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NOTE

From : Presidency
To : delegations

Prev. doc. 7654/11 COPEN 47 EUROJUST 32 EJN 22 CODEC 402

Subject : Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters.

I. INTRODUCTION

In April 2010, a group of seven Member States presented a proposal for a Directive of the European Parliament and the Council regarding the European Investigation Order in criminal matters (hereafter “the EIO”). The objective of the proposal is to set up a single regime on obtaining evidence between the Member States by replacing the existing legal framework, including the Framework Decision 2008/978/JHA on the European Evidence Warrant. Negotiations started in July 2010.

The Working Party on Cooperation in Criminal Matters met on 8 March in order to continue the examination of the proposal. The discussions were focused on Articles 8-10. In particular two options concerning the provisions related to "grounds for non-recognition" were presented.

Delegations were invited to express their opinion on this issue.

Following those discussions the Presidency called on JHA Counsellors to meet on 18 March with a view to discussing the revised text of provisions related to "grounds for non-recognition". The text resulting from these discussions is set out in the Annex to this note. Further observations are set out under II below.

Furthermore, at the meeting on 7-8 February 2011 of the Working Party on Cooperation in Criminal Matters some other outstanding issues were discussed. In particular the rules on "legal remedy" (article 13) were examined. A revised text following these discussions, related to the provisions of Articles 11, 12 and 14 are set out in the Annex to this note, with some additional points clarified under II below.

Delegations are invited to further reflect on these issues.

II. ISSUES SUBMITTED TO THE WORKING PARTY

1. RECOGNITION AND EXECUTION

According to the principle of mutual recognition, the executing authority may refuse execution of an EIO only if a ground for refusal is applicable. The modalities of the procedure of execution of the EIO are however governed by the law of the executing State.

The discussions on the issue of "grounds for non-recognition" were carried out extensively already during the BE Presidency. Following these discussions, two versions of the draft provisions were submitted by HU presidency to the delegations: one was based on the document presented at the JHA Council in December 2010, and a new one, which offered a simpler but more general approach. Both of these proposals were discussed during the meeting and

most of the delegations preferred the category based version. Recently, the JHA Counsellors examined a new draft prepared by the Presidency after having considered the reactions of the delegations¹. Two working documents (from **DELETED**) were presented at this meeting. Elements of these suggestions together with some additional modifications are reflected in the footnotes to the text as set out in the Annex to this note.

At the JHA Counsellors meeting the text set out in the Annex was identified as a basis for further work on the proposal. In this context a number of delegations made specific observations concerning the envisaged provisions. Some remarks were made already at the meeting on 8 March in relation to the then presented versions of the text, however, in view of their pertinence they are reproduced hereunder.

Furthermore, some delegations proposed an insertion of other grounds for non-recognition under Paragraph 1 of Article 10:

- **DELETED** suggested to add the following discretionary ground for non-recognition: "*under the law of the executing State, the suspected person cannot, because of his/her age, be held criminally responsible for the offence covered by the EIO*";
- In addition, **DELETED** proposed the following ground for non-recognition: "*the measure provided for in the EIO would not be authorised in a similar domestic case*". This proposal was supported by **DELETED**, but opposed by **DELETED**.
- **DELETED** suggested also that there should be a possibility to refuse recognition on the EIO in cases where there is of lack of information concerning the evidence.
- **DELETED** pleaded for introduction on the ground for non-recognition addressing the specific problem it has in respect of investigations carried out in respect of persons linked with press.
- **DELETED**, supported by **DELETED**, proposed the introduction of the ground of non-recognition linked with the 'territoriality principle'. **DELETED** strongly opposed this suggestion.

¹ C.f 7654/11 COPEN 47 EUROJUST 32 EJM 22 CODEC 402 for detailed description of the

Referring to the introduction of a ground of non-recognition linked with the 'territoriality principle', the Presidency highlights that the adoption of this provision could result in that investigations concerning serious organized crime that affect two or more Member States could be impeded. Such a ground of non-recognition can lead to situations where the prosecution cannot be carried out in either of the Member States.

Concerning the use of the *ne bis in idem* principle as a ground for non-recognition of an EIO this question was not in depth explored neither in the COPEN WP meeting, nor at the JHA Counsellors' meeting. Some delegations opposed to the use of this principle as a ground for refusal. Other delegations proposed to modify the wording of the proposal. Eurojust in its opinion (doc 6814/11) expressed concerns as to the introduction of this ground for non-recognition as regards the wide interpretation of this notion by the ECJ, which may lead to differing application among the Member States. However, the Presidency believes that the reference to this principle as a ground for non-recognition is necessary in order to be consistent with the provisions (see Art. 2) of the Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

Delegations expressed some concerns in respect of the potentially broad understanding which could be made to the reference in the text to "coercive measures". It has been noted that previous drafts, while seemingly more complex, contained, in the then article 9bis a list of measures for which no ground for non-recognition (except for the ones currently reproduced in Article 10.1) could be possible. Accordingly, the scope of the grounds for non-recognition established for coercive measures could be limited. Therefore, delegations claimed that the present text may constitute a step backwards as against the present regime of MLA and of EEW. The Presidency is of the opinion that indeed, the text should not be a step backwards and restrict the cooperation between the judicial authorities in respect of collection of evidence.

Delegations generally agreed that there are situations where evidence should always be collected and/or transmitted to the issuing authority despite the fact that it might have been collected with the use of a measure regarded as coercive under the law of the executing state. In order to address these concerns the Presidency redrafted Article 10, with a separation of provisions of the original paragraph (1b).

- A new paragraph 1b is applicable to measures, where the recognition or execution of an EIO can only be refused in cases referred to in paragraph (1). In point b) a non exhaustive list for non-coercive measures is introduced, with the aim to create a minimum common understanding of the notion ‘non-coercive measure’.
- The insertion of the identification of persons holding a subscription of a specified phone number or IP address should cover common requests under current MLA practice, irrespective of whether or not they are considered coercive. The identification of the owner of a phone number is an example of non sensitive data for which the EU could have a simplified regime.

However, the Presidency believes that a clarification is needed whether or not obtaining data already collected but through a coercive measure carried out in the past, falls under general provisions or the provisions only for coercive measures.

Delegations are invited to examine the proposal and reflect on the questions raised above.

2. LEGAL REMEDIES

The question of "legal remedies" was already discussed during the meeting on 27-28 July 2010, 11-12 January 2011 and 7-8 February 2011.

The discussions addressed two main issues. The first of them was the question of the relation between legal remedies provided for in Article 13 with the legal remedies already existing under national law. A majority of delegations were of the opinion that the directive should not be understood as imposing upon the Member States any obligation to provide more legal remedies than what is available in respect of the same investigative measures carried out in a similar national case. Secondly, the relationship between Article 13 and Articles 11 and 12 setting the time limits and Article 14 listing the grounds for postponement of recognition or execution was examined.

In order to address concerns voiced by delegations and the need to ensure a comprehensive mechanism on this issue, the Presidency proposes a new wording of Article 13.

The principal rule reflected in paragraph (1) of Article 13, is that Member States should ensure the applicability of legal remedies which already exist in their national law. This main principle is applicable both in the issuing and executing State. It is assumed that each Member State has in its law legal remedies although those remedies may differ between Member States and may apply at different stages of proceedings and also have different impact on these proceedings. It is noted also that, in the instance no legal remedy is available in the executing State, either because according to national law the person is not informed of the investigative measure being carried out, or because the investigative measure is carried out at an early stage of the procedure, it is understood that any interested party will nonetheless have the possibility to challenge the measure at least in the course of the procedure carried out in the issuing State.

Paragraph (3) of Article 13 reiterates one basic principle of the mutual recognition instruments that the substantive reasons for issuing the EIO may be challenged only in an action brought before a court in the issuing State. It is then understood that the recognition or execution of the EIO may be challenged in both the executing and issuing State. Accordingly as the rules on legal remedies stem from national law, Article 13 does not define the time limit within which a legal remedy can be applied for.

Therefore, two fundamental issues need at least to be addressed in this debate: the question of the suspension of the execution/transfer and the effect of the remedy exercised.

First, on the question of the suspension of the execution / transfer pending the outcome of a legal remedy in the executing State, it is necessary to make a distinction between different situations. Three examples, based on the moment when the person becomes aware of the execution of the investigation measure concerned, illustrate the various situations:

- The first example concerns cases where the interested party is informed prior to the actual execution of the measure and may challenge the decision to execute the measure before it is actually carried out. This may include for example taking of blood sample or compulsory hearing of a witness. In such case, the remedy will impact on whether or not the measure is executed.

In this case, it is recalled that Article 11 (4) provides already a certain margin of flexibility for the Member States allowing the measure to be executed within 90 days after the decision on the recognition and execution has been taken. Article 11 (6) also provides the possibility to postpone the execution even further.

- The second example concerns cases where the person is informed of the measure but only while or after it has been carried out. The person may therefore challenge the measure only after the EIO and the investigative measure concerned have been executed. This may include for example the search of premises where there is seizure of evidence.

In this instance, the question arises whether the transfer of the evidence should be postponed or not pending the outcome of the legal remedy. This question is not expressly addressed in the Directive and it is therefore up to national law of the executing State to decide on how to handle the question. According to Article 12 (1), the evidence has to be transferred without undue delay. However it can be reasonably argued that a pending remedy is a legitimate reason to delay the transfer if the remedy has suspensive effect under national law.

- The third example concerns cases where the person is not informed about the measure or is informed only at a later stage. This may include for example the interception of telecommunications, where, depending on the national systems concerned, the person will not be informed or will only be informed after the investigation is completed. In this case, a possible remedy will, in most cases, be exercised only after the evidence has been transferred to the issuing State and probably the remedy will be exercised in the issuing State itself.

It may however happen that the remedy will be exercised in the executing State. In this case, the question at hand is not the suspension of execution/transfer any more but the question of the effect in the issuing State of the remedy being exercised in the executing State. This specific issue is addressed in paragraph 5a.

There are two situations:

- Either the exercise of a remedy leads to the conclusion that the EIO should not have been recognised in the first place (because a ground for refusal should have been applied);

- Or the EIO should have been executed but there was some irregularity in the way the evidence was collected according to the national law of the executing State.

In both cases, the issuing authority would have to take into account the irregularity established in the executing State in accordance with its own national law.

Delegations are invited to further reflect on this issue, and, if appropriate, endorse the language contained in the Article.

3. COSTS

The Working Party meeting on 7-8 February 2011 continued the examination of the question of costs. The following principles stemming from the discussion in the Council were confirmed by the delegations as the basis for drafting: 1. disproportionate costs or lack of resources in the executing State should not be a ground for refusal for the executing authority; 2 instead other possible alternative solutions could be applied (direct communication between the competent authorities, extension of deadlines, sharing of costs, etc).

Delegations confirmed that there should be a possibility to make, in exceptional circumstances, the execution of the investigative measure subject to the condition that the costs will be borne by (or shared with) the issuing State. In this case, the issuing authority should have the possibility to withdraw the EIO.

The discussions at the last meeting were based on two drafting versions of paragraph 3 and 4 aimed at addressing the issue of costs, as well as on a proposal made by the **DELETED** delegation (document 6208/11 COPEN 17 EUROJUST 14 EJM 8 CODEC 178). Delegations clearly expressed their preference to the second version proposed by the Presidency which constitutes the basis for the new proposal.

It should be noted also that the Article Y below will become a general rule of the Directive and that other specific provisions relating to costs (e.g. Article 20 (9) or Article 27) will be provided for in respect of particular measures.

Article Y²

Costs

1. Unless otherwise provided in the Directive, all costs undertaken on the territory of the executing State which are related to the execution of an EIO shall be borne by the executing State.

2. Where the executing authority considers that the costs for the execution of the EIO may become exceptionally high, it shall consult with the issuing authority on whether and how the costs could be shared.

3. If consultations referred to in paragraph 2 cannot lead to an agreement on the division of cost, (...) the competent authorities should further consult with each other in order to assess whether the request could not be modified (...), spread over time or eventually completely or partially withdrawn (...). Where the issuing authority objects to the withdrawal of the EIO it shall specify its reasons to the executing authority.

4. deleted

² Scrutiny reservation entered by **DELETED**. **DELETED** proposed modifications according to which paragraph 2 should be deleted and paragraph 3 read: "If consultations referred to in paragraph 2 cannot lead to an agreement on the division of costs, the issuing authority may withdraw the EIO." **DELETED** proposed instead that paragraph 3 is deleted and additional sentence is added at the end of paragraph 2 in order to read as follows: "Notwithstanding these consultations the EIO shall be executed without delay unless the issuing state decides to withdraw or modify the EIO." **DELETED** proposed that paragraph 4 is deleted and additional sentence is added at the end of paragraph 3 in order to read as follows: "the EIO shall be executed subject to the budgetary constraints of the executing authority in a manner to be determined by the executing authority."

(Only the relevant provisions for the discussion are reproduced below)

CHAPTER III
PROCEDURES AND SAFEGUARDS
FOR THE EXECUTING STATE

Article 8

Recognition and execution

1. The executing authority shall recognise an EIO, transmitted in accordance with Article 6, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in this Directive or one of the grounds for postponement provided for in Article 14.
2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State³.

³ **DELETED** suggested to modify the last part of the sentence so that it reads as follows: *'provided that they are allowed for under the domestic law of the executing state'*. **DELETED**/COM opposed such modification.

- 3.⁴ The issuing authority may request that one or several authorities of the issuing State assist in the execution of the EIO in support to the competent authorities of the executing State to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measure(s) mentioned in the EIO in a similar national case. The executing authority shall comply with this request provided that such assistance is not contrary to the fundamental principles of law of the executing State or does not harm its essential national security interests.⁵
- 3a. The authorities of the issuing State present in the executing State shall be bound by the law of the executing State during the execution of the EIO. They shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing State and has been agreed between issuing and executing authorities.⁶
4. The issuing and executing authorities may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

⁴ Some delegations were of the opinion that the decision of the executing State to comply with the request under this paragraph should not be automatic, but rather subject to certain conditions. **DELETED** suggested to refer to the domestic law, instead of the fundamental principles of law, of the executing State. **DELETED** supported by **DELETED** proposed modifications in the text of this article based on: 1. replacing the reference to "assist in" by "*be present*", adding the following sentence at the end of paragraph 3a: "*The executing authority may set conditions as to the scope and nature of the attendance of the authorities of the issuing State*", and inserting a new paragraph 3b: "*The presence of the authorities of the issuing State shall not result in facts being divulged to persons other than those authorised by virtue of the preceding paragraphs in breach of judicial confidentiality or the rights of the person concerned. The information brought to the knowledge of the issuing State may not be used as evidence until the transfer of evidence has taken place in accordance with Article 12.*" HU PRES believes that the addition of the sentence at the end of paragraph 3a proposed by **DELETED** could be adequate, however, inserting a new paragraph 3b is not necessary. The provision proposed in the new paragraph 3b could make more precise the provision covered by paragraph 3a, but in order to keep the text as simple as possible, the insertion of a new recital would be more appropriate.

⁵ **DELETED** delegation inquired about the relationship between this provision and Article 89 TFEU.

⁶ Scrutiny reservation by some delegations

Article 9

Recourse to a different type of investigative measure⁷

1. The executing authority may decide to have recourse to an investigative measure other than that provided for in the EIO when:
 - a) [the investigative measure indicated in the EIO does not exist under the law of the executing State⁸;]
 - b) (...)
 - c) the investigative measure selected by the executing authority will have the same result as the measure provided for in the EIO by less (...) intrusive means .
2. When the executing authority decides to avail itself of the possibility referred to in paragraph 1, it shall first inform the issuing authority, which may decide to withdraw the EIO.

Article 9a

Specific grounds for non-recognition or non-execution

deleted

⁷ **DELETED** suggested introducing an additional point d), which could read as follows: *'the investigative measure indicated in the EIO would require the use of disproportionate resources by the executing Member State'*.

⁸ Text reintroduced in light of the new draft of Article 10. In order to ensure the flexibility of the execution of the EIO, the Presidency believes that the possibility to have recourse to a different type of investigative measure should be given also in cases where the EIO relates to non coercive measures.

Article 10⁹

Grounds for non-recognition or non-execution

1. Recognition or execution of an EIO may be refused in the executing State where¹⁰:
 - a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO¹¹;
 - b) in a specific case, its execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;
 - c) (...)

⁹ Scrutiny reservation by a number of delegations on this new draft. Some delegations suggested that additional grounds for non-recognition are inserted into this provision. C.f. under II on the cover note.

¹⁰ Further to other proposals made by other delegations, **DELETED** suggested that a new point f) is added making a ground for non-recognition related to territoriality: f) *the EIO relates to criminal offences which: (i) under the law of the executing state are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory; or (ii) were committed outside the territory of the issuing state, and the law of the executing state does not permit legal proceedings to be taken in respect of such offences where they are committed outside that state's territory.*" A number of delegations strongly opposed this addition.

¹¹ **DELETED** proposed that this point be modified in order to address its specific institutional concerns. The text should read as follows: "*under the law of the executing State, there is an immunity or a privilege or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which would make it impossible to execute the EIO.*" **DELETED** requested that this text be accompanied by the following recital: "*This directive shall not have the effect of requiring Member States to take any measures which conflict with their constitutional rules relating, amongst others, to freedom of association, freedom of the press and freedom of expression in other media*" Some delegations supported the **DELETED** plea for a specific ground for refusal related to the specific rules existing in **DELETED** in relation to freedom of the press. Some delegations opposed it however, indicating that an inclusion of such provision may bring the risk of setting up a hierarchy of fundamental rights and constitutional freedoms. Therefore, some other delegations suggested that also other "constitutional" rules and freedoms be added to the list of grounds of refusal. It needs to be noted that almost all delegations opposed the inclusion of the recital proposed by **DELETED**. Also **DELETED** raised an objection referring to established case law of the ECJ, addressing the relationship between the MS constitutional rules and EU law.

- d) [the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the measure would not be authorised in a similar domestic case]¹²;
- e)¹³ its execution would infringe the *ne bis in idem* principle.

1a. Without prejudice to paragraph (1) where the investigative measure indicated by the issuing authority in the EIO concerns a coercive measure the recognition or execution of the measure may also be refused in any of the following cases:

- a) if the conduct for which the EIO has been issued does not constitute an offence [is not punishable] under the law of the executing State, or;
- b)¹⁴ if the measure concerned would not have been authorised [by the executing authority] in a similar domestic case, or;
- c) if the measure does not exist under the law of the executing State and there is no other measure that will have the same result in accordance with Article 9, or;
- d)¹⁵ if the measure exists under the law of the executing State, but its use is restricted to a list or category of offences which does not include the offence covered by the EIO

¹² This point will be further examined.

¹³ **DELETED** opposed the use of the *ne bis in idem* principle as a ground for refusal of an EIO. **DELETED** proposed that this point should be replaced by the following text: *‘there are strong reasons to believe that its execution would infringe the ne bis in idem principle’*. **DELETED** suggested the following wording: *‘the proceedings to which the EIO relates would infringe the ne bis in idem principle’*. Eurojust in its opinion (doc 6814/11) also expressed concerns as to the introduction of this ground for refusal because of the wide interpretation of this notion by the ECJ, which may lead to differing application among the Member States.

HU PRES believes that the proposal should be consistent with the provisions of the Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

¹⁴ **DELETED** suggested the deletion of the reference to the executing authority.

¹⁵ **DELETED** suggested to delete this point.

1b. Where the investigative measure indicated in the EIO concerns one of the following measures, the recognition or execution of the EIO can only be refused in cases referred to in paragraph 1:

- a) the hearing of a witness, victim¹⁶, suspect or third party in the territory of the executing State or
- b) a non-coercive investigative measure, including at least:
 - i) the obtaining of information already in the possession of the executing authority;
 - ii) the obtaining of information contained in databases held by police or judicial authorities or accessible by the executing authority in the framework of criminal proceedings;
 - iii) [the identification of persons holding a subscription of a specified phone number or IP address].

1c Without prejudice to paragraph (1) (...), the execution or recognition of an EIO may not be refused in the cases provided for in paragraph 1a (a) and (b)¹⁷, where the investigative measure has been requested in relation to the following categories of offences, as indicated by the issuing authority in the EIO, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of that State, and they shall not be subject to verification of double criminality under any circumstances:

[insert list of 32 offences in accordance with Article 2(2) of the Framework Decision on the European Arrest Warrant]

¹⁶ **DELETED** suggested to insert additional text.

¹⁷ Linked to footnote no. 16., **DELETED** suggested the deletion of reference to paragraph 1a point b). However, HU PRES would emphasise that this deletion would give a wide possibility of non- recognition and non-execution of an EIO on the basis of the verification of the double criminality.

2. In the cases referred to in paragraph 1(a), (b) and (e), before deciding not to recognise or not to execute an EIO, either totally or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.
- 3¹⁸. In the case referred to in paragraph 1(a) and where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request it to exercise that power.

Article 11

Deadlines for recognition or execution

1. The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar national case¹⁹ and, in any case, within the deadlines provided in this Article.
2. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has stated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.

¹⁸ New paragraph introduced following a suggestion made by **DELETED** and supported by number of delegations. This provision proposed in new paragraph 3 would make more precise the provision covered by paragraph 1 point (a). However, HU PRES believes that the insertion of a new recital would be more appropriate. The obligation for consultation has already been indicated in the provision of paragraph 2 and the “request to exercise”, proposed by new paragraph 3 would be based on consultation as well.

¹⁹ **DELETED** expressed some concerns about the use of the terms "as for a similar national case" (e.g. in the absence of dual criminality) and suggested to limit the application of deadlines in instances where the dual criminality has been established. This proposal was opposed by several delegations.

3. The decision on the recognition or execution shall be taken as soon as possible and, without prejudice to paragraph 5, no later than 30²⁰ days after the receipt of the EIO by the competent executing authority.
- 4.²¹ Unless either grounds for postponement under Article 14 exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the executing State²², the executing authority shall carry out the investigative measure without delay and without prejudice to paragraph 5, no later than 90 days after the decision referred to in paragraph 3.
5. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 3 or on a specific date set out in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the decision to be taken. In this case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.

²⁰ All delegations supported the inclusion of deadlines for the decision on recognition or execution of an EIO. No delegation considered the deadlines to be too short, to the contrary some delegations pleaded for even shorter time limits. Some delegations proposed the introduction of the terminology “urgent cases”, where the deadlines would be shorter, however the Presidency believes that the expression “no longer than” allows a shorter deadline for executing. **DELETED** suggested to differentiate the deadlines according to different categories of investigative measures.

²¹ **DELETED** suggested that an additional text be inserted in order to allow for the prolongation of the deadlines also in cases where a legal remedy is pending in accordance with Articles 13. However, it was also understood that this Directive should not result in an obligation on the Member States to introduce into their national systems remedies which would be applicable in a similar national case (c.f. discussion on article 13). Therefore, the effects of the application of the legal remedies on the time limits of the proceedings should also be regulated in accordance with the national rules. **DELETED** also proposed that during the period of legal remedies the recognition or execution would be suspended. A number of delegations opposed this suggestion the Presidency is of the opinion that the suspending effect of legal remedies will depend on the relevant solutions existing under national law.

²² **DELETED** suggested to specify that in the case the evidence is already in the possession of the executing State, it should be immediately transferred. This concern is however already addressed by Article 12 (1).

6. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 4, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the executing authority on the appropriate timing to carry out the measure.

Article 12

Transfer of evidence

1. The executing authority shall without undue delay transfer the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State. Where requested in the EIO and if possible under national law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 8(3).
2. When transferring the evidence obtained, the executing authority shall indicate whether it requires it to be returned to the executing State as soon as it is no longer required in the issuing State.²³
3. Where the objects, documents, or data concerned are already relevant for other proceedings the executing authority may, at the explicit request and after consultations with the issuing authority temporarily transfer the evidence under the condition that it be returned to the executing State as soon as they are no longer required in the issuing State or at any other time/occasion agreed between the competent authorities.

²³ Paragraph 2 of the initiative has been reintroduced following a suggestion made by **DELETED**.

Article 13
Legal remedies

1. Member States shall (...) ensure that any interested party may avail himself of the same legal remedies as those available in a domestic case against the investigative measure concerned, in order to preserve their legitimate interests.
2. (...)
3. The substantive reasons for issuing the EIO may be challenged only in an action brought before a court in the issuing State.
4. (...)
5. (...)
- 5a. In case the evidence has already been transferred and the recognition or execution of an EIO has been successfully challenged in the executing State, this decision will be taken into account in the issuing State in accordance with its own national law.
6. (...).
7. (...)

Article 14
Grounds for postponement of recognition or execution

1. Without prejudice to Article 12(2) the recognition or execution of the EIO may be postponed in the executing State where:
 - a) its execution might prejudice an ongoing criminal investigation or prosecution until such time as the executing State deems reasonable;

- b) the objects, documents, or data concerned are already being used in other proceedings until such time as they are no longer required for this purpose; or
 - c) referred to paragraph (5) Article 13, the executing State suspends the transfer of objects, documents and data pending the outcome of a legal remedy in a comparable domestic case.
2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority thereof by any means capable of producing a written record.
-