



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2010/0817(COD)

10.2.2012

AMENDMENTS

55 - 199

Draft report
Nuno Melo
(PE478.493v02-00)

on the adoption of a Directive of the European Parliament and of the Council
regarding the European Investigation Order in criminal matters

Draft directive
(09288/2010 – C7-0185/2010 – 2010/0817(COD))

Amendment 55
Rosario Crocetta

Draft directive
Recital 1

Text of the initiative

(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 ***in accordance with the Charter of Fundamental Rights of the European Union and the constitutional principles of the individual Member States.***

Or. it

Amendment 56
Cornelis de Jong

Draft directive
Recital 1 a (new)

Text of the initiative

Amendment

(1a) The European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR) have helped to define and raise human rights standards, 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.

Or. en

Amendment 57
Cornelis de Jong

Draft directive
Recital 2

Text of the initiative

(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.

Amendment

(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.
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 Charter and in the European Convention on Human Rights.

Or. en

Amendment 58
Rosario Crocetta

Draft directive
Recital 2

Text of the initiative

(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.

Amendment

(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, ***in keeping with the Charter of Fundamental Rights of the European Union and the constitutional principles of the Member States participating in the EIO.***

Or. it

Amendment 59
Rosario Crocetta

Draft directive
Recital 2 a (new)

Text of the initiative

Amendment

(2a) The executing State may not refuse the EIO on the grounds of differences between its own ordinary laws and those of the issuing State, but may do so should the EIO contravene the Charter of Fundamental Rights of the European Union and the constitutional principles of the executing State.

Or. it

Amendment 60
Kinga Göncz

Draft directive
Recital 2 a (new)

Text of the initiative

Amendment

(2a) Judicial cooperation is based on mutual trust in each others' judicial system that requires a well functioning, independent and impartial judiciary system without any political interference in all Member States.

Or. en

**Amendment 61
Cornelis de Jong**

**Draft directive
Recital 2 a (new)**

Text of the initiative

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 rights or national constitutional principles in the Member States involved may be infringed must form an additional ground for refusal.

Or. en

**Amendment 62
Cornelis de Jong**

**Draft directive
Recital 12**

Text of the initiative

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.

deleted

Or. en

**Amendment 63
Anna Hedh**

**Draft directive
Recital 12 a (new)**

Text of the initiative

Amendment

(12a) It should be possible to refuse an EIO where its recognition or execution in the executing State would involve breaching an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in the European Union and the precise definition of these terms is therefore left to national law, which may include protections which apply to medical and legal professions, but should not be interpreted in a way which would run counter to the obligation to abolish certain grounds for refusal in Article 7 of the 2001 Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. This may include as well, even though they are not necessarily considered as privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.

Or. en

Amendment 64
Birgit Sippel

Draft directive
Recital 13 a (new)

Text of the initiative

Amendment

(13a) The personal data processed in the context of the implementation of this Directive will be protected in accordance with the relevant instruments including 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, as well as by the additional protection afforded by this Directive in line with Article 23 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.

Or. en

Amendment 65
Cornelis de Jong

Draft directive
Recital 13 a (new)

Text of the initiative

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, the executing State will examine whether there are reasons

for not recognising the EIO, for example because of the lack of proportionality, or infringement of human rights, 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.

Or. en

Amendment 66
Anna Hedh

Draft directive
Recital 13 a (new)

Text of the initiative

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 in due time 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 67
Rosario Crocetta

Draft directive
Recital 13 a (new)

Text of the initiative

Amendment

(13a) To enable the EIO to be executed in countries that do not have substantial funds and resources for investigations, should these be insufficient then the costs of executing the EIO, borne normally by the executing State, may be assumed directly by the State issuing the EIO. Member States may also draw up general or specific agreements to compensate the costs incurred by means of clearing accounts.

Or. it

Amendment 68
Cornelis de Jong

Draft directive
Recital 14

Text of the initiative

Amendment

(14) The EIO provides a single regime for obtaining evidence. Additional rules are however necessary for some types of investigative measures which should be included in the EIO, such as the temporary transfer of persons held in custody, hearing by video or telephone conference, obtaining of information related to bank accounts or banking transactions ***or controlled deliveries***. Investigative measures implying a gathering of evidence in real time, continuously and over a

(14) The EIO provides a single regime for obtaining evidence. Additional rules are however necessary for some types of investigative measures which should be included in the EIO, such as the temporary transfer of persons held in custody, hearing by video or telephone conference, obtaining of information related to bank accounts or banking transactions. Investigative measures implying a gathering of evidence in real time, continuously and over a certain period of

certain period of time are covered by the EIO, but flexibility should be given to the executing authority for these measures given the differences existing in the national laws of the Member States.

time are covered by the EIO, but flexibility should be given to the executing authority for these measures given the differences existing in the national laws of the Member States.

Or. en

Amendment 69
Cornelis de Jong

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.

Or. en

Amendment 70
Cornelis de Jong

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.

Or. en

**Amendment 71
Cornelis de Jong**

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

Text of the initiative

Amendment

(14c) An EIO may be issued in order to get evidential information concerning the accounts, of whatever nature, held in any bank or any non-banking financial institution by the person subject to criminal proceedings. This possibility is to be understood broadly as comprising not only suspected or accused persons but also any other person in respect of which such information is found necessary by the competent authorities in the course of criminal proceedings.

Or. en

**Amendment 72
Cornelis de Jong**

**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 financing¹.

¹OJ L 309, 25.11.2005, p.15.

Or. en

**Amendment 73
Cornelis de Jong**

**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.

Or. en

**Amendment 74
Cornelis de Jong**

**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.

Or. en

**Amendment 75
Cornelis de Jong**

**Draft directive
Recital 17 a (new)**

Text of the initiative

Amendment

(17a) Personal data processed, when implementing this Directive, should 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 matters¹. Evidence gathered

under the EIO may not be used for other purposes than the prevention, investigation, detection or prosecution of crime or de enforcement of criminal sanctions and the exercise of the right of defence.

¹*OJ L 350, 30.12.2008, p. 60.*

Or. en

Amendment 76
Kinga Göncz

Draft directive
Article 1 – paragraph 3

Text of the initiative

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, **as well as the right to defence - including access to a lawyer in all stages of the proceedings-, effective remedy and fair trial by an independent and impartial tribunal as enshrined in Article 47 and 48 of the Charter of Fundamental Rights of the European Union.** 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.

Or. en

Amendment 77
Kinga Göncz

Draft directive
Article 2 – paragraph 1 – point a – point i

Text of the initiative

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

Amendment

(i) a judge, a court, an investigating magistrate or a public prosecutor competent in the case concerned **and acting with full independence and impartiality**; or

Or. en

Amendment 78
Cornelis de Jong

Draft directive
Article 2 – paragraph 1 – point a – point i

Text of the initiative

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

Amendment

(i) a judge, a court, an investigating magistrate or a public prosecutor competent in the case concerned, **or 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 or issuing an EIO at the request of the representative of the defendant in order to secure investigative procedures for the benefit of the defence, with competence to order the gathering of evidence in the case concerned in accordance with national law**;

Or. nl

Amendment 79
Cornelis de Jong

Draft directive
Article 2 – paragraph 1 – point a – point ii

Text of the initiative

Amendment

(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,

deleted

Or. nl

Amendment 80
Anna Hedh

Draft directive
Article 2 – paragraph 1 – point a – point ii

Text of the initiative

Amendment

(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,

(ii) any other **competent** 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,

Or. en

Amendment 81
Sonia Alfano

Draft directive
Article 2 – paragraph 1 – point a – point ii

Text of the initiative

Amendment

(ii) any other **judicial** authority as defined by the issuing State and, in the specific case, acting in its capacity as an

(ii) any other **competent** 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,

investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law,

Or. it

Amendment 82
Sarah Ludford

Draft directive
Article 2 – paragraph 1 – point b

Text of the initiative

(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.*

Amendment

(b) ‘executing authority’ shall mean an authority having competence to recognise an EIO *and ensure its execution* in accordance with this Directive.

Or. en

Justification

It should be clear that the executing authority is the one recognising the EIO but not the one carrying out the measure, i.e. executing it.

Amendment 83
Sonia Alfano

Draft directive
Article 3 – paragraph 2 – point b

Text of the initiative

(b) the interception and immediate transmission of telecommunications referred to in Articles 18(1)(a) of the Convention; and

Amendment

deleted

Or. it

Amendment 84
Cornelis de Jong

Draft directive
Article 3 – paragraph 2 – point b

Text of the initiative

(b) the interception *and immediate transmission* of telecommunications referred to in *Articles 18(1)(a)* of the Convention; *and*

Amendment

(b) the interception of telecommunications referred to in *Title III* of the Convention;

Or. en

Amendment 85
Sonia Alfano

Draft directive
Article 3 – paragraph 2 – point c

Text of the initiative

(c) the interception of telecommunications referred to in Article 18(1)(b) of the Convention insofar as they relate to situations referred to in Article 18(2)(a) and (c) and Article 20 of that Convention.

Amendment

deleted

Or. it

Amendment 86
Cornelis de Jong

Draft directive
Article 3 – paragraph 2 – point c

Text of the initiative

(c) the interception of telecommunications referred to in Article 18(1)(b) of the Convention insofar as they relate to

Amendment

(c) covert investigations referred to in *Article 14* of the Convention;

situations referred to in Article 18(2)(a) and (c) and Article 20 of that Convention.

Or. en

Amendment 87
Sarah Ludford

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.

Or. en

Justification

The current scope of the EIO is very wide, covering all types of investigative measures, however intrusive or sensitive. In our view interception, controlled deliveries and covert investigation are not suitable for the scope and we propose to remove them. Interception is out of the scope in the original Council text and we delete the other two.

Amendment 88
Cornelis de Jong

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

Text of the initiative

Amendment

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

Or. en

Amendment 89
Sarah Ludford

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.

Or. en

Justification

The current scope of the EIO is very wide, covering all types of investigative measures, however intrusive or sensitive. In our view interception, controlled deliveries and covert investigation are not suitable for the scope and we propose to remove them. Interception is out of the scope in the original Council text and we delete the other two.

Amendment 90
Stanimir Ilchev

Draft directive
Article 4 – paragraph 1 – introductory part

Text of the initiative

Amendment

The EIO may be issued:

The EIO may be issued ***in relation with an already launched criminal proceeding, which is under the competence/jurisdiction of a criminal court in accordance with the national law of the issuing state.***

Or. en

Justification

The text is being amended in order to make it clear that the criminal proceedings must have been already launched. There can be no investigative measures without a due criminal

procedure. Criminal procedures are always carried out in regard of crimes and never for minor offences/violations of law.

Amendment 91
Stanimir Ilchev

Draft directive
Article 4 – paragraph 1 – point a

Text of the initiative

Amendment

(a) with respect to criminal proceedings brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State; ***deleted***

Or. en

Justification

The criminal proceedings must have been already launched. There can be no investigative measures without a due criminal procedure.

Amendment 92
Cornelis de Jong

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;

Or. nl

Amendment 93
Stanimir Ilchev

Draft directive
Article 4 – paragraph 1 – point b

Text of the initiative

Amendment

(b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters;

deleted

Or. en

Justification

Points (b), (c) and (d) are being deleted because: 1) They collide with the directive's objectives, title and preamble. 2) The Directive is about co-operation in criminal matters and not about administrative, civil, disciplinary or other forms of cooperation. The legal basis of the Directive is Art. 82(1)(a) TFEU which refers to criminal matters only. Police co-operation and co-operation in civil matters are regulated by other chapters of the TFEU. It is inadmissible to confuse procedures relating to different sorts of cases - civil, penal, administrative, taxation etc. It is inadmissible to use criminal investigative measures in administrative, civil, taxation and other cases. Criminal investigative measures could affect to large extent human rights, businesses, and citizens legitimate interests and are appropriate only for gravest offences - crimes. Other offences are minor and merit different action. 3) The deleted text foresees a possibility of criminal measures in relation to future expectations that a criminal proceeding will be opened by a court. It is not acceptable that future expectations and probabilities are a basis for criminal measures. This bears a risk to violate fundamental human rights and to harm legitimate businesses and interests.

Amendment 94
Stanimir Ilchev

Draft directive
Article 4 – paragraph 1 – point c

Text of the initiative

Amendment

(c) in proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being

deleted

infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters, and

Or. en

Justification

Points (b), (c) and (d) are being deleted because: 1) They collide with the directive's objectives, title and preamble. 2) The Directive is about co-operation in criminal matters and not about administrative, civil, disciplinary or other forms of cooperation. The legal basis of the Directive is Art. 82(1)(a) TFEU which refers to criminal matters only. Police co-operation and co-operation in civil matters are regulated by other chapters of the TFEU. It is inadmissible to confuse procedures relating to different sorts of cases - civil, penal, administrative, taxation etc. It is inadmissible to use criminal investigative measures in administrative, civil, taxation and other cases. Criminal investigative measures could affect to large extent human rights, businesses, and citizens legitimate interests and are appropriate only for gravest offences - crimes. Other offences are minor and merit different action. 3) The deleted text foresees a possibility of criminal measures in relation to future expectations that a criminal proceeding will be opened by a court. It is not acceptable that future expectations and probabilities are a basis for criminal measures. This bears a risk to violate fundamental human rights and to harm legitimate businesses and interests.

**Amendment 95
Stanimir Ilchev**

**Draft directive
Article 4 – paragraph 1 – point d**

Text of the initiative

Amendment

(d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing state. ***deleted***

Or. en

Justification

As far as the deletion of point (d) is concerned: criminal responsibility is personal and should be born by natural persons. A legal person should not itself as such be responsible in the framework of criminal law. It should bear only civil responsibility. Only crimes merit

criminal proceedings.

Amendment 96
Jan Philipp Albrecht

Draft directive
Article 5 – paragraph 1

Text of the initiative

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.

Amendment

1. The EIO *shall be issued in accordance with* the form *set out* in Annex 1 of *this Directive. It shall, in particular, contain the following information:*

(a) the issuing authority and/or validating authority;

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

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

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

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

Or. en

Amendment 97
Birgit Sippel

Draft directive
Article 5 – paragraph 2 a (new)

Text of the initiative

Amendment

2a. A European investigation order 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.

The form referred to in Annex A shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.

Or. en

Amendment 98
Sarah Ludford

Draft directive
Article 5 – paragraph 2 a (new)

Text of the initiative

Amendment

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).

Or. en

Justification

This wording is taken from the European Protection Order which has precise provisions on translations.

Amendment 99
Jan Philipp Albrecht

Draft directive
Article 5 a (new)

Text of the initiative

Amendment

Article 5a

Minor offences

Where the executing authority has reasons to believe that:

(a) the investigative measure concerns an

offence which it might consider being very minor, or

(b) it is likely that the final penalty in the case may be 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, or in case the executing authority, after having received the EIO, is of the opinion that it may not be proportionate to execute the EIO regarding this minor offence. After such consultation, the issuing authority may decide to withdraw the EIO.

Or. en

Justification

This article helps ensure that the EIO is used in a proportionate way, disproportionate use as occurs in the context of the European Arrest Warrant should be prevented.

Amendment 100
Sarah Ludford

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.

Or. en

Justification

The Council and the rapporteur have added Article 5(a). This amendment is in relation to the rapporteur's similar Am 24 but includes the concept of minor offences which can be different from proportionality.

Amendment 101

Nuno Melo

Draft directive

Article 5 a (new)

Text of the initiative

Amendment

Article 5a

Conditions for issuing and transmitting an EIO

1. An EIO may only be issued where the Issuing Authority is convinced that the following conditions are met:

(a) The issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4;

(b) The investigative measures mentioned in the EIO would be ordered under the same conditions in a similar national case.

2. These conditions shall be assessed by the issuing authority in each case.

3. After its compliance with the conditions for its issue have been assessed, the EIO shall be validated if necessary, in accordance with the Directive, by a judge a court, an investigating magistrate or a prosecutor before being transmitted to the executing authority.

Justification

In systematic terms, the directive always allows control of the proportionality requirement for the issuing and the executing state, using Article 10.

Amendment 102
Cornelis de Jong

Draft directive
Article 5 a (new)

Text of the initiative

Amendment

Article 5a

1. An EIO may only be issued where the issuing authority is convinced that the following conditions are met:

(a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4;

(b) the investigative measures mentioned in the EIO would be ordered under the same conditions in a similar national case.

2. These conditions shall be assessed by the issuing authority in each case. Exceptionally they shall be assessed by the executing authority where there are firm grounds to believe, based on clear and objective evidence, that the measures are not proportionate or are manifestly unjustifiable and cannot be used in an internal procedure of the issuing state.

3. After its compliance with the conditions for its issue have been assessed, the EIO shall be validated, in accordance with the Directive, by a judge, a court, an investigating magistrate or a prosecutor before being transmitted to the executing authority.

Amendment 103
Rosario Crocetta

Draft directive
Article 6 – paragraph 2

Text of the initiative

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.

Amendment

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. Said authority, while not having any investigative powers, shall be bound to observe the principles of confidentiality and of mandatory prosecution which apply normally to examining magistrates in the performance of their own duties.***

Or. it

Amendment 104
Sonia Alfano

Draft directive
Article 6 – paragraph 3

Text of the initiative

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

Amendment

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

European Judicial Network.

European Judicial Network *or via Eurojust.*

Or. it

Amendment 105

Sonia Alfano

Draft directive

Article 6 – paragraph 4

Text of the initiative

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.

Amendment

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

Or. it

Amendment 106

Stanimir Ilchev

Draft directive

Article 6 – paragraph 6

Text of the initiative

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.

Amendment

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. ***The executing authority shall verify the authenticity of the EIO and competence of the issuing authority.***

Or. en

Amendment 107
Sonia Alfano

Draft directive
Article 6 – paragraph 6

Text of the initiative

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.

Amendment

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. ***Within the limits of its mandate, Eurojust shall provide assistance in any matter connected with the issue, transmission or execution of the EIO, in order to facilitate its use.***

Or. it

Amendment 108
Sarah Ludford

Draft directive
Article 7 – paragraph 2 a (new)

Text of the initiative

Amendment

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

Or. en

Justification

It is important that any supplementary EIO is issued according to the same criteria as an original EIO.

Amendment 109
Sarah Ludford

Draft directive
Article 8 – paragraph 3

Text of the initiative

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.***

Amendment

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:

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

(aa) such participation does not harm its essential national security interests; and,

(ab) that the participation of the authorities of the issuing state does not place an excessive burden on the resources of the executing State.

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. They shall not have any law enforcement powers in the territory of the executing State.

Or. en

Justification

It is important to clarify under what conditions and under what legal constraints officials from another Member State can take part in investigations in another Member State and what their legal position there is.

Amendment 110
Cornelis de Jong

Draft directive
Article 9 – paragraph 1 – point b

Text of the initiative

(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

Amendment

(b) the investigative measure indicated in the EIO exists in the law of the executing State but is *not admissible in a similar case*, or

Or. en

Amendment 111
Cornelis de Jong

Draft directive
Article 9 – paragraph 1 – point c

Text of the initiative

(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.

Amendment

(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.

Or. en

Amendment 112
Sonia Alfano

Draft directive
Article 9 – paragraph 2

Text of the initiative

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.

Amendment

2. When the executing authority decides to avail itself of the possibility referred to in paragraph 1, it shall, *possibly with the assistance of Eurojust, confer with the issuing authority in order to identify the alternative measures best suited to the circumstances concerned; following this consultation stage, the executing*

authority shall officially inform the issuing authority, which may decide to withdraw the EIO.

Or. it

Amendment 113
Cornelis de Jong

Draft directive
Article 9 – paragraph 2 a (new)

Text of the initiative

Amendment

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.

Or. en

Amendment 114
Rosario Crocetta

Draft directive
Article 10 – paragraph 1 – point -a a (new)

Text of the initiative

Amendment

(-aa) the EIO contravenes the Charter of Fundamental Rights of the European Union or the constitutional principles of the executing State;

Or. it

Amendment 115

Draft directive

Article 10 - paragraph 1 - point -a b (new)

Text of the initiative

Amendment

(-ab) the EIO refers to facts that do not constitute a crime or an offence under the national law of the executing 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 States¹ that shall not be the subject to a double criminality check;

¹ OJ L 190, 18.7.2002, p. 1.

Or. en

Justification

It is necessary to establish a coherent system as regards double criminality between the EIO Directive and the existing provisions of Article 2(2) of Framework Decision 2002/584/JHA on the EAW. Member States should not have any control on double criminality in relation to the 32 crimes and conditions listed in the mentioned provisions.

Amendment 116

Birgit Sippel

Draft directive

Article 10 – paragraph 1 – point a a (new)

Text of the initiative

Amendment

(aa) the EIO concerns facts that do not constitute a sanction regarding minor offences under the national law of the executing State;

Or. en

Amendment 117
Kinga Göncz

Draft directive
Article 10 – paragraph 1 – point a a (new)

Text of the initiative

Amendment

(aa) where the principle of independence and impartiality of the court has been breached;

Or. en

Amendment 118
Kinga Göncz

Draft directive
Article 10 – paragraph 1 – point a b (new)

Text of the initiative

Amendment

(ab) where there is a clear evidence that the fundamental rights of the person subject to criminal proceeding have not been respected, the right to access to lawyer, and the right to interpretation - where applicable - have not been granted;

Or. en

Amendment 119
Sarah Ludford

Draft directive
Article 10 – paragraph 1 – point d a (new)

Text of the initiative

Amendment

(da) if the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State and if the investigative measure requested is coercive, including where it would require

search or seizure, carrying out bodily examinations, or obtaining from a person bodily material or biometric data such as DNA or fingerprints.

Or. en

Justification

We agree in the rapporteur's new structure and extended grounds for refusal. However, accepting double criminality on everything is setting judicial cooperation back too far. Dual criminality should only be checked if the measure sought is coercive.

Amendment 120
Rosario Crocetta

Draft directive
Article 10 – paragraph 1 a (new)

Text of the initiative

Amendment

1a. Should the EIO contravene the constitutional principles of the executing State, it may be challenged before the judiciary of the executing State.

Or. it

Amendment 121
Rosario Crocetta

Draft directive
Article 10 – paragraph 1 b (new)

Text of the initiative

Amendment

1b. The executing authority may not invoke any right to oppose the EIO when the reasons for requesting the inquiry are connected with organised crime, mafia and terrorism offences, unless the contents of the EIO breach the Charter of Fundamental Rights of the European Union or the constitutional principles of

the executing State.

Or. it

Amendment 122
Cornelis de Jong

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.

Or. en

Amendment 123
Cornelis de Jong

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).

Or. en

Amendment 124
Sonia Alfano

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 as a result of the execution of the EIO to the issuing State. Where requested in the EIO, 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).

Or. it

Amendment 125
Cornelis de Jong

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.

Or. en

Amendment 126
Nuno Melo

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.

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.

If. 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.

Or. en

Justification

The Rapporteur intends to ensure an effective right to a legal remedy by any interested party, but at the same time also ensure that it will not be used as a pure delaying mechanism, as a way to hamper the effectiveness of the investigations that justified the request.

Amendment 127
Jan Philipp Albrecht

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. Member States shall take the necessary measures to enable any interested party or person to have issuing, recognition, and execution of an EIO reviewed by a court for the purpose of preserving their legitimate interests.

1a. Legal remedies against recognition and execution of the EIO shall be sought from the competent authority of the executing State in accordance with the legal provisions of that State.

1b. Legal remedies against issuance of the EIO, including the question whether the conditions referred to in Article 5a(1) have been fulfilled, can be sought only from the competent authority of the issuing State. The issuing State shall ensure that the legal remedies concerned are such as are also available in a comparable domestic case.

1c. The issuing and the executing authorities shall take the necessary measures to enable legal remedies to be sought pursuant to paragraphs 1a and 1b, in particular by providing relevant and adequate information to interested parties or persons, in simple language that they can understand, regarding the possibilities for seeking the legal remedies concerned. The issuing State shall provide information, based on its national law, regarding the legal remedies available against issuance of the EIO and against the investigative measure ordered therein.

1d. Member States shall ensure that any time limits for seeking a legal remedy referred to in paragraphs 1a and 1b are applied in a way that guarantees the possibility of effective assertion of these legal remedies for interested parties or persons.

1e. If a legal remedy under paragraph 1a is sought in the executing State, the competent authority of the executing State shall inform the issuing authority thereof and of the grounds given for seeking that legal remedy, so that the issuing authority can submit the arguments that it deems necessary. The issuing authority shall be informed of the outcome of the proceedings.

1f. If a legal remedy under paragraph 1b is sought in the issuing State, the competent authority of the issuing State shall inform the executing authority thereof and of the grounds given for seeking that legal remedy, so that the executing authority can submit the arguments that it deems necessary. The executing authority shall be informed of the outcome of the proceedings.

1g. The executing State shall suspend the transfer of the evidence, pending the decision regarding legal remedies sought pursuant to paragraph 1a or 1b.

1h. If in the executing State objections are submitted by interested parties or persons in respect of the substantive reasons for issuing the EIO, they shall be transmitted to the issuing authority without delay. The issuing authority shall inform the executing authority whether transmission in accordance with the first sentence is considered as a legal remedy or whether a legal remedy has been sought in another way. The executing authority shall suspend transfer of the evidence until this information has been received.

Or. en

Justification

This text is derived from the European Evidence Warrant with slight alterations. Member States must ensure that interested parties can also seek a legal remedy against the issuance of an EIO (paragraph 1). It follows the rapporteur's approach in obliging the suspension of the transfer of evidence pending the decision regarding legal remedies (paragraph 1g).

Paragraph 1h allows citizens affected by the EIO to submit legitimate objections against the issuance of an EIO also in the executing state.

Amendment 128

Axel Voss

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

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

Or. de

Justification

The introduction of the principle of mutual recognition for investigative measures in the field of criminal law presupposes that effective legal protection of the citizens concerned is guaranteed. If the person concerned could only seek a legal remedy in the issuing State, it would create unacceptable obstacles to the effective exercise of rights to protection, due to inadequate understanding of a legal order which in most cases will be unfamiliar and due to linguistic difficulties.

Amendment 129

Cornelis de Jong

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. Member states shall ensure that any interested party, including third parties in good faith, shall be entitled to legal remedies against recognition and execution of an EIO, which are equivalent to those, which would be available in a similar domestic case,

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, unless these reasons relate to the proportionality of the EIO or of it being manifestly unjustifiable.

Or. en

Amendment 130
Anna Hedh

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.

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. In case the evidence has already been transferred in accordance with Article 12 and the recognition or execution of an EIO has been successfully challenged in the executing State, this decision will be taken into account in the issuing State in accordance with its own national law.

Or. en

Justification

Effective legal remedy must be provided as soon as possible. The situation that can occur when an EIO is successfully challenged but the evidence already has been transferred to another Member State should be handled with already existing rules in the Members States, in line with the principle of mutual recognition.

Amendment 131

Birgit Sippel

Draft directive

Article 13 – paragraph 1 a (new)

Text of the initiative

Amendment

Member States shall ensure that any time limits for bringing an action mentioned in paragraph 1 are applied in a way that guarantees the possibility of an effective legal remedy for interested parties.

Or. en

Amendment 132

Sarah Ludford

Draft directive

Article 13 – paragraph 1 a (new)

Text of the initiative

Amendment

In order to protect legitimate interest, Member States shall ensure that any interested party shall be entitled to legal

remedies, which are equivalent to those which would be available in a similar domestic case, to challenge the recognition or the execution of an EIO or the investigative measure in question.

Or. en

Justification

It is important that there is a legal remedy not only to challenge the investigative measure, but also the recognition and execution in cases where national law provides for interested parties to be informed prior to or after the measure is carried out.

Amendment 133
Sonia Alfano

Draft directive
Article 14 – title

Text of the initiative

Amendment

Grounds for postponement of *recognition or* execution

Grounds for postponement of execution

Or. it

Amendment 134
Sonia Alfano

Draft directive
Article 14 – paragraph 1 – introductory part

Text of the initiative

Amendment

1. The *recognition or* execution of the EIO may be postponed in the executing State where:

1. The execution of the EIO may be postponed in the executing State where:

Or. it

Amendment 135
Sonia Alfano

Draft directive
Article 14 – paragraph 1 a (new)

Text of the initiative

Amendment

1a. Where the objects, documents, or data concerned are already relevant to other proceedings the executing authority may, at the explicit request of and after conferring with the issuing authority, temporarily transfer the evidence on condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time agreed between the competent authorities.

Or. it

Amendment 136
Cornelis de Jong

Draft directive
Article 15 – paragraph 2 – point b – point i

Text of the initiative

Amendment

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

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

Or. en

Amendment 137
Sarah Ludford

Draft directive
Article 15 – paragraph 2 – point b a (new)

Text of the initiative

Amendment

(ba) The issuing authority shall inform

the executing authority immediately of any modifications to the EIO or of its expiry or revocation.

Or. en

Justification

In order to have legal certainty it is important that the EIO should be cancelled both in the issuing and executing State, if it cannot be carried out.

Amendment 138

Sarah Ludford

Draft directive

Article 18 – paragraph 4 a (new)

Text of the initiative

Amendment

4a. Personal data processed when implementing this Directive should 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 matters¹ 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.

¹ OJ L 350, 30.12.2008, p. 60.

Or. en

Amendment 139

Sarah Ludford

Draft directive

Article 18 – paragraph 4 b (new)

Text of the initiative

Amendment

4b. Evidence gathered under the EIO may not be for other purposes than the prevention, investigation, detection or prosecution of crime or the enforcement of criminal sanctions and the exercises of the right of defence.

Or. en

Amendment 140

Sarah Ludford

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.

Or. en

Amendment 141

Sarah Ludford

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.

Or. en

Amendment 142

Nuno Melo

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.

Or. en

Justification

In order to share responsibilities as regards the execution of an EIO request, an equal division of costs is being established. This will prevent excessive and unintended recourses to an EIO if only one of the parties would have to support these costs. It is possible that, in concrete cases and considering the specific circumstances, a different sharing of costs could be agreed beforehand.

Amendment 143

Birgit Sippel

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.

Or. en

Amendment 144
Cornelis de Jong

Draft directive
Article 19 – title

Text of the initiative

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

Amendment

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

Or. en

Amendment 145
Sarah Ludford

Draft directive
Article 19 – paragraph 1

Text of the initiative

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.

Amendment

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.

Or. en

Amendment 146
Sarah Ludford

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.

Or. en

Justification

It is logical that persons to be transferred should have the same rights under Article 19 and

20, regardless of which State they are to be transferred from.

Amendment 147
Rosario Crocetta

Draft directive
Article 19 – paragraph 2 – point a

Text of the initiative

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

Amendment

(a) *the judicial authority of the executing State declares, ex officio or at the request of the person in custody, the transfer inadmissible on the grounds of ongoing legal proceedings or security;*

Or. it

Amendment 148
Rosario Crocetta

Draft directive
Article 19 – paragraph 2 – point b

Text of the initiative

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

Amendment

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

Or. it

Amendment 149
Birgit Sippel

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

Text of the initiative

Amendment

(ba) *the person to be transferred risks torture or inhuman or degrading treatment or punishment.*

Amendment 150
Sarah Ludford

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.

Or. en

Justification

It is logical that the conditions for transfer of prisoners in Articles 19 and 20 should be the same.

Amendment 151
Kinga Göncz

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

Text of the initiative

Amendment

(ba) the detention conditions in the issuing state are not sufficient to guarantee fundamental rights.

Or. en

Amendment 152
Sarah Ludford

Draft directive
Article 19 – paragraph 4

Text of the initiative

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

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 that the person is detained in custody arrangements equivalent to the level of security and in accordance with his physical or mental needs as in the issuing state.**

Or. en

Justification

It is important that the person to be transferred will not be put in harsher prison conditions in the State to which they are transferred than in their home State. A person in an open prison should not be put in a high security prison.

Amendment 153
Cornelis de Jong

Draft directive
Article 19 – paragraph 4

Text of the initiative

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

4. The practical arrangements regarding the temporary transfer of the person **including the particularities of his custody conditions in the issuing State**, 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.

Or. en

Amendment 154
Cornelis de Jong

Draft directive
Article 19 – paragraph 5

Text of the initiative

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.

Amendment

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.

Or. en

Amendment 155
Cornelis de Jong

Draft directive
Article 19 – paragraph 7

Text of the initiative

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.

Amendment

7. ***Without prejudice to paragraph 5, a*** transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty ***in the issuing State*** for acts ***committed*** or convictions ***handed down before*** his departure from the territory of the executing State and which are not specified in the EIO.

Or. en

Amendment 156
Sarah Ludford

Draft directive
Article 19 – paragraph 8

Text of the initiative

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.***

Amendment

8. The immunity provided for in paragraph 7 shall, ***in a case in which the person is not required to be transferred back to the State from which he has been transferred, cease when the transferred person:***

(a) has remained in the State to which he was transferred for a period of fifteen consecutive days from the date ***on which*** his presence is no longer required ***despite having been given the opportunity of leaving; or***

(b) having left the State to which he was transferred, has returned there.

Or. en

Justification

The addition to the previous paragraph makes this paragraph unnecessary.

Amendment 157

Sarah Ludford

Draft directive

Article 19 – paragraph 8 a (new)

Text of the initiative

Amendment

8 a. 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 proceedings¹, receives information in accordance with the

Directive [...] on the right to information in criminal proceedings² and receives legal advice in accordance with the national law of the issuing State.

¹ OJ L 280, 26.10.2010, p. 1.

² OJ L ...

Or. en

Justification

A transferred person is placed in a prison environment where they will often not understand the language or know the national procedures. It is important that they receive special support, if required.

Amendment 158

Sarah Ludford

Draft directive

Article 19 – paragraph 9

Text of the initiative

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

Amendment

9. Costs **resulting from the application of this Article shall be borne in accordance with Article Y, except from the costs arising from the transfer of the person between States, which will** be borne by the issuing State.

Or. en

Amendment 159

Rosario Crocetta

Draft directive

Article 19 a (new)

Text of the initiative

Amendment

Article 19a

If a person held in custody in the State executing the EIO is transferred to the issuing State, he shall be subject to the same detention regime as that to which he was subject in the country in which the sentence would normally be served.

Or. it

Amendment 160
Rosario Crocetta

Draft directive
Article 20 – paragraph 2 – point a

Text of the initiative

(a) consent to the transfer is required from the person concerned and this consent has not been obtained;

Amendment

(a) the person in custody has obtained an opinion from the competent court having jurisdiction over him that he should not be transferred; in any event, the transfer decision shall not be subject to appeal except on grounds relating to ongoing judicial proceedings or the safety of the person in custody;

Or. it

Amendment 161
Sarah Ludford

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

Text of the initiative

Amendment

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

Or. en

Justification

Brings the Article in line with Article 19.

Amendment 162
Birgit Sippel

Draft directive
Article 20 – paragraph 2 – point b a (new)

Text of the initiative

Amendment

(ba) the person to be transferred risks torture or inhuman or degrading treatment or punishment.

Or. en

Amendment 163
Kinga Göncz

Draft directive
Article 20 – paragraph 2 – point b a (new)

Text of the initiative

Amendment

(ba) the detention conditions in the executing state are not sufficient to guarantee fundamental rights.

Or. en

Amendment 164
Sarah Ludford

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.

Or. en

Justification

It is important that the safeguards provided in Article 19 cases in my amendment are available also in Article 20 cases.

Amendment 165

Sarah Ludford

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**

Or. en

Justification

Amendment on previous paragraph ensures that provisions in costs in Article 19 will apply also to Article 20.

Amendment 166

Cornelis de Jong

Draft directive

Article 21 – paragraph 1

Text of the initiative

Amendment

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.

1. If a person is in the territory of the executing State and has to be heard as a witness or expert by the **competent** authorities of the issuing State, the issuing authority may 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.

Amendment 167
Cornelis de Jong

Draft directive
Article 21 – paragraph 1 a (new)

Text of the initiative

Amendment

1a. An EIO may also be issued for the purpose of the hearing of a suspected or accused person by videoconference or other audio - visual transmission. In addition to the grounds for non-recognition or non-execution referred to in Article 10, the execution of the EIO may also be refused if:

(a) the suspected or accused person does not consent; or

(b) the execution of such a measure in a particular case would be contrary to the fundamental principles of the law of the executing State.

Or. en

Amendment 168
Cornelis de Jong

Draft directive
Article 21 – paragraph 1 b (new)

Text of the initiative

Amendment

1b. 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.

Or. en

Amendment 169
Rosario Crocetta

Draft directive
Article 21 – paragraph 2 – point a

Text of the initiative

(a) the use of videoconference is contrary to *fundamental* principles *of the law* of the executing State;

Amendment

(a) the use of videoconference is contrary to *the constitutional* principles of the executing State;

Or. it

Amendment 170
Rosario Crocetta

Draft directive
Article 21 – paragraph 2 – point b

Text of the initiative

(b) the executing State does not have the technical means for videoconference.

Amendment

deleted

Or. it

Amendment 171
Sonia Alfano

Draft directive
Article 21 – paragraph 2 – point b

Text of the initiative

Amendment

(b) the executing State does not have the technical means for videoconference.

deleted

Or. it

Amendment 172
Sonia Alfano

Draft directive
Article 21 – paragraph 2 – point b a (new)

Text of the initiative

Amendment

(ba) the witness or expert does not agree to 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.

Or. it

Amendment 173
Axel Voss

Draft directive
Article 21 – paragraph 6 – point e

Text of the initiative

Amendment

(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 or the issuing State.

(e) the person to be heard must be informed of his 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.

Or. de

Justification

In order to be able to exercise the right not to testify, a person must first be informed of that right. If the witness is to have a genuine choice between the rights not to testify as laid down in the laws of the issuing and the executing State, he must be adequately informed of both options and of their consequences.

Amendment 174 Birgit Sippel

Draft directive Article 21 – paragraph 6 – point e

Text of the initiative

(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 or the issuing State*.

Amendment

(e) the *competent authority of the executing or the issuing state shall 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*.

Or. en

Amendment 175 Cornelis de Jong

Draft directive Article 21 – paragraph 6 – point e

Text of the initiative

(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 or the issuing State.

Amendment

(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 or the issuing State. *The person concerned shall be informed about this right in advance of the hearing.*

Or. en

Amendment 176
Rosario Crocetta

Draft directive
Article 21 – paragraph 10 – point a

Text of the initiative

Amendment

(a) the accused person does not consent;

deleted

Or. it

Amendment 177
Sonia Alfano

Draft directive
Article 21 – paragraph 10 – point a

Text of the initiative

Amendment

(a) the accused person does not consent;

***(a) the accused person does not consent,
citing reasonable grounds which must be
assessed by the judicial authority of the
executing State in accordance with its
national rules, after consulting the
issuing authority;***

Or. it

Amendment 178
Rosario Crocetta

Draft directive
Article 21 – paragraph 10 – point b

Text of the initiative

Amendment

***(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.***

Or. it

Amendment 179
Sarah Ludford

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 **professional** witness or expert by **competent** authorities of another Member State, the issuing authority of the latter Member State may issue an EIO in order to hear a **professional** witness or expert by telephone conference as provided for in **paragraph (...) 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.**

Or. en

Justification

It is important that evidence by telephone is only given in a case where there is no danger of self-incrimination, such as in the case of a professional witness.

Amendment 180
Sonia Alfano

Draft directive
Article 22 – paragraph 2 – point b

Text of the initiative

(b) the witness or expert does not agree to the hearing taking place by that method.

Amendment

(b) the witness or expert does not agree to 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.**

Or. it

Amendment 181
Rosario Crocetta

Draft directive
Article 22 – paragraph 4 – subparagraph 1 – point b

Text of the initiative

Amendment

*(b) ensure the identification of the witness
or expert;* *deleted*

Or. it

Amendment 182
Birgit Sippel

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.*

Or. en

Amendment 183
Rosario Crocetta

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
Rosario Crocetta

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.

Or. it

Amendment 185
Sonia Alfano

Draft directive
Article 23 – paragraph 4

Text of the initiative

Amendment

4. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

deleted

Or. it

Amendment 186
Rosario Crocetta

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, **or if the execution of such a measure would contravene the European Charter of Fundamental Rights or the constitutional principles of** the executing State

Or. it

Amendment 187
Cornelis de Jong

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.

Or. en

Amendment 188
Sonia Alfano

Draft directive
Article 24 – paragraph 3

Text of the initiative

Amendment

3. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.

deleted

Or. it

**Amendment 189
Cornelis de Jong**

**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.

Or. en

**Amendment 190
Sarah Ludford**

**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 191
Cornelis de Jong**

**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 192
Sonia Alfano**

**Draft directive
Article 27**

Text of the initiative

Amendment

Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time

deleted

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.

2. Article 10(2) applies mutatis mutandis to cases referred to in paragraph 1.

3. The executing authority may make the execution of an EIO referred to in paragraph 1 subject to an agreement on the allocation of costs.

Or. it

Amendment 193
Cornelis de Jong

Draft directive
Article 27 – paragraph 1

Text of the initiative

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.

Amendment

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.

Or. en

Amendment 194
Cornelis de Jong

Article 27a

Provisional measures

- 1. An EIO may be issued in order to take any measure with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of item that may be used as evidence.***
- 2. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, whenever practicable, within 24 hours of receipt of the EIO.***
- 3. When the provisional measure referred to in paragraph 1 is requested the issuing authority shall indicate in the EIO whether the evidence shall be transferred to the issuing State or shall remain in the executing State. The executing authority shall recognise and execute such EIO and transfer the evidence in accordance with the procedures laid down in the Directive.***
- 4. When in accordance with paragraph 3 an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure referred to in paragraph 1, or the estimated date for submission of the request for the evidence to be transferred to the issuing State.***
- 5. After consulting the issuing authority, the executing authority may in accordance with its national law and practices lay down appropriate conditions in the light of the circumstances of the case in order to limit the period for which the provisional measure referred to in paragraph 1 will be maintained. If, in accordance with those conditions, it***

envisages lifting the provisional measure, it shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the executing authority that the measures referred to in paragraph 1 have been lifted.

Or. en

Amendment 195

Birgit Sippel

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.

Or. en

Amendment 196

Sonia Alfano

Draft directive

Article 31 – paragraph 3

Text of the initiative

Amendment

3. By ...**, Member States shall transmit *to the General Secretariat of the Council and* to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

3. By ...*, Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

Or. it

Amendment 197
Sonia Alfano

Draft directive
Article 31 – paragraph 4

Text of the initiative

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.

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 **and implement** this Directive, accompanied, if necessary, by legislative proposals.

Or. it

Amendment 198
Sonia Alfano

Draft directive
Article 32

Text of the initiative

Report on the application

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.

Amendment

deleted

Or. it

Amendment 199
Sarah Ludford

Draft directive
Article 32 – paragraph 1

Text of the initiative

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.

Amendment

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 the defence and on data protection requirements**. The report shall be accompanied, if necessary, by proposals for amending this Directive.

Or. en

Justification

Since the EIO can potentially have serious implications for fundamental rights, the rights of the defence and data protection a serious evaluation of its effects should be carried out within a year or two of the Directive being implemented by Member States.