

EJN regional meeting 21.-22.9.2017 in Helsinki

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Finland organized its third regional meeting 21 and 22 September 2017 in Helsinki in the premises of the Ministry of Justice. The two previous regional meetings had taken place in 2011 and 2014.

The other participating member states were Sweden, Estonia and Latvia. Also Lithuania had been invited but participants from Lithuania were unable to attend. Mr. Ola Löfgren as representative of the Secretariat for the European Judicial Network was also present. As the meeting was organized in Finland, several both contact points and other judicial authorities involved in international cooperation participated. Ms. Tuuli Eerolainen from the Prosecutor General's Office presided over the meeting as the new national correspondent for Finland.

The sole topic in the agenda was European Investigation Order. All other participating member states had implemented EIO before the meeting, except Sweden. Each participating member state had been given one subtopic to prepare for the meeting and the others made comments and additions. The meeting ended in a short practical exercise. The chair had distributed in advance a mock case to each participation state (also Finland) and they presented it to the other member states with any problems they found in filling in the EIO form.

Ola Löfgren told about the working group on the EIO form. The first topic as a round table was the national implementation of the directive in the participating states. Issues to discuss were among others the implementation situation, who are the competent authorities, are there possible changes in other implementations, what are possible foreseeable challenges etc. Finland has implemented the EIO 3 July 2017. The competent authority to issue an EIO can still be police, but prosecutor's validation is needed. The competent executing authorities are mostly the same as before with the exception of temporary transfer of persons held in custody. In the latter, all EIO's shall be sent to the Prosecution, more precisely to Prosecution Office of Helsinki. Languages accepted are Finnish, Swedish and English. In Latvia the authorities are the same as in MLA requests. The executing authorities depend on the phase of the proceedings: to the police in the pre-trial stage, to the Prosecutor General's Office when considering the charges and to the Ministry of Justice in trial phase. Language accepted is Latvian, hopefully in the near future also English. In Estonia the EIO's should always be sent to the Prosecutor General's Office (not anymore to the Central Authority, Ministry of Justice) and the languages accepted are Estonian and English. In Sweden the implementing is still ongoing, EIO should be in force on 1 December 2017. The executing authorities will be the same as before and languages accepted will be Swedish and English. As a conclusion it was agreed that all the needed measures should be in one EIO form (even when they have different executing authorities) or if several EIO's are issued they must have clear references to each other.

The next topic was measures not falling into the scope of EIO which was introduced by Finland. Non-EU member states and Denmark and Ireland are not bound by the Directive and are excluded. EIO does not cover the setting up of a joint investigation team and the gathering of evidence within a JIT. Directive should not apply to cross-border surveillance (Article 40 of the Schengen agreement), although Estonia and Latvia would prefer to execute an EIO in these matters also. Measures outside the scope of EIO are those that are not aimed at gathering evidence: such as transfer of criminal proceedings, sending and service of procedural documents, restitution of property to the rightful owner, the exchange of information on criminal records throughout the ECRIS and dual criminality requests. Sweden raised a question if it would be outside the scope of EIO having a telephone hearing when assistance is not needed from the executing state. Is that allowed and on what conditions? In Finland that is possible in the sense of Nordic reciprocity and Sweden should ask Central Authority's permission to this measure. Estonia and Latvia will need an EIO. Estonia will not accept a video hearing with accused person. One problem in practice could be the

distinction between seizure of evidence and restitution of property if they are both needed. Everybody agreed that it should be clearly stated in the EIO why the asked measure is relevant.

Sweden introduced the next topic how to cooperate when requesting or requested state has not implemented the EIO. The main principle is that you apply existing instruments if the EIO is not in force yet. Sweden will treat the EIO's as MLA requests and execute them. Latvia issues only EIO's and has had no problems. Sweden raised a question about compensation to the victim – is that covered in the EIO? How to freeze such property? Finland's opinion is that EIO does not cover this. Estonia promised to take this issue to the working group of the new regulation of freezing and confiscation.

Finland introduced the next topic appliance of other bilateral or multilateral agreements as stated in article 34. According to the article 34 the EIO replaces the corresponding provisions of the MLA 1959 and MLA 2000 conventions and the Schengen Agreement, EEW and freezing order as regards freezing of evidence. Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States only insofar as these make it possible to further strengthen and contribute to simplifying or further facilitating the procedures for gathering of evidence. Member States shall notify to the Commission the existing agreements and arrangements which they wish to continue to apply. So far notifications were made only by Lithuania, Italy and Germany. It was agreed that the article 34 is not very clear. Article 34 paragraph 3 concerns only overlapping regulation. With provisions that are not included in the scope of the EIO Directive – no need to notify, you can apply. Overlapping provisions in the obtaining of evidence: the EIO directive should be applied. Is the parallel use of conventions still possible – or is there an order of priority?

The next topic as a round table was the EIO training organized (or to be organized) in participating states. Issues to discuss were among others the how the training was organized, how much training there has been organized, which were the target group(s), was it organized jointly (or not) with other authorities, what were the questions asked by prosecutors (or other authorities), are there any best practices etc. Finland and Latvia are organizing training with practical cases and there is a handbook available (or coming). Estonia has not yet organized training, but practitioners were given guidelines and practical instructions. Sweden will organize training in November and there will be a handbook, maybe another also for the judges. It was also discussed how to share handbooks and guidelines among participating states.

Estonia introduced the next topic practice, problems and solutions thus far, the role of EIJN Contact Points. Estonia has so far received 28 and issued 14 EIO's with no major problems. Some EIO's didn't provide all the necessary information and there was a need to ask additional information from issuing authority. One EIO was used for the purpose of freezing the property and it was not executed. There are problems with contact detail information, it is not always provided an e-mail address for contact – it is time consuming to ask additional information via ordinary mail. Finland has issued 20 EIO's. It is a very time-consuming process to fill in the form. The digital transmission of EIO's and electronic signature were also discussed. Digital transmission is used with Finland (pdf versions via Interpol channel, no papers) and it is very effective. Estonia also expressed its satisfaction about the content of the EIO compared with previous MLA requests from Finland.

Latvia introduced the next topic EIJN website (especially Atlas); where and how to find information about EIO. The EIJN webpage contains among other things information about national systems, EU legal instruments for judicial cooperation, status of implementation in the MS of EU instruments, cooperation with third countries and judicial networks and practical tools for judicial cooperation. It was reminded to keep the Atlas information up to date.

Exercise, challenges in filling in the EIO form was prepared by Finland: short mock cases were distributed in advance for the participating states. No major problems were found in the filling in of the forms and in most cases the other states declared that they would execute the EIO's of other participants.

Tuuli Eerolainen and Ola Löfgren closed the meeting. The meeting was quite informal and many issues were discussed. The next plenary meeting will be in Tallinn in November and the questions that remained still unanswered will be discussed there. Such themes would be e.g. proportionality and the extent of the principle of rule of speciality in EIO's.

