

Letter of the
The German Minister of Justice
to
European Criminal Bar Association c/o Prof . Dr. Matt

23th of November 2010

Dear Prof. Matt,

thank you very much for your letter of 25 October 2010 containing the European Criminal Bar Association's statement with regard to the proposed directive on the European Investigation Order in Criminal Matters (EIO).

I find the statement very interesting and share many of your positions. Since the outset of the consultations concerning the proposed directive I have actively supported the implementation of sufficiently broad grounds for refusal taking into account the issue of double criminality. Furthermore, I share your support for a territoriality clause mirroring the framework decision 2002/584/JI regarding the European Arrest Warrant. I also feel very strongly about the need for a reasonable regime to ensure legal remedies.

Unfortunately, as prior negotiations have shown, this issue finds only limited support in Brussels. The deliberations in the Council of Ministers of Justice on 8th and 9th November 2010 have revealed a majority against the German-led effort to make a violation of national law through investigative measures listed in the EIO an explicit ground for refusal. There is hardly any support for our position to grant the right of review regarding the proportionality of a European Investigative Order not only to the issuing State but to the executing State as well.

It is therefore crucial that our efforts to phrase the directive in a way that combines legal efficiency, practicability and the rule of law be continued. I consider it necessary to include external and non-governmental experts in the deliberations. You might be pleased to learn that I took a clear stance in this respect during the November council meeting explicitly emphasizing the ECBA statement.

Kind regards

Sabine Leutheusser-Schnarrenberger