

## The European Investigation Order

The proposed directive on the European Investigation Order is aimed at setting up a comprehensive system for obtaining evidence in criminal cases with a cross-border dimension. Whereas this mutual recognition instrument is supposed to facilitate much greater cooperation across the EU, it also raises concerns over the protection of fundamental rights.

### Towards a new model for obtaining evidence

EU cross-border gathering and use of evidence have been regulated mainly through mutual assistance instruments, including the 2000 [Convention](#) on Mutual Assistance in Criminal Matters between EU Member States (MS). However, mutual recognition has been gradually gaining ground, as illustrated by the 2008 [Framework Decision](#) on the European evidence warrant (EEW) which nevertheless met with criticism for creating a complex and rigid system regulating just a small set of specific types of evidence. Only a limited number of countries have implemented the EEW Framework Decision.

The fragmented regime regulating transfer of evidence issues, involving both mutual assistance and mutual recognition measures was criticised in the [Stockholm Programme](#). The European Council stated that while the mutual recognition path, now enshrined in Article [82\(1\)](#) TFEU, should be further explored, a new approach was needed taking into account the flexibility of mutual legal assistance and covering as many types of evidence as possible.

### The proposal and its reception

Following the Stockholm Programme, the Commission published a [Green Paper](#) with a view to introducing a single mutual recognition instrument that would replace all existing measures related to obtaining evidence across the EU. However, in 2010 a group of seven MS put forward a [proposal](#) – based on Article [76\(b\)](#) TFEU – on the European Investigation Order (EIO) bringing the consultation process to a halt.

The proposed EIO would apply to almost all types of evidence. It would have a much larger scope of application than the EEW, covering evidence which does not yet exist (e.g. a statement to be taken from a witness) or is not directly available (e.g. analysis of a DNA sample). Time limits would be set for deciding on the recognition and the execution of an EIO. The number of grounds for refusal would be very limited. Issuing authorities could request to assist in an EIO's execution, although this would not imply any law enforcement powers outside their own Member State.

The [European Commission](#), the [European Data Protection Supervisor](#) and the EU [Agency for Fundamental Rights](#) (FRA) have published opinions on the proposal, which has also been discussed widely by civil society and academia. Many commentators see EIO as an instrument with far-reaching implications for individual rights, upsetting the balance between the prosecution and the defence, with the latter not entitled to use it. Some [bemoaned](#) the lack of connection between the EIO and the development of the Council's [Roadmap for strengthening procedural rights](#) and considered the initiative premature. This argument may, however, be losing pertinence with the gradual adoption of the [Procedural Rights Package](#). The need for a wider list of grounds for refusal has been [stressed](#), in particular with respect to fundamental rights, the *ne bis in idem* principle and proportionality. These points of criticism have been addressed in trilogues.

### European Parliament

The Civil Liberties, Justice and Home Affairs (LIBE) Committee has [examined](#) the proposal (rapporteur Nuno Melo, EPP, Portugal). On 5 December 2013 the Committee supported the compromise text agreed in trilogue in November 2013. The [text](#) now needs to be approved in plenary.

---

**Author:** Piotr Bąkowski, Members' Research Service

**European Parliamentary Research Service**

140751REV1

**Disclaimer and Copyright:** This briefing is a summary of published information and does not necessarily represent the views of the author or the European Parliament. The document is exclusively addressed to the Members and staff of the European Parliament for their parliamentary work. Links to information sources within this document may be inaccessible from locations outside the European Parliament network. © European Union, 2014. All rights reserved. <http://www.eprs.ep.parl.union.eu> — <http://epthinktank.eu> — [ep@ep.europa.eu](mailto:ep@ep.europa.eu)