

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

CHAPTER IV

SPECIFIC PROVISIONS FOR CERTAIN INVESTIGATIVE MEASURES

Article 22

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

1 An EIO may be issued for the temporary transfer of a person in custody in the executing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which the presence of that person on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.

2 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:

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

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

4 In cases referred to in paragraph 1, transit of the person in custody through the territory of a third Member State ('the Member State of transit') shall be granted on application, accompanied by all necessary documents.

5 The practical arrangements regarding the temporary transfer of the person including the details of his custody conditions in the issuing State, and the dates by which he must be transferred from and returned to the territory of the executing State shall be agreed between the issuing State and the executing State, ensuring that the physical and mental condition of the person concerned, as well as the level of security required in the issuing State, are taken into account.

6 The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State of transit, for the acts or convictions for which he has been kept in custody in the executing State, unless the executing State applies for his release.

7 The period of custody in the territory of the issuing State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing State.

8 Without prejudice to paragraph 6, a transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the issuing State for acts committed or convictions handed down before his departure from the territory of the executing State and which are not specified in the EIO.

9 The immunity referred to in paragraph 8 shall cease to exist if the transferred person, having had an opportunity to leave for a period of 15 consecutive days from the date when his presence is no longer required by the issuing authorities, has either:

- a nevertheless remained in the territory; or
- b having left it, has returned.

10 Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transfer of the person to and from the issuing State which shall be borne by that State.

Article 23

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

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

2 Paragraph 2(a) and paragraphs 3 to 9 of Article 22 are applicable *mutatis mutandis* to the temporary transfer under this Article.

3 Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transfer of the person concerned to and from the executing State which shall be borne by the issuing State.

Article 24

Hearing by videoconference or other audiovisual transmission

1 Where a person is in the territory of the executing State and has to be heard as a witness or expert by the competent authorities of the issuing State, the issuing authority may issue an EIO in order to hear the witness or expert by videoconference or other audiovisual transmission in accordance with paragraphs 5 to 7.

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

2 In addition to the grounds for non-recognition or non-execution referred to in Article 11, execution of an EIO may be refused if either:

- a the suspected or accused person does not consent; or
- b the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing State.

3 The issuing authority and the executing authority shall agree the practical arrangements. When agreeing such arrangements, the executing authority shall undertake to:

- a summon the witness or expert concerned, indicating the time and the venue of the hearing;
- b summon the suspected or accused persons to appear for the hearing in accordance with the detailed rules laid down in the law of the executing State and inform such persons about their rights under the law of the issuing State, in such a time as to allow them to exercise their rights of defence effectively;
- c ensure the identity of the person to be heard.

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

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

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

If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;

- b measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing State and the executing State;
- c the hearing shall be conducted directly by, or under the direction of, the competent authority of the issuing State in accordance with its own laws;
- d at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- e suspected or accused persons shall be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and the issuing State. Witnesses and experts may claim the right not to testify which would accrue to them under the law of either the executing or the issuing State and shall be informed about this right in advance of the hearing.

6 Without prejudice to any measures agreed for the protection of persons, on the conclusion of the hearing, the executing authority shall draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.

7 Each Member State shall take the necessary measures to ensure that, where the person is being heard within its territory in accordance with this Article and refuses to testify when under an obligation to testify or does not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.

Article 25

Hearing by telephone conference

1 If a person is in the territory of one Member State and has to be heard as a witness or expert by competent authorities of another Member State, the issuing authority of the latter Member State may, where it is not appropriate or possible for the person to be heard to appear in its territory in person, and after having examined other suitable means, issue an EIO in order to hear a witness or expert by telephone conference as provided for in paragraph 2.

2 Unless otherwise agreed, Article 24(3), (5), (6) and (7) shall apply *mutatis mutandis* to hearings by telephone conference.

Article 26

Information on bank and other financial accounts

1 An EIO may be issued in order to determine whether any natural or legal person subject to the criminal proceedings concerned holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State, and if so, to obtain all the details of the identified accounts.

2 Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.

3 The information referred to in paragraph 1 shall also, if requested in the EIO, include accounts for which the person subject to the criminal proceedings concerned has powers of attorney.

4 The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.

5 In the EIO the issuing authority shall indicate the reasons why it considers that the requested information is likely to be of substantial value for the purpose of the criminal proceedings concerned and on what grounds it presumes that banks in the executing State hold the account and, to the extent available, which banks may be involved. It shall also include in the EIO any information available which may facilitate its execution.

6 An EIO may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds one or more accounts, in any non-bank financial institution located on the territory of the executing State. Paragraphs 3 to 5 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused if the execution of the investigative measure would not be authorised in a similar domestic case.

Article 27

Information on banking and other financial operations

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

2 Each Member State shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.

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

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

5 An EIO may also be issued with regard to the information provided for in paragraph 1 with reference to the financial operations conducted by non-banking financial institutions. Paragraphs 3 to 4 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may

also be refused where the execution of the investigative measure would not be authorised in a similar domestic case.

Article 28

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

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;
- b the controlled deliveries on the territory of the executing State;

its 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 authorised in a similar domestic case.

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

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

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

Article 29

Covert investigations

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 recognition 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:

- a the execution of the covert investigation would not be authorised in a similar domestic case; or
- b it was not possible to reach an agreement on the arrangements for the covert investigations 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 to act, to direct and to control the operation related to the covert investigation shall lie solely with the competent authorities of the executing State. The duration of the covert

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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.