



MINUTES OF THE 12 Project Meeting

15/01/2018



Best practices for EUROpean COORDination on investigative measures and evidence gathering



EUROCOORD

Version FINAL

Preparation date 20/07/2017

Deliverable D1.4

Work Package WP1

Authors: Sandra Vilaplana on behalf of University of Burgos

Approved by Coordinator on: XX/XX/2017

Dissemination level: CO



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Abbreviations and Acronyms

UBU	University of Burgos
UCM	Complutense University of Madrid
UNIPA	University of degli Studi di Palermo
UJ	University Jagiellonski
WS	Work Stream
DoA	Description of Action (<i>Referred to Annex I Grant Agreement</i>)



1. Meeting information

Date	20 December 2017
Time	09:00 – 15:00
Location	Complutense University of Madrid

Participants

Name	Institution
Mar Jimeno	University of Burgos
Miriam Manrique	University of Burgos
Annalisa Mangiaracina	University of Palermo
Vincenzo Militello	University of Palermo
Lorena Bachmaier	Complutense University of Madrid
Marien Aguilera Morales	Complutense University of Madrid
Adam Gorski	University Jagiellonski
Krzysztof Michalak	University Jagiellonski
Sandra Vilaplana	K-veloce I+D+i



2. Agenda

Meeting venue:

Venue:

Faculty of Law, Universidad Complutense, 5th Floor new building,
Meeting Room.

Avda. Complutense s/n, Ciudad Universitaria
Madrid 28040

Time	Item	Speaker
09.00 - 09:15	Welcome and introduction to the EUROCOORD 12 PM	Lorena Bachmaier UCM
09:15 - 10:00 (45 min)	WS1 <i>"Comparative analysis of specific national and European jurisprudence and legislation"</i> Work done / achievements / next steps	Annalisa Mangiaracina, UNIPA
10.00- 10.45 (45 min)	WS2 <i>"Comprehensive research on legal protection in the EU Member States under the EIO provision"</i> Work done / achievements / next steps	Mar Jimeno, UBU
10.45 -11:00	Coffee break	
11:00 – 11:30	WS3 <i>"Code of Best Practices"</i> Next steps.	Lorena Bachmaier, UCM
11:30-12:30	WS4 <i>"Training and Dissemination"</i> <ul style="list-style-type: none">- Dissemination plan- Dissemination activities (social media campaign)- Work done / achievements / next steps	Adam Gorsky, Jagiellonian University All
12:30-13:00	WS0 <i>"Management and Coordination of the Project"</i> Reporting and Financial issues Work done / achievements / next steps	UBU
13:00 -14:30	Lunch break	
14:30– 15:00	General questions and doubts: <i>Stablishing next project meeting</i>	All participants

3. Welcome and introduction to the EUROCOORD KoM

Ms. Lorena Bachmaier representing Complutense University of Madrid in the EUROCOORD project welcomed to all partners, and introduced the meeting agenda for the third project meeting.

4. WS1 “Comparative analysis of specific national and European jurisprudence and legislation”

Ms. Annalisa Mangiaracina as leader of WS1 presented the activities carried done during last months since July 2017.

Specifically following points were presented and discussed among project partners:

- Status of transposition of DEIO
- Italian legislation
- The application of DEIO in relation to other legal instruments
- Activities excluded by DEIO
- Description of the work done within WS1.
- Next steps

This WS is expecting a delay due to there is not still case-law in countries Spain, Italy and Poland and we are waiting to definitive approval on EIO implementation.

UNIPA is working in deliverables: D1.2 Relevant experience of professionals working on the field, a framework with specific items to be filled it will be elaborated, D1.3 Diagnosis of the current situation through desk research and unstructured interviews in the countries of the Consortium (Spain, Italy, Poland), including associate partners and D1.4 National reports on EOI and common practices. To be submitted as soon as they are ready.

Regarding D1.2 the end of February; D1.2. the middle of March.

Regarding D1.4 Italian National Report on the EIO it is ready. I only need the linguistic revision, and it will take about one month.

Further details of the achievements and results performed within WS1 in the last reporting period are attached in the annex section.

5. WS2 “Comprehensive research on legal protection in the EU Member States under the EIO provision”

Ms. Mar Jimeno as project coordinator and leader of WS2 presented the activities performed from July to November 2017 in a methodological approach point of view.

Specifically following points were presented and discussed among project partners:

- Work done within WS2
- Achievements
- Next steps



This WS is expecting a delay because WS1 is unfinished due to the lack of definitive approval on EIO implementation in Spain and late approval in Italy and Poland.

UBU is working in deliverables: D2.2, Common practices related with EIO and evidence transfer in Spain, Italy and Poland; and D2.3 National reports on EOI and common practices are expected to submit in April – May 2018

Further details of the achievements and results performed within WS2 in the last reporting period are attached in the annex section.

6. WS3 “Proposal for a Code of Best Practice: enactment, debate and training”

Ms. Lorena Bachmaier as WS3 leader presented the scope of the WS3 and its action plan for the next months.

Specifically, following points were presented and discussed among partners:

- Code of bet Practices on the use of the EIO
- Which structure should we follow?
 - o First option: published Handbook for the issuing and execution of the EAW (2017/C355/01)DOUE 6.10.17
 - o Second option: structure of Directive 2014/14/EU itself.ç
- Content of the Code of Bet practices

Moreover, Lorena asked to the coordinator, contact to the Project Officer to define Best Practices on the EIO structure and its extension.

Further details of the achievements and results performed within WS3 in the last reporting period are attached in the annex section.

7. WS4 “Training and Dissemination”

Mr. Krzysztof Michalak as leader of WS4 and from UJ showed its progress under training and dissemination work.

Specifically, following points were presented:

- General description of our activities (GA, CA, other relevant docs.)
- Undertaken and ongoing steps and actions

This WS is running under schedule.

During the project meeting Eurocoord website developed by UBU, was showed to the partners, and asked for their feedback.

8. WS0 “Management and Coordination of the Project”

Ms. Sandra Villaplana on behalf of UBU, with the support and supervision of UBU outlined the project management and coordination to all partners. She emphasized that project is expecting some delay due to national EIO approval implementation.

Moreover, and apart of the financial report which each partner should provide at the end of January, a technical report should be also written by each beneficiary to know the progress of the project. After this technical progress report, the deviation will be identified, and the proper plan will be discussed and agreed by all partners.

A review of meetings held, budget allocation, clauses of C.A to comply with, documents to prepare (TS, English financial report on sigma template provided by EC) and a breakdown of budget per category and entity was presented. The coordinator presented an overview of main points to be aware of for a satisfactory financial management.

9. Next steps – Action plan

Action to be taken	Responsible	Deadline
WS1		
Comparative analysis – Italy, Spain and Poland – and assessment of results	UNIPA	<i>April 2018</i>
Monitoring and analysis of case law on EIO	UNIPA	<i>April 2018</i>
WS2		
To elaborate common methodology framework in order to elaborate national reports on judicial cooperation practice by Italy, Poland and Spain	UBU	<i>April 2018</i>
To analyse, read and listen all interviews carefully in order to prepare national report as deliverable	UBU	March 2018
WS3		
To define structure of Best practices' Code	UCM	June 2018
Work in the content of Best practices' Code	UCM	July 2018
WS4		
Dissemination and communication activities	UJ	UJ
WS0		
To send and coordinate technical progress reports	UBU	January 2018
To check financial partners reports	UBU	January 2018

10. Next project meeting

4th project meeting

4th Project meeting will be held in Poland and organized by University Jagiellonski.

- Expected dates to be agreed by all project partners are: 18-22 June; 25-29 June or 2-6 July.

11. General questions and doubts

No questions and doubts were addressed.

Ms. Lorena Bachmaier concluded the meeting, thanking all partners for their participation and fruitful cooperation.



EUROCOORD

Annex I: presentations & attendance list



“Best practices for European Coordination on investigative measures and evidence gathering”

Kick-off Meeting

December 20th 2017

Universidad Complutense de Madrid

WSO “Management and Coordination of the Project”
Miriam Manrique (UBU) and Sandra Vilaplana (K-veloce I+D+i)

Partners:





WSO. TABLE OF CONTENTS

- *Summary*
- *Objectives of this workstream*
- *Task List & Gantt Diagram*
- *Description of the work (activities)*
- *Outputs of WS*



SUMMARY

Work stream Number: 0	Workstream name: Management and Coordination of the Project				
WS Leader	UBU	Start date	1 (dec 16)	End date	24 (nov 18)
Person-months per participant	UBU	UCM	UOP	UJ	
	9	3	3	3	



Objectives of this workstream

Workstream 0 is intended for all activities related to the general management and coordination of the project (kick-off meetings, coordination, project monitoring and evaluation, financial management) and all the activities which are cross cutting and therefore difficult to assign just to one specific workstream.



Task List & Gantt Diagram

UPDATED 20/12/2017		Year 1												Year 2											
		dic-16	ene-17	feb-17	mar-17	abr-17	may-17	jun-17	jul-17	ago-17	sep-17	oct-17	nov-17	dic-17	ene-18	feb-18	mar-18	abr-18	may-18	jun-18	jul-18	ago-18	sep-18	oct-18	nov-18
Lead Organisation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Workstream 0 (Management and Coord.)		UBU																							
1 Brussels Kick-off meeting	UBU	x	x																						
2 Project kick-off meeting	UBU	x	x		D0.2																				
3 2nd Project meeting	UOP						x	x		D0.3															
4 3rd Project meeting	UCM												x	x											
5 4th Project meeting	JU																		x						
6 Final Project Meeting	UBU																								x
7 Project monitoring and steering committee	UBU		D		x						x			D				x				x			D
8 Administrative and financial management	UBU																								
9 Ethics management	UBU																								
10 Preliminary and final evaluation	UBU					x							x					x						x	
Workstream 1 (National and European legislation)		UOP																							
1 Comparative research methodology	UOP	x	x											D1.1											
2 Jurisprudence analysis	UOP. All partners																								
3 Interviews	UOP. All partners					D																			
4 Analysis and assessment of the results	UOP								D																
Workstream 2 (legal protection)		UBU																							
1 Qualitative research methodology	UBU													D2.1											
2 Interviews and focus groups	UBU, UCM, UOP, UJ														D2.2										
3 Comprehensive and qualitative analysis	UBU, UOP, UJ																								D2.3
Workstream 3 (Code of Best Practises)		UCM																							
1 First draft	UCM																	x							
2 Discussion groups	UCM. All partners																					D			
3 Final version	UCM																						x		
4 Training courses planning and syllabus	UBU																								
Workstream 4 (Dissemination and training)		JU																							
1 Main website and updates	UBU		D																						D
2 Online debate and communication	UJ							D																	
3 Offline communication campaigns	UJ																								
4 Training courses and resources	UBU																								
5 European Observatory for the EIO	UJ, UBU, UOP																								D
6 Dissemination to policy makers	UJ, UBU, UOP																								
7 Scientific dissemination	UJ, UBU, UOP																								D
8 Events and conferences	UCM																							x	D



Description of the work

N o	Name and description of the activity		Partner	Month
1	Brussels Kick-off meeting with the Commission (M0). Project coordinator and financial coordinator will attend one-day kick of meeting in Brussels with the Commission.	DONE	UBU	1 → 4
2	Project kick- off meeting in Burgos (M1). 2 people of each partner will meet in Burgos to discuss project outcomes and implementation.	DONE	UBU	1 → 3
3	2nd project meeting in Palermo (M6). 2 people of each partner will meet in Palermo to discuss project outcomes and implementation. Associated partners will be invited.	DONE	UOP	6 → 8
4	3rd project meeting in Madrid (M12). 2 people of each partner will meet in Madrid to discuss project outcomes and implementation.	DONE	UCM	12 → 13



Description of the work

Nº	Name and description of the activity		Partner	Month
5	4th project meeting in Poland (M18). 2 people of each partner will meet in Poland to discuss project outcomes and implementation. Associated partners will be invited. <i>Date should be discuss it in this meeting.</i> <i>Suggested dates: 18-22 june, 25-29 june; 2-6 july</i>		JU	18
6	Final project meeting in Burgos (M24). 2 people of each partner will meet in Burgos to discuss project final results.		UBU	24
7	Project monitoring and steering committee. A monitoring strategy and steering committee will be established for a continued and informed steering of project implementation. This activity will be supported by an external evaluator.	DONE	UBU	4
8	Administrative and financial management (payments, financial statements and reporting)	In progress	UBU	
9	Ethics management The Ethical management will supports the Project Coordinator in ensuring the ethical procedures or the project.	In progress	UBU	
10	Preliminary and final evaluation (formative evaluation in order to assess adherence to objectives and results)	In progress	UBU	



Actions already done

Nº	Name and description of the activity
1	Drobox as repository tool. UBU in charge of manage it.
2	Consortium Agreement → already signed and submitted on 13/07/2017 in electronic services (SyGMA)
3	Financial templates and instructions to complete them done by UBU
4	Legal and financial instructions to report project costs on December 2017. <u>Responsible:</u> UBU <u>Addressed to:</u> partners. Specifically person in charge of European or international offices at universities. <u>When:</u> November 2017. <u>Description:</u> to give indications and instructions to fulfil with legal and financial issues related with project and Justice programme



Deliverables we should deal with

Name and description of the activity

TECHNICAL REPORTS

- WS 1: D1.2 jun-17 (UNIPA) ; D1.3 jun-17, D1.4 jul-17 (UNIPA)
- WS 2: D2.2 oct 17 (UBU); D2.3 nov 17 (UBU)
- Web site D4.4 –published, but we should do a report (UBU)
- D4.6 dissemination plan (UJ)

MANAGEMENT AND DISSEMINATION REPORTS

- D0.7 1st Annual Periodic activities (UBU) –
- D0.9 1st monitoring report by external evaluator (UBU) –
- D0.13 1st Steering committee meeting report (UBU) –



Deliverables we should deal with

D1.1	Compilation framework	WS1	3- UNIPA	Other	Confidential, only for members of the consortium (Including the Commission Services)	2	ene-17	Submitted: 07/09/17
D1.2	Relevant experience of professionals working on the field, a framework with specific items to be filled it will be elaborated	WS1	3- UNIPA	Other	Confidential, only for members of the consortium (Including the Commission Services)	7	jun-17	Delayed
D1.3	Diagnosis of the current situation through desk research and unstructured interviews in the countries of the Consortium (Spain, Italy, Poland), including associate partners	WS1	3- UNIPA	Report	Public	7	jun-17	Delayed
D1.4	National reports on EOI and common practices	WS1	3- UNIPA	Report	Public	8	jul-17	Delayed
D2.1	Current situation	WS2	1-UBU	Other	Confidential, only for members of the consortium (Including the Commission Services)	4	mar-17	Submitted: 12/09/17
D2.2	Common practices related with EIO and evidence transfer in Spain, Italy and Poland	WS2	1-UBU	Other	Confidential, only for members of the consortium (Including the Commission Services)	11	oct-17	Delayed
D2.3	National reports on EOI and common practices	WS2	1-UBU	Report	Public	12	nov-17	Delayed



723198 (EUROCOORD) JUST-AG

JUSTICE ACROSS EUROPE

Call: JUST-2015-JCOO-AG
Topic: JUST-2015-JCOO-AG-CRIMUnit: JUST/04

Summary for publication

Deliverables Ethics, DMP, Other Reports

Milestones

Critical Risks

Disseminat...

Patents (IPR)



Deliverables, Ethics, DMP, Other Reports

For each Deliverable, a single file (max 52MB) can be uploaded

WP No	Del Rel. #	Del No	Title	Description	Lead Be	Nature	Disseminat	Est. Del. Date	Receipt Date	Approval Date	Status
WP1	D1.1	D1	Project Handbook Manual	A manual (electronic) will be done to provide t...	UBU	Report	Confident	31 Jan 2017	21 Mar 2017		Submi...
WP1	D1.2	D2	Project Meetings reports	Kick off meeting report.	UBU	Other	Confident	31 Dec 2016	21 Mar 2017		Submi...
WP1	D1.3	D3	2nd Project meeting report	Minutes of the second project meeting.	UBU	Report	Confident	30 Jun 2017	04 Sep 2017		Submi...
WP1	D1.4	D4	3rd Project meeting report	Minutes of the third project meeting	UBU	Report	Confident	31 Dec 2017			Pending
WP1	D1.5	D5	4th Project meeting report	Minutes of the fourth project meeting	UBU	Report	Confident	30 Jun 2018			Pending
WP1	D1.6	D6	Final project meeting report	Minutes of the final project meeting	UBU	Report	Confident	30 Nov 2018			Pending
WP1	D1.7	D7	First Annual Periodic Activities	UBU will provide a consolidated progress report...	UBU	Report	Confident	30 Nov 2017			Pending
WP1	D1.8	D8	Second Annual Periodic Activities re	UBU will provide a consolidated progress report...	UBU	Report	Confident	30 Nov 2018			Pending
WP1	D1.9	D9	1st monitoring report by external e	UBU will meet every 6 months with external evalu...	UBU	Report	Confident	31 May 2017			Pending
WP1	D1.10	D10	2nd monitoring report by external e	UBU will meet every 6 month with external evalu...	UBU	Report	Confident	30 Nov 2017			Pending
WP1	D1.11	D11	3rd monitoring report by external e	UBU will meet every 6 month with external evalu...	UBU	Report	Confident	31 May 2018			Pending
WP1	D1.12	D12	4th monitoring report by external e	UBU will meet every 6 month with external evalu...	UBU	Report	Confident	30 Nov 2018			Pending
WP1	D1.13	D13	1st Steering committe meeting repi	Minutes of steering committe first meeting	UBU	Report	Confident	31 May 2017			Pending
WP1	D1.14	D14	2nd Steering committe meeting rep	Minutes of second sttering committe meeting	UBU	Report	Confident	30 Nov 2017			Pending
WP1	D1.15	D15	3rd Steering committe meeting rep	Minutes of 3rd steering committe meeting	UBU	Report	Confident	31 May 2018			Pending



Financial issues: payments

Payments:

Date of transmission to the coordinator of the evidences	Date of payment after validation by the coordinator	Percentage of the paid subsidy	Amount
DONE	At the signature of the Consortium Agreement	30%	73.675,80 €
31 December 2017 – Second payments Subject to having used around 50% of the budget allocated and subject to the receipt of financial and technical documents. The Beneficiary must have fulfilled all his obligations in the Grant Agreement on time	15/02/2018	25%	61.396,50 €
30 April 2018 – third payment Justification of around 85% of the expenses. Breakdown of the amounts claimed Technical report providing details of the implementation and results of the actions. The Beneficiary must have fulfilled all his obligations in the Grant Agreement on time	15/06/2018	10%	24.558,60 €

Next one:



Legal and financial issues

Kind remind: C.A. page 7.

Article 11 – Reports

1. The **Beneficiaries** shall provide the **Coordinator** with any information and document required for the preparation of the Final report, with certified copies of all the necessary supporting documents *completed and signed by the legal representative* by 31/12/2017, 30/04/2018 and by 30/11/2018, at the latest.

Timesheets



Legal and financial issues

Kind remind: C.A. page 7.

Why?

The project does not foreseen an audit BUT
it is SUBJECT TO BE audited.

The officer can ask for proof documents when deemed necessary
and at the end of the project for a representative collection.

The coordinator can review the expenses allocated.

Questions? Difficulties within entities?



Legal and financial issues

Kind remind: C.A. page 7.

Reporting:

- Scan documentation from the beginning of the project.
- Establish a periodicity of documentation collection (quarterly, for example).
- Update the template with the expenses executed quarterly.
- Fill in the Timesheet monthly.
- Monitoring and scanning of Trips-docs and invoice^c

UPLOAD IN DROPBOX





OVERALL BUDGET

	[A] Direct Personnel Costs (€)	[B.1] Direct travel costs (€)	[B.2] Direct subsistence costs (€)	[C] Direct costs of subcontracting (€)	[D] Direct costs of providing financial support (€)	[E] Other direct costs	[F] Indirect costs (€) Max 7% of direct costs (sum of budget categories A-E)	[G] Total costs (€) (A)+(B)+(C)+(D)+€+(F)	[H] Receipts	[I] Other Income (G-H-J)	[J] Requested grant
UBU	128.000 €	4.300 €	3.400 €	16.000 €	0 €	22.500 €	12.194 €	186.394 €	0 €	37.279 €	149.115 €
UCM	100.000 €	2.400 €	1.800 €	0 €	0 €	500 €	7.329 €	112.029 €	0 €	22.406 €	89.623 €
UOP	86.400 €	4.800 €	3.000 €	0 €	0 €	1.500 €	6.699 €	102.399 €	0 €	20.480 €	81.919 €
UJ	76.000 €	6.000 €	3.000 €	0 €	0 €	1.500 €	6.055 €	92.555 €	0 €	18.511 €	74.044 €
	390.400 €	17.500 €	11.200 €	16.000 €	0 €	26.000 €	32.277 €	493.377 €	0 €	98.675 €	394.702 €



Outputs

Nº	Output	Characteristics	Target group	
1	Project Handbook Manual (M2)	A manual (electronic) will be done to provide the information and processes of the project. Ethical issue process will be included. Language: English.	Partners - Internal documentation (CO)	D0.1 submitted on 21/3/17
2	Project Meetings reports	As a result of each project meeting an electronic report will be done. 5 status reports each 6 months, 1 final report. Language: English	Partners - Internal documentation (CO) – Associated partners Partners - Internal documentation (CO)	D0.2 submitted on 21/3/17
3	First Annual Periodic Activities report (M12)	UBU will provide a consolidated progress report to the European Commission. (M12). Ethical issues will be included. Language: English.	Partners - Internal documentation (CO)	Expected on Dec-17



Outputs

Nº	Output	Characteristics	Target group	
4	Second Annual Periodic Activities report (m24)	UBU will provide a consolidated progress report to the European Commission. (M12). Ethical issues will be included. Language: English.	Partners - Internal documentation (CO) – Associated partners	
5	Monitoring meetings with external evaluation	UBU will meet every 6 months with external evaluator to ensure that the project is implemented as planned. A monitoring report will be done each meeting (Months: 5,11,17,23). The evaluation will be presented in project meetings.	Partners - Internal documentation (CO) – Associated partners	
6	PSC meetings.	A steering committee will meet every four months in order to follow up on the progress of the project and discuss the preliminary results	Stakeholders (accused's rights) and Society (PU)	



FUTURE ACTIONS

Nº	Name and description of the activity	
1	Monitoring meeting with external evaluation. M12	UBU
2	PSC meeting to monitor technical achievements	UBU
3	Collect technical and economic information for the interim report, according to the templates already shared by the coordinator	UBU
4	Submit delayed deliverables	all



Discussion points

- Next Project meeting Poland. Organized by UJ.
 - Suggested dates: 18-22 june, 25-29 june; 2-6 july – to be agreed by project partners.
 - Venue: to be determined by UJ.



¿Questions?



“Best practices for European Coordination on investigative measures and evidence gathering”

2nd PROJECT MEETING

December 20th 2017

Universidad Complutense de Madrid

WS0 “Management and coordination of the project”

Miriam Manrique –UBU

Partners:





WSO. TABLE OF CONTENTS

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- *Description of the work (activities)*
- *Outputs of WS*



Description of the work

Achievements:

Brussels Kick-off meeting with the Commission (M0).

Project kick- off meeting in Burgos (M1).

2nd project meeting in Palermo (M6).

3rd project meeting in Madrid (M12).

TBD

4th project meeting in Poland (M18). 11-15 June. 18-22 June. 25-29 June. 2-6 July...



Description of the work

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UOP	86.400 €	4.800 €	3.000 €	0 €	0 €	1.500 €	6.699 €	102.399 €	0 €	20.480 €	81.919 €
UJ	76.000 €	6.000 €	3.000 €	0 €	0 €	1.500 €	6.055 €	92.555 €	0 €	18.511 €	74.044 €
	390.400 €	17.500 €	11.200 €	16.000 €	0 €	26.000 €	32.277 €	493.377 €	0 €	98.675 €	394.702 €



¿Questions?



“Best practices for European Coordination on investigative measures and evidence gathering”

3rd PROJECT MEETING

December 20th 2017
Universidad Complutense de Madrid

WS1 “Comparative analysis of specific national and European jurisprudence and legislation”

ANNALISA MANGIARACINA

Partners:





WS1. TABLE OF CONTENTS

- *Summary*
- *Objectives of this workstream*
- *Status of transposition of DEIO*
- *Italian Legislation*
- *The application of DEIO in relations to other legal instruments*
- *Activities excluded by DEIO*
- *Description of the work (activities)*
- *Outputs*
- *Work done*
- *Next steps*



SUMMARY

Work stream Number: 1	Workstream name: Comparative analysis of specific national and European jurisprudence and legislation				
WS Leader	UOP	Start date	February	End date	November
Person-months per participant	UBU	UCM	UOP	UJ	
	5	5	6	5	



Objectives of this workstream

See p. 18 of Project description and implementation:

“TO COMPILE, IN A UNIFORM MANNER, CURRENT LEGISLATION AND JURISPRUDENCE RELATED WITH THE EIO AT EUROPEAN AND NATIONAL LEVEL”: Italy, Spain and Poland.



Status of transposition of DEIO

Deadline for transposition: 22 May 2017.

EU MEMBER STATES (updated on 13 December 2017)

Approved: Belgium, Croatia, estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Netherlands, Portugal, Slovakia,, Sweden, United Kingdom.

Ongoing process: Austria, Bulgaria, Cyprus, Czeck Republic, Luxembourg, Poland, Romania, Slovenia, Spain.

Denmark and Ireland are not bound.



Italian Legislation

RECENT LAWS ON EUROPEAN COOPERATION IN THE GATHERING OF EVIDENCE:

- **Legislative Decree 5 April 2017, n° 97**, has implemented the 2000 Convention on Mutual Legal Assistance in Criminal Matters between MS of the EU.
- **Legislative Decree 21 June 2017, n° 108**, has implemented Directive 2014/41/UE on EIO (entered into force 28 July 2017).
- **Legislative Decree 3 October 2017, n° 149**, has amended Book XI Italian CPC regarding jurisdictional relationship with foreign authorities



The application of DEIO in relation to other legal instruments

Directive 2014/41 «replaces» the corresponding provisions of several instruments and among these: the 1959 ECMACM, as well as its two Additional Protocols; the CISA; the 2000 EU CMLACM; FD 2003/577/JHA, as regard freezing of evidence, and FD 2008/978/JHA (art. 34).

Any provisional rule is provided for by Legislative Decree on the EIO.

How to read the verb «replace».

See:

- 1) Eurojust-Note on the meaning of «corresponding provisions» and the applicable legal regime in case of delayed transposition of the EIO Directive- 2 May 2017;
- 2) Italian Minister of Justice – Handbook on the EIO, 26 October 2017



The application of DEIO in relations to other legal instruments

Following the **teleological/pragmatic interpretation** given by the Italian desk of Eurojust and by the European Judicial Network (EJN), the word “replaces” does not entail the automatic abolition of all previous normative instruments adopted in the field of judicial assistance: they will retain their application in situations where the DEIO is not applicable, such as for instance in relation with Denmark and Ireland, and also in relation with Member States that have not completely transposed the DEIO.

Same interpretation regarding FD EAW (ECJ, 12 August 2008, C-296/08 PPU, *Goicoechea*: the replacement under Article 31(1) of the FD of the conventions mentioned in that provision does not entail the abolition of those conventions, which retain their relevance in cases covered by a statement made by a Member State pursuant to Article 32 of the FD, and also in other situations in which the EAW system is not applicable (§ 58).



Activities excluded by DEIO

According to the text of DEIO:

Joint investigative teams and evidence gathered within such a team.

For Italy, see Legislative decree 15 February 2016, n° 134.

According to interpretation given by EUROJUST:

- Service and sending of procedural documents (Art. 5 MLA Convention);
- Spontaneous exchange of information (art. 7 MLA Convention);
- Transfer of criminal proceedings (art. 21 MLA Convention and the CoE Convention 1972 on the Transfer of proceedings)
- Returning of an object to a injured party (art. 8 MLA Convention and art. 12 II Additional Protocol), including a seizure only for this purpose
- Freezing of the property for the purpose of confiscation (FD 2003/577)
- Confiscation (FD 2006/783)



Activities excluded by DEIO

- Freezing of the accused assets for the purpose of compensation of the victim
- Measures on cooperation between customs authorities (Naples II)
- Exchange of criminal records (2009/315(ECRIS FD) with the exception of Art. 13 of 1959 Convention and where the EIO should be sent between judicial authorities
- Cross border surveillance and cross border pursuit (hot pursuit) (Articles 40 and 41 CAAS and recital 9 DEIO)



Description of the work

N o	Name and description of the activity	Partner	Month
1	Qualitative research methodology The coordinator will state a common methodology to ensure all information is provided in a scientifically adequate approach	UBU	3 Feb 17
2	Interviews and focus groups: Phase 1) Professionals of the legal system, judicial institutions, experts, lawyers... Phase 2) Police officers, NGOs members and volunteers and anti-discrimination experts	UBU, UCM, UOP, UJ	4 – 10 From Mar to Sept 17)
3	Comprehensive qualitative analysis of the data collected	UBU, UOP, UJ	8 – 12 From July to Nov 17



Outputs

Nº	Output	Characteristics	Target group
1	Current situation	In order to ensure the information about national practices, a framework with specific items interview protocols will be stated.	Partners (CO)
2	Common practices related with EIO and evidence transfer in Spain, Italy and Poland	Analysis of practices in the countries of the Consortium (desk research and unstructured).	Partners (CO)
3	<u>DELIVERABLE</u> National reports on EIO application and practices	Electronic deliverable (English, Spanish, Italian and Polish) It will compile the common practices in these countries	Academia, Juridical Authorities defence lawyers and legal aid lawyers, law enforcement officers and NGOs (PU)



Work done (1)

1) Qualitative research methodology:

UOP has redacted the first draft of a «Common methodology» in order to compile legislation, jurisprudence and references: draft was approved by the Coordinator and also by other Partners following a discussion.

The idea behind WS1:

- A) First of all focusing on normative instruments on the gathering of evidence abroad;
- B) Then analysing national legislation on the EIO, not in general, but focusing on specific issues that were problematic also in the context of Letters Rogatory (and using the experience in the context of EAW).



Work done (1)

2) Italian Report on EIO.

There is not still case-law. The legislative decree approved, at first sight, shows lights and shadows.

SPECIFIC ISSUES RELATED TO THE EIO:

SUBJECTS: who may request the issuing of an EIO (art. 1 § 3 DEIO).

A) Only the **judicial authority**: PP (during preliminary investigations) - judge (Art. 27 Italian LD). The PP is also competent to receive the EIO

Criminal proceedings (not administrative proceedings) - Proceedings for the application of an economic prevention measure



Work done (1)

B) EIO under request of defence (art. 31 Italian LD):

- the lawyer of person under investigation/accused; the lawyer of person under the application of an economic «prevention measure» (such as confiscation);

Request submitted to the PP or to the judge, with the specification of the investigative measure and reasons that justify the measure itself.

If the request is refused, the PP adopts a reasoned decree.

The judge issues a decision («ordinanza») after having heard parties.

Weak points:

- the victim is not among subjects who may request the issuing of an EIO;



Work done (1)

- against the refusal is not provided a remedy.

NOTHING IS CHANGED?

Following case-law on Letters Rogatory, it should be possible to apply a remedy named «incidente di esecuzione» (in this sense see M.R. Marchetti, Member of the Commission that elaborated the draft of Legislative decree).



Work done (1)

PARTICIPATION IN THE EXECUTION OF THE EIO (art. 9 §§ 4 and 5 of DEIO):

Art. 29 (Italian LD):

PP - by agreement with the executing authority – can participate directly or through one or more officials of the judiciary police in the execution of the EIO. With this aim the PP can also promote the setting up of a **joint investigation team** (in this case it applies d.lgs. 15.02.2016, n. 34).

The **judge** who issued the EIO may request the execution authority to participate in the execution of the EIO.

Any reference to the participation of the defence. However the defence could request to take part to the act (any obligation to admit the request).



Work done (1)

GROUND FOR NON-RECOGNITION OR NON EXECUTION (art. 11 DEIO).

Art. 10 Italian LD: **all grounds are mandatory;**

- **Principle of legality:** Where the investigative measure does not exist under the law of the executing State or where there are not the conditions imposed by Italian law to perform the investigative measure requested – so translated the ambiguous term unavailability – the PP, under communication with the issuing authority, may resort to different investigative measures that would achieve the same result. The impossibility to execute the request, according to this provision, is deemed as a ground for refusal, that is added to the grounds listed in the following Article 10 of Italian LD (Article 9 § 3, recalled in the *incipit* of Article 10 § 1).



Work done (1)

Principle of proportionality: Italian LD has provided that, under agreement with the issuing authority, recourse to an investigative measure other than that provided in the EIO and that would achieve the same result, is possible also where the EIO is not proportionate (Art. 9 § 2). Excluded for acts mentioned in Art. 9 § 2.

Definition in Art. 7: an EIO is not proportionate where from its execution can derive a prejudice to the rights and liberties of a defendant, a person under investigation or other persons involved and the prejudice is not justified by investigation or evidentiary needs concerning the practical case, keeping into account the seriousness of the offences and the penalty provided for.

IS NOT AN ADDITIONAL GROUND FOR REFUSAL



Work done (1)

- **Ne bis in idem**: Italian and European case-law.

The concept of final judgment:

the principle of *ne bis in idem* laid down in Article 54 of the CISA, read in the light of Article 50 of the CFREU, must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, cannot be characterised as a final decision for the purposes of those articles when it is clear from the statement of reasons for that decision that the procedure was closed without a detailed investigation having been carried out (CJEU, 29 June 2016, Kossowski).



Work done (1)

- **Principle of territoriality:** is not among grounds for refusal at national level. According to the Handbook on EIO, issued by the Minister of Justice, in case of an EIO issued for an offence committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, it is applicable the general condition of double criminality, with its exceptions where the EIO has been issued for offences listed in Art. 11 DEIO or for acts mentioned in Art. 9 § 5.
- **Double criminality:** the Italian judicial authority has to assess whether the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State: any relevance has the nomen juris (it is sufficient that the conduct is in concreto punishable as an offence in both States, being irrelevant the different sanctioning treatment, the different nomen iuris and other elements which are necessary for the offence: C, VI, n. 22249/17, regarding EAW)



Work done (1)

- although is not provided as a ground for refusal the condition that the measure indicated in the EIO is restricted to a list or category of offences or to offences punishable by certain threshold (Art. 11 lett. h) DEIO) are to mention art. 9 § 3 of Italian LD and specific provisions related to certain investigation acts. So, will be refused the recognition of and order of interception issued for an offence not listed in Art. 266 It CPC.

Grounds for refusal for specific investigative measures:

- Temporary transfer to the issuing State of persons held in custody (Art. 16 Italian LD): the person in custody does not consent or the transfer is liable to prolong the detention of the person in custody;
- Hearing by videoconference (Art. 18 Italian LD): the suspected or accused does not consent;



Work done (1)

- Covert investigations (Art. 21 Italian LD): when the execution of the measure would not be authorised in a similar domestic case; it was not possible to reach an agreement on the arrangements for the covert investigations.
- Interception of telecommunications with technical assistance of the Italian judicial authority (art. 23 Italian LD): where the interception would not have been authorised in a similar domestic case.



Work done (1)

LEGAL REMEDIES AT NATIONAL LEVEL: (relevant new provision if compared with letters rogatory)

The decree which recognises the EIO is communicated, by the secretary of the PP, to the lawyer of person under investigation, following terms provided by Italian law (Art. 4 § 4 Italian LD): where the act to perform is the interview of the person under investigation, the defence lawyer must be informed almost twenty-four hours in advance (Article 364 § 3 CPP). Where the measure requested is “a surprise” measure (such as a search or a seizure) the defence has the right to participate to the act but not the right to be informed in advance. In such a case the decree is communicated at the moment of performing the act or immediately after (Article 4 § 4).

Any communication is given to the lawyer in case of measures such as an interception, for which Italian law does not provide any right to participate to the act by the defence. As a consequence is not available the remedy of opposition to the judge for preliminary investigations.



Work done (1)

Within five days since the communication of the decree which recognise the EIO, a person under investigation and their defence lawyer, can submit an **“OPPOSITION” to the judge for preliminary investigations**, who decide having heard a Public prosecutor. The “remedy” does not suspend the execution of the EIO and the transmission of results of activities performed; but the PP could decide do not transmit the result of investigations if it would cause serious and irreversible damages to the person under investigation, to the accused or to the person interested by the act (Art. 13 § 4). Should the opposition being accepted, the decree is annulled, a decision that must be communicated “immediately” to the requesting authority (Article 6 § 4).

Assessment of grounds for refusal.



Work done (1)

In case of a decree related to the execution of a seizure aimed at evidence (Art. 13 § 7): the opposition, to be submitted, in the absence of a specific rule, within five days, can be submitted by a person under investigation, a defendant, a **person to whom evidence or have been seized and the person who has the right to the restitution**. The judge will decide *in camera*, following Article 127 CPC (participation is not mandatory) and against the decision is provided the recourse to the Supreme Court, only for violation of law, by a public prosecutor and who is “interested”. The court will decide, *in camera*, within thirty days since has received the recourse, which does not have any suspensive effect.



Work done (1)

INTERCEPTION OF TELECOMMUNICATIONS WITHOUT TECHNICAL ASSISTANCE:

The intercepting MS shall notify the competent authority of the notified MS of the interceptions: it is a new provision for our legislation.

Following Italian case law, the recourse to **routing (“instradamento”)** – it means conveying of phone call departing from abroad to a place in Italy (*a fortiori* in case of phone call from Italy towards abroad, conveyed through a service provider located in Italy) – does not imply any violation of provisions on letters rogatory, because all the activity of interception, reception and registration of phone call is performed in Italy, while is necessary the letter rogatory for intervention abroad related to interceptions of conversations abroad or captured only by a foreign service provider (See, lastly, Cass, IV, 5 April 2017, n. 46968).



Work done (1)

Different is the perspective of DEIO: reference to the territory of the State where is located the “target” of the measure. Competent for the notification is the PP.

TWO CLARIFICATIONS (Handbook on EIO):

1) Notification is not necessary where, being the interception executed on a device located in the Italian territory, are captured conversations incoming/ougoing towards persons who are in the territory of another MS (indirect interceptions);

2) The recourse to “routing” is still possible for targets located in the territory of States that are not bounded by DEIO, as well as by EU CMLACM.



Work done (2)

Interviews:

- UOP has contacted Public prosecutors, judges, and defence lawyers with experience in the field of judicial cooperation.
- Many difficulties with lawyers.

PROVISIONAL RESULTS:

- No specific training in this field;
- General satisfaction, except for delay in executing requests.



Next steps

- Comparative analysis – Italy, Spain and Poland – and assessment of results.
- Monitoring and analysis of case law on EIO



¿Questions?



“Best practices for European Coordination on investigative measures and evidence gathering”

3rd PROJECT MEETING

December 20th, 2017

Universidad Complutense de Madrid

WP2 “COMPREHENSIVE RESEARCH ON LEGAL PROTECTION IN THE EU MEMBER STATES UNDER EIO PROVISION”

Mar Jimeno Bulnes - UBU

Partners:





WSX. TABLE OF CONTENTS

- *Summary*
- *Objectives of this workstream*
- *Task List & Gantt Diagram*
- *Description of the work (activities)*
- *Outputs of WS*
- *Work done*
- *Achievements*
- *Next steps*
- *Questions?*



SUMMARY

Work stream Number: 2	Workstream name: COMPREHENSIVE RESEARCH ON LEGAL PROTECTION IN THE EU MEMBER STATES UNDER EIO PROVISION				
WS Leader	UBU	Start date	3 (Feb – 17)	End date	12 (Nov – 17)
Person-months per participant	UBU	UCM	UOP	UJ	
	8	2	2	2	



Objectives of this workstream

Project description and implementation (p.19):

To analyse the current practices on juridical protection for accused individuals, evidence gathering and investigative measures in Spain, Italy and Poland.

It should be considered the qualitative assessment of the unstructured data, collected through interviews and focus groups.

Duration in months: 10



Task List & Gantt Diagram

		Year 1											
		dic-16	ene-17	feb-17	mar-17	abr-17	may-17	jun-17	jul-17	ago-17	sep-17	oct-17	nov-17
Workstream 2 (legal protection)	UBU												
1 Qualitative research methodology	UBU												
2 Interviews and focus groups	UBU, UCM, UOP, UJ												
3 Comprehensive and qualitative analysis	UBU, UOP, UJ												D



Description of the work

N o	Name and description of the activity	Partner	Month
1	Qualitative research methodology The coordinator will state a common methodology to ensure all information is provided in a scientifically adequate approach	UBU	3 Feb 17
2	Interviews and focus groups: Phase 1) Professionals of the legal system, judicial institutions, experts, lawyers... Phase 2) Police officers, NGOs members and volunteers and anti-discrimination experts	UBU, UCM, UOP, UJ	4 – 10 From Mar to Sept 17)
3	Comprehensive qualitative analysis of the data collected	UBU, UOP, UJ	8 – 12 From July to Nov 17



Outputs

Nº	Output	Characteristics	Target group
1	Current situation	In order to ensure the information about national practices, a framework with specific items interview protocols will be stated.	Partners (CO)
2	Common practices related with EIO and evidence transfer in Spain, Italy and Poland	Analysis of practices in the countries of the Consortium (desk research and unstructured).	Partners (CO)
3	<u>DELIVERABLE</u> National reports on EIO application and practices	Electronic deliverable (English, Spanish, Italian and Polish) It will compile the common practices in these countries	Academia, Juridical Authorities defence lawyers and legal aid lawyers, law enforcement officers and NGOs (PU)



Work done (I)

N o	Name and description of the activity	Partner	Month
1	Qualitative research methodology The coordinator stated a common interview in both different models for judges/public prosecutors and lawyers/NGOs (2 DELIVERABLES)	UBU	4 March 2017
2	Interviews and focus groups: Phase 1) Professionals of the judicial institutions such as judges and public prosecutors, lawyers Phase 2) NGOs members and lawyers on behalf of NGOs	UBU, UCM, UOP ? UJ ?	5 – 10 From April to Sept 17)



Work done (II)

- Agreement between partners in order to elaborate different models of interview including same and different questions for:
 - Judges and public prosecutors: 22 questions
 - Lawyers and NGOs members: 18 questions
- Open interview takes place including questions related to:
 - General questions related to experience and specific training
 - Experience in EU judicial cooperation: conventions employed, duration of proceedings, success of judicial cooperation
 - Cross-border evidence: sort of assistance, application of *lex loci/forum*, possible reduction of procedural rights, practice on interception of communications abroad, authorization of executing state, transmission of data for other proceedings
 - Opinion on further EIO: improvement on judicial cooperation, provisional functioning till definitive application in all MMSS, behaviour on data protection and observance of principle of specialty
- Few specific questions addressed to lawyers, eg, possibility of representation in the executing country, possible disadvantage of defence lawyers in transnational cases



Achievements (Spain) I

- Spain elaborated 2 lists with names of:
 - o 20 judges and public prosecutors belonging to European institutions (Eurojust, EJM, liaison magistrates) and Spanish courts (Supreme Court, National Court)
 - o 15 lawyers including independent lawyers as well as lawyers working on NGOs (Fair Trials International, Rights International Spain-RIS, International Amnesty)
- Interviews are shared between UCM (M. Aguilera Morales and L. Bachmaier Winter) and UBU (M. Jimeno Bulnes)
- Method: face to face if possible (mostly of them work in Madrid, not far either from Burgos), otherwise skype (eg, Spanish liaison magistrate attached to Morocco)
- Many of them have been recorded (M. Jimeno Bulnes) and all of them have name although there shall be anonymous in further national report
- Spain has finished interviewing last September: 18 judges/prosecutors and 8 lawyers
- Unfortunately not all planned interviews shall be possible, especially in the case of the lawyers (different reasons are argued by them eg, no practice, work)
- Nevertheless, the interviews already carried out include very interesting information



Achievements (Spain) II

- Same questions addressed to judges/prosecutors and lawyers have different answers eg. In relation with reduction of procedural guarantees and/or possibility of representation by defence lawyer in the executing country
- Many answers are coincident in both cases, in relation to judges/prosecutors and in relation to lawyers:
 - Conventions employed: Convention 1959, Convention 2000, EAW instruments
 - Specific training by General Council of the Judiciary Branch
 - Requests on EAW, declaration of the suspect and/or witnesses, intervention of communications (phone), freezing
 - Problems on admissibility of evidence by Spain in some cases eg. Police questioning without defence lawyer (UK and Germany), no admission of videoconferencing by some countries (France), intervention of communications in some countries do not require judicial order...
 - Specific difficulties pointed by lawyers eg, need of specific legal aid provision in relation to EAW (now in Madrid only concerning National Court), poor quality of translations, lack of knowledge on judicial cooperation by judicial civil servants...



Next steps (UBU)

- To elaborate common methodology framework in order to elaborate national reports on judicial cooperation practice by Italy, Poland and Spain
- To analyse, read and listen all interviews carefully in order to prepare national report as deliverable
- Report shall include assessment on national practices according to information provided through answers to interviews in following topics:
 - Practices on EU judicial cooperation and cross-border evidence
 - Opinion on further implementation of EIO in Spain
- Report should identify present problems on the practice of EU judicial cooperation related to cross-border evidence before EIO implementation
- Months: January-February (delay due to delay on WS1 still unfinished in Spain waiting to definitive approval on EIO implementation)
- Methodology: to be discussed and agreed (Proposal: same as WS1)
- Persons in charge at UBU: J. Pérez Gil and F. Valbuena González
- Assistant: recent Eurocoord contract in favour of Serena Cacciatore (8 Jan. 2018)



¿Questions?



“Best practices for European Coordination on investigative measures and evidence gathering”

2nd PROJECT MEETING

December 20th 2017

Universidad Complutense de Madrid

WS3 “Proposal for a Code of Best Practice: enactment, debate and training”
Lorena Bachmaier – Complutense University of Madrid

Partners:





WS3. TABLE OF CONTENTS

- *Summary*
- *Objectives of this workstream*
- *Task List & Gantt Diagram*
- *Description of the work (activities)*
- *Outputs of WS*



SUMMARY

Work stream Number: 3	Workstream name: Proposal for a Code of Best Practice: enactment, debate and training				
WS Leader	UCM	Start date	Dec.2017	End date	Nov.2018
Persons months	UBU	UCM	UOP	UJ	
	5	6	3	3	



		Year 1												Year 2											
		dic-16	ene-17	feb-17	mar-17	abr-17	may-17	jun-17	jul-17	ago-17	sep-17	oct-17	nov-17	dic-17	ene-18	feb-18	mar-18	abr-18	may-18	jun-18	jul-18	ago-18	sep-18	oct-18	nov-18
Lead Organisation		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Workstream 0 (Management and Coord.)		UBU																							
1 Brussels Kick-off meeting	UBU	x																							
2 Project kick-off meeting	UBU	x	→	x																					
3 2nd Project meeting	UOP						x																		
4 3rd Project meeting	UCM											x													
5 4th Project meeting	JU																		x						
6 Final Project Meeting	UBU																							x	
7 Project monitoring and steering committee	UBU		D		x			x				D					x			x				D	
8 Administrative and financial management	UBU																								
9 Ethics management	UBU																								
10 Preliminary and final evaluation	UBU					x						x						x						x	
Workstream 1 (National and European legislation)		UOP																							
1 Comparative research methodology	UOP		→																						
2 Jurisprudence analysis	UOP, All partners																								
3 Interviews	UOP, All partners						D																		
4 Analysis and assessment of the results	UOP								D																
Workstream 2 (legal protection)		UBU																							
1 Qualitative research methodology	UBU																								
2 Interviews and focus groups	UBU, UCM, UOP, UJ																								
3 Comprehensive and qualitative analysis	UBU, UOP, UJ												D												
Workstream 3 (Code of Best Practises)		UCM																							
1 First draft	UCM																	x							
2 Discussion groups	UCM, All partners																				D				
3 Final version	UCM																					x			
4 Training courses planning and syllabus	UBU																								
Workstream 4 (Dissemination and training)		JU																							
1 Main website and updates	UBU		D																						
2 Online debate and communication	UJ							D																	
3 Offline communication campaigns	UJ																								
4 Training courses and resources	UBU																				D				
5 European Observatory for the EIO	UJ, UBU, UOP																								



Outputs

Nº	Output	Characteristics	Target group
1	Current situation	In order to ensure the information about national practices, a framework with specific items interview protocols will be stated.	Partners (CO)
2	Common practices related with EIO and evidence transfer in Spain, Italy and Poland	Analysis of practices in the countries of the Consortium (desk research and unstructured).	Partners (CO)
3	<u>DELIVERABLE</u> National reports on EIO application and practices	Electronic deliverable (English, Spanish, Italian and Polish) It will compile the common practices in these countries	Academia, Juridical Authorities defence lawyers and legal aid lawyers, law enforcement officers and NGOs (PU)



Objectives of this workstream

Elaborate Code of best Practices on the use of the EIO

- Beyond transposition into domestic law
- Beyond critical approach to Directive EIO
- Interpretation and Implementation

Codes of Best Practices

“Perhaps more important, and more vibrant, than any of these new approaches to rulemaking is the recent turn to "best practices" instead of rules to ensure the success of legal framework and regulatory programs.” (D. Zaring, New York Univ. Law Review, April 2006)



Code of Best Practices

LEAD BY EXAMPLE

At their core, beSt practices are a method of regulation that works through horizontal modeling rather than hierarchical direction.

In a classic “best practices” scheme the entities and authorities themselves devise practices to comply with the legal or regulatory requirements

These practices are publicized as “best” but are not mandated.

Guidelines, create common practices, although always not ideal



Structure?



First Option

Follow structure of the recently published Handbook for the issuing and execution of the EAW (2017 / C355 / 01) DOUE 6.10.17

Outline:

1. Introductory chapter (background, purpose, scope of application, content, form and time of the communication between the issuing State and the State of execution ...)

which would be followed by two additional chapters, regarding

2. The issuing of an EIO and

3. The execution of the EIO.



IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

Commission Notice — Handbook on how to issue and execute a European arrest warrant

(2017/C 335/01)

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Structure?



Second Option

Follow the structure of Directive 2014/41/EU itself.

On the other hand, but also with a view to specifying the Code of Best Practices, it would be advisable to consider the possibility of including, where necessary, the problems that are deemed appropriate with respect to each of the legal systems

(eg, in Spain, issues of transitional law, prosecutorial investigation proceedings, subsidiary jurisdiction courts in relation to the enforcement authority, etc.).



Content



Focus in detail on problematic points that require further guidance and interpretation

1) Scope of application (art.4 D EIO)

Check scope in each of the three MS within EUROCOORD and compare

Eventually check with other relevant MS

Transfer of evidence from administrative offence proceedings that amount to “criminal charges”

Guidelines



Content



2) The “issuing authority” (art. 2 c)

Poltorak C-452/16: NOT POLICE

**Kovalkovas C-477/16: NOT MINISTRY OF JUSTICE, both
10.11.2016 and EAW**



Content

EIO and protection Procedural Rights Suspect/Defendant

By issuing authority:

- Checking proportionality + necessity
- Only if provided for “similar” domestic case
- “Judicial” order or judicial validation
- Judicial order also for non-coercive measures: more safeguards in cross-border evidence than in national evidence?
- Remedies BUT AT WHAT MOMENT? WILL DEPEND ON NATIONAL RULES
- Rules on admissibility of evidence, certain check introduced (art. 14.7) but no harmonization.



Content

3) The executing authority:

Domestic rules apply, eg. witness immunities

Refusal if measure not provided or limited to list of offences, but possibility to adopt another one. (ART.10)

Proportionality test: change of measure if another measure is less intrusive and same aims (10.3)

Judicial authorization if needed in domestic rules (2.d)

Possibility of “consultations” on necessity/proportionality (art.6.3) IF DOUBTS!!

Remedies



Content

4) Grounds for refusal

Poplawski Case 29 June 2017, C-579/15

- a) immunities or privileges (art. 11.1.a).
- b) grounds of national security or national interest, as well as intelligence activities (art. 11.1 b).
- c) the measure requested is not foreseen in the executing state and no other measure available would serve to achieve a similar result (art.10.5 + 11.1 h)
- d) the EIO would not be authorised in a similar national case. (art. 10.5 D EIO + 11.1c)
- e) ne bis in idem, jurisdiction ,against FR (art.11.1d,e,f)



Content

5) Gathering, access and transfer of electronic evidence

1. Access with technical assistance of the executing state (art. 31 DEIO)
2. Access without technical assistance of the intercepted state: need to notify, but if measure not allowed in that territory, possibility notified state to refuse its use (art. 32.2 b) DEIO).



Content

Further:

- 6) Relationship EIO and JITS: which way better for which cases?
- 7) Relationship EIO and EAW: overlapping rules? Transfer of suspect?
- 8) How to deal with multiple EIOs?
- 9) Eio and the EPPO: EPPO as a “judicial authority under art.2 Directive?
- 10) Language of the EIO
- 11) Data protection issues



Any Questions?



“Best practices for European Coordination on investigative measures and evidence gathering”

3rd PROJECT MEETING

December 20th 2017

Universidad Complutense de Madrid

WS4 “DISSEMINATION”

Adam Górski

Krzysztof Michalak

UJ

Partners:





WS4. TABLE OF CONTENTS



-
- *Preface*
 - *Objectives of this workstream*
 - *Task List (scheduled and already made)*
 - *General description of the work (activities)*
 - *Outputs of WS4*
 - *Other inquiries/matters*
 - *Summary*



SUMMARY



Work stream Number: 4	Workstream name: Training and Dissemination				
WS Leader	JU, Adam Górski	Start date	1 (1 Jan 2017)*	End date	24 (1 Jan 2019)
Person-months per participant	UBU	UCM	UOP	UJ	
	5	4	4	6; for details see. GA pp. 21	



WS 4 ACTIVITIES



General description of our activities
(GA, CA, other relevant docs)



WS 4 ACTIVITIES



→ Due to its perpetual duration activities in WS4 are not divided in phases (see: General Agreement, PART B - SUBMISSION TEMPLATE PROJECT DESCRIPTION AND IMPLEMENTATION, description of WS and Activities pp. 21 - 23, and compare to pp. 18 – 19)

Dissemination activities description:

General:

Web page

Social media campaign

Leaflets

Participation in international events

Workshops

Local events

Other

For details see: “dissemination plan” in Dropbox



WS 4 ACTIVITIES



Detailed (Dossier for main aims, tools, responsible person, aims achievements and other):

WEB Site : UBU and UJ responsible of the coordination on this task (contents managing, translations, etc.) March 2017- November 2018;

Krzysztof Michalak shall be directly responsible for the content of website, under supervision of Adam Gorski (among UJ as participant):

MOODLE(learning platform) module of the WEB Site for training courses and materials;

Krzysztof Michalak, Adam Gorski, with Mar Jimeno Bulnes participation will be responsible for the content of moodle;

Establishment of presence, communication and debate on social media channels;



WS 4 ACTIVITIES



Detailed (Dossier for main aims, tools, responsible person, aims achievements and other):

Dissemination of research achievements will take place in common social medias such as: Twitter and other means;

Launching a dedicated blog concerning outcomes of EUROCOORD, which will be broadcasted (linked to) on several websites of Universities in Poland, Spain and Italy;

Achievement of specific objectives, such as: generation of the required knowledge to optimise the implementation of the EIO in criminal matters, specifically, the transmission of evidence;

Involvement of relevant stakeholders with the competencies and protocols needed in order to make easier the cooperation and admissibility of evidence across different countries;



WS 4 ACTIVITIES



Detailed (Dossier for main aims, tools, responsible person, aims achievements and other):

Aim is also to rise awareness, disseminate knowledge generated and train professionals with a multiplying potential;

Above mentioned will be achieved by tools such as: Main website and updates, Online debate and communication, Offline communication campaigns, Training courses and resources, European Observatory for the EIO, Dissemination to policy makers, Scientific dissemination, and dedicated events and conferences

Offline communication campaign, newspapers, professional publications and, in general, non-specific and specific press



WS 4 ACTIVITIES



Undertaken and ongoing steps and actions



WS 4 ACTIVITIES



-
- Administrative preparatory steps;
 - Proper empowerment;
 - Other;



WS 4 ACTIVITIES



-
- **Agreements and intent letters with NGOs and public institutions;**
 - **Interviews with law professionals;**
 - **EU – funding visibility logo;**
 - **Websites;**
 - **Publications;**
 - **Social media campaign;**
 - **Other;**



WS 4 ACTIVITIES



Agreements and intent letters with NGOs and public institutions:

- Fair Trials Europe
- Fair Trials International
- ICJ – International Commission of Jurists (Geneva bureau)
- Fundacja Court Watch Polska
- Commissioner for Human Rights in Poland (Ombudsman)



WS 4 ACTIVITIES



Interviews with law professionals:

- Over a dozen of prosecutors bureaus and Courts of different instances, in more than four voivodeships, was already visited with our interviews;



WS 4 ACTIVITIES



Interviews with law professionals:

- Forms of interviews are worked in manner, whichlet provide overall effects of it in future (proper data management).



WS 4 ACTIVITIES



**Sometimes we do not
obtain approval for
interviews:**


PROKURATURA OKRĘGOWA
w OSTROWIE WIELKOPOLSKIM
ul. Krotoszyńska 37
63-400 Ostrów Wielkopolski

Ostrów Wielkopolski, dnia 16 listopada 2017 roku

PO IV WOS 067.1.2017

Pan
Krzysztof Michalak
k.michalak@doctoral.uj.edu.pl

W nawiązaniu do Pana pisma z dnia 9 listopada 2017 roku informuję, że prokuratorzy Prokuratury Okręgowej w Ostrowie Wielkopolskim nie są zainteresowani uczestnictwem proponowanym przez Pana osobistym przeprowadzeniem z nimi ankiet.

JG/IP

PROKURATOR OKRĘGOWY

Paweł Szymanowski



WS 4 ACTIVITIES



EU – funding visibility logo:

- Using a EU funding visibility logo as well as using logos of our project in every, both internal and external, correspondence.



WS 4 ACTIVITIES



Websites:

- UJ official website, and official website of Chair of Criminal Procedure UJ is used as a dissemination tool, in meaning given by the GA, to make our activities popular.



WS 4 ACTIVITIES



Publications:

- Publications in widely read press such as „Rzeczpospolita”, about polish legislative undertakings in implementation of EIO;
- (Professor Adam Górski, PhD Ariel Falkiewicz).



WS 4 ACTIVITIES



Social media campaign:

- Social media campaign: **Twitter** used as a contact platform (prominent persons and popular organisation in polish public life).



Description of the work



N o	Name and description of the activity	Partner	Month
1	<p>Qualitative research methodology</p> <p>The coordinator will state a common methodology to ensure all information is provided in a scientifically adequate approach</p>	UBU	3 Feb 17
2	<p>Interviews and focus groups:</p> <p>Phase 1) Professionals of the legal system, judicial institutions, experts, lawyers...</p> <p>Phase 2) Police officers, NGOs members and volunteers and anti-discrimination experts</p>	UBU, UCM, UOP, UJ	4 – 10 From Mar to Sept 17)
3	<p>Comprehensive qualitative analysis of the data collected</p>	UBU, UOP, UJ	8 – 12 From July to Nov 17



Nº	Output	Characteristics	Target group
1	Current situation	In order to ensure the information about national practices, a framework with specific items interview protocols will be stated.	Partners (CO)
2	Common practices related with EIO and evidence transfer in Spain, Italy and Poland	Analysis of practices in the countries of the Consortium (desk research and unstructured).	Partners (CO)
3	<u>DELIVERABLE</u> National reports on EIO application and practices	Electronic deliverable (English, Spanish, Italian and Polish) It will compile the common practices in these countries	Academia, Juridical Authorities defence lawyers and legal aid lawyers, law enforcement officers and NGOs (PU)



Future actions



Nº	Name and description of the activity	Partner
1	Qualitative research methodology	UBU



Thank for your attention

Questions or doubts?



EUROCOORD

Best practices for EUROpean COORDination on investigative measures and evidence gathering

12 Month Project Meeting

December 20th 2017

Organized by: Universidad Complutense Madrid

Venue: Faculty of Law, Universidad Complutense, 5th Floor new building,
Meeting Room. Avda. Complutense s/n, Ciudad Universitaria
Madrid 28040

ATTENDANCE LIST

ATTENDEE	PARTNER	SIGNATURE
Adam Gorski	U7	
KRZYSZTOF MICHALUK	US	
Ulicium Hennique	UBU	
VINCENZO MITELLO	U	
Marian Aguilera	UCM	
Dr. Lorenzo Bula	UBU	
ANNAISA MANGIAPANICHI	UNIPA	
Lorena Buchman	UCR	

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