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European Investigation Order, mutual legal assistance and Joint Investigation Teams

This section gives an overview of EU law on gathering evidence, providing mutual legal assistance and setting up Joint Investigation Teams (JITs) in cross-border cases.

Background

Removing border controls in the EU has made it much easier for EU citizens to travel around freely, but has also made it easier for criminals to operate across borders.

So it's essential that EU countries cooperate effectively on gathering evidence in criminal matters.

Taking evidence in a criminal case

The European Investigation Order

The European Investigation Order is a judicial decision issued in or validated by the judicial authority in one EU country to have investigative measures to gather evidence in criminal matters carried out in another EU country.

The Directive regarding the European Investigation Order in criminal matters was adopted on 3 April 2014, which EU countries had to transpose the Directive into their national legal systems by 22 May 2017. Denmark and Ireland are not bound by this instrument.

The European Investigation Order is based on mutual recognition, which means that the executing authority is obliged to recognise and ensure execution of the request of the other country. The execution is to be carried out in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing country. A European Investigation Order may also be issued to obtain evidence that already exists.

The Directive creates a single comprehensive framework for obtaining evidence. The investigative measures would, for example, include the hearing of witnesses, telephone interceptions, covert investigations and information on banking operations.

The issuing authorities can only use an European Investigation Order if the investigative measure is:

- necessary,
- proportionate, and
- allowed in similar domestic cases.

A European Investigation Order is issued using a standard form and translated into the official language of the executing EU country or any other language indicated by the executing EU country.

Under the new Directive, investigative measures must be carried out by the executing EU country with the same

promptness and priority as they would be in similar domestic cases.

The Directive lays down deadlines (a maximum of 30 days to decide to recognise and execute the request and 90 days to execute the request effectively following the taking of the aforementioned decision).

EU countries can refuse the request on certain grounds. The following general grounds for refusal apply to all measures:

1. immunity or privilege or rules limiting criminal liability relating to freedom of the press
2. harm to essential national security interests
3. non-criminal procedures
4. *ne bis in idem* principle
5. extraterritoriality coupled with double criminality
6. incompatibility with fundamental rights obligations.

There are additional grounds for refusal for certain measures:

1. lack of double criminality (except for a list of serious offences)
2. impossible to execute the measure (investigative measure does not exist or is not available in similar domestic cases, and there is no alternative).

Electronic evidence

Obtaining electronic evidence (e-evidence), such as information on the holder of an email account or the timing and content of messages exchanged via Facebook messenger, for criminal investigations often has cross-border implications, as the data may be stored or the service provider located in another EU country or somewhere else in the world.

Traditional judicial cooperation tools are considered too slow in this context. The European Commission on 17 April 2018 proposed new rules in the form of a [Regulation](#) and a [Directive](#) to make it easier and faster for law enforcement and judicial authorities to obtain the electronic evidence they need to investigate and eventually prosecute criminals and terrorists.

Mutual Legal Assistance

The legal framework for such assistance is established by the [Convention on Mutual Assistance in Criminal Matters](#) between the Member States of the European Union of 29 May 2000 and its [Protocol](#) of 16 October 2001.

The primary aim of the Convention is to improve judicial cooperation by developing and modernising the existing provisions governing mutual assistance. In particular, the Convention supplements the provisions and facilitate the application between the EU countries, of:

- the [European Convention on Mutual Assistance in Criminal Matters](#) of the Council of Europe of 20 April 1959 and its additional protocol of 17 March 1978;
- the provisions on mutual assistance in criminal matters of the [Convention of 19 June 1990 implementing the Schengen Agreement](#).

Under the Convention, the requesting authority can contact the issuing authority directly.

Unless the executing authority has grounds to refuse a request, the request should be executed as soon as possible – and by the deadline given by the requesting authority, if feasible.

Until 22 May 2017, the Convention was the main tool for obtaining evidence within the EU. As of that date, the Directive on the European Investigation Order replaced the corresponding provisions of the Convention and the Protocol for those EU countries bound by the Directive. The Convention and the Protocol are still of particular relevance to the latter countries to the extent where certain provisions (such as those on joint investigation teams) have not been replaced by the Directive, as well as to the EU countries not bound by the Directive. Please consult [here](#) the ratification details for the Convention, and [here](#) for the Protocol.

Joint Investigation Teams

A joint investigation team (JIT) is a team consisting of judges, prosecutors and law enforcement authorities of several States, established for a limited period of time and a specific purpose by way of a written agreement, to carry out criminal investigations in one or more of the involved States. The EU legal framework provides the possibility of setting up JITs between Member States in Article 13 of the [Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union](#) and in the [Council Framework Decision 2002/465/JHA on joint investigation teams](#).

More information

[JITs](#)

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