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NOTE

from:	Presidency
to:	Working Party on Cooperation in Criminal Matters
No. prev. doc.:	12212/10 COPEN 159 EUROJUST 70 EJN 26 CODEC 692
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 - Answers to the questionnaire related to issuing authorities in application of the initiative for a Council Framework Decision on the European Investigation Order

Delegations will find in Annex the answers to the questionnaire related to issuing authorities in application of the initiative for a Council Framework Decision on the European Investigation Order (doc. 12212/10).

Questions

1. *Please indicate whether, in accordance with national law of your Member State, an authority, other than an judge, a court, an investigating magistrate or a public prosecutor, could be defined as a judicial authority in accordance with Article 2(a)(ii) of the proposal for a Directive.*
2. *If the answer to the first question is YES, please specify the kind of authorities concerned.*
3. *If the answer to the first question is YES, please indicate whether such an authority is competent under the national law of your Member State to order all kind of investigative measures or only specific ones, and for all types of offences or only specific ones, specifying them if need be.*

Member State	Question 1	Question 2	Question 3
AT	Yes	<p>The answer to this question depends to a large extent on the types of procedures for which an EIO can be issued. If Art. 4 (b) is retained all administrative authorities competent for administrative penalties would have to be defined as judicial authorities.</p> <p>Administrative authorities competent for administrative penalties include the local district authorities (Bezirksverwaltungsbehörden) and the administrative authorities of the 15 self-governing townships.</p> <p>Other authorities competent for such proceedings are the 14 federal police offices (Bundespolizeidirektion), the Tax authorities (Finanzstrafbehörden), the Financial Market Authority (Finanzmarktaufsichtsbehörde) or the Agricultural District Authorities (Agrarbezirksbehörde) and a large number of other, highly specialized administrative authorities.</p>	<p>Administrative authorities can apply only a limited number of investigative measures. The hearing of witnesses and accused persons is always possible. The search of premises or persons is allowed only in a few exceptional cases e.g. according to the Law on Epidemics (Epidemiegesetz 1950), the Law on Ammunitions and Explosive Materials (Schieß- und Sprengmittelgesetz) or the Law on Telekommunikations (Telekommunikationsgesetz 2003). Access to bank information is permitted only for the Tax Authorities in relation to violations of tax laws committed intentionally and in certain cases for the Financial Market Authority. Interception of telecommunications, controlled deliveries or observations are never allowed in these proceedings.</p>
BE	No	N/a	N/a
BG			
CZ	No	N/a	N/a
CY			

DE	<p>No</p> <p><i>In case another authority listed under Article 2) a) ii) in another Member State be the competent issuing authority for a EIO where investigative acts that touch upon fundamental rights are concerned, validation/confirmation is required from one of the judicial authorities in Article 2 a) i) in accordance with the provisions of Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.</i></p>	N/a	N/a
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DK	<p>In general the following authorities are regarded as judicial authorities according to Danish law: the Prosecution Service (Director of Public Prosecutions, the Public Prosecutors and the Chiefs of Police) and the Ministry of justice.</p> <p>In Denmark crimes are investigated by the police. This investigation is subject to the legality control of the Prosecution Service which is composed of the Director of Public Prosecutions, the Public Prosecutors and Chiefs of Police. Some investigative measures have to be approved by the courts at the request of the Prosecution Service</p>	/	/
EE	No	N/a	N/a
EL	No	N/a	N/a
ES	No	N/a	N/a

<p>FI</p>	<p>Yes</p> <p>As to the draft Directive, Finnish preliminary investigation authorities could be regarded as judicial authorities in accordance with Article 2(a)(ii).</p>	<p>For the purposes of the 1959 MLA Convention Finland has declared that the following are deemed to be judicial authorities in Finland:</p> <ul style="list-style-type: none"> - The Ministry of Justice, - The Courts of First Instance, the Courts of Appeal and the Supreme Court, - The public prosecutors, - The police authorities, the customs authorities as well as the frontier guard officers in their capacity of preliminary criminal investigation authorities in criminal proceedings. <p>This declaration has been given in 1994 and since the 2000 EU MLA Convention supplements the 1959 Convention and it has no other specific provisions on competent authorities, it is valid also for the purposes of the 2000 MLA Convention.</p> <p>Finland has implemented the Council Framework Decision on European Evidence Warrant by legislation which will come into force on 19 January 2011.</p> <p>According to the Implementing Act the following authorities are entitled to issue an evidence warrant in Finland.</p> <ul style="list-style-type: none"> - the public prosecutors, - the Courts of First Instance - the Courts of Appeal - the Supreme Court - if the evidence sought is in the possession of the executing authority and the Member State in question has not required a validation by a court, a judge, or a public 	<p>According to the Finnish system the head of investigation in most cases is not a prosecutor, and never a judge. Prosecutors and investigation authorities belong to different organisations and approval of prosecutor is not needed to each request for evidence needed during the criminal investigation. We do not have a system of investigative magistrates.</p> <p>According the Pre-trial Investigation Act (449/1987) a criminal investigation in most cases is led by police authorities and in certain cases by customs or frontier authorities (with respect of crimes falling within their competences). However, apart from certain minor offences, a public prosecutor leads investigation, if the suspected person is a policeman. The pre-trial investigation case is led by the head of investigation. Within the said authorities, the head of the pre-trial investigation is official who is competent to decide on arrest. In most cases the head of investigation is a police, customs and frontier authority; he/she is a senior/superior civil servant. In some cases, especially when serious economic or organised crimes are being investigated, the head of investigation has a degree in law. For a special reason, a criminal police sergeant or a police sergeant may act as the head of investigation (but these officials are not entitled to decide on coercive measures) in a case being investigated by the police, and an official specifically entitled to the same by an Act may act as the head of</p>
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		<p>prosecutor, an evidence warrant may be issued by an official who within the police authorities, customs authorities or frontier authorities is competent to act as the head of investigation.</p>	<p>investigation in a case investigated by an authority other than the police.</p> <p>As to whether these authorities are entitled to order specific investigative measures, depends on the measure in question. Within the said authorities, an official who is competent to decide on arrest, is entitled to order e.g. a house search, a seizure of an object or document, a bodily search (a physical examination only by a doctor or medical personnel), an order to take identification marks or an arrest. A high ranking police and customs officer or Border Guard Headquarters is competent to decide on a controlled delivery. The Chief of the National Bureau of Investigation and Security Police are competent to decide on undercover operations. On the other hand, when e.g. interception of telecommunication or obtaining of call related data, interception (other than telecommunication) is concerned, it is ordered by the Court upon an application of the head of investigation.</p> <p>The public prosecutors have also competences during the preliminary investigation phase. They may request the police to carry out a criminal investigation or further investigation, as well as comply with the instructions issued by the prosecutor for the securing the objectives of the criminal investigation. In general, preliminary criminal investigation authorities and public prosecutors have a duty to act in cooperation when crimes are being investigated. A public prosecutor is also an official, who is competent to decide on arrest.</p>
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			Thus, a public prosecutor is competent to decide on such coercive measures, which require a decision by such an official (described above).
FR	No	N/a	N/a
HU	No	N/a	N/a
IE	No	<i>The Central Authority for Mutual Legal Assistance (located within the Department of Justice) transmits requests for assistance on behalf of the prosecuting authorities. The Central Authority is not a judicial authority.</i> <i>The Central Authority is responsible for the recognition of incoming requests. Neither prosecutorial nor judicial authorities have any function in relation to recognition of incoming requests. Requests are executed by the Central Authority and some measures (e.g., search warrants, freezing of assets) may require judicial involvement.</i>	N/a
IT	No	N/a	N/a
LT	No	N/a	N/a
LU	No	N/a	N/a

LV	Yes	<p>The police authorities as being investigators of an offence may decide to use investigative measures.</p> <p>The authorisation to perform criminal proceedings on behalf of the State is held only by officials of the institutions specified in the Criminal Procedure Law (CPL). A person directing the proceedings is:</p> <ol style="list-style-type: none"> 1) an investigator or in exceptional cases a public prosecutor – in an investigation; 2) a public prosecutor – in a criminal prosecution; 3) a judge who leads the adjudication – in preparing a case for trial; 4) the composition of a court – during a trial; 5) a judge – after coming into effect of a judgment. <p>Additionally, it should be mentioned, that investigator is an official of an investigative institution who is authorised with an order of the head of the investigative institution to perform an investigation in criminal proceedings.</p> <p>An investigator has a duty:</p> <ol style="list-style-type: none"> 1) to examine information, which indicate the possible commitment 	<p>The investigator individually in the framework of his competence could not decide to perform all investigative measures, as in certain cases the decision of investigating judge or court, or approval of a prosecutor is required. It should be noted that competence of an investigator and a prosecutor to perform investigative measures in general concur.</p> <p>Latvian criminal law system does not divide competence of an investigator, prosecutor or court with regards to the types of offences.</p> <p>We would like to indicate several examples of the division of competences:</p> <p>An investigator himself may: interrogate¹; question²; confront³; inspect⁴; examine a person⁵; seize⁶; make on-site examination of testimony⁷; present for identification⁸; order to store the data located in an electronic information system⁹; order to make expert-examination.</p> <p>Investigating judge or court take a decision after the initiation of an investigator on these investigating measures: search¹⁰; disclose the data stored in an electronic information system¹¹; provide information or documents from</p>
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1 KPL 145.pants
2 KPL 155.pants
3 KPL 157.pants
4 KPL 159.pants
5 KPL 168.pants
6 KPL 186.pants
7 KPL 173.pants
8 KPL 175.pants
9 KPL 191.pants
10 KPL 179.pants
11 KPL 191.pants

		<p>of a criminal offence, and to initiate criminal proceedings as soon as a reason and grounds specified in the Law have been determined or to refuse to initiate criminal proceedings;</p> <p>2) to perform investigative actions in order to ascertain whether a criminal offence has taken place, who committed such an offence, whether a person must be held criminally liable regarding such offence, and to ascertain such person and acquire evidence that gives a basis for holding such person criminally liable;</p> <p>3) to perform all measures provided for in the CPL for ensuring compensation for damages;</p> <p>4) to select a type of criminal proceedings that ensures a fair regulation of criminal legal relations without unjustified intervention in the life of a person and unfound expenditures;</p> <p>5) to fulfill the orders of the direct supervisor, supervising public prosecutor, or higher-ranking public prosecutor thereof or the injunctions of the investigating judge.</p> <p>An investigator has the right:</p> <p>1) to take any procedural decision in accordance with the procedures specified by the CPL and to perform any procedural action or assign the performing thereof to a member of an investigative group or the executor of procedural tasks;</p> <p>2) to propose for the supervising public prosecutor to decide the matter regarding the initiation of criminal prosecution;</p> <p>3) to appeal the instructions of the</p>	<p>credit institution or financial institution¹; special investigative measures²: control of legal correspondence; control of means of communication; control of data in an automated data processing system; control of the content of transmitted data; audio-control of a site or a person; video-control of a site; surveillance and tracking of a person; surveillance of an object; a special investigative experiment; the acquisition in a special manner of the samples necessary for a comparative study; control of a criminal activity, as well as other measures.</p> <p>The approval of prosecutor is necessary for investigator to receive data from the merchant of an electronic information system.³</p> <p>The monitoring of bank account may be performed with approval of investigating judge.⁴</p>
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¹ KPL 121.pants
² KPL 11.nodaļa
³ KPL 192.pants
⁴ KPL 121.pants

		<p>direct supervisor thereof;</p> <p>4) to appeal the decisions and instructions of the supervising public prosecutor;</p> <p>5) to appeal the instructions of a higher-ranking public prosecutor;</p> <p>6) to appeal the decision of an investigating judge.</p>	
MT			
NL	No	N/a	N/a
PL	No	N/a	N/a
PT	No	N/a	N/a
RO	No	N/a	N/a
SE	Yes	<p>a) The Swedish National Police Board and 21 regional Police Authorities in Sweden.</p> <p>b) The Swedish Customs Administration.</p> <p>c) The Swedish Coast Guard.</p>	<p>a) A preliminary investigation is generally lead by the Police if it concerns a simple matter or as long as there is no person found that can be reasonably suspected of having committed the offence. Preliminary investigations regarding certain types of crime are however always led by a prosecutor. There are detailed instructions on when a police inspector or a prosecutor should lead the investigations. Judges do not lead preliminary investigations, but judges may become involved when a prosecutor needs to seek approval for certain intrusive investigative measures such as interception of telecommunications.</p> <p>Within the framework of a police-led preliminary investigation police officers can carry out a number of investigative measures without a decision of a prosecutor or a judge. Some of the investigative measures are then available to the police officers, for example provisional confiscation, seizure, search of premises, body search and body examination etc., provided that certain prerequisites are fulfilled.</p> <p>The Customs Administration (b)</p>

			and Coast Guard (c) have certain powers within their area of competence/field of responsibility.
SI	Yes	<p>In the Republic of Slovenia the authorities who are competent to gather or obtain evidence are the following:</p> <ul style="list-style-type: none"> - in the pre-trial proceedings: police and investigative judge; - in the investigative phase: public prosecutor and investigative judge; - in the trial stage: public prosecutor and court. <p>The authorities who are competent for obtaining and gathering the evidence in the proceedings brought by administrative authorities Article 4(b) are:</p> <ul style="list-style-type: none"> - Offence authorities i.e. administrative authorities and bearers of public authority which supervise implementation of laws and regulations governing offences, and bodies of self-governing local communities vested with authority for offences adjudication pursuant to special regulations. - Courts are offence courts of the first instance and offence courts of the second instance. <p>Therefore the authorities other than the ones defined as a judicial authority in accordance with Article 2(a)(ii) of the proposal for a Directive would be: police and offence authorities involved in proceedings brought by administrative authorities where the decision may give rise to proceedings before court (article 4(b)).</p>	<p>The Slovenian criminal procedure is in general divided into three phases: pre-trial phase, investigative phase and trial phase. The police has leading role in the pre-trial proceedings where its main responsibility is to take steps necessary for discovering the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, detecting and preserving traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful conducting of criminal proceedings. The acts of police are informal and they don't have the nature of investigative measures in the meaning of the proposal for the directive. The cooperation in respect of gathering the needed information from other Member States is based on rules governing police cooperation. There is however one exception i.e. the interrogation of the suspect, which can be regarded as investigative measure and has in that respect the nature of an evidence in later stages of criminal proceeding. Therefore also the police would be able to act as an issuing authority when the interrogation of the suspect in the other Member State would be needed.</p> <p>As regards the proceedings brought by administrative authorities that may give rise to proceedings before court, the offence authorities have a competence to ex officio and without delay, promptly and</p>

			straightforwardly establish the facts and collect the evidence necessary to adjudicate on the offence. Hence, this doesn't mean that they have the competence to order investigative measures that can be in criminal proceeding ordered by the public prosecutor or judge. Their competence is limited to gathering information and already existing evidences. When they would need to obtain such evidence they would be also able to act as an issuing authority in accordance with the EIO.
SK	No		
UK	No	<p>By way of further background, under the UK's existing MLA legislation (the Crime and International Cooperation Act 2003 (CICA)) requests for evidence can be issued either by a court or by a designated prosecuting authority. The list of prosecuting authorities which are currently designated is as follows:</p> <ul style="list-style-type: none"> - The Attorney General for England and Wales; - The Attorney General for Northern Ireland; - The Financial Services Authority. - The Director of Public Prosecutions and any Crown Prosecutor; - The Director of Public Prosecutions in Northern Ireland - The Director of the Revenue and Customs Prosecutions Office and anyone within that Office authorised by him; - The Director and any designated member of the Serious Fraud Office; - The Secretary of State for Business, Innovation & Skills in respect of his function of investigating and prosecuting offences; 	

		In addition to the courts and to these designated prosecuting authorities, in Scotland the Lord Advocate and any Procurator Fiscal can also request MLA.	
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