

Directive (EU) 2023/977

Information Note from the Department

1. Directive Title

DIRECTIVE (EU) 2023/977 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA.

2. Transposition Deadline

12/12/2024.

By way of derogation, Member States have until 12 June 2027 to establish the secure communication channel of the Single Points of Contact with Europol's SIENA (Art.13, Art 22 refer).

3. Anticipated Transposition date

Expected to be transposed by 12/12/2024

Include information on any specific administrative, policy or legislative changes required before the Directive may be transposed.

4. COM number of original Commission proposal

COM/2021/782 final

5. Department with primary responsibility

Department of Justice

6. Other Departments involved

No.

7. Background to, short summary and aim of the Directive

Background

The general rules for the exchange of law enforcement information which has cross-border relevance among Member States' law enforcement authorities are laid down in Council Framework Decision 2006/960/JHA simplifying the exchange of information between law enforcement authorities of the Member States of the European Union (hereinafter referred to as '*Swedish Framework Decision*' or 'SFD'). The Swedish Framework Decision partially superseded the police cooperation Chapter of the 1990 Convention Implementation of the Schengen Agreement.

On 8 December 2021, the Commission launched its proposal for an **EU Police Cooperation Code**.

The Police Cooperation Code includes three measures; (i) the proposal for a Council Recommendation on operational law enforcement cooperation, (ii) the proposal for a regulation on

automated data exchange for police cooperation (Prüm II) and (iii) a **proposal for an Information Exchange Directive**.

Summary and aim of Directive

The **Information Exchange Directive** aims to formalise and clarify the procedures for information sharing among Member States' law enforcement authorities to contribute to the effective and efficient exchange of such information. It aims to establish clear and solid common rules on the exchange of information, common structures and effective management tools for the exchange of information as well as common practices in the use of existing communication channels to exchange information.

The Directive builds on the *Swedish Framework Decision* and seeks to clarify the role of the 'Single Point of Contact' (SPOC) for exchanges, the full use of Europol's information exchange channel SIENA (Secure Information Exchange Network Application) for exchanges, deadlines for responding to requests, grounds for refusing requests and to oblige Member States to copy Europol on all requests with some exceptions (Article 12).

The Directive provides for equivalent access for national law enforcement authorities to information available in other Member States. It seeks to improve the functioning of SPOCs for the exchange of information, making them operational 24 hours a day, 7 days a week. The deadlines for SPOCs to provide information are 8 hours for urgent requests if information is contained in a database which is directly available to a SPOC or law enforcement authorities and three days if it can be obtained from other sources. Any other request needs to be answered within 7 calendar days. SIENA, managed by Europol is to become the default channel of communication.

8. Legal basis of the Directive

Article 87 of the Treaty on the Functioning of the European Union (TFEU).

9. Category of Directive

This Directive is of some significance

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The general rules for the exchange of law enforcement information which has cross-border relevance among Member States' law enforcement authorities are laid down in Council Framework Decision 2006/960/JHA simplifying the exchange of information between law enforcement authorities of the Member States of the European Union (hereinafter referred to as '*Swedish Framework Decision*' or 'SFD').

The Directive updates and replaces the *Swedish Framework Decision* and seeks to clarify the role of the 'Single Point of Contact' for exchanges.

10. Implications for Ireland (including details of regulatory impact assessments carried out in Ireland, if required)

The Directive constitutes a development of the provisions of the Schengen *acquis* in which Ireland takes part and so Ireland will be bound by it.

Generally, the impacts for Ireland will be positive as regards improved police cooperation on information exchange. Operationally, the main implications for Ireland arise from the requirements in the Directive for a single point of contact with 24/7 operational capability (Art. 14) and a single electronic case management system (Art. 16).

11. Impact on the public

The Directive aims to formalise and clarify the procedures for information sharing among Member States' law enforcement authorities to contribute to the effective and efficient exchange of such information. There will be no direct impact on the public.

12. Estimated cost to the Exchequer

An Garda Síochána has already established a single point of contact (SPOC) which comprises of the SIRENE Bureau, Europol National Unit and Interpol National Central Bureau. However, additional costs may arise for AGS in the provision of 24/7 cover to meet the requirements of the Directive. These have not been quantified yet but are expected to be modest.

The Directive also requires the setting up of a case management system (Art. 16). In that regard it should be noted that An Garda Síochána has an existing case management system (CMS) in the SIRENE Bureau which was introduced in 2021. An integration project is currently ongoing to extend the CMS to Interpol and Europol to have all international cooperation channels on the same platform. This is due to be completed in Q3 2023. Once this has been achieved it is intended to review all aspects of the SPOC function. It is too early to say whether there will be additional ICT-related costs associated with the Information Exchange Directive

13. Consequences and possible costs, arising from non-transposition

Please indicate potential consequences and costs if known. Also include if a Directive outlines a fine that would be imposed for non-transposition.

The potential consequences of non-transposition are more operational and reputational than financial. Ireland would not be in a position to benefit from the improved information exchanges as set out in the Directive. This could have implications for police cooperation with other Member States and for criminal investigations (incoming and outgoing requests).

14. Have consultations taken place with stakeholders or are there any plans to do so?

An Garda Síochána (AGS) has been consulted during the negotiation stages of the proposal.

15. Are there areas of the Directive where Member States have discretion on implementation?

Yes. Article 15 establishes minimum requirements regarding the composition of the Single Point of Contact, leaving a degree of flexibility to each Member State to determine its precise organisation and composition as deemed most appropriate depending on its national circumstances, provided the requirements of the Directive are met.

Article 16 defines minimum requirements for the Case Management System of the Single Points of Contact.

16. Does Ireland intend to seek any derogations from the provisions of the Directive?

No.

17. Offences or penalties (if any) to be created by the transposition of the Directive

Not applicable.

18. Competent authorities or market surveillance authorities (if any) to be designated by the transposition of the Directive

An Garda Síochána will be designated as the Single Point of Contact for the purposes of the Directive (Art. 14 refers).

19. Consequences for national legislation?

A statutory instrument will likely be required, the full extent of which will be explored with the Department's Legal Unit.

20. Are there any parts of the Directive which are planned to be transposed by primary legislation, and if so, which parts?

By way of guidance, it may also be useful to indicate the parts of the Directive proposed to be transposed by statutory instrument and parts where transposition may not be necessary.

None likely.

21. When is it anticipated that the draft statutory instrument(s) transposing this Directive will be available?

Anticipated Q2 2024.

22. Contact name, telephone number and e-mail address of official in Department with primary responsibility

Criminal Justice Penal and Policing Policy.

13 September 2023.