

ONLINE TRAINING OF MASTER TRAINERS

SESSION 1 – 16 NOVEMBER 2021



This project was funded by the European Union's Justice Programme (2014-2020) under Grant Agreement No. 882068

Session 1: Tuesday, 16th November 2021, 09.15-12.45

09.15 – 09.30	Virtual registration and logging in to meeting
09.30 – 09.45	Welcome and introduction to the learning objectives of these training sessions
09.45 – 10.00	Tour de Table of all participants
10.00 – 10.50	Reflections on the grounds of issuing an EIO
10.50 – 11.00	Comfort break
11.00 – 11.50	Reflections on particular investigative measures
11.50 – 12.35	Introduction to the e-Evidence Digital Exchange System
12.35 – 12.45	Concluding remarks for Session 1



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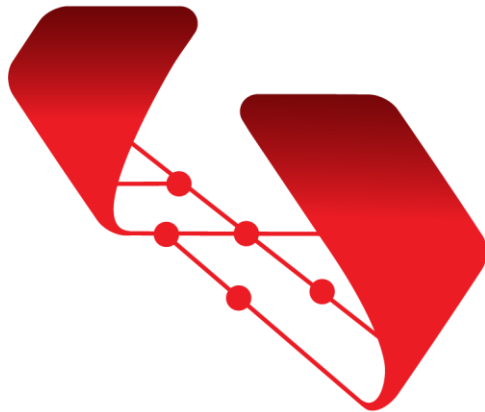
Session 1: Tuesday, 16th November 2021, 13.45-17.15 CET

13.45 – 14.00	Virtual registration and logging in to meeting
14.00 – 14.15	Welcome and introduction to the learning objectives of these training sessions
14.15 – 14.30	Tour de Table of all participants
14.30 - 15.20	Reflections on the grounds of issuing an EIO
15.20 – 15.30	Comfort break
15.30 – 16.20	Reflections on particular investigative measures
16.20 – 17.05	Introduction to the e-Evidence Digital Exchange System
17.05 – 17.15	Concluding remarks for Session 1



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LEARNING OUTCOMES FOR THIS TRAINING



By the end of the Training, participants should be able to:

1. Have a structured approach to passing on their knowledge on the EIO procedures
2. Identify and overcome cultural differences in the application of the EIO
3. Using their nuanced knowledge of legal differences between MSs, help anticipate potential obstacles in the EIO process
4. Use and instruct others on the use of the e-Evidence Digital Exchange System

STRUCTURE

- Session 1 – emphasis is on issuing an EIO
- Session 2 – emphasis is on receiving/executing an EIO
- Session 3 – emphasis on particular 'obstacles' in the process
- In each session:
 - Choice of particular topics
 - Refresher of the provisions in the directive
 - Reflection on reality
 - Familiarisation with eEDES
- This is not a beginners guide to EIO... but the materials we have prepared for the trainings have a section for beginners too... depending on the trainees.

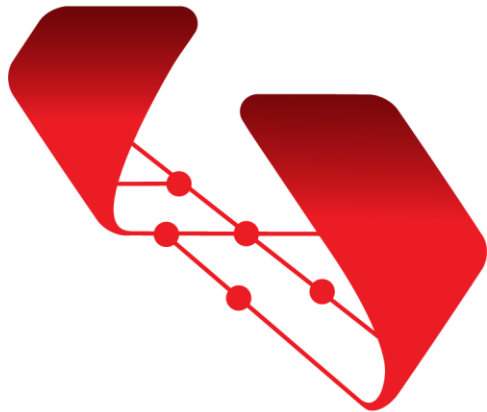
TOUR DE TABLE

- Brief introduction of yourself
- What types of EIOs do you handle
- For how long have you been responsible for EIOs

The background features a solid red field on the right side, which transitions into a white field on the left. The boundary between the two colors is a dynamic, flowing shape that resembles a ribbon or a liquid splash, curving from the top left towards the bottom center. The text is centered in the red area.

**REFLECTIONS ON THE
GROUNDS OF ISSUING AN EIO**

GROUNDS OF ISSUING AN EIO



- **Refresher on provisions in Directive**
- **Some common obstacles**
- **Shared issues & solutions found**
- **Concluding reflections**

ARTICLE 4 – TYPES OF PROCEEDINGS FOR WHICH THE EIO CAN BE ISSUED

An EIO may be issued:

- (a) with **respect to criminal proceedings** that are brought by, or that may be brought before, a **judicial authority in respect of a criminal offence** under the **national law of the issuing State**;
- (b) in proceedings brought by **administrative authorities** in respect of acts which are punishable under the national law of the issuing State by virtue of being **infringements of the rules of law** and where the decision may give rise to proceedings before a court having jurisdiction, **in particular, in criminal matters**;
- (c) in proceedings **brought by judicial authorities** in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision **may give rise to proceedings before a court having jurisdiction**, in particular, in criminal matters; and
- (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which **a legal person may be held liable or punished** in the issuing State.

SECTION F - TYPE OF PROCEEDINGS FOR WHICH THE EIO IS ISSUED

SECTION F | Type of proceedings for which the EIO is issued

- (a) With respect to criminal proceedings brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State,
- (b) proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (c) proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

ARTICLE 5 – CONTENT AND FORM OF THE EIO

1. The EIO in the form set out in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority.

The EIO shall, in particular, contain the following information:

- (a) data about the issuing authority and, where applicable, the validating authority;
 - (b) the object of and reasons for the EIO;**
 - (c) the necessary information available on the person(s) concerned;
 - (d) a description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;
 - (e) a description of the investigative measures(s) requested and the evidence to be obtained.
2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the Member State concerned is the executing State.
3. The competent authority of the issuing State shall translate the EIO set out in Annex A into an official language of the executing State or any other language indicated by the executing State in accordance with paragraph 2 of this Article.

SECTION G - GROUNDS FOR ISSUING THE EIO

SECTION G | Grounds for issuing the EIO

1. Summary of the facts

Set out the reason why the EIO is issued, including a summary of the underlying facts, a description of offences charged or under investigation, the stage of investigation has reached, the reasons for any risk factors and any other relevant information.

- Date, time (period of time) of offence
- Place of offence
- Name and nationality of the suspect/accused, and other details, if known

2. Nature and legal classification of the offence(s) for which the EIO is issued and the applicable statutory provision/code: *

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions, explosives
- corruption
- fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities financial interests
- laundering of the proceeds of crime
- counterfeiting currency, including of the euro
- computer-related crime

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions, explosives
- corruption
- fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities financial interests
- laundering of the proceeds of crime
- counterfeiting currency, including of the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

REFUSAL OF AN EIO

- Recital 20

It should be possible to refuse an EIO where its recognition or execution in the executing State would involve a breach of an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in Union law,; the precise definition of these terms is therefore left to national law, which may include protections which apply to medical and legal professions, but should not be interpreted in a way to counter the obligation to abolish certain grounds for refusal as set out in the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (4). This may also include, even though they are not necessarily considered as privilege or immunity, rules relating to freedom of the press and freedom of expression in other media.

ARTICLE 11 – GROUND FOR NON-RECOGNITION OR NON-EXECUTION

1. Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:

- (a) there is an **immunity or a privilege under the law of the executing State** which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to **freedom of the press and freedom of expression in other media**, which make it impossible to execute the EIO;
- (b) in a specific case the execution of the EIO would **harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities**;
- (c) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the investigative measure would **not be authorised** under the law of the executing State in a similar domestic case;
- (d) the execution of the EIO would be contrary to the principle of ***ne bis in idem***;
- (e) the EIO relates to a criminal offence which is alleged to have been committed **outside the territory of the issuing State** and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is **not an offence** in the executing State;
- (f) there are substantial grounds to believe that **the execution of the investigative measure** indicated in the EIO would be incompatible with the executing State's obligations in accordance with **Article 6 TEU and the Charter**;
- (g) the conduct for which the EIO has been issued **does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years**; or
- (h) the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

2. Paragraphs 1(g) and 1(h) do not apply to investigative measures referred to in Article 10(2).

ARTICLE 11 – GROUND FOR NON-RECOGNITION OR NON-EXECUTION

3. Where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

4. In the cases referred to in points (a), (b), (d), (e) and (f) of paragraph 1 before deciding not to recognise or not to execute an EIO, either in whole or in part the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

5. In the case referred to in paragraph 1(a) and where power to waive the privilege or immunity lies with an authority of the executing State, the executing authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing authority to request the authority concerned to exercise that power.

REFLECTIONS FROM REALITY

EIO DIRECTIVE 2014/41/UE - FIRST CASE

The issuing Country (**Country A**) requests the interrogation of a person as a suspect in **section C**.

Section E is the identity of the person.

Section H4 (with reference to the different types of crime) does not have any box ticked.

Section G (***)** **VERY IMPORTANT:** explanation of the facts.

- After section G a general reference to the Street Code, from where you understand that this person has caused an accident and has caused damages to... (something?)

FIRST CASE (PAGE 2) REFLECTIONS

So you have received such an EIO:

What would you do?

- Would you ask for clarification?
- Would you ask for the issuing of a new EIO?
- In case that the EIO is corrected and every information is contained is it possible to execute it?
- Can you give support to your opinion?

POINTS OF ATTENTION: FOLLOWING FROM CASE 1

- Tips on how to ensure readability and clarity
 - Have guidelines (similar to Spanish example: including recommendation to write simple sentences, addressing the how, why, when, who questions)
 - Organise informal peer-review where another colleague reads the EIO text before it is sent
- Clarifications
 - May be efficient to ask for a clarification by email
 - BUT often it is better, to avoid questions on legality later, to ask for a new EIO to be sent with the complete information

POINTS OF ATTENTION: GROUNDS FOR ISSUING THE EIO

- Summary of facts – too long or too short
 - Copying of bill of indictment is not a good option
 - Language – keep clear and simple
- Classification of the offence
 - Follow the terminology used to describe the crime
 - List importance
 - List urgency
- Make sure that summary of facts and boxes of crimes ticked are in line
- Note on differences in understanding of particular crimes
- Distinction between accused, suspect, victim



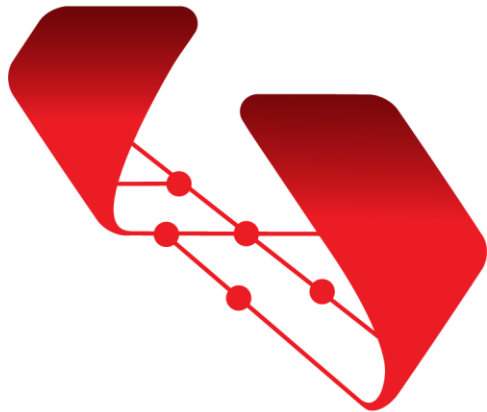
COMFORT BREAK

10 minutes

The background features a dynamic composition of red and white. On the left, a white area is partially obscured by a dark red, curved shape that flows towards the center. Below this, a lighter red, curved shape also flows towards the center, creating a sense of movement and depth. The right side of the image is a solid, vibrant red.

REFLECTIONS ON PARTICULAR INVESTIGATIVE MEASURES

PARTICULAR INVESTIGATIVE MEASURES



- **Refresher on provisions in Directive**
- **Some common obstacles**
- **Shared issues & solutions found**
- **Concluding reflections**

INVESTIGATIVE MEASURES TO BE CARRIED OUT – PROPORTIONATE, ADEQUATE AND APPLICABLE

- Recital 11

The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore **ascertain whether the evidence sought is necessary and proportionate for the purpose of the proceedings, whether the investigative measure chosen is necessary and proportionate for the gathering of the evidence concerned, and whether, by means of issuing the EIO, another Member State should be involved in the gathering of that evidence.** The **same assessment should be carried out in the validation procedure,** where the validation of an EIO is required under this Directive. The **execution of an EIO should not be refused on grounds other than those stated in this Directive.** However the **executing authority should be entitled to opt for a less intrusive investigative measure** than the one indicated in an **EIO if it makes it possible to achieve similar results.**

INVESTIGATIVE MEASURES TO BE CARRIED OUT – FULL RESPECT OF FUNDAMENTAL RIGHTS

- Recital 12

When issuing an EIO **the issuing authority should pay particular attention to ensuring full respect for the rights as enshrined in Article 48 of the Charter of Fundamental Rights of the European Union (the Charter)**. The presumption of innocence and the rights of defence in criminal proceedings are a cornerstone of the fundamental rights recognised in the Charter within the area of criminal justice. **Any limitation of such rights by an investigative measure ordered in accordance with this Directive should fully conform to the requirements established in Article 52 of the Charter** with regard to the necessity, proportionality and objectives that it should pursue, in particular the protection of the rights and freedoms of others.

ARTICLE 6 – CONDITIONS FOR ISSUING AND TRANSMITTING AND EIO

1. The issuing authority may only issue an EIO where the following conditions have been met:
 - (a) the issuing of the EIO is **necessary and proportionate for the purpose of the proceedings** referred to in Article 4 **taking into account the rights of the suspected or accused person**; and
 - (b) the investigative measure(s) indicated in the EIO could have **been ordered under the same conditions in a similar domestic case**.
2. The conditions referred to in paragraph 1 **shall be assessed by the issuing authority in each case**.
3. **Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.**

ARTICLE 11 – GROUND FOR NON-RECOGNITION OR NON-EXECUTION

1. Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:

(a) there is an **immunity or a privilege under the law of the executing State** which makes it impossible to execute the EIO or there are rules on determination and limitation of criminal liability relating to **freedom of the press and freedom of expression in other media**, which make it impossible to execute the EIO;

(b) in a specific case the execution of the EIO would **harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities**;

(c) the EIO has been issued in proceedings referred to in Article 4(b) and (c) and the investigative measure would **not be authorised** under the law of the executing State in a similar domestic case;

(d) the execution of the EIO would be contrary to the principle of *ne bis in idem*;

(e) the EIO relates to a criminal offence which is alleged to have been committed **outside the territory of the issuing State** and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is **not an offence** in the executing State;

(f) there are substantial grounds to believe that **the execution of the investigative measure** indicated in the EIO would be incompatible with the executing State's obligations in accordance with **Article 6 TEU and the Charter**;

(g) the conduct for which the EIO has been issued **does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D, as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years**; or

(h) the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

2. Paragraphs 1(g) and 1(h) do not apply to investigative measures referred to in Article 10(2).

SECTION C - INVESTIGATIVE MEASURES TO BE CARRIED OUT

SECTION C | Investigative measure(s) to be carried out

Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures: *

Investigative measure(s) to collect the following types of e-evidence:

- Search
- Seizure (with a view to gather evidence)
- Surrender of documents
- Surrender of business records
- Obtaining information or evidence which is already in the possession of the executing authority
- Obtaining information contained in databases held by police or judicial authorities
- Hearing
- Identification of persons holding a subscription of a specified phone number or IP address
- Temporary transfer of a person held in custody to the issuing State
- Temporary transfer of a person held in custody to the executing State
- Hearing by video conference or other audio visual transmission
- Hearing by telephone conference
- Information on bank and other financial accounts
- Information on banking and other financial operations

REFLECTIONS FROM REALITY

EIO DIRECTIVE 2014/41/UE - SECOND CASE

- The requesting country – Country A – asks for the interrogation and search and seizure in the place where the person **lives**: the person lives in the house of the former wife, they have separated but they have not divorced. He does not have any bank account and no valuable assets except the car.

REFLECTIONS

- The EIO is complete in all its parts and in the explanation it is written, that he has committed a carousel fraud, so this is the reason for the search and seizure as well as the interrogation; furthermore in section I, it is requested the participation of two police officers of the issuing country.
- What would you do?
- Would you grant it or not? Why?
- Would you communicate with the Issuing Authority?

POINTS OF ATTENTION - INVESTIGATIVE MEASURES TO BE CARRIED OUT - 1

- Clarity of the description is central
 - E.g. clear identification of persons holding a subscription of specified phone number or IP address
 - Not always filled with acts to be performed
 - Simple and effective way to describe what is needed
 - E.g. banking info is not straight forward
 - Understand different banking cultures
 - Dependent on investigation traditions
 - Needs to be specific
 - No fishing expeditions
 - 'do not over ask'
 - Justify what you **actually need**

POINTS OF ATTENTION - INVESTIGATIVE MEASURES TO BE CARRIED OUT - 2

- Additional Requirements for certain measures – Section H
 - Hearings
 - Temporary transfer of a person held in custody to the issuing State/executing State
 - Information on bank and other financial accounts/operations
 - Real time monitoring
 - Covert investigation
 - Interception of telecommunications
 - Provisional measures to prevent the destruction, transformation, moving, transfer etc.
- Understanding investigative measures in the Executing State

POINTS OF ATTENTION – CONSIDERATIONS ON NECESSARY AND PROPORTIONATE


For the Issuing Authority

- Take into account the rights of the subject of the EIO
- “Can a video conference serve as a viable alternative?”
- Consider similar cases in domestic law and the investigation measures taken
- Case-by-case assessment
- Remember that Executing Authority must also consider necessity and proportionality
 - If doubts → Issuing Authority is contacted to ‘reconsider’

ADDITIONAL REQUIREMENTS FOR CERTAIN MEASURES – ARTICLES 22-30 (AND SECTION H)


SECTION H | Additional requirements for certain measures.


SECTION H1 Transfer of a person held in a custody  >

SECTION H2 Video or telephone conference or other audiovisual transmission  >

SECTION H3 Provisional measures  >

SECTION H4 Information on bank and other financial accounts  >

SECTION H5 Investigate measures implying the gathering of evidence in real time, continuously and over a certain period of time  >

SECTION H6 Covert investigations  >

SECTION H7 Interception of telecommunications  >

SECTION H4 INFORMATION ON BANK AND OTHER FINANCIAL ACCOUNTS

SECTION H3 Provisional measures



If a provisional measure to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence, is requested, please indicate whether:


- the item is to be transferred to the issuing State
- the item is to remain in the executing State; please indicate an estimated date:

for lifting of provisional measure

for the submission of a subsequent request concerning the item

SECTION H4 Information on bank and other financial accounts



 Add new account

No account added

Add new account



(1) If information on bank accounts or other financial accounts that the person holds or controls is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings and on what grounds you presume that banks in the executing State hold the account:

- information on bank accounts that the person holds or in respect of which he or she has the power of attorney
- information on other financial accounts that the person holds or in respect of which he or she has the power of attorney

(2) If information on banking operations or other financial operations is requested, please indicate, for each of them, the reasons why you consider the measure relevant for the purpose of the criminal proceedings:

- information on banking operations
- information on other financial accounts

Indicate the relevant period of time and the related accounts:

- Name of the bank:
- Account number:
- Account holder:
- Relevant time period:

Show translation

Cancel

Add

- Recital 27

An EIO may be **issued in order to obtain evidence concerning the accounts**, of whatever nature, **held in any bank or any non-banking financial institution** by a person subject to criminal proceedings. This possibility is **to be understood broadly** as comprising not only suspected or accused persons but also any other person in respect of whom such information is found necessary by the competent authorities in the course of criminal proceedings.

- Recital 29

When an EIO is issued to obtain 'details' of a specified account, **'details' should be understood to include at least the name and address of the account holder, details of any powers of attorney held over the account, and any other details or documents provided by the account holder when the account was opened and that are still held by the bank.**

ARTICLE 27 INFORMATION ON BANKING AND OTHER FINANCIAL OPERATIONS

- (1) An EIO may be issued in order to obtain **the details of specified bank accounts and of banking operations** which have been carried out **during a defined period through one or more accounts specified** therein, **including the details of any sending or recipient account.**

SCOPE OF OBLIGATION UNDER ARTICLE 27

- (2) Each Member State **shall take the measures necessary to enable it to provide the information referred to in paragraph 1 in accordance with the conditions under this Article.**
- (3) **The obligation set out in this Article shall apply only to the extent that the information is in the possession of the bank in which the account is held**

SECTION H6 COVERT INVESTIGATIONS

SECTION H6 Covert investigations



If covert investigation is requested please indicate the reasons why you consider the investigative measure likely to be relevant for the purpose of the criminal proceedings:

ARTICLE 29 COVERT INVESTIGATION

- Covert investigation: **the conduct of investigations into crime by officers acting under covert or false identity** (Art. 29(1))
- These investigations shall take place **in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place.** (Art. 29(4))
 - The right to act, to direct and to control the operation related to the covert investigation shall lie solely with the competent authorities of the executing State.
 - The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the issuing State and the executing State with due regard to their national laws and procedures

ADDITIONAL DUTIES FOR ISSUING AUTHORITY ART. 29(2)

- The issuing authority shall indicate in the EIO **why it considers that the covert investigation is likely to be relevant for the purpose of the criminal proceedings.**
- **The decision on the recognition and execution of an EIO issued under this Article shall be taken in each individual case by the competent authorities of the executing State with due regard to its national law and procedures.**

ADDITIONAL GROUNDS FOR REFUSAL ART 29(3)

- **Where:**
 - **(a) the execution of the covert investigation would not be authorised in a similar domestic case; or**
 - **(b) it was not possible to reach an agreement on the arrangements for the covert investigations under paragraph 4.**

SECTION H7 INTERCEPTION OF TELECOMMUNICATIONS

SECTION H7 Interception of telecommunications



(1) If interception of telecommunications is requested please indicate the reasons why you consider the investigative measure relevant for the purpose of the criminal proceedings:

(2) Please provide following information:

(a) information for the purpose of identifying the subject of the interception:

(b) the desired duration of the interception:

(c) technical data (in particular the target identifier – such as mobile telephone, landline telephone, email address, internet connection), to ensure that the EIO can be executed:

- Telephone number:
- User name/ID:
- IP address:
- IMEI number:
- E-mail address:
- MAC address:
- Other:

- Recital 30

Possibilities to cooperate under this Directive on **the interception of telecommunications should not be limited to the content of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications**, allowing competent authorities to issue an EIO for the purpose of obtaining less intrusive data on telecommunications. **An EIO issued to obtain historical traffic and location data related to telecommunications should be dealt with under the general regime** related to the execution of the EIO and **may be considered**, depending on the national law of the executing State, **as a coercive investigative measure**.

- Recital 32

In an EIO containing the **request for interception of telecommunications** the issuing authority **should provide the executing authority with sufficient information**, such as details of the criminal conduct under investigation, **in order to allow the executing authority to assess whether that investigative measure, would be authorised in a similar domestic case.**

- Recital 33

Member States should **have regard to the importance of ensuring that technical assistance can be provided by a service provider** operating publicly available telecommunications networks and services in the territory of the Member State concerned, **in order to facilitate cooperation** under this instrument in relation to the lawful interception of telecommunications.

INTERCEPTION OF TELECOMMUNICATIONS WITH TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ART. 30)

- The EIO shall be **sent only to one** Member State if multiple can provide the necessary technical assistance → Priority to State **where the subject of the interception is or will be located**

The EIO shall also contain the following information:

- ✓ information for the **purpose of identifying the subject** of the interception
- ✓ the **desired duration** of the interception; and
- ✓ **sufficient technical data**, in particular the target identifier, to ensure that the EIO can be executed

INTERCEPTION OF TELECOMMUNICATIONS WITH TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ART. 30)

- Issuing authority shall indicate in the EIO the reasons **why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings** concerned
- Execution of an EIO may also be refused where the investigative measure would **not have been authorised in a similar domestic case** → consent subject to any conditions which would be observed in a similar domestic case.

The EIO may be executed by:

- transmitting telecommunications immediately to the issuing State; or
- intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State

The issuing authority may request a transcription, decoding or decrypting of the recording.

INTERCEPTION OF TELECOMMUNICATIONS WITHOUT TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ART 31)

SCOPE: For the purpose of carrying out an investigative measure, an interception of telecommunications:

- authorised by the competent authority of one Member State (the '**intercepting Member State**')
- the communication address of the subject of the interception specified in the interception order is being used on the territory of another Member State (the '**notified Member State**')

INTERCEPTION OF TELECOMMUNICATIONS WITHOUT TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ART 31)

NOTIFICATION: intercepting Member State shall notify the competent authority of the notified Member State of the interception:

- **prior to the interception:** if it is known that the subject of the interception is or will be on the territory of the notified Member State
- **during the interception** or **after** the interception: immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State'

• If **not be authorised in a similar domestic case**, notify:

- that the interception may not be carried out or shall be **terminated**; and
- where necessary, that any material already **may not be used**, or may only be used under conditions which it shall specify → including reasons justifying those conditions

ANNEX C NOTIFICATION OF ITN

Overview

Notification (Annex C)

Event & Message Timeline

 Get PDF / Print

 Attach Document

 Validation check

 Form Translation

Start a new request

Type of Request*

- EIO European Investigation Order Request
- MLA Mutual Legal Assistance Request
- ITN Interception of Telecommunication Notification**

System Case Number is auto-generated when the request is sent.

Date of Request is auto-generated when the request is sent.

Continue

NOTIFICATION

SECTION A

THE COMPETENT AUTHORITY

SECTION B

INFORMATION CONCERNING
THE INTERCEPTION

SECTION C

SIGNATURE AND DATE

NOTIFICATION

NOTIFICATION

This form is used in order to notify a Member State about the interception of telecommunication that will be, is or has been carried out on its territory without its technical assistance. I hereby inform

Issuing State

Republic of Poland

Notified State *

Select executing state

NOTIFICATION

SECTION A

THE COMPETENT AUTHORITY

SECTION B

INFORMATION CONCERNING THE INTERCEPTION

SECTION C

SIGNATURE AND DATE

SECTION A | THE COMPETENT AUTHORITY

The authority which is referred to here is the one which should be contacted in further correspondence with the issuing State.

Official name of the authority:

Auth.S1EC1

Show translation

Name of its representative:

Post held (title/grade):

Address:

NOTIFICATION

SECTION A

THE COMPETENT AUTHORITY

SECTION B

INFORMATION CONCERNING
THE INTERCEPTION

SECTION C

SIGNATURE AND DATE

SECTION B | INFORMATION CONCERNING THE INTERCEPTION

(I) Information about state of play: This notification takes place (please tick)

- prior to the interception
- during the interception
- after the interception

(II) The (anticipated) duration of the interception (as known to the issuing authority):

Duration:

Starting from:

(III) Target of the interception: (telephone, IP number or email)

- Telephone number:
- IP number:
- E-mail:

(IV) Identity of the persons concerned

State all information, as far as they are known, regarding the identity of the (I) natural or (II) legal person(s) against whom the proceedings are/may be/is taking place:

(I) IN THE CASE OF NATURAL PERSON(S) >

(II) IN THE CASE OF LEGAL PERSON(S) >

(V) Information regarding the purpose of this interception:

State all necessary information, including description of the case, legal classification of the offence(s) and the applicable statutory provision/code, in order to enable the notified authority to assess the following

- whether the interception would be authorised in a similar domestic case; and whether the material obtained can be used in legal proceedings
- where the interception has already occurred, whether that material can be used in legal proceedings

Please note that any objection to the interception or the use of already intercepted material must be made no later than 96 hours after the reception of this notification.

Overview

Notification (Annex C)

Event & Message Timeline

 Get PDF / Print

 Attach Document

 Validation check

 Form Translation

NOTIFICATION

SECTION A

THE COMPETENT AUTHORITY

SECTION B

INFORMATION CONCERNING
THE INTERCEPTION

SECTION C

SIGNATURE AND DATE

SECTION C | SIGNATURE AND DATE

Signature:

Date:

dd/mm/yyyy



Official stamp (if available):

POINTS OF ATTENTION: INTERCEPTION MEASURES

- Interceptions in cars
 - Wiretapping across borders
 - No equivalent measures
- Relations between Annex A and C
 - Admissibility of this evidence
- Frequency of interception measures



INTRODUCTION TO THE E- EVIDENCE DIGITAL EXCHANGE SYSTEM



Introduction to eEDES

Legal Basis

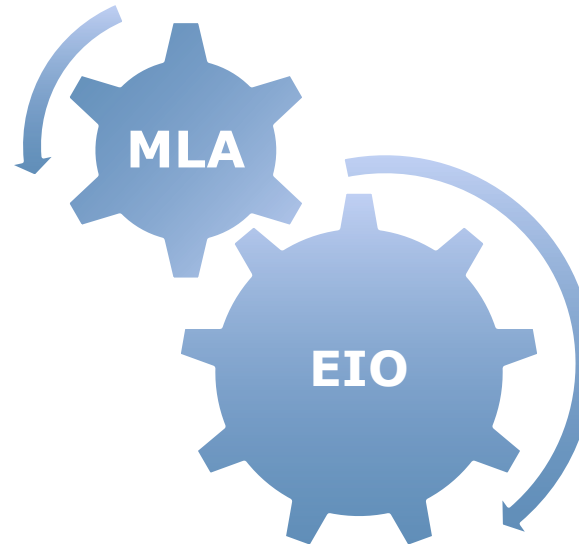
eEDES is constituted of the combined rights:

- context of Directive 2014/41/EU of the European Parliament (EIO directive)
- Council of 3rd April 2014 regarding the European Investigation Order in criminal matters [DIR 01 / Art 3]
- Existing MLA conventions.



Implemented legal instruments

- **EIO** – standardized format of assistance exchange between MS in criminal matters.
EIO covers **Annex A**, **Annex B** and **Annex C** (ITN)
- **MLA** – legal convention of cooperation for the purpose of collecting and exchanging information.



Instruments definition:

- **EIO**



Acrobat
Document

- **MLA**



ETS No.030

Objectives and advantages



+

**Facilitating
judicial cooperation
between the
competent
authorities**



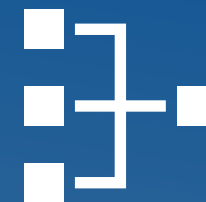
+

**Reducing the
operational risks -
- securing platform
for data exchanges**



+

**Improving the
transparency
and speeding up
the process**



+

**Reducing
the complexity and
resource-intensity
of the exchanges**

Objectives and advantages



+

Delivering user-friendly, intuitive tool which replaces other medium of contact (e-mails, traditional post etc.)

+

Simplifying the tasks of the Member States

+

Delivering unified place for communication consistent for all countries and users

+

Allowing MS to exchanges requests and responses in digital way

List of functionalities

- Exchange workflow for EIO Request
EIO amendment & form correlation
- Exchange workflow for ITN/MLA
- Case sharing (other authority validation)
- Deadlines (EIO/ITN)
- Messages exchange between case-involved
Authorities
- Delivery receipt confirmation of message
exchange
- Exchange readiness for authorities (e-Codex
address)
- Event Timeline
- Case status
- Case linking
- National case number
- Internal comments and attachments
- Information on Authority-Accepted
languages
- Virus scan of attachments
- EIO on-line help
- User notification mechanism (bell / e-mail)
- Translations (ad-hoc, full form)

Prerequisite

- Log in to the portal using the provided usernames and passwords

Issuing Authority side - EIO

Roles which perform actions
on Issuing Authority side:

Author

Reviewer

Signer 1

Signer 2

Sender

Supervisor

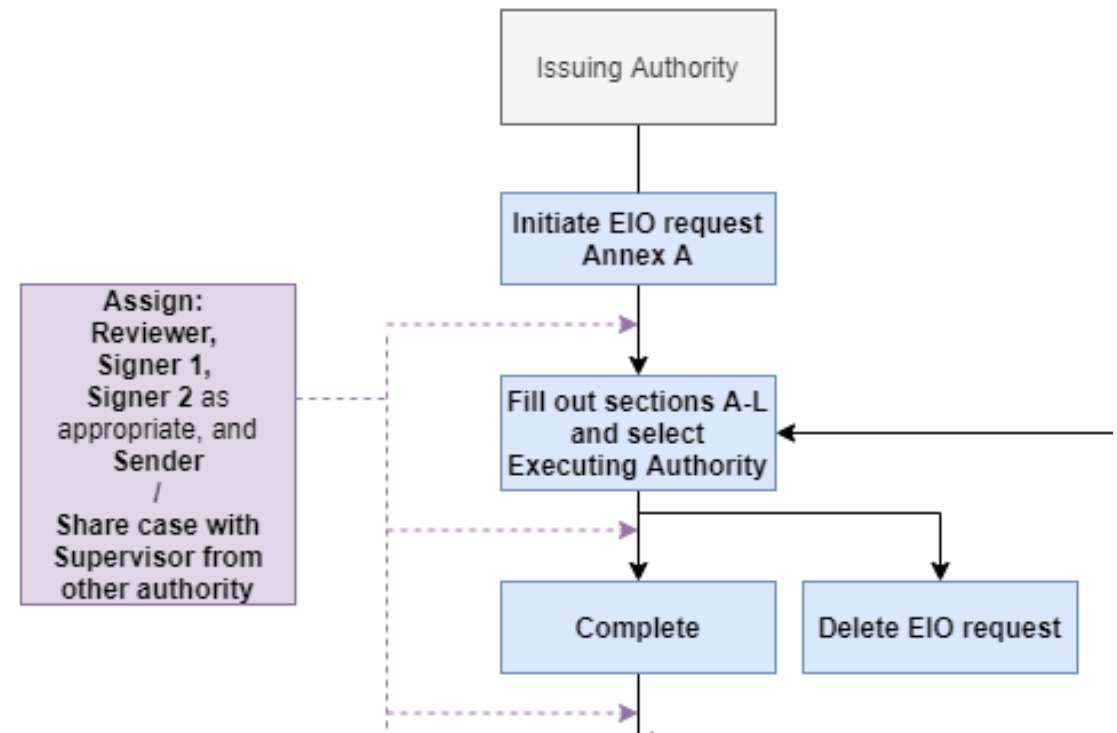
Author

The Author role is responsible for **creating and editing e-Evidence drafts** using the e-Evidence Portal. Both MLA and EIO.



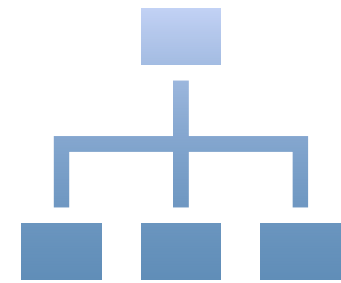
Actions dedicated for Author

- Initiates the case creation (EIO/MLA)
- Addressing the case (proper Member State and Authority on MS site)
- Filling sections of EIO/MLA
- Sending case for review
- Applying corrections when the case is returned for amendments



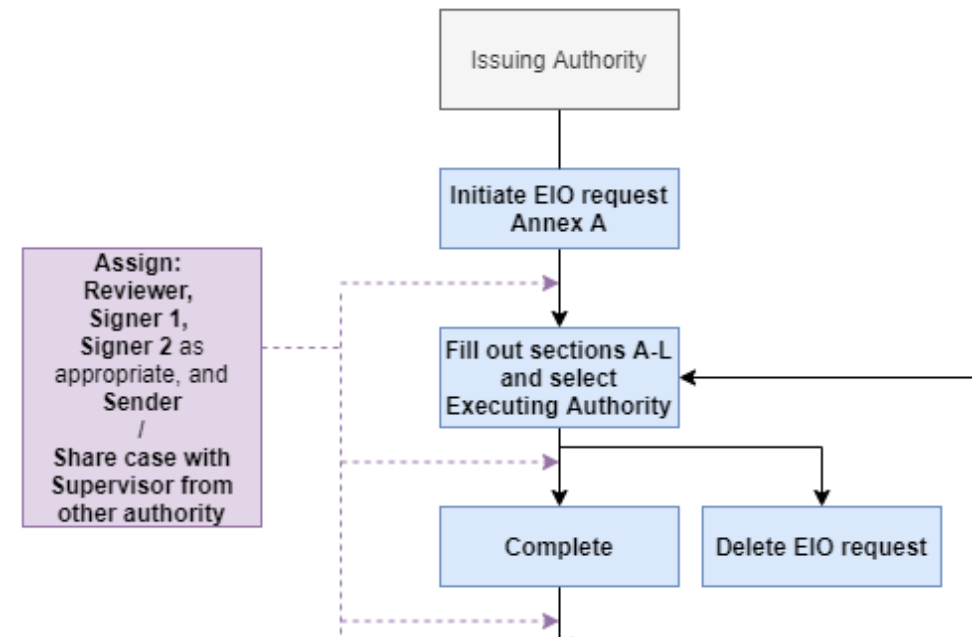
Supervisor

The Supervisor user has **access to all cases** (drafts, issued, received and closed) within a Competent Authority and is responsible for **assigning cases to users** using the e-Evidence Portal.



Actions dedicated for Supervisor

- Assigning other roles for the case e.g. Reviewer, Signer 1, Signer 2 (if applicable) and Sender
- Supervisor does not perform any other operations on case;
- Assigning the case to Supervisor in another Authority – case sharing.



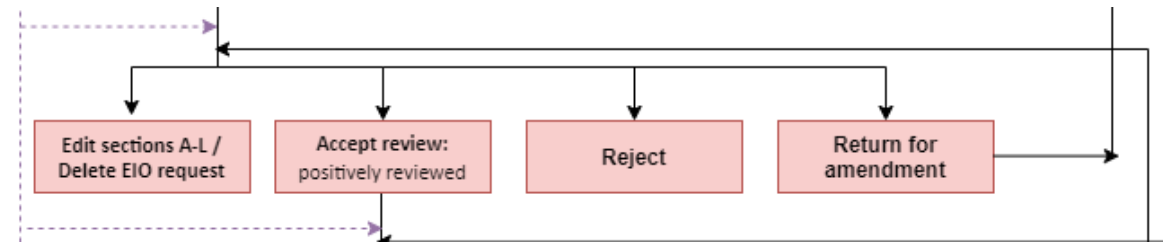
Reviewer

The Reviewer user role is responsible for **Rejecting or Accepting a draft e-Evidence request** in the e-Evidence Portal before it is sent out for signature(s).




Actions dedicated for Reviewer

- Receive cases from Author to perform a review
- Editing sections A-L directly
- Positively Reviewing – sending the case for next step to Signer 1
- Rejecting – closing the processing the case
- Returning for amendment – sending the case back to the author for corrections



Signer 1

The Signer 1 is responsible for filling in the details of the issuing authority and signing the e-Evidence EIO request before it is sent to another Member State using the e-Evidence Portal.

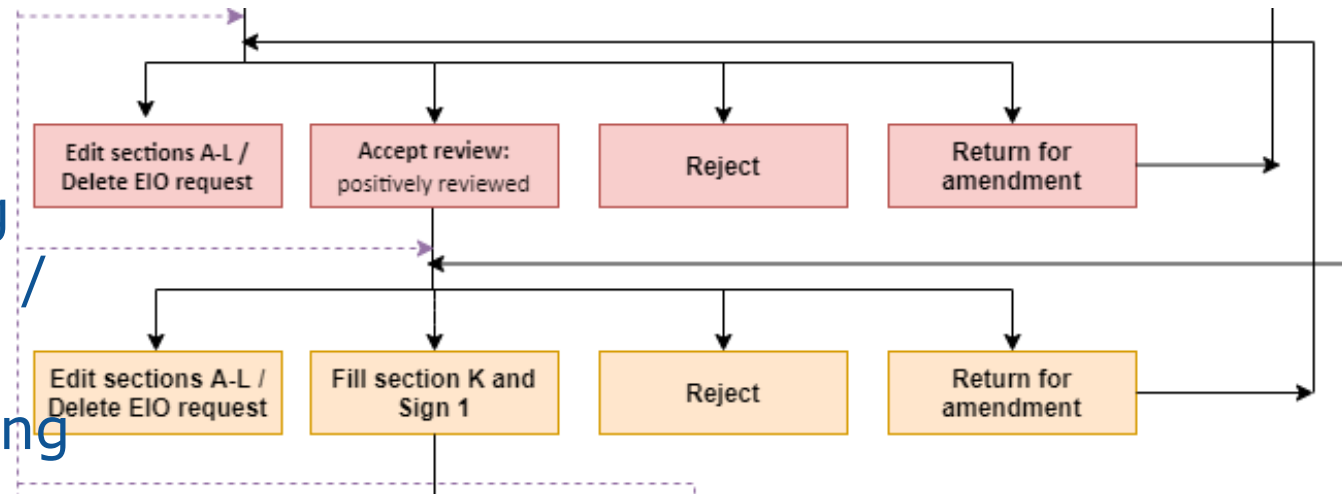
 If Signer 1 is a member of the **judicial authority**, no further validation is required.

 If Signer 1 is a member of a **non-judicial authority**, then the Signer will need to provide the details of a judicial authority that will validate the EIO through Signer 2.



Actions dedicated for **Signer 1**

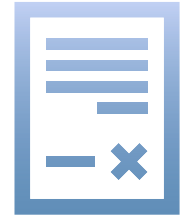
- Responsible for filling section K
- Editing sections A-L directly;
- Approving the case by signing the PDF document, and sending for further processing (Signer 2 / Sender);
- Rejecting – closing the processing of the case;
- Returning for amendment – sending the case back to the Reviewer for corrections.



Signer2

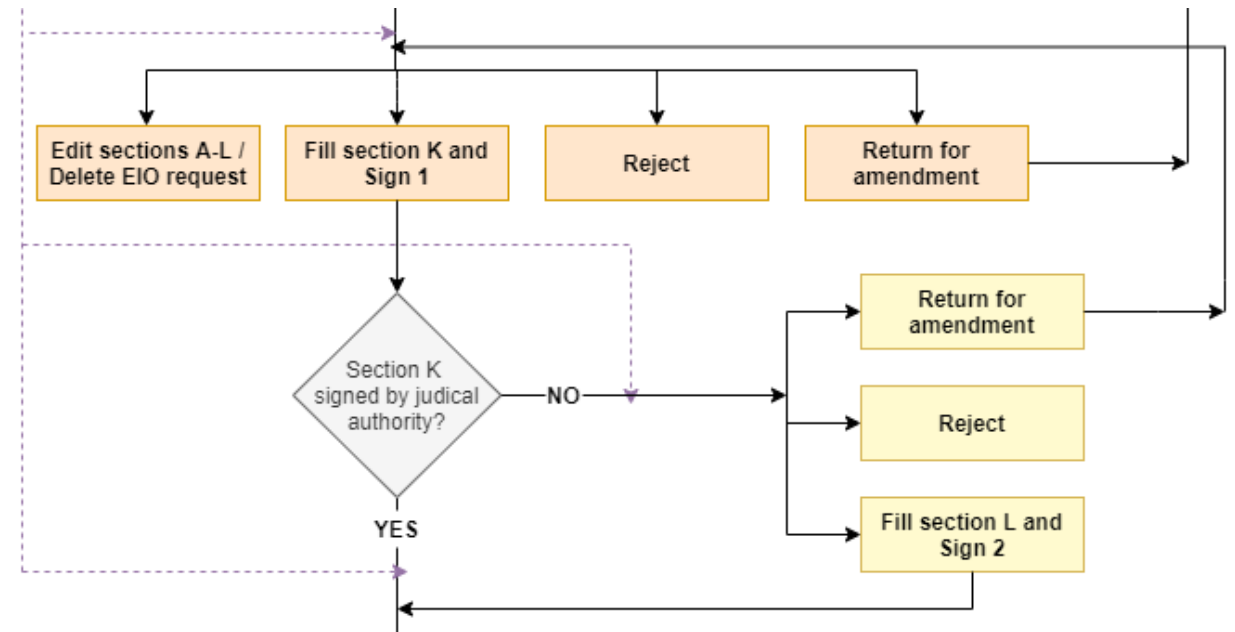
The Signer2 is always a member of a **judicial authority**.

This user is responsible for validating the EIO through a second approval signature before an EIO can be sent to another Member State using the e-Evidence Portal.



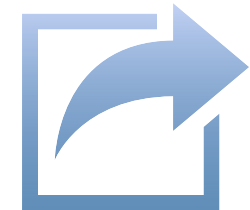
Actions dedicated for Signer 2

- Responsible for filling section L
- Approve the case by signing the PDF document, and sending for further processing to Sender
- Rejecting – closing the processing of the case
- Returning for amendment – sending the case back to Signer for corrections



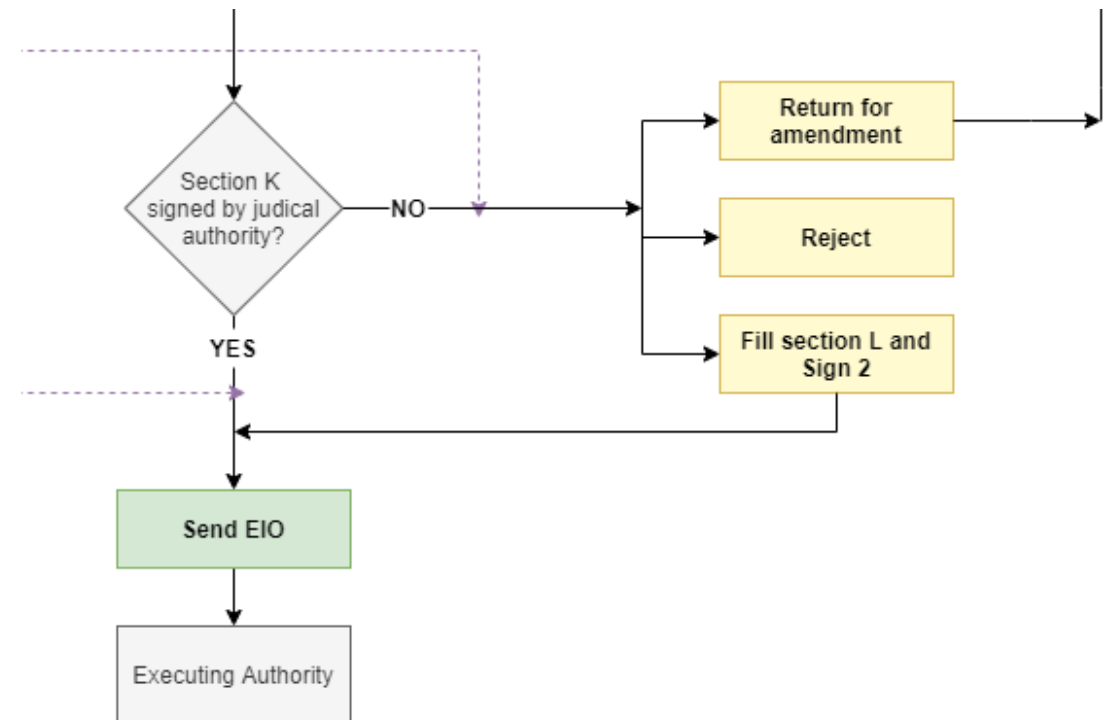
Sender

The Sender - is responsible for **sending an e-Evidence requests to another Member State** using the e-Evidence Portal.



Actions dedicated for **Sender**

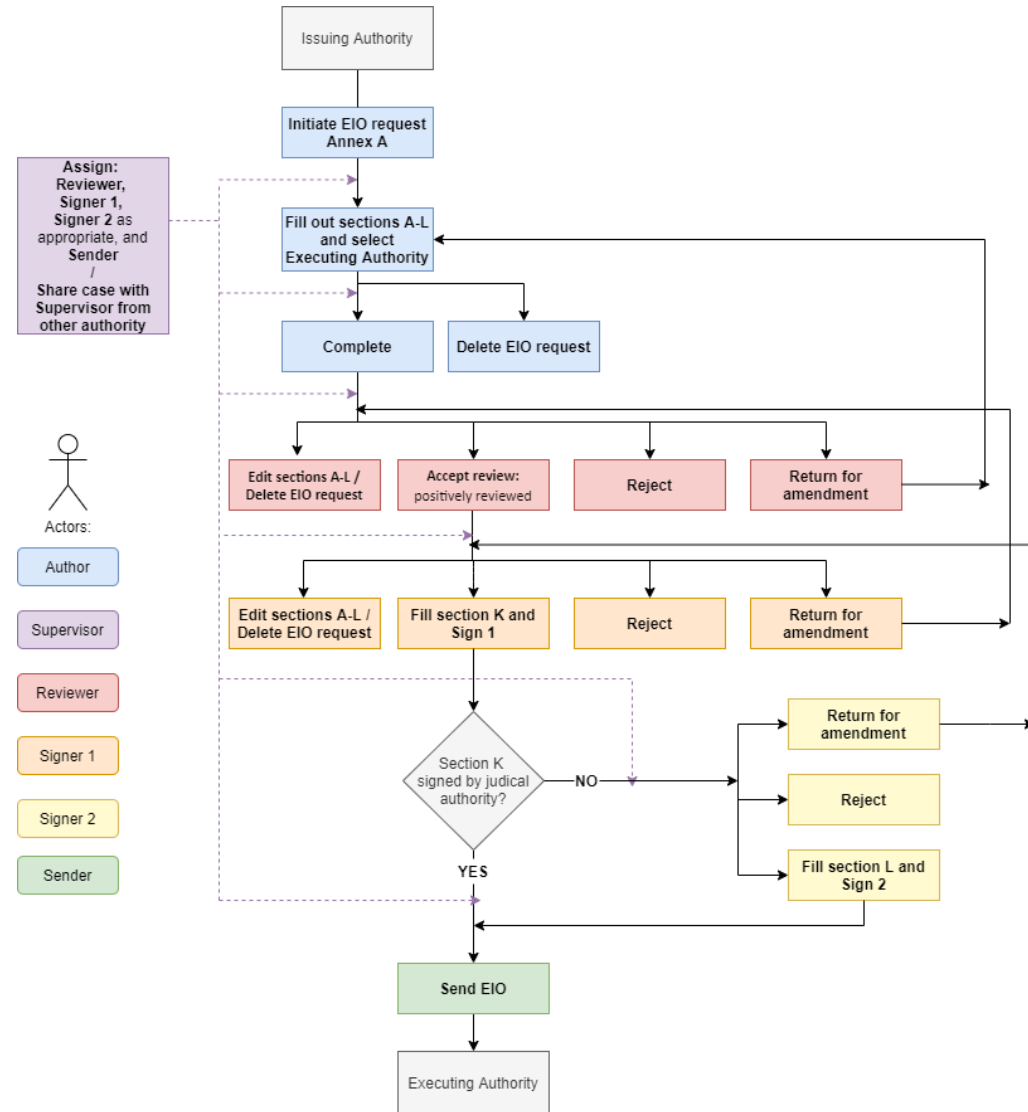
- Responsible for **sending the case for executing authority** on Member State



Document Workflow – EIO Draft



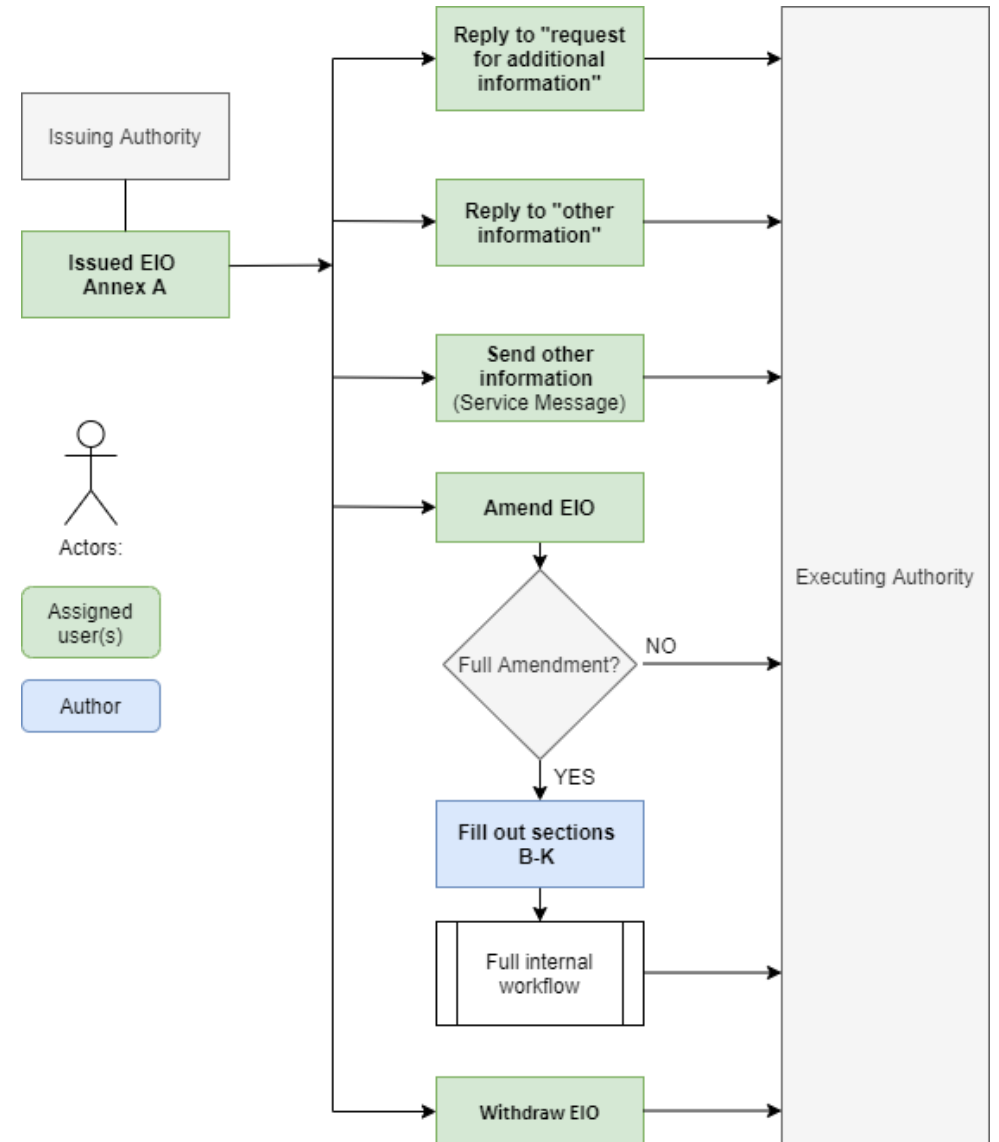
diagrams-for-2.0_v11-EIO draft.png



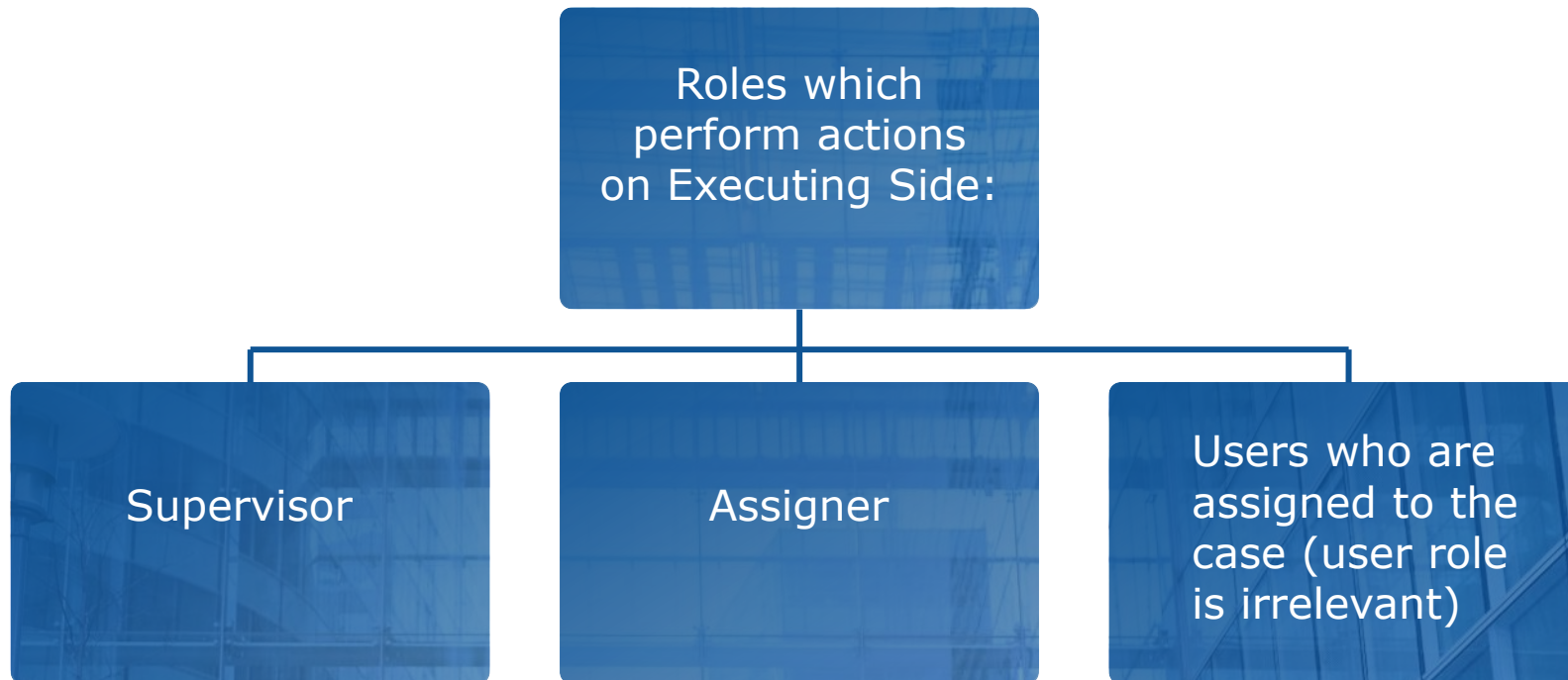
Document Workflow – EIO Issued



diagrams-for-2.0_v11-EIO issued.png



Executing Authority side - EIO



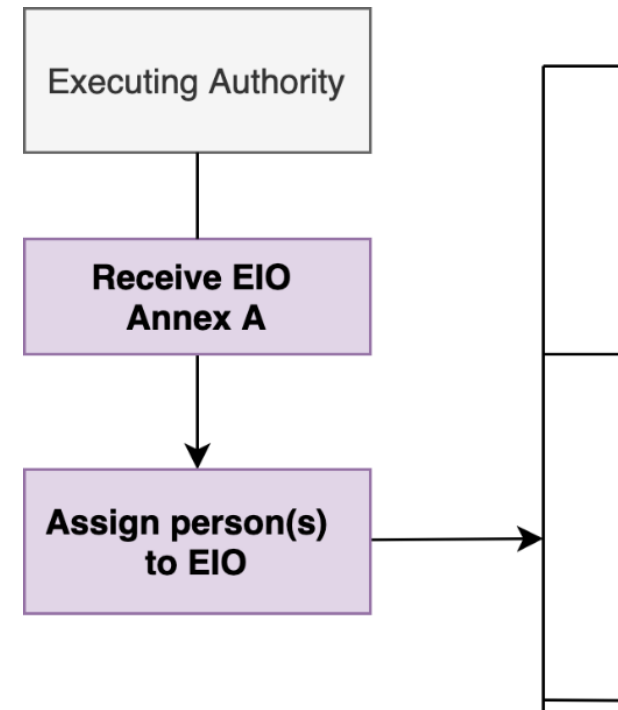
Assigner

The Assigner is responsible for reviewing and assigning received requests to appropriate users for execution using the e-Evidence Portal. This role has read permissions for all incoming requests in the Competent Authority



Actions dedicated for Assigner

- Selecting the users who will process the case



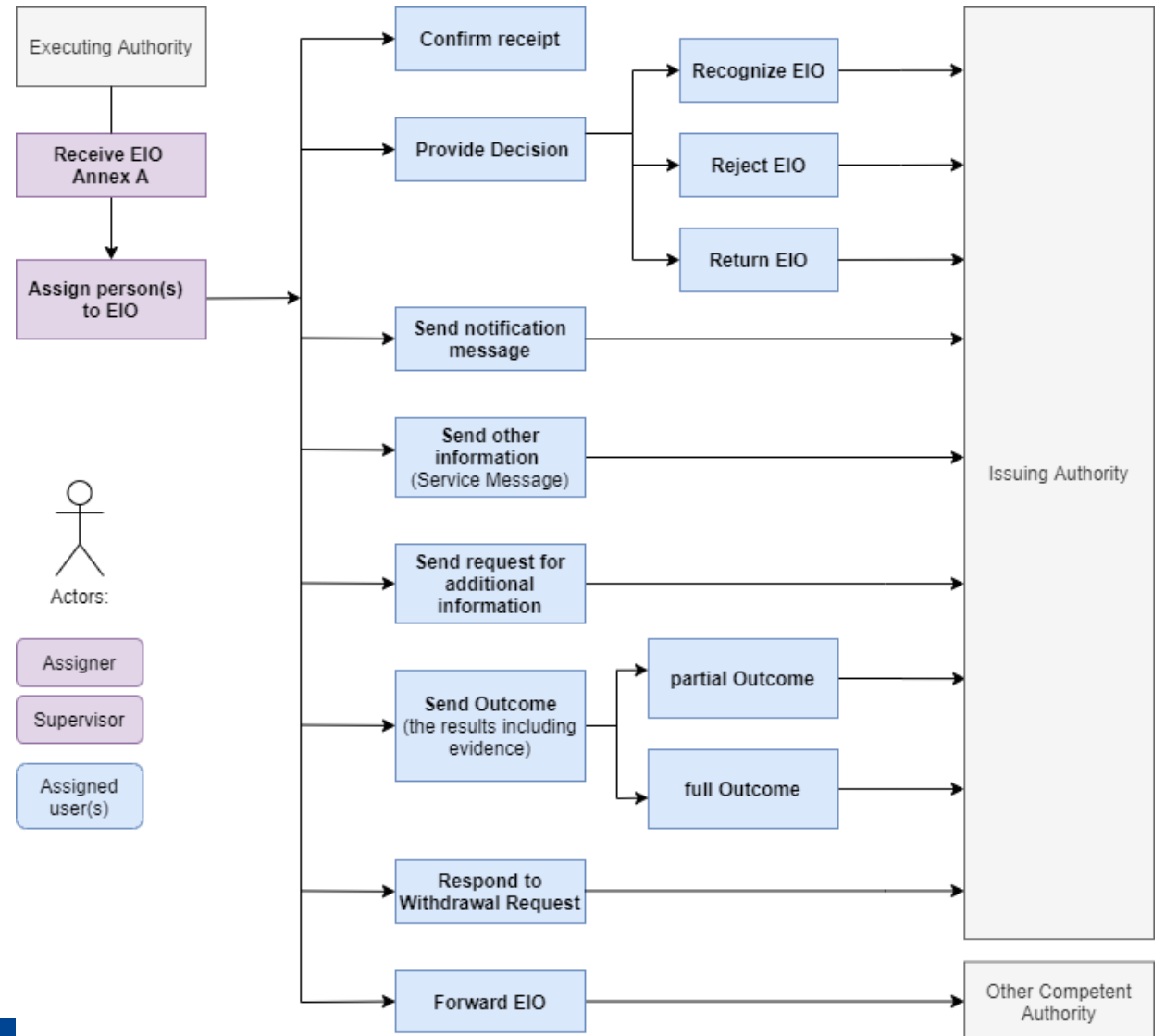
Supervisor on Executing Side

- Can access shared cases and assign to other users in his Authority
- Can look and assign on received cases

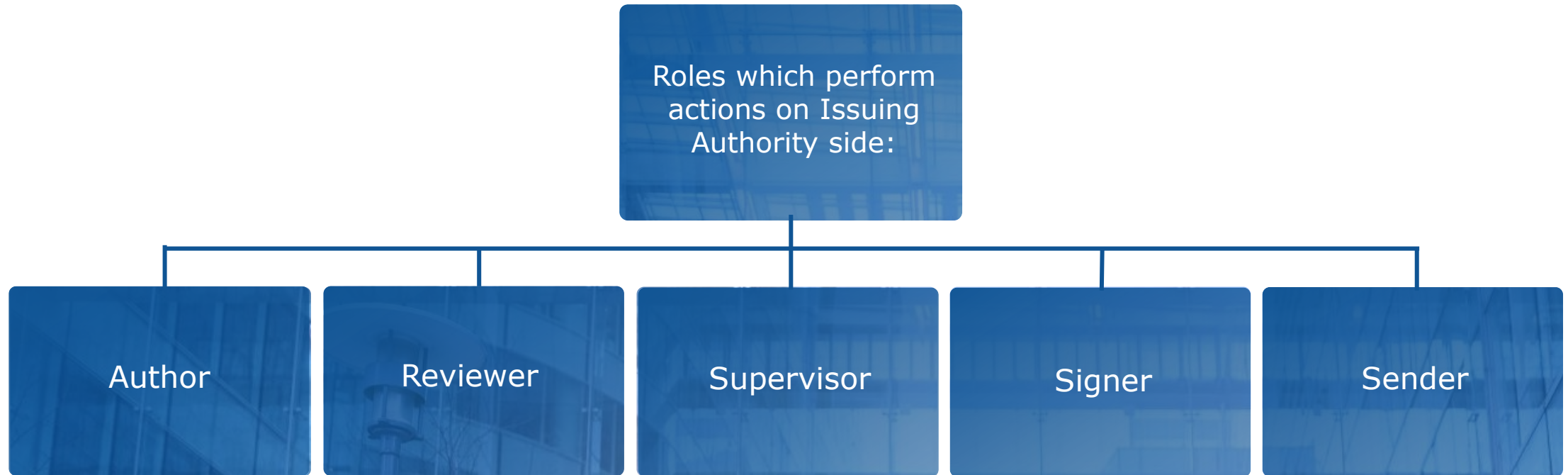
Document Workflow – EIO Received



diagrams-for-2.0_v11-EIO received.png



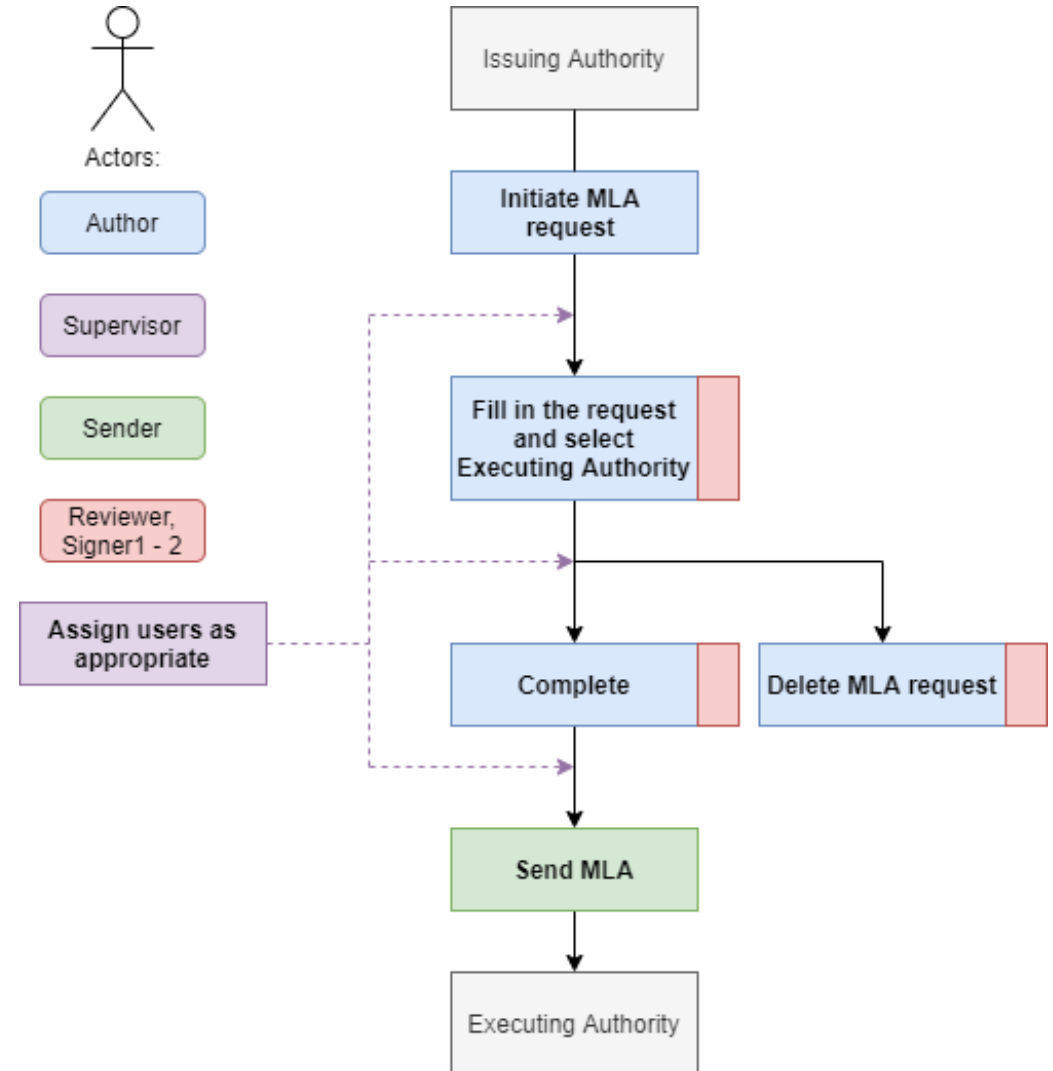
Issuing Authority side - MLA



Document Workflow – MLA Draft



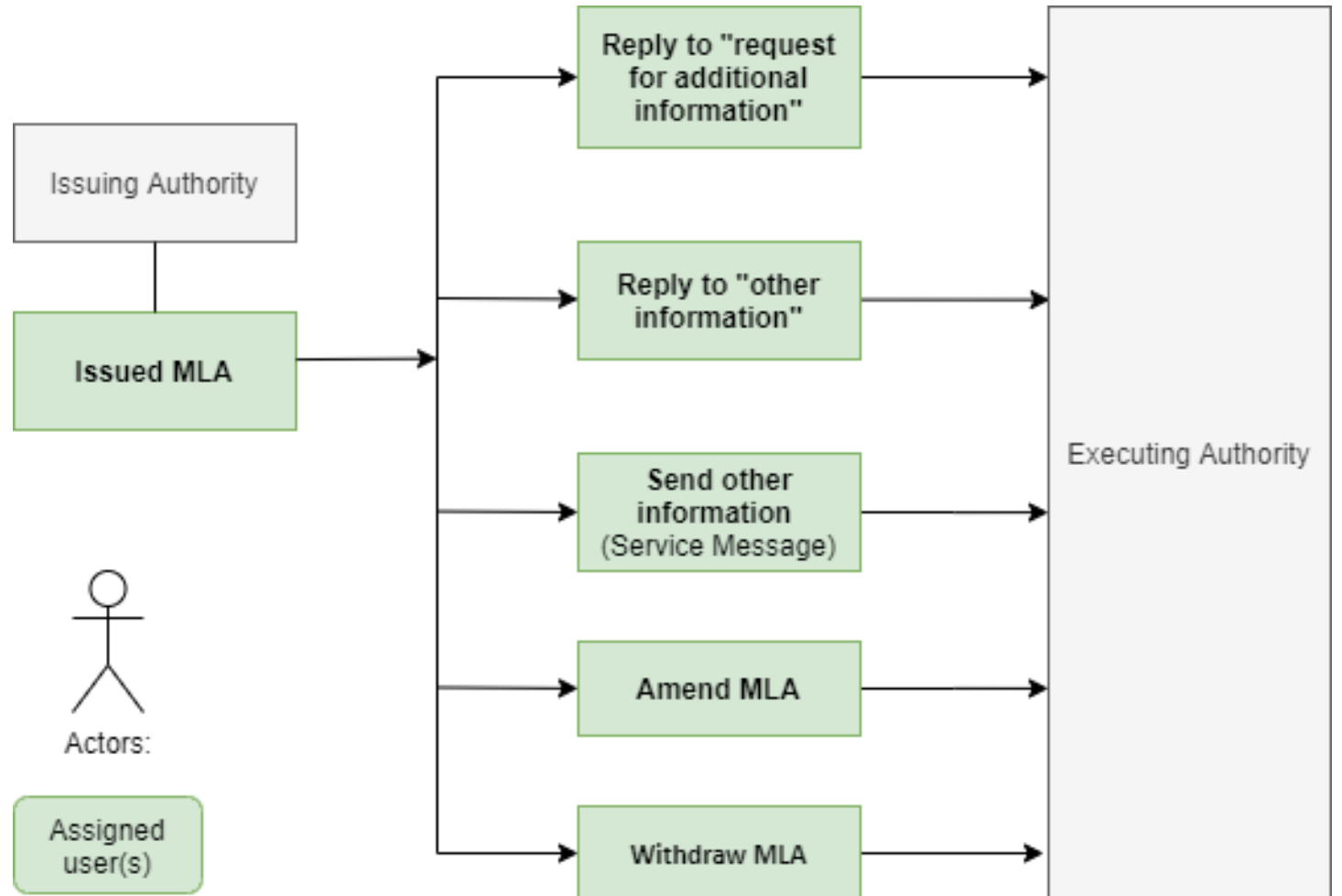
diagrams-for-2.0_v11-MLA draft.png



Document Workflow – MLA Issued



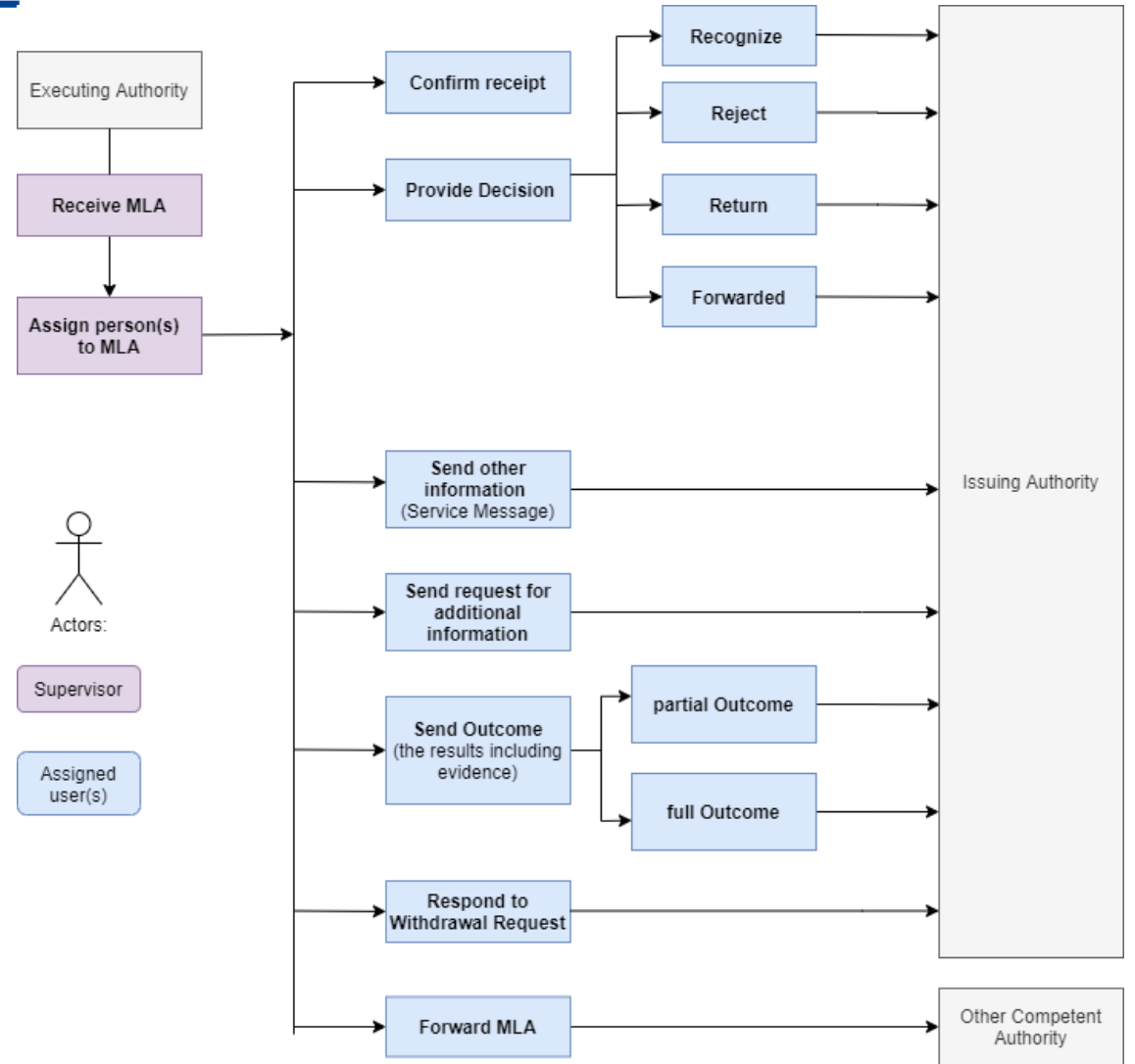
diagrams-for-2.0_v11-MLA Issued.png



Document Workflow – MLA Received



diagrams-for-2.0_v11-MLA Received.png



Issuing Authority side - ITN

Roles which perform actions
on Issuing Authority side:

Author

Reviewer

Signer 1

Signer 2

Sender

Supervisor

Document Workflow – ITN Draft



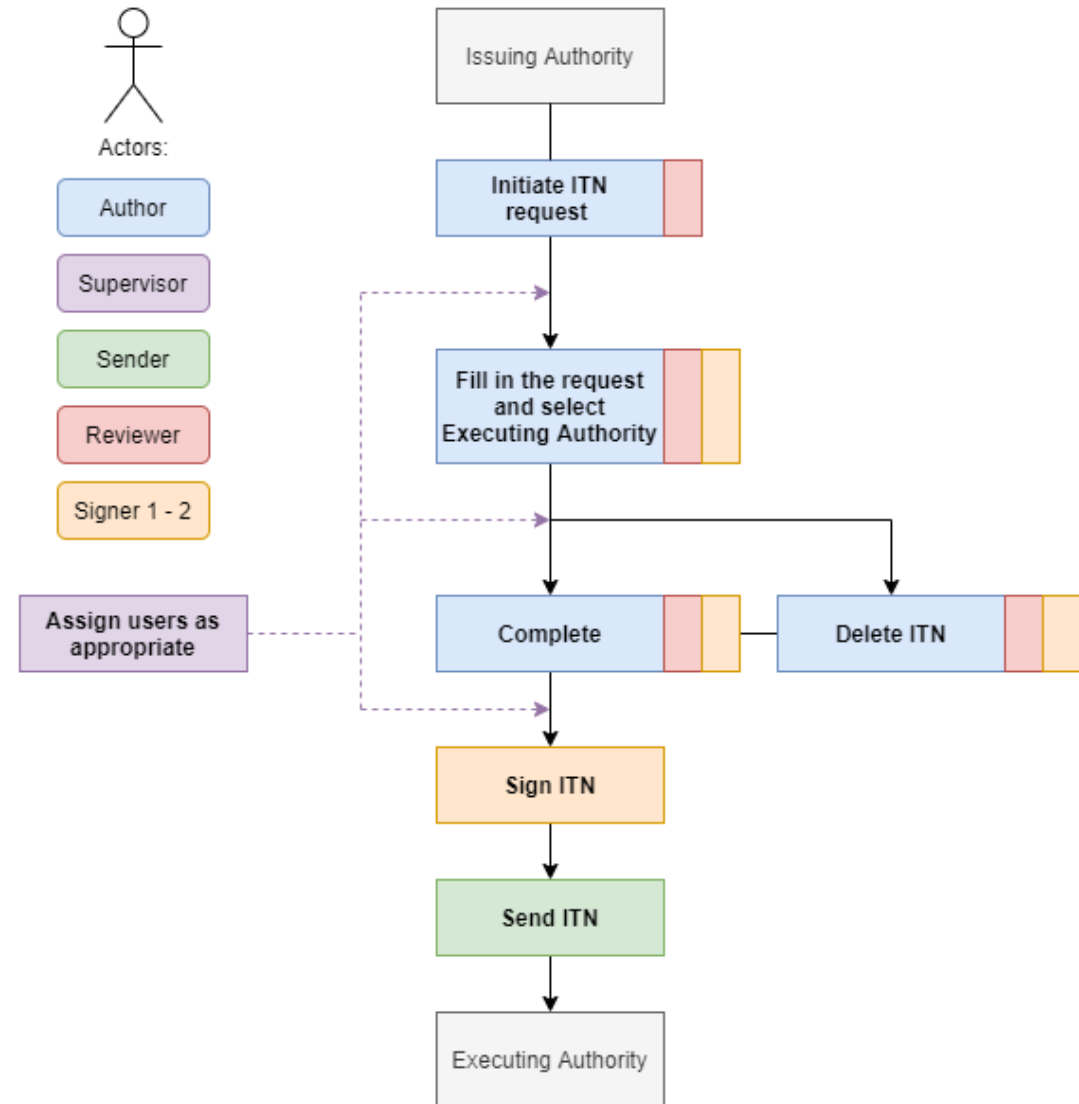
ITN / Annex C tab contains a digital version of the EIO Annex C form along with vertical navigation for Annex C sections. It is visible for all cases, including drafts, issued and received cases.



The same roles are used both EIO and ITN but the way of processing is a bit different



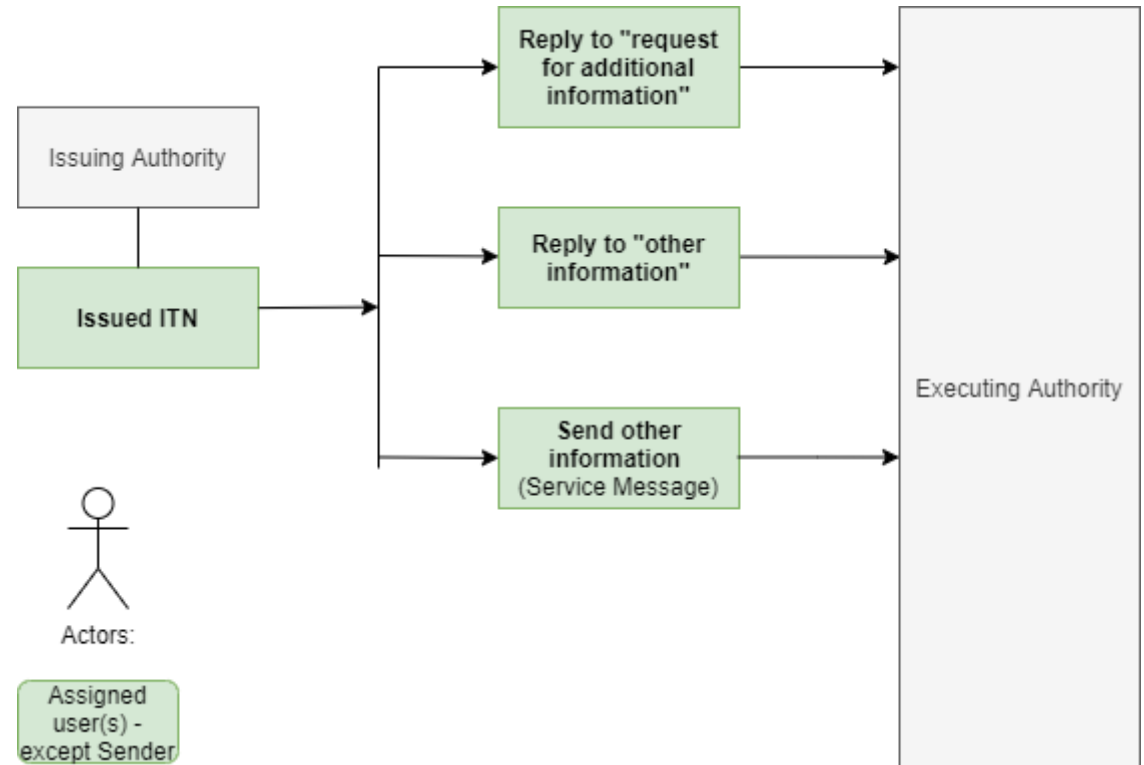
diagrams-for-2.0_v11-ITN Draft.png



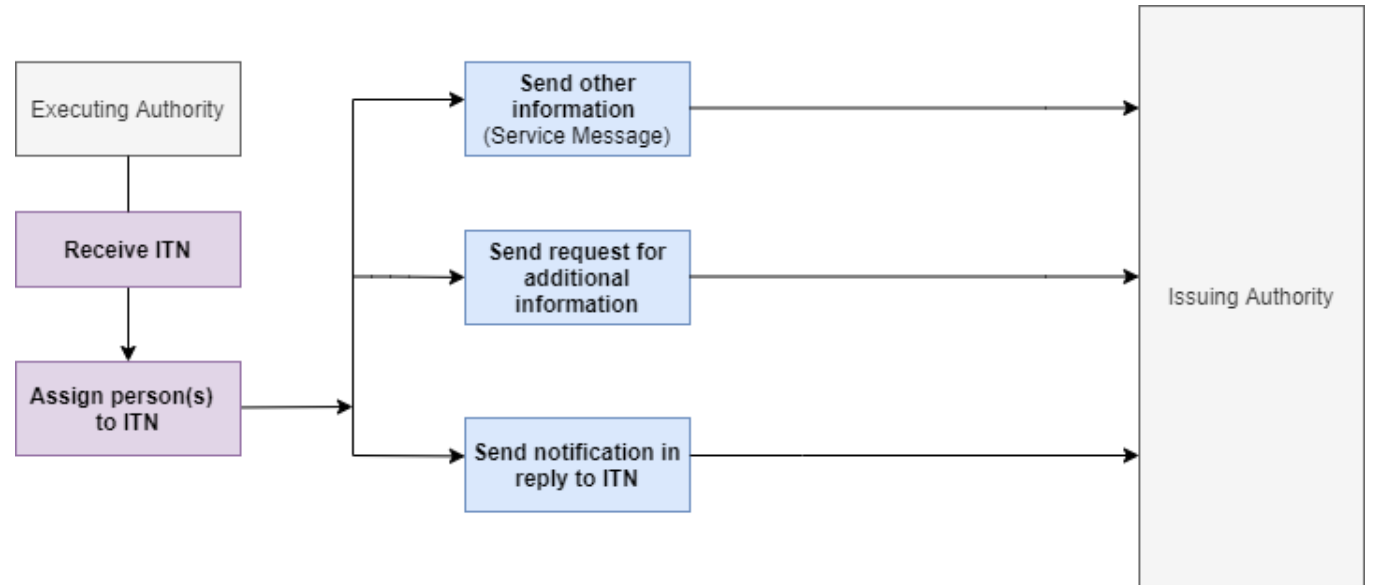
Document Workflow – ITN Issued



diagrams-for-2.0_v11-ITN Issued.png



Document Workflow – ITN Received



diagrams-for-2.0_v11-ITN Received.png



Actors:

Supervisor

Assigned user(s)

Signing PDF documents

- Signing options in Adobe Acrobat Reader



- Public trusted vs local trusted signatures



- Identity recognition



- Circle of trust



- Examples



Acrobat
Document

Time limits for case processing

- EIO and MLA legal instruments have notifications implemented (e-mail and the bell in RI)
- Deadlines implemented for:
 - **Sending Annex B**
 - **Sending decision**
 - **Sending outcome**



E-mail notification example

08-10-2020 14:49

A new EIO case has been received

Case Subject:

Eio 08102020/1445

Reference number:

EIO-CZ-PL-2020-10-08-0008-1

Message Type:

MessageId:



EIO workflow

- **Exercise 1:** Create & send an EIO

CONCLUDING REMARKS



THANK YOU & SEE YOU ON 24TH NOVEMBER