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**NOTE**

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

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During the discussion on the scope of the proposal for a Directive on the EIO, which took place during the meeting of the Working Party of 27-28 July on the basis of doc 12201/10 COPEN 157 EUROJUST 68 EJN 24 CODEC 687, the issue of interception of telecommunications has been raised.

In the proposal, the scope of the Directive includes ordinary interceptions of telecommunications but excludes some specific types. The exclusion has been supported by some delegations but contested by others. It was agreed that a questionnaire should be prepared to evaluate the relevance of the types of interceptions of telecommunications concerned.

The questionnaire is to be found below. Delegations are invited to send their replies to the questionnaire **before 30 September 2010** to [copen@just.fgov.be](mailto:copen@just.fgov.be), with a copy to [secretariat.criminal-law@consilium.europa.eu](mailto:secretariat.criminal-law@consilium.europa.eu).

It should be noted that, although not explicitly provided for, cooperation with regard to interception of telecommunications is possible under the other horizontal instruments on mutual legal assistance. Delegations of Member States which have not yet ratified the 2000 EU MLA Convention are therefore also invited to answer this questionnaire.

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

As explained during the meeting of the Working Party of 27-28 July, in case the draft Directive should be extended to forms of interception of telecommunications other than the one described under type 1, it is important to make sure that the rules provided in the instrument are simpler or at least more readable than those provided in the 2000 EU MLA Convention.

**Type 1: Ordinary interception of telecommunications without immediate transmission**

Type 1 refers to the following case (Art. 18(1)(b) combined with Art. 18(2)(c)) :

- the target is in the territory of the requested State;
- the requesting State needs the technical assistance of the requested State;
- the interception of telecommunications takes place in the requested State and the result is later forwarded to the requesting State (no immediate transmission, see below).

*Please indicate how many cases of this type you had in the last 5 years (please indicate the numbers for every year) as a requesting State and as a requested State. Please indicate how many requests were successfully executed.*

## **Type 2: Ordinary interception of telecommunications with immediate transmission**

Type 2 refers to the following case (art. 18(1)(a) combined with art. 18(2)(a), (b) or (c)):

- the target is in the territory of the requested State;
- the requesting State needs the technical assistance of the requested State;
- the interception of telecommunications takes place in the requested State but the telecommunications are immediately transmitted to the requesting State the telecommunications are in a way “deviated” to the requesting State, so that the listening and recording takes place in the requesting State.

*Please indicate whether this form of cooperation is technically possible in your Member State.*

*If yes, please indicate how many cases of this type you had in the last 5 years (please indicate the numbers for every year) as a requesting State and as a requested State. Please indicate how many requests were successfully executed.*

## **Type 3: Interception of satellite telecommunications (relation between the requesting State and the State hosting the terrestrial station)**

In cases of satellite telecommunications, it is important to differentiate between the requesting State, the State where the target is located and the State hosting the terrestrial station.

If the person is located in the State hosting the terrestrial station, the case corresponds to type 1 or 2 of interception of telecommunications (see above).

If the person is located either in the requesting State or in a third State (other than the one hosting the terrestrial station), the following types of cooperation are possible as far as the relation between the requesting State and the State hosting the terrestrial station is concerned:

*Type 3a:* the interception of telecommunications takes place in the State hosting the terrestrial station and the result is later forwarded to the requesting State (no immediate transmission) (art. 18(1)(b) combined with art. 18(2)(a) or (c)).

*Type 3b:* telecommunications are intercepted in the State hosting the terrestrial station but immediately transmitted to the requesting State (art. 18(1)(a) combined with art. 18(2)(a) or (c)).

*Type 3c:* the interception of telecommunications takes place in the requesting State, which uses a remote control system to activate the transmission of telecommunications from the terrestrial station to one of its telecommunication service providers (art. 19).

*Please indicate whether your Member State hosts a terrestrial station.*

*With regard to types 3a and 3b :*

*If your Member State hosts a terrestrial station, please indicate the number of cases you had, as a requested State, in the last 5 years (please indicate the numbers for every year);*

*Please indicate how many cases you had as a requesting State in the last 5 years (please indicate the numbers for every year).*

*With regard to type 3c :*

*Please indicate whether measures have been taken in your Member State to make the use of the “remote control” system possible in your Member State.*

*If yes :*

*- please describe these measures*

*- please indicate how many cases you had of interceptions of this type as a requesting State and, if your Member State hosts a terrestrial station, as a “requested” State.*

#### **Type 4: Interception of telecommunications in cases where the requesting State does not need the technical assistance of the Member State where the target is located**

Article 20 of the Convention deals with a situation where the requesting State does not need the technical assistance of the State where the target is located. This can be the case :

- either because the telecommunication are transmitted via satellite (and the terrestrial station is in a third Member State, see type 3 for the relationship between the requesting State and the State hosting the terrestrial station) or
- because the target is in a border region where the cell phone still uses the network of a service provider located in Member State A.

In such cases, the interception of telecommunication “happens” to some extent in the requested State, as the actual telecommunication takes place on its territory, but is not “executed” there. Article 20 does not provide for the usual regime of request and reply, but for a regime based on notification of the fact that the interception is going to take place or is taking place with a possibility for the Member State where the target is located to oppose this interception.

*As a requesting State, please indicate in how many cases your national authorities have notified the interception of telecommunications to the Member State where the target was located. Please indicate in how many cases this Member State opposed the interception.*

*As a requested State, please indicate in how many cases you have been notified of the interception of telecommunications. Please indicate in how many cases your Member State opposed the interception.*

## **Other information**

Delegations are invited to send all additional information related to cooperation in the sector of interceptions of telecommunications which can be relevant both to decide on which types of cooperation should be included in the scope and to simplify or, if necessary, detail further, the legal regime applicable to these interceptions in the draft Directive on the EIO.