



The European Investigation Order and the MEIOR Project: An Introduction

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MEIOR Webinar

Fair Trials | 25 September 2024



Today's webinar

- 17.10–17.30: **Introduction to the EIO and MEIOR**, Ashlee Beazley
- 17.30–17.50: **Recent developments in the field of the EIO**, Anna Mosna
- 17.50–18.10: **Regulation 2023/2844/EU on the digitalisation of judicial cooperation**, Lorenzo Bernadini
- 18.10–18.45: **Challenges and possible improvements to the EIO and the MEIOR Project's main findings**, Michele Panzavolta

The EIO and MEIOR

- The **EIO**:

- The **Directive 2014/41/EU** of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

- The **MEIOR** Project:

- Consortium project funded by the EU
- Study of structures of judicial review
- Six jurisdictions:
 - Belgium, Italy, Poland, Spain and Sweden.



MEIOR Mould EIO Review



Funded by the
Justice Programme (JUST) (2021-2027)
of the European Union
Project ID: 101046446

The MEIOR Project, Part I

- Background:
 - Judicial cooperation is driven by principle of mutual recognition;
 - Mutual trust no longer understood as blind trust;
 - Insufficient fundamental rights protection may lead to obstacles in the functioning of the EU judicial cooperation system in criminal matters.
- MEIOR Study:
 - Legal and empirical research
 - National studies as basis for comparative and European studies
 - Main research question: what is **effective judicial protection in EIO proceedings?**

The MEIOR Project, Part II

- **Goal:** strengthening of mutual trust to benefit judicial cooperation.
 - **Training module** for stakeholders.
- Scope of the research:
 - What is a legal remedy?
 - What is an **effective** legal remedy?
 - Central role of judicial independence: structure important in guaranteeing principle of effective judicial protection (Art. 47, CFREU).
 - Independence in EIO proceedings
 - Measures interfering with—
 - Rights to physical and mental integrity, right to private and family life, right to property.
- **Output:** Set of 10 Guidelines that propose amendments to applicable rules and suggest adjustments in practice.
 - Michele will present these.

The EIO (Directive), Part I

- **What is it?**

A judicial decision issued in or validated by the **judicial authority** in one EU country to have **investigative measures to gather or use evidence** in **criminal matters** carried out in another EU country: Art. 1(1), EIO Dir.

- Based on **mutual recognition**.
- **Rights of the defence** in criminal proceedings (cf. Art. 48, CFREU, Art. 6 TEU) to be **respected and ensured**: Art. 1(4).

- **What does it do?**

Creates a single, comprehensive framework for obtaining evidence, thereby—

- Facilitating evidence-gathering activities in cross-border criminal investigations; and
- Providing a more efficient system with direct contact between judicial authorities, and with clear deadlines for recognition and execution.

Covers 'any investigative measure' to obtain evidence: Art. 3.

The EIO (Directive), Part II

- Some definitions (as per Art. 2, EIO Dir.):
 - **“issuing State”**: Member State in which EIO is issued;
 - **“executing State”**: Member State executing the EIO, in which the investigative measure is to be carried out;
 - **“issuing authority”** means either—
 - a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
 - ‘any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competent to order the gathering of evidence in accordance with national law.’
 - Note CJEU case law: C-584/19 *Staatsanwaltschaft Wien*, C-66/22 *Staatsanwaltschaft Graz*
 - **“executing authority”**: authority having competence to recognise EIO and ensure its execution in accordance with the Directive and the procedures applicable under national law.

EIO Structures and Mechanisms I: Consent and Form—Art. 5

- Content and Form of EIO: Art. 5, EIO Dir.
 - Form in Annex A of Directive →
 - Must contain, in particular:
 - Data about issuing authority;
 - **Object of and reason for EIO**;
 - Necessary information available on person(s) concerned;
 - **Description** of the criminal act subject to investigation or proceedings + **applicable provisions of criminal law** of issuing State;
 - **Description** of the **investigative measure(s) requested** and **evidence to be obtained**.

ANNEX A
EUROPEAN INVESTIGATION ORDER (EIO)

This EIO has been issued by a competent authority. The issuing authority certifies that the issuing of this EIO is necessary and proportionate for the purpose of the proceedings specified within it taking into account the rights of the suspected or accused person and that the investigative measures requested could have been ordered under the same conditions in a similar domestic case. I request that the investigative measure or measures specified below be carried out taking due account of the confidentiality of the investigation and that the evidence obtained as a result of the execution of the EIO be transferred.

<p>SECTION A Issuing State: Executing State:</p>
<p>SECTION B: Urgency Please indicate if there is any urgency due to <input type="checkbox"/> Evidence being concealed or destroyed <input type="checkbox"/> Imminent trial date <input type="checkbox"/> Any other reason Please specify below: Time limits for execution of the EIO are laid down in Directive 2014/41/EU. However, if a shorter or specific time limit is necessary, please provide the date and explain the reason for this:</p>
<p>SECTION C: Investigative measure(s) to be carried out 1. Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures: <input type="checkbox"/> Obtaining information or evidence which is already in the possession of the executing authority <input type="checkbox"/> Obtaining information contained in databases held by police or judicial authorities <input type="checkbox"/> Hearing <input type="checkbox"/> witness <input type="checkbox"/> expert <input type="checkbox"/> suspected or accused person <input type="checkbox"/> victim <input type="checkbox"/> third party <input type="checkbox"/> Identification of persons holding a subscription of a specified phone number or IP address</p>

EIO Structures and Mechanisms II:

Conditions for Issuing—Art. 6

- **Two** conditions:
 - (a) issuing of EIO is **necessary** and **proportionate** for the purposes of the proceedings, taking into account the rights of the suspect or accused; and
 - (b) the investigative measure(s) indicated **could have been ordered** under **the same conditions in a similar domestic case**.
- Conditions to be assessed by the issuing authority in each case.
- Where executing authority has reason to believe conditions have **not been met**, they may consult issuing authority on importance of executing EIO: Art. 6(3).
 - EIO should be chosen where ‘the execution of an investigative measure seems **proportionate, adequate and applicable** to the case in hand’: Recital 11
 - After consultation, issuing authority may decide to **withdraw EIO**.

EIO Structures and Mechanisms III: Recognition and Execution—Art. 9

- **General rule:**

Executing authority to **recognise an EIO**, without any further formality being required (**principle of mutual recognition**), as if measure had been ordered by domestic authority: Art. 9(1).

- **Unless:** grounds for non-recognition or non-execution (Art. 11), or postponement (Art. 15).
- **Question:** what role for the **executing authority**?
 - Executing authority has a **margin of appreciation** on whether conditions for issuing EIO have been met.
 - *Prima facie* proportionality assessment... But: doubts as to whether this is applicable in practice → MEIOR.

EIO Structures and Mechanisms IV:

Different Type of Investigative Measure—Art. 10

- Executing authority ‘shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO’: Art. 10(1).
 - Another form of margin of appreciation.
- **Conditions:**
 - Investigative measure indicated **≠ exist** under law of executing State; **or**
 - Investigative measure indicated **≠ available** in similar domestic case.
- Executing authority may also have recourse to different investigative measure where different investigative measure would **achieve same result by less intrusive means** than the investigative measure indicated in EIO: Art. 10(3).
- Issuing authority must be informed: can withdraw/supplement EIO: Art. 10(4).
- **Note:** if investigative measure indicated **≠ exist**, **≠ available** and recourse to different measure **≠ possible** → **no execution**: Art. 10(5).

EIO Structures and Mechanisms V:

Grounds for Non-Recognition, Non-Execution—Art. 11

- EIO may be **refused** where:
 - Immunity/privilege or rules on determination and limitation of criminal liability (freedom of the press + expression in other media);
 - Execution would harm essential national security interests, jeopardise source of the information, or involve use of classified information;
 - Issued re: minor or administrative offences (only potential, subsequent competence of criminal court) and measure not available in similar domestic case;
 - Execution would be contrary to *ne bis in idem*;
 - No territorial link to issuing State, but (at least partial) link to executing State;
 - ➔ **Incompatibility with fundamental rights (Art. 6 TEU + Charter);**
 - Conduct for which EIO issued ≠ offence in executing State; and
 - **Note:** exception here list of 32 offences set out in Annex D. Include corruption, rape, terrorism, trafficking, laundering, murder, *etc.*
 - Measure available only for offences punished by a certain threshold.

EIO Complexities + Issues, Part I

- There are many, but especially—
 1. Limitations to mutual recognition (“MR”)
 2. Fundamental rights protection under the EIO Directive
 3. Legal remedies

1. Limitations to mutual recognition

- Provisions of EIO Directive allow executing authority to—
 - shift from indications in EIO, for reasons of proportionality; and
 - refuse recognition or execution on various grounds, incl. **fundamental rights**.
- Has this shifted our understanding of mutual recognition? **Yes** → cannot be blind but must be earned.
 - How? **Through protection of fundamental rights**.
 - Cf. *Gavanozov II*

EIO Complexities + Issues, Part II

2. Fundamental rights protection under the EIO Directive

- Art. 1(4): Directive shall not modify **obligation to respect fundamental rights and legal principles** as enshrined in Art. 6 of TEU, including defence rights.
- Art. 11(f): EIO may be refused where 'there are substantial grounds to believe that the execution of the investigative measure... would be **incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter**.'

• **Gavanozov II (C-852/19):**

- CJEU asked if national legislation which ≠ provide for any legal remedy against issuing of EIO for, *inter alia*, search and seizures, compatible with EIO Directive.
- CJEU: **No. EIO cannot be issued** if appropriate legal remedies ≠ available → trigger ground for refusal (Art. 11(f)) *vis-à-vis* fundamental rights violation.
 - Persons concerned must be able to contest need for and lawfulness of measures ordered with EIO, and to seek redress if unlawfully order.

EIO Complexities + Issues, Part III

3. Legal remedies

- Member States shall ensure legal remedies **equivalent** to those available in a similar domestic case are applicable to investigative measures indicated in EIO: Art. 14(1).
- **Substantive reasons for issuing EIO** may be challenged only in action brought in issuing State, without prejudice to guarantees of fundamental rights in executing State: Art. 14(2).
 - Remember! **Recognition and execution** of EIO must be challenged in executing State: Art. 9, Art. 11.
- **General rule**: legal challenge against EIO ≠ suspend execution of investigative measure.
 - Exception: if suspension provided for in similar domestic case(s): Art. 14(6).

SECTION J: Legal remedies

1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):
.....
.....

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:

Contact person (if applicable):

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

See also: Section J, Annex A Form (above).

The EIO → MEIOR

- We know that—
 - judicial cooperation is driven by principle of mutual recognition;
 - mutual trust no longer understood as blind trust; and
 - insufficient fundamental rights protection may lead to obstacles in the functioning of the EU judicial cooperation system in criminal matters.
- MEIOR asked: given this, what is **effective judicial protection in EIO proceedings?**
 - The answer will come in the presentations which follow!
 - A hint: the **MEIOR Guidelines**.
 - Plus—**strengthening** of mutual trust to **benefit** judicial cooperation.

Thank you!

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