



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**COPEN 46
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NOTE

from:	Presidency
to:	Delegations
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 - Comparative table with amendments proposals by EP and Presidency suggestions

In view of the Friends of the Presidency meeting on 11 April 2013, delegations will find attached a document drawn up by the Presidency on Articles 18 - 34.

The document contains a table, in four separate columns: (1) the text of the original initiative; (2) the text of the general approach agreed by Council; (3) the text of the draft amendments approved by the LIBE Committee; and (4) the Presidency proposal for a Council position in the negotiations with the European Parliament and the Commission.

The Presidency invites delegations to consider the amendments and the suggestions for a Council position in view of the trilogue that will take place on 16 April 2013.

Background

The Council reached its general approach in December 2011 and the European Parliament had an orientation vote in May 2012. This file was suspended parts of the year 2012. The European Parliament and the Council have now found three dates for trilogues, the first on 26 March, the second on 16 April and the last one on 7 May 2013. The issues for the first trilgoue were discussed in COPEN on 19 November 2012. For the second and third trilogues the Presidency need delegations' input."

Article 18

<i>Confidentiality</i>	<i>Confidentiality</i>	Confidentiality and processing of personal data Amendment 50	The Council can accept this amendment.
1. Each Member State shall take the necessary measures to ensure that the issuing and executing authorities take due account, in the execution of an EIO, of the confidentiality of the investigation.	1. Each Member State shall take the necessary measures to ensure that the issuing and executing authorities take due account, in the execution of an EIO, of the confidentiality of the investigation.		In conformity with the Council general approach.
2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and substance of the EIO, except to the extent necessary to execute the investigative measure. If the executing authority cannot comply with the requirement of confidentiality, it shall without delay notify the issuing authority.	2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and substance of the EIO, except to the extent necessary to execute the investigative measure. If the executing authority cannot comply with the requirement of confidentiality, it shall without delay notify the issuing authority.		In conformity with the Council general approach.

		<p><i>2a. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, keep confidential any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.</i></p> <p>Amendment 51</p>	In conformity with the Council general approach, paragraph 3.
<p>3. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, keep confidential any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.</p>	<p>3. The issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, keep confidential any evidence and information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.</p>		
<p>4. Each Member State shall take the necessary measure to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the issuing State in accordance with Articles 23, 24 and 25 or that an investigation is being carried out.</p>	<p>4. Each Member State shall take the necessary measure to ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been transmitted to the issuing State in accordance with Articles 23, 24 and 25 or that an investigation is being carried out.</p>		In conformity with the Council general approach.

		<p><i>4a) Member States shall provide that their authority controlling the personal data takes all reasonable steps to have transparent and easily accessible policies with regard to the processing of personal data and for the exercise of the data subjects' rights to legal remedies under Article 13</i></p> <p>Amendment 140</p>	<p>The Council suggests to make a reference to the on-going data protecting package. (cf recital 17a)</p>
		<p><i>4b) Member States shall provide that the competent authority adopts policies and implements appropriate measures to ensure that the processing of personal data is performed in compliance with the provisions adopted pursuant to this Directive.</i></p> <p>Amendment 141.</p>	<p>The Council suggests to make a reference to the on-going data protecting package.</p>

Article 18a (amendment 143)

		<i>Conditions for the use of personal data</i>	
		<p><i>1. Personal data processed when implementing this Directive shall be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and with the principles laid down in the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.</i></p> <p>2. Amendment 143</p>	The Council can accept this amendment but with a reference to the on-going data protection package.
		<p><i>2. Personal data obtained under this Directive may be used by the issuing State for proceedings for which the EIO may be issued. For any purpose other than those set out in this paragraph, personal data obtained under this Directive may be used only with the prior consent of the executing State, unless the issuing State has obtained the consent of the data subject.</i></p> <p>Amendment 143</p>	The Council suggests to make a reference to the on-going data protection package)

		<p><i>3. In the circumstances of the particular case, the executing State may require the Member State to which the personal data have been transferred to give information on the use made of the data.</i></p> <p>Amendment 143</p>	The Council suggests to make a reference to the on-going data protection package
Article Y/Article 18a (amendment 142)			
	<u>Costs</u>	Costs	
	<p><u>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.</u></p>	<p><i>All expenses arising from an investigation request, with a view of obtaining evidence, will be shared in equal parts between the issuing and the executing States unless both concerned States, in concrete cases, have previously agreed on a different distribution of costs.</i></p> <p>Amendment 142</p>	The Council invites the EP to consider maintaining the text of the general approach.

	<p><u>2. Where the executing authority considers that the costs for the execution of the EIO may become exceptionally high, it may consult with the issuing authority on whether and how the costs could be shared or the EIO modified. The issuing authority shall be previously informed by the executing authority of the detailed specifications of the part of the costs deemed exceptionally high.</u></p>		<p>The Council invites the EP to consider maintaining the text of the general approach.</p>
	<p><u>3. In exceptional situations where the consultations can not lead to an agreement, the issuing authority may decide to withdraw partially or completely the EIO or, should it decide to maintain the EIO, it will bear the part of the costs deemed exceptionally high.</u></p>		<p>The Council invites the EP to consider maintaining the text of the general approach.</p>

**CHAPTER IV
SPECIFIC PROVISIONS FOR
CERTAIN INVESTIGATIVE MEASURES**

Article 19

<p><i>Temporary transfer to the issuing State of persons held in custody for purpose of investigation</i></p>	<p><i>Temporary transfer to the issuing State of persons held in custody for purpose of <u>conducting an investigative measure</u></i></p>	<p><i>Temporary transfer to the issuing State of persons held in custody for purpose of conducting an investigative measure</i></p> <p>Compromise amendment 14</p>	<p>In conformity with the Council general approach</p>
<p>1. An EIO may be issued for the temporary transfer of a person in custody in the executing State in order to have an investigative measure carried out for which his presence on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.</p>	<p>1. An EIO may be issued for the temporary transfer of a person in custody in the executing State (...) <u>for the purpose of conducting an investigative measure with a view to collecting evidence</u> for which his presence on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.</p>	<p>1. An EIO may be issued for the temporary transfer of a person in custody in the executing State for the purpose of conducting an investigative measure with a view to collecting evidence for which his presence on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.</p> <p>Compromise amendment 14</p>	<p>In conformity with the Council general approach</p>

		<p><i>1a. Before executing the EIO the person concerned shall be given opportunity to state their opinion to the executing authority on the temporary transfer. Where the executing State considers it necessary in view of the person's age or physical or mental condition, that opportunity shall be given to their legal representative. The opinion of the person shall be taken into account when deciding to execute an EIO.</i></p> <p>Amendment 146</p>	<p>The Council would like to ask the EP for clarification on the consistency of this amendment and § 2 (a).</p>
<p>2. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:</p>	<p>2. In addition to the grounds for (...) <u>non-recognition or non-execution</u> referred to in Article 10(...) the execution of the EIO may also be refused if:</p>	<p>2. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:</p> <p>Compromise amendment 14</p>	<p>The Council invites the EP to accept the text in the Council general approach for the sake of consistency of language.</p> <p>The Council suggests that the question as to whether the reference should be made to Article 10 or Article 10.1 will be decided once Article 10 has been discussed.</p>
<p>(a) the person in custody does not consent; or</p>	<p>(a) the person in custody does not consent; or</p>	<p>(a) the person in custody does not consent; or</p> <p>Compromise amendment 14</p>	<p>In conformity with the Council general approach</p>

(b) the transfer is liable to prolong his detention.	(b) the transfer is liable to prolong his detention.	(b) the transfer <i>of the person in custody</i> is liable to prolong his detention. Compromise amendment 14	The Council is willing to accept the EP amendment for the sake of consistency of language.
		<i>(ba) the issuing and executing authorities cannot reach an agreement on the arrangements for the temporary transfer.</i> Amendment 150	The Council invites the EP to consider deleting this paragraph, since the general grounds for refusal apply.
3. In a case under paragraph 1, transit of the person in custody through the territory of a third Member State shall be granted on application, accompanied by all necessary documents.	3. In a case under paragraph 1, transit of the person in custody through the territory of a third Member State shall be granted on application, accompanied by all necessary documents.	3. In a case under paragraph 1, transit of the person in custody through the territory of a third Member State shall be granted on application, accompanied by all necessary documents. Compromise amendment 14	In conformity with the Council general approach

<p>4. The practical arrangements regarding the temporary transfer of the person and the date by which he must be returned to the territory of the executing State shall be agreed between the Member States concerned.</p>	<p>4. The practical arrangements regarding the temporary transfer of the person <u>including the particularities of his custody conditions in the issuing State</u>, and the <u>dates</u> by which he must be <u>transferred from and</u> returned to the territory of the executing State shall be agreed between the Member States concerned.</p>	<p>4. The practical arrangements regarding the temporary transfer of the person and the <i>dates</i> by which he must be <i>transferred from and</i> returned to the territory of the executing State shall be agreed between the Member States concerned. <i>Practical arrangements must ensure the particularities of the custody conditions in the issuing State, that the person is detained in custody arrangements equivalent to the level of security and in accordance with his physical or mental needs as in the executing State. The person shall be subject to the same detention regime as that to which he as subject in the country in which the sentence would normally be served.</i></p> <p>Compromise amendment 14</p>	<p>The Council maintains its position..</p>
<p>5. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State through which transit is required, unless the executing Member State applies for his release.</p>	<p>5. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State through which transit is required, <u>for the acts or convictions for which he has been kept in custody in the executing State</u>, unless the executing Member State applies for his release.</p>	<p>5. The transferred person shall remain in custody in the territory of the issuing State and, where applicable, in the territory of the Member State through which transit is required, <u>for the acts or convictions for which he has been kept in custody in the executing State</u>, unless the executing Member State applies for his release</p> <p>Compromise amendment 14</p>	<p>In conformity with the Council general approach.</p>

<p>6. The period of custody in the territory of the issuing Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing Member State.</p>	<p>6. The period of custody in the territory of the issuing Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing Member State.</p>	<p>6. The period of custody in the territory of the issuing Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the executing Member State.</p> <p>Compromise amendment 14</p>	<p>In conformity with the Council general approach.</p>
<p>7. A transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions which precede his departure from the territory of the executing State and which are not specified in the EIO.</p>	<p>7. <u>Without prejudice to paragraph 5</u>, a transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the issuing State for acts <u>committed</u> or convictions (...) <u>handed down before</u> his departure from the territory of the executing State and which are not specified in the EIO.</p>	<p>7. A transferred person shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions which precede his departure from the territory of the executing State and which are not specified in the EIO.</p> <p>Compromise amendment 14</p>	<p>The Council invites the EP to consider maintaining the text of the Council general approach, since paragraph 7 concerns the speciality principle.</p>
<p>8. The immunity provided for in paragraph 7 shall cease when the transferred person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity to leave, has nevertheless remained in the territory, or having left it, has returned.</p>	<p>8. The immunity provided for in paragraph 7 shall cease when the transferred person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the issuing authorities an opportunity to leave, has nevertheless remained in the territory, or having left it, has returned.</p>	<p>8. The immunity provided for in paragraph 7 shall cease when the transferred person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity to leave, has nevertheless remained in the territory, or having left it, has returned.</p> <p>Compromise amendment 14</p>	<p>In conformity with the Council general approach.</p>

		<p><i>8a At the request of the issuing State or the person to be transferred, the executing State shall ensure that, the person is assisted by an interpreter and receives translations of any important documents in accordance with Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, receives information in accordance with the Directive [...] on the right to information in criminal proceedings and receives legal advice in accordance with the national law of the issuing State.</i></p> <p>Compromise amendment 14</p>	<p>The Council reminds the EP that these Directives will be applicable in any case and Council has agreed to insert a reference to them in a recital.</p>
<p>9. Costs arising from the transfer shall be borne by the issuing State.</p>	<p>9. <u>Costs resulting from the application of this Article shall be borne in accordance with Article Y, except for the costs arising from the transfer of the person to and from the issuing State which shall be borne by this State.</u></p>	<p>Deletion</p> <p>Compromise amendment 14</p>	<p>Council invites the EP to consider maintaining the text of the General approach, that the MS executing the measure should bear the costs.</p>

Article 20

<i>Temporary transfer to the executing State of persons held in custody for the purpose of investigation.</i>	<i>Temporary transfer to the executing State of persons held in custody for the purpose of <u>conducting an investigative measure</u></i>		The Council invites the EP to maintain the text of the general approach for the sake of consistency of language with the title in Article 19.
1. An EIO may be issued for the temporary transfer of a person held in custody in the issuing State in order to have an investigative measure carried out for which his presence on the territory of the executing State is required.	1. An EIO may be issued for the temporary transfer of a person held in custody in the issuing State (...) <u>for the purpose of conducting an investigative measure with a view to collecting evidence</u> for which his presence on the territory of the executing State is required.		The Council invites the EP to maintain the text of the general approach since this text is clearer.
	<u>1a. Before issuing the EIO the person concerned shall be given opportunity to state her opinion to the issuing authority on the temporary transfer. Where the issuing State considers it necessary in view of the person's age or physical or mental condition, that opportunity shall be given to his or her legal representative. The opinion of the person shall be taken into account when deciding to issue an EIO and be transmitted to the executing authority.</u>		The Council invites the EP to maintain the text of the general approach which allows for some flexibility for the executing State.

2. In addition to the grounds for refusal referred to in Article 10 (1), the execution of the EIO may also be refused if:	2. (...)		The Council invites the EP to consider maintaining the text of the general approach since the general ground for refusals in Article 10 apply.
(a) consent to the transfer is required from the person concerned and this consent has not been obtained; or		<p><i>(a) The person in custody has obtained an opinion from competent court having jurisdiction over him that he should not be transferred</i></p> <p>Compromise amendment 15</p>	The Council would like to ask the EP to explain the reasons for this amendment.
		<p><i>(aa) the transfer is liable to prolong his detention;</i></p> <p>Amendment 161</p>	The Council would like to ask the EP to explain the reasons for this amendment.
(b) the issuing and executing authorities cannot reach an agreement on the arrangements for the temporary transfer.			
3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided without delay to the executing authority.	3. (...)		The Council would like to invite the EP to consider maintaining the text of the general approach since this issue is partly covered by paragraph 1a.

<p>4. Each Member State may indicate that, before executing the EIO, the consent referred to in paragraph 3 is required under certain conditions indicated in the notification.</p>	<p>4. (...) </p>		<p>The Council would like to invite the EP to consider maintaining the text of the general approach since this issue is partly covered by paragraph 1a.</p>
<p>5. Paragraphs 3 to 8 of Article 19 are applicable <i>mutatis mutandis</i> to the temporary transfer under this Article.</p>	<p>5. Paragraphs 3 to 8 of Article 19 are applicable <i>mutatis mutandis</i> to the temporary transfer under this Article.</p>	<p>5. Paragraphs 3 to 9 of Article 19 are applicable <i>mutatis mutandis</i> to the temporary transfer under this Article.</p> <p>Amendment 164</p>	
<p>6. Costs arising from the transfer shall be borne by the issuing State. This does not include costs arising from the detention of the person in the executing State.</p>	<p>6. <u>Costs resulting from the application of this Article shall be borne in accordance with Article Y, except for the costs arising from the transfer of the person to and from the executing State which shall be borne by the issuing State.</u></p>	<p>Deleted</p> <p>Amendment 165</p>	<p>The Council maintains its position that costs be borne by the MS executing the measure.</p>

Article 21

<p><i>Hearing by videoconference</i></p>	<p><i>Hearing by videoconference <u>or other audio – visual transmission</u></i></p>	<p><i>Hearing by videoconference</i></p>	<p>The Council invites the EP to consider maintaining the text of the general approach for the sake of consistency of language (AM for . for paragraph 1.).</p>
<p>1. If a person is in the territory of the executing State and has to be heard as a witness or expert by the judicial authorities of the issuing State, the issuing authority may, where it is not desirable or possible for the person to be heard to appear in its territory in person, issue an EIO in order to hear the witness or expert by videoconference, as provided for in paragraphs 2 to 9.</p>	<p>1. If a person is in the territory of the executing State and has to be heard as a witness or expert by the (...) <u>competent</u> authorities of the issuing State, the issuing authority may (...) issue an EIO in order to hear the witness or expert by videoconference <u>or other audio – visual transmission</u>, as provided for in paragraphs <u>6</u> to 9.</p>	<p>1. If a person is in the territory of the executing State and has to be heard as a witness or expert by the judicial authorities of the issuing State, the issuing authority may, where it is not desirable or possible for the person to be heard to appear in its territory in person, issue an EIO in order to hear the witness or expert by videoconference <i>or other audio-visual transmission</i>, as provided for in paragraphs 2 to 9.</p> <p>Compromise amendment 16</p>	<p>The Council invites the EP to consider maintaining the text of the general approach since there may be other reasons that a person is heard by videoconference etc.</p> <p>The question of language, judicial authority or issuing authority or competent authority will be discussed once Article 2 has been decided.</p>
<p>10. An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply <i>mutatis mutandis</i>. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:</p>	<p>1a. An EIO may also be issued for the purpose of the hearing of a <u>suspected or accused</u> person by videoconference <u>or other audio - visual transmission</u>. (...) In addition to the grounds for <u>non-recognition or non-execution</u> referred to in Article 10 (...), the execution of the EIO may also be refused if:</p>	<p>10) An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply <i>mutatis mutandis</i>. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if:</p> <p>Compromise amendment 16</p>	<p>The Council invites the EP to consider maintaining the text of the general approach concerning language. "Suspected or accused person" appears in paragraph 2a in EP text.</p> <p>The Council suggests that the question as to whether the reference should be made to Article 10 or</p>

			Article 10.1 will be decided once Article 10 has been discussed.
(a) the accused person does not consent; or	a) the <u>suspected or accused</u> person does not consent; or	<i>Deletion</i> Compromise amendment 16	This condition is already covered by paragraph b.
(b) the execution of such a measure would be contrary to the law of the executing State.	b) the execution of such a measure <u>in a particular case</u> would be contrary to the <u>fundamental principles of the law</u> of the executing State.	(b) the execution of such a measure would be contrary to the law of the executing State. Compromise amendment 16	The Council maintains its position that it is about a specific case and not contrary to the law in general but fundamental principles.
	<u>1b. The practical arrangements regarding the hearing shall be agreed between the issuing and the executing authority. When agreeing such arrangements, the executing authority shall undertake to:</u>		In conformity with EP paragraph 2a.
	<u>(a) summon the witness or expert concerned of the time and the venue of the hearing or;</u>		

	<u>(b) summon the suspected or accused person to appear for the hearing in accordance with the forms laid down by its law and inform him about his rights under the law of the issuing State, in such a time as to allow him to exercise his rights of defence effectively;</u>		
	<u>(c) ensure the identification of the person to be heard.</u>		
2. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if :	2. (...)	An EIO may also be issued for the purpose of the hearing of an accused person by videoconference. Paragraphs 1 to 9 shall apply <i>mutatis mutandis</i> . In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if: Compromise amendment 16	In conformity with the Council general approach (paragraph 1a)
(a) the use of videoconference is contrary to fundamental principles of the law of the executing State; or		(a) the use of videoconference is contrary to the <i>constitutional</i> principles of the executing State Compromise amendment 15	The Council maintains its position about the supremacy of EU law or specify the text further "in the individual/concrete case".

<p>(b) the executing State does not have the technical means for videoconference.</p>		<p>(b) the executing State does not have the technical means for videoconference.</p> <p>Compromise amendment 15</p>	<p>The Council maintains its position that absence of technical means cannot be a reason for not executing an EIO.</p>
		<p><i>2a) The practical arrangements regarding the hearing shall be agreed between the issuing and the executing authority. When agreeing such arrangement, the executing authority shall undertake to:</i></p> <ul style="list-style-type: none"> <i>a) summon the witness or expert concerned of the time and venue of the hearing or;</i> <i>b) summon the suspected or accused person to appear for the hearing in accordance with the forms laid down by its law and inform him about his rights under the law of the issuing State, in such a time as to allow him to exercise his rights of defence effectively;</i> <i>c) ensure the identification of the person to be heard</i> <p>Compromise amendment 16</p>	<p>In conformity with the Council general approach (paragraph 1b).</p>

<p>3. If the executing State has no access to the technical means for videoconferencing, such means may be made available to it by the issuing State by mutual agreement.</p>	<p>3. (...) </p>	<p>3. If the executing State has no access to the technical means for videoconferencing, such means may be made available to it by the issuing State by mutual agreement.</p> <p>Compromise amendment 16</p>	<p>The Council would like to invite the EP to accept the position in the general approach. Access to technical means should not stop from hearing a witness or expert in the beginning of the 21 century.</p>
<p>4. Article 10(2) is applicable <i>mutatis mutandis</i> to cases referred to in paragraph 2(b).</p>	<p>4. (...) </p>	<p>4. Article 10(2) is applicable <i>mutatis mutandis</i> to cases referred to in paragraph 2(b).</p> <p>Compromise amendment 16</p>	<p>The Council would like to invite the EP to explain the reasons behind this amendment.</p>
<p>5. The EIO issued for the purpose of a hearing by videoconference shall contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.</p>	<p>5. (...) </p>	<p>5. The EIO issued for the purpose of a hearing by videoconference shall contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.</p> <p>Compromise amendment 16</p>	<p>The Council would like to invite the EP to explain the differences between paragraph 1 and 5.</p>
<p>6. In case of a hearing by videoconference, the following rules shall apply:</p>	<p>6. In case of a hearing by videoconference <u>or other audio – visual transmission</u>, the following rules shall apply:</p>	<p>6. In case of a hearing by videoconference, the following rules shall apply:</p> <p>Compromise amendment 16</p>	<p>The Council invites the EP to consider maintaining the text of the general approach for the sake of consistency of language.</p>

<p>(a) a judicial authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the executing State. If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;</p>	<p>(a) a competent authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the executing State. If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;</p>	<p>(a) a judicial authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the executing State. If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;</p> <p>Compromise amendment 16</p>	<p>In conformity with the text of the Council general approach.</p> <p>The question of language, judicial authority or issuing authority or competent authority will be discussed once Article 2 has been decided.</p>
<p>(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing and the executing State;</p>	<p>(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing and the executing State;</p>	<p>(b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing and the executing State;</p> <p>Compromise amendment 16</p>	<p>In conformity with the text of the Council general approach, except for the vocabulary of competent authorities.</p>

<p>(c) the hearing shall be conducted directly by, or under the direction of, the issuing authority in accordance with its own laws;</p>	<p>(c) the hearing shall be conducted directly by, or under the direction of, the (...) <u>competent authority of the issuing State</u> in accordance with its own laws;</p>	<p>(c) the hearing shall be conducted directly by, or under the direction of, the issuing authority in accordance with its own laws;</p> <p>Compromise amendment 16</p>	<p>In conformity with the text of the Council general approach, except for the vocabulary of competent/issuing authorities.</p>
<p>(d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;</p>	<p>(d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;</p>	<p>(d) at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;</p> <p>Compromise amendment 16</p>	<p>In conformity with the Council general approach.</p>
<p>(e) the person to be heard may claim the right not to testify which would accrue to him under the law of either the executing or the issuing State.</p>	<p>(e) the person to be heard may claim the right not to testify which would accrue to him under the law of either the executing or the issuing State; <u>the person concerned shall be informed about this right in advance of the hearing.</u></p>	<p>(e) the person to be heard <i>must be informed in advance of the hearing of his procedural rights which accrue to him, including the principles of a fair trial and equality of arms and the right not to testify</i>, under the law of <i>both</i> of the executing <i>and</i> the issuing State, <i>and may, at his own discretion, invoke either of the rights not to testify.</i></p> <p>Compromise amendment 16</p>	<p>In substance in conformity with the Council general approach.</p>

<p>7. Without prejudice to any measures agreed for the protection of the persons, the executing authority shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.</p>	<p>7. Without prejudice to any measures agreed for the protection of the persons, the executing authority shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.</p>	<p>7. Without prejudice to any measures agreed for the protection of the persons, the executing authority shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.</p> <p>Compromise amendment 16</p>	<p>In conformity with the Council general approach.</p>
<p>8. The cost of establishing the video link, costs related to the servicing of the video link in the executing State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the executing State shall be refunded by the issuing State to the executing State, unless the latter waives the refunding of all or some of these expenses.</p>	<p>8. (...)</p>	<p>8. The cost of establishing the video link, costs related to the servicing of the video link in the executing State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the executing State shall be refunded by the issuing State to the executing State, unless the latter waives the refunding of all or some of these expenses.</p> <p>Compromise amendment 16</p>	<p>The Council invites the EP to consider maintaining the text of the general approach set out in Article Y/18a</p>

<p>9. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.</p>	<p>9. Each Member State shall take the necessary measures to ensure that, where (...) <u>the person is</u> being heard within its territory in accordance with this Article and <u>refuses</u> to testify when under an obligation to testify or <u>does</u> not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure</p>	<p>9. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify the truth, its national law applies in the same way as if the hearing took place in a national procedure.</p> <p>Compromise amendment 16</p>	<p>The Council would like to invite the EP to consider maintaining the text of the general approach since this Article also applies to suspected or accused persons. (paragraph 1a in Cnl text and paragraph 10 in EPtext.)</p>
<p>see above along paragraph 1a)</p>	<p>10. (...)</p>	<p>See above along paragraph 1a)</p>	
<p>Article 22</p>			
<p><i>Hearing by telephone conference</i></p>	<p><i>Hearing by telephone conference</i></p>		<p><u>2000 MLA Convention</u></p>
<p>1. If a person is in the territory of one Member State and has to be heard as a witness or expert by judicial authorities of another Member State, the issuing authority of the latter Member State may issue an EIO in order to hear a witness or expert by telephone conference, as provided for in paragraphs 2 to 4.</p>	<p>1. If a person is in the territory of one Member State and has to be heard as a witness or expert by competent authorities of another Member State, the issuing authority of the latter Member State may issue an EIO in order to hear a witness or expert by telephone conference as provided for in paragraph (...) 4.</p>	<p>1. If a person is in the territory of one Member State and has to be heard as a witness or expert by judicial authorities of another Member State, the issuing authority of the latter Member State may issue an EIO in order to hear a witness or expert by telephone conference, as provided for in paragraphs 2 to 4. <i>A telephone conference shall only be used in exceptional cases where no other means of taking evidence are available and the evidence is not disputed.</i></p>	<p>The Council invites the EP to consider maintaining the text of the general approach.</p>

		Compromise amendment 17.	
2. In addition to the grounds for refusal referred to in Article 10(1), the execution of the EIO may also be refused if	2. (...)		
(a) The use of teleconference is contrary to fundamental principles of the law of the executing State; or		(a) the use of teleconference is contrary to <i>fundamental rights and</i> fundamental <i>legal</i> principles of the law of the executing State; or Amendment 53	The Council maintains its position and considers that this ground for refusal is too wide.
(b) the witness or expert does not agree to the hearing taking place by that method.		(b) the witness or expert does not agree to the hearing taking place by that method, citing reasonable grounds which must be assessed by the judicial authority of the executing State in accordance with its national rules. Amendment 180	The Council maintains its position and considers that this ground for refusal is too wide.
3. The EIO issued for a hearing by telephone conference shall contain the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.	3. (...)		Is this acceptable? Could we accept to put it into an Annex?

4. The practical arrangements regarding the hearing shall be agreed between the issuing and the executing authority. When agreeing such arrangements, the executing authority shall undertake to:	4. ...) Unless otherwise agreed, the provisions of Article 21(1b.), (6), (7) and (9)(...) shall apply <i>mutatis mutandis</i> .		The Council invites the EP to consider maintaining the text of the general approach.
(a) Notify the witness or expert concerned of the time and the venue of the hearing;			
(b) Ensure the identification of the witness or expert; and		Deletion Amendment 181	In conformity with the Council general approach paragraph 4 (reference back to Article 21.1b.
(c) Verify that the witness or expert agrees to the hearing by telephone conference.			
		<i>(ca) inform the person to be heard promptly about his procedural rights which accrue to him under the Charter and the ECHR, including the fundamental rights and principles of a fair trial, of equality of arms and the right not to testify.</i> Amendment 182	The Council has already agreed to set out in a recital a text on the rights of the defence.
		<i>(c bis) if the use of teleconference would be contrary to the constitutional principles of the executing State.</i>	The Council maintains its position and considers that this ground for refusal is too wide.

		Amendment 183	
		<p><i>(2a) Hearings of witnesses, collaborators of justice or other people benefiting from special protection measures may take place, provided their right not to have any image or likeness of themselves shown is safeguarded</i></p> <p>. Amendment 184</p>	The Council would like to invite the EP to explain this amendment.
The executing State may make its agreement subject, fully or in part, to the relevant provisions of Article 21(6) and (9). Unless otherwise agreed, the provisions of Article 21(8) shall apply <i>mutatis mutandis</i> .			

Article 23

<i>Information on bank and other financial accounts</i>	<i>Information on bank and other financial accounts</i>		
1. an EIO may be issued in order to determine whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State.	1. an EIO may be issued in order to determine whether any natural or legal person that is the subject of <u>the (...) criminal (...) proceedings</u> holds or controls one or more accounts, of whatever nature, in any bank located in the territory of the executing State, <u>and if so, provide all the particulars of the identified accounts.</u>		The Council invites the EP to consider maintaining the text of the general approach.
2. Each Member State shall, under the conditions set out in this Article, take the measures necessary to enable it to provide the information referred to in paragraph 1.	2. Each Member State shall, under the conditions set out in this Article, take the measures necessary to enable it to provide the information referred to in paragraph 1.		In conformity with the Council general approach.
3. The information referred to in paragraph 1 shall also, if requested in the EIO and to the extent that it can be provided within a reasonable time, include accounts for which the person that is the subject of the proceedings has powers of attorney.	3. The information referred to in paragraph 1 shall also, if requested in the EIO(...) include accounts for which the person that is the subject of the proceedings has powers of attorney.		The Council maintains its position in the general approach to limit the possibilities not to cooperate.

4. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.	4. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank keeping the account.		In conformity with the Council general approach.
5. an addition to the grounds for refusal referred to in article 10(1), the execution of an EIO referred to in paragraph 1 may also be refused if the offence concerned is not:			The Council invites the EP to consider maintaining the text of the general approach and refer to Article 9.3 or the general grounds for refusal in Article 10.
(a) an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the issuing State and at least two years in the executing State;		(a) an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least <i>two years</i> in the issuing State Compromise amendment 18;	The Council invites the EP to consider maintaining the text of the general approach taking into consideration the fact that, if obtaining information on bank accounts is considered as a coercive measure, Article 9.3 and Article 10.1b will be applicable.
(b) an offence referred to in Article 4 of Council Decision of 6 April 2009 establishing the European Police Office (Europol) (hereinafter referred to as "the Europol Decision") ¹ ; or			In conformity with the Council general approach.

¹ OJ L 121, 15.5.2009, p. 37.

<p>(c) to the extent that it may not be covered by the Europol Decision, an offence referred to in the 1995 Convention on the Protection of the European Communities' Financial Interests², the 1996 Protocol thereto³, or the 1997 Second Protocol thereto⁴.</p>	<p>5. (...) </p>		<p>The Council invites the EP to consider maintaining the text of the general approach taking into consideration Articles 9.3 and 10.1b.b.</p>
<p>6. The issuing authority shall state in the EIO why it considers that the requested information is likely to be of substantial value for the purpose of the investigation into the offence and on what grounds it presumes that banks in the executing State hold the account and, to the extent available, which banks may be involved. It shall also include in the EIO any information available which may facilitate its execution.</p>	<p>6. The issuing authority shall state in the EIO why it considers that the requested information is likely to be of substantial value for the purpose of the (...) <u>criminal proceedings</u> and on what grounds it presumes that banks in the executing State hold the account and, to the extent available, which banks may be involved. It shall also include in the EIO any information available which may facilitate its execution.</p>		<p>The Council would like to invite the EP to consider maintaining the text of the general approach taking into consideration that criminal proceedings is the legally accurate term in this context.</p>

² OJ C 316, 27.11.1995, p. 49.

³ OJ C 313, 23.10.1996, p. 2.

⁴ OJ C 221, 19.7.1997, p. 12.

		<p><i>6a. An EIO may also be issued to determine whether any natural or legal person that is the subject of the criminal proceedings holds one or more accounts, in any non-bank financial institution located on the territory of the executing State.</i></p> <p><i>Paragraphs 3 to 6 shall apply mutatis mutandis. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 10, the execution of the EIO may also be refused if the execution of the measure would not be authorised in a similar national case.</i></p> <p>Compromise amendment 187</p>	<p>In conformity with the Council general approach, paragraph 7.</p>
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	<p><u>7. An EIO may also be issued to determine whether any natural or legal person that is the subject of the criminal proceedings holds one or more accounts, in any non-bank financial institution located on the territory of the executing State. Paragraphs 3 to 6 shall apply <i>mutatis mutandis</i>. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 10, the execution of the EIO may also be refused if the execution of the measure would not be authorised in a similar national case.</u></p>		
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Article 24

<i>Information on banking transactions</i>	<i>Information on banking (...) and other financial operations</i>		The Council invites the EP to consider maintaining the text of the general approach to have a broad scope for the EIO.
1. An EIO may be issued in order to obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified within, including the particulars of any sending or recipient account.	1. An EIO may be issued in order to obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified within, including the particulars of any sending or recipient account.		
2. Each Member State shall, under the conditions set out in this Article, take the measures necessary to be able to provide the information referred to in paragraph 1.	2. Each Member State shall, under the conditions set out in this Article, take the measures necessary to be able to provide the information referred to in paragraph 1.		
3. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.	3. The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank holding the account.		

<p>4. The issuing State shall indicate in the EIO why it considers the requested information relevant for the purpose of the investigation into the offence.</p>	<p>4. The issuing authority shall indicate in the EIO why it considers the requested information relevant for the purpose of the (...) <u>criminal proceedings</u>.</p>		
		<p><i>4a. An EIO may also be issued with regard to the information provided for in paragraph 1 with reference to the financial operations conducted by non- banking financial institutions. Paragraphs 3 to 4 shall apply mutatis mutandis. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 10, the execution of the EIO may also be refused if the execution of the measure would not be authorised in a similar national case.</i></p> <p>Compromise amendment 189</p>	<p>In conformity with the Council general approach in paragraph 5.</p>

	<p><u>5. An EIO may also be issued with regard to the information provided for in paragraph 1 with reference to the financial operations conducted by non-banking financial institutions. Paragraphs 3 to 4 shall apply <i>mutatis mutandis</i>. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 10, the execution of the EIO may also be refused if the execution of the measure would not be authorised in a similar national case.</u></p>		
Article 25			
<i>The monitoring of banking transactions</i>	<i>The monitoring of banking transactions</i>		
<p>1. An EIO may be issued in order to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified within.</p>	<p>(Moved to Article 27)</p>	<p>1. An EIO may be issued in order to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified within.</p> <p>Amendment 54</p>	

<p>2. Each Member State shall, under the conditions set out in the Article, take the measures necessary to enable it to provide the information referred to in paragraph 1.</p>		<p>2. Each Member State shall, under the conditions set out in the Article, take the measures necessary to enable it to provide the information referred to in paragraph 1 <i>in the context of monitoring a banking operation</i>.</p> <p>Amendment 54</p>	
<p>3. The issuing State shall indicate in the EIO why it considers the requested information relevant for the purpose of the investigation into the offence.</p>		<p>3. The issuing State shall indicate in the EIO why it considers the requested information relevant for the purpose of the investigation into the offence.</p> <p>Amendment 54</p>	<p>In conformity with the Council general approach, Article 27.3.</p>
<p>4. The practical details regarding the monitoring shall be agreed between the competent authorities of the issuing and the executing States.</p>		<p>4. The practical details regarding the monitoring shall be agreed between the competent authorities of the issuing and the executing States.</p>	<p>In substance in conformity with the Council general approach, Article 27.2.</p>

		<p><i>4a. The issuing and executing authorities should ensure privacy and confidentiality of bank details obtained in contexts that are not related to the investigation, namely not releasing this information to third parties nor using it for other purposes than the ones that justified the request.</i></p> <p>Amendment 54</p>	The Council invites the EP to consider maintaining the text of the general approach since this is already covered by Article 18.3.
Article 26			
<i>Controlled deliveries</i>	<i>Controlled deliveries</i>		
1. An EIO may be issued to undertake a controlled delivery on the territory of the executing State.	(Moved to Article 27)	Deleted Amendments 190, 191	The Council maintains its position as set out in the context of Article 3, that it is important to have an instrument covering all types of investigative measures.
2. The right to act and to direct and control operations related to the execution of an EIO referred to in paragraph 1 shall lie with the competent authorities of the executing State.			

Article 27

<p><i>Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time</i></p>	<p><i>Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time</i></p>		
<p>1. When the EIO is issued for the purpose of executing a measure, including the measures referred to in Articles 25 and 26, implying the gathering of evidence in real time, continuously and over a certain period of time, its execution may be refused, in addition to the grounds for refusal referred to in Article 10(1), if the execution of the measure concerned would not be authorised in a similar national case.</p>	<p>1. When the EIO is issued for the purpose of executing a measure (...) implying the gathering of evidence in real time, continuously and over a certain period of time, such as:</p>	<p>1. When the EIO is issued for the purpose of executing a measure, including the measures referred to in Articles 25, implying the gathering of evidence in real time, continuously and over a certain period of time, its execution may be refused, in addition to the grounds for refusal referred to in Article 10(1), if the execution of the measure concerned would not be authorised in a similar national case.</p> <p>Amendment 193</p>	<p>The Council maintains its position as set out in the context of Article 3, that it is important to have an instrument covering all types of investigative measures.</p> <p>The Council would like to ask the EP to clarify this amendment, what are the other measures the EP are referring to?</p> <p>The last part of the amendment is in conformity with Council general approach, paragraph 1 last part.</p>
	<p><u>(a) monitoring banking or other financial operations that are being carried out through one or more specified accounts;</u></p>		
	<p><u>(b) controlled delivery on the territory of the executing State;</u></p>		

	its execution may be refused, in addition to the grounds <u>for non-recognition and non-execution</u> referred to in Article 10 (...), if the execution of the measure concerned would not be authorised in a similar national case.		
2. Article 10(2) applies <i>mutatis mutandis</i> to cases referred to in paragraph 1.	<u>2. The practical arrangements regarding the measure referred under paragraph 1 (b) and wherever else necessary, shall be agreed between the Member States concerned.</u>		In substance in conformity with EP Article 25.4.
3. The executing authority may make the execution of an EIO referred to in paragraph 1 subject to an agreement on the allocation of costs.	<u>3. The issuing authority shall indicate in the EIO why it considers the requested information relevant for the purpose of the criminal proceedings.</u>		In substance in conformity with the Council general approach, Article 25.3. Difference "criminal proceedings" and "investigation into the offence". This is a horizontal question.
	<u>4. The right to act and to direct and control operations related to the execution of an EIO referred to in paragraph 1 shall lie with the competent authorities of the executing State.</u>		

Article 27a

	<i>Covert investigations</i>		
	<u>1. An EIO may be issued for the purpose of requesting the executing State to assist issuing State in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).</u>		The Council maintains its position that the EIO shall have as large scope as possible.
	<u>2. The issuing authority shall state in the EIO why it considers that this particular measure is likely to be relevant for the purpose of the criminal proceedings. The decision on the recognition and execution of an EIO issued under the conditions set out in this Article shall be taken in each individual case by the competent authorities of the executing State with due regard to its national law and procedures.</u>		

	<p><u>3. Execution of an EIO referred to in paragraph 1 may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 10, if the execution of the measure concerned would not be authorised in a similar national case or where it was not possible to reach an agreement on the arrangements for the covert investigations, as set out in paragraph 4.</u></p>		<p>The Council draws the attention of the EP that an additional ground for refusal has been added.</p>
	<p><u>4. Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The right to act, to direct and to control operation related to the investigative measures referred to in paragraph 1 shall lie solely with the competent authorities of the executing State. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Member States with due regard to their national law and procedures.</u></p>		

CHAPTER IV (A)

INTERCEPTION OF TELECOMMUNICATIONS

Article 27b

	<i><u>Interception of telecommunications with technical assistance of another Member State</u></i>		
	<u>1. An EIO may be issued for the interception of telecommunications in the State from which technical assistance is needed.</u>		The Council maintains its position that the EIO shall have as large scope as possible.
	<u>2. Where more than one State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent to only one of them, and priority shall always be given to the State where the subject is or will be located.</u>		
	<u>3. An EIO referred to in paragraph 1 shall also contain the following:</u>		

	<u>(a) information for the purpose of identifying the subject of this interception;</u>		
	<u>(b) the desired duration of the interception; and</u>		
	<u>(c) the provision of sufficient technical data in particular the target identifier, to ensure that the EIO can be executed</u>		
	<u>3a. The issuing authority shall indicate in the EIO why it considers the requested measure relevant for the purpose of the criminal proceedings.</u>		
	<u>4. In addition to the grounds for refusal provided in Article 10, the execution of an EIO referred to in Paragraph 1 may also be refused if the measure would not have been authorised in a similar national case. The executing State may make its consent subject to any conditions which would be observed in a similar national case.</u>		The Council draws the attention of the EP that an additional ground for refusal has been added.
	<u>5. An EIO referred to in paragraph 1 may be executed by :</u>		
	<u>a) transmitting telecommunications immediately to the issuing State; or</u>		

	<u>b) intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.</u>		
	<u>The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with paragraph 5(a) or (b).</u>		
	<u>6. When issuing an EIO referred to in paragraph 1 or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.</u>		
	<u>7. Costs resulting from the application of this Article shall be borne in accordance with Article Y, except for the costs arising from the transcription, decoding and deciphering of the intercepted communications which shall be borne by the issuing State.</u>		

Article 27d

	<p><u>Notification of the Member State where the subject is located from which no technical assistance is needed</u></p>		<p>The Council maintains its position. This provision was deemed a necessary corollary to Article 27b.</p>
	<p><u>1. Where, for the purpose of conducting an investigative measure, the interception of telecommunications is authorized by the competent authority of one Member State (the 'intercepting Member State') and the communication address of the subject specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall inform the competent authority of the notified Member State of the interception:</u></p>		

	<u>a) prior to the interception in cases where the competent authority of the Member State knows when ordering the interception that the subject is or will be on the territory of the notified Member State;</u>		
	<u>b) during the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.</u>		
	<u>2. The notification referred to in paragraph 1 shall be done by using the form provided for in Annex C.</u>		
	<u>3. The competent authority of the notified Member States may, in case where the interception would not be authorized in a similar national case, notify, without delay and at the latest within 96 hours after the reception of the notification referred to in paragraph 1, the competent authority of the intercepting State that:</u>		
	<u>a) the interception may not be carried out or shall be terminated; and,</u>		

	<p><u>b) where necessary, that any material already intercepted while the subject was on its territory may not be used, or may only be used under conditions which it shall specify. The competent authority of the notified State shall inform the competent authority of the intercepting State of reasons justifying the said conditions.</u></p>		
	<p><u>4. Article 5(2) shall be applicable <i>mutatis mutandis</i> for the notification referred to in paragraph 2.</u></p>		

CHAPTER IV(B)

PROVISIONAL MEASURES

Article 27e

	<i>Provisional measures</i>		
	<u>1. An EIO may be issued in order to take any measure with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of item that may be used as evidence.</u>		In order to keep consistency with other Framework Decision the Council introduced this provision.
	<u>2. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, whenever practicable, within 24 hours of receipt of the EIO.</u>		

	<p><u>3. When the provisional measure referred to in paragraph 1 is requested the issuing authority shall indicate in the EIO whether the evidence shall be transferred to the issuing State or shall remain in the executing State. The executing authority shall recognise and execute such EIO and transfer the evidence in accordance with the procedures laid down in the Directive.</u></p>		
	<p><u>4. When in accordance with paragraph 3 an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure referred to in paragraph 1, or the estimated date for submission of the request for the evidence to be transferred to the issuing State.</u></p>		

	<p><u>5. After consulting the issuing authority, the executing authority may in accordance with its national law and practices lay down appropriate conditions in the light of the circumstances of the case in order to limit the period for which the provisional measure referred to in paragraph 1 will be maintained. If, in accordance with those conditions, it envisages lifting the provisional measure, it shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the executing authority that the measures referred to in paragraph 1 have been lifted.</u></p>		
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**CHAPTER V
FINAL PROVISIONS**

Article 28

<i>Notifications</i>	<i>Notifications</i>		
1. By ... * each Member State shall notify the Commission of the following:	1. By ... * each Member State shall notify the Commission of the following:		In conformity with the Council general approach.
(a) the authority or authorities which, in accordance with its internal legal order, are competent according to Article 2 (a) and (b) when this Member State is the issuing State or the executing State;	(a) the authority or authorities which, in accordance with its internal legal order, are competent according to Article 2 (a) and (b) when this Member State is the issuing State or the executing State;		
(b) the languages accepted for the EIO, as referred to in Article 5(2);	(b) the languages accepted for the EIO, as referred to in Article 5(2);		

* OJ: Please insert the date: Two years from the entry into force of this Directive.

* OJ: Please insert the date: Three years from the entry into force of this Directive.

<p>(c) the information regarding the designated central authority or authorities if the Member State wishes to make use of the possibility under Article 6(2). This information shall be binding upon the authorities of the issuing State;</p>	<p>(c) the information regarding the designated central authority or authorities if the Member State wishes to make use of the possibility under Article 6(2). This information shall be binding upon the authorities of the issuing State;</p>		
<p>(d) the requirement of consent to the transfer from the person concerned in the case the Member State wishes to make use of the possibility provided for in Article 20(4).</p>	<p>d) <u>Member State may also provide the list of necessary documents it would require under Article 19(3).</u></p>		
<p>2. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraph 1.</p>	<p>2. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraph 1.</p>		
<p>3. The Commission shall make the information received in application of this Article available to all the Member States and to the European Judicial Network (EJN). The EJN shall make the information available on the website referred to in Article 9 of the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network⁵.</p>	<p>3. The Commission shall make the information received in application of this Article available to all the Member States and to the European Judicial Network (EJN). The EJN shall make the information available on the website referred to in Article 9 of the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network⁶.</p>		

⁵ OJ L 348, 24.12.2008, p. 130.

⁶ OJ L 348, 24.12.2008, p. 130.

Article 29

<i>Relations to other agreements and arrangements</i>	<i>Relations to other agreements and arrangements</i>		
<p>1. Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 30, this Directive replaces, as from ..., * the corresponding provisions of the following conventions applicable in the relationships between the Member States bound by this Directive:</p> <p>European Convention on mutual legal assistance in criminal matters of 20 April 1959 as well as its two additional protocols of 17 March 1978 and 8 November 2001 and the bilateral agreements concluded pursuant to Article 26 of that Convention;</p>	<p>1. Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 30, this Directive replaces, as from ..., * the corresponding provisions of the following conventions applicable in the relationships between the Member States bound by this Directive:</p> <p><i>[European Convention on mutual legal assistance in criminal matters of 20 April 1959 as well as its two additional protocols of 17 March 1978 and 8 November 2001 and the bilateral agreements concluded pursuant to Article 26 of that Convention;</i></p>		

* OJ: Please insert the date: Two years from the entry into force of this Directive.

* OJ: Please insert the date: Three years from the entry into force of this Directive.

<p>Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985;</p> <p>Convention of 29 May 2000 regarding mutual legal assistance in criminal matters between the Member States of the EU and its protocol of 16 October 2001.</p>	<p><i>Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985;</i></p> <p><i>Convention of 29 May 2000 regarding mutual legal assistance in criminal matters between the Member States of the EU and its protocol of 16 October 2001.]</i></p> <p><u>The detailed list of specific provisions replaced by this Directive shall be introduced in an Annex.</u></p>		
<p>2. Framework Decision 2008/978/JHA is repealed. This Directive applies between the Member States to the freezing of items of evidence in substitution for the corresponding provisions of Framework Decision 2003/577/JHA.</p>	<p><i>[2. Framework Decision 2008/978/JHA is <u>repealed in relation to all Member States which participated in the adoption of this Directive</u>⁷. This Directive applies between the Member States <u>bound by it to the freezing of items of evidence in substitution for the corresponding provisions of Framework Decision 2003/577/JHA.</u>]</i></p>		

⁷ This paragraph was not submitted to the Council for the agreement on a general approach. The implications of an adoption of this Directive in respect of existing instruments will be further examined in a horizontal context in respect of all MS concerned.

<p>3. Member States may continue to apply the bilateral or multilateral agreements or arrangements in force after ...* insofar as these make it possible to go beyond the aims of this Directive and contribute to simplifying or further facilitating the evidence gathering procedures.</p>	<p>3. <u>In addition to this Directive</u>, Member States may <u>conclude or</u> continue to apply bilateral or multilateral agreements or arrangements (...) <u>with other Member States</u> after ...* <u>only</u> insofar as these make it possible to <u>further strengthen</u> the aims of this Directive and contribute to simplifying or further facilitating the evidence gathering procedures <u>and provided that the level of safeguards set out in this Directive is respected.</u></p>		
<p>4. Member States may conclude bilateral or multilateral agreements and arrangements after ...** insofar as these make it possible to go further into or extend the provisions of this Directive and contribute to simplifying or further facilitating the evidence gathering procedures.</p>	<p>4. (...) (merged with paragraph 3)</p>		

* OJ: Please insert the date: Two years from the entry into force of this Directive.
* OJ: Please insert the date: Three years from the entry into force of this Directive.
** OJ: Please insert the date of entry into force of this Directive.

<p>5. Member States shall notify to the Commission by ...* the existing agreements and arrangements referred to in paragraph 3 which they wish to continue to apply. The Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to paragraph 4.</p>	<p>5. Member States shall notify to the Commission by ...* the existing agreements and arrangements referred to in paragraph 3 which they wish to continue to apply. The Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to in paragraph 3 .</p>		
<p>6. If the Commission is of the view that a bilateral or multilateral agreement or arrangement notified to it does not comply with the conditions set out in paragraphs 3 and 4, it shall invite the Member States concerned to terminate, modify or refrain from concluding the agreement or arrangement in question.</p>	<p>6. (...)</p>		

* OJ: Please insert the date: Three months after the entry into force of this Directive.

* OJ: Please insert the date: Three years after the entry into force of this Directive.

Article 30

<i>Transitional arrangements</i>	<i>Transitional arrangements</i>		
1. Mutual assistance requests received before... ** shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. Decisions to freeze evidence by virtue of Framework Decision 2003/577/JHA and received before ... *** shall also be governed by the latter.	1. Mutual assistance requests received before.... * shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. Decisions to freeze evidence by virtue of Framework Decision 2003/577/JHA and received before *** shall also be governed by the latter.		In conformity with the Council general approach.
2. Article 7(1) is applicable <i>mutatis mutandis</i> to the EIO following a decision of freezing taken by virtue of Framework Decision 2003/577/JHA.	2. Article 7(1) is applicable <i>mutatis mutandis</i> to the EIO following a decision of freezing taken by virtue of Framework Decision 2003/577/JHA.		

** OJ: Please insert the date: Two years after the entry into force of this Directive.
 *** OJ: Please insert the date: Two years after the entry into force of this Directive.
 * OJ: Please insert the date: Three years after the entry into force of this Directive.
 *** OJ: Please insert the date: Three years after the entry into force of this Directive.

Article 31

<i>Transposition</i>	<i>Transposition</i>		
1. Member States shall take the necessary measures to comply with this Directive by ...*.	1. Member States shall take the necessary measures to comply with this Directive by ...*.		
2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.	2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.		
		<p><i>2a. They shall communicate the text of those provisions and a correlation table between those provisions and this Directive to the Commission.</i></p> <p>Amendment 195</p>	<p>According to the political declaration of the EP, the Council and the Commission on explanatory documents the Council is willing to accept to provide the Commission with an explanatory document..</p>

* OJ: Please insert the date: Three years after the entry into force of this Directive.

* OJ: Please insert the date: Three years after the entry into force of this Directive.

<p>3. By ...^{**}, Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.</p>	<p>3.⁸ By ...^{**}, Member States shall transmit to the (...) Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.</p>		
<p>4. The Commission shall, by ...^{***}, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.</p>	<p>4. (...) (see now article 32)</p>	<p><i>4. The Commission shall, by ***E, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with and implement this Directive, accompanied, if necessary, by legislative proposals.</i></p> <p>Amendment 197</p>	<p>The Council invites the EP to accept a timeframe of 4 years before the first report. See EP amendment in Article 32.</p>

^{**} OJ: Please insert the date: Two years after the entry into force of this Directive.

⁸ This paragraph will need to be modified subject to the agreement on the explanatory documents on the transposition of directives. C.f. doc 14603/11 INST 429. COM proposed the deletion of Paragraph 3.

^{**} OJ: Please insert the date: Five years after the entry into force of this Directive.

^{***} OJ: Please insert the date: Three years after the entry into force of this Directive.

Article 32

<i>Report on the application</i>	<i>Report on the application</i>		
No later than five years after the date of entry into force of this Directive, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information. The report shall be accompanied, if necessary, by proposals for amending this Directive.	No later than five years after the date of entry into force of this Directive, the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, <u>including in particular, the evaluation of its impact on the cooperation in criminal matters and the protection of individuals, as well as the execution of the provisions on the interception of telecommunications in light of technical developments.</u> The report shall be accompanied, if necessary, by proposals for amending this Directive.	No later than four years after the date of entry into force of this Directive, and in regular intervals thereafter , the Commission shall present to the European Parliament and the Council a report on the application of this Directive, on the basis of both qualitative and quantitative information, <u>including in particular, the evaluation of its impact on the cooperation in criminal matters., on fundamental rights, the rights of defence and data on protection requirements</u> The report shall be accompanied, if necessary, by proposals for amending this Directive. Compromise amendment 19	The Council can accept the timeframe suggested by the EP.

Article 33

<i>Entry into force</i>	<i>Entry into force</i>		
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i> .		In conformity with the Council general approach.

Article 34

<i>Addressees</i>	<i>Addressees</i>		
This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.		In conformity with the Council general approach.
