

Proportionality, necessity of issuing an EIO

Proportionality Check

Article 6

Conditions for issuing and transmitting an EIO

Para. 1

The issuing authority may only issue an EIO where the following conditions have been met:

The issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 considering the rights of the suspected/accused

The investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar case

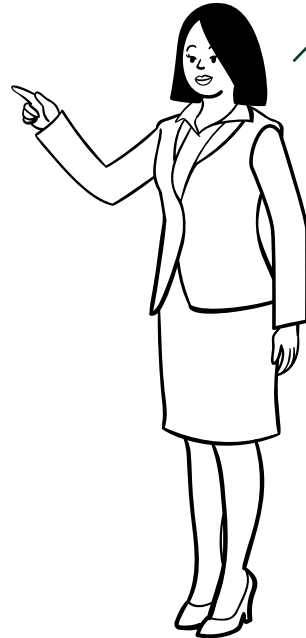
Proportionality Check



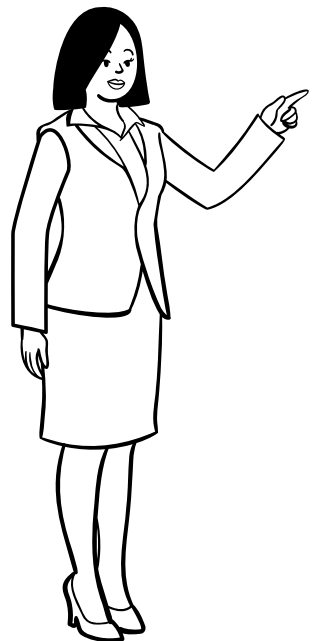
The issuing authority

- ☐ Judge, court, investigative judge or a public prosecutor competent in the case concerned or
- ☐ Any other competent authority as defined by the issuing State which is acting in its capacity

General rule



Proportionality Check



The issuing authority ← The executing authority

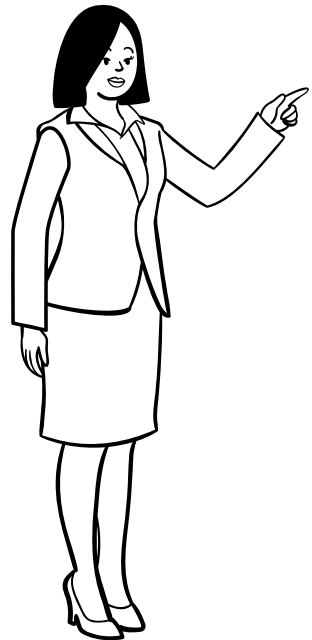
Article 6

Para. 3

Consultation Mechanism

This occurs if the executing authority has reason to believe that the condition has not been met

Proportionality Check



Consultation Mechanism

The issuing authority ← The executing authority

This occurs if the executing authority has reason to believe that the condition has not been met

The consultation can be used to provide relevant information to the executing authority and avoid the risk of delay.

This is also helpful for the issuing authority to decide whether to withdraw the EIO

examples

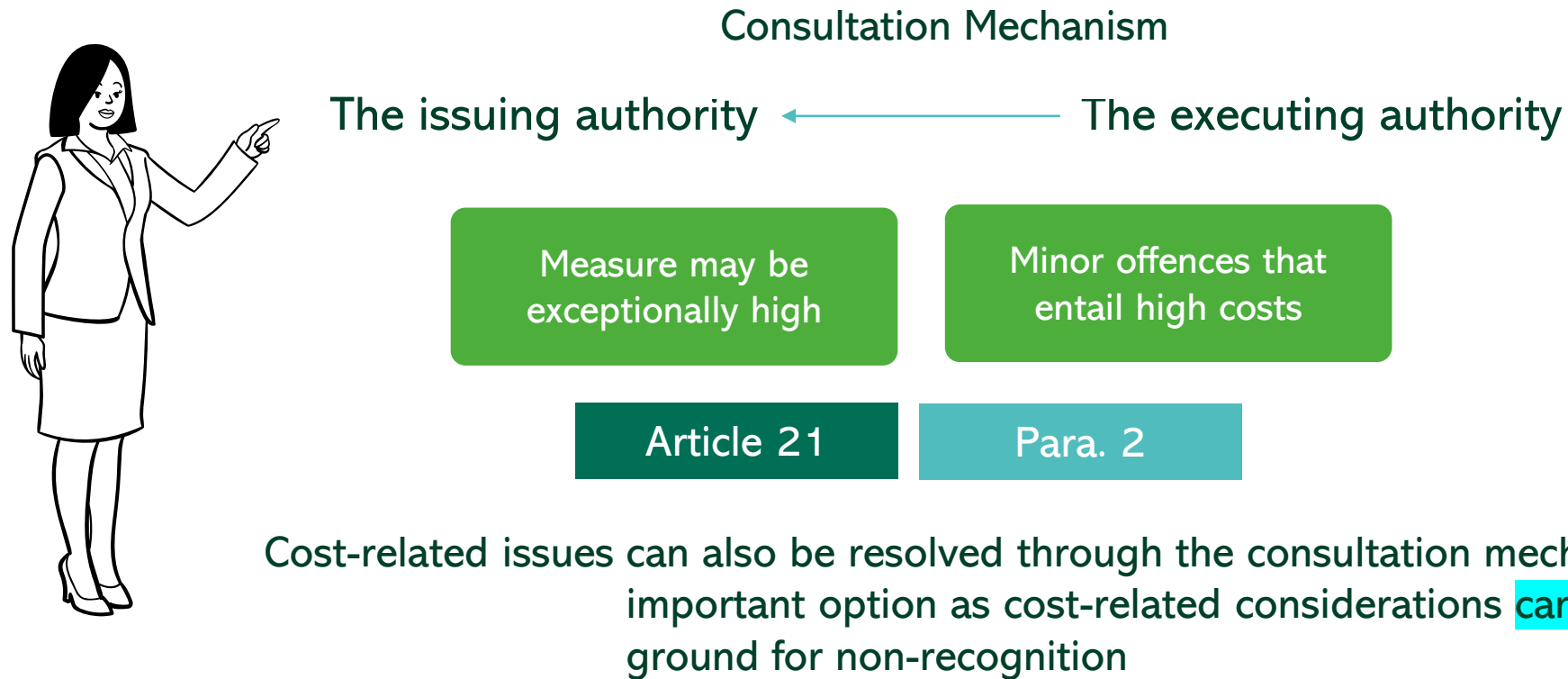
Offence is not sufficiently detailed

Measure may be too difficult or not concretely described

Measure may be exceptionally high

Minor offences that entail high costs

Proportionality Check



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Best Practice

No minimum threshold for
issuing an EIO

Cost-related issues

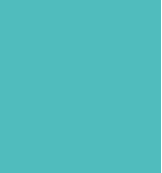
Any evidence that is required
regardless of the gravity could
be requested

Coherent with the aim of
establishing a single AFSJ

Important to undertake cost-
benefit analysis before an EIO

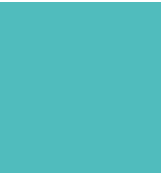
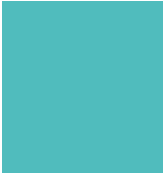
Practical Application

Best Practices



To avoid fishing expeditions, when issuing an EIO, the description of the facts must be as precise as possible to allow the executing authority identify the precise offence being investigated

To avoid delay and issues with cooperation, formalities regarding the form of the EIO which is either incomplete, incorrect or unused should not be used as a reason to invoke the refusal, so long as the issuing authority is one of the authorities listed in conformity with the directive



The EIO certificate and the domestic order granting the investigative measure are dependent of each other. The executing authority shall only exceptionally request this, when the content of the EIO is either unclear or the legality of the measure may come into question

