

## The European Investigation Order

### **Introduction**

The European Investigation Order (EIO) is an EU legal instrument aimed at speeding up the assistance provided by one country to another in criminal investigations. The EIO has been created by Directive 2014/41/EU of the European Parliament and of the Council (dated 3<sup>rd</sup> April 2014).

### **Background**

With the relaxations in borders across the EU, the globalisation of businesses and the ease that individuals can travel, combined with the ability to move money and assets around the globe, crime and criminality has become more international. More than ever before, investigators need to look overseas to seize evidence, find witnesses or suspects or seek assistance from foreign jurisdictions. For a long period of time, individual countries and the EU have considered that existing cooperation measures, such as International Letters of Request (Commission Rogatoire) are too slow and cumbersome to offer the speed of activity that investigators currently need in an increasingly complex world.

In an attempt to modernise and speed up cooperation, the EIO was first proposed by seven member states in 2010. It aimed at replacing existing frameworks for the gathering of evidence in another Member State with a single comprehensive instrument based on Mutual Recognition. The Directive came into force on the 21<sup>st</sup> May 2014 giving countries 3 years to transpose and implement the Directive into their national law. The UK goes live with the EIO on 31st July 2017.

### **Which Countries have opted into the EIO?**

All EU member States have opted into the EIO with the exception of the Republic of Ireland and Denmark. These are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden and the United Kingdom.

However, just because Member States have opted into the EIO it does not necessarily mean that they will all be ready to create or receive the EIO from the “go live” date as some countries may take longer to transpose the Directive into their national legislation. During the transition period, where countries are preparing for the EIO but are not yet ready, conventional ILORs will be used. For further advice in this area contact the CPS. It should also be noted that **the UK has opted into the EIO irrespective of the fact that it has elected to exercise its right to leave the EU.**

### **Purpose**

The EIO is designed to streamline the process by which a country can request assistance from another in criminal investigations. Because the EIO is what is known as a “Mutual Recognition” instrument, it puts in place an agreed process and sets time limits in which the evidence will need to be gathered. Furthermore it denotes a move away from a request for assistance in obtaining evidence, to an order for specified measures to be undertaken and for evidence already in the possession of a state to be transferred without delay.

The EIO will be very relevant to many UK investigators and is likely to have significant and positive effect on UK investigations with evidence and information held overseas becoming much easier to access.

### **What types of investigation can be asked for under the EIO?**

The EIO is deliberately wide ranging in order to take into account the differing roles of the Police and Prosecutors in the various Member States. Article 3 within the Directive states that the EIO shall cover “any investigative measure” with the exception of measures exempted and listed in the next paragraph below.

Therefore, suspect interviews, the obtaining of banking evidence, communication data and other third party material held in confidence will be covered by the Order. The gathering or transfer of intelligence can be covered by the order, the search of premises and surveillance activity can also be asked for, as can the transfer of information already in the possession of the police in a country. In short, any activity that can be carried out lawfully domestically can be asked for, or asked of, another Member State. The EIO also specifically identifies certain activity that does fall within the Order:

- Temporary transfer of prisoners for the purpose of carrying out an investigative measure (incoming and outgoing)
- Hearing witnesses by Video Link
- Hearing witnesses by Telephone Link\*
- Gathering information on bank and other financial accounts (account holder information)
- Gathering information on banking and financial operations (transaction information)
- Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time (this specifically covers account monitoring orders and controlled deliveries)
- Covert investigations (this could cover surveillance, the deployment of Under Cover Officers etc. However it is the UK position that as much of this activity should be maintained under existing police cooperation routes)
- Intercept of telecommunications\*

\* Whilst the EIO makes specific reference to a number of investigative measures common in the EU, some of the measures are not available to us because our own domestic law does not allow for it. For example hearing witnesses by telephone link and the use of interception material in evidence.

### **Can the EIO be used for any offence?**

The offences for which the EIO can be issued are based on “Dual Criminality” which means it is an offence in both the issuing and executing countries. Also an EIO can be issued if the offence is punishable by a maximum of 3 years and is listed below. These are the same rules as relate to the issuing of a European Arrest Warrant under the EAW Framework Decision and also the same list of categories of offences for which an Article 36 Alert can be issued on the Schengen Information System. They are:

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption

- fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting currency, including of the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage.

In reality, it is unlikely that we would issue an EIO for a summary only offence as oppose to a serious crime and unlikely that the CPS would authorise such a request. However if you have a case that you feel falls within this category but is important enough to issue an EIO, consult with the CPS.

#### **What is not covered by the EIO?**

- Joint Investigation teams are exempt from the EIO
- Article 40 (Convention Implementing the Schengen Acquis) Cross Border Surveillance is exempt from the EIO
- Requests to Ireland and Denmark which should be continued by way of International letters of Request
- Any non EU Member State which should be continued by way of International Letters of Request
- Confiscation unless part of a criminal proceeding
- Police to Police activity which may include taking statements from willing witnesses.

## **What is the EIO?**

The EIO is a judicial decision (Order) issued/made or validated by a judicial authority in a issuing member state to have one or several specific investigative measures carried out in another (the executing) member state. The executing member state shall recognise the EIO unless one of the grounds for non-recognition or grounds for postponement exist. The Order (EIO) will be received and drafted on a set template which forms part of the directive.

## **Recourse to another type of investigation**

There are certain instances where the same result can be achieved by a different means. See Annex A, Article 10.

## **Grounds for non-recognition or non-execution**

There are certain limited grounds to refuse a request. See Annex A, Article 11.

## **Grounds for postponement**

There are certain occasions when a request can be postponed. See Annex A, Article 15.

## **What does it replace?**

The EIO will replace International Letters of Request (Commission Rogatoire) for EU member states (except Ireland and Denmark). It may also replace some activity currently undertaken by way of "Police Cooperation" either through Interpol, Europol or by way of bilateral agreement. This is because the involvement of a prosecutor (examining magistrate) may be more prevalent in other EU Member States and they may require an EIO to undertake the requested activity. **UK Law Enforcement should always where possible try to maintain police cooperation activity through existing routes as opposed to the EIO.**

## **What is Mutual Recognition?**

Mutual Recognition is an EU principal which in essence means that the recipient country will treat the issuing state as an equal and trust the criminal justice in that country the same as we trust our own. Every country joining the EU has to demonstrate that their legal system is of the standard required by the EU. Therefore under Mutual Recognition, if a competent authority requires assistance, the UK is obliged to provide it unless one of the limited grounds for refusal exists.

## **Time Limits**

The Directive sets clear time limits in which the EIO must be dealt with and also confirms that it must be prioritised with the same "celerity and priority" as a domestic case. Furthermore, in urgent cases the EIO should be dealt with quicker than the below time limits.

Relevant time limits:

1. The executing Member State will have 30 days to make a decision on whether to recognise (accept) the Order. This action will be taken by the Central Authority.
2. Once a decision has been made to recognise the Order, the Executing Authority has 90 days to carry out the request (this will be the relevant force). If the action **cannot** be taken within the 90 days the force must let the Central Authority know as soon as possible and a further 30 days can be extended. If the Order cannot be fulfilled within the extra period (90 days plus 30 days) the Force must give the Central Authority a date by when it will be complete.

Failing to have adequate resources is not an acceptable reason for the non-completion of an Order. The EIO is an Order and must be carried out with the same priority as a domestic case.

### **What happens if I don't comply with the Order?**

Failing to comply with an Order is:

- Unlawful. The EIO is legally binding on the UK and failure to carry out the activity ordered can result in fines being levied against us
- Likely to have a negative impact on the reputation of the UK amongst other partner countries
- May result in other countries failing to actively support other (and potentially more important) UK requests.

### **Incoming European Investigation Orders**

All incoming EIOs will be received on the Order template and go to the relevant UK Central Authority. This will be:

- The Crown Office for Scotland
- The Home Office Central Authority (UKCA) for England, Wales and Northern Ireland
- HMRC for Tax issues

If an EIO is received directly by a force and has not come via the Central Authority, it does not comply with the legal basis and must be submitted to the relevant Central Authority as soon as possible.

The role of the Central Authorities is important and defined as part of the Directive. The Central Authority will:

1. acknowledge receipt of the Order to the requesting country within 7 days (this will start the time clock running)
2. transmit to alternative Central Authority if received by the wrong one
3. ensure it is lawful
4. take a decision on whether to accede to the request and designate which Executing Authority (or Authorities should there be numerous elements relevant to differing actions to be taken) to deliver the requested activity (within 30 days).

In relation to 4 above, the Central Authority may contact, within the 30 days, a force or number of forces to establish if the requested action can be taken and the most appropriate route for doing so. A request should only come to a force where the activity requested is geographically located within that force area or the Headquarters of the institution from where the evidence needs to be gathered (Bank HQ for example) sits within that force. Where no geographical location can be ascertained, the UKCA will carry out preliminary investigations until a suitable geographical force can be located.

### **Where will the Central Authority send the request?**

Every effort has been made to deal with the EIO along similar lines as we deal with International Letters of Request now. Although there may be some differences, the EIO will be sent by the UKCA to the network of force International Liaison Officers using the existing email addresses already supplied.

## What will my force receive?

You will receive from the UKCA either:

1. **A referral letter and accompanying EIO.** If you receive a referral letter with the Order, it has already been recognised (accepted) by the Central Authority. The letter will state that it has been recognised and will provide a date by which the evidence must be gathered. This will be **90 days** from the date which the Central Authority recognised the Order.
2. **A request for information and accompanying EIO.** If you receive a request for information with the Order, the UKCA are seeking your views as to whether you are able to execute the request prior to recognising (accepting) it formally. You will have **14 days** maximum in which to address the questions asked. If the information you supply results in the Central Authority recognising the Order and forwarding it to your force area, 1 above will apply.

In the case of either above, the grounds for refusal and postponement can be invoked. In either case for both 1 and 2 above, a response must be sent to the Central Authority within **14 days**.

Please note that the referral letter will stipulate which part of the Order that your force area is being asked to complete. This is because one Order may cover a number of elements relating to multiple force areas. To avoid duplicity, please just complete what you are being asked to do. If you feel that it is important, for whatever reason to complete other parts of the Order or that the part you have been asked to complete does not fall within your force area, you must inform the Central Authority within the **14 day** period.

## Completion date

The force must start their own clock using the date highlighted within either the Request for Information or Referral Letter sent by the Central Authority. As soon as the activity is complete, the force should stop their clock and record the **completion date** on any correspondence back to the Central Authority. This will allow the UK to keep robust figures on how often we fail to meet the deadlines.

## What do I need to do?

No.	Activity	Does one of the grounds for non recognition or postponement exist?	What do I need to do?	Time limits
1	ILO Inbox	N/A	Monitor regularly to ensure EIO is identified at earliest opportunity	Constant monitoring
2	Start the clock	N/A	As soon as either a Request for Information or a Referral Letter are received from the Central Authority, the receiving Force must start the clock and follow the below time limits. The moment the	Measured by Force

			action is complete, the clock should be stopped and the date logged. This will be known as the <b>completion date</b> and this should be recorded on all correspondence back to the Central Authority	
3	Request for information and EIO received	N/A	Respond to Central Authority with requested information or decision	ASAP but within 14 days
4	Referral Letter and EIO received	Yes	Respond with relevant reasons to Central Authority	ASAP but within 14 days
5	Referral Letter and EIO received	No	Comply with request and respond to Central Authority	ASAP but within 90 days
6	Chaser letter from Central Authority (after 60 days)	No	Update the Central Authority as to whether you will complete required activity within original 90 day period	Within 60 days
7	Referral Letter and EIO received but unable to complete within 90 days	No	Respond to Central Authority outlining reasons why time limit will be missed. 30 day extension will be granted	ASAP but within the initial 90 day period
8	Referral Letter and EIO received but unable to complete within 90 days plus 30 day extension	No	Respond to Central Authority giving a date that the Order can be completed by	Complete by the date you have given

### Dedicated Courts for Incoming EIO

The following 2 Courts have been designated by HM Courts and Tribunals Service as the incoming EIO Courts. (Please note that this is different for outgoing EIOs where Courts have been chosen on a regional basis.)

- Crown: Southwark Crown Court with Woolwich as a backup if required
- Magistrates: Westminster Magistrates Court.

Please note: Because only 2 Courts have been selected for incoming EIOs, the Courts have given an undertaking to the NPCC that personal attendance at Court will not be required, the intention is that proceedings will be conducted by email, video or telephone, depending on the directions of the Judge, the circumstances of each case and the available infrastructure. This approach has been provided for in the Criminal Procedure Rules. Single points of contact for each site will be in place for the EIO in each Court.

## **Production Orders**

Because the EIO is a Mutual Recognition instrument, and there are limited grounds for refusal, the process for issuing Production Orders will now change from the current Mutual Legal Assistance (International Letters of Request) process.

- The Central Authority has the responsibility to now apply for the Order to be recognised by a UK Court (see grounds for refusal and postponement). The UKCA will serve the Order on the Court.
- At the same time the Central Authority send the EIO and Production Order to the Court, they are duty bound to send a notice to the Chief Officer of Police in the area the evidence is held (this will be via the ILO). This is so that the force can ensure that the Order does not compromise any domestic investigation that may be underway. Should the force wish to make representation, they can do so in writing or to the Court via video-link.
- The Court will send the Production Order to the Force and notify the UKCA.
- The Force serves the Production Order in the normal way.

## **Search Warrants**

In relation to a request for search of premises, prior to the Central Authority recognising an EIO they will send a request for information and a copy of the EIO to the relevant force area so that the force can conduct checks to see if the premises is genuine and that there are not grounds for refusal or postponement. The force will be required to respond to the request for information within a maximum of 14 days. If the premises is legitimate and no grounds for non-execution or postponement exist, and the force informs the Central Authority of this, the Central Authority will:

- Draft a Search Warrant and send it to the Court for recognition
- At the same time the Central Authority sends the EIO and search warrant to the Court, they are duty bound to send a notice to the Chief Officer of Police in the area the evidence is held (this will be via the ILO). ). This is so that the force can ensure that the warrant does not compromise any domestic investigation that may be underway. Should the force wish to make representation, they can do so in writing or to the Court via video-link
- The Court will send the Search Warrant to the Force and notify the UKCA
- The Force searches the premises in the normal way.

## **RIPA Communications data**

The provisions of RIPA are strictly regulated and if the content of the Order is sufficient to satisfy the requirements for a successful RIPA authorisation then a RIPA application can be made to obtain data. However the Mutual Recognition element of the EIO is not generally compatible with RIPA requirements as limited information will likely be available. Furthermore, in most cases it is not possible to do RIPA applications on foreign telephone numbers. When this is the case, the Order should be returned to the UKCA for an alternative method of using a production to gather the communications product.

## **Transmission of evidence and responding back to the Central Authority**

Once the evidence has been gathered, in most cases it will be returned to the Central Authority with a closing report (which must outline the Completion Date). However, if the evidence is large or

complex or visiting officers were present when the activity was taken, the Force may wish to transfer the evidence directly. If this is the case, they must liaise directly with the Central Authority to seek permission to do this and must still return a Closing Report with Completion Date included.

### **Outgoing European Investigation Orders**

Because the EIO is a “Mutual Recognition” tool, it significantly changes the way we obtain assistance from other participating Member States and there are some fundamental differences. Previously we used International Letters of Request (ILORs). The main differences between an ILOR and the EIO are:

- An ILOR is a request. The European Investigation Order is an Order. As such, the executing country has very limited grounds for refusing to provide the assistance asked for.
- An ILOR has to be authorised by the country that is executing the request whereas because the EIO is authorised in the country issuing it, the country executing “recognises” it as being duly authorised
- The time limits attached to the EIO will result in assistance being provided much quicker than it is through an ILOR
- The justification for the EIO occurs either when the CPS authorise it or when the Court authorise it
- There is one standard template for the EIO which has been designed to simplify the process. As such, the EIO itself will focus on the specific investigative measures or evidence sought. The majority of the justification for the EIO takes place when applying to the CPS for an EIO or to the court.

### **Specific advantages**

There are a number of specific advantages with using the EIO

- It provides for the ability to ask for a specific investigative measure
- It allows for us to request in the EIO how that investigative measure is to be carried out i.e. how we need it done to be admissible in UK law
- We can direct how the product of that investigative measure is to be presented i.e. on specified forms such as witness statements
- It gives us the ability to open up a channel of communication to discuss practical arrangements rather than just receiving a package of measures
- It provides us the ability to request police officers to be present during the execution of the EIO on relevant cases
- Whilst there is work to be done up-front the product should be returned much quicker and in the right format
- By making a lawful application here, it is less likely to be challenged legally later and the ordered country has the relevant authority to conduct the work on our behalf.

### **Will UK Policing use the EIO more?**

The expectation is that because the EIO is much simpler to use and the evidence returned will be much quicker than under existing arrangements, we will use it significantly more than we use ILORs. Many investigations will have witnesses, victims or suspects overseas. There will be banking evidence, assets or communication data held overseas due to a more globally transient population. The reason why the EIO was created, and the reason why the UK Government elected to participate in it, is because UK Law Enforcement needs assistance on an increasing level. It is likely that the EIO will become a mainstream policing tool in the future.

### **What Can I use the EIO for?**

Please refer to the section “what types of investigation can be asked for under the EIO” above but in essence you can ask for anything that you can lawfully do in the UK. If any measure can be lawfully authorised in the UK, surveillance, obtaining of call data, search of premises for example, we can now ask for it to be carried out in another participating state. We can also ask for activity to be carried out where we have a right in law to do something. With regards to interviewing witnesses for example, we do not need to get an authority in place to conduct an interview as that is part of police procedure and we are authorised in law to do so. Therefore we can also ask for this to be done on an EIO. However, some measures such as the interview of a willing witness can be catered for under police cooperation in most countries and we should use this route in the first instance on the occasions that it is available to us.

### **Who can ask for an EIO?**

1. The CPS can be contacted to discuss the availability of an EIO if there are reasonable grounds for suspecting that that an offence has been committed and there are ongoing criminal investigations or criminal proceedings in respect of that offence, where the evidence is believed to be abroad or that there are investigative measures available that will produce such evidence.
2. If the requirements are met, the CPS and the Police (with consent of the CPS) can apply to the court for an EIO to be issued if that measure requires the authorisation of a Judge, either at the Magistrates Court or the Crown Court.
3. The CPS can validate any measure that the Police would have the power to make.
4. The CPS can make an EIO for any measure that the CPS would have the power to make e.g. Disclosure Notices.
5. The Police can ask the CPS to issue an EIO for an investigative measure or transfer of evidence on our behalf where they believe that information is located overseas which will assist an investigation.
6. The CPS can issue an EIO for an investigative measure or transfer of evidence where they believe information is available overseas which will assist a prosecution.

### **What is validation?**

Because the EIO is a “Mutual Recognition” tool, when enacting the EIO into domestic legislation, the Home Office have had to ensure that activity undertaken in the UK aligns with the differences in the EU in particular in relation to the role of the prosecutor. Furthermore, as the authorisation for a UK EIO will be carried out here and the executing country is bound by the Directive to carry out the ordered activity with limited grounds for refusal, the EIO has been enacted as close to existing domestic practices as possible. This will also ensure that the evidence is admissible in any UK proceedings.

Requesting organisation	Type of activity	EIO Drafted by	Made or Validated by	Why
Police	Non-coercive measures (including interviews which cannot be conducted by way of police cooperation)	CPS	CPS	Domestically we do not need Court authorisation for non-coercive measures
Police	Coercive measures including Search Warrants and Production Orders	CPS	Magistrates or Crown Court (same as for domestic cases)	Because this level of authorisation would be needed in a similar domestic case
Police	RIPA type activity for Covert policing activity (see note A)	CPS (Police in exceptionally urgent cases)	CPS	Although Police can authorise our own RIPA activity in the UK, in order to fulfil the "validation" requirements of the Directive, a Prosecutor must authorise the request. (See note B)
CPS	Non-coercive measures including interviews	CPS	CPS	Domestically we do not need Court authorisation for non-coercive measures
CPS	Coercive measures including Search Warrants and Production Orders	CPS	Magistrates or Crown Court (same as for domestic cases)	Because this level of authorisation would be needed in a similar domestic case

Note A: Any outgoing request for covert policing activity should be tried through the police to police route first and NCA International Crime Bureau will be the first port of call. This route is faster and more appropriate. In some cases however the requested country may insist on an EIO.

Note B: The CPS should only be concerned with the fact that we have a proper RIPA authority in place and should not question the operational decision to justify the RIPA decision in the first instance. Furthermore it is not necessary to disclose all of the RIPA documentation to the CPS, only that which shows the rationale behind the authorisation.

Note C: As a validating judicial authority for the purpose of the EIO, the CPS will need to be satisfied that the investigative measure could have been lawfully ordered or undertaken under the same

conditions as in a domestic case. This may include checking that the authorisation is under the right legislation, signed by the right level of authorisation and that the investigative measure sought falls within the authorisation.

### How do I get an EIO?

1. Before any activity is started, early consultation with the CPS is crucial. The CPS will authorise an EIO and discussions should be had with them as to whether the country is an EIO country, the type of case you are investigating and what you wish to achieve. The CPS is rolling out extensive EIO training and your usual route to the CPS should be used. Each CPS area has a designated EIO champion.
2. There is an express requirement for the Prosecutor to be satisfied that it is necessary and proportionate for the purpose of the investigation or proceedings for the EIO to be issued and the investigative measures sought could be ordered or undertaken in the same conditions as under domestic law.
3. Having consulted with the CPS and if they wish a further written submission, the template (police request to the CPS to draft an EIO Template) should be completed and emailed to them. The Template has been designed to specifically gather the information that the CPS (and Courts if required) will need to make a decision on whether the EIO is an appropriate way forward.

### What documentation will I need?

There are 3 forms in the EIO process and they are all very different and have different purposes.

1. The **police request to the CPS to draft an EIO Template** is for an officer to fill out only after having had an early verbal consultation with the CPS. This substitutes a file and specifically points the officer to what information is needed by the CPS to justify the issuing of an EIO which is important if we are to not get challenged over the admissibility of whatever evidence is subsequently obtained. The Template provides much of the justification to the CPS.
2. The **EIO** which is the actual Order which will be sent overseas. It is for the CPS to draft (unless in urgent RIPA cases where it may be quicker for the police to draft). In many cases the EIO will be authorised by the CPS. However, where coercive measures are sought, the measure can only be authorised by a Court (same as domestic proceedings).
3. The **Application for a European Investigation Order (Criminal Procedure Rules) form** is only to be used when the CPS have issued an EIO following the submission of the Template and the measures can only be authorised by the Court (in general coercive measures such as search of premises or Production Orders). It is for the CPS and Police to work together to draft this form. This form, alongside the completed EIO would need to be submitted to the Court either by the Police or the CPS.

### What roles do the different organisations play?

**Police:** It is for the police to identify when we have an active criminal investigation where we believe some evidence or investigative measure is needed from another EU country. We must, in the first instance discuss this with the CPS and subsequently provide the information to the CPS, if requested to do so, on the police request to the CPS to draft an EIO Template. We also need to consider whether we are able to secure what we need by Police to Police channels initially.

**CPS:** It is for the CPS to give early advice as to whether an EIO is a suitable instrument, is justified in the case and proportionate. If it is, it is their responsibility to draft the EIO in a timely manner. If the measures do not need Court authorisation in a similar domestic case, the CPS can directly transmit the EIO to the executing country. If the measures are ones that would need to be authorised by a Court in a similar domestic case, they have responsibility, in conjunction with the police to complete the Application for a European Investigation Order (Criminal Procedure Rules) form, and submit that and the completed EIO to the Court.

**Courts:** It is the responsibility of the Courts to have appointed EIO Judges in each listed EIO Court to hear the applications made by the police or CPS by way of paper, video or telephone applications.

**Will officers be required to attend a Court?**

To obtain an EIO, all requests should be submitted on the Template and this should be sent to the CPS. However, in certain cases (the equivalent to obtaining a search warrant or production order for example) where in a similar domestic case, the officer would have to apply to a UK Court, the officer will still have to satisfy the Court as to the validity of the request. In these cases, the officer will still need to make such an application.

Her Majesty’s Courts and Tribunal Service have allocated the following Courts, selected on a regional basis, who can hear applications for outgoing EIOs. This is to allow the “ticketing” of specialist Judges who have received training in the EIO. The following Courts have been selected:

**Which Courts can hear an EIO application?**

Region	Magistrates	Crown
London and South East	Westminster	Southwark
North East	Teeside	Teeside
North West	Liverpool	Liverpool
Midlands	Birmingham	Birmingham
Wales	Cardiff	Cardiff
South West	Bristol	

Once again, HMCTS have confirmed that as a general rule personal attendance will not be required at court. The intention is that attendance will be virtual by video or telephone, depending on the directions of the Judge, the circumstances of each case and the available infrastructure. This approach has been provided for in the Criminal Procedure Rules. A single point of contact for each site will be in place for EIOs in each Court, they are:

Court Location	E mail inbox address
Westminster Magistrates Court (incoming and outgoing)	WestminsterEIO@hmcts.gsi.gov.uk
Southwark Crown Court (incoming and outgoing)	EIO.Southwark@hmcts.gsi.gov.uk
Cardiff Magistrates Court	applications.cardiffmags@hmcts.gsi.gov.uk
Cardiff Crown Court	applications.cardiffcrowncourt@hmcts.gsi.gov.uk
Birmingham Magistrates Court	WM-ListingBirmingham@hmcts.gsi.gov.uk
Birmingham Crown Court	birmingham.listing@birmingham.crowncourt.gsi.gov.uk

Liverpool Magistrates Court	me-lpoolmctmp@hmcts.gsi.gov.uk
Liverpool Crown Court	listing@liverpool.crowncourt.gsi.gov.uk
Bristol Magistrates Court	Bristol.Legal@hmcts.gsi.gov.uk
Bristol Crown Court	courtsupport@bristol.crowncourt.gsi.gov.uk
Teesside Magistrates Court	CL-MiddlesbroMCList@hmcts.gsi.gov.uk;
Teesside Crown Court	enquiries@teesside.crowncourt.gsi.gov.uk;
Woolwich Crown (back-up for incoming if required)	woolwichcrowncourt@hmcts.gsi.gov.uk

### **Sensitive material**

Where material is considered too sensitive to submit to a secure email account, provisions can be made via the above single point of contacts to deliver material by hand.

### **Out of hours contacts**

Where an urgent “out of hours” request for an EIO needs to be submitted, there will be an on call extradition or terrorism judge available, who will be able to issue the Order. Contact will be made through the CPS.

### **Guidance on filling in the “police request to the CPS to draft an EIO” Template**

The Template has been designed between the NPCC and the CPS with the intention of getting the relevant prosecutor the information that they need to satisfy the Criminal Procedure Rules and therefore make any evidence that we get as a result of the EIO, admissible in the UK. The police only need to complete the template and it is not our role to complete the EIO (except where urgent RIPA cases make it more appropriate that we assist to reduce delay). Furthermore it is important that we respond to any questions, in a timely way, that the Prosecutor may have.

### **To access the template see annex B**

The template is designed to be easy to complete. Please note that the EIO has been implemented to make cross border cooperation easier. For too many years we have been submitting unnecessary amounts of information to other countries on International Letters of Request. Therefore:

- Be concise but ensure you give enough information for the CPS to make an informed decision.
- Answer the question asked.
- Put yourself in the shoes of the person being asked to complete the task. Do you understand what is required and is it achievable?
- Focus on what you want to achieve. If the request is unfocused and too wide, you will lessen your chance of getting what you need.
- Consider how you want the evidence gathered. Overseas police will not have the same legal processes as us.
- If a box is not relevant mark it not applicable (N/A)

The template is divided into 6 parts.

### **Part 1**

1. Section 1 asks for details of the individual or the organisation (in which case the company name should be used) that the case relates to. It can be a suspected or accused person or body, where the investigation is continuing, maybe in relation to obtaining details re a victim or witness. Please note:
  - a. Only use a victim or witness details if you are seeking specific activity which will affect them otherwise leave them out of the EIO.
  - b. If a number of activities are required against a number of suspects, list all the individuals.
2. Section 2 asks for Alias details
3. Section 3: insert Operation name if appropriate
4. Insert both place and date of birth if known. This should be country and town if you know it
5. Self explanatory
6. Insert any nationalities known
7. Section 7 asks for ID and passport no's, this is important for many EU Member States. If you have details please include them.
8. Insert any known UK addresses
9. Insert any addresses that the individual is linked to. There may be a number of addresses. Where the Order relates to a company, a company Head Office address can be used.
10. Section 10 asks details of what language the person who is subject to the activity can speak. These maybe unknown, but it is useful to people carrying out the activity to understand that the person only speaks English for example.
11. Section 11 may differ from previous addresses. This relates to where the activity is intended to take place.
12. Self explanatory
13. Self explanatory
14. Self explanatory
15. Self explanatory
16. Section 16 asks for contact details. Please ensure that a current mobile telephone number and email address are given. Internal force contact numbers are no good for the CPS. This is to facilitate a quick flow of information should it be required. This should be the person that any other questions relating to the request are forwarded to.
17. Self explanatory

## **Part 2**

18. Sections 18, 19 and 20 are so that the CPS can identify at what stage the investigation is at. Generally the more towards the accused stage the investigation is at, the more the CPS will feel comfortable in issuing the Order. Only one of these boxes should be filled out. This is where the underlying facts, details of the investigation or prosecution should be included.
19. See above
20. See above
21. Insert here what the Ordered information will be used for

## **Part 3**

22. Section 22 asks for a case summary. This does not have to be in any great depth merely an overview of the offences being investigated and the link with the activity requested. The

shorter and more concise the better as this will make it easier for the CPS to read. It is important that your case shows the nexus between what you are investigating and what you are seeking via the EIO.

23. Section 23 is important as this is where the CPS will send the request. If the investigator does not know where the request should be sent, it suggests that they are not at the stage where the EIO would be the most suitable instrument. Where activity is required in a number of different countries in the same case, it must be clear what activity is desired in which country. Please remember that not all countries will be able to operate under the EIO from the moment that we go live. Guidance should be sought from the CPS re which countries go live and when.
24. Section 24 refers to the desired activity. In this section you must state clearly what you require. Remember to be specific, do not use police jargon and keep the request achievable. The more you ask for, the less you will get. It is difficult to justify why you need banking records for 5 years for a large company when you are investigating a simple fraud. If you know the transaction has happened on a specific day, ask for that day's activity.
25. Section 25 requires an investigator to state why they believe the evidence will be in that country. This is likely to come from existing enquiries so these should be shown. Remember, keep it short and concise.
26. Some information relating to intelligence can be obtained through a police cooperation route (using the Interpol, Europol and Liaison Officer network). This will generally be for police records and intelligence and some countries may be willing to speak to witnesses on our behalf. The general rule however is that material obtained through the police cooperation route should be used as intelligence only and not be entered into the evidential chain. This route can be quicker than the EIO on occasions but it is not always the case and can be much slower. The International Crime Bureau within the NCA (0207 238 8115) can advise on what is or is not appropriate to be channelled through the police cooperation route.
27. It is likely that if the required activity can be obtained via a Police cooperation route, the CPS will ask that it is done this way (see 5 above). If you have established that this is not the appropriate route, record this here.
28. Under Section 28, record any information that you have received via police to police. This will enhance your chance of getting formal assistance via the EIO. To identify that the individual vehicle used in a rape a week ago is on the drive of a suspect's house in France now, will assist in getting the EIO in place to search the vehicle.
29. In section 29 it is asked that you detail why you believe the evidence that you are seeking will assist the investigation. This is really to ensure that a nexus exists between what we are asking and what we are trying to prove. So in the example given in 27 above it is likely that forensic examination of the vehicle will link the perpetrator to the victim. If we also asked to search the suspects other vehicles, that may be harder to justify.

#### **Part 4**

30. Because the EIO is a mutual recognition tool, it is really important that we justify to the CPS how the activity that we are seeking to have carried out in another country would have been legally justifiable if carried out in the UK. More so, police will need to evidence this. Therefore if we normally have to authorise the measure in the UK via RIPA, we will need to evidence this fact and send a copy of the authorisation to the CPS. A request for a search warrant will now be made by the CPS on receipt of this Template. No warrant as such will be

issued, but the Court will consider the same test as if they were granting a Warrant. This will now be granted as an EIO. Officers may still be required to attend Court but this can be done via video link for the EIO.

31. Section 31 underlines the point made in Section 30 in so far as ensuring the measure would be authorised here.
32. Section 32 seeks to ensure that the requested action is proportionate and necessary.

#### **Part 5**

33. Overseas Law Enforcement will not necessarily work the same way as we do in the UK and their rules of evidence will not be the same. It will not always be possible to get the continuity of exhibits to the same standard as we are used to or have items produced on a statement for example. Also, they will use different exhibiting processes and interview techniques. If we require an exhibit to be handled in a certain way or a victim or suspect told certain things we must explain this within section 28. This will not guarantee that the evidence will be gathered how we require it however if we don't ask, we can guarantee that it will not be gathered the way we require it.
34. Section 34 relates to where evidence is returned to. Some evidence will be electronic so a relevant inbox should be included where it is useful. Physical evidence can be returned to either the CPS or the police so a decision should be made between all parties as to the best place. What is vitally important however is that the Prosecutor, who issued the request, is informed as to when the evidence is received. This will allow the UK to monitor how other countries comply with requirements under the Directive.

#### **Part 6**

35. This section asks for contact numbers for anyone you have already been working with in the country you are seeking the activity from, who is prepared to carry out the activity or is expecting the request. This will often follow police cooperation between countries where teams have informally supported each other and now await a formal request.
36. There may be significant value in officers attending the country where the activity is to take place. The activity can often take place more quickly if UK officers are in attendance. The officers can provide continuity of the exhibits and return them in person. The evidence is often gathered in a way that makes it more admissible in the UK if UK officers are there to advise how we need it gathered. However it may not always be suitable or necessary to have officers accompany the request. This section asks, if officers plan to travel, their names and contact details and to provide justification as to why they need to travel. Furthermore it asks how officers who plan to travel will communicate with those already there. I.e. what language skills they have etc.
37. This section asks reasons for urgencies. It is unsuitable for officers to realise a week before a trial starts that they need key evidence/interviews overseas. However key court dates or other urgent reasons for activity may be justified. This section allows for these reasons to be articulated.
38. This section should be completed where there is a known or believed threat associated with what is being asked. UK officers would expect to be told if they were about to interview an individual on behalf of the French Authorities for example that they knew was extremely dangerous. The same applies the other way around. We should supply any details of risk that the required action attracts.

39. This box is really an “other relevant information box” and should be used for any information that is relevant and does not fit elsewhere.
40. This box is a declaration for the Officer to state that they know of no information that undermines this application. This is a straight lift from the Application for a European Investigation Order (Criminal Procedure Rules) form, and is a part of any application to a UK Court
41. Provide an electronic signature of the applicant.
42. Provide an electronic signature of the authorising officer of at least the rank of Inspector.

## **Annexes**

### Annex A

#### Article 10

##### Recourse to a different type of investigative measure

1. The executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where:

(a) the investigative measure indicated in the EIO does not exist under the law of the executing State; or

(b) the investigative measure indicated in the EIO would not be available in a similar domestic case.

2. Without prejudice to Article 11, paragraph (1) does not apply to the following investigative measures, which always have to be available under the law of the executing State:

(a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;

(b) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;

(c) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;

(d) any non-coercive investigative measure as defined under the law of the executing State;

(e) the identification of persons holding a subscription of a specified phone number or IP address.

3. The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.

4. When the executing authority decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.

5. Where, in accordance with paragraph 1, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and

where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested. 1.5.2014 L 130/10 Official Journal of the European Union EN

## Article 11

### Grounds for non-recognition or non-execution

1. Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:

(a) there is an immunity or a privilege under the law of the executing State which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;

(b) in a specific case the execution of the EIO would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;

(c) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the investigative measure would not be authorised under the law of the executing State in a similar domestic case;

(d) the execution of the EIO would be contrary to the principle of ne bis in idem;

(e) the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;

(f) there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;

(g) the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years; or

(h) the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

2. Paragraphs 1(g) and 1(h) do not apply to investigative measures referred to in Article 10(2).

3. Where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

4. In the cases referred to in points (a), (b), (d), (e) and (f) of paragraph 1 before deciding not to recognise or not to execute an EIO, either in whole or in part the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

5. In the case referred to in paragraph 1(a) and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power

## Article 15

### Grounds for postponement of recognition or execution

1. The recognition or execution of the EIO may be postponed in the executing State where:

(a) its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;

(b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.

2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.

## Police request to CPS to draft a European Investigation Order (EIO)

## Police request to CPS to draft a European Investigation Order (EIO) Template

### Part 1 Personal Details

Guidance: Insert the name of the person or organisation the request relates to. This will normally be a Defendant or a Suspect or company but on certain occasions assistance can be obtained in relation to witnesses or victims. Please tick appropriate box.

1. Name	Defendant	Suspect	Victim	Witness
2. Aliases				
3. Operation name (if any)				
4. Date and place of Birth				
5. Sex				
6. Nationality				
7. Any national ID or passport no's				
8. Address in UK				
9. Any linked addresses in country EIO is to be sent to				
10. Languages understood by person				
11. Address where investigative measure is to be carried out if different from above				
12. URN				
13. Court Reference (if any)				
14. Reviewing Prosecutor				
15. Officer in Case			16. Contact details (email and phone no)	
17. Force/unit details				

## Part 2: Details of the request

Guidance: Please answer the appropriate question below giving brief reasons for your answers. You do not have to answer each questions just the most appropriate one. You must include underlying facts and/or offences charged or investigated.

18. **Proactive stage only:** Has an investigation been initiated and if so what?

19. **Investigative stage only:** Has an offence been committed or are there reasonable grounds for suspecting that an offence has been committed?

20. **Post Charge stage only:** Have proceedings been instituted in respect of the offence in question?

21. Is the measure requested, for the purpose of obtaining evidence for use in the investigation, or proceedings, or both?

## Part 3: Details of the requested activity

22. **Case summary:** Please provide a brief background to the case.

23. **Location:** In which EU Member State do you wish to have the activity carried out? (Where there is more than one country, include them all). Denmark and the Republic of Ireland do not operate the EIO

24. **Measure:** What is/are the investigative measure(s) you wish to have carried out?

25. Why do you believe the evidence sought will be in the country where it is intended to send the EIO?

26. Can the information requested by obtained via Police to Police cooperation?

27. If the answer to the above question is yes, has this route been tried? If not why not?	
28. Has any preliminary information been received via police to police that will assist in drafting this EIO?	
29. How do you believe that the requested action will assist your investigation	

**Part 4: Domestic Authorisation**

Guidance: The EIO is a “Mutual Recognition” Instrument which means that other countries will have limited grounds for refusal based on the fact that the request has been properly authorised in the UK. Therefore, it is vitally important that the activity requested has been authorised in the same way that it would be if carried out within the UK.

30. Type of activity?	What authorisation would be required if the ordered activity were to have taken place in the UK?	Authorised by whom	Record of authorisation supplied to CPS
<p><i>Examples (please delete)</i></p> <p><i>Request for surveillance in France</i></p> <p><i>Search of premises 25 Smith street, France</i></p> <p><i>Interview with witness....</i></p>	<p><i>Examples</i></p> <p><i>1. RIPA Authority on subject in UK</i></p> <p><i>2. Search Warrant</i></p> <p><i>3. No authorisation needed as core police business</i></p>	<p><i>Examples</i></p> <p><i>1. Authorised on 01/01/2017 by Supt Smith</i></p> <p><i>2. This Template will act as justification.</i></p> <p><i>3. No authorisation needed</i></p>	<p><i>Examples</i></p> <p><i>1. Copy of DS supplied to CPS</i></p> <p><i>2. Copy of Template supplied</i></p> <p><i>3. No authorisation needed</i></p>

31. Could all the requested activity be lawfully requested in a similar domestic case in the UK?	
32. Is the request necessary and proportionate for the purposes of the investigation or proceedings in question?	
<b>Part 5: Formalities and Procedures</b>	
Guidance: It may not always be possible to have the evidence gathered or presented in the same way as we are used to for domestic cases. However any specifics should be included below. Foreign Law Enforcement operates differently to the UK. Do not use police jargon. Ensure you are specific. Do not assume they will provide continuity of the evidence.	
33. Is there any specific form or language that is needed or procedure to be followed? If so please provide guidance and relevant form?	
34. Where do you want the evidence returned to and can it be electronically transferred?	
<b>Part 6: Persons with knowledge of the case</b>	
35. Please provide details/contact numbers of police/prosecutor in the State receiving the EIO (if any) who is expecting to carry out required activity.	
36. If UK officers need to be present when the activity is carried out, include details, what languages are to be spoken and provide a strong rationale as to why it is necessary and proportionate? Please note this will not always be authorised .	
37. Please indicate any reason for urgency or any key dates that you are seeking to obtain the ordered activity by. Please note that	

unrealistic targets are unlikely to yield results			
38. Is there any specific information relating to risk that will assist the authorities executing this request?			
39. Please supply any further information that you believe will assist the CPS to make a decision on whether to issue the EIO			
40. Is there anything of which you are aware that might reasonably be considered capable of undermining any of the grounds of this application, or which for some other reason might affect the CPS or court's decision?			
41. Electronic signature of applicant		42. Electronic signature of supervising Officer (Insp. level or above)	