be carried out is the competent authority. In case of equal number of activities, the competent authority is the PPO of the district where the most important activity must be carried out.
d) Accepted Languages	1) Italian. 2) and 3) Apart from Italian, also English and French, subject to reciprocity, pursuant to Article 16 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.
e) Execution Deadline	No special deadline.
f) Concise legal practical information	None.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	In addition to the suspect, any person whose surveillance-tracking is useful for the investigation.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	No conditions other than the one above mentioned (the surveillance-tracking must be useful in the framework of the investigation ongoing in the Issuing/Requesting Country).
i) Competent authority to request the measure abroad	In outgoing cases the EIO/MLA request shall be issued/made by the Italian Public Prosecutor Office (PPO) carrying out the investigation in respect of which the surveillance-tracking is useful.

j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	No conditions other than those provided for in the international legal instruments above-mentioned under letter b) as <i>Legal Framework</i> .
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	Where the surveilled-tracked person is also audio/video recorded, the different legal provisions regarding interception of communications and telecommunications apply. Therefore, the Requesting Country is supposed to issue a rogatory letter (as for Ireland and Denmark or if it is a Third Country) or an EIO under Article 30 of the EIO Directive (if it is a EU MS different from the two mentioned above).
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	None.
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is.
b) International legal framework applicable for this measure in your Member State	<p>1) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20.12.1988 (Article 11), ratified by Law 5 November 1990 n. 328.</p> <p>2) United Nations Convention against Transnational Organized Crime of 13-15 December 2000 (Article 20), ratified by Law 16 March 2006 n. 146.</p> <p>3) Directive 2014/41/EU regarding the European Investigation Order in criminal matters, hereinafter EIO Directive (Articles 3 and 28), implemented by Legislative Decree of 21 June 2017 n. 108 (Articles 1 and 2 par. 1 sub-par. a).</p> <p>4) Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the EU (Articles 12), implemented by Legislative Decree of 5 April 2017 n. 102 (Article 16) (only with reference to EU MSs that are Parties to the said</p>

	<p>Convention and have not implemented the EIO Directive, that is with reference to Ireland).</p> <p>5) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001 (Article 18), ratified by Law 24 July 2019 n. 88 (also with reference to EU MSs that do not participate or have not implemented EIO Directive, and are not Parties and/or have not ratified/implemented the Convention of 29 May 2000, that is with reference to Denmark).</p>
c) Competent authority to receive the request / execute the measure	<p>The Ministry of Justice (<i>Direzione Generale degli Affari Internazionali e della Cooperazione Giudiziaria – Ufficio I</i>) is the Italian competent authority to receive the request for controlled delivery. However, direct communications between the judicial authorities concerned are provided for by the international legal instruments above-mentioned under letter b) numbers 3), 4) and 5) as <i>Legal Framework</i>.</p> <p>In any case, controlled delivery shall be authorized by the Public Prosecutor Office (PPO) attached to the Court of first instance of the city where is established the Court of Appeal in whose district the activity shall be carried out. When the EIO/MLA request concerns activities to be carried out in more than one district, the PPO of the district in which the greatest number of activities must be carried out is the competent authority. In case of equal number of activities, the competent authority is the PPO of the district where the most important activity must be carried out.</p> <p>As a matter of fact, however, a communication to the PPO of the district where the activity shall be carried out has been considered enough on several occasions. This under Italy's declaration on Article 18 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001, stipulating that the competent authorities are <i>the relevant police forces determined in accordance with applicable national legislation</i>.</p>
d) Accepted languages	<p>1) and 2) Apart from Italian, the other languages declared under the above-mentioned UN Conventions, if any.</p> <p>3) Italian.</p> <p>4) and 5) Apart from Italian, also English and French, subject to reciprocity, pursuant to Article 16 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.</p>
e) Execution deadline	No special deadline.
f) Concise legal practical information	None.
g) Possible object of controlled delivery	Narcotics, money, weapons, ammunition and explosives.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>There must be an ongoing investigation in the Issuing/Requesting Country for one or more of the serious crimes referred to in Article 9 of Law 16 March 2006 n. 146, including, among others, corruption, money-laundering, kidnapping, human trafficking, smuggling of migrants, terrorism and drug trafficking, as well as crimes involving weapons, ammunition and explosives.</p> <p>By the means of a reasoned decree, the competent PPO can delay an arrest and/or a seizure if this is needed in order to obtain essential pieces of evidence, or locate or capture the perpetrator of the crime.</p>

i) Competent authority to request the measure abroad	In outgoing cases the EIO/MLA request for controlled delivery shall be issued/made by the Italian Public Prosecutor Office (PPO) carrying out the relevant investigation.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Firstly, the conditions provided for in the international legal instrument applicable in each single case (see letter b) above). Secondly, police officers involved must promptly report to the PPO any relevant activity carried out, otherwise the outcomes of the controlled delivery cannot be used as evidence before the Judge. At the same purpose, drugs, narcotics and other items cannot be totally replaced with other similar stuff and must be examined by an expert.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	See letter j) above.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	Controlled deliveries are carried out only and exclusively by particular bodies of the Italian Law Enforcement Agencies, such as the special departments of <i>Polizia di Stato</i> , <i>Carabinieri</i> and <i>Guardia di Finanza</i> in charge of counter-terrorism and counter-organized crime.
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is.
b) International legal framework applicable for this measure in your Member State	<p>1) Directive 2014/41/EU regarding the European Investigation Order in criminal matters, hereinafter EIO Directive (Articles 3 and 30), implemented by Legislative Decree of 21 June 2017 n. 108 (Articles 1, 2 par. 1 sub-par. a), 23, 25, 43 e 45).</p> <p>2) Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the EU (Articles 17-22), implemented by Legislative Decree of 5 April 2017 n. 102 (Articles 19-23) (only with reference to EU MSs that are Parties to the said Convention and have not implemented the EIO Directive, that is with reference to Ireland).</p> <p>3) European Convention on Mutual Assistance in Criminal Matters signed of 20 April 1959 (Article 1), ratified by Law 23 February 1961 n. 215, and Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8</p>

	<p>November 2001, ratified by Law 24 July 2019 n. 88 (also with reference to EU MSs that do not participate or have not implemented EIO Directive, and are not Parties and/or have not ratified/implemented the Convention of 29 May 2000, that is with reference to Denmark).</p> <p>4) Italy has also signed several bilateral treaties and other multilateral conventions (including various conventions on terrorism), and they allow for the application of this measure.</p>
c) Competent authority to receive the request / execute the measure	<p>1), 2) e 3) The Public Prosecutor Office (PPO) attached to the Court of first instance of the city where is established the Court of Appeal in whose district the requested activity shall be carried out, that is the district in which the person to be intercepted is located. When the order/request concerns activities to be carried out in more than one district, the competent authority is the PPO of the district in which the greatest number of activities must be carried out. In case of equal number of activities, the competent authority is the PPO of the district where the most important activity must be carried out. However, the PPO must ask to the Investigative Judge the authorization to carry out the interception. As far as EIO is concerned, thus, its recognition is up to the PPO, while the execution is up to the Investigative Judge.</p> <p>4) According to each single treaty or convention, the MLA request must be sent by diplomatic channels or it can be sent to the Italian Ministry of Justice (MoJ) as Central Authority, or directly to the above-mentioned PPO. In any case, however, the request has to be sent to the above-mentioned PPO, who must ask to the Investigative Judge the authorization to carry out the interception.</p>
d) Accepted languages	<p>1) Italian.</p> <p>2) and 3) Apart from Italian, also English and French, subject to reciprocity, pursuant to Article 16 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.</p> <p>4) As provided for in each single treaty or convention, usually Italian.</p>
e) Execution deadline	<p>1) EIO must be recognized within 30 days of its receipt or at the different time-limit specified by the issuing authority. In any case, however, recognition must be granted within 60 days of receipt of the EIO. It shall be executed within the following 90 days or the shortest period specified by the issuing authority, where there are reasons of urgency or necessity.</p> <p>2) and 3) None.</p> <p>4) As provided for in each single treaty or convention, usually none.</p>
f) Concise legal practical information	<p>Since none of the above-mentioned international legal instruments contains detailed provisions on interception, recording and transcription of communications and telecommunications and this measure has a relevant impact on individual rights enshrined in the Italian Constitution, Italian domestic legislation shall apply. Therefore, interception, recording and transcription of communications and telecommunications can be carried out only if the following requirements are met: 1) there must already be serious pieces of evidence of the crime being prosecuted; 2) the said crime shall be punishable, according to Italian legislation, by life imprisonment or a maximum term of imprisonment of more than 5 years (many exceptions are provided to this rule, based on the kind of crime: crimes relating to narcotic and psychotropic substances; crimes relating to weapons and explosives;</p>

	<p>smuggling, crimes related to child pornography, offences connected with organized crime <i>et alia</i>); 3) interception must be absolutely essential for continuing the investigation. The measure may be authorized by the Investigative Judge for a maximum period of 15 days and extended for additional 15 days periods upon a specific request of the PPO.</p> <p>The same apply to interception, recording and transcription of communications between people in presence (so-called environmental wiretapping). This kind of interception can also be made by the means of putting a computer capturer (so-called <i>trojan horse</i>) into a mobile phone or other similar electronic device. In any case, the interception can be carried out at home or other similar places only if there are grounded reasons to believe that the criminal activity is taking place there.</p> <p>However, interceptions by the means of the so-called <i>trojan horse</i> are always possible with regard to offences related to terrorism and organized crime, as well as with regard to the most serious offences against the public administration (for the latter offences provided that reasons justifying the use of the capturing device even at home or other similar places are clearly mentioned in the Investigative Judge's decree).</p> <p>As far as offences related to organized crime (as well as other very serious crimes) are concerned, the requirements are further less strict: 1) there must already be enough (rather than serious) pieces of evidence of the crime being prosecuted; 2) interception must be necessary (rather than absolutely essential) for continuing the investigation. Moreover, the measure may be authorized by the Investigative Judge for a maximum period of 40 (rather than 15) days and extended for additional 20 days periods (rather than 15) upon a specific request of the PPO. Finally, interception at home or other similar places may be carried out even if there is no reason to believe that the criminal activity takes place there.</p> <p>In urgent cases, when any delay could hamper the investigation, the PPO orders the interception by a reasoned decree, which must be communicated to the Investigative Judge within 24 hours. Within the next 24 hours the decree must be validated by the said Judge. In case of non-validation, the interception cannot go on and the outcomes cannot be used as evidence.</p> <p>Interception operations are carried out by the judicial police on behalf of the PPO. Police officers draw up a report of the operations carried out, in which the content of the intercepted communications and telecommunication is summarized. Records and reports of intercepted communications and telecommunications shall immediately be lodged to secretariat of the PPO. Within 5 days of the end of the interception operations, records and reports, together with the decrees of the Investigative Judge, are filed in a confidential archive held under the direction and supervision of the Chief Prosecutor. If the filing can hamper the investigation, the Investigative Judge can authorize the PPO to postpone it, not beyond the deadline set for the same investigation. In fact, defendants are informed of the filing and have the right to examine the reports and listen to the records within a reasonable time-limit. Once this time-limit is passed, the Investigative Judge, in the adversarial proceedings of the parties, provides that only relevant interceptions remain in the file and that their full transcript shall be</p>
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	available. Not relevant interceptions remain in the above-mentioned archive until a final judgment put an end to the proceedings. However, the Investigative Judge, in the adversarial proceedings of the parties, can immediately order the destruction of interceptions detrimental to privacy, at the request of the party concerned.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	See letter f) above.
h) Competent authority to request the measure abroad	In outgoing cases the EIO/MLA request for interception, recording and transcription of communications and telecommunications shall be issued/made by the Italian Public Prosecutor Office (PPO) carrying out the relevant investigation. However, such an order/request must be grounded on a reasoned decree previously issued by the Investigative Judge in compliance with all the requirements provided for by Italian legislation, as explained in letter f) above.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	In principle, Italian law states that evidence gathered abroad in accordance with <i>lex loci</i> may be used as evidence in Italy. In practice, however, the ordering/requesting Italian judicial authority may indicate requirements and/or conditions. Therefore, it should be possible that execution by a judge is set out as requirement/condition.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	Interception of the defense counsel's communications and telecommunications is strictly prohibited, unless the defense counsel him/herself is personally involved in the crime under investigation. If a defense counsel is accidentally intercepted, the interception cannot be transcribed, even by summary. In any case, intercepted communications and telecommunications cannot be used as evidence. As far defense counsels are concerned, thus, no obligation to control or review interception is provided for by Italian law. On the contrary, such an obligation is provided for environmental wiretapping carried out through the so-called <i>trojan horse</i> , in cases where it is not foreseen that the interception will also affect communications taking place at home or in similar places. In these cases (that is when the investigation concerns crimes other than those of terrorism or organized crime, or crimes other than those the most serious crimes against the public administration), the decree authorizing the interception must indicate, more than the specific reasons that make it necessary to use the capturer, the times and places of switching on/off the microphone. Transferring this obligation to the Issuing State is not supposed to be possible even in cases provided for in Article 30 par. 6 sub-par. a) of the EIO Directive. Also in these cases, indeed, any issue related to the carrying out of the operations should still be up to the Executing State.
k) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one	As already mention above under letter c), the competent authority to receive and recognize the EIO is the PPO attached to the Court of first instance of the city where is established the Court of Appeal in whose district the person to be intercepted is located, while the competent authority to execute the EIO is the Investigative Judge of the said Court of first instance. These are, for both, highly

<p>for all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	<p>specialized authorities, because the Courts of first instance located in the same city where the Courts of Appeals are established are only 26 compared to a total of over 100 Courts of first instance. Moreover, the Investigative Judge of these 26 Courts and the PPO attached to the same Courts are competent in relation to the proceedings concerning the most serious crimes, including terrorism and organized crime.</p> <p>As already mention above under letter f), in urgent cases, when any delay could hamper the investigation, the PPO orders the interception by a reasoned decree, which must be communicated to the Investigative Judge within 24 hours and, within the next 24 hours, the decree must be validated by the said Judge. It is highly doubtful, however, that this also applies to interceptions requested by a foreign State, because it is not provided for in the Italian legislation implementing the EIO Directive.</p>
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is.
b) International legal framework applicable for this measure in your Member State	<p>1) Directive 2014/41/EU regarding the European Investigation Order in criminal matters, hereinafter EIO Directive (Articles 3 and 31), implemented by Legislative Decree of 21 June 2017 n. 108 (Articles 1, 2 par. 1 sub-par. a), 24 and 44).</p> <p>2) Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the EU (Articles 17-22), implemented by Legislative Decree of 5 April 2017 n. 102 (Articles 19-23) (only with reference to EU MSs that are Parties to the said Convention and have not implemented the EIO Directive, that is with reference to Ireland).</p> <p>3) European Convention on Mutual Assistance in Criminal Matters signed of 20 April 1959 (Article 1), ratified by Law 23 February 1961 n. 215, and Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 8 November 2001, ratified by Law 24 July 2019 n. 88 (also with reference to EU MSs that do not participate or have not implemented EIO Directive, and are not Parties and/or have not ratified/implemented the Convention of 29 May 2000, that is with reference to Denmark).</p> <p>4) Italy has also signed several bilateral treaties and other multilateral conventions (including various conventions on terrorism), and they allow for the application of this measure.</p>
c) Competent authority to receive the request / execute the measure	<p>1) The Public Prosecutor Office (PPO) attached to the Court of first instance of the city where is established the Court of Appeal in whose district the requested activity shall be carried out, that is the district in which the person to be intercepted is located, is the competent authority to receive the Annex C of the EIO Directive. When the order/request concerns activities to be carried out in more than one district, the competent authority is the PPO of the district in which the greatest number of activities must be carried out. In case of equal number of activities, the competent authority is the PPO of the district where the most important activity must be carried out. However, the said PPO immediately forward the Annex</p>

	<p>C to the Investigative Judge, who shall order to stop immediately the interception if the crime concerned in Italy does not allow interceptions. At the same time the Judge communicates it to the PPO, who informs without delay, and in any case within 96 hours, the competent judicial authority of the Issuing State, which is also informed that communication and telecommunications intercepted till then cannot be used as evidence.</p> <p>2) and 3) The Public Prosecutor Office (PPO) attached to the Court of first instance of the city where is established the Court of Appeal in whose district the requested activity shall be carried out, that is the district in which the person to be intercepted is located. When the order/request concerns activities to be carried out in more than one district, the competent authority is the PPO of the district in which the greatest number of activities must be carried out. In case of equal number of activities, the competent authority is the PPO of the district where the most important activity must be carried out. However, the PPO must ask to the Investigative Judge the authorization to carry out the interception.</p> <p>4) According to each single treaty or convention, the MLA request must be sent by diplomatic channels or it can be sent to the Italian Ministry of Justice (MoJ) as Central Authority, or directly to the above-mentioned PPO. In any case, however, the request must be sent to the above-mentioned PPO, who must ask to the Investigative Judge the authorization to carry out the interception.</p>
d) Accepted languages	<p>1) Italian.</p> <p>2) and 3) Apart from Italian, also English and French, subject to reciprocity, pursuant to Article 16 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.</p> <p>4) As provided for in each single treaty or convention, usually Italian.</p>
e) Execution deadline	<p>1) See letter c) above.</p> <p>2) and 3) None.</p> <p>4) As provided for in each single treaty or convention, usually none.</p>
f) Concise legal practical information	<p>Without prejudice to what has been reported with regard to the EIO, it is worth to point out that the case law of the Italian Court of Cassation considers, in relation to Italian outgoing procedures, that interceptions of communications and telecommunications abroad, if carried out without the technical assistance of the foreign State concerned, does not require the sending of a Mutual Legal Assistance (MLA) request. Therefore, the same must be held for Italian incoming procedures. Consequently, sending a MLA request under one or more of the international instruments referred to in points 2 to 4 of letter b) above may be considered – and indeed is considered – essentially useless.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>1) As for EIO is concerned see letter c) above.</p> <p>2), 3) and 4) As for MLA requests are concerned see letter f) above.</p>
h) Competent authority to request the measure abroad	<p>1) In outgoing cases the Annex C of the EIO Directive shall be issued and served by the Italian Public Prosecutor Office (PPO) carrying out the relevant investigation. However, the said Annex must be grounded on a reasoned decree previously issued by the Investigative Judge in compliance with all the requirements provided for by Italian legislation, as explained in letter f) of FBA.50</p>

	<p>above. It is important to point out that the Italian PPO shall immediately stop the interception if the competent authority of the other EU MS concerned, upon receipt of the Annex C, communicates that the interception cannot be carried out or continued. The outcomes of the measure may be used as evidence in Italy only if the said MS so allows. At this purpose, the same MS may lay down conditions, whose fulfilment is mandatory for the Italian judicial authority.</p> <p>2), 3) and 4) In outgoing cases the MLA request shall be made by the Italian Public Prosecutor Office (PPO) carrying out the relevant investigation. However, such a request must be grounded on a reasoned decree previously issued by the Investigative Judge in compliance with all the requirements provided for by Italian legislation, as explained in letter f) of FB A.50 above.</p>
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>Since interception, recording and transcription of communications and telecommunications are carried out without any assistance by the foreign State, requirements and conditions set out in Italian law are fully applicable from the outset. Therefore, the use as evidence of the outcomes does not entail any problem of compliance with the conditions of admissibility provided for by Italian law.</p>
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	<p>It seems useful to recall the case law of the Italian Court of Cassation already mentioned in letter f) above, in order to highlight that in this specific field the entry into force of the EIO Directive has led to the need of a procedure of international judicial cooperation which was not previously foreseen. However, this should not be seen, necessarily, as a step backwards in cooperation, because the new procedure significantly raises the level of protection of fundamental rights of individuals affected by the measure.</p> <p>There is no knowledge of practical experience based on international instruments other than EIO, that is those mentioned in points 2 to 4 of letter b) above. As regards EIO, however, practical experience is rather limited. As far as is known, no specific problems have been identified.</p> <p>As for the rest is concerned, see letter k) of FB A.50 above.</p>
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<p>Italy has implemented Framework Decision 2006/960/JHA of 18 December 2006 by Legislative Decree n. 54 of 23 April 2015. More specifically, Article 6 paragraphs 1 and 2 of the LD reproduce Article 1 par. 4 of the FD. According to the said Italian legal provisions, information or intelligence received may be used in Italy as evidence in criminal proceedings only by a specific authorization coming from the providing Member State. At this purpose, judicial cooperation tools applicable with the State concerned should be used. All this without prejudice to the case in which the use as evidence in criminal proceedings has already been authorized by the State concerned at the time of transmission of the information or intelligence. By answering the two questions made with reference to the example in the questionnaire, it is worth underline that:</p>

	<p>1) for Italy it is necessary that the competent judicial authority allows the use of the information or intelligence as evidence in criminal proceedings, unless such use has been authorized in advance at the time of transmission;</p> <p>2) at this regard, the competent Italian authority is the Public Prosecutor Office (PPO) who is competent to recognize and execute the EIOs, under the relevant conditions.</p>
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No, although some training initiative with regard to these topics would be desirable.

4.16. Latvia

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, the measure is possible
b) International legal framework applicable for this measure in your Member State	1) <i>Directive 2014/41/EU</i> of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. 2) Relevant bilateral agreements with non-EU countries.
c) Competent authority to receive the request/execute the measure	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
d) Accepted languages	Latvian, English (Urgent only Latvian)
e) Execution deadline	According to the <i>Directive 2014/41/EU</i> of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – execution of the EIO is 90 days. According to the CPL the term of Surveillance and Tracking of a Person is up to 30 days which an investigating judge may extend, if necessary. All the terms depend of the particular case and are the subject for the bilateral discussions.
f) Concise legal practical information	In the cases covering cross-border observation the core issue is to follow up the terms. As it has been mentioned before, the term of Surveillance and Tracking of a Person is up to 30 days in Latvia, which can be extended by the Investigative Judge. In order to receive such a prolongation, it is necessary to receive all the relevant documents from the EIO issuing country on time.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	The procedural status of the person does not matter. Each person connected with a crime according to s.223.1. of CPL.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	If there are exists an information that the person in concern could leave abroad or is going to leave abroad, but the person's behaviour and contacts with foreigners may possibly contain information that may be used as a proof in the court in relation to his/her criminal offence or contain information that would be important for investigation, a cross-border observation is allowed, using legal assistance request. Observation in the territory of another country may be executed only by police forces of that country- regulation in s.223. of CPL
i) Competent authority to request the measure abroad	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	s.2.3. of CPL (The norms of the criminal procedure of another country may be applied only in international co-operation on the basis of a reasoned request from a foreign country, if such request is not in contradiction to the basic principles of the criminal procedure of Latvia).

k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	According to the Section 222 of CPL, the audio-control of a person without the information of such person shall be performed, on the basis of a decision of an investigating judge, if there are grounds to believe that the conversations, or other sounds, of the person may contain information regarding facts included in circumstances to be proven, and if the acquisition of necessary information is not possible without such operation. Which means that in order to perform the audio-control of the person, another court's decision is necessary.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	Unit 3 of International Cooperation Department of Central Criminal Police Department of State Police of Latvia (during pre-trial investigation until prosecution) receives requests regarding this type of cooperation and forwards them to the competent Department (Investigation Support Department of Central Criminal Police Department of State Police of Latvia) for the further execution and technical support.
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, this measure is possible
b) International legal framework applicable for this measure in your Member State	1) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. 2) Relevant bilateral agreements with non-EU countries.
c) Competent authority to receive the request/execute the measure	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court. The Ministry of Justice – during the trial.
d) Accepted languages	Latvian, English (Urgent: only Latvian)
e) Execution deadline	According to the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – execution of the EIO is 90 days. According to CPL s.223.1. of CPL the term of Surveillance and Tracking of a Person is up to 30 days which an investigating judge may extend, if necessary. All the terms depend of the particular case and are the subject for the bilateral discussions.

f) Concise legal practical information	In the cases covering cross-border tracking the core issue is to follow up the terms. As it has been mentioned before, the term of Surveillance and Tracking of a Person is up to 30 days in Latvia, which can be extended by the Investigative Judge. In order to receive such a prolongation, it is necessary to receive all the relevant documents from the EIO issuing country on time.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	The procedural status of the person does not matter. Each person connected with a crime according to s.223.1. of CPL is the subject of observation/surveillance.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	If there are exists an information that the person in concern could leave abroad or is going to leave abroad, but the person's behaviour and contacts with foreigners may possibly contain information that may be used as a proof in the court in relation to his/her criminal offence or contain information that would be important for investigation, a cross-border observation is allowed, using legal assistance request. Observation at the territory of the another country may be executed only by police forces of that country- regulation in s.223. of CPL
i) Competent authority to request the measure abroad	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	s.2.3. of CPL (The norms of the criminal procedure of another country may be applied only in international co-operation on the basis of a reasoned request from a foreign country, if such request is not in contradiction to the basic principles of the criminal procedure of Latvia).
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	According to the Section 222 of CPL, the audio-control of a person without the information of such person shall be performed, on the basis of a decision of an investigating judge, if there are grounds to believe that the conversations, or other sounds, of the person may contain information regarding facts included in circumstances to be proven, and if the acquisition of necessary information is not possible without such operation. Which means that in order to perform audio-control of the person, another court's decision is necessary.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance	Unit 3 of International Cooperation Department of Central Criminal Police Department of State Police of Latvia (during pre-trial investigation until prosecution) receives requests regarding this type of cooperation and forwards them to the competent Department (Investigation Support Department of Central Criminal Police Department of State Police of Latvia) for the further execution and technical support.

carried out in this manner? - Any other?	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Possible to be implemented
b) Legal Framework	1) Domestic legal framework (Criminal Procedure Law) 2) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. 3) Relevant bilateral agreements with non-EU countries.
c) Competent Authority	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
d) Accepted Languages	Latvian, English (Urgent only Latvian)
e) Execution Deadline:	According to the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – execution of the EIO is 90 days. According to CPL s.223.1. of CPL the term of Surveillance and Tracking of a Person is up to 30 days which an investigating judge may extend, if necessary. All the terms depend of the particular case and are the subject for the bilateral discussions.
f) Concise legal practical information	In such cases the core issue is to follow up the terms. As it has been mentioned before, the term of Surveillance and Tracking of a Person is up to 30 days in Latvia, which can be extended by the Investigative Judge. In order to receive such a prolongation, it is necessary to receive all the relevant documents from the EIO issuing country on time An investigating judge shall indicate in a decision whether the rights are granted to continue with the surveillance and tracking, for a term of up to 48 hours, of other persons who have been in contact with a person to be placed under surveillance.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	The procedural status of the person does not matter. Each person connected with a crime according to s.223.1. of CPL is the subject of observation/surveillance.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	If there are exists an information that the person in concern could leave abroad or is going to leave abroad, but the person's behaviour and contacts with foreigners may possibly contain information that may be used as a proof in the court in relation to his/her criminal offence or contain information that would be important for investigation, a cross-border observation is allowed, using legal assistance request. Observation at the territory of the another country may be executed only by police forces of that country- regulation in s.223. of CPL
i) Competent authority to request the measure abroad	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
j) Conditions of admissibility of outcomes of this measure as	s.2.3. of CPL (The norms of the criminal procedure of another country may be applied only in international co-operation on the basis of a reasoned request from a foreign country, if such request

evidence in your country as requesting state	is not in contradiction to the basic principles of the criminal procedure of Latvia).
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	According to the Section 222 of CPL, the audio-control of a person without the information of such person shall be performed, on the basis of a decision of an investigating judge, if there are grounds to believe that the conversations, or other sounds, of the person may contain information regarding facts included in circumstances to be proven, and if the acquisition of necessary information is not possible without such operation. Which means that in order to perform audio-control of the person, another court's decision is necessary.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	Unit 3 of International Cooperation Department of Central Criminal Police Department of State Police of Latvia (during pre-trial investigation until prosecution) receives requests regarding this type of cooperation and forwards them to the competent Department (Investigation Support Department of Central Criminal Police Department of State Police of Latvia) for the further execution and technical support.
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, the measure is possible
b) International legal framework applicable for this measure in your Member State	1) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. 2) Relevant bilateral agreements with non-EU countries.
c) Competent authority to receive the request / execute the measure	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
d) Accepted languages	Latvian, English (Urgent: only Latvian)
e) Execution deadline	
f) Concise legal practical information	In such cases the core issue is to follow up the terms. As it has been mentioned before, the term of Surveillance and Tracking of a Person is up to 30 days in Latvia, which can be extended by the Investigative Judge. In order to receive such a prolongation, it is necessary to receive all the relevant documents from the EIO issuing country on time.

g) Possible object of controlled delivery	Goods or other valuables (including substances, means of payment or other financial instruments). This is regulated by s.227.1. of CPL "Control of criminal activity, but the term is broader and therefore EIO can be executed under this Art.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	In the cases of committed serious (deprivation of liberty for a term exceeding five years but not exceeding ten years) and very serious crimes (deprivation of liberty for a term exceeding ten years, life imprisonment or the death penalty).
i) Competent authority to request the measure abroad	Central authority - International Cooperation department of General Prosecutors Office of Republic of Latvia. If the investigation is carried out by the police authority - Pre-investigation department of Central Criminal Police department of State Police.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	s. 2.3. of CPL The norms of the criminal procedure of another country may be applied only in international co-operation on the basis of a reasoned request from a foreign country, if such request is not in contradiction to the basic principles of the criminal procedure of Latvia.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	Depends on the case
l) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other?	Unit 3 of International Cooperation Department of Central Criminal Police Department of State Police of Latvia (during pre-trial investigation until prosecution) receives requests regarding this type of cooperation and forwards them to the competent Department (Investigation Support Department of Central Criminal Police Department of State Police of Latvia) for the further execution and technical support. Sometimes it is necessary to involve other relevant Departments of the State Police of Latvia specializing on the specific type of crimes in order to be more effective.
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is possible
b) International legal framework applicable for this measure in your Member State	1) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. 2) Relevant bilateral agreements with non-EU countries.

c) Competent authority to receive the request / execute the measure	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
d) Accepted languages	Latvian, English (Urgent only Latvian)
e) Execution deadline	According to the <i>Directive</i> 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – execution of the EIO is 90 days. According to CPL the term is up to 30 days which an investigating judge may extend, if necessary. All the terms depend of the particular case and are the subject for the bilateral discussions.
f) Concise legal practical information	According to the <i>Directive</i> 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – execution of the EIO is 90 days.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	Control of means of communication (1) Control of telephones and other means of communication without the consent of participants of the conversation or information sender and receiver is executed on the basis of the decision of an investigative judge if there is a reason to believe that the conversation or the information transferred may contain information about facts and if without this action it is impossible to obtain the necessary information- s. 218.1. of CPL (2) Control of telephones and other means of communication with a written consent of participants of the conversation or information sender and receiver is executed if there is a reason to believe that against this person or his/her relatives a criminal offence may be committed or this person may be included into commission of a criminal offence- s. 218.2. of CPL
h) Competent authority to request the measure abroad	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	s.2.3. of CPL The norms of the criminal procedure of another country may be applied only in international co-operation on the basis of a reasoned request from a foreign country, if such request is not in contradiction to the basic principles of the criminal procedure of Latvia.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state,	Section 218 of CPL does not indicate any obligations in this matter. The control of telephones and other means of communications without the knowledge of the members of a conversation or the sender and recipient of information shall be performed, on the basis of a decision of an investigating judge, if there are grounds to believe that the conversation or transferred information may contain information regarding facts included in circumstances to be proven, and if the acquisition of necessary information is not possible without such operation. If such a decision has been obtained, all the telecommunication traffic is intercepted. Depending on the case, intercepted data is being recorded and

which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	later transmitted to the requesting party via CD or link to the virtual storage device.
k) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	Unit 3 of International Cooperation Department of Central Criminal Police Department of State Police of Latvia (during pre-trial investigation until prosecution) receives requests regarding this type of cooperation and forwards them to the competent Department (Investigation Support Department of Central Criminal Police Department of State Police of Latvia) for the further execution and technical support. Sometimes it is necessary to involve other relevant Departments of the State Police of Latvia specializing on the specific type of crimes in order to be more effective (to listen intercepted and recorded conversations in order to follow up the situation and react immediately).
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is possible
b) International legal framework applicable for this measure in your Member State	1) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. (Annex C). 2) Relevant bilateral agreements with non-EU countries.
c) Competent authority to receive the request / execute the measure	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.
d) Accepted languages	Latvian, English (Urgent only Latvian)
e) Execution deadline	According to the <i>Directive</i> 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – execution of the EIO is 90 days. All the terms depend of the particular case and are the subject for the bilateral discussions.
f) Concise legal practical information	Annex C of the EIO has to be filled in
g) Conditions under which it is possible to order the measure based on a request of foreign authority	CPL (basic terms and conditions of international legal assistance in criminal matters)
h) Competent authority to request the measure abroad	State Police of Latvia – during pre-trial investigation until prosecution. Prosecutor General's Office – during pre-trial investigation until submitting the case to the court.

i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	s.2.3. of CPL The norms of the criminal procedure of another country may be applied only in international co-operation on the basis of a reasoned request from a foreign country, if such request is not in contradiction to the basic principles of the criminal procedure of Latvia.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	Unit 3 of International Cooperation Department of Central Criminal Police Department of State Police of Latvia (during pre-trial investigation until prosecution) receives requests regarding this type of cooperation and forwards them to the competent Department (Investigation Support Department of Central Criminal Police Department of State Police of Latvia) for the further execution and technical support.
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	It has been implemented according to the general provisions of the Framework Decision, which does not impose any obligation on the part of the Member States to provide information and intelligence to be used as evidence before a judicial authority nor does it give any right to use such information or intelligence for that purpose. In order to obtain evidences in the frame of the criminal proceedings it is necessary to act according to the CPL. Section 676 of CPL on Admissibility of Evidence within the Framework of Criminal-legal Co-operation defines that evidence that has been acquired as a result of criminal-legal co-operation and in accordance with the criminal procedure specified in a foreign country shall be made equivalent to the evidence acquired in accordance with the procedures provided for CPL. Article 1 (4) of the Council Framework Decision 2006/960/JHA has been implemented for the use of information or intelligence only.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No

4.17. Lithuania

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes. BEFORE pre-trial investigation: Operational surveillance- a method of operational activity, when information is obtained secretly and the object is observed directly. DURING the pre-trial investigation: the pre-trial judge, upon the prosecutor's request, may order the observation of a person or a motor vehicle. In urgent cases, these actions may be conducted based on the prosecutor's or pre-trial investigator's decision. In such a case a pre-trial investigation judge's sanction for these actions must be received within 3 days. If such a sanction is not received, the observation must be terminated and the data received immediately destroyed.
b) International legal framework applicable for this measure in your Member State	CoE 1959 Convention on MLA and its additional Protocols, EU 2000 Convention on MLA. Directive 2014/41/EU regarding the European Investigation Order in criminal matters.
c) Competent authority to receive the request/execute the measure	* receive the request/decision for judicial cooperation. Prosecutor General's Office and Regional Prosecutor's Offices, if MLA is provided following the EU 2000 Convention or EIO Directive. Prosecutor General's Office - if CoE 1959 Convention on MLA is applicable. * execute/recognise the measure (if other than the receiving authority) Pre-trial judge, prosecutor and in some cases pre-trial investigation officer.
d) Accepted languages	Lithuanian or English under Directive 2014/41/EU regarding the European Investigation Order in criminal matters. Lithuanian or English under the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Under the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 requests and annexed documents shall be addressed to in Lithuanian or accompanied by a translation into one of the official languages of the Council of Europe (e.g. English or French).
e) Execution deadline	N/A. When processing a request based on a criminal intelligence investigation, observation of a person is possible for up to 3 days.
f) Concise legal practical information	a. Special requirements The officers from abroad, who are conducting the investigation, are allowed to participate in observation, however, the consent (on allowing them to participate in the pre-trial investigation actions) of the Prosecutor General's Office of the Republic of Lithuania should be obtained beforehand. b. Other useful information The classified information obtained in the course of operational activities, as well as that concerning a person's personal and family life and information demeaning his honour and dignity, may not be transferred or divulged, with the exception of transfer in the presence of co-operating entities of operational activities and in the case provided in Article 19 of the Law on Criminal Intelligence of the Republic of Lithuania (Use of Criminal Intelligence Information). Following the completion of the operational investigation and if the operational information with respect to the target of operational activities did not prove to be true, the information collected about the private life of the person, must be destroyed over a three-month period. The officer who authorised these activities must be informed of this one month prior to the

	destruction of the information collected through authorised activities.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person related to the criminal act, with the exception of persons with immunity from criminal prosecution according to the laws.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The MLA request should meet the content and form requirements set forth in the international treaties, based on which the assistance is requested, including translation issues.</p> <p>In carrying out requests of institutions of foreign states or international organisations, the courts, the prosecution and pre-trial investigation institutions of the Republic of Lithuania shall take procedural actions set out in the Criminal Procedure Code. When executing requests of the institutions of foreign states or international organisations in cases provided by an international agreement to which the Republic of Lithuania is a party, procedural actions which are not set out in the Criminal Procedure Code may also be taken, provided this does not contravene the Constitution and the laws of the Republic of Lithuania and is not against the fundamental principles of the criminal procedure of Lithuania. (Art. 67 of the Criminal Procedure Code).</p>
i) Competent authority to request the measure abroad	Prosecutor General's Office can issue MLA request concerning cross-border surveillance of a person in preliminary proceedings (when 2000 Convention is applied, the competent institutions can also be the Regional Prosecutor's Offices).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Protocol on course of cross-border surveillance of a person together with video or audio records, if available, is necessary so that the measure could be used as evidence before court in the Republic of Lithuania.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	The same procedure applies.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	<p>- Prosecutor General's Office acts as an authority with exclusive competence to receive EIO in cases where:</p> <ul style="list-style-type: none"> - it is not possible to establish specific location of execution of European Investigation Order within the territory of the Republic of Lithuania; - there are several territories related to execution of European Investigation Order and there is a need for coordination of EIO execution. <p>- In urgent cases, these actions may be conducted based on the prosecutor's or pre-trial investigator's decision. In such a case a pre-trial investigation judge's sanction for these actions must be received within 3 days. If such a sanction is not received, the observation must be terminated and the data received immediately destroyed;</p> <p>- The application of this measure is regulated in Article 160 of the Code of Criminal Procedure of the Republic of Lithuania and Article 15 of the Law on Criminal Intelligence of the Republic of Lithuania.</p>
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A 72)	
a) Is the measure possible in	Yes

your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	CoE 1959 Convention on MLA and its additional Protocols, EU 2000 Convention on MLA Directive 2014/41/EU regarding the European Investigation Order in criminal matters.
c) Competent authority to receive the request/execute the measure	<p>* receive the request/decision for judicial cooperation</p> <p>Prosecutor General's Office, if MLA is provided following CoE 1959 Convention on MLA.</p> <p>Prosecutor General's Office and Regional Prosecutor's Offices, if MLA is provided following the EU 2000 Convention or EIO directive.</p> <p>* execute/recognise the measure (if other than the receiving authority)</p> <p>Pre-trial judge, prosecutor and in some cases pre-trial investigation officer.</p>
d) Accepted languages	Lithuanian or English under Directive 2014/41/EU regarding the European Investigation Order in criminal matters. Lithuanian or English under the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Under the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 requests and annexed documents shall be addressed to in Lithuanian or accompanied by a translation into one of the official languages of the Council of Europe (e.g. English or French).
e) Execution deadline	EIO 90 days; MLA – not determined.
f) Concise legal practical information	<p>a. Special requirements</p> <p>The officers from abroad, who are conducting the investigation, are allowed to participate in person's tracking, however, the consent (on allowing them to participate in the pre-trial investigation actions) of the Prosecutor General's Office of the Republic of Lithuania should be obtained beforehand.</p> <p>b. Other useful information</p> <p>N/A</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person related to the particular criminal act.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The MLA request should meet the content and form requirements set forth in the international treaties, based on which the assistance is requested, including translation issues.</p> <p>In carrying out requests of institutions of foreign states or international organisations, the courts, the prosecution and pre-trial investigation institutions of the Republic of Lithuania shall take procedural actions set out in the Criminal Procedure Code. When executing requests of the institutions of foreign states or international organisations in cases provided by an international agreement to which the Republic of Lithuania is a party, procedural actions which are not set out in the Criminal Procedure Code may also be taken, provided this does not contravene the Constitution and the laws of the Republic of Lithuania and is not against the fundamental principles of the criminal procedure of Lithuania. (Art. 67 of the Criminal Procedure Code)</p>

i) Competent authority to request the measure abroad	Prosecutor General's Office can issue MLA request. When 2000 Convention or EIO directive are applied, the competent institutions can also be the Regional Prosecutor's Offices.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Protocol on course of cross-border surveillance of a vehicle or person together with video or audio records, if available, is necessary so that the measure could be used as evidence before court in the Republic of Lithuania.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	The same procedure applies.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	<p>- Prosecutor General's Office acts as an authority with exclusive competence to receive EIO in cases where:</p> <ul style="list-style-type: none"> - it is not possible to establish specific location of execution of European Investigation Order within the territory of the Republic of Lithuania; - there are several territories related to execution of European Investigation Order and there is a need for coordination of EIO execution. <p>- In urgent cases, these actions may be conducted based on the prosecutor's or pre-trial investigator's decision. In such a case a pre-trial investigation judge's sanction for these actions must be received within 3 days. If such a sanction is not received, the observation must be terminated and the data received immediately destroyed;</p> <p>- The application of this measure is regulated in Article 160 of the Code of Criminal Procedure of the Republic of Lithuania and Article 15 of the Law on Criminal Intelligence of the Republic of Lithuania.</p>
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Specifically not regulated by the legal acts of the Republic of Lithuania.
b) Legal Framework	CoE 1959 Convention on MLA and its additional Protocols, EU 2000 Convention on MLA Directive 2014/41/EU regarding the European Investigation Order in criminal matters.
c) Competent Authority	<p>* receive the request/decision for judicial cooperation</p> <p>Prosecutor General's Office, if MLA is provided following CoE 1959 Convention on MLA.</p> <p>Prosecutor General's Office and Regional Prosecutor's Offices (when 2000 Convention or EIO directive are applied).</p> <p>* execute/recognise the measure (if other than the receiving authority)</p> <p>Pre-trial judge, prosecutor and in some cases pre-trial investigation officer.</p>
d) Accepted Languages	Lithuanian or English under Directive 2014/41/EU regarding the European Investigation Order in criminal matters. Lithuanian or English under the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Under the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 requests and annexed documents shall be addressed to in Lithuanian or accompanied by a translation into one of the official languages of the Council of Europe (e.g. English or French).

e) Execution Deadline:	EIO 90 days; MLA – not determined.
f) Concise legal practical information	<p>a. Special requirements</p> <p>The officers from abroad, who are conducting the investigation, are allowed to participate in person's tracking, however, the consent (on allowing them to participate in the pre-trial investigation actions) of the Prosecutor General's Office of the Republic of Lithuania should be obtained beforehand.</p> <p>b. Other useful information N/A</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person related to the particular criminal acts.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Protocol on course of cross-border surveillance of a vehicle or person together with video or audio records, if available, is necessary so that the measure could be used as evidence before court in the Republic of Lithuania.
i) Competent authority to request the measure abroad	Prosecutor General's Office can issue MLA request (when 2000 Convention or EIO directive are applied, the competent institutions can also be the Regional Prosecutor's Offices.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Protocol on course of cross-border surveillance of a vehicle or person together with video or audio records, if available, is necessary so that the measure could be used as evidence before court in the Republic of Lithuania.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	The same procedure applies.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	<p>- Prosecutor General's Office acts as an authority with exclusive competence to receive EIO in cases where:</p> <ul style="list-style-type: none"> - it is not possible to establish specific location of execution of European Investigation Order within the territory of the Republic of Lithuania; - there are several territories related to execution of European Investigation Order and there is a need for coordination of EIO execution. <p>- In urgent cases, these actions may be conducted based on the prosecutor's or pre-trial investigator's decision. In such a case a pre-trial investigation judge's sanction for these actions must be received within 3 days. If such a sanction is not received, the observation must be terminated and the data received immediately destroyed;</p> <p>- The application of this measure is regulated in Article 160 of the Code of Criminal Procedure of the Republic of Lithuania and Article 15 of the Law on Criminal Intelligence of the Republic of Lithuania.</p>
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes. Controlled deliveries - approved way of collecting information, during which it is allowed to import in, transport through or export from the territory of the Republic of Lithuania goods or other objects which are illegally transported or arousing suspicion, when those actions are controlled by the entities of operational activities in order to clear the

	criminal acts, as well as the persons who are preparing, committing or who have already committed them. Also see FB A.70.
b) International legal framework applicable for this measure in your Member State	CoE 1959 Convention on MLA and its additional Protocols, EU 2000 Convention on MLA See FB A.70. Directive 2014/41/EU regarding the European Investigation Order in criminal matters.
c) Competent authority to receive the request / execute the measure	<p>* receive the request/decision for judicial cooperation</p> <p>Prosecutor General's Office, if MLA is provided following CoE 1959 Convention on MLA.</p> <p>Prosecutor General's Office and Regional Prosecutor's Offices (when 2000 Convention or EIO directive are applied).</p> <p>* execute/recognise the measure (if other than the receiving authority)</p> <p>Pre-trial judge, prosecutor and in some cases pre-trial investigation officer.</p>
d) Accepted languages	Lithuanian or English under Directive 2014/41/EU regarding the European Investigation Order in criminal matters. Lithuanian or English under the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Under the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 requests and annexed documents shall be addressed to in Lithuanian or accompanied by a translation into one of the official languages of the Council of Europe (e.g. English or French).
e) Execution deadline	EIO – 90 days, MLA - not determined.
f) Concise legal practical information	N/A
g) Possible object of controlled delivery	Goods or other objects which are illegally transported or arousing suspicion.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Those actions are conducted by the entities of criminal intelligence (operational) activities in order to clear the criminal acts, as well as the persons who are preparing, committing or who have already committed them. In the complex cases of the controlled delivery, a secret surveillance, the actions of pre-trial investigation officers without disclosing their identity or simulation of a criminal act may be applied. Depending on the nature of the requested actions, it is possible to apply either one or all of the aforesaid measures.
i) Competent authority to request the measure abroad	Prosecutor General's Office can issue MLA request concerning controlled delivery in preliminary proceedings (the measure is not applied during trial). When EU Convention of 2000 is applied, the competent institutions can also be the Regional Prosecutor's Offices.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Protocol on course of controlled delivery together with video or audio records, if available, is necessary so that the measure could be used as evidence before court in the Republic of Lithuania.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	There is no mandatory requirement to change the contents of the controlled shipment, but it is prohibited to carry out controlled delivery if it poses a direct risk to human life, health or may cause other serious consequences.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one	<p>- There is no specialized institution for obtaining/implementing this type of cooperation in Lithuania;</p> <p>- There are no legal, organizational or technical measures for urgent cases of controlled delivery.</p>

for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Any other?	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes. Interception and recording of information transmitted via telecommunication networks – is a procedural coercive measure, by means of which in accordance with procedure established by laws pretrial officer monitors phone calls, intercepts other information transmitted via telecommunication networks and records it in order to detect circumstances significant to investigation of the criminal offence.
b) International legal framework applicable for this measure in your Member State	CoE 1959 Convention on MLA and its additional Protocols, EU 2000 Convention on MLA. Directive 2014/41/EU regarding the European Investigation Order in criminal matters.
c) Competent authority to receive the request / execute the measure	* receive the request/decision for judicial cooperation Prosecutor General's Office and Regional Prosecutor's Offices, if MLA is provided following the EU 2000 Convention or EIO directive. Prosecutor General's Office - if CoE 1959 Convention on MLA is applicable. * execute/recognise the measure (if other than the receiving authority) A pre-trial judge by adopting a Ruling based on the prosecutor's request.
d) Accepted languages	Lithuanian or English under Directive 2014/41/EU regarding the European Investigation Order in criminal matters. Lithuanian or English under the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Under the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 requests and annexed documents shall be addressed to in Lithuanian or accompanied by a translation into one of the official languages of the Council of Europe (e.g. English or French).
e) Execution deadline	EIO – 90 days, MLA - not determined.
f) Concise legal practical information	a. Special requirements Participation of officers of the requesting states in interception is possible having obtained before that permission of the Prosecutor General's Office to participate in the execution of pre-trial proceedings. b. Other useful information Such measure may be applied when there are grounds to believe that data will be received about preparation to commit, being committed or already have been committed very serious, serious, less serious crime or certain minor crimes.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	To detect circumstances significant to investigation of the criminal offence. This measure is possible under mutual legal assistance.
h) Competent authority to request the measure abroad	Prosecutor General's Office of the Republic of Lithuania and Regional Prosecutor's Offices
i) Conditions of admissibility of outcomes of this measure as evidence in your country	Record of interception together with protocol containing significant information for the investigation of a criminal case could be used as evidence before court in the Republic of Lithuania.

as requesting state	
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>- It is prohibited to intercept, record conversations between the defence counsel and the suspect or accused transmitted by electronic communications networks, to monitor, record and store other information transmitted between them by electronic communications networks.</p> <p>It is recognised in the case-law that the above prohibition is not absolute, e.g. it cannot be applied where there is evidence that the defence counsel and/or the suspect or accused person are committing crimes.</p> <p>The Requesting State should be informed of the above prohibition.</p> <p>The obligation to take control of the content of information transmitted via electronic communication networks can be transferred to the officials of another EU member state who participated in the proceedings specified in the EIO on the territory of the Republic of Lithuania, but only as long as they are in the territory of the Republic of Lithuania.</p>
k) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Any other?	<p>- There is no specialized institution for the acceptance/implementation of this type of cooperation;</p> <p>- In urgent cases, these actions may be conducted based on the prosecutor's decision. In such a case a pre-trial investigation judge's sanction for these actions must be received within 3 days. If such a sanction is not received, the observation must be terminated and the data received immediately destroyed.</p>
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Not applicable
b) International legal framework applicable for this measure in your Member State	<p>Directive 2014/41/EU regarding the European Investigation Order in criminal matters. Annex C EIO.</p> <p>Notification in accordance with Art 20 of the 2000 MLA Convention</p>
c) Competent authority to receive the request / execute the measure	<p>To receive:</p> <p>Annex C EIO DIR: Police Department under the Ministry of the Interior (Saltoniskų str. 19, LT-08105, Vilnius, Lithuania; email: info@policija.lt)</p> <p><u>Request for a Mutual Legal Assistance in all cases has to reach Lithuania (Prosecutor General's Office) (Rinktinės str. 5A, LT-01515 Vilnius, Lithuania; email: generaline.prokuratura@prokuratos.lt)</u></p>
d) Accepted languages	Lithuanian and English. However, priority is given to Lithuanian.
e) Execution deadline	EIO – 90 days, MLA - not determined.
f) Concise legal practical information	N/A
g) Conditions under which it is possible to order the measure based on a	N/A

request of foreign authority	
h) Competent authority to request the measure abroad	Prosecutor General's Office or Regional Prosecutor's Office.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	N/A
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	N/A
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<i>The general principle is that in order to obtain consent to use information - in possession of authority other than police - in judicial proceedings, an EIO must be submitted. However, in cases where the requesting state does not need EIO (according to her national law) so as to use specific data in criminal proceedings and the police is able to provide such information (that is, such information is available to the police and there is no need to apply any procedural constraint measures on the grounds of Criminal Procedure Code) - then information exchange via police channels may take place.</i>
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	N/A

4.18. Luxembourg

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	This measure is possible in Luxembourg under international judicial cooperation.
b) International legal framework applicable for this measure in your Member State	See h) below
c) Competent authority to receive the request/execute the measure	The district prosecutor is competent to receive and execute the request. The General prosecutor is the central authority but delegate the reception and executing of the measure to the prosecutor.
d) Accepted languages	EN, FR, DE
e) Execution deadline	In between 48 hours
f) Concise legal practical information	We have no concise legal practical information.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Here again Luxembourg domestic law has no specific regulations, so that the general principles of law and human rights have to be respected, so the suspect and in general any person connected to a crime or presumed to project to commit a crime.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The texts in force are articles 40 and 41 of the CISA. If the request is issued by a non-member state of CISA, there are no provisions of law. Observation measures are possible under domestic law if the offenses are likely to carry a criminal penalty or an offence; the maximum is equal to or exceeds, one year imprisonment. (Article 48-12 of our domestic penal code)
i) Competent authority to request the measure abroad	Depending on the stage in the proceedings: prosecutor in a preliminary procedure and by the investigating magistrate when inquiring in the case.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Police report relating the operations, giving information of the day and at what time the controlled person entered and left the Luxembourg territory and describing possible incidents.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	The technical record made of the movement of the surveilled person combined with an audio/video recording is not admissible under Luxembourg law except for cases of terrorism and financing of terrorism.(in this case we need an European Investigation Order)
l) Can you share any good practice, such as: - Do you have a specialized body for	Concerning cross border observation in a police investigation, the central office of police in Luxembourg (RIFO) received the request for cross-border observation. In an urgent case the oral permit is

<p>receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>given by the prosecutor under the condition of a written request in between the 48 hours. If the cross border observation has been issued by the customs services, the request is taken in charge by the prosecutor and the physical execution is given to a special service of the customs in Luxembourg.</p>
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	This measure is possible in Luxembourg under international judicial cooperation by placing a beeper on a vehicle but not for placing a beeper on a person.
b) International legal framework applicable for this measure in your Member State	See below F.B.A70
c) Competent authority to receive the request/execute the measure	The competent authority to receive and execute the measure is the prosecutor. (to be complete: In Luxembourg we have one General Prosecutor, our central authority, and 2 judicial districts with on the top a chief prosecutor)
d) Accepted languages	EN,FR,DE
e) Execution deadline	In between 48 hours
f) Concise legal practical information	We have no concise legal practical information
g) Possible subject of observation/surveillance (suspect only, or also other persons)	The Suspect and also other persons (See FBA70 g)
h) Conditions under which it is possible to order the measure based on a request of foreign authority	See below FBA70 h)
i) Competent authority to request the measure abroad	The prosecutor is the competent authority to request the measure abroad and if already in charge of a domestic case it is the investigation judge.
j) Conditions of admissibility of outcomes of this measure as	The measure has to fulfill all legal provisions in the requesting and executing country. The judicial authority of Luxembourg are

evidence in your country as requesting state	normally not verifying the legal character of the measure in the requesting state.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	The technical device tracking the person combined with an audio/video recording is not admissible under Luxembourg law except for cases of terrorism and financing of terrorism. (in this case we need an European Investigation Order)
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	See below FBA70 k)
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	
b) Legal Framework	The legal framework is our domestic penal code.(Article 48-12 to 48-16) and article 40 Schengen Convention.
c) Competent Authority	The competent authority are the state prosecutor and the investigating magistrate when being required in the case
d) Accepted Languages	EN,FR,DE
e) Execution Deadline:	
f) Concise legal practical information	We have no concise legal practical information.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	The possible subject of observation and surveillance are the suspect and if needed other persons in contact for example with the suspect.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	See below FBA70h)

i) Competent authority to request the measure abroad	The prosecutor and the investigating judge depending on the stage of proceedings
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	There are no specific conditions in the domestic law.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	See below FBA70 k)
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	We have no special body receiving/executing this type of cooperation. We have no special legal, organizational or technical measure in urgent case. The on-duty prosecutor is in charge of receiving /executing this measure. The judicial police is in charge with the physical execution. Depending on the nature of the case, the section of the judicial police dealing with for example drugs or arms will be in charge of the execution. An request concerning a drug traffic case is taken in charge by the section dealing with drug traffic in domestic cases)
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	This measure is possible in Luxembourg under international judicial cooperation (EIO).
b) International legal framework applicable for this measure in your Member State	Article 38(2) of the domestic framework transposing Art. 28 of the EIO directive Luxembourg.
c) Competent authority to receive the request / execute the measure	General prosecutor is the central authority for receiving the request. The prosecutor is delegated and in charge of the reception and execution of the request.
d) Accepted languages	EN,FR,DE
e) Execution deadline	

f) Concise legal practical information	No concise legal practical information
g) Possible object of controlled delivery	Luxembourg has no provisions in its domestic law, but controlled deliveries are in practice organized, especially in cases of drug trafficking, arms and ammunition trafficking, produce deriving from crime.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	In the lack of provisions of law, there are no specific conditions by domestic law. The request from the foreign authority has to fulfil the formal conditions ordered in the CISA. Controlled delivery can be ordered in any kind of criminality, but it must never incite the suspected to commit a crime.
i) Competent authority to request the measure abroad	Depending on the stage in the proceedings: prosecutor in a preliminary procedure or the examining magistrate when inquiring in the case
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	1) that the inquiry of the controlled delivery has not incited the suspected person to commit the crime and 2) a police report relating the operations and unexpected incidents
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	We are not replacing the contents of the controlled consignment. If needed the interception of the delivery is treated under the domestic conditions of seizing drugs, arms. The practical aspects of the controlled delivery are fixed in common by the requesting and executing authority. (article 38 of EIO domestic Framework)
l) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other?	We have no special body receiving/executing this type of cooperation. We have no special legal, organizational or technical measure in place for urgent cases. (see below FBA55)
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	This measure is possible in Luxembourg under international judicial cooperation.
b) International legal framework applicable for this measure in your Member State	Luxembourg needs a European Investigation Order.(Articles 32 and 33 of our domestic framework transposing the EIO directive) The execution of the measure is in the competence of the examining magistrate.

c) Competent authority to receive the request / execute the measure	The competent authority to receive the request is the district prosecutor if competent: <i>rationae loci</i> .
d) Accepted languages	EN,FR,DE
e) Execution deadline	
f) Concise legal practical information	This measure is authorized for a period of one month and if necessary this period can be prolonged according to our penal procedure code to maximum 1 year. Article 88 of the penal procedure code
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>"A) Wire taping: article 38-1 of the penal procedure code: The conditions: The judge may, in exceptional circumstances and by special reasoned decision set out in relation to the circumstances and by reference to the conditions a) to c) here after, order the use of technical surveillance and control of all forms of communication, if: a) the prosecution aims at an offence of a particularly gravity punishable as a crime (the most serious offences, punished by imprisonment exceeding 5 years, for example murder, rape, aggravated theft ...) or as an offence (the common offences are punished by imprisonment from 8 days to 5 years) whose imprisonment is equal or exceeds two years imprisonment, and if b) the facts make the person to monitor, suspicious either to have committed or participated to the crime/offence, or either receiving or transmitting information to the accused or the suspect, c) ordinary means of investigation are inoperative due to the nature of the facts and circumstances of the case. The measures must not be ordered after the first interrogation of the accused by the investigating judge. The measures must not be ordered towards a person bound by his profession to professional secrecy, unless he is himself suspected of having committed the crime/offence or to have participated.</p> <p>B) Telephone tracking: article 67-1 of the criminal code = to trace a phone number on a specific date and determined time but without listening to the conversation, or recording it Conditions: If the examining judge seized of the facts which carry a criminal penalty or an offence penalty, the maximum is equal or exceeds six months' imprisonment, thinks that there are circumstances that make the telecommunications tracking or the location of origin or destination of telecommunications, necessary for the manifestation of the truth, he may proceed (requesting when appropriate the help of the technical operator of the telecommunications and / or of the provider of a telecommunication service) 1) to the identifying call data, from which or to which calls are sent or were sent And/or 2) to the location of the origin or destination of telecommunications."</p>
h) Competent authority to request the measure abroad	Examining magistrate
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	There are no legal provisions.

j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	Luxembourg have a prohibition to intercept a call between the accused person and their defense counsel. The investigating judge has also to stop the measure after the concerned person has been accused by the judge. (see below g) According to our article 32(3) EIO Framework, the judicial authority may submit his consent for the transmission of the results of the measure under the conditions of our legal provisions in accordance with the EIO directive.
k) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	We have no specialized body for receiving/executing this type of cooperation. For urgent cases there are no special legal, organizational or technical measure. (see below FBA55)
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	This measure is possible in our country under international judicial cooperation. This measure takes the form of a notification done by the requesting state to the executing state. There is no decision taken by a domestic judicial authority.
b) International legal framework applicable for this measure in your Member State	Domestic EIO Framework (Annexe C) in accordance with the EIO directive
c) Competent authority to receive the request / execute the measure	The competent authority to receive/execute the measure is the district prosecutor.
d) Accepted languages	EN,FR,DE
e) Execution deadline	96 hours
f) Concise legal practical information	No concise legal practical information

g) Conditions under which it is possible to order the measure based on a request of foreign authority	
h) Competent authority to request the measure abroad	The competent authority to request abroad is in Luxembourg the investigating judge in charge with a domestic case and having ordered wire tapping or telephone tracking based on article 67-1 penal code.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The measure has to be requested by the authority competent in the requesting country.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	We have no special body for receiving/executing this type of cooperation. No legal, organizational or technical measure for urgent cases. Police is not involved in this measure.
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	We have implemented this provision in our legal system. (Law 22 February 2018 transposing the Council Framework Decision 2006/960/JHA).
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	As an EJM contact point (3 contact points for Luxembourg) we did not yet organize or participate in any regional cross-border meeting focused on observation/ surveillance, controlled delivery or interception of telecommunications.

4.19. Malta

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Although Maltese law (S.L. 9.25) which transposed Directive 2014/41 does not specifically refer to cross-border observation, it does not exclude it as a possibility either. Also, the provisions of the Criminal Code do not make specific reference to this type of international cooperation either although there is always the possibility that such cooperation is requested on the basis of reciprocity. The Office of the Attorney General as the central authority, has not received such requests in the past two years.
b) International legal framework applicable for this measure in your Member State	Any treaty or an arrangement to which both states concerned are parties or on the basis of the principle of reciprocity being assured (in the event that no treaty exist). When assistance is provided upon the principle of reciprocity the same assistance will be provided in terms of national law.
c) Competent authority to receive the request/execute the measure	In general, any request for international cooperation is sent to the Office of the Attorney General as the central authority but is then sent to the police for execution from their end.
d) Accepted languages	English, Maltese
e) Execution deadline	Not specified in Maltese law.
f) Concise legal practical information	Maltese law on international judicial cooperation does not make specific reference to 'cross-border observation' and therefore this information is not available at this point in time in relation to this type of investigative measure.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	This is not specified in MT law dealing with international judicial cooperation.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	If the request is made in terms of a particular treaty or arrangement, the conditions will be those set out in that treaty or arrangement. At this point in time, Maltese law dealing with international judicial cooperation does not refer to conditions under which it is possible to order the measure upon a request from a foreign authority because this measure is not specifically mentioned.
i) Competent authority to request the measure abroad	The Attorney General's Office, which is the designated central authority, following a request to the same by Police (unless other arrangements cater for such measure on a police-to-police basis).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording,	

please clarify, whether your law stipulates a different procedure than indicated above	
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Although Maltese law (S.L 9.25) which transposed Directive 2014/41 does not specifically refer to the possibility of cross-border observation, it does not exclude it as a possibility either. Also, the provisions of the Criminal Code do not make specific reference to this type of international cooperation either although there is always the possibility that such cooperation is requested on the basis of reciprocity. MT has not received requests under international judicial cooperation with this investigative measure in the last two years.
b) International legal framework applicable for this measure in your Member State	At this point in time, Maltese law dealing with international judicial cooperation does not refer to this measure specifically.
c) Competent authority to receive the request/execute the measure	In general, any request for international cooperation is sent to the Office of the Attorney General as the central authority but is then sent to the police for execution from their end, unless such execution is precluded by law.
d) Accepted languages	English or Maltese
e) Execution deadline	Not specified in Maltese law.
f) Concise legal practical information	Maltese law on international judicial cooperation does not make specific reference to 'cross-border tracking' and therefore this information is not available at this point in time in relation to this type of investigative measure.
g) Possible subject of observation/surveillance	This is not specified in Maltese law.

(suspect only, or also other persons)	
h) Conditions under which it is possible to order the measure based on a request of foreign authority	If the request is made in terms of a particular treaty or arrangement, the conditions will be those set out in that treaty or arrangement.
i) Competent authority to request the measure abroad	In general any request for international judicial cooperation, is transmitted by the Office of the Attorney General as the central authority but would be transmitted upon a request by the police (unless other arrangements cater for such measure on a police-to-police basis).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Although Maltese law (S.L 9.25) which transposed Directive 2014/41 does not specifically refer to the possibility of cross-border observation, it does not exclude it as a possibility either.

	Also, the provisions of the Criminal Code do not make specific reference to this type of international cooperation either although there is always the possibility that such cooperation is requested on the basis of reciprocity. MT has not received requests under international judicial cooperation with this investigative measure in the last two years.
b) Legal Framework	At this point in time, Maltese law dealing with international judicial cooperation does not refer to this measure specifically.
c) Competent Authority	In general, all requests for international judicial cooperation are received by and transmitted by the Office of the Attorney General although requests are sent to other authorities, such as the police, for execution.
d) Accepted Languages	English or Maltese
e) Execution Deadline:	No execution deadline specified in the law as this measure within the framework of international judicial cooperation is not mentioned.
f) Concise legal practical information	Maltese law on international judicial cooperation does not make specific reference to 'surveillance and tracking of a person' and therefore this information is not available at this point in time in relation to this type of investigative measure.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	This is not specified in Maltese law.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	If the request is made in terms of a particular treaty or arrangement, the conditions will be those set out in that treaty or arrangement.
i) Competent authority to request the measure abroad	In general, requests are transmitted by the Office of the Attorney General as the central authority upon a request by the police or another competent authority.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or	

<p>one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is although Malta has received only one such request (an EIO) in the last two years.
b) International legal framework applicable for this measure in your Member State	DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 regarding the European Investigation Order in criminal matters, which has been transposed into national law in Subsidiary Legislation 9.25 – European Investigation Order Regulation
c) Competent authority to receive the request / execute the measure	The Office of the Attorney General receives the request as the central authority but any request is then sent to the Malta Police Force for execution.
d) Accepted languages	English and Maltese
e) Execution deadline	No specific execution deadline although MT as the executing state tries to take into account any deadlines given by the issuing state.
f) Concise legal practical information	The practical arrangements regarding this investigative measure, shall be agreed between the issuing State and the executing State. The issuing authority shall indicate in the EIO why it considers the information requested relevant for the purpose of the criminal proceedings concerned. The right to act, to direct and to control operations in relation to this type of investigative measure shall lie with the competent authorities of the executing State.
g) Possible object of controlled delivery	Any consignment whatsoever in terms of Article 435E(1) of the Maltese Criminal Code whilst Chapter 101 of the Laws of Malta (Dangerous Drugs Ordinance) then refers to an illicit or suspect consignment of a dangerous drug as defined in that law.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Controlled delivery is to take place with a view to identifying persons involved in the commission of any criminal offence under the laws of Malta or under the laws of another country.
i) Competent authority to request the measure abroad	Office of the Attorney General as the central authority is competent to transmit the request although the measure would have been requested by the Executive Police.
j) Conditions of admissibility of outcomes of this measure as	Provided it has been gathered in terms of law applicable in the executing state.

evidence in your country as requesting state	
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	
l) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is although Malta has not received such requests in the last two years.
b) International legal framework applicable for this measure in your Member State	DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 regarding the European Investigation Order in criminal matters, which has been transposed into national law in Subsidiary Legislation 9.25 – European Investigation Order Regulation
c) Competent authority to receive the request / execute the measure	The Office of the Attorney General is competent to transmit the request which would have been made by the Malta Police Force. In the case of incoming requests, these are sent to the Executive Police for execution.
d) Accepted languages	English and Maltese
e) Execution deadline	No specific execution deadline although MT as the executing state tries to take into account any deadlines given by the issuing state.
f) Concise legal practical information	<p>The information found in Maltese legislation in relation to this investigative measure can be found listed in Article 33 of the Subsidiary Legislation 9.25 – European Investigation Regulation. An EIO sent for the purpose of conducting this investigative measure must also contain the following information:</p> <p>(a) information for the purpose of identifying the subject of the interception;</p> <p>(b) the desired duration of the interception; and</p> <p>(c) sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.</p>

	<p>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.</p> <p>When issuing such an EIO, 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.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>An EIO sent for the purpose of conducting this investigative measure must also contain the following information:</p> <p>(a) information for the purpose of identifying the subject of the interception;</p> <p>(b) the desired duration of the interception; and</p> <p>(c) sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.</p> <p>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.</p> <p>In addition to the grounds for non-recognition or non-execution referred which apply in the case of any other investigative measure, the execution of an EIO involving this type of measure may also be refused where the investigative measure concerned would not have been authorised in a similar domestic case. Malta may make its consent subject to any conditions which would be observed in a similar domestic case.</p>
h) Competent authority to request the measure abroad	Office of the Attorney General transmits the request upon a request by the Executive Police or another competent authority (unless other arrangements cater for such measure on a police-to-police basis).
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The interception was carried out following an authorisation to that effect by a competent authority.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this	

question concerns Art. 30(6)(a) of the EIO Directive).	
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is.
b) International legal framework applicable for this measure in your Member State	DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 regarding the European Investigation Order in criminal matters, which has been transposed into national law in Subsidiary Legislation 9.25 – European Investigation Order Regulation
c) Competent authority to receive the request / execute the measure	The Office of the Attorney General receives the request as the central authority whilst the Malta Police Force would be responsible for the execution of this request.
d) Accepted languages	English, Maltese
e) Execution deadline	<p>No deadline specified for execution, however deadline can be found when the request cannot be executed as outlined in Article 34 S.L. 9.25:</p> <p>"(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, (Malta's competent authority is the notified competent authority) with the following:</p> <p>(a) that the interception may not be carried out or shall be terminated; and</p> <p>(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"</p>

f) Concise legal practical information	<p>The information found in Maltese legislation in relation to this investigative measure can be found listed in Article 34 of the Subsidiary Legislation 9.25 – European Investigation Regulation.</p> <p>The intercepting Member State shall notify the competent authority of the notified Member State of the interception:</p> <p>(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;</p> <p>(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.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	No specific conditions mentioned in the law apart from the fact that the notification about the interception of telecommunication without the technical assistance of the notified MS must be filled in with the details which are required to be filled in, in the case of any EIO.
h) Competent authority to request the measure abroad	Office of the Attorney General transmits the request as the central authority upon a request by the Executive Police (unless other arrangements cater for such measure on a police-to-police basis).
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	
j) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other? 	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	This was transposed in various laws, more specifically, S.L 164.20 which states that where the information or intelligence may, under any relevant provision of Maltese law, be accessed by the Police only pursuant to an agreement or authorisation of a judicial authority, the Police shall refrain from communicating the information or intelligence to the state agencies of other Member States having similar powers, unless the Attorney General agrees or authorizes the communication of such information or

	intelligence. Such agreement or authorisation shall always be sought whenever the information or intelligence is required for use as evidence.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	The current EJM Contact Point for Malta has been contact point since May 2020 and so far has not been involved in any regional or cross-border meetings focused on any of the investigative measures mentioned. Requests involving the use of these investigative measure is very rare both in the cases where Malta is the issuing state and also where Malta is the executing state.

4.20. The Netherlands

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes.
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> Article 40, The Schengen acquis - 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, 19 June 1990 Article 17, Second Additional Protocol to the European Convention on mutual assistance in criminal matters, 8 November 2001 Article 21, Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Napels II) Request for International Legal Assistance <p>Art 40 SUO request always needs to be followed by an MLAT</p>
c) Competent authority to receive the request/execute the measure	National Coordinating Centre for International Legal Assistance and / or National Cross-border Surveillance Coordination Centre (law enforcement)
d) Accepted languages	Dutch and English
e) Execution deadline	<p>The executing/requested state has to be informed of the observation in advance of the border crossing. In very urgent cases (e.g. during the observation) this can be done through the Cross-border Surveillance Coordination Centre (law enforcement).</p> <p><i>Can be requested for a maximum of three months (with the possibility to extend, upon receiving a motivated request for extension in time).</i></p>
f) Concise legal practical information	<p>When, in case of an urgency, the article 40 Schengen form is used, it has to be followed by a Request for International Legal Assistance, send to LIRC.</p> <p>If, apart from the observation, another measure is needed, an EIO is accepted to combine the requested investigative measures.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspects and other persons of interest to the investigation, for instance: co travelers, members of the criminal organization etc.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Surveillance by law enforcement of a person as part of a criminal investigation and continuing that surveillance into a third (party) country. Cross-border surveillance is only permitted in relation of a suspected crime.</p> <p>The measure can only be applied when there is a suspicion of serious offences in which the suspect can undergo pretrial detention. Generally speaking this means all serious offences with a four year or more prison sentence.</p> <p>The measure must be in the interest of the investigation; A specific person (e.g. not only the suspect) The measure is not applicable to objects such as containers (it is possible to ask for the measure for a unknown person, and then connect it to the object).</p>

	The request for assistance (in advance) is directed to the national public prosecutor with the National Centre for International Legal Assistance (LIRC).
i) Competent authority to request the measure abroad	The public prosecutor
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	The measure has to be admissible in the requested state. In case of an article 40 request, this has to be formalized by a Request for International Legal Assistance
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	Recording of a confidential communication by means of technical equipment constitutes intrusive and covert surveillance. This coercive measure requires prior permission from an investigating judge and cannot be requested retrospectively. It can only be requested through an EIO. In case of emergency the National prosecutor can contact an investigating judge with an oral request 24/7. An Annex C form does not apply.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	<p>Contact 1 Name: National Coordinating Centre for International Legal Assistance (LIRC) (available from Monday to Friday from 8.00 – 17.00) E-mail: LIRC-LP@politie.nl Phone number: +31 88 662 9450</p> <p>Contact 2 Name: Cross-border Surveillance Coordination Centre (LCGO - law enforcement) (24/7 available) E-mail: LCGO@politie.nl Phone number: +31 88 662 9417</p> <p>Both the public prosecutor and the investigating judge are available 24/7 in case of extreme urgency. You can reach the public prosecutor through LCGO.</p>
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, this is considered a technical device during a cross border surveillance.
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> Article 40, The Schengen acquis - 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, 19 June 1990 Article 17, Second Additional Protocol to the European Convention on mutual assistance in criminal matters, 8 November 2001 Article 21, Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Napels II) Request for International Legal Assistance <p>Art 40 SUO request always needs to be followed by an MLAT</p>

c) Competent authority to receive the request/execute the measure	National Coordinating Centre for International Legal Assistance
d) Accepted languages	Dutch and English
e) Execution deadline	The executing/requested state has to be informed of the observation in advance of the border crossing through GPS. In very urgent cases (e.g. during the observation) this can be done through the Cross-border Surveillance Coordination Centre (law enforcement). <i>Can be requested for a maximum of three months (with the possibility to extend, upon receiving a motivated request for extension in time).</i>
f) Concise legal practical information	When, in case of an urgency, the article 40 Schengen form is used, it has to be followed by a Request for International Legal Assistance, send to LIRC. If, apart from the observation, another measure is needed, an EIO is accepted to combine the requested investigative measures.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspects and other persons of interest to the investigation, for instance: co travelers, members of the criminal organization etc. The monitoring/ tracking device cannot be physically placed on the surveilled person, unless he or she has given permission for that.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Cross-border surveillance by law enforcement of a person by means of a beeper/ tracker/ GPS as part of a criminal investigation and continuing that surveillance into a third (party) country. Cross-border surveillance is only permitted in relation to a suspected crime and at the order of the public prosecutor in the Netherlands. The measure can only be applied when there is a suspicion of serious offences in which the suspect can undergo pretrial detention. Generally speaking this means all serious offences with a four year or more prison sentence. The measure must be in the interest of the investigation; A specific person (e.g. not only the suspect). The measure is not applicable to objects such as containers (it is possible to ask for the measure for a unknown person, and then connect it to the object).
i) Competent authority to request the measure abroad	The public prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The measure has to be admissible in the requested state. In case of an article 40 request has to be formalized by a Request for International Legal Assistance
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	Recording of a confidential communication by means of technical equipment constitutes intrusive and covert surveillance. This coercive measure requires prior permission from a investigating judge and cannot be requested retrospectively. It can only be requested through EIO. In case of emergency the National prosecutor can contact an investigating judge with an oral request 24/7. An Annex C form does not apply.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for	Approval for surveillance through a tracker can be obtained retrospectively, however, as soon as it becomes known to the issuing/ requesting state an MLA ¹ needs to send to the National Coordinating Centre for International Legal Assistance containing the reasons for the delayed request as well as the details of the tracked object and date and place.

<p>all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>Contact 1 Name: National Coordinating Centre for International Legal Assistance (LIRC) (available from Monday to Friday from 8.00 – 17.00) E-mail: LIRC-LP@politie.nl Phone number: +31 88 662 9450</p> <p>Contact 2 Name: Cross-border Surveillance Coordination Centre (LCGO - law enforcement) (24/7 available) E-mail: LCGO@politie.nl Phone number: +31 88 662 9417</p> <p>Both the public prosecutor and the investigating judge are available 24/7 in case of extreme urgency. You can reach the public prosecutor through LCGO.</p>
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	In the Netherlands this is seen as an incoming request for cross-border observation.
b) Legal Framework	<ul style="list-style-type: none"> • Article 40, The Schengen acquis - 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, 19 June 1990 • Article 17, Second Additional Protocol to the European Convention on mutual assistance in criminal matters, 8 November 2001 • Article 21, Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Napels II) • Request for International Legal Assistance <p>Art 40 SUO request always needs to be followed by an MLAT</p>
c) Competent Authority	National Coordinating Centre for International Legal Assistance (LIRC)
d) Accepted Languages	Dutch and English
e) Execution Deadline:	<p>If the issuing/ requested state wishes to request surveillance and tracking of a person where the tracking device has to be installed by the executing state, it is important that this happens with sufficient time/ notice to execute.</p> <p>Permission for the cross border surveillance starts from the moment that the technical device is placed.</p>
f) Concise legal practical information	<p>When, in case of an urgency, the article 40 Schengen form is used, it has to be followed by a Request for International Legal Assistance, send to LIRC.</p> <p>If, apart from the observation, another measure is needed, an EIO is accepted to combine the requested investigative measures.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	<p>Suspects and other persons of interest to the investigation, for instance: co travelers, members of the criminal organization etc.</p> <p>The monitoring/ tracking device cannot be physically placed on the surveilled person, unless he or she has given permission for that.</p>

h) Conditions under which it is possible to order the measure based on a request of foreign authority	Cross-border surveillance by law enforcement of a person as part of a criminal investigation and continuing that surveillance into a third (party) country, by means of a beeper/ tracker/ GPS. Cross-border surveillance by means of a beeper/ tracker/ GPS is only permitted in relation of a suspected crime and at the order of the public prosecutor in the Netherlands. The measure can only be applied when there is a suspicion of serious offences in which the suspect can undergo pretrial detention. Generally speaking this means all serious offences with a four year or more prison sentence. The measure must be in the interest of the investigation; A specific person (e.g. not only the suspect). The measure is not applicable to objects such as containers (it is possible to ask for the measure for a unknown person, and then connect it to the object).
i) Competent authority to request the measure abroad	The public prosecutor
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The measure has to be admissible in the requested state. In case of an article 40 request has to be formalized by a Request for International Legal Assistance
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	Recording of a confidential communication by means of technical equipment constitutes intrusive and covert surveillance. This coercive measure requires prior permission from an investigating judge and cannot be requested retrospectively. It can only be requested through EIO. In case of emergency the National prosecutor can contact an investigating judge with an oral request 24/7. An Annex C form does not apply.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	<p>If the issuing/ requested state wishes to request surveillance and tracking of a person where the tracking device has to be installed by the executing state, it is important that this happens with sufficient time/ notice to execute.</p> <p>Permission for the cross border surveillance starts from the moment that the technical device is placed.</p> <p>Contact 1 Name: National Coordinating Centre for International Legal Assistance (LIRC) (available from Monday to Friday from 8.00 – 17.00) E-mail: LIRC-LP@politie.nl Phone number: +31 88 662 9450</p> <p>Contact 2 Name: Cross-border Surveillance Coordination Centre (LCGO - law enforcement) (24/7 available) E-mail: LCGO@politie.nl Phone number: +31 88 662 9417</p> <p>Both the public prosecutor and the investigating judge are available 24/7 in case of extreme urgency. You can reach the public prosecutor through LCGO.</p>
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under	Yes.

international judicial cooperation?	In principle, harmful or dangerous goods to public health and safety (e.g. firearms, contaminated soil or drugs, and there is an absolute prohibition on human trafficking.) have to be seized. However, the investigation can urgently require that the seizure of harmful or dangerous goods may be postponed until a later moment. This exception is regulated by a stringent approval procedure.
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> Article 12, Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, 29 May 2000. Article 18, Second Additional Protocol to the European Convention on mutual assistance in criminal matters, 8 November 2001 European Investigation Order in criminal matters (Directive 2014/41/EU of 3 April 2014); Article 22, Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Napels II) Several bilateral and multilateral treaties.
c) Competent authority to receive the request / execute the measure	National Coordinating Centre for International Legal Assistance (LIRC) or a Regional Centre for International Legal Assistance (IRC).
d) Accepted languages	Dutch and English
e) Execution deadline	The guarantees surrounding a controlled delivery have to be agreed upon prior to the crossing of the goods.
f) Concise legal practical information	Guarantees for apprehension of the suspect and the final seizure of the goods must be stated in writing in the request. According to the Dutch implementation law, implementing Article 28 and 29 of the Directive EIO, an additional ground for non-execution applies; if in a similar Dutch criminal case the application of the measure is not possible, this is a reason to refuse the EIO. Furthermore it should meet the subsidiarity test (Article 5.4.19 Code of Criminal Procedure).
g) Possible object of controlled delivery	The possible object of controlled delivery are harmful or dangerous goods, e.g. firearms, contaminated soil or drugs. There is an absolute prohibition on human trafficking.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The measure can only be applied when there is a suspicion of serious offences in which the suspect can undergo pretrial detention. Generally speaking this means all serious offences with a four year or more prison sentence.</p> <p>The directive judicial requests concerning cross border surveillance 2006 A003 covers controlled deliveries. Laisser passer (doorlaten) is not allowed. However, in case of a serious investigative interest such as tactical or strategic reasons, seizure of goods can be postponed. Underlying this decision must always be the guarantee that the goods will be "controlled" (using covert surveillance) and seized at a later moment in time. Controlled delivery may never result in harmful or dangerous goods entering the Dutch/ foreign market freely.</p>
i) Competent authority to request the measure abroad	A public prosecutor (local or national) can ask for this measure.
j) Conditions of admissibility of outcomes of this measure as evidence in	The measure has to be admissible in the requested state and an EIO or MLAT has to request the measure.

your country as requesting state	
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	After consultation and agreement, a (small) sample can be left, however most of the dangerous goods need to be seized and replaced (by dummy goods) because of the risk they pose.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	
Interception, recording and transcription of telecommunications (FB A 50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes.
b) International legal framework applicable for this measure in your Member State	EU Directive 2014/41/EU, with the European Investigation Order (EIO), was implemented in Dutch law, effective from June 17th 2017. For countries who have not implemented this EU Directive: <ul style="list-style-type: none"> - EU Convention on Mutual Assistance in criminal matters between the member states of the European Union (29 May 2000);
c) Competent authority to receive the request / execute the measure	The competent authorities are the regional International Legal Assistance Centres (the IRCs) and the National Legal Assistance Centre (LIRC).
d) Accepted languages	Dutch and English
e) Execution deadline	The coercive measure of interception of telecommunications cannot be applied retrospectively, because the investigating judge needs to give prior authorization on application of the prosecutor.
f) Concise legal practical information	On application of the prosecutor, the investigating judge can give authorization for a period of four weeks. It is possible to request an extension. This period can be prolonged with four weeks (unlimited with view to the investigating needs). For a prolongation an additional request is needed, in which the necessity for the prolongation is explained. Also, the request for prolongation needs to send at a minimum of three working days prior to the end date of the authorization.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	This measure is strictly regulated and can be used in any part of the telecommunication system, including facsimile machines and internet. There are specific articles regarding tapping in terrorism cases. <p>The following conditions must be met:</p> <ul style="list-style-type: none"> - The measure can only be applied to the suspicion of serious offences in which the suspect can undergo pretrial detention. Generally speaking this means all serious offences with a four year or more prison sentence.

	<ul style="list-style-type: none"> - The measure must be urgently required for the investigation (the necessity for the wiretap needs to be explained). - Applicable to (tele) communications not intended to the public in which a user (not necessarily a suspect) participates by using the services or a provider of telecommunications. - When using an EIO: no special requirements are needed. Otherwise: - There are two options: either the requesting authority states in the request the details of the order to wiretap and that it has been issued OR the wiretap order is enclosed with the request. - It must be a written request, stating reasons; in case of urgency this can be done verbally, and then to be confirmed as soon as possible (maximum of two days). - In the NL, an authorization by an investigating judge is required, also in the case of amending/adding/extending; According to the Dutch implementation law, implementing Article 28 and 29 of the Directive EIO, an additional ground for non-execution applies; if in a similar Dutch criminal case the application of the measure is not possible, this is a reason to refuse the EIO. Furthermore the public prosecutor can choose another measure then asked for in the EIO, if the requested measure does not exist in Dutch law or would not be applicable.
h) Competent authority to request the measure abroad	The investigating judge or application of the public prosecutor.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The measure has to be admissible in the requested state. And needs to come from the investigating judge. With regard to, persons entitled to privilege, such as lawyers, doctors, notaries, etc. see below (under J).
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>In principal, it is not allowed to intercept a call between the accused person and their defense counsel. However, exceptions are possible. Phone calls of defense counsels are protected in the following ways:</p> <p>First of all, the interception of communication needs to be ended when a number is recognized as the number of a defense counsel (there is an automated system in place for this).</p> <p>If a call between the accused person and their defense counsel is intercepted, the recordings of communication that fall under the scope of attorney-client privilege/ the privilege to decline to give evidence need to be destroyed. If the communication does not fall under the privilege to decline to give evidence, the transcript thereof can only be used after the investigating judge has given authorization.</p> <p>Yes, it is possible to transfer this obligation to the state that requested the interception of telecommunications with immediate transmission to the issuing state if the international law allows.</p>
k) Can you share any good practice, such as: <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	<p>The measure of interception of telecommunication can be applied to anyone (other than the suspect) if it is urgently required in the interest of the investigation (which has to be substantiated).</p> <p>In case of extreme urgency, both the public prosecutor and the investigating judge are available 24/7.</p>

Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, but only for telecommunication (not for direct listening devices, in for instance a vehicle).
b) International legal framework applicable for this measure in your Member State	Annex C form.
c) Competent authority to receive the request / execute the measure	The National Public Prosecutor of the National Coordinating Centre for International Legal Assistance (LIRC).
d) Accepted languages	Dutch and English
e) Execution deadline	Within 96 hours. It has to be send as soon as possible after the requesting state finds out that it has intercepted telecommunication without the technical assistance of another member state.
f) Concise legal practical information	The Annex C 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 the territory of an EU MS without its technical assistance, an Annex C form needs to be send.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<ul style="list-style-type: none"> - A notification, about the intention to intercept or the interception of telecommunications of a user who is in the territory of the Netherlands must be promptly forwarded to the national public prosecutor of the LIRC. - This public prosecutor has to apply to the investigating judge for permission to intercept. - The investigating judge shall take a decision on the application. - If the authorization is granted, the public prosecutor shall inform the authorities from whom the notification was received, within the time limit 96 hours that permission is granted for the intended interception or the interception of telecommunications of a user who is in the territory of the Netherlands. The public prosecutor shall attach to said permission the conditions set by the investigating judge and the conditions that the data obtained by intercepting the telecommunications of the user during his stay in the Netherlands: <ul style="list-style-type: none"> a. insofar as said telecommunications contain statements made by or to a person who could assert privilege under section 218 if he were to be asked about the content of these statements in the capacity of a witness, may not be used and should be destroyed, and b. may only be used for the criminal investigation in the context of which the notification was given and that prior permission must be requested and obtained for any other purpose.
h) Competent authority to request the measure abroad	On application of the prosecutor, the investigating judge can give authorization for a period of four weeks.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The measure has to be admissible in the requested state.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for	All incoming Annex C forms have to be send to the National Coordinating Centre for International Legal Assistance

<p>all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other? 	
General questions	
<p>a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?</p>	<p>In exceptional cases requests done through Siena to change the code from H1 to H0 are interpreted as a request to use the H1 information as evidence in court. In exceptional cases the prosecutor can decide positively on the requests. However, in general an EIO is requested, depending on the complexity and the amount of information as well as the complexity of the investigation.</p>
<p>b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?</p>	<p>Yes, BES Practice 3.0: Intensifying the judicial cross border cooperation in criminal matters through training: Hitchhikers' guide to Cross Border Cooperation.</p>

4.21. Poland

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	The Polish implementation of the EIO Directive provides for the possibility to issue/execute the EIO relating to so-called "operational measures", including the cross-border observation, conducted by the Police or other LEA (usually before the institution of the preparatory proceedings).
b) International legal framework applicable for this measure in your Member State	Option 1: EIO Directive (Annex A). Option 2: For countries who have not implemented this EU Directive and for cases where only observation is asked Convention implementing the Schengen Agreement of 1990 (CISA) – EU Convention on mutual assistance and cooperation between customs administrations (Napels II) – Bilateral treaties.
c) Competent authority to receive the request/execute the measure	Option 1: Under the EIO Directive – the circuit prosecutor (prokurator okręgowy) having the territorial jurisdiction. Option 2: Under CISA and multi-/bilateral treaties usually Police, or other LEA depending on their domestic competence.
d) Accepted languages	Option 1: Polish, only exceptionally in urgent matters and if the basis for the cross-border observation is the EIO Directive, English. Option 2: Polish or English.
e) Execution deadline	Option 1: According to the EIO Directive deadlines. Option 2: Authorisation of the requested Member State required within 5 hours after the border was crossed.
f) Concise legal practical information	Under the EIO Directive the cross-border observation is defined narrowly and it matches the definition of a cross-border observation as specified in the Art. 40 of the Convention implementing the Schengen Agreement of 1990 (CISA).
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Only a suspect or a suspected person may be the subject of cross-border observation.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Option 1: Since the transposition of the EIO Directive the cross-border observation may be applied on the basis of the EIO under the condition that there is a prior agreement between the Polish Police/other LEA and the competent authority of the issuing Member State, which enables a Polish prosecutor to confirm such EIO issued by the Polish Police/other LEA, or to issue a decision on executing such EIO issued by the competent authority of another EU Member State. Option 2: Usually with neighbouring countries this measure is applied as a form of a Police-to-Police cooperation and then the cross-border observation of persons is not considered as a form of judicial assistance and hence no involvement of judicial authorities (in Poland a court or a prosecutor) is envisaged. Police/other LEA may cooperate in cross-border observation provided that Poland is a party to certain international agreements. Such agreements include: Convention implementing the Schengen Agreement of 1990 (CISA) and several bilateral instruments with other countries, like Germany, Lithuania, Slovakia.

i) Competent authority to request the measure abroad	Option 1: Under the EIO Directive Police or other LEA empowered to pursue a cross-border observation (mainly Customs Service, Border Guard, Internal Security Agency) only after confirmation of the order by a prosecutor. Option 2: Police or other LEA (mainly Customs Service, Border Guard, Internal Security Agency).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Option 1: When the cross-border observation has been conducted on the basis of the EIC, the results may be admitted as evidence in criminal proceedings Option 2: Otherwise the results of the cross-border observation cannot be directly used as evidence. They may be admitted as evidence before the court only upon the consent of the head of a certain law enforcement agency that gathered the materials (e.g. video or voice records, written notes). Also the officers conducting the observation (under certain conditions) may be called as witnesses before the court. Only a National Tax Administration may secure directly evidence during so-called "operational measures", including the cross-border observation.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	As long as recording does not include interception it is permissible under the cross-border observation. Obtaining and recording the image or sound of persons from premises, means of transport or places other than public places is not a part of a cross-border observation, it is qualified as an interception and therefore provisions on interception are to be applied. This means that under the Polish law a prosecutor and a court are involved in the procedure.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	Under the EIO Directive there is no single designated authority responsible for receiving or executing this type of cooperation. Competence is attached to the territorial jurisdiction. In urgent matters there is possibility to contact a competent Police or a prosecutor being available in a 24/7 regime, or a central authority. During the cross-border observation ordered on the basis of the EIO it is not possible to carry out activities on the territory of Poland independently by authorities of another EU Member State. However, at the request of the Issuing State, a representative of the authority issuing the EIO shall be allowed to be present in the performance of the activities to which the EIO relates, if this is not contrary to the principles of the legal order of the Republic of Poland and does not pose a threat to national security.
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state	Yes, this is considered a technical device during a cross-border surveillance.

under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	Option 1: EIO Directive (Annex A). Option 2: For countries who have not implemented this EU Directive and for cases where only observation is asked the Convention implementing the Schengen Agreement of 1990 (CISA) – EU Convention on mutual assistance and cooperation between customs administrations (Napels II) – Bilateral treaties.
c) Competent authority to receive the request/execute the measure	Option 1: Under the EIO Directive a circuit prosecutor (prokurator okręgowy) having the territorial jurisdiction. Option 2: Under the CISA and bilateral treaties usually Police, or other LEA depending on their domestic competence.
d) Accepted languages	Option 1: Under the EIO Directive Polish, only exceptionally in urgent matters English. Option 2: Polish or English
e) Execution deadline	Option 1: According to the EIO Directive deadlines. Option 2: Despite the fact that the officer conducting the surveillance does not personally crosses the border to another Member State the deadline of 5 hours shall be applicable because of the technical device being on the territory of another State.
f) Concise legal practical information	This type of measure falls under the definition of the cross-border observation and it is defined narrowly. Its definition matches the definition of a cross-border observation under the Art. 40 of the Convention implementing the Schengen Agreement of 1990 (CISA). Under this type of cooperation interception is not possible.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Only a suspect or a suspected person may be the subject of such cross-border observation.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Option 1: Since the transposition of the EIO Directive this measure may be applied on the basis of the EIO under the condition that there is a prior agreement between the Polish Police/other LEA and the competent authority of the issuing Member State, which enables a Polish prosecutor to confirm such EIO issued by the Polish Police/other LEA, or to issue a decision on executing such EIO issued by the competent authority of another EU Member State. Option 2: Conditions determined in the Art. 40 CISA, or in bilateral treaties.
i) Competent authority to request the measure abroad	Option 1: Police or other LEA empowered to pursue the cross-border observation (mainly Customs Service, Border Guard, Internal Security Agency) only after confirmation of the EIO by a prosecutor. Option 2: Police, or other LEA depending on their domestic competence.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Option 1: When the cross-border observation has been conducted on the basis of the EIO, the results may be admitted as evidence in criminal proceedings. Option 2: Otherwise the results of a cross-border observation cannot be directly used as evidence. They may be admitted as evidence before the court only upon the consent of the head of a certain law enforcement agency that gathered the materials (e.g.

	video or voice records, written notes). Also the officers conducting the observation (under certain conditions) may be called as witnesses before the court. Only a National Tax Administration may secure directly evidence during so-called "operational measures", including the cross-border observation.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	As long as recording does not include interception it is permissible under the cross-border observation. Obtaining and recording the image or sound of persons from premises, means of transport or places other than public places is not a part of a cross-border observation, it is qualified as an interception and therefore provisions on interception are to be applied. This means that under the Polish law a prosecutor and a court are involved in the procedure.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	There is no single designated authority responsible for receiving or executing this type of cooperation. Competence is attached to the territorial jurisdiction. In urgent matters there is possibility to contact a competent Police or a prosecutor being available in a 24/7 regime, or a central authority.
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Yes.
b) Legal Framework	Option 1: EIO Directive (Annex A). Option 2: For countries who have not implemented this EU Directive and for cases where only observation is asked the Convention implementing the Schengen Agreement of 1990 (CISA) – EU Convention on mutual assistance and cooperation between customs administrations (Napels II) – Bilateral treaties.
c) Competent Authority	Option 1: Police or other LEA empowered to pursue the cross-border observation (mainly Customs Service, Border Guard, Internal Security Agency) only after confirmation of the EIO by a prosecutor. Option 2: Police, or other LEA depending on their domestic competence.
d) Accepted Languages	Option 1: Polish, only exceptionally in urgent matters, English. Option 2: Polish or English

e) Execution Deadline:	Option 1: According to the EIO Directive deadlines. Option 2: If the officer conducting the surveillance does not personally cross the border to another Member State and the technical device is installed by the executing State the deadline of 5 hours shall not be applicable.
f) Concise legal practical information	This type of cooperation falls under the definition of the cross-order observation. Since the transposition of the EIO Directive it may be conducted on the basis of the EIO Directive.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Only a suspect or a suspected person may be the subject of a cross-border observation.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	On the basis of the EIO under the condition that there is a prior agreement between the Polish Police/other LEA and the competent authority of the issuing Member State, which enables a Polish prosecutor to confirm such EIO issued by the Polish Police/other LEA, or to issue a decision on executing such EIO issued by the competent authority of another EU Member State.
i) Competent authority to request the measure abroad	Option 1: Police or other LEA empowered to pursue the cross-border observation (mainly Customs Service, Border Guard, Internal Security Agency) only after confirmation of the EIO by a prosecutor. Option 2: . Under the CSA and bilateral treaties usually Police, or other LEA depending on their domestic competence.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Option 1: When the cross-border observation has been conducted on the basis of the EIO, the results may be admitted as evidence in criminal proceedings Option 2: Otherwise the results of a cross-border observation cannot be directly used as evidence. They may be admitted as evidence before the court only upon the consent of the head of a certain law enforcement agency that gathered the materials (e.g. video or voice records, written notes). Also the officers conducting the observation (under certain conditions) may be called as witnesses before the court. Only a National Tax Administration may secure directly evidence during so-called "operational measures", including the cross-border observation.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	As long as recording does not include interception it is permissible under the cross-border observation. Obtaining and recording the image or sound of persons from premises, means of transport or places other than public places is not a part of a cross-border observation, it is qualified as an interception and therefore provisions on interception are to be applied. This means that under the Polish law a prosecutor and a court are involved in the procedure..
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or	There is no one single authority responsible for receiving or executing this type of cooperation. Competence is attached to the territorial jurisdiction. In urgent matters there is possibility to contact a competent Police or a prosecutor being available in a 24/7 regime, or a central authority. During the cross-border observation ordered on the basis of the EIO it is not possible to carry out activities on the territory of Poland

<p>one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>independently by authorities of another EU Member State. However, at the request of the Issuing State, a representative of the authority issuing the EIO shall be allowed to be present in the performance of the activities to which the EIO relates, if this is not contrary to the principles of the legal order of the Republic of Poland and does not pose a threat to national security.</p>
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes.
b) International legal framework applicable for this measure in your Member State	<p>Option 1: EIO Directive (Annex A).</p> <p>Option 2: In relation to the Member States who do not cooperate on the basis of the EIO Directive:</p> <ul style="list-style-type: none"> - Convention on Mutual Assistance in Criminal Matters of 20 April 1959 with its First and Second Additional Protocols of 1978 and 2001 - Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and its Protocol of 2001
c) Competent authority to receive the request / execute the measure	<p>Option 1: Circuit prosecutor (prokurator okręgowy) having the territorial jurisdiction.</p> <p>Option 2: Chief Police Commander (Komendant Główny Policji); in respect of serious fiscal offences - also the Minister of Finance.</p>
d) Accepted languages	<p>Option 1: Under the EIO Directive Polish, only exceptionally in urgent matters, English.</p> <p>Option 2: Polish (preferably), or one of the official languages of the Council of Europe.</p>
e) Execution deadline	<p>Option 1: According to the EIO Directive deadlines.</p> <p>Option 2: There are no specific deadlines.</p>
f) Concise legal practical information	For the purpose of evidencing the most serious criminal offences listed in Article 19 (1) of the Act on the Police of 1990, or establishing the identity of persons participating in these offences, or taking over the objects of offences.
g) Possible object of controlled delivery	Objects of criminal offences.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	At the 1. EIO 2. request, 1. executing authority 2. requested Party may grant permission for the controlled delivery of objects coming from crime or intended for the commission thereof, if otherwise determine the participants in the act or detection of distribution routes would be impossible, or very difficult. These objects may be in particular narcotic drugs and psychotropic substances, weapons, explosives, false means of payment, securities, financial resources and objects from the crime. Authorisation may be granted subject

	to certain conditions. Consent shall be in accordance with the domestic law of the executing/requested Member State. The executing authority/requested Member State may refuse or limit per consignment implicitly supervised, especially when it involves a particular danger to the life or health of persons involved.
i) Competent authority to request the measure abroad	Option 1: Under the EIO Directive Police or other LEA empowered to pursue controlled deliveries (mainly Customs Service, Border Guard, Internal Security Agency) only after confirmation of the order by a prosecutor. Option 2: Chief of Police, Commander of the Central Bureau of Investigation of the Police, Commander of the Police Internal Affairs Bureau, Commander of the Central Bureau for Combating Cybercrime. In respect of serious fiscal offences - also the Minister of Finance.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The results may be admitted as evidence in criminal proceedings.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	Both ways of handling the control delivery are acceptable.
l) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other?	Option 1: There is no one single authority responsible for receiving or executing this type of cooperation. Competence is attached to the territorial jurisdiction. In urgent matters there is possibility to contact a competent Police or a prosecutor being available in a 24/7 regime, or a central authority. Option 2: Chief of Police, Commander of the Central Bureau of Investigation of the Police, Commander of the Police Internal Affairs Bureau, Commander of the Central Bureau for Combating Cybercrime. In respect of serious fiscal offences - also the Minister of Finance.
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes.
b) International legal framework applicable for this measure in your Member State	Option 1: The EIO Directive (Annex A). Option 2: In relation to the Member States who do not cooperate on the basis of the EIO Directive: Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.

c) Competent authority to receive the request / execute the measure	<p>Option 1: The competent authority to execute the EIO is the district court (sąd rejonowy) having territorial jurisdiction, regardless of the stage of the proceedings in the issuing state. When it is not possible to establish territorial jurisdiction, the EIO may be sent to the central authority – National Prosecutor's Office, Bureau of International Legal Cooperation. If an EIO was issued at the judicial stage of the proceedings, its transmission is also possible via the Ministry of Justice, Department of International Cooperation and Human Rights.</p> <p>Option 2: Circuit prosecutor (prokurator okręgowy) having the territorial jurisdiction. A request can be sent via the central authority (the National Prosecutor's Office, or the Ministry of Justice depending on the stage of the proceedings).</p>
d) Accepted languages	<p>Option 1: Polish, only exceptionally in urgent matters, English.</p> <p>Option 2: Polish or one of the Council of Europe official languages.</p>
e) Execution deadline	<p>Option 1: According to the EIO Directive deadlines.</p> <p>Option 2: No deadlines indicated.</p>
f) Concise legal practical information	The Polish implementation of the EIO Directive provides for the possibility to issue/execute the EIO relating to: a) procedural interception (ordered by a court on a request of a prosecutor during the preparatory proceedings), but also to so-called "operational measures", including, operational interception (ordered by a court on a request of the Police, or other LEA after a consent of a prosecutor, usually before the institution of the preparatory proceedings).
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>EIO Directive and the MLAT of 2000:</p> <p>Procedural interception:</p> <p>Interception of telecommunication is allowed in Polish jurisdiction upon the request of issuing state, in accordance with Article 237 paragraph 3-4 Polish Code of Criminal Procedure and in the light of Article 241 Polish Code of Criminal Procedure, only when the ongoing proceedings or a justified concern as to the possibility of a new criminal offence concern:</p> <ol style="list-style-type: none"> 1) homicide; 2) causing a danger to the public or causing a catastrophe; 3) human trafficking; 4) abduction of a person; 5) ransom extortion; 6) hijacking of an aircraft or ship; 7) robbery, robbery with violence, or extortion by force; 8) attempt against the sovereignty or independence of the State; 9) attempt against the constitutional order of the State or against its supreme bodies, or against a unit of the Armed Forces of the Republic of Poland; 10) espionage or disclosure of classified information with the clause "secret" or "top secret"; 11) amassing weapons, explosives or radioactive materials; 12) counterfeiting and circulating counterfeit monies, payment means or instruments, or tradable documents entitling to receive a cash amount, commodity, cargo, or in-kind prize, or tradable documents providing for an obligation of capital contribution, contribution of interest, share in profits or statement of interest in a company;

	<p>12a) the forgery or modification of invoices or the use of invoices forged or modified within the scope of factual circumstances that might influence the determination of the amount of the public-law liabilities or their refund, or the refund of other tax liabilities, and the issuance and use of invoices certifying false information concerning factual circumstances that might influence the determination of the amount of the public liabilities or their refund, or the refund of other tax liabilities;</p> <p>13) manufacturing, processing, trading, and smuggling drugs, precursors, substitutes, and psychotropic substances;</p> <p>14) organised crime group;</p> <p>15) property of significant value;</p> <p>16) use of violence or unlawful threats in connection with criminal proceedings;</p> <p>16a) giving false testimony and the presentation of a false opinion, expert opinion or translation by an expert witness, qualified expert, or translator;</p> <p>16b) a false accusation of a criminal offence, fiscal offence, or fiscal delinquency against another person;</p> <p>16c) producing false evidence or taking other deceptive actions directing prosecution for a crime, fiscal offence, or fiscal delinquency against another person, or taking such actions in the course of the proceedings;</p> <p>16d) concealing evidence demonstrating the innocence of a person suspected of committing a criminal offence, fiscal offence, or fiscal delinquency;</p> <p>16e) notifying a prosecution body of a criminal offence or fiscal offence that has not been committed;</p> <p>16f) acting as an accessory after the fact;</p> <p>16g) failure to report a criminal offence;</p> <p>17) bribery and influence peddling;</p> <p>18) procurement or facilitation of prostitution;</p> <p>19) criminal offences defined in Chapter XVI of the Act of 6 June 1997 - the Criminal Code (Journal of Laws of 2020, items 1444 and 1517), as well as in Articles 5 to 8 of the Rome Statute of the International Criminal Court, drawn up in Rome on 17 July 1998 (Journal of Laws of 2003, item 708 and of 2018, item 1753), hereinafter referred to as "Rome Statute".</p> <p>The surveillance and recording of the content of telephone conversations and interception of other forms of telecommunication shall also be allowed for the purpose of revealing property at risk of forfeiture, as referred to in Article 45 § 2 of the Criminal Code or Article 33 § 2 of the Fiscal Criminal Code.</p> <p>Surveillance and recording of the contents of telephone conversations and interception of other forms of telecommunication shall be permitted with regard to a suspected person, the accused, and with regard to the injured or another person whom the accused may contact or who might be connected with the perpetrator or with an imminent criminal offence.</p> <p>The surveillance and recording of the content of telephone conversations shall also be allowed for the purpose of revealing property at risk of forfeiture, as referred to in Article 45 § 2 of the Criminal Code or Article 33 § 2 of the Fiscal Criminal Code.</p> <p>The surveillance and recording of telephone conversations and interception of other forms of telecommunication may be carried</p>
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	<p>out for a period not exceeding 3 months, with a possibility of extension, in particularly justified cases, for a period no longer than further 3 months.</p> <p>Only the EIO Directive: Operational interception: This type of interception is regulated by competence laws of individual services (Police/other LEA) and it is allowed in relation to the most serious crimes (see above) when other measures have proved ineffective or will be of no use. It can be requested by the Police/other LEA according to their domestic competence and ordered by the circuit court after the consent of the Prosecutor General or the circuit prosecutor. The surveillance and recording of telephone conversations and interception of other forms of telecommunication may be carried out for a period not exceeding 3 months, with a possibility of extension, in particularly justified cases, for a period no longer than further 3 months. In exceptional situations the circuit court has the possibility to extend this period to 12 months.</p>
h) Competent authority to request the measure abroad	<p>Option 1: EIO Directive: The circuit court on the request of a prosecutor, or the Police/other LEA authority – in this case before applying to the court a consent of a competent prosecutor is necessary.</p> <p>Option 2: MLAT of 2000: A competent prosecutor during the preliminary proceedings, or a court after the submission of an indictment.</p>
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>Records of interception together with written records containing information about place, time, manner, content of record and the intercepting authority is necessary so that the measure could be used as evidence before court in Poland.</p> <p>Where, as a result of an inspection, evidence has been obtained that a person against whom the inspection has been applied has committed a criminal offence prosecuted <i>ex officio</i> or a fiscal offence other than the criminal offence covered by the inspection order or that a person not covered by the inspection order has committed a criminal offence prosecuted <i>ex officio</i>, or a fiscal offence, the prosecutor shall take a decision as to the use of such evidence in criminal proceedings.</p>
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with	<p>It is illegal to intercept telecommunication of a defense counsel, an attorney, or a legal adviser as to the facts they learned about when providing legal advice or conducting a case.</p> <p>It is also illegal to control the telephone conversations of a clergyman and a mediator as to facts that they learned during confession or mediation.</p> <p>The announcement of the decision ordering the surveillance and recording of telephone conversations to the person concerned may be adjourned for a period necessary with the view to the interest of the case.</p> <p>The announcement of the decision in an investigation may be adjourned no more than until the investigation is completed.</p> <p>A decision regarding the surveillance and recording of telephone conversations may be contested. In their complaint, a person to whom such a decision relates may demand that the validity and</p>

immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>legality of the surveillance and recording of telephone conversations be controlled. The complaint against a decision of a public prosecutor is considered by the court.</p> <p>Only the court and a prosecutor shall be entitled to play the recordings, and in cases of utmost urgency, the Police with the approval of the court or a prosecutor.</p> <p>Only the court shall have the right to acquaint itself with the register of telephone conversation surveillance, and in the investigation - the public prosecutor.</p> <p>It is not technically possible to channel the intercepted telecommunication to the issuing state in real-time. However, it is possible to intercept, record and subsequently transmit the outcome of interception of telecommunications to the issuing State.</p>
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	<p>There is no one single authority responsible for receiving or executing this type of cooperation. Competence is attached to the territorial jurisdiction.</p> <p>In urgent matters there is possibility to contact a competent Police or a prosecutor being available in a 24/7 regime, or a central authority.</p>
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<p>Option 1: EIO Directive (Annex C).</p> <p>Option 2: In relation to the Member States who do not cooperate on the basis of the EIO Directive: Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.</p>
c) Competent authority to receive the request / execute the measure	<p>Option 1: Circuit prosecutor (prokurator okręgowy) having territorial jurisdiction is the competent authority to receive an Annex C notification. In case it is not possible to establish territorial jurisdiction, the EIO may be sent to the central authority – National Prosecutor's Office, Bureau of International Legal Cooperation.</p> <p>Option 2: Circuit prosecutors (prokurator okręgowy) having territorial jurisdiction; while the role of contact points shall be fulfilled by the Voivodeship Police Commanders (Komendant Wojewódzki Policji) having territorial jurisdiction.</p>
d) Accepted languages	<p>Option 1: Polish, only exceptionally in urgent matters, English.</p> <p>Option 2: Polish (preferably), or one of the official languages of the Council of Europe.</p>

e) Execution deadline	Option 1: According to the EIO Directive deadlines. Option 2: There are no specific deadlines.
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>Interception of telecommunication is allowed in Polish jurisdiction upon the request of issuing state, in accordance with Article 237 paragraph 3-4 Polish Code of Criminal Procedure and in the light of Article 241 Polish Code of Criminal Procedure, only when the ongoing proceedings or a justified concern as to the possibility of a new criminal offence concern:</p> <ol style="list-style-type: none"> 1) homicide; 2) causing a danger to the public or causing a catastrophe; 3) human trafficking; 4) abduction of a person; 5) ransom extortion; 6) hijacking of an aircraft or ship; 7) robbery, robbery with violence, or extortion by force; 8) attempt against the sovereignty or independence of the State; 9) attempt against the constitutional order of the State or against its supreme bodies, or against a unit of the Armed Forces of the Republic of Poland; 10) espionage or disclosure of classified information with the clause "secret" or "top secret"; 11) amassing weapons, explosives or radioactive materials; 12) counterfeiting and circulating counterfeit monies, payment means or instruments, or tradable documents entitling to receive a cash amount, commodity, cargo, or in-kind prize, or tradable documents providing for an obligation of capital contribution, contribution of interest, share in profits or statement of interest in a company; 12a) the forgery or modification of invoices or the use of invoices forged or modified within the scope of factual circumstances that might influence the determination of the amount of the public-law liabilities or their refund, or the refund of other tax liabilities, and the issuance and use of invoices certifying false information concerning factual circumstances that might influence the determination of the amount of the public liabilities or their refund, or the refund of other tax liabilities; 13) manufacturing, processing, trading, and smuggling drugs, precursors, substitutes, and psychotropic substances; 14) organised crime group; 15) property of significant value; 16) use of violence or unlawful threats in connection with criminal proceedings; 16a) giving false testimony and the presentation of a false opinion, expert opinion or translation by an expert witness, qualified expert, or translator; 16b) a false accusation of a criminal offence, fiscal offence, or fiscal delinquency against another person; 16c) producing false evidence or taking other deceptive actions directing prosecution for a crime, fiscal offence, or fiscal delinquency against another person, or taking such actions in the course of the proceedings;

	<p>16d) concealing evidence demonstrating the innocence of a person suspected of committing a criminal offence, fiscal offence, or fiscal delinquency;</p> <p>16e) notifying a prosecution body of a criminal offence or fiscal offence that has not been committed;</p> <p>16f) acting as an accessory after the fact;</p> <p>16g) failure to report a criminal offence;</p> <p>17) bribery and influence peddling;</p> <p>18) procurement or facilitation of prostitution;</p> <p>19) criminal offences defined in Chapter XVI of the Act of 6 June 1997 - the Criminal Code (Journal of Laws of 2020, items 1444 and 1517), as well as in Articles 5 to 8 of the Rome Statute of the International Criminal Court, drawn up in Rome on 17 July 1998 (Journal of Laws of 2003, item 708 and of 2018, item 1753), hereinafter referred to as "Rome Statute".</p> <p>The surveillance and recording of the content of telephone conversations and interception of other forms of telecommunication shall also be allowed for the purpose of revealing property at risk of forfeiture, as referred to in Article 45 § 2 of the Criminal Code or Article 33 § 2 of the Fiscal Criminal Code.</p>
h) Competent authority to request the measure abroad	<p>Option 1: Prosecutors (all levels – district, circuit, regional, NPO), Police or other investigating authorities, e.g.: authorities of the Border Guard, Internal Security Agency and the National Revenue Administration, the Central Anticorruption Bureau, the Military Police, the Trade Inspectorate and the State Sanitary Inspectorate, the President of the Office of Electronic Communications, State Hunting Guard, Forest Service, heads of Customs and Revenue Offices as well as heads of Revenue Offices, the Military Counter-Intelligence Service and Military Intelligence Service.</p> <p>Option 2: Competent prosecutors.</p>
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Materials gathered during the interception are admissible as evidence during the criminal proceedings.
<p>j) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other? 	<p>Option 1: There is no one single authority responsible for receiving or executing this type of cooperation. Competence of the circuit prosecutors is attached to the territorial jurisdiction.</p> <p>In urgent matters there is possibility to contact a competent Police or a prosecutor being available in a 24/7 regime, or a central authority.</p> <p>Option 2: Voivodeship Police Commanders (Komendant Wojewódzki Policji) having territorial jurisdiction and fulfilling the role of 24/7 contact points.</p>

General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<p>Act of 16 September 2011 on the exchange of information with law enforcement authorities of the Member States of the European Union, third countries, European Union agencies and international organisations implements the Council Framework Decision 2006/960/JHA.</p> <p>According to its Article 12 on Conditions for the transfer of information to law enforcement authorities of EU Member States:</p> <p>1. Authorised entities may make the transfer of information to the law enforcement authority of a Member State of the EU subject to compliance by that authority with certain conditions, in particular to:</p> <p>1) receive additional information in the case for which that authority has requested it;</p> <p>2) be informed about the use of the information provided by this authority.</p> <p>When providing information, the right holder or the contact point shall indicate to the law enforcement authority of a Member State of the EU how it may be used by that authority, in particular whether it may be used in criminal proceedings.</p> <p>According to the Article 14 on Requirement to obtain consent for the provision of information</p> <p>1. Where the consent of the authority conducting the criminal proceedings is required for the transmission of information to the law enforcement authority of a Member State of the EU, the right holders shall request the authority conducting the proceedings to consent to the transmission of the information.</p> <p>2. Right holders shall refuse to transmit information to the law enforcement authority of a Member State of the EU if the authority conducting the criminal proceedings has not given its consent to its transmission.</p>
b) Did you as EJN contact point organize or participate in any regional cross-border meeting (the EJN one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	<p>Yes, the Polish and the Czech prosecutors (from central and lower level stages) were involved in the series of bilateral meetings on cross-border observation.</p>

4.22. Portugal

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	YES
b) International legal framework applicable for this measure in your Member State	This measure is foreseen by the Convention of the Schengen Agreement 14 June 1985
c) Competent authority to receive the request/execute the measure	National Director of the Judiciary Police (Portuguese declaration to article 40 n°5 of the Schengen acquis)
d) Accepted languages	Portuguese/in urgent cases English may be informally accepted
e) Execution deadline	not foreseen
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Cross-border surveillance may be carried out in relation to the suspect. It may also be carried out in relation to other persons under the conditions set forth in international treaties or conventions binding upon Portugal (e.g. Article 40, par 1, indent 1 of the Schengen Convention, as amended by Council Decision 2003/725/JHA, 2 October 2003).
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The conditions set forth in the provisions of an international convention or treaty shall apply (Schengen Convention).
i) Competent authority to request the measure abroad	Under the provisions of the Schengen Convention, the Portuguese competent authority to authorize the measure is the National Director of Polícia Judiciária (Criminal Police, under the Ministry of Justice).
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	It must comply with the requirements set out in the relevant treaty provisions (eg Schengen Convention) and shall not violate the fundamental rights of the person in question.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	The law stipulates that an investigative judge must authorize the audio/videos recording (Law n°5/2002 in case of organized crime or serious crime) under the request of a competent prosecutor.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border	The specialized body to receive and execute this type of cooperation is the Judiciary Police, to all MS.

observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	This measure is not specifically regulated either under internal law nor under international judicial cooperation.
b) International legal framework applicable for this measure in your Member State	See answer above.
c) Competent authority to receive the request/execute the measure	Portuguese jurisprudence, doctrine and practice of prosecutors differ regarding the necessity (or not) of specific judicial authorization in what concerns placing of a GPS device on a vehicle. This being said, in principle, either a prosecutor or a judge would decide this matter if a foreign request was received.
d) Accepted languages	Portuguese
e) Execution deadline	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Suspect or any other person specifically linked to the object of the investigation
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Like any other investigative measure within a criminal investigation, it would have to be proportionate and directly linked to the matter under investigation.
i) Competent authority to request the measure abroad	The prosecutor in charge of the case
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	In principle it would be admissible, as it is not classified as forbidden evidence by the criminal code of procedure. However, there are different views in doctrine, jurisprudence and practice in what concerns the necessity of the authorization of an investigative judge to place such a device.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	In this case the law stipulates that an investigative judge must authorize the audio/videos recording (Law nº5/2002 in case of organized crime or serious crime) under the request of a competent prosecutor.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border	No.

observation/surveillance carried out in this manner? - Any other?	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	This measure is not regulated either under internal law nor under international judicial cooperation.
b) Legal Framework	-
c) Competent Authority	-
d) Accepted Languages	Portuguese
e) Execution Deadline:	
f) Concise legal practical information	-
g) Possible subject of observation/surveillance (suspect only, or also other persons)	-
h) Conditions under which it is possible to order the measure based on a request of foreign authority	-
i) Competent authority to request the measure abroad	-
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	-
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	-
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	-
Controlled delivery (FB A.73)	

a) Is the measure possible in your member state under international judicial cooperation?	YES
b) International legal framework applicable for this measure in your Member State	Convention on mutual assistance in criminal matters between MS of the EU
c) Competent authority to receive the request / execute the measure	Department of Criminal Investigation and Penal Action of Lisbon 8article 160-A Law 144/99)
d) Accepted languages	Portuguese
e) Execution deadline	Not applicable
f) Concise legal practical information	
g) Possible object of controlled delivery	All goods whose transport can be controlled.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	It is only admissible in relation to extraditable offences. Authorisation given to the criminal police bodies to abstain from acting within the cross border criminal investigations is dependent upon: the competent foreign authorities having ensured (i) that both their legislation provides adequate criminal sanctions for the offence at stake and criminal proceedings shall be carried out; (ii) the security of the substances and goods at stake against the risk of flight and loss; (iii) that they will urgently communicate detailed information about the results of the operation as well as the acts performed by each of the offenders, in particular those who acted in Portugal.
i) Competent authority to request the measure abroad	competent Prosecutor
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	It must comply with the requirements set out in the relevant international provisions. In that context, the general rules of the admissibility of evidence, including the exclusionary rules, apply.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	It will be a case to case decision, it depends on the agreement with the requesting State- it can be either way, also depending on the danger and toxicity of the substances themselves.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Any other?	The specialized body is the competent Prosecutor in the Department of Criminal Investigation and Penal Action of Lisbon (article 160-A Law 144/99)
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under	YES

international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	DIRECTIVE 2014/41/EU -EIO
c) Competent authority to receive the request / execute the measure	Competent Prosecutor would receive and ask authorization to the competent Investigative Judge
d) Accepted languages	Portuguese
e) Execution deadline	-
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	"The measure of interception is only admissible within the inquiry (initial phase of the criminal proceedings) and when there are founded reasons to believe that it is indispensable or that the evidence would be impossible or very difficult to obtain otherwise; it further requires a motivated order of the judge, upon request of the public prosecutor, in relation to the following criminal offences: crimes punishable with imprisonment over 3 years; drug trafficking; unlawful possession of weapons and trafficking in arms; smuggling; verbal abuse, threats, coercion and interference in a person's private life and disturbance of peace and tranquillity when committed by telephone. It may only be carried out in relation to the suspect; a third person when there are good reasons to believe that he/she receives or transmits messages from or to the suspect; the victim upon his/her given or presumed consent. Interception and recording of conversations or communications between the accused and counsel is prohibited, except when the judge has good reason to believe that those conversations constitute the object or an element of the criminal offence. The interception is authorised for a maximum duration of three months, which may be prorogated for successive periods of the same duration provided that the conditions of admissibility are met in respect of each prorogation."
h) Competent authority to request the measure abroad	Competent investigating judge.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	A record (procès-verbal) of the interception, together with information about the intercepting officer, the duration of the measure and the orders applying/prorogating the measure must be provided.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns art	No interception and recording of telephone conversations or communications between the defendant and his defence counsel is allowed, unless the judge has reasonable grounds to believe that the said conversation or communication is the object or the constitutive element of a criminal offence. It should be in any case informed to the Portuguese authorities that there are intercepted communications between the defendant and the defence counsel.

30(6)(a) of the EIO Directive).	
k) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Any other? 	
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	YES.
b) International legal framework applicable for this measure in your Member State	DIRECTIVE 2014/41/EU - EIO
c) Competent authority to receive the request / execute the measure	Competent Prosecutor will receive and ask authorization to the competent Investigative Judge
d) Accepted languages	Portuguese
e) Execution deadline	-
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	The measure of interception is only admissible within the object of investigation in the particular file, and when there are founded reasons to believe that it is indispensable or that the evidence would be impossible or very difficult to obtain otherwise; it further requires a motivated order of the judge, upon request of the public prosecutor, in relation to the following criminal offences: crimes punishable with imprisonment over 3 years; drug trafficking; unlawful possession of weapons and trafficking in arms; smuggling; verbal abuse, threats, coercion and interference in a person's private life and disturbance of peace and tranquillity when committed by telephone. It may only be carried out in relation to the suspect; a third person when there are good reasons to believe that he/she receives or transmits messages from or to the suspect; the victim upon his/her given or presumed consent. Interception and recording of conversations or communications between the accused and counsel is prohibited, except when the judge has good reason to believe that those conversations constitute the object or an element of the criminal offence. The interception is authorised for a maximum duration of three months, which may be prorogated for successive periods of the same duration provided that the conditions of admissibility are met in respect of each prorogation."
h) Competent authority to request the measure abroad	Prosecutor will ask authorization to the competent Investigative Judge who will validate the EIO.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	A record of the interception, together with information about the intercepting officer, the duration of the measure and the orders applying/prorogating the measure must be provided.

j) Can you share any good practice, such as:	-
- Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?	
- Do you have any legal, organizational or technical measure for urgent cases?	
- Have you had any real-world experience with application of this measure?	
- Any other?	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<p>The FD has been implemented by Law n.º 74/2009, of 12 de August; Its article 3º states that there is no obligation to provide information and intelligence to be used as evidence before a judicial authority nor does it give any right to use such information or intelligence (basically following the FD text).</p> <p>If the information is to be used as evidence before a judicial authority, permission should be asked to the competent prosecutor or investigative judge.</p> <p>Only information obtained through typically police urgent measures can be transmitted without a specific authorization of the competent prosecutor.</p>
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	NO

4.23. Romania

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	European Convention on Mutual Assistance in Criminal Matters, Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, 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
c) Competent authority to receive the request/execute the measure	Prosecutor Office attached to the High Court of Cassation and Justice Directorate for the Investigation of Organized Crime and Terrorism Offences National Anticorruption Directorate
d) Accepted languages	Romanian, English, French
e) Execution deadline	5 hours
f) Concise legal practical information	<p>The request shall contain all the relevant information in the case, according to the provisions of the applicable convention. Through its authorisation, the Public Prosecutor's Office attached to the High Court of Cassation and Justice may impose certain conditions.</p> <p>The surveillance shall be carried out only under the following conditions:</p> <ul style="list-style-type: none"> a) the surveillance agents must comply with the provisions of the Romanian law; b) subject to the situations when, for urgent reasons, the prior authorisation of the Romanian State cannot be requested, during the surveillance the officers shall carry on them a document attesting that permission has been granted; c) the surveillance agents must be permanently able to justify they are acting in an official capacity; d) the surveillance agents may carry their service weapons during the supervision, except where specifically otherwise provided by Public Prosecutor's Office attached to the High Court of Cassation and Justice through an authorisation; the use of the weapons shall be prohibited, except for the case of self-defence; e) the trespassing private homes and places not accessible to the public shall be prohibited; f) the surveillance agents may neither remand on custody, nor arrest the supervised person; g) any operation shall be the subject to a report of the Public Prosecutor's Office attached to the High Court of Cassation and Justice, which may request inclusively that the surveillance agents are present in person;

	<p>h) the authority of the State to which the surveillance agents pertain, at the request by the competent Romanian authority, may assist to the investigation subsequent to the operation, including to the legal procedures;</p> <p>i) the authorities of the State to which the supervision agents pertain, at the request of the Romanian authorities, contribute to the proper course of the investigation subsequent to the operation in which they took part, including to the legal procedures.</p> <p>When, for urgent reasons, the prior authorisation of the Romanian State cannot be requested, the foreign agents that are operating within the judicial investigation that is in the stage of criminal prosecution shall be authorised to continue on the territory of Romania the supervision of a person presumed to have committed any of the offences listed below:</p> <ul style="list-style-type: none"> a) murder and aggravated murder; b) serious sexual offences, including rape and sexual abuse of minors; c) destruction and aggravated destruction, committed through arson, explosion or any other such means; d) counterfeiting and forgery of means of payment; e) aggravated theft and robbery, as well as receiving stolen goods; f) extortion; g) kidnapping; h) offences related to trafficking in human beings, trafficking in minors, use of services of an abused person, child pornography; i) offences related to trafficking in narcotic drugs or precursors; j) offences related to the breach of the regime applied to arms and ammunition, explosives, nuclear materials and other radioactive substances; k) illegal carriage of toxic and dangerous waste; l) smuggling of aliens, facilitating the illegal stay in Romania; m) blackmail. <p>The surveillance provided above (when, for urgent reasons, the prior authorisation of the Romanian State cannot be requested) shall cease where the authorisation has not been obtained within 5 hours from crossing the State border, as well as at the request of the Public Prosecutor's Office attached to the High Court of Cassation and Justice.</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	That person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the abovementioned person.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>" The cross-border surveillance can be applied in case of a crime punished by both legislations, of the requesting part and of the requested country.</p> <p>The punishment provided by the law must be at least 1 year of prison. For urgent reasons and in case of a limited list of crimes, the cross border surveillance can be conducted on the Romanian territory without prior authorisation. The list is the following one:</p> <ul style="list-style-type: none"> a) homicide, assassination and murder;

	<p>b) serious sexual offences, including rape and sexual abuse of children;</p> <p>c) destruction and aggravated destruction, committed through arson, explosion or any other such means;</p> <p>d) counterfeiting and forgery of means of payment;</p> <p>e) aggravated theft and robbery, as well as receiving stolen goods;</p> <p>f) extortion;</p> <p>g) kidnapping;</p> <p>h) traffic in human beings and related offences;</p> <p>i) drugs and precursors traffic;</p> <p>j) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances;</p> <p>k) illegal carriage of toxic and dangerous waste;</p> <p>l) smuggling of migrants;</p> <p>m) blackmail.</p> <p>A request for international judicial assistance is needed."</p>
i) Competent authority to request the measure abroad	The prosecutor in charge with the investigation.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	<p>The surveillance realized in the framework of a judicial investigation, on the basis of a MLA request, could be used as evidence.</p> <p>The conditions under which the evidence can be obtained according to Romanian law:</p> <p>Technical surveillance is ordered by the Judge for Rights and Liberties when the following requirements are cumulatively met:</p> <p>a) there is a reasonable suspicion in relation to the preparation or commission of a serious offence;</p> <p>b) such measure is proportional to the restriction of fundamental rights and freedoms, considering the particularities of the case, the importance of information or evidence that are to be obtained or the seriousness of the offense;</p> <p>c) evidence could not be obtained in any other way or its obtaining implies special difficulties that would harm the investigation, or there is a threat for the safety of persons or of valuable goods.</p> <p>The prosecutor may authorize, for a time period of maximum 48 hours, electronic surveillance measures when there is an emergency situation, and the obtaining of a technical surveillance warrant would lead to a substantial delay of investigations, to the loss, alteration or destruction of evidence, or would jeopardize the safety of the victim, of witnesses or of their family members. Within a maximum of 24 hours following expiry of a measure, the prosecutor is under an obligation to notify the Judge for Rights and Liberties of the court having the competence of jurisdiction to examine the case. If the Judge for Rights and Liberties decides that the legal requirements were not met, they shall nullify the measure taken by the prosecutor and shall order destruction of the evidence thus obtained.</p>
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an	No

audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>There are specialized divisions for judicial cooperation within the Prosecution Office attached to the High Court of Cassation and Justice and within the Directorate for the Investigation of Organized Crime and Terrorism Offences and the National Anticorruption Directorate.</p> <p>No special division in relation to certain states.</p> <p>Urgent request can be transmitted via police channels (SIRENE National Bureau, EUROPOL) (SIRENE – National Bureau, EUROPOL)</p>
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<p>European Convention on Mutual Assistance in Criminal Matters, Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters</p> <p>Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union,</p> <p>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</p>
c) Competent authority to receive the request/execute the measure	<p>Prosecutor Office attached to the High Court of Cassation and Justice</p> <p>Directorate for the Investigation of Organized Crime and Terrorism Offences</p> <p>National Anticorruption Directorate</p>
d) Accepted languages	Romanian, English, French
e) Execution deadline	No
f) Concise legal practical information	

g) Possible subject of observation/surveillance (suspect only, or also other persons)	That person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the abovementioned person.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The cross-border surveillance can be applied in case of a crime punished by both legislations, of the requesting part and of the requested country.</p> <p>The punishment provided by the law must be at least 1 year of prison. For urgent reasons and in case of a limited list of crimes, the cross border surveillance can be conducted on the Romanian territory without prior authorisation. The list is the following one:</p> <ul style="list-style-type: none"> a) homicide, assassination and murder; b) serious sexual offences, including rape and sexual abuse of children; c) destruction and aggravated destruction, committed through arson, explosion or any other such means; d) counterfeiting and forgery of means of payment; e) aggravated theft and robbery, as well as receiving stolen goods; f) extortion; g) kidnapping; h) traffic in human beings and related offences; i) drugs and precursors traffic; j) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances; k) illegal carriage of toxic and dangerous waste; l) smuggling of migrants; m) blackmail.
i) Competent authority to request the measure abroad	The prosecutor in charge of the investigation
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>The surveillance realized in the framework of a judicial investigation, on the basis of a MLA request, could be used as evidence.</p> <p>The conditions under which the evidence can be obtained according to Romanian law:</p> <p>Technical surveillance is ordered by the Judge for Rights and Liberties when the following requirements are cumulatively met:</p> <ul style="list-style-type: none"> a) there is a reasonable suspicion in relation to the preparation or commission of a serious offence; b) such measure is proportional to the restriction of fundamental rights and freedoms, considering the particularities of the case, the importance of information or evidence that are to be obtained or the seriousness of the offense; c) evidence could not be obtained in any other way or its obtaining implies special difficulties that would harm the investigation, or there is a threat for the safety of persons or of valuable goods. <p>The prosecutor may authorize, for a time period of maximum 48 hours, electronic surveillance measures when there is an emergency situation, and the obtaining of a technical surveillance warrant would lead to a substantial delay of investigations, to the loss, alteration or destruction of evidence, or would jeopardize the safety of the victim, of witnesses or of their family members. Within</p>

	a maximum of 24 hours following expiry of a measure, the prosecutor is under an obligation to notify the Judge for Rights and Liberties of the court having the competence of jurisdiction to examine the case. If the Judge for Rights and Liberties decides that the legal requirements were not met, they shall nullify the measure taken by the prosecutor and shall order destruction of the evidence thus obtained
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	No
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	There are specialized divisions for judicial cooperation within the Prosecution Office attached to the High Court of Cassation and Justice and within the Directorate for the Investigation of Organized Crime and Terrorism Offences and the National Anticorruption Directorate. No special division in relation to certain states. Urgent request can be transmitted via police channels (SIRENE National Bureau, EURCPOL).
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Yes
b) Legal Framework	European Convention on Mutual Assistance in Criminal Matters, Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, 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
c) Competent Authority	Prosecutor Office attached to the High Court of Cassation and Justice

	Directorate for the Investigation of Organized Crime and Terrorism Offences National Anticorruption Directorate
d) Accepted Languages	Romanian, English, French
e) Execution Deadline:	
f) Concise legal practical information	
g) Possible subject of observation/surveillance (suspect only, or also other persons)	That person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the abovementioned person.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The cross-border surveillance can be applied in case of a crime punished by both legislations, of the requesting part and of the requested country.</p> <p>The punishment provided by the law must be at least 1 year of prison. For urgent reasons and in case of a limited list of crimes, the cross border surveillance can be conducted on the Romanian territory without prior authorisation. The list is the following one:</p> <ul style="list-style-type: none"> a) homicide, assassination and murder; b) serious sexual offences, including rape and sexual abuse of children; c) destruction and aggravated destruction, committed through arson, explosion or any other such means; d) counterfeiting and forgery of means of payment; e) aggravated theft and robbery, as well as receiving stolen goods; f) extortion; g) kidnapping; h) traffic in human beings and related offences; i) drugs and precursors traffic; j) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances; k) illegal carriage of toxic and dangerous waste; l) smuggling of migrants; m) blackmail.
i) Competent authority to request the measure abroad	The prosecutor in charge of the investigation
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>The surveillance realized in the framework of a judicial investigation, on the basis of a MLA request, could be used as evidence.</p> <p>The conditions under which the evidence can be obtained according to Romanian law:</p> <p>Technical surveillance is ordered by the Judge for Rights and Liberties when the following requirements are cumulatively met:</p> <ul style="list-style-type: none"> a) there is a reasonable suspicion in relation to the preparation or commission of a serious offence; b) such measure is proportional to the restriction of fundamental rights and freedoms, considering the particularities of the case, the importance of information or evidence that are to be obtained or the seriousness of the offense;

	<p>c) evidence could not be obtained in any other way or its obtaining implies special difficulties that would harm the investigation, or there is a threat for the safety of persons or of valuable goods.</p> <p>The prosecutor may authorize, for a time period of maximum 48 hours, electronic surveillance measures when there is an emergency situation, and the obtaining of a technical surveillance warrant would lead to a substantial delay of investigations, to the loss, alteration or destruction of evidence, or would jeopardize the safety of the victim, of witnesses or of their family members. Within a maximum of 24 hours following expiry of a measure, the prosecutor is under an obligation to notify the Judge for Rights and Liberties of the court having the competence of jurisdiction to examine the case. If the Judge for Rights and Liberties decides that the legal requirements were not met, they shall nullify the measure taken by the prosecutor and shall order destruction of the evidence thus obtained</p>
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	No
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>There are specialized divisions for judicial cooperation within the Prosecution Office attached to the High Court of Cassation and Justice and within the Directorate for the Investigation of Organized Crime and Terrorism Offences and the National Anticorruption Directorate.</p> <p>No special division in relation to certain states.</p> <p>Urgent request can be transmitted via police channels (SIRENE National Bureau, EUROPOL)</p>
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for	European Convention on Mutual Assistance in Criminal Matters,

this measure in your Member State	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters
c) Competent authority to receive the request / execute the measure	Prosecution Office attached to the High Court of Cassation and Justice Directorate for the Investigation of Organized Crime and Terrorism Offences National Anticorruption Directorate
d) Accepted languages	Romanian, English, French
e) Execution deadline	In case the request is made under the EIO Directive, the deadlines provided therein are applicable.
f) Concise legal practical information	A controlled delivery may be authorized by the prosecutor supervising or conducting the criminal investigation, through a prosecutorial order, upon request by institutions or bodies of competent jurisdiction. A controlled delivery may be authorized only in the following situations: a) if persons involved in illegal transport of drugs, weapons, stolen items, explosive or nuclear materials, radioactive materials, money amounts and other proceeds resulting from illegal activities or of items used for the purpose of perpetrating offenses could not be discovered or arrested in other ways or if this implies extreme difficulties that would harm the investigation or would be a threat against the safety of persons or of high value goods; b) if the discovery or proving of offenses committed in relation to the delivery of illegal or suspicious transports is impossible or extremely difficult in other way. A controlled delivery can be performed under the terms established by the prosecutor supervising or conducting the criminal investigation who orders such measure, and makes sure that the transited states' authorities: a) agree with the entry of the illegal or suspicious transport on their territory and with its exit from their territory; b) guarantee that the illegal or suspicious transport is permanently monitored by the competent authorities; c) guarantee that a prosecutor, law enforcement body or other competent state authorities are informed of the results of the criminal investigation against persons accused of the offense subject to this special investigation method.
g) Possible object of controlled delivery	That person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the abovementioned person.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	See point f)

i) Competent authority to request the measure abroad	The prosecutor in charge with the investigation.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The controlled delivery carried out in the framework of a judicial investigation, on the basis of a MLA request, could be used as evidence.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	A controlled delivery may be authorized with or without the removal or total or partial substitution of the goods that are the subject of the delivery
l) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? Any other? 	There are specialized divisions for judicial cooperation within the Prosecution Office attached to the High Court of Cassation and Justice and within the Directorate for the Investigation of Organized Crime and Terrorism Offences and the National Anticorruption Directorate. No special division in relation to certain states. Urgent request can be transmitted via police channels (SIRENE National Bureau, EURCPOL).
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	European Convention on Mutual Assistance in Criminal Matters, Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters
c) Competent authority to receive the request / execute the measure	Prosecution office attached to the High Court of Cassation and Justice, through its specialized structures, including the Directorate for Investigation of Organized Crime and Terrorism Offences of the National Anticorruption Directorate. In application of EIO, prosecution offices having material and territorial jurisdiction.
d) Accepted languages	Romanian, English, French

e) Execution deadline	No specific deadline, except for the application of the EIO (deadlines provided by the Directive)
f) Concise legal practical information	<p>For the purpose of solving a criminal case, the judicial authorities of the requesting State or the competent authorities thus designated by the requesting State can address to the Romanian authorities a request for judicial assistance having as object the interception of telecommunications and their immediate transmission to the requesting State or the interception of the recording and of the subsequent transmission of the recording of telecommunications to the requesting State, in case the prosecuted person:</p> <ul style="list-style-type: none"> a) is on the territory of the requesting State and the latter needs technical assistance to intercept communications from the target; b) is on the territory of Romania, in the event that the communications from the target can be intercepted in the Romanian State; c) is on the territory of a third country which has been informed also whether the requesting State needs technical assistance for intercepting communications from the target. <p>The requests must meet the following conditions:</p> <ul style="list-style-type: none"> a) specify and confirm the issuing of an order or a warrant for interception and recording, within a criminal trial; b) contain information that would allow identification of the target of the interception; c) indicate the criminal acts that are the object of the criminal investigation; d) mention the duration of interception; e) if possible, contain sufficient technical data, in particular the number for connecting to the network, in order to allow the processing of the request. <p>(3) Where the request is formulated in case the prosecuted person is on the territory of Romania, in the event that the communications from the target can be intercepted in Romania, it must contain also a description of the facts. The Romanian judicial authorities may request any other additional information needed to allow them to establish whether the requested measure would also have been taken in a similar national case.</p>
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>"The interception is possible when there is solid assumption that a crime, for which the criminal pursuit starts ex officio according to the law, was committed. The law allows the interception in cases of crimes against national security, drug traffic, trafficking in weapons, trafficking in human beings, terrorism, money laundering, forgery of money, corruption and assimilated crimes, other serious crimes and crimes committed through means of electronic communication. The request for authorization must be justified by the prosecutor, showing that it is needed in order to determine the facts, identify and localize the criminals, otherwise the investigation being delayed. "Serious crimes" under the Law 39/2003 on preventing and combating organized crime are:</p> <ul style="list-style-type: none"> 1) all type of homicide; 2) illegal deprivation of freedom, 3) slavery; 4) blackmail; 5) offenses against patrimony, which have brought about particularly serious consequences; 6) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances;

	<p>7) forgery of money or of other values;</p> <p>8) disclosure of economic secret, disloyal competition, trespassing of stipulations regarding import or export operations, embezzlement, trespassing of provisions regarding the import of toxic waste and residual matter;</p> <p>9) procurement;</p> <p>10) offences regarding games of chance;</p> <p>11) offenses regarding drug precursors trafficking or;</p> <p>12) traffic in human beings and related offences;</p> <p>13) traffic of migrants;</p> <p>14) money laundering;</p> <p>15) offenses of corruption, offenses assimilated to these, as well as offenses directly connected with offenses of corruption;</p> <p>16) smuggling;</p> <p>17) fraudulent bankruptcy;</p> <p>18) offenses committed through digital or communication systems and networks;</p> <p>19) traffic of human tissues or organs;</p> <p>20) any other offense for which the law stipulates the punishment of prison whose specific minimum is at least 5 years."</p>
h) Competent authority to request the measure abroad	The case prosecutor.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The interception performed in accordance with the conditions provided by the Romanian law, on the basis of a MLA request or an EIO, could be used as evidence.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>The recordings done by the parties or by other persons, represent evidence when they concern their own conversations or communications with third parties. Any other recordings may constitute evidence unless prohibited by law.</p> <p>The relationship between a counsel and a person assisted or represented by them may be subject to electronic surveillance only when there is information that the counsel perpetrates or prepares the commission of any of the following offenses:</p> <p>offenses against national security stipulated by the Criminal Code and by special laws,</p> <p>drug trafficking,</p> <p>weapons trafficking,</p> <p>trafficking in human beings,</p> <p>acts of terrorism,</p> <p>money laundering,</p> <p>counterfeiting of currency or securities, counterfeiting electronic payment instruments,</p> <p>offenses against property,</p> <p>blackmail,</p> <p>rape,</p> <p>deprivation of freedom,</p> <p>tax evasion,</p> <p>corruption offenses and offenses assimilated to corruption,</p> <p>offenses against the European Union's financial interests,</p> <p>offenses committed by means of computer systems or electronic communication devices,</p>

	<p>other offenses in respect of which the law sets forth a penalty of no less than 5 years of imprisonment.</p> <p>If during or after the performance of such measure it results that the activities of electronic surveillance also targeted the relations between the counsel and the suspect or defendant defended by the former, the evidence obtained this way may not be used in a criminal proceeding, and shall be destroyed forthwith by the prosecutor. The judge having ordered such measure shall be informed forthwith by the prosecutor. When deemed necessary, the judge may order the information of the counsel.</p>
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	<p>There are specialized divisions for judicial cooperation within the Prosecution Office attached to the High Court of Cassation and Justice and within the Directorate for the Investigation of Organized Crime and Terrorism Offences and the National Anticorruption Directorate.</p> <p>No special division in relation to certain states.</p> <p>Urgent request can be transmitted via police channels (SIRENE National Bureau, EURCPOL).</p>
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	<p>European Convention on Mutual Assistance in Criminal Matters, Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters</p> <p>Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union</p> <p>Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters</p>
c) Competent authority to receive the request / execute the measure	<p>Prosecution office attached to the High Court of Cassation and Justice.</p> <p>In application of EIO, prosecution offices having material and territorial jurisdiction.</p>
d) Accepted languages	Romanian, English, French
e) Execution deadline	According to the legal instrument applicable.
f) Concise legal practical information	
g) Conditions under which it is possible to order the	"The interception is possible when there is solid assumption that a crime, for which the criminal pursuit starts ex officio according to

measure based on a request of foreign authority	<p>the law, was committed. The law allows the interception in cases of crimes against national security, drug traffic, trafficking in weapons, trafficking in human beings, terrorism, money laundering, forgery of money, corruption and assimilated crimes, other serious crimes and crimes committed through means of electronic communication. The request for authorization must be justified by the prosecutor, showing that it is needed in order to determine the facts, identify and localize the criminals, otherwise the investigation being delayed. "Serious crimes" under the Law 39/2003 on preventing and combating organized crime are:</p> <ol style="list-style-type: none"> 1) all type of homicide; 2) illegal deprivation of freedom, 3) slavery; 4) blackmail; 5) offenses against patrimony, which have brought about particularly serious consequences; 6) breach of the laws on arms, ammunition, explosives, nuclear materials and other radioactive substances; 7) forgery of money or of other values; 8) disclosure of economic secret, disloyal competition, trespassing of stipulations regarding import or export operations, embezzlement, trespassing of provisions regarding the import of toxic waste and residual matter; 9) procurement; 10) offences regarding games of chance; 11) offenses regarding drug precursors trafficking or; 12) traffic in human beings and related offences; 13) traffic of migrants; 14) money laundering; 15) offenses of corruption, offenses assimilated to these, as well as offenses directly connected with offenses of corruption; 16) smuggling; 17) fraudulent bankruptcy; 18) offenses committed through digital or communication systems and networks; 19) traffic of human tissues or organs; 20) any other offense for which the law stipulates the punishment of prison whose specific minimum is at least 5 years."
h) Competent authority to request the measure abroad	The prosecutor in charge of the case will draft the request or the EIO and send it to the competent foreign authority under the conditions provided in the applicable legal instrument
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	The interception performed in accordance with the conditions provided by the Romanian law, on the basis of an MLA request or an EIO, could be used as evidence.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or	<p>There are specialized divisions for judicial cooperation within the Prosecution Office attached to the High Court of Cassation and Justice and within the Directorate for the Investigation of Organized Crime and Terrorism Offences and the National Anticorruption Directorate.</p> <p>No special division in relation to certain states.</p> <p>Urgent request can be transmitted via police channels (SIRENE National Bureau, EURCPOL).</p>

<p>technical measure for urgent cases?</p> <ul style="list-style-type: none"> - Have you had any real-world experience with application of this measure? - Any other? 	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	The FD was implemented by Law 201/2010 for the amendment and completion of the Emergency Ordinance of the Government no. 103/2006 regarding some measures to facilitate international police cooperation
b) Did you as EJN contact point organize or participate in any regional cross-border meeting (the EJN one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No, in our opinion it is a matter pertaining mainly to police cooperation.

4.24. Slovakia

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, in the event of existence of a relevant international agreement. Foreign authorities may perform cross-border surveillance in the territory of the Slovak Republic under the terms set out in an international treaty (§ 544 of the Code of Criminal Procedure).
b) International legal framework applicable for this measure in your Member State	European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 amended by its Second Additional Protocol. Convention implementing the Schengen Agreement of June 14, 1985. In case of existence, the bilateral or other multilateral treaty covering the specific subject matter may be applicable.
c) Competent authority to receive the request/execute the measure	Regional Prosecutor's Office in Bratislava (Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of November 08, 2001) / According to the declarations of the Slovak Republic to the appropriate international treaty District Prosecutor's Office (execution of the measure)
d) Accepted languages	Slovak language / other (according to the declarations of the Slovak Republic to the appropriate international treaty)
e) Execution deadline	N/A
f) Concise legal practical information	In case the Slovak authorities receive EIO from another EU Member State, such EIO will be considered as mutual legal assistance request pursuant to the relevant international treaty. Slovak Republic does not apply EIO on this measure.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person without the strict limitation of its procedural status in the criminal proceeding of the intentional crime.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The surveillance of persons and items may be performed in the criminal proceedings on an intentional criminal offence if it can reasonably be assumed that it will reveal facts relevant to the criminal proceedings.
i) Competent authority to request the measure abroad	Public prosecutor in preliminary proceedings, judge in trial.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Cross-border surveillance has to be executed under the legal order of the state where it was executed and documented by a process record, also video-record, audio-record, photos or any other media recording the process of operation. Surveillance has to be requested/executed under the conditions set out in the relevant international treaty.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	In criminal proceedings for an intentional criminal offence, for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, corruption or another intentional criminal offence, the performance of which is bound by an international treaty, a video, audio or audiovisual recording may be prepared if it may be reasonably assumed that facts important to the criminal proceedings will be so revealed (§ 114 CCP).
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?	N/A

<ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>In general, cross-border observation carried out in this manner is not possible to approve additionally.</p> <p>N/A</p>
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, in the event of existence of a relevant international agreement. Identical regulation as in measure FB A.70.
b) International legal framework applicable for this measure in your Member State	European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 amended by its Second Additional Protocol. Convention implementing the Schengen Agreement of June 14, 1985. Other international treaty covering the specific subject matter may be applicable. The special legal provisions are applied in relation to the Czech Republic (bilateral treaty).
c) Competent authority to receive the request/execute the measure	Regional Prosecutor's Office in Bratislava (Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of November 08, 2001) District Prosecutor's Office according to the place of possible crossing the state border.
d) Accepted languages	Slovak language / other (according to the declarations of the Slovak Republic to the appropriate international treaty)
e) Execution deadline	N/A
f) Concise legal practical information	In case the Slovak authorities receive EIO from another EU Member State, such EIO will be considered as mutual legal assistance request pursuant to the relevant international treaty and forwarded to the relevant District Prosecutor's Office. Slovak Republic does not apply EIO on this measure.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person without the strict limitation of its procedural status in the criminal proceeding of the intentional crime.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The cross-border tracking by placing a beeper may be performed in the criminal proceedings on an intentional criminal offence if it can reasonably be assumed that it will reveal facts relevant to the criminal proceedings.
i) Competent authority to request the measure abroad	Public prosecutor in preliminary proceedings, judge in trial.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Cross-border tracking by placing a beeper has to be executed under the legal order of the state where it was executed and under the conditions set out in the relevant international treaty.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	In criminal proceedings for an intentional criminal offence, for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, corruption or another intentional criminal offence, the performance of which is bound by an international treaty, a video, audio or audiovisual recording may be prepared if it may be reasonably assumed that facts important to the criminal proceedings will be so revealed (§114 CCP). The period, during which the preparation of video, audio or audiovisual recordings shall be performed, must be determined in the order; this period may be up to six months. This period may be extended for no more than two months, even repeatedly.

<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>N/A</p> <p>In general, cross-border tracking carried out in this manner is not possible to approve additionally.</p> <p>If the technical device tracking the car can also make an audio/video recording, EU Member State shall forward EIO. The competent authority to receive and execute EIO in such case is the Regional Prosecutor's Office according to the place of possible crossing the state border.</p> <p>In the absence of legal framework (audio-video recording), the principle of reciprocity may be applicable.</p>
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	Act no. 236/2017 Coll. on the European Investigation Order.
b) Legal Framework	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. The bilateral or other multilateral treaty covering the specific subject matter may be applicable (third states). In the absence of legal framework, the principle of reciprocity may be applicable.
c) Competent Authority	Regional Prosecutor's Office (EIO) District Prosecutor's Office (third states)
d) Accepted Languages	Slovak language. Czech language accepted in case of EIO issued by Czech Republic. other (according to the declarations of the Slovak Republic to the appropriate international treaty (third states)).
e) Execution Deadline:	N/A
f) Concise legal practical information	There are two situations that may occur with this measure – either the surveillance is conducted only in the territory of the requested state, or it may continue to the requesting state, thus becoming cross-border surveillance. Conditions for both situations are the same.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Any person without the strict limitation of its procedural status in the criminal proceeding of the intentional crime.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	The surveillance of persons and items may be performed in the criminal proceedings on an intentional criminal offence if it can reasonably be assumed that it will reveal facts relevant to the criminal proceedings.
i) Competent authority to request the measure abroad	Public prosecutor in preliminary proceedings, judge in trial.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Surveillance and tracking of a person has to be executed under the legal order of the state where it was executed and under the conditions set out in the relevant international treaty.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates	In criminal proceedings for an intentional criminal offence, for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, corruption or another intentional criminal offence, the performance of which is bound by an international treaty, a video, audio or audiovisual recording may be prepared if it may be reasonably assumed that facts important to the criminal proceedings will be so

a different procedure than indicated above.	revealed (§114 CCP). The period, during which the preparation of video, audio or audiovisual recordings shall be performed, must be determined in the order; this period may be up to six months. This period may be extended for no more than two months, even repeatedly.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other?	N/A If it is a matter that cannot be deferred and the preparation of audio/video recording is not associated with entry into a dwelling and a written warrant from a judge cannot be obtained in advance, the public prosecutor may, before the commencement of the criminal prosecution and in the preliminary hearing, issue the warrant; such a warrant must be confirmed by the judge no later than 24 hours from its issue, otherwise it shall expire and the information obtained cannot be used for the purposes of the criminal proceedings and must be destroyed without undue delay. The preparation of audio/video recording associated with the direct entry into a dwelling is permitted only in criminal proceedings on a crime, corruption, a criminal offence of abuse of authority of a public official, a criminal offence of money laundering or for another intentional criminal offence, the performance of which is bound by an international treaty, and only with the prior consent of the competent authority. N/A
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. The bilateral or other multilateral treaty covering the specific subject matter may be applicable (third states). In the absence of legal framework, the principle of reciprocity may be applicable.
c) Competent authority to receive the request / execute the measure	Regional Prosecutor's Office (EIO) District Prosecutor's Office according to the place of the beginning of the action (third states).
d) Accepted languages	Slovak language. Czech language accepted in case of EIO issued by Czech Republic. other (according to the declarations of the Slovak Republic to the appropriate international treaty)
e) Execution deadline	N/A
f) Concise legal practical information	N/A
g) Possible object of controlled delivery	narcotic substances, psychotropic substances, precursors, poisons, nuclear or other radioactive materials, hazardous chemical substances, counterfeit or altered money, counterfeit or altered securities, counterfeit, altered or illegally produced custom stamps, postal stamps, labels and postal stamps, means of payment, firearms or weapons of mass destruction, ammunition and explosives, cultural heritage items or other items that require special permissions for their possession, items intended to commit a criminal offence, or items of a committed criminal offence
h) Conditions under which it is possible to order the	For the purpose of apprehending persons who take part in the handling of such consignment.

measure based on a request of foreign authority	
i) Competent authority to request the measure abroad	Public prosecutor in preliminary proceedings, judge in trial.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Controlled delivery has to be executed under the legal order of the state where it was executed and documented by a process record, also video-record, audio-record, photos or any other media recording the process of operation.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	No, it is not strictly established.
l) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other?	Monitoring of the delivery shall be performed by the Police Force in cooperation with customs administration authorities, which must be notified of such procedure in advance. The Police Force may commence the monitoring of the consignment without the warrant if the item cannot be deferred and the warrant cannot be procured in advance. The Police Force shall notify the public prosecutor of such act without undue delay. If the public prosecutor fails to issue a warrant within 48 hours, the monitoring of the consignment must be terminated and the obtained information can no longer be used in further proceedings and must be destroyed in the prescribed manner without undue delay. The special legal provisions are applied in relation to the Czech Republic (bilateral treaty).
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. European Convention on Mutual Assistance in Criminal Matters of April 20, 1959 amended by its First and Second Additional Protocol. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000. In case of existence, the bilateral or other multilateral treaty covering the specific subject matter may be applicable. In the absence of legal framework, the principle of reciprocity may be applicable.
c) Competent authority to receive the request / execute the measure	Regional Prosecutor's Office in Bratislava (EIO) District Prosecutor's Office (third states)
d) Accepted languages	Slovak language. Czech language accepted in case of EIO issued by Czech Republic. other (according to the declarations of the Slovak Republic to the appropriate international treaty)
e) Execution deadline	N/A
f) Concise legal practical information	N/A
g) Conditions under which it is possible to order the measure based on a request of foreign authority	In criminal proceedings on a crime, corruption, criminal offences of extremism, a criminal offence of abuse of authority of a public official, a criminal offence of money laundering or another intentional criminal offence, the performance of which is bound by an international treaty, a

	<p>warrant for the interception and recording of telecommunication operations may be issued if it may be reasonably assumed that it will aid in obtaining all the facts relevant to the criminal proceedings (§115 CCP). The warrant may be issued if the purpose pursued may not be attained otherwise or if its attainment in another manner would be considerably hindered. The warrant must include the determination of the user address or device and the person if their identity is known, that the interception and recording of telecommunication operations concerns, and the period during which the interception and recording of telecommunication operations will be performed. The interception and recording period may last up to six months. This period may be extended by two months, even repeatedly. In criminal proceedings for an intentional criminal offence other than the one referred above, a warrant for the interception and recording of telecommunication operations may be issued only with the consent of the user of the intercepted or recorded telecommunications device.</p>
h) Competent authority to request the measure abroad	Public prosecutor in preliminary proceedings, judge in trial.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>If the recording of telecommunication operations is to be used as evidence, the literal transcript of the recording shall be enclosed with it, if the prepared recording allows it, which shall be prepared by a member of the Police Force performing the interception, in the extent of the findings crucial for the criminal proceedings, with information on the time, place, authority that prepared such recording, and legality of the interception. The recording of telecommunication operations shall be stored as a whole on file using the appropriate electronic media. The literal transcript of a recording in a foreign language may be drawn up and supplemented by an interpreter.</p>
<p>j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)?</p> <p>Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).</p>	<p>A police officer or the competent department of the Police Force is obligated to systematically examine whether the reasons that led to the issue of the interception and recording of telecommunication operations warrant are still valid. If it is found during the interception and recording of telecommunication operations that the accused has communicated with their defense counsel, such obtained information may not be used for the purpose of the criminal proceedings and must be destroyed in a prescribed manner without undue delay; this shall not apply if it is about information which relates to the matter in which the attorney does not represent the accused as their defense counsel.</p> <p>Act no. 236/2017 Coll. on the European Investigation Order assumes this possibility. We are not able to comment on the technical possibility of such procedure.</p>
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or technical measure for urgent cases? 	<p>N/A</p> <p>This measure is not applicable without the prior request for legal assistance.</p>

• Any other?	N/A
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000.
c) Competent authority to receive the request / execute the measure	The competent authority to receive the notification made by using the form set out in Annex C of the Directive is District court Bratislava I (EIO). District Prosecutor's Office (MLA 2000).
d) Accepted languages	Slovak language. Czech language accepted in case of notification issued by Czech Republic. other (according to the declarations of the Slovak Republic to the appropriate international treaty)
e) Execution deadline	96 hours
f) Concise legal practical information	If consent to interception of telecommunication has not been granted, the competent court shall notify the authority of the another Member State that the information obtained through interception of telecommunication cannot be used for the purposes of criminal proceedings conducted in that Member State, or that it may only be used if the conditions determined by the competent court are met. The notice shall state the reason for which it is necessary to fulfill such conditions.
g) Conditions under which it is possible to order the measure based on a request of foreign authority	Consent to interception of telecommunication or its continuation can only be granted if the conditions specified in § 115 of the Code of Criminal Procedure are met: In criminal proceedings on a crime, corruption, criminal offences of extremism, a criminal offence of abuse of authority of a public official, a criminal offence of money laundering or another intentional criminal offence, the performance of which is bound by an international treaty, a warrant for the interception and recording of telecommunication operations may be issued if it may be reasonably assumed that it will aid in obtaining all the facts relevant to the criminal proceedings. The warrant may be issued if the purpose pursued may not be attained otherwise or if its attainment in another manner would be considerably hindered. The interception and recording period may last up to six months. This period may be extended by two months, even repeatedly. In criminal proceedings for an intentional criminal offence other than the one referred above, a warrant for the interception and recording of telecommunication operations may be issued only with the consent of the user of the intercepted or recorded telecommunications device.
h) Competent authority to request the measure abroad	Public prosecutor in preliminary proceedings, judge in trial.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	If the recording of telecommunication operations is to be used as evidence, the literal transcript of the recording shall be enclosed with it, if the prepared recording allows it, which shall be prepared by a member of the Police Force performing the interception, in the extent of the findings crucial for the criminal proceedings, with information on the time, place, authority that prepared such recording, and legality of the interception. The recording of telecommunication operations shall be stored as a whole on file using the appropriate electronic media. The literal transcript of a recording in a foreign language may be drawn up and supplemented by an interpreter.

j) Can you share any good practice, such as:	
- Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?	N/A
- Do you have any legal, organizational or technical measure for urgent cases?	N/A
- Have you had any real-world experience with application of this measure?	N/A
- Any other?	
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	Art. 1/4 was not implemented, however, our judicial authorities are able to consider requests for granting consent with using the police information as evidence in criminal proceedings. The consent may be granted in case the conditions of domestic legislation for using such information as evidence in domestic criminal proceedings are met.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	No

4.25. Slovenia

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	This special investigative measure of cross-border surveillance is not specifically regulated by a specific Slovenian law. It is regarded as a general undercover observation.
b) International legal framework applicable for this measure in your Member State	Article 149.a of the Slovenian Criminal Procedure law – ZKP Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
c) Competent authority to receive the request/execute the measure	State Prosecutor – generally Court – when there is use of technical devices for voice transmission and recording, planting a tracking technical device, surveillance inside enclosed spaces or surveillance of a third person (not a suspect)
d) Accepted languages	Slovenian and English
e) Execution deadline	N/A – The State Prosecutor and the Court regards the special investigative measure as urgent.
f) Concise legal practical information	N/A
g) Possible subject of observation/surveillance (suspect only, or also other persons)	<p>"Secret surveillance shall be, generally, permitted by the state prosecutor through a written order and at the written request of the police.</p> <p>Exceptions:</p> <p>Secret surveillance shall be ordered in writing by the investigating judge, at the written request of the public prosecutor, in the following cases:</p> <ol style="list-style-type: none"> 1. if he envisages the use of technical devices for the transmission and recording of sound in the application of the measure; 2. if application of the measure requires the installation of technical devices in a vehicle or in other protected or closed premises or objects in order to establish the position and movements of a suspect; 3. for application of a measure in private premises, if the owner of these premises so allows; 4. for the application of a measure against a person who is not a suspect. <p>In exceptional cases, if written orders cannot be obtained in time and if a delay would present a risk, the public prosecutor may at the verbal request of the police, allow the measure to commence on the basis of a verbal order, and the investigating judge may, at the verbal request of the public prosecutor, allow the measure to commence on the basis of a verbal order.</p> <p>Cross-border surveillance is subject to protection of classified information. All information gathered in pre-criminal procedure is considered as classified information.</p> <p>MLA requests are usually delivered directly to competent authority of another Member State.</p> <p>In practice these channels are the Police, State Prosecutor's Office, Eurojust, European Judicial Network and Ministry of Justice."</p>

h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>"On request of competent foreign body state prosecutor is generally competent to issue an order, if there are reasonable grounds for suspecting that a certain person has committed, is committing, is preparing to commit or is organising the commission of any of the criminal offences specified in the fourth paragraph of Article 149.a of the CPA and if it is reasonable to conclude that police officers would be unable to uncover, prevent or prove this offence using other measures, or if these other measures would give rise to disproportionate difficulties, secret surveillance of this person may be ordered.</p> <p>Surveillance when using only technical means without foreign officials personally crossing the border is considered as a measure of secret surveillance."</p>
i) Competent authority to request the measure abroad	State prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Basic principle: All the evidence, which was gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	Court order is needed
l) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>Usually the Specialized State Prosecutors Office is the competent authority.</p> <p>In urgent cases the communication is the fastest via Eurojust. Crypted communication between State prosecutor and Eurojust is very useful in cases of special investigative measures. If there is time allows it is useful to acquire information through EJM contact point in advance.</p>
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>This special investigative measure of cross-border surveillance is not specifically regulated by a specific law.</p> <p>It is regarded as a general undercover observation.</p>

b) International legal framework applicable for this measure in your Member State	Article 149.a of the Slovenian Criminal Procedure law – ZKP Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
c) Competent authority to receive the request/execute the measure	Slovenian Court
d) Accepted languages	Slovenian and English
e) Execution deadline	N/A – The Court regards the special investigative measure as urgent.
f) Concise legal practical information	N/A
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Investigative measure can be carried out on the suspect and other persons provided that they agree to it.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	On request of competent foreign body investigating judge is generally competent to issue an order, if there are reasonable grounds for suspecting that a certain person has committed, is committing, is preparing to commit or is organising the commission of any of the criminal offences specified in the fourth paragraph of Article 149.a of the CPA and if it is reasonable to conclude that police officers would be unable to uncover, prevent or prove this offence using other measures, or if these other measures would give rise to disproportionate difficulties, secret surveillance of this person may be ordered.
i) Competent authority to request the measure abroad	State prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Basic principle: All the evidence, which was gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	No
l) Can you share any good practice, such as: 3. Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?	/

<ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FBA.55))	
a) Measure implementation	It is regarded as a general undercover observation.
b) Legal Framework	Article 149.a of the Slovenian Criminal Procedure law – ZKP Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters;
c) Competent Authority	Slovenian Court
d) Accepted Languages	Slovenian and English
e) Execution Deadline:	N/A – The Court regards the special investigative measure as urgent.
f) Concise legal practical information	N/A
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Investigative measure can be carried out on the suspect and other persons provided that they agree to it.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	On request of competent foreign body investigating judge is generally competent to issue an order, if there are reasonable grounds for suspecting that a certain person has committed, is committing, is preparing to commit or is organising the commission of any of the criminal offences specified in the fourth paragraph of Article 149.a of the CPA and if it is reasonable to conclude that police officers would be unable to uncover, prevent or prove this offence using other measures, or if these other measures would give rise to disproportionate difficulties, secret surveillance of this person may be ordered.
i) Competent authority to request the measure abroad	State prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Basic principle: All the evidence, which was gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	No

<p>l) Can you share any good practice, such as:</p> <p>4. Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>In urgent cases the communication is the fastest via Eurojust. Crypted communication between State prosecutor and Eurojust is very useful in cases of special investigative measures. If there is time allows it is useful to acquire information through EJNI contact point in advance.</p>
Controlled delivery (FB A.73)	
5. Is the measure possible in your member state under international judicial cooperation?	Yes
b) International legal framework applicable for this measure in your Member State	Article 159 of the Slovenian Criminal Procedure law - ZKP Article 55 of the Cooperation in Criminal Matters with the Member States of the European Union Act – ZSKZDČEU-1 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters;
c) Competent authority to receive the request / execute the measure	District State prosecutor where the border crossing will happen or Special Prosecutors Office Slovenian Court - if measure includes other special investigative means and methods with the use of technical devices of transmitting and recording of sound, video recoding or photography The police executes the controlled delivery.
d) Accepted languages	Slovenian and English
e) Execution deadline	N/A – The State Prosecutor and the Court regards the special investigative measure as urgent.
f) Concise legal practical information	N/A
g) Possible object of controlled delivery	Object of controlled delivery can be transportation or transfer of persons, objects or goods of whom or which importation is limited or prohibited.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>"The controlled delivery shall be permitted at the request of the competent authority of the Member State or in agreement with another Member State, if criminal offences are involved that satisfy the conditions for the issue of an European Arrest Warrant, which means that a criminal offence in question must be prosecuted ex officio and must be punishable by a sentence of imprisonment of at least one year.</p> <p>Controlled delivery shall be performed by using two measures, secret surveillance and suspension of the arrest of a suspect and</p>

	the execution of other measure. It is possible in cases when seizure of objects or arrest of a person may be suspended with a view to discovering a major criminal activity but only if, and as long as, the lives and health of third persons are not thereby endangered."
i) Competent authority to request the measure abroad	State prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Basic principle: All the evidence gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	Court order is needed
l) Can you share any good practice, such as: 6. Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Any other?	Usually the Specialized State Prosecutors Office is the competent authority. In urgent cases the communication is the fastest via Eurojust. Crypted communication between State prosecutor and Eurojust is very useful in cases of special investigative measures. If there is time allows it is useful to acquire information through EJM contact point in advance.
Interception, recording and transcription of telecommunications (FBA.50)	
7. Is the measure possible in your member state under international judicial cooperation?	Yes. In national legislation the measure of surveillance of electronic communications with hearing and recording and control and securing of evidence in all forms of communication transmitted through electronic communication network is defined. The term "electronic communication network" is understood in the widest possible sense.
b) International legal framework applicable for this measure in your Member State	Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union; European Convention on Mutual Assistance in Criminal Matters with Additional Protocols; Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters; Schengen Convention, Bilateral Agreements.
c) Competent authority to receive the request / execute the measure	District Courts.
d) Accepted languages	Slovenian/English.
e) Execution deadline	N/A - The court regards the special investigative measure as urgent.

f) Concise legal practical information	N/A
g) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>"Pursuant to Article 150 of Slovenian Criminal Procedure Act (CPA) interception of telecommunication (the monitoring of electronic communications using listening and recording devices and the control and protection of evidence on all forms of communication transmitted over the electronic communications network) may be ordered against a person under following cumulative conditions:</p> <p>1. if there are reasonable grounds for suspecting that a particular person has committed, is committing or is preparing or organising the commission of any of the following criminal offences:</p> <ul style="list-style-type: none"> - criminal offences against the security of the Republic of Slovenia and its constitutional order, and crimes against humanity and international law for which the law prescribes a prison sentence of five or more years; - criminal offences of abduction (Article 144 of the Penal Code), the showing, possession, manufacture and distribution of pornographic material (Article 187), illicit narcotics production and trafficking (Article 196), facilitating of drug-taking (Article 197), blackmail (Article 218), abuse of inside information (Article 243), unauthorised acceptance of gifts (Article 247), unauthorised giving of gifts (Article 248), money laundering (Article 252), smuggling (Article 255), accepting of a bribe (Article 267), giving of a bribe (Article 268), acceptance of gifts to secure unlawful intervention (Article 269), giving of gifts to secure unlawful intervention (Article 269.a), criminal association (Article 297), unauthorised production of and trade in arms or explosives (Article 310), and causing of danger with nuclear substances (third paragraph of Article 319); - other criminal offences for which the law prescribes a prison sentence of eight or more years. <p>2. if there exists a reasonable suspicion that such person is using for communications in connection with this criminal offence a particular mean of communication or computer system or that such means or system will be used,</p> <p>3. wherein it is possible to reasonably conclude that other measures will not enable the gathering of data or that the gathering of data could endanger the lives or health of people."</p>
h) Competent authority to request the measure abroad	State prosecutor.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>"Basic principle:</p> <p>All the evidence, which was gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible."</p>
10. What are the obligations under your law to control or review interception of telecommunication traffic	The Slovenian Criminal Procedure Act does not have specific provisions that would prohibit wiretapping between certain persons (for example between defence counsel and the accused) and that such wiretapping would consequently lead to exclusion of evidence. However, based on other provisions of the

<p>already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)?</p> <p>Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).</p>	<p>law (for example, the provisions of the law on cases where certain persons are exempted from the duty to testify, because they are obliged to keep confidential what they learn in the course of their profession, which also applies to the relationship between the accused and the defense counsel, and and the provision of the law that the court may not base its decision on evidence obtained by violating the law or constitutionally guaranteed rights and freedoms), it can be concluded that the validity of such evidence is questionable.</p>
<p>j) Can you share any good practice, such as:</p> <p>11. Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?</p> <ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Any other? 	/
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
12. Is the measure possible in your member state under international judicial cooperation?	Yes.
b) International legal framework applicable for this measure in your Member State	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (the EIO directive).
c) Competent authority to receive the request / execute the measure	District Courts.
d) Accepted languages	Slovenian and English.
e) Execution deadline	N/A - The court regards the special investigative measure as urgent.
f) Concise legal practical information	N/A
g) Conditions under which it is possible to order the measure based on a request of foreign authority	Pursuant to Article 150 of Slovenian Criminal Procedure Act (CPA) interception of telecommunication (the monitoring of electronic communications using listening and recording devices and the control and protection of evidence on all forms of communication transmitted over the electronic communications network) may be ordered against a person under following cumulative conditions:

	<p>1. if there are reasonable grounds for suspecting that a particular person has committed, is committing or is preparing or organising the commission of any of the following criminal offences:</p> <ul style="list-style-type: none"> - criminal offences against the security of the Republic of Slovenia and its constitutional order, and crimes against humanity and international law for which the law prescribes a prison sentence of five or more years; - criminal offences of abduction (Article 144 of the Penal Code), the showing, possession, manufacture and distribution of pornographic material (Article 187), illicit narcotics production and trafficking (Article 196), facilitating of drug-taking (Article 197), blackmail (Article 218), abuse of inside information (Article 243), unauthorised acceptance of gifts (Article 247), unauthorised giving of gifts (Article 248), money laundering (Article 252), smuggling (Article 255), accepting of a bribe (Article 267), giving of a bribe (Article 268), acceptance of gifts to secure unlawful intervention (Article 269), giving of gifts to secure unlawful intervention (Article 269.a), criminal association (Article 297), unauthorised production of and trade in arms or explosives (Article 310), and causing of danger with nuclear substances (third paragraph of Article 319); - other criminal offences for which the law prescribes a prison sentence of eight or more years. <p>2. if there exists a reasonable suspicion that such person is using for communications in connection with this criminal offence a particular mean of communication or computer system or that such means or system will be used,</p> <p>3. wherein it is possible to reasonably conclude that other measures will not enable the gathering of data or that the gathering of data could endanger the lives or health of people.</p>
h) Competent authority to request the measure abroad	State prosecutor.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Basic principle: All the evidence gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible.
j) Can you share any good practice, such as: 13. Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure?	/

- Any other?	
General questions	
14. How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	Government Regulation of 3 December 2013 (entered into force on 18 December 2013). Article 3, paragraph 5 of Regulation summarizes the content of Article 1 (4) of the framework decision.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?	/

4.26. Spain

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Cross-border observation, also known as Cross-Border Surveillance is not specifically regulated in our Criminal Procedure Code or the domestic Mutual Recognition law 23/2014 as an investigation measure as an international judicial cooperation legal instrument. However, on the basis of Article 40 of the Convention Implementing the Schengen Agreement (CISA)</p> <p>The surveillance would begin on the basis of an incoming request "in response to a request for assistance made in advance", previously issued in the framework of a criminal (normally judicial) investigation against a suspect to be monitored who allegedly committed an offence that may give rise to extradition (Murder, manslaughter, rape, arson, forgery of money, aggravated burglary and robbery and receiving stolen goods, extortion, kidnapping and hostage-taking, trafficking in human beings, illicit trafficking of narcotic drug and psychotropic substances, breach of the laws on arms and explosives, wilful damage thorough the use of explosives and illicit transportation of toxic and hazardous waste, listed in paragraph 7 art 40). As regards to hot pursuit Art. 41 adds situations when the suspect person flees after a traffic accident resulting in death or serious injury.</p> <p>This could be previously foreseen but is normally urgent in which case the request may be immediately submitted when the monitored person has crossed the border though the requested State have not been able to be warned or when previously warned they have not been able to move to the border to continue surveillance, communicating this situation to the Central authority of the requested country and resending without delay the request for assistance.</p> <p>As regards to hot pursuit (Art. 41 CISA) as this is a mere police measure, it does not require prior judicial authorization.</p>
b) International legal framework applicable for this measure in your Member State	<p>As already mentioned the applicable legal basis for this measure in Spain are</p> <ul style="list-style-type: none"> • Article 40 of the Convention Implementing the Schengen Agreement (CISA) • Article 41 CISA as regards to hot pursuit
c) Competent authority to receive the request/execute the measure	<p>According to article 2 of the Spanish Instrument of Accession to the Convention Implementing the Schengen Agreement [Instrumento de Ratificación del 23 de Julio de 1993 del Acuerdo de 25 de junio de 1991 de Adhesión del Reino de España al Convenio de Aplicación de 19 de junio de 1990 del Acuerdo de Schengen de 14 de junio de 1985. [BOE nº 81 de 5/4/1994], Spain designated the following authorities:</p> <p>1. The officers referred to in Article 40(4) of the 1990 Convention as regards the Kingdom of Spain shall be: officers of the Cuerpo Nacional de Policía (national police) and of the Cuerpo de la Guardia Civil in the exercise of their criminal police duties, as well as officials of the Customs Administration, under the conditions laid down in appropriate bilateral agreements referred to in Article 40(6)</p>

	<p>of the 1990 Convention, with respect to their powers regarding the illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste.</p> <p>2. The authority referred to in Article 40(5) of the 1990 Convention as the national central authority is the Dirección General de la Policía (Directorate-General of Police).</p> <p>as regards of hot pursuit the National Police, the Guardia Civil and the Customs Surveillance Service (only for certain crimes such as smuggling). Additionally regional police forces from Basque Country and Catalonia are recently included just in relation to hot pursuit measure.</p>
d) Accepted languages	Spanish
e) Execution deadline	As the current legal basis is Art. 40 CISA: Surveillance shall cease as soon as the Spanish authorities in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b) or, where authorisation has not been obtained, five hours after the border was crossed.
f) Concise legal practical information	<p>In this case scenario, however the request for assistance re cross-border surveillance would be normally issued by a judicial authority in the framework of an ongoing criminal proceedings, a police authority is the one in charge of receiving and executing it, not only in urgent cases - whenever the request should be submitted immediately after crossing the border-, but even when the given measure is expected and foreseen in advance.</p> <p>The mentioned Spanish designated police authorities should notify the judicial authorities (Public Prosecutor and/or Investigating Judge) concerned in the territory where the cross-border surveillance is to be expected or is going on /happened but there is a legal gap and LEA do not report back to judicial authorities in all cases or in regular basis (and no reliable statistics are available on this particular measure)</p>
g) Possible subject of observation/surveillance (suspect only, or also other persons)	<p>Any person connected with the investigation.</p> <p>Any person who is presumed to have participated in an extraditable criminal offence listed in Art. 40 (7) and 41 (4) of the CISA</p>
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>The measure can be used in criminal proceedings concerning any kind of criminality. This is strictly a collaboration between police forces; it can be carried out by Spanish officers on a single basis or jointly with foreign police officers.</p> <p>The surveillance may only be issued where one of the extraditable criminal offences listed in Art. 40 (7) and 41 (4) of the CISA are involved</p>
i) Competent authority to request the measure abroad	<p>Same police authority as competent to authorize - via international Police cooperation, or Judges by using a rogatory letter.</p> <p>Whenever there is judicial criminal proceedings the Investigating Judge, when there is a pre-judicial file the Public Prosecutor using a MLA request. As regards to ongoing police investigations the competent LEA the police authority concerned despite of the possibility of notifying the Public Prosecutor on the need to issuing a MLA request in the basis of Article 20 of the Royal Decree 769/1987 on Judicial Police.</p>

j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	<p>All the evidence, which was gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible.</p> <p>The surveillance may only be carried out where one of the extraditable criminal offences listed in Art. 40 (7) and 41 (4) of the CISA are involved and there is a verified factual situation and need</p>
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>There shall be a specific and motivated authorization from the competent judge for the tracking/tracing and audio/video recording. As previously mentioned police observations and surveillance in public spaces currently lack legal provision in our procedural system also as a cross-border measure spite of Article 40 and 41 CISA. So, the Spanish legal system does not allocate any specific provision to regulate discreet or visual surveillance.</p> <p>The case-law stemming from the Spanish Supreme Court set up (as stated in judgements nº 610/2016, of 10th March and 329/2016 of 20th April) that, in the absence of a specific rule, no fundamental right violates the police agent who perceives with his eyes what is available to anyone. The police officer can narrate as a policeman what he saw and observed when he was carrying out surveillance and monitoring tasks. Our constitutional system does not raise any obstacle to carry out, within the framework of a criminal investigation, observations and monitoring in public places. So, in those cases the Public Prosecutor would be entitled to issue and execute any cross-border surveillance request for assistance and also the police in urgent cases, on the basis of Art. 40 CISA.</p> <p>In addition, Public Prosecutors and Police may issue a cross-border request for assistance including the use technical video surveillance mechanisms that allow recording the image of the subjects, objects or places subject to surveillance, provided that they are limited to videotaping images of actions that take place on public roads. Art. 588 d a) of the Spanish CPC provides that "[t]he Judicial Police may obtain and record, by any technical means, images of the person under investigation when they are in a public place or space, if this is necessary to facilitate their identification, to locate the instruments or effects of the crime or obtain relevant data to clarify the facts". And second paragraph of the aforementioned provision states, "[t]he measure may be carried out even when it affects persons other than the person under investigation, provided that otherwise the usefulness of the surveillance is significantly reduced or there are well-founded indications of the relationship of said persons with the person under investigation and the facts that are the object of the investigation."</p> <p>The photo and video material obtained under the aforementioned conditions and without undue interference with family privacy is admissible as evidence under the Spanish legal system regime as amended by the Organic Law nº 13/2015 by introducing the new article 588 quinquies a) in our CPC which establishes that the Judicial Police may obtain and record by any technical means images of the person under investigation when they are in a public place or space, even when the measure affects different people of the investigated. In these cases a Court authorization is not necessary to the extent that none of the fundamental rights are concerned.</p>

	<p>It is noteworthy to underline that taping conversations in public spaces will require, in any case, prior Court authorization in accordance with Art. 588 quater a) CPC. As stated in the PG's Circular no. 3/2019, on capturing and recording oral communications through the use of electronic devices, «the recording of communications in public places must always be authorized by the judge. Although it could be contradictory, the communication can be heard directly by a police agent without the need for judicial authorization but whenever any conversation stemming from a surveillance is to be recorded a judicial authorization is needed. So, only in cases in which the recording of cross-border surveillance measures is limited to the images of the monitored person under investigation without recording the sound at the same time, this measures could be requested and executed by the police and the Public Prosecutor directly under the basis of Art. 40 CISA.</p> <p>Whenever both images and sound are requested to be recorded at the same time a EIO should be needed. The EIO should be transmitted to the Public Prosecutor in accordance with article 187 (2) of the Mutual Recognition national Law 23/2014 but the PP shall asap submit it before the relevant Investigating Judge as the competent executing authority in Spain</p>
<p>m) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>If any tracking/tracing device has been installed by the requesting authority , and enters Spain (with or without audio/video), authorization is required from the Spanish judge by means of instruments of mutual recognition (EIO: european investigation order. Annex A of Directive 214/41/CE, of 3 april 2014).</p> <p>This autorisation to use it in Spain /notification is required to legally use the results in the requesting state.</p> <p>In urgent case , authoriization/notification may be requested from the competent on duty court.</p> <p>As mentioned before the designated authorities in urgent cross-surveillance measures cases are police authorities (According to article 2 of the Spanish Instrument of Accession to the Convention Implementing the Schengen Agreement)</p> <p>However, taking into account the particularities of the Spanish legal system whenever a technical record support of the monitored person is requested, namely an audio/video recording of his/her movement, it is highly recommended to issue an EIO sending it towards:</p> <ul style="list-style-type: none"> • The International Cooperation Unit of the General Prosecutor's Office (UCIF) when the requesting authority does not know the location of the person under surveillance and this Unit will decide whether to execute it immediately within the PPO or to send it to the Central Investigating Judge • The local Specialized Public Prosecutor of the territory when the whereabouts of the person under surveillance is known and this PP will decide whether to execute it without

	delay or to send the EIO to the competent Investigating Judge
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Yes, it is possible. If the use of technical devices is required to track a person or a vehicle this measure is considered as a judicial measure. According to Art.588 quinquies b) of the Spanish Criminal Procedure Law, the use of technical media or devices for tracking and tracing, requires judicial authorization, in accordance with the following requirements 1. It is necessary well-founded reasons based on need and provided that the measure is proportionate. 2. The authorisation must specify the item of technical media that is to be used. 3. The service providers, agents and persons referred to in Article 588 ter e) of the Spanish Criminal Procedure Law are required to provide the Judge, the Public Prosecutor's Office and the officers of the Judicial Police designated to carry out the measure, with the assistance and collaboration required to facilitate the execution of the tracking orders.</p> <p>Cross-border tracking is possible under the Spanish CPC (arts. 588 quinquies b and 588 quinquies c) which provides the legal basis for using technical tracking and tracing devices, so-called "beacons".</p> <p>The legal framework only refers to those technical devices that allow geolocation, but without including other data, such as image or sound. Likewise the above mentioned regulation is limited to the use of these devices in the context of a criminal investigation and is applicable to international judicial cooperation.</p> <p>As of the Organic Law nº 13/2015 amending the Spanish CPC a Court authorization would be needed, in general terms, for the placement and use of technical tracking and location devices.</p> <p>Exceptionally, in urgent cases, the Judicial Police may place devices or technical means of surveillance and location without prior judicial authorization whenever the urgency of the case makes it reasonable to foresee that, if they do not do so, the investigation could be undermined.</p> <p>The use of stored geolocation data that corresponds to dates prior to the judicial resolution -in the case of geolocation data stored in GPS devices found in the possession of the person under investigation- has the same legal regime as associated or traffic communication data held in the automated files ISPs in line with legislation on data retention and arts. 588 sexies a and following of CPC and therefore, has to be judicially validated.</p>
b) International legal framework applicable for this measure in your Member State	In line with Recital 30 of the EIO Directive 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 an intrusive investigative measure.

	Therefore, the relevant domestic legislation applicable for this measure are arts. 200 and 219 of the Spanish Mutual Recognition Law 23/2014 for outgoing and incoming EIOs, respectively (both implementing Art. 28 of the 2014 Directive)
c) Competent authority to receive the request/execute the measure	<u>Receiving authority</u> (as SPoC): the Public Prosecutor as provided by Article 187 (2) of the Mutual recognition Law 23/2014 and whenever the competent local PPO is not clear enough, EIO could be sent to the International Cooperation Unit at the General Prosecutor's Office (UCIF) <u>Executing authority</u> : The competent judicial authority is the Investigating Judge or the Central Investigating Judge at the National Court, according to the scope of their respective objective competence (see Judicial Atlas).
d) Accepted languages	Spanish
e) Execution deadline	In accordance with article 588 quinquies c (1) of the Spanish CPC, the geolocation measure will have a maximum duration of three months from the authorization and exceptionally if justified and considering the results already obtained, it may be extended for the same or shorter period up to a maximum of eighteen months, if justified.
f) Concise legal practical information	In addition, Article 588 quinquies c (2), provides that the Judicial Police will deliver to the judge the original supports or authentic electronic copies containing the information collected when the Judge requests it and, in any case, when the investigation (or the execution of the EIO) is finished. Furthermore, the information obtained through the technical tracking and tracing devices must be duly safeguarded to prevent its improper use.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Targeted persons should be suspects only, though other persons could be also affected if they are also in the vehicle
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Spanish CPC Article 538 d. ii (1) on use of technical devices or means of tracking and localization set up "Where there are proven reasons of necessity, and the measure is proportionate, the competent judge may authorise the use of technical devices or means of tracking and localization in a reasoned decision In addition, paragraph 2 of the above mentioned provision established that "The authorization must specify the technical means to be used.". So this information should be available in the EIO
i) Competent authority to request the measure abroad	Although at a national level it is up to the Public Prosecutor and Judicial Police to authorize this measure in urgent cases from the cross-border view, taking into account Judgment of the EUCJ (Fourth Chamber) of 16 December 2021 -Criminal proceedings against HP- re an EIO seeking to obtain traffic and location data

	associated with telecommunications, where the Luxembourg Court set up that this EIO cannot be issued by a BG public prosecutor, It would be wise to consider Investigating Judge as the competent authority to request this measure abroad by means of an EIO.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Taken into account the condition laid down in Article 6(1)(b) of Directive 2014/41, according to which the issuing authority may only issue an EIO where the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case as in general terms a prior Court authorization is needed in accordance with Art. 588 quater a) CPC, taking into account Judgment of the EUCJ (Fourth Chamber) of 16 December 2021 -Criminal proceedings against HP- re an EIO seeking to obtain traffic and location data associated with telecommunications, where the Luxembourg Court set up that this EIO cannot be issued by a BG public prosecutor, It would be recommended to ask the Judge for a priori judicial authorisation and to issue an EIO whenever there is a cross-border implication.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	<p>There shall be a specific and motivated JUDICIAL authorization for the audio/video recording.</p> <p>The recording of sound or image by means of electronic devices has to be authorized separately (audio and video) by a judge in a reasoned manner in each case.</p> <p>As said in FB A 70, If any tracking/tracing device has been installed by the requesting authority , and enters Spain (with or without audio/video), authorization is required from the Spanish judge by means of instruments of mutual recognition (EIO: european investigation order. Annex A of Directive 214/41/CE, of 3 april 2014).</p> <p>This autorisation/notification is required to legally use the results in the requesting state.</p> <p>As previously mentioned in relation to cross-border surveillance measures it is noteworthy to underline that using tracking devices will always require a prior Court authorization in accordance with Art. 588 quater a) CPC. Whenever sound is requested to be recorded the EIO should be transmitted to the Public Prosecutor in accordance with article 187 (2) of the Mutual Recognition national Law 23/2014 but the PP shall immediately submit it before the relevant Investigating Judge as the competent executing authority in Spain</p>
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)?	In an urgent case, when there are reasonable grounds for considering that the failure to immediately install the technical media or device for tracking and tracing is likely to frustrate the investigation, the Judicial Police may carry out such installation and shall provide a report thereon as soon as possible and in any event within 24 hours to the court, which may confirm the measures implemented or order its immediate withdrawal. In this latter scenario, any information obtained from the device shall be

<ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>excluded from the proceedings (Art. 588 quinquies b. Criminal Procedural Law)</p> <p>Notification of the existence in Spain of these devices that have been installed by the requesting state, and the authorization of their use in the issuing state, is carried out by the Central Investigative Judges in the Audiencia Nacional.</p> <p>In urgent cases, authorization may be requested from the competent duty court (in the Audiencia Nacional)</p> <p>A practical recommendation as regards to incoming cross-border tracking EIO would be to send it to the District PPO of the border province capital to be forwarded to the competent Investigating Judge where this measure is foreseeable to begin in Spain. Otherwise, centralized Units like UCIF (as receiving authority) and Central Investigating Courts would be dealing with the execution of these sort of EIOs.</p>
<p>Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))</p>	
<p>a) Measure implementation</p>	
<p>b) Legal Framework</p>	<p>Article 588 quater b: The use of electronic devices enabling to capture and record direct oral communications must be linked to communications that may take place between the investigated person and other people, in one or several particular meetings that, according to evidence provided by the investigation, are likely to take place</p>
<p>c) Competent Authority</p>	<p><u>Receiving authority</u> (as SPoC): the Public Prosecutor as provided by Article 187 (2) of the Mutual recognition Law 23/2014 and whenever the competent local PPO is not clear, EIO could be sent to the International Cooperation Unit at the General Prosecutor's Office (UCIF)</p> <p><u>Executing authority</u>: The competent judicial authority is the Investigating Judge or the Central Investigating Judge at the National Court, according to the scope of their respective objective competence (see Judicial Atlas).</p>
<p>d) Accepted Languages</p>	<p>Spanish</p>
<p>e) Execution Deadline:</p>	<p>Article 588 quater b (1) of the CPC does not provide any specific deadline. This provision establishes that the use of said devices is "linked to communications that may take place in one or several specific meetings of the person under investigation with other people and on whose predictability there are indications revealed by the investigation".</p> <p>In 2019, in a GP's circular it was stated that "the first problem" in these cases is "the interpretation of what should be understood by a specific meeting." The Supreme Court ruled on this point in 2021, which recognized that "there is no express reference to a term", as is the case with the rest of the measures that affect the right to privacy, but it did set a guideline to define the time limits to authorization.</p>

f) Concise legal practical information	As matter of fact, the Prosecutor's Office has proposed limiting listening and recording with judicial authorization to 10 days
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Targeted persons should be suspects only, though other persons could be also affected if they are also in the vehicle/room
h) Conditions under which it is possible to order the measure based on a request of foreign authority	May only be authorised under the following circumstances: a) When the facts being investigated may constitute one of the following criminal offences: a) Intentional crimes punished with a maximum of, at least, three years' imprisonment sentence, b) Offences committed within a criminal group or organisation; c) Terrorist offences. In all cases, only when it can be rationally expected that the use of such devices shall provide essential information, important as evidence for the clarification of facts and the identification of the offender.
i) Competent authority to request the measure abroad	Investigating Judge conducting any ongoing criminal proceedings
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>The Investigating Judge in a reasoned decision under the following principles:</p> <ul style="list-style-type: none"> • Principle of specialty (Article 588 bis. A (2) of the CPC), this measure should be related to the investigation of a specific crime. In general terms special technological investigation measures may not be authorized for the purpose of preventing or discovering crimes or dispelling suspicions without an objective basis. In other words, it is not, therefore, a generic or prospective investigation of crimes, nor is it the generic prevention of illicit behavior. • Principle of suitability, by which the measure must be adequate and constitute the most important means for the investigation of the crimes that are the object of the investigation. • Principle of exceptionality, since this measure must be proposed when there are no other means of investigation that are less serious for the fundamental rights of those investigated and prevent the development of the investigation if said means are not used. • Principle of necessity: the measure must be absolutely essential for the development of the investigation, since, without it, the discovery or verification of the fact under investigation, the determination of its author or authors, the investigation of their whereabouts and the location of the effects of the crime, would be seriously hindered, if not impossible. • Principle of proportionality, (Article 588 bis a (5) CPC) under which all the circumstances of the case are taken into consideration. So, the sacrifice of the affected rights and interests is not greater than the benefit resulting from its adoption for the public interest and that of third parties. For the weighting of the interests in conflict, the assessment of the public interest will be based on the

	seriousness of the fact, its social importance or the technological field of production, the intensity of the existing evidence and the relevance of the result pursued with the restriction of the right.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	<p>There shall be a specific and motivated authorization for the audio/video recording.</p> <p>As indicated in the previous cases, the installation of a tracking/tracing, audio or video devices, authorization is required from the Spanish judge by means of instruments of mutual recognition (EIO: European investigation order. Annex A of Directive 214/41/CE, of 3 April 2014).</p> <p>As previously mentioned in relation to cross-border surveillance measures it is noteworthy to underline that using devices which technically can make audio recording will always require a prior Court authorization in accordance with Art. 588 quarter a) CPC. Whenever sound is requested to be recorded the EIO should be transmitted to the Public Prosecutor in accordance with article 187 (2) of the Mutual Recognition national Law23/2014 but the PP shall immediately submit it before the relevant Investigating Judge as the competent executing authority in Spain</p>
<p>l) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	<p>There is no specialized body to request their INSTALLATION in Spain, as it is governed by the Spanish procedural law which also applies for Spanish proceedings.</p> <p>In urgent cases, authorization may be requested from the competent duty court.</p>
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	
b) International legal framework applicable for this measure in your Member State	

c) Competent authority to receive the request / execute the measure	<p><u>Receiving authority</u> (as SPoC): the Public Prosecutor as provided by Article 187 (2) of the Mutual recognition Law 23/2014 and whenever the competent local PPO is not clear, EIO could be sent to the International Cooperation Unit at the General Prosecutor's Office (UCIF)</p> <p><u>Executing authority</u>: The competent judicial authority is the Public Prosecutor or the Investigating Judge /the Central Investigating Judge at the National Court, according to the scope of their respective objective competence (see Judicial Atlas) whenever an intrusive measure is needed</p>
d) Accepted languages	
e) Execution deadline	
f) Concise legal practical information	
g) Possible object of controlled delivery	<p>"In accordance with Spanish Law (Section 263 b of the Criminal Procedure Law) the possible object of controlled delivery would be, in international MLA cases, that indicated by the applicable Convention.</p> <p>In non-international cases, those objects are:</p> <ul style="list-style-type: none"> - Illicit drugs, narcotic drugs, psychotropic substances and other prohibited substances; - equipment, materials and substances listed in Table I and Table II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, and any other product added to the same Convention or which might be included in other future conventions of the same nature, ratified by Spain; - proceeds derived from criminal offences; - specimens of endangered flora and wild fauna species and subspecies; - counterfeited currency; - weapons or ammunition prohibited by law or subject to authorisation; - explosive, flammable, incendiary or asphyxiating substances or devices and their components."
h) Conditions under which it is possible to order the measure based on a request of foreign authority	<p>"The conditions, in international MLA cases, are those envisaged by the applicable Convention.</p> <p>Under Domestic Law, it is possible to allow illicit or suspicious consignments of the aforementioned objects, to circulate with the knowledge and under the supervision of the competent authorities; with a view to identify persons involved in the commission of prescribed offences (those related the aforementioned possible objects of the measure).</p> <p>The decisions for controlled delivery shall be taken on a case-by-case basis, and they should be motivated and proportionate.</p> <p>Though decisions may also be taken by Chief Police Officers and Public Prosecutors, a Court order is essential, whenever suspect postal mail is concerned, either for its interception, opening or further substitution of its contents. As an exception to general rules, the interested party has no right to be present in the search and opening of his/her postal mail.</p> <p>In principle, it is the nature and not the seriousness of the offence that is relevant: drug trafficking, including trafficking in so-called</p>

	<p>"drug precursors", and also money laundering, whichever the original crime.</p> <p>263 bis. 2. Controlled delivery or movement shall be understood to mean the technique whereby illicit or suspicious consignments of toxic drugs, psychotropic substances or other prohibited substances, the equipment, material and substances referred to in the foregoing paragraph, substances replacing the aforementioned substances, or any goods or proceeds resulting from the criminal activities referred to in articles 301 to 304 and 368 to 373 of the Criminal Code, shall be allowed to travel across, leave or enter Spanish territory under the surveillance of the authority or its agents without any restrictive interference on their part, for the purpose of discovering or identifying the persons involved in the commission of any offence connected with such drugs, substances, equipment, materials, goods or proceeds, and of providing assistance to foreign authorities for those same purposes."</p>
i) Competent authority to request the measure abroad	<p>"Because Spanish Law expressly provides that international requests for such a measure, shall be governed by International Treaties ratified by Spain, the competent body will be, once again, that designated by the applicable Treaty.</p> <p>As a general rule, the same authorities who are competent to authorize the measure could ask for it abroad, though they might not be able to do so directly."</p> <p>Public Prosecutors may also authorize this measure at a national level (ex Art. 263 a CPC) and issue an EIO to request this measure abroad.</p>
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	All the evidence gathered in compliance with the laws of the State, in which the investigating measures were carried out, is admissible.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	The interception and opening of postal items suspected of containing narcotics and, where appropriate, the subsequent replacement of the drugs inside them shall be carried out in accordance with the judicial guarantees established in the legal system at all times, with the exception of the summoning of the person concerned Article 263 bis in relation with 584 of the Criminal Procedural Law.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? Do you have any legal, organizational or 	<p>The authorization to carry out a controlled delivery in Spain in accordance with the legal provision above mentioned, is the responsibility of the competent Judge (if he has an ongoing investigation), or the public Prosecution Office.</p> <p>As specialized body that urgently authorizes controlled deliveries, there is only the Special Antidrug Prosecution Office (in the Audiencia Nacional), with jurisdiction over the entire national territory, and any request coming from abroad. Authorisation from this PPO can only be obtained if it concerns controlled deliveries of drugs, or cash in the case of a money laundering offence.</p>

technical measure for urgent cases? • Any other?	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is possible. The applicable law is the Criminal Procedural Act, which refers to this measure for national cases in articles 588 ter a to 588 ter m.
b) International legal framework applicable for this measure in your Member State	Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union European Convention on Mutual Assistance in Criminal Matters of 1959 with Denmark and Ireland Directive 2014/41/EU on the EIO in relation to the other 25 member States including Spain. In particular the execution of incoming EIOs in relation to this measure is provided in article 221 of law 23/2014
c) Competent authority to receive the request / execute the measure	<u>Receiving authority</u> (as SPoC): the Public Prosecutor as provided by Article 187 (2) of the Mutual recognition Law 23/2014 and whenever the competent local PPO is not clear, EIO could be sent to the International Cooperation Unit at the General Prosecutor's Office (UCIF) <u>Executing authority</u> : The competent judicial authority is the Investigating Judge or the Central Investigating Judge at the National Court, according to the scope of their respective objective competence (see Judicial Atlas).
d) Accepted languages	Spanish
e) Execution deadline	The deadline set up is three months, extendable for successive periods of equal duration up to a maximum of eighteen months. The extension of the measure, both in its initial period and in total, must be calculated on the guiding principles of Art. 588 bis a CPC. For instance, to set an initial term that reaches a maximum duration of three months, the need for this extension in the specific case must be justified, as well as its proportionality. The principle of proportionality should also gain prominence in justifying the extensions as the maximum interception period approaches, since only the seriousness of the crime under investigation, together with the needs of the investigation, can justify the exhaustion of the maximum duration periods. The deadlines, will be calculated from the date of judicial authorization and not from the effective date of the interception.
f) Concise legal practical information	
g) Conditions under which it is possible to order the measure based on a request of foreign authority	Legal aspects about interceptions are foreseen in Criminal Procedure Act (section 579.2) and case law from High and Constitutional Courts. There is no legal definition to specify what a "serious" offence is, so it has to be decided on case by case bases according to the harm caused by the crime and the severity of the legal penalty ("Principle of proportionality"). Interceptions are to be authorized by competent judicial bodies by means of a motivated

	<p>decision explaining the existence of probable cause and the necessity of the operation as well as the facts under investigation and the criminal charges. An actual judicial investigation on serious offences is mandatory before issuing the warrant of interception. The term of the measure, as a maximum, reaches three months. It may be protracted for further terms of the same length.</p> <p>The Investigating Judge in a reasoned decision under the following principles:</p> <ul style="list-style-type: none"> - Principle of specialty (Article 588 bis. A (2) of the CPC), this measure should be related to the investigation of a specific crime. In general terms special technological investigation measures may not be authorized for the purpose of preventing or discovering crimes or dispelling suspicions without an objective basis. In other words, it is not, therefore, a generic or prospective investigation of crimes, nor is it the generic prevention of illicit behavior. - Principle of suitability, by which the measure must be adequate and constitute the most important means for the investigation of the crimes that are the object of the investigation. - Principle of exceptionality, since this measure must be proposed when there are no other means of investigation that are less serious for the fundamental rights of those investigated and prevent the development of the investigation if said means are not used. - Principle of necessity: the measure must be absolutely essential for the development of the investigation, since, without it, the discovery or verification of the fact under investigation, the determination of its author or authors, the investigation of their whereabouts and the location of the effects of the crime, would be seriously hindered, if not impossible. - Principle of proportionality, (Article 588 bis a (5) CPC) under which all the circumstances of the case are taken into consideration. So, the sacrifice of the affected rights and interests is not greater than the benefit resulting from its adoption for the public interest and that of third parties. For the weighting of the interests in conflict, the assessment of the public interest will be based on the seriousness of the fact, its social importance or the technological field of production, the intensity of the existing evidence and the relevance of the result pursued with the restriction of the right.
h) Competent authority to request the measure abroad	Prosecutors (when suspects are underaged people) and investigating magistrates.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Conversations gathered during the surveillance shall be transcribed in a protocol as far they are useful for the discovery of the truth. The whole recording and its transcriptions shall be discovered to the defendant as soon the examination is terminated and it does not endangered the criminal investigation. It is necessary a new warrant of interception if evidence relevant to the investigation of crimes not initially included in the judicial authorization is discovered the course of the surveillance. No interception may be made of communications between a lawyer

	and his client, unless the lawyer is taking advantage of the privilege of confidentiality to commit a crime.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	<p>The Judicial Police will put at the disposal of the Investigating Judge, with the frequency determined by the latter and on different digital carriers, the transcription of the passages deemed of interest and the complete recordings made. The source and destination of each of them shall be indicated and it shall be secured by means of a system of stamping or advanced electronic signature or a sufficiently reliable certification system, the authenticity and integrity of the information transferred from the central computer to the digital carriers on which the communications would have been recorded. (Article 588 ter f. Control of the measure).</p> <p>Immediate transmission of telecommunications (Art. 30(6)(a) of the EIO Directive), is the preferred option if technically possible, as it allows real-time monitoring of the results and, consequently, the assessment of the necessity and proportionality of a possible extension.</p> <p>In the case of interception of telecommunication (IC) at the request of another state, control over the content of what is being intercepted, rests with the requesting state.</p> <p>The judge in charge of the IC will send the entirety of what is obtained to the requesting state, which will be in charge of controlling the content depending on whether or not it affects its rules and its investigation. In some cases, provision is made for direct transmission of the interception as it is being carried out. This depends on the technical devices for IC used in the two states.</p> <p>In general terms, telecommunications that the person under investigation maintains from external terminals or media may be intervened, as well as those maintained by third parties unrelated to the person under investigation and which the latter uses or collaborates with. In this context, legal professional privilege may be limited by judicial decision duly motivated and justified on the merits of a given case.</p> <p>In these cases, however, the justification of the suitability, proportionality, exceptionality and necessity of the measure must be particularly reinforced, providing indications of the relationship of the person under investigation with the terminal or means of communication used or with its owner, its use for the commission of the crime and the relevance of the measure for the investigation in the specific case.</p> <p>Intervention of telecommunications with the victim of a crime may be authorized whatsoever, both with his/her consent and without it. This measure may only be adopted for the purpose of investigating criminal offenses in which a foreseeable serious risk to the life or integrity of the victim is proven and with the observance of the rest of the requirements established in general for the interception of communications.</p> <p>Third bona fide parties who are affected by the measure must be informed of it when it ceases, being able to obtain the delivery of</p>

	<p>copies of the recordings only in those cases in which the privacy of third parties is not affected.</p> <p>This circumstances should be share by the executing authority with the issuing authority in the context of the consultation procedures provided in arts. 9 (6) not only on the basis of Art. 30 (6) a of the EIO Directive but mainly on the basis of its Art. 9 (6).</p>
<p>k) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other? 	<p>In cases of urgency, when investigations are carried out to investigate crimes related to the actions of armed gangs or terrorist elements and there are well-founded reasons that make the measure essential, it may be ordered by the Minister of the Interior or, failing this, by the Secretary of State for Security. This measure shall be communicated immediately to the competent judge and, in any case, within a maximum period of twenty-four hours, stating the reasons that justified the adoption of the measure, the action taken, the manner in which it was carried out and its result. The competent judge, also in a reasoned manner, shall revoke or confirm such action within a maximum period of seventy-two hours from the time the measure was ordered.(Article 588 ter d)</p>
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Yes, it is possible under the relevant provisions of the applicable law, although technical problems in the implementation of the measures might appear. The applicable law is the Criminal Procedural Act, which refers to this measure for national cases in article 588 ter. The investigation should concern one of the following criminal offences (article 588 ter a in relationship with article 579.1):</p> <p>a) Intentional crimes punished with a maximum of, at least, three years' imprisonment sentence. b) Offences committed within a criminal group or organisation. c) Terrorist offences</p>
b) International legal framework applicable for this measure in your Member State	<p>Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union European Convention on Mutual Assistance in Criminal Matters of 1959 with Denmark and Ireland Directive 2014/41/EU on the EIO in relation to the other 25 member States including Spain.</p> <p>In particular the execution of incoming EIOs in relation to this measure is provided in article 222 of law 23/2014</p>
c) Competent authority to receive the request / execute the measure	<p><u>Receiving authority</u> (as SPoC): the Public Prosecutor as provided by Article 187 (2) of the Mutual recognition Law 23/2014. This notifications can be sent to the International Cooperation Unit at the General Prosecutor's Office (UCIF)</p> <p><u>Executing authority</u>: The competent judicial authority to be notified is the Central Investigating Judge at the National Court.</p>
d) Accepted languages	Spanish
e) Execution deadline	
f) Concise legal practical information	
g) Conditions under which it is possible to order the	The Spanish legislator transposed Article 31 EIO DIR

measure based on a request of foreign authority	Literally in Art. 222 of the Mutual Recognition Law 23/2014. So there are no specific provisions regarding the legal requirements necessary for their issuing authorities to authorise the interception abroad.
h) Competent authority to request the measure abroad	The Investigating Judge conducting the criminal proceedings at a national level
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	<p>In many cases, the Annex C form is not being used or whenever it is used relevant information is missing.</p> <p>In such cases Central Judges -as notified authorities- need to be provided with essential feedback on the identification on the number wiretapped the person affected or date/period when the authorities became aware that the person subject to the interception had moved abroad and the seriousness of the offence , (e.g. at least 5 years of imprisonment) for the notified authority to conclude whether the interception falls or not under the provisions regulating 'a similar domestic case' (without assessing the merits of the case).</p>
<p>j) Can you share any good practice, such as:</p> <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? <p>Any other?</p>	<p>For these cases, within the EU, the request made to Spain is the notification provided for in Annex C of Directive 214/41/CE ,from 3 April 2014 on the European Investigation Order.</p> <p>The annex has to be judicially authorized by the Central competent Court (AN).</p> <p>The legal dead line for being notified is 96 hours from receipt of the document.</p> <p>In urgent cases , authorization may be requested from the competent duty court of the AN.</p> <p>Regarding the interception of telecommunications with no technical assistance needed from Spain when the subject of the interception is located in our country (Art. 31 EIO DIR/Art. 222 Law 23/2014), which obliges the intercepting Member State to notify the Spanish authorities as "the notified Member State", the discussion on whether the check provided in Art. 31 (3) EIO DIR ("the interception would not be authorised in a similar domestic case") should be done in a merely formal way, as procedural check or by a substantive examination whereby additional information is requested to make the assessment which often leads to decisions imposing a termination of the interception (if it is still ongoing) and/or a prohibition to use the intercepted material. Spanish competent authorities (Central Investigating Courts) don't do a detailed, substantive approach considering it is not in line with the ratio legis of Art. 31 EIC DIR.</p> <p>Indeed, the purpose of the notification is not an order for recognizing an investigative measure (Annex A), but a mere reflection of respect for the sovereignty of the other country. It would be a contradiction if in the context of the relevant Annex C form the same or more information would be requested than in the frame of an Annex A form. So, Spanish authorities believed that the provision should be interpreted in the light of the values of the</p>

	<p>European Judicial Area, based on mutual trust and respect for different legal systems.</p> <p>In addition, Spanish authorities are concerned about the lack of notifications based on Article 31(3) EIO DIR whenever the whereabouts of the investigated person is known and the admissibility of the evidence implications.</p>
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	<p>In Spain, any type of intelligence information cannot be used directly as evidence in judicial proceedings. In addition to obtain the consent of the Member State that provides it, the Spanish Judicial Police must process it in order to obtain objective evidence to corroborate its content.</p> <p>Council Framework Decision 2006/960/JHA (Swedish Initiative) was transposed in the Spanish law nº 31/2010 (Ley 31/2010, de 27 de julio, <i>sobre simplificación del intercambio de información e inteligencia entre los servicios de seguridad de los Estados miembros de la Unión Europea</i>).</p> <p>Namely Article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative) was transposed and has its mirror provision in Article 1 (2) of Law 31/2010 which allows, in general terms, the exchange of available information at a police-to-police level even in the context or in relation to judicial criminal proceedings.</p> <p>Furthermore, Articles 7 (4) and 9 (4) regulate in detail the possibility for the Spanish police to exchange information that has or could have judicial relevance as it could be used as evidence, depending on whether the Spanish LEA are requesting or are requested to provide that information in a police-to-police level (active or passive standpoint).</p> <p>So,</p> <ul style="list-style-type: none"> ✓ From the active approach, Art. 7 (4) establishes that when such information is wanted as evidence "the consent of the Member State that has provided the information or intelligence must be obtained using, (...), the current instruments on judicial cooperation between the Member States". To my understanding, after the amendment of law 23/2014 in 2018, transposing the 2014/41/UE Directive on EIO, the competent Spanish authorities (Public Prosecutors or Investigating Judges, depending on the type of criminal proceedings) should issue an EIO as "current instrument on judicial cooperation between the Member States". Unless the requested Member State previously agreed or authorized its use as evidence, at the time when the intelligence or information was transmitted. To this end, Art. 7 (5) precisely provides that the Spanish police, when this situation is foreseen, could obtain an <i>a priori</i> consent of the

	<p>Member State for its use as evidence from the very moment of the exchange.</p> <p>✓ On the other hand, from the passive point of view, Art. 9 (4) establishes that whenever (under the Spanish legal system) access and subsequent delivery of the information requested at police level is only possible with a judicial authorization, the Spanish police should ask for this authorisation to the competent Court. In this decision the Court would apply the same standards as would had been used in a similar domestic case.</p> <p>Last but not least, the 2nd additional provision of Law 31/2010 set up the competent judicial authorities to be approached whenever a judicial authorization should be granted for exchanging information or using it as evidence in criminal proceedings:</p> <ul style="list-style-type: none"> • a) The competent Investigating Judge by means of a EIO. Please be aware that, in any case, the District Public Prosecutor is the EIO receiving authority. • b) Whenever judicial authorization is required for access to the requested information in general terms and no Judge is already carrying out an investigation, Central Investigating Courts of the Audiencia Nacional will be the competent judicial authority. Likewise, if such "ex post facto" consent s to be requested via an OEI or an Annex C of the 2014 Directive is to be notified, they should be sent to the International Cooperation Unit at the General Prosecution Office in Madrid (UCIF internacional.fge@fiscal.es) as receiving authority. • If so, what practical experience do you have with the use of this legislation? <p>So far few reliable data on the application of articles 7 and 9 of the Spanish law 31/2010 are available at a police side, neither in relation to figures of incoming EIOs or LORs asking for "ex post facto" judicial consent to used already exchanged information as evidence at Courts, nor at the PPOs/UCIF.</p>
<p>b) Did you as EJN contact point organize or participate in any regional cross-border meeting (the EJN one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or interception of telecommunications?</p>	<p>No.</p>



4.27. Sweden

Cross-border observation (FB A.70)	
a) Is the measure possible in your member state under international judicial cooperation?	Cross-border surveillance is not a judicial measure in Sweden, but is handled within the framework of international police co-operation.
b) International legal framework applicable for this measure in your Member State	The Schengen Convention, article 40.
c) Competent authority to receive the request/execute the measure	Please Note: Police co-operation! Swedish Police, The National Operations Department, The International Unit, which will contact the competent local police authority.
d) Accepted languages	-
e) Execution deadline	-
f) Concise legal practical information	-
g) Possible subject of observation/surveillance (suspect only, or also other persons)	The suspected perpetrator or other persons if there are serious reasons to believe the action can contribute to identify or track a suspected perpetrator.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Either on consent by the Swedish National Police Board <u>or</u> without consent, if it is an urgent case and no time to ask for consent and the suspected crime is one of them listed in Art. 40.7 of the Schengen Convention. In the latter case, the foreign authority must inform the Swedish National Police Board about the border crossing at the earliest convenience.
i) Competent authority to request the measure abroad	Police officers or officers at the Swedish Customs Service or the Swedish Coast Guard
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting/issuing state	Sweden applies the principle of free evaluation of evidence and consequently has no provisions on admissibility of evidence. A protocol over the cross-border surveillance will be produced following ordinary provisions on documentation of criminal investigations. Police agents or other persons involved in the cross-border surveillance may give statements as witnesses.
k) If a technical record is being made not only of the movement of the surveilled person, but there is also an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	It is necessary to use an EIO (European Investigation Order) or request for MLA (Mutual Legal Assistance) when audio/video recordings are requested along with surveillance on behalf of foreign authorities. The request will be handled by a public prosecutor who then will apply for permission at a District Court which makes the actual decisions. Prosecution Authority should be contacted on how to proceed.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases?	<ul style="list-style-type: none"> - The National Operations Department is responsible for the execution when covert audio recordings are requested. - If the technical measure for audio recordings is already installed in the vehicle by the requesting, state the interception could be executed by any regional department. - When a surveilled vehicle is about to cross the Swedish border, it will be met by Swedish law enforcement that will continue the surveillance.

- Do you have any legal, organizational or technical measures for cross-border observation/surveillance carried out in this manner? - Any other?	
Cross-border tracking (by placing a beeper on a vehicle or a person) (FB A.72)	
a) Is the measure possible in your member state under international judicial cooperation?	Cross-border tracking by placing a beeper on a vehicle is not a judicial measure in Sweden, but is handled within the framework of international police co-operation.
b) International legal framework applicable for this measure in your Member State	The measure is not specially regulated in Swedish law but is executed under the general Police Law.
c) Competent authority to receive the request/execute the measure	Please Note: Police co-operation! Swedish Police, The National Operations Department, The International Unit, which will contact competent local police authority.
d) Accepted languages	-
e) Execution deadline	-
f) Concise legal practical information	-
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Could also be other persons.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	-
i) Competent authority to request the measure abroad	The law enforcement authorities are competent to ask for surveillance in another country.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Sweden applies the principle of free evaluation of evidence and consequently has no provisions on admissibility of evidence. A protocol over the cross-border surveillance will be produced following ordinary provisions on documentation of criminal investigations. Police agents or other persons involved in the cross-border surveillance may give statements as witnesses.
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above	The use of technical devices for tracking vehicles is not regulated in Swedish law. If the device also should be used for audio/video recordings, a court decision on request from a public prosecutor is required. Prosecution Authority should be contacted on how to proceed.
l) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases?	- Surveillance in general could be executed by specialized units in any region in Sweden. - When audio/video recordings are requested along the surveillance, the National Operations Department is responsible for the execution after a court decision.

<ul style="list-style-type: none"> - Do you have any legal, organizational or technical measure for cross-border observation/surveillance carried out in this manner? - Any other? 	
Surveillance and tracking of a person (tracking device being installed/put by an executing state (FB A.55))	
a) Measure implementation	There is no regulation regarding surveillance and tracking of a person in Sweden. This is a question for law enforcement authorities and not for judicial authorities.
b) Legal Framework	-
c) Competent Authority	Please Note: Police co-operation! Swedish Police, The National Operations Department, The International Unit, which will contact competent local police authority.
d) Accepted Languages	-
e) Execution Deadline:	-
f) Concise legal practical information	Note: In case a foreign state sends an EIO to request surveillance in the territory of Sweden, the prosecutor will contact police or customs (depending on the what crime is at hand and who is the investigating body in the issuing MS) in order to see what can be done by them.
g) Possible subject of observation/surveillance (suspect only, or also other persons)	Could also be other persons.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	Cross-border tracking is not a judicial measure in Sweden, but is handled within the framework of international police co-operation.
i) Competent authority to request the measure abroad	Swedish law enforcement authorities.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Sweden applies the principle of free evaluation of evidence and consequently has no provisions on admissibility of evidence
k) If the technical device tracking the person can also make an audio/video recording, please clarify, whether your law stipulates a different procedure than indicated above.	The use of technical devices for tracking vehicles is not regulated in Swedish law. If the device also should be used for audio/video recordings, a court decision on request from a public prosecutor is required.
l) Can you share any good practice, such as: <ul style="list-style-type: none"> - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Do you have any legal, organizational or technical 	<ul style="list-style-type: none"> - Surveillance in general could be executed by specialized units in any region in Sweden. - When audio/video recordings are requested along the surveillance, the National Operations Department is responsible for the execution after a court decision.

measure for cross-border observation/surveillance carried out in this manner? - Any other?	
Controlled delivery (FB A.73)	
a) Is the measure possible in your member state under international judicial cooperation?	Yes, it is possible and is regulated by law.
b) International legal framework applicable for this measure in your Member State	- Directive 2014/41. - 2000 MLA Convention. - 1959 CoE Convention.
c) Competent authority to receive the request / execute the measure	See the Atlas.
d) Accepted languages	Swedish, Danish or Norwegian, but the general view of most practitioners is that English is accepted.
e) Execution deadline	-
f) Concise legal practical information	-
g) Possible object of controlled delivery	In theory there are no limitations to certain objects. In practice narcotics, alcohol, tobacco, weapons, protected species of animals and plants can be subject to controlled delivery. However, controlled deliveries are limited to situations when there is reason to believe that a serious crime is being committed.
h) Conditions under which it is possible to order the measure based on a request of foreign authority	There are no legal provisions in Swedish law on the conditions for the use of controlled deliveries. Instead, general principles on what is accepted as working methods for the police and prosecutor apply. Controlled delivery may be used if there is reason to believe that a serious crime is being committed. The purpose of the controlled delivery shall be to identify, arrest and prosecute the perpetrators and the controlled delivery must be surveilled in a way that allows for control over the object.
i) Competent authority to request the measure abroad	Chief Public Prosecutor or other prosecutors assigned by a chief public prosecutor.
j) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Sweden applies the principle of free evaluation of evidence and consequently has no provisions on admissibility of evidence. A protocol of the controlled delivery will be produced following ordinary provisions on documentation of criminal investigations. Police agents or other persons involved in the controlled delivery may give statements as witnesses.
k) Do you insist on replacing the contents of the controlled consignment, or conversely, does the consignment need to have the original contents?	This matter is evaluated on a case-to-case basis, depending on how the contents are packed.
l) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases?	-Sweden has specialized units for handling incoming EIO or MLA (see the Atlas) concerning controlled deliveries. These units have routines for handling urgent cases. -Sweden also has a system with prosecutors with un-call duty 24/7 all over the country. -In urgent cases, there is also a possibility to address the matter to the International Unit (SPOC) at the Swedish Police or to Eurojust, which will forward the case to a competent authority.

• Any other?	
Interception, recording and transcription of telecommunications (FB A.50)	
a) Is the measure possible in your member state under international judicial cooperation?	<p>Interception, recording and transcription of the content of telecommunications on behalf of foreign authorities is possible in Sweden by using an EIO (European Investigation Order) or request for MLA (Mutual Legal Assistance) on the same grounds as in a domestic investigation. A criminal investigation must be instigated by competent authorities, concerning an identified person under reasonable suspicion of having committed a crime which, in that particular case, should render at least two years of imprisonment if it had been committed in Sweden. The interception must be directed against a telecommunication address that this person will use or against a third person of whom there is reasonable grounds to suppose that he or she will be contacted by the suspect. There is also a need to explain why these measures are deemed necessary.</p> <p>The request will be handled by a public prosecutor who then will apply for permission at a District Court which makes the actual decisions. However, immediate interim decisions are possible should there be peril in delay (Periculum in mora). The police or the customs authority are competent authorities for the execution of the measures. If the requesting country makes the interception by itself, no police involvement is necessary.</p> <p>If the request only concerns interception of traffic data see under A.52</p>
b) International legal framework applicable for this measure in your Member State	<ul style="list-style-type: none"> - Directive 2014/41. - 2000 MLA Convention.
c) Competent authority to receive the request / execute the measure	See the Atlas.
d) Accepted languages	Swedish, Danish, Norwegian or English.
e) Execution deadline	The execution will be dealt with as soon as possible. Immediate interim decisions are possible should there be peril in delay (Periculum in mora).
f) Concise legal practical information	<p>-In MLA cases concerning interception of telecommunication Sweden demands dual criminality. The submission should contain a short description of relevant circumstances, including the suspected crime, the identity of the suspect, what punishments could be expected for the crime, why there is reason to suspect the particular person of having committed the crime, how the telecommunication addresses were identified, for how long the measure is needed, and why the measure is necessary.</p> <p>-The same rules apply whether the actual interception is done by the police or agencies in Sweden or abroad.</p> <p>- Swedish law compiles the authorities to inform persons after having been subject to interception etc unless there are specific reasons not to.</p> <p>-A telecommunication interception can only be decided for one month at a time but can be renewed, provided there is reason for prolonging. Direct transmittance of the interception is legally possible, otherwise the way to transmit intercepted material must be decided on a case-by-case basis.</p> <p>- After surrender of the materials any copies left in Sweden will be destroyed.</p>
g) Conditions under which it is possible to order the	Interception, recording and transcription of the content of telecommunications on behalf of foreign authorities is possible in Sweden by using an EIO (European Investigation Order) or request for MLA

measure based on a request of foreign authority	(Mutual Legal Assistance) on the same grounds as in a domestic investigation. A criminal investigation must be instigated by competent authorities, concerning an identified person under reasonable suspicion of having committed a crime which, in that particular case, should render at least two years of imprisonment if it had been committed in Sweden. The interception must be directed against a telecommunication address that this person will use or against a third person of whom there is reasonable grounds to suppose that he or she will be contacted by the suspect. There is also a need to explain why these measures are deemed necessary.
h) Competent authority to request the measure abroad	The request will be handled by a public prosecutor who then will apply for permission at a District Court which makes the actual decisions.
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Sweden applies the principle of free evaluation of evidence and consequently has no provisions on admissibility of evidence. The recording of the communication and the protocol over the interception made in the requested country will serve as evidence in the Swedish proceedings.
j) What are the obligations under your law to control or review interception of telecommunication traffic already in progress (e.g. prohibition to intercept a call between the accused person and their defense counsel etc.)? Is it possible in your opinion to transfer this obligation to the state, which requested the interception of telecommunications with immediate transmission to the issuing state? (this question concerns Art. 30(6)(a) of the EIO Directive).	-Interception of telecommunication between the suspect and certain categories of persons such as defense counsel, doctors etc. is prohibited. If such communication occurs, the interception must be terminated immediately and any recordings must be destroyed. -If a state requests interception of telecommunication with immediate transmission to the issuing state, it is not possible for the executing state to uphold this obligation. In our legislation there is no regulation which makes it possible to transfer this obligation to the issuing state.
k) Can you share any good practice, such as: • Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? • Do you have any legal, organizational or technical measure for urgent cases? • Any other?	-Sweden has specialized units for handling incoming EIO or MLA (see the Atlas). These units have routines for handling urgent cases. -Sweden also has a system with prosecutors with un-call duty 24/7 all over the country. -If there is peril in delay, immediate interim decisions made by prosecutors are possible. The prosecutor is then obligated to without delay inform the court for reviewing.
Interception of telecommunication without the technical assistance of another Member State (FB A.51)	
a) Is the measure possible in your member state under international judicial cooperation?	A public prosecutor shall confirm receiving the notification and state the time of the receipt to the transmitting State. The prosecutor makes a preliminary estimation if the interception would be authorized in a similar domestic case. If the requirements are fulfilled the notification will be handed over to a district court that will decide if the interception is authorized or not. If the interception is not authorized, the prosecutor will

	notify the intercepting state without delay within 96 hours that the interception may not be carried out or must be terminated.
b) International legal framework applicable for this measure in your Member State	- Directive 2014/41.
c) Competent authority to receive the request / execute the measure	See the Atlas.
d) Accepted languages	Swedish or English.
e) Execution deadline	Within 96 hours after the receipt of the Annex C of the EIO.
f) Concise legal practical information	-
g) Conditions under which it is possible to order the measure based on a request of foreign authority	A public prosecutor shall confirm receiving the notification and state the time of the receipt to the transmitting State. The prosecutor makes a preliminary estimation if the interception would be authorized in a similar domestic case. If the requirements are fulfilled the notification will be handed over to a district court that will decide if the interception is authorized or not. If the interception is not authorized, the prosecutor will notify the intercepting state without delay within 96 hours that the interception may not be carried out or must be terminated.
h) Competent authority to request the measure abroad	See g)
i) Conditions of admissibility of outcomes of this measure as evidence in your country as requesting state	Sweden applies the principle of free evaluation of evidence and consequently has no provisions on admissibility of evidence. The recording of the communication and the protocol over the interception made in the requested country will serve as evidence in the Swedish proceedings.
j) Can you share any good practice, such as: - Do you have a specialized body for receiving/executing this type of cooperation (one for all foreign states or one for certain group of states, ...)? - Do you have any legal, organizational or technical measure for urgent cases? - Have you had any real-world experience with application of this measure? - Any other?	-Sweden has specialized units for handling incoming EIO (see the Atlas). These units have routines for handling urgent cases. -Sweden also has a system with prosecutors with on-call duty 24/7 all over the country.
General questions	
a) How did you implement article 1 (4) of the Council Framework Decision 2006/960/JHA (Swedish Initiative)?	Such limitation on the use of obtained intelligence information is regulated by law in Sweden. The Swedish Authority that has obtained intelligence information with a limitation on the use of it needs to issue an EIO or a request for MLA in order to use it as evidence in judicial proceedings.
b) Did you as EJM contact point organize or participate in any regional cross-border meeting (the EJM one or another one) that was focused to cross-border observation/surveillance, controlled delivery, or	Sweden organized a regional meeting focused on controlled delivery in Gothenburg in January 2013. Participating countries were SE, NL, DE, DK and NO. A report from the meeting is enclosed.

interception
telecommunications?

of

5. Legal regulation of cross-border surveillance, controlled delivery and interception of telecommunications in multilateral international treaties or EU legislation

a) Cross-border surveillance

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

Whereas:

...

(9) This Directive should not apply to cross-border surveillance as referred to in the Convention implementing the Schengen Agreement⁹.

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.

⁹ 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).

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 8 November 2001

Article 17

Cross-border observations

1. Police officers of one of the Parties who, within the framework of a criminal investigation, are keeping under observation in their country a person who is presumed to have taken part in a criminal offence to which extradition may apply, or a person who it is strongly believed will lead to the identification or location of the above-mentioned person, shall be authorised to continue their observation in the territory of another Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

On request, the observation will be entrusted to officers of the Party in whose territory it is carried out.

The request for assistance referred to in the first sub-paragraph must be sent to an authority designated by each Party and having jurisdiction to grant or to forward the requested authorisation.

2. Where, for particularly urgent reasons, prior authorisation of the other Party cannot be requested, the officers conducting the observation within the framework of a criminal investigation shall be authorised to continue beyond the border the observation of a person presumed to have committed offences listed in paragraph 6, provided that the following conditions are met:

- a) the authorities of the Party designated under paragraph 4, in whose territory the observation is to be continued, must be notified immediately, during the observation, that the border has been crossed;
- b) a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Party in whose territory it is taking place so requests, following the notification referred to in a. or the request referred to in b. or where authorisation has not been obtained within five hours of the border being crossed.

3. The observation referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

- a) The officers conducting the observation must comply with the provisions of this article and with the law of the Party in whose territory they are operating; they must obey the instructions of the local responsible authorities.
- b) Except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted.
- c) The officers conducting the observation must be able at all times to provide proof that they are acting in an official capacity.
- d) The officers conducting the observation may carry their service weapons during the observation, save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.
- e) Entry into private homes and places not accessible to the public shall be prohibited.
- f) The officers conducting the observation may neither stop and question, nor arrest, the person under observation.

- g) All operations shall be the subject of a report to the authorities of the Party in whose territory they took place; the officers conducting the observation may be required to appear in person.
- h) The authorities of the Party from which the observing officers have come shall, when requested by the authorities of the Party in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4. Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate both the officers and authorities that they designate for the purposes of paragraphs 1 and 2 of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

5. The Parties may, at bilateral level, extend the scope of this article and adopt additional measures in implementation thereof.

6. The observation referred to in paragraph 2 may take place only for one of the following criminal offences:

- assassination;
- murder;
- rape;
- arson;
- counterfeiting;
- armed robbery and receiving of stolen goods;
- extortion;
- kidnapping and hostage taking;
- traffic in human beings;
- illicit traffic in narcotic drugs and psychotropic substances;
- breach of the laws on arms and explosives;
- use of explosives;
- illicit carriage of toxic and dangerous waste;
- smuggling of aliens;
- sexual abuse of children.

Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations, 18 December 1997 (the Naples II Convention)

Article 1

Scope

1. Without prejudice to the competences of the Community, the Member States of the European Union shall provide each other with mutual assistance and shall cooperate with one another through their customs administrations, with a view to:

— preventing and detecting infringements of national customs provisions,

and

— prosecuting and punishing infringements of Community and national customs provisions.

2. Without prejudice to Article 3, this Convention shall not affect the provisions applicable regarding mutual assistance in criminal matters between judicial authorities, more favourable provisions in bilateral or multilateral agreements between Member States governing cooperation as provided for in paragraph 1 between the customs authorities or other competent authorities of the Member States, or arrangements in the same field agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance.

Article 2

Powers

The customs administrations shall apply this Convention with the limits of the powers conferred upon them under national provisions. Nothing in this Convention may be construed as affecting the powers conferred under national provisions upon the customs administrations within the meaning of this Convention..¹⁰

Article 3

Relationship to mutual assistance provided by the judicial authorities

1. This Convention covers mutual assistance and cooperation in the framework of criminal investigations concerning infringements of national and Community customs provisions, concerning which the applicant authority has jurisdiction on the basis of the national provisions of the relevant Member State.

2. Where a criminal investigation is carried out by or under the direction of a judicial authority, that authority shall determine whether requests for mutual assistance or cooperation in that connection shall be submitted on the basis of the provisions applicable concerning mutual assistance in criminal matters or on the basis of this Convention.

Article 21

Cross-border surveillance

1. Officers of the customs administration of one of the Member States who are keeping under observation in their country persons in respect of whom there are serious grounds for believing that they are involved in one of the infringements referred to in Article 19(2) shall be authorised to continue their observation in the territory of another Member State where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

Member States shall inform the depositary of the officers to whom this provision applies; the depositary shall inform the other Member States. On request, the observation shall be entrusted to officers of the Member State in whose territory it is carried out. The request referred to in the first subparagraph shall be sent to an authority designated by each of the Member States empowered to grant the requested authorisation or pass on the request. Member States shall inform the depositary of the authority designated for this purpose; the depositary shall inform the other Member States.

2. Where, for particularly urgent reasons, prior authorisation of the other Member State cannot be requested, the officers conducting the observation shall be authorised to continue beyond the border the observation of persons in respect of whom there are serious grounds for

¹⁰ Only in some countries are customs authorities authorized to obtain evidence for criminal proceedings in relation to foreign countries.

believing that they are involved in one of the infringements referred to in Article 19(2), provided that the following conditions are met:

- (a) the competent authorities of the Member State in whose territory the observation is to be continued shall be notified immediately of the crossing of the border, during the observation;
- (b) a request submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted without delay.

Observation shall cease as soon as the Member State in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b), or where authorisation has not been obtained five hours after the border was crossed.

3. The observation referred to in paragraph 1 and 2 shall be carried out only under the following general conditions:

- (a) the officers conducting the observation shall comply with the provisions of this Article and with the law of the Member State in whose territory they are operating; they must obey the instructions of the competent authorities of the said Member State;
- (b) except in the situations provided for in paragraph 2, the officers shall, during the observation, carry a document certifying that authorisation has been granted;
- (c) the officers conducting the observation shall be able at all times to provide proof that they are acting in an official capacity;
- (d) the officers conducting the observation may carry their service weapons during the observation save (i) where the requested Member State has made a general declaration that weapons may never be carried into its territory or (ii) where specifically decided otherwise by the requested Member State. When officers of another Member State are permitted to carry their service weapons, their use shall be prohibited save in cases of legitimate self-defence;
- (e) entry into private homes and places not accessible to the public shall be prohibited;
- (f) the officers conducting the observation may neither challenge nor arrest the person under observation;
- (g) all operations shall be the subject of a report to the authorities of the Member State in whose territory they took place; the officers conducting the observation may be required to appear in person;
- (h) the authorities of the Member State from which the observing officers have come shall, when requested by the authorities of the Member State in whose territory the observation took place, assist the enquiry subsequent to the operation in which they took part, including legal proceedings.

4. The Member States may, at bilateral level, extend the scope of this Article and adopt additional measures in implementation thereof.

5. When depositing its instruments of adoption of this Convention, a Member State may declare that it is not bound by this Article or by part thereof. Such declaration may be withdrawn at any time.

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, 19 June 1990 (CISA)

Article 40

1. Officers of one of the Contracting Parties who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence shall be authorised to continue their surveillance in the territory of another Contracting Party where the latter has authorised cross-border surveillance in response to a request for assistance made in advance. Conditions may be attached to the authorisation.

On request, the surveillance will be entrusted to officers of the Contracting Party in whose territory this is carried out.

The request for assistance referred to in the first subparagraph must be sent to an authority designated by each of the Contracting Parties and empowered to grant or to pass on the requested authorisation.

2. Where, for particularly urgent reasons, prior authorisation cannot be requested from the other Contracting Party, the officers carrying out the surveillance shall be authorised to continue beyond the border the surveillance of a person presumed to have committed criminal offences listed in paragraph 7, provided that the following conditions are met:

(a) the authority of the Contracting Party designated under paragraph 5, in whose territory the surveillance is to be continued, must be notified immediately, during the surveillance, that the border has been crossed;

(b) a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted immediately.

Surveillance shall cease as soon as the Contracting Party in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b) or, where authorisation has not been obtained, five hours after the border was crossed.

3. The surveillance referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

(a) The officers carrying out the surveillance must comply with the provisions of this Article and with the law of the Contracting Party in whose territory they are operating; they must obey the instructions of the competent local authorities.

(b) Except in the situations outlined in paragraph 2, the officers shall, during the surveillance, carry a document certifying that authorisation has been granted.

(c) The officers carrying out the surveillance must at all times be able to prove that they are acting in an official capacity.

(d) The officers carrying out the surveillance may carry their service weapons during the surveillance save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.

(e) Entry into private homes and places not accessible to the public shall be prohibited.

(f) The officers carrying out the surveillance may neither challenge nor arrest the person under surveillance.

(g) All operations shall be the subject of a report to the authorities of the Contracting Party in whose territory they took place; the officers carrying out the surveillance may be required to appear in person.

(h) The authorities of the Contracting Party from which the surveillance officers have come shall, when requested by the authorities of the Contracting Party in whose territory the surveillance took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.

4. The officers referred to in paragraphs 1 and 2 shall be:

- as regards the Kingdom of Belgium: members of the police judiciaire près les Parquets (Criminal Police attached to the Public Prosecutor's Office), the gendarmerie and the police communale (municipal police), as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;

- as regards the Federal Republic of Germany: officers of the Polizeien des Bundes und der Länder (Federal Police and Federal State Police), as well as, with respect only to illicit trafficking in narcotic drugs and psychotropic substances and arms trafficking, officers of the Zollfahndungsdienst (customs investigation service) in their capacity as auxiliary officers of the Public Prosecutor's Office; as regards the French Republic: criminal police officers of the national police and national gendarmerie, as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;

- as regards the Grand Duchy of Luxembourg: officers of the gendarmerie and the police, as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;

- as regards the Kingdom of the Netherlands: officers of the Rijkspolitie (national police) and the Gemeentepolitie (municipal police), as well as, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives and the illicit transportation of toxic and hazardous waste, officers of the tax inspection and investigation authorities responsible for import and excise duties.

5. The authority referred to in paragraphs 1 and 2 shall be:

- as regards the Kingdom of Belgium: the Commissariat général de la Police judiciaire (Criminal Investigation Department),

- as regards the Federal Republic of Germany: the Bundeskriminalamt (Federal Crime Office),

- as regards the French Republic: the Direction centrale de la Police judiciaire (Central Headquarters of the Criminal Police),

- as regards the Grand Duchy of Luxembourg: the Procureur général d'Etat (Principal State Prosecutor),

- as regards the Kingdom of the Netherlands: the Landelijk Officier van Justitie (National Public Prosecutor) responsible for cross-border surveillance.

6. The Contracting Parties may, at bilateral level, extend the scope of this Article and adopt additional measures in application thereof.

7. The surveillance referred to in paragraph 2 may only be carried out where one of the following criminal offences is involved:

- murder,
- manslaughter,
- rape,
- arson,
- forgery of money,
- aggravated burglary and robbery and receiving stolen goods,
- extortion,
- kidnapping and hostage taking,
- trafficking in human beings,
- illicit trafficking in narcotic drugs and psychotropic substances,
- breach of the laws on arms and explosives,
- wilful damage through the use of explosives,
- illicit transportation of toxic and hazardous waste

b) Interception of telecommunications

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

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

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1. Where, for the purpose of carrying out an investigative measure, the interception of telecommunications is authorised 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.

Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, 29 May 2000 (the 2000 Convention)

Article 17

Authorities competent to order interception of telecommunications

For the purpose of the application of the provisions of Articles 18, 19 and 20, 'competent authority' shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by those provisions, an equivalent competent authority, specified pursuant to Article 24(1)(e) and acting for the purpose of a criminal investigation.

Article 18

Requests for interception of telecommunications

1. For the purpose of a criminal investigation, a competent authority in the requesting Member State may, in accordance with the requirements of its national law, make a request to a competent authority in the requested Member State for:

- (a) the interception and immediate transmission to the requesting Member State of telecommunications; or
 - (b) the interception, recording and subsequent transmission to the requesting Member State of the recording of telecommunications.
2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present in:
- (a) the requesting Member State and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications;
 - (b) the requesting Member State and his or her communications can be intercepted in that Member State;
 - (c) a third Member State which has been informed pursuant to Article 20(2)(a) and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications.
3. By way of derogation from Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests under this Article shall include the following:
- (a) an indication of the authority making the request;
 - (b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;
 - (c) information for the purpose of identifying the subject of this interception;
 - (d) an indication of the criminal conduct under investigation;
 - (e) the desired duration of the interception; and
 - (f) if possible, the provision of sufficient technical data, in particular the relevant network connection number, to ensure that the request can be met.
4. In the case of a request pursuant to paragraph 2(b), a request shall also include a summary of the facts. The requested Member State may require any further information to enable it to decide whether the requested measure would be taken by it in a similar national case.
5. The requested Member State shall undertake to comply with requests under paragraph 1(a):
- (a) in the case of a request pursuant to paragraph 2(a) and 2(c), on being provided with the information in paragraph 3. The requested Member State may allow the interception to proceed without further formality;
 - (b) in the case of a request pursuant to paragraph 2(b), on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any conditions which would have to be observed in a similar national case
6. Where immediate transmission is not possible, the requested Member State shall undertake to comply with requests under paragraph 1(b) on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any condition which would have to be observed in a similar national case.

7. When giving the notification provided for in Article 27(2), any Member State may declare that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other Member State may apply the principle of reciprocity.

8. When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a transcription of the recording. The requested Member State shall consider such requests in accordance with its national law and procedures.

9. The Member State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its national law.

Article 19

Interceptions of telecommunications on national territory by the use of service providers

1. Member States shall ensure that systems of telecommunications services operated via a gateway on their territory, which for the lawful interception of the communications of a subject present in another Member State are not directly accessible on the territory of the latter, may be made directly accessible for the lawful interception by that Member State through the intermediary of a designated service provider present on its territory.

2. In the case referred to in paragraph 1, the competent authorities of a Member State shall be entitled, for the purposes of a criminal investigation and in accordance with applicable national law and provided that the subject of the interception is present in that Member State, to carry out the interception through the intermediary of a designated service provider present on its territory without involving the Member State on whose territory the gateway is located.

3. Paragraph 2 shall also apply where the interception is carried out upon a request made pursuant to Article 18(2)(b).

4. Nothing in this Article shall prevent a Member State from making a request to the Member State on whose territory the gateway is located for the lawful interception of telecommunications in accordance with Article 18, in particular where there is no intermediary in the requesting Member State.

Article 20

Interception of telecommunications without the technical assistance of another Member State

1. Without prejudice to the general principles of international law as well as to the provisions of Article 18(2)(c), the obligations under this Article shall apply to interception orders made or authorised by the competent authority of one Member State in the course of criminal investigations which present the characteristics of being an investigation following the commission of a specific criminal offence, including attempts in so far as they are criminalised under national law, in order to identify and arrest, charge, prosecute or deliver judgment on those responsible.

2. Where for the purpose of a criminal investigation, the interception of telecommunications is authorised by the competent authority of one Member State (the 'intercepting Member State'), and the telecommunication address of the subject 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 inform the notified Member State of the interception:

- (a) prior to the interception in cases where it knows when ordering the interception that the subject is on the territory of the notified Member State;
- (b) in other cases, immediately after it becomes aware that the subject of the interception is on the territory of the notified Member State.

3. The information to be notified by the intercepting Member State shall include:

- (a) an indication of the authority ordering the interception;
- (b) confirmation that a lawful interception order has been issued in connection with a criminal investigation;
- (c) information for the purpose of identifying the subject of the interception;
- (d) an indication of the criminal conduct under investigation; and
- (e) the expected duration of the interception.

4. The following shall apply where a Member State is notified pursuant to paragraphs 2 and 3:

(a) Upon receipt of the information provided under paragraph 3 the competent authority of the notified Member State shall, without delay, and at the latest within 96 hours, reply to the intercepting Member State, with a view to:

(i) allowing the interception to be carried out or to be continued. The notified Member State may make its consent subject to any conditions which would have to be observed in a similar national case;

(ii) requiring the interception not to be carried out or to be terminated where the interception would not be permissible pursuant to the national law of the notified Member State, or for the reasons specified in Article 2 of the European Mutual Assistance Convention. Where the notified Member State imposes such a requirement, it shall give reasons for its decision in writing;

(iii) in cases referred to in point (ii), requiring that any material already intercepted while the subject was on its territory may not be used, or may only be used under conditions which it shall specify. The notified Member State shall inform the intercepting Member State of the reasons justifying the said conditions;

(iv) requiring a short extension, of up to a maximum period of eight days, to the original 96-hour deadline, to be agreed with the intercepting Member State, in order to carry out internal procedures under its national law. The notified Member State shall communicate, in writing, to the intercepting Member State, the conditions which, pursuant to its national law, justify the requested extension of the deadline.

(b) Until a decision has been taken by the notified Member State pursuant to points (i) or (ii) of subparagraph (a), the intercepting Member State:

- (i) may continue the interception; and
- (ii) may not use the material already intercepted, except:

- if otherwise agreed between the Member States concerned; or
- for taking urgent measures to prevent an immediate and serious threat to public security. The notified Member State shall be informed of any such use and the reasons justifying it.

(c) The notified Member State may request a summary of the facts of the case and any further information necessary to enable it to decide whether interception would be authorised in a similar national case. Such a request does not affect the application of subparagraph (b), unless otherwise agreed between the notified Member State and the intercepting Member State.

(d) The Member States shall take the necessary measures to ensure that a reply can be given within the 96-hour period. To this end they shall designate contact points, on duty twenty-four hours a day, and include them in their statements under Article 24(1)(e).

5. The notified Member State shall keep the information provided under paragraph 3 confidential in accordance with its national law.

6. Where the intercepting Member State is of the opinion that the information to be provided under paragraph 3 is of a particularly sensitive nature, it may be transmitted to the competent authority through a specific authority where that has been agreed on a bilateral basis between the Member States concerned.

7. When giving its notification under Article 27(2), or at any time thereafter, any Member State may declare that it will not be necessary to provide it with information on interceptions as envisaged in this Article.

Article 21

Responsibility for charges made by telecommunications operators

Costs which are incurred by telecommunications operators or service providers in executing requests pursuant to Article 18 shall be borne by the requesting Member State.

Article 22

Bilateral arrangements

Nothing in this Title shall preclude any bilateral or multilateral arrangements between Member States for the purpose of facilitating the exploitation of present and future technical possibilities regarding the lawful interception of telecommunications.

c) Controlled delivery

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

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.

Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, 29 May 2000 (the 2000 Convention)

Article 12

Controlled deliveries

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.

3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. The right to act and to direct and control operations shall lie with the competent authorities of that Member State.

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, 8 November 2001

Article 18

Controlled delivery

1. Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.
3. Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.
4. Parties shall at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, indicate the authorities that are competent for the purposes of this article. They subsequently may, at any time and in the same manner, change the terms of their declaration.

Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations, 18 December 1997 (the Naples II Convention)

Article 1

Scope

1. Without prejudice to the competences of the Community, the Member States of the European Union shall provide each other with mutual assistance and shall cooperate with one another through their customs administrations, with a view to:
 - preventing and detecting infringements of national customs provisions,and
 - prosecuting and punishing infringements of Community and national customs provisions.
2. Without prejudice to Article 3, this Convention shall not affect the provisions applicable regarding mutual assistance in criminal matters between judicial authorities, more favourable provisions in bilateral or multilateral agreements between Member States governing cooperation as provided for in paragraph 1 between the customs authorities or other competent authorities of the Member States, or arrangements in the same field agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance.

Article 2

Powers

The customs administrations shall apply this Convention with the limits of the powers conferred upon them under national provisions. Nothing in this Convention may be construed as affecting

the powers conferred under national provisions upon the customs administrations within the meaning of this Convention..¹¹

Article 3

Relationship to mutual assistance provided by the judicial authorities

1. This Convention covers mutual assistance and cooperation in the framework of criminal investigations concerning infringements of national and Community customs provisions, concerning which the applicant authority has jurisdiction on the basis of the national provisions of the relevant Member State.

2. Where a criminal investigation is carried out by or under the direction of a judicial authority, that authority shall determine whether requests for mutual assistance or cooperation in that connection shall be submitted on the basis of the provisions applicable concerning mutual assistance in criminal matters or on the basis of this Convention.

Article 22

Controlled delivery

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.

2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that State.

3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. Competence to act and to direct operations shall lie with the competent authorities of that Member State.

The requested authority shall take over control of the delivery when the goods cross the border or at an agreed hand-over point in order to avoid any interruption of surveillance. During the rest of the journey it shall ensure that the goods are kept permanently under surveillance in such a way that at any time it has the possibility of arresting the perpetrators and seizing the goods.

4. Consignments the controlled delivery of which is agreed to may, with the consent of the Member States concerned, be intercepted and allowed to continue with the initial contents intact or removed or replaced in whole or in part.

United Nations Convention against Transnational Organized Crime from 15 November 2000

Article 2. Use of terms

...

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under

¹¹ Only in some countries are customs authorities authorized to obtain evidence for criminal proceedings in relation to foreign countries.

the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;

...

Article 20. Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 20 December 1988

Article 1

DEFINITIONS

...

(g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention;

...

Article 11

CONTROLLED DELIVERY

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of

controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

United Nations Convention against Corruption from 31 October 2003

Article 2. Use of terms

...

(i) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.

...

Article 50. Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

6. Annexes – presentations from the EJM plenary concerning the topic

Annex no. 1: Presentation of Roman Vojtišek – Practical problems of police units applying cross border surveillance and interception of communication (please double-click the PDF icon to open the document).



59 EJM - Vojtišek -
interception and CB

Annex no. 2: Presentation of Světlana Kloučková – Current issues of interception of telecommunication, controlled delivery and cross border surveillance (please double-click the PDF icon to open the document).



59 EJM - Klouckova -
interception-CD-CBS

Annex no. 3: Presentation of Martina Hlušítková – Case from practice - Eurojust experience (please double-click the PDF icon to open the document).



59 EJM - Hlušítková
- experience from pr