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NOTE

from:	Presidency
to:	Delegations
Subject:	Initiative for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters: - Answers to the questionnaire on interception of telecommunications

Delegations will find in the Annex answers to the questionnaire on inception of telecommunications to be covered by the scope of the Initiative for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters. (doc [12863/10](#))

The questionnaire concerns 4 types of situations. Only type 1 is currently covered in the draft Directive.

- **Type 1:** Ordinary interception of telecommunications without immediate transmission;
- **Type 2:** Ordinary interception of telecommunications with immediate transmission;
- **Type 3:** Interception of satellite telecommunications (relation between the requesting State and the State hosting the terrestrial station);
 - **Type 3a:** the interception of telecommunications takes place in the State hosting the terrestrial station and the result is later forwarded to the requesting State;
 - **Type 3b:** telecommunications are intercepted in the State hosting the terrestrial station but immediately transmitted to the requesting State;
 - **Type 3c:** the interception of telecommunications takes place in the requesting State, which uses a remote control system to activate the transmission of telecommunications from the terrestrial station to one of its telecommunication service providers;
- **Type 4:** Interception of telecommunications in cases where the requesting State does not need the technical assistance of the Member State where the target is located

Member State	Type 1	Type 2	Type 3	Type 4	Other information
AT	<p>This form of interception of telecommunications is used frequently (both as a requesting and as a requested state) and usually successfully.</p> <p>Statistics on the number of cases in the last 5 years as a requesting State, as a requested State and of requests that were successfully executed are not available.</p>	<p>This form of cooperation is technically possible in Austria and used with a certain regularity.</p> <p>However, statistics on the number of cases in the last 5 years as a requesting State, as a requested State and of requests that were successfully executed are not available.</p>	<p>Austria does not host a terrestrial station for satellite telecommunications.</p> <p>Statistics on the number of cases in the last 5 years as a requesting State, as a requested State and of requests that were successfully executed are not available.</p> <p>Measures to make the use of the so-called “remote control” system have not been taken.</p>	<p>Statistics on the number of cases as a requesting State, as a requested State and of opposition to this type of interception are not available.</p>	
BE	<p>In the last 5 years, Belgium had approximately 350 cases of this type of interception of</p>	<p>This type of interception of telecommunications is not used in Belgium, due to</p>	<p>Belgium has no experience in the field of satellite-interception.</p>	<p>There is no statistic data on this type of interception available.</p>	

	telecommunications. Unfortunately, we do not have available statistics on the number of cases in which Belgium acted as, respectively, a requesting or a requested state.	technical difficulties.			
BG	The Republic of Bulgaria does not have cases of this type.	The Supreme Prosecution Office of Cassation had one case as a requested State (Request for legal assistance from the Netherlands). The cited request for legal assistance from the Netherlands was successfully executed. This form of cooperation is technically possible in Bulgaria.	On the interceptions, referred to as type 3a and 3b, the Communications Regulation Commission does not have information on cases of requests made to the competent authorities of the Republic of Bulgaria as requested state or made to the relevant requests of the Republic of Bulgaria as requesting state. Concerning the type 3c of interceptions it should be borne in	The Communications Regulation Commission has no information concerning possible notifications from another Member State about interception of type 4 that has been realized in the territory of the Republic of Bulgaria, respectively about the intention to be realized.	

			mind that the satellite systems use “remote control” in the terrestrial stations. From the information available to the Communications Regulation Commission, the currently working terrestrial stations in the territory of the Republic of Bulgaria do not have such an opportunity.		
CZ	With regard to the fact that there are direct contacts between the judicial authorities within the EU, we unfortunately do not have an exact overview of the numbers of MLA requests concerning interception of telecommunications. Moreover, even if there are statistics concerning the MLA	The legal conditions under which this type of interceptions is authorized are the same as at type 1, the difference concerns only the technical possibilities. It is a technical issue if the immediate transmission shall take place, it does not have an influence on the authorization of the	CZ reply: There is no terrestrial station at the territory of the Czech Republic; we also do not make use of the remote control system. As far as the central authorities are concerned (Supreme Public Prosecutors Office, competent department of the Police of the Czech Republic), we are not aware of any	With regard to the fact that there are direct contacts between the judicial authorities within the EU, by far we are unfortunately not aware of a request in which the CZ public prosecutors offices were notifying the interception to a Member State where the target was located, nor a request in which	We consider the interception where the technical assistance of the other States not needed, and it is found out only after the interception that the technical device was not on the territory of the other State as the most problematic one. It is clear that the Article 20 does not react to the technical progress. The problem of Article 20 par. 2 letter b) is that it refers to the interceptions which are ongoing (the intercepted person is at the moment locate on the territory of the notified State). In reality, the requesting authority will know only after the certain time that the intercepted device

	<p>requests to be found at the particular public prosecutors offices, they do not refer to different types of MLA requests. However, as CZ has the strictest conditions for authorization of interception within the criminal proceedings in the EU, we can assume that there will be the lowest amount of MLA requests concerning interceptions in CZ within the EU. However, we come across this kind of MLA requests, where CZ is both requesting State and requested State, mostly they concern drug trafficking offences or organized crime.</p>	<p>interception as such. EIO concerns only with the legal issues (the technical solution is the issue of the technical possibilities in each Member States), therefore there is no reason to exclude this type of interception from EIO. The Directive can contain a provision in which it will be regulate that the request for immediate transmission will be executed only if the requested State has relevant technical equipment. Otherwise the record of the interception will be sent subsequently. This type of interception is not common in CZ. The devices of the</p>	<p>MLA request where the Czech Republic was the requesting authority; there was also not any request for assistance noted from the side of judicial authorities towards the central authorities regarding this form of interception. If this type of interception should be dealt with in EIO, then the main point is whether the request should be sent to the State where the person is located or the State where the terrestrial station is located.</p>	<p>they were asking for authorization to use the interception as evidence in the criminal proceedings. (In this respect we again remind that there are very strict conditions for authorization of interception in CZ). However, we noted two requests in which the competent authorities form Netherlands asked the competent Czech authorities to get the authorization to use the record of the interception in the criminal proceedings, both in 2010. One of them was authorized, the other one is still pending.</p>	<p>was outside the territory of its State and therefore the request for authorization to use such interception is lodged only after the certain time when the interception took place. Therefore CZ suggests taking a new approach in order to solve the difficulties regarding this type of interception.</p> <p>We should introduce a system where a Member State can continue recording the interception even if the person is on the territory of the other Member State, however if the first Member State wishes to use the record as an evidence in the criminal proceedings, it can only do so with the consent of the other Member State.</p> <p>The provision could read as follows:</p> <p>“Where for the purpose of a criminal investigation, the interception of telecommunications authorised by the competent authority of one Member State (the “intercepting Member State”) will be carried out without technical assistance of another Member State, it is possible to carry out such an interception without prior approval of the other Member State. Once the intercepting Member State learns that intercepted device has been or was on</p>
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		<p>service providers are not equipped for immediate transmission of interception to the foreign State. Further, the issue concerning payment to the service providers would have to be solved. In CZ it is necessary to reimburse the providers all the costs in connection with the interception and according to our legislation it is therefore the foreign requesting authority which should pay the costs.</p> <p>Another problem which can be stated is that in individual Member States there are different rules concerning protection and security of the interception and the record therefrom.</p>			<p>the territory of another Member State, a competent authority of intercepting Member State asks for an approval to use a result of interception of a competent authority of the Member State on which territory the intercepted device has been or was (“notified Member State”). If the approval is not given, it is not possible to use the result of interception unless it is necessary urgently prevent immediate and serious threat to public security. Notified state shall be informed about such a using with pointing out the reasons.</p> <p>Member States inform General Secretariat of Council what are authorities competent to ask for an approval with using of results of interception and what authorities are competent to give such an approval or receive information about using of results of interception.”</p> <p>In connection with the above mentioned cases, with regard to the preparation of the EJM plenary meeting which was held in Prague during the CZ PRES the Supreme Public Prosecutors Office of CZ carried out a survey within Eurojust among the Member States on how they proceed in these cases. 19 States Members sent answers and it was possible to make the following</p>
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					<p>conclusions</p> <ul style="list-style-type: none"> - it is necessary to inform the other State also about the terminated interception (BE, DK, EE, FI, FR, DE, EL, LU, NL, PL, SK, UK) x it is NOT necessary to inform the other State also about the terminated interception (BG, MT, SE) - it is possible to authorize already terminated interception subsequently (BE, BG, DK, FI, FR, DE, EL, LU, MT, NL, PL, SK, SE, UK) x it is NOT possible to authorize already terminated interception subsequently (EE) - the subsequent authorization would follow the Article 1 of the 1959 Convention (FR, EL, LU, MT, PL, SK, UK) x the subsequent authorization would follow the Article 20 of the Convention 2000 (DK, DE, NL, PT, ES) x the subsequent authorization would follow the national legislation (BE, BG, FI) - the interception could be used as an evidence without the authorization of the State where the technical device was located (BG, DK, EE, FI, MT, NL, SK, SE) x the interception could not
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					<p>be used as an evidence without the authorization of the State where the technical device was located (BE, FR, EL, PL, UK)</p> <ul style="list-style-type: none"> - these States consider the interception which is carried out only by technical means on the territory of their State as the interference of their sovereignty – BE, CZ, DE, EE, EL, FI, LU, LV, MT, NL, PL, PT, RO, UK. <p>We also enclose the recommendations of the 32nd Plenary Meeting of the European Judicial Network and Conference on the application of cross-border surveillance, controlled delivery and interception of telecommunication in mutual legal assistance between Member States of the European Union, which took place in Prague, 24 – 26 June 2009.</p>
CY					
DE	It is not possible to specify the exact number of cases as not all Länder maintain separate	Germany does not have access to comprehensive statistical data in this connection (see the	This type of interception of telecommunications does not take place in Germany as there	Germany does not have access to comprehensive statistical data (see the reply concerning	N/A

	<p>statistics for incoming and outgoing requests for interception of telecommunications.</p> <p>Specific enquiries to the Länder have revealed that this type of interception of telecommunications (interception without immediate transmission) takes place on a regular basis, as both a requesting and a requested State.</p> <p>Germany regards this situation as highly relevant from a practical point of view.</p>	<p>reply concerning Type 1).</p> <p>Specific enquiries to the Länder have revealed that, apart from a few isolated examples, this type of interception of telecommunications is virtually never carried out in Germany.</p> <p>In the few cases in which interception of telecommunications with immediate transmission did take place, this was primarily in connection with a single EU Member State (the Netherlands), from where it is possible for intercepted telecommunications to be transmitted immediately to Germany. From a technical point of</p>	<p>are no terrestrial stations on German territory.</p>	<p>Type 1).</p> <p>Specific enquiries to the Länder have revealed that this type of interception of telecommunications is limited to a very small number of cases in the border regions.</p> <p>Some of the Länder questioned stated that there might be a need to regulate such situations.</p>	
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		<p>view, this currently takes the form of a system whereby the conversations intercepted by the foreign authorities are automatically stored on a server which the German investigation authorities can access via the Internet with only a few minutes' time delay.</p> <p>Some of the Länder questioned stated that there might be a need to regulate such situations.</p>			
DK	DK has no available statistics on the number of cases regarding interception of telecommunications without immediate transmission.	According to information provided by The Danish National Police it is technically possible for the Danish authorities to perform interception of telecommunications	According to information provided by the Danish National Police one phone company in Denmark has a terrestrial station. Denmark has not received or sent any requests regarding	Denmark has no available statistics on the number of cases regarding interception of telecommunications in cases where the requesting State does not need the technical assistance of the Member State	

		<p>with immediate transmission provided that the other country has the rights technical set-up.</p> <p>Denmark has not received any requests regarding interception of telecommunications with immediate transmission.</p> <p>During the last 5 years The Danish National Police has had approximately 2 cases per year where they have received data from a foreign authority. This data has not been transmitted on-line, but has been transmitted in 'packages' from the foreign authority to The Danish National Police.</p>	<p>interception of satellite telecommunications. It is therefore not known whether this kind of interception is in fact technical possible, but according to The Danish National Police, it would probably require a technical update of the police IT-system.</p>	<p>where the target is located.</p>	
EE	In Estonia such information is not	See answer no 1.	No, Estonia does not host a terrestrial	There's no statistics of this kind of	

	<p>transferred through Ministry of Justice but instead directly through competent law enforcement authorities.</p> <p>Therefore, we do not have the statistics (it is restricted information).</p>		station.	notifications.	
EL					<p>1.Regarding the number of requests for interception of communications in the last five years within the cooperation of mutual assistance, we would like to inform you that based on the information given until today to our department from the competent Public Prosecutors' Offices, from total 86 requests, 68 were executed and 18 were rejected.</p> <p>2. Regarding the information you requested about particular types of cooperation within the technical possibilities of our country, we would like to inform you that we are looking into the issue in collaboration with the competent authorities.</p>
ES					

FI	Estimated total number is about 300 requests/ 5 years. All our requests have been executed	Technical problems for this type of co-operation still exist in several member states. In practice if we have urgent need to receive the information immediately for the investigation, we will request whether our investigators may participate the investigation in the executing state.	Finland does not host a terrestrial station. There have not been requests of this type to EU-states.	No cases of this type.	
FR					
HU					
IE	Nil	Nil	Nil	Nil	Ireland has not dealt with any cases of this type
IT	Statistical data not available.	This type of cooperation is technically possible, usually via the procedure of receipt of the data and listening in Italy and at the same time transmission of the data to the Requesting State	Italy hosts a terrestrial station. With regard to types 3a and 3b : Statistical data not available. With regard to type 3c : It appears from the		

		<p>(“remotizzazione”), but probably it is possible that the telecommunications are in a way “deviated” to the Requesting State, without listening in Italy. Statistical data not available.</p>	<p>information obtained that the most frequent procedure is that described above at No. 2 (listening in Italy and at the same time transmission and listening in the Requesting State). Statistical data not available.</p> <p>The interception of telematic communications of landlines takes place in Italy. The interception of satellite telematic communications, on the other hand, allows the immediate transmission of the data. However there are obstacles to this possibility as a result of the practical procedures which require the activation of a</p>		
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			password which is only available to the police responsible for the investigation. Statistical data not available.		
LT					
LU					
LV	As State Police informed from July 1, 2009 there were 2 cases, when foreign state requested interception of telecommunications. In both cases competent judicial authorities sanctioned the measure and requests were executed.	With relation to technical possibilities to intercept telecommunications with immediate transmission, it should be noted that execution is dependent on technical possibilities available in requesting state. Unfortunately, there are no statistics.	Latvia does not host terrestrial station	There are no statistics.	Generally, Latvia would like to recognize that separate statistics on interception of telecommunications are not gathered in Latvia, as a result it makes data gathering quite complicated. At the same time it should be noted that mutual assistance in Latvia in this field is minimal.
MT					

NL					
PL					
PT	<p>All the requests we have knowledge of were successfully executed.</p> <p>In 2005 – 1 request; In 2006 – 2 requests; In 2007 – 1 request; In 2008 - 0 requests; In 2009 - 0 requests; In 2010 - 3 requests.</p>	<p>Although in Portugal this form of cooperation is technically possible, we have had no requests in the last five years.</p>	<p>We do not host a terrestrial station. We have had no cases as a requesting state under types 3a and 3b. We have had no cases as a requesting state under type 3c.</p>	<p>Portuguese authorities have not notified any interceptions under type 4 nor have they received any notification for this kind of interception.</p>	
RO					
SE	<p>Sweden only has statistics for year 2009 available. As a requested state Sweden received 35 requests. As a requesting state Sweden sent approximately 100 requests. There is no other information than that the requests have been carried out successfully.</p>	<p>This form of cooperation is legally possible in Sweden but due to technical practicalities it can not be carried out.</p>	<p>This type of interception is not possible in Sweden. There is no terrestrial station or possibility to use a remote control system in Sweden.</p>	<p>Only a few cases of this kind of interception have occurred.</p>	
SI	<p>Type 1 is possible in Slovenia and is</p>	<p>Yes with limitation. Only listening is</p>	<p>No</p>	<p>The Ministry of Justice or the Police</p>	

	<p>provided by the International Legal Assistance. It is implemented by Public prosecutor offices or Courts. Therefore the Ministry of Justice can't provide you with the number of the cases and the also the Police, who is responsible for the execution of such requets do not have information about the number of cases.</p>	<p>possible in the requesting state.</p> <p>None</p>		<p>who is responsible for execution of such investigative measure do not collect such information because we consider a cell geographic location that is used by target as target location that mean if target uses Slovenian mobile network it is supposed to be in Slovenia</p> <p>We don't have such information.</p>	
SK	<p>In the last 5 years there was no case of this type. Note: All interceptions (also for requesting States) took part on request of domestic (national) unit, which first started criminal procedure and requested so under National</p>	<p>Cooperation is possible in all listed cases – subject to approval in relation to the national (SK) law. Technically we can intercept all communication running through our domestic providers. In the last 5 years there was no case of this type.</p>	<p>With regard to types 3a and 3b : Interception of all communication through national telecommunication service providers is possible. We are not able to intercept communication of our providers abroad. In the last 5 years</p>	<p>In the last 5 years there was no case of these types.</p>	

	legislation.		there was no case of this type. With regard to type 3c : No measures. In the last 5 years there was no case of this type.		
UK	<p>Twenty four cases of this type of intercept have been received by the UK in the last five years.</p> <p>Six of these were successfully executed as warrants.</p>	This form of cooperation is not technically possible in the UK.	<p>Type 3a and 3b: There is no base station in the UK</p> <p>Type 3b: The UK has not taken measures to make use of a 'remote control' system.</p>	<p>As a requesting state, the number of times Member States have been opposed to an interception is: Nil</p> <p>As a requested state, the number of times the UK has opposed an interception is: Nil</p>	<p>The Regulation of Investigatory Powers Act 2000 (RIPA) provides the framework for lawful interception. Interception can lawfully take place under a warrant granted by the Secretary of State and in certain other limited circumstances, for example where the sender and recipient of the communication have given their permission.</p> <p>Only a limited number of investigation and intelligence agencies can apply of an interception warrant. A warrant can only be granted where the Secretary of State believes that it is necessary</p> <ul style="list-style-type: none"> • In the interests of national security; • For the purpose of preventing or detecting serious crime; • For the purpose of safeguarding the economic well-being of the

					<p>United Kingdom; or</p> <ul style="list-style-type: none"> • Similar circumstances for preventing/detecting serious crime under an international mutual assistance agreement. <p>The conduct authorised by the warrant must also be proportionate to what is sought to be achieved.</p> <p>Under section 17 of RIPA intercept product, save for some exceptions, cannot be used as evidence. Furthermore it is an offence under s19 of RIPA to disclose the existence and contents of a particular interception warrant. Therefore, as with the 2000 MLA Convention, the UK would not use the EIO to request intercept as it could not be used as evidence. The UK Government is committed to seeking a practical way to allow the use of intercept in court.</p> <p>Where the UK was asked by a Member State to carry out interception (under the 2000 MLA Convention) that was consistent with national law, the UK would supply intercept product that could be used as evidence. But if intercept product has already been collected for UK intelligence purposes</p>
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					this cannot be provided to foreign states to be used as evidence. There could be no disclosure of this product or its existence.
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