

Law 88/2017 of 21 August

Approves the legal framework for the issuing, transmission, recognition and execution of European decisions in criminal matters, transposes Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 and repeals Law 25/2009 of 5 June.

The Assembly of the Republic decrees, under Article 161 c) of the Constitution, the following:

CHAPTER I

General provisions

Article 1

Object

This law establishes the legal regime for the issuance, transmission, recognition and execution of European research decisions, transposing into national law Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order (EIO) in criminal matters.

Article 2

Nature

1 - The EIO is a decision issued or validated by a judicial authority of a Member State of the European Union to carry out one or more specific investigative measures in another Member State with a view to obtaining evidence in accordance with this law.

2 – The EIO shall be implemented on the basis of the principle of mutual recognition in accordance with this law and in accordance with Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014.

Article 3

Definitions

For the purposes of this Directive the following definitions apply:

- a) “Issuing State” means the Member State in which the EIO is issued;
- b) “Executing State” means the Member State executing the EIO, in which the investigative measure is to be carried out;
- c) “Issuing authority” means:
 - i) A judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
 - ii) 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 the criminal proceedings referred in Article 5, with competence to order the gathering of evidence in accordance with national law

insofar as the EIO is validated by a judge, court, investigating judge or a public prosecutor in the issuing State, after examination of its conformity with the conditions for issuing an EIO. Where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO;

d) “Executing authority” means an authority having competence to recognise an EIO and ensure its execution;

e) “Investigative measure” means the diligence or action necessary to carry out the purposes of the investigation or finding of facts, in order to obtain evidence, and the acts of producing evidence at trial or at a later stage of the proceedings, and administrative procedures, under the terms established in the criminal procedural law and other applicable legislation.

Article 4

Scope

1 - The EIO shall cover any investigative measure with the exception of the setting up of joint investigation teams and the gathering of evidence within such teams.

2 - The EIO also covers research measures aimed at achieving the objectives of a joint investigation team to be carried out in a Member State not participating in it by a decision of the competent judicial authority of one of the Member States that are part of it.

3 – The EIO applies to obtaining new evidence and to the transmission of evidence in the possession of the competent authorities of the executing State at all stages of the proceedings.

Article 5

Types of proceedings

An EIO may be issued:

a) With respect to criminal proceedings that are 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;

b) 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 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;

c) 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; and

d) In connection with proceedings referred to in the previous paragraphs which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

Article 6

Content and form

Form and content

1 - The EIO is issued by completing the form in Annex I to this law, of which it forms an integral part, and shall, in particular, contain the following information:

- a) Data about the issuing authority and, where applicable, the validating authority;
- b) The object of and reasons for the EIO,
- c) The necessary information available on the natural or legal person(s) concerned to which the research measure applies;
- d) A description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;
- e) A description of the investigative measures(s) requested and the evidence to be obtained.

2 - The EIO is signed by the issuing authority, which certifies the accuracy and correctness of the information contained therein.

3 - The competent authority of the issuing State shall translate the EIO into the official language of the executing State or to one of the official languages of the Member States of the European Union which it has declared to accept.

Article 7

Consultations and communications between competent authorities

1 - Where appropriate, the national authorities responsible for issuing and executing the EIO may consult each other in order to facilitate the correct and efficient application of this law.

2 - All official communications shall be made directly between the national authorities responsible for issuing and executing the EIO, by any means enabling a written record to be obtained and verification of its authenticity.

Article 8

Protection of personal data

1 – Where implementing this law, personal data are protected and processed in accordance with Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA of 27 November 2008 and in accordance with the principles enshrined in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and its Additional Protocol.

2 - Access to these data is restricted, only having access to them those that are duly authorized, without prejudice to the rights of the holder of the data.

3 - To the processing, security, conservation, access and protection of personal data processed in the scope of this law is shall be applicable Law 34/2009 of 14 July, amended by Law 30/2017 of 30 May, as well as Law 67/98 of 26 October, amended by Law 103/2015 of 24 August.

Article 9

Charges

1 - Without prejudice to the specific rules set forth in Chapter IV, the Portuguese State shall bear all expenses incurred with the execution of an EIO in national territory.

2 - Where expenditure is deemed to be exceptionally high, the national implementing authority shall agree with the issuing authority to share the charges or to amend the EIO by informing them in detail.

3 - The Portuguese State shall not bear the expenses arising from the execution in another Member State of an EIO issued by the Portuguese authorities, without prejudice to the provisions of the following paragraph.

4 - When asked by the executing authority to allocate exceptionally high expenses, the Portuguese issuing authority shall decide on the part of the costs to be incurred or, in the absence of agreement, on the total or partial withdrawal of the EIO.

Article 10

Central authority

1 - The Public Prosecutor's Office is designated as the central authority to assist the judicial authorities responsible for issuing and executing the EIO, in particular in communications with the authorities of the other Member States, and for other purposes provided for in this law.

2 - The EIOs issued and received by the competent national authorities shall be notified to the central authority.

CHAPTER II

Procedures and safeguards

Article 11

Purpose and conditions for issuing

1 – An EIO may only be issued or validated if the following conditions are met :

a) If it is necessary, appropriate and proportionate, for the purposes of the proceedings referred to in Article 5 taking into account the rights of the suspected or the accused person; and

b) If the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

2 – The conditions referred to in paragraph 1 shall be assessed by the issuing authority in each case.

3 – The EIO shall indicate, where appropriate, the formalities and procedures which are particularly required in order to obtain or produce the evidence in accordance with, and with reference to, the applicable legal provisions, requesting that it be complied with by the executing authority in order to ensure the validity and effectiveness of the evidence.

4 - Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.

Article 12

National issuing authorities

1 - The national judicial authority with jurisdiction for conducting the case in the phase in which it is, shall be competent to issue an EIO.

2 - The provisions of paragraph 1 shall be without prejudice to the powers of the investigating judge to authorize or order the conduct of acts in the investigation phase, in accordance with the law.

3 - An EIO may also be issued by the national member of the EUROJUST, under the terms and circumstances set forth in paragraphs 3 and 4 of article 8 of Law 36/2003 of 22 August as amended by Law 20/2014 of 15 April.

4 - The EIO shall be issued at the initiative of the judicial authority or at the request of the procedural subjects, under the terms in which they may request the attainment or production of evidence in accordance with the criminal procedural law.

5 - In cases of administrative infraction, the EIO shall be issued by the administrative entity competent for the processing of the administrative infraction, in accordance with the applicable regime, through validation by the Public Prosecution Service.

6 - In the case foreseen in the previous article, the validation is carried out, within a maximum period of 10 days counted from the date of receipt of the EIO, by the Public Prosecution Service in the competent court to hear the appeal of the decision of the administrative entity that applies the sanction.

Article 13

Transmission and communication procedures

1 - The EIO shall be transmitted directly by the issuing authority to the executing authority by any means capable of producing a written record to be kept and under conditions allowing its authenticity to be determined.

2 - The EIO may be transmitted through the telecommunications system of the European Judicial Network, as referred to in Council Decision 2008/976/JHA of 16 December 2008.

3 - Subsequent communications concerning the EIO shall be carried out directly between the issuing authority and the executing authority.

4 - Difficulties concerning the transmission or authenticity of documents necessary for the execution are dealt with by direct contact between the judicial authorities.

5 - The assistance of the central authority, the national member of EUROJUST or the contact points of the European Judicial Network may be requested, in particular for the identification of the competent authority for the execution.

6 - Without prejudice to the support of EUROJUST which is necessary for the coordination of the execution, the national issuing authority shall inform the national member of the latter in cases

where European research decisions are transmitted in the same procedure to at least two Member States, in accordance with the provisions of article 9-A of Law 36/2003 of 22 August, as amended by Law 20/2014 of 15 April.

Article 14

Complementary issuing

1 - As an EIO issued in addition to another, this shall be indicated in section D of the form in Annex I to this law.

2 - If, in accordance with the following article, the issuing authority may, while in the executing State, issue and deliver a supplementary EIO directly to the executing authority, without prejudice to the competence which the States concerned have assigned to the respective central authority.

3 - The supplementary EIO shall be certified in accordance with Article 6 (2) and, if applicable, validated.

Article 15

Assistance in the execution

1 - The issuing authority may request the executing authority to authorize authorities and agents of the issuing State with responsibility for investigation to assist the executing authorities.

2 - The authorities and agents present in the executing State shall be subject to the law of that State during the execution of the EIO, without execution powers, unless the law of that State so permits, as agreed between the national issuing authority and the executing authority.

Article 16

Confidentiality

The issuing authority shall not disclose any evidence or information provided by the executing authority which is subject to the duty of secrecy or confidentiality, except to the extent that disclosure is authorized by national law and does not conflict with the indication of the executing authority.

Article 17

Removal of secrecy, privilege or immunity

Where the executing authority informs that recognition execution may be refused on the grounds of the existence of secrecy, privilege or immunity for which a third State authority or international organization is responsible for, the issuing authority shall provide for obtaining it, the EIO being suspended.

CHAPTER III

Procedures and safeguards for the execution

Article 18

Recognition and execution by the national authorities

1 - The executing authority shall recognize, without further formalities under this law, the EIO issued and transmitted by the competent authority of another Member State and shall ensure its implementation, on the basis of the principle of mutual recognition, under the same conditions as if the investigative measure concerned had been ordered by a national authority, without prejudice to Articles 22 and 24.

2 - The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority, unless otherwise provided for in this law and subject cases.

3 - The executing authority may consult the issuing authority by such means as it deems appropriate to facilitate the application of this Article.

4 - The national enforcement authority shall, where necessary, request the support of the national member of EUROJUST within its jurisdiction body, in particular where the EIO requires coordinated implementation with the issuing authority or with investigative measures in other Member States or in States which have concluded cooperation agreements with EUROJUST, pursuant to the provisions of Law 36/2003 of 22 August, as amended by Law 20/2014 of 15 April.

5 - The EIO transmitted to the national authorities shall be translated into the official language of the executing State or into another official language of the Member States of the European Union, which Portugal has declared to accept in accordance with Article 6 (3).

Article 19

National executing authorities

1 - The national judicial authority competent to order the investigative measure in national territory, in accordance with the provisions of the criminal procedure law, the laws on the organization of the judicial system and the Statute of the Public Prosecution Service, shall be competent to recognize and guarantee the execution of an EIO.

2 - Without prejudice to the provisions of this law, the judicial authority of the district in whose area the natural person resides or is situated or has its registered office, shall be competent to recognize and guarantee the execution of an EIO whenever the measures are destined to the hearing of a natural person or legal representative of a legal person, or the judicial authority of the district in whose area the investigation measure is to be carried out.

3 - It is incumbent upon the local criminal court to perform acts of production of evidence in judgment.

4 - When the execution of the measures must take place in the area of territorial jurisdiction of different local criminal courts of the same district, the jurisdiction in the local competent criminal court that first receives the duly transmitted decision shall be established, the provisions of paragraph 7 being correspondingly applicable.

5 - If the EIO concerns several persons and they reside or have their headquarters in the area of different districts, as well as in the situations in which the investigation measures must be carried out in more than one district, it shall be territorially competent, according to the stage of the case in the issuing State or the investigative measure to be carried out:

a) The Central Department for Investigation and Penal Action, regarding acts of the preliminary stages of the case that must be practiced in the area of territorial jurisdiction of more than one

Court of Appeal or without defined territorial localization, and in cases in which it is attributed competence to order or promote the investigative measure in national proceedings;

b) The District Department for Investigation and Penal Action of the area of jurisdiction of the respective Court of Appeal, regarding acts of the preliminary stages of the case that must be practiced in the area of jurisdiction of that court;

c) The local criminal court of the Lisbon Court of Appeal, regarding acts of production of evidence in trial that must be practiced in the area of territorial jurisdiction of more than one Court of Appeal;

d) The local criminal court of the respective Court of Appeal relating to acts of production of evidence in trial that must be practiced in the area of territorial jurisdiction of that Court of Appeal.

6 - If the EIO is intended for the transmission of evidence in the possession of the national authorities, the judicial authority which leads the case at the stage in which it is shall be competent for the recognition and execution.

7 - In the cases provided for in sub-paragraphs c) and d) of paragraph 5, pre-emptive letters shall be issued to local criminal courts that are territorially competent to perform acts that are to take place outside the district where such courts are located, unless in the case of procedural acts that cannot or should not be separated.

8 - Without prejudice to paragraph 1, in the case provided for in article 5 (b), the Public Prosecutor's Office shall be competent for the recognition in the court referred to in article 12, paragraph 6, in accordance with the applicable regime, and the administrative authority with responsibility for the processing of the administrative offense is responsible for the execution of the measure.

9 – Where it does not have competence for the recognition and take the measures necessary for the execution, the national authority receiving the EIO shall forward it to the competent judicial authority, informing the issuing authority accordingly.

10 - When the circumstances set forth in paragraphs 3 and 4 of article 8 of Law 36/2003 of 22 August, as amended by Law 20/2014 of 15 April, are verified, the national member of EUROJUST may execute an EIO that has been transmitted to it by a competent authority of the issuing State.

Article 20

Recognition and execution procedures

1 - Once the EIO is received, the national executing authority shall verify that it complies with the limits and scope as laid down in Articles 2 (2), 4 and 5 and is issued in accordance with Article 6, respecting the requirements of form and content, and if the information contained therein shows any of the reasons for recourse to a measure other than that indicated, non-recognition or non-execution, or postponement, in accordance with Articles 21, 22 and 24, which it may have hear.

2 - If the EIO does not comply with the provisions of article 6, due to the fact that the form in Annex I to this law is incorrectly filled or manifestly incomplete or is not translated in accordance with Article 18 (5), the national executing authority shall inform the issuing authority in

accordance with Article 25 (3) (a), requesting that it be duly completed or corrected or translated.

3 - The lack of translation and non-compliance with the defects referred to in the preceding paragraph shall prevent the national executing authority from taking a decision on recognition, and the EIO shall be returned to the issuing authority.

4 - Once the formal and substantive regularity of the EIO has been verified, the national executing authority issues a recognition decision and orders, practices or ensures the acts necessary for its execution.

5 - Once the execution has been completed, or if no steps have been taken, the national executing authority shall terminate the EIO's execution and recognition procedure, transmitting the information obtained to the issuing authority.

Article 21

Alternative investigative measure

1 - If the measure does not exist under the law of the executing State or is not admissible in a similar national procedure, the executing authority shall, whenever possible, use a different investigative measure than that indicated in the EIO.

2 - The following investigative measures shall be exempt from the provisions of the preceding paragraph, without prejudice to the grounds for non-execution provided for in the following article applicable to them:

a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence that could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;

b) The obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;

c) The hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;

d) Any non-coercive investigative measure as defined under the law of the executing State;

e) The identification of persons holding a subscription of a specified phone number or IP address.

3 - The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means, taking into account the provisions of Article 11 (1) (a).

4 - When the executing authority decides to avail itself of the possibility referred to in the previous paragraphs, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.

5 - Where, in accordance with paragraph 1, the investigative measure indicated 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 investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.

6 - The national executing authority may request the support of the national member of Portugal in EUROJUST whenever it considers that the replacement of the measure requires coordination with the issuing authority.

Article 22

Grounds for non-recognition or non-execution

1 - The recognition or execution of an EIO may be refused where:

a) The conduct for which the EIO has been issued does not constitute an offence of a criminal or other nature under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex IV, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years;

b) There is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;

c) The execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

d) The EIO has been issued in proceedings referred to in Article 5(b) and (c) and the investigative measure would not be authorised under the law of the executing State in a similar domestic case;

e) The execution of the EIO would be contrary to the principle of *ne bis in idem*;

f) The EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;

g) There are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 of the TEU and the Charter of Fundamental Rights of the European Union; or

h) The use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

2 - Paragraphs 2(a) and (h) do not apply to the investigative measures referred to in Article 21(2).

3 - Where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

4 - In the cases referred to in subparagraphs b), c), e), f) and g) of paragraph 1 before deciding not to recognise or not to execute an EIO, either in whole or in part the executing authority shall

consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

5 - In the case referred to in paragraph 1(b) and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request the authority concerned to exercise that power.

Article 23

Transfer of evidence

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.

2 - Where requested in the EIO and if possible under the 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 27.

3 - The transfer of the evidence may be suspended, pending a decision on the appeal that has been filed pursuant to Article 45 (4), unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights.

4 - The transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.

5 - When transferring the evidence obtained, the executing authority shall indicate whether it requires the evidence to be returned to the executing State as soon as it is no longer required in the issuing State.

6 - The objects, documents or data relevant to other national cases may be temporarily transferred to the issuing State provided that they are returned as soon as they are no longer required in the issuing State or at any other time or at an agreed time between the competent authorities.

Article 24

Grounds for postponement

1 - The recognition or execution of an EIO may be postponed where:

- a) For a reasonable period where the execution might prejudice an on going criminal investigation or prosecution, until such time as the executing State deems reasonable;
- b) Whenever the objects, documents, or data concerned are being used in other proceedings, until such time as they are no longer required for that purpose.

2 - As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.

Article 25

Obligation to inform

1 - The executing authority that receives the EIO shall, immediately, and in any case within a week of the reception of an EIO, acknowledge reception of the EIO by completing and sending the form set out in Annex II.

2 - An authority which receives an EIO for which it is not competent shall forward it to the competent executing authority, informing the issuing authority thereof, using the form referred to in the previous paragraph, and always complying with the obligation to inform referred to in paragraph 1.

3 - Without prejudice to Article 21(4) and (5) the executing authority shall inform the issuing authority immediately by any means, whenever:

a) It is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex I is incomplete or manifestly incorrect or is not translated in accordance with Article 18 (5);

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

c) It is established that, in the specific case, the formalities and procedures expressly indicated by the issuing authority cannot be complied with.

4 - Upon request by the issuing authority, the information referred in the previous paragraph shall be confirmed without delay by any means capable of producing a written record.

5 - Without prejudice to Article 21(4) and (5) the executing authority shall inform the issuing authority without delay by any means capable of producing a written record:

a) Of any decision of non recognition or non execution any decision to appeal to a different type of investigative measure taken in accordance with Articles 22 and 21;

b) Of any decision to postpone the execution or the recognition, taken in accordance with Article 24, as well as the reasons for postponement and, if possible, the expected duration of the postponement.

Article 26

Time limits

1 - The decision on the recognition referred to in Article 18 shall be taken with the same celerity and priority as for a similar domestic case and, in any case, not exceeding the maximum period of 30 days from the receipt of the EIO by the executing authority.

2 - Without prejudice to the preceding paragraph and unless grounds for postponement exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure not later than 90 days following the taking of the decision referred to in the preceding paragraph.

3 - Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.

4 - Where it is not possible to comply with the time limit referred to in paragraph 1 or to comply with the date referred to in the preceding paragraph, the executing authority shall inform the issuing authority by any means, stating the reasons for the delay and the time limit necessary for the decision to be taken.

5 - In the case laid down in the preceding paragraph, the time limit may be extended by a maximum of 30 days.

6 - If it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph 2, it shall immediately inform the issuing authority by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the investigative measure.

Article 27

Assistance in the execution

1 - The enforcement authority shall comply with the request for assistance referred to in Article 15 provided that it is not contrary to the fundamental principles of its national law and does not prejudice the essential national security interests.

2 - The presence and direction of the national authorities in the acts and diligences in which the agents of the issuing State participate in Portuguese territory are obligatory.

3 - The executing authority may consult the issuing authority by such means as it deems appropriate to facilitate the application of this Article.

Article 28

Criminal liability regarding officials of the executing State

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

Article 29

Civil liability regarding officials of the executing State

1 - Where, in the framework of the application of this Directive, officials of a Member State are present in the territory of another Member State, the former Member State shall be liable for any damage caused by its officials during their operations, in accordance with the law of the Member State in whose territory they are operating.

2 - The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3 - The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse in full any sums the latter Member State has paid to the victims or persons entitled on their behalf.

4 - Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in cases referred to in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

Article 30

Confidentiality

1. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute the investigative measure.

Each Member State shall take the necessary measures to ensure that in the execution of an EIO the issuing authority and the executing authority take due account of the confidentiality of the investigation.

2 - If the executing authority cannot comply with the requirement of confidentiality, it shall immediately notify the issuing authority.

Article 31

National legislation applicable to the execution

The EIO shall be executed in accordance with the provisions of this law, in accordance with article 2, paragraph 2, the provisions of the Code of Criminal Procedure and supplementary legislation relating to investigative measures being subsidiary in their absence or insufficiency provisions of the law applicable to misdemeanours to which the EIO refers.

CHAPTER IV

Specific provisions for certain investigative measures

SECTION I

Temporary transfer of persons held in custody for the purpose of carrying out an investigative measure

Article 32

Temporary transfer to the issuing State of persons held in custody

1 - An EIO may be issued for the temporary transfer of a person in custody in the executing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which the presence of that person on the territory of the issuing State is required, provided that it is ensured that the person is returned to the authorities of the executing State within the time limit set by the executing authority after consultation, if necessary, between the latter and the issuing authorities.

2 - In addition to the grounds for non-recognition or non-execution referred to in Article 22 the execution of the EIO may also be refused if:

- a) The person in custody does not consent; or
- b) The transfer is liable to prolong the detention of the person in custody.

3 - Without prejudice to paragraph 2(a), where the executing State considers it necessary in view of the person's age or physical or mental condition, the opportunity to state the opinion on the temporary transfer shall be given to the legal representative of the person in custody.

4 - The person transferred temporarily to another member State shall remain in the territory of the issuing State and, where appropriate, in the territory of the member State of transit for the acts committed or convictions which have resulted in the custody in the executing State, unless the authorities of that State request his/her release.

5 - The period of custody in the territory of the issuing and transit States shall not suspend the period of remand and shall be deemed to comply with the sentence or security measure imposed in the executing State the person remaining, as the case may be, in one of these situations when Portugal is the executing State.

6 - For the purposes of the preceding paragraphs, where Portugal is the executing State, the examining magistrate or the judge who has applied the preventive detention order or the court of first instance under which the person in custody is, is competent to recognize and execute and order the person's release.

7 - The practical arrangements regarding the temporary transfer of the person including the details 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 issuing State and the executing State, ensuring that the physical and mental condition of the person concerned, as well as the level of security required in the issuing State, are taken into account.

8 - Costs resulting from the application of this Article shall be borne in accordance with Article 9, except for the costs arising from the transfer of the person to and from the issuing State, which shall be borne by that State.

9 - The transfer shall be made by the services of the Ministry of Justice in accordance with the authority of the issuing State to which it is to be transferred in respect of the means of transport, date, place and time of delivery.

10 - In the context of the execution of an EIO, the transit of the person held in custody through the territory or the national airspace shall be authorized by the Minister of Justice, provided there are no reasons of public order or State security, according to the provisions of Article 43 of Law 144/99 of 31 August, *mutatis mutandis*.

Article 33

Temporary transfer to the executing State of persons held in custody

1 - An EIO may be issued for the temporary transfer of a person held in custody in the issuing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which his presence on the territory of the executing State is required.

2 - Paragraph 2(a) and paragraphs 3, 4, 7, 8 and 10 of the preceding Article are applicable mutatis mutandis to the temporary transfer under this Article.

3 - Costs resulting from the application of this Article shall be borne in accordance with Article 9, except for the costs arising from the transfer of the person concerned to and from the executing State which shall be borne by the issuing State.

Article 34

Immunity

1 - The person transferred pursuant to Articles 32 and 33 may not be prosecuted, judged, detained or subjected to any other restriction of his or her freedom by acts committed or convictions given prior to his transfer and not specified in the issuance of the EIO.

2 - The immunity provided for in the preceding paragraph shall cease when, during a period of 15 consecutive days from the date on which his presence ceases to be requested by the issuing authorities, the person has had the opportunity to voluntarily leave the territory of the State to which he was transferred temporarily and yet he remained there or, having gone out, returned there.

SECTION II

Hearing by videoconference or by telephone conference

Article 35

Hearing by videoconference or other audio-visual transmission

1 - Where 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.

2 - The issuing authority may also issue an EIO for the purpose of hearing a suspected or accused person by videoconference or other audio-visual transmission.

3 - In addition to the grounds for non-recognition or non-execution referred to in Article 22, the execution of an EIO may be refused if either:

a) The suspected or accused person does not consent in relation to the act in which he has to intervene;

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

4 - The issuing authority and the executing authority shall agree the practical arrangements of the hearing and the executing authority shall undertake to:

a) Summon the witness or expert concerned, indicating the time and the venue of the hearing;

b) Summon the suspected or accused persons to appear for the hearing in accordance with the detailed rules laid down in the law of the executing State and inform such persons about their

rights under the law of the issuing State, in such a time as to allow them to exercise their rights of defence effectively;

c) Ensure the identity of the person to be heard.

5 - If in circumstances of a particular case the executing authority has no access to technical means for a hearing held, such means may be made available to it by the issuing State by mutual agreement.

6 - The hearings of witnesses and experts carried out on national territory shall be governed by the provisions which would apply if the hearing were conducted in the context of a national procedure as regards the refusal to give testimony or statements and their falsity.

Article 36

Rules and procedures of the hearing

1 - Where a hearing is held by videoconference or other audio-visual transmission, the following rules shall apply:

a) The competent authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall be responsible for ensuring both the identity of the person to be heard and respect for the fundamental principles of the law of the executing State.

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

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

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

e) Suspected or accused persons shall be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and the issuing State;

f) Witnesses and experts may claim the right not to testify which would accrue to them under the law of either the executing or the issuing State and shall be informed about this right in advance of the hearing.

2 - In the case referred to in subparagraph (a) of the preceding paragraph, if it considers that the fundamental principles of the law of the executing State are violated during the hearing, the national authority shall immediately take the necessary measures to ensure that the hearing continues in accordance with these principles.

3 - Without prejudice to any measures taken to protect persons at the end of the hearing, the executing authority shall draw up a report setting out the date and place of the hearing, the identity of the person being heard, the identity and duties of all other persons who took part in the hearing, any oaths given and the technical conditions in which the hearing took place.

4 - The document shall be forwarded by the executing authority to the issuing authority.

Article 37

Hearing by telephone conference

- 1 - If a person is in the territory of one Member State and has to be heard as a witness or expert by competent authorities of another Member State, an EIO may be issued in order to hear that person by telephone conference.
- 2 - The EIO shall be issued if the physical appearance of the person to be heard is not appropriate or possible, after consideration by the issuing authority of other means suitable for the hearing.
- 3 - Unless otherwise agreed, Article 35 and 36 shall apply *mutatis mutandis* to the hearing of witnesses and experts by telephone conference.

SECTION III

Information on accounts and banking and financial operations

Article 38

Information on bank and other financial operations

- 1 - An EIO may be issued in order to determine whether any natural or legal person subject to the criminal proceedings concerned holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State, and if so, to obtain all the details of the identified accounts.
- 2 - The information referred to in paragraph 1 shall also, if requested in the EIO, include accounts for which the person subject to the criminal proceedings concerned has powers of attorney.
- 3 - The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.
- 4 - In the EIO the issuing authority shall indicate the reasons why it considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings concerned and on what grounds it presumes that banks in the executing State hold the account and, to the extent available, which banks may be involved. It shall also include in the EIO any information available which may facilitate its execution.
- 5 - An EIO may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds one or more accounts, in any non-bank financial institution located on the territory of the executing State, the provisions of paragraphs 2, 3 and 4 shall apply *mutatis mutandis*.
- 6 - In the case referred to in the preceding paragraph, in addition to being refused on the grounds of non-recognition or non-execution referred to in Article 22, the execution of the EIO may still be refused if the execution of the investigative measure is not admissible in a similar national proceeding.
- 7 - Members of the governing bodies of banking institutions and non-banking financial institutions, their employees and persons providing services to them shall be bound by the duty of confidentiality in respect of investigative measures of which they are aware and may not in

particular disclose them to the persons whose accounts are checked or for which information or documents have been requested.

8 - The provisions of Chapter V of Law 5/2002 of 11 January, as amended by Law 19/2008 of 21 April, by Decree-Laws 317/2009 of 30 October and 242/2012 of 7 November and Laws 60/2013 of 23 August, 55/2015 of 23 June and 30/2017 of 30 May, shall apply to the duty to inform laid down in this Article.

Article 39

Information on banking and other financial operations

1 - An EIO may be issued in order to obtain the details of specified bank accounts and of banking operations which have been carried out during a defined period through one or more accounts specified therein, including the details of any sending or recipient account.

2 - The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank in which the account is held.

3 - In the EIO the issuing authority shall indicate the reasons why it considers the requested information relevant for the purpose of the criminal proceedings concerned.

4 - 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 2 and 3 shall apply *mutatis mutandis*.

5 - In the case foreseen in the preceding paragraph and in addition to the grounds for non-recognition and non-execution referred to in Article 22, the execution of the EIO may also be refused where the execution of the investigative measure would not be authorised in a similar domestic case.

SECTION IV

Investigative measures implying the gathering of evidence in real time

Article 40

Gathering of evidence in real time

1 – An EIO may be issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time, in particular the investigative measures that require:

- a) The monitoring of banking or other financial operations that are being carried out through one or more specified accounts;
- b) The controlled deliveries on the territory of the executing State.

2 - The execution of the EIO may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 22, if the investigative measure concerned would not be authorised in a similar domestic case.

3 - The issuing authority shall indicate in the EIO why it considers the information requested relevant for the purpose of the criminal proceedings concerned.

4 - The practical arrangements regarding the investigative measure referred to in paragraph 1(b) shall be agreed between the issuing State and the executing State.

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

6 - The magistrate of the Lisbon Department for Investigation and Penal Action is competent for the recognition of the EIO.

SECTION V

Covert investigations

Article 41

Covert actions

1 - An EIO may be issued for the purpose of requesting the executing State to assist the issuing State in the conduct of investigations into crime by officers acting under covert or false identity.

2 - The issuing authority shall indicate in the EIO why it considers that the covert investigation is likely to be relevant for the purpose of the criminal proceedings concerned.

3 - In addition to the grounds for non-recognition and non-execution referred to in Article 22, the execution of an EIO may be refused, where:

a) The execution of the covert investigation would not be authorised in a similar domestic case; or

b) It was not possible to reach an agreement on the arrangements for the covert investigations.

4 – The covert actions in the national territory are carried out in accordance with the provisions of Law 101/2001 of 25 August, as amended by Laws 60/2013 of 23 August and 61/2015 of 24 June, and Article 19 of Law 109/2009 of 15 September, and the competent Portuguese authorities shall be responsible for directing and controlling the investigative operations.

5 – To the competence for the recognition and to guarantee the execution of the EIO shall apply Article 3 (3) of Law 101/2001 of 25 August, as amended by Laws 60/2013 of 23 August, and 61/2015 of 24 June.

6 - The duration of the covert action, the conditions under which it takes place and the legal status of the agents involved in it shall be agreed between the issuing State and the executing State, taking into account the provisions of Law 101/2001 of 25 August, as amended by Laws 60/2013 of 23 August and 61/2015 of 24 June, and of the following paragraph.

7 - Investigative agents of the issuing State participating in covert actions in national territory under this article shall, during the period of their stay, have the same status as Portuguese criminal investigation agents, in accordance with the legislation applicable to them.

CHAPTER V

Interception of telecommunications

Article 42

Interception of telecommunications with technical assistance of another Member State

1 - An EIO may be issued for the interception of telecommunications in the Member State from which technical assistance is needed.

2 - Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent only to one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located.

3 - An EIO referred to in paragraph 1 shall also contain the following information:

- a) Information for the purpose of identifying the subject of the interception;
- b) The desired duration of the interception; and
- c) Sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.

4 - The issuing authority shall indicate in the EIO the reasons why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings concerned.

5 - In addition to the grounds for non-recognition or non-execution referred to in Article 22, the execution of an EIO may also be refused where the investigative measure would not have been authorised in a similar domestic case.

6 - An EIO referred to in paragraph 1 may be executed by:

- a) Transmitting telecommunications immediately to the issuing State; or
- b) Intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.

7 - The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with subparagraphs (a) or (b) of the preceding paragraph.

8 - When issuing an EIO referred to in paragraph 1 or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.

9 – To the execution in the national territory of the EIO referred to in this article shall apply the provisions of articles 187 to 190 of the Code of Criminal Procedure in all that does not contradict the provisions of this law.

10 - The provisions of Law 109/2009 of 15 September, regarding an EIO for obtaining computer data are applicable.

11 - Costs resulting from the application of this Article shall be borne in accordance with Article 9, except for the costs arising from the transcription, decoding and decrypting of the intercepted communications which shall be borne by the issuing State.

Article 43

Notification of the Member State where the subject of the interception is located from which no technical assistance is needed

1 - Where, for the purpose of carrying out an investigative measure, the interception of telecommunications is authorised by the competent authority of one Member State (the “intercepting Member State”) and the communication address of the subject of the interception specified in the interception order is being used on the territory of another Member State (the “notified Member State”) from which no technical assistance is needed to carry out the interception, the intercepting Member State shall notify the competent authority of the notified Member State of the interception:

- a) Prior to the interception in cases where the competent authority knows at the time of ordering the interception that the subject of the interception is or will be on the territory of the notified Member State;
- b) During the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.

2 - The notification referred to in paragraph 1 shall be made by using the form set out in Annex III to this law and of which it forms an integral part.

3 - The competent authority of the notified Member States shall, in case where the interception would not be authorised in a similar domestic case, without delay and at the latest within 96 hours after the receipt of the notification referred to in paragraph 1, notify the competent authority of the intercepting Member State:

- a) That the interception may not be carried out or shall be terminated; and
- b) Where necessary, that any material already intercepted while the subject of the interception was on its territory may not be used, or may only be used under conditions which it shall specify. The competent authority of the notified Member State shall inform the competent authority of the intercepting Member State of reasons justifying those conditions.

4 - Article 6(3) shall be applicable *mutatis mutandis* for the notification referred to in paragraph 2

5 - The Central Department for International Cooperation of the Criminal Police shall be competent to receive the notification referred to in paragraph 2.

6 - The notification referred to in the preceding paragraph shall be transmitted as soon as possible, but at the latest within 48 hours, to the Lisbon Criminal Investigation and Action Department for submission to a judge in the Lisbon Criminal Court, for the purposes of paragraph 3.

CHAPTER VI

Provisional measures

Article 44

Provisional measures

1 - An EIO may be issued in order to take any measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence.

2 - The issuing authority shall indicate in the EIO whether the evidence is to be transferred to the issuing State or must remain in the territory of the executing State.

3 - Where, in accordance with the previous paragraph, evidence is required to remain on the territory of the executing State, the issuing authority shall indicate the date on which the provisional measure referred to in paragraph 1 ceases or the date the request for transfer of evidence to the issuing State shall be submitted.

4 - The executing authority shall decide and communicate its decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the EIO.

5 - The executing authority shall recognise and execute the EIO and transfer the evidence in accordance with the procedures laid down in this law.

6 - After consulting the issuing authority, the executing authority may, in accordance with its national law and practice, lay down the appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure referred to in paragraph 1 is to be maintained.

7 - If, in accordance with the conditions referred in paragraph 5, it envisages lifting the provisional measure, the executing authority shall inform the issuing authority, which shall be given the opportunity to submit its comments.

8 - The issuing authority may at any time decide to cease the seizure by notifying the executing authority.

9 - The procedures for the execution of the EIO in national territory are governed by the provisions of the criminal procedural law on seizures of objects and other elements that may serve as evidence.

10 - The national executing authority shall immediately notify the issuing authority where it is not practicable to execute the seizure order because the objects or other evidence have disappeared, have been destroyed or cannot be found at the location indicated on the EIO or that indication has not been sufficiently precise even after consultation with the issuing State.

11 - Before proceeding to the notification referred to in the previous paragraph, the national executing authority shall take the necessary steps to locate the assets or evidence that could not be found.

CHAPTER VII

Ways to challenge

Article 45

Appeals

- 1 – Ways to appeal equivalent to those in similar national proceedings are ensured.
- 2 - The substantive grounds underlying the issue of an EIO can only be challenged in the issuing State.
- 3 - Since Portugal is the issuing State, the appeal of the judicial decision ordering the investigative measure and, consequently, the issue of the DEI, is governed, as far as the admissibility and regime, by the provisions of the Code of Criminal Procedure.
- 4 - Since Portugal is the executing State, recourse to the Portuguese courts is admissible for judicial decisions on the formalities and procedures for carrying out the investigative measure, in accordance with the provisions of the Code of Criminal Procedure on admissibility and regime.
- 5 - Information on the possibility of appealing under national law shall be provided to the person or persons covered by the investigative measure if this does not compromise the need to ensure the confidentiality of the investigation.
- 6 - The issuing authority and the executing authority shall inform each other of appeals lodged following the issuance, recognition and execution of an EIO.
- 7 - If the challenge to the recognition or execution of an EIO is well founded, that decision shall be taken into account by the issuing authority in accordance with national law.

CHAPTER VIII

Final and transitional provisions

Article 46

Transitional provisions

- 1 - Requests for mutual assistance from other Member States received before the entry into force of this law, not bound by Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the EIO in criminal matters, continue to be governed by the existing instruments on mutual legal assistance in criminal matters.
- 2 - The provisions of Law 25/2009 of 5 June, shall apply to the recognition and execution of decisions to seize evidence issued by other Member States and received before the entry into force of this law.
- 3 - Article 14 (1) shall apply, *mutatis mutandis*, to an EIO issued following a decision taken before the entry into force of this law, pursuant to Framework Decision 2003/577/JHA, of 22 July 2003, for the purposes of Article 44 (1).

4 - Upon entry into force of this law, requests for mutual legal assistance in criminal matters shall be addressed to the Member States bound by Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the EIO in criminal matters in accordance with this law, even if they have not transposed it.

5 - Requests for assistance received from the Member States referred to in the preceding paragraph, as from the same date, shall be executed in accordance with the provisions of this law.

Article 47

Subsidiary law

To the procedures referred to in this law shall additionally apply the Code of Criminal Procedure and other applicable procedural rules of national law.

Article 48

Relation to other legal instruments, agreements or conventions

This law replaces, as from its entry into force, in the relations between Portugal and other Member States bound by Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the EIO in criminal matters, the corresponding provisions of the following conventions:

- a) European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959 and its two Additional Protocols as well as bilateral agreements concluded in accordance with Article 26 of that Convention;
- b) Convention implementing the Schengen Agreement of 19 June 1990;
- c) Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and its Protocol.

Article 49

Legal provisions repealed

Law 25/2009 of 5 June, which establishes the legal regime for the issuance and execution of decisions on the seizure of assets or evidence in the European Union, in compliance with Framework Decision 2003/577/JHA of 22 July on the enforcement of decisions to confiscate evidence, is hereby repealed.

Article 50

Entry into force

This law shall enter into force on the day following its publication.

Approved on 23 June 2017.

The President of the Assembly of the Republic, Eduardo Ferro Rodrigues.

Promulgated on August 2017.

To be published.

The President of the Republic, Marcelo Rebelo de Sousa.

Countersigned on 7 August 2017.

The Prime Minister, António Luís Santos da Costa.

ANNEX I

(referred to in Articles 6 (1), 14 (1), 20 (2) and 25 (3) (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. It is requested 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.

SECTION A

Issuing State:.....

Executing State:.....

SECTION B: **Urgency**

Please indicate if there is any urgency due to

☐ Evidence being concealed or destroyed

☐ Imminent trial date

☐ 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:

.....
.....
.....

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:

.....
.....
.....
.....
.....
.....
.....

☐ Obtaining information or evidence which is already in the possession of the executing authority

☐ Obtaining information contained in databases held by police or judicial authorities

☐ Hearing

☐ witness

☐ expert

☐ suspected or accused person

☐ victim

☐ third party

☐ Identification of persons holding a subscription of a specified phone number or IP address

☐ Temporary transfer of a person held in custody to the issuing State

☐ Temporary transfer of a person held in custody to the executing State

- ☐ Hearing by videoconference or other audiovisual transmission
 - ☐ witness
 - ☐ expert
 - ☐ suspected or accused person
- ☐ Hearing by telephone conference
 - ☐ witness
 - ☐ expert
- ☐ Information on bank and other financial accounts
- ☐ Information on banking and other financial operations
- ☐ Investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time
 - ☐ monitoring of banking or other financial operations
 - ☐ controlled deliveries
 - ☐ other
- ☐ Covert investigation
- ☐ Interception of telecommunications
- ☐ Provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence

SECTION D: Relation to an earlier EIO

Indicate whether this EIO supplements an earlier EIO. If applicable, provide information relevant to identify the previous EIO (the date of issue of the EIO, the authority to which it was transmitted and, if available, the date of transmission of the EIO, and reference numbers given by the issuing and executing authorities):

.....

.....

If relevant please indicate if an EIO has already been addressed to another Member State in the same case:

.....

SECTION E: Identity of the person concerned

1. State all information, as far as known, regarding the identity of the (i) natural or (ii) legal person(s) concerned by the investigative measure (if more than one person is concerned, please provide the information for each person):

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number:

Type and number of the identity document(s) (ID card, passport), if available:

.....

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

.....

(ii) In the case of legal person(s)

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat:

Registration number:

Address of the legal person:

Name of the legal person's representative:

Please describe the position the concerned person currently holds in the proceedings:

☐ suspected or accused person

☐ victim

☐ witness

☐ expert

☐ third party

☐ other (please specify)

2. If different from the address above, please give the location where investigative measure is to be carried out:

.....

.....

3. Provide any other information that will assist with the execution of the EIO:

.....

.....

SECTION F: Type of proceedings for which the EIO is issued:

☐ (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; or

☐ (b) 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; or

☐ (c) proceedings brought by judicial 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;

☐ (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.

SECTION G: Grounds for issuing the EIO

1. Summary of the facts

Set out the reasons why the EIO is issued, including a summary of the underlying facts, a description of offences charged or under investigation, the stage the investigation has reached, the reasons for any risk factors and any other relevant information.

.....

.....

.....

2. Nature and legal classification of the offence(s) for which the EIO is issued and the applicable statutory provision/code:

.....

.....

.....

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

- ☐ participation in a criminal organisation
- ☐ terrorism
- ☐ trafficking in human beings
- ☐ sexual exploitation of children and child pornography
- ☐ illicit trafficking in narcotic drugs and psychotropic substances
- ☐ illicit trafficking in weapons, munitions and explosives
- ☐ corruption
- ☐ fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- ☐ laundering of the proceeds of crime
- ☐ counterfeiting currency, including of the euro
- ☐ computer-related crime
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- ☐ facilitation of unauthorised entry and residence
- ☐ murder, grievous bodily injury
- ☐ illicit trade in human organs and tissue
- ☐ kidnapping, illegal restraint and hostage-taking
- ☐ racism and xenophobia
- ☐ organised or armed robbery
- ☐ illicit trafficking in cultural goods, including antiques and works of art
- ☐ swindling
- ☐ racketeering and extortion
- ☐ counterfeiting and piracy of products
- ☐ forgery of administrative documents and trafficking therein
- ☐ forgery of means of payment
- ☐ illicit trafficking in hormonal substances and other growth promoters
- ☐ illicit trafficking in nuclear or radioactive materials
- ☐ trafficking in stolen vehicles
- ☐ rape
- ☐ arson
- ☐ crimes within the jurisdiction of the International Criminal Court
- ☐ unlawful seizure of aircraft/ships
- ☐ sabotage

SECTION H: Additional requirements for certain measures

Fill out the sections relevant to the investigative measure(s) requested:

SECTION H1: Transfer of a person held in custody

(1) If a temporary transfer to the issuing State of a person held in custody for the purpose of the investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No ☐ I request that the person's consent is sought

(2) If a temporary transfer to the executing State of a person held in custody for the purpose of investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No

SECTION H2: Video or telephone conference or other audiovisual transmission

If hearing by videoconference or telephone conference or other audiovisual transmission is requested:

Please indicate the name of the authority that will conduct the hearing (contact details/language):

.....

Please indicate reasons for requesting this measure:

.....

☐ (a) hearing by videoconference or other audiovisual transmission:

☐ the suspected or accused person has given his/her consent

☐ (b) hearing by telephone conference

SECTION H3: Provisional measures

If a provisional measure to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence, is requested, please indicate whether:

☐ the item is to be transferred to the issuing State

☐ the item is to remain in the executing State; please indicate an estimated date:

for lifting of provisional measure:

for the submission of a subsequent request concerning the item:

SECTION H4: Information on bank and other financial accounts

(1) If information on bank accounts or other financial accounts that the person holds or controls is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings and on what grounds you presume that banks in the executing State hold the account:

☐ information on bank accounts that the person holds or in respect of which he or she has the power of attorney

☐ information on other financial accounts that the person holds or in respect of which he or she has the power of attorney

.....

.....

.....

.....

(2) If information on banking operations or other financial operations is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings:

- ☐ information on banking operations
- ☐ information on other financial operations

.....

.....

.....

.....

Indicate the relevant period of time and the related accounts:

.....

.....

SECTION H5: Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time

If such investigative measure is requested please indicate the reasons why you consider the requested information relevant for the purpose of the criminal proceedings:

.....

.....

SECTION H6: Covert investigations

If covert investigation is requested please indicate the reasons why you consider the investigative measure likely to be relevant for the purpose of the criminal proceedings:

.....

.....

SECTION H7: Interception of telecommunications

(1) If interception of telecommunications is requested please indicate the reasons why you consider the investigative measure relevant for the purpose of the criminal proceedings:

.....

.....

(2) Please provide following information:

(a) information for the purpose of identifying the subject of the interception:

.....

.....

(b) the desired duration of the interception:

.....

.....

(c) technical data (in particular the target identifier — such as mobile telephone, landline telephone, email address, internet connection), to ensure that the EIO can be executed:

.....

.....

(3) Please indicate your preference concerning the method of execution:

- ☐ immediate transmission
- ☐ recording and subsequent transmission

Please indicate if you also require transcription, decoding or decrypting of the intercepted material (*):

.....

.....

(*) Please be aware that the costs of any transcription, decoding or decrypting must be met by the issuing State.

SECTION I: Formalities and procedures requested for the execution

1. Tick and complete, if applicable

☐ It is requested that the executing authority comply with the following formalities and procedures (...):

.....
.....

2. Tick and complete, if applicable

☐ It is requested that one or several officials of the issuing State assist in the execution of the EIO in support of the competent authorities of the executing State.

Contact details of the officials:

.....
.....

Languages that may be used for communication:

.....

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:

SECTION K: Details of the authority which issued the EIO

Tick the type of authority which issued the EIO:

☐ judicial authority

☐ (*) any other competent authority as defined by the law of the issuing State

(*) Please also complete section (L)

Name of authority:

.....

Name of representative/contact point:

.....

File No:

Address:

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

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

E-mail:

Languages in which it is possible to communicate with the issuing authority:

.....

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of evidence:

Name/Title/Organisation:

Address:

E-mail/Contact Phone No:

Signature of the issuing authority and/or its representative certifying the content of the EIO as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION L Details of the judicial authority which validated the EIO

Please indicate the type of judicial authority which has validated this EIO:

- ☐ (a) judge or court
- ☐ (b) investigating judge
- ☐ (c) public prosecutor

Official name of the validating authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

File no:

Address:

.....

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

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

E-mail:

Languages in which it is possible to communicate with the validating authority:

.....

Please indicate if the main contact point for the executing authority should be the:

- ☐ issuing authority
- ☐ validating authority

Signature and details of the validating authority

Name:

Post held (title/grade):

Date:

Official stamp (if available):

ANNEX II

(referred to in Article 25 (1))

CONFIRMATION OF THE RECEIPT OF AN EIO

Confirmation of receipt of a European Research Decision

This form must be completed by the authority of the executing State which received the European Investigation Order (EIO) below.

| |
|--|
| <p>(A) THE EIO CONCERNED</p> <p>Authority which issued the EIO:</p> <p>.....</p> <p>File reference:.....</p> <p>Date of issuing:</p> <p>Date of receipt:</p> |
| <p>(B) THE AUTHORITY WHICH RECEIVED THE EIO ⁽¹⁾</p> <p>Official name of the competent authority:</p> <p>.....</p> <p>Name of its representative:</p> <p>.....</p> <p>Post held (title/grade):</p> <p>.....</p> <p>Address:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Tel. No: (country code) (area/city code)</p> <p>Fax No: (country code) (area/city code)</p> <p>E-mail:.....</p> <p>File reference:.....</p> <p>Languages in which it is possible to communicate with the authority:</p> <p>.....</p> |
| <p>(C) (WHERE APPLICABLE) THE COMPETENT AUTHORITY TO WHOM THE EIO IS TRANSMITTED BY THE AUTHORITY UNDER (B)</p> <p>Official name of the authority:</p> <p>.....</p> <p>Name of its representative:</p> <p>.....</p> <p>Post held (title/grade):</p> <p>.....</p> <p>Address:</p> <p>.....</p> <p>.....</p> <p>Tel. No: (country code) (area/city code)</p> <p>Fax No: (country code) (area/city code)</p> <p>E-mail:.....</p> <p>Date of transmission:.....</p> <p>File reference:.....</p> <p>Language(s) that may be used for communication:</p> <p>.....</p> |

⁽¹⁾ This section is to be completed by each authority which received the EIO. This obligation falls upon the authority competent to recognise and execute the EIO and, where applicable, upon the central authority or the authority which transmitted the EIO to the competent authority.

(D) ANY OTHER INFORMATION WHICH MAY BE RELEVANT FOR THE ISSUING AUTHORITY:

.....
.....
.....

(E) SIGNATURE AND DATE

Signature:

Date:

Official stamp (if available):

ANNEX III

(referred to in Article 43 (2))

NOTIFICATION

This form is used in order to notify a Member State about the interception of telecommunication that will be, is or has been carried out on its territory without its technical assistance. I hereby inform ... (notified Member State) of the interception.

(A) ⁽¹⁾ THE COMPETENT AUTHORITY

Official name of the competent authority of intercepting Member State:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Address:

.....

.....

.....

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

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

E-mail:

File reference:

Date of issuing:

Languages in which it is possible to communicate with the authority:

.....

(B) INFORMATION CONCERNING THE INTERCEPTION

(I) Information about state of play: This notification takes place (please tick)

- ☐ prior to the interception
☐ during the interception
☐ after the interception

(II) The (anticipated) duration of the interception (as known to the issuing authority):

....., starting from

(III) Target of the interception: (telephone number, IP number or e-mail)

.....

(IV) Identity of the persons concerned

State all information, as far as they are known, regarding the identity of the (i) natural or (ii) legal person(s) against whom the proceedings are/may be/is taking place:

(i) In the case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number:

⁽¹⁾ The authority which is referred to here is the one which should be contacted in further correspondence with the issuing State.

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

.....

(ii) In the case of legal person(s)

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat.....

Registration number:.....

Address of the legal person:

Name and contact details of the representative of the legal person:

(V) Information regarding the purpose of this interception:

State all information necessary, including a description of the case, legal classification of the offence(s) and the applicable statutory provision/code, in order to enable the notified authority to assess the following:

☐ whether the interception would be authorised in a similar domestic case; and whether the material obtained can be used in legal proceedings

☐ where the interception has already occurred, whether that material can be used in legal proceedings

.....

.....

.....

.....

.....

.....

Please note that any objection to the interception or the use of already intercepted material must be made no later than 96 hours after the reception of this notification.

(C) SIGNATURE AND DATE

Signature:

Date:

Official stamp (if available):

ANNEX IV

(referred to in Article 22 (1) (a))

Categories of offences referred to in Article 22

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.