

Applying the European Investigation Order Sweden



Co-funded by the Justice

Programme of the European Union 2014-2020

Judicial and administrative authorities

Definition

- A decision to carry out investigative measures in another member state with the purpose of obtaining evidence, issued by a prosecutor or a court of law during an investigation or trial in a criminal case
- A decision in another member state with the same purpose issued or approved of by a judge, court, investigating judge or public prosecutor in a criminal proceeding or other proceeding regarding punishable offences started in an administrative or legal authority when the proceeding can lead to a trial in a criminal case

Judicial and administrative authorities

Limitations

- Restraining orders
- Compensation to crime victims (when the prosecutor represents the victim)
- Administrative consequences of crime (driving license, fines for companies)

Judicial and administrative authorities

- Only a court can issue an EIO regarding evidentiary hearing in court
- The prosecutor has to have the courts permission for:
 - Detention of mail and packages
 - Phonetaps, camera surveillance, bugging of a room
 - Forensic autopsy
- In urgent cases the prosecutor can carry out the measures immediately, but has to inform the court to get permission after

Proportionality considerations

- Intrusion for individual
- Time
- Cost
- Type of crime and gravity and other circumstances
- Legality, necessity, means and proportionality (principles of investigation)

Direct transmission

- No central or specific authority designated
- Request for evidentiary hearing or interrogation via video is handled by the court
- Other requests are handled by a prosecutor
- The competent court is the court in the area where the measure is to be taken. If the EIO is sent to the wrong court, the court has to forward it to the correct competent court

Inhibit cooperation

- An interrogation of a suspect or charged person requires consent
- A suspect can never be heard under oath
- If a prosecutor is leading an interrogation a witness cannot be heard under oath, unless the interrogation is held in a court
- Covert measures (phonetaps, controlled delivery, false identity etc) – dual criminality for execution
- Hearing of lawyers, doctors, priests and other privileged persons
- Other measure that lead to equal result
- A spouse has the right to refuse to testify

Multiple individuals and measures

- Not defined in law.

Entitlement to a lawyer

- Suspect, crime victim and other person affected by the investigation measure have the same right to a lawyer as in a domestic investigation or a trial
- Under special circumstances a suspect or defendant is entitled to a lawyer even if he is not affected by the measure

Time limits

- Art. 12 – Carried out with the same celerity and priority as for similar domestic cases.
- Issuing state indicated in the EIO
 - Procedural deadlines
 - Seriousness of the offence
 - Other particularly urgent circumstances
 - Specific date
- Time limits:
 - Decision on the recognition or execution – 30 days after the receipt
 - Carry out the investigative measure without delay – 90 days following the decision, unless grounds for postponement

Time limits

- If not practicable – possible extension of 30 days
- Art. 15 – Postponement
 - Execution might prejudice on-going criminal investigation
 - Objects, documents or data already being used in other proceedings
- Art. 32 – provisional measures
 - Provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence.
 - Executing authority has to decide and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of the receipt of the EIO