

Report on Eurojust's casework in the field of the European Investigation Order

Date: 10/11/2020

URL: <https://europa.eu/!gp86pR>

The Directive on the European Investigation Order (EIO DIR) was introduced to replace and improve the legal framework of mutual legal assistance (MLA). In many cases, the existence of standard forms (available in all EU languages), the increased role of judicial authorities (as issuing or validating authorities), the limited grounds for refusal and the time limits proved successful and had a positive impact on judicial cooperation. Yet, for the mutual recognition formula to be fully successful, it is crucial that the templates be duly filled in, the grounds for non-recognition be applied correctly and time limits be fully respected. This has not always been the case and, in practice, many practitioners have often struggled with the practical application of this instrument. The aim of this report, which is complementary to previously published documents by Eurojust (and the European Judicial Network (EJN)), is to inform both practitioners and policymakers of the main difficulties encountered in the practical application of the European Investigation Order (EIO) on the basis of Eurojust's casework and to highlight, where relevant, the role that Eurojust has played in overcoming such difficulties. The report is primarily based on the analysis of cases addressing issues related to the EIO registered at Eurojust between May 2017 and May 2019, and is complemented by views expressed during dedicated discussions with some Eurojust National Desks.

The report clearly indicates that the EIO is not yet functioning as a well-oiled machine. There are still several ongoing issues encountered throughout the life cycle of the EIO. Eurojust has played an important role in facilitating cooperation and ensuring coordination in both bilateral and multilateral cases involving EIOs. In the vast majority of cases handled by Eurojust, the issues mentioned throughout the report were resolved and EIOs could be executed successfully. Based on Eurojust's casework, solutions and best practices were identified, but the report also stresses some challenges that one should be aware of and sets out the main conclusions reached and recommendations proposed. The 10 most relevant issues identified in the report, followed by, where possible, Eurojust's recommendations/best practices, are as follows.

1. Defining the scope of the EIO.
 - Further clarification on the scope of the EIO DIR would be recommended and the possible need for further guidance on the single or combined use of EIOs/Letter of request (LoR) when certain requests are instrumental or linked to requests aimed at the gathering of evidence.
2. Clarifying the content of the EIO and assisting with requests for additional information.
 - For an overview of best practices, Eurojust would like to refer to the Joint Note of Eurojust-EJN note on the practical application of the EIO, which includes some suggestions in relation to the filling in of the different sections of the EIO.
3. Bridging differences between national legal systems.

- From an EU perspective, further clarification on the scope and meaning of these crucial concepts would be beneficial, rather than leaving it to the interpretation of each Member State, concerning, for example, but not limited to:
 - interception of telecommunications;
 - temporary transfer to the issuing state;
 - the speciality rule;
 - cross-border surveillance.
- 4. Ensuring a correct and restrictive interpretation of the grounds for non-execution.
- 5. Speeding up the execution of EIOs.
 - As best practice, it is suggested that, whenever the ‘urgency’ box is ticked in an EIO, it should be clearly explained why the execution of the requested measure is urgent.
- 6. Facilitating direct contact and exchange of information between issuing and executing authorities.
 - Contacting Eurojust at an early stage has been clearly shown to have a positive effect on the correct and swift execution of EIOs.
- 7. Addressing language issues.
 - A good translation of an EIO is the key to avoiding misunderstandings and unnecessary delays. As best practice, Eurojust’s casework revealed that, in urgent cases, an English version of the EIO was accepted, after which an official translation would follow.
- 8. Encouraging the use of Annexes B and C.
- 9. Transmitting EIOs to the competent executing authority.
- 10. Coordinating the execution of EIOs in different Member States and/or together with other instruments.
 - Early involvement of Eurojust in complex cases that require coordination has proved beneficial for the outcome in many cases and is therefore highly recommended.

A detailed explanation of the conclusions/recommendations/best practices mentioned above, including several other ongoing issues, can be found in this report. In addition, (anonymised) case examples, presented by Eurojust National Desks, have often been provided to help in explaining the issues at stake.