

# Chapter 15

## The European Investigation Order

### Draft Directive

In 2012, a group of Member States presented a proposal for a Directive of the European Parliament and of the Council to create the European Investigation Order in criminal matters,<sup>1</sup> with the aim of replacing the existing instruments in this area with a comprehensive system for obtaining evidence in cross-border cases, based on the principle of mutual recognition in criminal matters.

The new approach proposed in this initiative is based on a single instrument, the European Investigation Order (EIO) which would be issued for the purposes of carrying out specific investigative measures in the executing Member State, gathering the resulting information and evidence and transmitting them to the issuing Member State. With an horizontal approach, the EIO will cover most of the investigative measures, except the setting up of Joint Investigation Teams (JITs) and the gathering and transmission of evidence within JITs.

The issues of data processing and protection of personal data have also been discussed during the negotiations on the EIO draft Directive, in the context of which different versions for a Recital on this matter have been suggested.

In the original draft, the Commission suggested introducing a recital making reference to the data protection principles of the Convention 108, its Protocol, and Framework Decision 2008/977/JHA, as follows<sup>2</sup>:

The personal data processed in the context of the implementation of this Directive will be protected in accordance with the principles set out in the relevant instruments, including the Council of Europe Convention 108 of 28 January 1981 for the protection of individuals with regard to the automatic processing of personal data, the Additional Protocol to that Convention of 8 November 2001 and Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police

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<sup>1</sup> 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 the Council regarding the European Investigation Order in criminal matters. Council document 9288/10 COPEN 117 EUROJUST 49 EJM 13 PARLNAT 13 CODEC 384. Brussels, 21 May 2010.

<sup>2</sup> Commission document C(2010) 5789 final. Brussels, 24.8.2010, p. 10.

and judicial cooperation in criminal matters, as well as by the additional protection afforded by this Directive in line with Article 23 of the Convention on mutual assistance in criminal matters between the Member States of the European Union.

A simplified version of this paragraph was suggested in a later stage of negotiations, according to which:

Personal data processed, when implementing this Directive, should be protected in accordance with the provisions on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and with relevant international instruments in this field.

As suggested in other sections of this book, the introduction of this type of legal provisions in legal instruments of judicial cooperation are not necessary. They do not add anything new and may lead to some confusion with regard to the rules applicable for the exchange of information between judicial authorities in the framework created for specific requests for judicial cooperation based on the principle of mutual recognition. The European Investigations Orders, as such, will be subject to the principles of legality and proportionality applicable in the area of judicial cooperation in criminal matters, and the fundamental rights of the suspects will be protected in accordance with the Directives issued by the Commission with the same purpose.