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ANNEX

EVALUATION REPORT ON THE

10TH ROUND OF MUTUAL EVALUATIONS

on the implementation of the European Investigation Order

REPORT ON CZECHIA

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1. EXECUTIVE SUMMARY

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 Directive') addressed the need for a comprehensive system, based on mutual recognition, for obtaining evidence in cases with a cross-border dimension and replaced the previous fragmented evidence-gathering system, while taking into account the flexibility of the traditional system of mutual legal assistance ('MLA'). Moreover, the European Investigation Order ('EIO') aimed to provide a high level of protection for fundamental rights and implement already gathered practical experience, based on direct communication between European judicial authorities. Consequently, the EIO struck a balance between the approaches of mutual recognition and mutual assistance. After the Directive had been in effect for more than five years, it was decided to use the 10th round of mutual evaluations to assess the application of the main instrument for gathering evidence.

The information provided by Czechia in the questionnaire and during the on-site visit was detailed and comprehensive, and the evaluation visit was both well prepared and well organised by the Czech authorities. The evaluation team got a good overview of the strengths and weaknesses of the Czech system, which enabled them to identify some key issues that need to be addressed at national and European level, resulting in the recommendations made below in Chapter 21.2.

It should be highlighted that the Czech system – despite its complexity - seems to be working well in practice, which is mirrored in the number of best practices identified, outnumbering the recommendations addressed to Czechia by far.

A significant feature of the Czech system is the principle of concentration, whereby the issuing authority of another Member State communicates with only one Czech executing authority, even if the investigative measures requested in the EIO are to be carried out in several regions or involve specialised public prosecutor's offices ('PPO'), ensuring that the execution of complex EIOs is fully coordinated. If some of the investigative measures need to be authorised by a court, the receiving and executing PPO will contact the court in its own jurisdiction for authorisation, even if the investigative measures are to be carried out outside its territorial jurisdiction.

The principle of concentration is applied in Czechia in order to ensure efficiency, especially in large-scale cases. The appointment of specialists at regional and higher levels within the PPO and the organisation by the central judicial authorities of round-table discussions for an exchange of experiences among practitioners who deal with complex EIOs is also an appropriate measure for similar cases.

The e-Evidence Digital Exchange System (e-EDES) aims to facilitate the transmission of the EIO and communication between the issuing and executing authorities by creating a secure information channel. Even though Czech practitioners acknowledge the benefit of a secure information channel, they have also identified several shortcomings, which are described in Chapter 8.2. In the light of these findings, the evaluation team has invited the Commission to look into the shortcomings identified (see *Recommendation No 15*).

The evaluation team has identified a potential need to revise the Directive with regard to several points. In their view, the key points where the EU legislator should consider amending the Directive are as follows:

- provide a possibility for consent to use information already transferred between law enforcement authorities or by way of spontaneous exchange as evidence in judicial criminal proceedings (see *Recommendation No 14)*;
- include cross-border surveillance for evidence-gathering purposes (see *Recommendation No 14)*;
- make Annex A more user friendly (see *Recommendation No 14)*;
- clarify the applicability of the rule of speciality in the context of the EIO and its interplay with data protection principles (see *Recommendation No 14)*;
- clarify whether the ‘interception of telecommunications’ under Articles 30 and 31 also covers other surveillance measures, such as the bugging of vehicles or GPS tracking. If not, consideration should be given to amending the Directive to introduce special provisions that also regulate such measures, including in cases where no technical assistance is needed from the Member State concerned (notification mechanism) (see *Recommendation No 18*).

The Union legislator should also examine how the executing State could transfer its obligation to subsequently review the interception to the issuing State, particularly when telecommunications are transmitted immediately to the issuing State ((see *Recommendation No 19*). In a broader context, the evaluation team also invites the Union legislator to revisit the question of the attendance of the accused person at the trial and public sessions of the court via videoconference from another Member State (see *Recommendation No 14*).

The Commission is invited to provide for a handbook at EU level which would give guidance on the practical challenges in the application of the Directive, touching upon issues such as the necessity of the underlying judicial order (see *Recommendation No 16).*

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997[1] ('the Joint Action') established a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

In line with Article 2 of the Joint Action, the Coordinating Committee in the area of police and judicial cooperation in criminal matters ('CATS') agreed after an informal procedure following its informal meeting on 10 May 2022, and as set out in the Directive, that the 10th round of mutual evaluations would focus on the EIO.

The aim of the 10th round of mutual evaluations is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also – and in particular – relevant practical and operational aspects linked to the implementation of the Directive. This will allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus helping to ensure a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

[1] Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.

More generally, promoting the coherent and effective implementation of this legal instrument to its full potential could significantly enhance mutual trust among the Member States' judicial authorities and ensure the better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice. Furthermore, the current evaluation process could provide helpful input to Member States that may not have implemented all aspects of the Directive.

Czechia was the 14th Member State to be visited during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 29 June 2022 by silence procedure[2].

In accordance with Article 3 of the Joint Action, the Presidency drew up a list of experts for the evaluations to be carried out. Pursuant to a written request sent to delegations on 15 June 2022 by the Secretariat of the Council of the European Union, Member States nominated experts with substantial practical knowledge in the field.

Each evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the 10th round of mutual evaluations, it was agreed that the European Commission and the European Union Agency for Criminal Justice Cooperation ('Eurojust') should be invited as observers[3].

The experts entrusted with the task of evaluating Czechia were Ms Kelly Theologitou (EL), Mr Alexander Kunosik (SK) and Mr Marek Vahing (EE). The observers were Ms Christine Janssens (Eurojust), together with Ms Emma Kunsagi from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on Czechia's detailed replies to the evaluation questionnaire, and the findings from the evaluation visit carried out in Czechia between 5 and 7 December 2023, where the evaluation team interviewed the representatives of the Ministry of Justice and the Supreme Public Prosecutor's Office ('SPPO'), judges, prosecutors and representatives of the Czech Bar Association.

[2] ST 10119/22.
[3] ST 10119/22.

3. TRANSPOSITION

The Directive is implemented into Chapter XI (Sections 357-395) of Act No 104/2013 Coll. on International Judicial Cooperation in Criminal Matters, as amended ('IJCCM'). Unless the IJCCM stipulates otherwise, or if it does not regulate a certain issue, the Code of Criminal Procedure ('CCP') applies[4].

Further details can be found in the General Instruction of the Supreme Public Prosecutor of 16 December 2013 on International Judicial Cooperation in Criminal Matters (No 10/2013, as amended), which is a binding regulation for public prosecutors and, in the context of EIOs, regulates the information obligations of public prosecutors in relation to the International Department of the SPPO[5]. This department publishes its methodology (which is not legally binding) for public prosecutors on the PPO's extranet.

Information, templates, procedures, etc. are available to judges on the extranet of the Ministry of Justice.

The evaluators consider that the approach of adopting and then updating a single legal instrument covering the whole scope of judicial cooperation in criminal matters is helpful for the work of practitioners and simplifies the application of EU instruments (see *Best practice No 1*).

Furthermore, the internal guidelines issued by the SPPO, which contain a unified, non-binding methodology for prosecutors, and the information on the application of the Directive disseminated by the Ministry of Justice, ensure a uniform application of the Directive, and are also a methodological measure that eliminates shortcomings arising in practice or from the ambiguity of the legislation at EU level (see *Best practice No 2*).

The working group for the IJCCM, which is composed of practitioners from all areas involved in the application of this law, has been extremely valuable, not only in preparing the transposing legislation but also in amending the IJCCM. The stable make-up and continuity of this expert working group made it possible to hold comprehensive and multidisciplinary discussions (see *Best practice No 3).*

[4] Section 3(1) IJCCM.
[5] See Articles 94a to 94c.

4. COMPETENT AUTHORITIES

4.1. Issuing authorities

Where Czechia is the issuing Member State, the competent judicial authorities[6] are:

- district courts (including the district courts in Prague and the Municipal Court in Brno), regional courts (including the Municipal Court in Prague) and high courts;

- district public prosecutor's offices ('DPPO') (including the district public prosecutor's offices in Prague and the Municipal Public Prosecutor's Office ('MPPO') in Brno), regional public prosecutor's offices ('RPPO') (including the MPPO in Prague), and high public prosecutor's offices ('HPPO').

The conclusions of the judgment of the Court of Justice of the European Union ('CJEU') in Case C-724/19 (*HP*) ('HP judgment') have been implemented in Section 374(1) and Section 375a IJCCM. Pursuant to Section 374(1) IJCCM, if an EIO is issued during the investigation for an investigative measure requiring a court authorisation or order, the judge will, on application by the public prosecutor, confirm the EIO for that measure before its dispatch by filling in section L of the EIO form.

Pursuant to Section 375a IJCCM, if the executing authority of another Member State considers that the conditions for issuing the EIO for a measure confirmed by a judge in Czechia are not met and the public prosecutor finds the objections unjustified, he or she will notify the judge thereof and request his or her opinion. If the judge subsequently finds, based on the request of the public prosecutor, that the conditions for issuing the EIO in relation to the measure that he or she confirmed are not met, the public prosecutor will withdraw the relevant EIO in accordance with Section 376(a) IJCCM.

[6] See Annex 1 to the notification of Czechia under Article 33(1)(a) of the Directive arising from Section 358(a) IJCCM in conjunction with the provisions of the CCP on subject matter and local jurisdiction.

As executing State, if the EIO is not issued by a court in such a case, Czech authorities require – for cases falling under the scenario of the HP judgment – the attachment of the court decision or court confirmation in section L. In individual cases, Czech authorities also accept the EIO if the issuing authority refers to the court decision, indicating the date on which it was issued, the file number and a summary of its contents.

In light of the Directive, validation by the court, without an underlying court order, should be sufficient. However, not all Member States take the same view on this (see also Chapter 9).

The evaluation team is of the opinion that the HP judgment still leaves several questions open. First, it is not clear, based on this judgment, whether a separate national judicial order is necessary. The judgment does not address this matter and it is not a requirement under the Directive. If a judge/court issues the EIO in an HP scenario, this seems to be sufficient under EU law. However, some executing authorities insist on national judicial orders (in HP-related scenarios, but also in other cases - see Chapter 9).

Second, it is not clear whether the CJEU would accept a scenario in which a court does not 'issue' an EIO, but was involved prior to the actual issuing phase, i.e. by authorising the investigative measure before the EIO was issued but in compliance with the obligations under the Directive. It is hoped that this issue will be clarified by the CJEU in pending Case C-635/23.

Third, the solution adopted by Czechia, whereby a court 'endorses' or 'validates' an EIO issued by the public prosecutor after duly considering all requirements under the Directive, is a sensible approach.

Even though not in line with the literal wording of the Directive (which requires that the court 'issues the EIO'), it seems to be in line with the ratio legis of the judgment and the CJEU's case law in other fields[7]. The evaluation team believes that it would be helpful if these issues were to be further clarified by the EU legislator and/or the CJEU's case law.

[7] See the endorsement system accepted by the CJEU in the context of the EAW Framework Decision: Case C-489/19 PPU, NJ *(Parquet de Vienne)*, Judgment of 9 October 2019 or Case C-453/16 PPU, *Halil Ibrahim Özcelik*, Judgment of 10 November 2016.

4.2. Executing authorities

Where Czechia is the executing Member State, the competent judicial authorities[8] are - as a rule - the competent RPPO, if the case in another Member State is at the pre-trial stage, and otherwise the regional court in whose jurisdiction at least one of the requested measures is to be carried out.

Czech authorities can also execute EIOs issued by non-judicial authorities provided that the requirements under the Directive are met. In accordance with Section 358(b) IJCCM, an EIO issued by an authority other than a judicial authority of another Member State (i.e. an administrative authority) can be recognised and executed.

However, this non-judicial authority must be competent to obtain evidence, the EIO that it has issued must be validated by a judicial authority of that Member State and the EIO must be issued in order to obtain evidence via legal assistance. No specific procedure is provided for such cases; the regime for EIOs issued by judicial authorities applies. So far, Czech authorities have not encountered any EIOs issued or to be executed in order to obtain the personal data necessary for the enforcement of an administrative decision.

There are rules for special competence in the context of the following specific investigative measures (see *Best practice No 4*):

- for covert investigations: the HPPO in Prague;
- for cross-border surveillance or controlled deliveries: the RPPO in Prague;
- for the purpose of the cross-border interception of telecommunications without technical assistance: the Regional Court in Prague or the RPPO in Prague, depending on the stage of the criminal proceedings in the issuing Member State;
- for temporary transfer:
    - the PPO, if the person is in custody during the investigation;
    - the court conducting the proceedings, if the person is in custody after the indictment;
    - the district court, if the person is serving a sentence of imprisonment or a protective measure involving deprivation of liberty in Czechia.

[8] See Annex 1 to the notification of Czechia under Article 33(1)(a) of the Directive arising from Section 360(1) in conjunction with Section 48(6) to (9) and Section 48a IJCCM.

In addition, there are some specific rules based on the relevance and the urgency of the case.

If, after receipt of the EIO, it is established that pre-trial proceedings conducted in another Member State relate to criminal proceedings conducted in Czechia in which the HPPO is involved, the HPPO may execute the EIO with the prior consent of the SPPO. This is without prejudice to special competence to perform specific investigative measures.

If several PPOs or courts are locally competent, the EIO is executed by the PPOs or the court to which the EIO was first delivered or forwarded by an authority not competent to accept it.

If the matter cannot be delayed or if there is another important reason given, the competent PPO or court may also execute the EIO even if it is beyond its local jurisdiction *(see Best practice No 5)*.

In order to facilitate the execution of a simple investigative measure, or for other important reasons, the RPPO or the regional court competent to recognise and execute the EIO may, in exceptional cases, ask the district public prosecutor's office or district court in whose jurisdiction the investigative measure is to be executed to provide the legal assistance.

This exception can be used to avoid the risk of a delay in the execution of the measure or in order to take any other particularity into account which would justify a departure from the general rule. Such cases are not based on the gravity of the offence, but rather on the nature of the measure or evidence which is already in the possession of a different prosecution office or court which does not have competence according to the general rules.

If pre-trial proceedings are being conducted in another Member State and the issuing authority requires the taking of evidence which can only be decided by a court in Czechia, the Czech executing prosecutor must ask the court for an order to take such evidence. The competent court is the district court in the jurisdiction of the regional court where the RPPO competent to execute the EIO operates. For larger regions, the IJCCM determines the local jurisdiction of the district courts as follows:

- in the case of the Municipal Court in Prague, the District Court for Prague 1;
- in the case of the Regional Court in Prague, the District Court Prague-East;
- in the case of the Regional Court in Plzeň, the District Court Plzeň-City;
- in the case of the Regional Court in Brno, the Municipal Court in Brno.

These statutory rules are in accordance with the Decision of the Constitutional Court, file no Pl. ÚS 4/14, which required a more precise determination of the jurisdiction of courts to decide in these cases.

Furthermore, the Ministry of Justice is competent to submit a request for transit through the territory of another Member State and to decide on requests submitted to it for transit through the territory of Czechia.

After a thorough explanation, the evaluation team also recognised the advantages of the seemingly comprehensive system of rules for determining the jurisdiction of the executing authority in Czechia. The specific rules for the designation of authorities for certain investigative measures (e.g. covert investigation, temporary transfer, etc.) not only take the specificities of these measures into account, but also the specialisation that has led to a uniform application of the Directive in Czechia.

4.3. Principle of concentration

The purpose of the principle of concentration, as provided for in Section 360(1), read in conjunction with Section 48(6) to (9) IJCCM, is to ensure that the issuing authority in another Member State communicates with only one executing authority in Czechia, even if it requests investigative measures to be carried out in several regions, and to ensure that the execution of complex EIOs is fully coordinated (*see Best practice No 6).*

Thus, for example, if the issuing authority of another Member State asks for searches of premises or hearings of witnesses to be carried out in four Czech regions, it is sufficient to issue one EIO and deliver it to an RPPO which is competent to carry out at least one of these investigative measures. If some of the investigative measures need to be authorised by a court, the RPPO receiving the EIO will contact the court in its jurisdiction, which will authorise all the investigative measures, even if they are to be carried out outside its territorial jurisdiction. If investigative measures are to be carried out in other regions, it is up to the PPO to which the EIO was delivered (the international cooperation specialist) to request the cooperation of their colleagues in other regions *(see Best practice No 7)*.

If the EIO concerns a specific investigative measure involving specialised PPOs, the RPPO will contact the specialised public prosecutor's offices and ask for their cooperation and will then gather the evidence from the whole territory of Czechia and send it to the issuing authority.

In view of the above, it should be noted that the principle of concentration is applied in Czechia in order to ensure efficiency, especially in large-scale cases. The appointment of specialists at regional level and the organisation of round-table discussions for an exchange of experiences among practitioners who deal with complex EIOs are also appropriate measures for similar cases.

4.4. Central authorities

In accordance with Section 2(b) IJCCM, the central authorities for international judicial cooperation in criminal matters are generally the Ministry of Justice (for courts) and the SPPO (for public prosecutors).

Czechia has not designated any of these central authorities as the authority competent to send or receive EIOs. Thus, the role of the central authorities is limited to practical, methodological and administrative assistance.

Upon request, the Ministry of Justice or the SPPO will provide its assistance in gathering necessary information, in particular in identifying the competent authority of another Member State. The same assistance is provided by the Ministry of Justice or the SPPO when the authority of another Member State requests information on the competent Czech authorities or on the relevant Czech law.

4.5. The right of the suspected or accused person or victim to apply for an EIO

In accordance with Section 374(5) IJCCM, both the accused and their lawyer may apply for an EIO. Although the victim is not explicitly mentioned in this provision, the victim also has this right. Pursuant to Section 43(1) CCP, the victim has the right apply to supplement the evidence and/or to issue an EIO. Czech practitioners however stated that they saw no need to explicitly refer to this possibility in the Directive, as it would not fit the prosecutorial model.

These cases are occasionally encountered both during the investigation and during the main trial. If the applicant's request is justified and an EIO can provide relevant facts to the criminal proceedings, then it is admitted – in practice this is usually the case. If the application for an EIO is not accepted during the investigation, legal remedy is available to the applicant by applying for supervision by the superior PPO; this has been recognised as an effective remedy by several decisions of the Constitutional Court of Czechia[9]. In the proceedings after lodging an indictment, there is no such separate legal remedy and the issue will be dealt with by appeal.

[9] See resolution of 28.8.2014, file no II. ÚS 2166/14 (U 14/74 SbNU 623) and judgment of 2.3.2015, file no I. ÚS 1565/14 (N 51/76 SbNU 691).

5. SCOPE OF THE EIO AND RELATION TO OTHER INSTRUMENTS

Article 1(1) of the Directive (implemented in Section 358 IJCCM) provides that the EIO is a judicial decision, issued or validated by a judicial authority of a Member State to request that one or several specific investigative measure(s) be carried out in another Member State in order to obtain evidence. As interpreted by the Czech authorities, the Directive lays down rules for obtaining evidence at all stages of criminal proceedings, including the enforcement stage.

According to the Czech authorities, the following measures are not covered by the EIO:

- obtaining evidence within a joint investigation team ('JIT') set up with another Member State, except where evidence is obtained from another Member State not participating in the JIT (excluded by Article 3 of the Directive);
- the spontaneous exchange of information;
- a request for consent to use information that has been provided through police cooperation as evidence;
- measures which are not considered as evidence, such as:
    - the service of documents, unless as part of an investigative measure;
    - the transfer of criminal proceedings;
    - the freezing of assets for the purpose of their restitution to the victim;
    - the freezing of assets for the purpose of subsequent confiscation or forfeiture;
    - familiarisation with the case file[10];
    - the transmission of criminal records;
    - a procedure under the Naples II Convention[11].

[10] After the investigation is completed, i.e. before the indictment is filed with the court, the investigator is obliged to present the entire criminal case file to be submitted to the court to the accused and his or her defence counsel. If this is to be done in international cooperation, this is the task of the public prosecutor.

[11] 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).

5.1. Challenges related to the choice of the correct instrument

In some cases, the Czech issuing authorities have encountered some difficulties in determining the investigative measures for which an EIO may be used and/or have observed the erroneous use of the EIO or other instruments, for instance:

- **Seizure of funds**. The Czech executing authorities noted that some Member States issue an EIO for the seizure of funds, which is incorrect in the view of the Czech authorities. Under an EIO, it is possible to seize, for example, counterfeit banknotes to be assessed as evidence, but not funds to be subject to subsequent confiscation or restitution to the victim. This also follows, *inter alia*, from the judgment of the Constitutional Court of 12 May 2020, file no IV. ÚS 1355/18. The seizure of funds must be requested by means of a freezing order based on Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders as regards the Member States which are parties thereto, or Framework Decision 2003/577/JHA, or an international treaty. In such cases, Czechia as the executing Member State will always inform the issuing authority of the need to issue a freezing order under the abovementioned EU legislation.

- **Temporary transfer of a witness.** In one case, in the proceedings after lodging an indictment, a court of another Member State had sent a European arrest warrant ('EAW') for the purpose of the temporary transfer of a witness who was serving a sentence in Czechia. The court was advised that such a procedure was not correct, stating that an EIO should be sent to the district court of the district where the witness was imprisoned. After correcting the situation, the EIO was recognised and executed.

– **EIO-JIT.** If legal assistance needs to be requested within a JIT from a Member State not participating in it, either a separate request for legal assistance or an EIO must always be submitted. This practice poses no problems. However, as regards issuing requests for MLA or an EIO to Member States outside the JIT, Czech practitioners include a provision in the JIT agreement stating that the JIT members should coordinate their procedure. In the opinion of Czech practitioners, a JIT member cannot submit an EIO on behalf of the JIT, but only for the purposes of its own criminal proceedings. However, the JIT member may indicate in the EIO that it requests consent to forward the results of the execution of the EIO to other JIT members. To this end, there is a specific provision in the JIT agreements[12].

  In practice, the EIO or MLA request is often sent by one JIT member only, and if the requested/executing Member State agrees, the result is shared with the other JIT members. This situation is considered as a request to use evidence in another criminal case. As the CCP stipulates, for certain types of evidence, the conditions under which this evidence may be used in another criminal case (e.g. that it can only be used in an equally serious case), it is possible to give consent to the sharing of information within the JIT subject to these conditions.

  If a JIT member has not submitted an EIO or an MLA request to a third State but wishes to use the evidence gathered by way of an EIO or MLA request issued by Czechia, it must subsequently ask permission from Czechia to use the evidence thus obtained in its criminal proceedings. The request must include a description of the offence and its legal classification, including the punishment for the criminal offence.

– **The purpose is not related to evidence gathering**. During pre-trial proceedings, the Czech authorities have issued (and received) EIOs for the purpose of consulting the file or providing a copy of a court decision. They have also requested, by means of an EIO, that local inquiries be carried out in order to establish the residence of the person to be heard or to establish the identity of the victims.

[12] 'Should a need arise for a mutual legal assistance request (or EIO) to be sent to a State that does not participate in the JIT, the requesting State shall consider seeking the agreement of the requested State to share with the other JIT party/parties the information or evidence obtained as a result of the execution of the request'.

Similarly, for example, where an EIO is issued for the purpose of a hearing and procedural documents need to be served on the person concerned, this is always requested in the EIO (i.e. no separate request for the service of procedural documents is sent at the same time as the EIO). In practice, these EIOs are generally recognised and executed, particularly where the request also includes measures which clearly fall within the scope of the Directive.

Cases have also been recorded where an EIO was issued by the Czech authorities to verify the location of a convicted person or to verify that a person was still alive. In Czechia, only five EIOs were issued in the last five years during pre-trial proceedings to establish the location of a person for the purpose of the subsequent hearing of a witness.

The Czech authorities reiterated during the visit that this form of cooperation is not recommended to public prosecutors, as the search for persons is the responsibility of the police authorities. They are therefore advised in such cases to use cooperation between the police authorities of the Member States. One case was mentioned where an EIO was issued to verify the location of a person during the trial. As executing Member State, the Czech authorities have not encountered any EIOs issued for the purpose of locating a person.

– **EIO for contacting a witness directly**. Czech practitioners also encountered a case where a judicial authority merely notified the court via the EIO that it wished to contact the witness and hear her by telephone, without any Czech judicial authority being involved in the procedure. Both the evaluation team and the Czech authorities consider this to be improper conduct, as neither the Directive nor any other Union act provides for a request from a judicial authority for cooperation in the territory of another Member State to circumvent the local executing judicial authorities and independently produce evidence in criminal proceedings.

The evaluation team believes that some of these cases highlight the need for a greater degree of consistency in the choice of the EIO as a tool for the taking of evidence, in order to maintain the limits set by the Directive. Therefore, the competent authorities of Member States should consider the scope provided for issuing an EIO as a decisive condition for their further actions (see *Recommendation No 6*).

On the other hand, the evaluation team welcomes the flexibility of the Czech authorities in the execution of EIOs by handling them, where possible, as MLA requests (see *Best practice No 8*). The evaluation team also agrees with the more rigid approach in those cases where a wrong instrument was clearly used (e.g. an EIO instead of a freezing order, or an EAW instead of an EIO).

5.2. Information obtained through police cooperation or spontaneous exchange

The Czech executing and issuing authorities have both encountered cases where consent was requested for the use of information obtained through police cooperation as evidence in criminal proceedings. The Directive does not contain such a consent procedure, but Framework Decision 2006/960/JHA and its successor, Directive 2023/977, both mention the possibility of giving consent[13].

The possibility of a judicial authority providing consent to use information already provided by the police authorities of Member States and Associated States as evidence in criminal proceedings is implemented in Czechia on the basis of this EU legal framework in Section 20 IJCCM.

During the evaluation visit, the Czech authorities and the evaluation team concluded that the link between the two legal frameworks is far from clear and that neither instrument regulates how the consent should be given. The Czech authorities clarified that in Czechia public prosecutors are advised to issue a request for consent in such cases; a template for this request is available on the PPO's extranet. When the Czech authorities receive such EIOs from other Member States they treat them as MLA requests.

[13] See Article 1(4) of (repealed) Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (repealed by Directive 2023/977) and confirmed in Article 1(4) of Directive 2023/977 on the exchange of information between the law enforcement authorities of Member States. This provision states that Directive 2023/977 'does not establish any right to use the information provided in accordance with this Directive as evidence in judicial proceedings' and that 'the Member State providing the information **may consent** to its use as evidence in judicial proceedings' (emphasis added). See also recital 14 of Directive 2023/977.

Similarly, in the context of a spontaneous exchange of information between judicial authorities, the link with the Directive is not clear. Whereas the 2000 MLA Convention includes a specific provision on the spontaneous exchange of information (Article 7)[14], the Directive is completely silent on this. Amongst practitioners, there are different views as to whether there is always a need to issue an EIO for a request to use evidence that was previously obtained via a spontaneous exchange between judicial authorities.

It is clear that the Union legislator saw fit to provide for an element of consent in the abovementioned legislation in the field of police cooperation and the spontaneous exchange of information. However, according to some Member States, including Czechia, requesting consent for information obtained through police cooperation or spontaneous exchange is not adequately regulated on the judicial side as the Directive does not explicitly provide for a consent/validation procedure.

The evaluation team agrees with the Czech experts that it is advisable to explicitly provide for a possibility for consent to use information already transferred between law enforcement authorities or by way of spontaneous information exchange as evidence in judicial criminal proceedings. Consequently, a bridge should be established by the Union legislator between judicial and police cooperation in relation to information exchange, in order to ensure that information gathered at police level can be used as evidence in criminal proceedings. A similar logic and need for clarification also applies in the case of information gathered via a spontaneous exchange of information (see *Recommendation No 14*).

[14] This provision states that, within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences […]. Furthermore, paragraph 2 of this provision specifies that 'the providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.' The latter sentence could possibly imply that the providing authority, at the time of sending that information, would/could, depending on national law, already consent to the use of that information as evidence.

5.3. Issues relating to cross-border surveillance

Recital 9 of the Directive states that it should not apply to cross-border surveillance ('CBS') as referred to in the Convention implementing the Schengen Agreement ('CISA'). However, Article 40 CISA is part of the chapter on police cooperation. There are therefore doubts as to whether evidence can be obtained only at the level of police cooperation, since Article 1(1) of the Directive explicitly states that evidence is to be obtained by means of an EIO and Article 2(c)(ii) of the Directive makes it clear that police authorities cannot independently issue an EIO without the validation of a judge, court, investigating judge or public prosecutor.

Analysis carried out by the European Judicial Network[15] ('EJN') clearly shows that almost all Member States consider the vast majority of types of CBS to be a way of obtaining evidence in criminal proceedings. The difference is whether an EIO or MLA is applied.

In the view of Czech practitioners, CBS is about securing evidence in real time, in the same way as when surveillance of persons and items within the borders of the executing Member State is requested. In accordance with Section 387 IJCCM, the public prosecutor is always obliged to issue an EIO in the case of CBS. This gives the executing Member State the possibility to either recognise and execute it as an EIO or, depending on its content, to consider it as a request for legal assistance.

This is an area of cooperation where there is a lot of confusion between the Member States. Therefore, one of the conclusions of the EJN Plenary in Prague on 9-11 November 2022[16] was that there is no uniform EU-level legislation on CBS when surveillance records are to be used as evidence in criminal proceedings and that it would be desirable to have a specific provision for CBS in the Directive.

[15] 15966/22.
[16] 15296/22.

In this regard, the evaluation team took note of the suggestion of the Czech experts to create an additional Article 28a in the Directive. In the view of the evaluation team, an alternative solution could be to reformulate the current Article 28 of the Directive by broadening the title, including an explicit reference to cover CBS and including a mechanism for ex post notification similar to the one included in Article 31 of the Directive. The evaluation team thus agrees that this particular topic should be addressed during future discussions on a possible legislative initiative at EU level to amend the Directive (see *Recommendation No 14*).

The evaluation mission also appreciated the application of provisions included in the bilateral agreements between Czechia and some neighbouring Member States on technical surveillance with *ex post* notification (see *Best practice No 9*).

6. CONTENT AND FORM OF THE EIO

6.1. Challenges relating to the form

The Czech issuing authorities have not encountered any problems in filling in the EIO form. The EIO form is available on the extranets of the Ministry of Justice and the PPO together with instructions for filling it in. The implementation of the EIO in Czechia has also been the subject of a number of training courses for public prosecutors, judges, assistant judges or legal and judicial trainees. To improve the form, the Czech authorities recommended that a separate section for the list of attachments should be created in order to make the form clearer.

In their view, it would also be advisable to explicitly include the request for traffic data on telecommunications in section H7, as this is requested much more frequently than interceptions themselves. A court decision is usually also required to request them in the Member States, i.e. they are also subject to stricter conditions than, for example, a request to hear a witness.

The evaluation team is also of the opinion that Annex A could be made more user friendly (see *Recommendation No 14*).

In the experience of the Czech executing authorities, the content of EIOs is sometimes incomplete, inconsistent or inaccurate. This situation is always addressed by sending additional questions.

The Czech executing authorities mentioned cases where an EIO was issued without any request to obtain evidence. On other occasions, the issuing judicial authority had not fully understood the purpose of the EIO. For example, one judicial authority issued an EIO requesting the interception of telecommunications without providing any information to enable this and, after subsequent communication, it eventually became clear that the purpose was to remove a video from a website. It was not possible to fulfil the request, so the case was eventually discontinued.

6.2. Language regime

As issuing authorities, Czech public prosecutors occasionally encounter an insufficient quality of translations performed by certified translators, but they usually manage to detect these deficiencies before sending the EIO. In the case of EIOs issued during the main trial, no problems have been reported. In accordance with Act No 354/2019 on Certified Interpreters and Certified Translators, as amended, only a certified interpreter or a certified translator may carry out translation activities (see *Best practice No 10*).

This Act also obliges interpreters and translators to maintain confidentiality, holds them responsible for the performance of interpreting activities, and sets out the qualification requirements for interpreters and translators, who need to pass an entrance examination and take an oath before being registered in the list of interpreters and translators maintained by the Ministry of Justice[17]. If no registered translator is available, an ad hoc (not registered) translator is appointed.

As executing authorities, both Czech PPOs and courts reported cases where the EIO form was sent untranslated. In such cases, a translation is usually requested from the issuing authority. On rare occasions, the quality of a translation is unsatisfactory, and the executing authorities usually overcome this either through their own knowledge of the language or, if the translation sent is completely incomprehensible, by asking the issuing State to send a new translation. However, poor quality translations have not yet been an obstacle to the recognition and execution of an EIO, provided that the other conditions laid down have been satisfied in the case in question.

In urgent cases in which there is no time for a translation to be carried out by a registered translator, an ad hoc solution may also be a working translation prepared by the Czech National Desk at Eurojust. In practice, there have been cases where the court ordering an investigative measure in pre-trial proceedings (house search) exceptionally accepted an EIO in English, if the case was urgent; however, this was mainly because the public prosecutor must submit a reasoned motion to the court with other supporting documents (e.g. an extract from the land registry), which must be in Czech.

The evaluation team invites all Member States, including Czechia, to indicate another language which is commonly used in the Union in their declaration concerning the language regime, in addition to their official language (see *Recommendations Nos 1* and *7*).

[17] 'Exceptionally, a public authority may appoint another person, who is not registered in the list of interpreters and translators for a given language, to perform an interpreting or translating act, if that person has the necessary expertise to perform the interpreting act and has consented to his or her appointment, where there is no interpreter registered for the language concerned, or no interpreter registered in the list of interpreters and translators is able to perform the interpreting act, or the performance of the interpreting act by an interpreter registered in the list of interpreters and translators would involve unreasonable costs or difficulty.'

6.3. Additional EIOs, multiple requests in one EIO

Czech issuing authorities have encountered cases where they requested that several people be heard who resided in the jurisdiction of different executing authorities of another Member State. The EIO was sent by the Czech public prosecutor to all the competent executing authorities of the other Member State, indicating which of the requested measures concerned them.

Similarly, different executing authorities may be competent for the identification of an account holder and their subsequent hearing, depending on the place of residence. When executing these EIOs, the issuing authorities are informed that the EIO has been referred to the competent executing authority for execution, so in general, these situations do not pose any practical problems. If it is necessary to coordinate, Eurojust may be asked for assistance.

In practice, of course, there will occasionally be situations where the execution of an EIO brings new knowledge which requires an additional EIO. In complex cases, where it can be anticipated that there will be repeated EIOs to another Member State, public prosecutors are advised to consider setting up a JIT.

If it is clear that evidence needs to be gathered in different locations of the executing State, Czech public prosecutors may either issue one EIO and deliver several extra copies of it or (more commonly) they issue several EIOs in which they indicate that the EIO has also been sent to other executing authorities of the same executing State. This allows the executing authorities of another Member State to better coordinate their steps.

If coordination is necessary within the territory of one Member State, the EJN contact points can be asked to coordinate or otherwise assist. In the case of complex and often urgent EIOs sent to several Member States in a single criminal case, Eurojust usually coordinates.

As executing Member State, the Czech authorities have encountered (albeit very rarely) situations involving additional or conditional EIOs issued during the investigation but they have not experienced any practical problems with their execution, thanks to the principle of concentration (see Chapter 3.3). Such complicated EIOs do not occur at the trial stage.

6.4. Orally issued EIOs

Generally speaking, orally issued EIOs are not accepted and the delivery of a written copy of the EIO is required. Unlike a request for MLA, the EIO is a decision of a judicial authority. Therefore, there must be certainty as to the content of such a decision by a judicial authority and it must be reviewable retrospectively. Hence the need for a written EIO. In practice, Czech executing authorities have not encountered a case where the issuing authority of another Member State issued an EIO only orally.

In urgent cases, as executing authorities, Czech public prosecutors are able to take organisational measures prior to the delivery of the EIO on the basis of a request communicated via telephone, in order to ensure that the execution takes place as quickly as possible after its delivery. Organisational and other related measures based on informal communication can contribute to a more efficient execution of the EIO (*see Best practice No 11*).

There was an isolated experience with the execution of a telephone request for the urgent provision of a copy of a judgment; the EIO was delivered the following day. The courts have not yet been confronted with particularly urgent cases that had to be dealt with first by telephone or otherwise.

7. NECESSITY, PROPORTIONALITY, RECOURSE TO A DIFFERENT INVESTIGATIVE MEASURE

Pursuant to Section 374(4) IJCCM, an EIO may be issued if it is necessary in order to reach the pursued objective, it is proportional to the seriousness of the offence, and the investigative measure can be performed under the same conditions under Czech law.

The criterion of necessity is usually interpreted as meaning that an EIO is issued only as an *ultima ratio*, i.e. in cases where the evidence in question cannot be obtained by other means, or in cases where the criminal proceedings cannot be successfully concluded without the EIO (the importance of the evidence in terms of clarifying the case is assessed), but account must also be taken, for example, of a binding instruction from a superior (i.e. appellate) court.

Proportionality is assessed when considering whether the evidence can be secured by other means or whether the facts can be clarified without such evidence. The criterion of proportionality is based on the circumstances of the criminal case. Generally speaking, the judicial authorities in criminal proceedings seek to apply criminal law procedures which are less burdensome for all persons concerned.

This criterion is interpreted in terms of the seriousness or nature of the criminal activity, the difficulty of executing the EIO (the economy and speed of obtaining the evidence), and the contribution of the requested evidence to the clarification of the case. The rights of third parties and the degree of interference with their rights and protected interests, or the amount of damage, are also taken into account.

On occasion, Czech issuing authorities consider EIOs to be unnecessary or disproportionate, especially in minor cases where the cost of issuing, translating and sending the EIO would significantly exceed the damage caused by the offence. So far, the Czech judicial authorities have not had to resort to the consultation procedure under Article 6(3) of the Directive as they were able to assess the necessity and proportionality themselves, taking into account their knowledge of the circumstances of the whole criminal case, which usually cannot be assessed by the executing authority.

The Czech authorities' practice of assessing the principles of proportionality and necessity when issuing an EIO is in keeping with a fundamental pillar of mutual recognition, namely the assessment of proportionality by the issuing State (see *Best practice No 12*).

Czech executing authorities have encountered a few cases of disproportionate EIOs, issued for searches of entire business premises, where the court stated that it would not authorise the search due to a failure to satisfy the proportionality test. Furthermore, Czech practitioners reported having received a disproportionate EIO requesting the handover of full accounting in a case where the offence obviously related to a transaction with only one business partner.

In another case, an EIO was issued to request banking information over an unreasonably long period of time that was not justified by the description of the offence. In these cases, adjustments were made following the application of the consultation mechanism (Article 6(3) of the Directive) with the issuing authority. Also, in the event of ambiguities, the situation is usually solved by way of consultations with the issuing authority.

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACTS

8.1. Identification of the competent authority, direct contacts

The EJN Atlas is used by public prosecutors to determine the authority competent for execution. They can also use the methodological materials on the PPO's extranet, where, for example, applications are available to search by postcode not only in Czechia but also in some other Member States. The use of a postcode when searching for a competent authority is a very useful tool which is not time consuming and does not require knowledge of the language of another Member State *(*see *Best practice No 13)*.

Czech practitioners have encountered several situations with other Member States when the Czech public prosecutor needed to request bank account information. In these cases it was either not clear in which federal state the bank account was held or it was not clear with which bank. In such cases, police cooperation was used, as the police authorities in those Member States not only have access to the central registers of bank accounts but are also entitled to obtain information on where the account is held and the name of the person to whom the account belongs. Subsequently, this cooperation with police authorities made it possible to efficiently and quickly identify to whom the EIO should be addressed in the other Member State.

It is also possible to consult the International Department of the SPPO, whose public prosecutors are the contact points of the EJN, or to consult the Czech National Desk at Eurojust.

The Czech courts have not experienced difficulties in identifying the competent executing authority in another Member State. All the necessary information is available to the courts on the extranet of the Ministry of Justice, and the courts also use the EJN Atlas in particular. In the event of ambiguity, the courts contact the EJN contact points. Only in isolated cases was it noted that the EIO was mistakenly sent to a non-competent authority in another Member State, which then forwarded it to the competent authority.

Czech practitioners consider that the EJN Atlas is fit for purpose, but during the evaluation visit it was mentioned that it could be improved by providing a translation of the list of investigative measures (see *Recommendation No 20*).

In the vast majority of cases, communication takes place directly, most often by e-mail or telephone. Other channels, such as central authorities, EJN contact points, or Eurojust are only used if this method of communication fails. Only rarely and in very specific cases is transmission via Eurojust preferred, for instance in a case where it was necessary to hear and coordinate the hearings of 15 witnesses via different judicial authorities.

8.2. Transmission of the EIO

Currently, EIOs are always sent by post, even if they are first sent electronically. If the Czech issuing authority delivers the EIO by fax, electronically, via international police cooperation, in person or by other means, they are obliged under Section 8(4) IJCCM to subsequently send the EIO to the executing authority, as a rule in the original. This does not apply in cases where the EIO is sent in writing in a manner allowing for verification of its credibility (however, no such e-platform for judicial authorities exists yet) or where the executing authority expressly states that they do not require the original EIO.

Under Section 8(5) IJCCM, if there are no doubts regarding the credibility of the request, the Czech executing authority may commence execution of the EIO based on a first version sent by the issuing authority by fax, electronically, via international police cooperation, in person or by other means. If the executing authority has doubts regarding the credibility of the EIO or if they deem it necessary for other important reasons, they will ask the issuing authority to subsequently deliver the EIO in a prescribed manner and within a time limit set by them.

Czech practitioners would indeed prefer a secure information channel for sending electronic EIOs, with the possibility of unequivocal identification of the sending authority and with a qualified electronic signature recognised across the EU. They acknowledge that sending paper documents is inherently slower and generates higher delivery costs. Sending EIOs by simple e-mail is not considered appropriate in many cases due to issues with the security and integrity of the information sent or with the authenticity of the sender, although they accept that it does occur in practice, especially in urgent cases.

In practice they have also encountered cases where the executing States have also sent the results of the execution of the EIO electronically (e.g. by uploading the materials to a specific repository to which they provide access to the authorities of the issuing State and allow them to download the requested documents). No objections have yet been raised before the court regarding the applicability of such evidence sent for the purpose of criminal proceedings.

The e-EDES will certainly be beneficial, since it will provide a secure information channel; Member States should therefore speed up the process of joining e-EDES (see *Recommendation No 8*).

However, Czech practitioners have technical reservations about its current form, mainly because there is a risk that a considerable administrative burden associated with the processing of documents will be transferred to the judicial authorities. The system does not take into account the organisation of work in the PPOs and courts or the need to store EIOs in national judicial databases. In addition, validation does not seem to be adequately solved in e-EDES.

Therefore, the introduction of an obligation to fill in the EIO directly in e-EDES is particularly questionable. Czech authorities cannot issue their decisions in a language other than Czech, but the executing authorities only read the translation of the EIO (which in Czechia must be carried out by a qualified translator who is personally responsible for the quality of the translation, see Chapter 6.2), which is added to e-EDES as a pdf attachment. Paradoxically, it will be much easier to use e-EDES to send requests for legal assistance.

The Czech authorities are advised to further advance digitalisation, especially with a view to establishing links between the case management systems and e-EDES to address the administrative burden (*see Recommendation No 2*), and the expert team believes that it would be useful for the Commission to address the issues with e-EDES that have already been identified (*see Recommendation No 15*).

The Czech authorities mentioned the issue of classified information regimes, which can be a significant hindrance to cross-border cooperation in criminal matters. The authorities of some Member States classify material containing the outcome of the executed measure as 'restricted' or even 'confidential', which in practical terms means that the information is sent through diplomatic channels. In an extreme case, this led to a delay of one year. In another case, SIENA was used to transmit the classified information, but this should remain the exception as SIENA is intended for communication between Member States' law enforcement authorities and Europol. The expert team would therefore recommend that Member States carefully reflect on the classification of documents in the field of cross-border cooperation (see *Recommendation No 9*).

9. RECOGNITION AND EXECUTION, FORMALITIES, ADMISSIBILITY OF EVIDENCE

The Czech authorities and the evaluation team agreed that compliance with formalities is an important condition for the successful execution of an EIO and that non-compliance can affect the admissibility of the evidence.

Czech executing authorities have encountered cases where section I was not completed, but in practice this did not cause problems in terms of the recognition and execution of the EIO. If section I is not completed, the procedure for the execution of the measure is based on Czech law. If necessary, any problems are dealt with through consultation. No major problems have been identified in this respect.

For the hearing of persons, the Czech authorities underlined the importance of taking into consideration, to the extent possible, the rules of both the issuing and executing Member States, which do not necessarily coincide.

Problems have sometimes arisen in relation to house searches. Under Czech law, a house search cannot be carried out before hearing the person affected, as the person should be given an opportunity to voluntarily provide the evidence sought. This takes place on the spot, when presenting the order for the house search. As this is not the case in the national legislation of many other countries, some issuing Member States ask that this procedure be waived. Czech law provides that in urgent and exceptional cases, where there is a clear obstacle or it is obvious that the information is unlikely to be provided voluntarily, the Czech authorities do not have to apply this procedure. It thus depends on the specific case whether this procedure is applied or not.

From the issuing perspective, Czech public prosecutors mentioned several occasions when the lack of compliance with formalities resulted in issues with the admissibility of evidence.

One such issue relates to the hearing of a witness without a defence counsel present and the failure to notify the Czech public prosecutor of the date and place of the hearing so that he or she could forward this information to the defence counsel. Under Czech law, the defence lawyer, has, in principle, the right to be present at any investigative measure.

The defence lawyer must be informed of the date and place of the hearing and must be given the opportunity to attend. If an EIO is issued for the hearing of a defendant, the Czech prosecutor is advised to ask for the Czech lawyer to be present and also to ask for the possibility to ask additional questions, but this is not always respected by the executing authorities. In one case involving 10 witnesses to be heard, the defence lawyer wanted to be present at least at some of the hearings but the exact time of the hearings was not communicated, only the week. The presence of a lawyer in pre-trial proceedings is a vital formality, which is also reflected in the fact that the notification of the defence needs to be registered in the criminal file.

A further issue with formalities relates to the incorrect service of procedural documents. Investigative measures requested in an EIO are often linked to the service of procedural documents. Under Czech law, some documents, such as the decision on the accusation must be served in a verified manner, which is not necessarily the case in other Member States. If such a document is not served in the prescribed manner, all subsequent investigative measures are invalid.

These and other examples given during the evaluation visit confirmed that foreign authorities are not always keen to apply such 'formalities'. In addition, executing authorities seem to interpret the 'fundamental principles of their law' very broadly in order to refuse the execution of EIOs: they do not only refuse to apply formalities in the case of issues affecting their constitutional law, but also in cases in which their law is simply different. This is quite problematic and seems to go beyond what is allowed under Article 9(2) of the Directive.

The expert team would therefore remind all executing authorities to respect the formalities indicated by the issuing authority and narrowly interpret the basic fundamental principles of law (see *Recommendation No 10* and Chapter 12).

As regards the admissibility of evidence, the Czech authorities mentioned that so far there have only been a few Czech judgments addressing this issue. In one case (related to the MLA regime, not the EIO), the Czech court judged the evidence to be inadmissible as the lawyer had not been present during the hearing. In another case, the conclusion was also inadmissibility, due to the fact that only police authorities were present during the execution of an investigative measure and not judicial authorities (as requested).

In another case, the executing authority, when executing a Czech EIO, had not complied with a Czech formality according to which a document had to be signed on each page. In this case, the Czech Constitutional Court[18] upheld the admissibility of the evidence stating that the document had been signed in conformity with the law of the executing State. The non-compliance with that Czech formality did not affect the admissibility of the evidence.

9.1. The underlying judicial order

The Czech authorities consider the silence of the Directive on the underlying judicial order to be a weak point. Czech prosecutors are of the opinion that if the EIO contains all the necessary information, the underlying judicial decision is not needed and a reference to it is sufficient. However, judges welcome the attachment of the underlying judicial decision to the EIO. It was explained during the visit that if the decision is sent, a translation is usually attached, which no doubt has an impact on the speed of the cooperation.

[18] See resolution of 29.4.2004, file no III. ÚS 59/04 (U 26/33 SbNU 479).

If there is absolutely no reference to the judicial order in the EIO, the Czech executing authorities request additional information. If the issuing authority confirms, for instance, that the court has not issued an order, but merely stated its decision about the investigative measure in the record of the court session, the Czech executing authorities are, on a case-by-case basis, willing to accept the prosecutor's confirmation, including the date and file number of the court order.

In any case, if the court decides that the investigative measure is in accordance with the CCP, the Czech judge (or the prosecutor, in the case of pre-trial proceedings) issues their own judicial order. However, in practice this solution is not often used. A simple reference to the judicial order would be sufficient for some Member States, but for others it would bear no relevance.

Members States' practice also seems to vary in this respect. In the light of the above, the evaluation team would invite the Commission to provide for a handbook at EU level, which – amongst other practical challenges in the application of the Directive – should touch upon the necessity of the underlying judicial order (see *Recommendation No 16*).

10. RULE OF SPECIALITY

The rule of speciality is regulated in Section 7[19] IJCCM. The Czech authorities consider that the rule of speciality is in accordance with Article 19(3) of the Directive.

The rule of speciality is necessary, for example, because under the CCP not all evidence can be used in another criminal case.

[19] (1) Authorities of the Czech Republic will not use, without the previous consent of the foreign authority, information or evidence acquired within the framework of international judicial cooperation for purposes other than for which they were provided, if they are so obliged according to a promulgated international treaty binding the Czech Republic, or if the information or evidence was provided under the condition of observing these restrictions. This also applies for provision thereof to a third state or an international organisation.
(2) In order to use information or evidence provided to a foreign state for a purpose other than for which it was provided, the explicit consent of the judicial or central authority which provided the information or evidence will be necessary, unless an international treaty stipulates otherwise.

When it comes to assessing what falls under ‘another criminal case’, under Czech law and national case law it is essential that the factual elements of a criminal act remain the same. In Czechia, the assessment of the nature of the criminal act is very flexible. Criminal acts are considered identical if at least the acts, their consequences or fundamental parts of both are the same – the legal classification plays no role in this context. Therefore, as long as the nature of the criminal act is the same, there is no need to ask for consent. Such consent would only be requested if, in the course of the criminal proceedings, the proceedings are extended to cover entirely new facts.

Pursuant to Section 7(1) IJCCM, the Czech issuing authority will ask the foreign state to consent to the use of evidence in other proceedings if they are bound by an international treaty or if the authority of the foreign state providing the evidence so requests. The evaluation team understands that this provision makes the need to comply with the rule of speciality conditional on either an international treaty so providing or on an explicit provision of the executing/requested authority that consent must be given if the evidence provided is to be used in another criminal case.

It seems that in the absence of an applicable international treaty regulating this issue and if a foreign executing authority has not indicated anything in this respect, Czech authorities could use the evidence for other criminal proceedings without requesting consent. During the evaluation visit, Czech authorities explained that, in principle, Czech authorities always request consent to use evidence in other criminal proceedings. A model request is available to public prosecutors on the PPO’s extranet.

Pursuant to Section 7(2) IJCCM, the Czech executing authority is obliged to notify the issuing authority that the use of the evidence for a purpose other than that for which it was provided requires the express consent of the Czech executing authority. As executing authority, Czechia thus always explicitly mentions the requirement for the issuing authority to comply with the speciality rule when sending them the evidence.

Under Czech law, anything that can contribute to the clarification of the case may serve as evidence in a criminal case, provided that the evidence in question was lawfully obtained. Consequently, it is generally possible to use evidence obtained in one criminal case in another, unrelated, criminal case.

However, for evidence gathered through particularly intrusive measures (such as interception, bugging carried out in a private home, the use of an agent, banking information, etc.), the CCP lays down certain conditions for the evidence to be used in another criminal case. This condition is usually that the other criminal case involves an equally serious offence, ensuring that the conditions for authorising these investigative measures are not circumvented.

The law sets the strictest conditions for banking information. It cannot be used in another criminal case and must always be requested again for other criminal proceedings. The Supreme Court has also dealt with this issue in two recent resolutions[20].

When deciding whether to consent to the use of evidence already provided in another criminal case, the executing authority must always take into account – in addition to the condition laid down by the law – the principle of proportionality and the seriousness of the offence in this other criminal case (as some evidence can only be used in another criminal case if it relates to an equally serious offence), or it may be necessary to check whether the accused person is being prosecuted for the same offence in Czechia.

Czech executing authorities also mentioned cases where they had needed to use the evidence obtained through the execution of the EIO in domestic criminal proceedings. In those cases, consent had been requested from the issuing authority. There was only one case in the last five years where a new domestic investigation had to be opened based on a coincidental discovery through the execution of a foreign EIO. In that case, the opening of a new investigation was communicated to the issuing authority at police level.

[20] Resolutions of the Supreme Court No 8 Tdo 647/2020 of 25.8.2020 and No 7 Tdo 865/2020 of 1.9.2020.

The evaluation team notes that there are different interpretations among Member States regarding the applicability of the speciality rule to the EIO and regarding the scenarios it applies to, which are also linked to questions of legality, opportunity and confidentiality. There are several situations where the rule of speciality could potentially be applicable or give rise to differing interpretations.

Considering that these issues are not specific to Czechia, the evaluation team would invite the EU legislator to clarify the applicability of the rule of speciality in the context of the EIO and its interplay with data protection principles (see *Recommendation No 14*).

11. CONFIDENTIALITY

As executing Member State, Czech practitioners have not encountered any problems, as the CCP allows for the confidentiality of all measures carried out as part of criminal proceedings. Pursuant to section 65(1) CCP, the accused, victims, persons participating in the proceedings, their defence counsels and agents have the right to inspect the files[21], to make extracts and notes therefrom and to make copies of the files and parts thereof at their own expense[22].

Other persons may do so with the consent of the presiding judge and, in pre-trial proceedings, with the consent of the public prosecutor or the police authority, only if this is necessary for the exercise of their rights.

However, pursuant to Section 65(2) CCP, in pre-trial proceedings, the public prosecutor or police authority may deny the right to inspect the files and the other rights referred to in Section 65(1) CCP for serious reasons – without giving the reasons. These rights cannot be denied to the accused and defence counsel after the conclusion of the pre-trial proceedings, when they are notified of the opportunity to inspect the file, i.e. the right to inspect the file cannot be denied before the indictment is filed with the court or while negotiating an agreement on sentencing.

[21] With the exception of the voting record and the personal data of a witness whose identity is kept secret pursuant to Section 55(2) CCP.

[22] 'The same right shall be granted to the legal representative or guardian of the accused, the victim or the person participating in the proceedings, if those persons are not fully capable of exercising their legal capacity or if their legal capacity is limited'.

During the evaluation visit, Czech practitioners noted that the matter of confidentiality has several dimensions. One aspect is the confidentiality of the information shared during coordination meetings at Eurojust. Here, Czech practitioners are advised to always enquire at the start of the meeting whether a record will be made and whether there is an obligation to disclose it to the defence, and if so, at what stage of the proceedings. A specific problem is also the requirement of some Member States to issue certain decisions as classified documents. These matters should be carefully considered as they might hinder the exchange of information and thereby effective cooperation.

12. GROUNDS FOR NON-EXECUTION

The vast majority of EIOs issued by Czech authorities are executed. Most often, the issuing authorities encountered a refusal on the grounds that the conduct in question was not a criminal offence in the executing Member State (Article 11(1)(g) of the Directive) or that the use of the investigative measure requested in the EIO is limited in the executing Member State to certain categories of criminal offences which do not cover the offence in question (Article 11(1)(h) of the Directive). For example, the Czech authorities encountered a case where a DNA sample was not taken from a witness because that measure could not be carried out in a similar domestic case.

Several cases were mentioned where an EIO issued by the Czech authorities was not executed as the executing State took the view that execution would be contrary to the fundamental principles of the law. The cases were as follows:

- the hearing of a defendant by videoconference at the trial stage was refused;
- the hearing of the accused in the presence of a Czech lawyer was refused;
- a financial enquiry into family members in the search for the proceeds of the accused person's criminal activity was refused on the grounds that it is not possible to provide such data on persons who are not suspects;
- the hearing of a witness was refused on the grounds that he might be a suspect, even though guarantees had been given (including under constitutional provisions) not to use the testimony as evidence if the person was subsequently actually accused.

The evaluation team notes that some of these examples again reflect the difficulties of some Member States in complying with formalities requested by the issuing State and a possibly too broad interpretation of the concept of the fundamental principles of the law of the executing State (see Chapter 9 and *Recommendation No 10*).

In relation to the last example, the evaluation team believes that under the mutual recognition principle the issuing authority, rather than the executing authority, should have the final word on the status of the person subject to criminal proceedings in the issuing Member State in accordance with their law.

Furthermore, public prosecutors repeatedly encountered cases with a few Member States where the execution of an EIO concerning the written statement of a witness (which is possible under Section 8(1) CCP) was refused. The reasoning from the executing Member States was that such investigative measure was unknown and that it circumvented the provisions on the hearing of witnesses.

The executing authorities advised the Czech authorities to request an ordinary hearing, or they unilaterally chose this form of executing the EIO. It should be noted that this investigative measure is only used in large criminal cases involving dozens or even thousands of victims or witnesses, usually at the beginning of the criminal proceedings before charges are brought against a particular person. The persons concerned are duly heard as witnesses at a later stage, after they have been charged, when the defence counsel then has the right to attend their hearings.

The evaluation team took note of this example and questioned whether, in light of the Directive, the executing authorities were entitled to refuse the execution of such a measure based on the argument that this investigative measure was unknown to them (Article 10(1)(a) of the Directive). Article 10(2)(d) of the Directive clearly states that Article 10(1)(a) cannot be invoked for non-coercive measures and, in the view of the evaluation team, a written statement of a witness would seem to fall under the category of non-coercive measures.

The Czech authorities also mentioned cases in which the authorities of another Member State refused to hear the accused in a situation where the latter had previously announced through his defence counsel that he would not give any statement. The request to bring the accused to the hearing was refused on grounds pertaining to disproportionate interference with his rights. Similarly, in cases of minor criminal activity, witnesses were not heard on the grounds that the witness could not be compelled to testify. These problems are generally resolved through communication between EJN contact points or within Eurojust.

The vast majority of incoming EIOs are executed in Czechia. The most common ground for refusal is the absence of dual criminality. Other grounds include cases where the authorities have requested evidence which is not recognised by the Czech legal system or the investigative measure would not be available under Czech law in a similar domestic case. Finally, in some cases the EIO could not be executed due to mere factual grounds when the requested evidence was not available (e.g. the witness's location could not be traced in Czechia).

In accordance with Sections 362(3) and 365(3) IJCCM, the Czech executing authorities are obliged to consult the issuing authority if there are issues which could lead to the refusal of an EIO. The evaluation team discussed this with the Czech authorities and concluded that the underlying consultation mechanism set out in Article 11(4) of the Directive is very important.

The scope of this mandatory consultation could be extended by including grounds for non-recognition related to dual criminality (which is not currently covered by Article 11(4)). After all, based on the evaluation visits, dual criminality seems to be one of the most frequently invoked refusal grounds and the consultation mechanism could clarify the criminal conduct and possibly lead to the conclusion that the dual criminality requirement was satisfied.

13. TIME LIMITS

The experience of issuing authorities shows that in about 34 % of cases the time limits are not complied with and/or no information on the delay is provided. In rare cases, the executing authority has neither respected the time limit, nor communicated or responded to reminders.

Issuing authorities most often set time limits in urgent cases such as custody cases, or when they fear the potential loss of evidence or its evidentiary value, or when there is a need to execute the EIO before the date of the trial. To a lesser extent, urgency is assessed according to the importance of the EIO for the criminal proceedings, the seriousness of the case, the risk of the expiration of a limitation period or the protection of victims. Where possible, executing authorities of other Member States will accommodate requests for the urgent execution of an EIO or for execution within a specified time limit.

In the opinion of the expert team, Member States should comply with time limits and if that is not possible, they should inform the issuing authority, stating reasons (see *Recommendation No 11*).

Time limits are usually respected by the Czech executing authorities, except in exceptional cases where it is not possible (e.g. due to the scope of the requested measures, a search for persons, etc.). In such cases, the issuing authority is duly informed.

Executing authorities most often have to deal with urgent requests in custody cases or in cases where evidence is at risk of being lost. With reference to the principle of mutual trust, they also assess urgency according to whether the issuing authority identifies the EIO as urgent.

Only two cases were mentioned where the execution of the EIO had to be postponed: in one case it was decided that a JIT should be established; in another case, the execution of the EIO would have affected a domestic case and therefore it was postponed.

14. LEGAL REMEDIES

The IJCCM does not provide for a specific legal remedy against the issuance of an EIO. Nevertheless, Czech law still meets the requirements of the judgment in Case C-852/19 *Gavanozov II* before the CJEU, which provides for a legal remedy against the issuance of an EIO by way of a constitutional complaint. In addition, if an EIO is issued during the investigation, before filing a constitutional complaint, it is necessary to first apply for supervision by the superior PPO[23], which the Constitutional Court of Czechia has identified as an effective remedy[24].

The Constitutional Court's backlog has decreased in recent years, and consequently a constitutional complaint takes two to three months to be processed. There is no suspensive effect to the execution of the EIO or the transmission of the evidence, but the Constitutional Court can order a preventive measure. The decision of the Constitutional Court is binding. Should the Constitutional Court render the EIO invalid, the issuing State would be informed that under Czech law, the evidence is to be considered inadmissible. However, to date there is no relevant jurisprudence.

During the evaluation visit, it was clarified that, when issuing EIOs, the Czech authorities are encouraged to fill in section J with general information on this system of legal remedies to anticipate any follow-up questions in this regard in light of the *Gavanozov II* judgment. Regarding the available legal remedies in other Member States, Czech practitioners mentioned that they prefer not to delay proceedings by asking for additional information from the issuing Member States. Instead, they consult the compilation of the EJN and Eurojust on the legal remedies, which is available on the PPO's extranet.

[23] Section 12d of Act No 283/1993 Coll., on the Public Prosecutor's Office, as amended.
[24] See the Constitutional Court's judgment of 2 March 2015, file no I. ÚS 1565/14.

15. OBLIGATION TO INFORM

The Czech issuing authorities are often confronted with the fact that the executing authorities have failed to send Annex B. Some courts indicated that Annex B is rarely sent. In such cases, the Czech authorities contact the executing authority directly or through EJN/Eurojust. The issuing authorities are also reminded to systematically send Annex B (see *Recommendation No 12*).

The Czech executing authorities stated that they always send Annex B.

16. COSTS

In the opinion of the Czech authorities, it is very difficult to set a fixed threshold at which costs could be considered exceptionally high; costs are assessed on a case-by-case basis. Any exceptionally high costs would have to be outside the normal range of costs and would have to be 'special' and not provided for in the context of criminal proceedings. The approach of the Member State in question towards EIOs issued by Czech authorities in similar cases would probably be taken into account, if there is previous experience.

As executing Member State, Czechia has never delayed the execution of an EIO due to extraordinary costs. In one case, a Member State requested the seizure of a huge number of accounting documents and asked for delivery via DHL. After consultations, the issuing Member State sent two investigators to Czechia to look at the documents in person. Often liaison officers are used to transfer evidence in order to avoid high costs.

Czech practitioners have not encountered any difficulties in consulting foreign authorities on whether and how the costs related to the execution of an EIO could be shared or how the EIO could be modified. Only one case was reported where the execution of an EIO issued by the Czech authorities was delayed for approximately two months due to a consultation regarding the costs of execution.

17. COORDINATION

The Czech authorities only encountered difficulties with parallel or linked proceedings with several Member States involved. Coordination of the procedure is always handled in cooperation with Eurojust or the EJN contact points.

Since, unlike MLA, the EIO does not cover all investigative measures, other Union instruments for judicial cooperation in criminal matters have to be applied in parallel. Typically, this applies to cases where banking information or other evidence is requested, and at the same time, there is a request to seize the funds on the account, for which there must be a freezing order under the abovementioned Regulation. This may be the case where the issuing authority issues both an EIO requesting a search of premises and the seizure of evidence and at the same time issues a freezing order, as it assumes that the proceeds of crime will be seized during the search, or where the court of the issuing Member State issues an EAW together with an EIO, if it can be assumed that the search will lead to the arrest of the suspect.

18. SPECIFIC INVESTIGATIVE MEASURES

18.1. Temporary transfer

Temporary transfer is used only in exceptional cases; the hearing of witnesses by videoconference is the preferred method. This measure always involves previous consultation for the arrangements, since the matter of detention and other special rules also have to be agreed upon.

As issuing authority, Czech practitioners have not encountered any problems in ensuring that the person is held in custody during the temporary transfer. If the person is to be temporarily transferred to the territory of Czechia, the executing Member State ascertains the person’s position on the temporary transfer upon receipt of the EIO. If the person is to be temporarily transferred from territory of Czechia, consent is given in the proceedings before the court pursuant to Section 382(3) in conjunction with Section 70(5) IJCCM after the service of the EIO.

In practice, it would be possible to find out the preliminary position of the temporarily transferred person through the competent authorities of the prison where the person is serving his or her sentence. Should it be established at this stage that the person concerned does not agree with his or her temporary transfer, this information may be relevant for the competent judicial authority when considering whether to issue an EIO.

Even if the temporary transfer is authorised, since in accordance with Section 382(1) IJCCM and Article 22(2)(a) of the Directive the lack of consent of the person affected is only an optional ground for non-execution, the person would probably exercise his or her right to remain silent and in such a case it would therefore probably not be appropriate to issue an EIO.

18.2. Hearing by videoconference

Under section 52a CCP, technical equipment for video and audio transmission (‘videoconference equipment’) can be used to carry out investigative measures, if relevant and technically possible, to protect the rights of persons, in particular in view of their age or health, or if required by security or other serious reasons (always taking into account the circumstances of the case, e.g. where procedural time limits are short).

Consequently, it is possible to hear the witness, victim, suspect or accused by means of videoconference, provided that the accused person’s right to a fair trial, including any individual rights which constitute the right to a fair trial, is preserved.

Sections 383(1)(a) and 384(1) IJCCM respectively regulate the use of an EIO for the purpose of arranging a hearing by videoconference of a suspect, accused person, witness or expert. Czech practitioners have not encountered any major issues in relation to the status of the person to be heard, or a case where provisional guarantees had to be applied, either as issuing or executing authorities.

Where EIOs are issued for the purpose of hearing a witness, any problems can generally be solved through consultation.

Czech public prosecutors mentioned one case where another Member State refused to hear the accused by videoconference on the grounds that it would be contrary to the fundamental principles of the executing Member State. In the end, the videoconference did not take place. There have been more such refusals when EIOs have been issued during the trial phase. Since the Czech authorities know which Member States are likely to refuse the execution of such EIOs, the courts do not even issue the EIO in many cases.

There was also one case when the executing authorities refused to ensure the presence of the defendant during the entire main trial via videoconference, which is not provided for by Article 24 of the Directive, although the approach of the Czech courts as executing judicial authority may differ in this respect. The CCP contains provisions whereby the accused and other persons may not only be heard by videoconference (Sections 95(2), 111a and 183a CCP), but their presence at the main trial may also be arranged by videoconference (Section 202 CCP). The same applies to hearing and arranging the presence of such persons at public court sessions (Section 234 CCP).

In one case, compliance with the principles of immediacy and confidentiality were questioned when a defendant was heard in a prison facility in another Member State while the defence lawyer was in the courtroom in Czechia. The doubts were removed by establishing a telephone connection between the defendant and his lawyer via the court's official telephone. The judicial authority of another Member State requested that an EIO be supplemented with a description of a specific procedure ensuring that the consultation with the appointed defence lawyer could be conducted in such a way as to preserve confidentiality and avoid the presence of a third party who could overhear the content of the consultation.

The Czech authorities do not support the practice of judicial authorities of other Member States who circumvent the executing judicial authorities of Czechia and conduct investigative measures on its territory by directly contacting witnesses on Czech territory via WhatsApp or another application without an EIO and thus without involving the Czech judicial authorities. This is prohibited by Section 368 in conjunction with Section 51(1) IJCCM, and is not provided for in the Directive. In the opinion of the expert team, this practice should not be continued (see *Recommendation No 13*).

Czech practitioners mentioned their interest in using videoconferences not only for hearings but also for the participation of persons in the main trial and any other public session, even after the final judgment, based on an EIO. This would be particularly appropriate for hearings concerning a conditional release. These proceedings are very short; apart from questioning the convicted person, only a few reports need to be read out. No EIOs with requests for this were executed, even if the person agreed not to attend the trial but to be heard and participate in the public session via videoconference.

Czech practitioners noted that in this sense, the EIO presents a significant limitation in comparison with the MLA system, where the possibilities are much broader. Czech authorities would be interested in broadening the scope of Article 24 of the Directive, subject to the agreement of the issuing and executing authorities.

This matter is also related to the wider questions of whether the EIO applies only to evidence gathering in the strictest sense or also to investigative measures in criminal proceedings in general, what exactly falls under ‘evidence-gathering purposes’, and who should have the final word on this matter.

The representative of the Czech Bar Association stated that videoconferencing should be used more often, as it is clearly a more beneficial way to conduct hearings, instead of surrender or judgments *in absentia*. The CCP acknowledges this method as a means to conduct a hearing, but it is up to the judge to grant this possibility. The reality is that some judges still prefer physical presence.

During the evaluation visit, the Czech authorities and the evaluation team closely observed developments in this area in relation to a referral for a preliminary ruling before the CJEU in joined Cases C-255/23 and C-285/23.

However, on 6 June 2024, the CJEU concluded in these cases that there was no need to rule on the requests for a preliminary ruling as the referring court had not stayed the national proceedings whilst awaiting the CJEU's decision[25]. The expert team agreed with the Czech authorities that this issue should be clarified and would like to invite the Union legislator to address the question of the participation of the accused person at trial or public session via videoconference from another Member State (see *Recommendation No 17*).

No issues were reported with identifying the place where the videoconference should take place. Hearings by videoconference take place either in courthouses, PPOs or on police premises. The availability of technical equipment may be a problem given the increase in the use of videoconferencing in both international and domestic proceedings. In some cases, technical problems have been noted in relation to the incompatibility of videoconferencing equipment and/or insufficient transmission quality. The expert team would therefore invite Czechia to step up its commitment to improve the videoconferencing facilities of both the prosecution services and the courts (see *Recommendation No 3*).

[25] See CJEU, Judgment of 6 June 2024 in Joint Cases C-255/23 and C-285/23, *AVVA and Others (Procès par vidéoconférence en l'absence d'une décision d'enquête européenne*), paragraph 38. In this case, the referring court stated, in Case C-255/23, that it had not, notwithstanding the submission of its request for a preliminary ruling, stayed the proceedings and that it had continued the hearings in which E had participated both in person and remotely by videoconference. With regard to Case C-285/23, the referring court stated that it had not stayed the proceedings either and that it intended to continue the hearings in A's physical presence. Such procedural steps, including, in particular, the examination of the evidence on which the charges against the accused persons are based, are liable to render the questions referred for a preliminary ruling concerning the possibility for the accused persons to participate in the proceedings by videoconference devoid of purpose and relevance to the main proceedings. They are therefore liable to prevent the referring court from complying, in the context of the main proceedings in both cases, with the decisions by which the Court would reply to the references for a preliminary ruling.

18.3. Hearing by telephone conference

Hearings are not generally carried out via telephone conference in Czechia. However, an exception was made in one case because the person who was being heard was immobile in his residence. A Czech police officer was present who identified the person and was present throughout the hearing. The evidence obtained by the hearing of the witness was evaluated by the Appeal Court as inadmissible, as gathering evidence in this manner is not provided for in the CCP. It should be noted that this was not a situation where an EIO was issued.

18.4. Covert investigations

Under Czech law, covert investigation involves two measures:

- fictive transfer, which can be carried out by anyone under the supervision of law enforcement authorities; and

- using an agent, which can only be a member of the police or the General Inspectorate of Security Forces.

As part of a covert investigation, the agent may, in particular, carry out surveillance of persons and items (including so-called bugging) or a fictive transfer without further authorisation and may use various means necessary for the performance of his or her official tasks, provided that he or she does not interfere with the rights of other persons beyond what is strictly necessary.

At present, if the criminal proceedings are being conducted in Czechia and an agent from another Member State performs the measure in Czechia, it is considered a domestic measure, therefore no EIO is required by law.

Some minor complications were encountered when consent was required for a foreign agent to operate in Czechia; this consent was required under Czech law before the amendment to the IJCCM. The judicial authorities of the Member State concerned often did not understand the need for consent when the agent was going to act on Czech territory, in a Czech criminal procedure. Similar misunderstandings occurred in cases where the Czech authorities asked for consent to use a Czech agent in a covert investigation in another Member State using MLA. However, these irregularities were resolved by the amendment to the IJCCM effective from 1 January 2023.

However, serious problems arose in relation to one Member State, where it was impossible to execute an EIO issued for covert investigative measures related to drug offences. Their judicial authorities interpreted the second sentence of Article 29(4) of the Directive[26] to mean that a bilateral international agreement must be concluded in order to carry out this measure. Cooperation with this Member State is also greatly complicated by the fact that the police and the judicial authorities of this country insist that all documents related to these measures remain secret, which, however, in accordance with the relevant bilateral agreement, means that they can only be transmitted through diplomatic channels (i.e. through the two countries' Foreign Affairs ministries).

18.5. Interception of telecommunications

At the time of the evaluation visit in Czechia, there was no common European definition of the interception of telecommunications. The interception of telecommunications is interpreted differently by the Member States. Some Member States have adopted a strict interpretation, whereby the interception of telecommunications only concerns wiretapping, while others have embraced a broader meaning that also covers other surveillance measures (e.g. the bugging of vehicles, GPS tracking or surveillance through Trojan horse-like devices or audio surveillance in private premises).

[26] 'The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the issuing State and the executing State with due regard to their national laws and procedures.'

In Czechia, the interception of telecommunications is regulated in Section 88 CCP exclusively as the interception of telecommunications carried out by public service providers. Other related measures, such as the bugging of a vehicle by means of a hidden listening device that picks up sound in the surrounding space, fall under the 'surveillance of persons and items' (Section 158d CCP), as well as surveillance by means of GPS or other operative means.

The difference between the concept of interception and the concept of surveillance is whether or not the person subject to the measure is transmitting a telecommunication in real time. For the interception of telecommunications, Czech practitioners apply Articles 30 and 31 of the Directive. Czech practitioners consider surveillance measures, such as controlled deliveries or the surveillance of persons and items, including CBS, to be investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time within the meaning of Article 28 of the Directive (see Chapter 5.1).

Where another Member State seeks authorisation for such a measure, it is irrelevant in practice whether it proceeds under Article 28 or Article 30 of the Directive, as both Article 28(1) and Article 30(5) of the Directive provide the same additional grounds for non-execution. In this respect, therefore, the conditions for execution are the same.

Surveillance by means of malicious computer code (malware) is possible in Czechia under Section 158d(2) and (3) CCP; it is considered a form of surveillance which accesses the communications data stored on a server. This investigative measure must be authorised by a court. An EIO issued in another Member State requesting such an investigative measure could in principle be recognised and executed. At the time of the evaluation visit, the CJEU has not yet ruled whether the installation of malware is an 'interception of telecommunications' within the meaning of Article 31 of the Directive[27].

[27] CJEU, Judgment of 30 April 2024 in Case C-670/22 *M.N. (EncroChat).*

As issuing authority, Czech practitioners encountered cases where the execution of the EIO issued during the investigation was refused under Article 30(5) of the Directive. Czech executing authorities assess the authorisation of interception of telecommunications as they would 'in a similar domestic case' in accordance with Section 88 CCP and applicable case law.

Whilst the CJEU's judgment in Case C-670/22 *M.N. (EncroChat)* makes it clear that the installation of malware falls under the 'interception of telecommunications', it is not yet clear whether the same applies to other types of investigative measures such as the bugging of vehicles or GPS tracking.

In the light of the above, the Union legislator is invited to clarify whether the 'interception of telecommunications' under Articles 30 and 31 of the Directive also covers other surveillance measures such as the bugging of vehicles and GPS tracking. If not, consideration should be given to amending the Directive to introduce special provisions regulating such measures, including in cases where no technical assistance is needed from the Member State concerned (notification mechanism) *(see Recommendation No 18).*

18.5.1. The application of Annex C

Annex C has not been used by Czech issuing authorities in the past five years. This probably reflects the fact that Czechia interprets the 'interception of telecommunications' strictly in the sense of the cross-border interception of telecommunications, which is only possible in the vicinity of the border, before the intercepted device is connected to a foreign service provider. Furthermore, the interception of telecommunications from Czechia is no longer technically possible and must be arranged by the authorities of another Member State with the local service provider. The vast majority of cross-border interceptions of telecommunications are therefore carried out on the basis of a prior request.

When Czechia is the executing Member State, the RPPO in Prague has exclusive competence during pre-trial proceedings and is also the only authority that can receive Annex C (Section 393(1) IJCCM).

Article 31(3) of the Directive, which states that the competent authority of the notified Member State 'may' notify the intercepting Member State, has been implemented into Czech law in such a way that a Czech court must take a formal decision on this (Section 393(1) IJCCM). Based on their experience, Czech authorities believe that the following information should be added to Annex C, as it is relevant in making a decision based on Article 31(3) of the Directive:

- a description of the factual elements of the offence;
- the legal classification, including an indication of the upper limit of the sentence;
- a justification for the assumption that the interception may provide relevant facts and information for the criminal proceedings;
- a justification as to why the facts and information cannot be obtained in any other way.

Furthermore, the Czech authorities believe that it would be useful if the technical procedure or the technical means by which the interception is carried out were specified in Annex C. This would then facilitate an assessment of whether it is in fact an interception of telecommunications or another measure (typically the surveillance of persons and items using bugging, to which Annex C cannot be applied).

The evaluation team took note of the suggestions made by the Czech authorities. They believe that the EU legislator might need to further reflect on the exact requirements and scope of the content of Annex C and the assessment to be carried out by the notified authority, particularly in light of the short deadlines (which do not seem to suggest an in-depth assessment) and the CJEU's judgment in Case C-670/22 *M.N. (EncroChat)*[28].

[28] In this judgment, the CJEU underlines, following from the word 'may', the 'discretion' of the notified authority (at paragraph 123), which does not necessarily need to be a judicial authority (at paragraphs 115-117). The CJEU also underlines the protection of the users which extends to the use of the data for the purpose of the criminal prosecution in the notified Member State (at paragraph 124). In other words, at that moment in time, a judicial authority can still make the necessary assessment.

18.5.2. Transmission of the intercept

With regard to Article 30(6)(a) of the Directive, there are both technical and legal aspects to be considered. Czechia has joined the INTLI project, but the technical possibilities of immediate data transmission are still being tested. In practice, the executed interceptions are more likely to be recorded on some medium and continuously transmitted to the issuing Member State according to its requirements.

As far as the legal issues involved are concerned, neither Article 30 of the Directive nor the transposing Czech legislation addresses the question of how the executing Member State is to proceed as regards the review of an ongoing interception. Under Section 88 CCP, the review involves the following obligations:

- the obligation to delete any parts of the interception concerning conversations between the defence counsel and the accused; a report must be made on the deletion of the data and included in the criminal case file;
- the obligation to continuously assess the necessity of the interception;
- the obligation to destroy interception reports three years after the interception has taken place if they do not reveal facts relevant to the criminal proceedings;
- the obligation to inform the intercepted person after the final conclusion of the criminal proceedings.

If the intercepted data were to be transferred immediately, it would be absolutely impossible for the executing State to comply with the statutory requirements laid down by its own law.

However, even when data is transmitted later, the executing State has no realistic possibility to carry out a subsequent review of the interception – particularly if conversations are in the language of the issuing State. Moreover, only the issuing authority knows all the circumstances of the case. Therefore, Czech executing authorities prefer to execute such EIOs on the condition that the issuing authority assumes these review obligations, in accordance with Article 30(5), last sentence, of the Directive.

However, as the discussion at the EJN Plenary Session in Prague on 9-11 November 2022 showed, Member States are not unanimous on whether this obligation can be transferred. Therefore, in the opinion of the Czech authorities, it would be advisable to amend Article 30 of the Directive to specify the possibility of the transfer of the review obligation. The expert team would like to invite the Union legislator to examine the conditions under which it would be possible to provide for the executing State to transfer its duties of subsequent control of the interception to the issuing State, particularly when transmitting telecommunications immediately to the issuing State (see *Recommendation No 19*).

19. STATISTICS

19.1. Statistics provided by Czechia

The Czech authorities were only able to provide statistical data relating to EIOs issued and executed during the investigation. For EIOs handled by the courts, no exact statistics are available. Data is crucial for the evaluation of the use of EIOs in practice, so it is essential to store relevant data in the courts' systems. It will therefore be essential for national legislation to also provide for the collection and subsequent evaluation of relevant court data (*see Recommendation No 4)*.

The numbers presented below concern the EIOs issued and executed by the PPO during the investigation between 1 January 2018 and 31 December 2022, as submitted by the Czech authorities.

PPO	Issued	Refused	Postponed	Received	Refused	Postponed
RPPO ČB	562	2	-	380	-	-
RPPO HK	512	5	-	585	6	-
RPPO Plzeň	631	7	-	861	-	-
RPPO Prague	736	4	-	1667	-	-
RPPO Ústí n.L.	927	4	-	973	-	-
MPPO Prague	1260	22	2	3580	3	1
RPPO Brno	1941	72	14	1436	-	-
RPPO Ostrava	1689	3	1	1757	1	-
HPPO Olomouc	155	-	-	-	-	-
HPPO Prague	120	2	-	33	3	-
In total	**8533**	**121**	**17**	**11272**	**13**	**1**

The below statistics provided by the Czech authorities concern EIOs in relation to certain investigative measures, issued and executed by the PPO during the investigation, for the period 2017-2022:

	Use of agents		**Cross-border surveillance**		**Controlled delivery**	
	Outgoing	**Incoming**	**Outgoing**	**Incoming**	**Outgoing**	**Incoming**
2017	8	5	26	61	-	3
2018	2	10	55	53	-	1
2019	4	6	57	44	-	-
2020	3	3	25	34	-	1
2021	3	3	26	17	-	2
2022	5	4	37	24	-	-
In total	**25**	**31**	**225**	**233**	**-**	**7**

19.2. Statistics provided by Eurojust

In the context of the evaluation visit, Eurojust provided statistics extracted from the Eurojust Case Management System in relation to cases dealt with by Eurojust. It included information on: i) the total number of EIO-related cases at Eurojust; ii) the number of bilateral and multilateral cases involving the Czech National Desk at Eurojust; and iii) the number of EIO-related cases in which the Czech National Desk was either 'requesting' or 'requested'[29].

Based on these statistics, it is interesting to note that, particularly in recent years, the number of bilateral cases involving Czechia is significantly higher than the number of multilateral cases.

EIO All Eurojust	2017	2018	2019	2020	2021	2022	Total
Bilateral cases	51	561	987	1295	1898	2289	**7081**
Multilateral cases	37	231	340	462	418	424	**1912**
Total cases	**88**	**792**	**1327**	**1757**	**2316**	**2713**	**8993**

EIO Czechia	2017	2018	2019	2020	2021	2022	Total
Bilateral cases	0	12	55	79	74	82	**302**
Multilateral cases	2	28	37	49	53	51	**220**
Total cases	**2**	**40**	**92**	**128**	**127**	**133**	**522**

EIO Czechia	2017	2018	2019	2020	2021	2022	Total
Requesting cases	0	11	40	60	60	64	**235**
Requested cases	2	29	52	68	67	69	**287**
Total cases	**2**	**40**	**92**	**128**	**127**	**133**	**522**

[29] 'Requesting' means that a Czech national authority requested that the Czech National Desk open a case at Eurojust vis-a-vis one or more other Member States; 'requested' means that, at the request of its national authority, another National Desk at Eurojust opened a case vis-a-vis the Czech National Desk.

20. TRAINING

Educational events, seminars, training, workshops, courses, conferences, meetings or round tables are organised or co-organised by the Judicial Academy in Kroměříž. These events are primarily intended for the education of judges, public prosecutors and other target groups of judicial personnel – judicial and legal trainees, assistant judges and public prosecutors, judicial candidates, senior judicial officers and senior judicial officers of public prosecutor's offices, employees of the financial administration of courts and public prosecutor's offices, employees of the Ministry of Justice and other employees of the courts.

These training events are not mandatory and serve to further train judicial staff. Joint training activities between representatives of the courts and the prosecution service and the Ministry of Justice provide, through their multidisciplinary nature, not only an opportunity to exchange experiences but also to harmonise approaches to relevant procedures *(see Best practices Nos 14 and 15)*.

In addition to seminars held in 2018 specifically on the EIO, the EIO is included in training on international judicial cooperation.

The Judicial Academy also regularly offers international seminars in this area to Czech judges and prosecutors every year, organised in cooperation with the European Judicial Training Network ('EJTN') and the Academy of European Law ('ERA'). Similarly, language training events organised by the Judicial Academy or in cooperation with the abovementioned institutions often focus on the terminology and concepts of international judicial cooperation, including the EIO.

The lecturers at these training events are mainly experts and expert trainers on international judicial cooperation from the Ministry of Justice, the SPPO, the courts and PPOs at various levels, international institutions, but also, for example, interpreters.

Twice a year, the International Department of the SPPO, in cooperation with the Judicial Academy of Czechia, organises meetings of public prosecutors from RPPOs and HPPOs who specialise in the execution of EIOs and other forms of international cooperation. During these meetings, various topics related to international judicial cooperation are discussed, as well as the case law of the CJEU on the subject and other issues that have arisen in practice.

Public prosecutors working at the International Department of the SPPO give lectures on the EIO in seminars on international judicial cooperation in criminal proceedings for public prosecutors and judges not specialised in this area, i.e. especially for supervising public prosecutors who issue EIOs. Another positive example is the provision of training by judicial cooperation specialists for prosecutors who do not come into contact with EIOs on a regular basis, but nevertheless need to know how they function.

The International Department for Criminal Matters of the Ministry of Justice holds regular meetings of the Internal Network of Judges. This is a meeting of selected judges from district, regional and higher courts whose work includes international judicial cooperation. During these meetings, various topics related to international judicial cooperation are discussed, as well as the case law of the CJEU on the subject and other issues that have arisen in practice.

A representative of the International Department for Criminal Matters of the Ministry of Justice, in cooperation with the Judicial Academy, regularly attends round-table meetings of judges from regional and higher courts who specialise in international judicial cooperation. A prosecutor from the SPPO is also always invited. During these meetings, problems encountered in the application of various elements of international legal assistance are discussed.

The quality of the training events provided by the Judicial Academy is assessed primarily by the participants themselves in the evaluation sheets that they voluntarily fill in and submit (Kirkpatrick's model for evaluating training). They can also send suggestions regarding any area of training provided by the Academy, in order to improve the content quality and benefits of training events that are held regularly. All training events are evaluated very positively by the participants and the Judicial Academy is regularly asked to include them in their training plans.

Similarly, public prosecutors and judges are very positive about all events organised by the International Department of the SPPO and the International Department of the Ministry of Justice. These events are in high demand from practitioners, as they are practically oriented, facilitate meetings and discussions between experts, and provide training and opportunities to seek common solutions and approaches to identified problems in international judicial cooperation.

The area of international judicial cooperation, including the EIO, is regularly and systematically included in the training plans of the Judicial Academy every year.

The application of the Directive as an instrument of mutual recognition in the field of criminal law requires, by its very nature, that judicial authorities in the Member States have some knowledge of the most commonly used EU languages. At the very least, prosecution specialists in the regions should have language skills that provide opportunities for communication in the context of mutual cooperation. It is therefore recommended that language training is provided, especially for these practitioners (see *Recommendation No 5*).

The PPO's extranet is also an important educational tool for public prosecutors, where they can access all knowledge and documents on the EIO (the handbook, templates, EU forms, general information, Eurojust and EJN information, case law, etc.). The extranet of the Ministry of Justice is used in a similar way by the courts. The information available there is regularly updated where necessary.

21. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

21.1. Suggestions by Czechia

The EIO is the most widely used instrument for international judicial cooperation in criminal matters in the EU. In the vast majority of cases, direct cooperation between issuing and executing authorities runs smoothly. However, there are still some conceptual problems that complicate practice.

21.1.1. Obtaining evidence through cross-border surveillance

CBS is not explicitly regulated in the Directive and the significant differences in Member States' practices complicate cooperation – see also the presentation, analysis[30] and conclusions[31] of the EJN Plenary Meeting in Prague on 9-11 November 2023.

From discussions at several meetings organised by the EJN and from information gathered by Eurojust it has been established that if this measure is considered an operative activity, Article 40 CISA is sufficient. However, if the results of the CBS are to be used as evidence, an EIO is required. The Council Recommendation on operational law enforcement cooperation of 24 May 2022[32] also referred to the need to respect the fact that CBS must be authorised by judicial authorities in some Member States. An EJN analysis also confirmed that the vast majority of Member States use the results of CBS as evidence in criminal proceedings, the only difference being the legal base.

[30] Note of the General Secretariat of the Council - Current issues of EIO concerning certain investigative measures of the 59th Plenary Meeting of the European Judicial Network (EJN) (Prague, Prague Congress Centre, 9-11 November 2022), Brussels, 13 December 2022, 15966/22.
[31] Note of the General Secretariat of the Council - Comments and Conclusions of the 59th Plenary Meeting of the European Judicial Network (EJN) (Prague, 9-11 November 2022), Brussels 13 December 2022, 15296/22.
[32] Council Recommendation of 24 May 2022 on operational law enforcement cooperation (Interinstitutional file: 2021/0415 (CNS)).

The applicable multilateral treaties are also dated: the CISA is 33 years old, the Naples II Convention is 25 years old and the Second Additional Protocol to the 2001 European Convention on Mutual Assistance in Criminal Matters is 22 years old. In the meantime, there has been a significant increase of CBS cases due to open borders; the numbers of cases using only technical equipment have also risen; and lastly, there has been more stringent judicial supervision of the activities of police authorities, as seen in the relevant jurisprudence of the CJEU.

In the opinion of the Czech authorities, CBS is an investigative measure to gather evidence in real time that falls under Article 28 of the Directive. There is no difference between CBS in a cross-border and a domestic setting; in both cases fundamental rights are equally affected.

Furthermore, in practice, persons under surveillance change their plans and thus their routes so quickly that sometimes it is not possible to send an EIO requesting authorisation for CBS in advance.

Unfortunately, Article 28 of the Directive is not followed by a provision that provides for an *ex post* notification mechanism similar to that in Article 31 of the Directive. This *ex post* notification is currently possible for Czechia based on bilateral agreements with some neighbouring Member States.

This form of cooperation has proved very useful, and Czech practitioners are not aware of any court ever objecting due to breaches of fundamental rights. The cooperation between police authorities is carried out in real time, with the obligation to always notify each other of a border crossing, and the judicial authorities are obliged to review the conditions for authorising surveillance of persons and items under their law immediately after being notified of the CBS.

This subsequent consent to the use of the recording as evidence in criminal proceedings is less suitable for other measures falling under Article 28 such as controlled deliveries (these deliveries must always be tracked by the police or customs authorities of the State they are entering, as they contain not only illegal but very often also dangerous items such as weapons, explosives, illegal drugs, etc.), or the surveillance of a bank account.

Therefore, Czech authorities consider it preferable to regulate the CBS in a separate Article of the Directive, where the possibility of subsequent consent to (or refusal of) the use of the results as evidence would be explicitly regulated, together with a new Annex, rather than under Article 28.

21.1.2. Bugging

In the view of Czech practitioners, the bugging of vehicles does not constitute an interception of telecommunications because the passengers of the vehicle are talking to each other in person and not through a technical telecommunications device where communication is ensured by a service provider. Therefore, Article 31 of the Directive and Annex C cannot be applied.

Some Member States nevertheless send Annex C; this has become increasingly common in recent years, but Czech practitioners do not agree with this approach.

The CJEU judgment in *Encrochat*[33] concerns the use of malware and it is not clear whether its conclusions regarding the interpretation of the 'interception of telecommunications' in paragraph 111 (the term 'telecommunications' refers, in its ordinary meaning, to all processes for the remote transmission of information) can also be applied to bugging.

Czech practitioners would prefer a solution in which this measure is regulated in a separate Article in the Directive rather than alternative solutions such as striking the word 'telecommunications' from Article 31 of the Directive.

21.1.3. Transfer of the review obligation of the interception

An EIO is executed in accordance with the law of the executing State. The law of many Member States (including Czechia) includes an obligation to control or review the interception after its authorisation. The scope of such a review may differ but it could include:

- the obligation to constantly evaluate the necessity of the measure;
- the obligation to delete parts relating to communication between the accused and his or her defence lawyer (or cases involving professional secrecy).

[33] CJEU judgment of 30 April 2024 in Case C-670/22 *M. N. (EncroChat)*.

This review of the interception should not be neglected in international cooperation as it affects the protection of human rights.

In accordance with Article 30(5), second sentence, of the Directive ('the executing State may make its consent subject to any conditions which would be observed in a similar domestic case'), consideration should be given to whether the executing State can transfer the obligation to review the intercepted telecommunication to the issuing State and set such a condition in accordance with Article 30(5) of the Directive. If not, this issue should be explicitly addressed in the Directive.

21.1.4. Videoconference

Neither Article 24 nor Article 25 of the Directive covers the possibility for the accused to participate in the entire main trial or public session of the court by videoconference. In future, the Directive should make it possible for the defendant to attend the entire trial by videoconference, subject to the agreement of the issuing and executing authorities.

Hearings by videoconference appear to be both desirable and effective, in particular with regard to respect for the principle of proportionality. A good example is a hearing held to decide on the conditional release of a sentenced person, as these cases involve very short public sessions.

This possibility was the subject of a preliminary question submitted by Latvia on 3 May 2023 as part of Case C-285/23 *Linte*[34]. There are already a number of decisions of the European Court of Human Rights concerning Article 6(3) point c)[35] of the European Convention on Human Rights ('ECHR'), which clearly establish that attendance at the main trial by videoconference does not contradict the ECHR if it serves a legitimate aim and the arrangements for giving evidence are compatible with the requirements of respect for due process[36].

[34] See Judgment CJEU of 06/06/2024 in Case C-255/23 (Joined Cases C-255/23, C-285/23) *AVVA and Others* (*Procès par vidéoconférence en l'absence d'une decision d'enquête européenne*). See also, more recently, pending case C-325/24.

[35] Article 6(3): 'Everyone charged with a criminal offence has the following minimum rights: c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.'

[36] Marcello Viola v Italy, 5 October 2006, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-77246%22]}
Sakhnovskiy v Russia, 2 November 2010, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-101568%22]}
Boyets v Ukraine, 30 January 2018, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-180492%22]}
Dijkhuizen v the Netherlands, 9 June 2021, https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-210486%22]}

21.1.5. Consent to the use of information obtained through police cooperation

Article 1(4) of Council Framework Decision 2006/960/JHA (recently replaced by Article 1(4) of Directive (EU) 2023/977 on the exchange of information between law enforcement authorities of the Member States[37]) provides that the judicial authorities of the State which has transferred information at police level may give consent to the use of that information as evidence in criminal proceedings.

Recital 14 of Directive (EU) 2023/977 allows the State that has provided the information to give consent to the use of this information as evidence in judicial proceedings using the applicable instruments of judicial cooperation between Member States.

The possibility for such consent is regulated in Section 20 IJCCM. As the EJN's abovementioned 2022 analysis shows, not all Member States have provided for such consent in their national legislation.

This form of cooperation is absolutely necessary to preserve evidence. For example, recordings from video cameras placed in public places must be deleted after about a week in order to comply with statutory EU data protection regulations, but police authorities may share these recordings as operative information. However, if the Member State that has shared them does not need them for its criminal proceedings, it is obliged to delete them. If the Member State that received the recordings evaluates them over the course of the next month and initiates criminal proceedings where the recordings are to be used as evidence, it cannot request the recording again through the EIO, as the evidence no longer exists in the originating Member State because it has been deleted for data protection reasons.

[37] Directive (EU) 2023/977 of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States, OJ L 134, 22.5.2023, p. 1.

A future reform of the Directive should therefore take into account Directive (EU) 2023/977 and should explicitly provide for the possibility of providing consent for information shared between the police authorities of the Member States to be used as evidence in criminal proceedings. A new form should be linked to this provision, just as Annex C is linked to Article 31 of the Directive. Reference is made to the conclusions of the EJN Plenary Meeting in Prague in 2022.

21.1.6. Possibility for a court to validate an EIO issued by a public prosecutor in pre-trial proceedings

The implementation of the HP judgment should respect the legal traditions of the Member States. In Member States (such as Czechia) that do not have investigating judges, it is for the police authority and the supervising prosecutor to decide what evidence should be collected in the pre-trial proceedings. Courts in these Member States only authorise or order the more intrusive investigative measures during the investigation at the request of the supervising prosecutor.

Therefore, in the experience of Czech practitioners, Member States that do not have investigating judges either attach the underlying judicial order or simply refer to it in the EIO.

These options are familiar to Member States from MLA requests for interception under Article 18(3)(b) of the 2000 MLA Convention[38]. In addition to the discussion of the extent to which these options meet the requirements of the above CJEU judgment, these options raise several problems.

In some Member States, national court decisions are issued as classified documents, which prevents direct contact; this situation will not be resolved with e-EDES.

A simple reference to the underlying judgement is merely a statement made by the prosecutor. Following the principle of mutual trust, this should be sufficient, but it is questionable whether it is really sufficient in terms of the requirements of the HP judgment.

[38] '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:
(b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation.'

A third option - also used by Czechia – is for the court to validate the EIO issued by the prosecutor in relation to the investigative measures subject to judicial authorisation in pre-trial proceedings in Czechia. The court will only issue a national decision to authorise such an investigative measure if part of the investigative measure is to be carried out in Czechia. If the investigative measure (typically a home search) is to be carried out only in another Member State, the court does not issue a national decision but only validates the EIO issued by the prosecutor in respect of that investigative measure.

Although the Directive itself does not envisage such a validation mechanism, this possibility is implied by the CJEU decisions related to the EAW[39]. In these decisions, the CJEU stated that if the court validates the prosecutor's decision, it takes responsibility for it and it is as if it had issued it itself.

This last option seems to meet the requirements set out in the HP judgment, as it is a decision of the court and there is no further national decision on the investigative measure (unless the investigative measure is to be executed partially in the territory of the issuing State) which saves time and money and further increases the likelihood that the issuing authority will avoid the classified information regime.

The CJEU is expected to further clarify this issue in pending Case C-635/23.

21.1.7. Extension of the scope of the Directive

In future, the Directive should explicitly allow for investigative measures which are not strictly for evidentiary purposes, e.g. the service of procedural documents, transmission of spontaneous information, etc., using simplified forms.

[39] Case C-489/19 PPU, NJ (*Parquet de Vienne*), Judgment of 9 October 2019 or Case C-453/16 PPU, *Halil Ibrahim Özcelik*, Judgment of 10. 11. 2016.

21.1.8. Amendment of Annex A

Annex A should include a section for the identification of Annexes. In the view of the Czech authorities, this would make the form clearer and lead to faster and more efficient processing. Section H5 should also be explicitly extended to request data from telecommunications.

21.1.9. e-Evidence Digital Exchange System

In general, Czech practitioners welcome the development of the e-EDES portal for the secure electronic transmission of EIOs. However, this system should have practical benefits for the users and not create an additional administrative burden for judicial authorities.

21.1.10. The EJN Atlas and website

All Member States should provide and update all necessary information regarding their competent authorities and other information necessary for the proper execution of an EIO in a proper, regular and timely manner. Czech practitioners are also of the opinion that translating (at least) the list of measures in the EJN Atlas into national languages would considerably facilitate the work of practitioners.

21.2. Recommendations

Regarding the practical implementation and operation of the Directive, the team of experts involved in the assessment in Czechia was able to review the system to their satisfaction.

The evaluation team saw fit to make several suggestions for the attention of the Czech authorities. Furthermore, based on the various examples of good practice, related recommendations are being put forward to the EU, its institutions and agencies, and to Eurojust in particular, as well as to the EJN. Czechia should conduct an 18-month follow-up to the recommendations referred to below after this report has been agreed by COPEN.

21.2.1. Recommendations for Czechia

Recommendation No 1: Czechia is invited to indicate another language which is commonly used in the Union in its declaration concerning the language regime, in addition to its official language (see Chapter 6.2).

Recommendation No 2: Czechia should further advance digitalisation, particularly with a view to establishing links with e-EDES (see Chapter 8.2).

Recommendation No 3: Czechia should step up its commitment to improve the videoconferencing facilities of the prosecution services and the courts (see Chapter 18.2).

Recommendation No 4: Czechia should collect statistical data on the application of the EIO from the courts (see Chapter 19.1).

Recommendation No 5: Czechia should provide more language training to facilitate direct contact, especially for specialised prosecutors (see Chapter 20).

21.2.2. Recommendations for the other Member States

Recommendation No 6: Member States' issuing authorities should respect the scope of the EIO (see Chapter 5.1).

Recommendation No 7: In accordance with recital 14 of the Directive, Member States are invited to indicate another language which is commonly used in the Union in their declaration concerning the language regime, in addition to their official language (see Chapter 6.2).

Recommendation No 8: Member States should speed up the process of joining e-EDES (see Chapter 8.2).

Recommendation No 9: Member States' authorities should carefully reflect on the classification of documents in the field of cross-border cooperation (see Chapter 8.2).

Recommendation No 10: executing authorities should respect the formalities indicated by the issuing authority and should narrowly interpret the basic fundamental principles of law (see Chapters 9.2 and 12).

Recommendation No 11: executing authorities should comply with time limits and, if this not possible, inform the issuing authority, stating reasons (see Chapter 13).

Recommendation No 12: executing authorities should systematically send Annex B (see Chapter 15).

Recommendation No 13: Member States should refrain from directly hearing witnesses in another Member State without issuing an EIO (see Chapter 18.2).

21.2.3. Recommendations for the European Union and its institutions

Recommendation No 14: the Union legislator is encouraged to amend the Directive by:

- providing a possibility for consent to use information already transferred between law enforcement authorities or by way of spontaneous information exchange as evidence in judicial criminal proceedings (see Chapter 5.1);
- including CBS in the Directive (see Chapter 5.2);
- amending Annex A (see Chapter 6.1);
- clarifying the applicability of the rule of speciality in the context of the EIO and its interplay with data protection principles (see Chapter 10);

Recommendation No 15: the Commission is invited to address the issues with e-EDES that have already been identified (see Chapter 8.2).

Recommendation No 16: the Commission is invited to provide for a handbook at EU level which would give guidance on the practical challenges in the application of the Directive (see Chapter 9.1).

Recommendation No 17: the Union legislator is invited to revisit the question of the attendance of the accused person at the trial and public sessions of the court via videoconference from another Member State (see Chapter 18.2).

Recommendation No 18: the Union legislator is invited to clarify whether the 'interception of telecommunications' under Articles 30 and 31 also covers other surveillance measures such as the bugging of vehicles and GPS tracking. If not, consideration should be given to amending the Directive to introduce special provisions regulating such measures, including in cases where no technical assistance is needed from the Member State concerned (notification mechanism) (see Chapter 18.5).

Recommendation No 19: The Union legislator is invited to examine the conditions under which it would be possible to allow the executing State to transfer to the issuing State its duties to subsequently review the interception, particularly when telecommunications are transmitted immediately to the issuing State (see Chapter 18.5.2).

21.2.4. Recommendations for the EJN

Recommendation No 20: the EJN is invited to translate the measures in the EJN Atlas (see Chapter 8.1).

21.3. Best practices

This section will include a list of best practices to be adopted by other Member States.

Czechia is commended for:

1. having one legislative act incorporating all relevant rules on judicial cooperation in criminal matters (see Chapter 3);
2. the general instruction issued by the SPPO, ensuring a uniform application of the Directive (see Chapter 3);
3. the comprehensive, multidisciplinary discussions on the application of the EIO (see Chapter 3);
4. the specialisation of executing authorities in specific investigative measures (Chapter 4.2);
5. the execution of an EIO by the competent PPO or court even beyond their local jurisdiction, if the matter cannot be delayed or if there is another important reason provided (see Chapter 4.2);

6. the principle of concentration (see Chapter 4.3);
7. the establishment of international cooperation specialists (see Chapter 4.3);
8. handling incoming EIOs outside the scope of the Directive as MLA requests, if possible (see Chapter 5.1);
9. the provisions concerning technical surveillance with *ex post* notification in the bilateral treaties with neighbouring Member States (see Chapter 5.2);
10. the special law on translators and language experts, which enhances the professionalism of translators and the accuracy of translations (see Chapter 6.2);
11. taking organisational measures prior to the receipt of the EIO on the basis of a request communicated via telephone (see Chapter 6.2);
12. the thorough proportionality and necessity check carried out by Czech issuing authorities (see Chapter 7);
13. the use of an application to search by postcode not only in Czechia but also in some other Member States (see Chapter 8.1);
14. the training available, including for court and PPO staff on the subject of the EIO (see Chapter 20);
15. joint and regular training for public prosecutors and judges not specialised in the area of international judicial cooperation (see Chapter 20).

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

5 December 2023 – 7 December 2023 - Ministry of Justice (Vyšehradská 16, Praha 2)

05 December 2023	
9:30 – 9:45	Welcome – introductions
9:45 – 10:30	Presentation - judicial cooperation in criminal matters in relation to the EIO – preliminary proceedings/investigation
10:30 – 10:45	Coffee break
10:45 – 12:00	Discussion – meeting with prosecutors
12:00 – 13:15	Lunch
13:15 – 14:45	Discussion – meeting with prosecutors - continuation
14:45 – 15:00	Coffee break
15:00 – 16:00	Discussion – meeting with prosecutors - continuation
16:00 – 16:30	Conclusion of the first day
19:30	Dinner

06 December 2023	
9:30 – 10:30	Discussion – meeting with prosecutors
10:30 – 10:45	Coffee break
10:45 – 12:00	Discussion – meeting with prosecutors - continuation
12:00 – 13:00	Lunch
13:00 – 15:15	Discussion – meeting with prosecutors and judges
15:15 – 15:30	Presentation of the extranets of the Ministry of Justice and the PPO
15:30– 15:45	Coffee break
15:45 – 16:30	Discussion - meeting with representatives of the Czech Bar Association

07 December 2023	
9:30 – 10:30	Wrap-up meeting
10:30 – 10:45	Coffee break
10:45 – 11:30	Final remarks and conclusions

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

Acronyms and abbreviations	Full term
2000 MLA Convention	Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted in 2000
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
CBS	cross-border surveillance
CCP	Code of Criminal Procedure
CISA	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
CJEU	Court of Justice of the European Union
DPPO	district public prosecutor´s offices
Directive	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters
EAW	European arrest warrant
e-EDES	e-Evidence Digital Exchange System
EIO	European Investigation Order
EJN	European Judicial Network
EJN Atlas	Judicial Atlas of the European Judicial Network
EJTN	European Judicial Training Network
ERA	Academy of European Law
Eurojust	European Union Agency for Criminal Justice Cooperation
Eurojust Regulation	Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing Council Decision 2002/187/JHA
executing State	executing Member State
HP judgment	Judgment of the Court of Justice of the European Union in Case C-724/19 (*HP)*
HPPO	high public prosecutor’s office
IJCCM	Act No 104/2013 Coll. on International Judicial Cooperation in Criminal Matters

issuing State	issuing Member State
JIT	joint investigation team
Joint Action	Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime
MLA	mutual legal assistance
MPPO	municipal public prosecutor's office
PPO	public prosecutor's office
RPPO	regional public prosecutor's office
SPPO	Supreme Public Prosecutor's Office