

Date: 14 March 2017

From: Dr Ivo Thiemrodt, Permanent Representation of the Federal Republic of Germany to the European Union

To: Directorate-General for Justice and Consumers, European Commission

Subject: **Implementation 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**

Ref.: **Pol 350.82/2** (please quote in all correspondence)

Encl.: Federal Law Gazette (BGBl.) I, pp. 31 et seq. (Annex 1),
Implementation report (Annex 2)

In accordance with Article 36(3) 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 ('the EIO Directive'), please find enclosed, as Annex 1 to this letter, the provisions transposing into national law Germany's obligations resulting from the EIO Directive. The Directive was implemented by supplementing and amending the Act on International Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen* — IRG), see excerpt from the Federal Law Gazette (BGBl. I 2017, pp. 31 et seq.) The amendments to the IRG enter into force on 22 May 2017. A supplemental implementation report is attached as Annex 2.

In addition, I would like to notify the following in accordance with Articles 33(1), 33(2) and 34(4) of the EIO Directive:

Article 33(1)(a) and (b) of the EIO Directive:

1. In Germany, the issuing or executing authority may be **any judicial authority** (in particular: the Federal Prosecutor General at the Federal Court of Justice, the local public prosecution offices, the prosecutors general of the Länder and the Central Office of the Land Justice Administrations for the Investigation of National Socialist Crimes in Ludwigsburg, or any court having jurisdiction in criminal matters), depending on the allocation of responsibilities in the relevant Land.

Administrative authorities responsible for prosecuting and punishing administrative offences under German law can also be issuing and executing authorities.

In compliance with Article 2(c) of the EIO Directive, requests from German administrative authorities to other EU Member States must usually be validated by the public prosecutor's office at the Regional Court (Landgericht) in whose district the administrative authority is based. By way of derogation, the Länder are free to assign jurisdiction for such validation to a court, or to regulate the local jurisdiction of the validating public prosecutor's office in other ways (Section 91j(2) of the IRG).

Requests from German revenue authorities which are independently conducting a criminal investigation pursuant to Section 386(2) of the Tax Code (*Abgabenordnung* — AO) do not require validation by a judicial authority or a court. In this case, the revenue authorities exercise the rights and responsibilities of a public prosecutor's office in accordance with Section 399(1) of the Tax Code in conjunction with Section 77(1) of the IRG and themselves act as a judicial authority within the meaning of Article 2(c) of the EIO Directive.

2. With reference to Article 5(2) of the EIO Directive, incoming requests to authorities in Germany on the basis of the EIO Directive must be in German.

Article 33(2) of the EIO Directive:

Based on the provisions of national law, Germany generally requires the following documents to be provided alongside requests for the transit of a person in custody:

- the document which forms the basis for detention in the executing state, as this is the basis for the German arrest warrant,
- a document stating that the temporary transfer will be recognised and enforced by the executing state, as Germany will act as a transit state only provided there is such recognition,
- a document expressing the consent of the person in custody, this consent being necessary in order to justify the transit and the related detention in Germany, and
- a document calculating the period of detention, since if the detention period is exceeded the person in custody may have to be released.

Article 34(4) of the EIO Directive:

Germany assumes that bi- and multilateral agreements concerning police cooperation and cooperation between customs authorities remain unaffected by the EIO Directive, since the scope of the EIO Directive is limited to judicial cooperation in criminal matters. Germany also assumes that agreements with Schengen-associated states likewise remain unaffected, as the EIO Directive does not create any Schengen *acquis*.

In this context, Germany hereby intends, as a general rule and subject to the necessary bilateral arrangements with its respective treaty partners, to continue to apply the following agreements on judicial cooperation in criminal matters relating to cross-border acquisition of evidence:

- Treaty of 24 October 1974 between the Federal Republic of Germany and the Republic of France concerning the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959
- Treaty of 24 October 1979 between the Federal Republic of Germany and the Republic of Italy supplementing and facilitating the implementation of the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959
- Treaty of 30 August 1979 between the Federal Republic of Germany and the Kingdom of the Netherlands supplementing and facilitating the implementation of the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959
- Treaty of 2 March 2005 between the Federal Republic of Germany and the Kingdom of the Netherlands on cross-border police cooperation and cooperation in criminal matters
- Treaty of 31 January 1972 between the Federal Republic of Germany and the Republic of Austria supplementing and facilitating the implementation of the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959
- Treaty of 10 November and 19 December 2003 between the Federal Republic of Germany and the Republic of Austria on cross-border cooperation in the area of risk prevention by the police and in criminal matters
- Treaty of 31 May 1988 between the Federal Republic of Germany and the Republic of Austria on administrative and legal cooperation in administrative matters
- Treaty of 17 July 2003 between the Federal Republic of Germany and the Republic of Poland supplementing and facilitating the implementation of the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959

- Treaty of 2 February 2000 between the Federal Republic of Germany and the Czech Republic supplementing and facilitating the implementation of the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959

The implementing act has already been electronically notified via the MNE database (No (2017)50405).