



# Applying the European Investigation Order Directive 2014/41/EU

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## Implementation in France

- France has implemented the EIO directive, effective on May 22, 2017 ! Last day ... !
- Order n°2016-1636 of 1 december 2016 and decree n°2017-511 of 7 april 2017
- Notified to the Commission on 24 April 2017
- Explanatory note (Circulaire) of 16 may 2017
  
- The French implementation is very similar to the directive (“copy & paste”) 

# Issuing authorities

In France only judicial authorities may issue an order

- Public Prosecutor
- Investigating Judge
- Court for investigation
- Criminal courts and Sentence courts
- Presidents of these courts

*No Administrative authorities may issue an EIO !*

■ No order issued by Police in France : **must be validated by judicial authority.**

■ No order issued by administrative bodies. No validation possible (AMF)

# Executing Authority

## Validation by judicial authority

Competent executing authority is :

- Public Prosecutor
- Investigative Judge

*(limitation of territorial jurisdiction – art. 694-30 CPP)*

## Validation

■ Orders issued by another MS may be issued by an administrative authority but they must be validated by a judicial authority in the issuing country

Assistance by central authorities (DAP for transfer and transit – DACG for any other difficulty)

## Conditions for recognition and execution

- (Before EIO) There was no deadline for the execution of requests for assistance in French criminal law.
- Today, *article 694-35 CPP* : 30 days to recognize or refuse the EIO (unless issuing MS asks for shorter time period)
- Execution - Directive says « without delay » :
  - - max 90 days for execution
  - - max extension 30 days

# Enforceable

EIO must be recognized and enforced in the same way as if it were a decision of a national court

- it can not be refused
- only in exceptional circumstances and
- limited by law

# Proportionality When executing

■ The issuing authority should ascertain whether the evidence sought is proportionate (Art.694-20 “to the rights of the suspected or accused”).

■ The executing state (France) must trust this decision.

■ However :

■ Proportionality is checked in France when executing “coercive measures” ( Preliminary article of the code of criminal procedure ):

■ « They (*coercive measures*) must be strictly limited to the necessities of the proceedings, proportionate to the seriousness of the offense charged and must not affect the dignity of the person »

## Availability of direct transmission

- Direct transmission is the rule (*D.47-1-1 CPP*)
- By any means capable of producing a written record
- Fax or Mail (exclusively professional)
- Directly to the competent authority mentioned in the EJN

Central authority may provide technical or legal assistance



# Exceptions to direct transmission

Exceptions : no direct transmission

But Central authority

- Director of Criminal Matters and Pardons authorizes the transit of a person detained on French territory
- Director of Criminal Matters and Pardons (DACG) responsible for responding to telecommunications interception notifications (annexe C)

# Grounds for refusal

Refusal to be decided by the Minister of Justice only!

Minister may refuse EIO :

- If detrimental to fundamental national security interests
- If EIO imperils the source of information
- If it includes the use of information classified
- *(article 694-34 CPP)*

# Nine grounds for refusal

*(see article 694-31 CPP)*

To be decided by the competent executing authority:

- Privilege and immunity
- Ne bis in idem
- Fundamental Rights
- Press, Media, Freedom of speech
- If it includes the use of information classified under article 694-34 CPP
- The offense is not a criminal offense under French Law and was not perpetrated in the issuing country
- And more ...

# No refusal

EIO may not be refused for :

- obtaining information or evidence which is already in the possession of the French authorities and which could have been obtained under French law in the context of criminal proceedings;
- obtaining information contained in judicial, police files accessible in the context of criminal proceedings ;
- any hearing of witnesses, experts, victims, suspects or accused persons or third parties;
- identification of holders of a telephone number or IP address;
- any other non-intrusive investigative measure that does not affect individual rights or freedom

# Conditions for recourse to an investigative measure other than that provided in the EIO

- The execution of an EIO should not be refused on grounds other than those stated in the 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
  - 
  - If the EIO requested doesn't exist under French Law
  - The executing authority must inform the issuing MS

## Specific rule for some EIOs

- Videoconference
- Covert investigations
- Gathering of evidence in real time
- Interception of telecommunications
- Provisional measures
- Execution may be refused based on specific grounds linked to the EIO requested

# Annexes

- **Annex A** : Request for an EIO
- **Annex B** : Confirmation of receipt of the EIO
- **Annex C** : Notification of the interception (DACG central authority may stop the interception – answer within 96h)

## Filling in the EIO form (Annex A)

When multiple measures are requested, practitioners should include all of them in one EIO.

**Be very precise on :**

- - reasons for the request ;
  - – informations as to identification of the person ;
  - – deadline ;
  - – technical data ;
  - - description of the request
- 
- There is guidance for annexes A, B et C on the website of the French Ministry of Justice and on EJM website
  - An electronic model form for the EIO, with guidance on how to fill it in would be welcomed.



# Language regime

## Article 5.2

■ Member States should include more than one accepted language in their national provisions, recognising that English would be the best solution as it is widely spoken among practitioners

France has mentioned only French on the EJNI

## In case of urgency

Is there a possibility to take action immediately as an executing authority when approached by the issuing authority, while waiting for the EIO to be finalised and sent?

■ Yes

■ sending a request in advance, which would not be bound to any form (e. g. per email or even on the phone).

■ No

■ no possibility to act before the EIO is issued

**More on the website of DACG – BEPI**  
**Coopération internationale**



**Thank you for your attention**

