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Analytical Supporting Document

Accompanying the document

**Proposal for a Directive of the European Parliament and of the Council
regarding the European Investigation Order in criminal matters and the European
Remote Participation Order (recast)**

{COM(2026) 313 final}

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

This document accompanies the Commission proposal for a directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters and the European Remote Participation Order (recast)¹ – as adopted by the Commission on 23 June 2026.

As set out in the explanatory memorandum of the initiative, no impact assessment for this proposal was carried out, due to a lack of feasible options² (as non-legislative measures would not sufficiently address the identified shortcomings) and the proposal's limited impacts on businesses and the public³. Instead, this document serves to explain the problem, the objectives of the proposal, the chosen policy approach and the consultation activities carried out. It also analyses the proposed solution in the light of its impacts on effectiveness, efficiency, fundamental rights and coherence with other EU instruments for cross-border judicial cooperation.

The increasing cross-border dimension of criminal activity, including organised crime, terrorism and cyber-enabled offences, poses a serious challenge to security within the EU and has therefore made effective judicial-cooperation mechanisms even more important. Criminal networks and terrorist organisations operate seamlessly across multiple jurisdictions to carry out their criminal activities. Therefore, the EU's criminal justice systems need effective tools and reliable cooperation procedures to address these threats.

The European Investigation Order ('EIO') framework, introduced by Directive 2014/41/EU ('the Directive')⁴, enables competent authorities to obtain evidence located in another Member State through a simplified and standardised procedure based on mutual recognition. Since becoming applicable in 2017, the EIO has replaced the fragmented system of mutual legal assistance instruments for most investigative measures. It has also become the principal legal instrument governing cross-border evidence gathering within the EU.

The aim of the 10th round of mutual evaluations⁵, which took place between 2023 and 2024, was to evaluate the application and implementation of the Directive. The 10th round of mutual evaluations demonstrate that the EIO has substantially improved judicial cooperation and confirmed that from the entry into application EIOs were used frequently. This conclusion is also

¹ Proposal for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters and the European Remote Participation Order (recast), COM/2026/313 final.

² See further Section 5.

³ See further Section 6.

⁴ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

⁵ The evaluation was carried out in line with the Joint Action 97/827/JHA of 5 December 1997 adopted by the Council. The Joint Action established a mechanism of peer evaluation of the application and implementation at national level of Union and other international acts and instruments in criminal matters, of the resulting legislation and practices at national level and of international cooperation actions in the fight against organized crime.

backed by data from Eurojust⁶ and the European Judicial Network in criminal matters (‘EJN’)⁷. At the same time, practical experience with implementation of the EIO has revealed a number of legal and operational shortcomings affecting the uniform interpretation and application of the existing framework. These shortcomings create legal uncertainty, reduce efficiency and may hinder mutual trust among judicial authorities. The final report on the 10th round of mutual evaluations on the implementation of the EIO (‘the final report on mutual evaluations’)⁸ identified several areas where Member States interpret the Directive differently or lack specific procedures, particularly: (i) the use of evidence for other purposes; (ii) the definition of ‘interception of telecommunications’; (iii) the use of technical recording devices and the relationship between the EIO and cross-border surveillance under Article 40 of the Convention Implementing the Schengen Agreement (‘CISA’)⁹; and (iv) the use of previously exchanged law-enforcement information as evidence. The final report concluded that these gaps hinder consistent implementation of the EIO framework and called on the Commission to consider legislative amendments to clarify these issues. Moreover, the final report highlighted issues relating to the implementation of Article 24 of the Directive (on hearings by videoconference) and called on the Commission to ‘address at legislative level the question of the participation of the accused person in the trial via videoconference from another Member State’. Existing EU instruments regulate hearings by videoconference only in limited situations and do not lay down a comprehensive framework for full remote participation in criminal proceedings.

In addition to these conclusions set out in the final report of the 10th round of mutual evaluations, the High-Level Group on Access to Data for Effective Law Enforcement launched by the Commission in June 2023, explored challenges that law enforcement practitioners in the EU face in connection to access to data and potential solutions to overcome them. The High Level Group also said that cross-border lawful interception requests pose several challenges for law-enforcement authorities. The High-Level Group’s concluding report¹⁰ suggested exploring how the Directive could better support requests for efficient cross-border lawful interception.

⁶ The 2025 Eurojust annual report indicates 6 711 ongoing Eurojust cases, including 2 751 new cases, almost half of all Eurojust cases: <https://www.eurojust.europa.eu/about-us/planning-and-reporting/annual-report#downloadpdf>.

⁷ The 2023-2024 EJN report on activities and management indicates that, from 2023 to 2024, EJN contact points reported more than 4 612 cases in which they assisted with EIO-related requests. These cases constituted nearly one third of all cases where EJN assistance was required: <https://www.ejncrimjust.europa.eu/ejn2021/ContentDetail/EN/2/67>.

⁸ Final report of mutual evaluations: <https://data.consilium.europa.eu/doc/document/ST-15834-2024-REV-1/en/pdf>.

⁹ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

¹⁰ Concluding report of the High-Level Group on Access to Data for Effective Law Enforcement: https://home-affairs.ec.europa.eu/document/download/4802e306-c364-4154-835b-e986a9a49281_en?filename=Concluding%20Report%20of%20the%20HLG%20on%20access%20to%20data%20for%20effective%20law%20enforcement_en.pdf.

The need for targeted legislative action was also confirmed by: (i) operational findings reported by Eurojust¹¹ and the EJM¹²; (ii) the report of the High-Level Forum on the Future of EU Criminal Justice¹³; and (iii) the assessment of the effect given by the Member States to Council Recommendation (EU) 2022/915¹⁴.

Finally, relevant case law of the Court of Justice of the European Union (CJEU) has also clarified how certain aspects of the Directive should be interpreted and has highlighted areas where additional legislative clarification is appropriate. Some cases that came before the CJEU concerned, in particular, the interpretation of Article 24 of the Directive concerning hearings by videoconference. These cases highlighted legal uncertainty as to: (i) the scope and conditions under which videoconferencing may be used in criminal proceedings; and (ii) the extent to which assistance in this regard may be requested under the Directive beyond the primary purpose of taking evidence.

Against this background, in June 2026 the Commission adopted the proposal for a Directive regarding the European Investigation Order in criminal matters and the European Remote Participation Order (recast). The proposal forms part of the EU's broader efforts to strengthen judicial cooperation and provide more effective tools to combat serious and organised crime and terrorism in an increasingly transnational and digital environment. The proposal complements both: (i) recent legislative initiatives digitalising judicial cooperation procedures; and (ii) criminal justice initiatives. Both of these initiatives aim to strengthen the EU's capacity to prevent, detect, investigate and prosecute serious cross-border crime in an increasingly complex security environment. By integrating the EIO and the new European Remote Participation Order (ERPO) into a single recast instrument, the proposal aims to improve coherence, simplify the legal framework and facilitate its practical application by judicial authorities throughout the EU. This analytical document has been prepared to support and accompany the legal proposal.

In addition to the resources and forums of discussion mentioned above, the data contained in this document have been mainly obtained from: (i) public feedback to the call for evidence carried out from 6 January 2026 to 13 February 2026, which included submissions by academics; (ii) targeted consultations with Member States' authorities, Eurojust, the European Judicial Network in criminal matters (EJM), the European Public Prosecutor's Office (EPPO), Europol, the European Union Agency for Fundamental Rights (FRA), the European Criminal Bar Association (ECBA) and the Council of Bars and Law Societies of Europe (CCBE), carried out from 20 October 2026 to 14 November 2026; (iii) three dedicated meetings with experts from Member State authorities held on 31 March 2025, 2 July 2025 and 5 May 2026; (iv) a meeting of the Commission's Expert Group on EU Criminal Policy held on 14 May 2025; and (v) the results of concluded and

¹¹ Operational Topic on Interception of Telecommunication, Summary and compilation of replies, June 2024.

¹² Comments and Conclusions of the 59th Plenary Meeting of the European Judicial Network (EJM) (Prague, 9-11 November 2022).

¹³ Report of the High-Level Forum on the Future of EU Criminal Justice: https://commission.europa.eu/document/download/606f0f38-12f9-4893-8941-3ac835229bcd_en?filename=JUST_template_comingsoon_standard_16.pdf.

¹⁴ COM Staff working document 'Assessment of the effect given by the Member States to Council Recommendation (EU) 2022/915 of 9 June 2022 on operational law-enforcement cooperation', 31.1.2025 SWD(2025) 36 final.

ongoing research projects and working conferences on the use of videoconferencing in criminal proceedings¹⁵.

2. PROBLEM DEFINITION

The shortcomings identified in the 10th round of mutual evaluations called for targeted amendments of the existing framework to ensure that it responds to the new threats and changes in how criminal activities operate.

The initiative aims to tackle two main problems affecting the implementation of the Directive, as identified in both the final report of mutual evaluations and the stakeholder consultation process. These two main problems are:

- 1) legal gaps, ambiguities and operational shortcomings that hinder consistent and effective cross-border cooperation in evidence gathering in criminal matters; and
- 2) the absence of a common EU legal framework for cross-border remote participation in criminal court hearings.

The 10th round of mutual evaluations, alongside the Eurojust and EJM reports, provide the evidence base confirming that these problems are systemic and persistent. The 10th round of mutual evaluations has demonstrated that legislative action is the only avenue capable of resolving the legal uncertainty underlying the identified problem areas. Addressing these shortcomings would contribute to more effective judicial cooperation and strengthen mutual trust between Member States. The following paragraphs address in detail the nature and drivers of these problems and assess the best policy option available to address them.

2.1. Problems

2.1.1 Legal gaps, ambiguities and operational shortcomings that hinder consistent and effective cross-border cooperation in evidence gathering in criminal matters

Although the Directive has significantly improved judicial cooperation, practical experience has shown that the current framework contains legal and operational gaps that create uncertainty as to the applicable rules. These gaps have resulted in divergent implementation and application across Member States, reducing the efficiency, predictability and legal certainty of cross-border judicial cooperation in gathering evidence in criminal matters. The following paragraphs discuss the eight greatest problems in the current framework that were identified by the final report.

¹⁵ Working Conference on the use of videoconferencing for trial purposes in cross-border criminal cases in the EU held on 20 January 2026 and organised by the Dutch Ministry of Justice and Erasmus University Rotterdam; 2026 Fair Trials LEAP Annual Conference.

Problem 1: Absence of a dedicated procedure for the continued use of technical recording devices (enabling the collection of location, audio or visual data) installed in one Member State and moving to another Member State

In criminal investigations, especially in those concerning organised criminal groups, the use of technical recording devices (such as vehicle-tracking devices or other devices recording audio or visual data) can be crucial in order to gather important evidence concerning the crimes being committed. However, the current legal framework does not provide for a dedicated procedure for those measures in several situations.

For example, authorities in one Member State might install a GPS-tracker on a vehicle as part of an investigation into offences such as drug trafficking or trafficking in human beings. Because these crimes often have a cross-border dimension, the vehicle may then travel through several Member States, sometimes within a single day, before returning to the Member State where the device was installed.

The difficulty is that, given the target's constant movement and the short timeframe involved, it would not be feasible for the first Member State to issue an EIO requiring other Member States to also install a GPS-tracker on the car as it passed through their territories.

The problem is further compounded when the investigating Member State only becomes aware of the presence of the recording device on the territory of another Member State after it has already crossed the border.

Unlike in the case of interception of telecommunications, the Directive provides no mechanism governing how such ongoing investigative measure can be lawfully continued on the territory of another Member State or retrospectively regularised. This creates legal uncertainty for operations involving rapidly moving targets.

The 10th round of mutual evaluations has shown that Member States face challenges in continuing to use such devices on the territory of another Member State and have diverging approaches as to whether this investigative measure falls within the scope of Article 31 of the Directive currently in force, which sets out a notification procedure for the purpose of informing another Member State about the carrying out of interception of telecommunications on their territory in cases where the subject of interception is located in that Member State and from which no technical assistance is needed to carry out the interception. The operational experience of both Eurojust and the EJM demonstrates that cross-border use of technical recording devices gives rise to legal uncertainty¹⁶
¹⁷.

The 10th round of mutual evaluations has confirmed the need for a specific notification mechanism, similar to the one provided for in Article 31 of the Directive, to apply in cases where

¹⁶ Section 8.4 of the Joint note of Eurojust and the EJM on the practical application of the EIO: [Joint Note of Eurojust and the European Judicial Network on the practical application of the European Investigation Order](#).

¹⁷ Comments and conclusions of the 59th Plenary meeting of the EJM (Prague, 9-11 November 2022): <https://data.consilium.europa.eu/doc/document/ST-15296-2022-INIT/en/pdf>.

technical recording devices are used, and where no technical assistance is required from the Member State where the subject of the measure may move or has moved.

Problem 2: Uncertainty concerning cross-border surveillance carried out in person by law enforcement officers with the purpose of gathering evidence for criminal proceedings and the relationship with Article 40 of the CISA

The 10th round of mutual evaluations highlighted differing views among Member States on the legal framework applicable to cross-border surveillance carried out in person by law enforcement officers when the aim is to gather evidence. In particular, uncertainty exists as to whether such measures: (i) fall within the scope of judicial cooperation (either under the Directive or under mutual legal assistance agreements); or (ii) remain governed by Article 40 of the CISA. The Directive has a horizontal scope and should apply to all investigative measures aimed at gathering evidence. However, in light of recital 9 of the Directive currently in-force, Member States have adopted differing interpretations as to whether an EIO may be issued for the purpose of cross-border surveillance, as confirmed in the overview prepared by the EJM¹⁸. At the same time, some Member States consider such requests to require mutual legal assistance and therefore frequently reject requests submitted under Article 40 of the CISA¹⁹. The absence of clear rules governing the relationship between these legal instruments has thus resulted in inconsistent practices and legal uncertainty in investigations involving cross-border surveillance measures.

Problem 3: Absence of a definition of ‘telecommunications’ and lack of clarity on certain procedural aspects of the notification procedure for interception without the need for technical assistance from another Member State

The High-Level Group on Access to Data for Effective Law Enforcement identified a number of challenges relating to requests for cross-border lawful interception. In its concluding report, it recommended examining how the Directive could better facilitate the efficient execution of such requests, in particular by improving legal certainty, limiting administrative burden and fostering consistent usage of the EIO. One of the issues raised in the concluding report was that the absence of a definition of ‘telecommunications’ creates uncertainty as to the material scope of the relevant provisions of the Directive. Furthermore, experience has revealed certain procedural gaps in the notification regime applicable to interceptions carried out without the technical assistance of another Member State. In particular, the Directive does not regulate certain practical aspects of the notification procedure, such as cases where the prescribed time limit for objection cannot be met or where the notified authority is not competent to examine the notification.

Problem 4: Uncertainty regarding the issuing of an EIO in situations where a judicial authorisation is required under national law of the issuing State for the adoption of a specific investigative measure in a similar domestic case

¹⁸ Current issues of EIO concerning certain investigative measures of the 59th Plenary Meeting of the European Judicial Network (EJM) (Prague, Prague Congress Centre, 9 – 11 November 2022): <https://data.consilium.europa.eu/doc/document/ST-15966-2022-INIT/en/pdf>.

¹⁹ Supra, at 13.

Although the case law of the Court of Justice has clarified several aspects related to the definition of ‘issuing authority’ under the Directive, the current definition does not provide sufficient legal certainty as to the circumstances in which an EIO may be issued by a public prosecutor or a law-enforcement authority, when a judge is the competent authority to adopt that specific investigative measure domestically. Authorities in different Member States do not always share the same understanding as to the procedural requirements applicable in those situations. This issue is particularly relevant for investigative measures that significantly interfere with fundamental rights, such as: (i) searches; (ii) the production of telecommunications data; or (iii) other coercive measures, where the degree of judicial scrutiny required under national law varies across Member States.

The resulting lack of clarity may undermine mutual trust and the uniform application of the Directive. It can lead to: (i) requests for additional information (such as requests to provide copies of domestic court decisions ordering a specific investigative measure); (ii) delays in the recognition and execution of EIOs; and (iii) uncertainty for practitioners as to the procedural requirements applicable in cross-border investigations.

Problem 5: Inefficient time limits for the recognition and execution of certain investigative techniques

The interception of telecommunications, cross-border surveillance, and measures implying the gathering of evidence in real time (such as controlled deliveries, which are very important in the investigation of serious crime, and in particular organised crime) are usually inherently urgent measures. These measures are vulnerable to delays, as evidence may disappear if execution of the measure is postponed. Where the investigative measure, such as cross-border surveillance, has commenced on the territory of one Member State and continues into the territory of another Member State, delays in the recognition and execution of an EIO might result in an unexpected termination of the measure, leading to the measure not achieving its intended purpose. However, the standard time limits set out in the Directive (30 days for the recognition of an EIO and 90 additional days for its execution) are often too long and not adapted to the operational needs of certain investigative techniques. This was the view of the experts of the High-Level Group on Access to Data for Effective Law Enforcement, and the view was further confirmed in the targeted consultations with Eurojust and Europol.

Problem 6: Legal uncertainty regarding the application of the rule of speciality

The Directive does not expressly regulate whether or not the rule of speciality (the principle that evidence obtained through judicial cooperation may only be used for the specific purposes for which it was requested) applies in the EIO framework. The 10th round of mutual evaluations revealed diverging interpretations among Member States on this question. Although some authorities consider that the consent of the executing State is required before such evidence can be used for another purpose, others consider that this principle does not apply in the EIO framework. The absence of a common understanding on this matter creates legal uncertainty concerning the subsequent use of evidence and may affect the predictability of judicial cooperation between Member States.

Problem 7: The lack of a legal framework for obtaining consent to use previously exchanged information as evidence

The Directive does not establish a procedure for requesting consent to use information previously exchanged through channels of law-enforcement cooperation as evidence in criminal proceedings. While Directive (EU) 2023/977²⁰ expressly envisages that such consent may be given, including through judicial cooperation instruments where necessary under national law, neither Directive establishes how consent should be requested or granted. As a result, authorities apply different approaches, including the use of EIOs for this purpose, raising questions as to the suitability of that procedure in practice.

The overview by Eurojust²¹ suggests that some Member States also go through an EIO procedure when they intend to use information obtained spontaneously as evidence in criminal proceedings. Information is sent as a ‘spontaneous exchange of information’ based on Article 7 of the 2000 Convention on Mutual Assistance in Criminal Matters²², which enables spontaneous exchanges of information within the limits of national law and allows the providing authority, pursuant to its national law, to impose conditions on the use of such information by the receiving authority. Eurojust’s casework confirms that, both from the providing and receiving Member States perspectives, the use as evidence of information exchanged spontaneously may depend on the subsequent consent from the providing authority or may require a subsequent EIO. This creates legal uncertainty regarding the applicable cooperation mechanism, and may delay or complicate the use of information that is already available to competent authorities.

Problem 8: Deficiencies in the structure of the EIO form

Although practitioners across the EU have become broadly familiar with the form over the years since 2017, the 10th round of mutual evaluations identified structural deficiencies with the form as it is currently designed, such as inconsistencies between different sections, unnecessary duplications and the absence of dedicated fields for information that is often relevant for the execution of an EIO. These shortcomings make communication between issuing and executing authorities less efficient and may contribute to delays in the execution process.

2.1.2 Absence of an EU legal framework for cross-border remote participation in criminal court hearings, ensuring effective protection of procedural rights

Among the legal gaps identified in the 10th round of mutual evaluations, issues with the implementation of Article 24 of the Directive on hearings via videoconference for the purpose of evidence gathering were identified, in particular questions as to whether that provision also allows

²⁰ 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 and repealing Council Framework Decision 2006/960/JHA (OJ L 134, 22.5.2023, p. 1, ELI: <http://data.europa.eu/eli/dir/2023/977/oj>).

²¹ ‘Spontaneous exchange of information: - Topic initiated by Eurojust’s Judicial Cooperation Instruments Working Group and Cybercrime working group – Summary and compilation of replies’.

²² Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000. Applicable in relations between Ireland and Denmark, and between Ireland or Denmark and other Member States, which are otherwise bound by the EIO Directive in their mutual relations.

the remote participation of an accused person at their trial. Evidence collected as part of the 10th round of mutual evaluations shows that several Member States issue and, at times, execute EIOs for the purpose of remote participation in criminal court hearings by videoconference, although this practice is not accepted by other Member States, which consider that such a measure falls outside the scope of the Directive. Furthermore, the 10th round of mutual evaluations shows that the laws of some Member States provide for the possibility of conducting remote participation by videoconference even without issuing an EIO, by relying on either mutual legal assistance instruments or other avenues.

These different practices and difficulties in the interpretation of Article 24 of the Directive have also been acknowledged by the several preliminary references submitted to the Court of Justice on: (i) the interpretation of that provision; and (ii) the possibility to request, under that framework, the full remote participation of a person from another Member State²³.

In that context, and in particular in case C- 325/24²⁴, the Court of Justice clarified that Article 24 of the Directive allows for the issuance of an EIO where that measure has the purpose of gathering evidence and its execution does not go beyond what is necessary for that purpose, irrespective of whether it also allows, in the specific instance, for the person to participate in the hearing. From this standpoint, the proposal clarifies the scope of application of Article 24, and introduces a dedicated framework for the authorities to request the facilitation of remote participation of a suspect, accused person or victim of crime by videoconferencing from another Member State whenever a number of conditions are satisfied.

At present, EU law does not provide a dedicated, coherent and comprehensive legal framework governing the remote participation of suspects, accused persons or victims of crime in criminal court hearings from another Member State. Existing EU instruments regulate the use of videoconferencing only in limited and fragmented contexts, and were not designed to facilitate full participation in criminal proceedings from abroad (see Section 2.2.2 of this document).

This regulatory gap has become increasingly apparent as a consequence of the growing mobility of individuals within the EU. Criminal proceedings frequently involve: (i) persons who reside, work, study, or temporarily stay in a Member State other than the one conducting the proceedings; or (ii) persons who are detained in another Member State in relation to other proceedings. The exercise of the right to free movement and the cross-border nature of crime has therefore led to a growing number of cases in which participants in criminal proceedings are physically located in a territory that is outside the competent jurisdiction.

At the same time, the digital transformation of national justice systems and the increasing availability of more advanced videoconferencing technologies have significantly increased the

²³ Judgment of the Court of Justice of 4 July 2024, FP and Others, C-760/22, EU:C:2024:574; judgment of the Court of Justice of 6 June 2024, AVVA and Others, Joined Cases C-255/23 and C-285/23, EU:C:2024:462; judgment of the Court of Justice of 18 December 2025, C-325/24, Bissili, EU:C:2025:989.

²⁴ Judgment of the Court of Justice of 18 December 2025, C-325/24, Bissili, EU:C:2025:989.

capacity of judicial authorities to conduct hearings remotely. Most Member States now use videoconferencing in at least some domestic criminal proceedings. Data collected as part of the EU Justice Scoreboard²⁵, since 2021 until its latest 2026 edition, show an increase in the number of Member States that have procedural rules allowing for distance-communication technology to hear parties to the proceedings in criminal domestic cases. According to the 2026 EU Justice Scoreboard, such rules appear to exist in all EU Member States – even if the respective scope of application differs²⁶.

The COVID-19 pandemic further demonstrated the importance of reliable remote participation mechanisms for ensuring the continuity of judicial proceedings during exceptional circumstances. During the pandemic, many Member States introduced emergency measures allowing certain hearings to take place remotely in order to ensure the functioning of justice systems while protecting public health in those exceptional circumstances. However, these measures often were adopted rapidly, differed significantly between jurisdictions, and primarily addressed domestic situations.

However, these technological developments have not been accompanied by a coherent EU framework regulating their cross-border use in criminal court hearings with the aim of ensuring full remote participation, the regulation of which is still fragmented in the Member States. These matters are currently subject to national law and practices (see Section 2.2.2 of this document) and existing rules are distinctly varied with differences in scope, availability (in particular depending on the stage of the procedure) and safeguards available to the persons concerned.

The matter was also discussed in the context of the High-Level Forum on the Future of EU Criminal Justice²⁷, a forum of discussion gathering input from several stakeholders on important issues for the future of EU criminal justice. In that occasion, the majority of Member States supported the establishment of new rules governing the use of videoconference for remote participation in court hearings in cross-border cases for suspects and accused persons who are present in another Member State. Only a small number of Member States showed scepticism, specifically with regard to fundamental national procedural principles regarding the right to be present at trial and the limited exceptions to these principles. Attention was drawn to the importance of ensuring that fundamental rights, equality of arms, and the integrity of judicial proceedings are fully respected when using digital tools. Some Member States specifically called for embedding such rules within the EIO framework.

Moreover, in the context of other consultations, several stakeholders (including professional organisations such as the CCBE, ECBA and the Flemish Bar Association, as well as civil society

²⁵ https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en.

²⁶ https://commission.europa.eu/document/download/d1367f58-9eed-4ebd-8eb3-68646b7c7ddc_en?filename=2026_eu_justice_scoreboard.pdf

²⁷ See the final report of the High-Level Forum on the Future of EU Criminal Justice: https://commission.europa.eu/document/download/606f0f38-12f9-4893-8941-3ac835229bcd_en?filename=JUST_template_comingsoon_standard_16.pdf

organisations) have argued that: (i) trials in the physical presence of the accused should always remain the rule; and (ii) remote hearings should be subject to specific safeguards to ensure fair trial standards and respect for (and the exercise of) the rights of defence. At the same time, these stakeholders acknowledge that in cross-border contexts the alternative to remote participation in court hearings may be no participation at all. This means that some proceedings would have to be conducted *in absentia* or, in the case of suspects/accused persons deprived of liberty abroad, proceedings may have to be stayed until the person is able to attend their trial (and requests for surrender of the person can thus be refused or postponed on this basis). Participation in court hearings by videoconference can therefore constitute a welcome alternative means of exercising the right to be present at trial for suspects and accused persons. This has been acknowledged by the ECBA in its ‘Statement of principles on the use of video conferencing in criminal cases in a post COVID-19 world’²⁸, issued in 2020. In this statement, the ECBA advocates for rules on remote participation in cross-border cases which would: 1) avoid trials *in absentia*; 2) avoid the issuance of a European arrest warrant for the purpose of ensuring the presence of the person at the trial, in cases where such an exceptional measure of deprivation of liberty would not be necessary; and 3) ensure that strong safeguards are in place for protecting the right of defence. This position has also been reflected in the ECBA and CCBE contribution to the targeted consultations carried out in preparation for the proposal (see Annex 2 of this document).

2.2. Problem drivers

2.2.1. Legal gaps, ambiguities and operational shortcomings that hinder consistent and effective cross-border cooperation in evidence gathering in criminal matters

Driver 1 - The Directive does not adequately regulate certain forms of cross-border cooperation that have become increasingly relevant in practice

The Directive does not contain specific rules for situations regularly encountered by judicial authorities, including the use of technical recording devices across borders, the use of previously exchanged information as evidence, and procedures for the subsequent use of information. These regulatory gaps create uncertainty regarding the applicable legal framework and lead to divergent national practices.

Driver 2 – Certain provisions of the Directive lack sufficient clarity or detail

Several provisions have given rise to different interpretations among Member States regarding their scope and procedural requirements. This is especially the case for: (i) the notions of ‘telecommunications’ and ‘issuing authority’; (ii) the application of the notification regime for interceptions without technical assistance; and (iii) the relationship between the Directive and Article 40 of the CISA as regards cross-border surveillance. The resulting legal uncertainty affects the uniform application of the Directive.

Driver 3 – The current procedural framework does not sufficiently reflect operational needs

²⁸ https://www.ecba.org/extdocserv/20200906_ECBAStatement_videolink.pdf.

Certain procedural arrangements under the Directive have proven insufficiently adapted to operational realities, particularly in relation to: (i) the timely execution of urgent interception and cross-border surveillance measures; (ii) measures requiring the gathering of evidence in real time, continuously and over a certain period of time; and (iii) the structure of the EIO form. These shortcomings may create delays and reduce the effectiveness of cross-border cooperation.

2.2.2. The absence of an EU legal framework for cross-border remote participation in criminal court hearings, ensuring effective protection of procedural rights of the persons concerned

Driver 1 - Existing rules on hearings via videoconference cannot serve as a legal basis for full remote participation in criminal court hearings

At EU level, a number of instruments already provide for the possibility of using videoconferencing to hear a person in cross-border situations in criminal matters, albeit in limited and fragmented contexts. As mentioned above, these instruments were not designed to facilitate full participation in criminal proceedings from abroad.

Experience with hearings via videoconference for the purpose of taking evidence in cross-border situations has been gathered over a significant period of time, starting with the 2000 Convention on Mutual Assistance in Criminal Matters, Article 10 of which makes it possible to request a hearing via videoconference if a person is in another Member State's territory and has to be heard as a witness or expert by the judicial authorities of the Member State where the proceedings are being carried out. Under certain conditions, the provisions of this Article may also apply to hearings of accused persons.

Article 10 of the 2000 Convention was later superseded by Article 24 of the Directive in relation to Member States bound by the Directive. Under this Article 24, an EIO can be issued for the purpose of hearing a witness, expert, suspect or accused person who is present in the territory of the executing State by videoconference or other audiovisual transmission with a view to gathering evidence, at any stage of the proceedings.

Moreover, from the perspective of victims' rights, Article 17 of Directive 2012/29/EU²⁹, amended by Directive (EU) 2026/1472³⁰, requires Member States to facilitate the participation in the criminal proceedings of victims who are resident in another Member State through videoconferencing or other distance communication technology, to the extent possible under Union and national law and in accordance with the victim's role in the criminal proceedings. Finally, Regulation (EU) 2023/2844³¹ ('the Digitalisation Regulation') also lays down a legal basis

²⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

³⁰ Directive (EU) 2026/1472 of the European Parliament and of the Council of 17 June 2026 amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L, 2026/1472, 30.6.2026.

³¹ Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters,

for cross-border videoconferencing, with different scopes and different requirements in civil and criminal matters. For criminal matters, Article 6 of the Digitalisation Regulation lays down a legal basis for cross-border hearings of suspects, accused, convicted persons or affected persons through videoconferencing or other distance-communication technology in judicial cooperation procedures under an exhaustive list of legal acts identified by the Article, notably:

- (a) Council Framework Decision 2002/584/JHA on the European Arrest Warrant³², in particular Article 18(1)(a) thereof, which regulates hearings in situations pending the decision on surrender;
- (b) Framework Decision 2008/909/JHA on the transfer of prisoners³³, in particular Article 6(3) thereof, when the opinion of the sentenced person is gathered;
- (c) Framework Decision 2008/947/JHA on the mutual recognition of judgments and probation decisions³⁴, in particular Article 17(4) thereof when the sentenced person must be given a judicial hearing before a decision is taken on the imposition of a sentence;
- (d) Framework Decision 2009/829/JHA on the mutual recognition of decisions on supervision measures as an alternative to provisional detention³⁵, in particular Article 19(4) thereof where the legislation of the issuing State provides that a judicial hearing must be held before a subsequent decision relating to a decision on supervision measures is taken;
- (e) Directive 2011/99/EU on the European protection order³⁶, in particular Article 6(4) thereof when – before issuing a European protection order – the person causing danger is given the right to be heard;

and amending certain acts in the field of judicial cooperation (OJ L, 2023/2844, 27.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2844/oj>).

³² Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, pp. 1-20; ELI: http://data.europa.eu/eli/dec_framw/2002/584/oj)

³³ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27, ELI: http://data.europa.eu/eli/dec_framw/2008/909/oj).

³⁴ Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337, 16.12.2008, pp. 102-122, ELI: http://data.europa.eu/eli/dec_framw/2008/947/oj).

³⁵ Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, pp. 20-40, ELI: http://data.europa.eu/eli/dec_framw/2009/829/oj).

³⁶ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L 338, 21.12.2011, pp. 2–18, ELI: <http://data.europa.eu/eli/dir/2011/99/oj>).

(f) Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders³⁷, in particular Article 33(1) thereof, which provides for the right to effective remedies for affected persons.

However, the scope of this provision is clearly limited to hearings held in the context of judicial-cooperation procedures which do not entail: (i) the taking of evidence for the purpose of the main trial; or (ii) participation in court hearings aimed at determining the guilt or innocence of a suspect or an accused person. Thus, Article 6 of the Digitalisation Regulation does not cover the use of videoconferencing or other distance-communication technology as this is meant to be covered by the proposed ERPO.

The proposed rules on the ERPO, by introducing a framework laying down common rules to facilitate full participation from another Member State in all types of criminal court hearings at both the pre-trial and trial stage (as appropriate depending on whether the person concerned is a suspect, accused person or victim of crime) fills in an existing gap in the European legislation. It has the added value of also laying down a number of procedural guarantees for full remote participation to be carried out in compliance with fair trial rights (see Driver 3).

Driver 2 – Current national rules on remote participation differ significantly across the EU

The results of the stakeholder consultations confirmed the existence of significant differences between national legal frameworks, both as regards: (i) suspects and accused persons; and (ii) victims of crime (see Annex 1).

Only some Member States currently have explicit rules governing cross-border remote participation in criminal hearings, while others rely on general provisions, mutual legal assistance instruments or ad hoc types of cooperation between authorities. Even where national frameworks exist, their content differs substantially. This fragmentation is problematic both from the perspective of protecting procedural rights and from the perspective of ensuring effective judicial cooperation.

In relation to suspects and accused persons, only a limited number of Member States have adopted specific national provisions allowing remote participation from another Member State. Among the 18 Member States that provided information in the targeted consultations, 7 reported having such rules, while 3 indicated that remote participation is not permitted, and the remaining Member States reported that the matter is not specifically regulated. Even where remote participation is possible, Member States rely on different legal bases. Some Member States permit it on the basis of domestic procedural law alone, without requiring the involvement of the Member State where the person is present. Others rely on mutual legal assistance instruments, the 1959 European Convention on Mutual Assistance in Criminal Matters, the 2000 Convention on Mutual Assistance in Criminal Matters, the European Investigation Order, or a combination thereof. As noted by one

³⁷ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1805/oj>).

Member State, the frequent refusal of requests under existing frameworks for mutual legal assistance demonstrates the practical limitations of the current legal landscape.

There are also significant differences in the conditions under which suspects and accused persons may participate remotely. While most Member States consider the mere presence of the person in another Member State sufficient to allow their remote participation, others require additional conditions, such as justified reasons preventing physical attendance or a particular connection with the Member State where the person is located.

Differences are equally visible in the current legal framework on remote participation in relation to victims of crime. Although most Member States reported that they had rules allowing victims located in another Member State to participate in criminal court hearings remotely, the situation in several Member States still needs to be improved. The scope of victims' participation also differs considerably from one Member State to another. In several Member States, remote participation is possible only where the victim is heard as a witness, whereas other Member States provide broader possibilities or make participation dependent on the victim's procedural status in their legal system.

As a result, the legal framework governing remote participation in cross-border criminal proceedings varies considerably across the EU. These divergences: (i) create legal uncertainty for judicial authorities and participants in proceedings; (ii) complicate cross-border cooperation; and (iii) may lead to different levels of procedural guarantees depending on the Member States involved.

Stakeholders broadly agreed that common procedures, standards and safeguards are necessary to ensure that videoconferencing technologies can be used effectively and fairly in cross-border criminal proceedings.

Driver 3 – Different national rules result in different standards of procedural safeguards

The absence of a dedicated EU framework for full remote participation in criminal proceedings means that, where such participation takes place, it is currently based on a variety of legal instruments and national procedural rules. As a result, the procedural safeguards applicable to persons participating remotely differ significantly across Member States depending on the applicable rules.

Existing EU instruments that provide for the use of videoconferencing in cross-border situations were designed for specific purposes, and contain different requirements and safeguards which were designed in light of the instruments in which they were included.

Similarly, national rules governing remote participation vary considerably. These variations include: (i) the conditions for authorising remote participation; (ii) the role of the authorities of the Member State where the person is located; and (iii) the rights, safeguards and remedies available to the persons concerned in the event of procedural violations.

Stakeholder consultations revealed significant differences between Member States, including in the legal framework applicable to purely domestic proceedings. Although some Member States

rely primarily on the general guarantees deriving from the right to a fair trial and procedural rights generally applicable under national law, others have introduced specific safeguards designed to ensure that rights can be effectively exercised digitally in a remote context.

In cross-border situations, these differences have a direct impact on the level of protection afforded to suspects, accused persons, and victims of crime in the EU.

One difference in the standard of protection relates to the requirement for consent of the person concerned. Some Member States always require the consent of the suspect or accused person, while others require the consent of all parties to the proceedings, and others do not impose any specific consent requirement.

There are also differences in the extent to which it is possible for persons participating remotely to communicate effectively and confidentially with their lawyer. Few Member States specifically regulate this right and the conditions under which it should be exercised when a person remotely participates via videoconference, while others rely on general confidentiality provisions. In addition, Member States take different approaches to the presence of defence counsel in the courtroom, with one Member State considering the lawyer's presence in the courtroom necessary to ensure the effective exercise of defence rights, while another explicitly clarifies that this is not necessary.

The availability of remedies in the event of procedural violations affecting the remote hearing also varies. Only a limited number of Member States reported specific remedies addressing violations occurring in the context of remote participation, while most Member States rely on the general remedies available under their criminal procedural law.

The resulting differences in procedural protection create uncertainty for judicial authorities and participants in proceedings alike. This situation may lead to unequal levels of protection across the EU and undermine mutual trust between judicial authorities.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

The initiative is based on Article 82(1) of the Treaty on the Functioning of the European Union (TFEU).

Article 82(1) TFEU provides that judicial cooperation in criminal matters within the EU is to be based on the principle of mutual recognition of judgments and judicial decisions. It empowers the EU to adopt measures, among other things: (i) laying down rules and procedures for ensuring recognition throughout the EU of all forms of judgments and judicial decisions; and (ii) facilitating cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

The Directive was adopted on the basis of Article 82(1) TFEU, as with other existing mutual recognition instruments. Maintaining Article 82(1) TFEU as the legal basis therefore ensures

consistency with the original choice and reflects the objective and content of the amendments introduced via the recast initiative.

3.2. Subsidiarity: Necessity and added value of EU action

The Directive is already laid down at EU level as an instrument of cross-border judicial cooperation in criminal matters for the gathering of evidence. By its very nature, the Directive addresses cross-border issues, which cannot be effectively dealt with by individual Member States acting alone. The EU has already exercised its powers by adopting the Directive, and further action should therefore also be taken at EU level.

On the specific amendments introducing rules to facilitate remote participation in criminal court hearings when the suspect, accused person, or victim of crime is in another Member State, the cross-border nature of this issue means that no single Member State can make these rules on its own nor bind on that basis other Member States without specific agreements for this purpose.

The replies to the public and targeted consultations confirm that EU action in this area would deliver better outcomes than action by Member States. The Council has recognised that the challenges that this initiative aims to address require action beyond the national level. This proposal therefore responds to issues raised by the Member States as explained above.

Given the cross-border dimension of the issues outlined above, and the fact that the EU has already exercised its powers in these matters, the proposal needs to be adopted at EU level to achieve the objectives.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

Objectives	
General objectives	(1) Improve legal clarity, operational effectiveness and uniform application of cross-border judicial cooperation in evidence gathering in criminal matters within the EU; and (2) Lay down a coherent EU framework enabling remote participation in criminal court hearings for suspects, accused persons and victims of crime from another Member State, while ensuring procedural safeguards and the fairness of proceedings
Specific objectives	(1) Address regulatory gaps in the EU framework for cross-border evidence gathering in criminal matters. (2) Improve the efficiency and operational effectiveness of cross-border cooperation procedures in evidence gathering.

	(3) Facilitate cooperation to allow a suspect, accused person or victim of crime to remotely participate in criminal court hearings via videoconference from another Member State. (4) Improve access to justice and the effective exercise of procedural rights when a person remotely participates in criminal court hearings from another Member State.
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5. WHAT IS THE CHOSEN POLICY OPTION?

In order to address the problems set out in Section 2 and to achieve the objectives listed in Section 4, a legislative proposal has therefore been proposed that: (i) introduces targeted amendments to the existing framework on the rules for cross-border evidence gathering; and (ii) incorporates a new framework on remote participation in criminal court hearings. This approach builds on the strengths of the current EIO system while: (i) addressing shortcomings identified during its implementation; and (ii) responding to the increasing need for a dedicated legal framework governing cross-border remote participation in criminal court hearings.

The Commission considered that a recast of the existing Directive was the most appropriate legislative approach. The 10th round of mutual evaluations confirmed that the EIO has become the principal instrument for cross-border evidence gathering in the EU and has significantly improved judicial cooperation. Consequently, replacing the existing framework with an entirely new instrument would not be justified. At the same time, practical experience has demonstrated that targeted amendments are necessary to improve legal certainty and adapt the legal framework to technological developments and evolving operational needs. Therefore, maintaining the current legal framework without legislative amendments (or similarly, relying solely on non-legislative measures, such as guidance, handbooks or exchanges of best practice) would not sufficiently address the shortcomings identified as it would not provide for the necessary binding legal framework, such as for cross-border remote participation in criminal court hearings and for certain cross-border evidence-gathering measures.

Integrating the ERPO into the proposed recast Directive provides a coherent legal framework for cross-border judicial cooperation. Rather than creating a separate legislative instrument, the proposal brings together in a single legal act rules governing the collection of evidence and the remote participation of persons in criminal court hearings, which entail the full exercise of procedural rights – including the giving of evidence. This does three things: (i) it facilitates practical application by competent authorities; (ii) it ensures consistency between the two instruments – the EIO and the ERPO - in particular between the rules on remote participation and hearings via videoconference by way of EIO; and (iii) it contributes to a more coherent legal framework for judicial practitioners.

Firstly, the proposal modernises cross-border judicial cooperation in evidence gathering in criminal matters within the EU by introducing targeted amendments. These amendments seek to: (i) improve legal certainty and promote the uniform application of the Directive across

participating Member States by clarifying concepts and procedural rules that have given rise to different national practices; and (ii) facilitate the effective and timely execution of cross-border investigative measures.

In particular, the proposal includes 12 important elements. These 12 elements are discussed in detail in the paragraphs below.

- The first element is the amendment of the definition of the term ‘issuing authority’ under Article 2, point (c) of the Directive (Article 2(1), point (c) of the proposed recast Directive), which aims to clarify the authorities competent to issue an EIO. The amendment clarifies that where national law requires prior authorisation by a judge, court or investigating judge for the investigative measure concerned and such authorisation has not been obtained in accordance with national procedures, the EIO must be validated by a judge, court or investigating judge before being sent to the executing authority. This ensures that measures subject to such authorisation at national level continue to benefit from equivalent scrutiny in cross-border proceedings. This does two things: (i) it ensures legal certainty; and (ii) it strengthens consistency with both national procedural safeguards and with the case law of the Court of Justice concerning the level of independence and judicial protection required for issuing an EIO³⁸.
- The second element is a new Article 2(1), point (g), of the proposed recast Directive which introduces a definition of ‘telecommunications’. The definition aligns the terminology with Directive (EU) 2018/1972³⁹ by referring to electronic communications networks and electronic communications services. This reference ensures that the proposed Directive remains aligned with developments in electronic communications technologies and prevents disparities in interpretation between Member States arising from technological developments.
- The third element is targeted amendments of Articles 1(1), 3 and 5 of the Directive (Articles 3(1), 4 and 6(4) of the proposed recast Directive), which aim to codify the case law of the Court of Justice in Case C-583/23 [Delda]⁴⁰. In that judgment, the Court of Justice clarified that service of an indictment to the person concerned may be requested by means of a European Investigation Order where, under the national law of the issuing State, the requested investigative measure (such as a hearing to gather evidence) can take place only after an indictment is served.
- The fourth element is changes to Article 12 of the Directive (Article 13, under its paragraphs (4) and (5) of the proposed recast Directive), on the time limits for recognition and execution of an EIO. These changes aim to improve the timely execution of certain investigative measures, namely: (i) measures, implying a gathering of evidence in real time,

³⁸ Judgment of the Court of Justice of 10 July 2025, WBS GmbH, C-635/23, ECLI:EU:C:2025:546.

³⁹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36, ELI: <http://data.europa.eu/eli/dir/2018/1972/oj>).

⁴⁰ Judgment of the Court of Justice of 9 January 2025, Delda, C-583/23, ECLI:EU:C:2025:6, paragraphs 44-45.

continuously and over a certain period of time (such as controlled deliveries); (ii) the interception of telecommunications; and (iii) cross-border surveillance in person by law enforcement officers. Such measures are particularly vulnerable to delays, as evidence may disappear if execution of the measures is postponed. Under the proposal, executing authorities will be required to prioritise such EIOs and, where strictly necessary to ensure the requested measures remain effective, allow provisional execution before the formal recognition decision is adopted. This would enable authorities to commence investigative measures immediately and avoid procedural interruptions.

- The fifth element is Article 14 of the Directive (Article 17 of the proposed recast Directive) on legal remedies, which has been amended to clarify and strengthen the right to an effective legal remedy. The provision specifies that legal remedies must be available not only to suspects and accused persons, but also to any other persons whose rights are adversely affected by the investigative measure. In addition, the amendment addresses situations where an EIO is issued to obtain evidence that is already in the possession of the competent authorities of the executing State. In such cases, the executing State must ensure that legal remedies equivalent to those available in a similar domestic case are available to challenge the lawfulness of the investigative measures through which that evidence was originally obtained. This ensures effective judicial protection irrespective of whether the evidence is gathered specifically in execution of an EIO or has already been collected under national procedures, thereby strengthening the protection of fundamental rights and increasing legal certainty.
- The sixth element is the introduction of a new Article 21 to lay down a common framework governing the subsequent use and onward transfer of information and evidence obtained under the Directive. The provision strengthens legal certainty by clarifying the circumstances in which information or evidence may be: (i) used for purposes other than those for which it was originally collected; or (ii) transferred to another Member State, a third country or an international organisation. The new rules preserve the principle that limitations applicable under the law of the executing or notified Member State continue to apply after the transfer of information or evidence. Where such limitations have been communicated, the issuing authority must request the prior consent of the executing or notified authority before using the information or evidence for another purpose. Prior consent is also required for any onward transfer of information or evidence, thereby ensuring that the Member State which originally gathered the information or evidence retains appropriate control over its subsequent use. The provision also introduces: (i) a standardised request form; (ii) short time limits for decisions on requests for consent; and (iii) limited circumstances in which consent may be refused or postponed, which aim to ensure the efficiency of the procedure.
- The seventh element is an amendment to Article 24 of the Directive (Article 24 of the proposed recast Directive) on hearings by videoconference to align its terminology, scope

and certain procedural requirements with both the new Title on the European Remote Participation Order and Regulation (EU) 2023/2844⁴¹ to ensure consistent application.

- The eighth element is a new Article 30, which introduces a legal framework for the continuation of cross-border surveillance carried out in person by law enforcement officers operating technical means for evidentiary purposes. The provision fills a gap in the existing framework by clarifying the conditions under which cross-border surveillance may be executed, while ensuring full respect for the sovereignty of the executing State. It provides that the executing authority, in addition to the general grounds for non-recognition and non-execution of an EIO, may refuse the execution of this investigative measure where it would not be authorised in a similar domestic case, may make its consent subject to the conditions applicable in a similar domestic case, and must agree with the competent authorities of the issuing State on the duration of – and practical arrangements for – the surveillance. The provision also limits the powers of law enforcement officers operating in the territory of another Member State. To address situations requiring immediate operational action, the Article lays down a specific urgency procedure allowing surveillance to continue temporarily after the crossing of the border and before an EIO has been issued, subject to: (i) strict conditions; (ii) short deadlines; (iii) prompt notification of the executing State; and (iv) subsequent judicial cooperation through the EIO. The provision further regulates the consequences where authorisation is refused and limits the use of information obtained in such circumstances to exceptional cases involving an immediate and serious threat to public security. The proposal also clarifies the relationship between the EIO and cross-border surveillance carried out under Article 40 of the CISA, thereby providing greater certainty as to the applicable legal framework for surveillance measures conducted for evidentiary purposes.
- The ninth element is amendments to Article 31 of the Directive (Article 33 of the proposed recast Directive), which aim to clarify procedural aspects of the notification procedure for interception without the need for the technical assistance of another Member State. Proposed changes to this provision, such as the requirement to forward the notification to the competent authority where the authority that received the original notification lacks competence, aim to ensure the efficient handling of notifications. Furthermore, the amendments clarify that in the cases where the interception would not be authorised in a similar domestic case and the competent authority of the notified Member State would inform the investigating Member State that any material obtained by that investigative measure may not be used, it may also indicate that such material must be deleted as there

⁴¹ Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ L, 2023/2844, 27.12.2023, ELI: <http://data.europa.eu/eli/reg/2023/2844/oj>.

is no reason for the data to be kept any longer, thereby respecting the data minimisation principle⁴².

- The tenth element is a new Article 34, which sets out rules governing the use of technical recording devices. The proposal introduces a dedicated notification mechanism that is limited to situations where a technical recording device enabling the collection of location, audio or visual data and lawfully installed in one Member State continues to operate when the target moves to the territory of another Member State without requiring technical assistance from that Member State. This addresses a gap in the current Directive that has resulted in divergent national practices and legal uncertainty, particularly in investigations involving organised crime and highly mobile targets. The notification mechanism is based on the existing notification procedure laid down in Article 31⁴³ for the interception of telecommunications without the technical assistance of another Member State. The proposal introduces the concept of a ‘technical recording device’, defined as a technical device enabling the collection of location, audio or visual data. The definition is intended to be technology-neutral to accommodate current and future technological developments. It covers, for example, GPS tracking devices or other location-tracking devices, covert audio-recording devices and video-recording devices, irrespective of their specific technical characteristics or means of communication. The notified Member State may object, within 96 hours, to the use of a technical recording device where it would not be authorised in a similar domestic case and may decide, where necessary, that any material already collected while the device was on its territory: (i) may not be used and must be deleted; or (ii) may only be used under conditions which the notified Member State will specify. The proposal also requires that a new notification be made where the investigating Member State intends to extend the use of the measure beyond the duration indicated in the initial notification. The concept does not extend to the interception of telecommunications, which is subject to the specific regime laid down in Article 31. A dedicated standard form for notification is also proposed. The proposal distinguishes such situations from cases where active technical intervention, installation or support by the second Member State is required, and where an EIO should be issued requesting the use of such a device pursuant to Article 28.
- The eleventh element is a new Article 35, which lays down a common procedure for requesting consent for the use of as evidence information previously exchanged between law-enforcement authorities under Directive (EU) 2023/977 or spontaneously exchanged between judicial authorities, where required under either the national law of the requesting Member State or the conditions attached to the original transmission of the information. The Article lays down common procedural requirements (including a standardised request form, translation requirements and time limits for responding to requests), and specifies limited grounds on which consent may be refused or postponed. It also ensures that

⁴² See Article 5(1)(c) Regulation (EU) 2016/679 (GDPR), Article 4(1)(c) of the Directive (EU) 2016/680 (LED), and Article 4(1)(c) of the Regulation (EU) 2018/1725 (EUDPR).

⁴³ Renumbered to Article 33 under the recast proposal.

effective legal remedies are available in relation to requests for consent and the corresponding decisions.

- The twelfth element is the proposal addressing the deficiencies identified in the EIO form by removing inconsistencies, reducing duplication and introducing fields that better reflect operational needs. It also introduces standard forms to facilitate the exchange of information and limit the need for translation for the new procedures created under the proposal.

Secondly, the proposal lays down a coherent EU framework enabling remote participation in criminal court hearings for suspects, accused persons and victims of crime from another Member State, while ensuring procedural safeguards and the fairness of proceedings. This is achieved by creating a new title laying down the conditions for a Member State to request the assistance of a Member State where the person is located to have that person remotely participate in criminal court hearings.

Unlike Article 24 of the Directive, which is limited to hearings with an evidentiary purpose the scope of which has been clarified in the proposal in accordance with the interpretation provided by the Court of Justice of the European Union, the ERPO is intended to facilitate full remote participation by videoconference in hearings throughout criminal proceedings, including pre-trial hearings, trial, sentencing and appeal proceedings.

Title III includes, among other things, five noteworthy features. These five features are outlined below.

- The first feature is that the issuance of an ERPO is subject to strict conditions. An ERPO may only be issued where the person concerned is resident, temporarily staying or detained in another Member State, and where remote participation is considered appropriate and proportionate in the circumstances of the case, taking into account the rights of the person concerned.
- The second feature is that, as a general rule, issuance of an ERPO requires the informed, voluntary and unequivocal consent of the person concerned. The proposal provides for detailed safeguards to ensure that consent is obtained in an informed manner, including safeguards that lay out information concerning: (i) legal assistance, interpretation and translation rights; (ii) the implications of the remote participation; and (ii) the procedure that applies in remote participation. A narrowly framed derogation from the consent requirement is possible only in exceptional situations involving serious threats to public security or public health, which is shown to be genuine and present or foreseeable, where postponement of the hearing would be contrary to the efficient and proper administration of justice. Additional safeguards apply in such cases, including limitations concerning vulnerable persons and children.
- The third feature is that the proposal lays down a clear allocation of responsibilities between the issuing and executing authority during the conduct of the hearings, which

remain governed by the law of the issuing State, reflecting the fact that the hearing forms part of criminal proceedings pending before the competent authorities of that State. Measures required for the practical execution of the ERPO on the territory of the executing State, such as identity verification, summons and technical arrangements, remain governed by the law of the executing State.

- The fourth feature is that rules on the recognition and execution of an ERPO by the executing authority include: (a) a mandatory time limit to recognise/execute; and (b) an exhaustive list of grounds of mandatory and optional non-recognition and non-execution. These grounds include situations such as: (i) *ne bis in idem*; (ii) immunity; (iii) lack of criminal responsibility due to age; (iv) certain territoriality-related situations; and (v) exceptional cases involving manifest breaches of fundamental rights. These grounds for non-execution and non-recognition reflect those grounds for refusal available under other mutual recognition instruments to ensure that this new instrument fits coherently within the existing legal architecture. In addition, the proposal introduces an exceptional ground for non-recognition or non-execution where the executing authority considers that the execution of the ERPO in the particular case would clearly impose a disproportionate burden on the judicial system of the executing State.
- The fifth feature is that procedural rights and safeguards constitute a central component of the ERPO framework. The proposal builds on the existing EU *acquis* concerning procedural rights and victims' rights, and requires Member States to ensure that rights capable of being exercised in person can also be exercised effectively in a remote environment. The framework includes safeguards concerning: (i) access to a lawyer; (ii) confidential communication with defence counsel; (iii) interpretation and translation; (iv) remedies available in both issuing and executing States; (v) protection of vulnerable persons and children; and (vi) measures addressing technical failures affecting the fairness of proceedings.

The laying down of common EU rules on remote participation in criminal court hearings serves closely linked goals. Firstly, the initiative seeks to strengthen the effective exercise of the right to be present at trial and to participate effectively in criminal proceedings, as guaranteed by Articles 47 and 48 of the Charter of Fundamental Rights of the European Union and Directive (EU) 2016/343⁴⁴. In practice, persons involved in criminal proceedings who have exercised their right to free movement and reside in another Member State or are temporarily staying there, may prefer, in the specific circumstances of the case, to participate remotely instead of travelling to attend in person. Alternatively, they may face legitimate obstacles to physically attending hearings in the Member State conducting the proceedings, such as health-related limitations, caring responsibilities, restrictions linked to deprivation of liberty in another Member State, or other justified reasons. In such situations, the person affected may *de facto* be forced by their circumstances to waive their right to be present at the trial simply because they cannot travel to

⁴⁴ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, pp. 1-11).

attend hearings in person, even though they would in fact like to participate. By making it easier to participate remotely, the initiative therefore seeks to reduce the number of trials *in absentia* and to ensure that exercising the right to free movement within the EU does not, in practice, diminish the effective enjoyment of procedural rights in criminal proceedings. The initiative is also expected to reduce the risks of secondary victimisation for victims of crime by limiting, where appropriate, the need for repeated travel, unnecessary exposure to stressful environments, or direct confrontation with the suspect or accused person in cross-border situations.

Moreover, the initiative seeks to improve the efficiency of judicial cooperation by laying down common procedures and standardised safeguards governing remote participation across the EU. This is expected to reduce administrative burden, legal uncertainty and operational delays. Where coercive measures or surrender procedures are not necessary or proportionate, remote participation may also constitute an appropriate and less intrusive alternative to the physical surrender of the person pursuant to Council Framework Decision 2002/584/JHA. In appropriate cases, remote participation may therefore help to reduce the need for transfers of persons solely for the purpose of attending hearings while still ensuring effective participation in proceedings.

6. EXPECTED IMPACTS

The suggested option is discussed and assessed hereunder against the following five criteria:

- effectiveness;
- efficiency;
- fundamental rights;
- coherence with other EU cross-border judicial-cooperation instruments;
- proportionality.

6.1. Effectiveness

The proposed option is expected to improve the effectiveness of cross-border evidence gathering, including by reducing legal ambiguities that can lead to delays and refusals of execution. By providing appropriate cooperation mechanisms, such as for the cross-border use of technical recording devices, the proposal is expected to close an important gap in the current legal framework. The absence of a specific procedure currently creates uncertainty for investigating authorities and has led to divergent national practices.

Clarifying the relationship between the EIO and Article 40 of the CISA for cross-border surveillance measures is expected to improve legal certainty and promote a more uniform application of the legal framework. Clearer rules should reduce conflicting practices and facilitate more predictable judicial cooperation.

Defining the notion of ‘telecommunications’ and clarifying procedural aspects of the notification regime applicable where no technical assistance is required from another Member State are expected to improve the handling of notifications and contribute to the more effective execution of interception measures.

The proposed changes to the time limits for the recognition and execution of the measures (measures such as real-time evidence gathering, interception of telecommunications and cross-border surveillance) are likely to improve the effectiveness of the EIO framework. By requiring executing authorities to prioritise such EIOs and, where necessary, allowing provisional execution before the formal recognition decision is adopted, the proposal would enable authorities to commence investigative measures immediately where necessary to preserve their effectiveness. This would reduce procedural interruptions that can undermine the practical utility of the EIO in urgent cases and sometimes even lead to evidence becoming unavailable during the recognition process. The proposed changes thereby increase the likelihood that urgent investigative measures achieve their intended purpose, while maintaining safeguards that limit the use of evidence obtained through measures that are ultimately not recognised.

Taken together, these measures are expected to increase the legal certainty, consistency and predictability of the framework, thereby improving the overall effectiveness of cross-border criminal investigations.

The new rules facilitating remote participation are expected to contribute significantly to achieving the objectives of the initiative by addressing the current absence of a dedicated EU framework for remote participation in criminal court hearings from another Member State.

By laying down common procedures, safeguards and mutual recognition obligations, the ERPO is expected to provide greater legal certainty and facilitate a more uniform approach across the EU.

The proposal is also expected to strengthen the effective exercise of procedural rights in cross-border criminal proceedings. Persons concerned would be able to participate in criminal court hearings despite practical obstacles to physical attendance, such as residence abroad, detention in another Member State, health-related limitations or other justified circumstances. The proposal is therefore expected to reduce the number of situations in which individuals are prevented from participating in proceedings due to difficulties associated with cross-border mobility.

By facilitating participation through videoconferencing or other distance-communication technologies, the proposal is also expected to reduce the occurrence of proceedings conducted *in absentia* in cross-border situations and contribute to the effective exercise of the right to be present at trial. For victims of crime, remote participation may also reduce the burden associated with travel and help to limit the risk of secondary victimisation in certain cases.

The proposal is also expected to strengthen mutual trust between Member States by laying down a common framework governing the conditions, safeguards and practical arrangements applicable to remote participation in criminal court hearings.

Overall, the proposed framework is expected to improve access to justice and facilitate the effective participation of persons concerned in cross-border criminal proceedings while ensuring respect for fundamental rights and procedural safeguards.

6.2. Efficiency

Several of the proposed amendments respond directly to operational difficulties identified by practitioners. Clarifying the applicable legal framework for cross-border surveillance in person by law enforcement officers, the use of technical recording devices and the rules for requesting the use of information previously exchanged between authorities should reduce the number of requests requiring clarification or resubmission under a different legal basis. If the proposal is accepted, competent authorities should therefore spend less time determining the appropriate cooperation instrument and resolving procedural uncertainties.

On the proposed changes to the time limits for recognising and executing the measures (measures such as real-time evidence gathering, interception of telecommunications and cross-border surveillance in person by law enforcement officers) these changes have the potential to reduce procedural delays and improve the speed of cross-border judicial cooperation. By requiring executing authorities to treat urgent requests as requiring immediate attention and permitting provisional execution, it may be possible to shorten the time needed to implement investigative measures and reduce the operational costs associated with repeated requests or lost investigative opportunities. These improvements should contribute to the more efficient allocation of judicial and law-enforcement resources. Nevertheless, the ultimate impact of the proposed changes will depend on uniform implementation and consistent application throughout the Member States.

The proposal also includes improvements to the structure of the standard EIO form. By removing inconsistencies, reducing duplication and introducing fields that better reflect operational needs, the revised form is expected to facilitate communication between issuing and executing authorities and reduce the risk of incomplete requests. The proposal also includes additional forms for newly introduced procedures. These improvements should simplify the preparation and execution of EIOs, notifications and other requests while promoting faster processing by competent authorities.

In addition, the proposal is expected to generate cost reductions for public authorities as processes become more efficient through a clear legal framework. Existing problems with the procedures for cross-border judicial cooperation in evidence gathering will likely be mitigated and costs reduced.

The proposed ERPO framework is expected to generate efficiency gains for national authorities and persons concerned. These rules may reduce the need for temporary transfers, partial hearings and physical surrender of persons between Member States. This is expected to reduce logistical burden and administrative costs associated with organising travel, transfers and related security arrangements.

The proposal is also expected to help reduce delays in criminal proceedings linked to difficulties in securing the physical presence of persons located in another Member State, thus improving the overall efficiency of judicial proceedings.

The administrative costs associated with implementation are expected to remain proportionate. The proposal will also build on the trust services and related infrastructure established under the eIDAS Regulation⁴⁵, notably through leveraging the use of qualified electronic signatures and electronic seals. The proposal builds on existing mutual-recognition mechanisms and relies on the decentralised IT system established under Regulation (EU) 2023/2844. National authorities are already familiar with the operation of mutual recognition instruments in criminal matters, and this is expected to facilitate implementation and limit adaptation costs.

Certain costs may arise from the need to ensure access to appropriate videoconferencing infrastructure, secure communication channels and arrangements necessary to safeguard procedural rights⁴⁶. However, many Member States have already invested significantly in digital justice infrastructure in recent years. Furthermore, such costs are expected to be offset over time by reductions in travel, transfer and organisational expenses, as well as by gains in procedural efficiency.

Overall, the proposal is expected to improve the cost-effectiveness of cross-border criminal proceedings by enabling participation while maintaining a high level of procedural safeguards and ensuring the fairness of proceedings.

6.3. Fundamental rights

The proposal complies with the fundamental rights and principles recognised by the Charter, in particular the right to a fair trial and to effective remedy and the rights of defence, as enshrined in Articles 47 and 48 of the Charter and Articles 6 and 13(1) of the European Convention on Human Rights (ECHR). It builds on the six EU Directives on procedural rights for suspects and accused persons in criminal proceedings (Directives 2010/64/EU⁴⁷, 2012/13/EU⁴⁸, 2013/48/EU⁴⁹, (EU)

⁴⁵ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, p. 73.

⁴⁶ Cost calculations regarding videoconferencing have been carried out in the context of the Commission Staff Working Document Impact Assessment Report accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation and Proposal for a Directive of the European Parliament and of the Council on amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, as regards digitalisation of judicial cooperation, SWD(2021) 392 final.

⁴⁷ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁴⁸ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁴⁹ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

2016/343, (EU) 2016/800⁵⁰ and (EU) 2016/1919⁵¹) as well as Directive 2012/29/EU⁵², amended by Directive (EU) 2026/1472⁵³ on the rights of victims of crime.

The suggested option maintains the high level of protection of fundamental rights laid down under the existing EIO framework, while improving legal certainty regarding the application of procedural safeguards.

The Directive protects fundamental rights by embedding safeguards throughout the framework on the EIO and other measures for obtaining evidence in criminal matters. In particular, the Directive lays down specific provisions intended to ensure that the issuing or validation of an EIO is accompanied by guarantees relating to respect for the fundamental rights of the person concerned. The Directive also allows the executing authority to consider the principle of proportionality and to ensure that the procedural and fundamental rights of the person concerned are respected when executing an EIO. The proposal does not modify the fundamental conditions governing the issuing and execution of EIOs.

In addition, the notification procedure for the cross-border interception of telecommunications which does not require assistance from another Member State ensures that the Member State where the subject of the measure is located is informed and may intervene if the measure would not be authorised in a similar domestic case. Similarly, the introduction in the proposal of a notification mechanism for the continued use of technical recording devices ensures that investigative activities affecting the territory of another Member State are carried out within a clear legal framework that preserves the procedural guarantees available under the Directive. Additionally, clarifications concerning interception procedures and the subsequent use of evidence also contribute to greater legal certainty for both competent authorities and persons affected by investigative measures.

Finally, the Directive currently requires Member States to ensure that legal remedies equivalent to those available in a similar domestic case are available in respect of the investigative measure concerned. The proposal further introduces a requirement that, where an EIO is issued to obtain evidence already in the possession of the competent authorities of the executing State, a legal remedy also be available in that State to challenge the lawfulness of investigative measures carried out for the purpose of obtaining the evidence to be transferred to the issuing State.

The proposed rules on remote participation in criminal court hearings set clear and strict conditions for issuing and executing an ERPO, as well as related procedural safeguards and remedies. These

⁵⁰ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

⁵¹ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

⁵² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

⁵³ Directive (EU) 2026/1472 of the European Parliament and of the Council of 17 June 2026 amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L, 2026/1472, 30.6.2026.

rules ensure that remote participation in hearings is not carried out in a manner that undermines the fairness of proceedings or the exercise of procedural rights. In particular, the obligation to obtain the consent of the person concerned by the ERPO is intended to ensure that the execution of the ERPO remains compatible with the protection of the fundamental rights enshrined in the Charter, especially the right to be physically present at the trial. A derogation from this consent requirement is permitted only in exceptional and clearly identified situations which constitute permissible limitations in accordance with Article 52 of the Charter. Moreover, the requirement for the suspect or accused person to be represented by a mandated lawyer present in the issuing Member State constitutes an additional safeguard for the effective exercise of defence rights.

The proposed rules on remote participation in criminal proceedings are consistent with the case law of both the European Court of Human Rights (ECtHR) and the Court of Justice. Although the ECtHR has consistently recognised that the physical presence of the accused in the courtroom is an important component of the right to a fair trial, it has also held that participation in hearings by videoconference is not, in itself, incompatible with the right to a fair and public hearing, provided that the person concerned is able to: (i) follow the proceedings; (ii) see and hear the persons participating in the hearing; (iii) be seen and heard without technical impediments; and (iv) communicate effectively and confidentially with their lawyer. The proposal reflects all these standards and, as mentioned above, lays down a number of additional safeguards.

The proposed rules also take into account the relevant case law of the Court of Justice, notably case C-760/22⁵⁴. In that case, the Court clarified that since Article 8(1) of Directive (EU) 2016/343 does not expressly regulate the issue of remote participation in criminal trials, that provision cannot preclude an accused person, who makes an express request to that effect, from participating in their trial hearings by videoconference. The Court of Justice also confirmed that, where the Member States allow the defendant to exercise the right to attend their trial remotely, those rules should not undermine the aim pursued by Directive (EU) 2016/343, which is to strengthen the right to a fair trial in criminal proceedings, the presumption of innocence and the right of defence as enshrined in the Charter and the ECHR.

6.4. Coherence with other EU instruments on cross-border judicial cooperation

The suggested option is expected to strengthen the coherence of the EU's framework governing cross-border judicial-cooperation instruments in criminal matters, by filling in gaps identified in the Directive and by maintaining consistency with other instruments.

Several amendments clarify the relationship between the EIO and other existing instruments. In particular, the proposal provides greater legal certainty regarding the interaction between the Directive and Article 40 of the CISA in relation to cross-border surveillance. This clarification is

⁵⁴ Judgment of the Court of Justice of 4 July 2024, FP and Others (Procès par visioconférence), C-760/22, EU:C:2024:574.

expected to reduce overlap between legal regimes and ensure that practitioners apply the appropriate instrument more consistently.

Similarly, laying down a dedicated procedure for obtaining consent to use previously exchanged information as evidence contributes to greater coherence between the EIO framework and existing mechanisms governing law enforcement and judicial information exchange, namely the Directive on the exchange of information between law-enforcement authorities⁵⁵ and the 2000 Convention on Mutual Assistance in Criminal Matters. The proposal thereby bridges an operational gap without altering the legal framework governing those exchanges.

The initiative is also consistent – and creates direct links – with: (i) the Eurojust Regulation⁵⁶; (ii) the EPPO⁵⁷ Regulation and (iii) the Council Decision on the European Judicial Network⁵⁸.

With respect to the ERPO, the proposal fills a current gap in the EU *acquis*, while ensuring a coherent approach with the existing rules on the use of videoconferencing in criminal proceedings which are already covered at EU level (see Section 2.2.2 above).

The proposal is also fully consistent with the EU *acquis* on procedural rights in criminal proceedings. Directive (EU) 2016/343 enshrines, in its Article 8, the right of suspects and accused persons to be present at trial. Without prejudice to that right and to the standards set under that Directive for trials to be held *in absentia*, this proposal aims to strengthen the exercise of the right to be present at trial. It does this by allowing persons concerned to participate remotely by way of videoconference or other distance-communication technology in hearings where strict conditions are met and a number of safeguards guaranteed. At the same time, the proposal aims to ensure that procedural rights and safeguards which were designed to be exercised in person can also be effectively exercised remotely, where necessary.

The new provisions on ERPOs help to improve access to justice in cross-border criminal proceedings. They enable suspects, accused persons and victims of crime who are resident, detained, or temporarily staying in another Member State for justified reasons, to participate effectively in criminal proceedings without being required to travel to the issuing State. In this way, the proposal may, in appropriate circumstances, constitute an alternative to physical surrender under Council Framework Decision 2002/584/JHA, whenever a coercive measure is not considered necessary in the specific case and the objective pursued is limited to securing the person's participation in a hearing or their trial.

⁵⁵ 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 and repealing Council Framework Decision 2006/960/JHA (OJ L 134, 22.5.2023, p. 1).

⁵⁶ 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) and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

⁵⁷ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

⁵⁸ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

6.5. Proportionality

The proposal complies with the principle of proportionality set out in Article 5(4) of the Treaty on European Union, as it does not go beyond what is necessary to achieve its objectives. It builds on existing mutual recognition instruments and digital infrastructure at EU level, thereby limiting additional administrative and financial burden.

Rather than fundamentally redesigning the EIO framework, the proposal introduces targeted amendments limited to those areas where the 10th round of mutual evaluations identified specific legal uncertainties or operational shortcomings. It preserves the existing architecture of the Directive, including: (i) the principle of mutual recognition; (ii) the allocation of responsibilities between issuing and executing authorities; and (iii) the existing safeguards relating to necessity, proportionality and fundamental rights.

The proposed targeted amendments to the EIO are limited to the concerns identified in the 10th round of mutual evaluations and other reports mentioned in the sections above. They clarify existing provisions and introduce procedures where genuine legal gaps have been identified. The measures therefore address identified problems in a targeted manner while respecting the diversity of Member States' criminal justice systems.

The proposed rules on remote participation in criminal court hearings respond to requests by Member States. The initiative creates a targeted framework that is limited to and does not go beyond what is necessary to facilitate cooperation between judicial authorities to issue and recognise requests for suspects, accused persons and victims of crime to participate remotely in criminal court hearings, whenever they consent (with narrowly defined exceptions in exceptional circumstances). It does not harmonise national criminal procedures more broadly at domestic level. The use of an ERPO in individual cases remains at the discretion of the Member States, and is subject to a proportionality and appropriateness assessment in each individual case. Specific safeguards to ensure proceedings are fair and procedural rights can be exercised effectively are included in the proposal.

The proposal also respects Member States' procedural autonomy as the conduct of hearings continues to be left to the law of the issuing Member State, while only necessary execution measures are governed by the law of the executing Member State.

7. IMPACT MONITORING

The Directive will be evaluated and the Commission will submit a report to the European Parliament and the Council no later than five years after it adopts the implementing act referred to in Article 60(3) of the proposal. The evaluation will be based, among other things, on the input received from the Member States' authorities and other relevant stakeholders. In particular, the Commission will organise meetings of Member State experts to discuss issues arising from the implementation of the Directive. Eurojust and the EJM will also play an important role in the implementation and application of the relevant instruments. These forums, together with other

professional networks, may be used to both gather feedback from practitioners on the application of the Directive and identify practical challenges.

The success of the Directive will be assessed against the extent to which it achieves its objectives, in particular by facilitating cooperation between Member States' competent authorities in the cross-border judicial-cooperation procedures covered by the Directive. As this objective is unlikely to be directly measurable, the assessment should instead be based on a combination of the indicators set out in the box below.

Figure 1: Examples of potential evaluation indicators

Assessment criterion	Examples of potential indicators
To improve the efficiency and legal certainty of cross-border cooperation procedures in evidence gathering. To enable remote participation from another Member State. To lay down specific procedural safeguards in the context of remote participation.	The practical application of the Directive: - the number of EIOs, ERPOs and notifications under Article 30(6), point (a) and under Articles 33 and 34 issued and sent (source – Member States, yearly); - the length of time to send evidence or the length of time taken to send information on the decision on non-recognition or non-execution of an EIO (source – Member States, yearly); - percentage of recognised and executed EIOs and ERPOs, and percentage of EIOs and ERPOs which were not recognised and non-executed, including the grounds for refusal (source – Member States, yearly); - percentage of legal remedies sought against the issuing or execution of the EIO and ERPO (including whether by a suspect, accused person or a victim) and the number of successfully challenged decisions (source – Member States, yearly); - case law concerning the new provisions of the Directive, possible preliminary ruling

	requests to the CJEU concerning the interpretation of these provisions. • The perception of the Directive by civil society, legal practitioners, academia and public authorities of Member States: ○ Commission's targeted consultation of public authorities, relevant EU agencies, EU bodies and EU networks, and lawyers' associations; ○ the number of petitions and letters from members of the public related to issues in the application of the Directive; ○ the views of the Directive in academic literature and in reports by individuals, organisations and international organisations. Costs of implementing and operating the decentralised IT system for the newly introduced procedures (source – Commission and Member States).
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Annex 1: Procedural information

1. Lead DG, Decide planning/CWP references

Lead DG: The Directorates-General for Justice and Consumers (JUST) is the DG responsible for preparing this initiative.

Decide reference: PLAN/2025/1063.

2. Evidence and sources

European Commissioner Dombrovskis has granted on 17 January 2025 a derogation from the requirement to carry out an impact assessment to sustain the targeted review of the EIO. There were two main grounds for this derogation: lack of realistic options and the initiative's limited economic, social, and environmental impacts. To compensate for the absence of an impact assessment, this analytical Commission staff working document was prepared. Moreover, Better Regulation rules contemplate the possibility to exempt files concerning enforcement of EU laws and legal alignment (e.g. box B page 44): the EIO is about legal alignment of proceedings and about harmonising enforcement of (EU) laws.

This analytical document accompanying the initiative compiles the evaluative evidence. Evidence has been gathered through several consultation activities. In addition, the proposal draws on: (i) the final report of the 10th round of mutual evaluations; (ii) reports⁵⁹ from Eurojust and the European Judicial Network; and (iii) other research projects and discussions⁶⁰.

The problem definition, the suggested policy option and the impacts reflect the views of the relevant stakeholders that participated in the consultation activities detailed in Annex 2.

⁵⁹ Supra, at 20.

⁶⁰ Including: (i) the results of a research project on the digitalisation of defence rights in criminal proceedings which was funded by the European Commission under the Justice programme <https://www.law.kuleuven.be/linc/english/research/researchdigirights.html>; (ii) the FRA report 'digitalising Justice: A Fundamental Rights-based Approach' https://fra.europa.eu/sites/default/files/fra_uploads/fra-2025-digitalising-justice-fundamental-rightsapproach_en.pdf; (iii) the preliminary results of discussions at the working conference on the use of videoconferencing for trial purposes in cross-border criminal cases in the EU held on 20 January 2026 and organised by the Dutch Ministry of Justice and Erasmus University Rotterdam; and (iv) the 2026 Fair Trials LEAP Annual Conference.

Annex 2: Stakeholder consultation

This annex provides a summary of all stakeholder consultation activities undertaken in the context of the Commission's initiative on the recast of Directive 2014/41/EU.

1. Consultation strategy

The consultation activities aimed at ensuring that all interested parties and stakeholders would have the opportunity to provide feedback on possible policy options and their likely impacts. In that context, the Commission reached out to a broad range of stakeholders, including Member States' national authorities, non-governmental organisations, EU agencies and bodies, academics and individual members of the public.

In order to ensure that the Commission's proposal adequately took into account the views of all interested stakeholders, the consultation strategy supporting this initiative was built on the following components:

I. Consultation activities:

o Call for evidence

- Published on the European Commission's 'Have your Say' website on 6 January 2026. Submissions were possible until 3 February 2026.
- Included a link to a document describing the political context, the problems, the objectives, policy options, and likely impacts.
- The targeted audience included professionals dealing with cross-border judicial cooperation, civil society organisations, academics, researchers, and the general public.

o Targeted consultations

- Consultation of Member States' public authorities through a targeted questionnaire on the current situation and a potential future legal framework. The questionnaire was sent on 20 October 2025 with a deadline of 14 November 2025.
- Consultation of relevant stakeholders, namely Eurojust, the EJN, the EPPO, Europol, and the FRA, through targeted questionnaires.

II. Meetings:

o Group expert meetings

- EIO expert group meetings organised by the Commission on 31 March 2025 and 2 July 2025. These meetings included Member State experts as well as representatives of the FRA, Eurojust, the EJN and the EPPO.
- Expert Group on EU Criminal Policy on 14 May 2025 organised by the Commission.

- Online expert meeting on the use of certain special investigative techniques in the context of cross-border investigations into organised crime, organised by the Commission on 5 May 2026.

The results of each component are presented below.

2. Results of the consultation

The following sections present a summary of the main results of the consultation activities.

I. Call for evidence

Fifteen replies were gathered through the call for evidence. Five respondents identified themselves as EU citizens (one of whom is an academic); two identified themselves as non-governmental organisations; two were public authorities; one was a research institution; and the five others included practitioners and lawyers' associations.

Respondents overall supported a revision of the EIO Directive, emphasising the added value of the proposal, and the key elements which would benefit from reform. Most respondents called for a balanced approach that both improves cross-border cooperation and upholds fundamental rights.

Some respondents raised concerns about the introduction of rules on remote participation for the impact these may have on the adversarial principle and the right to be present at trial, calling for specific and clear standards of protection to be laid down for the persons concerned.

II. Targeted consultations

The targeted consultations gathered views on both: (i) issues with the cross-border gathering of evidence; and (ii) potential future rules on remote participation in criminal court hearings. Replies were received from 18 Member States, the CCBE, the ECBA, the EJC, the EPPO, Eurojust, Europol and the Fundamental Rights Agency (FRA).

A. Consultations on the cross-border gathering of evidence in criminal matters

Consultations with Member States

The questionnaire focused on seven specific issues, identified in recent reports on the application of the EIO Directive for evidence gathering, as requiring clarification or legislative intervention at EU level. These seven specific issues are: (i) the use of information, shared previously between law enforcement authorities, as evidence in criminal proceedings; (ii) the rule of speciality in the context of the EIO; (iii) the use of technical devices that track movements and record sound and images; (iv) surveillance conducted in person by law enforcement officers and its relationship with Article 40 of the CISA; (v) the interception of telecommunications; (vi) the possible extension of the scope of the EIO Directive; and (vii) legal remedies. The paragraphs below look at each of these seven issues in more detail.

- (i) The use of information, which was shared previously between law enforcement authorities, as evidence in criminal proceedings

The consultation examined possible amendments to the Directive to regulate requests for consent to use as evidence in criminal proceedings information previously exchanged between law enforcement authorities, or sent through spontaneous exchanges between judicial authorities.

Concerning the grounds on which authorities should be able to refuse consent, most Member States (12) considered that these grounds should correspond to the grounds for refusal provided for in Article 11(1) of the EIO Directive. Five Member States expressed different views. Three considered that additional grounds for refusal should be available, including where the information had been obtained unlawfully or was inaccurate, had been shared exclusively for intelligence purposes, or remained subject to investigative confidentiality. By contrast, two Member States favoured a more limited approach, considering that consent should be refused only where the information could not be used as evidence under the law of the providing State or where its use would jeopardise ongoing criminal proceedings in that State.

Member States also reported differing experiences regarding the time required to process requests for consent. Seven Member States indicated that such requests were processed within one week or less. Three Member States reported an average response time of between one and two weeks. A further three Member States indicated that it generally took more than two weeks. Other three other Member States reported having no practical experience with such requests.

- (ii) Rule of speciality in the context of the EIO

The consultation confirmed that Member States followed different approaches to the subsequent use of evidence obtained through the execution of an EIO. Ten Member States indicated that their national legislation, whenever they act as an executing State or a notified Member State, did not impose specific restrictions on the use of evidence, whereas six applied general limitations and two limited its use only in relation to certain investigative measures. Among those applying restrictions, there was broad agreement that evidence should, as a general rule, be used only for the purpose for which it had originally been obtained, and that for any other purpose consent must be requested from the executing authority. Some Member States also referred to safeguards applicable in domestic proceedings that either: (i) prohibit the use of evidence obtained in other criminal proceedings (such as in one Member State a request for banking information or information from tax proceedings would need to be submitted in each individual case separately); or (ii) restrict such use by requiring an authorisation before evidence obtained in one criminal proceeding could be used in another, particularly where coercive investigative measures or evidence available only for the investigation of serious offences were concerned.

Regarding the future legal framework, several alternative legislative options were considered but did not attract majority support. The options proposed different approaches to the further use of evidence obtained through an EIO, ranging from limiting the use of evidence to specific purposes

listed in the Directive unless the executing State consents to other uses⁶¹, to generally permitting further use of evidence subject to national conditions, or requiring the executing State's consent for further use only in the case of evidence obtained through specified investigative measures. The largest group of Member States (seven) favoured allowing evidence obtained through an EIO to be used for purposes other than those for which it had originally been obtained, while allowing the executing State to inform the issuing State of any limitations or conditions under its national law. Under this approach, the issuing State could request that such limitations be lifted where the further use of the evidence was necessary. Four Member States supported a consent-based model based on Article 23 of the 2000 Convention on Mutual Assistance in Criminal Matters, while a further two preferred requiring consent only where the evidence had been obtained through specified investigative measures, such as coercive measures. Four Member States did not support any of the proposed options. The views of these four Member States ranged from opposing the introduction of a rule of speciality altogether to supporting a consent-based system for any other use to be assessed on a case-by-case basis. One Member State also suggested introducing a 'silence means consent' mechanism, whereby consent would be deemed to have been granted if no objection was raised within 96 hours.

As regards the option of limiting the use of evidence to specific purposes listed in the Directive, Member States also expressed different views on the circumstances in which it should be possible to use evidence without the consent of the executing State. The greatest support (eight Member States) was expressed for allowing the use of evidence in other judicial or administrative proceedings directly related to those for which the EIO had been issued (whereas one Member State considered that consent should be a necessary requirement for such purpose). Six Member States also supported its use where necessary to prevent an immediate and serious threat to public security (whereas three considered that consent should be a necessary requirement for such purpose). Only three favoured allowing its unrestricted use for the investigation or prosecution of other criminal offences (whereas six Member States considered that consent should be required for such purposes). 9 Member States considered that consent should be required for any other purpose not mentioned.

Views also differed as to the categories of evidence that should be subject to a consent requirement. Seven Member States supported applying the requirement to all evidence obtained through the execution of an EIO, while three favoured limiting it to evidence obtained through coercive investigative measures. Four Member States considered that the requirement should apply only to evidence obtained through specific investigative measures provided for in the EIO Directive, namely covert investigations, the interception of telecommunications and hearings by videoconference.

On procedural arrangements, 9 Member States considered that requests for consent should contain the information referred to in Article 5(1)(a) - (d) of the EIO Directive, while one Member State proposed requiring a more detailed justification explaining the intended use of the evidence, its connection with the original proceedings and the specific evidence concerned. Eleven Member

⁶¹ Model of Article 23 of 2000 Convention on Mutual Assistance in Criminal Matters.

States supported aligning the grounds for refusing consent with the existing grounds for non-recognition or non-execution under the EIO Directive.

Most Member States (nine) considered that the authorities competent to request and grant consent should be the same as the issuing and executing authorities under the EIO Directive. Two Member States preferred that requests should be submitted by the judicial authority responsible for the new criminal proceedings.

A large majority of Member States (14) also supported extending any future rules on the use of evidence to evidence obtained through the notification procedure under Article 31 of the EIO Directive, including any future notification mechanism governing the cross-border use of technical recording devices, whereas three Member States opposed. Those 14 Member States further considered that the same rules should apply irrespective of whether the evidence had been obtained through the execution of an EIO or through a notification procedure.

(iii) Use of technical devices that track movements and record sound and images

The consultation showed broad convergence among Member States regarding the availability of technical recording devices in criminal proceedings. Sixteen Member States reported that their national law permitted the use of technical devices for tracking movements (e.g. GPS trackers) as well as devices recording sound and images. A small number of Member States authorised only certain categories of technical devices, while one Member State indicated that additional technical investigative tools were also available.

Most Member States reported that the use of such measures was subject to extensive procedural safeguards. Judicial authorisation by a court or investigating judge was the predominant safeguard, although several Member States allowed prosecutors to authorise certain urgent measures subject to subsequent judicial review. Many Member States further restricted the use of technical devices to investigations concerning serious offences, often defined by reference to statutory penalties or specific categories of crime. Other reported safeguards included: (i) compliance with the principles of necessity and proportionality; (ii) subsidiarity where less intrusive measures were available; (iii) fixed maximum durations with the possibility of judicial renewal; (iv) requirements that the measure should be likely to produce relevant evidence; (v) reasoned judicial decisions; (vi) personal data-protection safeguards; and (vii) the availability of judicial remedies.

A clear majority of Member States (14) supported introducing a notification mechanism for the continued use of technical devices lawfully installed in one Member State where the device subsequently enters the territory of another Member State without requiring technical assistance from that State. Most respondents considered that the notified Member State should be entitled to object to, or impose conditions on, the continued use of the measure within a specified period. Only two Member States considered that the current provisions of the EIO Directive were sufficient, while one Member State supported a notification procedure but considered that devices tracking movements should not be covered (as falling within police cooperation).

Most Member States also supported applying the same notification procedure irrespective of whether the cross-border movement of the device had been anticipated or became known only after the border had been crossed. A minority considered that advance knowledge of the border crossing should instead require the prior issuance of an EIO, while others favoured replacing the distinction between notifications and EIOs with a single, simplified instrument.

On the scope of such a notification procedure, most Member States considered that it should apply to all technical devices used to track movements or record sound and images. One respondent also suggested extending the mechanism to software installed on electronic devices, while another considered that devices recording images should not be covered.

There was broad agreement that the notified Member State should be able to oppose the continued use of a technical device only where such a measure would not be authorised in a similar domestic case. A small number of Member States also proposed aligning the grounds for objection with the existing grounds for non-recognition or non-execution under Article 11 of the EIO Directive.

On the content of notifications, most Member States considered that the information listed in Article 5(1)(a) - (d) of the EIO Directive would be sufficient. Others favoured supplementing this information with technical and procedural details, such as information about the measure (type, device identification data and when and where the measure was installed), the expected duration, details on why the notification procedure (rather than a full EIO) is being used, and using a simplified notification form based on Annex C to the Directive.

Several Member States also highlighted the importance of clearly distinguishing the proposed notification mechanism from Article 40 of the CISA, emphasising the need for a coherent legal framework governing cross-border surveillance and the use of technical recording devices.

as to the scenario of requesting technical assistance for the installation of technical devices in another Member State, most respondents (15) considered that Article 28 of the EIO Directive already constituted the appropriate legal basis. Nevertheless, a significant number (11 Member States) supported explicitly clarifying the Directive by providing that an EIO could be issued whenever the technical assistance of another Member State was required for the use of the device in its territory. Six respondents favoured regulating such situations through a dedicated provision on the use of technical devices rather than relying solely on Article 28, while three considered that the existing provision could be clarified without introducing a separate legal basis.

(iv) Surveillance conducted in person by law-enforcement officers and its relationship with Article 40 of the CISA

All responding Member States indicated that surveillance conducted in person by law-enforcement officers was available under their national law as an investigative measure for gathering evidence in criminal proceedings.

The consultation showed that surveillance was generally subject to safeguards comparable to those governing the use of technical devices. Several Member States required prior judicial authorisation, while others allowed prosecutors, and in some cases other competent authorities, to

grant initial authorisation, particularly in urgent situations. Surveillance was commonly limited to investigations involving serious offences or offences meeting specified statutory thresholds. Most Member States also required that the measure be necessary and proportionate, that less intrusive investigative methods would be insufficient, and that there be reasonable grounds to believe that the surveillance would produce relevant evidence. Additional safeguards included maximum duration, judicial review of extensions, personal data-protection requirements, protection of the private life of the person concerned and, where appropriate, subsequent notification of the person concerned.

Member States reported divergent practices regarding the legal basis for asking another Member State to carry out surveillance within its territory. Ten Member States relied on Article 28 of the EIO Directive, while four referred to bilateral agreements. Seven Member States indicated that Article 40 of the CISA constituted the appropriate legal basis.

A number of Member States (11) supported amending the EIO Directive to expressly regulate requests for the surveillance of persons, vehicles and objects in another Member State for evidentiary purposes. Five Member States considered that no legislative amendment was necessary, either because Article 28 already provided a sufficient legal basis or because surveillance was regarded as an operational police activity falling outside the scope of the Directive.

Among those supporting legislative amendments, most favoured introducing a dedicated provision on cross-border surveillance, while a smaller number preferred clarifying Article 28. As regards surveillance, which was initiated in one State by its officers and continues in the territory of another State (cross-border surveillance), thirteen Member States considered Article 40 of the CISA to be the appropriate legal basis for cross-border surveillance conducted in person by law-enforcement officers, whereas eight relied on Article 28 of the EIO Directive. Several Member States reported using both instruments, depending on the purpose of the measure, or combining them with bilateral agreements or other mutual legal assistance instruments. Some respondents observed that Article 40 of the CISA lacked clear provisions on evidentiary use, recording of surveillance activities and judicial oversight, while others stressed the need to distinguish more clearly between police cooperation under Article 40 of the CISA and judicial cooperation under the EIO Directive.

As to the future legal framework, A number of Member States proposed limiting the scope of such a provision to proceedings falling within Article 4(a) of the EIO Directive or to persons suspected, accused or convicted of criminal offences. Eight Member States supported allowing surveillance to continue across a border in urgent situations where it had not been possible to issue an EIO in advance, provided that the executing State was notified immediately and an EIO was subsequently issued within a prescribed period. Most Member States (11) also considered that any new provision on cross-border surveillance should incorporate the conditions laid down in Article 40(3) of the CISA.

(v) Interception of telecommunications

The consultation indicated broad support for clarifying and improving the provisions of the EIO Directive governing the interception of telecommunications, particularly the notification procedure under Article 31. Although a number of Member States considered the existing framework to be broadly appropriate, most respondents identified practical improvements aimed at increasing legal certainty, limiting administrative burden and facilitating the timely handling of cross-border interception requests.

The most frequently supported amendments concerned the operation of the notification procedure. Seven Member States proposed extending the current 96-hour deadline for responding to notifications, with two specifically suggesting a seven-day deadline to reflect the increasing volume and complexity of judicial cooperation requests. Eight Member States supported introducing an obligation for the notified authority to acknowledge receipt of the notification and forward it promptly to the competent authority where necessary, together with an obligation to inform the intercepting Member State. Several Member States were also in favour of: (i) requiring Member States to notify the Commission of the authorities competent to receive Article 31 notifications; and (ii) introducing a mechanism allowing an extension of the response deadline in justified cases. A smaller number supported assigning a coordinating role to a central authority.

Several additional suggestions aimed to simplify the notification procedure. These included: (i) encouraging designation of a single competent authority to handle notifications in order to ensure greater expertise and efficiency; and (ii) clarifying Article 31 in light of recent case law. Conversely, two Member States considered that the existing provisions were adequate and did not require amendment. One Member State also stressed the need to distinguish between the interception of telecommunications and the recording of face-to-face conversations, suggesting that the latter should be addressed through separate legislative provisions.

(vi) Possible extension of the scope of the EIO Directive

The consultation also examined whether the scope of the EIO Directive should be extended to proceedings concerning assets derived from criminal conduct that are not linked to a specific criminal offence. Eleven Member States supported such an extension, considering that it would facilitate evidence gathering in non-conviction-based confiscation proceedings and strengthen cross-border asset recovery. Five Member States opposed extending the scope of the Directive in this way, noting the lack of legal basis in their national law for such proceedings, and arguing that the EIO should remain limited to criminal proceedings or that alternative EU instruments would be more appropriate for such measures.

Member States were similarly divided on extending the scope of the EIO Directive to investigative measures carried out during the execution phase following conviction, such as locating convicted persons or tracing assets. Eight Member States supported extending the Directive in this way, considering that it could improve judicial cooperation and facilitate asset recovery after conviction. Some respondents nevertheless suggested that a separate instrument could also achieve this objective. A further eight Member States opposed extending the Directive for this purpose, arguing that post-conviction proceedings involve different authorities and different legal frameworks and should therefore remain governed by separate instruments.

(vii) Legal remedies

Member States expressed differing views on whether the EIO Directive required further harmonisation of the rules governing legal remedies.

Eight Member States supported amending Article 14 to ensure that persons affected by an investigative measure have access to an effective legal remedy in both the issuing and executing States. They considered that challenges to the substantive reasons for issuing an EIO should be brought before the courts of the issuing State, while remedies relating to the execution of the investigative measure should remain available in the executing State. A smaller number of Member States (five) supported amending Article 5(1) of the EIO Directive to require that every EIO explicitly indicate the legal remedies available in the issuing State.

By contrast, six Member States considered that the existing framework under Article 14 was generally satisfactory and did not require legislative amendment. Although some respondents acknowledged that clarification in light of the evolving case law of the Court of Justice of the European Union could be beneficial, they considered that any amendments should preserve the effectiveness of investigations and avoid creating unnecessary procedural burdens.

Consultations with Eurojust

Eurojust provides operational assistance to national authorities throughout the lifecycle of EIO proceedings. This includes: (i) advising on the appropriate legal instrument; (ii) assisting in the drafting of EIOs; (iii) identifying the competent executing authorities; (iv) coordinating urgent or multi-jurisdictional execution; (v) addressing language-related issues; (vi) clarifying grounds for refusal; and (vii) facilitating the provision of supplementary information where required.

For the reporting period from 1 November 2020 to 31 October 2025, Eurojust reported a total of 13 391 cases involving at least one EIO (often several EIOs are issued within a single case).

On the possible introduction of new provisions in the EIO Directive governing requests for consent to use information previously exchanged by law-enforcement authorities as evidence in criminal proceedings, Eurojust considered that legislative amendments should not be confined to Directive (EU) 2023/977, but also cover spontaneous information exchange between judicial authorities under Article 7 of the 2000 Convention on Mutual Assistance in Criminal Matters. Eurojust's casework confirmed that information is regularly sent as part of a 'spontaneous exchange of information' and has raised issues.

Eurojust considered that: (i) the main necessity is to clarify under EU law which instrument and procedure are applicable to request consent; and (ii) it should be clear that obtaining consent is not mandatory under EU law but dependent on applicable national law. Eurojust considered that the most relevant grounds for refusal of consent were: (i) if the use as evidence would prejudice ongoing investigations in the providing Member State; and (ii) if the information cannot be used as evidence under the law of the providing Member State. Eurojust also considered that the deadlines could be shorter and the form should be shorter and different than set out in Annex A.

On the rule of speciality, Eurojust considered that such a rule should cover all categories of evidence, with the exception of investigative measures which are always available under Article 10 of the Directive. It also considered that refusal should be possible where sending evidence for use in separate proceedings would not be permissible in an equivalent domestic case under the law of the issuing State.

As the preferred model for regulating the principle of speciality, Eurojust supported an approach under which the principle would not apply as a general rule but could be imposed by the executing authority in limited and duly justified cases. In Eurojust's view, this approach: (i) is consistent with the principle of mutual trust; (ii) avoids unnecessarily complicating the operation of the EIO Directive; and (iii) enables the executing authority to impose the rule of speciality as an exception where justified (for example where evidence has been obtained through coercive measures that are available only in relation to specified categories of serious offences).

On the use of technical devices, Eurojust considered that an amendment to the EIO Directive was necessary for situations involving the continued use of a device lawfully installed in one Member State after the person or object concerned crosses into another Member State. Situations involving the installation of a technical device within another Member State were considered adequately regulated by Article 28 of the Directive. Eurojust proposed that technical recording devices should be regulated in a manner comparable to Article 31 of the Directive through an *ex post* notification mechanism. The notified authority should be entitled to oppose the measure only where it would not be available in a similar domestic case, while the absence of any response within the prescribed period should be deemed to constitute approval.

Eurojust confirmed that difficulties arise in the application of cross-border surveillance and considered that it was necessary to clarify the relationship between the Directive and Article 40 of the CISA.

On the interception of telecommunications, Eurojust considered that the current provisions of the EIO Directive are not entirely satisfactory. It recommended introducing an autonomous and technologically neutral definition of 'interception of telecommunications' in order to avoid divergent national interpretations. Eurojust also recommended revising the standard forms contained in Annexes A and C so that issuing authorities are required to specify in greater detail the technical measures requested.

In light of significant divergences among Member States, giving rise to refusals, partial execution of requests, and operational delays, Eurojust suggested limiting the scope of the ground for refusal where an interception measure would not have been authorised in a similar domestic case (at least for cases in which the requests do not require any technical assistance by the other Member State or in respect of a list of serious offences). Eurojust further considered that because the EIO is an evidence-gathering instrument, intelligence-only restrictions in the executing State should not prevent the use of intercepted communications as evidence where permitted by the issuing State's law. It also suggested clarifying that the executing State has a duty to inform the issuing State of the allowed duration of the interception and of the possibility of requesting a prolongation, and

supported introducing shorter deadlines for the execution of interception (and surveillance) measures.

Eurojust also supported extending the scope of the EIO Directive to cover proceedings concerning assets derived from criminal conduct that are not linked to a specific criminal offence. It also supports extending the Directive to cover investigative measures carried out during the enforcement phase following conviction.

On legal remedies, Eurojust noted that its operational experience does not reveal any significant shortcomings requiring further harmonisation.

Because Eurojust provides operational and strategic support for the implementation of EIOs, it recommended that its role be explicitly mentioned as a reminder in the Directive.

Finally, Eurojust recommended clarifying the scope of the EIO Directive to confirm that an EIO may also encompass procedural measures that are instrumental or intrinsically linked to the execution of the requested investigative measure, thereby avoiding the need to issue separate letters of request. More broadly, Eurojust suggested considering an expansion of the Directive's scope beyond purely investigative measures so that additional forms of judicial cooperation currently governed by the regime for mutual legal assistance could also be brought within the framework of mutual recognition.

Consultations with the EJM

Five EJM practitioners from different Member States, in reply to targeted consultations, shared their experience with the application of the Directive and identified recurring challenges related to legal uncertainty, divergent national practices and delays in execution. Overall, although the existing framework was considered to function satisfactorily, participants called for greater legal clarity and further harmonisation.

When seeking consent to use information previously exchanged between law-enforcement authorities as evidence in criminal proceedings, practitioners primarily rely on the Directive as the legal basis (or they rely on another legal instrument for Member States not participating in the Directive). Although some practitioners either have not experienced difficulties or did not have experience with such requests, others reported challenges related to: (i) delays in receiving responses; (ii) a lack of relevant provisions in the Directive or another legal framework; and (iii) uncertainty as to the competent authorities. Participants generally considered that any future legal framework should build upon the existing provisions of the Directive, while some suggested introducing standardised forms for consent requests. As regards potential grounds to refuse such requests, although some practitioners were of the view that the grounds under Article 11 of the Directive should apply, others considered different grounds to be applicable, such as: (i) where the execution would harm essential national security interests or would jeopardise ongoing investigations; (ii) when information that was shared was not intended for evidentiary use; (iii) when domestic standards of evidence collection were not met or where there is a conflict with

procedural safeguards under national law; and (iv) where the request involves personal data and complying with the request could result in breaching the rules on data protection.

Some practitioners reported difficulties both when requesting consent from another Member State and when responding to requests to use evidence obtained during the execution of an EIO for purposes other than those for which the EIO had originally been issued (rule of speciality). One practitioner referred to a case where the request was overly general, with the requesting State asking permission to use information obtained whenever the need could arise in the future in any criminal or administrative case, and was consequently refused. Other practitioners had not encountered comparable difficulties but noted that the Directive does not clearly address whether the rule of speciality applies in such situations. As a result, some Member States take the view that evidence obtained through an EIO may subsequently be used without further consent, while others consider that prior authorisation from the executing State remains necessary. Consequently, requests for consent may not always be submitted where some practitioners consider them to be required.

Regarding a possible future legal framework on the rule of speciality and specifically as concerns the grounds to refuse consent, several practitioners considered that consent should be refused on the basis of the existing grounds for non-recognition or non-execution of an EIO set out in the Directive. Other practitioners considered that different grounds should be applicable, in particular, where the conditions governing the use of personal data would not be complied with. According to some practitioners, the future legal framework should be similar to the existing Article 23 of the 2000 Convention on Mutual Assistance in Criminal Matters.

Practitioners confirmed the need for a specific legal framework for the use of technical recording devices. Several practitioners suggested that the provisions on the use of technical recording devices could draw on the model laid down in Article 3 of the recently adopted Third Additional Protocol⁶², although most expressed a preference for an approach mirroring the notification system provided for in Article 31 of the Directive. It was considered that such a notification system would increase efficiency, reduce periods of legal uncertainty and lessen the administrative burden on judicial authorities.

On cross-border surveillance in person by law enforcement officers, practitioners considered that the EIO Directive could be strengthened by introducing provisions that: (i) clearly regulate such surveillance for the purposes of evidence gathering; and (ii) clarify their relationship with Article 40 of the CISA. Practitioners observed that Member States currently take differing legal approaches, including on whether such requests should be handled under mutual legal assistance procedures or through an EIO. Clarification of these issues in a future amendment was therefore widely supported. Practitioners also suggested that provision should be made for emergency procedures allowing urgent surveillance measures, subject to rapid *ex post* validation.

⁶² Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CETS No. 227).

Additional proposals included extending Annex C to explicitly cover different forms of surveillance and technical recording devices, introducing standardised procedures and forms.

In the area of telecommunications interception, practitioners generally considered the existing provisions of the Directive to be satisfactory. Nevertheless, they noted that differences in national legal frameworks may prevent the execution of requested measures in certain cases. In addition, delays in the execution of interception requests by the executing State remain a recurring practical concern.

No difficulties were reported regarding the application of legal remedies under the EIO Directive.

Finally, as regards other issues, one practitioner suggested that the creation of a comprehensive handbook or guidance document would contribute to the more consistent application of the Directive across Member States. Another practitioner proposed extending the scope of the EIO framework to address issues arising during the execution phase (as it is sometimes necessary to trace persons or assets which are abroad), as well as clarifying the scope with respect to the service of procedural documents to the person concerned. Other practitioners suggested considering the introduction of objective safeguards or criteria aimed at preventing disproportionate or *de minimis* requests.

Consultations with the EPPO

The EPPO has been using the EIO in cooperation with Member States that did not participate in enhanced cooperation on the establishment of the EPPO and are bound by the Directive, i.e., until 2024, Hungary, Poland and Sweden. In 2024, Poland and Sweden joined the EPPO. In 2026, Hungary joined the enhanced cooperation as well⁶³. In 2024, the EPPO issued 30 EIOs to Hungary, 21 to Poland, and 3 to Sweden, while in 2025 it issued 25 EIOs to Hungary. With one of those Member States, cooperation has been possible only after it passed specific national legislation that enabled national authorities to cooperate with the EPPO on the basis of the relevant EU instruments. Among Member States participating in enhanced cooperation on the establishment of the EPPO, recourse to an EIO is exceptionally possible under Article 31(6) of the EPPO Regulation, when the assigned measure does not exist in a purely domestic situation, such as a hearing by videoconference, but would be available in a cross-border situation covered by the Directive.

The EPPO has not encountered specific difficulties with the Directive that would hinder EPPO investigations. The EPPO welcomed proposals for clarifications and additions – particularly regarding: (i) deadlines – that could increase the effectiveness and efficiency of judicial

⁶³ On 29 May 2026, Hungary notified the Commission of its intention to join the EPPO. The Commission adopted its Decision confirming Hungary's participation in the EPPO on 10 July 2026 (Commission Decision (EU) 2026/1701, OJ L, 2026/1701, 13.7.2026, ELI: <http://data.europa.eu/eli/dec/2026/1701/oj>). With the entry into force of this Decision, the EPPO Regulation will cease to be an act adopted within the framework of enhanced cooperation and become automatically an ordinary act of Union law, to be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the EU.

cooperation; and (ii) the EIO's relationship with the CISA on cross-border surveillance with certain provisions of the 2000 Convention on Mutual Assistance in Criminal Matters.

The EPPO was supportive of: (i) a potential amendment of the provisions on legal remedies to codify Court of Justice case law, particularly the Gavanozov II judgment⁶⁴; and (ii) an amendment to Article 5(1) to require that an EIO always contains information on the availability of legal remedies in the issuing State. The EPPO assumed that such a requirement would not impose an additional burden on issuing authorities, as standard wording could be used.

Consultations with Europol

Europol considered the Directive to be an important instrument for judicial cooperation but noted that the Directive's current framework does not fully reflect the operational realities of modern cross-border crime. According to Europol, technological developments, together with differences in national legal frameworks, reduce the effectiveness of the Directive in certain operational contexts. Europol identified particular challenges in relation to real-time fraud schemes, such as voice phishing and sms phishing, where evidence may no longer be available by the time an EIO has been issued and executed. Europol also highlighted the impact of divergent national rules on data retention and the application of the dual criminality requirement, which may result in refusals to execute EIOs or the loss of evidential material. In addition, cross-border surveillance continues to face legal and practical obstacles.

To address these challenges, Europol suggested that future revisions of the legal framework should provide for shorter deadlines for urgent EIOs, standardised data formats, and more limited grounds for refusal. In particular, it proposed restricting the application of Article 31(3) of the EIO Directive to procedural or formal compliance issues. Europol also advocated the development of a dedicated EU legal instrument governing the interception of telecommunications, drawing inspiration from the model laid down by Directive (EU) 2019/1153⁶⁵ for financial information. Furthermore, it called for clearer provisions governing cross-border surveillance, the use of technical devices and access to cloud-based evidence.

Europol further suggested that the EIO framework should contain specific provisions governing surveillance measures carried out for the purpose of gathering evidence. In its view, such provisions should prevail over Article 40 of the CISA where surveillance recordings are intended to be used as evidence in criminal proceedings, thereby ensuring consistent admissibility across Member States.

On the use of technical recording devices, Europol identified two operational scenarios that it considered should be expressly regulated. The first concerns situations in which a technical recording device lawfully installed in one Member State continues to operate after the monitored person or object has crossed into the territory of another Member State. The second concerns

⁶⁴ Judgment of the Court of Justice of 11 November 2021, Ivan Gavanozov II, C-852/19, ECLI:EU:C:2021:902.

⁶⁵ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/542/JHA, OJ L 186, 11.7.2019, p 122.

requests for assistance in installing a technical recording device within the territory of another Member State. Europol noted that the first scenario arises frequently in investigations into economic crime. However, some Member States permit such activities only for intelligence purposes. Consequently, although the deployment of the device may be lawful in the issuing State, in practice, this may result in information being used solely for intelligence purposes rather than as evidence in criminal proceedings.

According to Europol, requiring prior authorisation before the continuation of cross-border surveillance would often be operationally impracticable. While Article 3 of the Third Additional Protocol could serve as a starting point, Europol considered that this model should be complemented by simplified standard forms, 48-hour urgency deadlines and explicit rules governing the continuation of cross-border surveillance. It also suggested introducing a distinct category for non-invasive tracking measures in order to better reflect the principle of proportionality.

Regarding other gaps in the current framework for gathering evidence, Europol stressed the need to adapt the Directive to the speed and methods of contemporary organised crime. It considered that substantially shorter deadlines for responding to EIOs are necessary, as existing procedures are often too slow for rapidly evolving criminal activities. Europol further observed that some EIOs lack sufficient justification, leading to delays or refusals during execution. It also identified the need for clearer rules governing the conversion of intelligence exchanged between Member States into evidence admissible in criminal proceedings.

Europol also noted that the Directive does not sufficiently address access to cloud-based data and other forms of electronic evidence stored across borders, leaving competent authorities largely dependent on the voluntary cooperation of service providers. It also pointed to the absence of a standardised digital system for the secure transmission of evidence following the execution of an EIO. In addition, Europol suggested exploring a legislative model comparable to that applicable to the protection of the EU's financial interests, including the possibility of strengthening the mandate of existing EU bodies or establishing new structures to address serious and organised crime as a genuinely cross-border phenomenon. According to Europol, organised criminal groups continue to exploit jurisdictional boundaries while EIO procedures frequently require the involvement of multiple authorities before execution.

Finally, Europol suggested that the introduction of objective thresholds could reduce the number of low-value requests and alleviate the workload of competent authorities. It also proposed differentiated procedural arrangements for different categories of EIOs, allowing particularly urgent or operationally significant requests to be executed more rapidly. Specific examples included shorter deadlines for obtaining subscriber information in fast-moving investigations involving 'dark web' marketplaces and explicit provisions governing remote access to cloud-based evidence under Article 28 of the Directive in investigations concerning online counterfeit goods. Europol also said that greater harmonisation of evidentiary admissibility rules would reduce the risk of procedural challenges after execution and facilitate successful cross-border prosecutions. In investigations supported by Europol, Europol also suggested that executing authorities could

notify Europol when issuing or executing an EIO in order to facilitate operational coordination and investigative support.

Consultations with the FRA

The FRA supported amending the Directive to strengthen legal remedies. It proposed that the potential new rules on cross-border surveillance, as well as on the use of technical recording devices, should include prior authorisation (or at least immediate notification and *ex post* authorisation).

Consultations with the defence lawyers' associations

Both defence lawyers' associations supported targeted amendments to the EIO Directive to strengthen legal certainty, procedural safeguards, defence rights and the protection of fundamental rights in cross-border investigations.

The CCBE supported the Commission's initiative to revise the Directive, building on the findings of the 10th round of mutual evaluations and the High-Level Group on Access to Data of Effective Law Enforcement. It identified two main priorities: strengthening defence rights and improving the practical functioning of the EIO system.

On defence rights, the CCBE highlighted inconsistencies in judicial oversight across Member States, despite the Court of Justice's judgment in *Gavanozov II*. It noted that the right to effective judicial protection was undermined by: (i) delays in the execution of EIOs; (ii) limited access to the underlying reasons for issuing an EIO; (iii) the absence of effective legal remedies in several Member States; and (iv) divergent national implementation. The CCBE therefore advocates stronger judicial review, greater transparency, effective legal remedies in the issuing State, recognition of dual legal representation and improved access to case materials.

On the functioning of the Directive, the CCBE recommended: (i) clarifying the rules governing telecommunications interception and cross-border surveillance; (ii) strengthening notification obligations under Article 31; (iii) expressly incorporating the principle of speciality into the Directive; and (iv) ensuring that evidence transfers comply with the legal standards of both the issuing and executing States.

The Délégation des Barreaux de France also supported stronger safeguards, with particular emphasis on safeguards against intrusive investigative measures. It considered that the continued use of technical recording devices across borders should remain subject to: (i) judicial authorisation; (ii) necessity and proportionality requirements; (iii) limited duration; and (iv) judicial renewal where appropriate. For the remote activation of electronic devices, such measures should be permitted only where less intrusive alternatives are unavailable or would jeopardise the investigation.

The Délégation des Barreaux de France also proposed aligning cross-border surveillance with the safeguards provided for under Article 40 of the CISA, including prior or urgent authorisation by the Member State where surveillance takes place. It supported: (i) the explicit inclusion of the

principle of speciality in the EIO Directive; (ii) stronger legal remedies in the issuing State in accordance with the *Gavanozov II* judgment; and (iii) specific protection for legally privileged communications, particularly those involving lawyers.

Consultations with the ECBA

The ECBA broadly supported the revision of the EIO Directive and advocated stronger procedural safeguards throughout the EIO process.

It considered that intrusive investigative measures, including the use of technical recording devices and cross-border surveillance by law enforcement officers, should be: (i) strictly regulated by law; (ii) subject to judicial control and proportionality; and (iii) accompanied by effective safeguards and remedies. The ECBA supports EU-wide harmonisation of these safeguards to ensure consistent protection across Member States.

The ECBA also advocated the explicit inclusion of the principle of speciality, requiring the consent of the executing State before evidence may be used in proceedings other than those for which the EIO was issued. On legal remedies, the ECBA recommended: (i) strengthening Article 14 by guaranteeing effective judicial remedies in both the issuing and executing States; (ii) introducing a minimum 30-day time limit for challenges; and (iii) requiring EIOs to contain information on available remedies.

Finally, the ECBA recommended strengthening procedural safeguards by: (i) recognising the right to dual legal representation and legal aid; (ii) ensuring participation in evidence-gathering measures where appropriate; (iii) facilitating cross-border access to case files; and (iv) providing effective remedies against refusals to grant access. It also supported the introduction of an exclusionary rule where evidence has been obtained in breach of the executing State's procedural requirements.

B. Consultations on remote participation by videoconference in criminal court hearings

Consultations with Member States

Part II of the questionnaire gathered: (i) information on the existing legal frameworks in the Member States for remote participation in both cross-border and domestic cases for suspects, accused persons and victims of crime; and (ii) feedback on the options available for a possible EU initiative regulating cross-border remote participation in criminal court hearings.

1. Existing legal frameworks on the remote participation of suspects, accused persons and victims of crime

On the state of play of the legal frameworks in the Member States, the questionnaire revealed considerable diversity in national approaches to the remote participation of suspects, accused persons, and victims of crime in criminal proceedings.

For suspects and accused persons, a minority of Member States, (7 out of 18), have a legal framework specifically regulating **remote participation in cross-border situations**, while 3

Member States do not allow for it and the remaining do not regulate it. Existing practices are based on a variety of legal instruments, including national law, mutual legal assistance instruments and Article 24 of the EIO Directive, highlighting the absence of a common EU framework. Where cross-border remote participation is permitted, it applies to all stages of criminal proceedings and typically requires the involvement of the authorities of the executing State for identity verification, technical support and, in some cases, the verification of procedural guarantees. Most Member States that have rules on this matter clarified that the consent of the defendant is necessary, while one Member State clarified that all parties to the proceedings should consent to the remote participation of the person concerned. Defence rights are primarily exercised through legal counsel present in the Member State where proceedings are held, although some Member States also have specific additional rights to allow the defence to exercise these rights remotely. As to the mandatory presence of the lawyer in the courtroom, while one Member State signaled that the lawyer is not required to be in the courtroom, another Member State noted that the lawyer is required to be in the courtroom.

By contrast, the use of videoconferencing in **purely domestic criminal proceedings** is more widespread, with 13 out of 18 responding Member States providing for remote participation for suspects and accused persons in at least some stages of proceedings and only 5 Member States not having rules regulating it. Most Member States allow the persons concerned to request remote participation and remote participation can at the same time be imposed *ex officio*. Several Member States require the consent of the person concerned in specific situations or provide for exceptions on consent based on overriding public interest. Existing national rules typically include safeguards aimed at ensuring effective participation, in particular: (i) confidential communication with the lawyer; (ii) access to interpretation and translation; and (iii) the possibility to suspend or postpone hearings in the event of technical failures. However, approaches vary significantly with regard to the submission of evidence, the availability of specific remedies and the exercise of procedural rights prior to hearings. Two Member States require the physical presence of the lawyer in the courtroom, while others do not. Nine Member States allow the suspect and accused person to also exercise certain procedural rights (e.g. right of access to the materials of the case, right to file an application for legal aid) remotely (i.e. digitally) in advance of participation in the court hearings themselves.

Similarly, the questionnaire revealed that national approaches to the remote participation of **victims of crime** in criminal proceedings also differ considerably among Member States.

While 10 Member States provide for the possibility of **cross-border remote participation for victims of crime**, in several Member States the situation still needs to be improved. The applicable legal bases range from national law to mutual legal assistance instruments and the EIO framework. Significant differences remain regarding the categories of victims covered: participation rights differ for victims who are parties to the proceedings and those who are not. Six Member States noted that remote participation is only available if the victim is also called as a witness. Most Member States consider the cooperation of the other Member State as necessary, but positions differ as to the form that the involvement of the authorities of the State where the victim is located should take. On specific remedies available to victims of crime participating remotely from another

State in the event of procedural violations resulting from actions taken by the authorities in the State from which the person is participating, only one Member State noted that it had such remedies in place.

Most Member States have rules on remote participation in criminal court hearings by way of videoconference for **victims of crime in purely domestic cases** covering all stages of the proceedings, with specific restrictions depending on the legal standing or position of the victim in the respective proceedings. Three Member States do not regulate this at all. In particular, remote participation is mostly used where victims are a party to the criminal proceedings or are called as witnesses to the proceedings. One Member State also has rules on remote participation in the post-conviction phases, such as for sentence hearings. Most responding Member States clarified that remote participation can be requested by victims on their own initiative or (with the judge maintaining the discretionary power to make the final decision taking into account the other interests at stake, or be imposed ex officio. Only three Member States require the consent of the victim to their remote participation: all the remaining Member States do not consider this as a necessary requirement. Most Member States have measures in place to ensure that victims' individual needs are taken into account in cases of participation via videoconference in criminal court hearings. On the exercise of procedural rights, eight Member States rely on the general rules, and one Member State referred to the specific right of the victim to challenge the quality of the videoconference. The questionnaire revealed considerable differences between Member States in: (i) national rules governing procedural safeguards; (ii) remedies in the event of technical failures; (iii) the organisation of interpretation and legal representation; and (iv) the protection of victims with specific needs. This illustrates the absence of a harmonised framework across the EU. Although most Member States allow flexibility as to whether the lawyer is located with the victim or in the courtroom, approaches differ considerably and only around half of Member States provide dedicated channels for confidential lawyer-client communication. Most Member States rely on general procedural remedies, with suspension or postponement of hearings in the event of technical failures being the most common safeguard. Several Member States also have specific measures in place to protect vulnerable victims and children, including case-by-case assessments, specialised judicial safeguards, the involvement of legal representatives, and measures to facilitate effective participation while avoiding secondary victimisation.

2. Feedback on a possible EU initiative regulating cross-border remote participation in criminal court hearings

The questionnaire indicated broad support among Member States for the creation of an EU framework governing cross-border remote participation in criminal proceedings, while revealing differing views on its design.

Nine Member States supported the introduction of **specific criteria governing the use of remote participation** for suspects, accused persons, and victims of crime, whereas seven Member States considered such criteria unnecessary. Among those supporting common criteria, the criteria most frequently cited as being relevant were: (i) elements of proportionality; (ii) the seriousness of the offence; (iii) the stage and nature of the hearings concerned; (iv) the availability of appropriate

technical means; and (v) in the case of victims, their individual needs. Eleven Member States favoured allowing **exceptions to the requirement of the concerned person's consent**, especially on the grounds of public security, public order or the protection of witnesses, while two Member States opposed such exceptions. As to the type of exceptions that should be provided for, most Member States referred to serious public security risks, public order considerations and the protection of witnesses and experts. Most responding Member States said that the **right to request remote participation** should be exercised any time before the hearing(s) concerned. Member States were equally divided on the question of whether the **right to revert to in-person participation** at a later stage of the proceedings should be unconditional or not.

When asked what optional **grounds for non-recognition or non-execution** should be provided for in cases where a request for cooperation to facilitate remote participation is issued, most Member States selected multiple options, covering all those provided. In particular, 13 Member States considered that the execution of requests should remain subject to optional refusal where it would be contrary to the fundamental principles of the law of the executing State, while 12 Member States supported public order, national security and excessive complexity as additional grounds for non-recognition or non-execution. One Member State considered the grounds for non-recognition and non-execution available under the EIO framework to be also applicable in this context.

Most Member States also considered that decisions on recognition and execution should be taken by judicial **authorities**, with seven Member States saying that these decisions should be taken also by public prosecutors. Most Member States also said that the procedural law of the issuing Member State should govern the remote hearing, with the executing State remaining responsible for identity verification and technical arrangements. On the question of which authorities should be present throughout the whole hearing(s) in which the person participates remotely, once the identity checks and procedural acts have been carried out, most Member States opted for the same judicial authorities with a minority of three Member States considering that the presence of judicial, administrative, or technical staff was sufficient.

On **procedural safeguards for suspects and accused persons**, the questionnaire revealed broad support for ensuring that remote participation does not undermine the effective exercise of defence rights. Eight Member States said that defence rights during court hearings should primarily be exercised through a lawyer physically present in the courtroom and able to communicate confidentially with the suspect or accused person, while four Member States preferred digital access to evidence and the possibility of submitting evidence electronically. The remaining respondents supported a combination of both approaches. Similar views emerged regarding the exercise of defence rights outside hearings.

No clear preference emerged on the practical arrangements for interpretation during remote hearings. Four Member States considered that the interpreter should be present in the executing State, four preferred remote interpretation from another location and three supported the interpreter being present in the courtroom in the issuing State, while the remaining respondents favoured maintaining flexibility depending on the circumstances. A strong majority of 14 Member States

considered that technical failures affecting the effective participation of the suspect or accused person should entitle the person to a repetition of the hearing and the reinstatement of any expired procedural time limits. With the exception of one Member State, respondents generally considered that no additional remedies beyond those available under national law should be introduced for procedural violations occurring during remote participation.

The questionnaire also highlighted differing views on legal representation. Eleven Member States considered that the defence lawyer should not be required to be physically present in the courtroom of the issuing State, while six Member States favoured such a requirement. Likewise, 11 Member States supported allowing suspects or accused persons to have access to legal assistance in both the issuing and executing States, whereas 5 Member States did not consider dual legal assistance necessary.

Ten Member States favoured granting children and other vulnerable persons the right to be accompanied by a representative or support person, and seven Member States considered that consent to remote participation should only be valid if given after consultation with, and in the presence of, a lawyer and, where appropriate, a representative or support person. Six Member States considered that remote participation should never be imposed without the consent of the person concerned, except in *force majeure* situations. Other safeguards proposed include specialised support services, improved judicial supervision and, in some cases, dual legal representation.

On **procedural safeguards for victims of crime**, the questionnaire showed broad support for ensuring that victims' individual needs are appropriately taken into account when deciding on remote participation. Nine Member States considered that this responsibility should primarily lie with the issuing Member State, while five Member States favoured addressing it through an individual needs assessment and four Member States said this responsibility should lie with the executing Member State.

No single approach emerged on the organisation of interpretation during remote hearings. While four Member States considered that the interpreter should be present in the executing Member State, three Member States favoured the interpreter's presence in the courtroom of the issuing State and three Member States supported remote interpretation from another location. Five Member States explicitly favoured maintaining flexibility regarding the interpreter's location.

Consensus emerged that no additional remedies should be introduced for victims participating remotely beyond those available in purely domestic proceedings. By contrast, respondents broadly supported additional safeguards for vulnerable victims. Ten Member States favoured the involvement of specialised professionals to assist with videoconferencing, while nine Member States supported child-friendly premises for child victims and nine Member States advocated accessible and appropriately equipped facilities for victims with disabilities. Only two Member States considered that no additional safeguards beyond those already provided for in the Victims' Rights Directive would be necessary.

On the **design of a future EU instrument**, most responding Member States supported applying the same practical arrangements as those laid down in Article 24(3) of the EIO Directive. Most responding Member States considered that issues relating to consent and the service of summonses should remain governed by national law, while some Member States favoured partial harmonisation.

Consultations with the defence lawyers' associations

Representatives of the legal profession (ECBA, CCBE and Délégation des Barreaux de France) broadly supported an initiative on remote participation based on mutual recognition.

They were of the view that competent authorities should assess clear criteria before issuing a request, including: (i) the proportionality of the measure; (ii) the nature of the hearing; (iii) the seriousness of the offence; (iv) the availability of appropriate technical means; and (v) the individual needs of victims. They stressed that remote participation should in principle be voluntary and based on informed consent, with no exceptions to consent, and that the person concerned should have an unconditional right to revert to in-person participation. Particular caution was expressed for hearings concerning coercive measures, especially pre-trial detention, where in-person participation should generally be preferred or additional safeguards should apply.

On the role of the executing state, the ECBA said that it supported applying nearly all listed grounds for non-recognition (these listed grounds are: the lack of consent of the concerned person; if the execution of such a measure in a particular case would be contrary to the fundamental principles of the law of the executing state; *ne bis in idem* considerations; public order/national security concerns in the executing state; and excessive complexity). The only listed grounds that it did not support as a ground for non-recognition was the complexity of the case. The ECBA also said it supported a ground for refusal on the basis of violations of legal professional privilege. The CCBE considered that all listed grounds for non-recognition should apply except complexity and public order.

The defence lawyers' associations also emphasised the need to ensure the effective exercise of defence rights during and outside hearings. This includes digital access to all material evidence presented during the hearing, the possibility to submit evidence digitally, confidential communication with a lawyer, and access to legal assistance in both the issuing and executing Member States. The ECBA supported the presence of a lawyer in the courtroom of the issuing State, while the CCBE did not consider this mandatory, but both underlined the need for secure lawyer-client communication. They also supported effective interpretation, remedies in the event of technical failures, including repetition of the affected part of the hearing and reinstatement of time limits, and the availability of remedies to challenge shortcomings affecting the fairness of the proceedings.

For children and vulnerable persons, defence lawyers' associations supported additional safeguards, including: (i) consent only after consultation with a lawyer and, where appropriate, a legal representative; (ii) the right to be accompanied; and (iii) access to specialised support services and, where needed, dual legal representation.

On victims of crime, both the ECBA and CCBE stated that measures to ensure that victims' individual needs are taken into account, notably when deciding on victims' remote or in-person participation in criminal proceedings, shall be included.

Consultations with Eurojust

Eurojust advocated incorporating the new rules on remote participation into the EIO Directive rather than creating a separate instrument, and said that the initiative should remain a mutual recognition instrument with limited grounds for refusal, based on necessity, proportionality and effective judicial cooperation. It said that requests for remote participation should be subject to the same core conditions as an EIO (namely a legal basis in the issuing State and compliance with the principles of necessity and proportionality) and apply to all stages of criminal proceedings. Eurojust also said that issues such as consent, the right to request or revert to in-person participation and available remedies should generally remain governed by the national law of the issuing State. It also advocated limited grounds for refusal, while allowing refusal where there is a real risk of a breach of fundamental rights or where the necessary technical infrastructure does not ensure effective participation.

On procedural safeguards, Eurojust was of the view that the procedural law of the issuing State should govern the hearing, while the executing State should remain responsible for identity verification and technical arrangements, following the model of the EIO Directive. It emphasised the importance of effective legal representation, interpretation, and practical cooperation between issuing and executing authorities, including the possibility for the executing authority to seek the person's consent and serve summonses and other essential documents within the same request for remote participation. On victims, Eurojust stressed that the individual needs assessment under the Victims' Rights Directive should guide decisions on remote participation, with the executing Member State being best placed to assess victims' needs and provide practical support. More generally, Eurojust underlined the importance of ensuring consistency with the existing mutual recognition instruments, while avoiding unnecessary procedural complexity and strengthening cooperation between competent authorities.

Consultations with the EJM

The input received from EJM members highlighted both common ground and divergent views among practitioners. EJM practitioners broadly agreed on the importance of proportionality, necessity and effective procedural safeguards, while expressing differing views on consent, grounds for refusal and the degree of EU harmonisation. Several practitioners stated that requests for remote participation should remain subject to judicial discretion, with limited grounds for refusal and a flexible approach to the role of the executing authorities. They also stressed the need to ensure the effective exercise of defence rights (including legal representation, access to interpretation and secure communication), while opinions differed on the appropriate location of interpreters and the scope of remedies.

On victims, practitioners unanimously emphasised the importance of an individual assessment of victims' needs when deciding on remote participation. Most considered that existing remedies

under national law are sufficient and that practical arrangements should follow the model of Article 24(3) of the EIO Directive. Several practitioners also underlined the valuable role that the EIJ could play in facilitating implementation by identifying competent authorities, providing practical guidance, preparing standard forms, maintaining up-to-date information on national legal frameworks and supporting training for practitioners.

Consultations with the EPPO

The EPPO expressed clear support for the introduction of EU rules governing the cross-border remote participation of suspects, accused persons and victims in criminal proceedings. It indicated that such an instrument would be of particular practical value in complex cross-border investigations, including large-scale VAT fraud and other cases involving numerous suspects across several Member States. The EPPO further stressed the importance of ensuring effective procedural safeguards, including clear rules on consent, respect for fair trial rights and the availability of secure and reliable technological infrastructure. It noted that, given the powers conferred on European delegated prosecutors under the EPPO Regulation and the EPPO's own current use of the EIO framework, it does not envisage any specific differences in the use of remote participation by European delegated prosecutors and by national judicial authorities.

Consultations with the FRA

The FRA supported the use of remote participation in criminal proceedings provided that it is based on clear legal criteria, individual assessments and robust procedural safeguards. It was of the view that decisions on remote participation should take into account factors such as proportionality, the seriousness of the offence, the stage of the proceedings, the availability of appropriate technical means and, in particular, the individual needs of victims and vulnerable persons. It also stressed that stricter safeguards should apply to suspects and accused persons and that videoconferencing should not undermine fair trial rights, equality of arms, or effective participation in the proceedings.

The FRA emphasised the importance of ensuring effective legal representation, confidential lawyer-client communication, digital access to procedural rights, appropriate interpretation, and the possibility to repeat hearings affected by technical failures. It also advocated additional safeguards for children, persons with disabilities and other vulnerable individuals, including accessibility measures, individual assessments and the mandatory training of practitioners. Finally, the FRA supported building on the practical arrangements of Article 24(3) of the EIO Directive while ensuring that judges retain discretion over the use of videoconferencing.

III. Meetings

- **EIO Expert Group meetings organised by the Commission on 31 March 2025 and 2 July 2025**

The aim of the meetings was to discuss: (i) the recommendations of the 10th round of mutual evaluations and of other reports; and (ii) questions related to the possible future legal framework. The reports with the minutes of the meetings were published⁶⁶.

During these meetings, experts expressed broad support for targeted improvements to the EIO Directive in a number of specific areas. On cross-border surveillance, a large majority of experts supported regulating such measures within the EIO framework, while maintaining a clear distinction between the EIO, as an instrument for evidence gathering, and Article 40 of the CISA, which they felt should continue to govern operational police cooperation. Several experts also emphasised the need for appropriate safeguards in light of the intrusive nature of surveillance technologies. On the interception of telecommunications, experts generally considered that introducing a definition of the concept under the EIO Directive could improve legal certainty. Although there was limited support for broader amendments to the existing framework, a number of experts advocated clarifying the notification procedure under Article 31 in light of the *EncroChat* case law, in particular by ensuring clarity as to which authorities are competent to receive notifications. Simplifying the procedure for obtaining consent to use information exchanged through police channels as evidence in criminal proceedings also received broad support, especially if the procedure involves the use of simplified request forms and shorter deadlines. Finally, most experts supported the creation of a legal framework for the cross-border remote participation of suspects, accused persons and victims in criminal court hearings when located in another Member State. There was broad agreement that: (i) decisions on remote participation should remain with the competent court; (ii) the requested authorities should facilitate and oversee the necessary technical arrangements; and (iii) the framework should apply to both pre-trial and trial proceedings. Experts also agreed that remote participation should provide procedural safeguards equivalent to those applicable to in-person hearings, including effective access to legal representation and confidential communication with counsel. At the same time, divergent views remained regarding: (i) the legal nature of the instrument, in particular whether it should be based on mutual recognition or mutual legal assistance; (ii) the respective roles of the authorities involved; and (iii) the scope of applicable procedural rules.

- **Expert Group on EU Criminal Policy on 14 May 2025 organised by the Commission, which focused on the revision of the EIO**

On 14 May 2025, the Commission organised a meeting with the Expert Group on EU Criminal Policy. The members of this expert group are academics and practitioners with considerable expertise in national and European criminal law. The discussion focused on developments and challenges with the EIO, highlighting the recommendations for legislative improvements following from the 10th round of mutual evaluations and from other reports. A report with the

⁶⁶ Minutes of the EIO Expert group meeting on 31 March 2025: <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=61993&fromExpertGroups=636>. Minutes of the EIO Expert group meeting on 2 July 2025: <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=63265&fromExpertGroups=636>.

meeting minutes was published⁶⁷. Experts broadly supported limiting any future revision to targeted improvements. Discussions focused on: (i) the possible introduction of a rule of speciality; (ii) the regulation of cross-border surveillance measures; (iii) the scope of the EIO; and (iv) the use of information exchanged through police channels. Participants generally favoured clarification and practical improvements over substantive changes. Experts also exchanged views on a possible framework for the cross-border remote participation of suspects, accused persons and victims in criminal proceedings by videoconference. While recognising its potential to facilitate judicial cooperation, participants stressed that the use of cross-border remote participation should be accompanied by robust procedural safeguards, including informed consent, effective legal representation, interpretation and the protection of fair trial rights. Practical issues relating to costs, technical infrastructure and the protection of victims were also highlighted.

- **Online expert meeting on the use of certain special investigative techniques in the context of cross-border investigations into organised crime, 5 May 2026**

The aim of the meeting was to discuss whether EU action is needed to address obstacles identified in Eurojust casework and in certain country reports prepared as part of the ongoing 11th round of mutual evaluations on cross-border drug trafficking in the EU. These obstacles relate to the use of certain investigative techniques in cross-border crime investigations, including controlled deliveries of drugs across countries, the use of undercover agents, surveillance and the interception of telecommunications. These obstacles stem primarily from divergent national rules and procedures. The issues identified include difficulties in determining in advance the route and timing of the controlled deliveries, identifying the competent authorities to be contacted in each Member State, and determining whether the substitution of commodities should take place, as national requirements differ across Member States and may prevent operations from continuing.

Several possible options were discussed, including targeted legislative amendments to the Directive. While several experts acknowledged the existence of operational obstacles, almost all the experts that took the floor expressed their opposition to addressing these issues through legislative amendments. Instead, non-legislative measures, such as handbooks, guidance, training and greater involvement of Eurojust in supporting the use of EIOs, were considered a more appropriate way forward at this stage. Only a small number of experts expressed openness to legislative action, and some experts considered that the matter could be reassessed following the finalisation of the 11th round of mutual evaluations.

⁶⁷ Minutes of the meeting of the Expert Group on EU Criminal Policy on 14 May 2025: <https://ec.europa.eu/transparency/expert-groups-register/screen/meetings/consult?lang=en&meetingId=62221&fromExpertGroups=2760>.