

Better applying European Criminal Law

ERA Court staff training

The European Investigation Order



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Fact sheet

- **22 May 2017** – deadline for transposition of the Directive 2014/41/EU
- **26 MS** have transposed it, **Denmark** and **Ireland** are **not bound** by the Dir.
- **Deadlines** for gathering the evidence requested are provided
- **Limited reasons** for refusing to recognise or execute an EIO
- **A single standard form** to be used – Certificate
- MS shall execute an EIO on the basis of the **principle of mutual recognition** and in accordance with the Dir.

Relationship with other legal instruments

- The Directive **replaces**, as from 22 May 2017, **the corresponding provisions** of the following conventions applicable between the Member States bound by this Directive (so not in relation to Denmark and Ireland):
 - (a) The 1959 Convention and its two protocols
 - (b) Convention implementing the Schengen Agreement
 - (c) The 2000 Convention and its protocol
- Gathering of evidence will be done according to the provisions of this Directive between the MS bound by the Directive
- In relation to **Denmark** and **Ireland** provisions from the MLA legal instruments will be applicable (an MLA instrument that **it is in force** in the MS involved in the judicial cooperation)

Scope of application

- The EIO **shall cover any investigative measure** to obtain evidence in accordance with this Directive (art.1 para. 1 Dir.)
- The EIO may also be issued for **obtaining evidence that is already in the possession** of the competent authorities of the executing State (art. 1 para. 2 Dir.)

- The Directive on EIO is **not applicable** to:
 - *Setting up of a JIT and gathering of evidence within such a team (article 3 of the Dir.)*
 - *Spontaneous exchange of information (article 7 of the 2000 Convention)*
 - *Freezing property for the purpose of subsequent confiscation (Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence; and, as of 19.12.2020, Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders)*
 - *Restitution: return of an object to victim (article 8 of the 2000 Convention)*
 - *Obtaining of extracts of the criminal records register/ECRIS*
 - *Summoning of witnesses, defendants, etc. for trials (art. 5 of the 2000 Convention or art. 7 of the 1959 Convention)*

Definitions

- **Issuing State** - MS in which the EIO is issued
- **Executing State** – MS executing the EIO, in which the investigative measure is to be carried out
- **Issuing authority**
 - (i) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned;*
 - (ii) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law*
- **Executing authority** - an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case

Channels of transmission

- The EIO completed and signed shall be transmitted **directly** from the issuing authority to the executing authority by any means capable of producing a written record – use [ATLAS](#) from the EJN's website to identify an executing CA from the executing MS
- Each Member State may **designate a central authority** or, where its legal system so provides, **more than one central authority**, **to assist** the competent authorities
- The issuing authority may transmit an EIO via the telecommunications system of the **European Judicial Network (EJN)**
- If the identity of the executing authority is unknown, the issuing authority **shall make all necessary inquiries, including via the EJN contact points**, in order to obtain the information from the executing State
- Where **the authority in the executing State** which receives the EIO **has no competence** to recognise the EIO or to take the necessary measures for its execution, it shall, *ex officio*, **transmit the EIO to the executing authority and so inform the issuing authority**

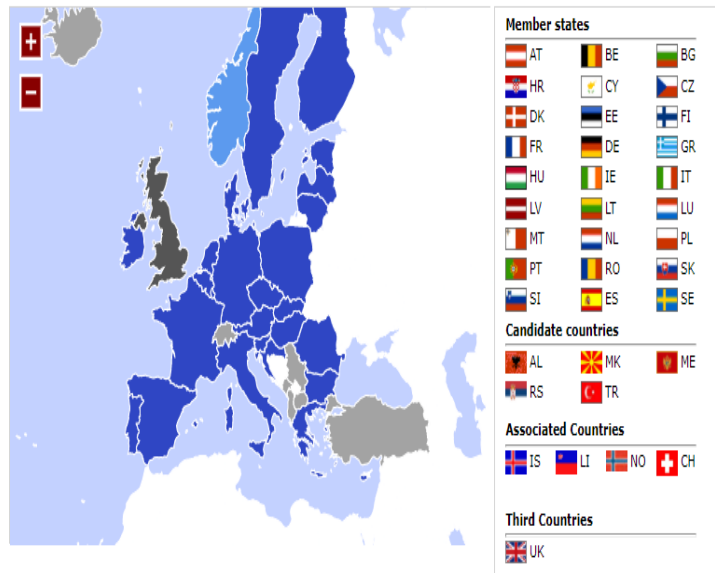
Atlas – EJN’s website

Judicial Atlas



The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Select country to where your request is to be sent to, clicking on the map:



Member states

AT	BE	BG
HR	CY	CZ
DK	EE	FI
FR	DE	GR
HU	IE	IT
LV	LT	LU
MT	NL	PL
PT	RO	SK
SI	ES	SE

Candidate countries

AL	MK	ME
RS	TR	

Associated Countries

IS	LI	NO	CH
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Third Countries

UK

- Info about national systems
- EU Legal Instruments for Judicial Cooperation
- Status of implementation in the Member States of EU legal instruments
- Cooperation with non-EU countries and judicial networks

Germany - Tools

- About EJN
- Introduction to the EJN Website
- EJN Secretariat
- EJN Meetings
- Projects
- Reports
- EJN Awareness
- Registry (EJN partially restricted area)
- COVID-19 and judicial cooperation in criminal matters
- European Arrest Warrant
- e-Evidence
- European Investigation Order
- EJN restricted access area



Atlas

Find competent authority to receive your request for judicial cooperation



Compendium

Draft a request for judicial cooperation



Fiches Belges

Concise legal and practical information on judicial cooperation measures available in the Member States



Status of implementation

Status of implementation in the Member States of EU legal instruments



Recognition and execution. Alternative measures

- The executing authority shall **recognise** an EIO **without any further formality being required** and **ensure its execution in the same way and under the same modalities** as if the investigative measure concerned had been ordered by an authority of the executing State (art. 9 para. 1 Dir.)
- The executing authority **shall comply with the formalities and procedures expressly indicated by the issuing authority** unless otherwise provided in this Directive and *provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State* (art. 9 para. 2 Dir.)
- **Recourse to a different type of investigative measure** (art. 10 para. 1 Dir.) - the executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where the investigative measure indicated in the EIO **does not exist under the law of the executing State** or **would not be available in a similar domestic case**. **Exceptions** to the abovementioned option are provided in art. 10 para. 2 let. a) - d) Dir.
- The executing authority **may also have recourse to an investigative measure** other than that indicated in the EIO where **the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO**

Grounds for non-recognition or non-execution. Postponement

- Grounds for non-recognition or non-execution of an EIO **limited and expressly provided** (art. 11 let. a)-h) Dir.)
- The recognition or execution of the EIO **may be postponed** in the executing State where:
 - (a) *its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable*
 - (b) *the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose*
- As soon as the ground for postponement **has ceased to exist**, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record (Art. 15 Dir.)

Time limits for recognition and execution

- The decision on the recognition or execution shall be taken and the investigative measure shall be carried out **with the same celerity and priority as for a similar domestic case** (art. 12 par. 1 Dir.)
- The executing authority shall take the decision on the recognition or execution of the EIO **as soon as possible**, no later **than 30 days** after the receipt of the EIO by the competent executing authority
- **In urgent circumstances**, if a shorter deadline is necessary or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement
- The executing authority shall carry out the investigative measure **without delay** and **not later than 90 days** following the taking of the decision of recognition. If it is not practicable in a specific case for the competent executing authority to meet the time limit it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the investigative measure.

Legal remedies

- Member States shall ensure that legal remedies **equivalent to those available in a similar domestic case** are applicable to the investigative measures indicated in the EIO
- **The substantive reasons for issuing the EIO** may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State
- The issuing authority and the executing authority **shall inform each other** about the legal remedies sought against the issuing, the recognition or the execution of an EIO
- A legal challenge **shall not suspend the execution of the investigative measure**, unless it is provided in similar domestic cases

Obligation to inform

- The CA in the executing State which receives the EIO **shall**, without delay, and in any case **within a week** of the receipt of an EIO, **acknowledge receipt of the EIO** by completing and sending the form set out in Annex B.
- The executing authority **shall inform** the issuing authority immediately by any means:
 - (a) the fact that the form provided for in Annex A is incomplete or manifestly incorrect
 - (b) if it considers, without further enquiries, that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued
 - (c) if it establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority
- The executing authority **shall inform** the issuing authority without delay by any means capable of producing a written record:
 - (a) of any decision taken pursuant to articles 10 or 11;
 - (b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Additional resources on the EJN website

- *Competent authorities, languages accepted, urgent matters and scope of the EIO Directive (Updated 07 August 2019)*

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/2120>

- *Guidelines on how to fill in the European Investigation Order (EIO) form*

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3155>

- *Editable .pdf form of the European Investigation Order – EIO (Annex A)*

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3152>