

PAWEŁ OLBER¹

ORCID: 0000-0002-4614-9527

THE EUROPEAN INVESTIGATION ORDER AS A MECHANISM FOR INTERNATIONAL COOPERATION IN CRIMINAL CASES TO COMBAT CYBERCRIME

The fight against rapidly growing international crime makes it necessary to create unified instruments for cooperation in criminal matters. Law enforcement and judicial authorities should have effective tools at their disposal to respond promptly to a committed crime, wherever it occurs. Previous forms of cooperation between European countries were based on several legal regulations, which significantly hindered cooperation within the European Union (hereinafter: EU). Therefore, creating simple and effective methods of cooperation between Member States in criminal matters has been one of the EU's priorities².

A result of the work on standardising European rules on cooperation in criminal matters is the European Investigation Order (hereinafter: EIO). The initiative to create the European Investigation Order was presented on 21 May 2010 by selected member states of the European Union and subsequently adopted by the European Commission on 25 August 2011. Finally, on 3 April 2014, the European Parliament and the Council adopted Directive 2014/41/EU on the European Investigation Order in criminal matters³.

Scope of the European Investigation Order

The European Investigation Order introduces a comprehensive system for obtaining evidence in cross-border cases. It is based on the

¹ Paweł Olber, PhD — senior lecturer at the Institute for Legal Sciences of the Faculty of Security and Legal Sciences at the Police Academy in Szczytno
E-mail: p.olber@wspol.edu.pl.

² Kusak M, Europejski nakaz dochodzeniowy — przełom w dziedzinie europejskiego ścigania karnego? *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2012, No. 4, pp. 93–94. *Electronic source: <http://hdl.handle.net/10593/6276>, accessed: 01.08 2018.*

³ OJ EU L 130, 31 July 2014, p. 1; hereinafter: Directive 2014/41/EU.

principle of mutual recognition. This new legal instrument replaces existing EU mutual legal assistance programmes, in particular the Convention on Mutual Legal Assistance between Member States of the European Union adopted in Brussels on 29 May 2000⁴, and 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 matters⁵.

The rules contained in Directive 2014/41/EU cover the complete process of gathering evidence, starting with securing the means of evidence and setting deadlines for gathering evidence on the basis of requests from member states. The Directive also contains provisions allowing requests to be refused. In addition, it introduces a uniform standard of forms to be used for evidence collection, and also protects the fundamental right of defence. A suspected or accused person may request an EIO. This possibility is also available to a lawyer acting on their behalf in the framework of the applicable rights of defence under national law and in conformity with national criminal procedure. Member states must provide for means of recourse equivalent to national measures. The persons concerned must also be properly informed of the options available to them. The European Investigation Order applies to all EU member states except for Denmark and Ireland. The UK, which became a third country (non-EU country) on 1 February 2020, also participated in the adoption of the Directive. The deadline for implementing the EIO was May 22, 2017⁶.

According to Article 1(1) of Directive 2014/41/EU, the EIO is a judicial decision issued or approved by a judicial authority of one member state (hereinafter: issuing state) for the purpose of requesting another state (hereinafter: executing state) to carry out one or more specific investigative measures in order to obtain evidence. The EIO may also be used to obtain evidence that is already in the possession of a member state.

The advantage of the EIO is its versatility and the minor limitations resulting from Article 3 of Directive 2014/41/EU. The regulation stipulates that the EIO covers every investigative measure, with the exception of the following:

- activities related to the setting up of a joint investigative team,
- gathering evidence within such an investigative team.

Conditions for issuing an EIO

The type of proceedings for which an EIO may be issued is defined in Article 4 of Directive 2014/41/EU. A European Investigation Order can

⁴ OJ EUL, 135/ 950, hereinafter: Directive 2007/135/EU

⁵ OJ EU L 350 of 2008, p. 72; end. of validity: 21 February 2016.

⁶ Jourova V, European Investigation Order. *Electronic source*: https://ec.europa.eu/poland/news/170522_inv_order_pl, accessed: 03.08.2019.

be issued primarily in criminal matters because they can be issued in relation to criminal proceedings which have been initiated by a judicial authority or which can be brought before a judicial authority for a criminal offence under the law of the issuing state. The issuing of an EIO does not need to be closely linked or limited to ongoing or potential criminal proceedings. An EIO may also be issued in proceedings brought by administrative authorities in respect of acts punishable under the national law of the issuing state⁷.

Directive 2014/41/EU does not strictly define the authorities empowered to issue an EIO. According to Article 2(c) of the Directive, the issuing authority shall mean a judge, a court, an investigating judge, a public prosecutor competent in a particular case or any other competent authority specified by the issuing state and, where appropriate, exercising its function in criminal proceedings. However, such an order must be approved, for example, by a judge⁸.

The issuing authority shall complete, sign and certify the form set out in Annex A to Directive 2014/41/EU. The form shall contain the following information⁹:

- the data of the issuing authority and in some cases the data of the validating authority,
- the object and reasons for issuing the order,
- the identity of the persons concerned ,
- the nature of the offence under investigation,
- the criminal law provisions of the issuing State applicable to the offence concerned,
- description of the required investigative measures,
- description of the evidence to be obtained.

The Order shall be drawn up in the official language of the issuing State or in one of the official languages of the EU¹⁰. The issuing authority may issue an EIO only if it is necessary and proportionate for the purpose of the proceedings and where it is allowed under the same conditions in a similar domestic case¹¹. The need to respect the proportionality criteria has already been emphasised in the preamble of Directive 2014/41/EU. The lack of proportionality of the EIO and the necessity to apply this instrument constitute negative premises in the EIO issuing procedure, either of which should result in a refusal¹².

⁷ Bojańczyk A, *Opinia prawna na temat projektu ustawy o zmianie ustawy — Kodeks postępowania karnego (draft of 1 March 2017)*. Warsaw, 2017, p. 2. *Electronic source*: http://www.adwokatura.pl/admin/wgrane_pliki/file-20170410-opinia-dla-ms-ws-zm-kpk-mec-bojanczyk-u-6-17-19208.pdf, accessed: 04.08.2018.

⁸ *Ibid.*, p. 6.

⁹ Directive 2014/41/EU, Article 5(1).

¹⁰ *Ibid.*, Article 5(2).

¹¹ *Ibid.*, Article 6.

¹² Bojańczyk A, *Opinia...*, *op. cit.*, p. 2.

Implementation of the EIO

The issuing authority shall transmit the EIO to the executing authority by any means capable of producing a written record and establishing its authenticity. In order to transmit the EIO, the issuing authority may use the European Judicial Network telecommunications system. All further contacts between the issuing authority and the executing authority shall be made directly. Each Member State may designate a central authority for the transmission and receipt of EIOs and for the continuation of official correspondence relating to the EIOs. If an EIO is delivered to the wrong recipient, that authority shall be obliged to forward the document to the competent executing authority without delay. All doubts and difficulties relating to transmission or authenticity should be dealt with through direct contact or with the central authorities of the member states¹³. The executing authority shall receive the document without any further formality being required. The authority shall recognise the order and proceed with its execution in accordance with the procedure applicable to the acts commissioned by the national authorities. The executing authority shall carry out all of the acts specified in the EIO, provided that they are not contrary to national law. The issuing authority may request assistance in conducting the tasks defined in the EIO. Such a request shall be met if it does not conflict with fundamental law principles of the executing state and does not prejudice its national security interests. When providing assistance in another state, the authorities shall not have any law enforcement powers in the territory of the executing state, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing state and to the extent agreed between the issuing authority and the executing authority¹⁴.

Where the investigative measure referred to in the order does not exist or is not admissible, another activity may be conducted under the law of the executing state. The executing authority may also perform an activity other than that indicated in the EIO if it produces the same result via less intrusive methods¹⁵. In addition, there are a number of grounds for refusing to recognise or execute an EIO, among others:

- if the law of the executing state provides for immunity or privilege, which prevents the execution of the order,
- if the execution of the order infringes national security interests,
- if the investigative measure is not permitted under the law of the executing state,
- if the execution of the order is contrary to the principle of *non bis in idem* according to which no legal action can be taken twice in the same case,

¹³ Directive no. 2014/41/EU, Article 7.

¹⁴ *Ibid.*, Article 9.

¹⁵ *Ibid.*, Article 10.

- if the order relates to an alleged offence in the territory of the executing state and the act for which the order was issued does not constitute an offence in that state,
- if there are indications that the investigative measure is incompatible with the obligations arising from Article 6 of the Treaty on European Union of 7 February 1992¹⁶ or the Charter of Fundamental Rights of European Union of 7 December 2000¹⁷,
- if the act for which the order was issued does not constitute an offence under the law of the executing state,
- if, under the law of the executing state, the execution of the investigative measure referred to in the EIO is limited to a specific list or to a specific category of offences which do not include an offence referred to in the EIO.

Time limits for recognition or execution

Once the decision on recognition or execution of the EIO has been taken, the executing authority shall carry out the investigative measures as a matter of priority, as in a domestic case. However, Directive 2014/41/EU provides for specific deadlines. The decision to recognise or execute the EIO should be taken within 30 days of receipt of the order. If it is not possible for the competent executing authority to meet the 30-day deadline, it is then obliged to inform the competent authority of the issuing state without delay. In addition, the issuing authority must give the reasons for the delay and the estimated time needed to take a decision on the recognition or execution of the EIO. In such cases, this time limit may be extended by a maximum of 30 days. A further time limit shall relate to the time taken to carry out the measure requested. Where the executing state does not have the evidence to which the requested measure relates, the executing authority shall do so without delay, but no later than 90 days after the decision on the recognition or execution of the EIO has been taken¹⁸. The maximum duration of the execution of the measure under the EIO is therefore 120 days¹⁹.

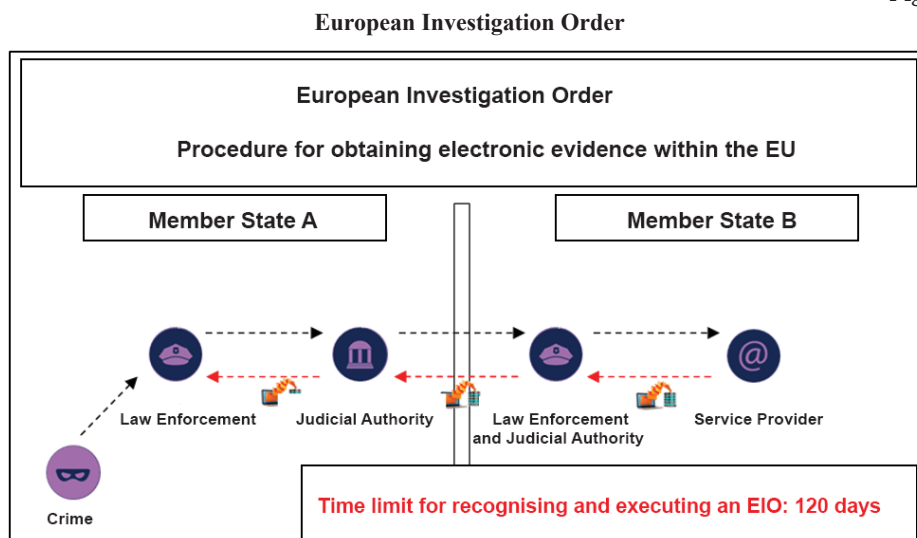
¹⁶ OJ EU C 191 of 1992, p. 1.

¹⁷ OJ EU C 326 of 2012, p. 391.

¹⁸ *Ibid.*, Article 12(1–5).

¹⁹ European Commission, Frequently Asked Questions: New EU rules to obtain electronic evidence. *Electronic source*: http://europa.eu/rapid/press-release_MEMO-18-3345_en.htm, *accessed*: 10.08.2019.

Fig 1



Source: Author's own material based on: European Commission, Frequently Asked Questions: New EU rules to obtain electronic evidence, *electronic source*: http://europa.eu/rapid/press-release_MEMO-18-3345_en.html, *accessed*: 10 August 2019.

If the executing authority is not able to meet the required deadline, it must immediately inform the authority of the issuing state, giving reasons for the delay. In such a case, it shall contact the issuing authority in order to set an appropriate time limit for the execution of the measure²⁰. After carrying out the requested activity, the executing authority shall, without undue delay, transfer the evidence obtained or already in the possession of the competent authorities of the executing state to the issuing state. When transferring the evidence obtained, the executing authority shall indicate whether it requires the evidence to be returned to the executing state as soon as it is no longer required in the issuing state. The evidence may also be forwarded to the authorities of the issuing state, which shall assist in the execution of the order. However, such information must be contained in the document sent²¹.

Legal remedies envisaged

There are remedies for the measures identified in the EIO, equivalent to those available in a similar domestic case. The grounds for issuing an EIO may be challenged only in an action brought in the issuing

²⁰ Directive 2014/41/EU, Article 12(6).

²¹ *Ibid.*, Article 13.

state. The issuing authority and the executing authority shall be required to provide information on the possibilities for legal remedies under national law. A legal challenge shall not suspend the execution of the investigative measure in the EIO, unless such an effect is provided in a similar domestic case²².

The recognition or execution of an EIO may be postponed by the executing state. The recognition or execution of an EIO may be postponed for a period specified by the state if the execution of the order could prejudice ongoing proceedings in the country. Where the evidence is used in other proceedings, the executing authority may postpone the recognition or execution of the order until the evidence is no longer needed. Once the reasons for postponement have ceased to exist, the executing authority shall take the necessary measures for the execution of the EIO and inform the issuing authority thereof²³.

Obligation to provide feedback

The authority of the executing state or the central authority (if any), upon receipt of an EIO, shall immediately acknowledge the receipt of the EIO. The executing authority shall also immediately inform the issuing state, if:

- the executing authority is unable to take a decision on the recognition or execution of the EIO,
- that authority considers that it may be appropriate to carry out additional investigative measures,
- the authority establishes that it is unable to comply with the formalities and procedures.

In addition to the general cooperation mechanism, Directive 2014/41/EU contains specific provisions for specific investigative measures, namely:

- temporary transfer of persons in custody to the issuing state for the purpose of conducting an investigative measure,
- temporary transfer of persons in custody to the executing state for the purpose of conducting an investigative measure,
- hearing by videoconference or any other form of audio-visual transmission,
- hearing by telephone conference,
- obtaining information on bank accounts and other financial accounts,
- obtaining information on banking and other financial transactions,
- investigative activities implying the gathering of evidence in real time, continuously and over a certain period of time, *i.e.* the monitoring of banking or other financial operations and the covert surveillance of deliveries in the territory of the executing state.

²² *Ibid.*, Article 14.

²³ *Ibid.*, Article 15.

The inclusion of specific provisions stems from the conviction that general rules of conduct may not be sufficient due to the nature of these activities. Moreover, those rules provide for additional grounds for non-execution of the order²⁴.

Implementation of the Directive provisions in Poland

The Act of 10 January 2018 on the amendment of the Act — Code of Criminal Procedure and some other acts²⁵ is a revision of the criminal procedure to implement the new instrument for international legal cooperation, the EIO. The changes in the Polish criminal procedure were performed to implement Directive No 2014/41/EU into the Polish legal system.

From the legal opinion of the draft drawn up on 1 March 2017, concerning the Act amending the Act — Code of Criminal Procedure, it follows that originally Directive 2014/41/EU was to be implemented in the national legal order by 22 May 2017²⁶. The provisions of the Directive have been implemented in national legislation by adding two new chapters to the Act of 6 June 1997 — Code of Criminal Procedure²⁷, *i.e.*:

- Chapter 62c. Request to a Member State of the European Union to carry out investigative measures on the basis of EIO,
- Chapter 62d. Request by a Member State of the European Union to carry out investigative measures on the basis of EIO.

The essence of the EIO is an investigative measure. It is an important element in the definition of the EIO, emphasising the significance of this measure which focuses on how to obtain evidence²⁸. However, according to the legal opinion mentioned above, the activities covered by the EIO should be called evidentiary measures and not investigative measures, which is justified by the dualism of procedural forms of pre-trial proceedings provided for in the Polish Code of Criminal Procedure. The forms of pre-trial procedure in question argue in favour of abandoning the nomenclature used in Directive 2014/41/EU, which may erroneously imply that the activities carried out under that Directive involve only investigations and may be carried out only within the framework of procedural activities planned for investigations²⁹.

The new provisions of the Code of Criminal Procedure do not contain regulations strictly concerning electronic evidence but apply to all evidence. However, it is believed that a legal instrument such as the EIO will

²⁴ Kusak M, Europejski..., *op. cit.*, p. 99.

²⁵ DzU, 2018, item 201; hereinafter: ustawa o zmianie ustawy — Kodeks postępowania karnego.

²⁶ Bojańczyk A, Opinia..., *op. cit.*, p. 1.

²⁷ DzU, 1997, No, 89, item 555 as amended; hereinafter: k.p.k.

²⁸ Kusak M, Europejski..., *op. cit.*, p. 95.

²⁹ Bojańczyk A, Opinia..., *op. cit.*, p. 18.

improve the European criminal process and will be used to obtain digital evidence in order to combat cybercrime effectively.

According to Article 589w(1) of the Code of Criminal Procedure, when it is necessary to examine or to obtain evidence which is held or may be examined on the territory of another EU member state, the court before which the case is pending, or the prosecutor conducting the preparatory proceedings may issue an EIO *ex officio* or at the request of a party, a defence counsel or an EIO representative. The EIO may also be issued by a police officer conducting an investigation or verifying proceedings. In such a case, issuing the EIO requires the public prosecutor's approval³⁰. An EIO may also be issued in order to secure traces and evidence of a crime against their loss, disturbance or damage³¹.

Pursuant to Article 589x of the Code of Criminal Procedure, the issue of an EIO is inadmissible if the interests of the justice system or Polish law does not allow the evidence in question to be examined or obtained.

The indication of the 'interests of justice' as one of the negative grounds for issuing an EIO is inconsistent with the wording of Directive 2014/41/EU, which emphasises the need to respect the criteria of proportionality and necessity in proceedings concerning the EIO. The lack of proportionality of the EIO in relation to the case in which it is issued and the need to use that instrument for the purposes of the procedure constitute negative conditions which must result in the refusal to issue the EIO³².

The solution adopted by the Polish legislator involves a risk that Polish authorities will issue an EIO in legal systems which will differ from those of EU member states. Issuing the EIO may be in the interests of the Polish criminal justice, but at the same time it will not be proportionate or necessary to the objectives of the proceedings. This situation may lead to a consultation procedure being launched with the issuing authority on the purposefulness of the EIO being issued, and may result in the EIO being withdrawn³³. The second possibility is that where the executing authority considers that the costs for the execution of the EIO may be deemed exceptionally high, it may consult with the issuing authority on whether and how the costs could be shared or the EIO modified³⁴. Article 589x of the Code of Criminal Procedure raises some doubts from the point of view of the idea of harmonisation of legal proceedings in the EU when implementing evidence measures³⁵.

If an EU member state (the issuing state) applies for the execution of an EIO, the decision of its execution is issued by the public prosecutor or the district court in whose jurisdiction the evidence measure is or can be conducted. If the admittance, obtaining or examination of evidence

³⁰ Code of Criminal procedure, Article 589w(2).

³¹ *Ibid.*, Article 589w(3).

³² Bojańczyk A, *Opinia...*, *op. cit.*, pp. 4–5.

³³ Directive 2014/41/EU, Article 6(3).

³⁴ *Ibid.*, Article 21.

³⁵ Bojańczyk A, *Opinia...*, *op. cit.*, p. 5.

is reserved for the jurisdiction of a court or is dependent on that court, then the decision for its execution is issued by that court³⁶.

An execution decision shall be issued without delay, but no later than 30 days after the receipt of the EIO. If the 30-day time limit cannot be complied with, the decision on the execution of the EIO should be made within a further 30 days from the day on which that time limit expires. The authority issuing the EIO should be informed of the postponement, with the reason for the delay stated along with the expected date of the decision on the EIO execution³⁷.

If the evidence measure to which the EIO relates has not been conducted yet, the court or prosecutor shall carry it out immediately after the decision has been made. The evidence measure should be conducted not later than 90 days after the date of the decision. If the authority issuing the EIO has set a deadline for conducting the measure, the court or prosecutor should take this deadline into account if possible. If the time limit cannot be met, the issuing authority should be informed. The reason for the delay and the expected time limit for executing the evidence measure should be specified at the same time³⁸.

Evidence that has been obtained as a result of the execution of an EIO shall be transferred to the issuing State without delay. After consultation with the issuing authority, the evidence transferred may be returned³⁹.

If an EIO has been issued to protect the traces and evidence of an offence from loss, disturbance or damage, the competent court or prosecutor shall rule on the enforcement of the EIO within 24 hours of its receipt. If it is not possible to execute the EIO within that time, the order must be executed as soon as possible. The court or prosecutor shall either transfer the evidence to the issuing state or leave the evidence at their own disposal for a specified period, as requested by the issuing state. The period of freezing may be reduced after prior consultation with the authority issuing the EIO⁴⁰.

When executing an EIO, the provisions of Polish law should be applied. However, the conclusions contained therein concerning the use of a particular procedure or form should be taken into account if it does not conflict with national provisions⁴¹.

Practical application of the EIO

When discussing the EIO, the possibility of using this legal instrument in the context of the fight against cybercrime should be mentioned. An excellent example of this is the investigation, (ref. PO II Ds 129.2017) conducted in the District Prosecutor's Office in Warsaw, into attacks

³⁶ Code of Criminal Procedure, Article 589ze(1).

³⁷ *Ibid.*, Article 589zg(1-2).

³⁸ *Ibid.*, Article 589zh(1).

³⁹ *Ibid.*, Article 589zp(1-2).

⁴⁰ *Ibid.*, Article 589zq(1-2).

⁴¹ *Ibid.*, Article 589zi(1).

on computers of Polish Internet users by a person using the pseudonyms Thomas and Armaged0n. The said criminal had been hiding from Polish law enforcement authorities in Belgium for many years. Eventually, he was apprehended in Poland on 14 March 2018. The criminal activity of the aforementioned person consisted in the use of harmful software, so-called ransomware, whose operation is based on blocking access to victims' computer systems by encrypting the users' data and demanding a ransom from the victims for their restoration. In doing so, the criminal claimed a payment of between USD 200 and USD 400 for decryption⁴².

The presented case deserves attention because this new legal instrument, the EIO, was used in the course of the investigation. The application of this legal instrument enabled Belgian police specialising in securing digital evidence to conduct investigative measures effectively and to arrest the perpetrator in Poland. The offender was apprehended 6 years after the first crime was committed and the offender identified⁴³. One may conclude that it was the first use of an EIO by Polish law enforcement authorities.

Conclusions

Providing a single general instrument for international cooperation offers great opportunities to improve European criminal justice. There is a chance that the EIO will solve the problem of gathering evidence beyond national borders. No doubt, it is a major instrument that removes many procedural constraints and provides an opportunity to improve the European criminal process⁴⁴.

According to a press release, published on 17 April 2018 on the website of the European Commission (hereinafter: EC), the legal instrument, *i.e.* the EIO, aims to facilitate and speed up the acquisition of digital evidence, including *inter alia* e-mails and documents in the cloud computing, by law enforcement and judicial authorities. The European Commission underlines that in more than half of all current criminal cases, requests are issued for cross-border acquisition of digital evidence possessed by service providers based in another member state or outside of the EU. Mutual legal assistance is necessary to obtain digital evidence, but the process is very slow and cumbersome. Currently, almost two-thirds of the offences for which digital evidence is located in another country cannot be properly prosecuted, mainly because of the time it takes

⁴² Najbardziej uciążliwy polski cyberprzestępca w rękach Policji (The most pestering cybercriminal in police hands). *Electronic source*: <http://www.opolska.policja.gov.pl/op/aktualnosci/10555,Najbardziej-uciazliwy-polski-cyberprzestepca-w-rekach-Policji.html>, accessed: 05.08.2019.

⁴³ Haertle A, Wywiad z prok. dr inż. Agnieszka Gryszczyńska (Interview with the prosecutor Agnieszka Gryszczyńska, D.E.). *Electronic source*: <https://zaufanatrzeciastrona.pl/post/wywiad-z-prok-dr-inz-agnieszka-gryszczynska-prowadzaca-sprawe-tomasza-thomasa-t/>, accessed: 10.08.2019.

⁴⁴ Kusak M, Europejski..., *op. cit.*, p. 105.

to collect such evidence or because of a large number of different legal regulations. The EIO should fill the existing gap by providing a fast and efficient procedure to obtain digital evidence⁴⁵, which should result in higher efficiency of law enforcement in the fight against cybercrime.

However, it should be emphasised that Directive 2014/41/EU does not contain regulations strictly focused on the acquisition of digital evidence, but refers to all evidence. According to additional information, also published on the EC website⁴⁶, new solutions are being developed to equip judicial authorities with modern tools in order to simplify access to digital evidence. The need for new solutions stems from the fact that traditional investigative tools do not always meet the requirements of the developing world⁴⁷.

When formulating the *de lege ferenda* conclusions, one should propose to amend the Prosecution Service's Rules of Procedure with regard to the EIO. According to the design to introduce the EIO, every prosecutor conducting preparatory proceedings should be entitled to prepare and submit an application. In reality, however, according to the notification of the Ministry of Justice of 7 February 2018, the bodies executing the EIO in Poland at the pre-trial stage are district prosecutor's offices⁴⁸. It should be emphasised that an EIO may be issued by a police officer conducting preparatory proceedings. In such a situation, it should be approved by a prosecutor, which results directly from Article 589w(2) of the Code of Criminal Procedure. The prosecutor supervising the preparatory proceedings should be authorised to approve the EIO. They are obliged to know the case and supervise the correct and efficient course of the supervised proceedings.

References

Publications

Opitek P, Wybrane aspekty pozyskiwania dowodów cyfrowych w sprawach karnych. *Prokuratura i Prawo*, 2018, No. 7–8, pp. 73–77.

Legal acts

Treaty on European Union of 7 February 1992 (OJ EU C 191 of 1992, p. 1).

Ustawa z 6 czerwca 1997 r. — Kodeks postępowania karnego (DzU, 1997, No. 89, item 555 as amended).

⁴⁵ European Commission, Security Union: Commission facilitates access to electronic evidence. *Electronic source*: http://europa.eu/rapid/press-release_IP-18-3343_en.html, accessed: 11.08.2019.

⁴⁶ Last update: 14.06.2018.

⁴⁷ Jourova V, Europejski..., *op. cit.*

⁴⁸ Opitek P, Wybrane aspekty pozyskiwania dowodów cyfrowych w sprawach karnych. *Prokuratura i Prawo*, 2018, No. 7–8, pp. 73–77.

- Ustawa z 10 stycznia 2018 o zmianie ustawy — Kodeks postępowania karnego oraz niektórych innych ustaw (DzU, 2018, item 201).
- Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ EU L of 2014, No. 130, p. 1).
- Convention on Mutual Assistance in Criminal Matters between the EU countries, drafted in Brussels on 29 May 2000. (OJ of 2007, No. 135, item 950).
- The Charter of Fundamental Rights of the European Union of 7 December 2000. (OJ EU C 326 of 2012, p. 391).
- 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 (OJ EU L 350 of 2008).

Other sources

- Bojańczyk A, Opinia prawna na temat projektu ustawy o zmianie ustawy — Kodeks postępowania karnego (projekt z dnia 1 marca 2017). Warsaw, 2017. *Electronic source*: http://www.adwokatura.pl/admin/wgrane_pliki/file-20170410-opinia-dla-ms-ws-zm-kpk-mec-bojanczyk-u-6-17-19208.pdf, *accessed*: 04.08.2018.
- European Commission, Frequently Asked Questions: New EU rules to obtain electronic evidence. *Electronic source*: http://europa.eu/rapid/press-release_MEMO-18-3345_en.htm, *accessed*: 10.08.2019.
- European Commission, Security Union: Commission facilitates access to electronic evidence. *Electronic source*: http://europa.eu/rapid/press-release_IP-18-3343_en.html, *accessed*: 11.08.2019.
- Haertle A, Wywiad z prok. dr inż. Agnieszka Gryszczyńską. *Electronic source*: <https://zaufanatrzeciastrona.pl/post/wywiad-z-prok-dr-inz-agnieszka-gryszczynska-prowadzaca-sprawe-tomasza-thomasa-t/>, *accessed*: 10.08.2019.
- Jourova V, Europejski nakaz dochodzeniowy. *Electronic source*: https://ec.europa.eu/poland/news/170522_inv_order_pl, *accessed*: 03.08.2019.
- Kusak M, Europejski nakaz dochodzeniowy — przełom w dziedzinie europejskiego ścigania karnego? *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2012, No. 4. *Electronic source*: <https://repozytorium.amu.edu.pl/bitstream/10593/6276/1/10.%20MARTYNA%20KUSAK%20RPEIS%204-2012.pdf>, *accessed*: 01.08.2018.
- Najbardziej uciążliwy polski cyberprzestępca w rękach Policji. *Electronic source*: <http://www.opolska.policja.gov.pl/op/aktualnosci/10555,Najbardziej-uciazliwy-polski-cyberprzestepca-w-rekach-Policji.html>, *accessed*: 05.08.2019.
- Szybsze i bardziej efektywne transgraniczne dochodzenia karne w UE. *Electronic source*: https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=LEGISSUM:230301_2&from=EN, *accessed*: 01.08.2018.

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Summary: The fight against cybercrime requires effective and rapid solutions for the collection of digital evidence at the international level. An example of such an instrument is the European Investigation Order, which introduces a comprehensive system for obtaining evidence in cross-border cases. The legislation on this solution is contained in directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters. The above regulations have been implemented into the Polish national law by the Act of 10 January 2018 amending the Act — The Code of Criminal Procedure and certain other acts. The European Investigation Order was presumably first used by Polish law enforcement authorities in a case involving cybercrimes committed by a person using the aliases Thomas and Armaged0n. The use of this investigation measure made it possible to apprehend the offender many years after the first offence was committed and the offender was identified⁴⁹. Despite this success, further changes to the European Investigation Order in national legislation are needed to improve the effectiveness of the fight against cybercrime. It should be proposed to modify the Prosecution Services' Rules of Procedure as regards the authorities competent to issue European Investigation Orders. Currently, the authorities executing the European Investigation Order in Poland at the stage of preparatory proceedings are district prosecutor's offices, whereas such powers should be vested in every prosecutor conducting preparatory proceedings.

⁴⁹ Haertle A, Wywiad..., *op. cit.*