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Applying the European Investigation Order (EIO)

Special conditions for issuing and executing
an EIO

in selected EU Member States

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Germany

Article 34 EIO Directive

(Relation to other legal instruments, agreements and arrangements)

European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959 + its two additional protocols + bilateral agreements concluded pursuant to Article 26 thereof

Convention implementing the Schengen Agreement

Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 + its protocol

Framework Decision 2008/978/JHA on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters

Framework Decision 2003/577/JHA (as regard freezing of evidence) on the execution in the European Union of orders freezing property or evidence

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
(with respect to the scope of the EIO Directive see also Article 3 and 34 paragraph 3 EIO Directive)

Article 36 paragraph 1 EIO Directive (Transposition):
„Member States shall take the necessary measures to comply with this Directive by 22 May 2017“

Applying the European Investigation Order
in Germany

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

GERMAN LAW

National provisions transposing the Directive 2014/41/EU:
Section 91a – 91j of the Act on International Cooperation in Criminal Matters
(Gesetz über die internationale Rechtshilfe in Strafsachen, „IRG“)

Supported by

The German Directive of the Federal Ministry of Justice and Consumer Protection for International Co-operation in Criminal Matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten „RiVAST“*)

National administrative regulations

Section 91a paragraph 4 number 1 in conjunction with 77 IRG (Application of Procedural Rules):
*“(1) To the extent that this Act does not contain any special procedural rules, the provisions of the Gerichtsverfassungsgesetz and the Einführungsgesetz zum Gerichtsverfassungsgesetz, the Strafprozessordnung, the Jugendgerichtsgesetz, the Abgabenordnung, and of the Ordnungswidrigkeitengesetz shall apply mutatis mutandis.
(2) [...]”*

Applying the European Investigation Order
in Germany

Judicial and administrative authorities under national law and validation

Article 1 and 2 EIO Directive:

- Article 1 paragraph 1 EIO Directive: “A European Investigation Order (EIO) is a “judicial decision” [...] “
→ Translation issue (!) as the German translation of the EIO Directive states an EIO would be a “*gerichtliche Entscheidung*” (“decision by the court”) → BUT SEE Article 2 letter (c) number (i) and (ii) EIO Directive
- Apart from the definition of the issuing and executing authority of an EIO pursuant to Article 2 letter (c) and (d) EIO Directive, the EIO Directive does not stipulate which specific authority in each Member State is entitled to issue and execute an EIO.

GERMAN LAW:

- Article 32 paragraph 1 of the German constitution: „*Relations with foreign states shall be conducted by the Federation. [...]*“
- According to Section 74 paragraph 2 IRG in conjunction with the agreement of exercise of jurisdiction (*Zuständigkeitsvereinbarung*) of 28 April 2004 between the German federal and state governments, the German federal government confers – with certain exceptions – its power to decide on foreign requests for legal assistance and to request foreign States for legal assistance to the state governments.
- The state governments typically confer their power to the German public prosecutor’s offices and to the courts.
- German public prosecutor’s offices are usually recognition and execution authority (*Bewilligungs- und Ausführungsbehörde*).

Judicial and administrative authorities under national law and validation

Outgoing letter of request (EIOs) (Section 91j paragraph 2-4 IRG)

EJN Forum: Competent authorities accepted for the European Investigation Order in criminal matters - as notified by the Member States which have transposed the Directive 2014/41/EU :

- Issuing authority:
 - All judicial authorities, particularly:
 - the Prosecutor General of the Federal Court of Justice;
 - the chief public prosecutor's offices;
 - the prosecutor's offices;
 - the central body;
 - all criminal courts; and
 - managing authorities which are responsible for prosecuting and punishing offences (administrative offences).
- Validating authority: For requests which are sent by German managing authorities, a validation process by a public prosecutor or by a court is provided in Section 91j paragraph 2-4 IRG. However, a request of the German fiscal authority (within the scope of Section 386 paragraph 2 of the German Tax Code) does not require validation by a public prosecutor or by a court.
- Number 27 paragraph 1 RiVAST states that outgoing letters of request have to be sent to the competent foreign authority (see Article 7 paragraph 5 EIO Directive).

Incoming letter of request (EIOs) (Section 91d paragraph 1 IRG)

EJN Forum: Competent authorities accepted for the European Investigation Order in criminal matters - as notified by the Member States which have transposed the Directive 2014/41/EU:

- Receiving authority: The same as executing authority.
- Executing authority:
 - All judicial authorities, particularly:
 - the Prosecutor General of the Federal court of Justice;
 - the chief public prosecutor's offices;
 - prosecutor's offices;
 - the central body;
 - all criminal courts; and
 - managing authorities which are responsible for prosecuting and punishing offences (administrative offences).
- With regard to the competent authorities in Germany for recognition and execution of a letter of request see also Number 7 and Number 22 RiVAST.

Proportionality considerations when executing

Recital 11 EIO Directive:

“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.”

Recital 12 EIO Directive:

„When issuing an EIO the issuing authority should pay particular attention to ensuring full respect for the rights as enshrined in Article 48 of the Charter of Fundamental Rights of the European Union (the Charter). The presumption of innocence and the 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.“

Proportionality considerations when executing

Article 6 EIO Directive (Conditions for issuing and transmitting an EIO):

Article 6 paragraph 1 letter (a) and paragraph 3 EIO Directive:

„1. The issuing authority may only issue an EIO where the following conditions have been met (a) the issuing of an EIO is necessary and proportionate for the purpose of the proceeding referred to in Article 4 taking into account the rights of the suspected or accused person; and [...] 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 10 EIO Directive (Recourse to a different type of investigative measure):

„[...] 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. [...]“

Article 11 EIO Directive (Grounds for non-recognition or non-execution):

„1. Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where: [...] (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; [...] (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. [...]“

● Extracts from Conclusion of Plenary meeting of the EJC concerning the practical application of the EIO dated 8 December 2017 with regard to formal requirements in case of urgency:

“[...] It was nevertheless acknowledged that execution could be refused in exceptional cases. [...] One reason mentioned for why the executing authority might raise the questions of proportionality and necessity is that the description of the offence sometimes is not detailed enough or the requested investigative measure is too wide and difficult to justify or not concretely described to make proper assessment. Member States stressed that the requested measures has to be relevant and no “phishing expeditions” are allowed. [...]“

Proportionality considerations when executing

German law:

- The principle of proportionality has constitutional status (Article 30 paragraph 3 of the German constitution) → Every action by the state must comply with the principle of proportionality, meaning that every encroachment on fundamental rights shall be in proportionate balance to the gravity of infringement and degree of suspicion. This would not be the case if another – less intrusive measure – could be executed (Federal Constitutional Court, Decision of 26 März 2007 - 2 BvR 1006/01).
- Incoming EIO: Section 91b paragraph 1 number 1 and 3 IRG: Proportionality conditions for the admissibility of an EIO
- Incoming EIO: Section 91f IRG: Recourse to a different type of investigative measure
- Outgoing EIO: Section 91j paragraph 3 IRG: With regard to the validation process it is explicitly stated that the public prosecutor's office or the court which is responsible in the specific case has to, *inter alia*, verify that the EIO complies with the principle of proportionality.
- Number 25 paragraph 1 sentence 3 RiVAST: "*The principle of proportionality is to be observed.*" In case of doubt whether a request should be issued, the issuing authority should report - together with a draft of the request - to the higher judicial or administrative authority.
- Examples of further considerations when examining the proportionality of an outgoing EIO:
 - prospects of success
 - intensity of intervention
 - possible consequences for the person suspected or accused
 - amount of damage
 - arising costs due to the request for mutual legal assistance (e.g. translation)
 - channel of communication (*Geschäftsweg*)

Availability of direct transmission

Article 7 EIO Directive (Transmission of the EIO):

1. *The EIO completed in accordance with Article 5 shall be transmitted from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.*
2. *Any further official communication shall be made directly between the issuing authority and the executing authority.*
3. *Without prejudice to Article 2(d), 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. A Member State may, if necessary due to the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and receipt of EIOs, as well as for other official correspondence relating to EIOs.*
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 (16).*
5. *If the identity of the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the EJN contact points, in order to obtain the information from the executing State.*
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.*
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 authority and the executing authority involved or, where appropriate, with the involvement of the central authorities of the Member States.”*

Extracts from Conclusion of Plenary meeting of the EJN concerning the practical application of the EIO dated 8 December 2017 with regard to formal requirements in case of urgency:

→ *Different opinions – BUT as the EIO Directive is aiming at improving international cooperation and not to make it less efficient, the approach that sending a request in advance which would not be bound to any form (e.g. per e-mail or even on the phone) would probably comply the most with the aim. In this case, the EIO should be expected shortly after. Article 7 (Spontaneous exchange of information) of the 2000 Convention could be a solution in some situations (see also Article 61a, 92c IRG).*

Availability of direct transmission

German law:

- Article 7 paragraph 1, 2 and 7 EIO Directive: Direct transmission between judicial authorities is (with some exceptions) already applicable within the European Union (see Article 6 paragraph 1 sentence 2 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000).

Formal requirements (Article 7 paragraph 1 EIO Directive):

- The IRG did not provide for regulations concerning formal requirements with respect to other legal assistance (unlike regulations with respect to extradition and assistance through enforcement of foreign judgements). However, see
 - Number 8 et. seq. RiVAST (common praxis: written request); and
 - Number 27 paragraph 1 sentence 1 RiVAST (outgoing request have to be sent with original papers); as well as
 - Number 10 RiVAST with regard to URGEND CASES: Possibility to send a request via e.g. fax, telephone, e-mail.
 - NOW: Section 91d paragraph 1 and 3 IRG: Formal requirement to use the form
- Article 7 paragraph 3 EIO Directive: Germany has not designated a central or specific authority. Special provision: Section 92d IRG → Provision on special local competent authorities with respect to requests from European Member States concerning the interception of telecommunications without technical help of the executing Member State.
 - Article 7 paragraph 4 and 5 EIO Directive: According to Section 14 paragraph 2 of the EUROJUST law (EJN contact points): Federal Office of Justice in Bonn (*Bundesamt für Justiz*, „BfJ“), the Federal Prosecutor General of the Federal Court of Justice (*Generalbundesanwalt bei dem Bundesgerichtshof*) and contact points determined by the local governments (mostly within the General Public Prosecutor’s Offices (*Generalstaatsanwaltschaften*) of the different federal states of Germany).
 - Article 7 paragraph 6 EIO Directive: Transposed in Section 91d paragraph 2 sentence 2 IRG: Forwarding the request to the competent authority and giving notice to the issuing state about the forwarding.

Situations where the EIO may inhibit cooperation

Article 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 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, suspected 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.”*

Situations where the EIO may inhibit cooperation

Article 11 EIO Directive (Grounds for non-recognition or non-execution):

„1. Without prejudice to Article 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 4(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 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. Paragraphs 1(g) and 1(h) do not apply to investigative measures referred to in Article 10(2).

3. 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 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(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.“

Situations where the EIO may inhibit cooperation

Article 15 EIO Directive (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.

2. necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.“

Further grounds for possible inhibition of cooperation:

- Article 5 paragraph 2 EIO Directive (Accepted languages): EIO send without translation might be considered as “incomplete” in the meaning of Article 16 paragraph 2 EIO Directive.
- Article 9 paragraph 4 and 5 EIO Directive (Assistance by authorities of the issuing state)
- Extracts from Conclusion of Plenary meeting of the EJM concerning the practical application of the EIO dated 8 December 2017 with regard to formal requirements in case of urgency:
“[...] It was also mentioned that in order to ensure that no problems occur, a request should be made, preferable by using EIO form before using the evidence for other purposes than what was stated in the original EIO [...]“

Situations where the EIO may inhibit cooperation

German law:

- Sections 91b, 91c, 91d paragraph 1 and 91f IRG (Mandatory requirements for the admissibility of an EIO)

Examples of grounds for mandatory inadmissibility of an EIO:

- Section 91b paragraph 1 number 1 IRG: Listed offence (*Katalogtat*), e.g. Section 100a (interception of telecommunication) of the German Code of Criminal Procedures
- Section 91b paragraph 1 number 2 letter (a) IRG: e.g. „Insofar as“ rights to refuse to give evidence and right to remain silence pursuant to Sections 52, 53 and 55 of the German Code of Criminal Procedure exist; exemption from confiscation (Section 97 paragraph 2 of the German Code of Criminal Procedures)
- Section 91b paragraph 3 IRG: Objective reasons lead to the conclusion that there is a risk of an encroachment on Fundamental Rights of the European Union, e.g. the principle of proportionality
- Section 91c IRG: Additional regulations to Section 91 b IRG with respect to certain types of requested measures (e.g. questioning recorded by video)
- Section 91d paragraph 1 and 3 IRG: Formal requirement to use the formular
- Section 91f IRG: Recourse to a different type of investigative measure

- Section 91e paragraph 1 IRG (Optional obstacle for non-recognition of an EIO):

Examples of grounds for optional non-recognition:

- Section 91e paragraph 1 IRG:
 - National security;
 - ne bis in idem;
 - so-called „territorial clause“;
 - the crime described is no crime or administrative offence under German law;
 - no consent of a person held in custody with regard to temporary transfer of this person for the purpose of carrying out an investigative measure; and
 - an agreement cannot be reached with regard to the conditions under which officers would act undercover or with a false identity in Germany
- Section 91e paragraph 2 IRG: Postponements of recognition of the EIO under certain circumstances

Situations where the EIO may inhibit cooperation

Further grounds for possible inhibition of cooperation:

- Article 5 paragraph 2 EIO Directive (Accepted languages): EJN Forum: Competent authorities and languages accepted for the European Investigation Order in criminal matters - as notified by the Member States which have transposed the Directive 2014/41/EU: ONLY GERMAN
→ EIO send without translation might be considered as “incomplete” in the meaning of Article 16 paragraph 2 EIO Directive.
- Article 9 paragraph 4 and 5 EIO Directive (Assistance by authorities of the issuing state): Section 91e paragraph 1 number 1 IRG and Number 138 paragraph 2 RiVAST
- In case the EIO has been recognised, the execution of the requested measures has to comply with the same provisions as a measure under domestic law, this includes the requirement of a decision of a judge for certain investigative measures (Section 91h paragraph 1 IRG). However, at least the requested procedural and formal requirements of the issuing state have to be considered as well (Section 91h paragraph 2 number 1 IRG)

SEE ALSO:

Number 18 RiVAST: If a resolvable obstacle with regard to a mutual legal assistance request exist, the issuing authority shall be given the opportunity to complete or correct the request.

EIOs for multiple individual and measures

Article 1 paragraph 1 EIO Directive (The European Investigation Order and obligation to execute it):

„1. A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ('the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence in accordance with this Directive. [...]"

Extracts from Conclusion of Plenary meeting of the EJC concerning the practical application of the EIO dated 8 December 2017:

„[...] Participants agreed that it is the responsibility of the Executing Member State to ensure that all relevant national authorities are timely involved in accordance with the law of that State. In principle it was agreed that when multiple measures are requested, practitioners should include all of them in one EIO. It was also clarified that in case of freezing and/or confiscation of instrumentalities and proceeds of crime, practitioners should continue to issue the respective Freezing or Confiscation Order. If other investigative measures falling within the scope of the EIO are necessary, then these will have to be sent in a separate EIO form [...]"

German law:

- Comments to the draft law regarding the transposition of the EIO Directive in national law by the German federal government of 26 September 2016 (Drucksache 18/9757, page 19): Provided that more than one investigative measure - which all fall within the scope of the EIO Directive - need to be requested against one or more than one person only one EIO needs to be issued.
- Article 7 paragraph 6 EIO Directive: Transposed in Section 91d paragraph 2 sentence 2 IRG: Forwarding the request to the competent authority and giving notice to the issuing state about the forwarding.

Entitlement to a lawyer

Article 1 paragraph 3 EIO Directive (The European Investigation Order and obligation to execute it):

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

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.*“

German law:

- Article 1 paragraph 3 EIO Directive refers to the national provisions.
- German Code of Criminal Procedure:
 - Investigation proceedings (*Ermittlungsverfahren*) und intermediate proceedings (*Zwischenverfahren*): Sections 136 paragraph 1 sentence 3 and 166 of the German Code of Criminal Procedure; and
 - Main proceedings (*Hauptverfahren*): Section 244 paragraph 3-6 of the German Code of Criminal Procedure.
- Article 1 paragraph 4 EIO Directive: Section 91b paragraph 3 IRG in conjunction with Section 73 sentence 2 IRG (Limitations of Assistance, Ordre Public): „[...] Requests under Parts VIII, IX and X shall not be granted if compliance would violate the principles in Article 6 of the Treaty on the European Union.“.

Entitlement to a lawyer

Article 14 EIO Directive (Legal remedies):

- „1. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO.*
- 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 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.*
- 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.“*

Entitlement to a lawyer

German law:

- Legal remedies against the grounds for issuing an EIO: see Article 14 paragraph 2 EIO Directive
- Legal remedies against the recognition and execution of an incoming EIO in Germany:
Section 91i IRG transfers Article 14 EIO Directive into national law:
 - Recognition decision: Not countervailable under German law, except in case of requests for the handover of objects (Section 91i in conjunction with 61 und 66 IRG); → BUT obligation to state reasons for the recognition of the EIO (Section 91e paragraph 3 IRG)
 - Execution act: Legal remedy against the execution act is possible. Section 91a paragraph 4 number 1 in conjunction with 77 IRG in conjunction with provisions of the German Code of Criminal Procedure, which also includes the judicial review of admissibility of mutual legal assistance in the respective criminal matter by the District Court (so called „integration solution“ (*Integrationslösung*) by the German Constitutional Court (*Bundesverfassungsgericht*), Decision of 24 Juni 1997, 2 BvR 1581/95), for instance:
 - Section 98 paragraph 2 (Court decision with respect to an order for seizure)
 - Section 101 (Court decision with respect to covert measures) or
 - Section 304 (e.g. an appeal against an issued search and seizure order of a court)

In case the District Court decides that the requirements for legal assistance have not been fulfilled, it shall note the reasons for its decision and request a final decision from the Higher Regional Court (*Oberlandesgericht*).

**Thank you very much
for your kind attention!**