

The European Investigation Order Directive 2010/0817 (COD)

Cost: No immediate financial cost, it will however further encroach on our civil liberties by allowing foreign police and security services to investigate criminal acts and charge British people. The EIO will, however, allow foreign countries the right to direct UK police and justice authorities, meaning costs will be incurred.

Talking Points

Transfer of power without a referendum

All previous cross-border instruments involved the transfer of evidence. The EIO transfers power to other EU member states to initiate investigations in other EU member states. Under the Government's referendum lock there should be a referendum to implement this transfer of power.

Dual Criminality

Under existing proposals, an EU member state can initiate an investigation of a crime in another member state where the act in question may not be a crime. The 'crime' does not need to be a crime in both member states. Law abiding Brits can be tried for acts that do not constitute a crime in Britain.

Civil Liberties are under threat

Foreign police will have access to UK banking, DNA and data records. There will be no grounds to refuse an EIO on the basis of 'double jeopardy' rules existing in the UK but not in other EU member states. ([Statewatch](#))

What is it?

A draft directive to enable police authorities across the EU to initiate criminal investigations and gather evidence in other EU member states.

The EU has already implemented the European Evidence Warrant of 2008, which grants member states the right to collect evidence already in available from another member state. This could be in the form of documents, objects, data etc. It does not cover interviews for suspects, DNA or other bodily material. Furthermore, under the EEW, 'real time' data cannot be collected, including communications or bank accounting details.

Member states have until 2011 to set up a framework to comply with the EEW.

The European Investigation Order Directive proposals, however, go further. They would create a single procedure for obtaining evidence (rather than accessing evidence under the EEW). Whereas the EEW is evidence based, the EIO is investigatory and allows other member states to instruct – to fixed timelines – other member states to investigate criminal activity. It would allow other EU member states to uncover evidence that does not already exist, demonstrating that it goes much further than the EEW agreement. The EIO will allow the transfer of British DNA, banking and other private data to other EU member states.

Under the current proposals, the EIO would be judicial and not political. The issuing authority in this case would be a judge, court or prosecutor (not forgetting the EU's plans here for a European Public Prosecutor). These would have the power to instruct investigations and direct police authorities in other member states.

The only instances to refuse an EIO would come if it "would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities" or violate privilege or immunity granted by the executing state.

Under current plans, according to the [European Foundation](#), authorities could be tasked to investigate crimes where there is not 'dual criminality', for example Country A could ask Country B to investigate a crime that is not a crime in Country B. Statewatch concurs and claims there will be no safeguards for British people to be tried for acts which are not crimes in this country.

Third Party Opinions

"The Government has signed us up to a measure that has serious implications for stretched police forces and for civil liberties. Despite this, our elected representatives have had no opportunity to debate the proposal or the issues it raises. Unless vital new safeguards are introduced, the decision to rush into this ill thought-out measure will be regretted across Europe." Jago Russell, chief executive, [Fair Trials International](#)

"Statewatch, the UK-based civil liberties monitor, says there is no longer a basis for refusal on the grounds of territoriality and what is called "dual criminality" - that the act for which information is sought must constitute a crime punishable in both states. This would now mean that a person who committed an act which is legal in the member state where the act was carried out could, according to critics, be subject to body, house and business searches, financial investigations, and some forms

of covert surveillance, if the act is regarded as a crime under the law of another member state.”
Statewatch quoted in [EU Observer](#).