CEPOL WESTERN BALKANS FINANCIAL INVESTIGATIONS PROJECT

EUROPEAN UNION AGENCY FOR LAW ENFORCEMENT TRAINING

The European Union Agency for Law Enforcement Training

DG HOME

TNA

Catalogue activities

Arms dealers, border guards, customs officers, prosecutors, judges.
CEPOL TRAININGS

WHO and HOW?

- CEPOL AGREEMENT (EU MS APART UK and DK)
- INTERN. TRANSPORT, ACCOMMODATION, MEALS
- CNU's and NCPs
- SELF PAYERS
- CANDIDATE COUNTRIES
- AGREEMENTS WITH 3RD COUNTRIES
CEPOL PROJECTS

COUNTER TERRORISM II
- Lebanon
- Jordan
- Turkey
- Tunisia
- Morocco

WESTERN BALKANS FINANCIAL INVESTIGATIONS
- Serbia
- Bosnia and Herzegovina
- Montenegro
- North Macedonia
- Albania
- Kosovo

[1] This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence.

CEPOL WB FI PROJECT

OVERVIEW

24 MONTHS LENGTH. KICK-OFF DECEMBER 2017

TNA CONDUCTED 1ST HALF 2018

IMPLEMENTATION PHASE STARTED JULY 2018

This project is funded by the European Union.
CEPOL WB FI PROJECT

OBJECTIVES

PROMOTING CLOSER COOPERATION AND MUTUAL LEARNING AND NETWORKING BETWEEN THE EU AND NON-EU LAW ENFORCEMENT OFFICIALS, PROSECUTORS AND JUDICIARY MEMBERS, DEALING WITH FINANCIAL INVESTIGATION

ESTABLISHMENT OF A COMMON AND SHARED PRACTICAL KNOWLEDGE IN THE FIELD OF FINANCIAL INVESTIGATION

CEPOL WB FI PROJECT

WORK PLAN

6 NATIONAL TRAININGS, 1 PER PARTNER
4 + 8 REGIONAL TRAININGS
120 EXCHANGES, PEER TO PEER
SELF PAYERS
23 WB PARTICIPANTS IN RESIDENTIAL ACTIVITIES
CEPOL WB FI PROJECT

NEXT TRAININGS
- HEADS/REPRESENTATIVES OF POLICE ACADEMIES
- MOCK TRIAL (1+1)
- IRREGULAR MIGRATION/THB
- INVESTIGATING CRYPTOCURRENCIES
- INVESTIGATING CORRUPTION
- ANALITICAL TOOLS IN REGARD TO FI
- SIMULATION MONEY LAUNDERING LINKED TO FI

CEPOL WB FI PROJECT

METHODOLOGY
- WORKSHOPS
- CASE STUDIES
- MIX GROUPS
- OPEN DISCUSSIONS
- COMMON SOLUTIONS TO CASE STUDIES

This project is funded by the European Union
Thank you for your attention!

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CEPOL
**Topics Today**

- Why are criminals suddenly interested in cryptocurrency?
- What's the conclusion?

**Why do criminals use cryptocurrencies?**

- Global: Jurisdiction difficulties
- Decentralized: Nowhere to send a request
- Pseudonymous: Maintains anonymity
- Irreversible: No way to recover the damage
- Permanent: The stolen funds are safe
**WHY do criminals use cryptocurrencies?**

- Easy to access: Can be used anywhere
- Easy to use: No special knowledge needed
  - Easy to posses: Difficult to seize
  - Fast: Difficult to follow
- Cheap: Why not?

**HOW do criminals use cryptocurrencies?**

1. They use it as **a tool**
2. They see it as **a goal**
3. They use it for **payments**
4. They use it for **storing value**
Cryptocurrencies as a tool
Terrorism financing

New York woman pleads guilty to using bitcoin to launder money for terror group ISIS

KEY POINTS
* A young New York woman pleaded guilty Friday to supporting the Islamic terror group ISIS with a stolen bank fraud, bitcoin and other cryptocurrencies.

* Victoria Sanchez, 27, of Bremerton, Wash., admitted to using more than $20,000,000 to individuals and paid witnesses that were paid for ISIS in Pakistan, China and Turkey in 2017.

Cryptocurrencies as a goal
Phishing
Ransomware
Classic extortion
Exchange hacks
Bitcoin theft with malware
Cryptojacking
„Simple“ frauds and thefts
ICO frauds
Pyramid schemes
Cryptocurrencies as a goal
Phishing

Create New Wallet

Enter a password

Cryptocurrencies as a goal
Ransomware

WannaCry: hackers withdraw £108,000 of bitcoin ransom

Digital wallets linked to ransomware attack that crippled NHS hospitals are cleared out, as law enforcement tries to track owners

Cryptocurrencies as a goal
Ransomware

South Korean Company Agrees to Pay Hackers $1 Million Bitcoin Ransom to Unlock Its Files

Cryptocurrencies as a goal
Classic extortion

Hackers Demand Millions in Bitcoin for Stolen HBO Files

BY THE ASSOCIATED PRESS AUG. 10, 2017
Cryptocurrencies as a goal
Classic extortion

Cryptocurrency Ransom Demanded for Wife of Norwegian Tycoon

Cryptocurrencies as a goal
Exchange hacks

Cryptocurrencies as a goal
Bitcoin theft with malware
Razy Malware Attacks Browser Extensions to Steal Cryptocurrency

Cryptocurrencies as a goal
Cryptojacking

Billions of video site visitors unwittingly mine cryptocurrency as they watch
Cryptocurrencies as a goal
Cryptojacking

Cryptocurrencies as a goal
"Simple" frauds and thefts

Cryptocurrencies as a goal
ICO (Initial Coin Offering) frauds

Cryptocurrencies as a goal
Pyramid schemes
**Cryptocurrencies for payments**

- Bitcoin and some other altcoins are the "official" currencies of Dark Web Marketplaces
- Traditional payment methods are not excepted
- We can buy almost anything for cryptocurrencies

**Cryptocurrencies and money laundering**

**Cryptocurrencies for storing**

- Easy to hide
- Safe to keep
- Easy to transfer
- Easy to check

**Tumbling or mixing**

- Cryptocurrency tumbler or mixing service is a service offered to mix cryptocurrency funds with others, so as to obscure the trail back to the original source.
- The goal of mixing is to improve the anonymity of cryptocurrencies since the currencies provide a public ledger of all transactions.
- **Transaction** fee typically 1-3%
The Future: Lightning Networks

BTC only 7 transactions per second
BTC CASH 62 transactions per second
VISA 24,000 transactions per second
Faster and cheaper networks are under development for BTC, LTC, Zcash
The Future: Lightning Networks

- Enables users to create payment channels between any two parties on an extra layer.
- Uses a multisignature wallet with common access.
- Only after the channel is closed, the final balance is broadcasted to the Bitcoin blockchain.
- So it enables users to conduct numerous transactions outside of the main blockchain and then record them as a single one.

Other online money laundering issues - Online Money Mules -

- Criminals search for mules online (spams, online ads, Social Media, etc.)
- Mules receive money to their account and transfer it for some percentage via bank transfer or even Western Union.
- Sometimes it is a job offer („Finance Manager“).

The Future: Atomic Swap

- A peer-to-peer exchange of cryptocurrencies from one party to another, without going through a third party service.
- During this entire process, the users have full control and ownership of their private keys.
- Uses Hashed Timelocked Contracts.

Other online money laundering issues - Online Games -

- Criminals open online game accounts (Second Life, World of Warcraft, etc.)
- Turn dirty money to game currency (resellers, forums, markets)
- Finally they sell the game currency for real money.
Seizing Cryptocurrencies

- Only a few countries have the proper legal background for seizing cryptocurrencies.
- In practice, it is a forced transaction from the target's address to the LE agencies' address. The main goal is asset recovery.
What's the CONCLUSION?

Thank you for your attention!

Budapest, HUNGARY

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What is CRYPTOCURRENCY?

- **Wikipedia:** A digital asset designed to work as a medium of exchange that uses strong cryptography to secure financial transactions, control the creation of additional units, and verify the transfer of assets.

- **Cambridge Dictionary:** A digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank.

Why we have to talk about cryptocurrencies?

- More and more people are using cryptocurrencies – the criminals as well
- It is only a matter of time until we stumble into cryptos during an investigation
- The technology gives the upper hand to the criminals
- If we don’t understand cryptocurrencies at all, we won’t even have a chance against them

The Birth of Cryptocurrencies

- The 21st century is the era of digitalization
- One of the last unsolved problem: How to transfer money in cyberspace?
- What has been the solution for centuries? - We use middlemen in whom we need to trust
- We trust a bank to manage our money, there is NO REAL MOVEMENT of physical bills, all is needed is an entry in the REGISTER, that NEITHER OF US controls
The Birth of Cryptocurrencies

• Besides trusting in the banks, we trust in our currencies for now because we trust in our governments' creditability.
• There is too much power in only a few hands...
• In the last few decades many tried to find a solution for this problem and get rid of the middleman (like Tyler Durden)...

The Birth of Cryptocurrencies

• In 2008 Satoshi Nakamoto introduced the first cryptocurrency: Bitcoin, which is based on the blockchain technology.
What is the blockchain?

Blockchain

Simply explained

How does the blockchain look like?

How does the transactions look like?

How Does a Blockchain Work: A Step-by-Step View

1. User requests for interaction
2. User requests to block for transaction
3. Blockchain records all the transactions
4. Blockchain adds the block to the blockchain
5. Blockchain sends the transaction to the network
6. The user fees are calculated and verified
7. The block is added to the blockchain
8. The blockchain is updated with the new block
9. The transaction is confirmed and verified

Transaction:

- Type:
- From:
- To:
- Amount:
- Date:
- Memo:
- Hash:
- Block:
- Size:
- Version:
- Previous Hash:
- Merkle Root:
- Timestamp:
-_nonce:
- Signature:
- Verification:
-Blockhash:
- Blockhash:
- Blockhash:
What was the first purchase?

03/01/2009 – The first block
22/05/2010 – The first “purchase” with bitcoin

I’ll pay 10,000 bitcoins for a couple of pizzas, like maybe 2 large ones so I have some left over for the next day. I told the pizza seller online to hold on it. You can use the pizza yourself and bring it to my house or either of my friends. I just want to order something or prepay for something, kind of like ordering a breakfast platter or a hook or something, just bring you something to eat and you’re happy.

I like things like onions, peppers, sausage, mushrooms, tomatoes, peppercorn, etc. just standard stuff to watch first hopping or anything like that. I also like regular cheese pizza which may be cheaper to prepare or otherwise suitable.

If you’re interested please let the know and we can work out a deal.

How does a BitCoin „look like“?

Public Address:
12yNbfAY8tBnRelb51hn4z6mEnsz7x8X0eh

Private Key (Wallet Import Format):
5g5yLY3kVvDACEZ2NgAYz24aupc71Q23JvVy8v6d52h2x2cPy1s8ecR

How many transactions out there?

- Public addresses:
  - 1BsbM9EYthWzqTFR5Au4m4GFg7v3aNVN2
  - 3J98t1WpE73CNmQv3cmryWmRqRvWNLy (multisig)
  - bc1qar0srm7xf5vyS1L643lydw9Re59gtzwf5mdq (segwit)

- Private keys:
  - Shwgr3u458GlafK9gtxssH5pqjYo3rGszsPwLRhLNsokDPyyA
  - L1av4aubDFB7yfras2S1mN3bqg9nwySY8knol.mJebsL58vV3ENZ
  - KQqZ8eq51LJUplknxqACDjesvgeZx8hptvJmGrUCf1jdVfrfQq1k6
How does other cryptos „look like“?

- Zcash: t1LgrxE3KSrKUsHzqPVTlbEFDXFj75UYsnnM
- Monero: 48yKkP6kcgSE6zBzf66pC7ByR8WnBTdHNAyg0H8mE
  urFu4Lh8gM1Y8XxKfSDo5jDa7qadA7egdkQfAhxo8W
  5T6fHGy7b
- Ethereum: 0xdd4ecc774d17887f50c27ae9bb14d99b07d7571b6

Where can we buy BitCoin?

- Mining
- Exchanges (from the operating company itself or from other users)
- Localbitcoins (small markets with sellers and buyers)
- ATMs
- Off the counter (on social media trading groups, personal connections)

BitCoin Vanity Address

What is bitcoin mining?

- Bitcoin mining is the process of adding transaction records to Bitcoin's public ledger of past transactions or the blockchain.
Cryptocurrency Exchanges

A cryptocurrency exchange allows customers to trade cryptocurrencies for other assets, such as conventional fiat money or other digital currencies.

- **Centralized exchanges** are online platforms used to buy and sell cryptocurrencies, but refers to the use of a middleman or third party to help conduct the transactions (e.g.: Coinbase, Kraken)

- **Decentralized exchange** operates in a decentralized way, i.e., without a central authority and allows peer-to-peer trading of cryptocurrencies. (e.g.: IDEX, Paradex)
Bitcoin ATMs in Budapest, Hungary

Off the Counter

*i need small amount of Ethereum to buy*

Please contact me. Have multiple ETH I can send if you need.

Like 3

How can we store and use Bitcoin?

- Bitcoin wallets -

Bitcoin ATMs near Montenegro
Brain wallet

Hardware wallets
- Generates and stores the private keys on the device
- All the operations and transactions are executed on the device
- Has a screen to display some information
- Displays transaction information
- Requires a manual confirmation of an operation using a hardware button
- Allows to create a backup of private keys if the device is broken, lost or stolen
- Requires to install manufacturer-provided software
- Doesn’t allow to install any software on the device
- Require to set up a PIN code
- Support only a few top cryptocurrencies
But why cryptocurrencies have any value?!

- Types of money:
  - **Commodity money** - has value because it consists of something that have value in themselves (gold coins, silver coins)
  - **Representative money** - has value because it is backed by some kind of commodity (gold, silver)
  - **Fiat money** - has value only because a government maintains its value, or because parties agree on its value (USD, EUR, JPY...174)

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But why cryptocurrencies have any value?!

- But one of the most important reason for value is that **PEOPLE WANT TO USE IT** to pay for goods and services, store their money, or simply speculate.

- The more the network of users and merchants grows and the more secure and advanced the system becomes, the **BIGGER IT'S VALUE** it can get.

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But why cryptocurrencies have any value?!

- Usually are **limited** in quantity (e.g., there are at maximum 21 million bitcoins). Similar to gold standard system, it prevents hyper-inflation due to limited issue of currencies.
- Cryptocurrency **cannot be forged** because it is secured by cryptography
- The transactions **costs are lower** because no middlemen
- **Independent** from political situation, governments and banks

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**Bitcoin Historical Price & Events**

[Graph showing Bitcoin historical price and events]

Source: [Bitcoin.com](https://www.bitcoin.com)
What is the INTERNET?

• Wikipedia: The global system of interconnected computer networks that use the Internet protocol suite (TCP/IP) to link devices worldwide.

• Google: A global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardized communication protocols.

• Cambridge Dictionary: The large system of connected computers around the world that allows people to share information and communicate with each other.

The Internet how we know...

• Crawling: When Google visits a website for tracking purposes. This process is done by Google’s Spider crawlers.

• Indexing: After crawling has been done, the results get put onto Google’s index (i.e. the web search).

• If something can not find with Google, it does not exits
• Is it true or false?
The Deep Web

- The Deep Web (invisible web or hidden web) is part of the World Wide Web but the contents are not indexed by standard web search engines for any reason.
- For example:
  - Password protected
  - Contains file types which are not indexed by crawlers
  - Or can be reached only with specific DARKNET softwares

The Darknet

- The Darknet: An encrypted network built on top of the existing Internet, and specific software (e.g.: browser) or tools are required to access it.
- Darknet provides anonymity for the users.
- Darknet is for example TOR, Freenet or I2P.
The Dark Web

- The Dark Web is the content itself, that exists on Darknets and requires specific software, configurations, or authorization to access and check it.

The TOR Network

- was developed in the mid-1990s by US Naval Research Laboratory
- special proxy network (client–node–tor–exit)
- daily users average 2 000 000 Worldwide (app. 300 in Montenegro, 4000 in Hungary, 150 000 in Germany, 400 000 in USA)
- Requires a special browser (TOR Browser)
- Free to download it, legal to use it
- Special domains .onion, but „normal” websites can be open with it
Country
- United States
- Russia
- United Arab Emirates
- Germany
- Indonesia
- France
- Ukraine
- United Kingdom
- India
- Netherlands

Mean daily users
- 369875 (18.54 %)
- 247779 (12.42 %)
- 163635 (8.20 %)
- 154110 (7.73 %)
- 104756 (5.25 %)
- 85557 (4.29 %)
- 77216 (3.87 %)
- 62535 (3.13 %)
- 46463 (2.33 %)
- 43821 (2.20 %)

The TOR Project

Our Projects
- Tor Browser
- Orbot
- Tails
- Nyx
- Relay Search
- Pluggable Transports
- Stem
- OONI

Learn more about our projects >
What are the disadvantages?

- It is for anonymity and not for encryption
- Slow connection speed
- Sometimes the network is unstable
- Some websites denying TOR exit nodes (as disallowed IPs)
Let's find some Dark Web URLs... but on the Surface Web...

- http://www.deepdotweb.com/
- http://darkwebnews.com/dark-web-market-list/
- https://dnstats.net/
- http://darknetmarkets.org/
- http://www.gvibes4u.com/list-of-darknet-marketplaces-pages/
- http://thehiddenwiki.org/

What can we find on the Dark Web?

Search engines

- DuckDuckGo
- searX
- TORCH
- Onion Link

How do I get to the...
How can criminals and terrorists use the Darknet and the Dark Web from a financial view?

- Raise funds anonymously
- Send money transfers easily and fast
- Usage of cryptocurrencies
- Money laundering
- Use marketplaces to sell goods (e.g.: drugs, weapons, etc.)
- Order financial services (e.g.: cash out)
- Order crime as a service
Marketplaces
- New generation of vendors and buyers, everybody keeps anonymity
- The first marketplace was opened in 2011 (Silk Road)
- General currency is Bitcoin or other cryptocurrencies
- There are general marketplaces and special ones only for one or two type of goods
- Despite law enforcement counter measures (Silk Road, AlphaBay, Hansa, etc.) it is a rapidly growing business, vendors are moving to other markets
- The biggest now days are Dream Market, The Wall Street Market, Point/Tochka Free Market

Marketplaces – What can we buy?
- All type of drugs
- Medicine
- Steroids
- Counterfeited money
- Forged documents
- Fake bank statement
- Payment card data
- Bank account data
- Child abuse material
- Terrorist propaganda
- Hitman
- Hacking activity
- Stolen goods
- Weapons, ammo
- Guidelines

Marketplaces – How they operate?
- Only username and password needed (no e-mail, no phone number, no credit card number, no real personal data)
- Sometimes Vendor status requires a bond of app. £0.1 ($534)
- There is escrow protection
- Categories, Forums, Chat rooms, Bug hunting for money
Operation Onymous

- 5-6/11/2014 – after 6 months of preparing
- 414 website shot down (Silk Road 2.0 – Cloud9 – Hydra)
- 17 country – 17 arrests
- Seizing – 1 billion USD BitCoin – 180.000 EUR cash, drugs, jewelry
Some law enforcement success

Operation „Root“

What do you do if you have an extremely dangerous child offender who is a real geek and operates only on the TOR network?

You arrest him.

Future of Dark Web

- LE actions against Dark Web will increase the wariness among users
- LE actions against TOR might push markets and vendors to other Darknets like Freenet or I2P
- LE actions against large markets will increase the number of small vendor shops and local, nation specific markets
- Other cryptocurrencies will compete with Bitcoin
- Private delivery services will emerge for anonymous delivery (e.g.: drones)
Thank you for your attention!
EFFECTIVE FINANCIAL INVESTIGATIONS AGAINST ORGANIZED CRIMINAL GROUPS
GATHERING EVIDENCE AND ITS CHALLENGE
May 6-10 2019
Budva – Montenegro

TRADITIONAL MECHANISMS:
 Council of Europe system

- MUTUAL LEGAL ASSISTANCE:
  EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, 1959
  FIRST ADDITIONAL PROTOCOL, 1978

- EXTRADITION:
  EUROPEAN CONVENTION ON EXTRADITION, 1957
  FIRST AND SECOND ADDITIONAL PROTOCOLS

- ENFORCEMENT OF CRIMINAL JUDGEMENTS:
  EUROPEAN CONVENTION ON THE TRANSFER OF SENTENCED PERSONS, 1983
  EUROPEAN CONVENTION ON THE VALIDITY OF CRIMINAL JUDGEMENTS, 1990.

European instruments adopted in the frame of the principle of
MUTUAL RECOGNITION within the European Union « cornerstone » of judicial co-operation (Tampere, 1998)

Instruments adopted and implemented:

2. FWD on the EUROPEAN ARREST WARRANT 13.06.2002
3. FWD on the FREEZING ORDERS 22.07.2003
4. FWD on the EUROPEAN EVIDENCE WARRANT 18.12.08
5. FWD on the CONFISCATION ORDERS 6.10.2006
EXTRADITION
PROCEDURE
TWO PHASES: ADMINISTRATIVE - JUDICIAL;

POLITICAL DECISION
TO CONTINUE WITH THE JUDICIAL PHASE
+ TO SURRENDER THE PERSON;

DISCRETIONARY GROUNDS FOR REFUSAL;

NO FIRM DEADLINES FOR GRANTING EXTRADITION
OR EFFECTING SURRENDER

PRINCIPLE OF DUAL CRIMINALITY

THE FWD ON THE EUROPEAN ARREST WARRANT

PRELIMINARIES

1. The mechanism of the EAW is based on a high level of confidence between Member and intended to increase the speed and ease of extradition throughout EU countries by removing the political and administrative phases of decision-making
2. Main role of the judicial authorities - the role of central authorities in the execution of a EAW is limited to practical and administrative assistance
3. The EAW should replace all the previous instruments concerning extradition in relations between MS
4. All the rules relating the respect of the fundamental rights are still applicable: refusal to surrender a person if
   - serious risk for death penalty or inhuman treatment
   - EAW based on discrimination

THE FWD ON THE EUROPEAN ARREST WARRANT

DEFINITION (art. 1 FWD)

The EAW is:
- a judicial decision
- issued by a Member State
- with a view to the arrest and the surrender by another Member State
- For the purpose of:
  - conducting a criminal prosecution
  - executing a custodial sentence / detention order

THE FWD ON THE EUROPEAN ARREST WARRANT

SCOPE (art. 2 FWD)

The EAW may be issued:
- for sentences of at least 4 months
- for acts punishable by the law of the issuing MS for a maximum period of at least 12 months

in the above cases THERE IS THE CONTROL OF DOUBLE CRIMINALITY

There is no control of double criminality:
For 32 offences limitatively listed if they are punishable in the issuing MS for a maximum period of at least
3 years
THE FWD ON THE EUROPEAN ARREST WARRANT

32 categories

THE FWD ON THE EUROPEAN ARREST WARRANT

GROUNDS FOR MANDATORY NON-EXECUTION (art. 3)

- OFFENCE COVERED BY AMNESTY IN THE EXECUTING MS
- FINAL JUDGMENT OR DEFINITIVE DECISION BY A EUROPEAN MEMBER STATE IN RESPECT OF THE SAME FACTS
- LOCAL MINORITY (under the law of the executing MS) AT THE MOMENT OF THE COMMISSION
- HUMAN RIGHTS VIOLATION (not explicitly listed) but can be inferred from Recital 12

This Framework decision respects fundamental rights and observes the principles recognized by Article 6 of the TEU and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VII thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a EAW has been issued where there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation... and Article 13(3). This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU.

THE FWD ON THE EUROPEAN ARREST WARRANT

GROUNDS FOR OPTIONAL NON-EXECUTION (art. 4)

- Lack of double criminality (except the 32 listed offences)
- Judicial proceedings for the same facts in the executing MS
- Prosecution or punishment is statute-barred according the law of the executing MS
- Judgement for the same facts in a non MS
- The requested person is national or resident in the executing MS which undertake to execute the sentence
- Acts committed in the executing MS
- Acts committed outside the issuing State and proceedings not allowed by the law of the executing State

THE FWD ON THE EUROPEAN ARREST WARRANT

GUARANTEES FROM THE ISSUING STATE (art. 5)

- EAW ISSUED FOR THE PURPOSES OF EXECUTING A SENTENCE OR MEASURE IMPOSED BY A DECISION RENDERED IN ABSENCE AGAINST A PERSON WHO WAS NOT INFORMED ABOUT THE TRIAL
  - MANDATORY GUARANTEE
    - ASSURANCE DEEMED ADEQUATE TO GUARANTEE THE PERSON THAT HE OR SHE WILL HAVE AN OPPORTUNITY TO APPLY FOR A RETRIAL OF THE CASE AND TO BE PRESENT AT THE JUDGMENT
  - Optional ground
    - Offence punishable by a custodial life sentence - legal system provides for review at least after 20 years, or measures of clemency

- EAW ISSUED FOR THE PURPOSES OF PROSECUTION AGAINST A NATIONAL OR RESIDENT IN THE EXECUTING MS
  - OPTIONAL GUARANTEE
    - RETURN OF THE PERSON CONCERNED TO THE EXECUTING MS IN ORDER TO SERVE THE CUSTODIAL SENTENCE OR DETENTION ORDER
THE FWD ON THE EUROPEAN ARREST WARRANT

JUDICIAL AUTHORITIES AND CENTRAL AUTHORITIES

The issuing judicial authority is the judicial authority of the issuing MS, competent to issue an EAW.

The executing judicial authority is the judicial authority of the executing MS, competent to execute a EAW.

Each MS may designate a central authority:
- to assist the competent judicial authority
- for the administrative transmission and reception

THE FWD ON THE EUROPEAN ARREST WARRANT

FORM AND CONTENT

MULTILINGUAL STANDARD FORM

INFORMATION: name of the person, issuing judicial authority, nature of the offence, penalty, description of the facts, translation in the language of executing state.

TRANSMISSION: directly to the executing judicial authority, or by an alert in the Schengen Information System (SIS - SI.RE.NE.), or by any secure means of transmission.

THE FWD ON THE EUROPEAN ARREST WARRANT

SURRENDER PROCEDURE

TIME LIMITS:
1. for the decision to execute the EAW:
   - with consent: 10 days
   - without consent: 60 days after arrest
   - if not: inform immediately the issuing MS + 30 days

2. for the surrender of the person:
   - ASAP or maximum 10 days after final decision
   - if not: immediate contact with the issuing MS
   - maximum 10 days after new date
THE FWD ON THE EUROPEAN ARREST WARRANT

SURRENDER PROCEDURE

POSSIBILITY TO POSTPONE THE SURRENDER

1. For serious humanitarian reasons (endanger the life of the health of the person)

2. For prosecution of the person in the executing MS or, if already sentenced, for serve a sentence in the executing MS

SPECIALITY RULE

GENERAL RULE: Article 27(2) – A person surrendered may not be prosecuted, sentenced or otherwise deprived of his/her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

EXEMPTIONS:

REPEALABILITY CAN BE AGREED – Article 27(1). Each Member State may notify the General Secretary of the Council that, on a bilateral agreement with other MS that have given the same notification, the consent is presumed to have been given for the prosecution, sentencing or detention with a view to the serving out of a custodial sentence of at least one year for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

The same applies regarding further surrenders to other MS than the executing MS (Article 28(1)).

SPECIFIC CASES:

(a) The person does not leave the territory of the state in 45 days from the final discharge or the return, the same applies for the surrender to a third state (Article 28(2)(a));

(b) The offence is not punishable by a custodial sentence or detention order;

(c) The criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) The financial penalty, even if it may give rise to a restriction of his/her personal liberty;

(e) The person consented to be surrendered;

(f) The person has after surrender ex post facto renounced entitlement to the specialty rule with regard to the specific offence preceding his/her surrender. The same applies for the surrender to another MS (Article 28(2)(g));

(g) Executing judicial authority gives its consent.

REPLACEMENT OF LEGAL INSTRUMENTS

GENERAL RULE:

Replacement from 1 January 2004 of the following conventions (for extradition requests received after 1 January 2004):


Agreement between 12 MS of the EC on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

Convention of 10 March 1996 on simplified extradition procedure between MS of the EC;

Convention of 27 September 1996 relating to extradition between the MS of the EU, Title III, Chapter 4 of the 1990 CISA.

Extradition requests received before 1 January 2004 or after based on a special statement by the MS for acts committed at least before 7 August 2002.
EU COMMISSION REPORT 2011

EAWs ISSUED:
FROM 3,000 (2004) TO 13,500 (2008) PER YEAR

AVERAGE TIME TO EXECUTE A EAW:
43 DAYS

AVERAGE TIME FOR VOLUNTARY SURRENDER:
13 DAYS

CRITICISM

Art. 2 (2) FwD dispense of verification of the principle of double criminality for 32 offences mentioned would be contrary to the principle of equality and non-discrimination and also to the principle of legality in criminal matters.

The European Court of Justice rejected this submission in a preliminary ruling in 2007 (Advocaten voor de Wereld VZW v Leden van de Ministerraad (2007) para. 48) because the Council’s choice of the 32 categories of offences listed in Art. 2 (2), among which are serious crimes that may adversely affect public order and public safety, was justified on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the EU Member States.

NGOs CRITICISM

- violation of principle of proportionality
- EAWs issued years after an alleged offence was committed;
- once EAWs have been issued there is no effective way of removing them, even after extradition has been refused;
- EAWs used to send people to another EU member state to serve a prison sentence resulting from an unfair trial;
- EAWs used to force a person to face trial when the charges are based on evidence obtained by police brutality;
- sometimes people surrendered under an EAW have to spend months or even years in detention before they can appear in court to establish their innocence.

EUROPEAN ARREST WARRANT: HELP!!!!

- ADDENDUM TO Council of EU NOTE 23 March 2010
Subject: Follow-up to the recommendations in the final report on the fourth round of mutual evaluations, concerning the European arrest warrant

- Council of EU NOTE 17 December 2010
from: General Secretariat of the Council
to: Delegations No. Prev.doc: 8216/2/08 REV 2 COPEN 70 EFN 26 EUROJUST 31
Subject: Revised version of the European handbook on how to issue an European Arrest Warrant
EUROPEAN ARREST WARRANT: PRACTICAL CASE

At the end of the investigations according to the Prosecutor request the Preliminary investigation judge issued an arrest warrant for 6 people (see selected parts of the warrant).

Three of them remained at large and the related EAWs must be issued for inserting them in the SIS.

Exercise
Fill the standard form of the EAW providing all the relevant information for the alleged execution of the EAWs.
DEFINITIONS

Article 1(1) - a judicial decision issued by the competent authority of a MS with a view to obtaining objects, documents and data (including evidence discovered by the executing authority during the execution of the EEW from another MS). The following procedures are listed:
(a) Criminal procedures brought by or to be brought before a judicial authority;
(b) Proceedings by administrative authorities where the acts are punishable and may give rise to proceedings before a court having jurisdiction in particular criminal matters;
(c) Proceedings brought by judicial authorities where the acts are punishable and may give rise to proceedings before a court having jurisdiction in particular criminal matters.

Certain evidence excluded, Article 4 - Scope: does NOT apply when the data is already in the possession of the executing authority before the EEW is issued (including DNA - Matchups: UK):
(a) Interviews and statements or hearings with suspects, witnesses, experts or any other parties; does not apply to persons present during the execution of the EEW and directly related to the object of the EEW (Article 4(10));
(b) Bodily examinations or bodily material or biometric data directly from the body of any person, including DNA and fingerprints;
(c) Information in real-time (direct interception of communications, covert surveillance or monitoring of bank accounts);
(d) Analysis of data, objects, documents or data;
(e) Communications data retained by providers of a publicly available electronic communications service;
(f) Information on criminal convictions.

EUROPEAN EVIDENCE WARRANT


NATIONAL TRANPOSITION by 19 January 2011

- Introducing the principle of mutual recognition into evidence gathering and transfer of evidence; Article 3(1): "The executing authority shall recognise an EEW, transmitted in accordance with Article 8, without any further formality being required and shall forthwith take the necessary measures for its execution in the same way as an authority of the executing state would obtain the objects, documents or data, unless that authority decides to invoke one of the grounds for non-recognition or non-execution... or for postponement..."
- Legal basis, Articles 31 and 34 TEU

Issuing authority (Article 2):
(a) A judge, a court, an investigating magistrate, a public prosecutor
(b) 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 to order the obtaining of evidence in cross-border cases in accordance with national law.

Each MS shall inform the General Secretariat of the Council which authority or authorities, under it national law, are competent when the MS is the issuing or the executing State.

Recital 5: "(9) Although authorities other than judges, courts, investigating magistrates and public prosecutors may have a role in the collection of such evidence in accordance with Article 25(4), this FDU does not cover police, customs, border and administrative cooperation which are regulated by other provisions of the Treaties."

Executing authority:
An authority having competence under national law to recognise or execute an EEW.

Search or seizure:
shall include any measures under criminal procedure as a result of which a legal or natural person is required, under legal compulsion, to provide or participate in providing objects, documents or data and which, if not complied with, may be enforceable without the consent of such a person, or may result in a sanction.
PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE OF THE EEW

NECESSITY AND PROPORIONALITY TEST BY ISSUING AUTHORITY

(a) Is necessary and proportionate for the purpose of the proceedings;
(b) The evidence can be obtained under the law of the issuing state in a comparable case.

The non-application of the test should not be assessed by the executing state (Recital 11).

TRANSMISSION

As general principle, direct cooperation between judicial authorities: Article 8(1). “The EEW may be transmitted to the competent authority of the issuing state if it contains the data or documents or data are located or in the case of electronic data, under the law of the executing state, and shall be transmitted without delay to the issuing authority in the executing state by any means capable of producing a written record under conditions allowing the executing state to establish authenticity. All further official communications shall be made directly between the issuing and the executing authority.

Role for EIN.

Possibility to nominate a central authority as exemption to the general rule.

PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE OF EEW

MUTUAL RECOGNITION AS A PRINCIPLE

- The executing state responsible for choosing the measures which under its national law ensure the provision of the evidence sought by an EEW (Article 1(2)). The executing state shall comply with the formalities and procedures expressly indicated by the issuing authority otherwise provided in the EEW and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing state (Article 13).
- Each MS has to ensure that any measure available in a similar domestic case is available in the executing state for the EEW; (b) search and seizure is available for the execution of a EEW regarding 32 offences for which a double criminality check is required (Article 14(1));
- Possibility to limit searches or seizures to cases where the issuing authority was a judge, Investigating magistrate or public prosecutor where the measure has validated the EEW (a) in each specific case (after consultation with the issuing state); (b) a declaration at the time of the adoption of the EEW or with a subsequent notification (in domestic cases a judge, court, investigating magistrate or prosecutor has to order) - Article 14(4) and (5).

5. A MS may, at the time of adoption of this EEW, make a declaration or subsequent notification to the General Secretariat of the Council requiring such validations in all cases where the issuing authority is not a judge, a court, an investigating magistrate or public prosecutor and where the measure necessary to execute the EEW would have to be ordered or supervised by a judge, a court, an investigating magistrate or public prosecutor under the law of the executing state in a similar domestic case.

USE OF PERSONAL DATA OBTAINED FROM THE EXECUTING STATE

Use in the issuing State for:
(a) proceedings for which the EEW may be issued;
(b) other judicial or administrative proceedings directly related to the EEW proceedings;
(c) Prevention of immediate and serious threat to public security;
(d) In other cases after obtaining consent of executing state or the data subject.

GROUND FOR REFUSAL (NON-RECOGNITION OR NON-EXECUTION) - ARTICLE 13 (OPTIONAL GROUNDS)

1. No basis in idem principle; prior consultation before refusal by issuing authority obligatory. (Article 13(5))
2. No double criminality check regarding search or seizure (for offences other than the 32 offences for which no check is necessary).
3. No measure for execution available.
4. Immunity or privilege (Recital 17).
5. No validation by a judge, court, Investigating magistrate or prosecutor is provided (Article 14(1) and (5)).
6. Territoriality rules (i.e., committed wholly or for a major part in the executing state) - deliberation criteria envisaged by the issuing state and must be respected. Whether a major or essential part took place in the issuing state, whether the EEW relates to an act that is not crime in the executing state, whether a search or seizure is necessary - consultation with parties; (ii) committed outside the issuing state and the executing state does not allow proceedings in such a case.
7. Harm of essential national security interest, jeopardise the source of information or involve the use of classified information relating to specific intelligence activities; prior consultation before refusal by issuing authority obligatory. (Article 13(5)); Recital 18).
8. Incomplete form or incorrect and has not been rectified; prior consultation before refusal by issuing authority obligatory (Article 13(5)).
9. Human rights (non-oportional) - Recital 8 “The principle of mutual recognition is based on a high level of confidence between MS. In order to protect this confidence the FED should contain important safeguards to protect fundamental rights. The FED should therefore be issued only by judges, courts, investigating magistrates, public prosecutors and certain other judicial authorities as defined by MS in accordance with this FED.”
DOUBLE CRIMINALITY

- No double criminality check unless a search or seizure is necessary (OPTIONAL TO INTRODUCE - Article 14(3)): “If the EEW is not related to any of the offences set out in paragraph 2 and its execution would require a search or seizure, recognition or execution of the EEW MAY be subject to the condition of double criminality. In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing state.”)

- Even if a search or seizure is necessary no double criminality check is being provided: for a list of 32 offences AND - if they are punishable in the issuing state by a custodial sentence or a detention order for a max. period of at least three years,

LEGAL REMEDIES (Article 18)

- Any interested party, including bona fide third parties against the recognition and execution in the executing state (possibility to limit it to cases where coercive measures were used); transfer may be suspended meanwhile;

- Substantive reasons and proportionality only challenged in the issuing state

RELATION WITH OTHER LEGAL INSTRUMENTS (Article 21)

- Coexistence with existing legal MLA instruments regarding relations between MS:

- EEW shall be used when all the evidence falls within the scope of this FD: “2. Without prejudice to paragraphs 3 and 4, issuing authorities shall rely on the EEW when all of the objects, documents or data required from the executing State fall within the scope of this FD.”

- In cases MLA may be used – Article 21(3). “3. Issuing authorities may use MLA to obtain objects, documents or data falling within the scope of this FD if they form part of a wider request for assistance OR if the issuing authority considers in the specific case that this would facilitate cooperation with the executing State.”; MLA applicable for requests done before 19 January 2011

- New bilateral or multilateral agreements: in so far as such agreements allow the objectives of the FD to be extended or enlarged and help to simplify or facilitate further procedures.
EUROPEAN INVESTIGATION ORDER


Based on an initiative by a group of MS (Austria, Belgium, Bulgaria, Estonia, Spain, Slovenia and Sweden) in accordance with Article 76 TFEU

Legal basis: Article 82 (1)(a)

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

(a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
(b) prevent and settle conflicts of jurisdiction between Member States;
(c) support the training of the judiciary and judicial staff;
(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

EUROPEAN INVESTIGATION ORDER

Scope

the EIO will have a horizontal scope and therefore should apply to all investigative measures aimed at gathering evidence. However, the setting up of a joint investigation team and the gathering of evidence within such a team require specific rules which are better dealt with separately. Without prejudice to the application of the Directive, existing instruments should therefore continue to apply to this type of investigative measure.

Basically it includes all investigative measures except the setting up of joint investigation teams.

EUROPEAN INVESTIGATION ORDER

TIME LINE OF THE ADOPTION OF THE PROPOSAL

May 2010 - Initiative by MS
November 2011 - Council general approach
May 2012 - European Parliament Libe report
June 2012-December 2013 - negotiations between European Parliament and Council
December 2013 - Agreement reached
February 2014 - vote in EP
March 2014 - vote in the Council
2017 - end of transposition period

EUROPEAN INVESTIGATION ORDER

DEFINITION - Article 1

1. A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ("the issuing State") to one or several specific investigative measure(s) carried out in another Member State ("the executing State") to obtain evidence in accordance with this Directive. The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

2. MS shall execute an EIO on the basis of the principle of mutual recognition and in accordance with the Directive.

3. The issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure. (I.E. FOR BOTH PARTIES TO THE PROCEDURE - PROSECUTION AND DEFENCE (PRINCIPLE OF EQUALITY OF PARTIES))

This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected. (SPECIFIC REFERENCE TO FUNDAMENTAL RIGHTS OBLIGATIONS HAS TO BE READ TOGETHER WITH RECITAL 39 ON DEFINITION OF HUMAN RIGHTS AND A HUMAN RIGHTS NON-RECOGNITION GROUND)

Recital 39. (19) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably title III thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutional law in their respective fields of application. Nothing in this Directive may be interpreted as precluding refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of persecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinion, or that the person's position may be prejudiced for any of these reasons.
EUROPEAN INVESTIGATION ORDER

DEFINITION OF ISSUING AND EXECUTING AUTHORITIES - art. 2

Resolving the dilemma of the different notion of "judicial authority" (in some MS even the police is considered as a judicial authority, for example in Ireland), an EIO has to be issued or validated if the initial authority is the police by a "classical" judicial authority: a court, judge, investigating judge or prosecutor.

Article 2(a): "issuing authority" means:

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

(b) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence, in order to authorise or evidence in accordance with national law. In addition, before it is transmitted to the executing authority, the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 4.1., by a judge, court, investigating judge or a public prosecutor in the issuing State, where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO.

- Resolving the problem of executing authority as regards the specific role of a judge in authorising certain intrusive measures (in German "durchsetzter Amtsbehalten"), if only a court can order certain measures in the executing State than the EIO can be issued by such an authority beforehand. For example, a house search requested in Germany an an EIO of an Italian prosecutor has to go to a German court before executing it.

Article 2(6): "executing authority" means an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case. Such procedures may require a court authorisation in the executing State where provided by its national law.

EUROPEAN INVESTIGATION ORDER

CONTENT - Article 5

1. The EIO in the form set out in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority.

The EIO shall, in particular, contain the following information:

(a) data about the issuing authority and, where applicable, the validating authority;

(b) the object of and reasons for the EIO;

(c) the necessary information available on the person(s) concerned;

(d) a description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;

(e) a description of the investigative measures(s) requested and the evidence to be obtained.

2. 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 for completing or translating the EIO when the Member State concerned is the executing State.

EUROPEAN INVESTIGATION ORDER

PROCEDURES TO WHICH AN EIO IS APPLICABLE

No only criminal proceedings (EU) where broader covering also administrative-criminal proceedings and legal persons (solution taken over from the 2000 EU MLA Convention):

Article 4:

An EIO may be issued:

(a) with respect to criminal proceedings that are brought by, or may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;

(b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters;

(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

(d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

EUROPEAN INVESTIGATION ORDER

TRANSMISSION AND DEADLINES

- Direct transmission between issuing and executing authority

- Possibility to include a central authority for the administrative work

- Strict deadlines: Decision of recognition takes within 30 days (possibility to extend additional 30 days) after the receipt of the EIO, measure carried out not later than 90 days following the decision

- However, the executing authority shall take as full account as possible of the requirement that the investigative measure must be carried out on a specific date

POSTPONEMENT:

The recognition or execution of the EIO may be postponed in the executing State where:

(a) as execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;

(b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.

As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.
PROPORTIONALITY TEST IN THE ISSUING STATE AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE IN THE EXECUTING STATE (1)

Article 6
Conditions for issuing and transmittal on EIO
1. The issuing authority may, only issue an EIO where the following conditions have been met:
   a) The issuing authority is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person; and
   b) The investigatory measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

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

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

EUROPEAN INVESTIGATION ORDER

Execution
the authorities of the issuing state present in the executing state shall be bound by the law of the executing state during the execution of the EIO. They shall not have any law enforcement powers in the territory of the executing state, unless the execution of such powers in the territory of the executing state is in accordance with the law of the executing state and to the extent agreed between the issuing authority and the executing authority.

Recourse to a different type of investigative measure
the executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigatory measure selected by the executing authority would achieve the same result by less intrusive means than the investigatory measure indicated in the EIO.

EUROPEAN INVESTIGATION ORDER

TRANSFER OF EVIDENCE

IMMEDIATE TRANSFER OF EVIDENCE AS A GENERAL PRINCIPLE WITH THE OBLIGATION OF SUSPENSION IF IT WOULD CAUSE SERIOUS AND IRREVERSIBLE DAMAGE TO THE PERSON CONCERNED

Article 13
Transfer of evidence
1. The executing authority shall, without undue delay, transfer the evidence obtained or already in its possession to the competent authorities of the executing state as a result of the execution of the EIO in the issuing state.
2. The transfer of the evidence may be suspended, pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights. However, the transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.
3. Where transferring the evidence would cause serious and irreversible damage to the person concerned, the executing authority shall indicate within 14 days after consultation with the issuing authority, the decision to suspend and the reasons for it.
4. Where the evidence is referred to in paragraph 1, the executing authority may, at its request, return the evidence on condition that it be returned to the issuing state as soon as it no longer required in the issuing state.
5. The executing authority may, at its request, return the evidence on condition that it be returned to the issuing state as soon as it no longer required in the issuing state.
EUROPEAN INVESTIGATION ORDER

GRUNDS FOR NON-RECOGNITION OR NON-EXECUTION (1)

Recognition or execution of an EIO may be refused in the executing State where, inter alia:

- there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;
- the execution of the EIO would be contrary to the principle of ne bis in idem (for instance when the issuing authority has provided assurances that the evidence transferred as a result of the execution of the EIO will not be used to prosecute or sanction a person whose case has been disposed of in another MS for the same facts);
- the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;

EUROPEAN INVESTIGATION ORDER

GRUNDS FOR NON-RECOGNITION OR NON-EXECUTION (2)

- the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D (such as terrorism or trafficking in human beings), as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years.

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

LEGAL REMEDIES

SCOPE OF CHALLENGE
Formal aspects of the particular investigative measure carried out can be challenged also in the executing State. The content of the order should be in principle challenged in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.

CONSEQUENCE OF CHALLENGE

- In principle, no suspensive effect, unless it is provided in similar domestic cases.
- As regards the effective and genuine protection of the rights of the defence, the measures taken shall be taken into account.

Article 14 Legal remedies

1. Member States shall ensure that legal remedies, including in a similar domestic case, are available to the investigating authority without prejudice to the guarantees of effective and genuine protection of the rights of the defence.

2. The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.

3. Where it is not possible to ensure confidentiality of the investigation under Article 3(1), the issuing authority and the executing authority shall make the appropriate steps to ensure that the information provided about the procedure under national law is not revealed, the legal remedy being subject to the applicable law and in due time to ensure that they can be exercised effectively.

4. Member States shall ensure that the time limits for seeking a legal remedy shall be the same as those provided for in similar domestic cases and applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.

5. The issuing authority and the executing authority shall inform each other about the legal remit of the other against the issuing, the recognition or the execution of the EIO.

6. A legal challenge shall not impair the execution of the investigative measure unless it is provided in similar domestic cases.

7. The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assuming evidence obtained through the EIO.
EUROPEAN INVESTIGATION ORDER

Expenses incurred for the execution of an EIO shall be borne exclusively by that MS. However, the execution of an EIO may incur exceptionally high costs on the executing State. Such exceptionally high costs may, for example, be complex experts' opinions or large police operations or surveillance activities over a large period of time. This should not impede the execution of the EIO and the issuing and executing authorities should seek to establish which expenses are to be considered as exceptionally high. The issue of costs might become subject to consultations between the Member States concerned and they are recommended to resolve this issue during the consultations stage.

As the last resort, the issuing authority may decide to withdraw the EIO or to maintain it and the part of the costs which are estimated exceptionally high by the executing State and absolutely necessary in the course of the proceedings, should be covered by the issuing State.

European Arrest Warrant

An EIO may be issued for the temporary transfer of the person to the issuing State or for carrying out a hearing by videoconference. However, where the person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, an EAW shall be issued in accordance with the Council Framework Decision 2002/584/JHA.

EUROPEAN INVESTIGATION ORDER

SPECIFIC MEASURES (1)

TEMPORARY TRANSFER TO THE ISSUING STATE OF PERSONS HELD IN CUSTODY FOR THE PURPOSE OF CARRYING OUT AN INVESTIGATIVE MEASURE (ARTICLE 22)

(a) in addition to the grounds for non-recognition or non-execution referred to in Article 11 the execution of the EIO may also be refused if:
(b) the transfer is likely to prolong the detention of the person in custody.

Hearing by videoconference or other audio-visual transmission (Article 24)

Hearing by telephone conference (Article 25)

For witness or expert where it is not appropriate or possible for the person to be heard in person, and after having examined other suitable means.

EUROPEAN INVESTIGATION ORDER

SPECIFIC MEASURES (2)

INFORMATION ON BANKING AND OTHER FINANCIAL OPERATIONS (ART. 26-27)

An EIO may be issued in order to obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified within, including the particulars of any sending or recipient account. Measures have been laid down to determine which types of information should be recovered from the bank accounts.

No limitation to certain criminal acts (different than MLA)

For any natural or legal person subject to the criminal proceedings concerned holds or controls one or more accounts, of whatever nature, in any bank or non-banking financial institution located in the territory of the executing State, and if so, to obtain all the details of the identified accounts.

INVESTIGATIVE MEASURES IMPLYING THE GATHERING OF EVIDENCE IN REAL TIME, CONTINUOUSLY AND OVER A CERTAIN PERIOD OF TIME (ARTICLE 28)

1. When the EIO is issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time, such as:

(a) the monitoring of banking or other financial operations that are being carried out through one or more specified accounts,

the controlled deliveries on the territory of the executing State.

2. Any execution may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 11, if the execution of the investigative measure concerned would not be authorized in a similar domestic case.

The practical arrangements regarding the investigative measure referred to in paragraph 1 (a) and wherever else necessary shall be agreed between the issuing State and the executing State.

EUROPEAN INVESTIGATION ORDER

SPECIFIC MEASURES (3)

COVERT INVESTIGATIONS (ART. 29)

An EIO may be issued for the purpose of requesting the executing State to assist issuing State in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations). Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place.

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

2. The issuing authority shall indicate in the EIO why it considers that the covert investigation is likely to be relevant for the purpose of the criminal proceedings. The decision on the execution and execution of an EIO issued under this Article shall be taken in each individual case by the competent authorities of the executing State, with due regard to its national law and procedures.

3. In addition to the grounds for non-recognition and non-execution referred to in Article 11, the executing authority may refuse to execute an EIO referred to in paragraph 1, where:

the execution of the covert investigation would not be authorized in a similar domestic case; or

it was not possible to reach an agreement on the arrangements for the covert investigations under paragraph 4.

4. Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The right of access, direct and in contact, the operative referred to in the covert investigations shall be solely with the competent authorities of the executing State. 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 executing State, with due regard to their national laws and procedures.
EUROPEAN INVESTIGATION ORDER

SPECIFIC MEASURES (5)

INTERCEPTION OF TELECOMMUNICATIONS WITH TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ARTICLE 30)

The possibilities to cooperate under the provisions on interception of telecommunications should not be limited to the content of the telecommunication, but could also cover the collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for purposes of obtaining less intrusive data on telecommunications. (MLA SOLUTION IN THE FRAMEWORK OF MR)

TECHNICAL ASSISTANCE

Technical provisions have been introduced as regards the scope of the assistance to be offered. In an EIO containing the request for interception of telecommunications the issuing authority should provide the executing authority with sufficient information such as details of the criminal conduct under investigation, in order to allow the executing authority to assess whether the measure would be authorised in a similar national case.

DATA PROTECTION

MSs should provide in the application of this Directive for transparent policies with regard to the processing of personal data and for the exercise of the data subject's rights to legal remedies for the protection of his or her personal data. Personal data obtained under this Directive should be processed only in a manner compatible with the aim of the investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the right of defense. Only authorised persons should have access to information contained in personal data which may be achieved through authentication processes.

EUROPEAN INVESTIGATION ORDER

SPECIFIC MEASURES (4)

INTERCEPTION OF TELECOMMUNICATIONS WITH TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ARTICLE 30)

1. An EIO may be issued for the interception of telecommunications in the MS from which judicial assistance is needed.
2. Where more than one Member State is in a position to provide the necessary technical assistance for the same interception of telecommunications, the EIO shall be granted only in one of them. Priority shall always be given to the Member State where the subject of the interception will be located.
3. An EIO referred to in paragraph 1 shall also contain the following information:
   a) the purpose for which the interception of telecommunications is needed;
   b) the period for which the interception is needed;
   c) the method to be used;
   d) the technical assistance to be provided;
   e) the use to which the information obtained will be put.
4. The issuing authority shall ensure that the interception is carried out in accordance with this Directive and the technical assistance is provided in accordance with the technical assistance Directive.
5. The executing authority shall ensure that the technical assistance provided is used in accordance with this Directive and the technical assistance Directive.
6. The executing authority shall ensure that the technical assistance provided is used in accordance with this Directive and the technical assistance Directive.
7. When issuing an EIO referred to in paragraph 1, the issuing authority may, if it has a specific reason, request the interception of telecommunications to be carried out in accordance with this Directive and the technical assistance Directive.
8. Costs resulting from the interception of telecommunications under this Directive shall be borne by the issuing authority.

EUROPEAN INVESTIGATION ORDER

PROVISIONAL MEASURES (ART. 32)

REPLACING THE FREEZING OF EVIDENCE FD

It is stated that an EIO may be issued in order to take any measure with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of evidence that may be used as evidence. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, whenever practicable, within 24 hours of receipt of the EIO.

1. The freezing authority may issue an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence.
2. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, whenever practicable, within 24 hours of receipt of the EIO.
3. Where a provisional measure referred to in paragraph 1 is issued, the executing authority shall inform the freezing authority of the decision referred to in paragraph 1 and the date of the decision.
4. If, in accordance with paragraph 1, an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the freezing authority shall indicate the date of the decision referred to in paragraph 1 and the date of the decision.
5. When the executing authority shall decide and communicate the decision on the provisional measures referred to in paragraph 1, the executing authority shall inform the freezing authority of the decision referred to in paragraph 1 and the date of the decision.
6. The executing authority shall inform the freezing authority of the decision referred to in paragraph 1 and the date of the decision.
7. Where a provisional measure referred to in paragraph 1 is issued, the executing authority shall inform the freezing authority of the decision referred to in paragraph 1 and the date of the decision.
8. Costs resulting from the application of the Directive shall be borne in accordance with Article 21, except for the costs arising from the interception, decryption and decryption of the intercepted communications which shall be borne by the issuing State.

ANNEXES

The annexes of the Directive have been revised in order to clarify the content of the investigation order and list the offences that are likely to be the source of an EIO.
THE CONCEPT OF MUTUAL LEGAL ASSISTANCE
- Mutual Legal Assistance is the provision of assistance on a formal legal basis, usually in the gathering and transmission of evidence, by an authority of one country to an authority in another, in response to a request for assistance.
- "Mutual" simply denotes the fact that assistance is usually given in the expectation that it would be reciprocated in like circumstances, although reciprocity is not always a precondition to the provision of assistance.

GENERAL LIMITS/OBSTACLES
- principle of dual criminality
- principle of speciality (whereby the information obtained can only be used for the requested purpose)
- some offshore jurisdictions limit the scope of their co-operation where the offences involved are fiscal in nature;
- States sometimes limit their co-operation to certain types of criminal offences;
- some countries do not recognize freezing or confiscation orders made in another country.

FEATURES OF THE TRADITIONAL SYSTEM OF COOPERATION
- Based on the recognition of judicial borders and the principle of territoriality.
- The intervention of Central Authorities implies political control over the granting of the assistance: public order as ground for refusal.
- Application of the Law of the Requested Party can lead to the non validity of the material in the proceedings in the Requesting Party.
- New forms of assistance based on new investigating measures cannot take place: videoconferences, joint investigation teams, undercover agents...

TRADITIONAL MECHANISMS in the framework of Council of Europe
- MUTUAL LEGAL ASSISTANCE:
  - EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, 1999
  - FIRST ADDITIONAL PROTOCOL, 1978
  - SECOND ADDITIONAL PROTOCOL, 2001
- EVEN IF NOT STRICTLY MLA
  - EXTRADITION:
    - EUROPEAN CONVENTION ON EXTRADITION, 1957
    - FIRST AND SECOND ADDITIONAL PROTOCOLS
  - ENFORCEMENT OF CRIMINAL JUDGEMENTS:
    - EUROPEAN CONVENTION ON THE TRANSFER OF SENTENCED PERSONS, 1983
    - EUROPEAN CONVENTION ON THE VALIDITY OF CRIMINAL JUDGEMENTS, 1990
- **MUTUAL LEGAL ASSISTANCE CONVENTION 1959**
  - framework for traditional legal assistance system
  - system of central authorities
  - no direct transmission/exchange between judicial authorities, except in case of urgency (cc: central authority)
  - grounds for refusal based on public order and essential national interest
  - execution ruled by the law of the requesting country (locus regit actum)
  - the convention sets out rules for the enforcement of letters rogatory by the authorities of a ‘requested party’ which aim to procure evidence (hearing of witnesses, experts and prosecuted persons, service of writs and records of judicial verdicts) or to communicate the evidence (records or documents) in criminal proceedings undertaken by the judicial authorities of a ‘requesting party’.
  - the convention specifies the requirements that requests for MLA and letters rogatory have to meet (transmitting authorities, languages, grounds for refusal).

- **PROTOCOLS TO MLA CONVENTION 1989**
  - The first additional Protocol 1978 to the Convention
    - completes the Convention by withdrawing the possibility to refuse assistance solely on the grounds that the request concerns an offence which the requested party considers a fiscal offence
    - extends international cooperation to the service of documents concerning the enforcement of a sentence and similar measures
    - adds provisions relating to the exchange of information on judicial records
  - The second additional Protocol 2001
    - modernizes the provisions of the Convention by extending the range of circumstances under which MLA may be requested
    - facilitates assistance and makes it quicker and more flexible
    - parallels completely the EU Convention of 29 May 2000 in MLA and in other provisions follows the Schengen Convention on 14 June 1990.

- **SECOND ADDITIONAL PROTOCOL TO MLA CONVENTION**
  - **MOST IMPORTANT INNOVATIONS**
    - procedural requirements of the requesting States to be taken into account when executing a request for mutual assistance (article 8)
    - video-conference and tele-conference (article 9 and article 10)
    - controlled deliveries (article 18)
    - cross-border observations (article 17)
    - joint investigations teams (article 20)
    - spontaneous information (article 11)
    - under cover operations (article 19)
    - direct transmission of requests (article 4)
    - temporary transfer of detained persons to the requested Party (art 13)
**Tendency Towards a Change in Judicial Cooperation - Reasons**

- Crime has become transnational, also the struggle against it also had to be shaped likewise (joint cross-border investigations, undercover operations, controlled deliveries, asset sharing).
- Chances offered by new technology (videoconferences, interceptions of communications via satellite, ground station).
- Peculiarity of certain types of crime: high-tech crimes and trace/freeze problems (cybercrime convention).
- Technology has an influence also on ways of transmission of requests and other documentation (fax, email, share-filing).
- Awareness that IC and MLA in particular, needs to be more effective, and that requires the evidence gathered abroad to be admissible in the requesting State, i.e. where the trial is taking place.

**Judicial Cooperation vs. Police Cooperation**

- Boundary not determined nor accepted world-wide and depending on specific legal system and the different role played by Police and Prosecutors (common law / civil law).
- As a consequence it is hard to distinguish police/judicial cooperation only on the basis of the specific act or activity performed or sought, the sole discriminating aspects being a combination of the following: whether
  a. the requested act or the activity relates to a criminal proceeding;
  b. the request comes from a judicial authority (according to the definition given by the requesting State).
- On the other hand, because of the progress made in the field of technology, some of the activity once performed directly by the police, in that they impinge on individual fundamental rights (i.e. electronic surveillance), are now usually carried out either in pursuance of a court decision or under the supervision of a court or a judicial authority.
- Police co-operation more effective than judicial.

**Rome Treaty 1958: Silence on Justice**

- Economic objectives
- Free movement of goods, services, persons and capital (Coj in Cassis de Dijon 120/78; principle of mutual recognition for marketing of goods)
- Silence on cooperation in criminal matters
- In 1977, Valéry Giscard d'Estaing proposed creation of a European judicial area, but no follow-up

**Schengen Convention (I)**

- 1985: DE + FR + BENELUX, other Member States joined later
- 1990: Implementation Agreement
- Objective: abolition of internal border controls, reinforcement of outside border controls
- Amsterdam (1999) absorbed Schengen acquis
- UK and IE do not participate, but can opt-in for specific elements
- Some third countries participate (Norway, Island, Switzerland, Lichtenstein)
Scheuren Convention (I)

Accompanying measures:
- Schengen information system (SIS)
- Transborder surveillance of persons and “hot-pursuits” (under conditions)
- Exchange police information
- Direct contact between judicial authorities
- ‘Ne bis in idem’

Something more was necessary...

- Growing fear of organised crime in an ever more integrated Europe (Single European Act 1987, ‘objective 1992’ to complete internal market)
- Calls for new measures on cooperation in criminal matters

Treaty of Maastricht (I)

Entry into force on 1 November 1993
Creation of pillar system
1st pillar: EC policies
2nd pillar: CFSP
3rd pillar: justice and home affairs, including cooperation in criminal matters

Treaty of Maastricht (II)

(K.1) Member States shall regard the following areas as matters of common interest:

(7) judicial cooperation in criminal matters

(9) police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime
Treaty of Amsterdam (I)

- Creation of area of freedom, security and justice
- Integration of Schengen acquis: partly in first pillar (asylum, immigration, visa ...) and partly in third pillar (police and judicial cooperation in criminal matters)
- Enhanced cooperation both in criminal matters

Treaty of Amsterdam (II)

- 30: Common action in the field of police cooperation:
  - operational cooperation between the competent authorities
  - collection, storage, analysis of information
  - training
  - Cooperation through Europol is promoted

Treaty of Amsterdam (III)

- 31: Common action on judicial cooperation in criminal matters includes:
  - facilitating and accelerating cooperation between competent judicial or equivalent authorities of the Member States in relation to proceedings and enforcement of judgments
  - facilitating extradition
  - preventing conflicts of jurisdiction
  - establishing minimum rules relating to constituent elements of criminal acts and penalties

Judicial Cooperation: MR

- Following Tampere European Council (1999), various Framework Decisions have been adopted on the basis of the principle of mutual recognition

- The Hague Council (2004): judicial cooperation could be further enhanced by strengthening mutual trust and by the development of a European judicial culture
MR: adopted FDs

- Both pre-trial and post-trial:
  - European arrest warrant
  - Taking account of earlier convictions
- Pre-trial:
  - Freezing order
  - European evidence warrant
  - Supervision measures
- Post-trial:
  - Financial penalties
  - Confiscation orders
  - Transfer of sentenced persons
  - Probation
  - In absentia

New trends in JC

- Growing fear of organised crime in an ever more integrated Europe
  - (Single European Act 1987: "objective 1992" to complete internal market)
- Calls for new measures on cooperation in criminal matters
- New forms of mutual legal assistance:
  a. resulting from new technologies (fax, video-conferences, satellite interception etc.);
  b. resulting from the need to cope with new forms of crime (types of organized/cybercrime and/or nature or structure of transnational crime - JIT, under cover operations);
  c. alternative forms of MLA (Eurojust, EJN, liaison magistrates etc.).

EU SYSTEM:
Convention on MLA in criminal matters, 29th May 2000

- Entry into force: 8 ratifications of the "old" MS.
- Primary aim: developing and modernising the existing provision of mutual assistance by extending the range of circumstances in which assistance may be requested, by facilitating assistance to make it quicker and more effective, and by introducing new measures to facilitate and further cross-border investigations.
- Extends the application of MLA to proceedings before administrative authorities and proceedings involving legal persons.
- Provides for the application of the law of the Requesting State (if it is not contrary to the principles of the Requested State).
- To the extent possible, deadlines must be met, and reasons to non compliance must be given.
- Introduces new techniques applicable for mutual assistance (video and telephone conferences).
- Adopts rules on data protection.

EU SYSTEM:
Convention on MLA in criminal matters, 29th May 2000

- Service of documents:
  - General rule: by post
  - Only in certain circumstances it is possible to serve the document through the competent authorities of the requested state.
  - Translation: only if the addressee does not understand the language of the requesting state, and only the important passages thereof.
  - Accompanied by a report stating his/her rights (also translated to a language of his/her knowledge).
EU SYSTEM

Convention on MLA in criminal matters, 20th May 2000

REQUEST FOR MUTUAL LEGAL ASSISTANCE AND SPONTANEOUS EXCHANGE OF INFORMATION:
- GENERAL RULE: DIRECT TRANSMISSION BETWEEN JUDICIAL AUTHORITIES.
- INFORMATION LAKED WITH A VIEW TO PROCEEDINGS IN THE REQUESTED STATE: THEY MAY BE TRANSMITTED DIRECTLY.
- TRANSMISSION THROUGH CENTRAL AUTHORITIES IS ALSO POSSIBLE BUT IT MUST BE AVOIDED IF NOT INDISPENSABLE.
- TRANSMISSION THROUGH CENTRAL AUTHORITIES IS NECESSARY FOR:
  • TEMPORARY TRANSFER OR TRANSIT OF PERSONS IN CUSTODY
  • EXCHANGE OF INFORMATION ON CRIMINAL RECORDS
- GENERAL RULE is the application of the law of the Requesting State (if it is not contrary to the principles of the Requested State)

SPECIFIC FORMS OF ASSISTANCE

TEMPORARY TRANSFER OF PERSONS HELD IN CUSTODY FOR INVESTIGATION PURPOSES: AGREEMENT CONCLUDED AND DATE OF RETURN SPECIFIED

HEARING BY VIDEOCONFERENCE
- witness or expert agreement between MS that is also includes accused persons with its consent - Article 10(5), not desirable or possible for the person to be heard to appear - the way is not contrary to the fundamental principles of national law of requested state and it has the technical means (may be offered by requesting state) - judicial authority of the requested state shall be present - hearing conducted by judicial authority of requesting state - assistance of interpreter if necessary, right to testify in accordance with the law of the requested or requesting state - minutes T, the judicial authority of the requesting MS on the conclusion of the hearing, transmits indicatives of the date and place of the hearing, the identity of the person heard, the identities and functions of all the persons participating, any visits taken and the technical conditions - the document shall be forwarded to the competent authority of the requested MS in accordance with the principles of mutual legal assistance.

CONTROLLED DELIVERIES (Article 12)
- In accordance with the procedures of the requested state

JOINT INVESTIGATION TEAMS (Article 13)
- Agreements to set up, particularly for demanding and difficult investigations having links with other MS, subject to mutual agreement - MS conducting investigations and coordinated and concerted action is necessary - certain conditions (vagaries of the MS where the information is obtained) in accordance with national law of the state it operates - seconded experts from other MS may be in general person, responsible for certain matters - lawfully obtained information not available to the other MS may be used for certain purposes (purpose of the team, subject to prior consent of the MS where the information became available for investigating and protecting other interests - particularly immediate and serious threat to public security, other purposes agreed)

COVERT INVESTIGATIONS (Article 14): duration, donated conditions and legal status of the officers shall be agreed between MS, will this regard to national law and procedures, the covert investigation as such is conducted in accordance with the law of the state of operation - inessential possibility to exclude this article.
INTERCEPTION OF TELECOMMUNICATIONS (Articles 17-22)

- Competent authority in the requesting Member State - the judicial authority in the requesting Member State (Article 17)

2. KINDS OF REQUEST:

(a) Interception and transmission of a person's communications in the requesting state and in the requested state (Article 17)

(b) Interception, recording and subsequent transmission (Article 18(6))

(c) When interception, transmission or data retrieval is not possible, the requested Member State is to accede where the request is made (Article 18)

(d) Where the request is made by a Member State in a similar international case or at the request of a Member State, the requesting Member State shall notify the Member State concerned of the request (Article 18(2))

Conditions: requiring authority, confirmation that an order or warrant has been issued, identifying the subject, the criminal conduct, the intended duration, the reasons for which it should be done, in the requested state

Interception of telecommunications without the judicial assistance of another Member State (Article 24)

- Days of notification:

(a) Where a request is made by the requesting Member State, it is to be notified to the judicial authority in the requesting Member State

(b) The request is to be notified to the judicial authority in the requested Member State

(c) The request is to be notified to the judicial authority in the requesting Member State

(d) The request is to be notified to the judicial authority in the requesting Member State

Interception of telecommunications as national territory by the use of service providers (Article 19)

1. Member States shall ensure that systems of telecommunications services and services provided by service providers are available and accessible to the Member States through the international and domestic telecommunications networks of service providers, to ensure the protection of the rights and freedoms of individuals.

2. In the absence of a request to the competent authorities of a Member State, the responsible authorities of the Member State shall notify the person or entity or situation in accordance with the law and the applicable international law and the procedures and rules of evidence of the requesting Member State.

3. Nothing in this Article shall prevent a Member State from making a request to the Member State, or from the Member State, if the situation is considered by the requesting Member State, or from making a request to the Member State, or from the Member State.

4. Nothing in this Article shall prevent a Member State from making a request to the Member State or from making a request to the Member State, or from making a request to the Member State, or from making a request to the Member State.

Additional Protocol to the 2000 EU MLA Convention (2001)

Ratified by all EU MS except Greece, Estonia, Croatia, Italy and Ireland

Relates to banking information:

(a) Request for information on bank accounts

(b) Whether a natural or legal person is the subject of a criminal investigation, holds or controls bank accounts in another Member State, or in another state where the investigation is being conducted

(c) The information shall be provided to the extent to which it can be provided in accordance with the applicable law

Limitation:

- in certain cases, if the information is not provided or is not provided in time or in a manner that is not compatible with the applicable law

- in certain cases, if the information is not provided or is not provided in time or in a manner that is not compatible with the applicable law

- in certain cases, if the information is not provided or is not provided in time or in a manner that is not compatible with the applicable law

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Member States may, under certain conditions, ensure the execution of a request according to the provisions of the Articles that apply in respect of requests for search and seizure.

Member States may, under certain conditions, ensure the execution of a request according to the provisions of the Articles that apply in respect of requests for search and seizure.
Requests for information on banking transactions

Parishes of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

Requests for the monitoring of banking transactions

Requests for the monitoring of banking transactions during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicated to the requesting Member State.

The decision to monitor shall be taken in each individual case by the competent authorities of the requesting Member State, with due regard for the national law of that Member State.

Banking secrecy

A Member State shall not invoke banking secrecy as a reason for refusing any cooperation regarding a request for mutual assistance from another Member State.

CLARIFICATIONS ON FISCAL AND POLITICAL OFFENCES

Mutual assistance may not be refused solely on the grounds that the request concerns an offence which the requested Member State considers a fiscal offence. The request may not be refused solely on the grounds that the tax law of the requested Member State does not impose the same kind of tax as the tax that is the subject of the request of the requesting Member State.

For the purpose of mutual legal assistance between Member States, tax offences may be regarded as tax offences, an offence connected with a political offence as an offence committed by a political authority.

Each Member State may, when giving the notification referred to in Article 13(2), declare that it will apply paragraph 1 only in relation to:

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism of 27 January 1997,

(b) the offences of conspiracy or association, which correspond to the description of infravene referred to in Article 6(2) of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, in connection with the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

EJN

Set up in 1998

Located in each Member State (but secretariat in The Hague)

+/- 250 contact points (prosecutors, judges, representatives of Ministries of Justice); meet 3 times per year

Objective: to facilitate judicial cooperation, e.g. through personal contacts and 'Atlas'

Horizontal approach

EJN Website background

Objective: making information available that is practical, useful and essential for the day-to-day operation of the national judicial authorities.

One of the most important attributes of the Network, set out in Article 3, Line e) of the Joint Action and reinforced by the Council Decision on the European Judicial Network in Articles 3c, 7 and 8.

The construction of the so-called Network tools started before the EJN itself.

The EJN website was based in and until 2005 it was administered from Portugal.

Since June 2005 the EJN website is administered by the EJN Secretariat placed at Eurojust headquarters, in The Hague.

The EJN website can be accessed thanks to the following link: www.ejnocriminaleurope.eu

These tools are used not only by Contact Points but also by the judicial authorities from all the MS.

The EJN IT tools are composed of the List of Contact Points, the Legal Instruments, the Fiches Belgies, the European Judicial Atlas (commonly known as the Atlas), the EAW Atlas, the Solan, the Compendium and the Forms section.
**Eurojust**

**Objectives**

Set up in 2002 (modifications in 2003 and 2008/2009)
Located in The Hague
28 EU prosecutors / judges
One nominated by each Member State

**Aim**

To deal more effectively with serious cross-border crime, particularly when it is organised, and involves two or more Member States.

*Source: EU Council Decision of 14 December 2000*
Eurojust

Objectives:
- Improve co-operation between Competent Authorities in Member States
- Bring better coordination of cross-border investigations and prosecutions
- Exchange of information
- To make recommendations to change laws to improve MLA & extradition arrangements

Eurojust

How does it work?
- Case Referrals
- Working Methods
- Adding Value
- Strategic Meetings
- Co-ordination Meetings

Eurojust

Areas of Added Value
1 Permanent Mutual Legal Assistance Network
2 Empowered MLA Network
3 Facilities - Casework Meetings & Conferences
4 Contact Points
5 Integrated Approach: Tackling Organised Crime
6 Voice Influencing Law-Makers & Others
7 Casework Examples

Eurojust

Powers
- Power to request competent authorities:
  - to investigate or prosecute specific acts
  - to accept that one country is better placed to prosecute than another
  - to co-ordinate with one another
  - to set up a Joint Investigation Team
  - to provide Eurojust with any information necessary to carry out its tasks