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EVALUATION REPORT ON THE 10TH ROUND OF MUTUAL EVALUATIONS

on the implementation of the European Investigation Order (EIO)

REPORT ON FRANCE

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1. EXECUTIVE SUMMARY

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('Directive') was a significant step forward in the domain of judicial cooperation in criminal matters based on the principle of mutual recognition, going beyond the previous regime of mutual legal assistance ('MLA'). The European Investigation Order ('EIO') has since become a core instrument in gathering evidence within the EU.

The EIO replaces the previous mutual legal assistance mechanisms within the EU, facilitating smoother, faster and more efficient cooperation based on the principle of mutual recognition, the use of the same simplified forms by all Member States and compliance, as far as possible, with time limits for execution. However, to ensure more consistent application and smoother functioning of this instrument across the EU, several practical and legal challenges still need to be addressed. Thus, over five years since the Directive was transposed, it was decided to evaluate its application in the context of the 10th round of mutual evaluations.

The information provided by France in the questionnaire and during the on-site visit was accurate, and the evaluation visit was both well prepared and well organised by the French authorities. All of the practitioners met with on site were very well prepared and were able to speak with full candour. The evaluation team was impressed by their high level of motivation and professionalism.

Thanks to a good overview of the strengths and weaknesses of the French system, the evaluation team was able to identify some key issues to be addressed at national and European level, resulting in the recommendations in Chapter 24.1.

The evaluators greatly appreciated the initiatives put in place by France to support and facilitate the application of the EIO (*see best practices 1.1 to 1.6*). In particular, they emphasised the drafting of the ministerial circular of 16 May 2017, which details the provisions of the Order of 1 December 2016 transposing the Directive. Although not binding, this circular provides essential detailed guidelines for practitioners, complementing the transposing legislation and the evolving case-law of the Court of Cassation and the Court of Justice of the European Union (CJEU).

In addition, detailed country-specific profiles, available on the justice.fr intranet, provide practical advice tailored to the specificities of each Member State. The 24/7 availability of magistrates, both in the courts and within the DACG (Directorate for Criminal Matters and Pardons), allows for a rapid response in urgent cases. This responsiveness is reinforced by the presence of units specialising in international mutual assistance in criminal matters in the larger courts.

The establishment of cross-border training and the inclusion of modules on international law from the initial stage of judges' training are also key factors that improve the skills of legal practitioners.

The experts were also impressed by the fact that the French authorities apply the *principle of subsidiarity* to prevent any disproportionate use of EIOs. This principle stipulates that a request for mutual assistance is to be issued only as a last resort, when national measures and investigations prove insufficient. In addition, the French authorities sometimes refrain from issuing EIOs when the case is not judicialised in time, when it appears very unlikely that the requested measure will be carried out or when the damage is considered insufficient (*see best practice 10*).

Moreover, as the executing state, France takes a pragmatic approach by agreeing to execute EIOs for the gathering of evidence post-sentencing, thus demonstrating its willingness to adapt the legal framework to the practical realities of judicial cooperation.

However, a number of recommendations are made to France (*see Chapter 24.1.1*) in order to optimise the application of EIOs. Although the French executing authorities sometimes receive EIOs whose necessity and proportionality may seem questionable, the evaluation team stresses that the consultation procedure must always be followed (Article 6(3) of the Directive) in order to agree on another way to proceed with the issuing state. The French executing authorities are therefore invited to reassess the strict application of the principle of proportionality in minor cases from Member States that apply mandatory prosecution, and to consult with the issuing Member State before making any decision to refuse (*see Chapter 7*).

It is also crucial that the French executing authorities systematically consult the issuing authorities in the event of any difficulties, in accordance with Article 9(6) of the Directive, so that EIOs can be processed quickly. In order to comply with the deadlines imposed by the Directive, the French authorities must ensure that all courts, in particular small courts, have the necessary human resources.

In terms of legislation, although the French transposing law generally reflects the letter and spirit of the EIO, some clarification is needed.

The team of experts noted a discrepancy in the transposition of the grounds for non-execution. In French law, all of the grounds for non-execution are mandatory, contrary to the provisions of the Directive. The French authorities consider that it would not be sufficient to make grounds for refusal optional under French law; on the contrary, a set of criteria should be added for each ground for non-execution in order to ensure compliance with French law and to limit the discretionary power of the competent authority. While taking due note of France's concerns, the evaluation team encouraged it to consider amending the transposing legislation to limit the grounds for refusal to those provided for in the Directive, and making all grounds for non-execution optional (*see Chapter 13.1 and recommendation 3*). Furthermore, while respecting the spirit and letter of the Directive, the team of experts stresses the importance of consulting the issuing authorities beforehand. The principle must be to grant the assistance requested as far as possible. In the event of a possible refusal, it is essential for the French authorities and the issuing authorities to consult one another to seek a solution.

Member States are invited to take particular care when drafting EIOs, making sure that they are written clearly, in short sentences and using precise language. Doing so will make translation and execution easier. In addition, special attention should be paid to the justification (details of the offence) and the reasons, as well as the clarity of the tasks, taking into account that the EIO is being sent to foreign authorities which are sometimes unfamiliar with the legislation of the issuing state (*see Chapter 6*).

The report and the evaluation visit also highlighted the need for the other Member States, when they are the issuing authorities, to be reminded of the principles of necessity and proportionality which must be upheld pursuant to Article 6(1) of the Directive and which they are bound by, as mentioned in the preliminary paragraph of Annex A to the EIO form (*see Chapter 7 and recommendation 19*).

In addition, when the law of the executing state requires all measures to be included in a single EIO, which must be sent to the authority competent to execute the majority of the measures requested, it is essential for the issuing authorities to clearly identify that authority and to send the EIO to it alone. This will prevent a piecemeal execution of the EIO (*see Chapters 4.2 and 8*).

This evaluation has also shown that, despite the Directive's efforts to simplify matters and the progress made since its EU-wide implementation, the practitioners consulted consider that the process of simplification, established by the Convention of 29 May 2000, should be continued, in particular with regard to the principle of direct transmission of requests for assistance. Several French authorities believe that the Directive has not fully achieved the desired and highly anticipated objective of simplifying and streamlining international judicial cooperation within the European Union.

While divergences in the Member States' individual legal concepts cannot be fully harmonised within the European Union because of the diverse legal frameworks, the French practitioners nevertheless consider that several aspects of the EIO could be improved. These aspects include the network for sending EIOs, the formalities of Annex A, translations, different interpretations of the principle of proportionality, problems relating to legal concepts specific to each Member State, and the scope of the EIO.

The evaluators share this view and also identified a possible need to revise the Directive on several points. In their view, the European Commission should consider making changes to the scope of the Directive, particularly as regards cross-border surveillance and the interception of telecommunications, and the speciality rule. It appears that because of the divergent practices in France and within the Member States, as reflected in the evaluation reports, it is necessary to clarify whether or not a speciality rule exists and its basis in the context of the EIO. Article 19 of the Directive deals with confidentiality without specifically addressing speciality, although some Member States have been able to invoke a speciality rule related to the protection of personal data (*see recommendation 26.3*).

The Commission is also invited to provide guidelines on the EIO, as well as a manual for drafting EIOs, in order to standardise practices across the Member States.

With regard to the form, it is recommended that Annex A be simplified to make it easier to read and avoid unnecessary repetition.

Eurojust and the European Judicial Network (EJN) are encouraged to increase the number of EIO-related courses and to draft guidelines on 'excessive costs' to assist judicial authorities. In addition, the EJN is invited to send the Member States a questionnaire to clarify which measures are considered 'covert investigations'. Finally, the Council of Bars and Law Societies of Europe (CCBE) is encouraged to give thought to a mechanism for cooperation between the European bars in order to facilitate legal support to complement the possibility of appeal provided for in the EIO.

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997[1] ('the Joint Action') established a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

In line with Article 2 of the Joint Action, the Coordinating Committee in the area of police and judicial cooperation in criminal matters ('CATS') agreed after an informal procedure following its informal meeting on 10 May 2022 that the 10th round of mutual evaluations would focus on the EIO.

The aim of the 10th round of mutual evaluations is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also – and in particular – relevant practical and operational aspects linked to the implementation of the Directive. This will make it possible to identify shortcomings and areas for improvement, together with best practices to be shared among Member States, thus contributing towards ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, promoting the coherent and effective implementation of this legal instrument at its full potential could significantly enhance mutual trust among the Member States' judicial authorities and ensure better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice. Furthermore, the current evaluation process could provide helpful input to Member States that may not have implemented all aspects of the Directive.

[1] Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.

France was the 25th Member State to be evaluated, as provided for in the order of visits to the Member States adopted by CATS[2].

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in the evaluations that are to be carried out. Pursuant to a written request sent to delegations by the General Secretariat of the Council of European Union, Member States have nominated experts with substantial practical knowledge in the field.

The evaluation team consists of three national experts, supported by one or more members of staff of the General Secretariat of the Council and observers. For the 10th round of mutual evaluations, it was agreed that the European Commission and Eurojust would be invited as observers[3].

The experts responsible for evaluating France were Mr Stefaan Ghesquiere (Belgium), Mr Patrick Thill (Luxembourg) and Ms Agnieszka Giewon (Poland). Two observers were also present: Ms Rita Simoes from Eurojust and Ms Filipa de Figueiroa Quelhas from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on France's detailed replies to the evaluation questionnaire and the findings arising from the evaluation visit that took place in France between 22 and 26 April 2024, during which the evaluation team interviewed representatives from the Directorate for Criminal Matters and Pardons (the Deputy Director for Criminal Matters and Pardons and the Assistant Director for Specialised Criminal Justice), from the Office for International Mutual Assistance in Criminal Matters (BEPI), and from the National School for the Judiciary (the Continuing Training Coordinator and the Initial Training Coordinator for the International Dimension of Justice department), examining magistrates and representatives from the public prosecutor's office, the investigation services (Central Directorate of the Criminal Police) and the Paris Bar (the vice-chair), and the French national member of Eurojust.

[2] ST 10119/22 and WK 6508/23.
[3] ST 10119/22.

3. TRANSPOSITION OF DIRECTIVE 2014/41/EU

The Directive has been transposed into French national law by the following texts: Order No 2016-1636 of 1 December 2016 regarding the European Investigation Order in criminal matters[4]; Law No 2016-731 of 3 June 2016 regarding strengthening the fight against organised crime, terrorism and the financing thereof and improving the efficiency and safeguards of criminal proceedings (Article 118); Decree No 2017-511 of 7 April 2017 regarding the European Investigation Order in criminal matters[5].

On the basis of the authorisation granted under Article 118 of Law No 2016-731 of 3 June 2016, the purpose of Order No 2016-1636 of 1 December 2016 is to transpose the Directive into the legislative part of the Code of Criminal Procedure (CCP).

Following the entry into force in France of the abovementioned provisions on 22 May 2017, the EIO became the reference instrument for gathering evidence within the European Union. Article 1 of Order No 2016-1636 transposes into French law Articles 1 to 32 of the Directive, by inserting into the part of the CCP related to mutual assistance in criminal matters between Member States of the European Union a new Section 1, on the EIO, containing 35 new articles (694-15 to 695-50). All these articles correspond to one or more articles of the Directive, with the wording adapted to that of the provisions of the CCP or the Criminal Code (CC).

The evaluation team greatly appreciated the initiatives put in place by France to facilitate the application of the EIO. In particular, the evaluators noted that the French authorities have at their disposal the national circular of 16 May 2017[6], which details the main provisions of the Order of 1 December 2016 transposing the Directive.

[4] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033511653
[5] https://www.legifrance.gouv.fr/loda/id/LEGIARTI000034402197
[6] Official Bulletin of the Minister for Justice, No 2017-06 of 30 June 2017 – JUSD1714605C.

The circular is a very effective tool at the disposal of French issuing authorities, which provides detailed guidelines on the processing of EIOs (*see best practice 1.1*). The experts noted that, although not binding ('soft law'), the circular, together with the transposing legislation and the evolving case-law of the Court of Cassation and the CJEU, constitutes the main source of guidance for practitioners.

The evaluators welcomed the detailed country-specific profiles, which can be found in a section about the EIO on the justice.fr intranet. These profiles contain practical advice and guidance for drafting EIOs, taking into account the specificities of each executing Member State (*see best practice 1.2*). It should also be noted that for mutual assistance in criminal matters, judicial authorities have magistrates available who can be contacted 24/7, within both the courts and the DACG[7], and who have proven to be responsive in urgent cases (*see best practice 1.3)*. Some major courts have sections that specialise in responding to requests for mutual assistance and have the expertise and support of contacts (contact prosecutor's office and legal assistants) (*see best practice 1.4*). All of these tools have proven to be of great use to judicial authorities in implementing EIOs.

4. COMPETENT AUTHORITIES

4.1. Issuing authority

Under Article 694-20 of the CCP, the French authorities competent to issue an EIO are: the public prosecutor, the investigating judge, the chamber of investigation and its president, and trial and sentence implementation courts and the presidents of those courts. This competence to issue an EIO is conferred on them in the criminal proceedings before them, in the exercise of their powers and within the limits of their powers.

[7] The standby service provided by the Office for International Mutual Assistance in Criminal Matters (BEPI) ends at 19:30 on working days; at nights and weekends this is continued by an on-call magistrate of the DACG.

The third paragraph of Article 694-20 of the CCP states that requesting judicial authorities may issue an investigation order only for the execution of measures which they themselves have the authority to order or execute in accordance with the provisions of the CCP. This means that an EIO can be issued by any competent judicial authority in criminal proceedings[8].

These measures, listed in Section C of Annex A to the EIO form, may include:

- hearings, including by video conference, of suspected or accused persons, victims, witnesses, experts, third parties;
- transmission of information contained in files held by police, gendarmerie or judicial authorities, such as the Processing of Criminal Records File (TAJ), the Automated National File of Genetic Prints (FNAEG) and the Automated Fingerprint Identification System (FAED);
- investigations into bank and financial accounts or transactions;
- identification of the holder of a phone number or an IP address;
- interception of telecommunications;
- real-time investigative measures, such as controlled delivery;

[8] An EIO may therefore be issued: during the police investigation phase under the authority of the public prosecutor's office recognised in the person of the public prosecutor; during the judicial investigation phase under the authority of the investigating judge, or, as the case may be, of the investigating chamber or its president; during the trial phase under the authority of the trial court and/or its president, and, finally; during the execution of the sentence under the authority of sentence implementation courts and/or their president, *'where it is seen to be necessary for the establishment, prosecution or trying of an offence or for the execution of a sentence and proportionate in light of the rights of the suspected, accused or convicted person and the measures requested may be carried out pursuant to the provisions of this Code'* (Article 694-20 of the CCP).

- covert investigations, e.g. infiltration;

- provisional measures with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item on the territory of the foreign executing state that may be used as evidence, such as the freezing of a bank account or the seizure of documents in the context of a search;

- the temporary transfer of a person held in custody on French territory or that of another Member State in order to ensure their participation in an investigative act.

This list is obviously not exhaustive, as any investigative act authorised or provided for by the CCP may be requested (e.g. audio recording, computer data capture or geolocation measures).

In the investigation phase, as of the flagrante delicto stage, investigating authorities may issue EIOs, in order to conduct without delay searches of the homes of suspected persons located in a Member State, the identification of correspondents and the geolocation of suspected persons' telephone(s), or telephone intercepts on foreign lines.

At the preliminary, flagrante delicto, or pre-trail investigation stage an EIO is also issued to retrieve information on a suspected person (e.g. bank accounts, domicile, criminal record), consult foreign files or interview an accused, a witness or (more rarely) a victim.

Prior authorisation of judge responsible for matters relating to liberty and detention

Where the issuing an EIO concerns an act requiring, in France, the prior authorisation of the judge responsible for matters relating to liberty and detention, e.g. a search, a house search or a seizure of evidence, it may be issued by one of the abovementioned competent authorities only after authorisation by that judge.

In that regard, Article 694-20 of the CCP specifies the rules applicable where the measure requested would require the prior authorisation of the judge responsible for matters relating to liberty and detention given to the public prosecutor or the investigating judge. This mainly concerns the public prosecutor, for example for a search during the preliminary investigation without the consent of the person, or the interception of communication concerning acts of crime or organised crime, acts requiring the agreement of the judge responsible for matters relating to liberty and detention pursuant to Articles 76 and 706-95 of the CCP. As regards an investigating judge, an example that can be mentioned is the entry at night into a private home in order to place a geolocation system (Article 230-34 of the CCP).

In such a case, the public prosecutor or investigating judge issuing the EIO is required to obtain prior authorisation from the judge responsible for matters relating to liberty and detention. Authorisations of the judge responsible for matters relating to liberty and detention provided for in Articles 76, 230-33, 230-34 and 706-92 need not mention the address of the private place in which a search may be carried out or a geolocation device placed or removed, if that address is not known when the investigation order is issued, provided that the identity of the person on whose premises such operations may be carried out is indicated (Article 694-20 of the CCP).

4.2. Executing authorities

In accordance with Articles 694-30, D47-1-10 and D47-1-11 of the CCP, the French authorities competent to execute an EIO are the public prosecutor and the investigating judge of the judicial court with territorial jurisdiction. Some investigating judges come under the specialised inter-regional courts (JIRS) or the National Jurisdiction Against Organised Crime (JUNALCO). The National Counter-Terrorism Prosecutor's Office (PNAT) and the National Financial Prosecutor's Office (PNF) may also process EIOs that fall within their competence.

Furthermore, where, under French national law, the execution of an EIO relates to acts which may be ordered or carried out only in the course of a judicial investigation or which may be carried out in the course of an investigation only with the authorisation of the judge responsible for matters relating to liberties and detention, the EIO is recognised by the French investigating judge and executed by that magistrate or by criminal police officers or officials acting on the basis of a letter of request from that magistrate.

In other cases, the EIO is recognised by the public prosecutor and executed by the magistrate or by the criminal police officers or officials called on by the magistrate for that purpose.

Therefore, under Article 694-30 of the CCP, an EIO issued by the authority of another Member State is directly transmitted for the purposes of recognition and enforcement:

- to the investigating judge of the judicial court with territorial jurisdiction, where that order concerns acts which may be ordered or carried out only during a pre-trial judicial investigation or which may be carried out in the course of an investigation only with the authorisation of the judge responsible for matters relating to liberty and detention;
- in other cases, to the public prosecutor of the regional court with territorial jurisdiction.

The EIO must be transmitted to the investigating judge or to the public prosecutor of the regional court with territorial jurisdiction, taking into account, where appropriate, the existence of wider concurrent territorial jurisdictions (e.g. regional jurisdiction of the JIRS and national jurisdictions of the PNF or the Paris anti-terrorist prosecutor's office), and therefore to the judge of the court in whose jurisdiction the requested acts are to be executed.

If the EIO relates to acts to be executed in more than one jurisdiction, it is considered appropriate to avoid fragmentation of the execution of the order and confer competence on the French magistrate in whose jurisdiction the majority of acts or main acts are to be executed (*see best practice 7*).

In practice, if an EIO concerns more than one measure, all the measures must be included in a single request, which must be sent to the authority competent to execute the majority of the requested measures. It is therefore essential that issuing authorities clearly identify the competent authority and address the EIO to that competent authority only (*see recommendation 11*). In this respect, it should be noted that issuing authorities should not send the same EIO to several French authorities, in the belief that increasing the number of recipients will ensure execution. On the contrary, this practice is highly counterproductive and confusing. Sending an EIO to several authorities of the requested state may lead to delays, misunderstandings and partial or inadequate execution of the request.

If the magistrate to whom the EIO is addressed does not have jurisdiction, he or she transmits it directly and without delay to the public prosecutor or to the investigating judge with territorial jurisdiction. In cases of concurrent jurisdiction, the magistrate to whom the EIO is addressed consults with the specialised prosecutor's office to ascertain whether the latter wishes to retain jurisdiction.

The public prosecutor and the investigating judge are competent not only to recognise the order and then execute it or have it executed by criminal police officers or officials acting on their instructions, but also to decide, if necessary, to refuse recognition or execution of the EIO in one of the cases exhaustively set out in law.

Execution of EIOs issued by administrative authorities

While national law does not allow French administrative authorities to issue EIOs, it does not prevent, under Article 694-29 of the CCP, the execution of EIOs in connection with *'proceedings which do not relate to criminal offences'* issued by an administrative authority, provided that the acts concerned are punishable as infringements of the rules of law under the national law of the issuing state, and provided that the order can be the subject of an *'appeal before a court having competence in particular in criminal matters'*.

In the context of this evaluation no specific difficulties were raised in relation to the execution of such requests.

French authorities reported that they had never encountered cases of EIOs being issued in order to obtain the personal data necessary for the enforcement of an administrative decision. However, Eurojust's French Desk stated that it had received an EIO from a German administrative authority for which execution had been refused.

Execution of EIOs issued during the post-sentencing phase

In accordance with French law, it is possible to make use of an EIO at all stages of proceedings. Although no provision expressly defines the temporal scope of the EIO in criminal proceedings, it is provided for in French law, in Article 694-20 of the CCP, that at each stage of criminal proceedings an authority is competent to issue an EIO in the exercise of its functions and within the limits of its prerogatives and powers. An EIO may therefore be issued, during the execution of the sentence under the authority of sentence implementation courts (JAP) and/or their president, *'where it is seen to be necessary for the establishment, prosecution or trying of an offence or for the execution of a sentence and proportionate in light of the rights of the suspected, accused or convicted person and the measures requested may be carried out in accordance with the provisions of this Code'*.

In practice, and on the basis of the responses submitted by public prosecutors' offices in the context of this evaluation, a French liaison magistrate encountered – albeit in a marginal way – EIOs issued by JAPs seeking the location of persons detained for other reasons in a Member State, in order to arrange for a hearing or to obtain a copy of proceedings taking place.

Overall, the French authorities have found very few divergences with other Member States regarding the phases of criminal proceedings in which an EIO can be used. The investigation and trial phases have not presented any difficulties.

As regards the execution of sentences phase, although the French authorities do not usually issue EIOs in the post-sentencing phase, they may nevertheless, as executing authorities, receive requests at this stage of the proceedings. For example, a court received from a Member State and had executed an EIO for the purpose of hearing a convicted person regarding the non-payment of damages ordered by a court sentencing him for domestic violence to suspension with probation and compensation of the victim. The French authorities thus showed pragmatism and flexibility in granting the mutual assistance by agreeing to execute an EIO for the purpose of gathering evidence during the post-sentencing phase (*see best practice 2*).

Although the Directive is applicable at all stages of criminal proceedings, including the trial stage, there is no consensus on the use of EIOs after the final judgment. Some experts consider that the Directive can be interpreted in such a way that an EIO may also include taking certain measures following the final judgment, for example gathering location data to contact a sentenced person, in the context of separate financial investigations to execute a confiscation order or in proceedings concerning the application of alternative sanctions and probation decisions.

However, many experts strongly believe that an EIO should never be used at the execution stage of a final judgment, as it does not fall within the scope of the Directive and other instruments are available for that purpose.

In theory, the evaluators do not see any obstacle to issuing/executing an EIO at the post-sentencing stage, provided that it is for evidential purposes and that an EIO is in fact the appropriate instrument.

To resolve these issues, the evaluation team considers that it would be appropriate to undertake an EU-wide study analysing the application of the EIO in the post-sentencing phase and to establish legal certainty about the matter (*see recommendation 27.1*). Such a study could be carried out in collaboration with Eurojust and the EJN.

4.3. Central Authority

Article 7(3) of the Directive allows Member States to designate a central authority to assist the competent authorities and make them responsible for the administrative transmission and receipt of EIOs, as well as for other official correspondence relating to EIOs.

In its notification of 5 May 2017[9], France designated the following central authorities: the Director of the Ministry of Justice's Prisons Administration Directorate and the Director of the Ministry of Justice's Criminal Matters and Pardons Directorate.

The Director of the Ministry of Justice's Prison Administration Directorate is responsible for assisting the French judicial authority with issuing and executing requests for the temporary transfer of a person in custody (Articles D47-1-6 and D47-1-18 CPP) and with issuing requests for the transit of a person in custody (Article D47-1-6 CPP).

The BEPI, under the leadership of the Director of Criminal Matters and Pardons (DACG) of the Ministry of Justice, is primarily responsible for providing technical or legal assistance in the event of difficulties encountered by the French or foreign judicial authority (drafting, translation, execution, communication, etc.). While its role and powers in relation to EIOs remain secondary in theory owing to the principle of direct transmission of EIOs by the issuing authority to the executing authority, the BEPI is nonetheless regularly called on by French practitioners with regard to technical issues related to EIOs.

Furthermore, the BEPI is competent to authorise the transit of a person held in custody within the national territory in connection with the execution of an EIO issued by another Member State (Article D47-1-19 CPP) and to respond to the notifications of interception of telecommunications in Article 31 of the Directive.

[9] https://www.ejn-crimjust.europa.eu/ejn/libshowdocument/EN/1973/EN

To conclude, pursuant to Article 7(3) of the Directive, the central authorities play a role in assisting the competent judicial authorities in three cases.

- The Director of the Ministry of Justice's Prison Administration assists the French issuing or executing authority by duly drawing up the request for the transfer of a person in custody, in collaboration with the competent authorities of the foreign state, in accordance with Articles D47-1-6 and D47-1-18 of the CCP.

- The Director of the Ministry of Justice's Prison Administration assists the French issuing authority by duly drawing up the request for transit of a person in custody, in collaboration with the competent authorities of the foreign state, in accordance with Article D47-1-6 of the CPP.

- The Director of Criminal Matters and Pardons of the Ministry of Justice (BEPI) may provide technical or legal assistance in the event of difficulties encountered by the national judicial authority or by the foreign authority.

In addition, the central authorities are competent in two cases.

- The Director of Criminal Matters and Pardons of the Ministry of Justice (BEPI) is competent to authorise the transit of a person in custody on French territory in connection with the execution of an EIO issued by another Member State, in accordance with Article D47-1-19 of the CCP.

- The Director of Criminal Matters and Pardons of the Ministry of Justice (BEPI) is competent to respond to the notifications of interception of telecommunications in Article 31 of the Directive, in accordance with Article D32-2-1 of the CCP.

4.4. The right of the suspected or accused person or victim to apply for an EIO

In general terms, in practice, the most common EIOs are those issued ex officio by the judicial authorities referred to in Article 694-20 of the CCP.

However, as is the case for any other investigative act in the course of criminal proceedings, Article 694-20 states that an EIO may also be issued following:

- an application to the public prosecutor's office by the suspect or the victim pursuant to Article 77-2 of the CCP, or to the investigating judge by the person under investigation or the civil party pursuant to Article 82-1 of the CCP;
- submissions lodged by the accused or the civil party before the court of assizes pursuant to Article 315 of the CCP, or by the parties before the criminal court, the court of appeal and their presidents under the conditions laid down in Articles 388-5 and 459 of the Code.

In light of Articles 81 and 82-1 of the CCP, in connection with the judicial investigation, the parties may, as a general rule, request a document which can be used to establish the truth, for example, fairly typically, in connection with the preparation of their defence, the hearing of a witness abroad or the delivery of a copy of a judicial document abroad. The investigating judge has 30 days to respond to the request. If the request is rejected, the parties may appeal to the examining chamber of the Court of Appeal to overturn the judge's decision and, where appropriate, require them to issue an EIO.

According to Article 1(3) of the Directive, the issuing of an EIO may be requested by a suspected person, an accused person or a lawyer acting on their behalf. The Directive does not contain any similar provisions conferring on victims the right to request the issuing of an EIO. However, the fact that French law allows victims (as well as civil parties) to submit requests to gather evidence and, accordingly, to issue an EIO, is recognised as a good practice (*see best practice 3*). This possibility is seen as a supplement to the victim's right to provide evidence, in accordance with Directive 2012/29/EU of 25 October 2012.

5. SCOPE OF THE EIO AND RELATION TO THE OTHER INSTRUMENTS

The Directive states that an EIO may be issued for one or more specific investigative measures to be implemented in another Member State in order to obtain evidence. The EIO may also be issued in order to obtain evidence that is already in the possession of the competent authorities of the executing state. Furthermore, the EIO covers all investigative measures, with the exception of the creation of a joint investigation team (JIT), in accordance with Article 3 of the Directive.

Therefore the purpose of the EIO is to carry out investigative measures '*to obtain evidence*'[10] '*with respect to criminal proceedings*'[11] or other equivalent procedures the purpose of which is to crack down on crime or infringements of the rules of law[12].

According to French law, EIOs may be, and are, used and requested for the purpose of obtaining evidence, but in a broader sense that is not limited to the direct transmission or request of evidence. Under the second and third subparagraphs of Article 694-16 of the CCP, EIOs may also 'have the purpose of provisionally preventing in the territory of the executing state the destruction, transformation, moving, transfer or disposal of material which might be used as evidence', 'this purpose may also be the temporary transfer to the issuing state of a person held in custody in the executing state, in order to enable procedural acts requiring the presence of that person to be carried out in the issuing state, or the temporary transfer to the executing state of a person held in custody in the issuing state for the purpose of participating in the requested investigations in that territory'.

[10] First subparagraph of Article 1(1) of the Directive.
[11] Article 4(a) of the Directive.
[12] Article 4(c) of the Directive.

For example, when France was the issuing state, the French courts had to issue EIOs for the purpose of obtaining a copy of a judgment or criminal file and did not encounter any difficulties.

In theory, as regards requests for the communication of judgments, it is not mandatory to use an EIO. So if a relationship has already been established with the foreign authority, these requests may in principle be based on Article 7 of the Convention of 12 July 2000, which allows the spontaneous transmission of judgments. However, in practice, some Member States, as executing state, may require an EIO to be issued for the purpose of obtaining copies of judgments. Others agree to provide copies of certain specific items or decisions by spontaneous transmission, with copies of complete procedures nonetheless being transmitted by means of an EIO.

When France was the executing State, the French courts were able, in the interests of efficiency and speed, to execute requests for notification of decisions in criminal matters sent by means of an EIO and to send reports drawn up by the French investigative services in connection with separate criminal proceedings or to summons witnesses.

In the vast majority of cases identified, no major problems were encountered with implementation, either as issuing state or as executing state. However, on several occasions the French authorities were asked, as authorities of the executing state, to communicate elements of ongoing proceedings or criminal judgments in cases where the judgment was not yet final. In these situations, and in accordance with Article 694-37 of the CCP, which states that 'the judge seised may decide to postpone the execution of the investigation order if it risks harming an ongoing investigation or prosecution or if the objects, documents or data concerned are already being used in another procedure', the authorities were then sometimes forced to suspend these requests, pending a final decision. However, the issuing states sometimes misunderstood those refusals or suspensions, not always comprehending the non-definitive nature of a judgment and the failure to communicate it.

Article 694-16 CPP defines the EIO the same way as the Directive; neither defines the concept of investigative measures 'for the purpose of obtaining evidence'. In this respect, in its judgment of 19 September 2023, the French Court of Cassation stayed the proceedings and, pursuant to Article 267 of the Treaty on the Functioning of the European Union, referred question No 583-23[13] on the scope of the EIO to the CJEU for a preliminary ruling. This reference for a preliminary ruling asks the Court about the material scope of the EIO. It is in particular a matter of whether this scope covers the case of a request for notification of an indictment containing an order for imprisonment and the lodging of a security and giving the person the opportunity 'to state [their] case as to the matters in question'. The French authorities, which have submitted their observations in these proceedings, will carefully follow the CJEU's ruling in this case.

However EIOs should not be issued in three cases, specified in Article 694-18 of the CCP: setting up a joint investigation team, freezing property and ordinary cross-border surveillance (OTO) requested under Article 40 of the Convention implementing the Schengen Agreement (CISA). In practice, the issuing and executing authorities sometimes debate the choice of instrument, but in the opinion of French practitioners, it is generally easy to resolve the debate by requesting or providing additional information.

Investigative measures may have the purpose of locating suspected persons in order to prepare the onward transmission of an EIO, for example for search and seizure purposes at the place where the suspected person was located. Preparatory acts such as this indisputably fall within the scope of the EIO, their purpose being to carry out investigative measures for the purpose of obtaining evidence of infringements.

[13] C-583/23 [Delda].

An EIO can also be used to identify and locate a person, and can therefore be considered 'preparatory' to the issuing of a European arrest warrant (EAW). Similarly, EIOs issued in connection with property investigations may have an evidential purpose and be considered 'preparatory' to a freezing certificate or confiscation certificate on the basis of Regulation (EU) No 1805/2018.

In most cases, EIOs issued for locating purposes ensure the active search for the targeted person supports the gathering of evidence for a hearing or a search operation.

However, while not all issuing authorities do so, several French courts confirmed that they have used the EIO for the purpose of locating a person, prior to an EAW being issued and then transmitted simultaneously or subsequently. Several of the French practitioners consulted suggested a system whereby an EIO request to locate the wanted person is sent at the same time as an EAW is issued in order to ensure it is executed.

It should be noted that in France, EIOs issued for this purpose are usually issued at the information stage by investigating judges, who have sole competence to issue an arrest warrant for prosecution purposes. Thus, public prosecutors' offices cannot issue EIOs to locate a person ahead of an EAW at the investigation stage. However, they can receive them.

The liaison magistrates (MDLs) who referred to this practice by the French investigating judges pointed out, in particular, that this unique use of the EIO for locating purposes is particularly useful for remedying the shortcomings of the EAW in terms of active search and makes it possible to ensure the effectiveness of the action of the executing authorities. As such, the French liaison magistrate in Spain pointed out that French magistrates often request location at the same time as other investigative acts within the same EIO. It was clarified that, in the absence of an express request for location, the executing authorities do not necessarily seek to locate the individual and may therefore base non-execution on the absence of a known address.

However, it would appear that, in most cases, requests for location are made through police cooperation (informal channel), which proves faster and more effective. In that case, a request is sent directly, either by simple email or by letters rogatory, referring the matter to the foreign police authorities. This approach is more proportional and efficient than sending EIOs to executing states, thus avoiding overloading them with requests for location purposes only (*see best practice 6*).

As executing authorities, the French authorities also receive EIOs fairly regularly, depending on the jurisdiction, for the purpose of locating a person or verifying an address of domicile or residence. These EIOs aimed at locating persons are sometimes issued without any suggestion of an EAW being transmitted subsequently. When such requests reach the French authorities, they generally assume that the issuing state makes the issuing of an EAW dependant on the results of the analysis of the hearing of the suspected person, a measure requested at the same time as the location.

On another note, France regrets that the EIO does not include within its scope the option of requesting investigations in cases of suspected deaths or disappearances, since with no offence referred to in the request, foreign authorities refuse to execute the request.

According to the feedback from the various French prosecutors' offices and courts, the national authorities do not appear to have any significant difficulties with regard to the legal basis of the requests received or issued on the basis of EIOs, and only a few authorities reported the occurrence of one-off errors.

Nevertheless, the French Eurojust office pointed out that the instruments are frequently confused with each other, in particular the EIO and ordinary cross-border surveillance requests, which are requested before any travel takes place.

Another frequent error seems to be with the interpretation of the scope of the EIO in relation to measures aimed at 'provisionally preventing in the territory of the executing state the destruction, transformation, moving, transfer or disposal of material which might be used as evidence'. Eurojust highlighted the fact that, on several occasions, the authorities had used EIOs wrongly for seizure for confiscation, when a freezing certificate should have been issued.

One court pointed out that it regularly wondered, when France was the issuing state, which legal basis to use in view of the effectiveness of the instruments, depending on the situations presented. Thus, instead of the EIO, the solution envisaged is to open a parallel investigation where the legal conditions allow (acts committed in both countries mainly, allowing each police/prosecutor to open a criminal investigation in parallel). The exchange of information then involves the transmission of information under the CISA and necessarily relies on strong police cooperation.

The same court also pointed out a difficulty related to real-time geolocation, in particular when a marked vehicle crosses the border. There are recurring questions about who can give prior authorisation to use the data obtained ex post facto. Again according to that court, it would be worth clarifying the legal regime. With regard to active mutual assistance, a difficulty arose in the case of a Member State which had been asked for authorisation to use the GPS coordinates of a beacon on the national territory and for authorisation to use conversations resulting from an audio recording system also on national territory. These two requests were refused on the grounds, according to the requested authority, that the fact that the vehicle concerned was going to travel to the territory of the Member State should have been anticipated and that the EIO should therefore have been issued before the vehicle went to that territory.

The interpretation of the legal framework applicable to cross-border observations is very different from one Member State to another. In some Member States, this measure is a form of police cooperation based on Article 40 of the CISA. But other Member States are of the opinion that cross-border surveillance through technical means can also be considered a judicial measure and a means of gathering evidence in real time and that, therefore, the EIO should be applicable.

This is an area of cooperation where there is no uniform approach between Member States. There is no EU legislation on cross-border surveillance to be used in criminal proceedings in the context of mutual legal assistance and it would therefore be desirable to include a specific provision in the Directive (*see recommendation 26.1*).

As regards requests to cover the use of material received or provided in advance by police authorities that are not issuing or executing authorities in investigations under the EIO Directive, in the vast majority of cases, while EIOs may be issued to supplement spontaneous exchanges of information between police services, there is no question of 'covering' or 'regularising' transmissions that would have been irregular.

However, this use of the EIO is not non-existent. In France, some courts have indicated that they are using EIOs in order, for example, to confirm the obtention of information previously obtained by police services when France was the issuing state, or, conversely, to receive requests to that effect. For example, a French liaison magistrate received from a Member State a request for the regularisation of a hearing requested by its police services through Interpol from the French police services in connection with a suspicion of ongoing kidnapping with payment for a ransom, that is to say, a request of utmost urgency. There was no intention of complying with this request for regularisation since the requested act had already been carried out. Agreeing to that request would have retroactively validated an act which in the case in question had been implemented irregularly. The liaison magistrate therefore held that the state which should have issued the EIO should deal with the possibility that the resulting hearing would be invalid.

These rare uses of the EIO are systematically driven by the dire urgency of a situation, which is not always compatible with the drafting of an EIO. Some of the practitioners consulted considered that, as a matter of urgency, the principle of mutual recognition of court orders and mutual trust in judicial systems should make it possible to pass directly through the police services.

The Directive excludes JITs from its scope[14]. It can therefore not be applied in relations between the states participating in a joint investigation team, which raises the question of how the states participating in the team should transmit requests for investigative measures to states that are not participating but are bound by the Directive.

In cases of JITs that include France, it has happened that EIOs have been issued to non-participating states to seek evidence obtained before the JIT was set up. This practice varies from one court to another, with some having never used it.

However, of those that issued or frequently issued EIOs to non-participating states, or received EIOs from them while in a JIT, none mentioned any particular difficulties that hindered the EIO or the sharing of information obtained through the EIO with the other members of the JIT. It has always been possible to resolve any questions about the procedure either through direct discussions with the relevant foreign authorities or with the support of Eurojust, which provides expertise and considerable support to the coordination of requests.

The majority of the French authorities consulted were able to confirm that they had never been aware of a situation in which a Member State belonging to a JIT had issued an EIO, on behalf of the JIT, in order to share with it the information obtained from the third state in connection with the EIO.

No difficulties were reported for the EIOs concerned,.

[14] See recital 8 and Article 3 of the Directive.

It should however be noted that this situation may present difficulties with regard to the principle of speciality. Which is why the Eurojust's French office pointed out that in order to allow information gathered through an EIO issued to a non-participating state to be shared with the other members of the JIT, the EIO must request a waiver of the principle of speciality.

In order to facilitate this sharing, EIOs issued by France include a waiver of the principle of speciality (*see best practice 4*).

During the on-site visit, it was stressed that more attention should be paid to the links between the different instruments in order to maintain a smooth relationship, as also highlighted in recital 34 of the Directive. Several practitioners pointed out that relations with other judicial instruments can be complex and lead to delays in proceedings, especially when the purpose of the measure evolves during criminal proceedings.

The evaluators consider that the issue of the relationship between mutual recognition instruments should be addressed at European level, in particular to clarify the relationship between the EIO and other mutual recognition instruments (e.g. Framework Decision 2008/947/JAI, Regulation (EU) 2018/1805 on freezing and confiscation orders and Framework Decision 2002/584/JAI). Therefore, the European Commission is invited to consider developing a handbook or guidelines on the EIO and its links with other instruments for judicial cooperation in criminal matters (*see recommendation 27.2.1*).

6. CONTENT AND FORMAT OF THE EIO

As established in Article 694-21 of the CCP, a complete form, signed and certified as precise and accurate by the issuing judicial authority, must be used to draft an EIO.

This form must include the following:

1. identification of the magistrate or court issuing the order;
2. subject and grounds of the order;
3. information available on the person(s) concerned;
4. description of the offence under investigation or prosecution and applicable criminal law provisions;
5. description of the investigative measures requested and the evidence to be obtained and, where appropriate, the formalities to be complied with in accordance with the provisions of this Code, in particular prior authorisation from a judge in the executing state in accordance with Article 694-20;
6. any references from a previous EIO supplementing the new order;
7. an indication, where applicable, of the deadline for carrying out the request, particularly if it is less than four months owing to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, or specification of the date on which the investigative measure is to be carried out, or a reference to the fact that it is to be carried out in real time, continuously and over a specified period.

In addition, Article 694-21 of the CCP lists the information that must be included in Annex A. Thus, the magistrate or court issuing an EIO must specify in this annex:

- their identity and capacity, in section K;
- the type of proceedings in which the order is issued, in section F;
- the identity, address and position of the person(s) concerned by the investigation, in section E;
- the grounds for the order, summarised in section G, as well as the legal classification and applicable criminal law provisions;
- the purpose of the order, describing the investigative measures requested, in section C;
- the specific formalities and procedural rules to be complied with by the authority, in accordance with the provisions of the French CPP;
- the deadline for executing the request, in section B;
- references from a previous EIO supplementing the new order;
- any appeals lodged against this order or against acts carried out in connection with its execution.

Generally speaking, the French authorities, as issuing authorities, have indicated that Annex A could be improved. While the national circular of 16 May 2017 is a good guide to perfecting it, according to many it is still a counter-intuitive, time-consuming and onerous task.

Many authorities have pointed to a major lack of clarity and redundancy in the drafting of Annex A as regards the measures requested. Indeed, according to various authorities, the fact that Annex A is structured in such a way that the issuing authority is obliged to provide information on the actions it is requesting twice, distinguishing between general measures (section C in writing) and special measures (section H with items to be ticked), and moreover in sections that are not consecutive, thus making the wording unnecessarily cumbersome and confusing, is dangerous.

In this regard, a number of authorities have suggested grouping all the measures together in a single section so that only five sections remain in Annex A (measures requested, summary of the facts and reasons for the measures requested, persons concerned, offences concerned and legal texts, issuing authority).

Additionally, the section relating to the summary of the facts and reasons appears to give rise to a number of difficulties. It was pointed out that there was little room for open comments, in particular in the summary of the facts and the assessment of the principle of proportionality. Some authorities indicated that the work of formalisation is a complex and time-consuming process, involving a detailed analysis which aims at matching the factual elements constituting an offence under French law with the criminal classification in the receiving Member State. However, the courts are not necessarily equipped with international mutual assistance centres capable of carrying out this technical exercise in comparative law. As a result, Eurojust's French Desk has identified recurrent problems with the execution of French EIOs by foreign countries, linked to insufficient or incomplete summaries of the facts. Several of the practitioners consulted felt that, for the sake of consistency and reasoned requests, it would be appropriate to move the summary of facts to the beginning of the form, before the measures requested. However, with regard to formalisation and the loophole indicated by Eurojust's French Desk, no solution has yet been proposed.

Moreover, the fact that Annex A contains several sections that are very often unused, adding to the document's formalism, has also been criticised. By way of example, a national prosecutor's office received an EIO from foreign authorities in which all unnecessary information had been deleted, thereby simplifying and speeding up the execution of the request for mutual assistance. The issue of unused information has prompted several French authorities to request that a simplified version of Annex A be used for simple requests that are not particularly complex.

In this regard, it is worth noting the best practice implemented by the Strasbourg Public Prosecutor's Office: a simplified 'standard' EIO (for theft, theft of fuel, hit-and-run offences, tram CCTV) has been produced, in cooperation with the German authorities (Offenburg public prosecutor's office), containing all the essential sections/information but still requiring some information to be provided that has to be translated (*see best practice 8*).

In view of the above, the evaluation team recommends that the Commission consider creating a handbook for drafting an EIO (e.g. similar to the handbook for drafting an EAW) (*see recommendation 27.1.2*). The Commission is therefore invited to simplify Annex A of the form in order to avoid repetition and to make it easier to read and complete. It would also be useful to clarify Section H4, as the current instructions do not sufficiently guide the person completing the EIO as to what is essential to include in the case of banking and financial requests, in particular regarding their need and proportionality. Furthermore, section J, on the services to be included, should be clarified (*see recommendation 27.3*).

In addition, the Commission is invited to consider drafting a simplified version of Annex A for standard EIOs, i.e. simple requests which are not particularly complex (*see recommendation 27.4*). It is also recommended to consider a simplified form for completing the first EIO when there is an urgent need to widen the scope of investigative measures during the execution of the EIO (e.g. on a joint action day), in order to avoid sending a new EIO that could burden the procedure with additional delays and translation costs (*see recommendation 27.5*).

However, the evaluators share the French authorities' view that amending Annex A alone would not resolve all the difficulties associated with the clarity of the requests. Many of the practitioners consulted emphasised the recurrent lack of rigour, on the part of both the French authorities and foreign authorities, in drafting and processing EIOs.

EIOs received by the French authorities are often incomplete, inconsistent or inaccurate. The way the forms are drafted is very heterogeneous and gaps, inconsistencies or inaccuracies have multiple sources.

While in some cases the difficulty encountered is due solely to the poor quality or even the absence of translations – which may, if not make it impossible to execute the EIO, then lead to misunderstandings as to the exact nature of the requested acts – it is also often the case that the issuing state does not fill in or fills in incorrectly the purpose of the request, or that the statement of facts is missing or is too brief for the procedural framework and the issues at stake in the request to be understood. Sometimes, information or documents mentioned in the EIO (legal forms to be completed by the persons to be heard, photographs to be shown to witnesses or suspected persons) are also missing.

6.1. Challenges relating to the form

One of the most frequently encountered difficulties concerns the structural distinction between Annex A and the requested measures. It is often the case that section C on the general measures requested is not filled in correctly, that the requested measures are entered in the wrong section or that confusion arises when the requested measure is entered in several sections (e.g. a request to hear a person as a suspect in section C and then as a witness in section E).

Thus, the use of unsuitable legal concepts, or those specific to certain states, sometimes makes it difficult to understand requests (for example, the use of the term '*mis en examen*' – interview – for the hearing of a mere '*mis en cause*' – suspect). In this respect, a few French MDLs have pointed out that some French magistrates may request acts using established formulas, taken from vocabulary usually employed by criminal law practitioners, but which are unknown in the law of the requested state, such as '*faire l'environnement de l'individu*' (which involves investigating an individual's personal and professional environment), making it impossible for the foreign authority to carry out the measure.

Another major difficulty is the lack of precision, particularly with regard to details concerning the execution of the investigative measures requested. Issuing states sometimes use broad, generic formulas without the details necessary for the executing state to carry out the request. Formulas such as 'carry out any useful act to establish the facts against XXX', with no details of the measures requested, cannot be executed. The same applies when the lack of precision concerns the reasons for requests. Any request or measure infringing fundamental rights must be specifically reasoned for it to be executed.

In such cases, the response to the EIO varies depending on the seriousness of the deficiencies in the request. If a request is inaccurate but contains the information that is needed for it to be executed, it is best executed on the basis of the information provided. By contrast, in most cases, in the event of a misunderstanding or a significant gap, the French authority is obliged to return the EIO to the issuing authority, together with a (translated) letter requesting clarification or additional information.

One recurrent shortcoming has been noted in particular: when EIOs concern a suspected person's hearing, the context of the line of questioning is not always specified, so that the French authorities frequently request clarification of the questions to be asked when a hearing is requested.

One jurisdiction highlighted certain cybersecurity gaps. Inaccurate EIOs requesting measures that were not justified or explained by the initial investigations also led to a request for clarification.

With regard to some of the difficulties encountered in the field of cybersecurity, one jurisdiction was keen to point out the deficiencies regularly observed in EIOs. This jurisdiction receives a large number of EIOs and requests for international mutual assistance in criminal matters with a digital component, aimed at obtaining data physically hosted on the national territory. These requests mainly concern searches or copies of servers and the collection of data held by OVHcloud, whether cybersecurity matters or other litigation (child pornography, fraud, money laundering, etc.). Obtaining a copy of a server means obtaining all the data it contains (customer databases, industrial processes, emails, banking and medical data, etc.). Checks must be carried out prior to any communication of potentially sensitive data so that no data is received that has not been initially requested in the EIO.

Moreover, with regard to processing these EIOs, the main difficulty is understanding the exact nature of the requests and determining the legal regime applicable to the acts requested, given the vagaries of translation and of the technical terminology used.

Another difficulty concerns the case summaries in Section G of the EIO: many requests for data stored with French hosts are not very justified or clear. Summaries often simply list a series of investigations, sometimes without any technical justification. However, in view of certain deadlines for sending EIOs, the architecture of the entities in question may have changed. When the file was examined, it was sometimes found that the site in question was not or was no longer stored by the host mentioned and/or that there was no verification linking the requested server to the facts reported.

As far as the drafting is concerned, greater attention should be paid not only to the justification (details of the offence) and the reasons, but also to the clarity of the tasks, bearing in mind that the EIO is being sent to foreign authorities who are sometimes unfamiliar with the legislation of the issuing state (*see recommendation 13*). For example, several authorities stressed the importance of dealing with the annexes to the request (i.e. attachments, such as photographic plates, digitised documents, etc.) with the same rigour as the request itself. One jurisdiction emphasised that it systematically sends a draft EIO to Eurojust before issuing it to prevent mistakes and obtain feedback.

6.2. Language regime and problems related to the translation

With regard to the quality of translations of requests, although the Annex A form is pre-translated, which is very practical, the French authorities regularly complain that the information entered by the issuing state is often translated sloppily or is not translated at all.

On this point, the French authorities, well aware of the constraints that translation work can represent for other Member States, suggest setting up a translation centre at European level with translators specially trained in judicial matters, to whom EIOs would be sent for translation.

The issue of translation is problematic for many judicial authorities in several respects. It is worth remembering that translation costs are borne by the requesting state. However, when France is the executing state, the EIO or attached documents are often not translated.

Very often, too, the quality of the translation is so poor that the order and the statement of facts cannot be understood. In addition, some translators seem to have difficulty handling the legal terms and concepts used by requesting and requested states, which makes understanding EIOs considerably more difficult. When translated, some EIOs reach the French authorities without any indication of the origin of the translation or any mention of a translator, suggesting that some authorities use machine translation software, which necessarily has an impact on the quality of the translation and, ultimately, makes it extremely difficult to understand the request. In such cases, the request is returned to the requesting state with either a refusal of enforcement on that ground or a request for clarification or additional information.

In the area of cybersecurity, one jurisdiction pointed out that, when reading the EIOs received, it noticed in particular that the translators generally had no knowledge of digital investigations, as the requests contained turns of phrase that were sometimes incomprehensible in French, especially since, by convention, certain English terms did not need to be translated.

Translation also remains problematic owing to the lengthy turnaround times and the costs involved in translating certain procedural documents. On the whole, if the translation of any document by the issuing state was commonplace prior to its transmission to the executing authority, cooperation would be facilitated.

In accordance with Article 694-23 of the CCP, when France is the issuing state, EIOs and any documents attached to the request are translated by sworn experts into at least one of the official languages of the European Union accepted by the state to which it is addressed. No problems were raised in this respect.

In view of the above, the evaluation team recommends that issuing authorities use short sentences and precise language when issuing an EIO. This will facilitate a clear and accurate translation, rather than a reproduction of the text of the underlying national order (*see recommendation 14*).

Furthermore, issuing authorities should use professional translators to translate EIOs, rather than online electronic translation systems (*see recommendation 15*).

6.3. Additional EIO, splitting of EIOs, conditional EIOs

On the whole, French authorities have no problem issuing or executing additional EIOs where the situation so requires. Additional EIOs are issued as and when necessary.

However, a number of practitioners feel that it would be advisable to include the references of previous EIOs at the beginning of additional EIOs to make it easier for the executing authorities to link them. Indeed, excessively detailed or successive EIOs are sometimes a source of confusion and can result in incomplete executions. In particular, certain jurisdictions, as issuing authorities, have encountered problems with large cases in which the executing state did not always understand that several EIOs had been issued and therefore did not respond to any of them. For example, it is worth being very rigorous with EIOs relating to extensions of technical measures (wiretapping, surveillance) because of the risk of overlapping measures.

With regard to the splitting of an EIO into several requests where the execution of the measures requested in the EIO does not fall within the competence of a single or central authority in the territory of the requested state, the prevailing principle for both the issuing and executing authorities is for the executing state to distribute tasks internally among the competent authorities, without the need for the issuing state to issue a new EIO or to divide it up (*see best practice 9*).

For the executing authority, when the EIO requires the assistance of multiple jurisdictions, it is nevertheless possible to centralise all requests in a single jurisdiction when the investigating authority for the EIO is able to process the entire request. Where it is not possible for a single authority to process a request, the EIO will be distributed internally.

Furthermore, it has been observed that when an EIO that has been received passes through several French jurisdictions (particularly internally when the request passes through different national judicial authorities) before being taken over by the competent authority, some of the requested measures do not correspond to the initial requests from the issuing country. However, generally speaking, in cases where an EIO involves several stakeholders (different states or several authorities within the same state), it seems that there are fewer difficulties when there is an intermediary (Eurojust or MDL) between the issuing and executing authorities.

Nevertheless, French authorities are encouraged to ensure more effective and faster coordination between their national executing authorities in cases where EIOs are issued for multiple investigative measures involving different competent authorities. This is intended to enhance the effective enforcement of EIOs and to meet deadlines (*see recommendation 6*).

Lastly, executing authorities reported no difficulties concerning conditional EIOs, as there are very rarely any problems. Nevertheless, for the issuing authorities, certain conditional requests were refused by the requested state. By way of example, a French court was obliged to issue two EIOs in proceedings in which a suspected person was to be questioned at first appearance abroad, and, if the person concerned made no comment, to consider a second, in-depth line of questioning (conditional). If the foreign authorities did not accept a single conditional EIO in which it was expected that the suspect would make no comment and a second line of questioning was anticipated, the court in question then had to draft an EIO by interrogating the suspect.

6.4. Orally issued EIOs

As regards the format of the EIO, Article 7(1) of the Directive stipulates that the EIO must be transmitted by the issuing authority *'by any means capable of producing a written record under conditions which enable the executing state to establish its authenticity'*.

That provision leaves some scope for accepting EIOs that have not been transmitted in an authentic version with an official signature. More specifically, it enables the acceptance of EIOs sent by fax or scanned versions sent by email.

Pursuant to Articles 694-21, 694-22 et 694-23 of the CCP, an EIO may be issued by the French authorities only if it is drawn up in accordance with the provisions of the Directive (form in Annex A), translated and transmitted directly to the competent authority designated by the executing state 'by any means capable of producing a written record', which means that the oral route is excluded for issuing an EIO.

The CCP is silent on the format for receipt of an EIO. However, and even though such a situation does not appear to have arisen, the French authorities consulted agree, as a matter of principle, that France is not prepared to execute an orally issued EIO, including in particularly urgent and very important cases, even on the understanding that a written EIO will subsequently be sent as soon as possible. Written requests remain the rule. The practice of formulating an EIO orally cannot be accepted because it does not comply with the format laid down by the Directive, and because it is not possible to verify the authenticity of the order or of its issuer and to ensure that all the mandatory particulars that need to be included in the EIO do actually appear in it.

That said, in one isolated case, a court agreed that the execution of an orally issued EIO could hypothetically be considered under the principle of mutual trust, whilst accepting that that option was not yet provided for in the legislation. Receipt of an oral request on that basis has so far never been applied by the French authorities although the practice has already been proposed by foreign authorities for an urgent search in their country. Another court pointed out that the hypothetical oral issuing of an EIO has never yet arisen, but that, if that were the case, the request would be assessed in the light of the urgency of the acts requested and the infringements of the rights and freedoms of the persons concerned as a result of execution in those circumstances.

Apart from that, some French judges agreed to start executing urgent EIOs before receiving the translation, however in those cases an EIO had already been issued in writing.

When France was the issuing state, the French authorities have occasionally issued EIOs during the police custody of defendants, however the request was always made in writing (email).

7. NECESSITY, PROPORTIONALITY AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE

Article 6(1)(a) of the Directive makes the issuing of an EIO subject to the condition that it is '*necessary and proportionate for the purposes of the proceedings referred to in Article 4* [i.e. criminal proceedings or assimilated to criminal proceedings in which the EIO has been issued], *taking into account the rights of the suspect or accused person*'. '*The conditions referred to* [...] are to be *assessed by the issuing authority in each case*'[15]. '*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* [and] *the issuing authority may decide to withdraw the EIO*'[16]. Moreover, Article 10(3) of the Directive authorises the executing authority to '*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*', i.e. more proportionate measures. Recital 11 of the Directive defines the necessity and proportionality criteria as the requirement to 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 principles of necessity and proportionality are mentioned in French law in general terms. Assessments focus primarily and systematically on the seriousness of the facts that are the subject of the EIO, which entails evaluating the nature of the infringement and its consequences.

[15] Article 6(2) of the Directive.
[16] Article 6(3) of the Directive.

For example, the Strasbourg Public Prosecutor's Office points out that, in the simplified EIO transmission procedures used with the Public Prosecutor's Office in Offenburg (covering theft, theft of fuel, leaks, seizure of tram videos), the latter has assessed proportionality in a very flexible manner. Generally, the amount of damage is limited (a few hundred euros), but the great simplicity of procedures for issuing and executing an EIO enables such execution and issuing of EIOs in minor cases. It should be noted that this is a public order requirement aimed at ensuring that there is no sense of impunity, even for minor offences, when crossing the border.

Nevertheless, other criteria are taken into account in order to determine whether the measures sought are necessary and proportionate to the offence in question, such as the length of the sentence incurred, the existence and extent of the damage or disorder caused (both physical and financial), the correspondence between the criminal classification of the acts and the offences referred to in Directive 2014/41/EU (Article 694-32 of the CCP), the feasibility and legality of the investigations sought, and also the likelihood of those investigations resulting in the discovery of evidence and/or the location of an offender.

The CJEU stated in its judgment in case C-584/19, *Staatsanwaltschaft Wien*[17], that '*the provisions of Directive 2014/41 [...] allow the executing authority and, more broadly, the executing state to ensure that the principle of proportionality* […] [*are] respected*'[18].

In most cases, the question of the necessity and proportionality of EIOs does not arise or present any difficulty, especially as regards all requests that merely concern the service of judicial documents.

[17] Abovementioned Judgment of 8 December 2020, C-584/19, *Staatsanwaltschaft Wien*, ECLI:EU:C:2020:1002.
[18] Paragraph 64 of the abovementioned judgment.

However, several French authorities have already received EIOs that are manifestly disproportionate compared to the interests in the initial procedure. It seems that a significant number of EIOs are issued by foreign authorities without assessing necessity and proportionality considerations. As France has a discretionary prosecution system it has received such EIOs from states that apply the principle of legality of prosecutions or EIOs covering old and/or minor offences, in particular road traffic offences, in respect of which the acts requested cause too much harm to the private life of the person in view of the facts being prosecuted.

Several French authorities would like issuing states to be more cautious when making their assessment of necessity and proportionality. The evaluation team shares the opinion of the French practitioners and recommends that Member States, as issuing authorities, adopt a cautious approach when assessing the necessity and proportionality of issuing an EIO, in accordance with Article 6(1)(a) of the Directive (*see recommendation 19*).

As issuing authorities, the French authorities consulted did not mention any issued EIO that the executing state had referred to as an unnecessary or disproportionate request. To prevent any disproportionality of requests, French public prosecutors' offices apply the subsidiarity principle (a mutual assistance request is only issued as a last resort where national measures and investigations are not sufficient) before issuing an EIO for use of mutual police assistance or for summoning the person to the national territory, for instance. In addition, the French authorities sometimes refrain from issuing EIOs when the case is brought to court late, when it appears very unlikely that the requested measure will be carried out or when the damage is considered too low (*see best practice 10*).

However, some French practitioners point out that certain foreign investigating judges sometimes refuse to execute an EIO as they consider the necessity and proportionality not to be sufficiently proven, for example in the case of searches or wiretapping. In particular, foreign authorities need to know the degree of involvement of the person concerned by the requested measure in the facts being prosecuted and to understand how the link is established with that person; it would seem that French EIOs are sometimes drafted in too 'standard' a way in that respect.

Although the French executing authorities sometimes receive EIOs whose necessity and proportionality may seem questionable, the evaluation team stresses that the consultation procedure must always be followed (Article 3(6) of the Directive) in order to agree on another way to proceed with the issuing state. The French executing authorities are therefore invited to reassess the strict application of the principle of proportionality in minor cases from Member States that apply mandatory prosecution, and to consult with the issuing Member State before deciding on refusal (*see recommendation 1*).

The French executing authorities must also always consult the issuing authority, pursuant to Article 9(6) of the Directive, in the event of potential difficulties or refusals, so as to facilitate the swift and optimal processing of EIOs. They must also consult the requesting authorities on the possibility to execute other measures before refusing enforcement (*see recommendation 2*).

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACTS

Several national authorities acknowledged encountering difficulties, when acting as the issuing authority, in identifying the competent executing authority. In particular, difficulties can arise when the judicial and institutional organisation of the requested state does not have a central authority which can direct the request, when no court has been designated to determine which public prosecutor's office has territorial jurisdiction to execute the EIO, or when the internal dialogue within the executing state has a hierarchical structure leading to a longer route for the EIOs.

However, numerous means are available to solve these difficulties and appear to be working effectively. The national authorities can spontaneously seek assistance from the central authorities (BEPI), from the European agencies (EJN or Eurojust), from the French liaison magistrates if they exist in the requested country, or from the network of liaison officers and internal security attachés.

The European Judicial Atlas (*see best practice 5*) helps with identifying the competent authority, but this remains complicated in some instances. More commonly, the BEPI or Eurojust are called upon to facilitate the transmission of the EIO, in particular when requests concern more than one authority.

When faced with these identification difficulties, the BEPI directs the national authority to the competent foreign authority whenever it can, but in many cases also invites the French judicial authority to put its questions to the French liaison magistrate, if there is one.

It is very common for the French magistrates to ask the liaison magistrates for assistance in identifying the judicial authority. For information purposes, out of the 120 EIOs processed annually by the French liaison magistrates in the Netherlands, this kind of information is requested in almost all cases. The same is true for most of the EIOs referred to the French liaison magistrate in Spain: the French authorities' first question is which competent authority should be addressed.

In the absence of a liaison magistrate or established contact point in the requested state, the BEPI can also point the French judicial authority towards the tools available on the EJN website. If those searches prove unsuccessful, the BEPI recommends contacting one of the EJN contact points in the requested state or in Eurojust's France office. Eurojust's France office can ask the national office directly to identify the competent executing office.

One French liaison magistrate reported that some French authorities tend to send the same EIO to several authorities in the requested state, in the hope that multiplying the number of interlocutors will ensure that the EIO is executed. On the contrary, this practice is highly counterproductive and confusing. In such cases, the liaison magistrates intervene to trace and clarify the request.

On the whole, the preferred interlocutor varies from one national issuing authority to another, but they are all able to resolve problems related to the identification of the competent executing authority. However, in the absence of a single Europe-wide channel for centralising the contact points and communication between Member States, the identification process can result in delays.

In most cases, a fragmented processing of the EIO does not cause problems. No examples were cited by the national authorities consulted of blockages arising when there was no centralised coordination point in the executing Member State when France was the issuing state. If several foreign executing authorities are asked to intervene, the liaison magistrate or Eurojust are usually asked to coordinate the requests. Moreover, in order to avoid duplication, the executing authorities often use a single transmission channel (e.g. if the EIO has been referred to the liaison magistrate, Eurojust will not be contacted). It is mainly when the requesting state makes its request through several channels or interlocutors that confusion arises and leads to the possibility of concurrent executions in the requested state.

However, in cases where several authorities are asked to become involved, although centralising the request may not lead to the request being blocked, problems can occur nonetheless. This often causes delays in execution or in returning the data collected to the issuing state. These issues mainly come to light in federal states.

The Directive is fairly liberal as regards the means for transmitting EIOs; it provides in Article 7(1) that the EIO is to be transmitted 'by any means capable of producing a written record, under conditions which enable the executing state to establish its authenticity'.

Nowadays in France sending a physical request by mail is mainly for those cases where there is no electronic address in the European Judicial Atlas, or in Member States where postal transmission is still a requirement. Some courts, however, send EIOs by mail, except in urgent cases, where an electronic copy is sent in parallel.

Since the COVID-19 health crisis, which speeded up the use of electronic transmission means and made them more widespread, the majority of the national authorities interviewed agree that sending an EIO electronically is sufficient for the transmission of an EIO, and that there is no need to send the original by post as well. Electronic transmission has become almost systematic for many national authorities, and a large number of authorities, both foreign and French, expressed the desire that this practice be definitively endorsed and become the sole channel for the transmission of EIOs. Electronic transmission has many advantages in that it makes it easier to follow up requests and speed up their execution, while reducing the burden of sending paper documents, which is now an obsolete practice.

However, one court stressed the importance of sending EIOs by post in one specific case. Some states send EIO documents that are not signed, including electronically, which raises the question of their existence in law. In these cases the original paper document sent by post is absolutely essential for checking whether the signatures exist and whether the document received corresponds to the final version.

As regards the issue of data protection during transmission, no national authority indicated whether a specific security (encryption) system was used. However, official email addresses are used for all EIOs transmitted by electronic means (...@justice. fr) and some EIOs are transmitted via secure data-sharing platforms, which are accessed via a link sent by email and a code sent in a separate email (s*ee best practice 11*). However, the diversity of IT systems makes it difficult to use an encryption system shared by everyone at EU level. A common secure messaging tool for all Member States would be welcome: eEDES will fit this description.

In principle, in cases where the national issuing authority was able to find the contact point of the competent executing authority immediately, in particular via the European Judicial Atlas, once the EIO has been transmitted, communication usually took place directly between the issuing and executing authorities without going through a third party. It should be noted, however, that direct communication is only possible if the French magistrate is able to communicate in the national language of the executing state or at least in a common language.

Very often, however, national authorities use the BEPI, the liaison magistrates, the EJN or Eurojust to determine the competent authority. In particular, the BEPI can act as an intermediary at the request of the requesting or requested judicial authorities when they are unable, or are no longer able, to enter into direct contact with each other to seek help from facilitators of intra-EU assistance. In cases where the national issuing authority has needed to go through the liaison magistrates or Eurojust in order to transmit the EIO to the competent executing authority, two situations may arise.

In the first case, once the issuing and executing authorities have been put in touch, they communicate with each other directly in direct exchanges. In the second case, the issuing authorities continue to request the assistance of the liaison magistrates or, more rarely, Eurojust, to facilitate communication. This is particularly the case in federal state systems, where it can be trickier to centralise communications on certain complex files, in which case Eurojust and the liaison magistrates may need to mediate, or where the executing authority fails to respond or manifestly misunderstands the EIO.

In cases where the liaison magistrates or Eurojust intervened from the outset, they generally continue to act as intermediary between the authorities of the two countries or remain in copy of their exchanges, which gives them a better overview of the file should they need to contact the authorities. Sometimes the national issuing authorities ask for magistrates from the executing country with whom they have already worked on previous cases, in order to facilitate communication.

It was also reported that Eurojust is frequently asked to deal with complex or high-profile cases (organised crime, criminal assets, etc.).

A number of French authorities suggest creating a common tool that would allow Member States to fill in and transmit the EIOs they issue online, but also to complete and return electronically the EIOs they receive (*see recommendation 27.8*).

According to these authorities, a tool of this kind would represent a considerable step towards making international cooperation simpler and more fluid, as it would solve a number of recurring problems relating to EIOs, including difficulties in identifying the right interlocutor, costs and follow-up. As a first step, it was suggested that developing software to obtain automatic reminders for all EIOs, but also for other cooperation instruments, would be particularly useful for checking compliance with deadlines and for sending automatic reminders upon expiry of the deadlines. Furthermore, it should be noted that it is very difficult to compile comprehensive statistics in a number of areas such as delays in the execution of EIOs, in the absence of a statistical tool. Once again, this kind of question can only be answered by the department memory. Furthermore, it was pointed out that it would be advisable to create at European level or directly within the BEPI a professional application (software) which would enable EIOs to be submitted directly, together with the relevant documents (translated by the court). They would then be automatically redistributed or assigned to the country of execution. All documents would be digitised and accompanied by certificates that would make it possible to follow the progress of the request.

Regarding the creation of a computerised tool, in its conclusions of 9 June 2016 on improving criminal justice in cyberspace, the Council of the European Union asked the European Commission to develop a secure online portal for electronic requests and replies and related procedures. The aim is to increase the efficiency of the mutual assistance procedures and standardised forms for obtaining electronic evidence. In response to this request, a reference portal for implementation is being developed. The e-Evidence Digital Exchange System (eEDES) will serve as a secure communication tool between the competent authorities of the Member States in the context of the taking of evidence and the provision of mutual legal assistance in criminal matters. The aim of the eEDES is to send requests for cooperation to several European countries in order to improve the efficiency and speed of the execution of requests for cooperation in criminal matters.

In terms of timeliness, there are several examples of good practice. The Toulouse Court of Appeal shared some solutions. In addition to setting a mandatory time limit of 60 days for all executing sub-delegates, the Court also asks that a systematic acknowledgement of receipt be sent to the mandating authorities by email and that the sub-delegates provide an acknowledgement of receipt. It has also put in place a systematised digitalisation of the entire exchange (EIO, execution documents, exchanges of emails, requests for additional information and replies obtained), so that if anything goes missing during the transmission of the execution, the Court is able to reconstruct what has been done, even in an emergency (*see best practice 13).* Significant progress has been made and currently 70 % of the EIOs sub-delegated to the police or gendarmerie by the public prosecutor's office are returned on time. However, when an investigation order is referred to an examining magistrate for execution the time limits are sometimes unreasonable.

In order to provide a better framework for implementing the measures and speed up the process, the Aix-en-Provence Court of Appeal restructured the international departments in a number of local public prosecutor's offices and assigned a number of specialised assistants to targeted posts (*see best practice 14)*. However, while follow-up using the shared Esabora software allows public prosecutor's offices to verify the duration of certain instructions, the Aix-en-Provence Court of Appeal underlined that the absence of a truly reliable statistical monitoring tool, together with the fact that the requests are not handled centrally by specific autonomous departments within the public prosecutor's offices, makes it particularly difficult in practice not only to evaluate this matter, but also to ensure follow-up when the public prosecutor's offices relaunch the requests by the mandating public prosecutor's offices.

While the difficulties mentioned above could be addressed in part by a tool that is shared among Member States, it is nevertheless clear that, in addition to the administrative and procedural issues raised by EIOs, the main difficulties encountered relate mainly to the requests' degree of precision and cannot be solved exclusively by creating a single communication network at European level.

The possibility of completing requests online on a platform shared by the Member States would not remedy the current shortcomings of Annex A if the form itself was not revised. While standardised forms have considerable advantages, the form is nonetheless confusing and often too 'complete' for standard requests that do not need to be so formal (*see Chapter 6.1*).

More generally, the Eurojust unit also needs to put measures in place at international level to create mutual legal assistance platforms on the American, African and Asian continents. These platforms could ensue from the transformation and integration of existing mutual assistance networks on these continents. Requests for mutual assistance could then be transmitted directly via this platform without the need to go through the central authorities, as is currently the case with countries outside the European Union, with the exception of countries covered by the Council of Europe regime.

9. RECOGNITION AND EXECUTION OF AN EIO AND FORMALITIES

Section I of the A form deals with the formalities and procedures requested by the issuing authority for the execution of an EIO, in terms of both compliance with certain formalities and procedures, and assistance in executing the EIO provided by officials from the issuing state. It transposes Article 9 of the Directive, which provides, first, in paragraph 1, that the executing authority '*shall [...] 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*' and, second, in paragraph 2, that '[t]*he 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*'.

In the vast majority of cases, national authorities didn't encounter any problems with the formalities. Occasionally, however, section I of the form provided in Annex A had not been completed. This shortcoming is particularly problematic where it relates to the nature of the authority (a criminal police officer or a magistrate) empowered to carry out one of the acts whose execution was sought or to compliance with the procedural formalities required by the issuing state.

While French magistrates do not seem to be the cause of significant difficulties, the French Eurojust office nonetheless pointed out that France, as an executing state, struggles to take into account the formalities set out in this section (where such are specified), these being on occasion detailed in the documents attached to Annex A. As a result, the foreign issuing state has to make additional requests in order for the execution of the EIO to be completed. According to the French authorities, foreign authorities regularly ask them to comply with certain procedural formalities (e.g. for hearing suspects, for access to the file) without providing copies of the documents that set out these formalities.

According to magistrates, section I of the form is currently illegible, and potentially even invisible, as it is relegated to the very end of Annex A, thus provoking the question as to whether this section should not be incorporated into the measures to be implemented (*see recommendation 27.3*).

The French authorities questioned do not seem to have encountered, either where France was issuing or where it was executing state, any cases where there was a refusal to comply with certain formalities on the grounds that they were considered to be contrary to the 'fundamental principles of law' of the executing state. Generally speaking, legal specificities are in many cases respected by both parties. It was, however, reported that the authorities of one Member State were very particular about the general principles relating to individual freedoms. In most cases, the involvement of Eurojust allowed such situations to be resolved. It should be noted, in this regard, that the executing authorities must comply with the procedural formalities requested by the issuing Member State, as these formalities are critical for the admissibility of the evidence, in cases where the conditions laid down in Article 9(2) are met. In any event, consultations should be held in order to ensure the most efficient possible execution of the EIO. At the same time, when issuing an EIO, issuing authorities are advised to clearly describe the formalities required and their importance in section I, bearing in mind that the executing authority is unlikely to know the criminal procedural law of their Member State (*see recommendation 23*).

The French Eurojust office stated that this type of difficulty arises notably with regard to procedural differences relating to the authority responsible for conducting hearings (the police or a magistrate) and with regard to certain aspects of respect for the rights of the defence, in particular making the procedure accessible.

On one occasion when France was the issuing state, a court encountered a situation where a Member State was unable, from a procedural point of view, to place defendants in serious crime cases in custody, the reason given being that this measure did not exist in the law of the Member State in question. The two files in question related to criminal acts. As it was, it was not possible to reach any agreement on the legal difficulty, but a solution was found by issuing an EAW after a pre-trial judicial investigation had been opened in France and a national arrest warrant issued by the judge.

On an occasion where France was the receiving state, the same court also encountered a difficulty arising from the requirement set out in the EIO that the requested person be heard by the mandating authority only in the presence of a lawyer. Under French law, there is no requirement that a lawyer be present during the investigation of flagrante delicto acts, during a preliminary investigation or before an investigating judge, the essential principle being instead the right of the person concerned to choose whether or not to make use of the services of a lawyer during police custody hearings and questioning. In such circumstances, the court provides a procedural explanation to the mandating authorities.

As a rule, where the EIO relates to investigation measures that, in France, must be authorised by a court, the French authorities do not require the issuing authority to attach the relevant authorisation. It is sufficient for the issuing authority to indicate in Section I of Annex A that, in order to be executed, the measure requires prior authorisation from a competent French court. Some courts, albeit a minority, do, however, still require prior authorisation from the judge of the issuing state. Furthermore, the French Eurojust office pointed out that some Member States automatically send prior authorisation, which does not in any event prevent them from being *re-authorised* by the competent judge in France. Article 694-29 of the CCP in fact stipulates that any EIO sent to the French authorities must be issued or validated by a judicial authority.

The evaluation team is of the opinion that the practice of 'revalidation' does not seem to meet the requirements set by the CJEU judgment in case C-724/19 *HP* v *Spetsializirana Prokuratura*[19]. Indeed, the division of competences between the issuing authority and the executing authority is an essential part of the mutual trust which should underpin all exchanges between Member States involved in an EIO, as provided for in the Directive. If the executing authority could, by means of a decision awarding recognition, remedy the failure to comply with the conditions for issuing an EIO set out in Article 6(1) of the Directive, this would jeopardise the balance of the EIO system, based as it is on mutual trust, as it would amount to giving the executing authority the power to review the substantive conditions for issuing such an order (see paragraph 53 of the judgment).

The CJEU has also indicated that, in accordance with Article 9(3) of the Directive, the executing authority must refer the EIO to the issuing state if the order has not been issued by an issuing authority within the meaning of Article 2(c) of the Directive (see point 54). The evaluators ask that the French authorities adopt a more flexible approach, respecting the division of competences between the issuing authority and the executing authority, this being an essential element of the mutual trust underlying the exchanges which take place between Member States during an EIO. The executing authority must under no circumstances remedy, by means of a decision awarding recognition, the failure to comply with the conditions for issuing an EIO, as this would jeopardise the balance of the EIO system, based as it is on mutual trust, and would amount to giving the executing authority the power to review the substantive conditions for issuing such an order (*see recommendation 5*).

Nonetheless, even in situations where the order has been issued by a court, and no other national decision on the investigative measure exists in the issuing state, and supposing that a mechanism by which the court could validate the order were permitted, it is essential that such a decision be taken in advance in the issuing state and not in the executing state. The CJEU is expected to further clarify this issue in case C-635/23, WBS GmbH[20].

[19] EU:C:2021:1020.
[20] https://curia.europa.eu/juris/showPdf.jsf?text=&docid=280564&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2566750

10. ADMISSIBILITY OF EVIDENCE

The effect of failure to comply with the formalities required under Article 9(2) of the Directive on the admissibility of evidence can be effectively assessed only by the issuing state, the executing state not being, in principle, aware of the potential difficulties caused by the execution of the EIO in the issuing state.

Article 82(2) of the TFEU, which relates to the possibility of adopting minimum rules for the mutual admissibility of evidence, has not yet been implemented, creating uncertainty as to the admissibility of evidence under the different legal systems in place respectively in the various EU Member States.

During the on-site visit, the French authorities mentioned the existence of a tendency to recognise what had happened abroad and not to question the elements already known to them when they are acting as executing authorities. The national authorities who were consulted did not pass on any reports of problems related to the admissibility of evidence stemming from non-compliance with certain formalities or procedures during the execution of EIOs. The question of the lawfulness of acts implementing EIOs is sometimes raised by the defence, but to date without any consequences, the French courts not being competent to assess the lawfulness of acts implemented abroad. Similarly, there have as yet been no cases of legal disputes relating to the lawfulness of the execution of EIOs in the executing country. According to the French authorities, even if the execution has been declared invalid in proceedings in the requested country, this does not mean that a defect affecting the entire procedure can be assumed to apply to proceedings in the requesting country. The above scenario weakens the procedure but does not signify its end. Evidence given by the executing country, even if considered null and void, may be used in the requesting country provided that the procedure brought in that country is strengthened by other elements and not solely based on that one element. The French chambers of investigation do not generally assess the lawfulness of evidence obtained from abroad, providing there has been no infringement of general principles of law.

The French Eurojust office did, however, pass on information about a problem relating to the admissibility of evidence in a case where an authority had carried out acts (and in particular conducted hearings) despite not being competent under national law given the status of the person being heard and requirements as to the notification of rights. By way of background, while in France interviews may be conducted by a criminal police officer, in some Member States this must be done by a magistrate, and the national authorities do not necessarily take this difference into account. The executing authorities must therefore comply with the procedural formalities requested by the issuing Member State, as these formalities are critical for the admissibility of the evidence in cases where the conditions laid down in Article 9(2) are met. In any event, consultations should be held in order to ensure the most efficient possible execution of the EIO (*see recommendation 23*).

11. SPECIALITY RULE

French legislation does not have specific rules that address the speciality rule in the context of the EIO Directive.

In this respect, the visit revealed that practices differ between authorities in France. According to practitioners, although in theory the issuing authority should systematically seek the consent of the executing authority if it needs to use evidence obtained in other proceedings, in practice this is not the case. However, consent is required where the needs of the enquiry or investigation so require. One court indicated that it always seeks the consent of the executing authority to enable it to apply and verify its own legislation.

Nevertheless, the fact remains that several authorities do not request such authorisation from the executing state. However, when authorisation is requested, reference seems to be generally made to Article 19(3) of the Directive.

Most of the authorities interviewed replied that they had never had to address this issue. Nevertheless, one court clarified that, for the executing authority, consent to use evidence in other proceedings is based on the speciality rule and the confidentiality of investigations (investigative secrecy). Another court stated that it relied on the principle of mutual recognition.

The execution of an EIO by the French authorities has already led to the use of evidence gathered on national territory in the context of proceedings, notably in relation to bank accounts opened abroad for money laundering and drug trafficking.

While several courts request the prior consent of the issuing state to use evidence obtained by national authorities on national territory in the context of an EIO, in principle there is nothing to prevent the public prosecutor from using, ex officio and without prior consent, information obtained in the course of the execution of an EIO for the purposes of national proceedings, except in special cases.

That analysis was supported by a judgment of the Criminal Chamber of the Court of Cassation of 13 December 2022 (Appeal No 22-81.257), which authorises the use of such information, taking the view that the executing authority is not bound by the speciality rule for acts carried out by itself within its jurisdiction.

In the event of a chance discovery during or after the execution of an EIO by the French authorities, it is for the competent national public prosecutor's office to decide whether to open a new national investigation. In any event, the execution of an EIO may lead to the opening of a parallel investigation into the same facts dealt with internally, or to the opening of an additional investigation into separate facts.

With regard to the information provided to the issuing authority, practice varies. On the whole, however, the national authorities consulted seem to consider that they are not under any obligation to provide information. The foreign authority that issued the investigation order that led to the discovery of a new offence is informed if this might also be relevant to it. This is particularly the case where the offence revealed relates to the same facts as those investigated in the ongoing EIO proceedings.

The Directive does not contain a general provision on the speciality rule, the only exception being the temporary transfer provision (Article 22(8)). However, Member States have differing views on the application of the speciality rule in the context of the EIO, and even practitioners from the same Member State might disagree on whether and to what extent the speciality rule is applicable.

On the one hand, many Member States are of the opinion that the speciality rule applies in the context of the EIO, but with different reasoning. Some consider that the speciality rule is based on Article 19(3) of the Directive, which deals with confidentiality, and that the speciality rule is a form of confidentiality. Some rely on the rule of speciality in their national law, while others consider that it is a general principle of international judicial cooperation and applies to all instruments in the field of cooperation in criminal matters. Fervent supporters of the speciality rule put forward the principles of necessity and proportionality to illustrate that the speciality rule must apply: otherwise, evidence could be used in situations where it would not have been necessary and proportionate to issue an EIO.

During on-site interviews, the evaluation team identified a particular problem faced by the French authorities: the use of information received in the context of the EIO and its subsequent sharing with an administrative authority (e.g. tax authorities). The French authorities face refusals from some executing states when they ask for their agreement to use this information for other purposes. This raises the question of whether the speciality rule is designed to maintain ongoing investigations or whether it is linked to the issue of data protection (i.e. the purpose for which the data can be processed). Indeed, some Member States apply Directive (EU) 2016/680 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, when using evidence received as the issuing state. In their view, that Directive provides for the free movement of data, thus allowing evidence to be used in other proceedings as long as data protection principles are respected and the executing state has not expressly declared that the evidence may be used only for the purposes set out in the EIO.

It would appear that, given the divergent practices in France and within the Member States, as revealed by the evaluation reports, it is necessary to clarify the existence or otherwise of a speciality rule and its basis. Article 19 of the Directive deals with confidentiality without specifically mentioning speciality, while some Member States have been able to refer to a speciality rule linked to the protection of personal data.

In light of these diverging views, it is essential to provide clarity on this subject, which is why the European Commission is invited to consider a proposal to amend the Directive in order to clarify its scope with regard to the speciality rule in the context of the EIO (*see recommendation 26.3*).

12. CONFIDENTIALITY

Article 19(2) of the Directive provides that '*[T] he 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 [and that] [i]f the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority without delay*'.

On the whole, it seems that this point does not raise any real difficulties. Where necessary, executing authorities call on their contact point (national authorities, Eurojust, liaison magistrates, EJN) to find out whether disclosure can be authorised or not. In the event that an executing state notifies the issuing authority that it is impossible to maintain the confidentiality of the EIO on the basis of Article 19(2), the issuing authority assesses whether or not the EIO should be maintained and, if so, when it should be executed.

For the issuing authority, there is no specific provision for such disclosure. Nevertheless, in accordance with the principle enshrined in the preliminary Article of the CCP, national legislation requires, as with any other investigative act carried out in the course of criminal proceedings, that the EIO, where it does not emanate directly from the person concerned by the measure, be brought to the attention of that person.

While the persons concerned may be informed of the issuing of an EIO concerning them at the time of its issue (except in cases where a covert investigative measure has been requested), the needs of the investigation may require that this information be brought to their attention only at the return stage, in order to prevent any risk of evidence being lost. On the other hand, the results of the EIO are disclosed only at the return stage, i.e. once the EIO has been executed by the executing state.

In the context of a judicial investigation, as long as the requested state has not executed the measure, the EIO is considered to be a 'pending act' not yet listed in the procedural file. Once executed, it becomes part of the criminal proceedings and is brought to the attention of the person concerned, the suspect or the accused, in order to obtain their observations and question them. It then also becomes accessible to all parties to the proceedings (defence and possible civil parties).

13. GROUNDS FOR NON-EXECUTION

13.1.Grounds for non-execution in transposing law

Article 11 of the Directive does not provide for mandatory refusal. Within the scope of the Directive, there are only optional grounds for non-execution (Articles 9 and 11 and recitals 11 and 19 of the Directive). The evaluators point out that the grounds for non-recognition and non-execution constitute exceptions to the principle of mutual trust, which is essential to the proper application of the EIO. Making a ground for refusal of execution mandatory may therefore make ongoing criminal investigations in other Member States difficult or even impede such investigations.

In addition to the measures referred to in Article 694-31, which provides French authorities with a ground for refusal of recognition or execution of the EIO if the requested measure is not authorised by the CCP for the offence on which the investigation order is based, national authorities may carry out all measures necessary 'to obtain evidence relating to a criminal offence or to provide evidence already in their possession' which could also be used in a similar domestic case. In addition, Article 694-33 of the CCP establishes a list of investigative measures which cannot be refused when they are requested in the context of the EIO. These measures, the execution of which is mandatory, include:

- the obtaining of information or evidence which is already in the possession of the French authorities and the information or evidence could have been obtained, under national law, in the framework of criminal proceedings or for the purposes of the EIO;

- the obtaining of information contained in the automatic processing of personal data carried out by national police and gendarmerie or judicial authorities and which is directly accessible in the framework of criminal proceedings;

- the hearing of a witness, expert, victim, suspected or accused person or third party;

- the identification of persons holding a subscription of a specified phone number or IP address;

- any other non-coercive investigative measure which does not infringe upon individual rights or freedoms.

Moreover, specific provisions for certain investigative measures (an offence in connection with taxes or duties, infiltration, gathering of evidence in real time etc.) are provided for in particular in Articles 694-43 and 694-47 to 694-49 of the CCP.

As outlined in the circular of 16 May 2017, the EIO may only be refused in the nine cases exhaustively listed in paragraphs 1 to 9 of Article 694-31 of the CCP and in one case provided for in Article 694-34. In practice, these should be exceptional cases.

Grounds for refusal provided for in Article 694-31

1. The existence of a privilege or immunity

The EIO must be refused if a privilege or immunity hinders its execution. Where that privilege or immunity may be waived by a French authority (for example, the immunity of a member of the National Assembly or Senate could be waived by the Bureau of the National Assembly or the Bureau of the Senate), the investigation order can only be refused once the French magistrate to whom the matter has been referred has sent, without delay, a request to the competent French authority to waive this privilege or immunity and that request has been refused. If the French authorities do not have jurisdiction (for example, if a foreign diplomat has diplomatic immunity), the request for waiver is left to the issuing state.

2. The EIO is contrary to the applicable criminal liability rules regarding press offences

The EIO must be refused if it is contrary to the criminal liability rules for press offences provided for in Articles 42 et seq. of the Law of 29 July 1881 on freedom of the press and Articles 93-3 and 93-4 of Law No 82-652 of 29 July 1982 on audiovisual communication.

3. The EIO relates to classified information

This matter is examined below as it is directly linked to the ground for refusal provided for in Article 694-34.

4. The measure is not authorised in France for similar acts which do not constitute criminal offences

The EIO must be refused if the requested measure would not be authorised under French law in a similar domestic case and is based, in the issuing state, on proceedings initiated by the administrative or judicial authorities for acts which do not relate to a criminal offence but rather the infringement of rules of law and by a decision subject to judicial remedy. This ground for refusal corresponds to the ground provided for in Article 11(1), point (c) of the Directive.

5. Infringement of the 'ne bis in idem' rule

The EIO must be refused if its execution or the evidence which may be transferred as a result of its execution could lead to a person being prosecuted or tried anew for acts for which they have already received final judgment in a Member State, on the condition, however, that the sentence handed down has been served, is currently being served or is statute-barred in accordance with the laws of the convicting state.

This is the traditional application of the *ne bis in idem* principle within the European Union, as provided for in Article 50 of the Charter of Fundamental Rights of the European Union, Article 54 of the CISA and the judgment of the CJEU (Grand Chamber) of 27 May 2014 in case C-129/14 PPU.

6. The acts are not subject to criminal penalty and were not committed in the issuing State

The EIO must be refused if the acts on which it is based do not constitute a criminal offence under French law, even though they were committed wholly or partially on national territory, and there are serious grounds to believe that they were not committed on the territory of the issuing state.

7. Infringement of fundamental principles

The EIO must be refused if there are substantial grounds for believing that the execution of the investigative measure would be incompatible with France's respect of the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

8. The acts are not subject to criminal penalty but were committed in the issuing State, with exceptions

The EIO must be refused if the acts on which it is based do not constitute a criminal offence under French law, except in the following two cases (exceptions which are however not applicable in the case of acts not committed in the issuing state, as mentioned in paragraph 6).

- If the acts relate to a category of offence mentioned in Article 694-32 which is punishable in the issuing state by a custodial sentence or a detention order for a period of at least three years.
- If the requested measure is one of the measures mentioned in Article 694-33. The 32 categories of offence mentioned in Article 694-32 correspond to those previously referred to in Article 695-23 and for which no checks are carried out under the EAW regarding the dual criminality of the acts. With regard to the EIO, the condition of dual criminality is thereby theoretically excluded for these offences, even though, in practice, the categories mentioned correspond to acts which, due to their nature and/or severity, are in fact punishable under French law.

9. The requested measure is not authorised in France for similar acts, with exceptions

The EIO must be refused if the requested measure is not authorised under the CCP for the offence on which the EIO is based, except if it is one of the measures mentioned in Article 694-33.

Article 694-31 specifies that in the cases mentioned in points **1, 2, 5, 6 and 7 above**, before deciding not to recognise or execute, either wholly or in part, an EIO, the magistrate to whom it has been referred has to consult the issuing authority by any appropriate means and, where relevant, ask that authority to provide any necessary information without delay.

It states that the magistrate to whom the matter has been referred is to inform the issuing authority, without delay and by any means that creates a written record, of any decision taken under that Article.

The refusal of an EIO which may harm essential national security interests or which is based on classified information

Where an EIO may harm essential national security interests or is based on classified information, it may or must be refused, as set out below, by the Minister for Justice (DACG) or by the magistrate to whom the matter has been referred.

- *Refusal on the basis of the risk of harming essential national security interests*

Where an EIO may harm essential national security interests or is based on classified information, Articles 694-4, 694-4-1 (which are already applicable to all international mutual assistance requests) and Articles 694-31(3) et 694-34 resulting from the order of 1 December 2016 should be applied.

Article 694-34 thereby provides that the provisions of Articles 694-4 and 694-4-1, which allow the Minister for Justice to refuse a mutual assistance request, are applicable if the execution of the EIO would:

- harm essential national security interests; or
- jeopardise the source of the information; or
- necessitate the use of information classified in accordance with the provisions of Article 413-9 of the CC and relating to intelligence activities.

In those cases, it is therefore the duty of the public prosecutor who received the EIO, or who was notified by the examining magistrate if the EIO was received by that magistrate, to send it to the Prosecutor-General for referral to the Minister for Justice (DACG). The Minister for Justice may then decide to refuse the recognition or execution of the EIO.

Before making a decision, the Minister for Justice shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

The last subparagraph of Article 694-34 specifies that if the Minister for Justice decides not to refuse recognition or execution of the EIO and if it relates to information which is classified in accordance with the provisions of Article 413-9 of the CC, the provisions of Article 694-31(3) of the CCP shall apply.

Refusal on the basis of the classified nature of the information requested

Article 694-31(3) provides that the magistrate to whom the matter has been referred must refuse to recognise or execute an EIO if it is based on the transmission of information which is classified in accordance with the provisions of Article 413-9 of the CC. This is a case of mandatory refusal and as such is not subject to the assessment of the magistrate.

However, in this case, recognition and execution of the EIO shall only be refused after the magistrate to whom the matter has been referred has sent, without delay, a request to the competent administrative authority for the declassification and communication of the information in accordance with the provisions of Article L2312-4 of the Defence Code and that request has not been accepted.
If the request for declassification has been partially accepted, recognition and execution of the EIO may only be based on the declassified information.

In practice, the provisions of paragraph 3 may therefore apply in two cases:

- either after application of Article 694-34 where the Minister for Justice did not decide to refuse the EIO, which is likely to be the most common case;

- or directly, without prior action by the Minister for Justice because the provisions of Article 694-34 of the CCP were not applicable, as the classified information did not concern intelligence activities or the transmission of that information would not harm essential national security interests or jeopardise the source of the information. Given the reasons why information may be classified in accordance with the provisions of Article 413-9 of the CC, this situation should, however, arise infrequently.

Analysis of the transposing law with regard to the Directive

In light of French transposing law, in particular under Article 694-31 of the CCP, all grounds for non-execution are mandatory: the magistrate to whom the matter has been referred shall refuse to recognise or execute an EIO in any of the cases listed above. This is in contrast to the rules and principles arising from the provisions of the Directive, according to which all grounds for non-execution are optional. Decisions should therefore be taken on a case-by-case basis by the executing authority and should not be predetermined by the national legislator and applicable to all cases without exception.

Furthermore, French transposing law provides for an additional ground for refusal which is not provided for by the Directive. The EIO must be refused if it is contrary to the criminal liability rules for press offences laid down in Articles 42 et seq. of the Law of 29 July 1881 on freedom of the press and Articles 93-3 and 93-4 of Law No 82-652 of 29 July 1982 on audiovisual communication (Article 694-31(2) of the CCP).

During the on-site visit, the French authorities explained that the grounds for non-execution are mandatory so as to be compatible with the grounds for refusal which, under French law, are mandatory. The French authorities consider that, in line with case-law of the CJEU and under the national legal framework, which requires that certain criteria form the grounds for non-execution, implementing purely optional grounds would be somewhat problematic. It would not be sufficient to simply make the grounds for refusal under French law optional. Instead, a set of criteria should be added for each ground for non-execution.

The grounds for non-recognition and non-execution provided for by the Directive (Article 11 and other grounds mentioned in Chapter IV of the Directive) constitute an exhaustive list, which must be interpreted restrictively, given that these grounds constitute an exception to the principle of mutual recognition. Therefore, under the EIO regime, there is no leeway to refuse the execution of EIOs on grounds not included in the Directive.

While taking due note of France's concerns, the evaluation team encourages France to consider amending the transposing law to make all grounds for non-execution optional and to limit the grounds for refusal to those provided for in the Directive (*see recommendation 3*). Pending a possible amendment, the French authorities are invited to ensure that a refusal never becomes automatic as a result of a mandatory legislative drafting approach. Practitioners, on the other hand, must make an evaluation on a case-by-case basis and in consultation with the issuing authorities.

It should be noted that, in the spirit of mutual trust and mutual recognition, execution of EIOs should be the default rule and refusal should be an exception to be interpreted strictly.

13.2. Grounds for non-execution in practice

In practice, it seems that no court reported difficulties in identifying investigative measures for which an EIO can be issued or executed by France. Problems and questions are usually resolved before the EIO is issued. The BEPI is regularly consulted by the courts to provide its expert opinion on measures that may be the subject of an EIO. The team assessed that, where there was any doubt, prior contact could be made with the requested foreign authority in order to check the possibility of executing the requested measure.

Many different reasons for non-execution were invoked by the authorities that contributed to this evaluation, in particular due to the national authority concerned. The reasons can vary widely, depending on key partners (the courts are not necessarily required to work with the same foreign states, according to their geographical location in the country).

However, the majority of the authorities interviewed indicated that cases where a ground for non-execution is invoked are rare, either as issuing or as executing authority.

In general, when France is acting as issuing authority, the grounds for non-execution invoked most frequently by requested states in respect of French EIOs are as follows: imminent trial of the person concerned (refusal of temporary surrender of a person held in custody); investigations are already being conducted in the requested state; or procedural and legal specificities that make it impossible to execute requests.

Although they are more sporadic, the following grounds for non-execution have also been cited in respect of a French EIO: lack of competence of the requested state, incomplete EIO (missing bank details), and immunity of the person subject to the requested measure. In addition, one court reported a case of systematic refusal by a Member State to execute an EIO in the context of real-time geolocation of vehicles not seized prior to their movement by means of a request for ordinary cross-border surveillance ('OTO') via police cooperation. It was also reported that a court had repeatedly been met with refusals by the authorities of one Member State, which considered the application to be prejudicial to civil liberties and to be disproportionate. The situation was also mentioned where refusal to execute was most often based on the reason that, in section G, the grounds for the EIO had not been provided, and/or the EIO had not been accompanied by a summary of the alleged acts or the matter under investigation.

Regarding EIOs issued in the context of cases handled by JIRS (specialised inter-regional courts), i.e. in the sphere of organised crime, where there is therefore a lot at stake, one court pointed out that difficulties had arisen with a Member State which had refused to authorise the use of GPS coordinates or audio data captured on its territory, on the grounds that the EIOs had been sent after the fact and should have been sent beforehand (in spite of the fact that it had been impossible to predict the movements by a vehicle detected and equipped with a tag and a listening device a few hours beforehand).

Finally, some courts stated that it is a regular occurrence for the requested state simply not to respond to the French EIO, although there has been no clear refusal indicating a ground for non-execution.

Where France is the executing state, the most frequent grounds for non-execution invoked by the French authorities relate mainly to a lack of jurisdiction (EIO sent by mistake or suspect not actually resident in the area of jurisdiction) or of sufficiently precise information permitting the competent judicial authority to be identified, to the prosecution of acts not recognised by national law as constituting an offence, or to the offence being insufficiently established, to insufficient means of investigation or to the workload of the judicial authorities, or to a request containing an element contravening the rights of the defence, such as not making provision of the procedure. It is important to note that, among these grounds for non-execution, the workload of the judicial authorities does not constitute a valid ground for refusal under the Directive. In addition, any time limit or postponement of execution must be communicated promptly to the issuing authority.

In the event of a refusal by the requested state, the national authorities asked to issue the request, and having done so, all seek, in their capacity as issuing authorities, to contact the requested state in order to obtain clarification of the grounds for the refusal and to try to resolve the procedural difficulties. As soon as possible, such attempts are made directly by exchange of emails or by telephone with the magistrate addressed. The national authorities stated that, in the event that no reply is received in response to such communications, they send reminders. However, one court underlined that contact with one Member State had been complicated. That state did not execute EIOs or did so only to a limited extent, taking particularly long to do so, without explanation, and the involvement of the French liaison magistrate in that context was time-consuming and often ineffective.

In cases where direct communication is not established or where there are difficulties or tensions, national authorities sometimes request the support of liaison magistrates or Eurojust to organise a videoconference, if necessary, with the requested competent authorities along with an interpreter, in order to understand the position of the foreign authority. In practice, however, in some cases, once the requested state has refused execution, it is too late for an exchange of information.

As executing authorities, the national authorities have already been able to refuse an EIO outright by explaining this refusal to the issuing state in a detailed letter.

As part of its tasks, Eurojust's French Desk also enters into communication with the counterparts from other countries in order to prevent, in advance, situations where execution is refused.

13.3.Dual criminality

The national authorities that responded to this questionnaire had encountered only very few cases where the test of dual criminality had been invoked and/or applied in relation to the categories of offences set out in Annex D.

As these cases are very rare, reference is made to a case where France was the issuing state for an EAW, in respect of which the French authorities received a refusal due to the lack of dual criminality for the offence of failure to fulfil marital or parental obligations, or to the offences of misuse of company assets or bankruptcy, where the classification under company criminal law differs slightly from one country to another. The cases mentioned above relate to offences that are not in Annex D; the executing authorities were therefore able to apply the test of dual criminality.

As executing authorities, the French authorities issued a number of refusals concerning insults or non-public defamation, as well as where the acts complained of were classified as petty offences, were statute-barred, or could not be classified at all as criminal offences under French law.

Apart from the cases referred to above, they had not encountered any cases in which the test of dual criminality was invoked/applied in relation to one of the investigative measures listed in Article 10(2).

13.4. Ne bis in idem

As far as grounds for non-execution are concerned, the *ne bis in idem* principle was not mentioned as being a ground for refusing to execute a request. During the on-site visit, the French authorities mentioned a case in which an investigation had been opened in two countries. The question therefore arose in advance as to whether the two authorities were investigating the same acts. In that case, it was simply a matter of determining whether one of the two transfer the procedure to the other, or one of the two discontinue their investigations.

13.5.Immunities or privileges

During the on-site visit, one French authority stated that it had been confronted with a request whose execution could potentially have conflicted with the immunities or privileges of an individual. That authority explained that it had asked the Ministry of Foreign Affairs to ascertain whether the person subject to the EIO was protected by diplomatic immunity.

Within the Ministry of Foreign Affairs, one department handles all questions centrally that relate to immunities or privileges, and is able to give the courts information on any question as to whether a person subject to an EIO enjoys immunity or not. To avail themselves of this, the courts have a structured address and contact details at their disposal, enabling them to send queries to this specialised service when necessary.

13.6.Fundamental rights

Cases where a national authority is confronted with a refusal on the grounds that the requested measure would be contrary to the fundamental principles of law of the executing state are very rare.

Based on the feedback obtained, only three cases were identified: a national public prosecutor's office refused to allow the use of a listening device in a case of murder, for which French law does not provide for this type of legal measure; another was faced with several refusals from one Member State concerning requests for real-time geolocation of vehicles which had not been seized prior to their movement by a technical request for ordinary cross-border surveillance ('OTO technique'); lastly, a number of judicial authorities of a Member State refused, in the context of an investigation for a disappearance causing concern, to investigate at what point in time an individual had crossed the border of the state in question and to identify telephone lines with details of communications. The authorities' refusal was based on grounds of lack of proportionality between the infringement of fundamental freedoms and the nature of the offence cited, including when a new request was made citing the offence of kidnapping/illegal restraint.

In addition, the Spanish liaison magistrate had indicated that no measures involving police custody were possible in Spain in connection with the execution of an EIO.

14. TIME LIMITS

Responses concerning the question on time limits were varied, but in general the indicative time limits and the 90-day time limit provided for in Article 694-37 of the CCP were frequently exceeded, whether France was the requested state or issuing state.

These delays may be due to numerous factors, but very generally they are related to the resources available to the courts or the investigation services, in particular the lack of availability of investigation services to execute the measures requested. There is also the problem that a large number of cases is pending with the courts and the police stations, against the background of insufficient staffing. Indeed, although it would appear that the requested magistrates most often directly execute the EIOs received, they are nevertheless, as far as further steps and practical implementation of certain measures are concerned, entirely dependent not only on the efforts of the investigating services, who do not always comply with the deadlines, but also on their staff. It is still the case that there is a lack of internal staff at the French courts in general, especially within the investigation services, which have a particularly high workload, and especially in the public prosecutor's office (lack of resources, court registry lacking in specialisation, a task which has become ancillary to another department or to specialised assistants).

In this respect, the evaluators encourage France to ensure that all executing authorities have sufficient resources and staffing to comply with the deadlines provided for in the Directive. With that same aim in mind, and in order to improve the country's responsiveness to incoming EIOs, the evaluators encourage France to bolster support for small courts to make them more efficient through better preparatory work and prompt execution of EIOs, while also improving the quality of outgoing EIOs (*see recommendation 4*).

In an attempt to counter these delays, as executing state, the French CCP provides in Article 694-37 that the requested French magistrate must grant the investigating services three months for the execution of the foreign EIO.

In some cases, delays may also be due to the inherent difficulty of carrying out the requested act (e.g. retrieving a very old file from the archives), the difficulty of obtaining the necessary translations within the time limit, or inaccuracies in or information missing from the requests, which mean the executing state has to ask the issuing authorities for additional information, resulting in a delay in execution.

Although the French judicial authorities are required, in accordance with Article 694-35 of the CCP, to deal with EIOs 'at the same speed and according the same priority as in a similar national case', in practice there is often a delay in executing EIOs concerning minor offences.

However, when it is stated that the matter is urgent and this is sufficiently substantiated, everything is done on the part of the requested states, as well as of the requesting state, to systematically carry out the requested acts within the prescribed time limits.

Usually no information is communicated when there is a delay in execution. The issuing authority is only informed about progress in execution of the measures if they send a reminder to the executing authorities. The executing authority will sometimes spontaneously inform the issuing authority that it is not possible to comply with the time limits. They will do so in particular when they know beforehand that the requested measure cannot be executed within the time limit. This practice can be seen both when the French authorities are issuing authority and when they are executing authority.

The evaluation team underlines that the Directive's provisions concerning time limits for recognition and for execution represent one of the added values of the EIO regime and have had a positive impact on judicial cooperation. The evaluators therefore recommend that executing authorities comply with deadlines as far as possible, swiftly inform the issuing authorities of any possible delay, and reply to requests for relaunching EIOs (*see recommendations 7 and 18*).

Only two courts indicated that the time limits for the executing authorities had been respected.

Article 12(2) of the Directive provides that the issuing authority may apply a shorter deadline for recognition and execution than provided for in the ordinary rules '*due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances*'. The Directive calls on the issuing authorities to state this request in section B of the form set out in Annex A, which has three boxes for this purpose, providing for urgency due to evidence being concealed or destroyed, an imminent trial date, or any other reason.

Whether in the capacity of requested state or requesting state, the criteria used most frequently to assess the urgency do not differ significantly. The criteria cited most frequently relate to the risks of evidence being lost (time limits for retention of videos, of detailed call bills, of geolocation data, of items that are likely to be deleted for which an urgent search is requested while a person is being held in police custody, etc.), the existence of imminent danger to the integrity of individuals, in particular in relation to children, the risk of suspects absconding or committing further offences (depending on the personality of the person concerned), the seriousness of the acts under investigation (classification of the offence or number of victims), the criterion of pre-trial detention, the existence of ongoing police custody, an imminent hearing or an ongoing trial, the duration of pre-trial detention of the suspects and the circumstances of their detention (where the EIO is the last and final act before the closure of a file in which a person is being held in pre-trial detention), or the statute of limitations.

While it is rare to encounter difficulties in the execution of an urgent request, it is not impossible, although the processing of such requests is prioritised by both the national and the foreign authorities. Potential difficulties are often those mentioned under question 36, relating to the feasibility of the measure within the time limit set. For example, from the perspective as requested state, requests for summoning a person to a hearing are sometimes issued late, which makes it impossible for them to be executed in time. From the perspective as issuing authority, it is, in particular, often difficult for national authorities to obtain measures before the period of police custody ends.

In addition, although the national executing authorities do not, as a matter of principle, apply any weighting to the assessment of urgency indicated by the issuing authority, a number of authorities sometimes receive EIOs which, objectively, wrongly indicate the urgency of the EIO, particularly in the case of a request for summons to a hearing. When designating an EIO as urgent, the issuing authorities should provide the relevant information justifying the urgency, such as stating an imminent hearing date. At the same time, issuing authorities should be judicious when using the designation 'urgent' to avoid it losing its meaning (*see recommendation 21*).

The evaluators also consider that it might be useful for the EJN to be asked to draft guidelines on justifying the ground of urgency in EIOs (*see recommendation 30.1*).

15. GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION

In accordance with Article 694-37, first paragraph, of the CCP, an EIO must be executed at the latest within 90 days of its recognition, i.e. of the date of transmission of the instruction to proceed with an investigation or of the letters rogatory to the competent departments of the police or *gendarmerie*.

Furthermore, according to Article D.47-1-15 of the CCP, French judges must, as far as possible, observe the shorter deadline or the specific date indicated by the foreign authority.

Those deadlines may, however, be extended or deferred. They may be extended if it is not possible to respect them or if extending them is warranted for particular reasons. In that case, the public prosecutor or the investigating judge must inform the foreign authority forthwith of the reasons for the delay and the estimated time required for execution.

In addition, French judges may decide to postpone execution of an EIO in two cases provided for in Article 694-37, second paragraph, of the CCP: if it might prejudice an ongoing investigation or prosecution; or if the objects, documents or data concerned are already being used in other proceedings.

As soon as the grounds that justified such postponement have ceased to exist, the public prosecutor or the investigating judge must proceed with execution of the EIO forthwith and inform the foreign authority thereof by any means capable of producing a written record. In any event, failure to observe the deadlines for executing an EIO and the consequent failure to comply with these obligations to inform do not constitute a ground for rendering the acts carried out under Article 694-41 of the CCP null and void.

The evaluation team notes that executing authorities must favour prior direct contact and be proactive to ensure the optimal execution of EIOs (*see recommendation 20*).

16. LEGAL REMEDIES

Article 694-41 of the CCP provides that 'where measures executed on national territory in application of an EIO could, had they been executed in a domestic case, have been subject to a challenge, application for annulment or any other form of legal remedy under this Code, such remedies may, subject to the same conditions and according to the same arrangements, be sought against those measures by the interested parties. Those persons shall be informed of their right to seek a legal remedy where such information is provided for in this Code'.

The same Article also stipulates that 'such remedies shall not suspend the execution of the investigative measure, unless such suspension is provided for in this Code' and that 'such remedies may not rely upon the underlying grounds on which the EIO is based, which may only be challenged by an action brought in the issuing state' or furthermore that 'failure to observe the deadlines for execution of an EIO may not constitute a ground for rendering the acts carried out null and void'.

If a legal remedy is sought against an EIO in France, the judge who issued that EIO must inform the executing authorities of the remedy and its outcome, in accordance with Article D.47-1-4 of the CCP.

If the legal remedy was sought at the time when the EIO was issued, that information must be included in section J: Legal remedies of Annex A.

Nevertheless, Article D.47-1-4 of the CCP specifies that failure to comply with that obligation to inform does not constitute a ground for rendering acts carried out abroad null and void.

If a legal remedy sought against an investigative measure carried out in implementation of an EIO issued by a French authority is successful in the executing state, Article 694-24 of the CCP provides that the records and evidence transmitted to the French judge shall not become null and void in the French proceedings for that reason alone. However, they may not be used as the sole basis for a criminal conviction in France.

These provisions transpose Article 14(7) of the Directive which, without laying down the principle of mutual recognition in the issuing state of any annulment decisions taken in the executing state, provides that: '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'.

During the visit, a meeting on legal assistance was held, attended by representatives of the French bar. During discussions the lawyers reported that the French *pro deo* system is not used widely enough, either in France or in executing states. That being so, it is possible for a French citizen to find themselves in a situation where they are faced with investigative measures which may infringe their rights and, in certain cases, necessitate action in the issuing state but they do not have the necessary financial means at their disposal to defend themselves or be represented by a lawyer.

To improve this situation, the Council of Bars and Law Societies of Europe (CCBE) is invited to consider a mechanism for cooperation between European bar associations to facilitate frontline legal aid to complement the legal remedies provided for in the EIO (*see recommendation 31*).

Practitioners also reported that section J of Annex A is not sufficiently clear on which authority is to be indicated (public authority, bar, etc.) and which information must be included (*see recommendation 27.3*).

17. TRANSFER OF EVIDENCE

When acting as an executing authority, the French authorities enable the immediate transfer of evidence if requested in the EIO, which must mention urgency in such cases. In practice, this generally often concerns non-sensitive data such as video surveillance recordings or digital or telephone data. Evidence may also be transferred immediately on the basis of an EAW. Most cases do not pose problems as the evidence requested is not or cannot be claimed as a right by just anyone: these are video recordings, photographs or digital data. In practice, French and foreign investigators are in direct contact to organise the transfer once the French court has given its agreement.

Finally, where wanted persons are concerned, they are interviewed with an interpreter and fully informed of their rights.

No problems in practice are known of. One court did, however, mention a problem with cash not always being seized during arrest, unless expressly requested (i.e. failure to officially place cash in possession of an accused under seal, which is, by default, open. The arresting services simply hand over the cash to the prison service. There is a risk of loss).

No distinction is made between physical and virtual evidence (for instance, an electronic copy can be transferred immediately).

18. OBLIGATION TO INFORM - ANNEX B

Article 16(1) of the Directive obliges the executing state to acknowledge receipt of the EIO within one week by completing and sending the form set out in Annex B. The form in Annex B is used to inform the executing state that the EIO has been duly received; it is an essential element in establishing direct contact between the executing and issuing authorities.

With regard to the processing of EIOs, although many practitioners find Annex B obsolete in its current format, many of them think that the pure and simple lack of a response by the requested authorities to the transmission of an EIO is counterproductive. Such communication problems often mean the issuing state has to contact the liaison magistrate or Eurojust for situations which could be solved through more active direct communication. This difficulty could be solved by the creation of a shared platform for the Member States.

In most of the cases reported in the answers to the questionnaire, the foreign executing authorities only sporadically complete the form in Annex B, and often miss the deadline. Executing authorities must always send Annex B within the deadlines set in Article 16 of the Directive (*see recommendation 16*).

In most cases, in the absence of a response from the requested authorities confirming that an EIO has been received and is being dealt with, the French authorities remind the requested state either directly or via the liaison magistrates.

Nevertheless, reminders sent solely for the purpose of obtaining an Annex B form are rare. Generally, the French authorities only remind the requested authorities when a measure has not been carried out, to inquire about progress in executing their EIO.

It is an apparent practice among a minority of courts to request Annex B even when the foreign authority confirms, including by simple email, due receipt of the EIO and that it is being dealt with forthwith, and Annex B is no longer deemed necessary.

It would seem that the French authorities, when acting as executing authorities, are no more systematic in returning the completed Annex B form than foreign authorities. While some judicial authorities indicated that they do so scrupulously, others simply confirm receipt of foreign EIOs by email, especially when the EIO has been received through the same channel, while others acknowledge that they do not do it systematically.

Experience of the French Eurojust desk has shown that the French executing authorities almost never complete the Annex B form, or do not meet the deadline. In their view, failure to do so consistently may be due to the fact that few public prosecutors' offices have a judge or secretariat dedicated to mutual legal assistance in criminal matters.

The French liaison judge in Belgium, when asked about the matter, suggested that it might be helpful to raise awareness in the French public prosecutors' offices of the usefulness of returning the Annex B form and to begin systematically registering incoming EIOs.

French executing authorities must always send Annex B, at least electronically, within the deadlines set in Article 16 of the Directive (*see recommendation 7*).

The team received several comments about the formal nature of Annex B and suggestions for possible improvements. The majority think that Annex B should be simplified.

The French authorities suggest that the form in Annex B could be made less rigidly formal and it could be condensed into a single section, making it easy to identify the authority in charge of execution. It was suggested that a simplified form with tickboxes could be considered. The executing authority would then only have to add its references and details.

Some authorities think, even more radically, that a simple email to the requesting authority indicating the exact functions of the judge who receives the request and the authority in charge of executing it, with all of their contact details, ought to suffice.

Others note that some sections of Annex B are superfluous at the stage of acknowledgement of receipt of the EIO. One court indicated that it never completes Sections C and D of Annex B at the receipt stage because potential comments most frequently do not arise until a later stage, when the EIO is recognised.

The European Commission is invited to reflect on the possibility of replacing Annex B with an electronic acknowledgement of receipt or including an arrangement to that effect in the eEDES (*see recommendation 27.6*).

19. COSTS

In general, the French authorities have rarely encountered any difficulties with expenses. The question of whether and how the costs associated with the execution of an EIO could be shared or whether and how an EIO could be modified has only arisen exceptionally for the French authorities. Moreover, as for the transfer of sealed evidence or execution documents, the costs are most often related to their volume.

One court pointed out that costs can be deemed particularly high when the issuing state requests the transfer of evidence such as vehicles. The costs of storing and transporting such vehicles are significant.

The vast majority of French authorities have never dealt with situations where they have had to assess the criteria for deeming costs to be exceptionally high. Should the question arise, the criterion of the total cost of the requested measure, but also the relative cost (taking into account its proportionality in relation to the seriousness of the offence, how necessary the evidence sought is, and whether it is possible to use an alternative measure), would be considered in order to determine whether or not the cost is proportionate. Certain expenses for expertise and the transport of sealed evidence have posed a problem, both because the estimate given was objectively very high, and because the costs of escorting sealed evidence also had to be factored in.
As for the costs of appointing mandatory defence counsel, they are never treated as exceptionally high costs to be borne by the issuing state.

None of the French authorities, neither as the issuing nor as the executing state, have ever had a case in which an EIO was executed late or not at all due to exceptionally high costs.

One single court indicated that EIOs are often not or only partially executed in two Member States without any justification. It is therefore impossible to know whether that is due to exceptionally high costs.

Eurojust is invited to draw up guidelines, based on its experience, concerning 'excessive costs' so as to give guidance to the judicial authorities (*see recommendation 29*).

20. COORDINATION OF THE EXECUTION OF DIFFERENT EIOS IN DIFFERENT MEMBER STATES AND/OR IN COMBINATION WITH OTHER INSTRUMENTS

None of the authorities interviewed for this report encountered any significant difficulties in cases involving multiple parties with different procedures. Although the existence of several EIOs addressed to different Member States or shared between Member States, as well as shared procedures with a JIT, may lead to confusion, the assistance of external actors such as the EJN and Eurojust is very useful.

When operations are to take place simultaneously in at least three countries, Eurojust is systematically called upon to coordinate, exchange information and plan simultaneous operations, and proves to be particularly responsive and effective in this area. Otherwise, operations are coordinated directly with the country concerned, whether in the context of an EIO or JIT, and liaison magistrates are often called upon, even when the case is opened at Eurojust. However, one French liaison magistrate reported difficulties encountered by foreign authorities, in particular with late requests for measures requiring specific authorisations and with start times of operations, as some authorities were reluctant to start operations at 06:00 or extend them as they do in France.

The evaluators greatly appreciated the implementation of the 'one EIO per country' principle to draw up one complete EIO incorporating all requests, with an indication of the public prosecutor's office to which they are addressed. This allows each authority in the issuing state to have an overview of ongoing measures, which is essential for coordination (*see best practice 12*).

21. SPECIFIC INVESTIGATIVE MEASURES

21.1.Temporary transfer (Articles 22 and 23)

It would seem that the issue of a temporary transfer requiring a person to be held in custody for the purpose of gathering evidence has never raised any significant difficulty for the issuing national authorities.

During the sessions, the French authorities stated that the EIO is used for these purposes but that the number of cases is more limited. Some practitioners favour the temporary surrender of the EAW.

Article 22(2)(a) of the Directive provides that the execution of an EIO for the temporary transfer of a person in custody in the executing state may be refused if the person does not consent. The same provision applies, on the basis of Article 23(2), in the event of a request for the temporary transfer of a person held in custody in the issuing state.

In the first case (custody in the executing state), it is the responsibility of the executing state to verify their consent, in principle. Section H.1 of the form in Annex A provides that the issuing state should already be in a position, at the time of issuing the EIO, to state whether consent has been obtained (to be obtained in the territory of the executing state, country of custody), which presupposes that it has already obtained that consent in advance, for example by means of an EIO issued for that purpose. As an alternative, it provides that the issuing state requests the executing state to obtain such consent from the person in custody (within the territory of that state).

In the second case (custody in the issuing state), this obligation falls upon the issuing state and is a precondition for issuing the EIO.

The purpose of consent is to enable the executing state to assess whether, in the event that the person to be transferred does not consent, it intends to refuse to execute the EIO on the basis of Article 22(2)(a) or Article 23(2) of the Directive.

This issue is particularly complex because Articles 22 and 23 of the Directive define four different scenarios, depending on whether the person to be transferred is held in custody in the territory of the issuing state (Article 22) or in the executing state (Article 23) and on which of the two countries requests the transfer to the other country. The Directive provides for both the scenario in which the issuing state requests the transfer to its territory of a person held in custody in the executing state and that in which it requests the transfer to the executing state of a person held in custody in its territory.

21.2.Hearing by videoconference

The use of videoconference for hearings has become more widespread in recent years, particularly in the context of the COVID-19 pandemic. To date, no national authority that has used videoconferencing has encountered any particular difficulties with the location where the hearing is supposed to take place. When they can be held at the court, it would seem that this is the preferred location (public prosecutor's office, assize courtroom, investigating judge's office, videoconferencing room), but they can also be held in a police station.

Ultimately, the difficulties encountered are mainly related to technical (connection and network) or communication (interpretation) issues.

Overall, hearings by videoconference do not seem to pose any major difficulties for national authorities when they are acting as executing authorities. Provided that the EIO clearly specifies the status of the person and the rights to be respected, they systematically apply the procedural safeguards requested by the issuing state. Furthermore, when the status of a person is not certain or unclear, the most protective status will be given, both as issuing and executing states, and during the hearing, the person will be informed of his or her rights as a witness and suspect under the legislation of each of the two Member States (*see best practice 16*).

However, some difficulties may hamper this measure, particularly when the EIO is received late with insufficient time to ensure the availability of a videoconferencing room, as a minimum, to convene participants and ascertain their consent. The evaluators note that, as far as possible, issuing authorities must allow executing authorities sufficient time after receipt of an EIO to conduct hearings by videoconference and to set dates for such hearings (*see recommendation 24*).

Other difficulties may also arise when there is no interpreter in the requesting country to test the connection and then start proceedings, or when no lawyer has been appointed at a victim's hearing, or when states whose legislation is close to a common law system require the presence of a lawyer for a mere witness, which French law does not provide for.

While videoconferencing has become more widely used, it has been reported by some French liaison magistrates that, as issuing state, the French authorities often seem reluctant to use it, in particular to ensure the exercise of rights, primarily as regards access to the case (remote access, particularly for EIOs sent to Member States which require access to the case before the hearing is held, the issue of interpretation, etc.) and the appointment of lawyers. However, in cases where a hearing is requested by the French authorities, they specify in the EIO the rules and guarantees applicable to the person interviewed according to his or her status and, where applicable, the rules and guarantees specific to videoconferences (*see best practice 15*).

In French law, Article 706-71 of the CCP defines the use of means of telecommunication in criminal proceedings in France. It states that 'where the needs of the inquiry or investigation justify it, the hearing or the interrogation of a person, and also any confrontation between one or more persons, may be carried out in one or more different parts of the French national territory which are linked by means of telecommunication guaranteeing the confidentiality of the transmission'.

This Article thus provides for the possibility of using videoconferencing before the trial court for the hearing of witnesses, civil parties or experts 'with the consent of the public prosecutor and all the parties, for the appearance of the accused before the criminal court if he or she is held in custody'. However, there is never any mention of a mere suspected person here.

On the other hand, Article 694-48 of the CCP, resulting from the transposition of the European EIO Directive, provides, in the context of the EIO, for the possibility of hearing a suspected person by videoconference. Nevertheless, the magistrate to whom the matter has been referred may 'without prejudice to the provisions of Article 694-31, refuse to execute the request if it concerns the hearing of a suspected or accused person and if that person objects'. During the visit, practitioners reported that there was no consistent practice between Member States on this issue and that it would be useful to obtain clarification or create a new instrument.

As executing state, the vast majority of judicial authorities do not seem to have had any cases where the suspected/accused person had not consented to a hearing by videoconference. If this were the case, a standard hearing would be conducted by the receiving authorities after exchange with the mandating authority.

One public prosecutor's office has nevertheless clarified that for a hearing by videoconference, the person is usually summoned by registered post. If they fail to attend the hearing, the requesting authority shall be informed live by videoconference that the hearing cannot be held.

French law does not allow for EIOs to be issued or executed for the hearing or participation by videoconference of the accused person throughout the main trial that will lead to their conviction. It is possible to execute an EIO to interview a suspected or accused person and then sentence them on the basis of their statements alone, provided that the rights guaranteed by French criminal procedure have been respected. However, it is not possible to sentence a person solely on the basis of statements obtained in the absence of a lawyer.

During on-site interviews, the practitioners stated that the rules governing the participation of the suspected or accused person by videoconference needed to be reassessed in light of recent societal developments. They also stated that the same issue arises for hearings in sentence implementation courts.

21.3.Hearing by telephone conference

Telephone conferencing, understood as referring to what French national law calls audioconferencing, is another form of remote hearing, which fulfils the same conditions as videoconferencing, as provided for in Article 25(2) of the Directive.

On the whole, French authorities who have encountered this type of request have not had any major problems with the formalities or procedures relating to the hearing of a person as a witness, suspect or victim. Furthermore, they pay careful attention to the EIO status of the person to be heard (witness, suspect or victim), as this results in different rights (right to silence, a lawyer, etc.).

However, the different legal frameworks have already led to imperfect executions by the French authorities. For example, some Member States require the presence of magistrates in witness hearings, which France does not provide for in its legislation.

One single court noted a rather significant increase in EIOs requested by foreign authorities to organise complex legal proceedings within very short timeframes (a few days). Similarly, videoconference hearings of witnesses before foreign courts tend to be regularly requested. These requests are made in low-stakes cases (for example, damage-only hit-and-run accidents), with time limits making it difficult for persons to be summoned, when the public prosecutor's office does not need to be contacted beforehand to make sure they are available and the requesting authorities do not have to respond to requests regarding logistical organisation and audio and video connections.

21.4. Information on bank and other financial accounts and banking and other financial operations

France already has an automated register for bank accounts and another for life assurance policies. However, it is not yet possible to obtain the balance of financial products directly from the register, as provided for in the new Directive (EU) 2024/1654 of 31 May 2024 amending Directive (EU) 2019/1153 as regards access by competent authorities to centralised bank account registries through the system of interconnection and technical measures to facilitate the use of transaction records (*see best practice 18*).

An EIO is always required to obtain specific banking information. In this respect, France should legislate to make it possible to access the last account balance via the national bank account register and grant access to it via the CARIN network. That would make it possible to improve efficiency and reduce the number of EIOs required, or make them more targeted (*see recommendation 8*).

France does not lay down any specific conditions for requesting financial information with regard to the status of the person concerned (accused or other persons).

During the on-site visit, practitioners reported that section H of Annex A to the form was not clear enough, resulting in numerous refusals to execute the EIO. Issues frequently raised include the lack of clarification regarding the inculpatory evidence involved in the bank investigation and the justification for the requested measure (necessity, proportionality and protection of privacy). However, practitioners noted that, when France is the executing state, clarifications are generally obtained pragmatically through direct communication with the issuing authority (e.g. by email).

21.5. Covert investigations

In French law, 'covert investigations' are mainly carried out for organised crime offences and certain offences relating to economic and financial crime. These investigations require a high degree of discretion to ensure evidence does not go missing. Investigations are referred to as 'covert' when they are carried out by officers acting under covert or false identity.

The investigative measures covered by this type of investigation mainly include controlled deliveries or undercover purchases, for which only judicial police officers acting under letters rogatory are authorised to carry out with covert or false identities. Article 694-6 of the CCP regulates the concept of surveillance and provides that 'where the surveillance provided for by Article 706-80 must be executed in a foreign state, it is authorised by the public prosecutor in charge of the investigation, under the conditions provided for by international conventions. The official reports of the execution of the surveillance operations or related reports and also the authorisation for carrying out the execution on foreign territory are attached to the case file'.

Article 706-80 of the CCP states that 'judicial police officers, and under their authority, judicial police agents, after having informed the public prosecutor and unless he/she opposes, may extend to the whole of the national territory the surveillance of persons against whom a plausible reason or reasons exist to suspect that they have committed any of the crimes or offences that fall within the scope of Articles 706-73, 706-73-1 or 706-74, or the surveillance of the transport of objects, goods or products arising from any of these offences or used to commit them. Advance notice of any extension of jurisdiction provided for in the previous paragraph must be given to the public prosecutor to whom the matter has already been referred and to the public prosecutor of the judicial court in whose jurisdiction the surveillance operations are likely to begin'.

The execution of covert investigations in France is covered by Article 694-7 of the CCP. These investigations are subject to the rules applicable to infiltration operations defined in Article 706-82 et seq. of the CCP. These infiltration operations are limited to organised criminal activity. They must be authorised by the Minister for Justice to whom a request for mutual legal assistance has been submitted. They are authorised by the public prosecutor or the investigating judge at the judicial court of Paris. They are led by French judicial police officers.

Article 694-7 of the CCP provides that 'with the prior consent of the Minister for Justice seised of a request for judicial assistance to this end, foreign police officers may carry out infiltration operations in accordance with the provisions of Articles 706-81 to 706-87 on French national territory, under the supervision of French judicial police officers. The consent of the Minister for Justice may be subject to conditions. The operation must next be authorised by the public prosecutor of the judicial court of Paris or the investigating judge of the same jurisdiction, under the conditions provided for by Article 706-81. The Minister for Justice may only give his/her consent if the foreign officers belong to a specialist division in their country and carry out police missions similar to those executed by the specially trained French national agents mentioned in Article 706-81'.

Article 706-82 of the CCP on infiltration operations provides that 'without incurring criminal liability for their actions, judicial police officers or agents authorised to carry out an infiltration operation may, in all parts of the French national territory:

1. acquire, possess, transport, dispense or deliver any substances, goods, products, documents or information resulting from any offences or used to commit these offences;

2. use or make available to those persons carrying out these offences legal or financial help, as well as means of transport, storage, lodging, safe-keeping and telecommunications.

The exemption from liability provided for by the first paragraph also applies, in respect of acts committed with the sole aim of infiltration, to those persons recruited by officers or agents of the judicial police in order to enable this operation to be carried out'.

Undercover investigations are governed by Article 230-46 of the CCP which provides that 'for the sole purpose of identifying crimes and offences punishable by imprisonment committed by means of electronic communications, and where justified by the needs of the inquiry or investigation, the judicial police officers or agents acting during an investigation or under letters rogatory may, if they are assigned to a specialised service and are specially authorised for that purpose under conditions specified by order of the Minister for Justice and the Minister for the Interior, carry out the following activities under covert or false identity without being held criminally liable:

1. participate in electronic exchanges, including with persons likely to be perpetrators of such offences;

2. extract or retain the data obtained on persons likely to be the perpetrators of such offences and any evidence;

3. after obtaining the authorisation of the public prosecutor or the investigation judge to whom the case has been referred, with a view to the acquisition, transmission or sale by the persons likely to be the perpetrators of such offences of any content, product, substance, collection or service, including unlawful, to make available to those persons legal or financial help, as well as means of transport, storage, lodging, safe-keeping and telecommunications'.

Under Article 694-7 of the CCP, a request for international mutual assistance (EIO in the EU) is required for a covert investigation to be carried out on French territory by another State. One court pointed out that the use of a joint investigation team would facilitate the coordination of such operations.

The BEPI is not aware of any foreign officers being contacted by French judicial authorities as part of an infiltration measure.

Overall, national courts do not experience significant difficulties in executing an EIO for covert investigations related to differences in national laws. However, it would seem that the concept of 'covert investigation' is sometimes perceived more broadly by other countries. Some requests for covert investigations concern the presence of foreign investigators as observers.

One issue raised during the on-site visit concerned the confidentiality of specific techniques used for covert investigations. Several Member States have a legal framework in place to ensure that investigators do not disclose these techniques. However, the French CCP does not include such provisions. Therefore, requesting covert investigative measures through an EIO in France often requires the disclosure of certain specific techniques.

As some issuing authorities from several Member States choose not to include this information in the EIO for France, there is a need to seek clarification and discuss the matter. The French authorities may postpone adding the reference to specific techniques during the execution of the EIO, but they must be indicated in the document sent to the issuing authority at the end of the execution.

The European Commission is therefore invited to consider a proposal to amend the Directive in order to clarify its scope with regard to covert investigations, by allowing for the non-disclosure of specific techniques used by investigators (*see recommendation 26.5*).

French law does not allow civil infiltration. Therefore, an EIO cannot be used for this purpose in France.

The evaluation team notes that the concept of 'covert investigation' varies considerably in the national legislation of different Member States. In some countries, it covers a wide range of investigative measures carried out without the knowledge of the persons concerned, such as interception of communications.

In Article 29 of the Directive, the term 'covert investigations' refers to investigations carried out by officers using covert or false identity.

Therefore, the evaluation team invites the EJN to send a questionnaire to the Member States in order to clarify which measures are considered 'covert investigations' within the meaning of section H6 of Annex A to the form. It would also be useful to offer specific training on this issue, during which participants could examine the different procedures in the Member States and commit themselves to finding practical solutions (*see recommendation 30.2*).

21.6. Interception of telecommunications

National legislation provides that the interception of telecommunications in the context of a foreign EIO may be authorised on French territory under the same conditions as a measure ordered in a similar national case.

De facto, requested national authorities, as executing authorities, refer to French legislation on the interception of telecommunications, namely Articles 100 et seq. and Articles 706-95 et seq. of the French CCP, which provide that such measures may be authorised, depending on the legal characterisation of the facts, and more specifically, for a crime or offence punishable by a minimum of three years' imprisonment.

In addition to this legal criterion, national authorities also assess the criteria of proportionality and necessity, or even the grounds of the actual link with the proceedings and facts.

When acting as the issuing state, national authorities do not appear to have encountered any such difficulties. The wiretaps requested have always been granted by the executing authority, sometimes even at very short notice. However, the exploitable results are very limited given the widespread use of encrypted messaging systems such as WhatsApp.

The evaluators were very impressed by the National Platform for Judicial Interceptions (PNIJ), which provides access to telecommunications provider data for telecommunication requests (number location, contact history and real-time wiretaps) (*see best practice 17*).

Indeed, in judicial investigations, the investigators or magistrates in charge of the case gather information using a number of mechanisms, for example by intercepting conversations, collecting connection data, geolocation, bugging, etc. These tools are implemented in accordance with the provisions of the CCP (Articles 74-2, 80-4, 100 to 100-8, 706-95 and 709-1-3(1) for judicial interceptions; Articles 230-32 to 44, Article 709-1-3(2) and Article 67a-2 of the Customs Code for real-time geolocation; Articles 60-2, 77-1-2 and 99-4 for connection data; and Articles 706-96 to 706-98 for audio recordings).

In order to centralise all these data, the National Agency for Judicial Digital Investigation Techniques (ANTENJ) has established a data processing system known as the PNIJ. ANTENJ is a service with national jurisdiction under the Keeper of the Seals, Minister for Justice.

This platform makes these data available securely and only for authorised users when acting in their judicial capacity (magistrates, investigators, translators, etc.)[21].

[21]Source: https://www.justice.fr/donnees-personnelles/PNIJ.

21.6.1. Scope of the concept of 'interception of telecommunications' and use of Annexes A or C

Under French law, the 'interception of telecommunications' referred to in Articles 30 and 31 of the EIO Directive covers only wiretaps and excludes other types of interception, such as judicial interceptions (keyloggers) or GPS tracking, which are subject to other legal provisions and specific procedural safeguards and should therefore be subject to separate requests for mutual assistance in criminal matters.

Article 31 of the EIO Directive provides for the notification of the Member State where the subject of the interception is located from which no technical assistance is needed. This notification is to be made using the form set out in Annex C to the Directive. Its purpose is to enable the competent authority of the notified state to assess whether the interception could have been authorised under a similar national procedure and to inform the competent authority of the intercepting state, in the case of a future or ongoing interception, that it cannot take place or must be interrupted and, in the case of an interception that has already taken place, that the intercepted data may not be used or may be used only under the conditions specified by the notified state.

There is no common European definition of interception of telecommunications. At present, each Member States interprets the concept differently. Some Member States interpret the concept strictly and deem interception to concern only wiretaps, while others adopt a broader approach and include other surveillance measures, such as the bugging of vehicles, GPS tracking or surveillance via Trojan horse type devices, as well as audio surveillance in private premises.

In their replies to the questionnaire, the French authorities explain that, in cases where a vehicle fitted with audio equipment or equipped with a GPS tracking system travels abroad or to France, most national authorities do not appear to require prior authorisation by means of an EIO (Annex A) and are content to issue an ex post notification using the form in Annex C. However, as a general rule, France, as executing state, recognises Annex C only in the case of wiretaps, in accordance with the provisions of that annex.

If the French executing authority considers Annex C not to be applicable to any investigative measure other than wiretaps, the French procedure allows other special investigative techniques to be requested ex post via Annex A of the EIO.

However, other authorities take the view that the mutual recognition of orders renders Annex C unnecessary and obsolete. Even though two countries may adopt different criteria, these differences should not result in a refusal to use Annex C. This is an administrative formality that has become unnecessary.

The national authorities were almost unanimous in stating that, as the issuing state, they do not use Annex C, which is considered to be far too restrictive, whereas cross-border telecommunications are very versatile given the movements of targets. Interception requests are almost always made via a standard EIO (Annex A), with the exception of requests to some Eastern European countries.

Moreover, as mentioned above, France regularly encounters difficulties with a Member State which requires a prior 'technical OTO' to authorise the use of geolocation data ex post. National authorities are only able to use data from audio recordings if an EIO has been issued before travel.

During the on-site interviews, the practitioners therefore indicated that France, as executing state, did not accept Annex C for GPS geolocation (e.g. beacons). According to France, geolocation is not considered to be an interception of telecommunications. The practitioners interviewed were of the opinion that, under French law, the interception of telecommunications is limited to wiretaps, and therefore considered that, in accordance with Article 31 of the Directive, a notification under Annex C is possible only for wiretaps.

In the light of the above, the EU legislator is invited to clarify whether the concept of 'interception of telecommunications' referred to in Articles 30 and 31 also includes other surveillance measures, such as the bugging of vehicles and GPS tracking. If not, it would be advisable to amend the Directive to introduce specific provisions governing such measures, including situations where no technical assistance is required from the Member State concerned (notification mechanism) (*see recommendation 26.2*).

21.6.2. Transmission of intercepts

Most national authorities, in their capacity as executing authorities, are unable to transmit intercepted telecommunications immediately to the issuing state. A specific report on the execution of that interception or an order would need to be drawn up. According to some courts, transmitting telecommunications directly by courier, even a secure courier, is difficult to imagine.

However, three courts reported that they were able to produce intercepted telecommunications within a short space of time, in particular because of the closer contacts between the various French and German investigation services.

21.7. Other investigative measures (e.g. house searches)

During the meetings, the practitioners highlighted the practical difficulties associated with the execution of searches (e.g. the discovery of a new property during execution). As things stand, it is not always clear whether it is possible in all Member States to extend the original EIO in the short term, adding the new address to carry out a search (e.g. by oral means followed by written confirmation). Despite the best practice of having investigators on site, the practitioners reported that there is no arrangement whereby an EIO can be extended immediately by oral means during the operation, followed up with a simplified form supplementing the original EIO, to avoid having to send a new EIO and delaying translation and procedural deadlines (*see recommendation 27.5*).

22. STATISTICS

22.1.Statistics extracted from the Eurojust case management system

During the evaluation visit, Eurojust provided statistics extracted from Eurojust's case management system on cases handled by Eurojust. This included information on: (i) the total number of EIO cases handled by Eurojust; (ii) the number of bilateral and multilateral cases handled by Eurojust's French Desk; and (iii) the number of EIO cases for which the French Desk was either 'requester' or 'requested'[22].

Table 1: All EIO cases handled by Eurojust from 22 May 2017 to 31 December 2023. Source: Eurojust's Case Management System, February 2024.

	2017	2018	2019	2020	2021	2022	2023	Total
Bilateral cases	51	561	986	1293	1897	2286	2538	**9612**
Multilateral cases	37	231	341	464	419	427	435	**2354**
Total number of cases	**88**	**792**	**1327**	**1757**	**2316**	**2713**	**2973**	**11966**

[22] 'Requesting' means that a French national authority requested that Eurojust's French Desk open a case against one or more other Member State; 'Requested' means that another country desk at Eurojust, at the request of its national authority, opened a case against the French Desk.

Table 2: All cases handled by Eurojust's French Desk from 22 May 2017 to 31 December 2023. Source: Eurojust's Case Management System, February 2024.

	2017	2018	2019	2020	2021	2022	2023	Total
Bilateral cases	18	95	169	226	509	756	771	**2544**
Multilateral cases	17	94	104	132	169	175	173	**864**
Total number of cases	**35**	**189**	**273**	**358**	**678**	**931**	**944**	**3408**

Table 3: All EIO cases handled by Eurojust's French Desk from 22 May 2017 to 31 December 2023. Source: Eurojust's Case Management System, February 2024.

	2017	2018	2019	2020	2021	2022	2023	Total
Requester	20	96	117	142	136	153	153	**817**
Requested	15	93	156	216	542	778	791	**2591**
Total number of cases	**35**	**189**	**273**	**358**	**678**	**931**	**944**	**3408**

22.2. Statistics provided by France

PERIODE	2018		2019		2020		2021		2022	
PAYS	ENTRANT	SORTANT	ENTRANT	SORTANT	ENTRANT	SORTANT	ENTRANT	SORTANT	ENTRANT	SORTANT
Allemagne	827	212	1437	226	1447	263	1363	279	1424	340
Autriche	44	6	173	13	249	14	231	24	356	49
Belgique	1658	428	1930	604	2213	391	2247	470	1754	631
Bulgarie	43	9	49	10	72	21	63	21	77	16
Chypre	1	4	1	8	7	6	6	2	1	2
Croatie	7	2	14	2	9	4	15	4	19	7
Espagne	588	128	922	147	819	149	920	228	873	324
Estonie	2	3	28	7	14	1	7	3	2	6
Finlande	2	3	6	1	11	2	5		8	2
Grèce	27	6	34	12	45	15	23	5	34	12
Hongrie	33	15	55	23	64	30	54	24	80	27
Italie	132	48	157	82	160	125	116	94	108	102
Lettonie	13	6	30	5	41	9	59	5	41	7
Lituanie	28	5	15	7	22	5	38	18	45	20
Luxembourg	445	69	349	139	633	186	647	165	496	101
Malte		4	17	2	6	4		1	4	3
Pays-Bas	312	65	242	79	475	130	245	121	157	96
Pologne	217	32	495	48	551	43	489	48	491	98
Portugal	698	71	1032	97	1369	123	1156	101	1083	385
République tchéque	21	10	57	8	76	14	74	8	80	11
Roumanie	90	56	160	76	137	66	154	84	147	42
Royaume-Uni	74	64	72	90	98	75	12	2	4	13
Slovaquie	29	7	56	8	44	3	70	3	45	2
Slovènie	16	1	37	8	49	1	41	1	55	4
Suède	31		34	13	155	2	40	13	52	5
TOTAL	**5338**	**1254**	**7402**	**1715**	**8766**	**1682**	**8075**	**1724**	**7436**	**2305**

Table 1: Evolution of EIOs executed (incoming) and issued (outgoing) by France, by Member State (2018-2022). Source: Ministry of Justice, February 2024.

The statistics set out in the table above are an estimate of the data from public prosecutors' offices and do not necessarily include all the activities of judges, in particular investigating judges. In the light of the feedback received and the various difficulties encountered while collecting data on European mutual assistance in criminal matters, the statistics focus solely on EIOs issued and received, and exclude cases of refusals. Moreover, no jurisdiction stated that it had ever faced a situation in which an EIO was postponed.

It is therefore important to clarify that the statistics provided are not exhaustive. They update the statistics recorded by the public prosecutor's office. Furthermore, some statistics – when EIOs are issued or executed by judges – are not systematically recorded.

Consequently, the data in each of the 'incoming' columns is likely to be significantly reduced owing to the lack of reliable statistics on EIOs issued by investigating judges.

The evaluation team notes that reliable, comprehensive and detailed statistics are essential for analysing and improving cooperation between Member States by identifying gaps and shortcomings in the functioning of judicial cooperation instruments and their implementation by Member States. The situation is expected to improve considerably once eEDES becomes fully operational. Member States are strongly encouraged to connect all competent national authorities to eEDES as soon as possible to ensure the security of data transmission (*see recommendation 25*).

However, until eEDES is fully operational, it is recommended that France improve the collection of statistical data on EIOs by gathering more reliable, comprehensive and detailed data, covering all competent issuing and executing authorities and cases of non-recognition and non-execution, as well as statistics on the grounds for such refusals and on cases where execution has been deferred (*see recommendation 9*).

The best practice of compiling a digital record of statistics, applied by the Thonon-les-Bains public prosecutor's office and annexed to the replies to the questionnaire, should serve as inspiration for these improvements (*see best practice 21*).

In fact, in December 2022, the Thonon-les-Bains public prosecutor's office found that, in the absence of a dedicated IT tool, it was difficult to gather statistics on European mutual assistance in criminal matters. Up to then, all requests for mutual assistance in criminal matters had been recorded in EIOs, including standard requests, but new calculation methods were implemented internally to obtain accurate statistical data on EIOs, as well as on 'Other EU requests'.

All requests are recorded using the Esabora software[23] and their titles standardised to facilitate the annual inventory of passive mutual assistance cases. European requests are given a specific title to differentiate between EIOs and 'Other EU requests', based on the following: Country/EIO or CRI/Incoming or Outgoing (an EIO transmitted by Italy will be recorded as follows: Italy/EIO/incoming). Filtering by 'keyword' has been tested but does not ensure an exact result, so a manual count is made from the annual list (a tool dedicated to international mutual assistance in criminal matters would avoid the risk of error or omission resulting from such practices).

These points were mentioned during the presentation on judicial cooperation in criminal matters at the Thonon-les-Bains public prosecutor's office for the 2023 Annual Report of the Public Prosecution Service. That same year, the Thonon-les-Bains public prosecutor's office decided to introduce an additional column entitled 'Other EU requests' to Annex 1 concerning statistics on the state of cooperation in criminal matters between EU Member States engaged in direct transmission, in order to best reflect its activities regarding European mutual assistance in criminal matters.

The Thonon-les-Bains public prosecutor's office was also keen to report on the main developments and plans concerning Franco-Swiss mutual assistance in criminal matters (resulting from the meeting of 23 June 2023).

[23] Esabora publishes PourMesDossiers, a horizontal IT solution which can be adapted and is adaptable to the management of structured files in a database.

With regard to urgent requests on the basis of Article 10 of the Paris Agreement, the Thonon-les-Bains public prosecutor's office explained that it was planning to process and transmit requests completely electronically (by means of electronic signature and the transmission of documents drawn up by the investigation services via the digital criminal office, documents which would then be sent electronically to the Swiss investigators).

Regarding the electronic transmission of requests for mutual assistance in criminal matters and the creation of a directory of participants' email addresses, the Thonon-les-Bains public prosecutor's office has set up a dedicated email address: entraide.tj-thonon-les-bains@justice.fr.

23. TRAINING

In France, legal professionals, including judges, prosecutors, judicial commissioners and some International Department trainee lawyers and auditors automatically receive training on EIOs. This training is provided as part of the initial training by the French National School for the Judiciary (ENM) and is a mandatory step for practitioners required to use EIOs in the context of their work.

The ENM organises training modules during which EIOs are studied, in particular through conferences on international mutual assistance in criminal matters, through directed studies focused on solving practical cases, and during modules aimed at enhancing students' knowledge of EIOs during the period of specialisation. In 2022, 261 students received training on EIOs.

In addition, new investigating judges automatically receive training on international mutual assistance in criminal matters, with a specific module on EIOs during each session on changing posts. On average, between 60 and 80 magistrates receive training each year during these sessions.

Once in office, practitioners also have the opportunity to receive regular training on tools for mutual assistance in criminal matters, including EIOs. Such training is offered in sessions on combating organised crime, drug trafficking and trafficking in human beings, on the application and execution of sentences and on European criminal investigations.

However, this additional training is not automatic and participation is voluntary. In addition, the ENM International Department is involved in training European and French magistrates on EIOs through seminars and projects funded by the EU's Justice DG.

Lastly, as part of the school's French Presidency of the Council of the European Union action, the International Department has implemented the JUST GREEN challenge, offering training on EIOs to European and French magistrates and investigators in the context of the fight against the trafficking of protected species.

Among best practices, it is worth emphasising that the training module on international law, including EIOs, is part of the training judges receive from the outset and is also covered in the 15-day course aimed at those who change post (*see best practice 20*). Colleagues starting work at a court near the border should always specifically be advised to follow the course on changing posts and international mutual legal assistance (*see recommendation 10*). The implementation of cross-border training, including theoretical and practical aspects of criminal proceedings, is also a best practice (*see best practice 19*).

The ENM therefore organises training modules on EIOs in particular, excluding proceedings initiated by administrative authorities, for which judicial validation is required. During the period of study common to all students in a class, EIOs are studied as follows:

- as part of a conference on international mutual assistance in criminal matters, at which a liaison magistrate, a public prosecutor and a chief superintendent responsible for coordinating a police and customs cooperation centre will speak;

- in the context of directed studies (groups of around 20 trainee magistrates) focusing on solving practical cases that help to identify the scope of the EIO and the corresponding main principles (need, proportionality, etc.), the importance of using it vis-à-vis other judicial cooperation instruments at the investigation stage (international letters rogatory in particular) and its relationship with the other cooperation tools in the context of the prosecution and the execution of the sentence (in particular the European arrest warrant).

During these modules, which last a total of six hours, students are introduced to Form A. In 2022, 261 students received training on EIOs.

Whilst preparing to take up their duties, which corresponds to a period of specialisation, future prosecutors and investigating judges study EIOs in depth so that they are able to at least draft one and fine-tune the relationship between EIOs and the other cooperation instruments in criminal matters (European arrest warrants, freezing orders, etc.). In 2022, 116 future prosecutors and 16 future investigating judges from the class of 2020 took a total of six hours' worth of modules to further their knowledge of EIOs.

In addition, as part of the mandatory session on changing posts, all new investigating judges automatically receive training on international mutual assistance in criminal matters with a particular focus on European tools, including EIOs. Each session includes a three-hour module on this topic. Two sessions on changing posts are organised each year, with an average of between 60 and 80 magistrates receiving training per year.

Once they have taken up their duties, practitioners may also choose to receive regular training on mutual assistance tools, including EIOs.

- The session entitled 'The fight against organised crime' automatically includes a day of training on international mutual assistance in criminal matters. On average, 100 magistrates follow this training each year.

- The session entitled 'The fight against drug trafficking' includes a presentation by a member of Eurojust's French Desk on this topic. On average, 40 magistrates follow this training each year.

- The half-day session entitled 'Human trafficking and procuring' covers the cooperation instruments in criminal matters available to combat these phenomena. 35 magistrates follow this training each year.

- In addition, a session entitled ‘Sentence enforcement’, which looks at cross-border challenges, is open to 20 magistrates. This session devotes two hours to international cooperation tools, including EIOs, Schengen, the European Criminal Records Information System (ECRIS), the EJN and the European Judicial Atlas, and the consular network.

- Lastly, there is a session on JITs, where cooperation tools are discussed.

However, this additional training offered by the ENM is voluntary and is not provided automatically.

Furthermore, as part of the actions implemented in 2021 and 2022, the International Department participated in the training of 64 European and 14 French magistrates on EIOs through three seminars in connection with the DG Justice-funded project ‘Evidence for environment: how to enhance the use of the EIO in support of a growing EU litigation, transnational environmental crimes’.

Finally, as part of the school’s self-funded French Presidency of the Council of the European Union action, the International Department implemented the challenge ‘JUST GREEN: combating the trafficking of protected wildlife species within the EU’, offering training to 12 European judges, investigators and deputies (Spanish and Italian) and 17 French judges, investigators and deputies.

Training on EIOs is usually provided by the ENM, in accordance with the guidelines of the curriculum approved by the ENM Board, and in liaison with the deans of the relevant faculties.

Nevertheless, given the limited number of hours of continuous training offered, the JIRS (Specialised Inter-regional Court) in Bordeaux, owing to its proximity to the ENM and its experience of international criminal proceedings, appears to provide practitioners starting out in a post with invaluable operational support to compensate for the possible lack of practice in EIOs, which is essential for cooperation between EU members.

The quality of the training, which is taught by training coordinators and external experts, has not yet been assessed at national level.

To facilitate access to training, the EJTN is invited to consider increasing the number of courses related to the EIO, possibly in partnership with national training projects. Such training should cover the interaction between the various instruments for judicial cooperation in criminal matters (*see recommendation 28*).

24. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

24.1.Recommendations

24.1.1. Recommendations to France

1. Although the French executing authorities sometimes have to deal with EIOs whose necessity and proportionality may seem questionable, the evaluation team stresses that the consultation procedure must always be followed in order to agree on another way to proceed with the issuing state. The French executing authorities are therefore invited to reassess the strict application of the principle of proportionality in minor cases from Member States that apply mandatory prosecution, and to consult with the issuing Member State before deciding to refuse (*see Chapter 7*).
2. The French executing authorities must always consult the issuing authority, in accordance with Article 9(6) of the Directive in the event of difficulties or potential refusals. This is with a view to facilitating the swift and optimal processing of EIOs. They must also consult the requesting authorities about whether there is scope for carrying out alternative measures before refusing execution (*see Chapters 7 and 13*).
3. While taking due note of France's concerns, it is recommended that France should consider amending its transposing law so as to make all grounds for non-execution optional and confine the grounds for refusal to those provided for in the Directive (*see Chapter 13.1*). Pending a possible amendment, the French authorities are invited to ensure that a refusal never becomes automatic as a result of a mandatory legislative drafting approach. Practitioners, on the other hand, must make an evaluation on a case-by-case basis and in consultation with the issuing authorities.

4. All executing authorities must have sufficient means and human resources at their disposal to be able to comply with the deadlines provided for in the Directive. With that same aim in mind, and in order to improve responsiveness to incoming EIOs, support for small courts should be bolstered to make them more efficient through better preparatory work and prompt execution of EIOs, while also improving the quality of outgoing EIOs (*see Chapter 14*).
5. The French authorities should adopt a more flexible approach, observing the division of competences between the issuing authority and the executing authority, this being an essential element of the mutual trust underlying the exchanges which take place between Member States during a European investigation procedure. The executing authority must under no circumstances remedy, by means of a decision awarding recognition, the failure to comply with the conditions for issuing an EIO, as this would jeopardise the balance of the EIO system, based as it is on mutual trust, and would amount to giving the executing authority the power to review the substantive conditions for issuing such an order (*see Chapter 9*).
6. The French authorities are encouraged to ensure more efficient and faster coordination among their national executing authorities where EIOs are issued for multiple investigative measures involving different competent authorities. The aim is to make application of EIOs more efficient and comply with deadlines (*see Chapter 6.3*).
7. The French executing authorities must always send Annex B, at least electronically, within the deadlines set in Article 16 of the Directive (*see Chapter 18*). The French executing authorities must always respect those deadlines and, as far as possible, swiftly inform the issuing authorities of any potential delay and reply to requests for relaunching an EIO (see Chapter 14).
8. France should legislate to make it possible to access the last account balance via the national bank account register and grant access to it via the CARIN network. That would make it possible to improve efficiency and reduce the number of EIOs required, or make them more targeted (*see Chapter 21.4*).

9. Until the e-Evidence Digital Exchange System (eEDES) is fully operational, the system for collecting statistics on the EIO should be improved by collecting the most reliable, complete and detailed data, covering all competent issuing and executing authorities and cases of non-recognition and non-execution, as well as statistics on the grounds for such refusals and on cases where execution has been deferred. The best practice of digitally collecting data as applied by the public prosecutor's office of Thonon-les-Bains should serve as inspiration for those improvements (*see Chapter 22*).
10. Colleagues starting work at a court near the borders should always specifically be advised to follow the course on changing posts and international mutual legal assistance (*see Chapter 23*).

24.1.2. Recommendations to the other Member States

11. When the law of the executing state requires all measures to be included in a single EIO, which must be sent to the authority competent to execute the majority of the measures requested, it is essential for the issuing authorities to clearly identify that authority and to send the EIO to it alone. This will prevent a piecemeal execution of the EIO (*see Chapters 4.2 and 8*).
12. The issuing authorities must stay within the scope of EIOs and not issue an EIO for purposes other than obtaining evidence (*see Chapter 5*).
13. As far as the drafting of the EIO is concerned, greater attention should be paid not only to the justification (details of the offence) and the reasons, but also to the clarity of the tasks, bearing in mind that the EIO is being sent to foreign authorities who are sometimes unfamiliar with the legislation of the issuing state (*see Chapter 6*).
14. When issuing an EIO, the issuing authorities must use short sentences and precise language to allow easy and precise translation, and must avoid copying the text of the underlying national rules (*see Chapter 6.2*).
15. The issuing authorities must use professional translators to translate EIOs, rather than online electronic translation systems (*see Chapter 6.2*).

16. Executing authorities must always send Annex B within the deadlines set in Article 16 of the Directive (*see Chapter 16*).
17. Executing authorities must accept EIOs sent electronically which comply with Article 7 of the Directive, not just EIOs that have been sent (on paper) by post (*see Chapter 8*).
18. Executing authorities must always comply with deadlines as far as possible, must swiftly inform the issuing authorities of any potential delay and must reply to requests for relaunching EIOs (*see Chapter 14*).
19. Executing authorities must exercise due care when assessing whether the issuing of an EIO is necessary and proportionate in accordance with Article 6(1)(a) of the Directive (*see Chapter 7*).
20. Executing authorities must favour direct prior contact and be proactive in order to ensure optimal execution of EIOs (*see Chapter 15*).
21. Issuing authorities must, when labelling an EIO urgent, provide relevant information justifying that label, such as the date of an imminent hearing. Issuing authorities must use the 'urgent' label wisely so that it does not become devoid of meaning (*see Chapter 14*).
22. Issuing authorities must mention any essential formalities and procedures that apply under their law to the obtaining of evidence and to the evidence itself in section I of the form in Annex A, bearing in mind that the executing authority will probably not be familiar with the other Member State's criminal procedure (*see Chapter 9*).
23. The executing authorities must comply with the procedural formalities requested by the issuing Member State, as these formalities are critical for the admissibility of the evidence in cases where the conditions laid down in Article 9(2) are met. In any event, consultations should be held in order to ensure the most efficient possible execution of the EIO. At the same time, it is recommended that when issuing an EIO, Member States clearly describe the formalities required and their importance in section I (*see Chapters 9 and 10*).

24. As far as possible, issuing authorities must allow executing authorities sufficient time after receipt of an EIO to conduct hearings by video conference and to set dates for such hearings (*see Chapter 21.2*).
25. Member States are strongly encouraged to connect all competent national authorities to the e-Evidence Digital Exchange System (eEDES) as soon as possible to ensure the security of data transmission (*see Chapter 22*).

24.1.3. Recommendations to the European Union and its institutions

26. The European Commission is invited to consider proposing an amendment to the Directive in order to clarify its scope with regard to:
    26.1. cross-border surveillance carried out by technical means for the purposes of obtaining evidence in criminal proceedings and in the context of judicial cooperation based on mutual recognition (*see Chapter 5*);
    26.2. the interception of telecommunications in the context of EIOs; specifying whether the concept referred to in Articles 30 and 31 of the EIO Directive also covers other surveillance measures such as bugging cars or GPS tracking and if not, to consider amending the Directive to introduce special provisions that govern such measures as well, including situations in which no technical assistance on the part of the Member State concerned is necessary (notification mechanism) (*see Chapter 21.6.1*);
    26.3. whether or not there is a speciality rule and the basis for it in the context of EIOs (*see Chapter 11*);
    26.4. the proportionality principle (*see Chapter 7*);
    26.5. covert investigations, by allowing for the non-disclosure of specific techniques used by investigators (*see Chapter 21.5*).

27. In addition, the Commission is invited to:

27.1. explore the scope for applying EIOs to the sentencing and post-sentencing phases (in particular for hearings of the accused by video conference in another Member State) so as to achieve legal certainty on the matter. A study could be conducted with Eurojust and the EJN (*see Chapter 4.2*);

27.2. consider providing:

27.2.1. guidelines on the EIO and how it interacts with other instruments for judicial cooperation in criminal matters (*see Chapter 5*);

27.2.2. a manual on how to draw up an EIO (see e.g. the Handbook on how to issue a European arrest warrant) (*see Chapter 6*);

27.3. simplify the form in Annex A to avoid repetition and make it easier to read and complete. It would also be useful to clarify Section H4, as the current instructions do not sufficiently guide the person completing the EIO as to what is essential to include in the case of banking and financial requests, in particular regarding their need and proportionality. Clarification should also be provided in section J, on the authorities to be included (*see Chapters 6 and 16*). Moreover, section I is illegible or not even visible, since it is relegated to the very end of Annex A; it should be included in the measures to be carried out (*see Chapter 9*);

27.4. consider drafting a simplified version of Annex A for 'standard' EIOs which are straightforward and do not involve any particular complications (*see Chapter 6*);

27.5. consider a simplified form for supplementing the 'original' EIO during execution when the scope of the investigative measures has to be extended as a matter of urgency and necessity (for instance, during a joint action day) so as to avoid sending another EIO, which might burden the procedure with delays and translation costs (*see Chapters 6 and 21.7*);

27.6. consider the possibility of replacing Annex B with an electronic acknowledgement of receipt or including an arrangement to that effect in the eEDES (*see Chapter 18*);

27.7. explore the possible inclusion of requests for investigations in cases of suspicious deaths or disappearances in the scope of the EIO. Where no offence is referred to in the request, foreign authorities often refuse to execute such requests (*see Chapter 5*);

27.8. include in the eEDES the option to complete and return incoming EIOs electronically via the eEDES (*see Chapter 8*).

24.1.4. Recommendations to Eurojust/the EJN and the EJTN

28. The EJTN is invited to consider increasing the number of courses related to the EIO, possibly in partnership with national training projects. Training should cover the interaction between the different instruments of judicial cooperation in criminal matters (*see Chapter 23*) or specific EIO headings (such as covert investigations) (*see Chapter 21.5*).
29. Eurojust is invited to draw up guidelines, based on its experience, concerning 'excessive costs' so as to give guidance to the judicial authorities (*see Chapter 19*).
30. The EJN is invited to:
    30.1. draw up guidelines on giving grounds for urgency (*see Chapter 14*);
    30.2. send a questionnaire to the Member States in order to clarify which measures are considered 'covert investigations' within the meaning of section H6 of Annex A to the form. It would also be useful to offer specific training for this purpose, during which participants could examine the different procedures in the Member States and commit themselves to finding practical solutions (*see Chapter 21.5*).
31. The Council of Bars and Law Societies of Europe (CCBE) is invited to reflect on a mechanism for cooperation between the European bars in order to facilitate primary legal aid to complement the possibility of appeal provided for in the EIO (*see Chapter 16*).

24.2. Best practices

This section will include a list of best practices to be adopted by other Member States.

France is to be commended for the following best practices:

1. Helping to facilitate the issuance and execution of EIOs by providing judicial authorities with (*see Chapter 3*):
   1.1. guidelines (circular of 16 May 2017) specifying all the provisions of the Order of 1 December 2016, which transposes the Directive;
   1.2. detailed country fact sheets, available in a section dedicated to the EIO on the justice.fr intranet, including practical advice and guidance for the drafting of EIOs, taking into account the specificities of each executing Member State;
   1.3. magistrates accessible 24 hours a day, 7 days a week, both in the courts and within the DACG, in the event of an emergency;
   1.4. specialised sections on international mutual assistance in criminal matters in large courts;
   1.5. in some large courts, contact points (prosecutors and assistant lawyers) to provide expertise and support in responding to requests for mutual assistance in criminal matters, including EIOs;
   1.6. an extensive network of mutual assistance facilitators (liaison magistrates) established in strategic countries for judicial cooperation in criminal matters, including among Member States and third countries.
2. Showing pragmatism and flexibility to make mutual assistance possible by agreeing to execute EIOs for the purpose of obtaining evidence in the post-sentencing phase (*see Chapter 4.2*).
3. Allowing victims (as well as civil parties (*parties civiles*)) to submit requests for the collection of evidence and, consequently, the issuance of an EIO; the same applies to a lawyer acting on their behalf (*see Chapter 4.4*).

4. The fact that, in order to facilitate the sharing of information gathered through an EIO issued to a non-participating state with other JIT members, the EIOs issued by France already include a waiver of the speciality rule (*see Chapter 5*).
5. Prioritising use of the European Judicial Atlas to find the competent executing authority in another Member State (*see Chapter 8*).
6. The fact that requests for location information are frequently (informally) channelled through police cooperation, thus avoiding overburdening executing states with location-only requests (*see Chapter 5*).
7. In order to avoid any fragmentation of the execution of the order in cases where the EIO relates to measures to be carried out in more than one jurisdiction, competence is conferred on the French magistrate in whose jurisdiction the majority of measures or the main measures are to be carried out (*see Chapter 4.2*).
8. The establishment by the Strasbourg Public Prosecutor's Office of a simplified 'typical' EIO (concerning theft, fuel theft, hit-and-run offences, seizure of a tram surveillance video) in cooperation with the German authorities (Offenburg public prosecutor's office) which contains all the essential sections/information, with only a few details still to be added and translated (*see Chapter 6.2*).
9. As regards the splitting of an EIO into several requests where there is not a single or central authority in the territory of the requested state that is competent to carry out the measures requested in the EIO, the prevailing principle, both as issuing authority and as executing authority, is that the executing state allocates tasks to the competent authorities internally, without it being necessary for the issuing state to issue a new EIO or to split it (*see Chapter 6.3*).
10. To prevent any disproportionality of requests, national public prosecutors' offices apply the subsidiarity principle (a mutual assistance request is only issued as a last resort where national measures and investigations are not sufficient) before issuing an EIO requesting mutual police assistance or for summoning the person to the national territory, for instance. In addition, the French authorities sometimes refrain from issuing EIOs when the case is brought to court late, when it appears very unlikely that the requested measure will be carried out or when the damage is considered insufficient (*see Chapter 7*).

11. Accepting EIOs sent by fax or electronic means, which comply with the conditions set out in Article 7 of the Directive and the secure transmission requirements, and not just EIOs that have been sent by post as a paper version. The fact that the EIOs sent electronically by France are sent via official email addresses (...@justice.fr) and that some are sent via secure data-sharing platforms, which are accessed through a link sent by email and a code sent in a separate email (*see Chapter 8*).
12. Putting the 'one EIO per country' principle into practice: drawing up one complete EIO incorporating all requests, with an indication of the public prosecutor's office to which they are addressed. This allows each authority in the issuing state to have an overview of ongoing measures, which is essential for coordination (*see Chapter 20*).
13. Solutions that have been identified by the Court of Appeal of Toulouse: in addition to setting a mandatory time limit of 60 days for all sub-delegates for execution, the Court requires a systematic acknowledgement of receipt to be sent by email to the mandating authorities and an acknowledgement of receipt by the sub-delegates. The Court has also put in place a systematised digitalisation of all exchanges (EIO, execution documents, email exchange, request for additional information and reply obtained), so that if anything goes missing during the transmission of the execution, the Court is able to reconstruct what has been done, even in an emergency (*see Chapter 8).*
14. The practice of the Aix-en-Provence Court of Appeal, which, in order to better frame and speed up the implementation of the measures, restructured the departments responsible for international affairs in a number of local public prosecutor's offices and assigned some specialised assistants to targeted posts (*see Chapter 8)*.
15. The fact that in cases where the French authorities request a hearing, they specify in the EIO the rules and guarantees applicable to the person interviewed according to his or her status and, where applicable, the rules and guarantees specific to videoconferences (*see Chapter 21.2*).
16. If the person to be heard has a different status (witness) in the issuing state from that which he or she has in France as executing state (suspect), the fact that the executing authorities inform that person, during his or her hearing, of his or her rights as a witness and suspect under the legislation of each of the two Member States (*see Chapter 21.2*).

17. The National Platform for Judicial Interceptions (PNIJ), which provides access to telecommunications provider data for telecommunication requests (number location, contact history and real-time wiretapping) (*see Chapter 21.6*).
18. The national register of bank accounts, implementing European legislation to this end (*see Chapter 21.4*).
19. The implementation of cross-border training, including theoretical and practical aspects of criminal proceedings (*see Chapter 23*).
20. The training module on international law, including EIOs, which is part of the training of judges from the outset and is also contained in the 15-day course aimed at those who change post (*see Chapter 23*).
21. The reliable, detailed and comprehensive collection of EIO statistics of the Thonon-les-Bains public prosecutor's office stored in a digital file management system, and their standardised titles, which facilitate the annual inventory of passive mutual assistance cases (*see Chapter 22*).

ANNEXE A: PROGRAMME DE LA VISITE SUR PLACE

Ministère de la justice - Salle Mireille Delmas Marty, Paris

23 avril 2024

9 h 30 – 9 h 45 Allocutions d'accueil

- Adjointe au directeur des affaires criminelles et des grâces
- Sous-directeur de la justice pénale spécialisée
- Coordinatrice évaluation - Secrétariat général du Conseil de l'Union européenne

9 h 45 – 10 h 30 Présentation du système judiciaire français par le BEPI

10 h 30 – 10 h 45 Pause café

10 h 45 – 12 h 00 Rencontre avec l'École nationale de la magistrature - Présentation de la formation professionnelle des magistrats

12 h 00 – 13 h 00 Pause déjeuner - Salle Carbonnier (DACS)

13 h 15 – 14 h 45 Rencontre avec les praticiens: magistrats instructeurs et représentants du ministère public

14 h 45 – 15 h 00 Pause café

15 h 00 – 16 h 30 Suite de la rencontre avec les praticiens et séance de questions-réponses

24 avril 2024

9 h 30 – 11 h 00 Rencontre avec les praticiens: magistrats instructeurs et représentants du ministère public

11 h 00 – 11 h 15 Pause café

11 h 15 – 12 h 15 Suite de la rencontre avec les praticiens: magistrats instructeurs et représentants du ministère public

12 h 00 – 13 h 15 Pause déjeuner - Salle de l'horloge (DACG)

13 h 30 – 14 h 45 Rencontre avec les services enquêteurs

- Direction centrale de la police judicaire
- Direction générale de la gendarmerie nationale

14 h 45 – 15 h 00 Pause café

15 h 00 – 16 h 30 Rencontre avec Madame la vice-bâtonnière du barreau de Paris

25 avril 2024

9 h 30 – 10 h 30 Séance de questions-réponses et debriefing,

10 h 30 – 10 h 45 Pause café

10 h 45 – 13 h 45 Conclusions préliminaires

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH
BEPI	Office for International Mutual Assistance in Criminal Matters
CISA	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
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
CCBE	Council of Bars and Law Societies of Europe
CJEU	Court of Justice of the European Union
CC	Criminal Code
CCP	French Code of Criminal Procedure
DACG	Director of Criminal Affairs and Pardons of the Ministry of Justice
EIO	European Investigation Order
EIO Directive or Directive	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters
JIT	joint investigation team
e-EDES	e-Evidence Digital Exchange System
ENM	French National School for the Judiciary
mutual legal assistance	request for mutual legal assistance
COPEN Working Party	Working Party on Judicial Cooperation in Criminal Matters (Council of the European Union)
JIRS	specialised inter-regional court
JUNALCO	National Jurisdiction Against Organised Crime
EAW	European arrest warrant

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH
MDL	liaison magistrate
OPJ	judicial police officer
OTO	ordinary cross-border surveillance request – measure requested before any travel takes place
PNAT	National Counter-Terrorism Prosecutor's Office
PNF	National Financial Prosecutor's Office
EJTN	European Judicial Training Network
EJN	European Judicial Network in criminal matters