



Council of the
European Union

Brussels, 11 October 2023
(OR. en)

13910/23

LIMITE

COPEN 346
JAI 1273
EVAL 9
CATS 53
EUROJUST 35
EJN 16

NOTE

From: General Secretariat of the Council

To: Delegations

Subject: **EVALUATION REPORT ON THE TENTH ROUND OF MUTUAL
EVALUATIONS**
On the implementation of the European Investigation Order (EIO)
REPORT ON HUNGARY



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TENTH ROUND OF MUTUAL EVALUATIONS
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1. EXECUTIVE SUMMARY

During the on-site visit, the evaluation team had the opportunity to meet with Hungarian representatives from various levels and districts, who provided the evaluation team with presentations regarding not only the legal aspects of the implementation of EIOs, but also the practical issues related to the investigative measures which they encountered in practice. The evaluation visit was organized at a professional level, and the evaluation team appreciates the openness of the Hungarian experts during the discussions and the friendly atmosphere during the meetings.

Based on the documents provided (answers to the questionnaire and national legislation), discussions during the visits and responses to additional questions after the evaluation visit, the evaluation team concluded that the practical implementation of the EIO in Hungary works very well. The EIO Directive has been incorporated into Hungarian national law correctly. Nevertheless, the evaluation team found room for improvement by the Hungarian authorities and the other Member States, which led to the recommendations proposed in point 24.2.

However, the recommendations for HU are not of a serious nature. This is, for example, accepting EN as a second language not only in urgent cases, ensuring that practitioners acting as executing authorities always send Annex B to the issuing authorities and inform them about any delay in execution with the reason, or as issuing authorities, not to send an EIO for the execution as a classified document.

Most of the issues identified related to the situations where Hungary acted as the executing State, e.g., practitioners' lack of adherence to basic requirements when filling in EIOs, such as not providing clear descriptions of facts, legal classifications of offences, purposes of the requested measure(s), or not responding to requests for additional information, which resulted in delays in execution or, in some cases, even led to refusal.

Another problem occurred due to not respecting the formalities and procedures indicated by the issuing authority, such as, for instance, not notifying the defence counsel about the interview dates of the persons concerned or failing to provide information about the rights and obligations of the persons concerned, what may lead to the inadmissibility of evidence or the repetition of the procedural act.

Furthermore, practitioners from some Member States have a different understanding of the *ne bis in idem* principle as grounds for refusal and apply it in cases where the investigation was terminated against an unknown perpetrator.

Another problem stems from the different legal regulations related to GPS tracking without the technical assistance of recipient countries. Some Member States do not accept Annex C due to its telecommunications reference; therefore, they ask issuing States to issue an EIO. Furthermore, the legal regulations of some Member States do not provide for the possibility of an ex-post authorisation. However, according to recital 9 of the EIO Directive, the Directive should not apply to cross-border surveillance as referred to in the Convention implementing the Schengen Agreement (CISA). Thus, the evaluation team thinks that the Commission should clarify the application of the EIO Directive in relation to Article 40 of the CISA regarding the surveillance of vehicles where a GPS tracking device is used. A uniform approach is needed because when different instruments are used, and there is no possibility of an ex-post authorisation, it is impossible to use evidence obtained in the period between the notification via Annex C and the recognition of a subsequently issued EIO.

The Hungarian authorities also proposed reconsidering the order of sections in Annex A of the EIO Directive, as described in point 6.1.

As the best practice, the evaluation team consider the flexible approach of the Hungarian experts in the execution of the investigative measures falling under different territorial jurisdictions, where the prosecutor who receives the EVP carries out all investigative measures as far as they fall within the scope of the prosecutor's office, or designation of the GPO as the central authority for the execution and issuance of EIOs related to the regulatory offences for which administrative bodies can impose a fine since there are not many such cases or not requiring a hard copy of a judge's order be attached to EIOs (validation of EIO by judge is sufficient) and also creation of the European Law Advisors' Network (ELAN) for judges to assist and harmonize the activities of judges. The members of the ELAN are from all regions and work nationwide.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the international undertakings' application and implementation at the national level in the fight against organised crime has been established.

In line with Article 2 of the Joint Action 97/827/JHA of 5 December 1997, as agreed by CATS after an informal procedure following its informal meeting on 10 May 2022, the 10th Round of Mutual Evaluations will focus on the European Investigation Order (EIO), as set out in Directive 2014/41/EU.

The tenth mutual evaluation round aims 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 2014/41/EU - the European Investigation Order by practitioners in the context of criminal proceedings. It will allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

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 a 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 Directive 2014/41/EU.

Hungary was the seventh Member State evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 29 June 2022 by a silence procedure (ST 10119/22).

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in the evaluations to be carried out. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request sent on 15 June 2022 to delegations by the Secretariat of the Council of European Union.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the tenth round of mutual evaluations, it was agreed that the European Commission and Eurojust should be invited as observers (ST 10119/22).

The experts entrusted with the task of evaluating Hungary were Mr Christian Lorenz (Germany), Ms Anna Ondrejová (Slovakia), and Ms Liina Pohlak (Estonia). Observers were also present: Ms Kitty Hendriks (Eurojust), together with Ms Mária Bačová 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 findings arising from the evaluation visit that took place in Hungary between 25.4 and 27.4, and on Hungarian's detailed replies to the evaluation questionnaire, discussion during the on-site visit together with its detailed answers to the ensuing follow-up questions.

During the on-site visit, the evaluation team met with Hungarian representatives from the following institutions: the Ministry of Justice, the General Prosecutor Office, the Prosecutor's Office of the Capital, the Prosecution Office of Csongrád-Csanád County, the Regional Court Budapest, the District Court of Hódmezővásárhely, the National Bureau of Investigation (Operational Service, Special Operational Unit, Operational Department). After the on-site visit, a videoconference meeting with a representative of the Bar Association took place too.

3. TRANSPOSITION OF THE DIRECTIVE 2014/41/EU

In Hungary, the framework regulating all aspects of the application of the European Investigation Order (EIO) transposing the EIO Directive 2014/41/EU (EIO DIR) is contained in the Act CLXXX of 2012 on cooperation in criminal matters with the Member States of the European Union, part three, Chapter IV: “Legal assistance in the execution of the European Investigation Order” (EUCCM). It is a complex and detailed set of rules from Section 35 to Section 65D.

According to Section 2 of the EUCCM, in proceedings with Member States must be applied, with the exceptions provided for EUCCM, the Act XXXVIII of 1996 on international criminal legal aid (ICLA), the Act C of 2012 on the Criminal Code (CC) and the Act XC of 2017 on the Criminal Procedure Code (CPC).

The EUCCM is the priority and generally applicable legislative act regarding EIO. The ICLA, CC and CPC are the subsidiary legislation to be used if there is no specific regulation in the EUCCM on a particular issue. When an investigative measure based on an EIO is being executed, the legal framework to be used is the CPC. Therefore, regulations of the CPC prevail mainly during the execution of investigative measures, as CPC provides the rules on; how, by whom and within what legal framework should a specific investigative measure be requested or executed. EUCCM contains very limited legislation on how specific investigative measures should be executed. If such regulation exists in the EUCCM (like some provisions of the EUCCM on the execution procedure of hearing by videoconference requested in an EIO), these provisions are obligatory.

4. COMPETENT AUTHORITIES HANDLING THE DIRECTIVE 2014/41/EU

The competent authority for issuing an EIO are courts and prosecution offices, depending on the phase of the criminal proceedings. The other authorities that can initiate the issuance of the EIO are the Law Enforcement Agency (LEA), Tax Offices and administrative authorities, but it has to be validated by judicial authorities.

The Hungarian court is involved in the application of the EIO in two ways, as an issuing and as an executing judicial authority. Investigating judge only on a motion, standard judge on his/her initiative or based on a motion and enforcement judge to a minimal extent. the courts are involved furthermore when they validate an EIO if an investigative measure to be asked for by means of an EIO needs domestic approval beforehand.

When executing EIOs, at the investigation phase of domestic criminal proceedings, the prosecution office supervising or directing the investigation is entitled to issue an EIO; at the trial stage, the court in charge of the case has this competence. An incoming EIO is executed by the prosecution office or court, which would have competence for the offence underlying the EIO under Act XC of 2017 (CPC) and whose territorial jurisdiction covers the place where the requested investigative measure is to be carried out.

When issuing an EIO, the prosecutor supervising, directing or conducting the investigation turns to the investigating judge for the validation of Section L of EIOs aiming at some covert measures (e.g. search of an advocate's or notary's office, seizure of evidence related to the advocate's or notary's activity) or the observation of mental condition.

If the investigating judge is authorised to order a procedural measure during the investigation, the public prosecutor submits the EIO with the motion to investigating judge for decision. If the court rejects the public prosecutor's request, it returns the EIO to the public prosecutor. If the conditions for ordering the procedural measure indicated in the public prosecutor's motion are met, the court approves the EIO by completing section L of the form.

The competent authority for recognizing and executing the EIO is the district court, or the public prosecutor with competence based on CPC, to investigate the criminal act underlying the EIO. When an investigative measure based on an EIO is being executed, the legal framework to be used is the CPC. If the competence of the public prosecutor cannot be determined, then the district public prosecutor is competent to execute the EIO. For incoming EIOs, the nature of requested measures and the stage of criminal proceedings determine whether PPO or court will execute an EIO. The choice between chief or local PPO is based on legal qualification underlining EIO. Territorial jurisdiction for PPOs and courts depends on where procedural measures identified in the EIO should be conducted, where the person to be heard or questioned resides or is present or established, or where the physical evidence can be found.

If the EIO requests several procedural measures or measures to be conducted in several places, or the place where the procedural measure is to be undertaken cannot be determined, the court or public prosecutor that acted earlier is competent. Where the court or prosecution office receives an EIO, the execution of which falls outside its subject matter or territorial competence, it must be transmitted without delay to the competent court or prosecution office and inform the Member State authority. The EIO submitted related to a legal person must be executed by the court or public prosecutor in whose jurisdiction the legal person is established or present.

To ensure the effective execution of the EIO, the prosecutor general or the supervising prosecutor can, by the order, to delegate the competence to a public prosecutor without jurisdiction to execute the EIO.

Concerning the possibility of executing an EIO issued by an administrative authority, the Hungarian authorities specified that in criminal proceedings, only EIOs issued or validated by a judicial authority could be executed in Hungary. The Hungarian Act on Legal Assistance of Infringement Proceedings concerns the regulatory offences for which administrative bodies can impose a fine. The General Prosecution Office (GPO) is designated as the central authority for issuing and executing such EIOs (Article 4(b) of the Act on EIO). The reason for such regulation is that there are not many such cases, so Hungary considers having one centralised body better and more practical. Thus, GPO receives the EIO, decides on the execution thereof, consults the issuing authority if necessary, and forwards the EIO to the competent court or infringement authority for execution. Once the requested measures have been carried out, the court or infringement authority sends the outcome documents to the GPO, which transmits them to the issuing authority.

Where an EIO is put forward for an act that constitutes a criminal offence under the law of the Member State but qualifies as an infraction under Hungarian law, the court or the prosecution office must transmit the EIO to the central authority (GPO) specified in the EUCCM for execution and inform the Member State authority accordingly.

The EIO may be issued ex officio by the court or the infringement authority where proceedings are pending. However, proceeding parties have the right to initiate obtaining any kind of evidence or the execution of any kind of procedural measure. This also includes the right to initiate the measures to be executed and evidence to be obtained via EIO. If such a motion is dismissed, the person concerned has the right to appeal against the decision.

During the videoconference (VDC) meeting with the evaluation team, the representatives of the Bar Association stated that in several cases, they proposed the issuance of an EIO; however, it was in cases where they represented the victims. As they said, they have not encountered a case yet where the competent authority would refused to send an EIO based on their proposal. They also added that the proposal contained information about the data or evidence that can be obtained through the EVP, as well as an explanation of why they are needed and why it is essential for the investigation.

There is no designated central authority for EIO in criminal proceedings. However, GPO is informed for statistical purposes only for the collection of data-central statistical evidence. PPOs are not obligated to notify GPO about each EIO, but individual cases are sometimes reported.

If Hungary is asked for execution, it is always a district court, but to issue EIO, it is always the court where the procedure runs. Usually, evidence is collected at the first instance, but in theory, there might be cases that the second instance court also issues EIO or MLA to collect some fractional evidence because of missing them in case.

The third-level court does not issue EIOs because there is no evidentiary procedure during this highest level. The court of second instance (either a tribunal or a regional court of appeal for special cases) may issue the EIO.

For dealing with urgent EIOs, a guideline was issued by GPO, providing that each request has to be complied with within the time limit set in EIO and PPOs are obliged to follow the time limit. If the EIO is labelled urgent, whoever acted first, will execute it. And if the executive authority does not have competence, it should forward the case to that which has the competence. However, there is exceptional jurisdiction for competence regulation in a very urgent case where it would cause delay.

5. SCOPE OF THE EIO AND RELATION TO THE OTHER INSTRUMENTS ACCORDING TO THE NATIONAL FRAMEWORK

According to Hungarian law, except for setting up a JIT or gathering evidence within a JIT, an EIO can be issued for any investigative measure stipulated in CPC, which is aimed at obtaining evidence. The court or the prosecution office may, in an EIO, initiate the performance of any procedural act suitable for getting evidence under the CPC, provided that it is necessary and proportionate in the criminal proceeding and the procedural act indicated in the EIO that could be performed under the conditions set out therein also under Hungarian law.

Hungarian prosecution offices, acting as the issuing or executing authority, have not encountered considerable difficulties identifying the investigative measures for which an EIO can be issued. The Joint Note of Eurojust and the EJM on the practical application of the EIO are considered helpful support to practitioners.

The Hungarian legislation does not provide for the possibility of using EIOs for purposes other than gathering evidence. However, difficulties are reported in some cases due to the diverse nature of the IMs or because of the divergent national legislation of the Member States concerned: the issuing and the executing authority have different views on the applicable legal instrument.

Hungarian practitioners encountered cases where the issuing authority, besides the IMs, asked to serve a judgment or seize money that can be regarded as evidence but also for confiscation. In these cases, the Hungarian prosecution offices concerned took a flexible approach to enable execution. As for Hungarian experience as an executing State, it is still common for some Member States to ask for mutual legal aid without issuing an EIO.

When judgments or other judicial decisions are requested, the transmission of judgments handed down in another Member State is mainly requested for considering a previous conviction of the suspect as aggravating circumstances. As this is not considered evidence gathering, convictions were usually requested by Hungarian authorities through EJM contact points or Eurojust, or a letter of request was issued based on the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Strasbourg). However, practitioners reported that in many cases, the requested authority insisted that an EIO should be issued for providing the judgement. Hungarian prosecution offices acted accordingly to resolve the issue. Obtaining a judgement, however, according to some Member States' legislation may also serve for evidentiary purposes in some cases where the application of an EIO can be justified. As for judgments, sometimes it is unclear whether it is requested for evidentiary purposes or other processes.

Courts have also indicated that, in practice, there were cases where other Member States' authorities issued an EIO to obtain copies of judicial decisions or court documents. Hungarian judges had executed the EIO as executing authority but at the same time informed the issuing authority that it would have been more appropriate to apply an MLA.

There have been cases where an EIO has been issued as the issuing authority, in which case the MLA has been supplemented on request. An EVP can be sent to a prisoner from another Member State through the prison, but the delivery of an official document is only possible within the framework of the MLA convention. If a request is made in the EVP to interrogate the accused and deliver the documents to the accused, the documents can be delivered to the accused for questioning, which must be recorded in the protocol. Hungarian authorities reported that in 2018-2019, 21 rogatory letters were received as EIOs. These were apparently received in this form due to initial anomalies in the interpretation of the law and were largely executed in accordance with the principle of loyal cooperation.

EIO and phases of the criminal proceeding.

An EIO can be used both during the criminal proceedings' investigation and trial phase. Under Hungarian law, the execution of sentences or the enforcement of other final decisions falls outside the concept of criminal procedure; thus, EIOs are not applicable at that stage.

As the executing state, only one EIO was received at that stage; this EIO was aimed at investigating the assets and income of a convicted person. On the issuing side, consequently, no problem has arisen in this context.

EIO and purpose of locating persons.

Hungarian prosecution offices reported that they issued as well as received EIOs to locate persons, primarily to conduct the hearing of the person concerned as a suspect or witness. On the contrary, EIOs indicating the subsequent transmission of an EAW or a certificate under Framework Decision 2008/909/JHA have not been issued or received.

In the judicial phase, only in the case of the issuing authority have some cases where EIOs were issued for the purpose of locating persons, for example, requirements for data from the address register.

Hungarian prosecution offices and the courts have issued or received no EIO to obtain the personal data necessary to enforce an administrative decision.

EIO and freezing order

Hungarian prosecution offices received several EIOs aimed at victims' restitution or seizure with a view to confiscation but usually combined (means house search and seizure) with other investigative measures for evidence gathering. These EIOs were executed. If it is clear that the seizure is for confiscation, the EIO will not be executed. The main criterion for delimitation is the purpose for which the evidence is collected; if the object concerned is needed as evidence, then the EIO is issued. In the case of securing objects for confiscation, then the freezing order is applied. The problem is that the objectives may be simultaneous or consecutive coexist.

EIO DIR or EAW

Prosecution offices reported that no such problems have arisen in relation to the temporary transfer of a person. On the other hand, it is reported that courts encounter difficulties as it would not be easy to choose between EIO and EAW due to the different legal basis of both instruments. An EIO may be issued for the temporary transfer of the person to the issuing State, and the EAW is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person to conduct a criminal prosecution or execute a custodial sentence or detention order. Taking the person to court for trial is also a taking of evidence, i.e. there is an overlap. That happens when the defendants are detained in another Member State, and the national authorities seek a way to hear them either at court or prior to that.

Considering the need to protect the fundamental rights of a person affected by investigative measures, then Hungarian authorities pointed out that the EIO serves to question the suspect by videoconference. Issuing an EAW is appropriate if the consent of the person concerned was not required for the temporary surrender, giving the issuing authorities a broader legal basis for arrest in the executing Member State. A statement of reasonable suspicion is not a prerequisite for an indictment if the conditions for proceeding in absentia are otherwise met, so there is no reason to issue an EIO.

Courts have found that in German-speaking countries, especially in Germany, they expect that if a person/defendant in their custody is needed for a longer period by a court in one of the Member States, they will only hand him/her over by issuing an EAW.

EIO and JIT

The national legislation provides that an EIO can be issued for any investigative measure stipulated in CPC, which is aimed at obtaining evidence, except for setting up a JIT or gathering evidence within a JIT.

Hungarian prosecution offices have not encountered problems in situations where an MS, which is a party to a JIT, issued an EIO on behalf of the JIT and reported that the data, information, evidence, etc., will be submitted to the JIT and therefore shared with other MS through the JIT channel.

6. CONTENT AND FORM OF THE EIO

6.1. Challenges

Hungarian prosecution offices have relatively often received incomplete, inconsistent or inaccurate EIOs. Just to mention a few examples: no clear description of the purpose and subject of the requested search or seizure, incorrect or incomplete identity or bank account details, no clear indication if the person concerned should be heard as a suspect or a witness, lack of the facts and legal classification of the suspicion in an EIO for suspect hearing, missing attachments. In these cases, the executing Hungarian prosecutions office consulted the issuing authority for clarification and/or additional information. Courts, as the executing authority, have some cases in which the content of the EIO was incomplete, inconsistent or inaccurate, but following the call for the shortcomings, have been filled.

Courts, as the executing authority, had also received EIOs where the content of the EIO was incomplete, inconsistent or inaccurate, but following the call for the shortcomings, it was amended.

EIO form and improving Annex A

Hungarian prosecution offices have not encountered significant problems with completing the EIO form. However, until the CJEU judgment in case C-324/17, it was unclear whether the available legal remedies should be indicated in Section J.

Regarding improving Annex A, it was noted that the sequence of Sections could be reconsidered. In particular, it was pointed out that since the grounds for issuing the EIO, including the facts of the case, are summarised in Section G, the structure of the form would be more logical and manageable if this Section preceded the description of the requested investigative measures (Section C). Besides, Section C has a very close logical link to Section H and Section I, which could be reflected in the order of Sections, or these Sections could be merged.

In addition, as information on remedies available in the issuing State can often be important for the executing authority, considering the CJEU ruling mentioned above, the rewording of Section J is proposed.

It is also suggested to introduce a Section in which attachments to the EIO could be indicated.

Courts indicated that there were no significant problems. However, having a Section where you could enter further helpful information would be beneficial.

6.2. Language regime

When Hungary acts as the issuing authority, EIOs are translated into the target languages. In some urgent cases where EIO concerned the MS, whose language is less frequent, the executing authority did not accept the English translation. To resolve this, the Hungarian National Desk at Eurojust was requested assist in translating into the required language at short notice.

Based on Article 33(1)(b) of the EIO Directive, Hungary submitted the following notification to the Commission: if Hungary acts as the executing State, EIOs are accepted only in Hungarian; in urgent cases, or were submitting the EIO in Hungarian is extremely difficult, it will accept the EIO in English, French or German. Despite this notification, Hungarian prosecution offices sometimes received EIOs in English, French or German without any reference to urgency. In these cases, the issuing authority was requested to attach the appropriate translation. In other cases, the poor quality of the Hungarian translation caused difficulties in interpreting and executing the EIO, which could be overcome by consulting the issuing authority.

Hungarian practitioners noted that in super urgent cases, e.g., controlled delivery, the EIO in EN, DE, FR or even SK languages it is possible to forward directly to LEA, specialised to deal with such execution, without the translation since they speak different languages. If EIO is received in a language they do not know, it is sent to translators from the on-call list who can translate it very quickly.

6.3. Multiple requests in one EIO

In cases where the Hungarian authorities issue an EIO for the performance of multiple procedural acts, they may be inserted into a single EIO, but only if the same authority is competent to order every procedural act concerned.

About the cases involving multiple executing authorities and eventual problems due to the lack of a centralised point for coordination in the executing Member State, Hungarian authorities reported that, in some cases, after prior consultation EIOs were sent to several executing authorities in the same Member State; however, the receiving executing authority forwarded the EIO to several prosecution offices, invoking different territorial jurisdiction. Due to the lack of coordination in the execution MS, the outcome documents were transmitted at different times, making it difficult to monitor the progress of the execution.

Courts have not had cases involving multiple procedural acts.

The criterion for the execution of EIO with several investigative measures is who receives it as the first will execute all of them. For example, if the district PPO that received the EIO is competent to execute at least one of them, it will execute all measures, regardless of territorial competence. The CPC stipulates which level of PPO is competent according to the gravity of offences, e.g., for severe crime (murder), it will be forwarded to a higher level of PPO (chief PPO), otherwise that PPO who received it. The PPO from one district may go beyond territorial jurisdiction; it is a practice. If a measure is supposed to be carried out in the other district, PPO can ask LEA from another district to execute EIO if it concerns several locations. However, the issuing authority is informed about this.

6.4. The issuance of the additional EIO, splitting of EIO, conditional EIO

Hungary has changed their approach when dealing with EIOs issued for several measures related to a different jurisdiction due to the negative experience in the past because the executions lacked coordination. Thus, when Hungary acts as executing authority, they do not ask issuing authorities to split the EIO if issued for several measures.

They have the same approach when acting as issuing authorities. However, if the EIO was issued for several measures, it sometimes happened that the Hungarian issuing authority had received incomplete execution, and the complete execution had to be consulted.

Concerning the additional EIO, Hungarian authorities ask to issue an additional EIO if new facts were found during the execution of the EIO, e.g., if a new location for the search was identified or a new investigative measure had to be executed or not executed fully. In cases where a typo in EIO occurred, e.g., an incorrect phone number etc., it was sufficient to provide the correct data via email.

When Hungary acted as issuing State, there was a case where it asked to wiretap the phone numbers of several suspects, but due to misspelt data in the EIO, the new EIO had to be issued. Generally, when typos in EIOs occurred, the executing authorities agreed to provide them with the correct data via email.

Hungarian prosecution offices, neither as the issuing nor as executing authority, have not encountered problems with additional EIOs or splitting of one EIO into several or conditional EIOs. Such cases occurred very rarely in practice.

6.5. Orally issued EIO

The Hungarian legislation does not provide for the possibility to issue an EIO orally or to execute an EIO issued that way. However, in urgent cases of great gravity, the competent prosecution office notifies its counterpart of the forthcoming EIO, usually with the assistance of Eurojust, so that the necessary preparatory measures can be taken in time. Simultaneously, competent law enforcement authorities also get in touch and exchange information. As a result, upon receiving the written EIO, the execution of the requested measures can be launched instantly.

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

As issuing State, Hungarian authorities first consider if the evidence located abroad is indispensable to clarify the facts of the case. Then, as a second step, they examined whether a domestic investigative measure may achieve the same outcome, as, for example, the witness to be heard is living or working abroad but occasionally travels to Hungary. In this case, the investigative authority seeks to contact him/her and arrange the interview in Hungarian territory. Besides, it is also under consideration whether the necessary evidence is likely to be obtained through an EIO. The EIO will not be issued if the proceedings can be conducted in the absence of the suspect.

The legality principle obligates the issuing authorities to verify whether the measure could have been ordered in a similar domestic case under the same conditions.

Proportionality checks are carried out mainly in cases of investigative measures which would restrict the fundamental rights of the person concerned. Section 2(3) of CPC states that in criminal proceedings, a fundamental right might be restricted only if the purpose cannot be reached by any other procedural act or measure involving lesser restriction. This rule applies to investigative measures requested in EIOs as well. Therefore, the Hungarian authorities will, for example, use a production order instead of a search and seizure if it is sufficient in the given case and considering the circumstances of the case.

As executing State according to the provisions of national legislation, immediately following the receipt of an EIO, a court or prosecution office must examine whether the conditions for the execution under Hungarian law are met and if it is reasonable to assume that the issuance of the EIO was unjustified or disproportionate in a way that is inconsistent with the rights of the person concerned, may consult the Member State authority as regards the execution.

The execution of a few EIOs issued by the Hungarian prosecution office was refused on grounds related to proportionality. In some cases of fraud involving minor damage, the executing authority invoked the de minimis principles. In the case of the EIO issued for obtaining electronic evidence, the executing authority argued that it would breach the requirement of proportionality to seize data stored on a mobile phone or personal computer for evidentiary purposes if the data have not been previously selected or if the relevant selection criteria are not otherwise indicated. However, no consultation procedure took place in these cases.

As the executing authority, Hungarian prosecution offices have not found any EIOs received contrary to the requirement of necessity or proportionality. Courts have not encountered cases in which the EIO was not necessary and/or not proportionate.

Special investigative techniques may only be ordered in the EIO if the evidence to be acquired is indispensable for achieving the purpose of the criminal proceeding and cannot be acquired by other means, and its use does not restrict any fundamental right in a disproportional manner considering the law enforcement goal, and thus, the aimed evidence can likely be obtained that way. Given the above, an EIO issuing is necessary if investigation means cannot replace the evidence. Criteria are the gravity of the criminal offence, public interest, and whether more lenient measures could be applied.

Moreover, the most intrusive special investigative measures subject to judicial permission, such as wiretapping, may only be requested if the investigated offence has been committed intentionally and is punishable by at least 5 years imprisonment. Recourse to different IMs happened quite rarely. Hungarian authority tries to comply with requirements.

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACTS

The EIO may be transmitted directly to Hungarian authorities in a manner that allows the establishment of its authenticity. An EIO is considered duly put forward also if the Member State authority transmits the EIO through the secure telecommunications system of the European Judicial Network or the Eurojust.

In most cases, Hungarian prosecutors have successfully identified the competent executing authority using the EJM Judicial Atlas. Difficulties arose when the Atlas did not contain all the information requested (e.g., for some countries, the e-mail addresses of the authorities are not indicated; for other countries, the information on the executing authorities has not been updated for a long time), the evidence to be obtained was located in different places in the requested State, or the EIO was issued to carry out several types of investigative measures. The assistance of EJM contact points or Eurojust was requested to overcome these difficulties.

Regarding the transmission of the EIO by email and whether or not it should also be sent by post or the secure systems (encrypted), which should ensure data protection when transmitting documents in electronic form, for the Hungarian system, it is sufficient to transmit the EIO by electronic means, as far as that makes it possible to confirm the authenticity of the EIO.

Courts have noted that to ensure data protection, it could be used a separate electronic system and that there was a similar system on the EJM home page, but it hasn't worked yet. They transmit EIO both by post and email.

About the communications after the transmission of the EIO between the issuing and executing authorities, it was stated that these usually take place directly. Eurojust provides crucial support for urgent requests or complex cases in timely and effective communication. In case of difficulties, the direct exchange of information applies, or EJM or Eurojust is asked for assistance. Also, investigative authorities use direct contacts to facilitate communication.

9. RECOGNITION AND EXECUTION OF EIO AND FORMALITIES

The court or the prosecution office must immediately, after the receipt of an EIO, examine whether the conditions for its execution are met and must decide on execution within not more than thirty days from the receipt of the EIO, taking into account any request by the Member State authority as regards execution as a matter of priority and any date set for the performance for the procedural act indicated in the EIO. If the decision on the execution of the EIO cannot be taken within the time limit, the court or the prosecution office must immediately inform the Member State authority accordingly, specifying the reasons for the delay. In such a situation, the decision must be taken within sixty days of receiving the EIO.

Once the court or prosecutor's office has reviewed the request and assessed all admissibility profiles, it either orders the EIO to be executed or refuses it if the conditions for proceeding are not met.

The EUCCM provides specific provisions on how to handle cases concerning the presence of the different grounds for refusal, communications to the requesting authorities of the existence of the grounds for total or partial refusal, hypotheses in which the EIO cannot nevertheless be refused, the possibility of requesting additional information from the requesting authority, and the modification of requests by the latter.

The whole discipline appears to conform to the idea of ensuring the possibility of removing obstacles to the execution, at least partially, of the requests indicated in the EIO through communications, consultations and confrontations.

Regarding the formalities to be observed for the execution of the requested activities, Hungarian PPOs reported that sometimes they receive EIOs where, due to a lack of information in Section I, it was not entirely clear how to carry out the requested investigative measure. For example, concerning hearings, uncertainty arose regarding the defence counsel, the applicable legal warnings or other procedural formalities. In these cases, the issuing authority was consulted for clarification. Courts, as the executing authority, have not encountered cases in which the issuing authority had not completed Section I.

Hungarian PPO and courts have not encountered any cases of refusal to comply with certain formalities as they were considered contrary to ‘fundamental principles of the law’ of the executing state, neither as the issuing nor as the executing authority.

Regarding the execution phase, Hungarian law includes specific provisions, i.e., that any procedural act suitable for obtaining evidence which can be carried out under Hungarian CPC will be executed, provided that the corresponding procedural act concerned would also be carried out in Hungarian criminal proceeding for the offence underlying the EIO offence. Hungarian law applies to the execution of the procedural act specified in the EIO.

It is also provided that, at the request of the MS authority, the rules specified in the request must be applied to the execution of the procedural act, provided that their rules and methods are not inconsistent with the fundamental principles of the Hungarian legal system. If this is impossible, the requesting authority is informed of the requirements for proceeding. Hungarian authorities stated that they had not encountered any cases of refusal to comply with certain formalities due to being considered contrary to fundamental principles of the executing State law neither as the issuing nor as the executing authority.

At the request of the Member State authority, the court or the prosecution office must enable an authority of the Member State to be present at the performance of the procedural act if this is not inconsistent with the fundamental principles of the Hungarian legal system; or does not harm essential national security interests of Hungary, or the member of the Member State authority may be present at the procedural act under the law of the Member State concerned. As regards the matter of the essential national security interests of Hungary, the position of the Minister or the Prosecutor General shall be decisive.

10. ADMISSIBILITY OF EVIDENCE

Hungarian prosecution offices, concerning any problems related to the admissibility of evidence stemming from non-compliance with certain formalities or procedures in the execution of the EIO, indicated that in the case of some EIOs aimed to hear a suspect or witness, the executing authority did not comply with relevant formalities or procedures: notifying the defence counsel of the interview, providing information to the person concerned on his/her rights and obligations, informing the suspect about the facts and legal classification of the suspicion. In these cases, investigative measures had to be repeated. Otherwise, the evidence would not be admissible.

Courts have not encountered any problems related to the admissibility of evidence stemming from non-compliance with certain formalities or procedures in the execution of the EIO.

Hungarian Courts do not require the issuing authority to attach the relevant judge's authorisation when the EIO relates to investigation measures for which a court must authorise in Hungary. Based on the principle of mutual trust and the opening sentence of Annex A ('This EIO has been issued by a competent authority'), Hungarian authorities assume that the EIO has been issued in conformity with the issuing Member State's law; therefore, no further document in respect of authorisation is required.

11. SPECIALITY RULE

Hungarian legislation contains specific regulations to observe the speciality rule in the context of a temporary transfer of a detained person to Hungary and vice versa to a Member State. Section 63(6) and Section 63/A (2) EUCCM state that no criminal proceedings may be launched in Hungary against this person for an offence committed before the transfer. Furthermore, this person must not be deprived of freedom in another way or found guilty.

If, during the process of executing an EIO, evidence was gathered which indicates that a crime had been committed in Hungary besides the one the EIO was based on the principles of legality and ex officio proceedings stipulated in Section 4 (1) CPC obliges Hungarian prosecution offices to launch a new domestic investigation.

As long as there is no connection between these proceedings, Hungary will not notify the issuing authority on this. Otherwise, in case of close links and especially when the need for a coordinated approach emerges, a consultation process will be initiated to avoid running the risk of a double prosecution and to identify a common strategy for the best way forward.

When issuing authorities seek consent to use the evidence collected in other proceedings which had not been subject to a Hungarian EIO, the speciality rule also doesn't hinder this. It will be therefore given as long as there is no clear ground for refusal according to Section 40 EUCCM which corresponds to Article 11 of the EIO DIR.

As issuing country Hungary doesn't ask for consent if the evidence provided by the executing country is to be used in other domestic proceedings since the EIO DIR does not comprise any usage limits.

Restrictions may only arise due to specific regulations in national law, e.g. if evidence was collected by means only applicable in investigating of a severe offence while the other proceedings were launched for minor offences. As issuing authority notably Hungarian courts faced some problems with their requests for a temporary transfer mainly towards German speaking countries, since the latter one demanded an EAW as appropriate instrument if the detained person should be transferred for a longer period, which means at least some months, even if this was not exactly quantified.

If, for example, the Hungarian EIO requested the execution of covert measures, evidence collected during this process could only be used in another domestic Hungarian proceeding when the same measures could have been asked likewise in the context of this investigation.

12. CONFIDENTIALITY

According to Article 19 (2) of EIO DIR, the executing authority must guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute the investigative measure. If the executing authority cannot comply with the confidentiality requirement, it must notify the issuing authority without delay.

According to Section 65A (7) of the Act CLXXX, in the course of the execution of the European Investigation Order, data relating to execution are protected by classification by the rules laid down in the Act on the protection of classified data, the classification of data cannot be an obstacle to the transfer of the outcome of the execution and the data recorded. At a request by the Member State authority, the entity which classified the data must review the classification and, where possible under an Act, declassify the data.

Another provision concerning confidentiality is stipulated in Section 40 (1)c of the Act CLXX, which states that the court or the prosecution office may refuse the execution of a EIO if execution would jeopardize an informant, confidential informant, other person cooperating in secret with the Hungarian authority or undercover investigator or the activities thereof.

If Hungary is the issuing State, upon a motion for disclosure, the EIO, along with all the other case documents, must be disclosed to the defendant and his/her defence counsel after the suspect interrogation in accordance with Section 100 (1) of the CPC.

However, regarding the interests of investigations, the court, the prosecution service and the investigating authority may restrict the right to inspection or any method of inspection concerning case documents specified by them until the investigation is completed; a decision must be adopted on any such restriction (section 100(6) and 100(6a) of Act XC of 2017 (CPC) .

If the proceeding is conducted for multiple acts, and there is at least one act concerning which the suspicion is not yet communicated; in such a case, the court, the prosecution service and the investigating authority may adopt a decision and restrict the right to inspect case documents (section 100(6a) and 100(6a) of Act XC of 2017 (CPC) .

As the issuing authority, Hungarian prosecution offices have not encountered problems in this context, and no notification under Article 19(2) has been received. The same applies to acting as the executing authority. The incoming EIOs are not disclosed to anyone concerned; the confidentiality requirement is complied with; thus, no notification under Article 19(2) needs to be sent.

If Hungary is the executing State, according to the guidelines of the Office of the Prosecutor General of Hungary and in line with Article 19(2) of the EIO Directive, the EIO must not be disclosed to the person(s) concerned due to data protection and the interests of the investigation conducted in the issuing Member State. As far as the requested investigative measure (e.g., seizure) requires the executing authority to issue a decision in conformity with the domestic law (CPC), this decision will be served on the person concerned. The domestic decision is disclosed to the person concerned, not EIO itself. The EIO is a part of a case file and cannot be disclosed until the investigation is terminated or if the disclosure of the information could harm the ongoing investigation. However, the whole file together with EIO is accessible for accused and defence lawyer after accusation.

During the meeting with the representatives of the Bar Association, it was confirmed that the defendant and defence lawyers had full access to the file after the accusation. During the investigation phase, it is up to the investigation body decision what kind of documents could be accessible, whether they allow access to all documents or just a part of them not to jeopardise the investigation. Full access to the file also includes access to the EIO; thus, it is obvious what kind of evidence was requested and obtained through the EIO since it also contains a list of evidence sent by foreign authorities.

During the investigation, the financial service provider must not inform any person about the surveillance of payment transactions, and it must ensure that all related information is kept a secret. The requirements of Article 19.4 of EIO DIR are covered.

As an executing country, Hungary does not require the judge's order for investigative measures to be attached to the EIO as an executing country. Hungary does not attach the judge's order for investigative measures to the EIO as the issuing country.

Hungarian prosecutor had encountered a case where the Czech Prosecutor's Office sent an EIO as a confidential document. The Czech Prosecutor's Office forwarded it to the judge, who has not got access to the classified content, so without reading it, the judge rejected the EIO because of this. Afterwards, Hungarian prosecutors sent EIO again to the Czech as the opened document, which then was recognized and executed..

From the presented Hungarian legislation and from the explanations given in addition, it does not appear that Hungary has significant problems in the implementation of Article 19 of the EIO DIR.

13. GROUNDS FOR NON-EXECUTION

EIO is an instrument based on the principles of mutual trust and recognition, the execution of which constitutes the rule, and refusal to execute is intended to be an exception that must be interpreted strictly. But the principle of proportionality and the procedural and fundamental rights of the person concerned must be respected.

The grounds for refusal of the execution of the EIO are provided for in Section 40(1) Hungarian law. The settings for refusal are optional /...may refuse the execution.../. Some grounds are adoption of Article 11(1), but also deriving from Article 24(2b) and 16(2). Section 40(1)h does not derive from the directive, but the language requirement of the EIO must ensure that the Hungarian authorities understand the EIO.

According to Section 46(3) of the Act CLXXX, at the request of the Member State authority, the rules and technical methods specified by the Member State authority must apply to the performance of the procedural act, provided that these rules and procedures are not inconsistent with the fundamental principles of the Hungarian legal system.

Under Section 42 (1), the court or the prosecution office must inform without delay the Member State authority if a ground for refusal exists and an enforceable procedural act other than the procedural act indicated in the European Investigation Order exists under Hungarian law that could lead to obtaining the evidence that is intended to be obtained using the European Investigation Order. It is for the implementation of Art 10.3 of EIO DIR. Recital 11 of EIO DIR also stipulates that executing authority should be entitled to opt for a less intrusive investigative measure than the one indicated in an EIO if it makes it possible to achieve similar results.

According to Hungary, most EIOs are executed timely and in line with the request. The number of refusals is very low.

In a few cases, the EIO received was incomplete or inaccurate to the extent that it did not allow execution, and additional information was not provided even upon the Hungarian prosecution office's request, leading eventually to a refusal.

For the implementation of Article 11.4 of EIO DIR the same principle is prescribed in Section 43 (1) that the court or the prosecution office must inform the Member State authority without delay if any ground for refusal under Section 40 (1) a) to c), f) and i) arises, and initiate a consultation.

Hungarian judges pointed out that in addition to the grounds for refusal set out in the EIO DIR, enforcement also may be refused under Hungarian law, e.g., if the procedural act specified in the EIO is not known under Hungarian law or the conditions for its performance are not met. As the executing authority, there were examples of refusal on formal grounds; however, in most cases, in addition to deficiencies, based on the principle of mutual trust, the EIO's performance has been taken place. However, grounds for refusal were always applied only as a last resort.

Courts and Prosecutor Offices' experiences are different in the case of issuing authority. If the execution of an EIO issued by a Hungarian prosecution office was refused, the executing authority usually did not consult the issuing authority beforehand. Courts exchange information with the relevant authority when an issue relating to a possible refusal arises, both as the executing and issuing authority.

In one of these cases, the non-compliance with the requirement of proportionality was also invoked.

One prosecutor's office reported that when Hungary acted as issuing country, the EIO was refused because the witness to be heard must be interrogated as a suspect according to executing authority's point of view. The executing country refused without consultation.

13.1. Dual criminality

Hungarian law provides that the execution of a European Investigation Order may be refused if execution would be contrary to the principle of double criminality as stipulated in Section 40 (1)d of Act CLXXX.

However, according to Section 41 (2) of the Act CLXXX, the double criminality must not be examined, and the execution of the EIO must not be refused according to Section 40 (1) d) of the Act CLXXX in the following cases:

- a) as regards criminal offences listed in Annex 1, if the criminal offence concerned is punishable by imprisonment for not less than three years or by a custodial measure in the Member State concerned;
- b) if the act qualifying as a criminal offence under Hungarian law constitutes an infraction under the law of the Member State; or
- c) if the Member State ensures reciprocity in this regard.

The principle stated in Article 11 (3) is provided for in Section 41(3) of Hungarian law (relating to taxes, duties, customs or exchange).

If the execution of an EIO issued by Hungarian was refused, mostly lack of dual criminality was the ground for that. When Hungary was the executing State, the lack of dual criminality was mostly invoked similarly. If the lack of dual criminality arose as a possible ground for refusal, the executing Hungarian authority usually exchanged information with the issuing authority.

In a few cases, the execution of the EIO received by a Hungarian prosecution office was refused, invoking the lack of dual criminality although the EIO was related to an investigative measure listed in Article 10(2) of the EIO DIR (interrogation). For example, Slovakia asked to interrogate the suspect for tax evasion. However, according to Hungarian Law, non-payment of taxes is not a crime without fraudulent activity. The first Hungarian prosecutor refused the EIO. Slovakian authorities contacted Eurojust, and Eurojust indicated that under article 10 (2) of EIO DIR, such grounds cannot be applied since this requested measure has always to be available. After discussion, the Hungarian prosecutor changed his point of view, and the EIO was executed. Prosecutors stated that in the past, there have also been German complaints as well or Austrian because of the refusal of suspect interrogation due to lack of dual criminality.

Afterwards, the General Prosecutor's Office provided guidelines to avoid refusing to execute EIO based on Hungarian legislation because these investigative measures are exceptions from the ground of refusal. However, two or three years ago, the corresponding changes were introduced into domestic law. Such cases are no longer a problem.

Courts have not encountered cases in which the dual criminality test was invoked/applied in relation to one of the investigative measures listed in Article 10(2) of the EIO DIR.

According to the provided information, there have not been any cases in which the dual criminality test was invoked/applied in relation to the categories of offences set out in Annex D.

13.2. Ne bis in idem

For the implementation of Article 11(1)(d) of EIO DIR, the Section 40 (1) f of the Act CLXXX provides that the execution of a European Investigation Order may be refused if, in Hungary or another Member State, the act serving as the basis for the European Investigation Order has been adjudicated with final and binding effect or a decision has been adopted on the merits of the act that, under the law of the Member State in which the decision has been adopted, constitutes an obstacle to instituting a new criminal procedure for an identical act.

In answers to the questionnaire, Hungary stated that, as an issuing authority, they had cases where the execution of EIO was refused based on the principle: ne bis in idem. However, no further details about the case were provided during the on-site visit.

Hungarian practitioners noted that any decision that became final does not allow opening or continuing criminal proceedings for the same crime against the same person. However, the decision of investigation authorities is not enough to be considered as ne bis in idem type decision. Suppose the case was terminated due to the lack of evidence; in that case, it is possible to reopen the investigation based on new evidence and the decision of the investigative judge if new evidence is enough to reopen the case. It is decided case-by-case basis.

Hungary encountered a case where the understanding of the ne bis in idem principle by the Austrian authorities was understood differently. In the given case, the Austrian authority closed the case against an unknown person, and, according to them, the ne bis in idem principle applied to such a decision.

If another MS has started the procedure against a Hungarian citizen, opening or registering the procedure was unnecessary. If, for example, another MS closes the procedure against a Hungarian citizen, Hungary does not have to continue the procedure.

When during the execution of EIO, it is revealed that the crime was also committed in Hungary, the Hungarian prosecutor's office will also start an investigation. Investigation in Hungary cannot be opened if it is for the same crime underlining the EIO. If there is a strong connection between the two cases, Hungary will notify the MS, and there will be some cooperation.

Hungary has a central database of investigations and convictions. The database makes it possible to check whether a decision has been made against the person for the activities mentioned in EIO in some previous procedures. However, Hungary is not obliged to register in its databases requests for the execution of investigative measures based on the EIO. The evaluation team thinks it would be helpful to insert the EIO file number cases and the personal data of the perpetrator or suspect into the investigation database to avoid of ne bis in idem cases.

From the presented Hungarian legislation and the explanations given, it appears that Hungary has not encountered any significant problems implementing Article 11 (1) d of the EIO DIR. There is no information that the rights of persons would have been infringed due to violation of this provision.

13.3. Immunities or privileges

There is no standard definition of what constitutes an immunity or privilege in Union law; the precise meaning of these terms is left to national laws.

Section 40 (1) g of the Act CLXXX provides that the execution of a European Investigation Order may be refused if the person affected by the procedural act enjoys immunity arising from public office or international law and the entity authorised to do so did not lift it.

Hungary has implemented art 11(5) of the EIO DIR into Section 42 (4)(5) and 55 (6) of Act CLXXX.

Section 42 (4) of the Act CLXXX provides that in a situation under Section 40 (1) g), the court or the prosecution office must, within its powers, arrange for the lifting of the immunity, or immunity arising from international law, of the person affected by the procedural act before refusing the execution of the European Investigation Order, and notify the Member State authority accordingly without delay.

According to Section 42(5) of the Act CLXXX, where the authority of another MS or an international organisation has the power to lift the immunity arising from the international law of the person affected by the procedural act, the court or the prosecution office must inform the Member State authority accordingly without delay. In such a situation, the execution of the European Investigation Order may be refused in accordance with Section 40 (1) (g) only if the immunity is not lifted within a reasonable time following consultation with the Member State authority.

Section 55 (6) of the Act CLXXX states that where the MS authority informs the court or the prosecution office that the person affected by the procedural act enjoys immunity based on international law, and lifting the immunity falls within the competence of the authority of another State or an international organisation, a motion for a decision may be submitted, according to the CPC, to the entity having the right to lift immunity. Where no motion is submitted for lifting immunity or is unsuccessful, the European Investigation Order must be withdrawn.

Hungarian law provides immunities and privileges for persons in certain positions and professions (N diplomats, members of parliament). The immunities and privileges are stipulated in specific laws regulating the activities of these persons. No general concept of immunity or privilege has been established.

Hungary, either as issuing or executing State, had no cases where it would be necessary to conduct investigative measures against persons subject to immunity or privileges.

13.4. Fundamental rights (Article 6 TEU and Charter)

Article 11(1)f of EIO DIR was transposed to Section 40 (1a) of the Act CLXXX, according to which the execution of a European Investigation Order may be refused if it would seriously violate the fundamental rights of the defendant in a criminal proceeding that are set out in an international treaty or a legal act of the European Union.

Article 22(2) of EIO DIR, which had been implemented in Section 62B (3) of the Act CLXXX, states that in addition to the grounds specified in Section 40, the execution of a European Investigation Order for temporary transfer may be refused if; it would extend the duration of detention. An unjustified extension of the duration of detention would be an infringement of fundamental rights.

The execution of a few EIOs issued by Hungarian prosecution offices was refused with reference to fundamental rights. For example, in a criminal case conducted for defamation in public, an EIO aimed at obtaining electronic evidence was not executed, invoking, among others, the constitutional rights to freedom and confidentiality of correspondence and freedom of expression. In the given case, the executing authority decided it would have been contrary to freedom of speech to secure electronic evidence from the phone. There were indications that the phone was linked to a specific crime. It was possible that the person would be a perpetrator.

In another case, the executive authority refused to hear the accused person via videoconference on the ground that this would violate the person's fundamental rights. The justification for refusal was that a person's right to be physically present in proceedings would be infringed in case of hearing the accused person via videoconference. There have been only a few cases with only one Member State.

There has been a good example case between Hungary and Slovakia. European Judicial Network Report on activities and management highlighted the Hungarian and Slovakian cooperation in a criminal case against three defendants on drug trafficking and money laundering charges in the framework of an organized crime group. One of the defendants was serving a custodial sentence in Slovakia. In the trial phase, an EJM Contact Point from Hungary was contacted by the Hungarian judge with a request for assistance in contacting the EJM Contact Points in Slovakia and to support the Hungarian judge in: • identifying the actual place of detention in Slovakia; • clarifying the Slovakian legal and technical background for an EIO request aiming the hearing of the defendant via videoconference. The effective cooperation of the Slovakian and Hungarian EJM contact points contributed to the execution of the EIO and the successful hearing via videoconference. No infringement of fundamental rights was highlighted.

Hungarian prosecution offices and courts have not had any cases where the measure was refused as it would be contrary to the fundamental principles of the law of the executing state (Article 24(2), point (b)).

According to Hungarian Law, the ground for refusal is a serious violation of fundamental rights; however, practitioners did not provide a clear answer on who decides whether it is a serious violation and where is the line for a serious violation. In the practice of the Hungarian prosecutor's office, no prosecutor has reported such a case. They trust the authorities of issuing country.

14. GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION

Recognition and execution of the EIO should generally occur as soon as possible, but there are certain conditions where recognition and execution can be postponed.

According to Section 48 (1) of the Act CLXXX, the court or the prosecution office may postpone the enforcement of the procedural act indicated in the European Investigation Order for a reasonable period if a criminal or other proceeding is pending in Hungary and the performance of the procedural act would jeopardize the success of that proceeding. (Transposition of article 15(1a) of EIO DIR). Article 15 (1b) is implemented by section 49 (5) in the Hungarian legislation, explicitly referring to the objects, documents or data already are already being used in another procedure.

The court or the prosecution office must inform without delay the Member State authority of the decision postponing the performance of the procedural act specifying the ground for and the expected period of the postponement. This corresponds to the general obligation to keep the requesting country informed of the execution of the EIO.

In Hungary, the postponement period must not be calculated into the time limit of 90 days under Section 46 (4) of Act CLXXX.

Article 15(2) of the EIO DIR was also adopted into national law, stating that if the ground for the postponement of the performance of the procedural act ceased to exist, the court or the prosecution office must immediately arrange for the performance of the procedural act and inform the Member State authority accordingly. (Section 48 (4) of the Act CLXXX).

According to Section 48 (5) of Act CLXXX, where the ground for postponement does not affect all procedural acts indicated in the European Investigation Order, the court or the prosecution office must perform the procedural acts not affected by postponement under Section 46 of Act CLXXX. The last provision obligates the execution of the EIO in respect of the procedural act in which there is no basis for postponement. Directive 2014/41/ does not provide such a detailed provision.

In general, Hungary decides the need for postponement of execution on a case-by-case basis.

Hungary, neither as an issuing nor an executing country has not encountered problems concerning the postponement of recognition or execution of EIO.

15. TIME LIMITS

The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the same celerity and priority as for a similar domestic case.

Section 37 (6) of the Act CL XXX provides that the court or the prosecution office must inform the Member State authority of the receipt of the European Investigation Order without delay, but within not more than seven days from receipt, under the form specified in Annex 19 (corresponds to Annex B of EIO DIR).

According to Section 39 (1-3) of the Act CLXXX, the court or the prosecution office must, immediately following the receipt of a European Investigation Order, examine whether the conditions for the execution of the EIO under Hungarian law are met, and decide on execution in a non-conclusive order within not more than thirty days from the receipt of the EIO taking account of any request by the Member State authority as regards execution as a matter of priority and any date set for the performance for the procedural act indicated in the EIO.

If the decision cannot be taken within thirty days, the Member State authority must be immediately informed by specifying the reasons for the delay. In such a situation, the decision must be taken within sixty days of receiving the EIO.

Section 46 (4-5) of the Act CLXX stipulates that the procedural act indicated in the EIO must be performed within not more than ninety days from the adoption of the decision on the execution of the EIO, taking account of any request by the Member State authority as regards execution as a matter of priority and any date set for the performance of the procedural act.

Hungary has correctly established the deadlines for implementing the EIO prescribed by EIO DIR in their national law.

In addition, the Office of the Prosecutor General of Hungary's guideline provides that each request must be complied with within the time limit set in EIO. Executing prosecutor offices are obliged to follow the time limit. When Hungary acted as the issuing State, the time limits set out in Article 12 of the EIO Directive were usually complied with. Where there was a delay in execution, in the vast majority of cases, the executing authority did not inform the issuing Hungarian prosecution office; consequently, the reason for the delay could not be established. When Hungarian authorities were not informed about the execution of EIO within the time limits, after 90 days, they contacted the executing authority.

However, the prosecutor's office stated that also on their side, sometimes there is a delay in execution without notification.

As the issuing authority, Hungarian prosecution offices requested the urgent execution of the EIO mostly for the following reasons:

- the suspect is in pre-trial detention or subject to a supervision measure affecting personal liberty (according to Section 79 of CPC, these criminal proceedings must be conducted as a matter of priority),
- there is a risk that evidence will be concealed, destroyed or becomes inaccessible (e.g., due to the data retention period),
- the statutory time limit for the investigation is about to expire,
- urgency is caused by the nature of the requested investigative measure (e.g., controlled delivery).

Urgent EIOs issued by Hungarian prosecution offices have usually been executed accordingly; in some cases, there was a delay in execution. The criteria indicated by Hungarian prosecution offices as a basis for urgency were relevant.

As the executing State, the time limits are generally complied with. In some cases, the complexity or number of the requested investigative measures or circumstances beyond the control of the executing authority (e.g., the witness to be heard failed to appear on summons) caused a delay in execution. In such cases, the executing Hungarian prosecution office has usually informed the issuing authority of the reason for the delay and the expected time of execution. The Hungarian Prosecutor's Office did not remember a single case in which the issuing State was not notified about the impossibility of meeting the execution deadline of EIO, but they did not rule out that some such cases may have occurred over the years. In practice could happen that deadlines are not met. Courts indicated that the time limits were usually complied with. Sometimes delays can occur.

As the executing authority, Hungarian prosecution offices have taken the necessary measures to ensure that urgent EIOs received are executed as soon as possible. The guideline of GPO provides that each urgent EIO must be complied with within the time limit set in EIO. No particular difficulties have arisen in this context; however, in some cases, the given deadline was so exceptionally tight (only a few days) that it was not feasible to meet them.

Hungary has received EIOs marked as urgent without no explanation for why it is urgent. The prosecutors also had cases that were not urgent but labelled as urgent.

Courts have not encountered any problems with the execution of 'urgent' EIOs. The criterion was an imminent trial date or the chance of losing evidence.

As executing State, the Hungarian prosecutors experienced many EIOs where the content was so unclear that they couldn't start execution. Thus, they contacted the issuing authorities to overcome this issue. In some cases, it caused delays in the execution of EIO.

16. LEGAL REMEDIES

According to Article 14 of the EIO DIR, Member States must ensure that legal remedies equivalent to those available in a similar domestic case apply to the investigative measures indicated in the EIO. Hungary has explicitly transposed article 14.1 into the Act CLXXX in the sense that remedies equivalent to those available in the context of Hungarian national procedure (CPC) are applicable.

Section 50 (1) of the Act CLXXX states that under general rules of executing an EIO, legal remedy may be sought against a decision adopted or a measure taken in the course of the execution of a European Investigation Order in accordance with the provisions of the CPC; however, the ordering of the procedural act indicated in the European Investigation Order may not be challenged by the legal remedy. The law of the Member State must apply to seeking legal remedy against the ordering of the procedural act indicated in the European Investigation Order. This is in line with Article 14 (2) of the EIO Directive.

The court or the prosecution office must inform the Member State authority of any legal remedy sought against a decision adopted or a measure taken during the execution of the European Investigation Order and the outcome of the adjudication of the motion for legal remedy. (Section 50(2) of the Act CLXXX).

If a legal remedy is sought against ordering the procedural act indicated in the European Investigation Order, the court or the prosecution office must transmit the motion for a legal remedy to the Member State authority without delay and inform the person who submitted the motion for legal remedy accordingly. The same principle stipulated in Article 50 of Act CLXXX is stated in Article 58 of Act CLXXX.

Art 14(3), 14(6), and 14(7) of EIO DIR are not explicitly transposed to Hungarian law.

The EIO itself is not contestable; the procedural act requested in the EIO is contestable.

Hungarian national law provides for legal remedies against the investigative measures indicated in the EIO. Under Section 58(1) of EUCCM, the same legal remedies are available against the investigative measures indicated in the EIO as those stipulated in CPC, i.e., which are applicable in domestic cases.

There is no legal remedy against the enforcement order of the EIO; however, decisions or measures taken during enforcement can be challenged under the rules of the Hungarian CPC. Appeals against the enforcement of an EIO must be sent to the national authority of the issuing Member State.

According to Hungarian domestic law, the investigative measures of restrictive nature (e.g., search, seizure of evidence) ordered by the investigative judge can be appealed in court. Complaints can be presented against investigative measures restrictive nature ordered by the prosecution office or investigating authority. If the prosecution office dismisses the complaint, a motion for revision could be filed to the court. This is a legal remedy for the second instance. The same legal remedies are available against investigative measures requested in an EIO. The executing Member State authority must also be informed of the appeal against the decision and of the outcome of the appeal.

If the law of issuing country provides for the possibility of legal remedy for the procedural act indicated in EIO but Hungarian law does not provide for legal remedy for the specific procedural act, Hungary just executes the EIO. If Hungarian authorities receive the complaint to appeal, they will send it abroad for a decision to issuing country.

If the issuing country order the seizure of evidence in Hungary and a person concerned challenges it, then Hungarian authorities take notes of that legal remedy and forwarded it to issuing authority.

When Hungary acts as the issuing State and asks for investigative measures for which the executive State has no legal remedy, the Hungarian legal provisions on legal remedy would be applicable. For example, if search and seizure were executed in Bulgaria and the person would challenge it, Bulgaria would send the complaint to Hungary, and Hungarian authorities would decide according to Hungarian legislation.

To file legal remedy depends on who has ordered the measure. If a judge orders an investigative measure, the Appeal Court deals with the remedy; if it is a Prosecution Office, the complaint could be launched to Prosecution Office within eight days. If the complaint is dismissed, the motion for the revision could be filed to the court (second instance of legal remedy). The investigative measures, such as obtaining some data collection, are rarely appealed.

There was one case with EIO, issued by France authorities, concerning a seizure of documents and devices, and a complaint was forwarded to France. But it involved the decision on seizure and not the manner of its execution.

A more frequently used legal remedy was against the hearing of the suspect. Under Hungarian law, the first communication of suspicion and all facts and legal classification of offence are forwarded to the suspect so that it can be challenged. But this doesn't mean that complaint about whether the suspicion was well-founded and reasonable can be decided by Hungarian authorities when they act as executing State. If the suspect disagreed with the suspicion communicated to him, Hungary forwarded the interrogation minutes to the issuing State. Hungary follows the practice that if such a remedy is requested, the complaint is sent to issuing country, and they decide on it.

Vice versa, if Hungary is asking another member State to interrogate somebody as the suspect for the first time in the proceeding, the whole case scenario and the criminal offence must be communicated to him. Then Hungary always indicates in EIO that there is a right to complain against this measure according to Hungarian law. On this basis, the other country may send this complaint to Hungary.

Also, recital 22 and Article 14.1 of EIO DIR impose a general obligation on Member States to ensure that legal remedies at least equivalent to those available in similar domestic cases apply to the investigative measures indicated in the EIO and do not require Member States to provide additional legal remedies to those that exist in a similar domestic case. However, the CJEU's opinion in case C-852/19 is different. The execution of an EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of the witnesses by videoconference, the lawfulness of which cannot be contested before a court of the issuing State, is such as to entail an infringement of the right to an effective remedy enshrined in the first paragraph of article 47 of the Charter. This decision is very problematic. Most Member States do not provide legal remedies for a summon to hear the witness. There are remedies for cases where the rights of witnesses are infringed during the hearing, taking into account the principle of proportionality and the fundamental rights of the person concerned.

If the procedural operations performed in order to obtain the evidence from the other Member States are contrary to the principles of Hungarian Law, this evidence can be contested during the criminal procedure in Hungary. Hungarian defence lawyers are of the opinion that the codification of the new Hungarian CPC has taken over the entire EU legal framework, and considering the available legal remedies, there is no problem with the protection of the rights of the defendants.

Based on the information provided, the presence or absence of a legal remedy in the laws of the Member States has not caused problems in the implementation of the EIO for Hungary. As an issuing State, Hungary has not encountered a case where the EIO they issued has not been executed due to a lack of legal remedy for the procedural act indicated in EIO.

17. TRANSFER OF EVIDENCE

The main principle is that the executing authority must, without undue delay, transfer the evidence obtained or already in possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State.

Provisions regulating the transfer of evidence are stipulated in Act CLXXX in the following Sections:

According to Section 49 (1), the court, the prosecution office, or, based on an authorisation therefrom, the investigating authority shall, immediately or at the time specified by the Member State authority, transfer to the Member State authority the means of evidence that were obtained in the course of the performance of the procedural act or that are already available, and any documents related thereto. (Corresponds partly to Article 13.1 of EIO DIR stipulations).

Section 49 (4-5) provides that the transfer of the means of evidence may be made conditional upon the Member State authority returning the means of evidence to Hungary in a condition at the time of transfer as soon as it is no longer required in the Member State concerned. If a means of evidence is needed for detecting or proving another criminal offence, the court or the prosecution office may postpone, informing the Member State authority at the same time and specifying the expected time of transfer, the transfer of the means of evidence for the period required for the means of evidence to become available. (Stipulations of article 13.3-13.4 of EIO DIR)

Section 49 (6-7) stipulates that the court or the prosecution office may postpone the transfer of a means of evidence also if the legal remedy was sought against a decision adopted or measure applied by the court or the prosecution office in the course of the execution of the European Investigation Order, except where immediate transfer of the means of evidence is required under the European Investigation Order. The transfer of the means of evidence shall be postponed until the adjudication of the legal remedy if the transfer would cause a serious disadvantage to the person concerned. (corresponds exactly to Article 13.2 criteria). The court or the prosecution office may, if it postpones the transfer of the means of evidence, transfer to the Member State authority the means of evidence also temporarily for a set period on the condition that the Member State authority concerned shall return it at a time agreed between them.

Hungary has adopted the conditions set out in Article 13 into its law with its clarifications.

The Hungarian authorities have not encountered particular problems in transmitting of the evidence. From a legal point of view of Hungarian authorities, there is no obstacle when representatives of issuing authorities are in Hungary to assist in the execution of EIO so evidence can be handover immediately.

If the evidence collection procedure is challenged, the transmission of evidence is postponed until the complaint is resolved.

In cases where it is necessary to use the evidence collected based on the EIO, also in the domestic investigation (different crimes not covered by EIO), the evidence transfer is decided on a case-by-case basis.

In rare cases, there have been technical issues that prevented Hungary to transmit the outcome of wiretapping directly and immediately to issuing State. Usually, interceptions were transmitted in real-time when Hungary was the issuing or executing State. When Hungary acted as the executing State, there was a case where the wiretapping was spoken in a language (Chinese) for which Hungary did not have an interpreter. Thus, wiretapping was just sent to the issuing State.

Generally, Hungarian authorities have not faced significant problems transmitting evidence as issuing or executing State.

18. OBLIGATION TO INFORM - ANNEX B

Section 37 of the act CLXXX provides that the court or the prosecution office must inform the Member State authority of the receipt of the European Investigation Order without delay and not more than seven days from receipt, using the form specified in Annex 19 (same as Annex B), and translated into the official language or one of the official languages of, or the language specified by, the Member State.

If the court or prosecution office receives a European Investigation Order, the execution of which falls outside its subject matter or territorial competence, it must transmit without delay the European Investigation Order to the competent court or prosecution office and inform the Member State authority. The court or prosecutor's office to which the European investigation order was sent is also subject to the duty of information. The requirements of Article 16.1 of EIO DIR have been correctly transposed to national law.

When Hungary acted as issuing State, Annex B was usually received within the time limit provided in Article 16(1) of the EIO DIR. In some cases, Hungarian prosecution offices were notified of the receipt and forwarding of the EIO by other means, e.g., by official letter or based on a request for additional information transmitted by the executing authority. In cases where Annex B or feedback were not received within a reasonable time, the executing authority was contacted directly or via EJN/Eurojust.

As the issuing authority, courts have encountered cases where courts did not receive an Annex B. In such cases, contacting the executing authority or asking Eurojust for help was essential. Nevertheless, the EIO has been executed. According to a national study, the Annex B form was only returned on time in 48 % of cases.

As executing State, with a few exceptions, the Hungarian prosecution's offices sent Annex B upon receipt of an EIO. In some cases, where the Hungarian issuing authority was contacted shortly after receiving the EIO for clarification or additional information or where the requested investigative measure was executed within the time limit set out in Article 16(1), Annex B was not completed and transmitted. As the executing authority, courts send an Annex B form.

Hungarian law has repeatedly emphasized the need to inform issuing States about the problems and possible solutions arising from the implementation of the EIO. Information exchange and consultations are the foundations for the correct execution of the EIO.

Hungarian Act CL XXX provides for several specific information obligations, such as:

- if the decision on the execution of the European Investigation Order cannot be taken within the time limit, the reasons for the delay and the period required to perform the procedural act must be specified (Section 39 (3));
- if a procedural act exists under Hungarian law that is suitable for obtaining the evidence indicated in the European Investigation Order but involves fewer rights restrictions than the procedural act indicated in the European Investigation Order (Section 39 (7));
- if a ground for refusal under Section 40 (1) e) exists and an enforceable procedural act other than the procedural act indicated in the European Investigation Order exists under Hungarian law that could lead to obtaining the evidence that is intended to be obtained (Section 42 (1));
- if any ground for refusal under Section 40 (1) a) to c), f), and i) arises, initiate consultation (Section 43 (1)).

To successfully perform the procedural act, the court or the prosecution office may, where justified, e.g.:

- consult the Member State authority, if, in the course of the performance of the procedural act, a circumstance arises due to which the procedural act cannot be performed.
- notify the Member State authority without delay if the court or the prosecution office finds expedient the performance of a further procedural act in addition to the procedural act indicated in the European Investigation Order for the success of the execution of the European Investigation Order or the taking of evidence under the European Investigation Order.

The notification obligations prescribed by Hungarian law do not always require using the Annex B form. Annex B is more of a formal notification that the EIO has been received, and Hungarian authorities usually send Annex B within the time limit. When solving substantive issues, the competent authority is contacted directly to eliminate deficiencies, if necessary, or make adjustments so that the EIO is enforceable.

Concerning Annex B form, the Hungarian Prosecutor Office has proposed that the decision on the recognition or execution of the EIO and sending Annex B, in practice, usually take place at the same time. Thus, it would be helpful to amend Annex B so that the decision on the recognition or execution of the EIO could also be indicated. Besides, a new Section could be drafted to indicate whether the executing authority requests additional information or consultation since Section D is unsuitable for this purpose with the current wording. When Annex B is completed, the file reference number of the judicial authority to which the EIO will be forwarded is not yet known; therefore, this line may be omitted in Section C of Annex B. However, from the court's point of view, the Annex B form doesn't need repair.

19. COSTS

The main principle of the EIO DIR concerning costs is that the expenses incurred in the territory of the executing State for the execution of an EIO should be borne exclusively by that State. However, where the executing authorities consider that the costs for the execution of the EIO may be deemed exceptionally high, they may consult with the issuing authority on whether and how the cost could be shared or the EIO modified.

The idea of the Article 21 of the Directive has been adopted into Section 52 of the Act CLXXX, which states that any costs incurred within the territory of Hungary in the course of the execution of the European Investigation Order must be borne by the Hungarian State.

However, the execution of a European Investigation Order might be made conditional upon the reimbursement or advancement, in part or full, of costs by the Member State authority if the execution of EIO involves substantial costs. However, consultation with the issuing authority must be initiated regarding the reimbursement or advancement of costs relating to the execution or the modification of the European Investigation Order.

When Hungary is the issuing State Section 59 (2) of the Act CLXXX provides the possibility for consultations if the objective intended to be reached by the EIO may be achieved through a procedural act involving lower costs. The court or the prosecution office must modify or supplement the European Investigation Order where possible.

If the agreement on the advancement or reimbursement costs between executing Member State and Hungary is not concluded, the court or the prosecution office may withdraw the European Investigation Order. (Section 59 (3) of the Act CLXXX).

According to Act CLXXX, all costs relating to the transfer to the Member State and the transfer back to the territory of Hungary of the detained person or incurred in connection with the detention of the person concerned in Hungary must be borne by the Member State.

Hungarian law stipulates guarantees for compensation for the damages which may occur during the execution of the EIO. Compensation for damages might be considered as the costs of the execution of the EIO.

Section 47 (5) of Act CLXXX states that Hungary is liable for any damage caused within the territory of Hungary by the member of the Member State authority present in the course of the performance of his task. Hungary may request from the Member State concerned reimbursement for the total amount of damages paid under this provision.

Vice versa, Hungary, according to Section 56 (4) of the Act CLXXX must reimburse, according to the law of the Member State, the whole amount of damages paid by the Member State due to damage caused by the member of the court, prosecution office or investigating authority present in the course of the performance of his tasks in connection with the execution of the European Investigation Order.

Although the Hungarian prosecutor's office replied to the questionnaire that costs related to the execution of an EIO exceeding 1000 EUR should be considered exceptionally high, the answers given during the on-site visit revealed that there are no boundaries. This amount does not derive from Hungarian law. There are no national guidelines that guide what costs are too high. It was believed that the threshold was being asked for harmonizing costs.

The costs of mandatory defence counsel do not treat as exceptionally high costs.

Although answers to the questionnaire showed that the cost of translation is considered substantial, the prosecutor's office does not know of any cases where the translation costs proved too high. In practice, there has not been a single case where it was necessary to contact that the costs of the execution of EIO were too high. Bearing the costs of the witness's travel and other expenses has not been a problem due to their size.

If there was no corresponding interpreter in Hungary, the issuing country provided an interpreter, and bore these costs at the same time.

If the officials of the issuing State wanted to participate in the execution of procedural actions, the costs of the interpreter were borne by the issuing State. In practice, these costs are not paid by Hungary.

When Hungary acted as executing State, consultations with issuing States took place in very few cases. According to information from the prosecutor's office, there were high costs for keeping the seized track with the number of tones of flammable material in one criminal case related to the handling of narcotic substances. Therefore, the Hungarian executing authority consulted the Netherlands issuing authority on costs, which in the end, asked not to seize the material but destroy it. The costs were high, but it was not a legal obstacle despite the Netherlands not paying them. Such cases are sporadic, one in five years.

The unwritten protocol must be followed in covert operations, i.e., requesting State always bears the costs. Hungary has a separate budget for those operations.

As the executing and issuing State, Hungarian courts have not encountered cases where the costs would be too high, requiring consultation with the issuing authorities.

As an executing State, Hungary is always oriented towards fulfilling the EIO as much as possible, so consultations with the issuing authorities are always considered the first solution to the problem.

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

Hungarian prosecution offices handled several cases in which a simultaneous execution of different investigative measures in other Member States had to take place. Therefore, mostly Eurojust's support was sought for proper preparation and to lay the grounds for a successful outcome.

This support concerned, e.g., identifying the competent authorities, information on how certain measures asked for could be executed, clarifying legal aspects which had to be taken into consideration and finding ways to facilitate the communication between the different authorities which had to be involved.

Notably, when the real-time exchange of information proved crucial for effective execution, Eurojust set up a coordination centre. As a result of such assistance, usually, a smooth execution without any significant difficulties was achieved.

21. SPECIFIC INVESTIGATIVE MEASURES

21.1. Temporary transfer

Article 23 of the EIO DIR was transposed into Hungarian law by Chapter IV, title 27 of Act CLXXX.

As executing State

Provisions on the temporary transfer of a person detained in Hungary to the other Member State are stipulated in Sections 62/B of the Act CLXXX, according to which it applies to a person in pre-trial detention or a person serving a final and binding sentence of imprisonment, confinement or a custodial measure.

If the requested person is held in pre-trial detention, the court or the prosecution office proceeding the case must obtain a statement from the detained person on whether he consents to the temporary transfer.

In case of an already final and binding sentence of imprisonment, it falls into the competence of the sentence enforcement judge to seek this statement.

The detained person may make his statement in writing, orally before the court or the prosecution office, or in minutes form. Where the detained person has a defence counsel, the detained person must be assured the possibility to consult his defence counsel regarding consent to the temporary transfer.

In addition to the grounds specified in Section 40 of the Act CLXXX, the court or the prosecution office may refuse the execution of a European Investigation Order also if:

- a) the detained person does not consent to the temporary transfer; or
- b) the temporary transfer would extend the duration of detention.

In practice, requests for a temporary transfer of a person detained in Hungary have been rare. What could be observed was, in any case, different approaches by Member States in which legal base should be applied. Some of them made use of an EAW, while others relied on an EIO. According to Hungarian authorities, it should always be resorted to an EIO if the temporary transfer is part of collecting evidence.

In one case, an EAW was sent despite an agreement on using an EIO. However, the EAW for the temporary transfer was postponed because the person concerned was kept in Hungarian detention, and the domestic proceeding was ongoing. Therefore, Hungarian authorities sought the support of Eurojust for clarification on the further procedure, which led to a successful outcome based on the EIO request.

The Hungarian authorities have not encountered cases where the consent of the person concerned was not given for the temporary transfer. As they stated, in such a case, they would first inform the issuing State about the detainee's disagreement with the temporary transfer, and together with the issuing authority, they would look for the possibility of applying another investigative measure to achieve the desired result. For example, if the aim were to obtain testimony, Hungarian practitioners wouldn't see any practical point in handing over a detained person against his/her will as it doesn't seem very likely that he/she would be willing to testify. Under these circumstances, they would probably suggest a hearing via video conference or a standard hearing by the Hungarian authorities.

However, since such a scenario is not subject to explicit legal regulation Hungarian practitioners would feel some kind of uncertainty about how to proceed if the temporary transfer would be requested only, for example, to identify the offender, for which his/her presence during this act would be needed, and the CPC of the issuing country wouldn't provide for any other less elaborate possibility to achieve this goal as e.g. an identification through photographs.

The execution of an EIO asking for a temporary transfer might also be refused if, thereby, the time limit for the pre-trial detention in Hungary would be exceeded since the period in which the person to be transferred is held in detention in the issuing State before his return also has to be counted in. Thus, before complying with such a request, accurate information on this timeframe is needed, even if Hungarian law provides for the possibility of an extension of pre-trial detention, which is not limitless. In case, the detained person cannot be kept any longer in detention as there is no possibility of a prolongation, the issuing state would be informed that he would have to be released.

As issuing State

Regarding the temporary transfer of a person detained in a Member State to Hungary, Section 63 (1) of the Act CLXXX requires likewise the conclusion of an agreement between the court or prosecution office which issued the EIO and the competent authority of the Member State. Pursuant to Section 63 (2), this agreement must meet the same conditions as the one for a temporary transfer from Hungary to a Member State.

Hungarian authorities issued such EIOs only on a few occasions when gathering evidence the presence of the requested person was needed in the context of his/her trial, which under certain conditions can be conducted without him since he/she can waive his/her right to be present. Usually, if in a domestic procedure, a person held in custody in the executing country needs to be interviewed, other types of legal assistance are sought, such as a hearing by videoconference or a direct interview performed by the competent authorities of the executing country.

As issuing authority, notably Hungarian courts faced some problems with their requests for a temporary transfer mainly towards German-speaking countries, since the latter demanded an EAW as an appropriate instrument if the detained person should be transferred for a more extended period, which means at least some months, even if this was not exactly quantified.

21.2. Hearing by videoconference

The Hungarian national legislation allows the hearing of defendants (i.e., suspects and accused persons), witnesses as well as experts via videoconference (pursuant to Section 63/C of the Act CLXXX).

The District Court or the District Prosecution Office of the actual place of residence of the person to be interrogated, or the person's actual place of residence or seat to be heard as an expert, are competent to execute the European Investigation Order. If the actual place of residence or seat of a person at liberty who is to be interrogated as a witness or defendant or heard as an expert is unknown, the Central District Court of Budapest or the Budapest-Capital Chief Prosecutor's Office is competent to proceed as regards the execution of the European Investigation Order.

In this respect, the EJN Atlas serves as a good medium for the accurate identification of the competent authority.

In addition to the grounds specified in Section 40 of the Act CLXXX, the court or the prosecution office may refuse the execution of a European Investigation Order also if:

- (a) the person to be interrogated as a defendant did not consent to interrogation by using a telecommunications device; or
- (b) interrogation or hearing by using a telecommunications device would be, in the case concerned, contrary to the fundamental principles of the Hungarian legal system.

Therefore in principle witnesses and experts could be heard even without consent although this doesn't constitute a likely practical scenario and has not happened so far.

In practice, up to now, only in one case, the execution of an EIO received by a Hungarian prosecution office for a hearing via videoconference was refused due to the lack of consent of the suspect concerned.

The statement consenting to interrogation using a telecommunications device he/she may make in writing, orally before the court or the prosecution office, or in minutes form.

Hungarian legislation allows also the hearing and participation of the accused person throughout the main trial, which can lead directly to a conviction. Thus according EIOs can be issued as well as executed without any hindrance.

Where the details of the enforcement of interrogation or hearing by using a telecommunications device and the applicable procedural rules cannot be determined based on the content of the European Investigation Order, the court or the prosecution office must conduct prior consultations with the Member State authority as regards such details and procedural rules.

Hungarian authorities stated that when issuing or executing EIOs, they didn't encounter problems concerning the person's status to be heard via videoconference or the corresponding procedural guarantees to be applied.

In any case, before the hearing of the person concerned can be carried out, they have to be advised on their respective rights according to the national legislation of the issuing as well as the executing country. Except if the executing country only provides the premises and technical support.

EIOs issued by Hungarian prosecution offices were sometimes rejected due to legal reasons when the requested hearing of a person via videoconference would violate their fundamental right (the right of physical presence in proceedings) pursuant to the legislation of the executing country.

As the executing authority, Hungarian prosecution offices have not refused the execution of a hearing on such grounds. However, courts have not been involved in cases where the suspect/accused person did not consent to a hearing via videoconference.

The necessary VDC equipment is available in courts and chief prosecution offices. If a local prosecution office is competent for the execution of such a request, it can resort to the equipment of one of the chief prosecution offices. Furthermore, some police offices also dispose of these technical means and thus can provide relevant technical support if necessary.

However, a practical problem arose for a Hungarian prosecution office as issuing authority since the courtroom where the requested hearing had to take place in accordance with the legislation of the executing country wouldn't be available in a timely manner. Taking this information into account, the issuing prosecution office requested the hearing to be carried out by officials of the executing State in the "traditional" way instead of videoconference.

Some Member States, Germany or Austria, do not agree to telecommunication hearings of the accused at the trial stage, because they consider that this is contrary to the principle of immediacy. Courts also indicated that a practice has developed, in particular in German jurisdictions, of refusing to execute an EIO for a videoconference hearing in respect of a trial because this is not a procedure for obtaining evidence but for ensuring presence at a procedural act, especially if there is also a possible sentencing.

A Hungarian prosecution office was on the other hand asked as executing authority via EIO to question a suspect by means of a videoconference in a courtroom even so the case was still at the investigative stage and thus no need for the involvement of a court was given according to Hungarian legislation. After consultation with the issuing country it was agreed that the videoconference would be held in the premises of the Hungarian investigative authority.

Regarding the VDC, the Bar Association representatives stated that when a witness or defendant is heard via VDC, he/she can request to stop the questioning and talk to the defence attorney privately via mobile phone. However, using the VDC in the investigation phase is not common, and as a rule, a written form is used, i.e., sending questions to the executing state. On the contrary, the written form of hearing during a court hearing is sporadic. They further stated that sometimes written form is better for defence attorneys for strategic reasons. However, resending the EVP with new questions was occasionally necessary because the information obtained this way was insufficient.

Concerning the procedural status of the person to be questioned, Hungary, as issuing State, faced a situation where the executing State refused an EIO to hear the person as a witness since, from their point of view, they must be interrogated as a suspect. Against this background the EIO was refused without previous consultation with the Hungarian issuing authority.

As the executing State, Hungary always respects the procedural status of a person as laid down in the EIO. In case Hungary deemed the person should be interviewed as a suspect instead of a witness, they always consulted with the issuing authorities beforehand and in case the issuing State agreed they forwarded a new EIO.

21.3. Hearing by telephone conference

Section 63/C (1) of the Act CLXXX transposes the requirements of Article 25 of the EIO DIR into Hungarian law and therefore enables courts and prosecution offices to execute an EIO which aims at the interrogation of a witness or expert by means of the teleconference.

So far, neither courts nor prosecution offices have received such a request which is why no practical experience could be gained.

Since the preparatory measures are quite similar to hearing a person by means of videoconference, there shouldn't be any obstacles to executing them.

However, Hungarian practitioners remarked that in any case they would favour a videoconference since during a telephone conference they cannot see the person's face and due to the nature of this communication path there might occur some difficulties to understand a person clearly.

Even in domestic proceedings, only one case could be identified where within a court session, the need arose to contact a witness by phone for clarification on a few minor points of his written statement. The presiding judge managed to reach this witness, so the missing information could immediately be given, and the trial could continue without any delay.

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

Provisions for issuing or executing of EIOs with the aim of data provision concerning financial accounts and account activity are stipulated in Sections 62 and 62/A of the Act CLXXX and can be used for:

- a) establishing whether a natural or legal person subject to a criminal proceeding in the Member State exercises, as an account holder or authorised person, the right of disposal over an account maintained at a bank or other financial institution operating within the territory of Hungary and for transmitting data held by the bank or other financial account relating to this account; or
- b) transferring data held by the account servicing bank or other financial institution as regards payment transactions performed within a specific period relating to an account maintained at a bank or other financial institution operating within the territory of Hungary, including data of all accounts affected by the transaction concerned, and for transferring account data held by the bank or other financial institution operating within the territory of Hungary.

Such information can be sought after, regardless if it affects a suspect, witness or company as long as it is necessary for the investigation. Furthermore, based on an according request, the bank or other financial institution can be ordered not to disclose the enquiry to their customer so that the ongoing investigation is not jeopardized. No practical problems in the context of executing such EIOs have been met until now.

Hungarian legislation allows, furthermore, pursuant to Section 216 Act X on the Code of Criminal Procedure which is well-harmonized with Articles 27 and 29 of the EIO DIR a real-time surveillance of payment transactions to the effect that the ordering entity can request specified data to be transmitted without delay or within a set time-limit.

So far, no practical experience in applying such a measure could be gained.

However, until now, not all financial institutions would be capable of delivering such information due to their compliance infrastructure if they would face such a request. Only about 3 or 4 of the biggest ones are prepared for that. In domestic proceedings, a very good experience could be made with the OTP Bank, Hungary's biggest one, where within less than 10 minutes, information on a currently happening financial transaction had been transmitted.

Sometimes, an EIO was issued or received to enable data obtained beforehand through the Financial Intelligence Unit or the police to be used as evidence since it was considered relevant for evidentiary purposes.

21.5. Covert investigations

Sections 64/B to 65/D Act CLXXX of 2012 contain detailed rules on using of covert means.

Generally, Hungarian legislation differentiates between three types of covert means set out in Chapter XXXVI to Chapter XXXVIII of Act XC of the CPC.

Chapter XXXIX to Chapter XLI stipulate standard rules for their implementation and termination, the handling of the data being obtained during such a measure and how to deal with the results of these investigative measures.

Section 215 defines the investigative measures which are not subject to permission of a prosecutor or judge, notably using a criminal trap, the covert surveillance of a person, home, other room, fenced area, public area, premises open to the public, or vehicle and GPS tracking as well as identifying the electronic communications device or information system or determining the location.

In Section 216 to section 230, the conditions for investigative measures requiring permission by a prosecutor are laid down. Such means are, e.g., surveillance of payment transactions, controlled delivery, using undercover investigators, cover deeds, cover institutes and cover data.

Finally, Section 231 to 242 describes the scope of covert means which have to be authorized by a judge, such as covert surveillance of an information system, secret search, secret surveillance of a locality, secret interception of a consignment and interception of communication (wiretapping).

Before going to these investigative measures, some important general criteria have to be met, such as the necessity to use covert means, the proportionality of their application and the probability of obtaining evidence by employing them.

Since July 2018, the specifically on Police level designed Hungarian Undercover Unit has been involved in 15 undercover operations with 19 different EU States as to a criminal investigation.

Specific covert means:

a) Undercover agent

Section 64/E (1) of the Act CLXXX provides that the prosecution office authorised to order the use of an undercover investigator is competent to execute a European Investigation Order issued for using a Member State undercover investigator within the territory of Hungary or a Hungarian undercover investigator within the territory of Hungary or a Member State.

According to Hungarian legislation, there is no difference between acting under a false identity and acting as an undercover agent, as in both scenarios, a legend disguising the real identity of the actor has to be used.

No civilians could be used for such a deployment.

In any case, the use of an undercover agent requires, according to Section 64/E (2), an ad hoc agreement concluded with the Member State authority, which has to be prepared by the organ designated by law for the execution of the use of an undercover agent of the police or the National Tax and customs Administration.

Pursuant to Section 222 Act X of 2017 on the Code of Criminal Procedure, an undercover agent can be used in criminal proceedings, particularly to infiltrate a criminal organisation or terrorist group, carry out simulated purchases and acquire information or evidence relating to criminal offences.

Although there are differences in national legislations, no complications have occurred in the practice of Hungarian prosecution offices and courts in their cooperation with other Member States.

If a Hungarian prosecution office sees the need to deploy an undercover investigator in another Member State during an investigation, Section 65 (1) EUCCM requires issuing an according EIO. The same applies if an undercover agent of a Member State is intended to be used within the territory of Hungary or the Member State.

Apart from several successful operations, in a few cases, practical problems led at least to an initial refusal of Hungarian EIOs aiming at the use of an undercover agent.

Another refusal related to a homicide case in Hungary happened, in which Hungarian authorities needed to approach the target by using an undercover agent who would act under the legend as a contractor and would take the target to Slovenian territory to gain his trust. Before the issuance of the EIO, the reasons and details were discussed with the competent executing authority, and it was agreed that Hungary would forward the EIO. However, the EIO was sent back to Hungary, asking for a justification for taking this target to Slovenia. Thus, the EIO was amended accordingly; however, the EIO was refused without a reasonable explanation.

b) Controlled delivery

Section 64/B up to Section 64/D of the Act CLXXX comprise provisions concerning controlled delivery.

This investigative measure is not defined in the Hungarian Code of Criminal Procedure since it belongs to the field of international cooperation. By its nature, it has to be considered a specific form of covert surveillance and therefore demands the authorization from the prosecution office.

Concerning the execution of EIOs issued for controlled delivery through the territory of Hungary, the county chief prosecutor's office or the Budapest-Capital Chief Prosecutor's Office is competent to execute it.

When Hungary acts as issuing State, the prosecution office may issue a European Investigation Order for the execution of controlled delivery through the territory of one or more Member States. Controlled delivery requires an ad hoc agreement with the Member State authorities, in both cases. This does not have to be a formal document signed and stamped by all parties. It will be concluded on the Police level and has to contain a detailed description of the itinerary for the entire route. If no obstacles turn up approval will be given by the competent prosecution office.

In cases where delays are unacceptable, where the conclusion or approval by the prosecution office of an ad hoc agreement would jeopardise or frustrate the successful execution of controlled delivery, also the head of the organ designated by law for the execution of controlled delivery of the police or the National Tax and Customs Administration that is competent as regards the criminal offence underlying the European Investigation Order may authorise controlled delivery for twenty-four hours. In such a situation, the prosecution office must be informed accordingly at the time of preliminary authorisation of controlled delivery. Following receiving of such information, the prosecution office shall decide on authorising a controlled delivery without delay. Should the prosecution office not authorise it, the outcome of a controlled delivery based on preliminary authorisation shall not be used as evidence.

After approval, incoming EIOs are forwarded to the police. In drug-related cases, which are the most frequent controlled delivery cases, EIOs are sent to the National Bureau of Investigation Anti-Drug Unit.

Practical issues addressed during the execution of such requests were whether a replacement or substitution of the illicitly transported material by harmless substances like sugar or flour would be allowed, which was positively answered. For example, Hungarian authorities encountered a case related to drug trafficking from Slovenia to Hungary where Slovenian's authority informed them and Eurojust about discovering a container containing 700 kg of heroin, which was supposed to be transported to one Hungarian company. Thus, the Hungarian authority launched the investigation and issued an EIO for the controlled delivery. However, Slovenian authority intended to substitute almost all amounts of delivery except 500 grams. Therefore, the Hungarian authority contacted them, and after the negotiation, they left 70 kg out of 700kg what enabled Hungary to pursue this act as a serious crime instead an offence. Hungarian authorities always negotiate with the other MSs about what volume of illicitly transported material may be substituted to be considered a serious crime in the MS where the controlled delivery is supposed to be seized.

Besides the impact on the scope of criminal accountability of the person being apprehended with these replaced substances and only a remaining small part of the original amount of illicit goods had to be taken into account due to different legal opinions.

Another important issue to be solved is the possible participation of a collaborator or informant in a controlled delivery which, in principle, can be allowed even though they won't receive any special protection.

When Hungary is only a "transit country" for controlled delivery, permission can only be granted if both the country of origin and the destination country consented in advance.

In one case with a series of EIOs aiming at the performance of several controlled deliveries, which encompassed the surveillance of a significant number of perpetrators on different levels and a large number of cars to be followed, Hungary, as executing country, didn't receive any feedback despite several queries, also sent via Eurojust, on the results of the operation so they couldn't follow up on any leads which might have affected criminal activities in Hungary itself.

Another problem Hungary faced related to the trafficking of amphetamine from NL to HU. Hungary knew about these illegal actions, but it was hard to prove it without NL's cooperation. First, it was necessary to localize a person and the place of the source of drugs in NL and the timing of delivery. Six EIOs were issued for the interception of communication in NL and cross-border surveillance, which was performed professionally by NL authorities where the interception was transmitted in real-time to Hungary through secret channels, which enabled them to identify the person, place and time of delivery of a new container. Netherlands' Law Enforcement Authorities (LEA) escorted the car up to DE/NL border, where the driver overnights next to the border crossing point. During the night, the car was monitored visually/by a camera. In the morning, NL's LEA monitor the delivery to the border crossing up to the point where the local public prosecutor from DE decided it was against domestic rule since the case was not monitored physically at every moment of the route; thus monitoring of delivery was interrupted. Moreover, the competent executing prosecutor did not communicate with the Hungarian authority even if they tried to contact him via Eurojust.

c) Computer related or electronic data monitoring

Hungarian CPC stipulates in section 232 (1) the possibility of secret surveillance of an information system with permission from a judge. If granted, the authorized law enforcement authority can secretly access and record data processed in an information system by technical means. For that purpose, any necessary electronic data may be placed in an information system, while any necessary technical device may be placed at a home, other room, fenced area, vehicle, or other object used by the person concerned, except for public areas, premises open to the public, and means of public transport.

In general, to obtain a judge's permission, the underlying criminal offence has to be committed intentionally and be punishable by imprisonment for five years or more under Section 234 (1) CPC.

However, Section 234 (2) to (4) contains detailed exceptions for other crimes listed therein.

21.6. Interception of telecommunication

The possibility to provide for an interception of telecommunication as laid down in Articles 30 and 31 of the EIO DIR has been transposed in Hungarian legislation by Section 65/A to 65/D of Act CLXXX.

However, the term 'interception of telecommunications' is interpreted differently by Hungarian courts and prosecution offices.

Hungarian prosecution offices opine that Section 65/ and Section 65/B of the Act CLXXX encompass only interception and record of communication conducted through an information system or an electronic communication service, which means wiretapping. Therefore, installing a direct listening device to record live conversations between persons, malware, or GPS tracking falls outside the scope of this investigative measure.

In contrast, according to Hungarian courts, the term "interception of telecommunication", as used in Articles 30 and 31 of the EIO DIR has to be understood in a broader sense since it covers a wider range of activities beyond traditional wiretapping. Thus, following their point of view, it also includes other forms of interception, such as installing a direct listening device (e.g., bugging), malware (e.g. a Trojan), and GPS tracking.

Despite these differing opinions, in practice, no substantial problems occurred so far in executing according to EIOs since the Hungarian law provides for the legality and procedures of such measures. This means in practice that based on the nature of the incoming request, the Hungarian authorities assess which kind of domestic investigative measure fits best for an according execution even so it wouldn't be exactly the same as asked for in the EIO.

Pursuant to Section 65/A, the county chief prosecutor's office or the Budapest-Capital Chief Prosecutor's Office shall be competent to execute an EIO requesting the interception of telecommunication. Where the prosecution office competent to execute the European Investigation Order cannot be identified, the competent prosecution office shall be the Budapest-Capital Chief Prosecutor's Office.

Section 65/C (1) furthermore stipulates that only the Budapest-Capital Chief Prosecutor's Office shall be competent to receive a notification made by a Member State authority in the Hungarian language by the form specified in Annex 20, or using an English, French or German translation available of that form, for accessing and recording, in a covert way, communication of a person residing within the territory of Hungary conducted through or using an electronic communications service or information system without Hungarian technical assistance and the knowledge of the person concerned.

On the other hand, Section 65/B provides the possibility that every prosecution office based on their territorial competence may issue an EIO for interception of telecommunication.

Before Hungarian prosecution offices approach the execution of an EIO where technical assistance is needed, they must file a motion to the investigative judge since section 231e of the Criminal Code of Procedure stipulates the need for permission by a judge. If it is given, in the case of outgoing EIOs, the judge will also validate the decision in section L of the EIO form, but the decision itself will not be attached to it.

If the investigating judge dismisses such a motion in the context of an incoming EIO, the prosecution office must, following Section 65/A (3) of the Act CLXXX inform the Member State authority that the procedural act indicated in the European Investigation Order cannot be performed and may consult the Member State authority for the execution of the European Investigation Order in another way.

Where more than one Member State may execute the procedural act, the European Investigation Order may be transmitted by Hungarian authorities only to the Member State, that can the most efficiently perform the procedural act indicated; this Member State must be that of the actual place of residence of the person concerned where possible.

Detailed rules, which criteria have to be met for an interception of telecommunications, have been set up in sections 214(5), 234(1) and 357(1) CPC.

The criteria must apply *mutatis mutandis* and are as follows:

- it is reasonable to assume that the evidence acquired is indispensable for achieving the purpose of the criminal proceedings, and it cannot be acquired by other means;
- the interception of telecommunications would not restrict any fundamental right of the person concerned or any other person in a disproportional manner considering law enforcement goals;
- it is likely that the evidence sought is obtained this way;
- the investigated offence has been committed intentionally and is punishable by at least 5 years imprisonment;
- the interception of telecommunications may be used against a person who has already been interrogated as a suspect in the case or at least can be suspected of having committed the investigated offence.

Even so, such a scenario happened only on rare occasions: wiretapping could generally also be ordered against persons in respect of whom it may be assumed, based on certain facts, that they are receiving or transmitting messages intended for or originating from the suspect, or that the suspect is using their telephone connection or information technology system. But this doesn't apply to victims.

As issuing State, no refusals had been encountered up to now on the ground that the requested interception didn't meet the criteria for such a measure in a domestic case.

As executing State, regarding the obligation under Article 30 (6a) of the EIO Directive to transmit intercepted communication immediately to the issuing State, it was not manageable for Hungarian authorities in a few cases to satisfy this condition due to technical problems. Relevant factors in this context are especially the nature and volume of the intercepted information, available resources and the technical infrastructure.

However, there are no general obstacles which would prevent an immediate transmission.

A recurring issue which had to be addressed by Hungarian prosecution offices as issuing authority was the fact that the target person had already changed their mobile phone number before the EIO was accepted by the executing country, which is why the EIO had to be supplemented by request to deploy an IMSI-catcher.

GPS tracking

Since the courts are neither involved in the execution nor the issuance of requests related to the permission to use or install a GPS tracker due to its legal qualification as covert means without authorization by a judge or prosecutor, their interpretation of the term “interception of telecommunication” doesn’t play any role in this context.

The legal base for such a measure as covert surveillance used by law enforcement authorities can be found in Section 215 (5) and (9) of CPC. Therefore in principle, no EIO would be needed. If, on the other hand, some Member States send them out, that doesn’t cause any problems. Some also rely instead of an EIO on transmitting the annexe C form, which Hungarian authorities likewise accept as they use it themselves for outgoing requests. However, in cases where Hungary is asked to instal a GPS tracker in a car after entering Hungary, EIO is needed.

Still, depending on the legal regulations in the recipient country, Hungarian authorities on the issuing side met obstacles when using the annexe C form since it was not accepted due to its reference to telecommunication, which is why an EIO had to be drafted. Furthermore, not all the Member States CPCs provide for the possibility of an ex-post authorization which leads to the impossibility of using evidence obtained in the period between the notification via Annex C and the recognition of subsequently issued EIO.

When Hungary as issuing authority want to use a bugging car, which means interception of communication in a private place under Hungarian legislation, it must be requested a judge’s permission through the Public Prosecutor’s Office. In case the suspect changes car, the public prosecutor must be informed and creates a new request for the judge’s permission. It also applies in cases where Hungary is asked to install a bug into a car. However, if another Member State’s authority instals a bug, there is no need for a Hungarian investigative judge's permission just acknowledge the Hungarian authority that will agree that the results of interception can be used as evidence.

21.7. The other investigative measures

Chapter XLIX of the Hungarian CPC comprises detailed rules for searches. According to section 302 (1), search means searching a home, other premises, fenced area, or vehicle to conduct a criminal proceeding successfully. The search may also include searching an information system or a data-storage medium.

Pursuant to Section 303, it may be ordered by the court, prosecution service, or investigating authority. If it is to be conducted in the offices of a notary, or a law office, for the purpose of gaining access to protected data related to the activities of a notary or an attorney-at-law, it must be ordered by a court.

It may be ordered if it is reasonable to assume that it leads to the apprehension of a perpetrator of a criminal offence, the detection of traces of a criminal offence, the discovery of a means of evidence, the discovery of a thing that may be subject to confiscation or forfeiture of assets, or the examination of an information system or data-storage medium. Thus it is not limited to suspects.

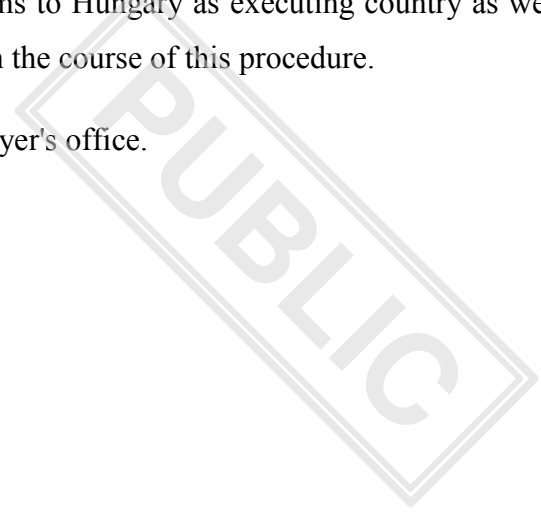
In any case, a search order must specify the purpose and the facts supporting ordering the search.

As issuing State, in some cases, Hungary encountered difficulties due to different legal preconditions in the executing countries for ordering such a measure, notably when the authorization had to be made by courts, which required supplementary information on the necessity of the search.

After some difficulties in the past, Hungary, as executing State, refrains from splitting the execution of investigative measures on the grounds of territorial jurisdiction. This means, in practice, that the prosecution office, which receives EIO first, will handle all requested measures as long as they fall into their competence. By applying this principle which hasn't been explicitly laid down into a written regulation in the CPC, Hungary can ensure, in general, the smooth execution of these requests since only one judicial authority is involved. Especially when it comes to the necessity of concurrent execution of various searches, this constitutes a substantial advantage since the whole coordination stays in one hand.

Allowing the presence of foreign investigators on the spot during the execution of EIOs aiming at searches happened quite often and did not pose problems to Hungary as executing country as well as request for an immediate hand-over of seized items in the course of this procedure.

Hungary has not been asked to carry out searches in lawyer's office.



22. STATISTICS

Hungarian PPOs provided the evaluation team with the statistical data (see the table); however, it was added that collected data do not cover the exact number of incoming or outgoing EIOs, but it includes all kinds of received or requested legal assistance besides EIOs. It was also noted that there is no obligation to inform GPO about EIOs cases for statistical purposes.

Thus, they could not provide us with more explanation of the table, e.g., whether requests refused related to EIO or the other type of legal assistance or reasons for the refusals or which other ways requests had been finished.

Requests for procedural legal assistance received from EU MS authorities	2018	2019	2020	2021	2022
Requests received	2.847	2.967	2.990	2.989	2.984
Requests refused	43	38	27	20	24
Requests finished in other ways	426	381	366	270	211
Requests recognised			250	306	309
Supplementary information asked for	1	16	18	10	17
Requests executed in own competency	164	191	151	137	143
non-execution	18	14	20	11	15
partial execution	11	11	11	9	11
full execution	110	157	109	123	106
Requests sent to the investigating authority for execution	1.273	1.413	1.333	1.475	1.424
non-execution	68	105	74	95	104
partial execution	86	107	132	130	81
full execution	782	1.086	1.089	1.184	1.074
Requests sent to the competent prosecution office for execution	951	931	765	848	840

Requests sent to foreign authorities (narrowed to EU MSs)	2018	2019	2020	2021	2022
Requests sent	853	976	1.084	1.143	1.095

Concerning courts, they provided the evaluation team with the following statistical data (see table below).

Statistical DATA - Execution

Case arrival						
The subject matter of the case	2018	2019	2020	2021	2022	Total
other european investigation orders	13	50	29	42	35	169
european investigation order - request for the examination of a witness	5	5	21	13	11	55
european investigation order - request for the examination of a defendant	2	19	20	20	37	98
european investigation order - request for videoconference	10	18	26	27	31	112
european investigation order (other)	7	0	0	0	0	7
european investigation order (the questioning of participants in proceedings, witnesses, accused persons, experts the request of a foreign judicial authority)	13	0	0	0	0	13

23. TRAINING

In Hungary, prosecutors do not specialize only in international criminal cases.

Prosecution offices (deputy chief prosecutors, prosecutors, deputy prosecutors, and trainee prosecutors) are regularly trained on international legal assistance, with particular attention to EIO. One thousand five hundred eleven practitioners received training on EIO in the last five years. (Total number of practitioners around 2200).

In 2019 the Office of the Prosecutor General conducted a comprehensive inquiry into the prosecutorial practice of issuing and executing EIOs. The summary report of this inquiry was disseminated to each prosecution office, and its conclusion was also presented in the subsequent training.

Within the Prosecution Offices, the training is generally provided by senior prosecutors with significant experience in international criminal cooperation, including the National Member for Hungary at Eurojust and the EJM National Contact Point.

The training occurs online and in hybrid form so that some participants are on-site and some are online. Due to the possibility of online participation, the number of participants in the training is not limited. No training on how to fill in a sample of the EIO is completed during the training. More experienced prosecutors act as lecturers and draw attention to the problems that have arisen during the execution or issuing of the EIO and give instructions on how to avoid problems in the future.

At the end of each training, participants are requested to fill in a detailed evaluation form. It is possible to evaluate each speaker and each presentation separately, in text and percentage form. The training organisers subsequently processed forms, and the comments and evaluations are considered when planning the later training.

In addition, from September 2022 on, to ensure a long-term follow-up of the effectiveness of the training, a new evaluation form has been sent to participants three months after the training, as recommended by the European Judicial Training Network, aimed to assess whether participants have been able to use the information they have learned.

The prosecutor's office has an intranet where all EIO-related information is provided and updated. All new information about EIO will also be sent by e-mail. If prosecutors desire, they can apply to participate in EJM and other international training. Important information obtained during the training will be added to the intranet.

Prosecutors and judges do not have joint training. However, the Chief Prosecutor is a regular guest at the annual meeting for judges, which allows him to get aware of the problems that have arisen before the judges and to mediate them to the prosecutor's office.

For judges, European Law Advisors' Network (ELAN) has been created to assist and harmonize the activities of judges. The members of the ELAN are assigned regionally and work nationwide.

Hungary has five nationwide regions (these are the territorial regions of the 5 Regional Courts of Appeal in Hungary), and within these five regions, colleagues are appointed to advisors from all levels of the Hungarian judicial system. The network is divided into branches, which align with the court system's professional division. ELAN is led by the coordinator. The deputy coordinator provides professional aid and opinions to the advisor.

The main task of ELAN is to advise colleagues on all practical problems related to EU law. They provide help to colleagues via mobile calls and in the form of an email. ELAN organizes lectures and presentations on EU-law-related legislation changes or any EU-law-related topic.

All judges participate in specialized training and compulsory training each semester. Members of the ELAN write different types of publications, like blogs and LWPs. In recent years, there have been local and central training sessions on the EIO in the judiciary, attended by nearly 600 judges and court secretaries. 635 judges received training on EIO in the last 5 years. Most of the speakers at the training courses were European legal advisers. The ELAN produced a detailed study covering day-to-day practice.

Neither the prosecutors nor the judges have regular mutual discussions regarding the problems related to EIO. When questions or problems arise, they are resolved on a case-by-case basis. Both judges and prosecutors consider the training opportunities to be sufficient. Based on the information provided, it can be said that judges and prosecutors are provided with sufficient training opportunities.

Since 2018 attorneys do not have common training with prosecutors and judges. Attorneys have access to court decisions of CJEU and ECHR. Lawyers have a general annual training obligation. The University organizes conferences with the participation of foreign lecturers. There is a Facebook group for lawyers (more than 4000 members) where legal information is shared.

24. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

24.1. Suggestions by Hungary



24.2. RECOMMENDATIONS

Regarding the practical implementation and operation of the evaluated Directive 2014/41/EU, the team of experts involved in assessing Hungary was able to review the system in Hungary satisfactorily.

Hungary should conduct an 18-month follow-up to the recommendations referred to below after this report has been adopted by the Working Party concerned.

The evaluation team saw fit to make several suggestions for the attention of Hungarian's authorities. Furthermore, based on the various good practices, related recommendations are being put forward to the EU, its institutions and agencies, and Eurojust and the EJM in particular.

24.2.1. Recommendations to Hungary

Recommendation 1: Due to the difficulties with translations into the Hungarian language, which are often of poor quality and not understandable, consider accepting EN as the second language, not only for urgent cases having in mind the difficulties in finding a translator for the Hungarian language (point 6.2.).

Recommendation 2: In the case of an EIO for collecting electronic evidence, we recommend providing the executing authority with relevant search criteria (point 7).

Recommendation 3: The evaluation team opines that it would be helpful if Hungary could also insert the EIO file number cases with the personal data of the perpetrators or suspects into their national database. This would enable them to cross-check domestic cases at a very early stage with investigations conducted abroad and therefore spot so far unknown links and minimise the risk that the domestic case would have to be dismissed due to the ne bis in idem principle when a perpetrator would have already been convicted for the same crime.

Recommendation 4: Ensure that practitioners always inform the issuing Member State about the delay of the execution by providing the reasons for the delay and the indication of the possible deadline for execution (point 15).

Recommendation 5: Ensure that practitioners would not omit to send Annex B to the issuing authorities (point 18).

Recommendation 6: The evaluation team encourages Hungarian authority to provide practitioners with guidelines on how to deal with scenarios of lacking consent where a person is required to participate, e.g. in the identification procedure, confrontations etc., that cannot be replaced by the other investigative measures and to prevent terminating the investigation due to lack of evidence and thus to ensure a uniform procedure as far as possible (point 21.1.).

Recommendation 7: Ensure that practitioners would not send an EIO for the execution as a classified document to ensure a smooth execution (points 12).

Recommendation 8: To ensure that all official financial service providers were able to comply with a request to deliver information concerning real-time surveillance of payment transactions.

Recommendation 9: Ensure that the technical infrastructure and manpower for an immediate transmission is available permanently to minimize the risk of obtaining crucial information belated (point 21.6.)

24.2.2. Recommendations to the other Member States

Recommendation 1: When filling in EIOs, provide a clear description of the facts, the legal classification of an offence, the purpose of the requested measure, and if it relates to search and seizure, identify the object/s to be seized to avoid delay in execution. (point 6.1.).

Recommendation 2: Respect the language regime and do not send the EIO in a language other than specified in the notice to the Commission if it is not urgent since, according to the notification, Hungary accepts EN, FR and DE only in urgent cases. And in case it is urgent, it is necessary to state it in the EIO form (point 6.2.).

Recommendation 3: Provide regular updates about executing authorities and e-mail addresses for EJN Judicial Atlas (point 8).

Recommendation 4: When executing an EIO, respect the provision under Article 9(2) of the EIO DIR, i.e. comply with the formalities and procedures expressly indicated by the issuing authority such as notifying the defence counsel of the interview, providing information to the person concerned on his/her rights and obligations, informing the suspect about the facts and legal classification (point 10).

Recommendation 5: If the executing State asks for additional information, it is necessary to provide this information to avoid the refusal of execution due to a reason that the EVP is incomplete or inaccurate to such an extent that it does not allow its execution (point 13).

Recommendation 6: Before refusing the EIO, the beforehand consultation procedure must take place in any case (points 13 and 21.2).

Recommendation 7: Ensure that practitioners understand correctly the principle ne bis in idem, i.e., it relates to a crime for which the person has already been acquitted or convicted by a final judgment, not a case closed against an unknown perpetrator (point 13.2.).

Recommendation 8: Executing Member States must always inform the issuing Member States if executing the EIO on time is impossible, providing the reasons for the delay and indicating the possible deadline for execution (point 15).

Recommendation 9: Mark the EIO as urgent only in those cases where it is truly urgent. It is also recommended to indicate the reason for the urgency (point 15).

Recommendation 10: Ensure that practitioners always send Annex B so that the issuing MS knows when the time limit for the execution has started and who is the executing authority mainly in case the EIO was forwarded to another body as the competent one (point 18).

Recommendation 11: Establish common rules in which way the incriminated consignment during a controlled delivery has to be monitored so that their further transport will be allowed by all MS. (point 21.5.)

Recommendation 12: The evaluation team considers cases of controlled delivery to be crucial for efficient combat against cross-border crimes; therefore, the requesting country should always provide the executing countries with feedback on the outcome of the operation. Only by this means can there be possible clues to already existing, until then, undetected criminal structures in the requested countries could be followed up (point 21.5).

Recommendation 13: Instruct your practitioners that when acting as executing authorities, it is not acceptable to ignore the request to discuss the issue with the issuing authority (point 21.5.).

Recommendation 14: To avoid any delay in the execution of wiretapping requests, always include in the EIO form the request to use an IMSI catcher in case the designated phone number changes. (point 21.6.)

Recommendation 15: To enable the PPO which receives the EIO at first to execute all requested measures regardless of possible different territorial competencies as long as they fall into its general competence. In this way, the EIO wouldn't have to be split and forwarded to several more PPOs which regularly causes delays and problems in case of a requested concurrent execution. (point 21.7.)

24.2.3. Recommendations to the European Commission.

Recommendation 1: To consider improving Annex A concerning the sequence of Sections and reformulating Section J as described in point 6.1.

Recommendation 2: The evaluation team invites the Commission to clarify the application of the EIO DIR concerning Article 40 of the CISA regarding the surveillance of vehicles where a GPS tracking device is used to reach a uniform approach because when different instruments are used and there is no possibility of an ex-post authorization, it leads to the impossibility of using obtained evidence. (point 21.6.)

24.3. Best practices

1. Designated central authorities (GPO) related to the regulatory offences for which administrative bodies can impose a fine since there are not many such cases and issuing authorities do not need to search the competent execution authorities. (point 4)
2. In urgent cases, Hungary accepts the EIOs in English, French or German, and EIOs may also be sent directly to LEAs since they speak different languages. (point 6.2.)
3. A flexible approach in the execution of various investigative measures falling under different territorial jurisdictions, where the prosecutor who receives the EVP carries out all investigative measures as far as they fall within the scope of the prosecutor's office. (point 6.3.)
4. Hungarian executing authorities do not require a hard copy of a judge's order to be attached to EIOs. (point 12)
5. Hungarian authorities always consult with the other MSs about what volume of illicitly transported material may be substituted to avoid any negative impact on further prosecution. (point 21.5.)
6. The establishment of the European Law Advisors' Network (ELAN) for judges has been created to assist and harmonize the activities of judges. The members of the ELAN are from all regions and work nationwide. (point 23)

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

Monday 24 April 2023

Arrival of the evaluation team to Budapest

Internal meeting of the evaluation team

Tuesday 25 April 2023 - at the Ministry of Justice

- 9:00-9:15** Arrival to the Supreme Cassation Prosecutor's Office. Welcoming speeches;
- 9:15-10:30** Presentations; the national framework of and practice on the issue and execution of an EIO, training activities of the National Institute of Justice, summary of the
- 10:30-10:45** Coffee break
- 10:45-12:00** Continuation with presentations
- 12:00-13:00** Lunch break
- 13:00-16:30** Meeting with practitioners on the implementation of the EIO DIR, Q&A; discussion;
- 18:00-19:30** Internal meeting of the evaluation team

Wednesday 26 April 2023 - at the General Prosecutor Office

- 9:00-10:30** Meeting with practitioners on the implementation of the EIO DIR,
Q&A; discussion;
- 10:30-10:45** Coffee break
- 10:45-12:00** Meeting with practitioners on the implementation of the EIO DIR,
Q&A; discussion;
- 12:00-13:00** Lunch break
- 13:00-14:45** Meeting with practitioners on the implementation of the EIO DIR,
Q&A; discussion;
- 14:45-15:00** Coffee break
- 15:00-16:30** Meeting with practitioners on the implementation of the EIO DIR,
Q&A; discussion;
- 18:00-19:30** Internal meeting of the evaluation team

Thursday 27 April 2023 – at the Ministry of Justice

- 9:00-11:00** Meeting with practitioners on the implementation of the EIO DIR,
Q&A; discussion;
- 11:00-11:15** Coffee break
- 11:15-12:30** Wrap-up meeting
- 16:00–17:30** Internal meeting of the evaluation team

Friday 28 April 2023

- 9:00-11:00** Internal meeting of the evaluation team

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CC		The Criminal Code
CJEU		The Court of Justice of European Union
CPC		The Criminal Procedure Code
EAW		The European Arrest Warrant
ECHR		The European Convention on Human Rights
EIO		The European Investigation Order
EIO DIR		The Directive on European Investigation Order
EJN		The European Judicial Network
ELAN		The European Law Advisors' Network
EUCCM		Act on cooperation in criminal matters with the Member States of the European Union
GPO		The General Prosecutor Office
GPS		The Global Positioning System
ICLA		Act XXXVIII of 1996 on international criminal legal aid
IMSI-catcher		The International mobile subscriber identity - catcher
JIT		The Joint Investigation Team
LEA		The Law Enforcement Agency
LWP		Law Working Paper
MLA		The Mutual Legal Assistance
PPO/s		The Public Prosecutor Office/s
VDC		The videoconference