

PRE-RIGHTS



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Preventive Measures and Cross-Border and Police Cooperation



PRE-RIGHTS | AGENFOR INTERNATIONAL, CENTER FOR THE STUDY OF DEMOCRACY,
CENTRE FOR SECURITY STUDIES



- Directive 2014/41/EU of 3 April 2014

Art. 1 a EIO is a judicial decision....to obtain EVIDENCE

- Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between EU countries

1. The **European Arrest Warrant** is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the **purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.**





EIO does not substitute the freezing order -Framework Decisions 2003/577/JHA (REGULATION (EU) 2018/1805 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders) and not even the European Arrest Warrant

Free exchange of information in criminal matters among Courts:
it is **always possible**.

In some cases EIO can bring to
the Joint Investigation Teams (so called Jits)





EIO IN DETAILS

- ❖ It can be applied, if the offence is previewed in the receiving state (same type of offence);
- ❖ The **EIO** model is the model - **Annex A** there must be a good and detailed description of the offence bearing in mind the two principles of **proportionality******* and **necessity** (Point 11 of the Directive)
- ❖ The Receiving State fills in the **Annex B**, which states that the OEI has been received (within 7 days from the receipt) and a “**Recognition or Acceptance Decree**”;
- ❖ Principle of “*Ne bis in idem*”





In some cases the OEI cannot be accepted and the Decree is a “Motivation Decree of Non-Acceptance or Refusal” (Point 20 of the Directive);

Annex C***** is used only to notify the interception of telecommunication without technical assistance .

*******NOTIFICATION OF INTERCEPTORS AS THE TROYAN HORSE WHICH SOME COUNTRIES DO NOT ACCEPT**





- **EAW and EIO:**
- * **DOUBLE CRIMINALITY** in the EAW it is not so strict as in the EIO*

Focal point of the EIO: it is an instrument for the **search of evidence**, so it can be alternative to the EAW **only** for this purpose and **NOT TO AVOID** defendants to be surrendered. Therefore there can be intersection between the EAW and the EIO

- **EXAMPLE : GERMANY AND AUSTRIA - REQUEST OF TURKEY - LETTER OF ROGATORY - EIO**





- THE EIO HAS THE MAXIMUM PERIOD OF DURATION OF 4 MONTHS: INVESTIGATION MUST BE CONCLUDED WITHIN THIS DATE OR ANOTHER EIO MUST BE RELEASED





The EPPO and the European Commission's Anti-Fraud Strategy 2019

The start of the operations of the EPPO should be an important step forward in bringing new impetus to the overall anti-fraud architecture of the union. The EPPO will endeavour to be actively involved in the main strategic EU initiatives in this area, notably the revised 2019 Commission's Anti-Fraud Strategy (CAFS);

EPPO: Regulation 2017/1939 12th October 2017

History of the EPPO: The idea is dated back to 1997 reaching the year 2000 and 2001: **Green paper of the Commission and its integration in Article 86 of TFEU, concluding with the 2013 Commission Proposal for a Regulation on the establishment of it;**





Peculiarity of the EPPO is the RIGHT OF EVOCATION (Art. 27) : it must be redefined because from the experience of this last year it is not so easy: Starting point could be the EIO; *********

Example of the Carousel Fraud

EIO is regulated by the Directive 2014/41/EU and is prior to the Directive Regulating the EPPO.

In the case of the Carousel Fraud, since the amount of money is huge and it reaches the ten million Euro established by EPPO, the competence should only be of the EPPO, but since the investigations of the EIO are not in the hands of the executing country, which only comply with the request, this cannot happen, so the procedure is inadmissible and the investigations are only executed on the grounds of the EIO.





Examples of Fraud affecting interests of the EU MSs

- ❑ 28 March 2022 Communication of Eurojust of a **JIT** among Lithuania, Poland and Ukraine;
- ❑ Europol: 11 April 2022 **Europol** with the support of **Eurojust** and **Frontex** target assets owned by individuals and legal entities sanctioned in relation to the Ukraine war;
- ❑ 23 March 2022 An article of a local Italian newspaper about the smuggling of huge amounts of money;
- ❑ 28 June 2022 -Land Grabbing and white collars;
- ❑ Europol: From Poland to Canary islands: 10 arrested for stealing EUR 34 million in taxpayers' money.
- ❑ Cryptocurrencies: “virtual” money with “real” rules?





The meaning of cooperation in this field is to have a net as wide and connected as possible and in my opinion you are the best in your job in the way you are the best in having a net.

Association or EU bodies which can help in the cooperation:

- EJM European Judicial Network
- CCBE The Council of Bars and Law Societies of Europe - Find a Lawyer Search Engine
- FAIR TRIAL
- FRA Fundamental Rights Agency

Each country has a liaison judge from other countries (not all countries) but if there is one, it helps a lot.





Activities of the EPPO must be in full compliance with the rights of suspects and accused persons;

Regarding minimum rights the Regulation refers to the adopted EU Directives on procedural safeguards: the right to interpretation and translation, the right to information, access to a lawyer [*****]...

Judicial review of EPPO procedural acts:

NATIONAL COURTS may initiate preliminary ruling procedures before the CJEU





Art. 103 Relationships with the EU institutions:

Strong relationship of cooperation with the Commission since the primary aim of the EPPO is the protection of the financial interests of the EU. For this reason it is important the following document:

Commission Anti Fraud Strategy Action plan - state of Play June 2021 - 32nd Annual report on the protection of the European Union's financial interests - Fight against fraud - 2020

- 4 - existing inventory of IT tools: Directive on E-Evidence
ARACHNE SYSTEM (operative only in 21 MSs) : it is still less implemented and ad hoc trainings should be supplied, because it is a system which detect shell companies and at the same time it matches the beneficiaries with the operators from the single person to the biggest company and this is an helpful system to avoid frauds (for instance convicted people);





- 6 - conferences and studies on selected topics;
- 8 - Develop country profiles to better analyse and assess MSs, antifraud actions (lack of uniformity of which it has been discussed in the previous slide)
- 10 - Intensify the work of the Commission Fraud Prevention and Detection Network by choosing agenda items that relate to colleagues' daily work experiences for "hands-on" collaboration;
- 16 - Maintaining and refine a corporate anti-fraud training cycle, including regular refresher courses;
- 37 - Encourage MSs to put in place national anti-fraud strategies and provide advice and support in this request;
- 53 - Cooperation with the EPPO- Procedures with OLAF; EU institutions and body may make use of OLAF for the Preliminary evaluation (recital 51) - as explained in the previous slides the question is controversial because as in case of EIOs, it should not be reported to OLAF but to the Delegated EPPO Prosecutor.





58 EDES SYSTEM: Evaluate and optimise the EDES including cooperation with OLAF

The European Investigation Order is still in the EDES SYSTEM with the evidence codex project

<https://evidence2e-codex.eu/>

There should be a synergy between all the tools to be put on the EDES SYSTEM.

Example of the chain of custody in the EIO.





SUGGESTIONS

- Adjustment to the EIO : execution with a minimum threshold of money;
- Arrangement in the model for the judge to send directly the EIO to the to the Deputy European Prosecutor of its own MS;
- Ad hoc courses on E-Evidence and chain of custody;
- More involvement of administrative personnel in the courts.
- Ad hoc trainings for the judiciary police at all ranks.





<https://satlawproject.eu/>

<https://www.pre-rights.eu/>

<https://treio.eu/>

<https://www.ejn-crimjust.europa.eu/>

<https://fairnessproject.eu/>

THANK YOU FOR YOUR ATTENTION!!

QUESTIONS????

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