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**NOTE**

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| From: | General Secretariat of the Council |
| To: | Delegations |
| Subject: | 63rd plenary meeting of the European Judicial Network (EJN) (Budapest, 6-8 November 2024)<br>– Conclusions of Workshop I: focusing on the implementation of the European Investigation Order |

Delegations will find attached the above-mentioned conclusions.

# 63rd PLENARY MEETING
# EUROPEAN JUDICIAL NETWORK

**6-8 November 2024**

**Budapest, Hungary**

## EJN CONCLUSIONS

## FOCUSING ON THE IMPLEMENTATION OF THE EUROPEAN INVESTIGATION ORDER

### BACKGROUND INFORMATION

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) responded to a well-recognised practical need for a comprehensive system based on mutual recognition for obtaining evidence in cross-border cases, replacing the previous fragmented system of evidence gathering, while considering the flexibility of the traditional Mutual Legal Assistance (MLA) system. The European Investigation Order (EIO) also aimed to establish a high level of protection of fundamental rights and to implement the practical experience already gained, based on direct communication between European judicial authorities. Consequently, the EIO struck a balance between mutual recognition and mutual legal assistance approaches.

After the Directive had been in force for more than five years, the European Council decided, in the context of the 10th round of mutual evaluations, to evaluate the application of the main instrument for gathering evidence.

The aim of the 10th round of mutual evaluations was to examine not only the legal issues but also the practical and operational aspects of the implementation of the Directive. This allowed the identification of areas for improvement and on the other hand the sharing of best practices between Member States, thus contributing to a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

In November 2023 the EJN Plenary Meeting discussed the EIO in relation to other legal instruments. However considering that the EIO has such a wide range of content it was believed to be important for the 63rd Plenary Meeting of the EJN, to further discuss some points identified in the 10th round of mutual evaluations and to be considered for a possible revision of the EIO directive.

**CONCLUSIONS – IMPLEMENTATION OF THE EIO**

**a. VIDEOCONFERENCE**

The participants discussed whether hearing of an accused/defendant in trial held by videoconference can be done through an EIO?

There were countries where the national authorities accept an EIO to hear an accused/defendant in trial via vidoconference. On the other hand there were also participants that stated that hearing of an accused/defendant by videoconference in trial should be requested via MLA. This reasoning argues that it would be out of the scope of EIO, as attending a court session it is not evidence gathering. Some others mentional the possibility to execute the EIO as an MLA request, since the latter is in principle form-free.

Even if the accused/defendant would like to be present in court during his/her trial via video instead of in person, there are jurisdictions in which this would be denied.

Regarding the concept of being present in the trial, other participants referred to the jurisprudence of the European Court of Human Rights whereby it was clarified that 'in person' could mean physically present or via videoconference.

With regard to attending trial via video-conference, practical problems and concerns were highlighted. One recurring concern referred to the inability to built the connection with the courtroom. How do you check the identity of the defendant/accused attending the trial? From which country is the defendant/accused connecting? How do you deal with perjury? Which jurisdiction is applicable?

What the participants highlighted more than once is the fact the presence of a judge with the defendant/accused has to be ensured throughout the whole trial. Since in big and complicated cases, the trial can go on for days or weeks, this is very time consuming and therefore a burden on the judge. Hence this could be a counter-argument for allowing attendance at trial in these kind of cases through video. It could however be efficient in less complicated cases, in order to guarantee attendance.

In general, because of the many issues that have to be taken into account when the defendant/accused participates in a trial by videoconference, the majority of participants favoured the possibility for having a new instrument instead of changing the EIO Directive.

### b. RULE OF SPECIALITY

Participants discussed the rule of speciality particularly in the situation where information is received through police cooperation and there is a need to use this information as evidence. Is consent to use it as such needed from the country that shared the information? And if consent is needed, can you request this through an EIO?

There were differing opinions about the applicability of the the rule of speciality to the EIO. Participants concluded that very many countries would ask for the consent of the other country to use police to police information in court as evidence. It was acknowledged that to facilitate judicial coopearation and avoid proliferation of clauses or conditions in practice, clarifications are necessary on the applicability of the rule of speciality in relation to the EIO.

### c. USE OF LANGUAGES

The discussion on the use of languages spanned from countries accepting EIO in several languages to countries only allowing their own. It was generally considered time consuming and costly in international judicial cooperation when the EIO had to be translated before sending. A solution that was proposed is to allow in general the use of a "widely used language". In relation to the use a widely spoken language, practical suggestions included the acceptance of English at least in urgent cases, which is the case in some countries. Furthermore, experience showed that translations from a widely spoken language into the own country language were sometimes of better quality. It was highlighted that, in general, the practitioners in international judicial cooperation are able to communicate in English. This however does not automatically apply to the other professionals needed when executing the EIO.

In conclusion it was suggested that the practice amongst the EJN practitioners is to communicate in English, indicating that at least English is acknowledged as being a widely spoken language.