



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2010/0817(COD)

8.5.2012

*****|**

ORIENTATION VOTE RESULT

on the adoption of a Directive of the European Parliament and of the Council
regarding the European Investigation Order in criminal matters
(09288/2010 – C7-0185/2010 – 2010/0817(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Nuno Melo

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT.....	54

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the adoption of a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters (09288/2010 – C7-0185/2010 – 2010/0817(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the initiative of a group of Member States submitted to the European Parliament and to the Council (09288/2010),
 - having regard to Article 76(b) and Article 82(1)(a) of the Treaty on the Functioning of the European Union, pursuant to which the draft act was submitted (C7-0185/2010),
 - having regard to Article 294(3) and (15) of the Treaty on the Functioning of the European Union,
 - having regard to [the reasoned opinions sent to its President by national parliaments/the reasoned opinion sent to its President by a national parliament] on whether the initiative complies with the principle of subsidiarity,
 - having regard to the opinion of the Commission ...,
 - having regard to Rules 44 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Compromise Amendment 1 (AM 1 and AM 55)

Draft directive

Recital 1

Text proposed by the group of Member States

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

Amendment

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice with respect for fundamental rights in accordance with the EU Charter of

Fundamental Rights and the different legal and constitutional systems of the Member States.

Compromise Amendment 20 (Includes AM 2, AM 60, AM 76, AM 117, AM 162, AM 163)

**Draft directive
Recital 1 a (new)**

Text of the initiative

Amendment

(1a) The Treaty of Lisbon introduced, for the first time in the EU criminal law legislation, appropriate parliamentary scrutiny through the European Parliament as co-legislator, and the National Parliaments as regards the principle of subsidiarity. Through the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union has become a legally binding document, thereby initiating a new phase with regard to the protection of human rights in the European Union, including fundamental rights in criminal proceedings, such as the right to life (Article 2), the right to the integrity of the person (Article 3), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), including appropriate detention condition, the right to liberty and security (Article 6), respect for private and family life (Article 7), the right to an effective remedy and to a fair trial by and independent and impartial tribunal previously established by law (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), and the right not to be tried or punished twice in criminal proceedings for the same criminal offence (Article 50). These rights should be fully respected in the framework of mutual recognition and all its measures. At the same time judicial

cooperation is based on mutual trust in each other's judicial system that requires a well functioning, independent and impartial judiciary system without any political interference in all Member States.

Amendment 3

Draft directive Recital 1 b (new)

Text proposed by the group of Member States

Amendment

(1b) The European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR) have helped to substantially raise the level of human rights, including the right to a fair trial in Europe. The Treaties and the Charter establish a special role for the Convention mechanism, as enshrined in Article 6 of the Treaty on European Union envisaging accession of the EU to the Convention, and defining the fundamental rights of the Convention as general principles of the Union's law, and as enshrined in Article 52 of the Charter, which guarantees a harmonious interpretation between the Charter and the Convention of these rights.

Compromise Amendment 21 (AM 4, AM 57, AM 58, AM 59)

Draft directive Recital 2

Text proposed by the group of Member States

Amendment

(2) According to Article 82(1) of the Treaty on the Functioning of the European

(2) According to Article 82(1) of the Treaty on the Functioning of the European

Union, judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union.

Union, judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union, ***in keeping with the Charter of Fundamental Rights of the European Union and the constitutional principles of the Member States participating in the EIO. Without calling into question its positive effects and central role, mutual recognition is to be applied in legal areas that are not harmonised and that have different legal traditions and criminal procedural systems, and may therefore result in legal anomalies to the detriment of the rights of suspects, as demonstrated by the experience gained with using the European Arrest Warrant. Measures must be established which will allow a national court to substantially intervene in cases where such anomalies may arise. In addition, any application of the concept of mutual recognition must also guarantee the fundamental rights enshrined in the ECHR and the Charter and in the European Convention on Human Rights, and respect fundamental national constitutional principles. The executing State should not refuse an EIO on grounds of differences between its own ordinary laws and those of the issuing State, but may do so should the EIO contravene the ECHR, the Charter of Fundamental Rights of the European Union and the constitutional principles of the executing State.***

Amendment 5

Draft directive Recital 2 a (new)

Text proposed by the group of Member States

Amendment

(2a) There are substantial differences between the Member States in constitutional and legal terms, particularly with regard to the role of prosecutors and the admissibility of evidence that the EIO must necessarily take into account. As a result, the EIO cannot obviate these differences by requiring less than is necessary in the executing States, and the fact that fundamental constitutional rules in the Member States involved may be infringed must form an additional ground for refusal.

Amendment 6

Draft directive Recital 2 b (new)

Text proposed by the group of Member States

Amendment

(2b) Account must be taken of the fact that, despite the double criminality check having in principle been ruled out with regard to a list of 32 offences in the area of mutual recognition, there are still essential differences between the national definitions of these offences. Therefore, Member States must avoid using the EIO where extraterritorial jurisdiction clauses may be involved, when a Member State initiates criminal proceedings against national citizens or residents in respect of acts committed outside its national territory and when the same act would not be punishable under the law of the executing State. Proceedings associated

with tax, customs and exchange offences do not fall into this category.

Amendment 7

Draft directive Recital 2 c (new)

Text proposed by the group of Member States

Amendment

(2c) Police authorities cannot be regarded as judicial authorities within the meaning of Article 82(1)(a) TFEU. Any request for an EIO made by the police in the issuing State must be validated by a prosecutor, magistrate or judge, taking into account the fundamental requirements of the executing State. The investigative authority in criminal proceedings, which is competent to order the gathering of evidence, is an authority that exercises judicial power, i.e. an authority that delivers, in accordance with the procedures laid down by law, binding decisions that are classified as ‘judicial decisions’.

Amendment 8

Draft directive Recital 6

Text proposed by the group of Member States

Amendment

(6) In the Stockholm programme, which was adopted on 11 December 2009, the European Council decided that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. ***The European Council indicated that the existing instruments in this area constitute a fragmentary regime and that a new approach is needed, based on the***

(6) In the Stockholm programme, which was adopted on 11 December 2009, the European Council decided that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued ***and*** called for a comprehensive system to replace all the existing instruments in this area, including the Framework Decision on the European

principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including the Framework Decision on the European evidence warrant, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal.

evidence warrant, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal.

Amendment 9

Draft directive Recital 7 a (new)

Text proposed by the group of Member States

Amendment

(7a) Another aim of this Directive is to provide an effective and flexible instrument, thereby ensuring swifter action; admissibility of evidence; procedural simplification; high level of protection of fundamental rights, particularly procedural rights; reduction in financial costs; increased mutual trust and cooperation between Member States; and protection of the specific characteristics of national systems and their judicial culture, all in accordance with the legal and constitutional systems of the Member States.

Amendment 10

Draft directive Recital 10

Text proposed by the group of Member States

Amendment

(10) The EIO should focus on the

(10) The EIO should focus on the

investigative measure which has to be carried out. The issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which measure is to be used. However, the executing authority should have the possibility to use another type of measure either because the requested measure does not exist or is not available under its national law or because the other type of measure will achieve the same result as the measure provided for in the EIO by less coercive means.

investigative measure which has to be carried out. The issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which measure is to be used. However, the executing authority should have the possibility to use another type of measure either because the requested measure does not exist or is not available under its national law ***in the specific case*** or because the other type of measure will achieve the same result as the measure provided for in the EIO by less coercive means, ***where the result to be achieved will be the same as with an EIO and will interfere less with the fundamental rights of the person in question.***

Amendment 11

Draft directive Recital 10 a (new)

Text proposed by the group of Member States

Amendment

(10a) The EIO should be chosen where the execution of an investigative measure appears to be proportionate, necessary and adequate in the case in question. The issuing authority should therefore check whether the evidence sought is necessary and proportionate for the purpose of the proceedings, if the chosen measure is necessary and proportionate for the purpose of gathering evidence, and if, by issuing an EIO, another Member State may be involved in gathering evidence. An appropriate assessment of the proportionality is a constitutional requirement in several Member States and also a requirement pursuant to Article 8 of the European Convention on Human Rights. As a result, a clear and obvious lack of proportionality may represent an infringement of human rights and/or an infringement of fundamental national

constitutional principles.

Amendment 12

Draft directive Recital 10 b (new)

Text proposed by the group of Member States

Amendment

(10b) In view of ensuring the transmission of an EIO to the competent authority of the executing State, the issuing authority may make use of any possible or relevant means of transmission, including for example the telecommunications system of the European Judicial Network, Eurojust or other channels used by competent judicial authorities. Where an EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmitting an EIO.

Amendment 13

Draft directive Recital 11

Text proposed by the group of Member States

Amendment

(11) The execution of an EIO should, to the widest extent possible, and without prejudice to fundamental principles of the law of the executing State, be carried out in accordance with the formalities and procedures expressly indicated by the issuing State. The issuing authority may request that one or several authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State. This possibility does not imply any law enforcement powers for the authorities of

(11) The execution of an EIO should, to the widest extent possible, and without prejudice to fundamental principles of the law of the executing State, be carried out in accordance with the formalities and procedures expressly indicated by the issuing State. The issuing authority may request that one or several authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State. This possibility does not imply any law enforcement powers for the authorities of

the issuing State in the territory of the executing State.

the issuing State in the territory of the executing State. *The executing authority should comply with such request, if necessary by setting conditions as to the scope and nature of the attendance of the authorities of the issuing State. In this way, a system is established to encourage judicial authorities to cooperate with each other, in a spirit of mutual trust, by promoting mechanisms not only to facilitate cooperation between authorities, but also to improve the judicial protection of individual rights.*

Amendment 14

Draft directive Recital 12

Text proposed by the group of Member States

(12) To ensure the effectiveness of judicial cooperation in criminal matters, the possibility of refusing to recognise or execute the EIO, as well as the grounds for postponing its execution, should be limited.

Amendment

(12) To ensure the effectiveness of judicial cooperation in criminal matters, the possibility of refusing to recognise or execute the EIO, as well as the grounds for postponing its execution, should be limited *insofar as is necessary to prevent adverse effects when the principle of mutual recognition is applied in a non-harmonised legal area with regard to criminal law and criminal proceedings, in particular in respect of the protection fundamental rights and fundamental constitutional rules of the Member States.*

Amendment 15

Draft directive Recital 12 a (new)

Text proposed by the group of Member States

Amendment

(12a) This Directive respects the principle of ne bis in idem, which means that no one should be tried or punished twice on

the same facts and for the same offence. This is established as an individual right in international legal instruments on human rights, such as Protocol No 7 to the European Convention on Human Rights (Article 4) and the Charter of Fundamental Rights of the European Union (Article 50), and is recognised in all legal systems based on the concept of respect for and protection of fundamental freedoms. Consequently, the principle of ne bis in idem is a fundamental principle of law in the European Union. As a result, the executing authority should have the right to refuse to execute an EIO where its execution would contravene this principle and where it is confirmed that the person in question has already been tried on the same facts, with a final decision having been made, under the conditions laid down in Article 54 of the Convention of 19 June 1990 applying the Schengen Agreement and also taking in account the case-law of the Court of Justice of the European Union. Given the preliminary nature of the proceedings underlying an EIO and the complexity of analysis of the conditions required by Article 54, the executing authority should inform and consult with the issuing authority, which should in turn consider this information and take the necessary measures in relation to the proceedings underlying the issuing of an EIO. Such consultation should be without prejudice to the obligation of the executing authority to consult the issuing authority in accordance with Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

Amendment 16

Draft directive Recital 13 a (new)

*Text proposed by the group of Member
States*

Amendment

(13a) The legal remedies available against an EIO should at least be the same as those available in domestic cases against the investigative measure in question. In accordance with their national law, Member States should ensure that these legal remedies can be used and should promptly inform interested parties about the possibilities and methods of legal remedy. In cases where objections against an EIO are made by an interested party in the executing State with regard to more substantive reasons for the issue of an EIO, it is advisable that such information is transmitted to the issuing authority and that the interested party is duly informed. There is a need to ensure the right to information and access to the courts for those affected by an EIO. The right of defence forms part of the right to a fair trial (Articles 47 and 48 of the Charter) during all stages of the proceedings.

Amendment 18

Draft directive Recital 14 a (new)

*Text proposed by the group of Member
States*

Amendment

(14a) By making a declaration on the use of languages, Member States will be encouraged to include at least one language that is commonly used in the European Union, in addition to their official language. The use of this language should not in any way be detrimental to the rights of the suspect in terms of interpretation and translation in

criminal proceedings, as laid down in 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.

Amendment 69

**Draft directive
Recital 14 a (new)**

Text of the initiative

Amendment

(14a) This Directive sets rules on carrying out, at all stages of criminal proceedings, including the trial phase, an investigative measure, if needed with the participation of the person with a view to collecting evidence. For example an EIO may be issued for the temporary transfer of the person to the issuing State or for carrying out of a hearing by videoconference. However, where the person is to be transferred to another Member State for the purposes of prosecution including bringing that person before a court for the purpose of the standing trial an EAW should be issued in accordance with the Council Framework Decision 2002/584/JHA.

Amendment 70

**Draft directive
Recital 14 b (new)**

Text of the initiative

Amendment

(14b) With a view to the proportionate use of European Arrest Warrants for the purpose of prosecution, judicial authorities should consider whether issuing an EIO for the hearing of a suspected or accused person via videoconferencing could serve as an

effective alternative.

Compromise Amendment 2 (AM 72 and AM 73)

**Draft directive
Recital 14 d (new)**

Text of the initiative

Amendment

(14d) Where in this Directive a reference is made to the financial institutions this term should be understood according to the relevant definitions of Article 3 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

**Draft directive
Recital 14 e (new)**

Text of the initiative

Amendment

(14e) When an EIO is issued to obtain the "particulars" of a specified account, "particulars" should be understood to include at least the name and address of the account holder, details of any powers of attorney held over the account, and any other details or documents provided by the account holder when the account was opened and that are still held by the bank.

Amendment 74

**Draft directive
Recital 14 f (new)**

Text of the initiative

Amendment

(14f) This directive, because of its scope, deals with provisional measures only with a view to gathering evidence. In this respect, it should be underlined that any item, including financial assets, may be

subject to various provisional measures in the course of criminal proceedings, not only with a view to gathering evidence but also with a view to confiscation. It is important to recognise that the distinction between the two objectives of provisional measures is not always obvious and that the objective of the provisional measure may change in the course of the proceedings. For this reason, it is crucial for future works to maintain a smooth interrelationship between the various instruments applicable in this field. Furthermore, for the same reason, the assessment on whether the item is to be used as evidence and therefore the object of an EIO should be left to the issuing authority.

Amendment 19

Draft directive Recital 16

Text proposed by the group of Member States

(16) *Since* the objective of this Directive, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment

(16) *The principle of subsidiarity, as set out in Article 5 of the Treaty on European Union, was introduced by the Treaty of Maastricht and expresses the fact that anything which can be better decided or managed at the national, regional or local level should not be regulated at Union level. According to this principle, Union decisions are therefore limited to cases in which they will be more effective and satisfactory than national action. Given the need to consolidate the process of European integration by establishing measures that increase the effectiveness of judicial cooperation between Member States and since* the objective of this Directive, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States and can therefore, by

reason of the scale and effects of the action, be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

Compromise Amendment 3 (Includes AM 64, AM 75, AM 138, AM 139)

Draft directive Recital 17 a (new)

Text of the initiative

Amendment

(17a) The personal data processed in the context of the implementation of this Directive, will be protected in accordance with the provisions laid down in Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and the principles of the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to the automatic processing of personal data. Evidence gathered under the EIO may not be used for other purposes than the prevention, investigation, detection or prosecution of crime or enforcement of criminal sanctions and the exercise of the right of defence.

Amendment 20

Draft directive Article 1 – paragraph 1

Text proposed by the group of Member States

Amendment

1. The European Investigation Order (EIO)

1. The European Investigation Order (EIO)

PEResult of the orientation vote 8/05/2012v01-0020/54

RR\2010_0817_COD_EN.doc

shall be a judicial decision issued by a competent authority of a Member State ('the issuing State') in order to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') with a view to gathering evidence within the framework of the proceedings referred to in Article 4.

shall be a judicial decision issued by a competent authority of a Member State ('the issuing State') in order to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') with a view to gathering evidence ***in accordance with the provisions of this Directive, and specifically*** within the framework of the proceedings referred to in Article 4.

Amendment 21

Draft directive

Article 1 – paragraph 3

Text proposed by the group of Member States

3. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty on European Union, and any obligations incumbent on judicial authorities in this respect shall remain unaffected. This Directive shall likewise not have the effect of requiring Member States to take any measures which conflict with their constitutional rules ***relating to*** freedom of association, freedom of the press and freedom of expression in other media.

Amendment

3. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty on European Union, ***including the right of defence of persons subject to criminal proceedings,*** and any obligations incumbent upon judicial authorities in this respect shall remain unaffected. This Directive shall likewise not have the effect of requiring Member States to take any measures which conflict with their ***fundamental*** constitutional rules, ***including*** freedom of association, freedom of the press and freedom of expression in other media.

Amendment 22

Draft directive

Article 2

Text proposed by the group of Member States

Amendment

For the purposes of this Directive:

For the purposes of this Directive:

(-aa) ‘issuing State’ shall mean the Member State in which the EIO is issued;

(-ab) ‘executing State’ shall mean the Member State executing the EIO, in which the person covered by the investigative measure requested or the document, object or data to be seized, examined or inspected is to be found;

(a) ‘issuing authority’ ***means:***

(a) ‘issuing authority’ ***shall mean*** a judge, a court, an investigating magistrate or a public prosecutor competent in the case concerned;

(i) a judge, a court, an investigating magistrate or a public prosecutor competent in the case concerned; or

(ii) any other judicial authority as defined by the issuing State and, in the specific case, acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law,

(b) ‘executing authority’ shall mean ***an*** authority having competence to recognise or execute an EIO in accordance with this Directive. The executing authority shall be an authority competent to ***undertake*** the investigative measure mentioned in the EIO in a similar national case.

(b) ‘executing authority’ shall mean ***a judicial*** authority having competence to recognise or execute an EIO in accordance with this Directive. The executing authority shall be an authority competent to ***order*** the investigative measure mentioned in the EIO in a similar national case.

Compromise Amendment 4 (Includes AM 86 and AM 89)

Draft directive

Article 3 – paragraph 2 – point c b (new)

Text of the initiative

Amendment

(cb) covert investigations as provided for in Article 14 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European

Union.

Amendments 87 and 88

Draft directive

Article 3 – paragraph 2 – point c a (new)

Text of the initiative

Amendment

(ca) controlled deliveries as provided for in Article 12 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

Amendment 92

Draft directive

Article 4 – paragraph 1 – point a a (new)

Text of the initiative

Amendment

(aa) at the request of the representative of the suspect or detainee in order to secure the performance of the investigative procedures requested by that person in his defence;

Compromise Amendment 5 (Includes AM 23, AM 96, AM 97, AM 98)

Draft directive

Article 5

Text proposed by the group of Member States

Amendment

1. The EIO set out in the form provided for in Annex A shall be completed, signed, and its content certified as accurate by the issuing authority.

1. The EIO set out in the form provided for in Annex A shall be completed, signed, and its content certified as accurate ***and correct*** by the issuing authority.

It shall, in particular, contain the following information:

(a) data about the issuing authority and, if

applicable, validating authority;

(aa) the object of and reasons for the EIO;

(ab) the necessary information available on the person(s) concerned ;

(ac) a description of the criminal act, which is subject of the investigation or proceedings, and the applicable provisions of criminal law ;

(ad) a description of the investigative measure(s) requested and evidence to be obtained.

2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the State in question is the executing State.

2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the State in question is the executing State.

2a. The EIO set out in the form provided for in Annex A shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State in accordance with Article 5(2).

Amendment 100

Draft directive Article 5 a (new)

Text of the initiative

Amendment

Article 5a

These conditions shall be assessed by the issuing authority in each case. Where the executing authority has reasons to believe that:

(a) the investigative measure is not proportionate, or

(b) it concerns an offence which it might consider being very minor,

the executing authority shall consult the issuing authority on the importance to

execute the investigative measure in the specific case if such an explanation has not been made in the EIO. After such consultation, the issuing authority may decide to withdraw the EIO.

Compromise Amendment 6 (Includes AM 25, AM 26, AM 27, AM 28, AM 103, AM 106)

**Draft directive
Article 6**

Text proposed by the group of Member States

Amendment

1. The EIO shall be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity. ***All further official communication shall be made directly between the issuing authority and the executing authority.***

1. The EIO, ***completed in accordance with Article 5***, shall be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity ***and competence of the issuing authority.***

1a. All further official communication shall be made directly between the issuing and the executing authority.

2. Without prejudice to Article 2 (b), each Member State may designate a central authority or, when its legal system so provides, more than one central authority, to assist the judicial competent authorities. A Member State may, if necessary as a result of the organisation of its internal judicial system, make its central authority (ies) responsible for the administrative transmission and receipt of the EIO, as well as for other official correspondence relating thereto.

2. Without prejudice to Article 2 (b), each Member State may designate a central authority or, when its legal system so provides, more than one central authority, to assist the judicial competent authorities. A Member State may, if necessary as a result of the organisation of its internal judicial system, make its central authority (ies) responsible for the administrative transmission and receipt of the EIO, as well as for other official correspondence relating thereto.

The members of the central authority in question shall be appointed by bodies of judges, who shall select them from within the judiciary. This authority shall be bound to observe the principles of confidentiality and of mandatory prosecution which apply normally to examining magistrates in the

3. If the issuing authority so wishes, transmission may be effected via the telecommunications system of the European Judicial Network.

5. When the authority in the executing State which receives the EIO has no jurisdiction to recognise it and to take the necessary measures for its execution, it shall, ex officio, transmit the EIO to the executing authority.

6. All difficulties concerning the transmission or authenticity of any document needed for the execution of the EIO shall be dealt with by direct contacts between the issuing and executing authorities involved or, where appropriate, with the involvement of the central authorities of the Member States.

performance of their own duties.

3. If the issuing authority so wishes, transmission may be effected via the telecommunications system of the European Judicial Network.

4. If the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the European Judicial Network contact points, in order to obtain the information from the executing State.

5. When the authority in the executing State which receives the EIO has no jurisdiction to recognise it and to take the necessary measures for its execution, it shall, ex officio, transmit the EIO to the executing authority.

6. All difficulties concerning the transmission or authenticity of any document needed for the execution of the EIO shall be dealt with by direct contacts between the issuing and executing authorities involved or, where appropriate, with the involvement of the central authorities of the Member States.

6a. In the context of this article, authentication systems shall be created to ensure that only authorised bodies have access to databases containing personal data and can operate these databases.

Compromise Amendment 7 (AM 29 and AM 108)

Draft directive Article 7

Text proposed by the group of Member States

1. Where, in accordance with Article 8(3), the issuing authority assists in the execution of the EIO in the executing State, it may, without prejudice to notifications made under Article 28(1)(c), address an EIO which supplements the

Amendment

1. Where the issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO in accordance with the form provided for in Annex A.

earlier EIO directly to the executing authority, while present in that State.

Where, in accordance with Article 8(3), the issuing authority assists in the execution of the EIO in the executing State, it may, without prejudice to notifications made under Article 28(1)(c), address an EIO which supplements the earlier EIO directly to the executing authority, while present in that State.

2. When assisting in the execution of the EIO in the executing State, in accordance with Article 8(3), the issuing authority may, without prejudice to notifications made under Article 28(1)(c), address an EIO which supplements the earlier EIO directly to the executing authority, while present in that State.

2a. Any supplementary EIO must be certified in accordance with Article 5 and validated in accordance with Article 5a.

Compromise Amendment 8 (AM 30, AM 31, AM 32, AM 33, AM 109)

Draft directive Article 8

Text proposed by the group of Member States

1. The executing authority shall recognise an EIO, transmitted in accordance with Article 6, without any further formality being required, and shall forthwith take the necessary measures for its execution in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority of the executing State, **unless** that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 10 or one of the grounds for postponement provided for in Article 14.

2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in the Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.

3. The issuing authority may request that

Amendment

1. The executing authority shall recognise an EIO, transmitted in accordance with Article 6, without any further formality being required, and shall forthwith take the necessary measures for its execution in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority of the executing State, **except where** that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 10 or one of the grounds for postponement provided for in Article 14.

2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in the Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.

3. The issuing authority may request that

one or several authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State. The executing authority shall comply with this request provided that such participation is not contrary to the fundamental principles of law of the executing State.

one or several authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State ***to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measures mentioned in the EIO in a similar national case.*** The executing authority shall comply with this request provided that:

(a) such participation is not contrary to the fundamental principles of law of the executing State;

(aa) such participation does not harm the essential national security interests of the executing State.

3a. The authorities of the issuing State present in the executing State shall be bound by the law of the executing State during the execution of the EIO. The issuing State shall not have any law enforcement powers in the territory of the executing State.

3b. The issuing and executing authorities shall consult each other, by any appropriate means, with a view to facilitating the application of this Article.

Compromise Amendment 9 (AM 34, AM 110, AM 111, AM 113)

Draft directive Article 9

Text proposed by the group of Member States

Amendment

1. The executing authority may decide to have recourse to an investigative measure other than that provided for in the EIO when:

(a) the investigative measure indicated in the EIO does not exist under the law of the executing State;

(b) the investigative measure indicated in the EIO exists in the law of the executing

1. The executing authority may decide to have recourse to an investigative measure other than that provided for in the EIO when:

(a) the investigative measure indicated in the EIO does not exist under the law of the executing State;

(b) the investigative measure indicated in the EIO exists in the law of the executing

State but *its use is restricted to a list or category of offences which does not include the offence covered by the EIO*, or

(c) the investigative measure selected by the executing authority will have the same result as the measure provided for in the EIO by less *coercive* means.

2. When the executing authority decides to avail itself of the possibility referred to in paragraph 1, it shall first inform the issuing authority, which may decide to withdraw the EIO.

State but is *not admissible in a similar national case*, or

(c) the investigative measure selected by the executing authority will have the same result as the measure provided for in the EIO by less *intrusive* means.

2. When the executing authority decides to avail itself of the possibility referred to in paragraph 1, it shall first inform the issuing authority, which may decide to withdraw the EIO.

2a. Where, in accordance with paragraph 1, the investigative measure provided for in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the measure requested, the executing authority must notify the issuing authority that it has not been possible to provide the assistance requested and has to explain the reason why that was not possible.

Compromise Amendment 10 (AM 35-44, AM 114, AM 115, AM 118, AM 120, AM 121)

Draft directive Article 10

Text proposed by the group of Member States

1. Recognition or execution of an EIO may be refused in the executing State where:

Amendment

1. Recognition or execution of an EIO may be refused in the executing State where:

(-aa) its execution would infringe the ne bis in idem principle;

(-ab) the EIO refers to facts that do not constitute a crime or an offence under the national law of the execution State, except under the conditions and for the criminal offences as referred to in Article 2(2) of Council Framework-Decision

2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States that shall not be the subject to a double criminality check. For the purpose of the no 2 of the article 2 of the Council Framework-Decision, should be considered in the expression "organised crime", the terrorism and mafia;

(-ac) the EIO concerns criminal offences that:

(i) under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory;

(ii) have been committed outside the territory of the issuing State, and the law of the executing State does not permit legal proceedings to be taken in respect of such offences where they are committed outside that State's territory;

a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO;

(a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO; where an authority in the executing State has the power to waive the immunity or privilege, the executing authority may request that this power be exercised immediately; where an authority in another State or an international organisation has the power to waive the immunity or privilege, the issuing authority shall request that this power be exercised;

(aa) where there are rules determining or limiting criminal liability relating to freedom of the press or the freedom of expression in other media, which make it impossible to execute the EIO;

(b) in a specific case, its execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

(b) in a specific case, its execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

(ba) there is clear and objective evidence

of an infringement of a fundamental right as laid down in the Charter of Fundamental Rights or in the European Convention on Human Rights or where executing a measure would clearly contradict the fundamental national constitutional principles of the executing State as regards criminal proceedings;

(bb) the measure has not been validated by a judge in a case where, in the issuing State, the measure has not been issued by a judge, but this requirement exists in the executing State;

(c) in the cases referred to in Article 9(1)(a) and (b), there is no other investigative measure available which will make it possible to achieve a similar result;

d) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the measure would not be authorised in a similar national case.

(c) in the cases referred to in Article 9(1)(a) and (b), there is no other investigative measure available which will make it possible to achieve a similar result;

(d) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the measure would not be authorised **by the law of the executing State** in a similar national case.

1a. With regard to tax, customs or exchange offences, recognition or execution may not be refused based on the fact that the law of the executing State does not impose the same kind of tax, excise duty, customs duty or exchange duty as in the issuing State.

1b. Where the EIO is incomplete or has clearly been completed incorrectly and also in the cases referred to in paragraph 1(aa), (ba), (b) and (c), before deciding not to recognise or not to execute an EIO, either totally or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

Compromise Amendment 11 (AM 122)

Draft directive

Article 11 – paragraph 5

Text of the initiative

5. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 3, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the decision to be taken. In this case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.

Amendment

5. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 3 **or on a specific date set out in paragraph 2**, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the decision to be taken. In this case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.

Amendment 123

Draft directive

Article 12 – paragraph 1

Text of the initiative

1. The executing authority shall without undue delay transfer the evidence obtained as a result of the execution of the EIO to the issuing State. Where requested in the EIO and if possible under national law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 8(3).

Amendment

1. The executing authority shall without undue delay transfer the evidence obtained **or already in the possession of the competent authorities of the executing State** as a result of the execution of the EIO to the issuing State. Where requested in the EIO and if possible under national law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 8(3).

Amendment 125

Draft directive

Article 12 – paragraph 2 a (new)

Text of the initiative

Amendment

2a. Where the objects, documents, or data concerned are already relevant for other proceedings the executing authority may, at the explicit request and after consultations with the issuing authority

temporarily transfer the evidence under the condition that it be returned to the executing State as soon as they are no longer required in the issuing State or at any other time/occasion agreed between the competent authorities.

Compromise Amendment 12 (Includes AM 126, AM 127, AM 128, AM 129, AM 130, AM 131, AM 132)

**Draft directive
Article 13**

Text of the initiative

Legal remedies shall be available for the interested parties in accordance with national law. The substantive reasons for issuing the EIO can be challenged only in an action brought before a court of the issuing State.

Amendment

1. The interested parties, including third parties in good faith, may have legal remedy against recognition and execution of an EIO, in defence of legitimate interests, before a court in the executing State.

1a. The substantive reasons for issuing the EIO can be challenged only in an action brought before a court of the issuing State, without prejudice to guarantee in the executing State fundamental rights and fundamental national constitutional principles.

1b. Where the right of legal remedy is exercised pursuant to paragraph 1, the judicial authority shall be informed of this fact and of the grounds of the legal remedy so that it can exercise its procedural rights.

1c. Provided that the need to ensure the confidentiality of an investigation is not called into question, as laid down in Article 18(1), the authorities in the issuing State and executing State shall provide interested parties with relevant and appropriate information to guarantee the effective exercise of the right of legal remedy and the right of action laid down in the above paragraphs.

1d. A lodged remedy has merely a devolutive effect and does not suspend the execution of the investigative measure requested by the issuing State.

1e. Despite this, evidence obtained will only be transmitted to the issuing State, in the case of a pending remedy, after a final decision as regards the remedy.

1f. The interested party may ask for the attribution of a suspensive effect, by lodging a remedy that proves that the execution of the request of the issuing State would cause serious or irreversible damages to her or him.

1g. For the purposes of the preceding paragraph, the court may suspend the measure in order to guarantee the rights of the interested party, whilst taking into account the preservation of evidence and the effectiveness of a request made by the issuing State.

1h. Despite the application of paragraph 1e of this Article, the issuing State may request that the evidence gathered be transferred until a final decision on the remedy is taken if it proves that the retention of the evidence, by the executing State, would cause irreversible damages and jeopardise the investigation that justified the request.

1i. For the purposes of the preceding paragraph and in the case of a successful remedy by the interested party, the evidence transferred to the issuing State during the remedy procedure, shall not be used, or shall be destroyed, depending on each case and as regards the nature of evidence.

1j. Member States shall ensure that any time limits for seeking a legal remedy are applied in a way that guarantees the possibility of effective assertion of these legal remedies for interested parties.

Amendment 46

Draft directive

Article 14 – paragraph 1 – point a

Text proposed by the group of Member States

(a) *its execution might prejudice an ongoing criminal investigation or prosecution*, until such time as the executing State deems reasonable; or

Amendment

(a) *the evidence obtained might also be relevant to ongoing criminal investigations or prosecutions or might prejudice such investigations or prosecutions*, until such time as the executing State deems reasonable; or

Compromise Amendment 13 (AM 136, AM 137)

Draft directive

Article 15 – paragraph 2

Text of the initiative

2. Without prejudice to Article 9(2), the executing authority shall inform the issuing authority:

(a) immediately by any means where:

(i) it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in the Annex is incomplete or manifestly incorrect;

(ii) the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to undertake investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case;

(iii) the executing authority establishes that, in the specific case, it cannot comply

Amendment

2. Without prejudice to Article 9(2), the executing authority shall inform the issuing authority:

(a) immediately by any means where:

(i) it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in the Annex is incomplete or manifestly incorrect;

(ii) the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to undertake investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case;

(iii) the executing authority establishes that, in the specific case, it cannot comply

with formalities and procedures expressly indicated by the issuing authority in accordance with Article 8.

Upon request by the issuing authority, the information shall be confirmed without delay by any means capable of producing a written record;

(b) without delay by any means capable of producing a written record:

(i) any decision taken in accordance with **Article 10(1)**;

(ii) the postponement of the execution or recognition of the EIO, the underlying reasons and, if possible, the expected duration of the postponement.

Amendment 48

Draft directive Article 16

Text proposed by the group of Member States

When present in the territory of the executing State in the framework of the application of this Directive, officials from the issuing State shall be regarded as officials of the executing State with respect to offences committed against them or by them.

with formalities and procedures expressly indicated by the issuing authority in accordance with Article 8;

(iv) the issuing authority makes modifications to the EIO or the EIO has expired or has been revoked.

Upon request by the issuing authority, the information shall be confirmed without delay by any means capable of producing a written record;

(b) without delay by any means capable of producing a written record:

(i) any decision taken in accordance with **Articles 9 or 10**;

(ii) the postponement of the execution or recognition of the EIO, the underlying reasons and, if possible, the expected duration of the postponement.

Amendment

Where, in the framework of the application of this Directive, officials from the issuing State are present in the territory of the executing State, they shall be regarded as officials of the executing State with respect to offences committed against them or by them.

Amendment 49

**Draft directive
Article 17 – paragraph 2 a (new)**

*Text proposed by the group of Member
States*

Amendment

2a. The issuing State whose officials have caused damage to any person in the territory of the executing State shall reimburse the latter any sums it has paid to the victims or persons entitled on their behalf.

Amendment 50

**Draft directive
Article 18 – title**

*Text proposed by the group of Member
States*

Amendment

Confidentiality

Confidentiality and processing of personal data

Amendment 51

**Draft directive
Article 18 – paragraph 2 a (new)**

*Text proposed by the group of Member
States*

Amendment

2a. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, keep confidential any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.

Amendment 140

**Draft directive
Article 18 – paragraph 4 c (new)**

Text of the initiative

Amendment

4c. Member States shall provide that their authority controlling the personal data takes all reasonable steps to have transparent and easily accessible policies with regard to the processing of personal data and for the exercise of the data subjects' rights to legal remedies under Article 13.

Amendment 141

**Draft directive
Article 18 – paragraph 4 d (new)**

Text of the initiative

Amendment

4d. Member States shall provide that the competent authority adopts policies and implements appropriate measures to ensure that the processing of personal data is performed in compliance with the provisions adopted pursuant to this Directive.

Amendment 142

**Draft directive
Article 18 a (new)**

Text of the initiative

Amendment

Costs

All expenses arising from an investigation request, with a view of obtaining evidence, will be shared in equal parts between the issuing and the executing State, unless both concerned States, in concrete cases, have previously agreed on a different distribution of costs.

Amendment 143

Draft directive Article 18 a (new)

Text of the initiative

Amendment

Article 18a

Conditions for the use of personal data

1. Personal data processed when implementing this Directive shall be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and with the principles laid down in the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

2. Personal data obtained under this Directive may be used by the issuing State for proceedings for which the EIO may be issued.

For any purpose other than those set out in this paragraph, personal data obtained under this Directive may be used only with the prior consent of the executing State, unless the issuing State has obtained the consent of the data subject.

3. In the circumstances of the particular case, the executing State may require the Member State to which the personal data have been transferred to give information on the use made of the data.

Compromise Amendment 14 (AM 52, AM 144, AM 145, AM 148, AM 152, AM 153, AM 154, AM 159)

**Draft directive
Article 19**

Text proposed by the group of Member States

Temporary transfer to the issuing State of persons held in custody for purpose of **investigation**

1. An EIO may be issued for the temporary transfer of a person in custody in the executing State in order to have an investigative measure carried out for which his presence on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.

2. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:

(a) the person in custody does not consent; or

(b) the transfer is liable to prolong his detention.

3. In a case under paragraph 1, transit of the person in custody through the territory of a third Member State shall be granted on application, accompanied by all necessary documents.

4. The practical arrangements regarding the temporary transfer of the person and the **date** by which he must be returned to the territory of the executing State shall be agreed between the Member States concerned.

Amendment

Temporary transfer to the issuing State of persons held in custody for purpose of **conducting an investigative measure**

1. An EIO may be issued for the temporary transfer of a person in custody in the executing State **for the purpose of conducting** an investigative measure **with a view to collecting evidence in respect of an ongoing case** for which his presence on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.

2. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:

(a) the person in custody does not consent; or

(b) the transfer **of the person in custody** is liable to prolong his detention.

3. In a case under paragraph 1, transit of the person in custody through the territory of a third Member State shall be granted on application, accompanied by all necessary documents.

4. The practical arrangements regarding the temporary transfer of the person and the **dates** by which he must be **transferred from and** returned to the territory of the executing State shall be agreed between the Member States concerned. **Practical arrangements must ensure the particularities of his custody conditions in the issuing State, that the person is detained in custody arrangements equivalent to the level of security and in accordance with his physical or mental**

5. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State through which transit is required, unless the executing Member State applies for his release.

6. The period of custody in the territory of the issuing Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing Member State.

7. A transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions which precede his departure from the territory of the executing State and which are not specified in the EIO.

8. The immunity provided for in paragraph 7 shall cease when the transferred person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity to leave, has nevertheless remained in the territory, or having left it, has returned.

needs as in the executing State. The person shall be subject to the same detention regime as that to which he as subject in the country in which the sentence would normally be served.

5. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State through which transit is required, *for the acts or convictions for which he has been kept in custody in the executing State*, unless the executing Member State applies for his release.

6. The period of custody in the territory of the issuing Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing Member State.

7. A transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions which precede his departure from the territory of the executing State and which are not specified in the EIO.

8. The immunity provided for in paragraph 7 shall cease when the transferred person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity to leave, has nevertheless remained in the territory, or having left it, has returned.

8a. At the request of the issuing State or the person to be transferred, the executing State shall ensure that, where necessary, the person is assisted by an interpreter and receives translations of any important documents in accordance with 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, receives information in accordance with the Directive [...] on the right to information

in criminal proceedings and receives legal advice in accordance with the national law of the issuing State.

9. Costs arising from the transfer shall be borne by the issuing State.

9. **deletion**

Amendment 146

Draft directive
Article 19 – paragraph 1 a (new)

Text of the initiative

Amendment

1a. Before executing the EIO the person concerned shall be given opportunity to state their opinion to the executing authority on the temporary transfer. Where the executing State considers it necessary in view of the person's age or physical or mental condition, that opportunity shall be given to their legal representative. The opinion of the person shall be taken into account when deciding to execute an EIO.

Amendment 150

Draft directive
Article 19 – paragraph 2 – point b a (new)

Text of the initiative

Amendment

(ba) the issuing and executing authorities cannot reach an agreement on the arrangements for the temporary transfer.

Compromise Amendment 15 (AM 160)

Draft directive
Article 20 – paragraph 2 – point a

Text of the initiative

Amendment

(a) consent to the transfer is required from the person concerned and this

(a) The person in custody has obtained an opinion from competent court having

consent has not been obtained;

jurisdiction over him that he should not be transferred;

Amendment 161

Draft directive

Article 20 – paragraph 2 – point a a (new)

Text of the initiative

Amendment

(aa) the transfer is liable to prolong his detention;

Amendment 164

Draft directive

Article 20 – paragraph 5

Text of the initiative

Amendment

5. Paragraphs 3 to **8** of Article 19 are applicable mutatis mutandis to the temporary transfer under this Article.

5. Paragraphs 3 to **9** of Article 19 are applicable mutatis mutandis to the temporary transfer under this Article.

Amendment 165

Draft directive

Article 20 – paragraph 6

Text of the initiative

Amendment

6. Costs arising from the transfer shall be borne by the issuing State. This does not include costs arising from the detention of the person in the executing State.

deleted

Compromise Amendment 16 (AM 166, AM 168, AM 169, AM 173, AM 174, AM 175, AM 176, AM 178)

Draft directive

Article 21

Text of the initiative

Hearing by videoconference

1. If a person is in the territory of the executing State and has to be heard as a witness or expert by the judicial authorities of the issuing State, the issuing authority may, where it is not desirable or possible for the person to be heard to appear in its territory in person, issue an EIO in order to hear the witness or expert by videoconference, as provided for in paragraphs 2 to 9.

2. An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply *mutatis mutandis*. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:

- (a) the use of videoconference is contrary to **fundamental** principles of the law of the executing State; or
- b) the executing State does not have the technical means for videoconference.

3. If the executing State has no access to

Amendment

Hearing by videoconference

1. If a person is in the territory of the executing State and has to be heard as a witness or expert by the judicial authorities of the issuing State, the issuing authority may, where it is not desirable or possible for the person to be heard to appear in its territory in person, issue an EIO in order to hear the witness or expert by videoconference **or other audio-visual transmission**, as provided for in paragraphs 2 to 9.

2. An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply *mutatis mutandis*. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:

- a) the use of videoconference is contrary to **the constitutional** principles of the executing State;
- b) the executing State does not have the technical means for videoconference.

2a. The practical arrangements regarding the hearing shall be agreed between the issuing and the executing authority. When agreeing such arrangements, the executing authority shall undertake to:

- (a) summon the witness or expert concerned of the time and the venue of the hearing or;**
- (b) summon the suspected or accused person to appear for the hearing in accordance with the forms laid down by its law and inform him about his rights under the law of the issuing State, in such a time as to allow him to exercise his rights of defence effectively;**
- (c) ensure the identification of the person to be heard.**

3. If the executing State has no access to

the technical means for videoconferencing, such means may be made available to it by the issuing State by mutual agreement.

4. Article 10(2) is applicable *mutatis mutandis* to cases referred to in paragraph 2(b).

5. The EIO issued for the purpose of a hearing by videoconference shall contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

6. In case of a hearing by videoconference, the following rules shall apply:

(a) a judicial authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the executing State. If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing and the executing State;

(c) the hearing shall be conducted directly by, or under the direction of, the issuing authority in accordance with its own laws;

(d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;

(e) the person to be heard ***may claim the right not to testify which would accrue to him*** under the law of either the executing

the technical means for videoconferencing, such means may be made available to it by the issuing State by mutual agreement.

4. Article 10(2) is applicable *mutatis mutandis* to cases referred to in paragraph 2(b).

5. The EIO issued for the purpose of a hearing by videoconference shall contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.

6. In case of a hearing by videoconference, the following rules shall apply:

(a) a judicial authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the executing State. If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;

(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing and the executing State;

(c) the hearing shall be conducted directly by, or under the direction of, the issuing authority in accordance with its own laws;

(d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;

(e) the person to be heard ***must be informed in advance of the hearing of his procedural rights which accrue to him,***

or the issuing State.

7. Without prejudice to any measures agreed for the protection of the persons, the executing authority shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.

8. The cost of establishing the video link, costs related to the servicing of the video link in the executing State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the executing State shall be refunded by the issuing State to the executing State, unless the latter waives the refunding of all or some of these expenses.

9. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.

10. An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply *mutatis mutandis*. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:

(a) the accused person does not consent;
or

including the principles of a fair trial and equality of arms and the right not to testify, under the law both of the executing and of the issuing State, ***and may, at his own discretion, invoke either of the rights not to testify.***

7. Without prejudice to any measures agreed for the protection of the persons, the executing authority shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.

8. The cost of establishing the video link, costs related to the servicing of the video link in the executing State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the executing State shall be refunded by the issuing State to the executing State, unless the latter waives the refunding of all or some of these expenses.

9. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.

10. An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply *mutatis mutandis*. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:

(a) deletion

(b) the execution of such a measure would be contrary to the law of the executing State.

(b) the execution of such a measure would be contrary to the *constitutional principles* of the executing State.

Compromise Amendment 17 (AM 179)

Draft directive

Article 22 – paragraph 1

Text of the initiative

1. If a person is in the territory of one Member State and has to be heard as a witness or expert by judicial authorities of another Member State, the issuing authority of the latter Member State may issue an EIO in order to hear a witness or expert by telephone conference, as provided for in paragraphs 2 to 4.

Amendment

1. If a person is in the territory of one Member State and has to be heard as a witness or a expert by judicial authorities of another Member State, the issuing authority of the latter Member State may issue an EIO in order to hear a witness or expert by telephone conference as provided for in paragraphs 2 to 4. *A telephone conference shall only be used in exceptional circumstances where no other means of taking evidence are available and the evidence is not disputed.*

Amendment 53

Draft directive

Article 22 – paragraph 2 – point a

Text proposed by the group of Member States

(a) the use of teleconference is contrary to fundamental principles of the law of the executing State; or

Amendment

(a) the use of teleconference is contrary to *fundamental rights and* fundamental *legal* principles of the law of the executing State; or

Amendment 180

Draft directive

Article 22 – paragraph 2 – point b

Text of the initiative

(b) the witness or expert does not agree to

Amendment

(b) the witness or expert does not agree to

the hearing taking place by that method.

the hearing taking place by that method,
citing reasonable grounds which must be assessed by the judicial authority of the executing State in accordance with its national rules.

Amendment 182

Draft directive

Article 22 – paragraph 4 – subparagraph 1 – point c a (new)

Text of the initiative

Amendment

(ca) inform the person to be heard promptly about his procedural rights which accrue to him under the Charter and the ECHR, including the fundamental rights and principles of a fair trial, of equality of arms and the right not to testify.

Amendment 183

Draft directive

Article 22 – paragraph 4 – subparagraph 1 – point c a (new)

Text of the initiative

Amendment

(ca) if the use of teleconference would be contrary to the constitutional principles of the executing State.

Amendment 184

Draft directive

Article 22 – paragraph 4 – subparagraph 2 a (new)

Text of the initiative

Amendment

Hearings of witnesses, collaborators of justice or other people benefiting from special protection measures may take place, provided their right not to have any image or likeness of themselves shown is safeguarded.

Compromise Amendment 18 (AM 186)

Draft directive

Article 23 – paragraph 5 – point a

Text of the initiative

(a) an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least **four** years in the issuing State **and at least two years** in the executing State;

Amendment

(a) an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least **two years** in the issuing State.

Amendment 187

Draft directive

Article 23 – paragraph 6 a (new)

Text of the initiative

Amendment

6a. An EIO may also be issued to determine whether any natural or legal person that is the subject of the criminal proceedings holds one or more accounts, in any non-bank financial institution located on the territory of the executing State. Paragraphs 3 to 6 shall apply mutatis mutandis. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 10, the execution of the EIO may also be refused if the execution of the measure would not be authorised in a similar national case.

Amendment 189

Draft directive

Article 24 – paragraph 4 a (new)

Text of the initiative

Amendment

4a. An EIO may also be issued with regard to the information provided for in

paragraph 1 with reference to the financial operations conducted by non-banking financial institutions. Paragraphs 3 to 4 shall apply mutatis mutandis. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 10, the execution of the EIO may also be refused if the execution of the measure would not be authorised in a similar national case.

Amendment 54

Draft directive Article 25

Text proposed by the group of Member States

1. An EIO may be issued in order to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified within.
2. Each Member State shall, under the conditions set out in the Article, take the measures necessary to enable it to provide the information referred to in paragraph 1.
3. The issuing State shall indicate in the EIO why it considers the requested information relevant for the purpose of the investigation into the offence.
4. The practical details regarding the monitoring shall be agreed between the competent authorities of the issuing and the executing States.

Amendment

1. An EIO may be issued in order to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified within.
2. Each Member State shall, under the conditions set out in the Article, take the measures necessary to enable it to provide the information referred to in paragraph 1 ***in the context of monitoring a banking operation.***
3. The issuing State shall indicate in the EIO why it considers the requested information relevant for the purpose of the investigation into the offence.
4. The practical details regarding the monitoring shall be agreed between the competent authorities of the issuing and the executing States.

4a. The issuing and executing authorities should ensure privacy and confidentiality of bank details obtained in contexts that are not related to the investigation, namely not releasing this information to third parties nor using it for other purposes than the ones that justified the request.

Amendments 190 and 191

Draft directive

Article 26

Text of the initiative

Amendment

Controlled deliveries

deleted

1. An EIO may be issued to undertake a controlled delivery on the territory of the executing State.

2. The right to act and to direct and control operations related to the execution of an EIO referred to in paragraph 1 shall lie with the competent authorities of the executing State.

Or. en

Amendment 193

Draft directive

Article 27 – paragraph 1

Text of the initiative

Amendment

1. When the EIO is issued for the purpose of executing a measure, including the measures referred to in **Articles 25 and 26**, implying the gathering of evidence in real time, continuously and over a certain period of time, its execution may be refused, in addition to the grounds for refusal referred to in Article 10(1), if the execution of the measure concerned would not be authorised in a similar national case.

1. When the EIO is issued for the purpose of executing a measure, including the measures referred to in **Article 25**, implying the gathering of evidence in real time, continuously and over a certain period of time, its execution may be refused, in addition to the grounds for refusal referred to in Article 10(1), if the execution of the measure concerned would not be authorised in a similar national case.

Amendment 195

Draft directive

Article 31 – paragraph 2 a (new)

Text of the initiative

Amendment

2a. They shall communicate the text of those provisions and a correlation table between those provisions and this Directive to the Commission.

Amendment 197

Draft directive Article 31 – paragraph 4

Text of the initiative

Amendment

4. The Commission shall, by ...**, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

4. The Commission shall, by **, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with **and implement** this Directive, accompanied, if necessary, by legislative proposals.

Compromise Amendment 19 (AM 199)

Draft directive Article 32 – paragraph 1

Text of the initiative

Amendment

No later than **five** years after the date of entry into force of this Directive, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information. The report shall be accompanied, if necessary, by proposals for amending this Directive.

No later than **four years** after the date of entry into force of this Directive, **and at regular intervals thereafter**, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, **including in particular the evaluation of its impact on cooperation in criminal matters, on fundamental rights, the rights of defence and on data protection requirements**. The report shall be accompanied, if necessary, by proposals for amending this Directive.

EXPLANATORY STATEMENT

Given the unsuitability of traditional judicial cooperation in the current European context, the step forward that the adoption of this Directive represents is undoubtedly a positive factor, which will clearly help to consolidate the construction of the European criminal area. It crystallises the tension in terms of progress with the transfer of sovereignty, in the name of security and protection of fundamental rights.

The challenge in terms of European criminal integration is therefore to ensure respect for and guarantee fundamental rights. It is significant that the preamble to the Charter of Fundamental Rights expressly refers to the area of 'freedom, security and justice', given its particularly sensitive nature in terms of fundamental rights and freedoms. There is no need to point out that this guarantee must be 'real' and not 'formal'. The carefully thought out and considered development of the European criminal area therefore requires judicial control of respect for fundamental rights in the Union.

The importance of the European criminal area is now evident as a priority within European integration, given the gradual liberation of traditional cooperation mechanisms. Having promoted police and judicial cooperation as a measure compensating for the disappearance of internal borders, the European Union is now moving beyond this inter-state cooperation in order to gradually construct a homogenous criminal area.

This progress must be made based on the following principles: mutual recognition, coordination of investigations, and protection of fundamental rights in criminal cases, thereby complying with the measures defined by Article 82 of the Treaty on the Functioning of the European Union. The complementary link between mutual recognition and harmonisation is thus reaffirmed, highlighting the fact that mutual recognition cannot be achieved without harmonisation.

There is no need to point out that one of the objectives of the European integration process is precisely to promote the free movement of persons, without failing to guarantee their safety, by creating an area of freedom, security and justice.