



## Evidence

This section gives an overview of EU law on gathering evidence 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.

### EU law

#### Current situation

The rules on gathering evidence in criminal matters in the EU are based on 'mutual assistance' agreements.

In particular:

- the [European Convention on Mutual Assistance in Criminal Matters](#) of the Council of Europe of 20 April 1959 and its additional protocols, plus bilateral agreements concluded under Article 26
- the [Convention implementing the Schengen Agreement](#) and its additional protocols
- the [Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000](#) and its protocol.

#### From 2017

From 22 May 2017, obtaining evidence in the EU will be governed by the Directive on the European Investigative Order.

The new directive is based on mutual recognition and replaces the corresponding measures in the above conventions.

It will apply between the EU countries bound by the Directive.

After the adoption of the Directive, the [Framework Decision on the European Evidence Warrant](#) of 2008 (which had a more limited scope) was repealed by Regulation 2016/95 of 20 January 2016.

#### Convention on mutual assistance in criminal matters of 2000

The Convention is the **most commonly used** instrument for obtaining evidence.

It covers mutual assistance in areas such as:

- taking statements from **suspects** and **witnesses**
- the use of videoconferencing
- using **search** and **seizure** to obtain evidence
- telecommunications.

Its protocol contains rules on obtaining information on **bank accounts** and **banking transactions**.

#### Requesting mutual assistance

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.

To ensure that the evidence obtained is admissible, the authorities of the executing country must comply with any procedures specified by the authorities in the requesting country – provided they are not contrary to fundamental principles of law in the executing country.

### **The Directive on 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 carried out in another EU country to gather evidence in criminal matters.

The Directive on the European Investigation Order was adopted on 3 April 2014. Denmark and Ireland opted out.

The aim of the directive was to introduce the mutual recognition principle while:

- maintaining flexibility in mutual legal assistance, and
- protecting fundamental rights.

It covers all investigative measures (except setting up a joint investigation team).

It can be issued in criminal, administrative or civil proceedings if the decision could give rise to proceedings before a criminal court.

The issuing authorities can only use an European investigation order if the investigative measure is:

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

Under the new Directive, investigative measures must be carried out by the executing EU country as **quickly** and with the **same level of priority** as they would in similar domestic cases.

Investigative measures must also be executed 'as soon as possible'. 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).

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).

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