

THE RECOGNITION AND ENFORCEMENT OF THE EUROPEAN INVESTIGATION ORDER IN THE EUROPEAN UNION

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Abstract: The continuous improvement of the cooperation activity in criminal matters between Member States represented and it will represent a permanent primary objective of the European Union, the achievement of which depends on the manner of achieving the area of freedom, security and justice. Amid the detection of imperfections in the practical execution of the order of freezing property and evidence, as well as of the European evidence warrant, it has called for the adoption of a new legislative act designed to simplify the cooperation activity between Member States. Within the present study we have examined the provisions contained in the European legal instrument governing the institution of the European investigation order in criminal matters. The novelty consists in the examination procedure for recognition and enforcement of a European investigation order, investigative measures, the limits and grounds for non-recognition or non-execution. There are also a number of critical opinions complemented by proposals for amending and completing the European legislative act, such as the grounds for non-recognition and non-execution that can only be mandatory, not optional as currently provided for in the examined international legal instrument.

Through this work we have aimed at continuing research activity extremely complex of international judicial cooperation in criminal matters, with a focus on European and Romanian legislative regulation. The work can be useful to academics, practitioners, and to the European legislator in the light of operating the mentioned changes; at the same time, the paper can be useful to the Romanian legislator from the perspective of transposing the European legal instrument provisions into national law by 22 May 2017.

Keywords: offense; grounds for non-recognition or non-enforcement, investigating alternative measures; deadlines; transfer of evidence

1. Introduction

Preventing and combating crime of all types more effectively on its territory is a major goal incurred by each state with an acknowledged democratic regime.

The unprecedented evolution of crime since the second half of last century, and particularly of the organized crime has crossed the borders of a single state, with ramifications and connections increasingly perfected in several countries or even several continents.

In the recent doctrine it was pointed out that currently, but also in perspective, the most serious threat to the existence of humanity is represented by the resurgence of international terrorism, which has reached to an unprecedented scale, affecting frequently the safety of states, destabilizing the national economies, organizations and institutions, reflecting implicitly on the civilian population, panicked, scared and outraged by the cruel and despicable means used by terrorists. The bloody events in the recent years, culminating with the blow to U.S.A. on 11 September 2001 by members of the “Al-Qaida” terrorist network lead by billionaire Osama bin-Laden (being considered responsible also for the bombings of American embassies in Kenya and Tanzania on August 7, 1998) have horrified and acknowledged the danger throughout humanity. In the same context there are also the terrorist attacks in Russia, Spain, England, Italy and Japan, resulting in significant casualties and property damage [1].

On the other hand, the recent revolutions in the Arab world, which led to the fall of dictatorial regimes, such as those in Iraq, Libya, Egypt and more recently large popular movement in Syria, create some favorable conditions for the proliferation of terrorism [2].

Currently, and in perspective, the large number of people seeking asylum in the European Union (particularly in Germany) will implicitly lead to the increase of crime of all kinds, focusing on terrorism.

The latest events lead to the conclusion that the latter phenomenon (immigration) will be perhaps the greatest challenge that the European Union will have to cope [3].

Amid the increases in crime and efforts to reduce it, an activity achieved by the majority of world states, the international judicial cooperation in criminal matters was designed as being a complex activity that has many facets. [4]

The solution identified by most judicial authorities with responsibilities in preventing and combating crime has been to intensify the activities of judicial cooperation in criminal matters among other world’s countries.

Although an initial examination of judicial cooperation in criminal matters between the different countries of the world seems to be generally accessible, the examination of the institution in depth leads to the conclusion that it is particularly complex, and consequently, many states continue to show some reluctance in the recognition and execution of its forms.

Although known since ancient times, the institution of international judicial cooperation in criminal matters has experienced an unprecedented development in the recent years, identifying and

promoting the new forms of cooperation, which were imposed amid the rate increase of cross-border crime and in particular organized crime that has resulted in the increase of terrorist offenses, drug trafficking, trafficking in arms and ammunition, radioactive materials and human trafficking.

The main problem with direct effects in terms of developing some forms of international judicial cooperation in criminal matters has been and it will be the recognition and enforcement of a judgment or other judicial act adopted by the judicial authorities of another State.

Given its importance in the complex activity of judicial cooperation in criminal matters, the European Union raised this form of cooperation at the level of principle.

Thus, according to art. 82, par. (1) of the Treaty on the Functioning of the European Union (TFEU) the Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions, which after the Tampere European Council of 15-16 October 1999 it was cited as the cornerstone of judicial cooperation in criminal matters within the Union.

On the other hand it is necessary to take into account the major objective that the European Union has set, which is to establish an area of freedom, security and justice.

Based on this reality, from the urgent need to reduce crime in its territory, in the recent years, at European Union level, it appeared and developed new forms of judicial cooperation in criminal matters, and in the case of other forms, it has been expanded the jurisdiction area.

One of the forms of judicial cooperation in criminal matters has experienced a significant development, both in terms of legislative regulation and practical application between Member States, i.e. judicial assistance in criminal matters.

Thus, in the recent years, the European Union, in addition to the classic judicial assistance in criminal matters, has experienced new ways of achievement, namely: execution of orders for freezing property or evidence [5], enforcement of financial penalties [6], mutual recognition to confiscation orders [7], and European evidence warrant [8].

The Judicial practice adopted in the recent years by Member States in the field of judicial cooperation in criminal matters has shown a permanent increase of the new ways of achieving judicial assistance in criminal matters, including the enforcement of financial penalties and the recognition and enforcement of confiscation orders.

2. Some General Considerations on European Investigation Order

Amid the detection of imperfections regarding the way of legal regulation, with direct effects in practice in the recent years, the Council Framework Decision 2003/577/JHA and Council Framework Decision 2008/978/JHA which ensure the execution of orders on freezing property or

evidence and the European evidence warrant for the purpose of obtaining objects, documents and data for using them in proceedings in criminal matters have not proven their effectiveness, as anticipated.

Thus, although the Framework Decision 2003/577 / JHA has covered the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence, however, that European legal instrument was restricted to the freezing phase, as the freezing order must be accompanied by a separate request for transfer of evidence. This mode of regulation imposed a two-step procedure affecting the efficiency and effectiveness; while this regulation coexists with other traditional instruments of cooperation, these aspects ultimately led to its quite rare use.

On the same lines it enrolls also the Council Framework Decision 2008/978 / JHA by relating to the European evidence warrant, which is based on the principle of mutual recognition for the purpose of obtaining objects, documents and data for their use in criminal proceedings. The most important drawback of this European legal instrument is that it applies only to the existing evidence, something which leads to cover a limited spectrum of judicial cooperation in criminal matters with respect to evidence. Due to the limited scope of application, the competent judicial authorities were free to use either the new regime or the mutual legal assistance procedures which remain applicable to evidence that do not fall within the scope of the European Evidence warrant (MEP).

Therefore, due to these imperfections found in the judicial practice, it was required a new European legal instrument that would lead to the improvement of judicial cooperation in criminal matters between Member States.

The European legislative act by which it was regulated this new institution of international judicial cooperation in criminal matters is Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014 on the European Investigation Order in criminal matters [9].

Under the depositions of European legal framework instrument, the European investigation order is *a judicial decision issued or validated by a judicial authority of a Member State in order to implement one or more investigative measures specific to a Member State in order to obtain evidence.*

Although this possibility is not included in the definition of the European investigation order, it can be issued for obtaining evidence that is already in possession of the competent authorities of the enforcement Member State.

It is important to note that issuing a European investigation order may be requested by the suspect or accused person, or by the lawyer (in the name of the suspect or accused) in accordance with the

provisions governing the rights of defense applicable in accordance with the internal law of the State in question.

Under art. 3 of the European legal instrument under examination, the European investigation order include any measure of investigation permitted by law, except the establishment of a joint investigation team and the gathering of evidence within a Joint Investigation Team, established pursuant to art. 13 of the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union [10] and the Framework Decision 2002/465 / JHA [11], unless the purpose is the application of art. 13, par. (8) of the Convention, and that art. 1, par. (8) of the Framework Decision.

In art. 1, par. (8) of Council Framework Decision 2002/465 / JHA of 13 June 2002 on joint investigation teams (to which we have earlier referred) it states that where the joint investigation team needs assistance from a Member State other than the one that founded it or from a third country, the request for assistance may be made by the competent authorities of the State in which it is conducted the intervention of their counterparts in the other State concerned, in accordance with the relevant instruments or arrangements.

3. Recognition and Enforcement of the European Investigation Order

We must emphasize from the outset that the European legal instrument governing the institution of European investigation order in criminal matters, to whose provisions we will refer, is the Directive 2014/41 / EU of the European Parliament and of the Council of 3 April on the European criminal investigation.

In our opinion, considering the provisions of European legal instrument it must start from the general rule established by its provisions, according to which the executing authority (from the executing Member State) recognizes a transmitted European investigation order, without requiring any further formality, ensuring the execution under the same conditions as if the order had been issued by a national authority.

From this general rule, it is an exception the case where the enforcement authority invokes one of the grounds for non-recognition or non-execution or one of the reasons for postponement of execution.

Also, the European investigation order will not be executed and it will be returned to the issuing authority, when the executing authority finds that the order is not issued by a competent authority indicated by the framework legislative act.

Regarding the term of the *issuing authority* which is envisaged by the European legislator, we mention that it means:

- A judge, a court, a judge or a public prosecutor competent in the case concerned; or
- Any other competent authority, as defined in the issuing State, acting in the case, as investigative authority in criminal proceedings which has the jurisdiction to order the gathering of evidence in accordance with national law.

So, assuming that a Member State of the European Union receives for execution a European investigation order issued by an authority, other than the one stipulated in the European legal instrument, it will not be executed.

In judicial practice this situation is tantamount to an obligatory reason for non-recognition and non-enforcement of a European investigation order.

Where necessary, the issuing authority may request for one or several authorities of the issuing State to attend to the execution of the European investigation order for supporting the competent authorities of the executing State, insofar as the designated authorities of the issuing State should be able to assist the execution of the measure or measures of investigation indicated in the European investigation order in criminal matters. Given that this assistance is not contrary to the fundamental principles of law of the executing State and it shall not affect the essential interests of national security, the executing authority will comply with the request mentioned above.

On the performance of the European investigation order, the authorities of the issuing State in the territory of the executing State shall respect the law of that State. These authorities do not have competences specific to the authorities in the executing State, unless the execution of such competences in the executing State is in accordance with the law of the executing State to the extent agreed between the issuing and executing authority.

The issuing and executing authorities of the two countries may consult each other, by any means, in cases where it considers that it is necessary.

3.1. Resorting to Alternative Investigative Measures

Under the depositions of the European legislative act, whenever possible, the executing authority will use a measure other than that provided for in the European investigation order, in cases when:

- the investigative measure indicated in the European investigation order does not exist under the law of the executing State; or
- the investigative measure indicated in the European investigation order does not apply in a similar national case.

However, without bringing prejudice to the grounds for non-recognition or non-execution provided for in the examined European legislative act, the above provisions do not apply to the following investigative measures which should always be available under the law of the executing State:

- obtaining information or evidence already in the possession of the executing authority and information or the evidence could have been obtained in accordance with the law of the executing State, in criminal proceedings or for the purposes of the European investigation order;
- obtaining information contained in databases held by the police or judicial authorities that are directly accessible to the executing authority in criminal proceedings;
- hearing of a witness, of an expert, a victim, a suspect or accused person or a third party in the executing State;
- any non-coercive investigative measure as defined in the law of the executing State;
- identifying individuals subscribed to a phone number or a certain IP address.

Also, the executing authority may use other investigative measure than the one provided in the European investigation order, to the extent where the investigation selected by the executing authority would have the same result as the measure of investigation indicated in the European investigation order, by means less intrusive.

Assuming that the investigative measure indicated in the European investigation order does not exist in the internal law of the administering State or it would not be available in an internal similar case and when there is no other investigative measure which would have the same result as the requested investigative measure, the executing authority shall notify the issuing authority that it was not possible to provide the requested assistance.

However, the issuing authority shall be informed on the possibilities to be taken by the executing authority according to the ones mentioned above, in which case it (the issuing authority) may withdraw or amend the European investigation order.

3.2. Reasons for Non-Recognition or Non-Execution

Although as mentioned previously the established general rule is that of recognizing and executing a European investigation order, however, the provisions of the framework legislative act provided some reasons that may lead to non-recognition and non-execution of the decision, namely:

a) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the European investigation order or there are rules determining or limiting the criminal liability relating to press freedom and freedom of expression in other media means of information, making it impossible the execution of the European investigation order; in the case where the competence to suspend the privilege or immunity lies with an authority of the executing State, the executing authority will submit an application to this effect without delay. If this competence lies with an authority of another State or an international organization, the issuing authority shall forward a request to the authority in question.

b) in a specific case, the execution of the European investigation order would bring prejudice to the essential interests of the national security, it would jeopardize the source of the information or involve the use of classified information relating to specific intelligence activities;

c) the European investigation order has been issued within proceedings referred specifically to art. 4, letter b) and c) of the examined European legal instrument and the investigation measure would not be authorized under the law of the executing State in a similar national case; we mention that art. 4, letter b) and c) are provided for types of procedures for which the European investigation order can be issued, namely:

in the proceedings initiated by administrative or judicial authorities in respect of acts constituting violations of the law and that are incriminated under the national law of the issuing State and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; and

in proceedings brought by judicial authorities in respect of acts which constitute violations of the law and that are incriminated under the national law of the issuing State and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

d) the execution of the European investigation order would be contrary to the principle of *ne bis in idem*;

e) the European investigation order refers to an offense, which allegedly was committed outside the territory of the issuing State and wholly or partially on the executing State, and the offense in respect of which was issued in the European investigation order does not constitute an offense in the executing State;

f) there are reasonable grounds to believe that the execution of an investigative measure indicated in the European investigation order would be inconsistent with the obligations of the executing State in accordance with art. 6 TEU and the Charter;

g) the act for which it was issued the European investigation order does not constitute an offense under the law of the executing State, unless it relates to an offense in the categories of offenses set out in Annex D of the examined European legislative act, as indicated by the issuing authority in the European investigation order, if that act is punishable in the issuing State by imprisonment or a measure of deprivation of liberty for a maximum period of at least three years; in Annex D there are provided 32 groups of crimes and offenses considered to be more serious among which: terrorism, participation in a criminal organization, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, murder, rape, cybercrime etc.

h) use of the measure of inquiry indicated in the European investigation order is restricted under the law of the executing State to a list or category of offenses or offenses punishable up to a certain level, which does not include the offense covered by the European investigation order [art. 11, par. (1) of the European legislative act].

Except the situations provided in letter c) and h), before deciding the non-recognition and non-execution of an European investigation order, in whole or in part, the executing authority shall consult the issuing authority, by any means; while the executing authority may request the issuing authority to urgently provide any information deemed to be necessary.

In situations where the European investigation order concerns an offense in connection with taxes or duties, customs and exchange, the executing authority cannot refuse the recognition or enforcement because the law of the executing State does not impose the same kind of tax or duty or it does not contain the same type of regulations concerning taxes, duties, customs or foreign exchange as the law of the issuing State.

3.3. Deadlines

The decision on recognition or execution shall be made, and the investigative measure will be enforced with the same speed and the same degree of priority as in a similar domestic case, within the deadlines set by the European legislative act.

In the case where the issuing authority has indicated in the European investigation order that, due to procedural deadlines, the seriousness of the offense or other particularly urgent circumstances, it requires a shorter period than those laid down in the European legal instrument or if the issuing authority has indicated in the European investigation order that the investigative measure must be implemented on a specific date, the executing authority will take account of this requirement as far as possible [art. 12 par. (1) and (2) of the European legislative act].

Regarding the term specifically set out in the European legislative act in which the executing authority shall make the decision on the recognition or enforcement of the European investigation order, it is at most 30 days of receipt of the European investigation order (as soon as it is possible).

If there are not one or more grounds for postponement or the evidence mentioned in the investigative measure included in the European investigation order is already in the possession of the executing State, the executing authority will apply the investigative measure without delay and without bringing prejudice to par. (5), art. 12 of the European legislative act, within 90 days of the decision referred to above; if the competent enforcement authorities cannot meet in a particular case the mentioned period, it shall inform without delay the competent authority of the issuing State, by any means, giving the reasons for the postponement and consult with the issuing authority on the appropriate timing for the measure of investigation.

Assuming that the executing authority cannot comply with an appropriate limit set in par. (3) or the date specified in par. (2), art. 12 of the European legislative act, it shall inform without delay the competent authority of the issuing State, by any means, giving the reasons for the delay and the estimated time for the decision; in such a case the period of 30 days may be extended by another 30 days.

3.4. Transfer of Evidence

Following the execution of the European investigation order, the executing authority will transfer to the issuing State without undue delay, the evidence obtained or already in possession of the competent authorities of the executing State; if it is required and possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing state.

Pending the outcome of an appeal, unless the European investigation order indicated that there are sufficient reasons for immediate transfer, it is essential for carrying out investigations under appropriate conditions or to maintain individual rights, the transfer of samples may be suspended. However the transfer of samples shall be suspended if they cause serious and irreversible damage to the person concerned.

We consider that these provisions of the art. 13, par. (2) of the European legislative act are at least questionable if not contrary to the principles of domestic law of any State.

If the executing State considers it necessary for the samples to be returned as soon as their presence on the territory of the issuing State is no longer required, this will be stated at the time of their transfer.

In the case where the objects, documents or data concerned are already relevant for other proceedings the executing authority may, at the explicit request of the licensing authority and after consultation with its temporarily transfer of evidence, provided that they are returned to the executing State when that is no longer required in the issuing State or at any other moment or at any other time agreed by the competent authorities (art. 13 of the European legislative act).

3.5. Ways of Appeal

Each Member State as the State of execution will consider investigating the possibility that the measures indicated in the order for investigation there are applicable the ways of appeal equivalent to those available in a similar national case.

In the exercise of an appeal, we mention that substantive reasons for issuing the European investigation order in criminal matters can be challenged only in an action initiated by the issuing State, without bringing prejudice to the guarantees of fundamental rights.

In the case where it would not undermine the need to ensure the confidentiality of an investigation, the issuing authority and the executing authority shall take appropriate measures to ensure that the information is provided on the possibilities under the national law to have recourse to remedies since they become applicable and in timely manner, in order to ensure the possibility of effective exercise [art. 14, par. (1) - (3) of the European legislative act].

The Member States shall ensure that the deadlines for exercising the right of recourse to an appeal which are identical to those laid down in cases similar to the national law and it applies so as to ensure that the parties concerned have the opportunity to exercise effectively the right of resorting to those ways of appeal.

In the enforcement process, the issuing and executing authorities shall inform each other on the appeal against the issuing, recognition or execution of a European investigation order.

Introducing a legal appeal does not suspend the enforcement of the investigative measure, unless this is provided for in similar domestic cases.

The issuing State will consider admitting the appeal against the recognition or enforcement of a European investigation order under its own law. Notwithstanding the internal procedural rules, the Member States shall ensure that, in criminal proceedings in the issuing State it shall respect the right of defense and of procedural fairness in the assessment of evidence obtained through the European investigation order [art. 14 par. (4) - (7) of European legislative act].

3.6. Grounds for Postponement of Recognition or Enforcement

In relation to the particularities of each individual case, the recognition or enforcement of the European investigation order may be postponed in the executing State in the case where:

- a) the execution of this order could bring prejudice on an investigation or a prosecution in progress, as long as the executing State deems to be necessary;
- b) objects, documents or data are already used in other proceedings until they are no longer needed for that purpose.

After the termination basis that led to the suspension of the order, the executing authority shall take measures for its execution and it shall inform the issuing authority by any means which allows a written record (art. 15 of the European legislative act).

3.7. Obligations Relating to Mutual Information

After the receipt of the European investigation order, the receiving authority acknowledges this reception without delay and in any case within a week of receiving the order by completing and sending the form provided in Annex B of European legal instrument.

If in the executing State it has been designated a central authority, the obligation to inform belongs to this authority and also to the executing authority.

Also, the executing authority shall immediately inform the issuing authority:

- a) if it is possible for the executing authority to make a decision on the recognition or enforcement because the form set out in Annex A of the European legislative act is incomplete or incorrect, in a valid way;
- b) in the situation where, during the execution of the European investigation order, the executing authority considers without further inquiries that it may be appropriate to undertake investigative measures that were not initially foreseen, or which could not be specified at the moment of issuing the European investigation, in order to enable the issuing authority to take further action in the case; or
- c) if the executing authority establishes that, in that case, it cannot comply with the formalities and procedures expressly indicated by the issuing authority, in accordance with art. 9 of the European legislative act [Art. 16, par. (2) of the European legislative act].

At the same time, the executing authority shall inform without delay the issuing authority by any means which leaves a written record of:

- a) any decision on the use of alternative investigative measures and grounds for non-recognition or non-execution;
- b) any decision to postpone the execution or recognition of the European investigation order, the reasons for the delay and, if possible, the expected duration of the postponement.

3.8. Criminal and Civil Liability

Officials of the issuing State on the territory of the executing State are regarded as officials of the executing State in respect of offenses committed against them or by them.

Also, the issuing Member State is liable for any damage caused by its officials during their operations, in accordance with the law of the Member State in whose territory they operate.

3.9. Privacy and Protection of Personal Data. The Costs

In each Member State there shall be taken measures to ensure confidentiality of the investigation into the execution of a European investigation order.

At the same time, the issuing authority shall keep confidential any evidence or information provided by the executing authority, except where such disclosure is necessary for the investigations or proceedings described in the European investigation order.

In the case of implementing the provisions of the enactment of the European Member States it shall ensure that personal data is protected and it can only be processed in accordance with Council Framework Decision 2008/977 / JHA [12] and the principles of the Convention Council Europe of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data and its additional protocol [13].

4. Conclusions and Critical Opinions

Since its adoption, the European Protection Order in criminal matters was intended to be a genuine instrument available to Member States to contribute to the improvement of the complex activity of judicial cooperation in criminal matters in the European Union.

As mentioned in this study, the adoption of the European legal instrument that regulates, among other institutions, also the recognition and enforcement of a European protection order in criminal matters was imposed amid the imperfections found in the judicial practice in relation to the execution of freezing orders of assets or evidence, and certain provisions governing the institution of the European evidence.

Against this background concerning some difficulties faced by the judicial bodies in the execution of the two European legal instruments, there was a need for a new law designed to simplify the cooperation activity in the domain of taking evidence required in criminal proceedings in a Member State.

Besides the simplification of procedures, the new law directly contributes to more efficient and concrete activities of obtaining evidence in another Member State, which will lead to the improvement of specific activities for preventing and combating crime of all kinds.

Under art. 36, par. (1) of the European framework legislative act (Directive 2014/41 / EU of the European Parliament and of the Council of April 3, 2014 on the European Investigation Order in criminal matters), the Member States shall take the necessary measures to transpose into their national law this European legal instrument until 22 May 2017.

In this context, without legal practice relevant at the level of Member States, it has imposed the examination of the provisions that regulated the procedure of recognition and execution of a European investigation order in criminal matters, examination which revealed some dysfunctions on the way of ruling, which led to some critical opinions.

Thus, in art. 11, par. (1) of the European framework regulatory act there are provided grounds for non-recognition or non-execution of a European Investigation Order in criminal matters.

As the European legislator uses the phrase *the recognition or execution of a European investigation order may be refused in the executing state*, the conclusion that emerges is that these reasons are only optional and not compulsory for the Member State of enforcement.

The examination of the eight grounds mentioned in the text of art. 11, par. (1) from the European legal instrument, leads to the conclusion that they are in their essence *obligatory grounds for non-recognition or non-execution of such an order, and not optional grounds*.

This imperfection of the law can be remedied by excluding the phrase *it may be refused* and replacing it with the phrase *it will be declined* in the text par. (1), art. 11.

Another provision in the wording of the examined legislative act that seems to be at least arguable is the one by which it states that *the introduction of an appeal court does not suspend the execution of the measure of investigation, unless this is provided for in cases similar to the national law*.

We believe that the provision contained in art. 14, par. (6) of the European legislative act should be removed in all circumstances as the introduction of an appeal against a measure of inquiry involves settlement in accordance with the law of the executing State.

We formulate another critical opinion in relation to art. 13, par. (2) of the European legislative act, according to which the transfer of evidence cannot be suspended pending the solution to be ruled in an appeal, when in *the European investigation order there are indicated insufficient grounds for an immediate transfer, it is essential for carrying out investigations under appropriate conditions or to maintain individual rights*.

We believe that these provisions should be removed from the text as it violates the rights and freedoms of the investigated person, every time, regardless of the situation, being necessary to suspend the transfer of evidence until the resolution of the appeal, if the national law provides this way of appeal.

As a general conclusion, we consider that the adoption of this European legal instrument by which it is regulated the institution of European investigation order will contribute to improving the complex activity of international judicial cooperation in criminal matters and thus to increasing the efficiency of solving some criminal cases with implications in other Member States.

Bibliography

[1] Boroi, Al. Rusu, I. & Balan-Rusu, M.-I. (2012). *The Judicial Cooperation in Criminal Matters in the European Union, EU Judicial Cooperation*. LAP Lambert Academic Publishing, Deutschland/Germany, Danubius University, p. 20.

- [2] I Rusu, I. & Balan-Rusu, M.-I. (2013). *The European Arrest Warrant, Romanian and European Legislation, Doctrine and Jurisprudence*. LAP Lambert Academic Publishing, Deutschland/Germany, Danubius University, pp. 14-15.
- [3] Boroii, Al.; Rusu, I. & Balan-Rusu, M.-I. (2016). *Cooperarea judiciară internațională în materie penală, Tratat/The international judicial cooperation in criminal matters. Treaty*. Bucharest: C.H. Beck, p. 7.
- [4] Minodora-Ioana Rusu (2015). *Asistența judiciară în materie penală la nivel European/Judicial assistance in criminal matters at European level*. Bucharest: Ed. Universul Juridic, p. 23.
- [5] Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders on freezing property or evidence, published in the Official Journal no. L 196 of 08.02.2003.
- [6] Council Framework Decision 2005/214 / JHA of 24 February 2005 on the principle of mutual recognition of financial penalties in the OJEU no. L 76 of 22 March 2005.
- [7] Council Framework Decision 2006/783 / JHA of 6 October 2006 on the principle of mutual recognition to confiscation orders, published in the OJEU no. L 328 of 24 November 2006.
- [8] Council Framework Decision 2008/978 / JHA of 18 December 2008 on the European Evidence for the purpose of obtaining objects, documents and data for their use in proceedings in criminal matters, published in the OJEU no. L 350 of 30 December 2008.
- [9] Directive 2014/41 / EU of the European Parliament and of the Council of April 3, 2014 on the European Investigation Order in criminal matters, published in the OJEU no. L 130 of 1 May 2014.
- [10] Convention on Mutual Judicial Assistance in Criminal Matters between Member States of the European Union, published in the OJ C 197 of 12 July 2007.
- [11] Council Framework Decision 2002/465 / JHA of 13 July 2002 on joint investigation teams, published in the OJEU no. L 162 of 26 June 2002.
- [12] Framework Decision 2008/977 / JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, published in the OJEU no. L 350 of 30 December 2008.
- [13] Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its Additional Protocol.