

The Act of 6 June 1997
The Code of Criminal Procedure
(consolidated text - Journal of Laws of 30 June 2022, item 1375)

Chapters 62c and 62d of the
(extracts related to the European Investigation Order)

Part XIII - Proceedings in criminal cases from international relations

**Chapter 62c - Request to a Member State of the European Union to carry out
investigative measures on the basis of the European Investigation Order**

Article 589w

§ 1. If it is necessary to take or obtain evidence that is located or may be taken in the territory of another Member State of the European Union, referred to in this chapter as the "executing State", the court before which the case is pending, or the prosecutor conducting the pre-trial proceedings may issue, *ex officio* or at the request of a party, defence counsel or representative, an European Investigation Order, referred to in this chapter as the "EIO", unless the EIO is not applicable in that Member State.

§ 2. In the case of the Police or the authorities referred to in Article 312, investigation or screening proceedings referred to in Article 307, or in the case of pre-trial proceedings by the authorities referred to in Article 133 § 1 and Article 134 § 1 of the Fiscal Criminal Code, the EIO may also be issued by the authority conducting the proceedings. The EIO requires validation by the prosecutor.

§ 3. The EIO may also be issued in order to secure traces and evidence of an offence against their loss, distortion or destruction.

§ 4. The decision to issue an EIO concerning the interception and recording of telephone conversations and the recording, using technical means, of the content of other conversations or information transfers, including correspondence sent by e-mail, replaces the decision referred to in Article 237 § 1. The provisions of Chapter 26 shall apply accordingly.

§ 5. The decision to issue an EIO concerning evidence, the admission, obtaining or carrying out of which requires the issue of the decision, replaces this decision. The provisions on individual activities and evidence shall apply accordingly.

§ 6. If the EIO has been issued in connection with the activities referred to in § 4, it is transmitted to the executing State, in which the person to whom the EIO concerns is or will be staying.

§ 7. In the case of conducting operational and intelligence activities on the basis of separate provisions, the EIO is issued by the authority conducting such activities upon prior agreement with the competent authority of the executing State on their duration and conditions for their performance. The issuing of an EIO requires validation by the competent prosecutor under separate regulations, unless the admission, obtaining or taking of evidence is reserved to the jurisdiction of the court. In such a case, the issue of an EIO requires approval by a competent court based on separate provisions.

Article 589x

The issue of an EIO is inadmissible if:

- 1) it is not required by the interest of the administration of justice;
- 2) Polish law does not allow taking or obtaining a given evidence.

Art. 589y

§ 1. The EIO contains:

- 1) designation of the authority issuing and validating the EIO, indicating their addresses, telephone numbers, fax numbers and e-mail addresses;
- 2) date and indication of the place of issue of the EIO;
- 3) identification of the requested investigative measure subject to the EIO or the evidence to be obtained or the circumstances to be established as a result of the investigative measure;
- 4) available data specifying the identity and nationality of the person to whom the EIO applies, as well as the address of residence or other address, including the address of the prison, if that person is staying there;
- 5) reference number of the files and indication of the type of proceedings in connection with which the EIO was issued;
- 6) a description and a legal qualification of the act being the subject of the proceedings;
- 7) a concise description of the circumstances of the case.

§ 2. The EIO contains a reference to the previously issued EIO, if it is related to it, together with the date of its issue, the designation of the authority to which it was transmitted, and the reference number of the files assigned by the issuing authority and the executing State.

§ 3. If the EIO is issued in order to secure traces and evidence of an offence against their loss, distortion or destruction, it also contains information on whether the trace or evidence is to be transferred to the authority issuing the EIO, or is to remain in the executing State. If the trace or evidence is to remain in the executing State, the issuing authority of the EIO shall specify the period for which the traces or evidence should be frozen.

§ 4. The EIO should be translated into the official language of the executing State or into another language indicated by that State.

§ 5. The EIO may also be transmitted by the use of devices used for automatic data transmission, in a way that allows to verify the authenticity of this document.

§ 6. The Minister of Justice shall determine, by way of a regulation, the template of the EIO form, bearing in mind the need to provide the executing State with the data necessary to make the correct decision on the execution of the EIO.

Article 589z

§ 1. If the EIO concerns the temporary transfer to the Republic of Poland of a person held in custody in the territory of the executing State in order to carry out an investigative measure, the provision of Article 589a shall apply accordingly. The court or the prosecutor orders a release of the person, if the executing State so requests.

§ 2. A person temporarily transferred, referred to in § 1, may not be prosecuted, arrested or detained on remand for an offence committed before crossing the Polish state border, not

indicated in the EIO. The penalty imposed for such an offence may also not be enforced against such a person.

§ 3. The prohibitions set out in § 2 shall not apply to a person who, being able to leave the territory of the Republic of Poland, remains on it after 15 days from the date of receipt of information of the court or the prosecutor that his/her presence is no longer required for criminal proceedings, or will return on the territory of the Republic of Poland after this period.

§ 4. Before issuing the EIO concerning the temporary transfer of a person held in custody on the territory of the Republic of Poland to the executing State, the authority issuing the EIO shall hear that person.

§ 5. If the EIO concerns the temporary transfer of a person held in custody on the territory of the Republic of Poland to the executing State in order to carry out an investigative measure, the period of factual deprivation of liberty of that person in that State shall be counted towards the sentence of imprisonment imposed or executed in the Republic of Poland.

Article 589za

§ 1. The authority issuing the EIO may request that its representative be present when the evidence is taken.

§ 2. If, according to the law of the executing State, that State has been liable for the damage caused by the representative referred to in § 1, in connection with the execution of the EIO issued or validated by the court or the prosecutor, at the request of the competent authority of executing State, the State Treasury shall return the amount equivalent to the compensation paid.

Art. 589zb

§ 1. The EIO is transmitted directly to the competent authority of the executing State. The EIO may also be transmitted through regional courts or the Minister of Justice or the regional prosecutor or the National Public Prosecutor's Office.

§ 2. In the event of difficulties in determining the competent court or other authority of the executing State, the court or the prosecutor may refer to the relevant organisational units of the European Justice Network.

§ 3. If the execution of the EIO is to take place by carrying out an investigative measure other than the measure specified in the decision, the issuing authority may modify, supplement or withdraw the EIO.

§ 4. If the execution of the EIO would involve significant costs and if no agreement with the executing State on the division of these costs has been concluded, the issuing authority may decide to withdraw the EIO in whole or in part or to bear the costs by this authority.

§ 5. The costs associated with the temporary transfer of a person held in custody shall be borne by the issuing authority.

Art. 589zc

§ 1. There is no interlocutory appeal against the decision on the issue of the EIO, unless a specific provision concerning the measure indicated in the EIO provides otherwise.

§ 2. The competent authority of the executing State shall be immediately notified of the interlocutory appeal being lodged, as well as of the content of the decision made as a result of its examination.

Article 589zd

§ 1. In connection with the interception and recording of telecommunications ordered or validated pursuant to Article 237 § 1 and 2 in relation to a person located on the territory of another Member State of the European Union, if there is no need to issue an EIO, the prosecutor, the Police or the authority referred to in Article 312, shall notify the competent authority of that State of the intention to carry out these activities, their carrying out or performance, depending on when the authority has learned that the person concerned is staying on the territory of that Member State.

§ 2. The provision of Article 589y § 4 shall apply accordingly to the notification.

§ 3. The notification contains information on:

- 1) the authority that ordered the interception and recording of telecommunications;
- 2) the interception and recording of telecommunications, including the period for which it was ordered;
- 3) the person concerned by the interception and recording of telecommunications.

§ 4. The Minister of Justice shall specify, by regulation, the template of the notification form referred to in § 1, bearing in mind the necessity of providing a Member State of the European Union with the data necessary to provide information on the possibility of carrying out activities on the territory of that state and the use of the obtained results evidence in criminal proceedings.

Chapter 62d - Request of a Member State of the European Union for carrying out investigative measures on the basis of the European Investigation Order

Article 589ze

§ 1. In the event of a request of a Member State of the European Union, referred to in this chapter as the "issuing State", for the execution of the European Investigation Order, referred to in this chapter as the "EIO", the decision concerning its execution is issued by the prosecutor or the district court in whose jurisdiction the evidence is located or shall be taken.

§ 2. If the admission, obtaining or taking of evidence is reserved to the jurisdiction of the court or subject to the order of that court, the decision referred to in § 1 shall be issued by that court.

§ 3. The regional court is competent to issue a decision on the execution of the EIO concerning the temporary transfer of a person held in custody to the issuing State in order to carry out investigative measure in that state. The person concerned by the EIO should be heard before issuing a decision.

§ 4. The regional court is competent to issue a decision on the execution of the EIO concerning the temporary transfer of a person held in custody to the Republic of Poland for the purpose of carrying out an investigative measure.

§ 5. If the court or the prosecutor to whom the EIO has been transmitted, is not competent to process it, it shall forward it to the competent court or prosecutor and notify the competent court or other authority of the issuing State, referred to in this chapter as the "issuing authority".

§ 6. If the EIO has been issued by an incompetent authority of the issuing State, it shall be returned unexecuted and the authority shall be informed of the reasons for the return.

§ 7. The decision on the execution of the EIO is not subject to interlocutory appeal, unless a specific provision concerning the order to perform an activity identical with the action indicated

in the EIO provides otherwise. In the appeal against the activity, the appellant may only demand an examination of the compliance of the decision on the execution of the EIO with Polish law and the correctness of its implementation.

§ 8. The issuing authority should be immediately notified of the interlocutory appeal being lodged, as well as of the content of the decision made as a result of its examination.

§ 9. If a special provision makes the disclosure of information conditional on the request of the court or the prosecutor for their disclosure in connection with pending proceedings for an offence or a fiscal offence, the EIO together with a final decision of the court or the prosecutor on its execution replaces such a request.

§ 10. The decision on the execution of the EIO, which concerns the interception and recording of telephone conversations and the recording, using technical means, of the content of other conversations or information transfers, including correspondence sent by e-mail, replaces the provision referred to in Article 237 § 1. The provisions of Article 237 § 3-7, Article 238 § 1 and 2, Article 239 § 1 and Article 241 shall apply accordingly.

Article 589zf

§ 1. If the EIO concerns the temporary transfer to the Republic of Poland of a person held in custody in order to carry out an investigative measure, the provision of Article 589a shall apply accordingly. The court or the prosecutor orders a release of the transferred person if the issuing State so requests. The court or the prosecutor shall inform the issuing authority about the factual period of deprivation of liberty of that person in the Republic of Poland.

§ 2. The temporarily transferred person, referred to in § 1, may not be prosecuted, arrested or detained on remand for an offence committed before crossing the Polish state border, not indicated in the EIO. The penalty imposed for such an offence may also not be enforced against such a person.

§ 3. The prohibitions set out in § 2 shall not apply to a person who, being able to leave the territory of the Republic of Poland, remains on it after 15 days from the date of receipt of the information of the court or the prosecutor that his/her presence is no longer required for criminal proceedings, or will return to the territory of the Republic of Poland after this period.

§ 4. If the EIO concerns the temporary transfer of a person held in custody to the issuing State in order to carry out an investigative measure, the period of factual deprivation of liberty of that person in that state shall be counted towards the sentence of imprisonment imposed or executed in the Republic of Poland.

Article 589zg

§ 1. The court or the prosecutor decides on the execution of the EIO as soon as possible, no later than within 30 days from the date of its receipt.

§ 2. If the time limit specified in § 1 cannot be met, the decision on the execution of the EIO should be issued within the next 30 days, counting from the date of expiry of that time limit. The issuing authority should be notified of the delay, stating the reason for the delay and the expected date of issue of a decision on the execution of the EIO.

Article 589zh

§ 1. If the evidence to which the EIO relates has not yet been obtained, the court or the prosecutor shall take this evidence immediately after the issue of the decision on the execution of the EIO, but not later than within 90 days from the date of the issue of the decision. If the issuing authority has specified a time limit for taking evidence, the court or the prosecutor shall, as far as possible, take into account this time limit.

§ 2. If the time limit specified in § 1 cannot be met, the issuing authority must be notified of the delay, stating the reason for the delay and the expected date of taking the evidence.

Article 589zi

§ 1. Unless the provisions of this chapter provide otherwise, to the execution of the EIO provisions of Polish law apply. However, the request of the issuing authority that a specific procedure or a particular form be applied to the performance of an investigative measure shall be fulfilled, if this is not contrary to the principles of the legal order of the Republic of Poland.

§ 2. If the investigative measure specified in the EIO is not provided for by Polish law or would be inadmissible in a similar national case, the court or the prosecutor shall inform the issuing authority, indicating the time limit for modifying, supplementing or withdrawing the EIO and specifying a possible substitute investigative measure consistent with the purpose of the EIO. After the expiry of the time limit, the court or the prosecutor decides to perform a substitute investigative measure. If the substitute measure cannot be determined, the court or the prosecutor refuses to execute the EIO.

§ 3. A substitute investigative measure is not carried out, if the EIO concerns:

- 1) evidence already in the possession of the court or the prosecutor;
- 2) information obtained from registers and databases available to the court or the prosecutor executing the EIO;
- 3) interrogation of a person on the territory of the Republic of Poland;
- 4) evidence, the admission, obtaining or taking of which does not require the issue of a decision;
- 5) identification of the telephone subscriber or IP-address.

§ 4. In the cases referred to in § 3, the measure indicated in the EIO is carried out.

§ 5. If obtaining the evidence specified in the EIO is possible by carrying out a substitute investigative measure, other than that indicated in this decision and less intrusive for the person to whom the EIO concerns, the court or the prosecutor shall inform the issuing authority, indicating the deadline for modifying, supplementing or withdrawing the EIO. After the expiry of the time limit, the court or the prosecutor specifies in the order to carry out a substitute investigative measure.

§ 6. If the EIO contains a request to conduct operational measure, within the scope of this request, the relevant Polish services and the services of the issuing State agree on the duration and conditions of the measure. The execution of an EIO may be refused if it does not contain information on the agreement and the issuing authority fails to supplement this information within the time limit set by the court or the prosecutor. The execution of the EIO shall be refused, if the performance of the investigative measure specified therein would not be admissible in a similar domestic case.

§ 7. Until the information is received or the time limit referred to in § 6 expires, the time limit specified in Article 589zg § 1 does not run.

Article 589zj

§ 1. The execution of an EIO shall be refused if:

- 1) the court or the prosecutor has not obtained the required permission to conduct investigative measure with the participation of the person indicated in the EIO;
- 2) in relation to the person being prosecuted, a final judgement was passed in a Member State of the European Union as to the same acts as indicated in the EIO, and, in the case of conviction for the same acts, the person being prosecuted is serving a sentence or has served it, or the penalty cannot be executed according to the law of the country where the conviction was issued;
- 3) the execution of an EIO could endanger the safety of the officer while performing operational and intelligence activities, as well as the person assisting the officer in the scope of these activities;
- 4) the EIO concerns the questioning on the circumstances covered by the absolute prohibition of the questioning (exclusionary rule);
- 5) execution of an EIO would violate human and civil rights and freedoms;
- 6) the requested measure would threaten national security;
- 7) the EIO concerns the temporary transfer of a person held in custody to the issuing State, and the execution of the EIO would result in an extension of the period of deprivation of liberty of that person.

§ 2. The execution of the EIO may be refused if:

- 1) the act constituting the basis for issuing the EIO, other than those listed in Article 607w, is not an offence under Polish law;
- 2) the act constituting the basis for issuing the EIO under Polish law was committed in whole or in part on the territory of the Republic of Poland or on a Polish ship or aircraft and does not constitute an offence under Polish law;
- 3) the execution of the EIO would involve the disclosure of classified information obtained in the course of operational and intelligence activities, as well as related to the conduct of these activities;
- 4) according to Polish law, the investigative measure to which the EIO relates may not be carried out in the case of an offence which is the basis for the issue of the EIO;
- 5) according to Polish law, the investigative measure to which the EIO relates, cannot be carried out in the proceedings in which it was issued;
- 6) the EIO concerns the temporary transfer of a person held in custody to the state of issuing the decision or to the Republic of Poland, and the person does not consent to it;
- 7) the EIO concerns an questioning by means of technical devices enabling this activity to be carried out remotely with simultaneous direct transmission of vision and sound, and the defendant, who is to be questioned, does not consent to it;
- 8) the EIO concerns a questioning of a person referred to in Article 179 § 1 or article 180 § 1 and 2, as to the circumstances specified in these provisions.

§ 3. The provisions of § 2 points 1 and 2 shall not apply, if the act does not constitute an offence due to the absence or a different regulation in Polish law of the relevant fees, taxes, duties or foreign exchange rules.

§ 4. In the case referred to in § 2 point 8, the court, acting *ex officio* or at the request of the public prosecutor, rules on the release of these persons from secrecy. The provisions of Article 179 and Article 180 § 1-4 shall apply.

§ 5. Before the issue of a decision on refusal to execute the EIO for reasons specified in § 1 points 1-6 or § 2 points 2, 3 and 8, the court or the prosecutor shall consult the issuing authority in order to enable it to modify or supplement the EIO.

§ 6. The execution of the EIO cannot be refused for reasons specified in § 2 points 1 and 4, if it concerns investigative activities specified in Art. 589zi § 3.

Article 589zk

§ 1. The competent court or the prosecutor may decide to postpone the execution of the EIO for the necessary period if:

- 1) its execution might prejudice on-going criminal proceedings;
- 2) objects, documents or data are already being used in other proceedings.

§ 2. As soon as the ground for postponement of the execution of the EIO ceases to exist, the competent court or the prosecutor immediately proceeds to its execution, informing at the same time the issuing authority.

Article 589zl

§ 1. The court or the prosecutor shall confirm receipt of the EIO immediately, but not later than within one week from the date of its receipt.

§ 2. The confirmation referred to in § 1 contains information on the authority that received the EIO or the authority to which the EIO was transferred in accordance with the jurisdiction.

§ 3. The Minister of Justice shall specify, by way of a regulation, a model form for confirmation of receipt of the EIO, bearing in mind the need to provide the issuing state with full information on the receipt of the EIO.

Article 589zm

The court or the prosecutor shall immediately inform the issuing authority:

- 1) that it is impossible to issue a decision regarding the EIO, if the EIO form is incomplete or incorrectly completed;
- 2) if it considers that it may be appropriate to carry out investigative measures that were not mentioned or could not have been indicated at the time the EIO was issued;
- 3) about the impossibility to complete the formalities and procedures indicated by the authority issuing the EIO;
- 4) about each case of refusal to execute the EIO or about a decision to carry out a substitute investigative action pursuant to Art. 589zi § 2 or 5;
- 5) about each case of postponing the execution of an EIO, stating the reasons justifying this postponement and its period;
- 6) on the repeal or termination of the security period applied in accordance with Article 589zq.

Article 589zn

§ 1. In the event of doubts as to whether the issue of an EIO was justified or expedient, or whether a given investigative measure would be admissible in the state issuing the judgment, the competent court or the prosecutor consults the issuing authority and, if required by the interest of justice, requests withdrawing the EIO.

§ 2. In the case of doubts as to the authenticity of the documents necessary for the execution of the EIO or technical obstacles preventing its execution, the provision of § 1 shall apply accordingly.

Article 589zo

§ 1. At the request of the issuing State, a representative of the issuing authority shall be allowed to be present during the performance of the activities to which the EIO relates, if this is not contrary to the principles of the legal order of the Republic of Poland and does not pose a threat to the national security.

§ 2. The representative referred to in § 1, with the consent of the court or the prosecutor, may ask certain questions or otherwise participate in the taking of evidence.

§ 3. The representative referred to in § 1 is considered to be a public official within the meaning of the provisions of the Criminal Code.

§ 4. If the State Treasury was liable for damage caused by the representative referred to in § 1 in connection with the execution of the EIO, the State Treasury shall request the issuing authority to reimburse the amount paid, which is equivalent to the compensation paid.

Article 589zp

§ 1. The evidence obtained in connection with the execution of the EIO shall be immediately transferred to the issuing State. In the case specified in Article 589zo § 1, the evidence may be submitted, at the request of the issuing State, to the representative of the issuing authority.

§ 2. When transferring the evidence obtained in connection with the execution of the EIO, the court or the prosecutor may, upon consultations with the issuing authority, reserve the evidence to be returned.

Article 589zq

§ 1. If the EIO has been issued in order to secure traces and evidence of an offence against their loss, distortion or destruction, the competent court or the prosecutor shall decide on the execution of the EIO within 24 hours of its receipt and, if this is not possible – as soon as possible after the lapse of this period. At the request of the issuing State, the court or the prosecutor transfers the evidence to the issuing State or leaves the evidence at its disposal for a period specified by the issuing State.

§ 2. The court or the prosecutor, after consultation with the issuing authority, may decide to shorten the period of freezing.

Article 589zr

§ 1. The costs related to the execution of the EIO are borne by the State Treasury. In justified cases, the court or the prosecutor may apply to the authority issuing the EIO for reimbursement of all or part of the expected expenses or for a modification of the EIO.

§ 2. The costs associated with the temporary transfer of a person held in custody shall be borne by the issuing State.

Article 589zs

§ 1. At the request of another Member State of the European Union, the Minister of Justice shall grant a permit to transport a temporarily transferred person held in custody through the territory of the Republic of Poland.

§ 2. The request for a transport permit includes:

- 1) designation of the requesting authority;
- 2) date and indication of the place of issue of the EIO;
- 3) data specifying the identity and citizenship of the person;
- 4) an indication of the investigative measure for which the person is temporarily transferred.

§ 3. In the case of using the air route without a planned landing, it is sufficient to notify the Minister of Justice that a person held in custody is transferred over the territory of the Republic of Poland. However, if an unscheduled landing occurs, the requesting State shall immediately provide the data referred to in § 2.

§ 4. If it is justified by the length of stay on the territory of the Republic of Poland of a person held in custody and transported through this territory for the purpose of its temporary transfer, the provision of Article 589zf shall apply accordingly.

Article 589zt

§ 1. If the authority of another Member State of the European Union, instead of the EIO, has notified the intent to intercept, or about having intercepted and recorded telecommunications, the prosecutor directly or through the competent Police commander shall provide this authority with information on the admissibility of:

- 1) activities, bearing in mind Article 237 § 3-4 and Article 238 § 1 and 2;
- 2) use of the obtained evidence in criminal proceedings.

§ 2. The information referred to in § 1 shall be provided within 96 hours of the receipt of the notification.