

Draft Directive on the European Investigation Order

Stéphanie Bosly, Belgian Ministry of Justice, 17 Feb 2011





EIO - Overview

- Legal and political background
- Member State's initiative of April 2010
- Main issues discussed so far
- The way forward



EIO - Legal background

Two different regimes for the obtaining of evidence in the EU



mutual legal assistance



mutual recognition



fragmentation and complexity



burdensome task for practitioners



Dias nummer 3

N.C.1

Before going further into detail on the proposal itself -> brief overview of the state of play and current issues.

Nathalie Cloosen; 03-06-2010

EIO - Political background

Point 3.1.1. of the Stockholm Programme:

“setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the mutual recognition”

“to replace all the existing instruments in this area, including the Framework Decision on the EEW, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal”



Dias nummer 4

N.C.2

Before going further into detail on the proposal itself -> brief overview of the state of play and current issues.

Nathalie Cloosen; 03-06-2010

EIO - Member State's initiative

Initiative of Austria, Belgium, Bulgaria, Estonia, Slovenia, Spain and Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters

Main objectives

- Maintain MLA flexibility
- Introduce MR principle



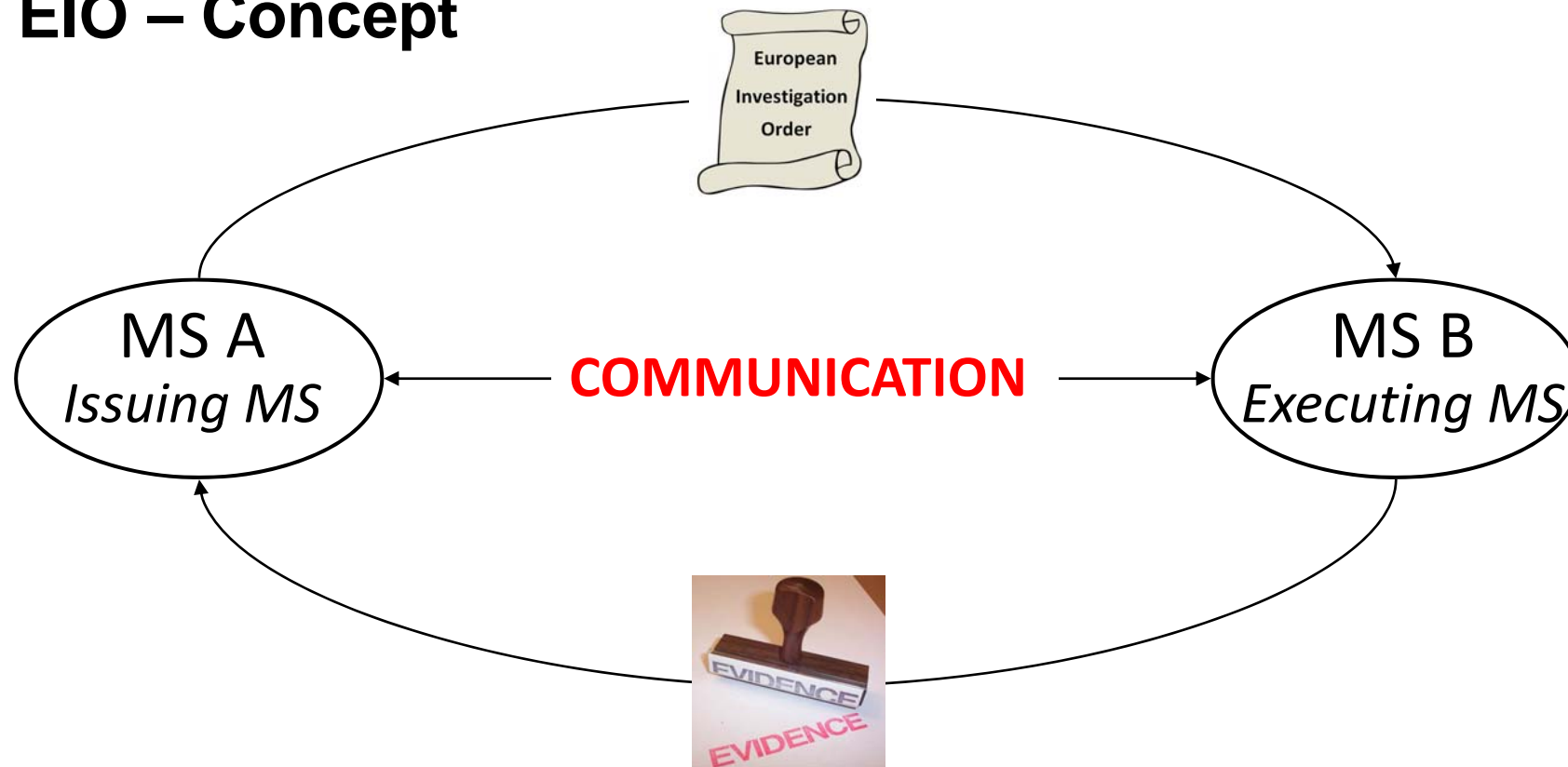
EIO – Concept (Art. 1)

The European Investigation Order (EIO) :

a judicial decision issued by a competent 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 gathering evidence in criminal matters



EIO – Concept





EIO - Innovations

- Creation of a single comprehensive instrument
- Focus on investigative measures
- General scope (all types of measures)
- Unification, simplification and acceleration of the procedure (time limits, standardised form)
- Limitation of the grounds for refusals



EIO – Main issues discussed so far

- Scope
- Issuing authorities
- Grounds for refusal
- Proportionality
- Costs
- Legal remedies



EIO – Scope (Art. 3)



All investigative measures

With the exception of:

The setting up of JITs and the gathering of evidence within
JITs

[The interception of telecommunications with immediate
transmission

The interception of satellite telecommunications or without
need of technical assistance]





EIO – Scope (Art. 4)

Types of procedures

- Criminal proceedings

- Some non-criminal proceedings (// EEW)



EIO – Issuing authority (Art. 2)

Judicial authorities (judge, court, public prosecutor or investigating magistrate)

Non-judicial authorities

Acting in their capacity of investigating authorities according to national law

!! New compromise: only after validation by a judicial authority



EIO - Grounds for refusal

No step backwards / avoid general grounds for refusal

Specific grounds for refusal applicable irrespective of the measure concerned (Art. 10):

- Immunity or privilege under the law of the executing State
- Harm to essential national security interests
- Non-criminal procedures
- Ne bis in idem



EIO - Grounds for refusal

(poss.) additional grounds for refusal depending on the coerciveness/intrusiveness of the measure

- Non-coercive/intrusive measures + hearings: no additional grounds for refusal
- Other measures: additional grounds for refusal
 - Existence/availability of the measure under national law
 - Double criminality
 - Authorization in a similar domestic case
- Limitation for serious offences (EAW list of 32 offences)



EIO - Proportionality

To be systematically checked by the issuing authority (new provision)

Control by the executing authority (minor offences)?



EIO - Costs

Need to address this issue in the proposal

Principle / exceptional circumstances



EIO – Legal remedies (Art. 13)

Availability in accordance with national law

Substantive reasons for issuing the EIO may only be challenged before the courts of the issuing State



The way forward

Progress report made at the end of the Belgian Presidency containing general orientations (doc. 16868/10)

Continuation of the discussions within the Council under the Hungarian Presidency and with the European Parliament





THANK YOU FOR YOUR ATTENTION

