

EN

EN

EN

AREA OF FREEDOM, SECURITY AND JUSTICE

INITIATIVE TAKEN BY THE KINGDOM OF BELGIUM, THE REPUBLIC OF BULGARIA, THE REPUBLIC OF ESTONIA, THE KINGDOM OF SPAIN, THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF SLOVENIA AND THE KINGDOM OF SWEDEN

UNDER TITLE V OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

JUST/B/1/AA-et D(2010) 6815

<b>INITIATIVE TAKEN BY THE KINGDOM OF BELGIUM, THE REPUBLIC OF BULGARIA, THE REPUBLIC OF ESTONIA, THE KINGDOM OF SPAIN, THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF SLOVENIA AND THE KINGDOM OF SWEDEN WITH A VIEW TO ADOPTING A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL REGARDING THE EUROPEAN INVESTIGATION ORDER IN CRIMINAL MATTERS</b>	
<b>STATUS OF PROCEDURE</b>	
The initiative was formally introduced on 29 April 2010.	
<b>DESCRIPTION OF INITIATIVE</b>	<b>COMMENTS</b>
<b>Objective</b>	
<p>The initiative aims to replace the existing legal regime on obtaining evidence in criminal matters with a single instrument based on the principle of mutual recognition and covering most types of investigative measures.</p> <p>The objective of the initiative is in line with the Stockholm Programme which states that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued.</p> <p>The initiative consists of general provisions applying to all types of investigative measures (Chapter 1-3 and 5) and specific provisions applying to certain types of investigative measures, such as the temporary transfer of persons held in custody for the purpose of investigation, the use of videoconferencing and</p>	<p>This initiative represents added value compared to the existing legal regime on obtaining evidence from another Member State, notably because:</p> <ul style="list-style-type: none"><li>• It replaces this fragmented regime with a single instrument covering almost all types of investigative measures.</li><li>• It introduces standard forms for issuing the EIO and fixed deadlines for its execution.</li><li>• It abolishes verification of dual criminality and limits the grounds for refusal.</li></ul> <p>Regarding the admissibility of evidence obtained from another Member State, the initiative does not go further than the existing legal regime.</p>

<p>gathering of evidence in real time (Chapter 4).</p> <p>The general provisions apply the typical characteristics of mutual recognition instruments, such as the use of an order (the EIO) instead of a request for assistance, direct contact between the judicial authorities, standard forms for issuing the EIO, fixed deadlines for its execution, abolition of dual criminality and a limited number of grounds for refusal. Many of the general provisions are similar to the corresponding provisions in the Framework Decision on the European Evidence Warrant.</p> <p>The specific provisions contain more detailed rules on the procedure for conducting the investigative measures concerned. They also introduce additional grounds for refusal allowing the executing State to deny execution if for example the person concerned does not consent (temporary transfer of persons held in custody), it would be contrary to fundamental principles of law (videoconferencing) or the investigative measure would not be authorised in a similar national case (gathering evidence in real time). Many of the specific provisions are similar to the corresponding provisions in the existing mutual assistance instruments (the 1959 Convention on Mutual Assistance in Criminal Matters, the 2000 Convention on Mutual Assistance in Criminal Matters and their protocols).</p>	<p>As the initiative does provide some added value and as the planned Commission proposals will not be ready for introduction before the beginning of 2011, the Commission should cooperate with the Member States behind it and follow the negotiations in Council. At the same time, the Commission should continue the preparatory work for its own proposals concerning issues going beyond the initiative in line with the Action Plan implementing the Stockholm Programme.</p>
<p><b>Title</b></p>	
<p>Initiative for a Directive of the European Parliament and of the Council on the European Investigation Order in criminal matters</p>	<p>The title corresponds to the content of the proposal.</p>
<p><b>Legal basis</b></p>	
<p>TFEU Article 82(1)(a)</p>	<p>The legal basis indicated is correct. However, it should be clarified that the proposal does not cover measures which could be characterised as police cooperation and would therefore require a different legal basis.</p>
<p><b>Legal form</b></p>	

Directive	In order to achieve the objectives of the proposal, a Regulation seems to be a more appropriate legal instrument than a Directive, which is not directly applicable and needs to be transposed into national law.
<b>Recitals</b>	
(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.	This is acceptable.
(2) According to article 82(1) of the Treaty on the Functioning of the European Union, the judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union.	This is acceptable.
(3) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property and evidence addressed the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence. However, due to the fact that the instrument is restricted to the freezing phase, the freezing order needs to be accompanied by a separate request for the transfer of the evidence to the issuing state in accordance with the rules applicable to mutual assistance in criminal matters. This results in a two-step procedure detrimental for its efficiency. Moreover this regime coexists with the traditional instruments of co-operation and is therefore seldom used in practice by the competent authorities.	It is premature to judge the practical application of this instrument as several Member States have only recently implemented it.

<p>(4) Council Framework Decision 2008/978/JHA of 18 December 2009 on the European evidence warrant was adopted to apply the principle of mutual recognition to the obtaining of objects, documents and data for use in proceedings in criminal matters. However, the European Evidence Warrant is only applicable to evidence which already exists and covers therefore a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Because of its limited scope, competent authorities are free to use the new regime or to use mutual legal assistance procedures which remain in any case applicable to evidence falling outside of the scope of the European Evidence Warrant.</p>	<p>The recital seems to imply that the use of the Framework Decision on the European Evidence Warrant is optional. However, the option to use alternative instruments only applies on certain conditions.</p>
<p>(5) Since the adoption of Framework Decisions 2003/577/JHA and 2008/978/JHA, it has become clear that the existing framework for the gathering of evidence is too fragmented and too complicated. A new approach is therefore necessary.</p>	<p>The Commission agrees that the existing legal framework is fragmented and that a new approach is necessary.</p>
<p>(6) In the Stockholm programme, which was adopted on 11 December 2009, the European Council decided that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The European Council indicated that the existing instruments in this area constitute a fragmentary regime and that a new approach is needed, based on the principle of mutual recognition but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including the Framework Decision on the European Evidence Warrant,</p>	<p>The recital fails to mention that the Stockholm Programme specifically invites the Commission to propose this comprehensive system on the basis of an impact assessment.</p>

	covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal.	
(7)	This new approach is based on a single instrument called the European Investigation Order (EIO). An EIO is to be issued for the purpose of having one or several specific investigative measure(s) carried out in the executing State with a view to gathering evidence. This includes the obtaining of evidence that is already in the possession of the executing authority.	See comments on Article 1.
(8)	The EIO has a horizontal scope and therefore applies to almost all investigative measures. However, some measures require specific rules which are better dealt with separately, such as the setting up of a Joint Investigation Team and the gathering of evidence within a Joint Investigation Team as well as some specific forms of interception of telecommunications (interception with immediate transmission and interception of satellite telecommunications). Existing instruments should continue to apply to these types of measures.	See comments on Article 3.
(9)	This Directive does not apply to crossborder observations as referred to in Article 40 of the Convention implementing the Schengen Agreements of 19 June 1990.	Instead of stating this in a recital, the measure should be mentioned in the list in Article 3(2) of measures not covered by the EIO.
(10)	The EIO should focus on the investigative measure which has to be carried out. The issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which measure is to be used. However, the executing authority should have the possibility to use another type of measure either because the requested measure does not exist or is not	See comments on Articles 8-9.

<p>available under its national law or because the other type of measure will achieve the same result as the measure provided for in the EIO by less coercive means.</p>	
<p>(11) The execution of an EIO should, to the widest extent possible, and without prejudice to fundamental principles of law of the executing State, be carried out in accordance with the formalities and procedures expressly indicated by the issuing State. The issuing authority may request that one or several authorities of the issuing State assist in the execution of the EIO in support of the competent authorities of the executing State. This possibility does not imply any law enforcement powers for the authorities of the issuing State in the territory of the executing State.</p>	<p>See comments on Article 8.</p>
<p>(12) To ensure the effectiveness of judicial cooperation in criminal matters, the possibility of refusing to recognise or execute the EIO, as well as the grounds for postponing its execution, should be limited.</p>	<p>See comments on Article 10.</p>
<p>(13) Time restrictions are necessary to ensure quick, effective and consistent cooperation between the Member States in criminal matters. The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the same celerity and priority as for a similar national case. Deadlines should be provided to ensure a decision or execution within reasonable time or to meet procedural constraints in the issuing State.</p>	<p>See comments on Article 11.</p>
<p>(14) The EIO provides a single regime for obtaining evidence. Additional rules are however necessary for some types of investigative measures which should be included in the EIO, such as temporary transfer of persons held in</p>	<p>See comments on Articles 19-27.</p>

<p>custody, hearing by video or telephone conference, obtaining of information related to bank accounts or banking transactions or controlled deliveries. Investigative measures implying gathering of evidence in real time, continuously and over a certain period of time are covered by the EIO, but flexibility should be given to the executing authority for these measures given the differences existing in the national laws of the Member States.</p>	
<p>(15) This Directive replaces Framework Decisions 2003/577/JHA and 2008/978/JHA as well as the various instruments on mutual legal assistance in criminal matters in so far as they are dealing with the obtaining of evidence for the use of proceedings in criminal matters.</p>	<p>See comments on Article 29.</p>
<p>(16) Since the objectives of the action to be taken, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at the level the Union, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.</p>	<p>This is acceptable.</p>
<p>(17) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, notably Title VI thereof. Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has</p>	<p>1. There is neither a proper impact assessment nor an explanatory memorandum that provides enough material to state that the draft Directive respects the Charter and the ECHR. On this requirement see COM 2009, 205, Section 3.2 on the methodology for the monitoring of the compliance with the Charter of legislative proposals. Member States</p>

been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.

endorsed this approach in the Stockholm Programme also for their initiatives.

The "Detailed Statement" provided on 23 June 2010 (Council doc. 9288/10 ADD 2) is not sufficient. As far as the impacts on fundamental rights are concerned, it only mentions the "Right to liberty and security" and the "Right to good administration". In doing so, it misunderstands the provisions of the Charter. In addition, it fails to identify and assess the more important fundamental rights potentially affected by this proposal (see below the list).

Therefore, the proclaimed statement of compliance with the Charter is not acceptable.

2. Once the group of Member States has established the necessary background work to justify this recital, it must be brought in line with legislative standards. This includes that the drafters of the proposal must a) identify the fundamental rights particularly affected (or promoted) by their proposal and b) add that the Directive has to be implemented accordingly.

An appropriate recital on the Charter could read, for instance:

"(17) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably [... *add here the fundamental rights of the Charter identified in the background work...*] and has to be implemented accordingly.

Based on the wording of the proposal, the following fundamental rights of the Charter could be relevant in this context (and should have been subject to analysis in an impact assessment): right to liberty and security, prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, protection of personal data, protection in the event of removal, expulsion or extradition, freedom of

	expression and information, the presumption of innocence and the right of defence, the right not to be tried or punished twice in criminal proceedings for the same criminal offence, the right to an effective remedy and to a fair trial.
(18) [In accordance with Article 3 of Protocol N° 21 on the Position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption of this Directive.]	This is acceptable.
(19) In accordance with Articles 1 and 2 of Protocol N° 22 on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by the Agreement or subject to its application.	This is acceptable.
	The Commission suggests introducing an additional recital to prevent forum shopping:  "An EIO should not be issued simply to avoid complying with the legal obligations that apply in one jurisdiction but not in another".
	The Commission suggests introducing an additional recital making reference to the data protection principles of the Council of Europe Convention 108/1981 and its additional protocol and the Framework Decision 2008/977:  "The personal data processed in the context of the implementation of this Directive will be protected in accordance with the principles set out in the relevant instruments, including the Council of Europe Convention 108 of 28 January 1981

	for the protection of individuals with regard to the automatic processing of personal data, the Additional Protocol to that Convention of 8 November 2001 and Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, as well as by the additional protection afforded by this Directive in line with Article 23 of the Convention on mutual assistance in criminal matters between the Member States of the European Union."
<b>Articles</b>	
<b>Chapter I: The European Investigation order (EIO)</b>	
<b>Article 1: Definition of the European Investigation Order and obligation to execute it</b>	
1. The European Investigation Order (EIO) shall be a judicial decision issued by a competent authority of a Member State (the issuing State) in order to have one or several specific investigative measure(s) carried out in another Member State (the executing State) with a view to gathering evidence within the framework of the proceedings referred to in Article 4.	The definition of an EIO is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant. However, whilst a European Evidence Warrant leaves it to the executing authority to choose the measures to obtain the evidence, an EIO shall explicitly indicate these measures.
2. Member States shall execute any EIO on the basis of the principle of mutual recognition and in accordance with the provisions of this Directive.	The Commission agrees that the initiative should be based on the principle of mutual recognition. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
3. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, and any obligations incumbent on judicial authorities in this respect shall remain unaffected. This Directive shall likewise not have the effect of requiring	The Commission agrees that it is important to ensure that fundamental rights are respected. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.  However, the reference to national

<p>Member States to take any measures in contradiction of its constitutional rules relating to freedom of association, freedom of the press and freedom of expression in other media.</p>	<p>constitutional rules in the last sentence is inappropriate and should therefore be deleted.</p>
<p><b>Article 2: Definitions</b></p>	
<p>For the purposes of this Directive:</p> <p>a) “issuing authority” shall mean:</p> <p style="padding-left: 40px;">i) a judge, a court, an investigating magistrate or a public prosecutor competent in the case concerned; or</p> <p style="padding-left: 40px;">ii) any other judicial authority as defined by the issuing State and, in the specific case, acting in its capacity as an investigating authority in criminal proceedings with competence in the case concerned to order the gathering of evidence in accordance with national law;</p> <p>b) “executing authority” shall mean an authority having competence to recognise or execute an EIO in accordance with this Directive. The executing authority shall be an authority competent to undertake the investigative measure mentioned in the EIO in a similar national case.</p>	<p>The Commission agrees that only judicial authorities should be allowed to act as an issuing authority while the definition of an executing authority should also cover non-judicial authorities. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.</p> <p>In light of the possible impacts on individuals, the Commission considers it necessary to add a definition of the term "investigative measure" that complies with the requirements of legal certainty and legal clarity.</p>
<p><b>Article 3: Scope of the EIO</b></p>	
<p>1. The EIO shall cover any investigative measure with the exception of the measures mentioned in Paragraph 2.</p>	<p>The Commission agrees that, in order to avoid fragmentation, the scope of the initiative should be as broad as possible. However, a definition on the term "investigative measure" should be added in Article 2</p>
<p>2. The following measures are not covered by the EIO :</p> <p>a) The setting up of a Joint Investigation Team and the gathering of evidence within a Joint Investigation Team as provided in Article 13 of the Convention of 29 May 2000 and in Framework</p>	<p>Measures should only be excluded from the scope of the initiative if strictly necessary. The exclusion of any measure from the scope of this legislation entails the risk of reproducing fragmentation, which the initiative seeks to end.</p>

<p>Decision 2002/465/JHA;</p> <p>b) Interception and immediate transmission of telecommunications referred to in Articles 18(1)(a) of the Convention of 29 May 2000;</p> <p>and</p> <p>c) Interception of telecommunications referred to in Article 18(1)(b) of the Convention of 29 May 2000 insofar as they relate to situations referred to in Article 18(2)(a) and (c) and Article 20 of the same convention.</p>	
<p><b>Article 4: Types of procedure for which the EIO can be issued</b></p>	
<p>The EIO may be issued:</p> <p>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;</p> <p>b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rule of law and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;</p> <p>c) in proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; and</p> <p>d) in connection with proceedings referred to in points (a),(b), and (c) which relate to offences or infringements for which a legal person may be held liable or</p>	<p>The Commission agrees with the broad range of procedures for which an EIO can be issued. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.</p>

punished in the issuing state.	
<b>Article 5: Content and form of the EIO</b>	
1. The EIO set out in the form provided for in Annex A shall be completed, signed, and its content certified as accurate by the issuing authority.	The introduction of a standard form will make it easier to obtain evidence from another Member State. However, this standard form must be drafted flexibly in order to ensure that it is applicable to all types of investigative measures. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used in writing in or translating the EIO when the State in question is the executing State.	The Member States should be encouraged to accept languages other than their official languages. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
<b>Chapter II: Procedures and safeguards for the issuing State</b>	
<b>Article 6: Transmission of the EIO</b>	
1. The EIO shall be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity. All further official communication shall be made directly between the issuing authority and the executing authority.	The Commission agrees that the EIO should be transmitted directly between the authorities involved.
2. Without prejudice to Article 2(b), each Member State may designate a central authority or, when its legal system so provides, more than one central authority, to assist the judicial competent authorities. A Member State may, if necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception	This is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.

of the EIO, as well as for other official correspondence relating thereto.	
3. If the issuing authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.	This is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
4. If the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the European Judicial Network contact points, in order to obtain the information from the executing State.	This is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
5. When the authority in the executing State which receives the EIO has no jurisdiction to recognise it and to take the necessary measures for its execution, it shall, <i>ex officio</i> , transmit the EIO to the executing authority and so inform the issuing authority.	This is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
6. All difficulties concerning the transmission or authenticity of any document needed for the execution of the EIO shall be dealt with by direct contacts between the issuing and executing authorities involved or, where appropriate, with the involvement of the central authorities of the Member States.	This is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
<b>Article 7: EIO related to an earlier EIO</b>	
1. Where the issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO in accordance with the form provided for in Annex A.	This is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
2. Where, in accordance with Article 8(3), the issuing authority assists in the execution of the EIO in the executing State, it may without prejudice to notifications made under Article 28(1)(c) address an EIO which supplements the earlier EIO directly to the executing authority, while present in that State.	This is acceptable. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.

<b>Chapter III: Procedures and safeguards for the executing State</b>	
<b>Article 8: Recognition and execution</b>	
1. The executing authority shall recognise an EIO, transmitted in accordance with Article 6, without any further formality being required, and shall forthwith take the necessary measures for its execution in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 10 or one of the grounds for postponement provided for in Article 14.	The Commission agrees with the general obligation to treat an EIO as a national order. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.	The Commission agrees with the general obligation to comply with formalities indicated by the issuing authority as this will contribute to ensuring the admissibility of the evidence obtained. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.
3. The issuing authority may request that one or several authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State. The executing authority shall comply with this request provided that such participation is not contrary to the fundamental principles of law of the executing State.	This is acceptable.
4. The issuing and executing authorities may consult each other, by any appropriate means, with a view to facilitating the efficient application of this article.	This provision seems superfluous as it does not create any rights or obligations for the authorities involved. The text should say: "shall, where necessary, consult each other".
<b>Article 9: Recourse to a different type of investigative measure</b>	
1. The executing authority may decide to have recourse to an investigative measure other than that provided for in the EIO	

<p>when:</p> <p>a) the investigative measure indicated in the EIO does not exist under the law of the executing State;</p> <p>b) the investigative measure indicated in the EIO exists in the law of the executing State but its use is restricted to a list or category of offences which does not include the offence covered by the EIO;</p> <p>or</p> <p>c) the investigative measure selected by the executing authority will have the same result as the measure provided for in the EIO by less coercive means.</p>	<p>This is acceptable.</p>
<p>2. When the executing authority decides to avail itself of the possibility mentioned in the first paragraph, it shall first inform the issuing authority, which may decide to withdraw the EIO.</p>	<p>This is acceptable.</p>
<p><b>Article 10: Grounds for non-recognition or non-execution</b></p>	
<p>1. Recognition or execution of the EIO may be refused in the executing State:</p> <p>a) if there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO;</p> <p>b) if, in a specific case, its execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;</p> <p>c) if, in the cases mentioned in Article 9 (1)(a) and (b), there is no other investigative measure available which will make it possible to achieve a similar result; or</p>	<p>Grounds for refusal should only be included if strictly necessary. It needs to be examined further whether this is the case for the grounds for refusal mentioned in this provision.</p> <p>However, it is necessary to include an additional ground for refusal:</p> <ul style="list-style-type: none"> <li>• if its execution would infringe the <i>ne bis in idem</i> principle.</li> </ul>

<p>d) if the EIO has been issued in proceedings referred to in Article 4 (b) and (c) and the measure would not be authorised in a similar national case.</p>	
<p>2. In the cases referred to in paragraph 1(b) and (c), before deciding not to recognise or not to execute an EIO, either totally or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.</p>	<p>The Commission agrees that the authorities involved should consult each other in order to avoid using a ground for refusal.</p>
<p><b>Article 11: Deadlines for recognition or execution</b></p>	
<p>1. The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar national case and, in any case, within the deadlines provided in this Article.</p>	<p>The Commission agrees with this principle of equivalence.</p>
<p>2. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has stated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.</p>	<p>The Commission agrees that in certain cases it may be necessary that an EIO is executed on a specific date or within a shorter deadline than the fixed deadline in Article 11(3).</p>
<p>3. The decision on the recognition or execution shall be taken as soon as possible and, without prejudice to paragraph 5, no later than 30 days after the receipt of the EIO by the competent executing authority.</p>	<p>The Commission supports the introduction of fixed deadlines for recognising and executing an EIO. However, given the different nature of the investigative measures covered by the initiative, it needs to be examined further whether the concrete deadlines suggested are appropriate.</p>
<p>4. Unless either grounds for postponement under Article 14 exist or evidence</p>	<p>See comments above.</p>

<p>mentioned in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure without delay and without prejudice to paragraph 5, no later than 90 days after the decision referred to in paragraph 3.</p>	
<p>5. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 3, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the decision to be taken. In this case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.</p>	<p>See comments above.</p>
<p>6. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 4, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the executing authority on the appropriate timing to carry out the measure.</p>	<p>The Commission agrees with the suggested consultation procedure.</p>
<p><b>Article 12: Transfer of evidence</b></p>	
<p>1. The executing authority shall without undue delay transfer the evidence obtained as a result of the execution of the EIO to the issuing State. Where requested in the EIO and if possible under national law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 8(3).</p>	<p>The Commission agrees with the suggested mechanism for transferring evidence. The provision is similar to the corresponding provision in the Framework Decision on the European Evidence Warrant.</p>
<p>2. When transferring the evidence obtained, the executing authority shall indicate whether it requires them to be returned to the executing State as soon as they are no longer required in the issuing State.</p>	<p>See comments above.</p>

<b>Article 13: Legal remedies</b>	
<p>Legal remedies shall be available for the interested parties in accordance with national law. The substantive reasons for issuing the EIO can be challenged only in an action brought before a court of the issuing State.</p>	<p>The Commission agrees that legal remedies should be available for persons affected by an EIO. Consideration should be given to describing these remedies in more detail, as was done in the Framework Decision on the European Evidence Warrant. In doing so, the EU legislator must take due account of Article 47(1) of the Charter of Fundamental Rights, in particular in so far as the right to an effective remedy under the Charter requires access to a court (administrative bodies are not sufficient), see Official Explanations relating to the Charter, Article 47, OJ C 303, page 17.</p>
<b>Article 14: Grounds for postponement of recognition or execution</b>	
<p>1. The recognition or execution of the EIO may be postponed in the executing State where:</p> <ul style="list-style-type: none"> <li>a) its execution might prejudice an ongoing criminal investigation or prosecution until such time as the executing State deems reasonable; or</li> <li>b) the objects, documents, or data concerned are already being used in other proceedings until such time as they are no longer required for this purpose.</li> </ul>	<p>The Commission agrees with the suggested postponement mechanism. However, the grounds for postponement should only relate to the execution of the EIO, not the recognition.</p>
<p>2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority thereof by any means capable of producing a written record.</p>	<p>See comments above.</p>
<b>Article 15: Obligation to inform</b>	
<p>1. The competent authority in the executing State which receives the EIO shall, without delay and in any case within a week of the reception of an EIO, acknowledge this reception by filling in</p>	<p>This is acceptable.</p>

<p>and sending the form provided in Annex B. Where a central authority has been designated in accordance with Article 6(2), this obligation is applicable both to the central authority and to the executing authority which receives the EIO via the central authority. In cases referred to in Article 6(5), this obligation applies both to the competent authority which initially received the EIO and to the executing authority to which the EIO is finally transmitted.</p>	
<p>2. Without prejudice to Article 9(2), the executing authority shall inform the issuing authority:</p> <p>(a) immediately by any means:</p> <p>(i) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in the Annex is incomplete or manifestly incorrect;</p> <p>(ii) if the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to undertake investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case;</p> <p>(iii) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 8.</p> <p>Upon request by the issuing authority, the information shall be confirmed without delay by any</p>	<p>The Commission agrees with the obligation for the executing authority to inform the issuing authority in these situations.</p>

<p>means capable of producing a written record;</p> <p>(b) without delay by any means capable of producing a written record:</p> <p>(i) of any decision taken in accordance with Article 10(1);</p> <p>(ii) of the postponement of the execution or recognition of the EIO, the underlying reasons and, if possible, the expected duration of the postponement.</p>	
<p><b>Article 16: Criminal liability regarding officials</b></p>	
<p>When present in the territory of the executing State in the framework of the application of this Directive, officials from the issuing State shall be regarded as officials of the executing State with respect of offences committed against them or by them.</p>	<p>The Commission agrees with this principle of equivalence. The provision is similar to the corresponding provision in the 2000 Convention on Mutual Assistance in Criminal Matters.</p>
<p><b>Article 17: Civil liability regarding officials</b></p>	
<p>1. Where, in the framework of the application of this Directive, officials of the issuing State are present in the territory of the executing State, the issuing State shall be liable for any damage caused by them during their operations, in accordance with the law of the executing State.</p>	<p>The Commission agrees with the suggested mechanism for dealing with civil claims. The provision is similar to the corresponding provision in the 2000 Convention on Mutual Assistance in Criminal Matters.</p>
<p>2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.</p>	<p>See comments above.</p>
<p>3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.</p>	<p>See comments above.</p>

<p>4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.</p>	<p>See comments above.</p>
<p><b>Article 18: Confidentiality</b></p>	
<p>1. Each Member State shall take the necessary measures to ensure that the issuing and executing authorities take due account, in the execution of an EIO, of the confidentiality of the investigation.</p>	<p>The Commission agrees that the issuing and executing authority should take due account of, and to the extent possible, ensure the confidentiality of the investigation.</p>
<p>2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and substance of the EIO, except to the extent necessary to execute the investigative measure. If the executing authority cannot comply with the requirement of confidentiality, it shall without delay notify the issuing authority.</p>	<p>See comments above.</p>
<p>3. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, keep confidential any evidence and information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.</p>	<p>See comments above.</p>
<p>4. Each Member State shall take the necessary measure to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the issuing State in accordance with Articles 23, 24 and 25 or that an investigation is being carried out.</p>	<p>This is acceptable. The provision is similar to the corresponding provision in the Protocol to the 2000 Convention on Mutual Assistance in Criminal Matters.</p>
<p><b>Chapter IV: Specific provisions for certain investigative measures</b></p>	<p>Chapter IV of the proposal contains a high number of measures which have previously not been covered by the Framework Decision on the European Evidence Warrant. All these measures have potentially great impacts on the</p>

	<p>fundamental rights of individuals. Owing to the lack of a proper impact assessment and explanatory memorandum, there is no evidence that the group of Member States have sufficiently scrutinised the compatibility of these provisions with fundamental rights. In the absence of this legal scrutiny, and as indicated above, the recital on compliance with fundamental rights of the Directive is not proven nor justified.</p> <p>The Commission's comments on the proposed specific measures under Chapter IV are of a preliminary nature and will depend on the additional material that the group of Member States will need to provide (impact assessment, explanatory memorandum, etc.)</p>
<b>Article 19: Temporary transfer to the issuing State of persons held in custody for purpose of investigation</b>	
1. An EIO may be issued for the temporary transfer of a person in custody in the executing State in order to have an investigative measure carried out for which his presence on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.	The Commission agrees that specific rules for this type of investigative measure are required. However, the rules suggested – which are based on the corresponding rules in the 1959 Convention on Mutual Assistance in Criminal Matters – need to be examined further.
2. In addition to the grounds for refusal referred to in article 10 (1), the execution of the EIO may also be refused if: <ul style="list-style-type: none"> <li>(a) the person in custody does not consent;</li> <li>(b) transfer is liable to prolong his detention.</li> </ul>	<p>See comments above.</p> <p>The Commission considers it necessary to add one more ground for refusal:</p> <p>c) substantial grounds indicate that the person to be transferred would face the real risk of being subjected to inhuman or degrading treatment or punishment.</p>
3. In a case coming within paragraph 1, transit of the person in custody through the territory of a third Member State shall be granted on application, accompanied by all necessary documents.	See comments above.
4. The practical arrangements regarding the temporary transfer of the person and the	See comments above.

<p>date by which he or she must be returned to the territory of the executing state shall be agreed between the Member States concerned.</p>	
<p>5. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State through which transit is required, unless the executing Member State applies for his release.</p>	<p>See comments above.</p>
<p>6. The period of custody in the territory of the issuing Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing Member State.</p>	<p>See comments above.</p>
<p>7. A transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the executing State and not specified in the EIO.</p>	<p>See comments above.</p>
<p>8. The immunity provided for in paragraph 7 shall cease when the transferred person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.</p>	<p>See comments above.</p>
<p>9. Costs arising from the transfer shall be borne by the issuing State.</p>	<p>See comments above.</p>
<p><b>Article 20: Temporary transfer to the executing State of persons held in custody for purpose of investigation</b></p>	
<p>1. An EIO may be issued for the temporary transfer of a person held in custody in the issuing State in order to have an investigative measure carried out for which his presence on the territory of the executing State is required.</p>	<p>The Commission agrees that specific rules for this type of investigative measure are required. However, the rules suggested – which are based on the corresponding rules in the 2000 Convention on Mutual Assistance in Criminal Matters – need to be examined further.</p>

<p>2. In addition to the grounds for refusal referred to in article 10 (1), the execution of the EIO may also be refused if:</p> <p>(a) consent to the transfer is required from the person concerned and this consent has not been obtained; or</p> <p>(b) the issuing and executing authorities cannot reach an agreement on the arrangements for the temporary transfer.</p>	<p>See comments above.</p> <p>The Commission considers it necessary to add one more ground for refusal:</p> <p>c) substantial grounds indicate that the person to be transferred would face the real risk of being subjected to inhuman or degrading treatment or punishment.</p>
<p>3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided without delay to the executing authority.</p>	<p>See comments above.</p>
<p>4. Each Member State may indicate that, before executing the EIO, the consent referred to in paragraph 3 of this Article will be required or will be required under certain conditions indicated in the notification.</p>	<p>See comments above.</p>
<p>5. The paragraphs 3 to 8 of article 19 are applicable <i>mutatis mutandis</i> to this article.</p>	<p>See comments above.</p>
<p>6. Costs arising from the transfer shall be borne by the issuing State. This does not include costs arising from the detention of the person in the executing State.</p>	<p>See comments above.</p>
<p><b>Article 21: Hearing by videoconference</b></p>	
<p>1. If a person is in the territory of the executing State and has to be heard as a witness or expert by the judicial authorities of the issuing State, the issuing authority may, where it is not desirable or possible for the person to be heard to appear in its territory in person, issue an EIO in order to hear the witness or expert by videoconference, as provided for in paragraphs 2 to 9.</p>	<p>The Commission agrees that specific rules for this type of investigative measure are required. However, the rules suggested – which are based on the corresponding rules in the 2000 Convention on Mutual Assistance in Criminal Matters – need to be examined further, in particular the necessity for the additional grounds for refusal in Articles 21(2) and 21(9). To allow the executing State to refuse a hearing by videoconference if this would be contrary to national law (in the case of accused persons) or fundamental principles of national law (in the case of</p>

	<p>witnesses/experts) is not in line with the principle of mutual recognition.</p> <p>The Commission notes that no thought has been given to the rights of the defence in this Article. The Commission considers it necessary to ensure that the principle of a fair trial and equality of arms in criminal proceedings is fully respected in the application of Article 21. Defence lawyers must have the possibility to question witnesses and experts during the hearing by videoconference if the information gathered by these means is to be introduced into the criminal trial. Additional requirements might need to be introduced in paragraph 6 of Article 21 in this respect.</p>
<p>2. In addition to the grounds for refusal referred to in article 10(1), the execution of the EIO may also be refused if :</p> <p>(a) the use of videoconference is contrary to fundamental principles of the law of the executing State;</p> <p>(b) the executing Member State does not have the technical means for videoconference.</p>	<p>See comments above.</p>
<p>3. If the executing State has no access to the technical means for videoconferencing, such means may be made available to it by the issuing Member State by mutual agreement.</p>	<p>See comments above.</p>
<p>4. Article 10(2) is applicable <i>mutatis mutandis</i> to cases referred to in paragraph 2(b).</p>	<p>See comments above.</p>
<p>5. The EIO issued for the purpose of a hearing by videoconference shall contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.</p>	<p>See comments above.</p>
<p>6. With reference to hearing by videoconference, the following rules shall apply:</p>	<p>See comments above.</p> <p>In the application of this Directive, Member</p>

<p>(a) a judicial authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the executing Member State. If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;</p> <p>(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing and the executing state;</p> <p>(c) the hearing shall be conducted directly by, or under the direction of, the issuing authority in accordance with its own laws;</p> <p>(d) at the request of the issuing State or the person to be heard the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;</p> <p>(e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the executing or the issuing Member State.</p>	<p>States are fully bound by the Charter of Fundamental Rights (see Article 51 Charter). To highlight this legal obligation, the Commission considers it necessary to add the words</p> <p>"(...) and the Charter of Fundamental Rights of the European Union"</p> <p>in letter a) after each reference to the "fundamental principles of the laws of the executing state"</p> <p>Furthermore, and as indicated above, consideration is necessary on how to ensure the rights of the defence, equality of arms and fair trial, e.g. by requiring the presence of the defence lawyer during the hearing by videoconference.</p> <p>In addition, it might be necessary to assess whether specific requirements are needed to ensure respect for the rights of children in the light of their special needs and vulnerabilities in the context of acting as witnesses in criminal proceedings (child friendly justice).</p>
<p>7. Without prejudice to any measures agreed for the protection of the persons, the executing authority shall on the conclusion of the hearing 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 in the executing Member State participating in the hearing, any</p>	<p>See comments above.</p>

<p>oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.</p>	
<p>8. The cost of establishing the video link, costs related to the servicing of the video link in the executing Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the executing Member State shall be refunded by the issuing Member State to the executing Member State, unless the latter waives the refunding of all or some of these expenses.</p>	<p>See comments above.</p>
<p>Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this article and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.</p>	<p>See comments above.</p>
<p>10. An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply mutatis mutandis. In addition to the grounds for refusal referred to in article 10(1), the execution of the EIO may also be refused if :</p> <p>(a) the accused person does not consent;</p> <p>(b) the execution of such a measure would be contrary to the law of the executing State.</p>	<p>See comments above.</p>
<p><b>Article 22: Hearing by telephone conference</b></p>	
<p>1. If a person is in one Member State's territory and has to be heard as a witness or expert by judicial authorities of another Member State, the issuing authority of the latter Member State may issue an EIO in order to hear a witness or expert by telephone conference, as provided for in paragraphs 2 to 4.</p>	<p>The Commission agrees that specific rules for this type of investigative measure are required. However, the rules suggested – which are based on the corresponding rules in the 2000 Convention on Mutual Assistance in Criminal Matters – need to be examined further, in particular the necessity for the additional grounds for refusal in</p>

	<p>Article 22(2). To allow the executing State to refuse a hearing by telephone conference if this would be contrary to fundamental principles of national law is not in line with the principle of mutual recognition.</p> <p>The Commission notes that no thought has been given to the rights of the defence in this Article. The Commission considers it necessary to ensure that the principle of a fair trial and equality of arms in criminal proceedings is fully respected in the application of Article 22. Defence lawyers must have the possibility to question witnesses and experts during the hearing by videoconference if the information gathered by these means is to be introduced into the criminal trial.</p> <p>In addition, it might be necessary to assess whether specific requirements are needed to ensure respect for the rights of children in light of their special needs and vulnerabilities in the context of acting as witnesses in criminal proceedings (child friendly justice).</p>
<p>2. In addition to the grounds for refusal referred to in article 10(1), the execution of the EIO may also be refused if</p> <p>(a) the use of teleconference is contrary to fundamental principles of the law of the executing State;</p> <p>(b) the witness or expert does not agree that the hearing take place by that method.</p>	<p>See comments above.</p>
<p>3. The EIO issued for a hearing by telephone conference shall contain the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.</p>	<p>See comments above.</p>
<p>4. The practical arrangements regarding the hearing shall be agreed between the issuing and the executing authority. When agreeing such arrangements, the</p>	<p>See comments above.</p>

<p>executing authority shall undertake to:</p> <ul style="list-style-type: none"> <li>(a) notify the witness or expert concerned of the time and the venue of the hearing;</li> <li>(b) ensure the identification of the witness or expert;</li> <li>(c) verify that the witness or expert agrees to the hearing by telephone conference.</li> </ul> <p>1. The executing Member state may make its agreement subject, fully or in part, to the relevant provisions of Article 21(6) and (9). Unless otherwise agreed, the provisions of Article 21(8) shall apply <i>mutatis mutandis</i>.</p>	
<b>Article 23: Information on bank accounts</b>	
<p>1. An EIO may be issued in order to determine whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State.</p>	<p>The Commission agrees that specific rules for this type of investigative measure are required. However, the rules suggested – which are based on the corresponding rules in the Protocol to the 2000 Convention on Mutual Assistance in Criminal Matters – need to be examined further, in particular the necessity for the additional grounds for refusal in Article 23(5).</p>
<p>2. Each Member State shall, under the conditions set out in the Article, take the measures necessary to be able to provide the information referred to in paragraph 1.</p>	<p>See comments above.</p>
<p>3. The information referred to in paragraph 1 shall also, if requested in the EIO and to the extent that it can be provided within a reasonable time, include accounts for which the person that is the subject of the proceedings has powers of attorney.</p>	<p>See comments above.</p>
<p>4. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.</p>	<p>See comments above.</p>

<p>5. In addition to the grounds for refusal referred to in article 10(1), the execution of an EIO referred to in paragraph 1 may also be refused if the offence concerned is not :</p> <ul style="list-style-type: none"> <li>(a) an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the issuing State and at least two years in the executing State;</li> <li>(b) an offence referred to in Article 4 of the Europol Decision;</li> <p style="text-align: center;">or</p> <li>(c) to the extent that it may not be covered by the Europol Decision, an offence referred to in the 1995 Convention on the Protection of the European Communities' Financial Interests, the 1996 Protocol thereto, or the 1997 Second Protocol thereto.</li> </ul>	<p>See comments above.</p>
<p>6. The issuing authority shall in the EIO:</p> <ul style="list-style-type: none"> <li>(a) state why it considers that the <i>requested</i> information is likely to be of substantial value for the purpose of the investigation into the offence,</li> <li>(b) state on what grounds it presumes that banks in the executing Member State hold the account and, to the extent available, which banks may be involved,</li> <li>(c) include any information available which may facilitate the execution of the EIO.</li> </ul>	<p>See comments above.</p>
<p><b>Article 24: Information on banking transactions</b></p>	
<p>1. An EIO may be issued in order to obtain the particulars of specified bank accounts and of banking operations which have</p>	<p>The need for specific rules for this type of</p>

<p>been carried out during a specified period through one or more accounts specified in the EIO, including the particulars of any sending or recipient account.</p>	<p>investigative measure should be examined further.</p>
<p>2. Each Member State shall, under the conditions set out in the Article, take the measures necessary to be able to provide the information referred to in paragraph 1.</p>	<p>See comments above.</p>
<p>3. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.</p>	<p>See comments above.</p>
<p>4. The issuing Member State shall in indicate in the EIO why it considers the requested information relevant for the purpose of the investigation into the offence.</p>	<p>See comments above.</p>
<p><b>Article 25: The monitoring of banking transactions</b></p>	
<p>1. An EIO may be issued in order to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the EIO.</p>	<p>The need for specific rules for this type of investigative measure should be examined further.</p>
<p>2. Each Member State shall, under the conditions set out in the Article, take the measures necessary to be able to provide the information referred to in paragraph 1.</p>	<p>See comments above.</p>
<p>3. The issuing Member State shall in the EIO indicate why it considers the requested information relevant for the purpose of the investigation into the offence.</p>	<p>See comments above.</p>
<p>4. The practical details regarding the monitoring shall be agreed between the competent authorities of the issuing and the executing States.</p>	<p>See comments above.</p>
<p><b>Article 26: Controlled deliveries</b></p>	
<p>1. An EIO may be issued to undertake a</p>	

controlled delivery on the territory of the executing State.	The need for specific rules for this type of investigative measure should be examined further.
2. The right to act and to direct and control operations related to the execution of an EIO referred to in Paragraph 1 shall lie with the competent authorities of the executing State.	See comments above.
<b>Article 27: Investigative measures implying gathering of evidence in real time, continuously and over a certain period of time</b>	
1. When the EIO is issued for the purpose of executing a measure, including the one referred to in Article 25 and 26, implying gathering of evidence in real time, continuously and over a certain period of time, its execution may also be refused, in addition to the grounds for refusal referred to in article 10(1), if the execution of the measure concerned would not be authorised in a similar national case.	Given the existence of the general grounds for refusal in Article 9, the need for this additional ground for refusal should be examined further.
2. Article 10(2) is applicable <i>mutatis mutandis</i> to cases referred to in paragraph 1.	See comments above.
3. The executing authority may make the execution of an EIO referred to in paragraph 1 subject to an agreement on the repartition of the costs.	See comments above.
<b>Chapter V: Final provisions</b>	
<b>Article 28: Notifications</b>	
1. By ... <sup>1</sup> each Member State shall notify the Commission of the following:  (a) the authority or authorities which, in accordance with its internal order, are competent in application of Article 2 (a) and (b) when this Member State is the issuing State or	This is acceptable.

<sup>1</sup> Two years from the entry into force of this Directive.

<p>the executing State;</p> <p>(b) the languages accepted for the EIO, as referred to in Article 5(2);</p> <p>(c) the information regarding the designated central authority or authorities if the Member State wishes to make use of the possibility under Article 6(2). This information shall be binding upon the authorities of the issuing State;</p> <p>(d) the requirement of consent to the transfer from the person concerned in the case the Member State wishes to make use of the possibility provided for in Article 20(4).</p>	
<p>2. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraph 1.</p>	<p>This is acceptable.</p>
<p>3. The Commission shall make the information received in application of this Article available to all the Member States to all the Member States and to the European Judicial Network (EJN). The EJN shall make the information available on the website referred to in Article 9 of the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.</p>	<p>This is acceptable.</p>
<p><b>Article 29: Relations to other agreements and arrangements</b></p>	
<p>1. Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 30, this Directive replaces, as from ...,<sup>2</sup> the corresponding provisions of the following conventions applicable in the relationships between the Member States bound by this Directive:</p> <ul style="list-style-type: none"> <li>– European Convention on mutual</li> </ul>	<p>This is acceptable.</p>

<sup>2</sup> Two years from the entry into force of this Directive.

<p>legal assistance in criminal matters of 20<sup>th</sup> April 1959 as well as its two additional protocols of 17<sup>th</sup> March 1978 and 8<sup>th</sup> November 2001 and the bilateral agreements concluded pursuant to Article 26 of that Convention;</p> <ul style="list-style-type: none"> <li>– Convention of 19<sup>th</sup> June 1990 implementing the Schengen Agreements of 14<sup>th</sup> June 1985;</li> <li>– Convention of 29<sup>th</sup> May 2000 regarding mutual legal assistance in criminal matters between the member States of the EU and its protocol of 16<sup>th</sup> October 2001.</li> </ul>	
<p>2. Framework Decision 2008/978/JHA is repealed. This Directive applies between the Member States to the freezing of items of evidence in substitution for the corresponding provisions of Framework Decision 2003/577/JHA.</p>	<p>This is acceptable.</p>
<p>3. Member States may continue to apply the bilateral or multilateral agreements or arrangements in force after ...<sup>3</sup> insofar as these make it possible to go beyond the aims of this Directive and contribute to simplifying or facilitating further the procedures for gathering evidence.</p>	<p>This is acceptable.</p>
<p>4. Member States may conclude bilateral or multilateral agreements and arrangements after ...<sup>4</sup> insofar as these make it possible to go further into or extend the provisions of this Directive and contribute to simplifying or facilitating further the procedures for gathering evidence.</p>	<p>This is acceptable.</p>

<sup>3</sup> Date of adoption of this Directive.

<sup>4</sup> Date of entry into force of this Directive.

<p>5. Member States shall notify the Commission by ...<sup>5</sup> the existing agreements and arrangements referred to in paragraph 3 which they wish to continue to apply. The Member States shall also notify the Commission within three months of signing in of any new agreement or arrangement referred to paragraph 4.</p>	<p>This is acceptable.</p>
<p>6. If the Commission is of the view that a bilateral or multilateral agreement or arrangement notified to it does not, or not entirely, comply with the conditions set out in paragraphs 3 and 4, it shall invite the Member States concerned to terminate, modify or refrain from concluding the agreement or arrangement in question.</p>	<p>This is acceptable.</p>
<p><b>Article 30: Transitional arrangements</b></p>	
<p>1. Mutual assistance requests received before...<sup>6</sup> shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. Decisions to freeze evidence by virtue of Framework Decision 2003/577/JHA and received before ...* shall also be governed by the instrument in question.</p>	<p>This is acceptable.</p>
<p>2. Article 7(1) is applicable <i>mutatis mutandis</i> to the EIO following a decision of freezing taken by virtue of Framework Decision 2003/577/JHA.</p>	<p>This is acceptable.</p>
<p><b>Article 31: Transposition</b></p>	
<p>1. Member States shall take the necessary measures to comply with the provisions of this Directive by ...<sup>7</sup></p>	
<p>2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be</p>	

<sup>5</sup> Three months after the entry into force of this Directive.

<sup>6</sup> Two years after the entry into force of this Directive.

<sup>7</sup> Two years after the entry into force of this Directive.

<p>accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.</p>	
<p>3. By ...<sup>8</sup>, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.</p>	<p>There is no need to transmit these provisions transposing the Directive into national law to the Council. They should only be transmitted to the Commission. The Council Secretariat has no role in implementation of legislation.</p> <p>In addition to the provisions transposing the Directive into national law, the Commission should also be provided with a table showing how these provisions correspond to the provisions of the Directive.</p>
<p>4. The Commission shall, by ...<sup>9</sup>, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.</p>	<p>It is superfluous to submit two reports on the Directive, one on its transposition as foreseen in this provision (3 years after the entry into force of the Directive) and one on its application as laid down in Article 32 (5 years after the entry into force of the Directive). Only one report should be submitted, preferably 4 years after the entry into force of the Directive, addressing both the issue of its transposition and its application. The Member States should be obliged to provide the Commission with the information needed to produce this report.</p>
<p><b>Article 32: Report on the application</b></p>	
<p>No later than five years after the entry into force of this Directive, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information. The report shall be accompanied, if need be, by proposals for adaptations to this Directive.</p>	<p>See comments to Article 31(3).</p>

<sup>8</sup> Two years after the entry into force of this Directive.

<sup>9</sup> Three years after the entry into force of this Directive.

<b>Article 33: Entry into force</b>	
<p>This Directive shall enter into force on the 20th day following its publication in the <i>Official Journal of the European Union</i>.</p>	
	<p>The Commission suggests introducing an additional Article on data protection:</p> <p style="text-align: center;">"Article [...]</p> <p style="text-align: center;">Data Protection</p> <p>1. The personal data processed in the context of the implementation of this Directive will be protected in accordance with the data protection principles set out in the Council of Europe Convention 108 of 28 January 1981 for the protection of individuals with regard to the automatic processing of personal data, the Additional Protocol to that Convention of 8 November 2001 and Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.</p> <p>2. Personal data obtained under this Directive may be used by the issuing authority for the purpose of:</p> <p>(a) proceedings for which the EIO may be issued;</p> <p>(b) other judicial and administrative proceedings directly related to the proceedings referred to under point (a);</p> <p>(c) preventing an immediate and serious threat to public security.</p> <p>For any other purpose, personal data obtained under this Directive may be used only with the prior permission of the executing authority, unless the issuing authority has obtained the consent of the data subject.</p>

	3. In the circumstances of the particular case, the executing authority may require the issuing authority to give information on the use made of the personal data."
<b>DEPARTMENTS ASSOCIATED</b>	
SG, SJ, OLAF	
<b>PROPOSAL TO THE COMMISSION</b>	
<p>The Commission is requested</p> <ul style="list-style-type: none"> <li>– To approve the line set out in the comments; and</li> <li>– To ask its representatives to express a position accordingly in the European Parliament and in the Council.</li> </ul>	