

Issuing and Executing a European Investigation Order Belgium

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A failed implementation ...

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Law 22 May 2017 (published 23 May 2017)

literal (and plainly uninspired) transposition of EIO Directive

identical provisions regarding e.g.

- proportionality considerations
- direct transmission (available!)
- refusal grounds
- ...

replaces “corresponding” provisions of 2004 MLA Act, which contains both generic and EU-specific provisions

result: increased fragmentation and complexity

research

publications

consultancy

conferences



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Receiving authorities & languages

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receiving authorities

- prosecutor (with jurisdiction to execute the investigative measures)
- Federal Prosecutor, both in general and in particular in case of
 - urgency
 - an EIO without indication of a specific location for execution
 - need to coordinate the execution of an EIO
- customs (when under its exclusive jurisdiction)

languages: Dutch, French, German or English

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Executing authorities

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prosecutor (can choose to:)

- execute EIO
- request the investigating judge to execute EIO

intervention investigating judge

- whenever required in a similar national procedure (e.g. interception of private communication or data; observation with technical means in private residence)
- in case of multiple measures (with partial exclusive competence of investigating judge), prosecutor can decide to transfer the file to the judge partially or fully

customs authorities (when under its exclusive jurisdiction)

- whenever competent in a similar national procedure
- except when investigating judge is competent

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Issuing authorities

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prosecutor (in principle)

- issue EIO
- request investigating judge to issue EIO
- in some cases validation by investigating judge required (prosecutor remains in charge of investigation) – appeal against refusal

investigating judge

- in case of a ‘judicial investigation’
- in case of exclusive competence (judge can decide to take over the investigation) – appeal against refusal

customs (when under its exclusive jurisdiction)

- whenever competent in a similar national procedure
- validation by investigating judge always required

not: trial judge?

- forgotten ...

Entitlement to assistance by a lawyer

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no specific provisions | general principles CCP apply
(predominant) inquisitorial nature pre-trial investigation

- passive role for defence
- minor exceptions (mainly in judicial investigation), e.g. to request access to the file or to request specific investigative measures

assistance of a lawyer during pre-trial phase

- during any hearing (as witness, suspect, victim,...) by police/judge
- during crime scene reconstruction
- during confrontation

limited legal remedies against execution EIO in Belgium limited

- request to prevent transfer of seized goods or objects (in Belgium)

legal aid guaranteed (whenever entitled to the assistance of a lawyer)

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