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NOTE

from: Presidency

to: Working Party on Cooperation in Criminal Matters

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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

- Answers to the questionnaire related to the types of procedure to be covered by the application of the initiative for a Council Framework Decision on the European Investigation Order

Delegations will find in Annex the answers to the questionnaire related to the types of procedure to be covered by the application of the initiative for a Council Framework Decision on the European Investigation Order (doc. 12213/10).

Questions:

1. *For each of the types of proceedings listed under Article 4 (b) and (c), please indicate whether, in accordance with national law of your Member State, investigative measures may be ordered.*
2. *If the answer to the first question is YES, please provide additional information concerning the type of investigative measure(s) concerned, the kind of authority concerned (judicial or other), the types of punishable acts concerned, etc.*
3. *If the answer to the first question is YES, please indicate if your Member State would be willing to make use of the EIO in the frame of those kinds of proceedings.*

Member State	Question 1	Question 2	Question 3
AT	<p>In proceedings listed under Art. 4 (b) certain investigative measures may be ordered.</p> <p>Proceedings as listed in Art. 4 (c) do not exist under Austrian law.</p>	<p>Proceedings listed under Art. 4 (b) are per definition proceedings conducted by administrative authorities. In general, administrative proceedings are conducted by the local district authorities (Bezirksverwaltungsbehörden) or by the administrative authorities of the 15 self-governing townships. Other authorities competent for certain proceedings under Art. 4 (b) include for example the 14 federal police offices (Bundespolizeidirektion), the Tax authorities (Finanzstrafbehörden), the Financial Market Authority (Finanzmarktaufsichtsbehörde) or the Agricultural District Authorities (Agrarbezirksbehörde) and a large number of other, highly specialized administrative authorities.</p> <p>Appeals against the decisions of administrative authorities on administrative penalties give rise</p>	<p>Our position will depend on the content of the Directive and on the results of this questionnaire.</p>

		<p>to proceedings before so-called Independent Administrative Senates (Unabhängige Verwaltungssenate – UVS) or similar institutions. The UVS and similar institutions are independent tribunals according to Art. 6 of the ECHR. All proceedings related to administrative penalties under Austrian Law would therefore qualify as proceedings listed under Art. 4 (b).</p> <p>Administrative penalties are prescribed for example for violations of the Traffic Code (Straßenverkehrsordnung), the Trade Act (Gewerbeordnung) or the Building Codes of the Federal States (Bauordnungen) and a large number of other federal and state laws.</p> <p>In such proceedings only a limited number of investigative measures are allowed. The hearing of witnesses and accused persons is always possible. The search of premises or persons is allowed only in a few exceptional cases e.g. according to the Law on Epidemics (Epidemiegesetz 1950), the Law on Ammunitions and Explosive Materials (Schieß- und Sprengmittelgesetz) or the Law on Telekommunikations (Telekommunikationsgesetz 2003). Access to bank information is permitted only for the Tax Authorities in relation to violations of tax laws committed intentionally and in certain cases for the Financial Market Authority. Interception of telecommunications, controlled deliveries or observations are never allowed in these proceedings.</p>	
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BE	No	N/a	N/a
BG			
CZ	No	N/a	N/a
CY	In Cyprus legal system, the courts constitute the only judicial authority. Thus, proceedings, as provided in Article 4(c) of the draft text on the EIO, cannot be brought by judicial authorities.	<p>Concerning proceedings brought by administrative authorities, as described in Article 4(b), it shall be mentioned that, according to Cyprus domestic legislation, administrative authorities, such as the Customs Office, the Social Insurance Department, municipalities or the Labour Department, can bring proceedings before criminal courts, in respect of acts, which constitute infringements of certain legal provisions and result to punishment. Such proceedings are brought by administrative authorities against individuals and, mainly, are related to the following acts:</p> <ul style="list-style-type: none"> (i) issuing of dishonored checks, (ii) non payment of taxes or levies, (iii) non payment of social insurances, (iv) labour accidents. <p>These acts constitute offences, which are punishable by virtue of certain laws, such as the Criminal Code (Cap. 154) or the Social Insurance Law.</p> <p>Investigative measures, such as obtaining of exhibits and the conduct of interrogations and/or the appropriate inquiries, are available as long as this is provided in the relevant legislation. Such investigations are conducted by the competent officials/officers of the administrative department/authority, which is involved in the case and only as</p>	Cyprus does not exclude the possibility to make use of the European Investigation Order in the frame of the kinds of proceedings mentioned in (b) above. However, a more concrete answer to this issue will be given after further study of the context of the draft Directive on the EIO by all national authorities involved.

		long as such investigative powers are provided in the relevant legislation. Police may also take part in such investigations only if the nature of the offence demands the involvement of the Police authorities.	
DE	Yes, according to German law, investigations can be ordered in both types of proceedings, i.e. in proceedings brought by both administrative and judicial authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rule of law – although certain limitations are imposed here by constitutional law.	<p>a) administrative authorities</p> <p>Administrative authorities are responsible for the prosecution of regulatory offences (violations of the law which have no criminal substance and are therefore not criminalised, but which can, as a so-called misconduct of an administrative nature, be punished with a fine), so long as this is not reserved under the Regulatory Offences Act for the public prosecution office or, for individual investigative acts, for the court instead.</p> <p>The administrative authority generally has the same rights and duties in proceedings to impose a regulatory fine as the public prosecution office has in prosecuting criminal offences. However, constitutional requirements, in particular the principle of proportionality, mean that not all actions which are to some extent possible in criminal proceedings are also admissible in proceedings to impose a regulatory fine. In accordance with constitutional requirements, the Code of Criminal Procedure stipulates a catalogue of criminal offences or a particular category of crime as the basis for certain investigative acts (e.g. “serious criminal offences” or “criminal offences of substantial significance”). As a result of this, no investigative acts that touch upon fundamental rights may be carried out on the basis of regulatory offence. This means,</p>	No conclusive answer can be provided to this question at present. However, the prospect of extending the Investigation Order in full to regulatory offences appears problematic from the German perspective. This would cause problems of proportionality and thus affect constitutional principles, as well as resulting possibly in a heavy additional burden in the area of minor offences.

		<p>for example, that the confiscation of post and telegrams, as well as requests for information on circumstances which are covered by post and telecommunications privacy, are not admissible in proceedings to impose and administrative fine.</p> <p>In the case of regulatory offences it is therefore not possible, because of constitutional requirements, for Germany as an issuing or executing State to order or carry out certain investigative acts that touch upon fundamental rights.</p> <p>b) Revenue authorities</p> <p>In the case of tax offences, the revenue authorities are the administrative authorities responsible for carrying out proceedings to impose a regulatory fine.</p> <p>In purely fiscal criminal proceedings the revenue authorities usually carry out investigation proceedings instead of and independently of the public prosecution office. To this extent the revenue authorities also (additionally) constitute prosecuting authorities. If there is a suspicion that a tax offence has been committed, the responsible revenue agency has the right and duty to investigate the facts and to make all non-deferrable orders to prevent the suppression of evidence. This means, for example, that it may order searches, confiscations, examinations and other measures in accordance with the provisions of the Code of Criminal procedure which apply to the investigators of the public prosecution office.</p>	
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DK	According to Danish law, there is no differentiation between administrative and criminal procedures in relation to punishable acts. All cases regarding a punishable act are considered criminal cases. Only the Prosecution Service has the competence to prosecute a criminal case.	N/a	N/a
EE	No	N/a	N/a
EL	Yes. According to the Greek law, investigative measures may be ordered under certain circumstances, in the frame of a procedure that has been initiated by an administrative authority. In this case, there is always the right to appeal before a judicial authority.	The administrative authorities that are entitled to conduct investigative measures are the following: 1) Body for prosecution of economic crime, 2) Commission of the fight against the legitimizing of proceeds from crime and the funding of terrorism. These authorities have the right to conduct investigative measures, before the initiation of any investigation conducted by judicial authorities, in order to safeguard any kind of evidence. Although these measures are taken by an administrative authority the whole procedure is taken place under the supervision of the judicial authority.	Yes. Greece may agree on the procedures referred in article 4 b, c, provided that a validation procedure by a judicial authority and an appeal procedure will be included.
ES	No	N/a	N/a
FI	No	N/a	N/a
FR	No	N/a	N/a
HU	Yes, for each of the types of proceedings	Proceeding authorities: The general proceeding authority is the notary of the	In Hungary it is still under consideration whether the use of the EIO would be reasonable

	<p>listed under Article 4 (b) and (c) investigative measures may be ordered in Hungary according to our national law.</p>	<p>county/city/village and the police. There are special proceeding authorities in some specific cases (Hungarian Tax and Financial Control Administration, Costumes and Finance Guard, Consumer Protection Authority, Labour Protection Authority, Social Authority etc.). The decisions of the proceeding authorities can be advanced before a competent local court.</p> <p>If the commission of an administrative offence is punishable with confinement, the decision shall be made by a court. The court of first instance shall be the local court and the 1st instance decision may be appealed before a county court.</p> <p>Type of investigation measures concerned: If the liability can be ascertained from the facts and datas of the complaint, the proceeding authority makes its decision based on the complaint without using any of the investigative measures. Otherwise the proceeding authority</p> <ul style="list-style-type: none"> a) calls the complainant for giving more information, hears the person under examination (suspect) and if it is necessary hears the complainant and others who can be witnesses b) hears experts c) obtains or makes to obtain physical evidences and documents d) requests the supply or transmission of information, data or documents from other organisations. <p>Types of punishable acts: Minor infringements which do not classify as crimes. For instance: theft, embezzlement, fraud, smuggling and other offences against property committed on</p>	<p>and effective in the frame of these kinds of proceedings.</p>
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		petty offence value (less than 20000 Ft.), minor forms of public nuisance/defamation/breach of domicile, illegal prostitution, road offences, illegal gambling, begging with a child etc.	
IE	Assistance is provided to requests from a court or tribunal exercising jurisdiction in criminal proceedings or any other authority appearing to have the function of making a request. A request from an administrative body - such as a body regulating a profession, e.g., Medical Council - could not be dealt with under Irish law. Assistance may be provided only in relation to criminal proceedings or a criminal investigation.	As set out above, assistance can only be provided to a judicial or law enforcement body seeking assistance in respect of a criminal investigation or criminal proceedings.	Ireland will only issue an EIO in respect of a criminal offence. Similarly, we are only able to provide assistance in respect to criminal offences.
IT	Yes	Under Italian law the investigative measures may be ordered in the area of criminal jurisdiction by judges, courts or public prosecutors. However in some specific cases investigative measures may be ordered by a judge in the context	Taking into account the scope of the E.I.O. Italy would not be willing to extend its use in contexts other than criminal proceedings.

		of a civil proceedings and also – but not only - in connection with a criminal offence.	
LT	No	N/a	N/a
LU	Aucune entité administrative non-judiciaire ne pourra émettre d’EIO (hypothèse 4 (b)). L’hypothèse 4 (c) vise les autorités judiciaires. Or, un EIO ne pourra être émis que dans un dossier pénal.	N/a	N/a
LV	No	N/a	N/a
MT	With regard to Article 4(b) and (c), no investigative measures may be ordered as in accordance with the current Maltese legislation. Any request for mutual assistance (including requests for investigative measures), will have to be made through a judicial authority, therefore, Article 4 (a) will apply.	N/a	N/a

NL	No	N/a	N/a
PL	According to Polish law, investigative measures may be ordered in both types of proceedings listed under Article 4(b) and (c),	<p>The range of investigative measures available during such proceedings is similar to this, provided for during regular criminal proceedings (witness hearing, expert's opinion, examination of things and inspecting places, experiment, etc.). However this catalogue does not include some special investigative measures, namely interception of mails, interception of telecommunications and undercover operations.</p> <p>The acts which are punishable under Polish law by virtue of being infringements of the rules of law might be called petty – offences or misdemeanors. The punishable acts vary much, but their general feature is the level of social threat, which is lower than this, concerning criminal offences or crimes. The investigation is run by Police or other administrative authority. A preparatory proceeding is not supervised by the prosecutor or other judicial authority. The indictment act is replaced by the punishment motion, submitted to the relevant court directly by the authority running preparatory proceedings. Further proceedings is similar to regular criminal court procedure, however it is simplified.</p> <p>Thus, there are two types of authorities involved: non – judicial authority during preparatory stage (Police or other authority, like Sanitary Inspector, Trading Standards Department, Work Standards and Safety Inspectorate, etc.) and court having jurisdiction in criminal matters, during judicial phase.</p>	Yes. Poland will be willing to make use of the EIO in the frame of such proceedings. The issuing authority could be a court competent in the case concerned.
PT			

RO	<p>For the proceedings brought by administrative authorities, where the decision may give rise to proceedings before a court, the aforementioned authorities are not competent to order investigative measures.</p> <p>An administrative authority, in the course of the proceedings, may only draft a report, including a description of the facts and the statements of the persons involved.</p> <p>Investigative measures may be ordered in the course of the proceedings brought by judicial authorities, where the decision may give rise to proceedings before a court.</p>	<p>As mentioned before, investigative measures may only be ordered in the course of judicial proceedings.</p> <p>The public prosecutor is the only competent authority to order investigative measures, in the course of the proceedings mentioned in Article 4(c).</p> <p>According to the Romanian code of criminal proceedings, a public prosecutor may order the following investigative measures:</p> <ul style="list-style-type: none"> - hearing of witnesses, suspects persons, injured parties, confrontation; - forensic and technical investigations; - seizure; - crime scene investigation <p>Interception of communications and search may only be conducted if authorized by a judge.</p>	<p>According to Law 302/2004 concerning international judicial cooperation in criminal matters, the investigation measures indicated above may already be carried out by Romanian judicial authorities competent to execute requests for mutual legal assistance in criminal matters.</p> <p>In our opinion, the added value of the European Investigation Order in simplifying and expediting judicial cooperation in criminal matters is obvious; therefore, we think it will be regarded by the practitioners as a significant improvement to their activity.</p>
SE	No	N/a	N/a
SI	In accordance with Slovenian law the investigative	An offence as defined in Slovenian legislation shall be any act which represents a violation of the law, regulation adopted by the	As regards the point b) Article 4 we would have no objection for using EIO also for such types of proceedings. Since

	<p>measures may be ordered for proceedings listed under Article 4(b).</p>	<p>Government, decree adopted by a self-governing local community, which as such has been laid down as an offence, and for which a sanction has been prescribed.</p> <p>Offences shall be adjudicated by offence authorities and courts: Offence authorities are administrative authorities and bearers of public authority which supervise implementation of laws and regulations governing offences, and bodies of self-governing local communities vested with authority for offences adjudication pursuant to special regulations. Courts are offence courts of the first instance and offence courts of the second instance.</p> <p>The Slovenian legislation regulating offences makes a difference between fast-track proceeding and ordinary court proceeding. Offences shall be in general adjudicated by fast-track proceeding unless otherwise provided by the law. Fast-track proceeding shall not be admissible in the following cases:</p> <ul style="list-style-type: none"> - when there was a body injury; - when the petitioner of regular court proceeding evaluates, considering the nature of the offence, that conditions are met for the imposition of a secondary sanction; - when the prescribed secondary sanction shall be prohibition of use of a motor vehicle; - when the offender is a juvenile, - for offences relating to defense duties and for offences relating to incompatibility of holding public 	<p>such proceedings are already included in 2000 MLA Convention it would be in our opinion a step back in cooperation if we would exclude them from the scope of the proposed Directive. Regarding point c) Article 4 please be advised that Slovenian legislation is not familiar with the proceedings described therein. However if our perception of the provision is correct i.e. that the proceeding is initiated by other judicial authority than court and may be subject to proceedings before court having jurisdiction particular in criminal matters, we would also be willing to make use of EIO in respect of such proceedings.</p>
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		<p>office with profitable activity;</p> <p>- for offences against public transport safety for which a secondary sanction of 18 penalty points is prescribed.</p> <p>Fast-track proceedings: When the offence authority establishes that legal conditions for instituting offence proceeding are met, it shall conduct the proceeding and issue a decision (fast-track proceeding). If fast-track proceeding is not admissible, the offence authority shall lodge an accusatory instrument with the competent court (ordinary court proceeding).</p> <p>The offence authority shall ex officio and without delay, promptly and straightforwardly establish the facts and collect the evidence necessary to adjudicate on the offence. The offence authority in the proceeding of establishing and deciding on an offence and before adopting the decision shall advise the offender of the following:</p> <p>- the offender has the right to give a statement on facts or circumstances of the offence, but is not obliged to do so nor to answer to any questions; when he chooses to give a statement or to answer questions, he shall not be obliged to testify against himself or against his relatives,</p> <p>- the offender must state all facts and produce all evidence to his benefit, if he fails to do so, he will not be able to claim these facts and evidence during the proceedings.</p> <p>A request for judicial protection may be lodged against an offence</p>	
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		<p>decision issued in the first instance by an offence authority using fast-track proceeding. All decisions that are not dismissed or replaced by the offence authority shall be submitted, with a letter and compete with eventual additional evidence, by the offence authority to the competent (criminal) court for decision.</p> <p>Ordinary court proceedings: Ordinary court proceedings (conducted in circumstances stated before) shall be subject to the mutatis mutandis provisions of the Criminal Procedure Act. Also the gathering and obtaining the evidence in the course of ordinary court proceedings is governed by the provisions of the Criminal Procedure Act. Offence proceedings in the first instance shall end with the issuance of an offence judgment.</p>	
SK	No	N/a	N/a
UK	No	N/a	N/a
