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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
-Text suggestions in view of the trilogue on 14 May 2013

In view of the "Friends of the Presidency" Group meeting on 30 April 2013, and on the basis of the delegations' comments and the reaction of the EP at the trilogue on 16 April as well as the technical meeting on 17 April 2013, the Presidency is has amended the text. Articles already agreed between the EP and the Council are set out at the end of the document.

Text suggested by the **EP** are set out in **bold** and suggestions by the Council are underlined.

I. Articles discussed at the trilogue on 16 April 2013**" Article 1***Definition of the European Investigation Order*

1. The European Investigation Order (EIO) shall be a judicial decision issued or validated by a judicial (...) authority of a Member State ("the issuing State") in order to have one or several specific investigative measure(s) carried out in another Member State ("the executing State") with a view to obtaining evidence (...) in accordance with the provisions of this Directive **and specifically within the framework of the proceedings referred to in Article 4**. The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

2. Member States shall execute any EIO on the basis of the principle of mutual recognition and in accordance with the provisions of this Directive.

3. The issuing of an EIO may be requested by a suspect or accused person (or by a lawyer on his behalf), within the framework of applicable defense rights in national criminal procedure.

4. This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty on European Union, **including the right of defence of persons subject to criminal proceedings**, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

The Presidency is suggesting that the text suggested by the EP and that was initially in Article 1.3 be put into recital 17. The text as amended has been forwarded to the EP underlining that the reference to MS constitutions was within square brackets.

"(17) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, notably Title VI thereof, by international law and international agreements to which the Union or Member States are party, including the European Convention for the protection of human Rights and Fundamental Freedoms, [and by Member States' Constitutions] in their respective field of application. Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons."

Article 2

Definitions

(-aa) 'issuing State' shall mean the Member State in which the EIO is issued;

(-ab) "executing State" shall mean the Member State executing the EIO, in which the investigative measure is to be carried out or the person covered by the investigative measure is to be found;

a) 'issuing authority' shall mean a judge, a court, an investigative magistrate or a public prosecutor competent in the case concerned;

ii) any other (...) competent authority as defined by the issuing State and, in the specific case, acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. In addition, before it is transmitted to the executing authority the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO, in particular ~~paragraph~~ the conditions set out in Article 5a.1, under this Directive, by a judge, court, investigating judge or a public prosecutor in the issuing State."

b) "executing authority" shall mean an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures that would apply in similar domestic cases, [including obtaining the authority of a judge or court if such authority is required in the executing state]

(The underlined text reflects changes introduced by the Presidency).

The EP was insisting on maintaining the reference to a judge or a court in the text as they feared that otherwise the MS would lower the standards for issuing an EIO. The EP indicated that a recital would not be enough; text in the operative part of the draft Directive would be necessary. In an attempt to satisfy the EP the Presidency added new text at the end of the definition of executing authority. The EP legal service pointed to two problems with the Council definition of "other competent authorities". Firstly, the EIO seemed to be an "EIO" before validation. Secondly, the scope of the assessment carried out in the validation procedure.

The EP also questioned to whom the executing authority would turn to in order to receive clarifications if it had questions relating to the EIO. The EP will come back on this at the next trilogue.

In order to reassure that the EP that the validation procedure is not a purely rubber-stamping exercise the Presidency put forward the text below. This text was already discussed in COPEN on 19 November 2012 (16120/12).

"(10a) The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore ascertain whether the evidence sought is necessary and proportionate for the purpose of proceedings, whether the measure chosen is necessary and proportionate for the gathering of this evidence, and whether, by means of issuing the EIO, another MS should be involved in the gathering of this evidence. The same assessment should be carried out in the validation procedure, when the validation of an EIO is required under this Directive. The execution of an EIO should not be refused on grounds other than those stated in this Directive, however the executing authority is entitled to opt for a less intrusive measure than the one indicated in an EIO if it makes it possible to achieve similar results."

Article 4

Types of procedure for which the EIO can be issued

The Presidency suggests inserting the paragraph below as Article 1.3 in order to take account of the request from the EP to have text on the right of the defence to initiate the issuing of an EIO in the operative text. Paragraph 3 would then be renumbered as paragraph 4. EP has made it clear that having such a reference in the body of the text was a red line for them.

“The issuing of an EIO may be requested by a suspect or accused person (or by a lawyer on his behalf), within the framework of applicable defence rights in national criminal procedure.”

Article 5

Content and form of the EIO

“This Directive should be implemented taking into account the provisions in Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings and 2012/13/EU on the right to information in criminal proceedings.”

In order to accommodate the EP request for a recital recalling the obligation for MSs to guarantee procedural rights of suspects or accused persons by referring to the 2 procedural rights instruments, the Presidency suggests inserting the full title of the two instruments in the text.

Article 5a

Conditions for the issuing and transmitting of an EIO

"1. An EIO may be issued only when the issuing authority is satisfied that the following conditions have been met:

(a) the issuing of the EIO is necessary **in a democratic society** and proportionate for the purpose of the proceedings referred to in Article 4 **taking into account the rights of the suspect;**

b) the investigative measure(s) mentioned in EIO could have been ordered under the same conditions in a similar national case.

2. These conditions shall be assessed by the issuing authority in each case.

The EP was not willing to withdraw the reference to "democratic society" - based on the fact that similar text is used in the Data Protection Regulation. The EP has also asked Council to address the issue of the rights of the suspect. This was linked to the EP wish to make sure that respect of the proportionality principle was not only a matter of cost and benefit but also related to the "opportunity" of issuing an EIO.

In reaction to the EP suggestion for a consultation procedure the Presidency forwarded the following two texts to the EP for consideration.

Proposal 1 - Where an executing authority has reason to believe that the conditions in Article 5a(1) have not been met, the executing authority can consult the issuing authority on the importance of executing the EIO. After such consultation, the issuing authority may decide to withdraw the EIO.

Proposal 2 - Where an executing authority has reason to believe that the conditions in Article 5a(1) have not been met, it may consult the issuing if an explanation has not been given in the EIO. Following the consultation, the issuing authority may decide to withdraw the EIO or to maintain the EIO which will then be executed/processed according to this Directive.

The EP legal service was concerned that this drafting could imply that the EIO could not be withdrawn during the consultation phase.

Article 14

Grounds for postponement of recognition or execution

Paragraph 1 (a) below is still open. The EP has not yet explained its reasons behind this amendment

"(a) *the evidence obtained might also be relevant to on-going criminal investigations or prosecutions or might prejudice such investigations or prosecutions*, until such time as the executing State deems reasonable; or"

Article 15

Obligation to inform

The EP would like to add a new paragraph 3 with the following wording:

"(iv) The issuing authority shall inform immediately the executing authority when it makes modifications to the EIO, the EIO has expired or has been revoked."

At the Friends of the Presidency Group meeting on 11 April some MS queried the meaning of the words "expired" and "revoked". At the trilogue the EP explained that in some MS an investigative measure can expire automatically if it has not been acted on within a certain period of time. This was the reason the EP wanted to insert the word "expiry". The EP explained that the word "revoked" meant "withdrawn".

The Presidency is therefore suggesting the following text:

"The issuing authority shall inform immediately the executing authority when measures specified in the EIO are no longer required, the EIO has been withdrawn or it does not wish to have the EIO executed due to particular requirements in the issuing state regarding the time available under the law of that state to obtain evidence. "

On Articles 3, 9 and 10, the EP listened to the Council's explanations for the Council text with differentiation of refusal grounds on the basis of the intrusiveness of the measure. The EP's main concern with this approach is that coercive/non-coercive measures are not defined in the text and that this could lead to the risk of great variation in implementation of the Directive. The EP clarified that for them the refusal grounds based on fundamental rights and *ne bis in idem* principle were particularly important. Concerning the latter refusal ground the EP did not want to attach any conditions to it. The Presidency engaged in drawing up text that clarifies the different refusal grounds while maintaining the structure of the general approach text.

Article 9.1 (b), the EP asked for an explanation as to why the Council used "available measure" and not "admissible". The Presidency explained that "admissible" was generally used in the context of evidence and whether certain evidence would be allowed or not in a court of law. The EP will return to this issue.

In an attempt to find a text acceptable for the EP the Presidency has drawn up three different proposals regarding Articles 9 and 10.

A. Proposal 1

Article 9

Recourse to a different type of investigative measure

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

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 ;

1bis. The executing authority may also have recourse to an investigative measure other than that provided for in the EIO when the investigative measure selected by the executing authority will have the same result as the measure provided for in the EIO by less intrusive means.

2. When the executing authority decides to avail itself of the possibility referred to in paragraph (1) and (1bis), it shall first inform the issuing authority, which may decide to withdraw the EIO.

3. Where, in accordance with paragraph (1), the investigative measure provided for 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 measure requested, the executing authority must notify the issuing authority that it has not been possible to provide the assistance requested.

4. This Article is not applicable to search and seizure where it has been requested in relation to the categories of offences set out in the Annex X, as indicated by the issuing authority in the EIO, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years

(insert list of 32 offences into the Annex X)

Article 10

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1.3, 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, its execution 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) (...)

- d) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the measure would not be authorised under the law of the executing State in a similar domestic case;
- e) the execution of the EIO would be contrary to the principle of ne bis in idem, unless the issuing authority provides an assurance that the evidence transferred as a result of an execution of an EIO shall not be used to prosecute a person whose case has been finally disposed of in another Member State for the same facts, in accordance with the conditions set out under Article 54 of the Convention of 19 June 1990 implementing the Schengen Agreement.
- f) the EIO relates to a criminal offence which is alleged to have been committed exclusively outside the territory of the issuing State and wholly or partially on the territory of the executing State, the EIO seeks the use of a coercive measure and the conduct in connection with which the EIO is issued is not an offence in the executing State
- g) there is clear evidence that the execution of the investigative measure would result in the real risk of an infringement of a fundamental right as set out in the Charter of Fundamental Rights or in the European Convention on Human Rights in the executing state.
- 1b. Without prejudice to paragraph (1), where the investigative measure indicated by the issuing authority in the EIO concerns a measure other than that referred to in Article 9(4), the recognition or execution of the measure may also be refused:
- (a) if 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 the Annex X, 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.
- (insert list of 32 offences into the Annex X)*
- (b) if the use of the measure 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.

1c. In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed 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.

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

3. 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 Member 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 it to exercise that power.

4. (...)

B. Proposal 2

Article 9

Recourse to a different type of investigative measure

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

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 ;

1bis. The executing authority may also have recourse to an investigative measure other than that provided for in the EIO when the investigative measure selected by the executing authority will have the same result as the measure provided for in the EIO by less intrusive means.

2. When the executing authority decides to avail itself of the possibility referred to in paragraph (1) and (1bis), it shall first inform the issuing authority, which may decide to withdraw the EIO.

3. Where, in accordance with paragraph (1), the investigative measure provided for 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 measure requested, the executing authority must notify the issuing authority that it has not been possible to provide the assistance requested.

4. Where the investigative measure indicated in the EIO concerns one of the following measures, paragraph (1) is not applicable and the recognition or execution of the EIO can only be refused in cases referred to in article 10(1):

a) the hearing of a witness, victim, suspect or third party in the territory of the executing State or

b) any non-coercive investigative measure;

c) the obtaining of information or evidence which is already in the possession of the executing authority and , this 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;

d) 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;

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

f) search and seizure where it has been requested in relation to the categories of offences set out in the Annex X, as indicated by the issuing authority in the EIO, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years.

(insert list of 32 offences into the Annex X)

Article 10

Grounds for non-recognition or non-execution

1. Without prejudice to Article 1.3, 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;

Where power to waive the privilege or immunity lies with an authority of the executing Member 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 it to exercise that power.

- b) in a specific case, its execution 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) (...)
- d) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the measure would not be authorised under the law of the executing State in a similar domestic case;
- e) the execution of the EIO would be contrary to the principle of ne bis in idem, unless the issuing authority provides an assurance that the evidence transferred as a result of an execution of an EIO shall not be used to prosecute a person whose case has been finally disposed of in another Member State for the same facts, in accordance with the conditions set out under Article 54 of the Convention of 19 June 1990 implementing the Schengen Agreement.
- f) the EIO relates to a criminal offence which is alleged to have been committed exclusively outside the territory of the issuing State and wholly or partially on the territory of the executing State, the EIO seeks the use of a coercive measure and the conduct in connection with which the EIO is issued is not an offence in the executing State.

1a. *(moved into article 9)*

2. Without prejudice to paragraph (1), where the investigative measure indicated by the issuing authority in the EIO concerns a measure other than those referred to in paragraph (1a), the recognition or execution of the measure may also be refused:

(a) if 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 the Annex X, 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.

(insert list of 32 offences into the Annex X)

(b) if the use of the measure 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.

3. In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed 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.

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

3. (*moved into 1(a)*)

4. (...)

C. Proposal 3

Article 9 remains unchanged, *i.d.* as set out in the general approach.

Article 10

Grounds for non-recognition or non-execution

1. Without prejudice to Art.1.3, where the investigative measure indicated by the issuing authority in the EIO concerns one of the following measures,
 - a) the hearing of a witness, victim, suspect or third party in the territory of the executing State or
 - b) any non-coercive investigative measure;

- c) the obtaining of information or evidence which is already in the possession of the executing authority and , this 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;
- d) 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;
- e) the identification of persons holding a subscription of a specified phone number or IP address;
- f) search and seizure where it has been requested in relation to the categories of offences set out in the Annex X, as indicated by the issuing authority in the EIO, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years.

(insert list of 32 offences into the Annex X)

Article 9(1) is not applicable and the recognition or execution of the 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, its execution 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) (...)

- d) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the measure would not be authorised under the law of the executing State in a similar domestic case;
- e) the execution of the EIO would be contrary to the principle of ne bis in idem, unless the issuing authority provides an assurance that the evidence transferred as a result of an execution of an EIO shall not be used to prosecute a person whose case has been finally disposed of in another Member State for the same facts, in accordance with the conditions set out under Article 54 of the Convention of 19 June 1990 implementing the Schengen Agreement.
- f) the EIO relates to a criminal offence which is alleged to have been committed exclusively outside the territory of the issuing State and wholly or partially on the territory of the executing State, the EIO seeks the use of a coercive measure and the conduct in connection with which the EIO is issued is not an offence in the executing State.
- 1b. Without prejudice to paragraph (1), where the investigative measure indicated by the issuing authority in the EIO concerns a measure other than those referred to in paragraph (1), the recognition or execution of the measure may also be refused:
- (a) if 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 the Annex X, 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
- (insert list of 32 offences into the Annex X)*
- (b) if the use of the measure 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.

- 1c. In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed 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.
2. In the cases referred to in paragraph 1(a), (b), (e) and (f) before deciding not to recognise or not to execute an EIO, either totally or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.
3. 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 Member 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 it to exercise that power.
4. (...)

II. Articles that have been agreed

Article 4

Types of procedure for which the EIO can be issued

The EIO may be issued

- a) with respect to criminal proceedings brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;
- b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters;
- c) in proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing state by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters, and
- d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing state.

Article 5

Content and form of the EIO

1. The EIO set out in the form provided for in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority

It shall in particular, contain the following information:

- (a) data about the issuing authority and, if applicable, validating authority;
 - (aa) the object of and reasons for EIO;
 - (ab) the necessary information available on the person(s) concerned;
 - (ac) a description of the criminal act, which is subject of the investigation or proceedings, and the applicable provisions of criminal law;
 - (ad) a description of the investigative measures(s) requested and evidence to be obtained.

2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the State in question is the executing State.

2a. The EIO set out in the form provided for in Annex A shall be translated by the competent authority of the issuing State into an official language of the executing State or any other language indicated by the executing State in accordance with Article 5(2).

And the corresponding recital

“This Directive should be implemented taking into account the provisions in Directive 2010/64/EU **on the right to interpretation and translation in criminal proceedings** and 2012/13/EU **on the right to information in criminal proceedings.**”

Article 7

EIO related to an earlier EIO

1. Where the issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO in accordance with the form provided for in Annex A.

2. When assisting in the execution of the EIO in the executing State, in accordance with Article 8(3), the issuing authority may, without prejudice to notifications made under Article 28(1)(c), address an EIO which supplements the earlier EIO directly to the executing authority, while present in that State.

2a. Any supplementary EIO must be certified in accordance with Article 5 and validated in accordance with Article 2.

Article 11

Deadlines for recognition or execution

1. The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same celerity and priority as for a similar national case and, in any case, within the deadlines provided in this Article.
2. Where the issuing authority has indicated in the EIO that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than those provided in this Article is necessary, or if the issuing authority has stated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement.
3. The decision on the recognition or execution shall be taken as soon as possible and, without prejudice to paragraph 5, no later than 30 days after the receipt of the EIO by the competent executing authority.
4. Unless either grounds for postponement under Article 14 exist or evidence mentioned in the investigative measure covered by the EIO is already in the possession of the executing State, the executing authority shall carry out the investigative measure without delay and without prejudice to paragraph 5, no later than 90 days after the decision referred to in paragraph 3 is taken.
5. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 3 or the specific date set out in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the decision to be taken. In this case, the time limit laid down in paragraph 3 may be extended by a maximum of 30 days.
6. When it is not practicable in a specific case for the competent executing authority to meet the deadline set out in paragraph 4, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the measure.

Article 16

Criminal liability regarding officials

When present in the territory of the executing State in the framework of the application of this Directive, officials from the issuing State shall be regarded as officials of the executing State with respect of offences committed against them or by them.

Article 17

Civil liability regarding officials

1. Where, in the framework of the application of this Directive, officials of a Member State are present in the territory of another Member State, the first Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse in full any sums the latter has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.