EUROPEAN
COMMISSION

Brussels, 2.10.2026
COM(2026) 313 final/2

2026/0172 (COD)

ADDENDUM
This document replaces document COM(2026) 313 final of 23.6.2026
Concerns all language versions.
Insertion of the reference to the Commission Staff Working Document SWD(2026) 780 final linked to this Proposal
The text shall read as follows:

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

regarding the European Investigation Order in criminal matters and the European Remote Participation Order (recast)

{SWD(2026) 780 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Criminal activity increasingly involves cross-border elements and poses a serious challenge to the security within the EU. Criminal networks and terrorist organisations operate seamlessly across multiple jurisdictions to carry out their criminal activities. Therefore, we need EU criminal justice systems with effective tools and reliable cooperation to address these threats.

Directive 2014/41/EU[1] ('the Directive') established the European Investigation Order ('EIO') as an instrument for cross-border gathering of evidence in criminal matters. The Directive was a response to a well-identified practical need for a comprehensive framework, based on mutual recognition, for obtaining evidence in cases with a cross-border dimension. Since the start of application in May 2017, the Directive has offered judicial and other competent authorities a valuable tool, which is used extensively used across the participating Member States.

The aim of the 10th round of mutual evaluations[2] which took place between 2023 and 2024, was to evaluate the application and implementation of the Directive. Backed by data from Eurojust[3] and the European Judicial Network in criminal matters ('EJN')[4], the evaluation confirmed that EIOs were used frequently. The evaluation also provided a valuable opportunity to identify areas for improvement and development, including at EU level. The final report on the 10th round of mutual evaluations on the implementation of the EIO ('final report on mutual evaluations')[5] identified several areas where Member States interpret the Directive differently or lack specific procedures, particularly: (i) the use of evidence for other purposes; (ii) the definition of 'interception of telecommunications'; (iii) the use of technical recording devices and the relationship between the EIO and cross-border surveillance under Article 40 of the Convention Implementing the Schengen Agreement ('CISA')[6]; and (iv) the use of previously exchanged law enforcement information as evidence. It concluded that these gaps hinder consistent implementation and called on the Commission to consider legislative amendments to clarify these issues. Moreover, it highlighted issues relating to the implementation of Article 24 of the Directive (on hearings by videoconference) and called on

---

1 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p. 1.

2 In line with the Joint Action 97/827/JHA of 5 December 1997 (the Joint Action), which established a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

3 The 2025 Eurojust annual report indicates 6 711 ongoing Eurojust cases, including 2 751 new cases, a close to half of all Eurojust cases: https://www.eurojust.europa.eu/about-us/planning-and-reporting/annual-report#downloadpdf .

4 The 2023-2024 EJN report on activities and management indicates that, from 2023 to 2024, EJN contact points reported more than 4 612 cases in which they assisted with EIO-related requests. These cases constituted nearly one third of all cases where EJN assistance was required: https://www.ejn-crimjust.europa.eu/ejn2021/ContentDetail/EN/2/67 .

5 Final report of mutual evaluations: https://data.consilium.europa.eu/doc/document/ST-15834-2024-REV-1/en/pdf.

6 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19.

the Commission to 'address at legislative level the question of the participation of the accused person in the trial via videoconference from another Member State'.

In addition, the High-Level Group on access to data for effective law enforcement considered that cross-border lawful interception requests pose several challenges for law enforcement authorities. The concluding report[7] suggested exploring how the Directive could better support efficient cross-border lawful interception requests.

The need for targeted legislative action was also confirmed by operational findings reported by Eurojust[8] and the EJN[9], by the report of the High-Level Forum on the Future of EU criminal justice[10] and by the assessment of the effect given by the Member States to Council Recommendation (EU) 2022/915[11].

Relevant case-law of the Court of Justice of the European Union (CJEU) has also clarified how certain aspects of the EIO Directive should be interpreted and has highlighted areas where additional legislative clarification is appropriate. Some cases concern, in particular, the interpretation of Article 24 of the Directive[12]. They highlight the legal uncertainty as to the scope, the conditions under which videoconferencing may be used in criminal proceedings and the extent to which assistance in this regard may be requested under the Directive beyond the primary purpose of taking of evidence.

Against this background, the proposal pursues two main objectives:

(1) to improve legal clarity and operational effectiveness in the cross-border gathering of evidence in the EU by addressing targeted deficiencies identified in the application of the Directive; and

(2) to draw up common rules for requesting assistance to make it easier for suspects, accused persons and victims to participate remotely in criminal court hearings from another Member State.

Addressing these shortcomings would contribute to more effective judicial cooperation and increase mutual trust between Member States.

With regard to the first objective, the proposal seeks to ensure a more uniform interpretation and application of key provisions of the Directive across participating Member States by clarifying concepts and procedural rules that have given rise to different national practices. In particular, it aims to provide greater legal certainty about: (i) the use of evidence for other purposes and its onward transfer; (ii) the definition of the notion 'telecommunications' and the procedural aspects of the notification procedure for interception without the need for

---

7 Concluding report of the High-Level Group on access to data for effective law enforcement: https://home-affairs.ec.europa.eu/document/download/4802e306-c364-4154-835b-e986a9a49281_en?filename=Concluding%20Report%20of%20the%20HLG%20on%20access%20to%20data%20for%20effective%20law%20enforcement_en.pdf .

8 Operational Topic on Interception of Telecommunication, Summary and compilation of replies, June 2024.

9 Comments and Conclusions of the 59th Plenary Meeting of the European Judicial Network (EJN) (Prague, 9–11 November 2022).

10 Report of the High-Level Forum on the Future of EU Criminal Justice: https://commission.europa.eu/document/download/606f0f38-12f9-4893-8941-3ac835229bcd_en?filename=JUST_template_comingsoon_standard_16.pdf .

11 Commission staff working document Assessment of the effect given by the Member States to Council Recommendation (EU) 2022/915 of 9 June 2022 on operational law enforcement cooperation, 31.1.2025 SWD(2025) 36 final, 31.1.2025.

12 Judgment of the Court of Justice of 4 July 2024, *FP and Others*, C-760/22, EU:C:2024:574; judgment of the Court of Justice of 6 June 2024, *AVVA and Others*, Joined Cases C-255/23 and C-285/23, EU:C:2024:462; judgment of the Court of Justice of 18 December 2025, C-325/24, *Bissili*, EU:C:2025:989.

technical assistance of another Member State; (iii) the definition of the 'issuing authority; and (iv) the procedures to request evidentiary use of information previously exchanged between law enforcement authorities or spontaneously exchanged between judicial authorities.

The proposal also sets out rules on the use of technical recording devices and on cross-border surveillance for the purpose of evidence gathering and clarifies the interaction between the EIO and cross-border surveillance measures under Article 40 CISA. It also aims to enhance the timely execution of certain investigative measures, implying a gathering of evidence in real time, such as controlled deliveries, as well as interception of telecommunications and cross-border surveillance. This will be done by allowing for provisional execution of such investigative measures where strictly necessary to ensure they remain effective. This is particularly important in organised crime investigations, where the use of those special investigative techniques is essential for gathering evidence. Moreover, the proposal addresses the deficiencies identified in the EIO form. The proposal thereby aims to strengthen the practical functioning of the common framework for obtaining evidence in cross-border cases, including by reducing legal ambiguities that can lead to delays, refusals of execution, or inconsistent procedural safeguards.

With regard to the second objective, the results of the consultations showed that only some Member States have specific rules on cross-border remote participation in criminal hearings, and the content of those rules differs significantly. In some cases, national frameworks do not even provide for the involvement of authorities from the Member States where the person is located. This fragmentation is both problematic in terms of protecting the procedural rights of the persons concerned and hampers effective judicial cooperation. Common procedures, standards and appropriate safeguards have to be in place so that proceedings are fair and videoconferencing technology can be used effectively in cross-border criminal proceedings. This makes judicial cooperation more effective and strengthens mutual trust in the EU Area of Freedom, Security and Justice.

The aim of the proposed rules on remote participation in criminal court hearings is therefore mainly to ensure that the right to be present at trial and to participate effectively in court hearings - as guaranteed under Union law by Articles 47 and 48 of the EU Charter of Fundamental Rights and Directive (EU) 2016/343[13] - is exercised more effectively. In practice, persons involved in criminal proceedings who have exercised their right to free movement and reside in another Member State or are temporarily staying there, may prefer, in the specific circumstances of the case, to participate remotely instead of travelling to attend in person. Alternatively, they may face legitimate obstacles to physically attending hearings in the Member State conducting the proceedings, such as health-related limitations, caring responsibilities, restrictions linked to deprivation of liberty in another Member State, or other justified reasons. In such situations, the person affected may *de facto* be forced by their circumstances to waive their right to be present at their trial simply because they cannot travel to attend hearings in person, even though they would in fact like to participate. By make it easier to participate remotely, the initiative therefore seeks to reduce the number of cross-border trials in absentia and to ensure that exercising the right to free movement within the Union does not, in practice, diminish the effective enjoyment of procedural rights in criminal proceedings. In particular, the initiative is also expected to reduce the risks of secondary victimisation for victims of crime by limiting, where appropriate, the need for repeated travel,

[13] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, pp. 1–11.

unnecessary exposure to stressful environments, or direct confrontation with the suspect or accused person in cross-border situations.

Second, where coercive measures and surrender are not necessary or proportionate, remote participation may, where appropriate, constitute an alternative to the physical surrender of the person pursuant to Council Framework Decision 2002/584/JHA[14].

- **Consistency with existing policy provisions in the policy area**

The current recast proposal strengthens the EU legal framework for cross-border judicial cooperation instruments in criminal matters, by filling in gaps identified in the Directive and by maintaining consistency with other instruments.

The proposed targeted amendments to the EIO are consistent with, and complementary to, existing Union instruments in the field of criminal justice cooperation, including:

– the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union[15], by setting out a procedure for requesting consent to use as evidence information previously exchanged spontaneously between judicial authorities under that Convention;

– the Convention implementing the Schengen Agreement, by clarifying the relationship between its Article 40 on cross-border surveillance and the EIO framework;

– the Directive on the exchange of information between law enforcement authorities[16], by setting out a procedure for requesting consent to use as evidence information previously exchanged between law enforcement authorities under that Directive.

The initiative is also consistent and creates direct links with the Eurojust[17] and the European Public Prosecutor's Office ('EPPO')[18] Regulations, as well as the Council Decision on the European Judicial Network[19].

With respect to the new rules for requesting assistance to make it easier to participate remotely in criminal court hearings from another Member State by means of a European Remote Participation Order (ERPO), the proposal fills a current gap in the Union acquis, which regulates remote participation only in specific contexts and for limited purposes.

Regulation (EU) 2023/2844[20] creates a legal framework for using videoconferencing and other distance communication technologies in cross-border proceedings. In criminal matters,

---

14 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, p. 1.

15 Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 3.

16 Directive (EU) 2023/977 of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA, OJ L 134, 22.5.2023, p. 1.

17 Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018, p. 138.

18 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1.

19 Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130.

Article 6 of that Regulation provides a legal basis for using videoconferencing or other distance communication technology to hear suspects, accused persons, convicted persons and other affected persons under a limited number of judicial cooperation procedures specifically identified in that provision[21]. The new framework sets up dedicated arrangements for remote participation of suspects, accused persons and victims of crime to participate remotely from another Member State in court hearings of the main proceedings in which they are involved. In so doing, it fills a regulatory gap in the existing Union framework on the digitalisation of criminal justice, which has been limited to digitalising hearings in judicial cooperation procedures.

Article 24 of the Directive regulates hearings by videoconference or other audiovisual transmission for evidentiary purposes. Under that provision, an EIO may be issued to hear, by videoconference, a witness, expert, suspect or accused person located in another Member State with a view to gathering evidence. As clarified by the Court of Justice, Article 24 applies to hearings for the purpose of gathering of evidence, and whose execution does not go beyond what is necessary for that purpose[22].

By contrast, this proposal aims to facilitate full participation from another Member State in all types of criminal court hearings at both the pre-trial and trial stage, as appropriate depending on whether the person concerned is a suspect, accused person or victim of crime. Full participation entails the full exercise of procedural rights to which the person concerned is entitled as if they were physically present at the hearing.

With regard to victims of crime, Article 17 of Directive 2012/29/EU[23] provides for the possibility of hearing victims located in another Member State by means of videoconferencing technology and require Member States to facilitate, to the extent possible under Union and national law - the participation of victims through videoconferencing, taking into account their role in the proceedings. The present proposal therefore complements that framework by setting out specific rules and safeguards on the remote participation of victims in criminal court hearings, including rules on procedural safeguards, technical arrangements and effective participation.

The proposal is also fully consistent with the Union acquis on procedural rights in criminal proceedings. Directive (EU) 2016/343 enshrines, in its Article 8, the right of suspects and accused persons to be present at trial. Without prejudice to that right and to the standards set

---

20 Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ L, 2023/2844, 27.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2844/oj.

21 The exhaustive list of legal acts referred to in Article 6 of the Digitalisation Regulation covers: (a) Council Framework Decision 2002/584/JHA on the European Arrest Warrant, in particular Article 18(1)(a) thereof; (b) Framework Decision 2008/909/JHA on the transfer of prisoners, in particular Article 6(3) thereof; (c) Framework Decision 2008/947/JHA on the mutual recognition of judgments and probation decisions, in particular Article 17(4) thereof; (d) Framework Decision 2009/829/JHA on the mutual recognition of decisions on supervision measures as an alternative to provisional detention, in particular Article 19(4) thereof; (e) Directive 2011/99/EU on the European protection order, in particular Article 6(4) thereof; (f) Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders, in particular Article 33(1) thereof.

22 Judgment of the Court of Justice of 18 December 2025, C-325/24, *Bissili*, EU:C:2025:989, para. 59.

23 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57.

under that Directive for trials to be held in absentia, this proposal aims to strengthen the exercise of the right to be present at trial. It does this by allowing persons concerned to participate remotely by way of videoconference or other distance communication technology in hearings where strict conditions are met and a number of safeguards guaranteed. At the same time, the proposal aims to ensure that procedural rights and safeguards which were designed to be exercised in person can also be effectively exercised remotely, where necessary.

The new provisions on ERPOs contribute to improving access to justice in cross-border criminal proceedings. They enable suspects, accused persons and victims of crime who are resident, detained, or temporarily staying in another Member State for justified reasons, to participate effectively in criminal proceedings without being required to travel to the issuing State. In this way, the proposal may, in appropriate circumstances, constitute an alternative to physical surrender under Council Framework Decision 2002/584/JHA, whenever a coercive measure is not considered necessary in the specific case and the objective pursued is limited to securing the person's participation in a hearing or their trial.

- **Consistency with other Union policies**

The present package of criminal justice initiatives pursues a coherent and complementary objective: strengthening the Union's capacity to prevent, detect, investigate and prosecute serious cross-border crime in an increasingly complex security environment. By modernising the legal frameworks governing cooperation between law enforcement, judicial and other relevant authorities, the package seeks to reinforce the effectiveness, coherence and interoperability of the Union's internal security architecture.

The proposed revisions of the Europol and Eurojust Regulations constitute the core of this effort. Europol and Eurojust perform distinct yet complementary functions within the Area of Freedom, Security and Justice: while Europol supports the prevention, detection and investigation of criminal activities, Eurojust facilitates judicial cooperation and ensures effective prosecutorial and judicial follow-up. The package therefore aims to strengthen cooperation and complementarity between the two agencies, as well as with other relevant Union actors in the Justice and Home Affairs and Anti-Fraud Architecture areas, with a view to ensuring a seamless continuum between law enforcement action and judicial follow-up across all stages of the criminal justice chain.

In this context, the amendments to the European Investigation Order framework and to the data protection rules applicable in the Justice and Home Affairs domain, further contribute to this objective by facilitating effective cross-border cooperation, improving the conditions for information exchange and ensuring a coherent legal framework adapted to operational realities and technological developments. Taken together, the measures proposed in this package will enhance the Union's ability to respond to evolving security threats while fully respecting fundamental rights, the rule of law and the division of responsibilities between the different actors involved.

This proposal is consistent with related Union policies, in particular for the following reasons:

– It contributes to the objectives of the ProtectEU Strategy[24], which emphasises the need to strengthen judicial cooperation and provide more effective tools to combat serious and organised crime and terrorism in an increasingly transnational and digital environment.

– It is aligned with the objectives of the Commission Communication 'DigitalJustice@2030'[25], which promotes the digitalisation of justice systems, including the development of secure digital tools and the use of interoperable videoconferencing technologies to improve the efficiency, accessibility and resilience of judicial proceedings across the Union. In particular, the Communication identified remote participation in criminal court hearings from another Member State via videoconference as an area of future action for the Commission (Action 9).

– It is part of the roadmap for lawful and effective access to data for law enforcement[26], which committed to assess the need to further strengthen the EIO to increase the efficiency of cross-border requests for lawful interception.

– It is part of the EU Drugs strategy[27], which points out the need to strengthen the EIO as part of the strategic priority on enhancing judicial cooperation to improve security and protecting society.

– It is fully consistent with the Union *acquis* on the protection of personal data, in particular Regulation (EU) 2016/679[28], Directive (EU) 2016/680[29] and Regulation (EU) 2018/1725[30], as it provides that the processing of personal data carried out under the proposed Directive must comply with the applicable Union data protection framework.

---

24 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on ProtectEU: a European Internal Security Strategy, COM(2025) 148 final.

25 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions DigitalJustice@2030, COM(2025) 802 final.

26 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Roadmap for lawful and effective access to data for law enforcement', COM/2025/349 final.

27 Communication from the Commission to the European Parliament and the Council on the EU Drugs Strategy, 4.12.2025, COM(2025) 743 final.

28 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1–88.

29 Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89.

30 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The initiative is based on Article 82(1) of the Treaty on the Functioning of the European Union (TFEU).

Article 82(1) TFEU provides that judicial cooperation in criminal matters within the Union is to be based on the principle of mutual recognition of judgments and judicial decisions. It empowers the Union to adopt measures, among other things, laying down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions.

The Directive was adopted on the basis of Article 82(1) TFEU, as with other existing mutual recognition instruments. Maintaining Article 82(1) TFEU as the legal basis therefore ensures consistency with the original choice and reflects the objective and content of the amendments introduced via the recast initiative.

• Subsidiarity (for non-exclusive competence)

The Directive is already established at EU level as an instrument of cross-border judicial cooperation in criminal matters for the gathering evidence. By its very nature, the Directive addresses cross-border issues, which cannot be effectively dealt with by individual Member States acting alone. The EU has already exercised its powers by adopting the Directive, and further action should therefore also be taken at EU level.

As concerns the specific amendments introducing rules to facilitate remote participation in criminal court hearings when the suspect, accused person, or victim of crime is in another Member State, the cross-border nature of this issue means that no single Member State can establish these rules on its own.

The replies to the public and targeted consultations confirm that EU action in this area is likely to deliver better outcomes than action by Member States. The Council has recognised that the challenges that this initiative aims to address require action beyond the national level. This proposal therefore responds to issues raised by the Member States as explained above.

Given the cross-border dimension of the issues outlined above, and the fact that the Union has already exercised its powers in these matters, the proposal needs to be adopted at EU level to achieve the objectives.

• Proportionality

The proposal complies with the principle of proportionality set out in Article 5(4) of the Treaty on European Union, as it does not go beyond what is necessary to achieve its objectives. It builds on existing mutual recognition instruments and digital infrastructure at Union level, thereby limiting additional administrative and financial burdens.

The proposed targeted amendments to the EIO are limited to the concerns identified by the Council in the 10th round of mutual evaluations and other reports mentioned in the context section of this Explanatory Memorandum. Throughout this proposal, the options set forth are those that are least intrusive for the national criminal justice systems of the Member States, while building on the general framework of the Directive.

The proposed rules on remote participation in criminal court hearings respond to requests by Member States during the mutual evaluation of the Directive. The initiative creates a targeted framework that is limited to making it easier for Member States to issue and recognise requests for people to participate remotely in criminal court hearings. It does not harmonise national criminal procedures more broadly at domestic level. The use of an ERPO in individual cases remains at the discretion of the Member States, and is subject to proportionality and appropriateness assessment in each individual case. As a general rule, remote participation is based on the consent of the person concerned and accompanied by safeguards to ensure proceedings are fair and procedural rights are exercised effectively.

The proposal also respects Member States' procedural autonomy as the conduct of hearings continues to be left to the law of the issuing Member State and certain execution measures governed by the law of the executing Member State.

- **Choice of the instrument**

This proposal is intended to provide for targeted amendments to the Directive to address the gaps, inconsistencies and shortcomings identified in the course of the implementation and evaluation of the Directive. Given their targeted nature, the same legal instrument is the most appropriate choice for introducing the amendments, and recasting is considered the most suitable technique to replace and repeal the Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The main reference document for the evaluation of the Directive is the final report on mutual evaluations. The report finds that the Directive has become an effective and widely used instrument for judicial cooperation in criminal matters across the European Union and that the system is generally considered to function well. However, it identifies several legal and operational challenges. In particular, the report calls for targeted amendments with respect to: (i) the use of evidence for other purposes; (ii) interception of telecommunications; (iii) the use of technical recording devices and cross-border surveillance; and (iv) the use as evidence of information previously exchanged between law enforcement authorities or spontaneously between judicial authorities. It also underlines that practitioners highlighted practical difficulties linked to the complexity of the standard EIO form, translation issues, and delays in execution. The report further suggests examining the issue of accused persons participating remotely in their trial. Overall, the evaluation recommends further legislative clarification and greater harmonisation to improve legal certainty, efficiency, and consistency in the application of the Directive.

- **Stakeholder consultations**

In drawing up the proposal, the Commission conducted extensive consultations in 2025 and 2026. The consultations targeted a wide range of stakeholders representing citizens, public authorities, representatives from academia, EU agencies and bodies, European defence lawyers' associations and other relevant stakeholders.

The consultations consisted of: (i) targeted consultations with Member States' authorities, Eurojust, EJN, the EPPO, Europol, the European Union Agency for Fundamental Rights (FRA), the European Criminal Bar Association and the Council of Bars and Law Societies of

Europe; (ii) public feedback on the call for evidence, which included submissions by academics; (iii) three dedicated meetings with experts from Member States' authorities[31] and (iv) a meeting with the Commission's Criminal Law Expert Group[32].

Overall, there has been broad consensus that the EU should address the issues identified through targeted amendments to the Directive.

In particular, many experts acknowledged the challenges associated with using certain investigative measures for evidence gathering in a cross-border context, especially cross-border surveillance for the purpose of evidence gathering and technical recording devices (for collecting location, audio or visual data). There was general support for including specific provisions on these matters in the Directive. Several experts believed that it would be useful to define the concept of 'interception of telecommunications' in the Directive. Some experts also saw potential for clarifying the notification procedure for interception without the need for technical assistance from another Member State.

Stakeholder opinions diverged on whether there is a need to clarify the rules on the use of evidence for other purposes. However, some experts supported a simplified procedure to set specific conditions for using evidence obtained and to request the lifting of those conditions in order to maintain the flexibility and efficiency of cross-border investigations. Several stakeholders saw a need to set out the procedure for requesting the evidentiary use of information previously exchanged between law enforcement authorities, while others underlined that new rules should take into account the differences in national legal frameworks. Similarly, the consultations showed that national legislation and practice vary as to when information that was 'spontaneously exchanged' by judicial authorities can be used as evidence, suggesting the need for dedicated rules. The consultations have also demonstrated the need for further limited clarifications in the Directive, such as on the scope of the EIO and on the definition of 'issuing authority'. The need for judicial training and the development of handbooks or further guidance, especially to clarify the relationship between the EIO and other instruments, as well as regarding the use of the EIO for the cross-border recognition and execution of special investigative techniques was also expressed. In addition, the use of complementary tools, such as the EJN Atlas and the Fiches Belges, was considered useful for ensuring the smooth application of the EIO, particularly in cases where differences in Member States' practices and legislation concerning special investigative measures create challenges for cooperation. Experts considered it necessary that these tools are regularly updated to reflect changes in Member States' legislation, competent authorities, and practical requirements, thereby ensuring their continued reliability and usefulness for practitioners.

Stakeholders broadly supported the objective of facilitating cross-border remote participation in criminal proceedings through a dedicated Union legal framework. However, they underlined the need to preserve the fairness of proceedings and the effective exercise of procedural rights of the persons concerned. Most Member States and experts shared the view that remote participation in hearings should be governed by the procedural law of the issuing Member State with regards in all respects, except for identity checks and the technical conditions for videoconferencing, which should be governed by the procedural law of the executing Member State.

Some experts agreed that the same safeguards and remedies as those applicable for in-person participation in court hearings should apply in a remote context. Most stakeholders nonetheless underlined the need for specific safeguards, in particular for: (i) the consent of the person concerned by an ERPO; (ii) the availability of a confidential channel of

[31] The three dedicated experts meeting were held on 31 March 2025, 2 July 2025 and 5 May 2026.

[32] The meeting was held on 14 May 2025.

communication between the person concerned and their lawyer; (iii) specific remedies in case of technical failures; and (iv) the protection of vulnerable persons and children. These contributions were reflected in the proposal.

However, stakeholders expressed different positions about: (i) the possibility (and extent) of exceptions to the consent requirement; (ii) the type of authorities competent for identity checks and procedural acts in the executing Member State: and (iii) the existence of specific remedies additional to those already available under the law of the issuing Member State. For instance, most Member States called for limited exceptions to the need to obtain the consent of the person concerned in exceptional circumstances, but defence lawyers' organisations generally opposed such derogations. The proposal therefore adopts a balanced approach by maintaining consent of the person concerned as a mandatory condition for the issuance of an ERPO, while allowing a narrowly framed derogation subject to strict safeguards and judicial oversight.

A more detailed summary of the outcome of the Commission's consultations will be included in a staff working document that will accompany this proposal.

- **Collection and use of expertise**

Aside from the above-mentioned stakeholder consultations, the Commission collected and used expertise from other sources.

In particular, the proposal draws on the final report of mutual evaluations, reports from Eurojust and the EJN, and technical and political discussions of the High-level Forum on the Future of Criminal Justice.

With regard to rules on remote participation in criminal court hearings, the proposal also takes into account: (i) the results of a research project on the digitalisation of defence rights in criminal proceedings which was funded by the European Commission under the Justice programme[33;] (ii) the FRA report 'digitalising Justice: A Fundamental Rights-based Approach'[34] and (iii) the preliminary results of discussions at working conferences on this matter[35].

- **Impact assessment**

A derogation from the requirement to carry out an impact assessment was considered justified in the present case on two main grounds: lack of options and no relevant negative economic, social or environmental impacts. The Directive has already undergone a comprehensive backward-looking assessment as part of the 10th round of mutual evaluations, which led to specific recommendations to address elements not yet covered by the Directive and amendments of existing provisions. The work carried out by the Council during the 10th round of mutual evaluations led to a conclusion that the range of viable policy alternatives is limited. The current revision is based on that work. Both the underlying Directive, originally adopted on the basis of an initiative by Member States, and the proposed amendments are predominantly technical and procedural in nature. Their impact will primarily be on public authorities involved in cross-border judicial cooperation. Any impact on natural or legal persons is expected to be positive, as the amendments aim to strengthen legal certainty,

33 https://www.law.kuleuven.be/linc/english/research/researchdigirights.html.

34 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2025-digitalising-justice-fundamental-rights-approach_en.pdf.

35 Working Conference on the use of videoconferencing for trial purposes in cross-border criminal cases in the EU held on 20 January 2026 and organised by the Dutch Ministry of Justice and Erasmus University Rotterdam; 2026 Fair Trials LEAP Annual Conference.

improve the effectiveness of existing procedures and facilitate access to justice through the use of remote participation in criminal court hearings.

As the initiative addresses inherently cross-border issues, it does not raise specific subsidiarity concerns. Any costs for public authorities linked to implementing the amendments are expected to be offset by efficiency gains in cross-border criminal investigations and prosecutions, as well as by reductions in delays, transfers and related operational burdens. As the initiative addresses inherently cross-border issues, it does not raise specific subsidiarity concerns. In the absence of an impact assessment, the proposal will be accompanied by a Commission staff working document to present the policy context, the problem definition, the policy choice(s) made and the expected impacts, including the results of stakeholders' consultations activities and future monitoring arrangements.

- **Regulatory fitness and simplification**

In compliance with the Commission's Regulatory Fitness and Performance Programme (REFIT), all initiatives aimed at revising existing EU legislation should seek to simplify and reduce administrative burden on Member States.

Both the underlying Directive and the proposed amendments are predominantly technical and procedural in nature. Their impact will primarily be on public authorities involved in cross-border judicial cooperation. Any impact on natural or legal persons is expected to be positive, as the amendments aim to strengthen legal certainty, improve the effectiveness of existing procedures and facilitate access to justice through the use of remote participation in criminal court hearings.

Any costs for public authorities linked to implementing the amendments are expected to be offset by efficiency gains in cross-border criminal investigations and prosecutions, as well as by reductions in delays, transfers and related operational burdens.

No impact is expected on SMEs and competitiveness.

- **Fundamental rights**

The proposal complies with the fundamental rights and principles recognised by the Charter, in particular the right to a fair trial and to an effective remedy and the rights of defence, as enshrined in Articles 47 and 48 of the Charter and Articles 6 and 13(1) of the European Convention on Human Rights (ECHR). It builds on the six EU Directives on procedural rights for suspects and accused persons in criminal proceedings, in particular Directives 2010/64/EU[36], 2012/13/EU[37], 2013/48/EU[38], (EU) 2016/343, (EU) 2016/800[39] and (EU)

[36] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1.

[37] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1.

[38] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1.

[39] Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21.5.2016, p. 1.

2016/1919[40], as well as Directive 2012/29/EU on the rights of victims of crime.

The Directive protects fundamental rights by embedding safeguards throughout the framework on the EIO and other measures for obtaining evidence in criminal matters. In particular, the Directive lays down specific provisions intended to ensure that the issuing or validation of an EIO is accompanied by guarantees relating to respect for the fundamental rights of the person concerned. The Directive also allows the executing authority to ensure that the principle of proportionality and the procedural and fundamental rights of the person concerned are respected when executing an EIO. In addition, specific procedural mechanisms, such as the notification procedures for cross-border investigative measures which do not require assistance from another Member State ensure that the Member State where the subject of the measure is located is informed and may intervene where the measure would not be authorised in a similar domestic case.

The proposed rules on remote participation in criminal court hearings set clear and strict conditions for issuing and executing an ERPO, as well as related procedural safeguards and remedies. These rules ensure that remote participation in hearings is not carried out in a manner that undermines the fairness of proceedings or the exercise of procedural rights. In particular, the obligation to obtain the consent of the person concerned by the ERPO is intended to ensure that the execution of the ERPO remains compatible with the protection of the fundamental rights enshrined in the Charter, especially the right to be present in person at the trial. A derogation from this consent requirement is permitted only in exceptional and clearly identified situations which constitute permissible limitations in accordance with Article 52 of the Charter. Moreover, the requirement for the suspect or accused person to be represented by a mandated lawyer present in the issuing Member State constitutes an additional safeguard for the effective exercise of defence rights.

The proposed rules on the remote participation in criminal proceedings are consistent with the case-law of both the European Court of Human Rights (ECtHR) and the Court of Justice. Although the ECtHR has consistently recognised that the physical presence of the accused in the courtroom is an important component of the right to a fair trial, it has also held that participation in hearings by videoconference is not, in itself, incompatible with the right to a fair and public hearing, provided that the person concerned is able to: (i) follow the proceedings; (ii) see and hear the persons participating in the hearing; (iii) be seen and heard without technical impediments; and (iv) communicate effectively and confidentially with their lawyer[41]. The proposal reflects all these standards and, as mentioned above, establishes a number of additional safeguards.

The proposed rules also take into account the relevant case-law of the Court of Justice, notably case C-760/22[42]. In that case, the Court clarified that since Article 8(1) of Directive (EU) 2016/343 does not expressly regulate the issue of remote participation in criminal trials,

---

40 Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, p. 1.

41 ECtHR, judgement of 5 October 2006, Marcello Viola v. Italy, ECLI:CE:ECHR:2006:1005JUD004510604, paragraphs. 65-67, and ECtHR, judgment of 27 November 2007, Asciutto v. Italy, ECLI:CE:ECHR:2007:1127JUD003579502, paragraphs. 62-73; ECtHR, judgment of 16 February 2016, *Yevdokimov e.a. v. Russia*, ECLI:CE:ECHR:2016:0216JUD002723605, paragraph. 43; ECtHR, *Sakhnovskiy v. Russia*, App. no. 21272/03, ECLI:CE:ECHR:2010:1102JUD002127203, paragraph. 98.

42 Judgment of the Court of Justice of 4 July 2024, FP and Others (Procès par visioconférence), C-760/22, EU:C:2024:574.

that provision cannot preclude an accused person, who expressly so requests, from being allowed to participate in their trial hearings by videoconference. The Court of Justice also confirmed that, where the Member States allow the defendant to exercise the right to attend their trial remotely, those rules should not undermine the aim pursued by Directive (EU) 2016/343, which is to strengthen the right to a fair trial in criminal proceedings, the presumption of innocence and the right of defence as enshrined in the Charter and the ECHR.

4. BUDGETARY IMPLICATIONS

The initiative has budgetary implications, in particular as a result of its digitalisation components. This includes legal, policy and coordination work within the Commission, as well as technical work on developing, adapting, testing, maintaining and supporting the decentralised IT system and its components.

The legislative financial and digital statement accompanying the proposal shows in detail the budgetary implications and the human and administrative resources required.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will check that the provisions amended by this Directive are correctly and effectively transposed into the national laws of all participating Member States. Throughout the transposition phase, the Commission will organise transposition workshops with all Member States.

The proposal provides for statistics to be collected so that the Commission can monitor the application of the Directive and submit a corresponding report to the European Parliament and to the Council.

- **Explanatory documents (for directives)**

Given that the proposal contains new legal obligations compared to the existing Directive, it will be necessary for explanatory documents, including, for example, a correlation table between national provisions and the Directive, to be sent with the notification of transposition measures. This is to ensure that the transposition measures that Member States add to existing legislation are clearly identifiable.

The national measures required to transpose this proposal are moreover likely to be transposed by Member States in more than one single legal text. For this reason, it is necessary for Member States to provide to the Commission with an explanatory document containing the text of the provisions adopted in transposing this Directive. It should also show how those provisions interact with the provisions already adopted to transpose the Directive and with provisions covered by other relevant EU policies.

- **Detailed explanation of the specific provisions of the proposal**

The following changes are being proposed:

Title I: General provisions
Article 1: outlines the subject matter.
Article 2: list of important definitions.

Title II: sets out the framework for the EIO and other measures for obtaining evidence in criminal matters

Article 3: defines the EIO and describes the obligation to execute it.
Article 4: sets out the scope of the EIO.
Article 5: lists the types of proceedings for which an EIO can be issued.
Article 6: stipulates the required content of an EIO and its form.
Article 7: sets out conditions for issuing and transmitting an EIO.
Article 8: sets out the procedure for transmitting the EIO between issuing/executing authorities.
Article 9: particular features if an EIO is related to an earlier EIO.
Article 10: sets out the obligation of the executing authority to recognise and execute an EIO.
Article 11: regulates the use of a different type of investigative measure and lists the measures that always have to be available under the law of the executing State.
Article 12: lists the grounds for non-recognition or non-execution.
Article 13: sets time limits for recognition or execution.
Article 14: sets out rules for the transfer of obtained evidence.
Article 15: lists the grounds for postponing recognition or execution.
Article 16: stipulates obligations to inform the issuing authority.
Article 17: sets out the legal remedies that must be available.
Article 18: sets out rules on the criminal liability of officials.
Article 19: sets out rules on the civil liability of officials.
Article 20: sets out the duty of confidentiality.
Article 21: sets out the conditions for the subsequent use and onward transfer of information or evidence.
Article 22: provides for the possibility of a temporary transfer to the issuing State of persons held in custody for the purpose of carrying out an investigative measure.
Article 23: provides for the possibility of a temporary transfer to the executing State of persons held in custody for the purpose of carrying out an investigative measure.
Article 24: provides for the possibility of hearing by videoconference or other distance communication technology.
Article 25: provides for the possibility of hearing of experts or witnesses by telephone conference.
Article 26: provides for the possibility of requesting information on bank and other financial accounts.
Article 27: provides for the possibility of requesting information on banking and other financial operations.
Article 28: regulates investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time.
Article 29: sets out specific rules on covert investigations.
Article 30: sets out specific rules on cross-border surveillance.
Article 31: sets out specific rules for requesting interception of telecommunications with technical assistance from another Member State.
Article 32: sets out specific rules on provisional measures to prevent the loss of evidence.
Article 33: sets out a notification procedure of the Member State where the subject of the interception is located and from which no technical assistance is needed.
Article 34: sets out a notification procedure of the Member State on the use, in its territory, of a technical recording device without the need for its technical assistance.
Article 35: sets out the procedure for requesting consent to use previously exchanged information as evidence.

Title III: establishes the ERPO, as a new mutual recognition instrument facilitating requests to have a suspect, accused person or victims of crime participate remotely in criminal court hearings from another Member State by means of videoconferencing or other distance communication technology.
Article 36: defines the ERPO.
Article 37: sets out the conditions for issuing an ERPO.
Article 38: establishes the procedure and safeguards for obtaining the consent of the person concerned.
Article 39: specifies the mandatory content of the ERPO standard form.
Article 40: regulates the transmission of the ERPO.
Article 41: establishes the obligation to recognise and execute the ERPO without further formalities.
Article 42: provides detailed rules on the practical arrangements for the execution of ERPO requests.
Article 43: sets out mandatory and optional grounds for non-recognition/execution of an ERPO.
Article 44: sets time limits for decisions on recognition and execution of the ERPO.
Article 45: regulates situations where execution of the ERPO is impossible.
Article 46: provides for information obligations between the competent authorities.
Article 47: regulates provisional measures after conviction.
Article 48: encourages direct consultations between issuing and executing authorities.
Article 49: sets out the applicable procedural rights.
Article 50: establishes the right to effective remedies.

Title IV: sets out common provisions
Article 51: sets out rules on the means of communication.
Article 52: allows central authorities to be designated in the Member States.
Article 53: addresses issues of cooperation with Eurojust and the EJN.
Article 54: regulates issues of costs.
Article 55: provides for obligations for Member States to provide statistics.
Article 56: provides for rules on amending the standard forms.
Article 57: specifies rules on exercising of the delegation.

Title V: sets out transitional and final provisions
Article 58: sets out obligations for notifications of competent authorities.
Article 59: regulates the relationship with other EU and international instruments.
Article 60: sets out transitional provisions.
Article 61: sets out the transposition deadlines.
Article 62: sets out an obligation for the Commission to report on the application of the Directive.
Article 63: sets out the repeal clause.
Article 64: sets out the clause on entry into force.
Article 65: indicates the addressees.

↓ 2014/41/EU (adapted)

2026/0172 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

regarding the European Investigation Order in criminal matters and the European Remote Participation Order (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82 (1)~~(a)~~ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([43])

Acting in accordance with the ordinary legislative procedure,

Whereas:

⇩ new

(1) Directive 2014/41/EU of the European Parliament and of the Council[44] has been substantially amended several times. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

↓ 2014/41/EU recital 1

(2) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

⇩ new

(3) Serious and organised crime, and terrorism are increasingly transnational in nature and pose a threat to security within the Union. Article 67(3) of the Treaty on the Functioning of the European Union requires the Union to endeavour to ensure a high level of security, including through coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters. Effective cross-border judicial cooperation in criminal matters is therefore essential to facilitate the gathering and

[43] […]

[44] Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1, ELI: http://data.europa.eu/eli/dir/2014/41/oj).

transfer of evidence across borders, thereby supporting the effective investigation and prosecution, and to enable the Union and the Member States to respond effectively to those threats.

↓ 2014/41/EU recital 2

(4) Pursuant to Article 82(1) of the Treaty on the Functioning of the European Union (TFEU), judicial cooperation in criminal matters in the Union is to be based on the principle of mutual recognition of judgments and judicial decisions, which is, since the Tampere European Council of 15 and 16 October 1999, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union.

↓ 2014/41/EU recital 3 (adapted)

~~Council Framework Decision 2003/577/JHA[45] addressed the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence. However, since that instrument is restricted to the freezing phase, a freezing order needs to be accompanied by a separate request for the transfer of the evidence to the State issuing the order ('the issuing State') in accordance with the rules applicable to mutual assistance in criminal matters. This results in a two-step procedure detrimental to its efficiency. Moreover, this regime coexists with the traditional instruments of cooperation and is therefore seldom used in practice by the competent authorities.~~

↓ 2014/41/EU recital 4 (adapted)

~~Council Framework Decision 2008/978/JHA[46] concerning the European evidence warrant (EEW) was adopted to apply the principle of mutual recognition for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. However, the EEW is only applicable to evidence which already exists and covers therefore a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Because of its limited scope, competent authorities have been free to use the new regime or to use mutual legal assistance procedures which, in any case, remain applicable to evidence falling outside of the scope of the EEW.~~

↓ 2014/41/EU recital 5 (adapted)

~~Since the adoption of Framework Decisions 2003/577/JHA and 2008/978/JHA, it has become clear that the existing framework for the gathering of evidence is too fragmented and complicated. A new approach is therefore necessary.~~

↓ 2014/41/EU recital 6 (adapted)

~~In the Stockholm Programme adopted by the European Council of 10-11 December 2009, the European Council considered that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension,~~

45 ~~Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45).~~

46 ~~Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L 350, 30.12.2008, p. 72).~~

~~based on the principle of mutual recognition, should be further pursued. The European Council indicated that the existing instruments in this area constituted a fragmentary regime and that a new approach was needed, based on the principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including Framework Decision 2008/978/JHA, covering as far as possible all types of evidence, containing time-limits for enforcement and limiting as far as possible the grounds for refusal.~~

⇩ new

(5) Directive 2014/41/EU established the European Investigation Order ('EIO') as an instrument for cross-border gathering of evidence in criminal matters. That Directive was a response to the well-identified practical need for a comprehensive framework, based on mutual recognition, for obtaining evidence in cases with a cross-border dimension. It replaced the previous fragmented evidence-gathering system while taking into account the flexibility of the traditional system of mutual legal assistance.

(6) Directive 2014/41/EU has applied since 22 May 2017 and has proven effective in practice. However, experience gained through its application, including the findings of the 10th round of mutual evaluations[47], has revealed areas where the legal framework should be strengthened and supplemented to improve legal clarity and effectiveness of cross-border evidence gathering. This calls for targeted legislative improvements to the EIO, as well as for facilitating the remote participation of suspects and accused persons and victims of crime located in another Member State in criminal court hearings by videoconference. The common rules on cross-border judicial cooperation in the gathering of evidence in criminal matters under Directive 2014/41/EU should therefore be further improved and developed to ensure the efficient functioning of that instrument and to enhance judicial cooperation in evidence gathering.

(7) The legal landscape across Member States regarding the remote participation of suspects, accused persons and victims of crime in court hearings by videoconference from another Member State is currently not regulated at Union level. The Member States are therefore faced with fragmentation and inconsistent practices in the cross-border remote participation in criminal court hearings. Individuals are faced with barriers to accessing justice in the exercise of their freedom of movement, as well as legal uncertainty, in the absence of Union level rules.

(8) To address those issues, this proposal establishes a new legal framework in the form of the European Remote Participation Order (ERPO) enabling cooperation between Member States to facilitate the effective participation via videoconference or other distance communication technology of a suspect, accused person or victim of crime, where they have the status of party to the proceedings, in one or more criminal court hearings from another Member State. An ERPO can therefore concern one or more hearings at pre-trial or trial stage. In relation to victims of crime Directive 2012/29/EU[48] invites the Member States to facilitate requests for victims' remote

[47] Endorsed by the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) on 21 November 2024.

[48] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57, ELI: http://data.europa.eu/eli/dir/2012/29/oj).

participation in criminal proceedings from another Member State, without however establishing specific rules for this purpose.

(9) For the purposes of an ERPO, remote participation should be understood as covering the full participation in all types of criminal court hearings at both the pre-trial and trial stage from another Member State, as appropriate, depending on whether the person concerned is a suspect, accused person or victim of crime. Full participation entails the full exercise of procedural rights to which the person concerned is entitled as if the person were physically present at the hearing, including any form of giving or taking of evidence. Full participation thus implies not only attendance at a hearing but also, as appropriate, any form of taking of evidence from the person concerned by means of videoconferencing or other distance communication technology. Such participation should ensure that the person concerned is able to follow the proceedings and be heard under conditions which respect the rights of the defence, as applicable, and the fairness of the proceedings.

(10) Whenever the purpose of the hearing is confined to the gathering of evidence to establish the relevant facts with regard to the existence of a criminal offence, the circumstances in which the offence was committed or the identity of the perpetrator, and to the extent that it does not go beyond what is necessary for that purpose, the competent authority should rely on the issuance of an EIO, be it for the purpose of hearing the person concerned in the territory of the executing State, for hearings by videoconference or other distance communication technology from the executing State or for the temporary transfer to the issuing State of a person held in custody.

(11) For the purpose of this Directive, videoconferencing or other distance communication technology should be understood as referring to an audio-visual transmission technology that allows two-way and simultaneous communication of image and sound, thereby enabling visual, audio and oral interaction, within the meaning established under Regulation (EU) 2023/2844 of the European Parliament and of the Council[49].

(12) The use of videoconferencing and other distance communication technology in criminal proceedings requires reliable and secure technical infrastructure capable of ensuring the effective participation of the person concerned. Such technology should allow for the person concerned to effectively exercise their procedural rights, including the possibility for that person to communicate confidentially with their lawyer, who should be present in the courtroom in the issuing State. Member States should therefore ensure that the competent authorities have access to technical means that are sufficiently secure, accessible and reliable for the purposes of remote participation in criminal proceedings.

↓ 2014/41/EU recital 7 (adapted)

(13) ~~This new approach is based on a single instrument called the European Investigation Order (EIO).~~ An EIO~~, it~~ is to be issued for the purpose of having one or several specific investigative measure(s) carried out in ~~the State executing the EIO~~ (~~'~~the

[49] Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L, 2023/2844, 27.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2844/oj).

executing State~~)~~ with a view to gathering evidence. ~~This~~ ⌦ That ⌫ includes the obtaining of evidence that is already in the possession of the executing authority.

↓ 2014/41/EU recital 8 (adapted)

(14) The EIO should 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 this Directive, existing instruments should therefore continue to apply to ~~this~~ ⌦ that ⌫ type of investigative measure.

⇩ new

(15) In certain situations, the effective execution of an investigative measure with a view to gathering evidence requires that a person concerned by the measure in the executing State be informed of, and enabled to attend or participate in, an investigative act for the purpose of obtaining evidence. The service of procedural documents for that purpose should therefore be possible under this Directive, provided that such service is strictly necessary for the execution of an investigative measure to obtain evidence.

↓ 2014/41/EU recital 9

~~This Directive should not apply to cross-border surveillance as referred to in the Convention implementing the Schengen Agreement~~[50]

↓ 2014/41/EU recital 10

(16) The EIO should focus on the investigative measure to be carried out. The issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which investigative measure is to be used. However, the executing authority should, wherever possible, use another type of investigative measure if the indicated measure does not exist under its national law or would not be available in a similar domestic case. Availability should refer to occasions where the indicated investigative measure exists under the law of the executing State but is only lawfully available in certain situations, for example where the investigative measure can only be carried out for offences of a certain degree of seriousness, against persons for whom there is already a certain level of suspicion or with the consent of the person concerned. The executing authority may also have recourse to another type of investigative measure where it would achieve the same result as the investigative measure indicated in the EIO by means implying less interference with the fundamental rights of the person concerned.

---

[50] ~~Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).~~

↓ 2014/41/EU recital 11 (adapted)

(17) The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore ascertain whether the evidence sought is necessary and proportionate for the purpose of the proceedings, whether the investigative measure chosen is necessary and proportionate for the gathering of the evidence concerned, and whether, by means of issuing the EIO, another Member State should be involved in the gathering of that evidence. The same assessment should be carried out in the validation procedure, where the validation of an EIO is required under this Directive. ~~The execution of an EIO should not be refused on grounds other than those stated in this Directive. However the executing authority should be entitled to opt for a less intrusive investigative measure than the one indicated in an EIO if it makes it possible to achieve similar results.~~

↓ 2014/41/EU récital 12 (adapted)
⇨ new

(18) When issuing an EIO ⇨ or an ERPO ⇦ the issuing authority should pay particular attention to ensuring full respect for the rights as enshrined in Articles ⇨ 47 and ⇦ 48 of the Charter ~~of Fundamental Rights of the European Union (the Charter)~~. ⇨ The right to a fair trial is one of the basic principles in a democratic society. ⇦ The presumption of innocence ⇨ , the right to be present at trial ⇦ and the ⌦ other ⌫ rights of defence in criminal proceedings are a cornerstone of the fundamental rights recognised in the Charter within the area of criminal justice. Any limitation of such rights ~~by an investigative measure ordered~~ in accordance with this Directive should fully conform to the requirements established in Article 52 of the Charter with regard to the necessity, proportionality and objectives that it should pursue, in particular the protection of the rights and freedoms of others.

⇩ new

(19) This Directive should be implemented ensuring that the rights provided under Directives 2010/64/EU[51], 2012/13/EU[52], 2013/48/EU[53], (EU) 2016/343[54], (EU)

[51] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1, ELI: http://data.europa.eu/eli/dir/2010/64/oj).

[52] Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1, ELI: http://data.europa.eu/eli/dir/2012/13/oj).

[53] Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1, ELI: http://data.europa.eu/eli/dir/2013/48/oj).

[54] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/343/oj).

2016/800[55] and (EU) 2016/1919[56] of the European Parliament and of the Council, which concern procedural rights of suspects and accused persons in criminal proceedings, as well as the rights of victims of crime provided under Directive 2012/29/EU, are fully respected and complied with.

(20) The implementation of Title III of this Directive, in particular, should not affect the right to be physically present at trial as enshrined in Article 8(1) of Directive (EU) 2016/343, nor other Union legal acts in the area of judicial cooperation in criminal matters or criminal procedural law, and in particular provisions on the use of videoconferencing or other audiovisual transmission technology in criminal matters.

(21) When implementing this Directive, due account should be taken of the specific needs of vulnerable persons, meaning persons in situations of vulnerability. The use of videoconferencing or other distance communication technology, in particular, may present additional challenges for such persons and may require specific procedural safeguards to be provided and arrangements to be made, including the provision of appropriate support measures. A broad and flexible approach should be adopted in identifying situations of vulnerability, in order to ensure that all persons who require specific attention can effectively exercise their rights. Specific attention should be paid to vulnerable persons when assessing the appropriateness and proportionality of issuing an ERPO and when considering any derogation from the requirement of consent. Where the person concerned is a child, their best interests should be a primary consideration. In order to ensure effective participation, competent authorities should cooperate closely to identify and implement appropriate measures tailored to the individual needs of the person concerned.

↓ 2014/41/EU recital 13

~~With a view to ensuring the transmission of the EIO to the competent authority of the executing State, the issuing authority may make use of any possible or relevant means of transmission, for example the secure telecommunications system of the European Judicial Network, Eurojust, or other channels used by judicial or law enforcement authorities.~~

↓ 2014/41/EU recital 15 (adapted)

~~This Directive should be implemented taking into account Directives 2010/64/EU[57], 2012/13/EU[58], and 2013/48/EU[59] of the European Parliament and of the Council, which concern procedural rights in criminal proceedings.~~

---

55 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/800/oj).

56 Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/1919/oj).

57 ~~Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).~~

58 ~~Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).~~

59 ~~Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).~~

↓ 2014/41/EU recital 11 (adapted)

(22) The execution of an EIO should not be refused on grounds other than those stated in this Directive. However, the executing authority should be entitled to opt for a less intrusive investigative measure than the one indicated in an EIO if it makes it possible to achieve similar results.

↓ 2014/41/EU recital 16

(23) Non-coercive measures could be, for example, such measures that do not infringe the right to privacy or the right to property, depending on national law.

↓ 2014/41/EU recital 17 (adapted)
⇨ new

(24) The principle of *ne bis in idem* is a fundamental principle of law in the Union, as recognised by the Charter and developed by the case-law of the Court of Justice of the European Union. Therefore the executing authority should be entitled to refuse the execution of an EIO ~~if~~ ⌦ where ⌫ its execution would be contrary to that principle. Given the preliminary nature of the proceedings underlying an EIO, its execution should not be subject to refusal where it is aimed to establish whether a possible conflict with the *ne bis in idem* principle exists, or where the issuing authority has provided assurances that ⌦ , in the case of an EIO, ⌫ the evidence transferred as a result of the execution of the EIO would not be used to prosecute or impose a sanction on a person whose case has been finally disposed of in another Member State for the same facts. ⇨ In the case of an ERPO, as remote participation forms part of the conduct of criminal proceedings and entails progressing towards a determination of guilt in a given case, where it is established that the person concerned has already been finally judged in respect of the same acts, or that a final decision has been adopted which precludes further proceedings on the merits, the executing authority should refuse the recognition and execution of that ERPO. ⇦

↓ 2014/41/EU recital 18 (adapted)

(25) As in other mutual recognition instruments, this Directive does not have the effect of modifying the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union (TEU) and the Charter. ~~In order to make this clear, a specific provision is inserted in the text.~~

↓ 2014/41/EU recital 19 (adapted)
⇨ new

(26) The creation of an area of freedom, security and justice within the Union is based on mutual confidence and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, that presumption is rebuttable. Consequently, ~~if~~ ⌦ where ⌫ there are substantial grounds for believing that the execution of an investigative measure indicated in the EIO ⇨ or of an ERPO ⇦ would result in a breach of a fundamental right of the person concerned and that the executing State would disregard its obligations concerning the protection of

fundamental rights recognised in the Charter, the execution of the EIO ⇨ or the ERPO ⇦ should be refused.

↓ 2014/41/EU recital 20 (adapted)
⇨ new

(27) It should be possible to refuse an EIO ⇨ or an ERPO also ⇦ where its recognition or execution in the executing State would involve a breach of an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in Union law~~;~~ the precise definition of ~~these~~ ⌦ those ⌫ terms is therefore left to national law, which may include protections which apply to medical and legal professions, but should not be interpreted in a way to counter the obligation to abolish certain grounds for refusal as set out in the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union[60]. ~~This~~ ⌦ That ⌫ may also include, even though they are not necessarily considered as privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.

↓ 2014/41/EU recital 21
⇨ new

(28) Time limits are necessary to ensure quick, effective and consistent cooperation between the Member States in criminal matters. The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be provided to ensure a decision or execution within reasonable time or to meet procedural constraints in the issuing State. ⇨ Particular attention should be given to investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time such as the monitoring of banking or other financial operations that are being carried out through one or more specified accounts and the controlled deliveries on the territory of the executing State, interception of telecommunications and cross-border surveillance, which should receive immediate attention and, where strictly necessary to preserve their effectiveness, the executing authority may decide to permit its provisional execution pending a decision on recognition or execution, subject to cessation where recognition is refused. ⇦

↓ 2014/41/EU recital 22

(29) Legal remedies available against an EIO should be at least equal to those available in a domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of such legal remedies, including by informing in due time any interested party about the possibilities and modalities for seeking those legal remedies. In cases where objections against the EIO are submitted by an interested party in the executing State in respect of the substantive reasons for issuing the EIO, it is advisable that information about such challenge be

---

60 Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 326, 21.11.2001, p. 2).

transmitted to the issuing authority and that the interested party be informed accordingly.

⇩ new

(30) Where information or evidence is obtained through the execution of a EIO or through a notification procedure which does not require the assistance of the notified Member State, and where the law of the executing State or notified Member State provides for conditions limiting the use of such information or evidence for purposes other than those for which it was originally gathered, those conditions should be duly indicated at the time of transfer of evidence or within the time limit indicated with respect to the notification procedures. Prior consent should be required for any onward transfer to another Member State, a third country or an international organisation.

(31) Where a competent authority seeks consent, where required under its national law or the conditions attached to the original transmission of the information, to use as evidence in criminal proceedings information previously exchanged between law enforcement authorities or through spontaneous exchange of information, such consent should be requested for each intended use of that information, including any different use thereof.

⇩ 2014/41/EU recital 23 (adapted)
⇨ new

(32) The expenses incurred in the territory of the executing State for the execution of an EIO ⇨ or an ERPO ⇦ should be borne exclusively by that State. This arrangement complies with the general principle of mutual recognition. However, the execution of an EIO ⇨ or an ERPO ⇦ may incur exceptionally high costs on the executing State. Such exceptionally high costs may, for example, ⌦ in the case of an EIO, ⌫ be complex experts' opinions or extensive police operations or surveillance activities over a long period of time ⇨ or, in the case of an ERPO, result from the organisation of a large number of remote hearings ⇦ . ~~This~~ ⌦ That ⌫ should not impede the execution of the EIO ⇨ or the ERPO ⇦ and the issuing ⌦ authority ⌫ and ⌦ the ⌫ executing ~~authorities~~ ⌦ authority ⌫ should seek to establish which costs are to be considered as exceptionally high. The issue of costs might become subject to consultations between the issuing State and the executing State and they are recommended to resolve ~~this~~ ⌦ that ⌫ issue during the consultations stage. As a last resort, the issuing authority may decide to withdraw the EIO ⇨ or the ERPO ⇦ 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. ⌦ In the case of an EIO, ⌫ ~~t~~The given mechanism should not constitute an additional ground for refusal, and in any event should not be abused in a way to delay or impede the execution of the EIO.

⇩ 2014/41/EU recital 24 (adapted)
⇨ new

(33) The EIO establishes a single regime for obtaining evidence. Additional rules are however necessary for certain types of investigative measures which should be indicated in the EIO, such as the temporary transfer of persons held in custody, hearing by video or telephone conference, obtaining of information related to bank

accounts or banking transactions, controlled deliveries, ~~or~~ covert investigations, ⇨ surveillance or use of technical recording devices ⇦ . Investigative measures implying a gathering of evidence in real time, continuously and over a certain period of time ⇨ ,as well as cross-border surveillance, ⇦ should be covered by the EIO, but, where necessary, practical arrangements should be agreed between the issuing State and the executing State in order to accommodate the differences existing in the national laws of those States.

↓ 2014/41/EU recital 25 (adapted)
⇨ new

(34) ~~This~~ ⌦ Title II of this ⌫ Directive sets out rules on carrying out, at all stages of criminal proceedings, including the trial phase, of an investigative measure, ~~if~~ ⌦ where ⌫ needed with the participation of the person concerned with a view to collecting evidence. For example an EIO may be issued for the temporary transfer of that person to the issuing State or for the carrying out of a hearing by videoconference~~.~~, ⇨ in so far as that measure has an evidential objective and its execution does not go beyond what is necessary for the purpose of gathering evidence. ⇦ However, where that 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, a European Arrest Warrant (EAW) should be issued in accordance with Council Framework Decision 2002/584/JHA[61].

↓ 2014/41/EU recital 26 (adapted)
⇨ new

(35) With a view to the proportionate use of an EAW, the issuing authority should consider whether an EIO ⇨ or an ERPO ⇦ would be an effective and proportionate means of pursuing criminal proceedings. The issuing authority should consider, in particular, whether issuing an EIO for the hearing of a suspect~~ed~~ or accused person by videoconference ⇨ or an ERPO allowing for the suspect or accused person's remote participation in criminal court hearings ⇦ could serve as an effective alternative.

↓ 2014/41/EU recital 27 (adapted)

(36) An EIO may be issued in order to obtain evidence concerning the accounts, of whatever nature, held in any bank or any non-banking financial institution by a person subject to criminal proceedings. ~~This~~ ⌦ That ⌫ possibility is to be understood broadly as comprising not only suspect~~ed~~ or accused persons but also any other person in respect of whom such information is found necessary by the competent authorities in the course of criminal proceedings.

↓ 2014/41/EU recital 28 (adapted)

(37) Where in this Directive a reference is made to financial institutions, ~~this~~ ⌦ that ⌫ term should be understood ~~according to~~ ⌦ in accordance with ⌫ the relevant

---

[61] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1, ELI: http://data.europa.eu/eli/dec_framw/2002/584/oj).

definition of Article 3 of Directive (EU) 2015/849~~Directive 2005/60/EC~~ of the European Parliament and the Council[62][63].

↓ 2014/41/EU recital 29

(38) When an EIO is issued to obtain 'details' of a specified account, 'details' should be understood to include at least the name and address of the account holder, details of any powers of attorney held over the account, and any other details or documents provided by the account holder when the account was opened and that are still held by the bank.

⇩ new

(39) The EIO covers cross-border surveillance as an investigative measure which is undertaken with the primary purpose of gathering evidence for criminal proceedings and involving the creation of audio, visual, or other recordings by technical means operated by law enforcement officers. The Convention implementing the Schengen Agreement ([4]) remains applicable to cross-border surveillance carried out within the framework of operational police cooperation. The applicable legal instrument should be determined on the basis of the primary purpose of the measure. In particular, where surveillance is ordered or authorised within the framework of criminal proceedings for the purpose of obtaining evidence, it should be carried out under this Directive. In cases of doubt as to which instrument applies, the competent authorities of the issuing State and of the executing State should consult each other without delay.

(40) In order to ensure the effectiveness of criminal investigations, competent authorities should be able, under strictly regulated conditions, to continue surveillance measures across the territory of another Member State where such continuity is necessary to avoid compromising the gathering of evidence. Such cross-border surveillance should not entail the exercise by officers of the issuing State of coercive or enforcement powers within the territory of the executing State. Cross-border surveillance should remain subject to the control of the executing State, which should retain the power to impose conditions, require handover of the operation to its own authorities, or refuse continuation where the measure would not be authorised in a similar domestic case. The derogation permitting continuation of surveillance in situations of duly justified urgency should be interpreted strictly and applied only where prior transmission of an EIO is impossible without jeopardising the measure. Given the urgent nature, it is for each Member State to designate the authority that is competent to receive and process urgent notifications relating to cross-border surveillance. Such authority may be a judicial authority, a law enforcement authority or a central authority, in accordance with national law. Member States should ensure that the authorities so designated are available and able to process such notifications 24 hours a day, 7 days a week.

---

62 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, , p. 73, ELI: http://data.europa.eu/eli/dir/2015/849/oj).

63 ~~Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).~~

↓ 2014/41/EU recital 30
⇨ new

(41) ⇨ In order to ensure the effective and technologically neutral application of the rules governing the interception of telecommunications under this Directive, the notion of "telecommunications" should be interpreted broadly. It should encompass any communication transmitted by means of electronic communications networks or electronic communications services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council[64]. Reference to the definitions contained in Directive (EU) 2018/1972 ensures that this Directive remains aligned with developments in electronic communications technologies and prevents disparities in interpretation between Member States arising from technological evolution. ⇦ Possibilities to cooperate under this Directive on the interception of telecommunications should not be limited to the content of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for the purpose of obtaining less intrusive data on telecommunications. An EIO issued to obtain historical traffic and location data related to telecommunications should be dealt with under the general regime related to the execution of the EIO and may be considered, depending on the national law of the executing State, as a coercive investigative measure.

↓ 2014/41/EU recital 31

(42) Where several Member States are in a position to provide the necessary technical assistance, an EIO should be sent only to one of them and priority should be given to the Member State where the person concerned is located. Member States where the subject of the interception is located and from which no technical assistance is needed to carry out the interception should be notified thereof in accordance with this Directive. However, where the technical assistance may not be received from merely one Member State, an EIO may be transmitted to more than one executing State.

↓ 2014/41/EU recital 32

(43) 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 that investigative measure would be authorised in a similar domestic case.

↓ 2014/41/EU recital 33 (adapted)

(44) Member States should have regard to the importance of ensuring that technical assistance can be provided by a service provider operating publicly available telecommunications networks and ⌦ providing ⌫ services in the territory of the

[64] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36, ELI: http://data.europa.eu/eli/dir/2018/1972/oj).

Member State concerned, in order to facilitate cooperation under this ~~instrument~~ ⌦ Directive ⌫ in relation to the lawful interception of telecommunications.

↓ 2014/41/EU recital 34

(45) The EIO, by virtue of its scope, deals with provisional measures only with a view to gathering evidence. In this respect, it should be underlined that any item, including financial assets, may be subject to various provisional measures in the course of criminal proceedings, not only with a view to gathering evidence but also with a view to confiscation. The distinction between the two objectives of provisional measures is not always obvious and the objective of the provisional measure may change in the course of the proceedings. For this reason, it is crucial to maintain a smooth relationship between the various instruments applicable in this field. Furthermore, for the same reason, the assessment of whether the item is to be used as evidence and therefore be the object of an EIO should be left to the issuing authority.

⇩ new

(46) Where a technical recording device lawfully authorised in one Member State enters the territory of another Member State without requiring its technical assistance, a notification mechanism should enable the competent authorities of that Member State to assess, within a limited period, whether the continued use of the device would be permissible in a comparable domestic case and, where appropriate, to object to its continuation or impose conditions on the use of material obtained. The transmission of data collected by such devices through electronic communications networks or services for the purpose of storing such data should not, in itself, qualify the measure as the interception of telecommunications. Such qualification should apply only where the measure is specifically directed at acquiring communications in transmission through such networks or services. The absence of an objection within the prescribed period should permit the continued operation of the measure for the notified duration. This mechanism applies within the framework of this Directive and is without prejudice to the application of the Convention implementing the Schengen Agreement to cross-border surveillance carried out for operational police cooperation purposes. The choice of applicable instrument depends on the primary purpose of the measure and not on the technical means used.

(47) As concerns the ERPO, the issuing authority may only issue an ERPO where the person concerned is or will, at the time of the envisaged hearing(s), be detained, resident or temporarily staying in the executing State for justified reasons impeding or otherwise hindering their physical presence in the issuing State, and where the issuing authority considers it appropriate and proportionate in light of the specific circumstances of the case. Unless an ERPO is issued following a request of the person concerned, that person has to give their consent to participate remotely. Consent must be freely given, specific, informed and unambiguously indicate that the person agrees to their remote participation in the hearing(s) concerned. For that purpose, it should be ensured that the person concerned is provided with information about the rights available to them and has access to a lawyer, before their consent is sought.

(48) It is for the issuing authority to assess, on the basis of information before it, whether there are reasonable grounds to believe that the suspect, accused person or victim resides in the executing State and whether it would be appropriate and proportionate

for that person to remotely participate in the hearing(s) concerned on that basis. Where only limited information is available, such an assessment should be the subject of consultations between the issuing authority and executing authority with a view to confirming the residence of the suspect, accused person or victim in the requested State and in order to serve the summons to the hearing(s) concerned. For the purposes of the assessment of residence, various objective circumstances that could indicate that the person concerned has established the habitual centre of their interests in a particular Member State or has the intention to do so at the time of the hearing(s) could be of relevance. Reasonable grounds to believe that a person resides in the executing State could exist, in particular, where a person is registered as a resident in the executing State, by holding an identity card or a residence permit, or by registration in an official residence register. Where the person in question is not registered in the executing State, residence could be indicated by the fact that that person manifested the intention to settle in that Member State or has acquired, following a stable period of presence in that Member State, certain connections with it which are of a similar degree as those resulting from establishing a formal residence in that Member State. In order to determine whether, in a specific situation, there are sufficient connections between the person concerned and the executing State giving rise to reasonable grounds to believe that the person concerned resides in that Member State, it is necessary to take into account various objective factors characterising the situation of that person, which include, in particular, the length, nature and conditions of that person's presence in the executing State or the family or economic connections which that person has with the requested State. A registered vehicle, a bank account, the fact that the person's stay in the executing State was uninterrupted or other objective factors could be of relevance for determining that there are reasonable grounds to believe that the person concerned resides in the executing State. A short visit, a holiday stay, including in a holiday home, or a similar stay in the executing State without any further substantial link is not enough to establish residence in that Member State.

(49) Where the suspect, accused person or victim of crime is found not to be resident but only temporarily staying in the executing State, the issuing authority should assess whether there are justified reasons for them to not be physically present at the hearings concerned. Where that information cannot be inferred from the material available to the court, it will be for the person concerned or their lawyer to present to the issuing authority any justified reasons for not attending the hearings in person. That includes situations where a person does not have a substantial link to the executing State which would qualify as residence but is temporarily staying in the executing State.

(50) In duly justified and exceptional situations, it may be necessary to provide for remote participation without the prior consent of the person concerned, in particular where clear risks relating to public security or public health arise which are shown to be genuine and present or foreseeable, and where postponing the hearing(s), or suspending the proceedings due to the absence for instance of the suspect or accused person would be contrary to the efficient and proper administration of justice. The use of such a derogation should remain strictly limited to situations of necessity and be subject to appropriate safeguards to ensure that it does not adversely affect the fairness of the proceedings or the rights of the defence.

(51) When assessing whether to issue an ERPO, the issuing authority should verify that all the conditions laid down in this Directive are fulfilled. In addition, it may consider whether recourse to a EAW under Framework Decision 2002/584/JHA would not be

possible, appropriate or proportionate in the circumstances of the case. That may in particular be the case where the offence concerned does not meet the penalty threshold set out in Article 2(1) of that Framework Decision or where the use of a EAW would not be necessary or proportionate because an ERPO can be considered sufficient to ensure the participation of the person concerned in the hearing(s) to which it relates. The issuing authority may also take into account situations where the presence of the suspect or accused person at the hearing is mandatory but surrender has been postponed indefinitely for serious humanitarian reasons pursuant to Article 23(4) of Framework Decision 2002/584/JHA, or where the person concerned is subject to deprivation of liberty in the executing State, or to an alternative measure requiring their confinement to the territory of that State, and temporary surrender pursuant to Article 24(2) of that Framework Decision is not possible or appropriate.

(52) When determining whether it is appropriate to issue an ERPO, the issuing authority should also be able to take into account other circumstances relevant to the efficient and proper administration of justice. In particular, it may consider whether the criminal proceedings would otherwise need to be conducted in the absence of the suspect or accused person, or whether a transfer of criminal proceedings under Regulation (EU) 2024/3011 of the European Parliament and of the Council[65] would not be possible or would not serve the efficient and proper administration of justice. The issuing authority may also take into account the interests of the victim, including their specific protection needs in accordance with Article 23 of Directive 2012/29/EU. In addition, the issuing authority may consider the seriousness or nature of the offence or the complexity of the proceedings, to assess whether an ERPO would be appropriate in a certain case.

(53) Grounds for refusing the execution of cross-border measures should remain limited and not undermine the effectiveness of judicial cooperation. The issuing authority and the executing authority should closely cooperate and consult one another before taking a decision on the non-recognition or non-execution of an EIO or ERPO.

(54) In the context of an ERPO, the executing authority should be able to refuse execution in exceptional situations, on the basis of an individual assessment, where the execution of an ERPO would impose a disproportionate burden on its judicial system, capable of unduly delaying, disrupting or rendering impracticable the proper conduct of its own administration of justice, and where such consequences cannot be mitigated by means of cooperation and specific practical agreements with the issuing authority.

(55) The remote hearings should be governed by the law of the issuing State. The issuing authority and the executing authority should agree on the practical arrangements for the execution of the ERPO. Clear allocation of responsibilities between those authorities is necessary in order to ensure the proper conduct of the hearing, legal certainty and the effective exercise of procedural rights by the person concerned. The executing authority should facilitate the practical organisation of the hearing within its territory and ensure that the person concerned can exercise their rights in the context of the execution of the ERPO. The issuing authority should remain responsible for the conduct of the proceedings and for ensuring the effective participation and exercise of relevant rights by the person concerned in accordance with the law of the issuing State. The issuing authority may require the executing authority to comply with certain

[65] Regulation (EU) 2024/3011 of the European Parliament and of the Council of 27 November 2024 on the transfer of proceedings in criminal matters (OJ L, 2024/3011, 27/11/2024, ELI: http://data.europa.eu/eli/reg/2024/3011/oj).

formalities and procedures when executing the ERPO, such as specific requirements to summon the person to appear for the remote hearing(s) or the provision of information to the person concerned specifically required under the law of the issuing State.

(56) In order to ensure legal certainty and avoid the unnecessary disruption of criminal proceedings, the consequences of a failure by the person concerned to appear for the remote participation in a hearing after having been duly summoned by the authorities of the executing State should be governed by the law of the issuing State, as in a domestic case. Depending on the circumstances of the case, such consequences may include the rescheduling of the hearing, the withdrawal of the ERPO, or the continuation of the proceedings in accordance with the applicable procedural rules of the issuing State. The application of such rules should remain subject to compliance with Union law and fundamental rights, in particular the right to be present at trial of suspects and accused persons as enshrined under Directive (EU) 2016/343.

(57) The executing authority should draw up minutes and record relevant elements relating to the execution of the ERPO to ensure publicity, transparency, accountability and, where relevant, the exercise of legal remedies. Such records, once forwarded to the issuing authority, shall be included in the national file.

(58) In order to safeguard the fairness of criminal proceedings and the effective exercise of the rights of the suspect or accused person concerned by the ERPO, the issuing authority should ensure that that person is represented by a mandated lawyer in the issuing State who is physically present at the hearing(s). The physical presence of the lawyer in the courtroom is essential to ensure that the suspect or accused person concerned can effectively exercise the procedural rights available under the law of the issuing State and under Union law. Victims of crime should be represented in accordance with the relevant provisions under national and Union law. Appropriate technical and practical arrangements should be available to enable secure, confidential and effective communication between the lawyer present in the issuing State and the person concerned participating remotely in the hearing(s).

(59) To avoid the risks of secondary and repeated victimisation of victims of crime, any hearings relating to the ERPO should be conducted in a manner that respects victims' individual needs. Victims have the right to receive the emotional support in accordance with Directive 2012/29/EU of the European Parliament and of the Council. To that end, the executing authority should ensure that access to that support in ensured throughout the execution of an ERPO. The authorities or services responsible for providing such support should be determined by the Member States.

(60) Remote participation in a criminal court hearing pursuant to an ERPO should not in any way reduce the level of protection afforded to persons involved in criminal proceedings and should take due account of the need to preserve the fairness of proceedings, the equality of arms and the effective exercise of the rights of the defence. Such persons should be able to exercise their procedural rights applicable in criminal proceedings under Union law and under the national law of the issuing State and the executing State in accordance with the arrangements envisaged under Title III of this Directive effectively, irrespective of whether participation takes place physically or remotely.

(61) The effective exercise of procedural rights in the context of remote participation should not be limited to the holding and duration of the hearing(s) themselves. Persons participating remotely should be able to exercise all the rights in the proceedings to which the ERPO relates, such as the submission of requests in preparation of the

hearing(s), access to the case-file and any other procedural rights available to them under Union law and the law of the issuing State, under conditions equivalent, as far as possible, to those applicable in the case of physical participation.

(62) Persons who have consented to or requested remote participation, should retain the possibility to revert to physical participation, if they so wish, to fully ensure their right to be physically present at trial. In those cases, the ERPO should be withdrawn.

(63) Persons concerned by an ERPO should have access to effective remedies in accordance with Article 47 of the Charter of Fundamental Rights of the European Union, both in the issuing State and in the executing State, where the issuing, recognition or execution of that ERPO adversely affects their rights. Moreover, when an ERPO is issued without the consent of the person concerned, effective judicial review of the decision to issue the ERPO should be available to verify compliance with the conditions and safeguards laid down in Title III of this Directive.

(64) The fairness of the proceedings to which the ERPO relates is closely tied to the reliability and efficacy of the technical and practical conditions under which they are conducted. Interruptions of communication with the courtroom and other technical failures, including in relation to the confidentiality or effectiveness of communication between the lawyer and the person concerned, may adversely affect the effective exercise of procedural rights and the fairness of the proceedings. It should therefore be possible for the person concerned to raise such issues before the issuing authority or the competent authorities of the executing State, which should on that basis inform the issuing authority. It is for the issuing authority to order appropriate remedial measures, where necessary, including the suspension, postponement or repetition of the hearing concerned.

(65) Where a suspect or accused person has participated remotely in their trial pursuant to an ERPO and those proceedings resulted in a on the conviction of that person, imposing on them a custodial sentence, detention order or confiscation measure, or any financial penalty or other supervision measure, it is important to ensure continuity and effective cooperation via the instruments of judicial cooperation available, as relevant. This includes, in particular, Framework Decision 2002/584/JHA for surrender with the purpose of execution of the sentence, Council Framework Decision 2008/909/JHA[66] for the purpose of recognition of the final decision against the person in the executing State and taking over of the sentence as well as Regulation (EU) 2018/1805 of the European Parliament and of the Council[67] with a view to the recognition of confiscation orders. In such situations, the issuing State and the executing State should be in close contact to ensure that the necessary provisional measures pending receipt and execution of judicial cooperation requests following the imposition of a sentence are taken in the specific case. In cases where the issuing State intends to issue an EAW, the executing State should be able, in accordance with its national law, to adopt appropriate provisional measures pending the receipt and execution of the EAW. Such measures should remain proportionate and strictly limited

[66] Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27, ELI: http://data.europa.eu/eli/dec_framw/2008/909/oj).

[67] 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 (OJ L 303, 28.11.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1805/oj).

to what is necessary to ensure that the person concerned remains in its territory for the effective enforcement of the final decision.

(66) The proper application of this Directive presupposes communication between the competent authorities. They should be encouraged to consult each other whenever appropriate to facilitate the smooth and efficient application of this Directive, either directly or, where appropriate, via European Union Agency for Criminal Justice Cooperation (Eurojust) established by Regulation (EU) 2018/1727 of the European Parliament and of the Council[68] or the European Judicial Network governed by Council Decision 2008/976/JHA[69]. Competent authorities are also encouraged, where appropriate, to request Eurojust to exercise a coordinating role within its remit in order to support and coordinate cross-border investigative measures with a view to gathering evidence, particularly controlled deliveries, cross-border surveillance, covert investigations or interception of telecommunications, given the specific coordination challenges such measures entail and the expertise Eurojust can bring in this regard. Competent authorities may also request Eurojust to facilitate the transmission of EIO, ERPO or notifications and requests for consent to use as evidence information previously exchanged.

(67) In order to ensure swift, direct, interoperable, reliable and secure exchange of data, to build on investments made to date and to ensure consistency with other Union acts, communication under this Directive between authorities should, as a rule, be carried out through the decentralised IT system established by Regulation (EU) 2023/2844. In particular, that decentralised IT system should, as a rule, be used for the exchange of the EIO and ERPO forms, as well as for any other official communication between the authorities under this Directive.

(68) Where this Directive provides, in respect of certain communications, that the communication may be carried out by "any means" or by "any appropriate means", authorities should have discretion as to which method of communication to use. Such provisions should be understood as identifying situations in which the use of the decentralised IT system may not be appropriate pursuant to Regulation (EU) 2023/2844. In those situations, authorities should be able to use other means of communication, provided that the exchange of information occurs in a secure and reliable manner, in accordance with that Regulation.

(69) In order to reduce the administrative burden on competent authorities, to ensure more complete, reliable, consistent and timely statistical reporting, the reference implementation software developed by the Commission should programmatically collect the statistical data necessary for monitoring purposes and such data should be transmitted to the Commission. Where Member States choose to use a national IT system instead of the reference implementation software developed by the Commission, such a system could be equipped to collect those data programmatically and, in that case, those data should be transmitted to the Commission. The e-CODEX connector could also be equipped with a feature allowing retrieval of relevant statistical data.

---

[68] Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138, ELI: http://data.europa.eu/eli/reg/2018/1727/oj).

[69] Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130, ELI: http://data.europa.eu/eli/dec/2008/976/oj).

↓ 2014/41/EU recital 35
⇨ new

(70) Where reference is made to mutual assistance in relevant international instruments, such as in conventions concluded within the Council of Europe ⇨ or within the United Nations, ⇦ it should be understood that between the Member States bound by this Directive it takes precedence over those conventions.

↓ 2014/41/EU recital 14

(71) When making a declaration concerning the language regime, Member States are encouraged to include at least one language which is commonly used in the Union other than their official language(s).

↓ 2014/41/EU recital 36

(72) The categories of offences listed in Annex IX~~D~~ should be interpreted consistently with their interpretation under existing legal instruments on mutual recognition.

↓ 2014/41/EU recital 37 (adapted)

~~In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[70], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the European Parliament and the Council consider the transmission of such documents to be justified.~~

↓ 2014/41/EU recital 38 (adapted)
⇨ new

(73) Since the objective of this Directive, namely ~~the mutual recognition of decisions taken to obtain evidence,~~ ⇨ procedures for the gathering of evidence in criminal matters and procedures to have a suspect, accused person or victim of crime participate remotely in criminal court hearings from another Member State by videoconferencing or other distance communication technology, ⇦ cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 ~~of the~~ TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve ~~that objective~~ ⇨ those objectives ⇦ .

70 ~~OJ C 369, 17.12.2011, p. 14.~~

↓ 2014/41/EU recital 39 (adapted)
⇨ new

(74) This Directive respects the fundamental rights and observes the principles recognised by Article 6 ~~of the~~ TEU and in the Charter, notably Title VI 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' constitutions in their respective fields of application. Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO ⇨ or an ERPO ⇦ when there are reasons to believe, on the basis of objective elements, that the EIO ⇨ or the ERPO ⇦ has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of ~~these~~ ⌦ those ⌫ reasons.

⇩ new

(75) The processing of personal data under this Directive involves the collection, exchange and subsequent use, as well as onward transfer, of relevant information and evidence for the objectives set out in Article 82 TFEU. In the interests of consistency and the effective protection of personal data, the processing of personal data under this Directive should comply with Directive (EU) 2016/680 of the European Parliament and of the Council[71], unless the processing of personal data is carried out in the context of proceedings as referred to in Article 5, points (b) and (c) and, in connection to such proceedings, point (d), of this Directive, where Regulation (EU) 2016/679 of the European Parliament and of the Council[72] may apply. The issuing authority, the executing authority, as well as other authorities competent to issue and receive notifications or requests for consent to use previously exchanged information as evidence, should be considered as controllers with respect to the processing of personal data under Directive (EU) 2016/680 and Regulation (EU) 2016/679. The central authorities could provide administrative support to those competent authorities and, to the extent they are processing personal data on behalf of those controllers, they should be considered as processors of the respective controller. As regards the processing of personal data by Eurojust, Regulation (EU) 2018/1725 of the European Parliament and of the Council[73] should apply, as well as the specific data protection rules laid down in Regulation (EU) 2018/1727. As regards the processing of personal

[71] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89, ELI: http://data.europa.eu/eli/dir/2016/680/oj).

[72] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

[73] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1725/oj).

data by the European Public Prosecutor's Office (EPPO), established by Council Regulation (EU) 2017/1939[74], Regulation (EU) 2018/1725 should apply as of the date of the entry into force of the amendments to Regulation (EU) 2017/1939, as well as the specific data protection rules laid down in that Regulation.

↓ 2014/41/EU recital 40

~~The protection of natural persons in relation to the processing of personal data is a fundamental right. In accordance with Article 8(1) of the Charter and Article 16(1) of the TFEU, everyone has the right to the protection of personal data concerning them.~~

↓ 2014/41/EU recital 41

~~Member States should, in the application of this Directive, provide for transparent policies with regard to the processing of personal data and for the exercise of the rights of data subjects to legal remedies for the protection of their personal data.~~

↓ 2014/41/EU recital 42

~~Personal data obtained under this Directive should only be processed when necessary and should be proportionate to the purposes compatible with the prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the rights of defence. Only authorised persons should have access to information containing personal data which may be obtained through authentication processes.~~

↓ 2014/41/EU recital 43

~~In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TEU and the TFEU, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.~~

↓ 2014/41/EU recital 44

~~In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.~~

⇩ new

(76) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and the TFEU, Ireland has notified [, by letter of …,] its wish to take part in the adoption and application of this Directive.] OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect

[74] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/1939/oj).

of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without affecting Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.]

↓ 2014/41/EU recital 45 (adapted)

(77) In accordance with Articles 1 and 2 of Protocol No 22 on the ~~p~~Position of Denmark, annexed to the TEU and ⌦ to ⌫ the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

↓ 2014/41/EU recital 46 (adapted)

(78) The European Data Protection Supervisor ⌦ was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and ⌫ delivered an opinion on ⌦ […] ⌫ ~~5 October 2010[75], based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[76]~~,

⇩ new

(79) The obligation to transpose this Directive into national law should be confined to those provisions which represent substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(80) This Directive should not affect the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Part B of Annex X,

↓ 2014/41

HAVE ADOPTED THIS DIRECTIVE:

⇩ new

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

[75] ~~OJ C 355, 29.12.2010, p. 1.~~

[76] ~~Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).~~

1. This Directive lays down rules on:

(a) the issuing, recognition and execution of European Investigation Orders (EIO) for the purpose of obtaining evidence in criminal matters, including for obtaining evidence that is already in the possession of the competent authorities of the executing State;

(b) the issuing of urgent notifications for cross-border surveillance and notifications for cross-border investigative measures which do not require technical assistance from another Member State, including the right of the notified Member State to object;

(c) the issuing of requests for consent to use as evidence information previously exchanged between law enforcement authorities or spontaneously between judicial authorities and the granting or refusal of such consent; and

(d) the issuing, recognition and execution of European Remote Participation Orders (ERPO), to have a suspect, accused person, or a victim of crime, who has the status of party to criminal proceedings, participate in one or more court hearing(s) in criminal proceedings remotely by way of videoconferencing or other distance communication technology from another Member State.

2. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 TEU, including the rights of defence and fair trial of persons affected by criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

3. Title III of this Directive shall not affect the right to be present at trial as enshrined in Article 8(1) of Directive (EU) 2016/343 or other Union legal acts in the area of judicial cooperation in criminal matters or criminal procedural law.

↓ 2014/41/EU

Article 2

Definitions

1. For the purposes of this Directive the following definitions apply:

↓ 2014/41/EU (adapted)
⇨ new

(a) 'issuing State' means the Member State in which the EIO is issued ⇨ or the Member State in which the ERPO is issued; ⇦ ;

(b) 'executing State' means the Member State executing the EIO, in which the investigative measure is to be carried out ⇨ or the Member State executing the ERPO, in which the person subject to the ERPO is located; ⇦

(c) 'issuing authority' means:

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

(ii) ⌦ a public prosecutor competent in the case concerned: ⌫

⇩ new

- for EIO, where national law requires prior authorisation by a judge, court or investigating judge for the investigative measure concerned and no such authorisation has been obtained in accordance with national procedures, before it is transmitted to the executing authority the EIO shall be validated by a judge, court or investigating judge, who shall verify the conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 7(1);
- for ERPO, before it is transmitted to the executing authority, the ERPO shall be validated, after examination of its conformity with the conditions for issuing an ERPO under this Directive, by a judge, court or investigating judge, in the issuing State;

🡻 2014/41/EU
⇨ new

(iii) ⇨ for EIO, ⇦ 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 to order the gathering of 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 7~~6~~(1), by a judge, court, investigating judge or a public prosecutor in the issuing State. ⇨ Where national law requires prior authorisation by a judge, court or investigating judge for the investigative measure concerned and no such authorisation has been obtained in accordance with national procedures, validation may only be carried out by a judge, court or investigating judge; ⇦ ~~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;~~

(d) '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, ⇨ and a judge, court or investigating judge having competence to recognise an ERPO and ensure its execution in accordance with this Directive ⇦ . Such procedures may require a court authorisation in the executing State where provided by its national law;

⇩ new

(e) 'investigating Member State' means a Member State in which a notification in accordance with Article 33 or 34 is issued;

(f) 'notified Member State' means a Member State which receives a notification in accordance with Article 33 or 34 and from which no technical assistance is needed to carry out the investigative measure;

(g) ‘telecommunications’ means any communications, including both the content of the communication and associated data, transmitted through electronic communications networks, as defined in Article 2, point (1), of Directive (EU) 2018/1972, or electronic communications services as defined in Article 2, point (4), of that Directive;

(h) ‘decentralised IT system’ means the decentralised IT system as defined in Article 2, point (3), of Regulation (EU) 2023/2844.

2. Where in accordance with paragraph 1 the EIO has been validated by a judicial authority or where the ERPO has been validated by a judge or a court or investigating judge, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO or the ERPO.

↓ 2014/41/EU (adapted)
⇨ new

⌦ TITLE II ⌫

⌦ CROSS-BORDER COOPERATION FOR OBTAINING EVIDENCE IN CRIMINAL MATTERS ⌫

CHAPTER I

THE EUROPEAN INVESTIGATION ORDER

Article 3~~1~~

The ~~European Investigation Order~~ ⌦ EIO ⌫ and obligation to execute it

1. ⌦ An ⌫ ~~A European Investigation Order (~~EIO~~)~~ is a judicial decision which has been issued or validated by a judicial authority of ~~a Member State~~ (‘~~t~~the issuing State~~’)~~ to have one or several specific investigative measure(s) carried out in ~~another Member State (‘~~the executing State~~’)~~ to obtain evidence in accordance with ⌦ this Title and Titles I, IV and V ⌫ ~~this Directive~~. ⇨ Where strictly necessary for the execution of such investigative measures, the issuing authority may also request the service of procedural documents to the person concerned ⇦ .

   The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

2. Member States shall execute an EIO on the basis of the principle of mutual recognition and in accordance with ⌦ this Title and Titles I, IV and V ⌫ ~~this Directive~~.

3. The issuing of an EIO may be requested by a suspect~~ed~~ or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure.

~~4. 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.~~

Article 43

Scope of the EIO

The EIO shall cover any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union[77] ('the Convention') and in Council Framework Decision 2002/465/JHA[78], other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision.

⇩ new

The EIO shall also cover the service of procedural documents to the person concerned, insofar as such service is strictly necessary for the execution of an investigative measure aimed at obtaining evidence which was requested in the EIO.

🡻 2014/41/EU (adapted)

Article 54

Types of proceedings for which the EIO can be issued

An EIO may be issued:

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

(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.

Article 6 ~~5~~

Content and form of the EIO

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

[77] Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 3).

[78] Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1, ELI: http://data.europa.eu/eli/dec_framw/2002/465/oj).

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;~~,~~

⇩ new

(f) where applicable, a confirmation that the requested investigative measure(s) has been authorised by a judge, a court or an investigating judge, including the date and reference number of the authorising decision, except where the EIO is issued or validated by a judge, a court or an investigating judge;

(g) information about the possibilities for seeking legal remedies.

🡻 2014/41/EU

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.

3. The competent authority of the issuing State shall translate the EIO set out in Annex I~~A~~ into an official language of the executing State or any other language indicated by the executing State in accordance with paragraph 2 of this Article.

⇩ new

4. Where the issuing authority requests the service of procedural documents necessary for the execution of an investigative measure requested in the EIO, and there is reason to believe that the person concerned does not understand the language in which the document to be served is drawn up, such a document must be accompanied by a translation into the language which the addressee understands.

🡻 2014/41/EU (adapted)

CHAPTER II

PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE

Article 7~~6~~

Conditions for issuing and transmitting an EIO

1. The issuing authority may only issue an EIO where the following conditions have been met:

   (a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 5~~4~~ taking into account the rights of the suspect~~ed~~ or accused person; and

   (b) the investigative 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.

Article 8~~7~~

Transmission of the EIO

↓ 2023/2843 Art. 11.2
⇨ new

1. The EIO completed in accordance with Article 6~~5~~ shall be transmitted by the issuing authority ⇨ directly ⇦ to the executing authority ⇨ or, where applicable, with the involvement of the central authority referred to in Article 52 ⇦.

↓ 2014/41/EU (adapted)
⇨ new

2. ~~Any further~~ ⌦ All other ⌫ official communication shall be made directly between the issuing authority and the executing authority ⇨ or, where applicable, with the involvement of the central authority referred to in Article 52 ⇦ .

3. 5. ~~If~~ ⌦ Where ⌫ the identity of the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the ~~EJN~~ contact points, ⌦ of the European Judicial Network as provided for by Decision 2008/976/JHA ⌫ in order to obtain the information from the executing State.

~~4. The issuing authority may transmit EIOs via the telecommunications system of the European Judicial Network (EJN), as set up by Council Joint Action. 98/428/JHA[79].~~

4~~6~~. Where the authority in the executing State which receives the EIO has no competence to recognise the EIO or to take the necessary measures for its execution, it shall, *ex officio*, transmit the EIO to the executing authority and so inform the issuing authority.

5~~7~~. All difficulties concerning the transmission or authenticity of any document needed for the execution of the EIO shall be dealt with by direct contacts between the issuing

---

79 ~~Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).~~

authority and the executing authority involved or, where appropriate, with the involvement of the central authorities of the Member States.

Article 9~~8~~

EIO related to an earlier EIO

1. Where an issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO.

2. ~~If~~ ⌦ Where ⌫ the issuing authority assists in the execution of the EIO in the executing State, in accordance with Article 10~~9~~(4), it may, without prejudice to notifications made under Article 58~~33~~(1), point (c), address an EIO which supplements an earlier EIO directly to the executing authority, while present in ~~that~~ ⌦ the executing ⌫ State.

3. The EIO which supplements an earlier EIO shall be certified in accordance with the first subparagraph of Article 6~~5~~(1), and, where applicable, be validated in accordance with Article ~~2(c)~~ ⇨ 2(1), point (c) ⇦ .

CHAPTER III

PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE

Article 10~~9~~

Recognition and execution

1. The executing authority shall recognise an EIO, transmitted in accordance with ⌦ the applicable provisions of ⌫ this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this ⌦ Title ⌫ ~~Directive~~.

2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this ⌦ Title ⌫ ~~Directive~~ and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.

3. Where an executing authority receives an EIO which has not been issued by an issuing authority as specified in Article ~~2(c)~~ ⇨ 2(1), point (c) ⇦, the executing authority shall return the EIO to the issuing State.

4. The issuing authority may request that one or more authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measures indicated in the EIO in a similar domestic case. The executing authority shall comply with this request provided that such assistance is not contrary to the fundamental principles of law of the executing State or does not harm its essential national security interests.

5. 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.

6. The issuing authority and executing authority may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

Article 11~~10~~

Recourse to a different type of investigative measure

1. The executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where:

   (a) the investigative measure indicated in the EIO does not exist under the law of the executing State; or

   (b) the investigative measure indicated in the EIO would not be available in a similar domestic case.

2. Without prejudice to Article 12~~11~~, paragraph ~~(~~1~~)~~ does not apply to the following investigative measures, which always have to be available under the law of the executing State:

   (a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;

   (b) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;

   (c) the hearing of a witness, expert, victim, suspect~~ed~~ or accused person or third party in the territory of the executing State;

   (d) any non-coercive investigative measure as defined under the law of the executing State;

   (e) the identification of persons holding a subscription of a specified phone number or IP address.

3. The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.

4. When the executing authority decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.

5. Where, in accordance with paragraph 1, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing

authority shall notify the issuing authority that it has not been possible to provide the assistance requested.

Article 12~~11~~

Grounds for non-recognition or non-execution

1. Without prejudice to Article ⇨ 1(2) ⇦ ~~1(4)~~, recognition or execution of an EIO may be refused in the executing State where:

   (a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or 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;

   (b) in a specific case the execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

   (c) the EIO has been issued in proceedings referred to in Article ~~5~~4, points (b) and (c), and the investigative measure would not be authorised under the law of the executing State in a similar domestic case;

   (d) the execution of the EIO would be contrary to the principle of *ne bis in idem*;

   (e) 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;

   (f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;

   (g) 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 IX~~D~~, 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; or

   (h) the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

2. Paragraph~~s~~ 1, points (g) and ~~1~~(h), ~~do~~ ⌦ shall ⌫ not apply to investigative measures referred to in Article 11~~10~~(2).

3. 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.

4. In the cases referred to in paragraph 1, points (a), (b), (d), (e) and (f), ~~of paragraph 1~~ before deciding not to recognise or not to execute an EIO, either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means,

and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

5. In the case referred to in paragraph 1, point (a), and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

Article 13~~12~~

Time limits for recognition or execution

1. The decision on the recognition or execution ⌦ of the EIO ⌫ shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar domestic case and, in any case, within the time limits provided in this Article.

~~2. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.~~

2. ~~3.~~ ⇨ Where no urgency is indicated, ⇦ ~~,~~ t~~T~~he executing authority shall:

(a) take the decision on the recognition or execution of the EIO as soon as possible and~~,~~ ~~without prejudice to paragraph 5,~~ no later than 30 days after the receipt of the EIO by the competent executing authority;~~,~~

🡻 2014/41/EU (adapted)
⇨ new

⇨ (b) carry out the investigative measure without delay and no later than 90 days following the taking of the decision referred to in point (a), ⇦ ~~4U~~unless grounds for postponement under Article 15 exist or evidence ~~mentioned~~ ⌦ referred to ⌫ in the investigative measure covered by the EIO is already in the possession of the executing State~~, the executing authority shall carry out the investigative measure without delay and without prejudice to paragraph 5, not later than 90 days following the taking of the decision referred to in paragraph 3~~.

⇩ new

3. Where the issuing authority has indicated in the EIO that, because of procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or where the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall give that request priority and shall take it into account to the maximum extent possible when executing the investigative measure.

4. Where the EIO concerns measures requiring the gathering of evidence in real time, continuously and over a certain period of time, as referred to in Article 28, the interception of telecommunications, as referred to in Article 31, or cross-border surveillance, as referred to in Article 30, the executing authority shall:

(a) treat the request as requiring immediate attention;

(b) take the decision on recognition or execution without delay;

(c) where necessary to ensure the effectiveness of the measure, permit its provisional execution pending the decision on recognition or execution of an EIO.

5. Provisional execution of a measure referred to in paragraph 4, point (c), shall cease where the recognition or execution of the EIO is refused. Any material obtained may be used only where strictly necessary to prevent an immediate and serious threat to public security. The executing authority shall be notified of any such use and of the reasons for it.

↓ 2014/41/EU (adapted)
⇨ new

6. ~~5~~. ~~If~~ ⌦ Where ⌫ it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph ~~3~~ ⇨ 2, point (a), ⇦ or the ⇨ shorter deadline or the ⇦ specific date set out in paragraph ⇨ 3 ⇦ ~~2~~, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken. In such a case, the time limit laid down in paragraph ~~3~~ ⇨ 2, point (a), ⇦ may be extended by a maximum of 30 days.

7. ~~6~~. ~~If~~ ⌦ Where ⌫ it is not practicable in a specific case for the competent executing authority to meet the time limit set out in paragraph ~~4~~ ⇨ 2, point (b), ⇦, it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the investigative measure.

⇩ new

8. Where execution of the EIO is delayed due to privilege or immunity under the national law of the executing State, the time-limits set out in paragraphs 1 to 4 shall commence only from the day on which the executing authority is informed of the fact that the privilege or immunity has been waived.

↓ 2014/41/EU (adapted)

Article ~~14~~13

Transfer of evidence

1. The executing authority shall, without undue delay, transfer the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State.

Where requested in the EIO and ~~if~~ ⌦ where ⌫ possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 10~~9~~(4).

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~~ ⌦ where ⌫ it would cause serious and irreversible damage to the person concerned.

3. When transferring the evidence obtained, the executing authority shall indicate whether it requires the evidence to be returned to the executing State as soon as it is no longer required in the issuing State.

4. Where the objects, documents~~,~~ or data concerned are already relevant for other proceedings, the executing authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.

⇩ new

5. Where applicable, the executing authority shall indicate whether the use of such evidence is subject to conditions under Article 21.

🡻 2014/41/EU

Article 15

Grounds for postponement of recognition or execution

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

   (a) its 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.

🡻 2023/2843 Art. 11.3

2. As soon as the grounds for postponement have ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority thereof.

↓ 2014/41/EU (adapted)
⇨ new

Article 16

Obligation to inform

1. The ~~competent~~ authority in the executing State which receives the EIO shall, without delay, and in any case within a week of the reception of an EIO, acknowledge reception of the EIO by completing and sending the form set out in Annex II~~B~~.

   Where a central authority has been designated in accordance with Article ~~7(3)~~ ⇨ 52 ⇦ , ~~this~~ ⌦ the ⌫ obligation ⌦ laid down in the first subparagraph ⌫ is applicable both to the central authority ⌦ of the executing state ⌫ and to the executing authority which receives the EIO from ~~the~~ ⌦ such ⌫ central authority.

   In the cases referred to in Article ~~7(6)~~8(4), ~~this~~ ⌦ the ⌫ obligation ⌦ laid down in the first subparagraph ⌫ applies both to the ~~competent~~ authority which initially received the EIO and to the executing authority to which the EIO is finally transmitted.

↓ 2023/2843 Art. 11.4(a)
⇨ new

2. Without prejudice to Article 11~~10~~(4) and (5), the executing authority shall inform the issuing authority immediately by any means:

   (a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex I~~A~~ is incomplete or manifestly incorrect;

   (b) if the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case; or

   (c) if the executing authority establishes that, in a specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 10~~9~~.

   Upon request by the issuing authority, the information shall be confirmed without delay in accordance with Article ⇨ 51 ⇦ ~~5a~~.

↓ 2014/41/EU (adapted)
➔1 2023/2843 Art. 11.4(b)

3. ➔1 Without prejudice to Article 11~~10~~(4) and (5), the executing authority shall inform the issuing authority without delay: ←

   (a) of any decision taken pursuant to Articles 11~~10~~ or 12~~11~~;

(b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, ~~if~~ ⌦ where ⌫ possible, the expected duration of the postponement.

↓ 2014/41/EU (adapted)
⇨ new

⌦ CHAPTER IV ⌫

⌦ LEGAL REMEDIES, SAFEGUARDS AND LIABILITY ⌫

Article 17~~14~~

Legal remedies

1. Member States shall ensure that ⌦ effective ⌫ legal remedies equivalent to those available in a similar domestic case~~,~~ are available ⇨ to suspects, accused persons and any other persons whose rights are adversely affected by ⇦ ~~are applicable to~~ the investigative measures indicated in the EIO. ⇨ Where the EIO is issued for obtaining evidence that is already in the possession of the competent authorities of the executing State, Member States shall ensure that legal remedies equivalent to those available in a similar domestic case are available in the executing State to suspects, accused persons and any other persons whose rights are adversely affected to challenge the lawfulness of the investigative measures carried out to collect that evidence. ⇦

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 would not undermine the need to ensure confidentiality of an investigation under Article 20~~19~~(1), the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable 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 that are provided for in similar domestic cases and are 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 remedies sought against the issuing, the recognition or the execution of an EIO. ⇨ The executing authority shall inform the issuing authority where a legal remedy is sought to challenge the lawfulness of the investigative measures caried out to collect the evidence, which where an EIO is issued for obtaining that evidence that is already in the possession of the competent authorities of the executing State. ⇦

6. A legal challenge shall not suspend 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 assessing evidence obtained through the EIO.

Article 18~~17~~

Criminal liability regarding officials

When present in the territory of the executing State in the framework of the application of this ⌦ Title ⌫ ~~Directive~~, officials from the issuing State shall be regarded as officials of the executing State with respect to offences committed against them or by them.

Article 19~~18~~

Civil liability regarding officials

1. Where, in the framework of the application of this ⌦ Title ⌫ ~~Directive~~, officials of a Member State are present in the territory of another Member State, the former Member State shall be liable for any damage caused by its officials during their operations, in accordance with the law of the Member State in whose territory they are operating.

2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.

3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse in full any sums the latter Member State has paid to the victims or persons entitled on their behalf.

4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in cases referred to in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

Article 20~~19~~

Confidentiality

1. Each Member State shall take the necessary measures to ensure that in the execution of an EIO the issuing authority and the executing authority take due account of the confidentiality of the investigation.

2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute the investigative measure. ~~If~~ ⌦ Where ⌫ the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority without delay.

3. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, not disclose any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.

4. Each Member State shall take the necessary measures to ensure that banks do not disclose to the bank customer concerned or to other third persons that information

has been transmitted to the issuing State in accordance with Articles 26 and 27 or that an investigation is being carried out.

⇩ new

5. Paragraphs 1 to 4 shall not affect Article 21 on conditions for the subsequent use and onward transfer of information or evidence.

Article 21

Conditions for the subsequent use and onward transfer of information or evidence

1. Where information or evidence has been obtained as a result of execution of an EIO or in accordance with Articles 33 and 34 , and in a similar domestic case the law of the executing State or the notified Member State provides for conditions limiting the use of the information or evidence for purposes other than those for which it was gathered, the competent authority of that Member State, shall indicate , at the time when the information or evidence is transferred and, in the case of a notification under Articles 33 or 34, without delay and at the latest within 96 hours after the receipt of the notification that such conditions also apply in the Member State which obtained the information or evidence under this Title.

2. The issuing authority or, where applicable, the competent authority of the investigating Member State ('requesting authority') shall obtain the prior consent of the executing authority or, where applicable, the competent authority of the notified Member State ('requested authority') to use that information or evidence for the purposes other than those for which it was collected or to a transfer of information or evidence to another Member State, a third country or an international organisation in following cases:

   (a) where conditions have been indicated pursuant to paragraph 1, before using the information or evidence for purposes other than those for which it was collected;

   (b) in all cases, before transmitting the information or evidence to another Member State, a third country or an international organisation.

3. Request for consent under paragraph 2 in the form set out in Annex IV shall be completed, signed, and its content certified as accurate and correct by the requesting authority. It shall be translated into an official language of the Member State, to which the request is addressed, or any other language accepted by that State in accordance with Article 6(2).

4. The requested authority shall decide on the request as soon as possible and no later than 14 days after receipt thereof. Where it is not practicable to comply with that time limit, the requested authority shall inform the requesting authority without delay, stating the reasons, and may extend the time limit by up to 10 days.

5. Without affecting paragraph 6, consent shall be granted except in any of the following situations:

   (a) a ground for non-recognition or non-execution of an EIO, or where applicable a ground for objection under Articles 33 or 34, applies;

(b) the requested use or onward transfer would affect an ongoing criminal investigation or prosecution;

(c) the conditions laid down in Chapter V of Regulation (EU) 2016/679 or Chapter V of Directive (EU) 2016/680 are not met.

The decision under paragraph 4 may be postponed for as long as such a ground persists.

6. The requested authority may, as a condition for granting consent to the transfer of information or evidence to another Member State, a third country or an international organisation, require that the request for such consent be accompanied by an EIO, a request for mutual legal assistance or an equivalent judicial cooperation instrument issued by the authorities competent in the specific case.7. Where, because of an immediate and serious threat to public security, prior consent cannot be obtained, the information or evidence may be used or transmitted without delay, provided that the requested authority is notified within 24 hours and informed of the reasons justifying urgency.

↓ 2014/41/EU (adapted)
⇨ new

CHAPTER ~~I~~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 12~~11~~ the execution of the EIO may also be refused ⌦ where ⌫ ~~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, point (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~~ ⌦ where ⌫ 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 5421, 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, point (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 5421, 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 ⌦ distance communication technology ⌫ ~~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 ⌦ distance communication technology ⌫ ~~audiovisual transmission~~ in accordance with paragraphs 5, 6 and ~~to~~ 7.

The issuing authority may also issue an EIO for the purpose of hearing a suspect~~ed~~ or accused person by videoconference or other ~~audiovisual transmission~~ ⌦ distance communication technology ⌫ , ⇨ where that measure has the purpose of gathering evidence and its execution does not go beyond what is necessary for that purpose ⇦ .

2. In addition to the grounds for non-recognition or non-execution referred to in Article 12~~11~~, execution of an EIO concerning the hearing of a suspect or accused person may be refused ~~if~~ ⌦ where ⌫ ~~either:~~ ~~(a)~~ the ⌦ concerned ⌫ suspect~~ed~~ 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 suspect~~ed~~ 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 ⌦ or other distance communication technology ⌫ , 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~~ ⌦ distance communication technology ⌫ , 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~~ ⌦ where ⌫ necessary;

(e) suspect~~ed~~ 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~~ ⌦ that ⌫ 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~~ ⌦ where ⌫ 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, 4 and ~~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 12~~11~~, the execution of the EIO may also be refused ~~if~~ ⌦ where ⌫ 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 and~~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 12~~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;

⇩ new

   (c) the surveillance on the territory of the executing State;

(d) the installation and use of a technical device enabling the collection of location, audio or visual data on the territory of the executing State,

---

↓ 2014/41/EU (adapted)
⇨ new

its execution may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 12~~11~~, ~~if~~ ⌦ where ⌫ 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, points (b), ⇨ (c) and (d) ⇦ , 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 12~~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 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.

⇩ new

Article 30

Cross-border surveillance

1. An EIO may be issued in the framework of proceedings referred to in Article 5, point (a), for the purpose of authorising the continuation, in the territory of the executing State, of surveillance initiated in the issuing State, where such surveillance consists of the observation of a person or object by law enforcement officers and involves the creation of audio, visual, or other records by technical means operated by law enforcement officers for the purpose of obtaining evidence.

2. The EIO shall state the reasons justifying recourse to cross-border surveillance.

3. In addition to the grounds for non-recognition or non-execution referred to in Article 12, the execution of the EIO referred to in paragraph 1 may also be refused where the investigative measure would not have been authorised in a similar domestic case. The executing authority may make its consent subject to any conditions which would apply in a similar domestic case.

4. The duration and practical arrangements for the cross-border surveillance, including the use of technical means and the modalities governing the conduct of the officers involved, shall be agreed between the competent authorities of the issuing State and the executing State. Law enforcement officers of the issuing State conducting the cross-border surveillance shall act solely for the purpose of observation and documentation of the cross-border surveillance, shall not exercise coercive powers and shall not enter private premises in the territory of the executing State.

5. Upon request, cross-border surveillance shall be handed over to the law enforcement officers of the executing State.

6. By way of derogation from paragraph 1, where, on the grounds of duly justified urgency, it is not possible to issue and transmit an EIO before the person or object under surveillance enters the territory of the executing State, the law enforcement officers of the issuing State may continue cross-border surveillance on the territory of the executing State provided that:

   (a) immediately after the law enforcement officers of the issuing State have crossed the border, the authority competent for the issuing and transmission of urgent notifications notifies by any appropriate means the authority competent for the receipt of urgent notifications, of the continuation of the surveillance in the executing State and of the reasons justifying the urgency;

   (b) the EIO is issued and transmitted to the executing authority without delay and no later than 48 hours after the crossing of the border referred to in point (a), stating the reasons why its prior transmission was not possible;

   (c) the cross-border surveillance is carried out in compliance with any instructions issued by the competent authorities of the executing State;

   (d) the cross-border surveillance shall cease as soon as the executing authority so requests or where the recognition or execution of the EIO is refused;

(e) where no decision on recognition or execution of an EIO is taken within 24 hours of the transmission of the EIO, the continuation of the cross-border surveillance shall be subject to the decision of the executing authority to permit the provisional execution of cross-border surveillance in accordance with Article 13(4), point (c);

(f) where the recognition or execution of the EIO is refused or the provisional execution of cross-border surveillance is otherwise not permitted under point (e), any material obtained from the cross-border surveillance may be used only where strictly necessary to prevent an immediate and serious threat to public security, and the executing authority shall be notified of any such use and of the reasons thereof.

7. The notification referred to in paragraph 6, point (a), shall be made using the form set out in Annex V. It shall be translated into an official language of the notified Member State, or any other language accepted by the notified Member State in accordance with Article 6(2). Where such a translation cannot reasonably be provided in time, the notification may be transmitted in a language generally understood in other Member States.

8. Where the notified authority referred to in paragraph 6, point (a), is different from the executing authority, it shall immediately inform the executing authority.

↓ 2014/41/EU (adapted)

~~*CHAPTER V*~~

~~*INTERCEPTION OF TELECOMMUNICATIONS*~~

Article 31~~30~~

Interception of telecommunications with technical assistance of another Member State

1. An EIO may be issued for the interception of telecommunications in the Member State from which technical assistance is needed.

2. Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent only to one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located.

3. An EIO referred to in paragraph 1 shall also contain the following information:

(a) information for the purpose of identifying the subject of the interception;

(b) the desired duration of the interception; ~~and~~

(c) sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.

4. The issuing authority shall indicate in the EIO the reasons why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings concerned.

5. In addition to the grounds for non-recognition or non-execution referred to in Article 11, the execution of an EIO referred to in paragraph 1 may also be refused where the investigative measure would not have been authorised in a similar domestic case. The executing State may make its consent subject to any conditions which would be observed in a similar domestic case.

6. An EIO referred to in paragraph 1 may be executed by:

(a) transmitting telecommunications immediately to the issuing State; or

(b) intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.

The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with point (a) or (b).

⇩ new

7. Where the period for which interception of telecommunications in the executing State is requested exceeds the period for which such an investigative measures has been ordered, or may be carried out, in accordance with the law of the executing State, the executing authority shall inform the issuing authority without delay and indicate possibilities, if any, to extend that period. Where the issuing authority intends to extend the interception of telecommunications in the executing State beyond the duration indicated in the initial EIO, a new EIO must be issued.

🡻 2014/41/EU

8. ~~7.~~When issuing an EIO referred to in paragraph 1 or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.

9. ~~8.~~Costs resulting from the application of this Article shall be borne in accordance with Article 5~~4~~21, except for the costs arising from the transcription, decoding and decrypting of the intercepted communications which shall be borne by the issuing State.

CHAPTER VI

PROVISIONAL MEASURES

Article 32

Provisional measures

1. The issuing authority may issue an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, removal, 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, wherever practicable, within 24 hours of receipt of the EIO.

↓ 2014/41/EU (adapted)
⇨ new

3. Where a provisional measure referred to in paragraph 1 is requested the issuing authority shall indicate in the EIO whether the evidence is to be transferred to the issuing State or is to remain in the executing State. The executing authority shall recognise and execute the EIO and transfer the evidence in accordance with the ⌦ applicable ⌫ procedures laid down in this Directive.

4. Where, in accordance with paragraph 3, an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure referred to in paragraph 1, or the estimated date for the submission of the request for the evidence to be transferred to the issuing State.

5. After consulting the issuing authority, the executing authority may, in accordance with its national law and practice, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure referred to in paragraph 1 is to be maintained. ⌦ Where ⌫ ~~If~~, in accordance with those conditions, it envisages lifting the provisional measure, the executing authority shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the executing authority that the provisional measure referred to in paragraph 1 has been lifted.

⌦ CHAPTER VII ⌫

⌦ NOTIFICATIONS FOR CROSS-BORDER INVESTIGATIVE MEASURES CARRIED OUT WITHOUT TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE ⌫

Article 33~~31~~

Notification of the Member State where the subject of the interception is located from which no technical assistance is needed

1. Where, for the purpose of carrying out an investigative measure ⇨ in proceedings referred to in Article 5, point (a), and, where related to such proceedings, those referred to in Article 5, point (d), ⇦ the interception of telecommunications is authorised by the competent authority of ~~one Member State~~ ~~(~~ the ⇨ investigating ⇦ ~~intercepting~~ Member State ~~)~~ and the communication address of the subject of the interception specified in the interception order is being used on the territory of another Member State ~~(the 'notified Member State')~~ from which no technical assistance is needed to carry out the interception, the ⇨ investigating ⇦ ~~intercepting~~ Member State shall notify the competent authority of ~~the notified~~ ⌦ that other ⌫ Member State of the interception:

(a) prior to the interception in cases where the competent authority of the ⇨ investigating ⇦ ~~intercepting~~ Member State knows at the time of ordering the interception that the subject of the interception is or will be on the territory of the notified Member State;

(b) during the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.

2. The notification referred to in paragraph 1 shall be made by using the form set out in Annex III~~C~~. ⇨ It shall be translated into an official language of the notified Member State or any other language accepted by the notified Member State in accordance with Article 6(2). ⇦

⇩ new

3. Where the authority in the notified Member State which receives the notification referred to in paragraph 1 has no competence to act, it shall, without undue delay and no later than 24 hours of receipt of a notification, transmit it to the competent authority of the notified Member State and so inform the competent authority of the investigating Member State.

🡻 2014/41/EU
⇨ new

4. ~~3~~. The competent authority of the notified Member State~~s~~ may, in case where the interception would not be authorised in a similar domestic case, notify, without delay and at the latest within 96 hours after the receipt of the notification referred to in paragraph 1, the competent authority of the ⇨ investigating ⇦ ~~intercepting~~ Member State:

(a) that the interception may not be carried out or shall be terminated; and

(b) where necessary, that any material already intercepted while the subject of the interception was on its territory may not be used ⇨ and must be deleted ⇦ , or may only be used under conditions which it shall specify. ⇨ including conditions communicated pursuant to Article 21 ⇦ . The competent authority of the notified Member State shall inform the competent authority of the ⇨ investigating ⇦ ~~intercepting~~ Member State of reasons justifying those conditions.

~~4. Article 5(2) shall be applicable *mutatis mutandis* for the notification referred to in paragraph 2.~~

⇩ new

5. At the request of the competent authority of the notified Member State, the competent authority of the investigating Member State shall provide any additional information necessary for the notified Member State to assess whether the interception could be authorised in a similar domestic case.

6. Where the internal procedures required under the national law of the notified Member State cannot be completed within the 96-hour period, competent authority of the notified Member State shall, without delay, inform the competent authority of the investigating Member State, giving reasons, and may extend that period by an additional maximum period of 96 hours.

7. Where no objection is raised by the competent authority of the notified Member State within the period referred to in paragraph 4 and without prejudice to paragraph 6, the investigating Member State may continue the interception on the territory of the notified Member State for the duration indicated in the notification referred to in paragraph 1. Where the competent authority of the investigating Member State intends to extend the interception beyond the duration indicated in the initial notification, a new notification must be made.

Article 34

Notification to the Member State of the use, in its territory, of a technical recording device without the need for its technical assistance

1. Where, for the purpose of carrying out an investigative measure in proceedings referred to in Article 5(1), point (a), and, to insofar as they relate to such proceedings, those referred to in Article 5(1), point (d), the use of a technical device enabling the collection of location, audio or visual data ('technical recording device') has been authorised by the competent authority of the investigating Member State and where that device enters the territory of another Member State from which no technical assistance is needed to continue its use, the competent authority of the investigating Member State shall notify the competent authority of that other Member State about the use of a technical recording device on its territory:

   (a) prior to such use in cases where the competent authority of the investigating Member State knows, at the time of ordering the use of the technical recording device, that it will enter the territory of the notified Member State; or

   (b) during or after such use as soon as it becomes aware that the technical recording device is, or will be, on the territory of the notified Member State.

2. Paragraphs 2, 3, 4, 5, 6 and 7 of Article 33 shall apply *mutatis mutandis* to the notifications made in accordance with paragraph 1 of this Article.

CHAPTER VIII

REQUESTS FOR CONSENT TO USE PREVIOUSLY EXCHANGED INFORMATION AS EVIDENCE

Article 35

Request for consent to use previously exchanged information as evidence

1. The requesting authority may, where required under its national law or the conditions attached to the original transmission of the information, request the consent of the requested authority to use as evidence in criminal proceedings information that has been previously provided to the competent authorities of one Member State ('the

requesting State') by the competent authorities of another Member State ('the requested State'):

(a) in accordance with Directive (EU) 2023/977 of the European Parliament and of the Council[80];

(b) through spontaneous exchange of information between judicial authorities pursuant to Article 7 of the Convention.

2. For the purposes of this article, 'requesting authority' means the authority referred to in Article 2(1), point (c), competent to issue a request for consent, and 'requested authority' means the authority referred to in Article 2(1), point (d), competent to respond to such a request.

3. The request for consent may be made only where the use of the information as evidence is necessary and proportionate for the purposes of the criminal proceedings concerned and such a request would be permissible under the same conditions in a similar domestic case in the requesting State.

4. The request for consent in the form set out in Annex VII shall be completed, signed, and its content certified as accurate and correct by the requesting authority. It shall contain the information necessary to enable the requested authority to decide whether consent may be granted. It shall be translated into an official language of the requested State or any other language accepted by that State in accordance with Article 6(2).

5. The requested authority shall decide on the request as soon as possible and no later than 14 days after receipt thereof. Where it is not practicable to meet that time limit, the requested authority shall inform the requesting authority without delay, stating the reasons, and may extend the time limit by up to 10 days.

6. The requested authority shall grant consent, where appropriate subject to conditions, unless one of the following grounds for refusal or postponement exist:

(a) the use of the information as evidence would not be admissible under the law of the requested State in proceedings of the same nature as those for which consent is requested;

(b) there are reasonable grounds to believe that granting consent would prejudice criminal proceedings pending in the requested State or would seriously harm essential national interests;

(c) the conditions governing the use of information provided pursuant to Directive (EU) 2023/977 are no longer fulfilled, including where the information is inaccurate, incomplete or no longer up to date.

7. As soon as the ground for postponement referred to in paragraph 6 has ceased to exist, the requested authority shall take a decision referred to in paragraph 5 and inform the requesting authority thereof.

8. Article 8 shall apply mutatis mutandis to requests for consent under this Article.

9. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case shall be applicable in respect of requests for consent and

[80] Directive (EU) 2023/977 of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA (OJ L 134, 22.5.2023, p. 1, ELI: http://data.europa.eu/eli/dir/2023/977/oj).

decisions on such requests. Paragraphs 2, 3, 4, 5, 6 and 7 of Article 17 shall apply *mutatis mutandis* to such requests and decisions.

TITLE III

EUROPEAN REMOTE PARTICIPATION ORDER

CHAPTER I – THE EUROPEAN REMOTE PARTICIPATION ORDER

Article 36

The ERPO and obligation to execute it

1. An ERPO is a judicial decision issued by a judicial authority of a Member State to enable a suspect, accused person, or a victim of crime, who has the status of party to criminal proceedings, to participate in one or more court hearing(s) in criminal proceedings remotely by means of videoconferencing or other distance communication technology from another Member State.
2. Member States shall ensure that the necessary legal and procedural framework is in place to allow their issuing authority to issue an ERPO in accordance with this Title.
3. Member States shall execute an ERPO on the basis of the principle of mutual recognition and in accordance with this Title and Titles I, IV and V.
4. The ERPO shall cover remote participation in any hearing(s) before a court having jurisdiction in criminal matters at all stages of the criminal proceedings, from the start of the investigations until the conclusion of the proceedings, including, where applicable, sentencing and the resolution of any appeals.

CHAPTER II

PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE

Article 37

Conditions for issuing and transmitting an ERPO

1. The issuing authority may issue an ERPO where all of the following conditions are met:
   (a) a suspect, accused person, or a victim of crime, is or will be resident in the executing State, or is or will be temporarily staying in that State for justified reasons impeding or otherwise hindering their presence in the issuing State, at the time of the hearing(s) concerned, or is detained in the executing State in relation to other proceedings against them;
   (b) the issuing of the ERPO is considered appropriate by the issuing authority and it is proportionate in the specific circumstances of the case to facilitate the participation of the person concerned in court hearing(s) in criminal

proceedings in the issuing State, taking into account the rights of the person concerned;

(c) the person concerned has given their consent to participate in the hearing(s) remotely, in accordance with Article 38.

2. By way of derogation to paragraph 1, the issuing authority may issue an ERPO where this is, exceptionally, required to ensure the efficient and proper administration of justice before obtaining the consent of the person concerned pursuant to paragraph 1(c). The issuing authority shall inform the executing authority accordingly and shall request its assistance to seek the consent of the person concerned, using the dedicated section of the form in Annex VIII. In such cases, the consent of the person concerned shall be ascertained by the executing authority before any decision on the recognition and execution of the ERPO in accordance with Article 41 or 43 is taken.

3. By way of derogation to paragraph 1, the issuing authority may issue an ERPO without obtaining the consent of the person concerned pursuant to paragraph 1, point (c), in exceptional circumstances, where their participation in the hearing(s) in person poses a serious threat to public security or public health which is shown to be genuine and present or foreseeable, and postponing the hearing(s) or suspending the proceedings would be contrary to the efficient and proper administration of justice, provided the rights of the defence of the person concerned and the fairness of the proceedings are respected.

This derogation shall not apply when the person concerned is a vulnerable person or a child and conducting the hearing(s) remotely is not compatible with their specific needs and best interests.

4. A suspect, accused person or victim of crime meeting the condition under paragraph (1), point (a), may request the issuance of an ERPO before the issuing authority, in accordance with procedures under the law of the issuing State. Such requests shall be submitted to the issuing authority in due time before the hearing(s) concerned and shall be examined by that authority in light of paragraph 1. The issuing authority shall provide a reasoned decision on the request within a reasonable time.

5. Where the ERPO concerns a child who is a suspect, accused person or victim of crime, the issuing authority shall ensure that their best interests are always a primary consideration in the application of this Article.

Article 38

Procedure for obtaining consent

1. Where the summons to attend hearing(s) are served to the person concerned, the issuing authority shall also, as appropriate:

(a) seek their consent to remotely participate in one or more hearing(s) by videoconference or other distance communication technology where the conditions set out under Article 37(1), point (a) and (b), are fulfilled; or

(b) inform the person concerned of the possibility and conditions under which, in accordance with national law and Article 37(4), they can submit a request to participate remotely in one or more hearing(s).

2. Before giving their consent, the suspect, accused person or victim of crime shall be informed orally or in writing, in a language which they understand, by the competent authorities of the issuing State of at least the following:

   (a) the possibility to seek the advice of a lawyer in the issuing State in accordance with Directive 2013/48/EU for a suspect or accused person, and with Directive 2012/29/EU and national law for victims of crime;

   (b) their right to be provided with interpretation before the competent authorities and the right to be provided with a written translation in accordance with Directive 2010/64/EU or Directive 2012/29/EU, as appropriate;

   (c) the procedure for executing an ERPO, as well as the specific rights that apply to the person concerned during such procedure.

3. In cases referred to in paragraph 2, point (a), where the person concerned is a child within the meaning of Article 3, point (1), of Directive (EU) 2016/800, that child shall be assisted by a lawyer before giving their consent. Where the person concerned is a child within the meaning of or Article 2, point 1(c), of Directive 2012/29/EU, and the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or the child victim is unaccompanied or separated from the family, the child shall be assisted by a special representative or by a lawyer before giving their consent.

4. Where the person concerned is a child, the holder of parental responsibility, as defined in Article 3, point (2), of Directive (EU) 2016/800, or as referred to in Article 1(2) of Directive 2012/29/EU, another appropriate adult or legal representative, as referred to in Article 5(2) of Directive (EU) 2016/800 or Article 24(1), points (b) and (c), of Directive 2012/29/EU, where applicable in accordance with those provision, shall be provided, as soon as possible, by the competent authorities of the issuing State with the information that the child has a right to receive in accordance with this Article.

5. Information referred to in paragraphs 2 and 4 shall be provided in simple and accessible language, taking into account any particular needs of vulnerable persons.

6. Consent to participate remotely in hearing(s) shall be given voluntarily and unequivocally. Consent shall be recorded together with the circumstances under which it was given, in accordance with the recording procedure required by the law of the issuing State.

7. The time limits for indicating consent or submitting a request to participate remotely in one or more hearing(s) shall be governed by the law of the issuing State.

8. In cases where the person concerned is present in the executing State at the time of the summons, the issuing authority shall request the assistance of the competent authorities in the executing State to serve the summons referred to in paragraph 1 and to provide information to the person concerned in accordance with this article, as well as indicate any formalities and procedures to be complied with. If consent of the person concerned to remotely participate in the hearing(s) is sought, the competent authorities in the executing State shall inform the issuing authority of whether consent was obtained and shall transmit all relevant records to the issuing authority. Where consent could not be obtained or the person concerned could not be reached, the competent authorities of the executing State shall inform the issuing authority accordingly.

9. Where the issuing authority has issued an ERPO pursuant to the derogation provided for in Article 37(2) from the requirement to obtain the consent of the person concerned to the remote participation in the hearing(s) prior to issuing the ERPO, the executing authority shall seek the consent of the person concerned to participate remotely in the hearing(s) to which the ERPO relates in accordance with the requirements of this article, and complying with any formalities and procedures indicated by the issuing authority, before taking a decision on recognition and execution of the ERPO.

Article 39

Content and form of the ERPO

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

2. The ERPO shall, in particular, contain the following information:

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

   (b) the identity of the suspect, accused person or victim of crime concerned by the ERPO, as well as any relevant information known to the issuing authority concerning possible vulnerabilities of that person;

   (c) the identity and contact details of the lawyer mandated by the person concerned or appointed by the issuing State for the purpose of the hearing(s) to which the ERPO relates;

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

   (e) a description of the stage of the proceedings and the type, number and indicative timing of the hearing(s) to which the ERPO relates;

   (f) the reasons why remote participation in the specific hearing(s) is appropriate in view of the conditions set out in Article 37(1);

   (g) information on whether the person concerned has requested or consented to participate remotely in the hearing(s), the application of Article 37(2) and any formalities and procedures to be complied with when seeking the consent of the person concerned or, where relevant, the application of Article 37(3);

   (h) the proposed practical arrangements for the execution of the ERPO in accordance with Article 42, including any measure required to accommodate any vulnerabilities of the person concerned;

   (i) any formalities and procedures expressly required by the law of the issuing State for the execution of the ERPO.

3. 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 ERPO when the Member State concerned is the executing State.

4. The competent authority of the issuing State shall translate the ERPO into an official language of the executing State or any other language indicated by the executing State in accordance with paragraph 3.

Article 40

Transmission of the ERPO

1. The ERPO completed in accordance with Article 39 shall be transmitted from the issuing authority to the executing authority or, where applicable, with the involvement of the central authority referred to in Article 52, via the decentralised IT system.
2. The ERPO shall be accompanied by any additional relevant information and documents, including the relevant records of the consent obtained.
3. If the identity of the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the European Judicial Network contact points, in order to obtain the information from the executing State.
4. Where the authority in the executing State which receives the ERPO has no competence to recognise the ERPO or to take the necessary measures for its execution, it shall, ex officio, transmit it to the executing authority and so inform the issuing authority.

CHAPTER III

PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE

Article 41

Recognition and execution

1. The executing authority shall recognise an ERPO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in accordance with the modalities agreed upon with the issuing authority unless the executing authority decides to invoke one of the grounds for non-recognition or non-execution provided for in this Directive.
2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.
3. The hearing(s) shall be conducted directly by, or under the direction of, the issuing authority and shall be governed by the law of the issuing State. Measures taken by the executing authority for the purpose of executing the ERPO shall be governed by the law of the executing State, with the exception of formalities and procedures referred to in paragraph 2 that are imposed by the issuing authority in accordance with the law of the issuing State.

Article 42

Requirements and practical arrangements for the execution of an ERPO

1. The issuing authority and the executing authority shall agree on the practical arrangements for the execution of the ERPO, including the timing of the hearing(s) concerned. When agreeing such arrangements, the executing authority shall undertake to:

(a) summon the suspect, accused person or victim of crime concerned to appear for the remote hearing(s) in accordance with the law of the executing State and the formalities and procedures required by the issuing authority in accordance with Article 41(2) and, unless otherwise agreed between the issuing authority and the executing authority, inform the person concerned about their rights under the law of the issuing State, in such a time as to allow them to exercise their rights effectively;

(b) verify the identity of the person concerned.

2. The issuing authority shall ensure that the person concerned, where they are a suspect or accused person, is represented by a mandated lawyer in the issuing Member State, who shall be physically present in the courtroom during the hearing(s) to which the ERPO relates.

3. Member States shall ensure that their competent authorities have access to all technical means required for executing an ERPO. This shall include the capacity to provide:

(a) a secure, confidential and effective channel for persons concerned to communicate with their lawyer in the issuing State that allows for the effective exercise of the right of access to a lawyer as provided for in Directives 2013/48/EU and (EU) 2016/800;

(b) the necessary infrastructure to ensure the accessibility of videoconferencing or other distance communication technology for vulnerable persons.

4. A competent authority of the executing State shall be present during the hearing(s), where necessary assisted by an interpreter, and shall also be responsible for verifying the identity of the person concerned and the proper functioning of the relevant technical infrastructure.

5. The issuing authority and the executing authority shall agree, where necessary, on measures required to accommodate any special needs of the person concerned. Where the executing authority becomes aware of vulnerabilities of the person concerned which have not been noted in the ERPO, it shall inform the issuing authority accordingly and without undue delay, so that measures for accommodating any special needs linked thereto can be agreed.

6. At the request of the issuing State or the person concerned, the executing State shall ensure that the person is assisted by an interpreter, where necessary.

7. Where the person concerned is a victim of crime, the executing authority shall ensure that that victim receives emotional support during the hearing(s) to which the ERPO relates in accordance with victims' individual needs.

8. The person concerned shall be informed in advance of the hearing(s) of the procedural rights which would accrue to them under the law of the issuing and the executing State respectively, orally or in writing, in simple and accessible language, taking into account any particular vulnerability they may have.

9. Without affecting any measures agreed for the protection of persons, on the conclusion of the hearing(s), the executing authority shall draw up minutes indicating the date and place of the hearing(s), the identity of the person concerned, the identities and functions of all other persons in the executing State participating in the hearing(s), any oaths taken and the technical conditions under which the hearing(s)

took place. The document shall be forwarded by the executing authority to the issuing authority.

Article 43

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(2) recognition and execution of an ERPO shall be refused in the executing State where:

   (a) the ERPO concerns a suspect or accused person and relates to hearing(s) in relation to an offence which is covered by amnesty in the executing State and, where that State had jurisdiction to prosecute the offence under its own criminal law;

   (b) the execution of the ERPO would be contrary to the principle of *ne bis in idem*;

   (c) the suspect or accused person concerned by the ERPO may not, owing to their age, be held criminally responsible, under the law of the executing State, for the acts to which the ERPO relates.

2. Without prejudice to Article 1(2) recognition or execution of an ERPO may be refused in the executing State where:

   (a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the ERPO or 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 ERPO, where the ERPO concerns a suspect or accused person;

   (b) the ERPO concerns a suspect or accused person and relates to hearing(s) in relation to conduct which falls within the jurisdiction of the executing State under its own criminal law and the criminal prosecution or punishment of the person concerned, if a suspect or accused person is statute-barred according to the law of that State;

   (c) the ERPO concerns a suspect or accused person and relates to hearing(s) in relation to a criminal offence which is alleged to have been committed:

      (i) outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in question is not an offence in the executing State; or

      (ii) outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;

   (d) in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the ERPO would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 TEU and in the Charter, in particular the right to a fair trial or the right of defence;

   (e) the ERPO concerns a suspect or accused person and relates to hearing(s) in relation to a conduct which 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 IX, as indicated by the issuing authority in the ERPO, 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;

(f) exceptionally, the executing authority considers that the execution of the ERPO in the particular case would clearly impose a disproportionate burden on the judicial system of executing State;

(g) the form in Annex VIII is incomplete or manifestly incorrect and has not been completed following the consultation referred to in paragraph 4.

3. Where the ERPO concerns hearing(s) in relation to 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.

4. In the case referred to in paragraph 2, point (a), and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request that authority to exercise that power h. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

5. In any of the cases referred to in paragraphs 1 and 2, before deciding not to recognise or execute the ERPO, either wholly or partially, the executing authority shall consult the issuing authority by any appropriate means, and, where appropriate, shall request the issuing authority to supply any necessary additional information without delay and at the latest within 7 days from the date on which the request was received. Where the executing authority decides that an ERPO can only be recognised partially, the issuing authority may decide to withdraw the ERPO *ex officio* or upon request by the person concerned.

6. Where, after having been duly summoned to participate remotely in the hearing(s) concerned, the person concerned does not appear at the time and place indicated by the executing authority, the procedural consequences of such non-appearance shall be governed by the law of the issuing State, as they would apply in a purely domestic case where a person summoned to a hearing fails to appear. The issuing authority shall inform the executing authority, where necessary, of any measures or arrangements required in those cases, including, where appropriate, the rescheduling of the hearing or the withdrawal of the ERPO.

Article 44

Time limits for recognition and execution

1. The decision on the recognition and execution shall be taken and the ERPO shall be executed within the time limits provided for in paragraphs 2 to 5.

2. Where the issuing authority has indicated in the ERPO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline for the decision on the recognition and execution than those provided in this article is necessary, or if the issuing authority has indicated in the ERPO that the hearing(s) to which the ERPO relates must take place on or by a

specific date, the executing authority shall take as full account as possible of that requirement for a shorter deadline.

3. The executing authority shall take the decision on the recognition and execution of the ERPO as soon as possible and, without affecting paragraph 5, no later than 30 days after the receipt of the ERPO by the competent executing authority.

4. The executing authority shall execute the ERPO in accordance with the practical arrangements agreed between the issuing authority and the executing authority in accordance with Article 42.

5. If it is not practicable in a specific case for the executing authority to meet the time limit set out in paragraph 3 or the specific deadline or date indicated by the issuing authority in accordance with paragraph 2, the executing authority shall, without delay, inform the issuing authority by any means, giving the reasons for the delay and the estimated time necessary for the decision to be taken. In such a case, the time limit of 30 days laid down in paragraph 3 may be extended by a maximum of 30 days.

Article 45

Impossibility to execute an ERPO

1. The non-execution of an ERPO may be justified where the summons to the hearing(s) to which the ERPO relates cannot be served to the person concerned because they cannot be located by the executing authority in the territory of the executing State, despite reasonable efforts having been made.

2. Before taking a decision on the impossibility to execute an ERPO, the executing authority shall consult with the issuing authority.

Article 46

Obligation to inform the issuing authority

1. The competent authority in the executing State which receives the ERPO shall, without delay, and in any case within a week of the reception of an ERPO, acknowledge reception of the ERPO.

Where a central authority has been designated, the obligation to acknowledge reception of the ERPO shall apply to the central authority and to the executing authority which receives the ERPO from the central authority.

In the cases referred to in Article 40(4), the obligation to acknowledge reception of the ERPO shall apply to the competent authority which initially received the ERPO and to the executing authority to which the ERPO is finally transmitted.

2. The executing authority shall inform the issuing authority immediately by any means:

(a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex VIII is incomplete or manifestly incorrect;

(b) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 41.

3. The executing authority shall inform the issuing authority without delay:

(a) of any decision taken pursuant to Article 43 and the reasons for that decision.

(b) where, after consultation with the issuing authority in accordance with Article 45(2) the executing authority considers that it is impossible to execute an ERPO.

4. The issuing authority shall inform the person concerned by an ERPO of any decision taken by the executing authority pursuant to Article 43 or Article 45.

Article 47

Provisional measures

1. Where an ERPO was issued to facilitate the participation in criminal proceedings of a suspect or accused persons from the executing State and the proceedings resulted in a finding of guilt and the imposition of a custodial sentence or detention order, the issuing State shall inform the executing State of its intention of issuing a EAW, where applicable.

2. The executing State shall ensure that, where so informed, their competent authorities are able to take appropriate provisional measures under and in accordance with national law to ensure that the person concerned remains in its territory, including by arresting the person, pending the receipt and decision on the recognition and execution of the EAW.

Article 48

Consultations between the issuing authority and the executing authority

1. Where necessary, the issuing authority and executing authority shall consult each other, without delay and with a view to facilitating the efficient application of this Title.

2. Where the issuing authority considers that it would facilitate the effective application of this Title, it may also consult the executing authority prior to issuing the ERPO, by any appropriate means. The executing authority shall respond to the request for a consultation without undue delay.

Article 49

Procedural rights and safeguards

1. When implementing this Directive, Member States shall ensure that the fairness of the proceedings to which the ERPO relates and the rights of persons concerned by the ERPO as provided for in Union law, in particular the rights of suspects and accused persons as set out in Directives 2010/64/EU, 2012/13/EU, 2013/48, (EU) 2016/343, (EU) 2016/800 and (EU) 2016/1919 and the rights of victims of crime as set out in Directive 2012/29/EU, and the respective law of the issuing or executing State, in so far as compliant with Union law, as applicable in accordance with Article 42, are respected.

Member States shall take appropriate measures to ensure that such rights can be exercised effectively remotely from the executing Member State by the person concerned and in such a manner as to ensure the fairness of the proceedings, both during the remote hearing(s) to which the ERPO relates as well as prior to and after such hearing(s), where the exercise of the rights in question is linked to the hearing(s) concerned.

2. Member States shall ensure that appropriate procedural arrangements are made for vulnerable suspects, accused persons or victims of crime who would otherwise not be able to effectively participate remotely in the hearing(s) to which the ERPO relates, including by applying special protection measures.

Where the ERPO relates to a child, Member States shall ensure that their best interests are always a primary consideration in any decision concerning them that is taken in accordance with this Title.

3. Member States shall ensure that where a person has the right to be present at the hearing(s) to which the ERPO relates and, in accordance with Article 37, requests or consents to participate in more than one remote hearing, they have the right to revert to participation in person for the purpose of any subsequent hearing(s) covered by the ERPO. In such cases the issuing authority shall withdraw the ERPO.

Article 50

Legal remedies

1. Member States shall ensure that a suspect, accused person or victim of crime concerned by an ERPO can effectively exercise all the remedies available under the law of the issuing State in the criminal proceedings to which the ERPO relates.

2. A suspect, accused person or victim of crime concerned by an ERPO shall have the right to an effective remedy in the issuing State against the issuing of an ERPO if their rights are adversely affected. In particular, the person concerned shall have the right to challenge a decision taken in accordance with Article 37(2) to issue an ERPO without their consent.

3. A suspect, accused person or victim of crime concerned by an ERPO shall have the right to an effective remedy in the executing State against the recognition and against the execution of an ERPO if their rights are adversely affected by the recognition and the execution of the ERPO. The exercise of such remedies shall have suspensive effects on the recognition and execution of the ERPO.

4. The executing authority shall monitor the technical and practical conditions of execution of the ERPO and shall immediately inform the issuing authority of any technical or practical issues that may affect the effective exercise of the rights of the person concerned or the fairness of the proceedings.

Where such issues arise during the hearing(s) to which the ERPO relates, the executing authority or the competent authority in the executing State that is present during the hearing shall immediately inform the issuing authority by any appropriate means. That hearing shall be suspended and the issuing authority and the executing authority or, where appropriate, the competent authority in the executing State that is present during the hearing, shall cooperate in taking all appropriate measures to

remedy those issues without delay and, where necessary, reschedule and repeat the hearing concerned.

Where the technical issues persist and cannot be resolved within a reasonable period of time, the issuing authority may decide to withdraw the ERPO. In such cases, the hearing(s) shall be rescheduled to allow the person concerned sufficient time to arrange for their physical presence at the hearing(s) in the issuing State.

5. Member States shall ensure that the time limits for invoking a legal remedy in accordance with paragraphs 2 and 3 do not render the exercise of the right to such a remedy practically impossible or excessively difficult.

6. The issuing authority and the executing authority shall inform each other about any legal remedy sought in accordance with paragraph 2 and 3 and the outcome thereof.

↓ 2023/2843/EU art. 11.1
(adapted)
⇨ new

TITLE IV

⌦ COMMON PROVISIONS ⌫

Article 51~~5a~~

Means of communication

1. With the exception of communication under Article 10~~9~~(6), Article 12~~11~~(4), Article 13~~12~~(5) and (6), ~~and~~ Article 16(2), first subparagraph, ⇨ Article 22(4), Article 30(6), Article 43(4), Article 44(5), Article 46(2), Article 48(2) and Article 50(3) ⇦ , official communication under this Directive between the issuing authority and the executing authority ⇨ , between the competent authority of the investigating Member State and the competent authority of the notified Member State, between the requesting authority and the requested authority referred to in Article 35, and between such national competent authorities and Eurojust or the European Public Prosecutor's Office, ⇦ shall be carried out in accordance with Article 3 of Regulation (EU) 2023/2844 ~~of the European Parliament and of the Council~~.

⇩ new

2. Communication pursuant to Article 10(6), Article 12(4), Article 13(5) and (6), Article 16(2), first subparagraph, Article 22(4), Article 30(6), point (a) Article 43(4), Article 44(5), Article 46(2), Article 48(2) and Article 50(3) may take place by the swiftest and most appropriate means of transmission, including through the decentralised IT system.

↓ 2014/41/EU
⇨ new

3. ~~2.~~Where a Member State has designated a central authority or authorities, paragraphs 1 ⇨ and 2 ⇦ shall also apply to official communication with the central authority or authorities of another Member State.

↓ 2014/41/EU (adapted)

Article 52 ~~7~~

⌦ Designation of central authorities ⌫

~~3.~~ ~~Without prejudice to Article 2(d),~~ ~~e~~Each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist the competent authorities ⌦ under this Directive ⌫ . A Member State may, ~~if~~ ⌦ where ⌫ necessary due to the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and receipt of ⌦ the following ⌫ :

(a) EIO~~s~~,

⇩ new

(b) notifications referred to in Article 30(6), point (a), and Articles 33 and 34,

(c) requests for consent to use information previously exchanged as evidence,

(d) ERPO,

↓ 2014/41/EU (adapted)

(e) ~~as well as for~~ other official correspondence relating ~~to EIOs~~ ⌦ to points (a) to (d)⌫ .

⇩ new

Article 53

Cooperation with Eurojust and the European Judicial Network

The competent authorities under this Directive may, at any stage of the procedure under this Directive, request the assistance of Eurojust or the European Judicial Network in accordance with their respective competences.

↓ 2014/41/EU (adapted)
⇨ new

Article 54~~21~~

Costs

1. Unless otherwise provided in this Directive, the executing State shall bear all costs undertaken on the territory of the executing State which are related to the execution of an EIO ⇨ or an ERPO ⇦ .

2. Where the executing authority considers that the costs for the execution of the EIO ⇨ or an ERPO ⇦ may be deemed exceptionally high, it may consult with the issuing authority on whether and how the costs could be shared or the EIO ⇨ or an ERPO ⇦modified.

The executing authority shall inform the issuing authority in advance of the detailed specifications of the part of the costs deemed exceptionally high.

3. In exceptional situations where no agreement can be reached with regard to the costs referred to in paragraph 2, the issuing authority may decide to:

(a) withdraw the EIO ⇨ or an ERPO ⇦ in whole or in part; ~~or~~

(b) keep the EIO ⇨ or an ERPO ⇦ and bear the part of the costs deemed exceptionally high.

⇩ new

Article 55

Statistics

1. Member States shall collect comprehensive statistics to allow the Commission to monitor the application of this Directive. The competent authorities of the Member States shall maintain those statistics and transmit them to the Commission on an annual basis. The competent authorities of the Member States may process personal data necessary for the production of those statistics. The statistics transmitted to the Commission shall be limited to aggregated data and shall not contain personal data.

2. The statistics referred to in paragraph 1 shall include all of the following:

(a) the number of EIO and notifications under Article 30(6), point (a), transmitted by the issuing State;

(b) the number of executed EIO by the executing State;

(c) the number of non-recognised and non-executed EIO, either in whole or in part, including the grounds for non-recognition/ non-execution, including cases where it is not possible to provide assistance pursuant to Article 11(5) and cases where the EIO is returned pursuant to Article 10(3), by the executing State;

(d) the number of cases in which legal remedies were sought against the issuing or the execution of the EIO and the number of successfully challenged decisions;

(e) the length of time taken to transmit evidence or the length of time taken to transmit information on the decision on non-recognition or non-execution of an EIO;

(f) the number of notifications under Articles 33 and 34 transmitted by the competent authority of the investigating Member State, and the number of objections transmitted by the notified Member State, in response to such notifications;

(g) the number of ERPO transmitted by the issuing State, including information on the stage of the proceedings to which they related and whether they concerned a suspect, an accused person or a victim of crime;

(h) the number of ERPO that were recognised and executed;

(i) the number of ERPO the recognition or execution of which was refused, either in whole or in part, including information on the ground for non-recognition or non-execution relied upon, the stage of the proceedings to which the ERPO

related and whether they concerned a suspect, an accused person or a victim of crime;

(j) the number of cases in which legal remedies were sought against the issuing or the execution of the ERPO, specifying whether each case was brought by a suspect, an accused person or a victim, and the number of decisions that were successfully challenged.

3. The reference implementation software referred to in Article 12 of Regulation (EU) 2023/2844 and, where equipped to do so, the national back-end systems referred to in Article 12(1) of that Regulation, shall programmatically collect the data referred to in paragraph 2 of this Article, and transmit them to the Commission on an annual basis.

4. The statistics referred to in paragraph 2 of this Article shall be collected in accordance with paragraph 3 of this Article from the date referred to in Article 60(3). Those statistics shall be transmitted for the first time one year after that date.

5. Until the date referred to in paragraph 4 of this Article, this Article shall not affect the application of Article 16(2), points (c) and (d), of Regulation (EU) 2023/2844 in respect of the following statistics, to the extent that they correspond to the information referred to in those points:

(a) the number of EIO transmitted by the issuing State through the decentralised IT system, as referred to in paragraph 2, point (a), of this Article;

(b) the length of time needed to transmit evidence or the length of time taken to transmit information on the decision on non-recognition or non-execution of an EIO referred to in paragraph 2, point (e), of this Article;

(c) the number of notifications under Article 33 transmitted by the competent authority of the investigating Member State referred to in paragraph 2, point (f), of this Article.

6. From the date referred to in paragraph 4 of this Article, the collection and transmission of the statistics referred to in paragraph 2, points (a), (e) and (f), of this Article shall constitute an equivalent notification procedure under Article 16(2) of Regulation (EU) 2023/2844 for the information referred to in Article 16(2), points (c) and (d), of that Regulation.

Article 56

Amendments to the standard forms

The Commission is empowered to adopt delegated acts in accordance with Article 57 to amend Annexes I to IX by updating or making technical changes to the standard forms contained in those Annexes.

Article 57

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 56 shall be conferred on the Commission for an indeterminate period of time from *[date of entry into force of this Directive]*.

3. The delegation of power referred to in Article 56 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 56 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

↓ 2014/41/EU (adapted)
⇨ new

TITLE V

⌦ TRANSITIONAL AND ⌫ FINAL PROVISIONS

Article 58~~33~~

Notifications

1. By ⇨ [*2 years after entry into force*] ⇦ ~~22 May 2017~~ each Member State shall notify the Commission of the following:

   (a) the authority or authorities which, in accordance with its national law, are competent ~~according to~~ ⌦ in accordance with ⌫ Article ~~2(c)~~ ⇨ 2(1), points (c) ⇦ and (d), when ⌦ that ⌫ Member State is the issuing State or the executing State ⇨ within the meaning of those provisions ⇦ ;

⇩ new

   (b) the authority or authorities which, in accordance with its national law, are competent in accordance with Articles 33 and 34 when that Member State is the investigating Member State or the notified Member State;

(c) the authority or authorities designated under Article 30(6), point (a), for the transmission and receipt of urgent notifications in accordance with that Article, when this Member State is the issuing State or the executing State;

↓ 2014/41/EU (adapted)
⇨ new

(~~d~~b) the languages accepted ~~for an EIO~~ as referred to in Article ~~6~~5(2) ⇨ and Article 38(3) ⇦ ;

(~~e~~c) the information regarding the designated central authority or authorities, ~~if~~ ⌦ where ⌫ the Member State wishes to make use of the possibility under Article ~~7(3)~~52, ⌦ clarifying their responsibilities ⌫ . ⌦ That ⌫ ~~This~~ information shall be binding upon the authorities of the issuing State.

2. Each Member State may also provide the Commission the list of necessary documents it would require under Article 22(4).

3. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraphs 1 and 2.

4. The Commission shall make the information received under this Article available to all the Member States and to the ⌦ European Judicial Network ⌫ ~~EJN~~. The ⌦ European Judicial Network ⌫ ~~EJN~~ shall make the information available on the website referred to in Article 9 of ~~the~~ ~~Council~~ Decision 2008/976/JHA ~~(~~[18]~~)~~.

⇩ new

5. Notifications transmitted under paragraphs 1 and 2 of Article 33 of the Directive 2014/41/EU shall remain valid for the purposes of this Directive unless replaced or updated in accordance with this Article.

↓ 2014/41/EU (adapted)
⇨ new

Article ~~59~~34

Relations to other legal instruments, agreements and arrangements

1. Without ~~prejudice to~~ ⌦ affecting ⌫ their application between Member States and third States and their temporary application by virtue of Article ⇨ 60 ⇦ ~~35~~, this Directive replaces, ~~as from 22 May 2017,~~ the ~~corresponding~~ provisions of the following conventions applicable between the Member States bound by this Directive ⌦ that correspond to provisions of this Directive ('corresponding provisions') ⌫ :

(a) European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959, as well as its ~~two~~ ⌦ three ⌫ additional protocols, and the bilateral agreements concluded pursuant to Article 26 thereof;

(b) Convention implementing the Schengen Agreement;

(c) Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol~~.~~;

⇩ new

(d) Convention on Cybercrime of the Council of Europe of 23 November 2001 and its additional protocols;

(e) United Nations Convention against Cybercrime of 24 December 2024;

(f) United Nations Convention against Transnational Organised crime;

(g) United Nations Convention against Corruption;

(h) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

2. The corresponding provisions of the conventions referred to in paragraph 1, points (a), (b) and (c), shall be replaced as from 22 May 2017. The corresponding provisions of the Conventions referred to in paragraph 1, points (d), (e), (f), (g), and (h) shall be replaced as from [two years after entry into force].

3. Where an additional protocol to a Convention referred to in paragraph 1, point (a), is adopted after 22 May 2017, the corresponding provisions of that protocol shall be replaced by the corresponding provisions of this Directive from [two years after entry into force].

🡻 2014/41/EU (adapted)
⇨ new

~~2. Framework Decision 2008/978/JHA is hereby replaced for the Member States bound by this Directive. Provisions of Framework Decision 2003/577/JHA are replaced for Member States bound by this Directive as regards freezing of evidence.~~

~~For the Member States bound by this Directive, references to Framework Decision 2008/978/JHA and, as regards freezing of evidence, to Framework Decision 2003/577/JHA, shall be construed as references to this Directive.~~

4.~~3.~~ In addition to this Directive, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after ⇨ [*two years after entry into force*] ⇦ ~~22 May 2017~~ only insofar as ~~these~~ ⌦ those ⌫ make it possible to further strengthen the aims of this Directive and contribute to simplifying or further facilitating the procedures for gathering evidence ⇨ or further facilitate the remote participation of suspects, accused persons or victims of crime in criminal court hearings from another Member State ⇦ and provided that the level of safeguards set out in this Directive is respected.

5~~4~~. Member States shall notify to the Commission by ⇨ [*two years after entry into force*] ⇦ ~~22 May 2017~~ the existing agreements and arrangements referred to in paragraph 3 which they wish to continue to apply. Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to in paragraph ~~3~~4.

⇩ new

6. Notifications transmitted under Article 34(4) of Directive 2014/41/EU shall remain valid for the purposes of this Directive unless replaced or updated in accordance with paragraph 5.

7. This Directive shall apply without prejudice to the Convention implementing the Schengen Agreement in so far as that Convention governs cross-border surveillance carried out for operational police cooperation purposes.

Article 60

Transitional provisions

1. This Directive shall apply to procedures referred to in Article 1(1) initiated from [*two years after entry into force*].

2. However, Article 51, insofar as it concerns communications relating to procedures established under Article 21, Article 30(6), and Articles 34 and 35 and under Title III, shall apply to procedures initiated from the date set by the Commission.

3. The Commission shall set the date referred to in the second paragraph in a decision after it adopted an implementing act under Article 10(1) of Regulation (EU) 2023/2844, which ensures that the decentralised IT system enables the application of the procedures introduced by this Directive. That date shall be the first day of the month following the period of two years from the date of entry into force of that implementing act.

4. EIO and notifications of the Member State, where the subject of the interception is located from which no technical assistance is needed, received before [*two years after entry into force*] shall continue to be governed by Directive 2014/41/EU.

🡻 2014/41/EU (adapted)
⇨ new

~~*Article 35*~~

~~**Transitional provisions**~~

~~1. Mutual assistance requests received before 22 May 2017 shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. Decisions to freeze evidence by virtue of Framework Decision 2003/577/JHA and received before 22 May 2017 shall also be governed by that Framework Decision.~~

~~2. Article 8(1) is applicable *mutatis mutandis* to the EIO following a decision of freezing taken under Framework Decision 2003/577/JHA.~~

Article 61~~36~~

Transposition

1. Member States shall ⌦ bring into force the laws, regulations and administrative provisions ⌫ ~~take the~~ necessary ~~measures~~ to comply with ~~this Directive by 22 May 2017~~ ⇨ Articles 1 and 2, Article 3(1), Article 4, Article 6(1), points (f) and (g), Article 6(4), Article 8(1) and 8(2), Article 9(3), Article 10(3), Article 13, Article 14(5), Article 17(1) and (5), Article 21, Article 24(1), (2) and (5), point (a), Article 28(1), points (c) and (d), Article 28(2), Article 30, Article 31(7), Articles 33 to 50, Articles 51 to 55, Articles 58 to 60 and Annexes I to IX by [*2 years after entry into force*] ⇦ . ⌦ They shall immediately communicate the text of those measures to the Commission. ⌫

⇨ They shall apply those measures from [2 years after entry into force]. ⇦

2. When Member States adopt ~~these~~ ⌦ those ⌫ measures, they shall contain a reference to this Directive or ~~shall~~ be accompanied by such reference on the occasion of their official publication. ⌦ They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ⌫ ~~The methods of making such reference shall be laid down by Member States.~~

~~3. By 22 May 2017, Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.~~

⇩ new

3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

🡻 2014/41/EU (adapted)

~~*Article37*~~

~~Report on the application~~

~~No later than five years after 21 May 2014, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, including in particular, the evaluation of its impact on the cooperation in criminal matters and the protection of individuals, as well as the execution of the provisions on the interception of telecommunications in light of technical developments. The report shall be accompanied, if necessary, by proposals for amendments to this Directive.~~

⇩ new

Article 62

Report on the application

No later than five years after the date of entry into force of the implementing acts referred to in Article 60(3), the Commission shall submit a report to the European Parliament, to the

Council and to the European Economic and Social Committee on the application of this Directive, supported by information supplied by the Member States in accordance with Article 55 and collected by the Commission.

Article 63

Repeal

Directive 2014/41/EU is repealed with effect from [*two years minus one day after entry into force of this Directive*], without prejudice to the obligations of the Member States relating to the time-limit for the transposition into of the Directive set out in Part B of Annex X.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex XI.

↓ 2014/41/EU (adapted)

Article 64~~38~~

Entry into force

This Directive shall enter into force on the twentieth day following ⌦ that of ⌫ its publication in the *Official Journal of the European Union*.

↓ 2014/41/EU

Article 65~~39~~

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels….