

LEGAL AND PRACTICAL CHALLENGES AND SCOPE OF THE EUROPEAN INVESTIGATION ORDER.

1. INTRODUCTION AND EVOLUTION: FROM THE E.E.W. (European arrest warrant) TO THE E.I.O.
2. ADVANTAGES OF THE E.I.O.
3. RIGHT OF DEFENCE PROTECTION.
4. SCOPE OF THE E.I.O.

1. INTRODUCTION AND EVOLUTION: FROM THE E.E.W. (European arrest warrant) TO THE E.I.O.

International judicial cooperation has become nowadays essential to fight serious crimes such as *terrorism, drug trafficking or corruption*, as these offences may have a transnational dimension.

Judicial cooperation in criminal matters in the E.U. territory is based on the principle of mutual recognition of judgments and judicial decisions, which is often referred to as a cornerstone of the judicial cooperation.

In 2008, the European Council passed the framework decision regarding the European Evidence Warrant, which, based on the mutual recognition, allowed the state members to obtain objects, documents and data for use in proceedings in criminal matters. Notwithstanding, this framework decision had a very limited scope, as it was only applicable to evidence which already existed, and therefore, authorities had to use MLA to obtain evidence instead of the EEW.

A new approach was necessary, and in 2009, the European Council considered setting up a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the mutual recognition. On the 21st of May 2010, seven EU Member States (Austria, Belgium, Bulgaria, Estonia, Slovenia, Spain and Sweden) put forward an initiative for a European Investigation Order. The Directive was adopted in 2014 jointly by the Council and the European Parliament.

2. ADVANTAGES OF THE E.I.O.

According to the Directive's first article, The E.I.O. is a judicial decision which has been issued or validated by a judicial authority of a Member State to have one or several specific investigative measure(s) carried out in another Member State to obtain evidence in accordance with this Directive.

Any investigative measure can be issued, being the only exception the JIT's and the cross border surveillance.

The European Investigation Order will bring the following advantages:

- **It creates a single comprehensive instrument with a large scope** – It will replace the existing fragmented legal framework for obtaining evidence. It will cover the whole process of collecting evidence, from the freezing of evidence to the transfer of existing evidence, for Member States participating.

- **It sets strict deadlines for gathering the evidence requested** - Member States have up to 30 days to decide if they accept a request. If accepted, there is a 90-day deadline to conduct the requested investigative measure. Any delay will be reported to the EU country issuing the investigation order.

- **It limits the reasons for refusing such requests** – The receiving authority can only refuse to execute the order under certain circumstances, e.g. if the request is against the country's fundamental principles of law or harms national security interests. Some of the measures can also be denied when it would not have been used in a similar case in the executing state

- **It reduces paperwork by introducing a single standard form** translated into the official language of the executing State for authorities to request help when seeking evidence.

3. RIGHT OF DEFENCE PROTECTION.

It protects the fundamental rights of the defence – The issuing authorities must assess the necessity and proportionality of the investigative measure requested. A European Investigation Order has to be issued or validated by a judicial authority, and the issuing of an order may be requested by a suspected or accused person, or by a lawyer on his/her behalf in line with the defence rights and with national criminal procedures. Member States must ensure **legal remedies equivalent** to those available in a similar domestic case and ensure that persons concerned are properly informed of these possibilities.

No matter how important it would be to cherish and to improve the efficiency of international cooperation, in this situation we should not follow the adage "the objective justifies all means". Therefore, human Rights have to be protected, and not only regarding suspects, but also other individuals that could be included in this process, such as witnesses.

The EIO should be chosen where the execution of an investigative measure seems **proportionate, adequate and applicable** to the case in hand. Attention is to be drawn exclusively to the fact that the suspect or the accused person (or a lawyer on their behalf), making use of the rights, applicable to the defence under the national criminal proceedings, may apply for issuance of the EIO. It is an important provision, which allows talking about the equal rights in the proceedings.

However, it mustn't be forgotten that one of the key provisions, guaranteeing fundamental rights, is inclusion of the earlier adopted Directives into the text of Directive 2014. Therefore, it would definite include the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; Directive 2012/13 / EU on the right to information in criminal proceedings; Directive 2013/48/EU on the right of access to a lawyer and the right to communicate when deprived of liberty.

4. SCOPE OF THE E.I.

In particular, the European Investigation Order allows for:

- temporary transfer of persons in custody in order to gather evidence
- checks on the bank accounts and financial operations of suspected or accused persons;
- covert investigations and intercepting telecommunications;
- measures to preserve evidence. Traditional investigation tools are not always adapted to the digital world we live in. Judicial authorities need ways to access evidence in the cloud and located in another or somewhere else in the world. The Commission is currently working on solutions to equip judicial authorities with modern investigation tools.

Member States had time to implement the European Investigation Order in national legislation by 22nd of May 2017.

The only members States who actually complied on time to implement the Directive were Latvia, who had its own law passed the 20th of may, and Germany, Belgium and France, who had their law passed the 22nd of may.

So far, the EIO has been implemented in Estonia, Finland, Hungary, Italy, Lithuania, The Netherlands, Portugal and the Uk.

The rest of the countries are still waiting to have their law passed, including Spain.