

# European Investigative Order Act

Promulgated, SG No. 16/20.02.2018

Text in Bulgarian: Закон за Европейската заповед за разследване

## Chapter One GENERAL DISPOSITIONS

### Subject Matter

**Article 1.** This Act shall regulate the terms and procedure for:

1. the recognition and execution of a European Investigative Order in criminal matters issued in another Member State;
2. the issuing of a European Investigative Order in criminal matters and the transmittal of the said order for recognition and execution in another Member State.

### European Investigative Order

**Article 2.** (1) A European Investigative Order shall be an instrument issued by a competent authority of a Member State whereby a competent authority of another Member State is requested to gather evidence, including evidence that is already in the possession of the latter State, or to carry out an investigative measure and other procedural measures.

(2) A European Investigative Order may be issued with respect to:

1. criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence committed in the issuing State;
2. proceedings brought by administrative authorities in respect of acts which are punishable under the 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 criminal matters;
3. proceedings brought by judicial authorities in respect of acts which are punishable under the 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 criminal matters;
4. acts in connection with proceedings referred to in Items 1 to 3, which relate to criminal offences or infringements for which a legal person may be held liable or punished in the issuing State.

(3) A European Investigative Order may be issued:

1. with a view to provisionally preventing acts of destruction, transformation, removal, transfer or disposal of items that may be used as evidence in the territory of the executing State;
2. for the temporary transfer to the issuing State of a person held in custody in the executing State for the purpose of carrying out procedural measures requiring the presence of that person, or for the temporary transfer to the executing State of a person held in custody in the issuing State for the purpose of participating in the investigation as requested.

### Content and Form of European Investigative Order

**Article 3.** A European Investigative Order shall be issued in a standard form according to Annex 1 hereto and shall contain:

1. data about, signature and official stamp the issuing authority;
2. object and reasons for issuing the European Investigative Order;
3. the necessary information available on the person in respect of whom investigative measures and other procedural measures will be carried out;

4. a description of the criminal act, which is the subject of the investigation or proceedings, and the relevant applicable provisions of the criminal law of the issuing State;

5. a description of the investigative measures and other procedural measures requested and the evidence to be obtained.

#### Field of Application

**Article 4.** (1) This Act shall apply to all investigative measures and other procedural measures for the carrying out of which a European Investigative Order has been issued with the exception of the cases where a joint investigation team under Article 476 (3) of the Criminal Procedure Code has been set up.

(2) Where a competent authority participating in a joint investigation team requests the assistance of a Member State other than those participating in the said team, a European Investigative Order may be issued.

(3) This Act shall not apply:

1. upon freezing property subject to confiscation, to the extent that the request for confiscation of the said property has not been stated, either;

2. where cross-border surveillance has been requested, implementing Article 40 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239/19 of 22 September 2000).

## **Chapter Two**

# **ISSUING EUROPEAN INVESTIGATIVE ORDER BY COMPETENT AUTHORITY IN REPUBLIC OF BULGARIA**

#### Authority Competent to Issue European Investigative Order

**Article 5.** (1) A European Investigative Order in the Republic of Bulgaria shall be issued by:

1. the relevant prosecutor: in the pre-trial proceeding;

2. the relevant court: in the trial proceeding.

(2) The issuing of a European Investigative Order may alternatively be requested by an accused person, a defendant or by a defence counsel authorised thereby for the implementation of the requisite defence in a criminal proceeding in accordance with the Criminal Procedure Code.

(3) The authorities referred to in Paragraph (1) shall not disclose any evidence or information provided thereto as a result of the execution of a European Investigative Order, except to the extent that the disclosure of any such evidence or information is necessary for the investigations or proceedings described in the European Investigative Order, unless otherwise indicated by the executing State.

(4) The relevant authority referred to in Paragraph (1) may request that competent authorities of the Republic of Bulgaria assist in the execution of the European Investigative Order in support to the executing authority if such assistance is provided for in the legislation of the executing State or does not harm the essential security interests thereof.

(5) The competent authorities referred to in Paragraph (4) present in the territory of the executing State shall be bound by the legislation thereof during the execution of the European Investigative Order.

#### Conditions for Issuing European Investigative Order

**Article 6.** (1) The competent authority referred to in Article 5 (1) herein, after assessment in each case, shall issue a European Investigative Order if the following conditions have been cumulatively met:

1. the issuing of the European Investigative Order is necessary and proportionate for the purpose of the criminal proceeding, taking into account the rights of the accused person or the defendant;

2. the investigative measures and other procedural measures, for which the European Investigative Order is issued, can be carried out under the same conditions according to Bulgarian legislation in a similar case.

(2) Where the executing authority determines that the conditions referred to in Paragraph (1) have not been met, after consulting the issuing authority on the importance of executing the European Investigative Order, the competent authority referred to in Article 5 (1) herein may decide to withdraw the European Investigative Order.

(3) The European Investigative Order shall be accompanied by a translation into the official language or one of the official languages of the executing State or into another official language of the institutions of the European Union which the said executing State has indicated in a declaration deposited thereby with the General Secretariat of the Council of the European Union.

#### Transmitting European Investigative Order

**Article 7.** (1) The European Investigative Order shall be transmitted to the executing authority by any means capable of producing a written record allowing the establishment of authenticity, and any further official communication shall be made directly between the competent authority referred to in Article 5 (1) herein and the executing authority.

(2) The competent authority referred to in Article 5 (1) herein may make use of any possible or relevant means of transmission of the European Investigative Order over the secure telecommunications system of the European Judicial Network, Eurojust, or other channels used by judicial or law enforcement authorities.

(3) Where the executing authority is unknown to the authority referred to in Article 5 (1) herein, the authority referred to in Article 5 (1) herein shall make an enquiry, including via the European Judicial Network contact points, in order to obtain the information from the executing State.

#### European Investigative Order Related to Earlier European Investigative Order

**Article 8.** (1) A European Investigative Order which supplements an earlier European Investigative Order shall be issued in the form and with the content referred to in Article 3 herein, and this fact shall be indicated in the relevant section of Annex 1 herein.

(2) If the competent authority referred to in Article 5 (1) herein assists in the execution of a European Investigative Order in the territory of the executing State according to Article 5 (4) herein, the said authority may address the European Investigative Order referred to in Paragraph (1) to the executing authority when present in that State.

## **Chapter Three**

# **RECOGNITION AND EXECUTION OF EUROPEAN INVESTIGATIVE ORDER ISSUED IN ANOTHER MEMBER STATE**

#### Authority Competent to Recognise European Investigative Order

**Article 9.** (1) The following authorities in the Republic of Bulgaria shall be competent to recognise a European Investigative Order issued by a competent authority of another Member State:

1. in a pre-trial proceeding: a prosecutor of the relevant district prosecution office or military district prosecution office within whose judicial district the relevant investigative measure or other procedural measures are requested to be carried out, of evidence which is already in possession is requested to be transferred, or a prosecutor of the specialised prosecution office;

2. in a trial proceeding: the relevant district court or military court within whose judicial district the investigative measure concerned or other procedural measures are requested to be carried out, of evidence which is already in possession is requested to be transferred, or the specialised criminal court.

(2) Where a European Investigative Order requests the carrying out of an investigative measure or other procedural measures which extend to multiple judicial districts, the authority competent to recognise any such order shall be the authority within whose judicial district the most urgent measure is to be carried out.

(3) Where a European Investigative Order has been transmitted to an authority which has no competence to recognise the said order, the said authority shall, ex officio, transmit the said order to the relevant competent authority under Paragraph (1) and shall forthwith so inform the issuing authority by any means capable of establishing in writing the authenticity of the receipt and the content of the said order.

(4) A European Investigative Order shall be transmitted to the authorities referred to in Paragraph (1) in a Bulgarian language version or in an English language version.

#### Conditions for Recognition

**Article 10.** (1) A European Investigative Order shall be recognised in the territory of the Republic of Bulgaria if it relates to conduct which constitutes a criminal offence under Bulgarian legislation as well, where, irrespective of the difference in the legal descriptions, there is a coincidence in the constituent elements underlying the said offences.

(2) Double criminality within the meaning given by Paragraph (1) shall not be required for the following criminal offences if they are punishable in the issuing Member State by a custodial sentence for a maximum period of at least three years or a detention order for a maximum period of at least three years is provided for in respect thereof:

1. participation in a criminal organisation;
2. terrorism;
3. trafficking in human beings;
4. sexual exploitation of children and child pornography;
5. illicit trafficking in narcotic drugs and psychotropic substances;
6. illicit trafficking in weapons, munitions and explosives;
7. corruption;
8. fraud, including fraud 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, ratified by law (State Gazette No. 12 of 2007);
9. laundering of the proceeds of crime;
10. counterfeiting currency, including of the euro;
11. computer crime and computer-related crime;
12. environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;

13. facilitation of unauthorised entry and residence;
14. murder, grievous bodily injury;
15. illicit trade in human organs and tissue;
16. kidnapping, illegal restraint and hostage-taking;
17. racism and xenophobia;
18. organised or armed robbery;
19. illicit trafficking in cultural goods, including antiques and works of art;
20. swindling;
21. racketeering and extortion;
22. counterfeiting and piracy of products;
23. forgery of administrative documents and trafficking therein;
24. forgery of means of payment;
25. illicit trafficking in hormonal substances and other growth promoters;
26. illicit trafficking in nuclear or radioactive materials;
27. trafficking in stolen vehicles;
28. rape;
29. arson;
30. crimes within the jurisdiction of the International Criminal Court;
31. unlawful seizure of aircraft/ships;
32. sabotage.

(3) Where a European Investigative Order concerns an offence in connection with taxes or duties, customs and exchange, the competent authority referred to in Article 9 (1) herein shall not refuse recognition or execution on the ground that Bulgarian legislation 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 where the investigative measures and the other procedural measures or the transfer of evidence are conditioned by a special regime, authorisation or approval by a court, the provisions of the Criminal Procedure Code shall apply, *mutatis mutandis*.

#### Proceeding for Recognition by Court

**Article 11.** (1) The competent court referred to in Item 2 of Article 9 (1) herein shall recognise a European Investigative Order, transmitted in accordance with Article 7 (1) herein, unless grounds for non-recognition or non-execution or grounds for postponement exist. The court shall examine the case sitting in camera in a single-judge panel.

(2) Where a European Investigative Order received according to the procedure established by Article 7 (1) herein does not conform to the requirements under Article 3 herein, the court shall return the said order to the issuing State.

(3) At the request of the issuing State, the court may allow one or more authorities to assist in the execution of the European Investigative Order if such assistance is provided for in Bulgarian legislation or does not harm the essential national security interests of the Republic of Bulgaria. The authorities of the issuing State present in the territory of the executing State shall be bound by Bulgarian legislation during the execution of the European Investigative Order.

(4) Within the time limits referred to in Article 14 herein, the court shall pronounce by a ruling whereby the court shall recognise the European Investigative Order and shall ensure the execution thereof according to Bulgarian legislation.

(5) The ruling shall be appealable by the defence and the prosecution within five days before the competent appellate court. The judgment of the appellate court shall be final.

#### Proceeding for Recognition by Prosecutor

**Article 12.** (1) The competent prosecutor referred to in Item 1 of Article 9 (1) herein shall recognise a European Investigative Order, transmitted in accordance with Article 7 (1) herein, unless grounds for non-recognition or non-execution or grounds for postponement exist.

(2) Where a European Investigative Order received according to the procedure established by Article 7 (1) herein does not conform to the requirements under Article 3 herein, the prosecutor shall return the said order to the issuing State.

(3) At the request of the issuing State, the prosecutor may allow one or more authorities to assist in the execution of the European Investigative Order if such assistance is provided for in Bulgarian legislation or does not harm the essential national security interests of the Republic of Bulgaria. The authorities of the issuing State present in the territory of the executing State shall be bound by Bulgarian legislation during the execution of the European Investigative Order.

(4) Within the time limits referred to in Article 14 herein, the prosecutor shall issue a warrant whereby the prosecutor shall recognise the European Investigative Order and shall designate the competent authority and the investigative measure and other procedural measures that are to be carried out in accordance with the request of the issuing State.

(5) The warrant shall be appealable according to the procedure established by Article 200 et seq. of the Criminal Procedure Code.

(6) The warrant on recognition and the European Investigative Order shall forthwith be transmitted to the relevant competent authorities for execution.

#### Execution of European Investigative Order

**Article 13.** (1) The authorities competent to execute a European Investigative Order shall take steps without delay for the execution of investigative measures and other procedural measures complying with the time limits provided for in this Act and in the Criminal Procedure Code.

(2) Upon the execution of a European Investigative Order, the competent authorities referred to in Paragraph (1) shall comply with the formalities and procedures indicated by the issuing authority, unless otherwise provided for in this Act and provided that such formalities and procedures are not contrary to Bulgarian legislation.

(3) The competent authority referred to in Article 9 (1) herein and the issuing authority may consult each other with a view to facilitating the efficient execution of a European Investigative Order.

#### Time Limits

**Article 14.** (1) Upon receipt of a European Investigative Order by postal mail, email, fax or other means capable of establishing in writing the authenticity of the receipt and the content of the said order, the competent authority referred to in Article 9 (1) herein shall institute a proceeding for recognition.

(2) The competent authority referred to in Article 9 (1) herein shall examine the European Investigative Order as received according to the procedure established by this Act.

(3) Not later than 30 days after the receipt of the European Investigative Order, the competent authority referred to in Article 9 (1) herein shall pronounce on the recognition and execution of the said order by the relevant instrument. The said time limit may be extended by no more than 30 days after giving the reasons for the delay and after the competent authority referred to in Article 9 (1) herein has consulted with the issuing authority.

(4) The authority competent to execute the European Investigative Order shall carry out investigative measures and other procedural measures not later than 90 days from the date of pronouncement under Paragraph (3).

(5) If it is not possible to meet the time limit referred to in Paragraph (4), the competent

authority referred to in Article 9 (1) herein shall forthwith inform the issuing authority of the reasons for the delay and, in consultation, the additional time necessary to execute an investigative measure and other procedural measures shall be determined.

(6) Where the issuing authority has indicated in the European Investigative Order that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in Paragraphs (3) and (4) is necessary or if any investigative measures and other procedural measures must be carried out on a specific date, the authority competent to execute the European Investigative Order shall take as full account as possible of this requirement.

(7) If it is not possible to meet the time limit or the specific date referred to in Paragraph (6), the competent authority referred to in Article 9 (1) herein shall forthwith inform the issuing authority of the reasons and, in consultation, the additional time necessary to execute an investigative measure and other procedural measures shall be determined.

#### Recourse to Different Type of Investigative Measure and Other Procedural Measures

**Article 15.** (1) The competent authority referred to in Article 9 (1) herein shall have recourse to an investigative measure and other procedural measures other than those indicated in the European Investigative Order where:

1. the measures indicated in the European Investigative Order are not provided for in Bulgarian legislation;
2. the measures indicated in the European Investigative Order would not be available in a similar case according to Bulgarian legislation;
3. the measure selected would achieve the same result by means that intrude less into the privacy and the legitimate interests and rights of the person than the measure indicated in the European Investigative Order.

(2) In the cases referred to in Paragraph (1), the competent authority referred to in Article 9 (1) herein shall forthwith inform the issuing authority, which may decide to withdraw or supplement the European Investigative Order.

(3) Where a different investigative measure and other procedural measures according to Paragraph (1) are not available, the competent authority referred to in Article 9 (1) herein shall so notify the issuing authority.

(4) The provision of Paragraph (1) shall not apply where the European Investigative Order relates to:

1. the obtaining of information or evidence which is already in the possession of the competent authority referred to in Article 9 (1) herein and the said information or evidence could have been obtained, in accordance with Bulgarian legislation, in the framework of criminal proceedings or for the purposes of the European Investigative Order;
2. the obtaining of information contained in the systems for automatic processing of personal data used by the judicial authorities, the pre-trial proceeding authorities or other authorities which have access to such information in the framework of criminal proceedings;
3. the hearing of a witness, expert witness, victim or accused person in the territory of the country;
4. the identification of persons holding a subscription of a specified phone number or IP address;
5. any other investigative measure and other procedural measures which do not violate individual rights or freedoms.

#### Grounds for Refusal of Recognition or Execution

**Article 16.** (1) The competent authority referred to in Article 9 (1) herein may refuse to

recognise or to execute a European Investigative Order where:

1. there is an immunity or a privilege under Bulgarian legislation which make it impossible to execute the said order;

2. the execution of the European Investigative Order would harm essential national security interests or would jeopardise a source of information, or would involve the use of classified information relating to specific intelligence activities;

3. the execution of the European Investigative Order would be contrary to the principle of ne bis in idem, except in the cases where the said order is aimed to establish whether a possible conflict with the ne bis in idem principle exists, or where the issuing authority has provided assurances that the evidence transferred as a result of the execution of the said order would not be used to prosecute or impose a sanction on a person whose case has been finally disposed of in another Member State for the same facts;

4. the European Investigative Order has been issued in connection with proceedings brought by administrative authorities or by judicial authorities in respect of acts for which carrying out an investigative measure and other procedural measures would not be authorised under Bulgarian legislation in a similar case;

5. the European Investigative Order relates to an act which has been committed outside the territory of the issuing State, has been committed wholly or partially on the territory of the Republic of Bulgaria, and does not constitute a criminal offence according to Bulgarian legislation;

6. there are substantial grounds to believe that the execution of the investigative measure and the other procedural measures would be incompatible with the respect for the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and the Charter of Fundamental Rights of the European Union;

7. a decision has been rendered regarding a legal remedy under Article 18 herein, whereby the European Investigative Order is invalidated;

8. the act for which the European Investigative Order has been issued does not constitute a criminal offence under Bulgarian legislation, unless the European Investigative Order relates to a criminal offence on the list referred to in Article 10 (2) herein;

9. the use of the investigative measure and other procedural measures for the criminal offence indicated in the European Investigative Order is restricted according to Bulgarian legislation to a range or category of offences or to offences punishable by a certain threshold and which do not include the offence covered by the European Investigative Order.

(2) The provisions of Items 8 and 9 of Paragraph (1) shall not apply where the European Investigative Order relates to the cases provided for in Article 15 (4) herein.

(3) Before deciding not to recognise or not to execute a European Investigative Order either in whole or in part, the competent authority referred to in Article 9 (1) herein shall consult the issuing authority by any means capable of producing a written record, and may request the said authority to supply any necessary information without delay.

(4) In the cases referred to in Item 1 of Paragraph (1), where the power to withdraw the privilege or to waive the immunity lies with a Bulgarian authority, the competent authority referred to in Article 9 (1) herein shall forthwith inform the relevant competent authority to request the authority concerned to exercise that power.

(5) In the cases referred to in Item 1 of Paragraph (1), where an authority of another State or international organisation is competent to withdraw the privilege or to waive the immunity, the authority referred to in Article 9 (1) herein shall forthwith inform the issuing authority to request



the authority concerned to exercise that power.

(6) In the cases referred to in Paragraphs (4) and (5), the time limits referred to in Article 14 herein shall commence from the day on which the competent authority referred to in Article 9 (1) herein was informed of the withdrawal of the privilege or of the waiver of the immunity.

#### Transfer of Evidence

**Article 17.** (1) The competent authority referred to in Article 9 (1) herein shall, without delay, transfer the evidence obtained or already in possession as a result of the execution of a European Investigative Order to the issuing State.

(2) Where requested in the European Investigative Order and if possible under Bulgarian legislation, the competent authority referred to in Article 9 (1) herein shall forthwith transfer the evidence to the authorities referred to in Article 11 (3) herein assisting in the execution of the European Investigative Order.

(3) The transfer of the evidence may be suspended until the rendition of a decision regarding a legal remedy pursued under Article 18 herein, unless sufficient reasons are indicated in the European Investigative Order that an immediate transfer of the said evidence is essential for the proper conduct of the investigation or for the preservation of the rights of the person concerned. Notwithstanding the indication of such reasons, the transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.

(4) When transferring the evidence, the competent authority referred to in Article 9 (1) herein shall indicate whether it requires the evidence to be returned thereto as soon as it is no longer required in the issuing State

(5) Where the evidence is already relevant for other proceedings, the competent authority referred to in Article 9 (1) herein may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authority referred to in Article 9 (1) herein and the executing authority.

#### Legal Remedies

**Article 18.** (1) The legal remedies and time limits available in similar cases under Bulgarian legislation shall apply to defence of the persons concerned when carrying out an investigative measure and other procedural measures indicated in the European Investigative Order.

(2) The substantive reasons for issuing a European Investigative Order may be appealed only in the issuing State, without prejudice to the guarantees of fundamental rights provided for in Bulgarian legislation.

(3) Where it would not undermine the need to ensure confidentiality of an investigation under Article 23 herein, the issuing authority and the competent authority referred to in Article 9 (1) herein shall take measures to ensure that information is provided about the possibilities for seeking the legal remedies when these become applicable and shall ensure in due time the effective exercise of the said remedies.

(4) The issuing authority and the competent authority referred to in Article 9 (1) herein shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of a European Investigative Order.

(5) An appeal of an investigative measure and other procedural measures shall not suspend the execution of the said measures, unless this is provided for under Bulgarian legislation in similar cases.

#### Grounds for Postponement of Recognition or Execution

**Article 19.** (1) The recognition or execution of a European Investigative Order may be postponed where:

1. the execution of the said order might prejudice the revelation of the objective truth in an ongoing criminal proceeding until such time as the competent authority referred to in Article 9 (1) herein deems reasonable;

2. the evidence concerned is already being used in another proceeding, until such time as the said evidence is no longer required for that purpose.

(2) After the ground for postponement has ceased to exist, the competent authorities referred to in Article 9 (1) herein shall forthwith take the necessary measures for the execution of the European Investigative Order and shall so inform the issuing authority by any means capable of producing a written record.

#### Obligation to Inform

**Article 20.** (1) Within seven days of the reception of a European Investigative Order, the competent authority referred to in Article 9 (1) herein shall acknowledge reception of the said order by completing and sending a form according to Annex 2 hereto. The form shall furthermore be completed by the authority referred to in Article 9 (3) herein which initially received the European Investigative Order.

(2) The competent authority referred to in Article 9 (1) herein shall forthwith inform the issuing authority where:

1. the competent authority is unable to take a decision on the recognition or execution of a European Investigative Order because the form provided for in Annex 1 hereto is incomplete or manifestly incorrect;

2. in the course of the execution of the European Investigative Order it is considered without further enquiries that investigative measures and other procedural measures, which were not initially foreseen or which could not be specified when the European Investigative Order was issued, can be carried out in order to enable the issuing authority to take further action in the specific case;

3. the formalities and procedures indicated by the issuing authority in accordance with Article 13 (2) herein cannot be complied with in the specific case.

#### Protection through Criminal Law and Criminal Liability

**Article 21.** When present in the territory of the country, officials from the issuing State whose assistance in investigative measures and other procedural measures has been admitted by the competent authority referred to in Article 9 (1) herein shall be regarded as domestic public officials within the meaning given by Item 1 of Article 93 of the Criminal Code in respect of any criminal offences committed against them or by them.

#### Liability for Damage

**Article 22.** (1) The issuing State shall be liable for any damage caused by its officials whose assistance in investigative measures and other procedural measures has been admitted by the competent authority referred to in Article 9 (1) herein during the execution of a European Investigative Order in accordance with Bulgarian legislation.

(2) The Bulgarian State shall take the necessary steps to make good the damage caused under Paragraph (1) under the conditions applicable to damage caused by its own officials according to the procedure provided for in Bulgarian legislation.

(3) In the cases referred to in Paragraph (2), the issuing State shall reimburse in full any sums paid by the Bulgarian State in compensation to the victims or persons entitled on behalf of the victims.

(4) Without prejudice to the rights of the Bulgarian State vis-a-vis third parties and with the

exception of the cases referred to in Paragraph (3), the Bulgarian State shall not request reimbursement of damages it has sustained from the issuing State.

#### Confidentiality

**Article 23.** (1) The competent authority referred to in Article 9 (1) herein and the authorities competent to execute a European Investigative Order shall take the necessary measures under Bulgarian legislation to ensure that due account is taken of the confidentiality of the investigation.

(2) In accordance with Bulgarian legislation, the authorities referred to in Paragraph (1) shall take the necessary measures to guarantee the confidentiality of the facts and the substance of the European Investigative Order, except to the extent necessary to execute the investigative measure and other procedural measures. Where the said authorities cannot comply with the requirement of confidentiality, the competent authority referred to in Article 9 (1) herein shall forthwith so notify the issuing authority.

(3) The competent authority referred to in Article 9 (1) herein shall, in accordance with Bulgarian legislation, take the necessary measures to ensure that banks do not disclose to bank customers or to other third persons that information has been transmitted to the issuing State in accordance with Articles 30 and 31 herein or that an investigation is being carried out.

#### Protection of Personal Data

**Article 24.** The necessary measures to ensure the protection of personal data upon the execution of a European Investigative Order shall be applied in conformity with the legislation in force.

#### Costs

**Article 25.** (1) The costs related to the execution of a European Investigative Order on the territory of the country shall be borne by the Bulgarian State.

(2) Where the costs referred to in Paragraph (1) prove to be excessive, the competent authority referred to in Article 9 (1) herein shall inform the issuing authority of the detailed specifications of the said costs and may consult with the issuing authority on how the said costs could be shared or the European Investigative Order modified.

(3) Where no agreement can be reached with regard to the costs referred to in Paragraph (2), the issuing authority may:

1. withdraw the European Investigative Order in whole or in part, or
2. bear the costs deemed excessive.

## **Chapter Four**

# **SPECIFIC RULES FOR CARRYING OUT CERTAIN INVESTIGATIVE MEASURES AND OTHER PROCEDURAL MEASURES**

Temporary Transfer of Persons Held in Custody for Purpose of Carrying Out Investigative Measure and Other Procedural Measures

**Article 26.** (1) A European Investigative Order may be issued for the temporary transfer of a person held in custody on the territory of the Republic of Bulgaria for the purpose of carrying out an investigative measure and other procedural measures with a view to gathering evidence for which the presence of that person on the territory of the issuing State is required, provided that the said person shall be sent back within the period stipulated by the competent authority referred to in Paragraph (2).

(2) The authority competent to recognise and execute a European Investigative Order in the cases referred to in Paragraph (1) shall be the district court within whose judicial district the person held in custody is located. The district court shall examine the European Investigative Order according to the procedure established by Article 50 of the Extradition and European Arrest Warrant Act and shall notify the Supreme Cassation Prosecution Office of the admitted transfer of the person held in custody, as well as of the conditions whereunder the transfer has been admitted.

(3) In addition to the cases referred to in Article 16 herein, the execution of a European Investigative Order issued for temporary transfer may be refused on the following grounds:

1. the person in custody does not consent, or
2. the transfer is liable to prolong the detention of the person in custody.

(4) Where necessary, in view of the person's age or physical or mental condition, the legal representative or defence counsel of the person in custody shall be given an opportunity to state in due time an opinion in writing on the temporary transfer.

(5) Where authorisation for transit of the person in custody through the territory of a third Member State is required, the issuing State shall notify the Supreme Cassation Prosecution Office and the competent authority referred to in Paragraph (2) of a received authorisation for transit of the person.

(6) The matters related to the transfer of the person including the details of his custody conditions in the issuing State and the deadline by which the said person must be received by the issuing State and returned to the Republic of Bulgaria, shall be agreed between the issuing State and the competent authority referred to in Paragraph (2), taking into account the physical and mental condition of the person concerned, as well as the level of security in the issuing State.

(7) The transferred person shall remain in custody in the territory of the issuing State and, where necessary, in the territory of the Member State of transit, for the acts or convictions for which the said person has been kept in custody in the Republic of Bulgaria, unless the competent authority referred to in Paragraph (2) applies for the release thereof.

(8) The period of custody in the territory of the States referred to in Paragraph (7) shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the Republic of Bulgaria.

(9) In the cases referred to in Paragraph (7), a transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the issuing State for acts committed or convictions handed down before the departure of the said person from the territory of the Republic of Bulgaria and which are not specified in the European Investigative Order.

(10) Paragraph (9) shall not apply where the transferred person, having had an opportunity to leave the territory of the issuing State for a period of 15 consecutive days from the date when the presence thereof is no longer required by the issuing authorities but:

1. has nevertheless remained in the territory of the issuing State, or
2. having left the said territory, has returned.

(11) The temporary transfer of the person shall follow the procedure established by Article 26 of the Extradition and European Arrest Warrant Act.

(12) Costs resulting from the temporary transfer shall be borne in accordance with Article 25 herein, except for the costs arising from the transfer of the person to and from the issuing State which shall be borne by that State.

(13) The provisions of Paragraphs (1) to (12), the grounds for non-recognition and non-execution under Article 16 herein and the rules for the costs under Article 25 herein shall apply, *mutatis mutandis*, to the temporary transfer of a person in custody in the issuing State for

the purpose of carrying out an investigative measure and other procedural measures with a view to gathering evidence for which the presence of that person on the territory of the executing State is required.

**Transit of Persons Held in Custody for Temporary Transfer for Purpose of Carrying Out Investigative Measure and Other Procedural Measures**

**Article 27.** (1) The Supreme Cassation Prosecution Office shall receive the applications for transit of persons in custody for temporary transfer for the purpose of carrying out an investigative measure and other procedural measures and the documents accompanying the said applications by any means capable of producing a written record of the transmission thereof.

(2) The Supreme Cassation Prosecution Office shall grant transit of a person under Paragraph (1) through the territory of the Republic of Bulgaria if the issuing State provides:

1. a copy of the European Investigative Order;
2. particulars of the person;
3. information on the consent given by the person or the opinion in writing of the legal representative thereof regarding a transfer for the purposes of Article 26 herein;
4. information about the officials escorting the person and an approved plan for implementation of the transfer.

(3) The Supreme Cassation Prosecution Office shall inform the issuing State of the decision thereof by any means capable of producing a written record of the transmission of the said decision.

(4) The provisions of this Article shall not apply in the case of transport by air without a scheduled stopover in the Republic of Bulgaria. In the case of a scheduled or unscheduled stopover, the issuing State shall provide the information referred to in Paragraph (2) to the Supreme Cassation Prosecution Office.

(5) Where a competent authority referred to in Article 5 (1) herein issues a European Investigative Order for the temporary transfer of a person in custody for the purpose of carrying out an investigative measure and other procedural measures, the said authority shall apply for transit through the territory of another Member State and, to this end, shall provide the documents referred to in Paragraph (2) to that State. In such cases, the authority shall inform the executing State of the authorisation granted for the transit of the person.

**Hearing by Videoconference or Other Audiovisual Transmission**

**Article 28.** (1) A European Investigative Order may be issued for the hearing by videoconference or other audiovisual transmission of a person who is located in the territory of the Republic of Bulgaria and who has to be heard by the issuing State as an accused person, witness or expert witness.

(2) The competent authority referred to in Article 9 (1) herein shall be obliged to inform the accused person about the rights thereof in such a time as to ensure a possibility for the effective exercise of the right of defence.

(3) Execution of a European Investigative Order by videoconference or other audiovisual transmission may be refused where the accused person:

1. does not consent, or
2. the execution of such an investigative measure and other procedural measures in the particular case is contrary to Bulgarian legislation.

(4) Witnesses shall not be obliged to testify in the cases provided for in Bulgarian legislation or in the legislation of the issuing State. In advance of the hearing, witnesses shall be informed of the rights thereof and of the liability they incur for giving false testimony or omitting certain circumstances.

(5) Expert witnesses shall not be obliged to give a conclusion in the cases provided for in Bulgarian legislation or in the legislation of the issuing State. In advance of the hearing, expert witnesses shall be informed of the rights thereof and of the liability they incur for knowingly giving a false oral or written conclusion.

(6) The competent authority referred to in Article 9 (1) herein shall be obliged:

1. to summon the accused person, the witness or the expert witness to appear for the hearing according to the procedure provided for in the Criminal Procedure Code, indicating the time and the venue of the hearing;

2. to ensure the identity of the person to be heard.

(7) Where in circumstances of a particular case the competent authority referred to in Article 9 (1) herein has no access to technical means for a hearing held by videoconference or other audiovisual transmission, such means may be made available to the said authority by the issuing State by mutual agreement.

(8) Where a hearing is held by videoconference or other audiovisual transmission, the following rules shall apply:

1. the competent authority referred to in Article 9 (1) herein shall be present during the hearing, where necessary assisted by an interpreter;

2. the competent authority referred to in Article 9 (1) herein shall be responsible for ensuring the identity of the person to be heard and respect for Bulgarian legislation and, where necessary, shall agree measures for the protection of the person to be heard with the issuing authority;

3. the hearing shall be conducted directly by, or under the direction of, the issuing authority in accordance with the legislation of the issuing State;

4. where necessary, at the request of the issuing State or the person to be heard, the competent authority referred to in Article 9 (1) herein shall ensure interpretation in a language which the person understands.

(9) Where an infringement of Bulgarian legislation is ascertained during the hearing, the competent authority referred to in Article 9 (1) herein shall take the necessary measures to ensure the conduct of the hearing in accordance with the rules established in the said legislation.

(10) After the conclusion of the hearing in compliance with the measures for the protection of the persons as agreed in the European Investigative Order, the competent authority referred to in Article 9 (1) herein shall draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The minutes shall be forwarded to the issuing authority.

(11) The competent authority referred to in Article 9 (1) herein shall take the necessary measures to ensure that, where the accused person, witness or expert witness refuses to give explanations, testimony or conclusions when under an obligation to do so, or any such person gives false explanations, testimony or conclusions, Bulgarian legislation shall apply in the same way as if the hearing took place within the framework of a national proceeding in a similar case.

#### Hearing by Telephone Conference

**Article 29.** (1) Where a person who has to be heard as a witness or expert witness is located in the territory of another Member State and it is not possible for the person to appear in person, after having examined other suitable means, the issuing authority may issue a European Investigative Order for the hearing of the witness or the expert witness by telephone conference.

(2) Article 28 (2), (4) to (6) and (8) to (11) herein shall apply, *mutatis mutandis*, to the hearing of the witness or the expert witness.

#### Information on Bank Accounts and Other Financial Accounts

**Article 30.** (1) A European Investigative Order may be issued in order to determine whether any natural or legal person subject to a criminal proceeding is authorised to dispose of, hold or can dispose of one or more accounts, of whatever nature, in any bank in the territory of the Republic of Bulgaria, and if so, to obtain all the details of the identified accounts.

(2) In the European Investigative Order, the issuing authority shall indicate the reasons why the said authority considers that the requested information is of substantial value for the purpose of the criminal proceeding concerned, the grounds on which the said authority presumes that banks in the Republic of Bulgaria hold such accounts, and which banks may hold the accounts in question. The authority shall also make available any information which may facilitate the execution of the order.

(3) The information referred to in Paragraph (1) shall be accessed according to the procedure established by Article 56a of the Credit Institutions Act.

(4) A European Investigative Order may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds or can dispose of one or more accounts, in any non-bank financial institution located on the territory of the Republic of Bulgaria. In such case, the recognition and execution of the European Investigative Order, in addition to the grounds referred to in Article 16 herein, may also be refused if the execution of such a measure is prohibited by Bulgarian legislation in similar cases.

#### Information on Banking and Other Financial Operations

**Article 31.** (1) A European Investigative Order may be issued in order to obtain information covered by banking secrecy about specified bank accounts and about 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) In the cases referred to in Paragraph (1), the court shall order disclosure of the information according to the procedure established by Chapter Eight of the Credit Institutions Act.

(3) In the European Investigative Order, the issuing authority shall indicate the reasons why the said authority considers the requested information relevant for the purpose of the criminal proceeding.

(4) A European Investigative Order may also be issued with regard to the information provided for in Paragraph (1) about financial operations conducted by non-banking financial institutions. The recognition and execution of a European Investigative Order may be refused, in addition to the grounds referred to in Article 16 herein, also if the execution of an investigative measure and other procedural measures is prohibited by Bulgarian legislation in similar cases.

#### Investigative Measure and Other Procedural Measures Implying Gathering of Evidence in Real Time, Continuously and Over Certain Period of Time

**Article 32.** (1) A European Investigative Order may be issued for the purpose of executing an investigative measure and other procedural measures requiring the gathering of evidence in real time, continuously and over a certain period of time, indicating the reasons why the information requested is considered relevant for the purpose of the criminal proceeding concerned, where involving:

1. the monitoring of banking or other financial operations that are being carried out through one or more specified accounts;
2. controlled deliveries on the territory of the Republic of Bulgaria.

(2) The recognition and execution of a European Investigative Order referred to in Paragraph (1) may be refused, in addition to the grounds referred to in Article 16 herein, also if

the execution of the investigative measure concerned and other procedural measures is not authorised by Bulgarian legislation in similar cases.

(3) In the cases referred to in Paragraph (1), the authority competent to execute the European Investigative Order shall have the right to act, to direct and to control operations related to the execution of the European Investigative Order.

(4) The details related to the execution of a European Investigative Order issued for the implementation of controlled delivery shall be agreed between the issuing State and the Republic of Bulgaria with due regard to the national legislation of the two States.

Investigation by Undercover Officer

**Article 33.** (1) A European Investigative Order may be issued for the purpose of requesting the Republic of Bulgaria to assist the issuing State in the conduct of investigations into crime by officers acting under covert identity.

(2) The issuing authority shall indicate in the European Investigative Order the reasons why the said authority considers that the covert investigation is relevant for the purpose of the criminal proceeding concerned. The decision on the recognition and execution of a European Investigative Order shall be taken in each individual case by the competent authority referred to in Article 9 (1) herein with due regard to Bulgarian legislation.

(3) The recognition and execution of the European Investigative Order may be refused, in addition to the grounds referred to in Article 16 herein, also where:

1. the execution of the covert investigation would not be authorised in a similar domestic case, or

2. it was not possible to reach an agreement on the arrangements for the covert investigations under Paragraph (6).

(4) A covert investigation on the territory of the Republic of Bulgaria shall take place in accordance with the Criminal Procedure Code and the Special Intelligence Means Act.

(5) The right to act, to direct and to control operations related to the covert investigation shall lie solely with the authority competent to execute the European Investigative Order.

(6) The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the issuing State and the Republic of Bulgaria with due regard to the national legislation of the two States.

(7) Where the European Investigative Order is issued by a competent authority referred to in Article 5 (1) herein, the said authority shall indicate in the said order the reasons why the said authority considers that the covert investigation is relevant for the purpose of the criminal proceeding concerned.

## **Chapter Five**

# **INTERCEPTION OF ELECTRONIC COMMUNICATIONS**

Interception of Electronic Communications with Technical Assistance of Another Member State

**Article 34.** (1) A European Investigative Order may be issued for the interception of electronic communications 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 electronic communications, a European Investigative Order shall be sent only to one of the said States, giving priority to the Member



State where the subject of the interception is or will be located.

(3) A European Investigative Order referred to in Paragraph (1) shall also contain:

1. information for the purpose of identifying the subject of the interception;
2. the desired duration of the interception;
3. sufficient technical data, in particular the target identifier, to ensure that the European Investigative Order can be executed.

(4) The issuing authority shall indicate in the European Investigative Order the reasons why the said authority considers that the indicated investigative measure and other procedural measures are relevant for the purpose of the criminal proceeding concerned.

(5) The recognition and execution of a European Investigative Order may be refused, in addition to the grounds referred to in Article 16 herein, also if the execution of the investigative measure concerned and other procedural measures is not authorised by Bulgarian legislation in a similar case. The executing State may make the consent thereof subject to any conditions which are required to be observed by Bulgarian legislation.

(6) The European Investigative Order may be executed by:

1. transmitting electronic communications immediately to the issuing State, or
2. intercepting, recording and subsequently transmitting the outcome of interception of electronic communications to the issuing State.

(7) The issuing authority and the competent authority referred to in Article 9 (1) herein shall consult each other with a view to agreeing on whether the interception is carried out in accordance with Item 1 or 2 of Paragraph (6).

(8) When issuing a European Investigative Order 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 competent authority referred to in Article 9 (1) herein.

(9) Costs resulting from the application of Paragraphs (1) to (8) shall be borne in accordance with Article 25 herein, except for the costs arising from the transcription, decoding and decrypting of the intercepted electronic communications, which shall be borne by the issuing State.

Notification of Member State where Subject of Interception Is Located from which No Technical Assistance Is Needed

**Article 35.** (1) Where, for the purpose of carrying out an investigative measure and other procedural measures, the interception of electronic communications 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:

1. prior to the interception in cases where the competent authority of the intercepting Member State 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;
2. 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 located on the territory of the notified Member State during the interception.

(2) The notification referred to in Paragraph (1) shall be made by using a form according to Annex 3 hereto.

(3) The competent authority of the notified Member States may, in case where the

interception is not authorised in a similar domestic case, notify, without delay and at the latest within 96 hours after the receipt of the notification referred to in Paragraph (1), [the competent authority of the intercepting Member State]:

1. that the interception may not be carried out or shall be terminated;
2. 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 specified by the said authority, informing the competent authority of the intercepting Member State of reasons justifying those conditions.

## **Chapter Six**

### **PROVISIONAL MEASURES**

#### **Provisional Measures**

**Article 36.** (1) A European Investigative Order may also be issued in order to take an investigative measure and other procedural measures with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence.

(2) The competent authority referred to in Article 9 (1) herein shall decide and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the European Investigative Order.

(3) Where a provisional measure is requested, the issuing authority shall indicate in the European Investigative Order whether the evidence is to be transferred to the issuing State or is to remain in the Republic of Bulgaria. The competent authority referred to in Article 9 (1) herein shall recognise and execute the European Investigative Order and shall transfer the evidence in accordance with this Act.

(4) Where a European Investigative Order is accompanied by an instruction that the evidence shall remain in the Republic of Bulgaria, the issuing authority shall indicate the date of lifting the provisional measure or the estimated date for the submission of the request for the evidence to be transferred to the issuing State.

(5) After consulting the issuing authority, the competent authority referred to in Article 9 (1) herein may, in accordance with Bulgarian legislation, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure is to be maintained.

(6) Where, in accordance with Paragraph (5), the competent authority referred to in Article 9 (1) herein envisages lifting the provisional measure, the said authority shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the competent authority referred to in Article 9 (1) herein that the provisional measure has been lifted.

### **SUPPLEMENTARY PROVISIONS**

**§ 1.** Within the meaning given by this Act:

1. "Member State" shall be a Member State of the European Union, with the exception of Ireland and Denmark.
2. "Issuing State" shall be a Member State in which a European Investigative Order is issued;
3. "Executing State" shall be a Member State executing a European Investigative Order, in

which an investigative measure and other procedural measures are to be carried out.

4. "Issuing authority" shall be:

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

(b) the 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 competence to order the gathering of evidence in accordance with the national legislation of that State and whose instrument is validated before it is transmitted for execution by a judge, court, investigating judge or a public prosecutor in the issuing State.

5. "Executing authority" shall be an authority having competence to recognise and ensure the execution of a European Investigative Order.

§ 2. This Act transposes the requirements of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130/1 of 1 May 2014).

§ 3. Except where this Act contains specific rules, the provisions of the Criminal Procedure Code shall apply.

## **TRANSITIONAL AND FINAL PROVISIONS**

§ 4. The Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence Act (State Gazette No. 59 of 2006) shall be amended as follows:

1. In the title of the Act, the words "or Evidence" shall be deleted.

2. In Article 2, in the heading and in the text, the words "or evidence" and "or to ensure the provision of evidence" shall be deleted.

3. In Article 4:

(a) in the heading, the words "or submission of evidence" shall be deleted;

(b) in Paragraph (1), Item 2 shall be repealed.

4. Article 12 shall be repealed.

5. In Article 16:

(a) in the heading, the words "or submission of evidence" shall be deleted;

(b) Paragraphs (3) and (4) shall be repealed.

6. In Article 19:

(a) in Paragraph (1):

(aa) in the text before Item 1, the words "or evidence" shall be deleted;

(bb) Item 2 shall be repealed;

(b) Paragraph (2) shall be repealed.

7. In Article 23:

(a) in Paragraph (1), the words "or evidence" shall be deleted;

(b) Paragraph (2) shall be repealed.

8. In § 1 of the Additional Provision, Item 4 shall be repealed.

9. In the rest of the texts of the Act, the words "or evidence", "or the evidence" and "or handover of evidence" shall be deleted.

10. In the Appendix to Article 3:

(a) in Litterae (a) and (b), the words "or if any additional arrangements are needed for the handover of evidence" shall be deleted;

(b) in Litterae (e), Item 2.2 and Item 3 shall be repealed;

(c) in Litterae (f):

(aa) the words "description of the assets or evidence and their location" shall be replaced by "description of the assets and their location";

(bb) Item 1 (b) shall be repealed;

(cc) the words "or evidence" shall be deleted passim.

§ 5. In the Credit Institutions Act (promulgated in the State Gazette No. 59 of 2006; amended in No. 105 of 2006, Nos. 52, 59 and 109 of 2007, No. 69 of 2008, Nos. 23, 24, 44, 93 and 95 of 2009, Nos. 94 and 101 of 2010, Nos. 77 and 105 of 2011, Nos. 38 and 44 of 2012, Nos. 52, 70 and 109 of 2013, Nos. 22, 27, 35 and 53 of 2014, Nos. 14, 22, 50, 62 and 94 of 2015, Nos. 33, 59, 62, 81, 95 and 98 of 2016, Nos. 63, 97 and 103 of 2017 and No. 7 of 2018), in Item 1 of Article 62 (6) at the end, there shall be ended "or in the cases referred to in Article 31 of the European Investigative Order Act".

§ 6. Any proceedings instituted prior to the entry into force of this Act for the purpose of securing evidence according to the procedure established by the Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence Act shall be examined and completed according to the hitherto effective procedure.

This Act was passed by the 44th National Assembly on the 7th day of February 2018, and the Official Seal of the National Assembly has been affixed thereto.

**Annex 1**

to Article 3

**EUROPEAN INVESTIGATIVE 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 and other procedural measures

requested could have been ordered under the same conditions in a similar domestic case. I request that the

investigative measure or measures and other procedural 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

? Immediate trial date

? Any other reason

Please specify below:

Time limits for execution of the EIO are laid down in Directive .../...EU. However, if a s

necessary, please provide the date and explain the reason for this:

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

**SECTION C: Investigative measure(s) and other procedural measures to be carried out:**

Describe the assistance/investigative measure(s) and other procedural measures required and indicate, if a  
of the following investigative measures and other procedural 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 witness

? 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 witness

? Suspected or accused person

? Hearing by telephone conference

? witness

? expert witness

? Information on bank and other financial accounts

? Information on banking and other financial operations

? Investigative measure and other procedural measures implying the gathering of evidence in real time, c  
a certain period of time

? Monitoring of banking or other financial operations

? Controlled deliveries

? Other

? Covert investigation

? Interception of electronic communications

? Provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an it  
as evidence.

**SECTION D: Relation to an earlier EIO**

Indicate whether this EIO supplements an earlier EIO. If applicable, provide information relevant to ident  
(the date of issue of the EIO, the authority to which it was transmitted and, if available, the date of transmis  
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 natural or legal person(s) concerned  
measure and other procedural measures (if more than one person is concerned, please provide the information for

(a) In the case of natural person(s):

Name: .....

First name(s): .....

Other relevant name(s), if applicable: .....

Aliases, if applicable: .....

Sex: .....

Nationality: .....

Identity number of social security number: .....

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

.....  
Date of birth: .....

Place of birth: .....

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

.....  
Language(s) which the person understands: .....

(b) In the case of legal person(s):

Name: .....

Form of legal person: .....

Shortened name, commonly used name or trading name,

.....  
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 witness

? third party

? other (please specify): .....

2. If different from the address above, please give the location where investigative measure and other pro  
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 judicial authority 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 judicial authority in particular in criminal matters
- ? (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements of the law of the issuing State in 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 the offence(s) 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 provisions

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or a fine 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 in Annex 1 (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 17 July 1995 on the protection of the European Communities' financial interests
- ? laundering of the proceeds of crime
- ? counterfeiting currency, including of the euro
- ? computer 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) and other procedural measures requested:

##### 1. Transfer of a person held in custody:

(a) If a temporary transfer to the issuing State of a person held in custody for the purpose of carrying out an investigative measure and other procedural measures is requested, please indicate whether the person consented to this measure:

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

(b) If a temporary transfer to the executing State of a person held in custody for the purpose of carrying out an investigative measure and other procedural measures is requested, please indicate whether the person consented to this measure:

? Yes ? No

##### 2. 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 an investigative measure and other procedural measures:

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

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

? (b) hearing by telephone conference

Indicate whether

? Yes ..... ? No

##### 3. Provisional measures:

If a provisional measure to prevent the destruction, transformation, moving, transfer or disposal of an item or 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

.....

##### 4. Information on bank and other financial accounts

(a) If information on bank accounts or other financial accounts that the person holds or controls is requested, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings 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



.....  
.....  
.....  
(b) If information on banking operations or other financial operations is requested, please indicate, for 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:

.....  
.....  
.....  
5. Investigative measure and other procedural measures implying the gathering of evidence in real time, or a certain period of time.

If such investigative measure and other procedural measures are requested, please indicate the reasons why requested information relevant for the purpose of the criminal proceedings:

.....  
.....  
6. Covert investigation:

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

.....  
.....  
7. Interception of electronic communications

(a) If interception of electronic communications is requested, please indicate the reasons why you consider the measure and other procedural measures relevant for the purpose of the criminal proceedings:

.....  
.....  
(b) Please provide following information:

(aa) information for the purpose of identifying the subject of the interception;

.....  
(bb) the desired duration of the interception:

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

.....  
(c) 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 authority.

## 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 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 provide 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 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 concerning 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 2**

to Article 20 (1)

**CONFIRMATION OF THE RECEIPT OF A EUROPEAN INVESTIGATIVE ORDER**

This form has to be completed by the authority of the executing State which received the EIO referred to below.

**1. THE EUROPEAN INVESTIGATIVE ORDER CONCERNED**

Authority which issued the EIO: .....

File reference: .....

Date of issuing: .....

Date of receipt: .....

**2. THE AUTHORITY WHICH RECEIVED THE EIO1**

Official name of the competent authority:
.....
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: .....
Languages in which it is possible to communicate with the authority:
.....
3. (WHERE APPLICABLE) THE COMPETENT AUTHORITY TO WHOM THE EIO IS TRANSFERRED AUTHORITY UNDER POINT 2
Official name of the authority:
.....
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: .....
Date of transmission: .....
File reference: .....
Languages that may be used for communication: .....
4. ANY OTHER INFORMATION WHICH MAY BE RELEVANT FOR THE ISSUING AUTHORITY: ..... .....
5. SIGNATURE AND DATE
Signature:
Date:
Official stamp (if available):

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.

**Annex 3**  
to Article 35 (2)

## NOTIFICATION

This form is used in order to notify a Member State about the interception of electronic communications/telecommunications 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.

1.2 THE COMPETENT AUTHORITY
Official name of the competent authority of the 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>2. INFORMATION CONCERNING THE INTERCEPTION</b>
(a) Information about state of play. This notification takes place (please tick):
? prior to the interception
? during the interception
? after the interception
(b) The (anticipated) duration of the interception (as known to the issuing authority):
....., starting from .....
(c) Target of the interception: (telephone number, IP number or e-mail)
.....
(d) Identity of the persons concerned:
State all information, as far as they are known, regarding the identity of the natural or legal person(s)

proceedings are/maybe/is taking place:
(aa) In the case of natural person(s):
Name: .....
First name(s): .....
Other relevant name(s), if applicable: .....
Aliases, if applicable: .....
Sex: .....
Nationality: .....
Identity number of social security number: .....
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:
.....
(bb) In the case of legal person(s):
Name: .....
Form of legal person: .....
Shortened name, commonly used name or trading name, .....
Registered seat: .....
Registration number: .....
Address of the legal person: .....

Name and contact details of the representative of the legal person:
.....
(e) 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 relevant statutory provisions/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 of the use of already intercepted material must be made within 48 hours after the reception of this notification.
3. SIGNATURE AND DATE
Signature:
Date: .....
Official stamp (if available):
.....
.....
2 The authority which is referred to here is the one which should be contacted in further correspondence.