

ONLINE TRAINING OF MASTER TRAINERS SESSION 2 – 24 NOVEMBER 2021



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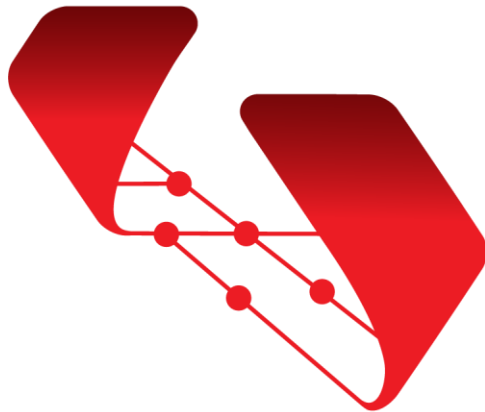
Session 2: Wednesday, 24th November 2021, 09.15-12.45

09.15 – 09.30	Virtual registration and logging in to meeting
09.30 – 09.45	Welcome and introduction to the learning objectives of this session
09.45 – 10.30	Reflections on particular investigative measures
10.30 – 11.20	Reflections on receiving an EIO
11.20 – 11.30	Comfort break
11.30 – 12.15	Experiences with the e-Evidence Digital Exchange System
12.15 – 12.40	Reflections on provisional orders
12.40 – 12.45	Concluding remarks for Session 2

Session 2: Wednesday, 24th 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 this session
14.15 – 15.00	Reflections on particular investigative measures
15.00 – 15.50	Reflections on receiving an EIO
15.50 – 16.00	Comfort break
16.00 – 16.30	Experiences with the e-Evidence Digital Exchange System
16.30 – 17.10	Reflections on provisional orders
17.10 – 17.15	Concluding remarks for Session 2

BRIEF REMINDER OF LEARNING OUTCOMES FOR THESE 3 SESSIONS OF 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

WELCOME

- Summary of learning goals of Session 1
 - Reflection on grounds of issuing an EIO
 - Reflection on particular investigative measures
 - How do we pass on experiences/lessons learnt from experience to others
 - How to/what aspects of cultural differences to pass on to others
 - First trials with the e-Evidence Digital Exchange System

The background features a dynamic composition of overlapping, flowing shapes in various shades of red and white. The shapes create a sense of movement and depth, with some areas appearing as if they are peeling or peeling away from a surface. The overall effect is modern and energetic.

EXPERIENCES WITH E-EDES

TOUR DE TABLE

- What is positive about using this system for sending an EIO?
- What are possible hurdles?
 - On look and feel
 - Missing
 - Not clear how it works

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 RECEIVING AN EIO

TWO APPROACHES

- Approach 1:
 - In smaller groups reflect on 3-5 elements you would definitely want to pass on to new/less experienced colleagues on receiving an EIO
- Approach 2:
 - On the basis of the selected elements – larger group reflection

WHAT IS IMPORTANT WHEN EXECUTING AN EIO

1. Send an Annex B!
2. Ability to ask for additional information when details in EIO are not enough
3. Deadlines are importantand important to inform if deadlines will not/cannot be followed
4. Do not forget to check that all the legal formalities have been followed before execution
5. Limitations faced when only parts of the EIO are translated or only an English translation is received
6. Making sure to check the Annex and to send it to the right authority, making clear the kind of crimes involved and to check the procedural measures
7. Checking the competence (Slovenia example)

REFLECTIONS ON THE ISSUING OF AN EIO

- Focus should be on clarity and simplicity
- Making sure the EIO is CLEAR, COMPREHENSIVE and has a STATEMENT FACTS
- Making sure that it is clear what MEASURES need to be conducted
- Provide justification of the measure, in particular if it is a coercive measure
- Making sure that the EIO is not too generic or too large
- Writing in a way that is understandable to foreign authorities and to be truthful (urgency should really be urgency)

POSSIBLE ASPECTS

- Confirmation of the Receipt of an EIO
 - Why is confirmation needed
 - The Authority which received the EIO
 - Competent Authority to whom EIO is transmitted by the (receiving) authority
 - Attention to any other information which may be relevant for the issuing authority
- Procedures and Safeguards for the Executing State
 - Recognition and Execution
 - Refusal of an EIO
 - Following up on EIO
 - Transfer of evidence
 - Legal Remedies
 - Liability

ARTICLE 16 – OBLIGATION TO INFORM

- Time frame (Art. 16(1))
 - **without delay, and in any case within a week of the reception of an EIO**, acknowledge reception of the EIO by completing and sending the form set out in Annex B.
 - applies to both the central authority and to the executing authority which receives the EIO
- Contents (Art. 16(2))
 - (a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex A is incomplete or manifestly incorrect;
 - (b) if the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case; or
 - (c) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 9.

ARTICLE 16 – OBLIGATION TO INFORM

- Information on other type of investigative measure or refusal or postponement (Art. 16(3))

Without prejudice to Article 10(4) and (5) the executing authority shall inform the issuing authority **without delay** by **any means capable of producing a written record**:

(a) of any decision taken pursuant to Articles 10 (Recourse to a different type of investigative measure) or 11 (Grounds for non-recognition or non-execution);

(b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Acknowledge receipt



SENDER

- Auth.S2BG1
- address
12345 undefined
- 012356789
- 0123456788
-

RECIPIENT

- Auth.S1BG1
- address
12345 undefined
- 012356789
- 0123456788
-

Message:

Normal
B *I* U

Sans Serif

Please enter the reason for the selected decision

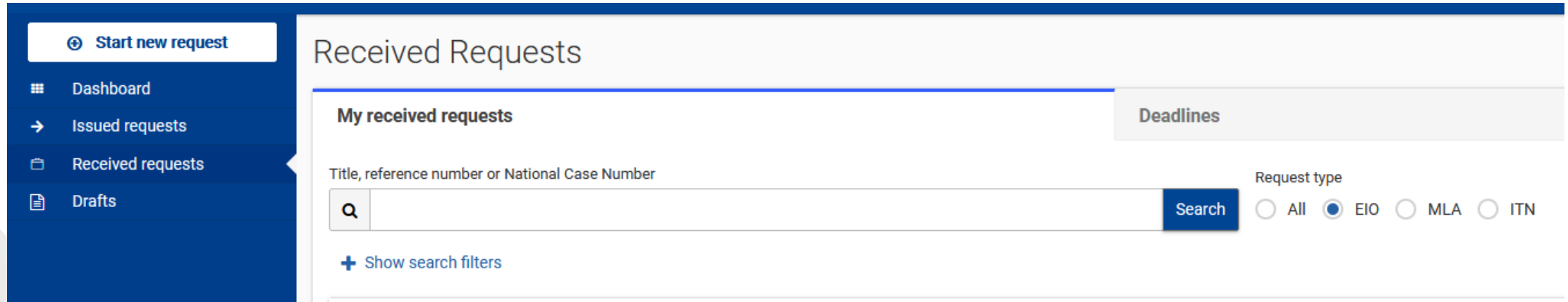
Save

Attach Document

Cancel

Send

THE AUTHORITY WHICH RECEIVED THE EIO



The screenshot shows the 'Received Requests' section of the TREIO application. On the left is a dark blue navigation sidebar with the following items: 'Start new request' (with a plus icon), 'Dashboard', 'Issued requests', 'Received requests' (highlighted), and 'Drafts'. The main content area is titled 'Received Requests' and contains two tabs: 'My received requests' (active) and 'Deadlines'. Below the tabs is a search bar with the placeholder text 'Title, reference number or National Case Number'. To the right of the search bar is a 'Search' button. Further right are radio buttons for 'Request type', with 'All', 'EIO' (selected), 'MLA', and 'ITN'. Below the search bar is a '+ Show search filters' link.

PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE

ARTICLE 9 - RECOGNITION AND EXECUTION

1. The executing authority shall recognise an EIO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this Directive.

2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and **provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.**

3. Where an executing authority receives an EIO which has not been issued by an issuing authority as specified in Article 2(c), the executing authority shall return the EIO to the issuing State.

Assistance of issuing State

4. The issuing authority may request that **one or more authorities of the issuing State assist in the execution of the EIO** in support to the competent authorities of the executing State to the extent that the designated authorities of the issuing State would be able to assist in the execution of the investigative measures indicated in the EIO in a similar domestic case. **The executing authority shall comply with this request provided that such assistance is not contrary to the fundamental principles of law of the executing State or does not harm its essential national security interests.**

Which law applies:

5. The authorities of the issuing State present in the executing State shall be **bound by the law of the executing State during the execution of the EIO.** They shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing State and to the extent agreed between the issuing authority and the executing authority.

6. The issuing authority and executing authority may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.

REFLECTIONS FROM REALITY

- SECTION C SUMMARY: Country A asks Country B to take on the investigations according to what it is described in section c and section G (motivation for issuing an EIO).
- In section C it is written, that from the investigation of the Police of Country A, there are two people who force women coming from Nigeria to prostitution. Country A asks generally to make further investigations giving the address of the suspected persons but not to interrogate the exploited woman, because she is now in country A.

REFLECTIONS FROM REALITY - 2

- QUESTIONS:

I. From the point of view of the form , is it correct, what do you think?

II. Concerning what Country A asks, is it correct ?

III. Would you recognize this EIO ? Yes/No – Give arguments on that.

IV. If not, how do you communicate it to the requesting authority ?

ARTICLE 12 - TIME LIMITS FOR RECOGNITION OR EXECUTION

Principles:

The decision on the recognition or execution shall be taken and the investigative measure shall be carried out with the same **celerity and priority as for a similar domestic case** and, in any case, **within the time limits provided in this Article**. (Art 12(1))

Urgency:

...where the **issuing authority has indicated** in the EIO that, **due to procedural deadlines**, the **seriousness of the offence** or other particularly **urgent circumstances**, a **shorter deadline** than those provided in this Article is necessary, or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a **specific date**, the executing authority shall take as full account as possible of this requirement. (Art 12(2))

Time limits:

Decision: The executing authority shall take the decision on the recognition or execution of the EIO **as soon as possible** and, without prejudice to paragraph 5, **no later than 30 days after the receipt** of the EIO by the competent executing authority. (Art12(3))delay then time limit may be extended by a maximum of 30 days (Art. 12(5))

Execution: unless grounds for postponement or evidence is already in the possession of the executing State, the executing authority shall carry out the investigative measure **without delay** and without prejudice to paragraph 5, **not later than 90 days** following the taking of the decision referred to in paragraph 3. (Art 12(4)) ...delay then consult with the issuing authority on the appropriate timing to carry out the investigative measure (Art 12(6))

ARTICLE 15 - GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION

- Grounds for postponement:
 - its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable (Art 15(1a))
 - the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose (Art 15(1b))

2. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.

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.

ARTICLE 13 - TRANSFER OF EVIDENCE

1. The executing authority shall, **without undue delay**, transfer the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State.

Where requested in the EIO and if possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 9(4).

2. The transfer of the evidence **may be suspended, pending a decision regarding a legal remedy**, unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights. However, the transfer of evidence shall be suspended **if it would cause serious and irreversible damage to the person concerned**.

3. When transferring the evidence obtained, the executing authority shall **indicate whether it requires the evidence to be returned** to the executing State as soon as it is no longer required in the issuing State.

4. Where the objects, documents, or data concerned are already relevant for other proceedings, the executing authority may, at the **explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required** in the issuing State or at any other time or occasion agreed between the competent authorities.

REFLECTIONS FROM REALITY

- There are some countries, Poland and the Czech Republic, for example which insist in asking the original documents, otherwise it is said that the evidence cannot be accepted in Court.
- - are you sure you can ask that? If in that country the original of documents are not submitted even for domestic cases, how can you oblige the country to do that?
- Why authenticate documents cannot be submitted? According to the international laws such documents are valid as the originals.

ARTICLE 14 - LEGAL REMEDIES

1. Member States shall ensure that **legal remedies equivalent to those available in a similar domestic case**, are applicable to the investigative measures indicated in the EIO.
2. The **substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State**, without prejudice to the guarantees of fundamental rights in the executing State.
3. Where it would not undermine the need to ensure confidentiality of an investigation under Article 19(1), the issuing authority and the executing authority shall take **the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable and in due time to ensure that they can be exercised effectively**.
4. Member States shall ensure that **the time-limits for seeking a legal remedy** shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.
5. The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.
6. **A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases**.
7. The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO.

LIABILITY

Criminal Liability - Article 17

When present in the territory of the executing State in the framework of the application of this Directive, officials from the issuing State shall be regarded as officials of the executing State with respect to offences committed against them or by them.

Civil Liability – Article 18

1. Where, in the framework of the application of this Directive, officials of a Member State are present in the territory of another Member State, the former Member State shall be liable for any damage caused by its officials during their operations, in accordance with the law of the Member State in whose territory they are operating.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse in full any sums the latter Member State has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in cases referred to in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.



COMFORT BREAK

10 minutes

The background features a dynamic composition of overlapping, flowing shapes in two shades of red and white. The shapes originate from the left side and curve towards the right, creating a sense of movement and depth. The primary color is a deep, dark red, while a secondary, slightly lighter red is used for some of the overlapping layers. The white space is primarily on the left, where the shapes appear to emerge from or recede into.

REFLECTIONS ON INVESTIGATIVE MEASURES

ARTICLE 10 - RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE

1. The executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where:
 - the investigative measure indicated in the EIO **does not exist under the law** of the executing State; or
 - the investigative measure indicated in the EIO **would not be available in a similar domestic case**.
2. Without prejudice to Article 11, paragraph (1) does not apply to the following investigative measures, which **always have to be available** under the law of the executing State:
 - **the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO;**
 - **the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;**
 - **the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;**
 - **any non-coercive investigative measure as defined under the law of the executing State;**
 - **the identification of persons holding a subscription of a specified phone number or IP address.**
3. The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.
4. When the executing authority decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.
5. Where, in accordance with paragraph 1, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested

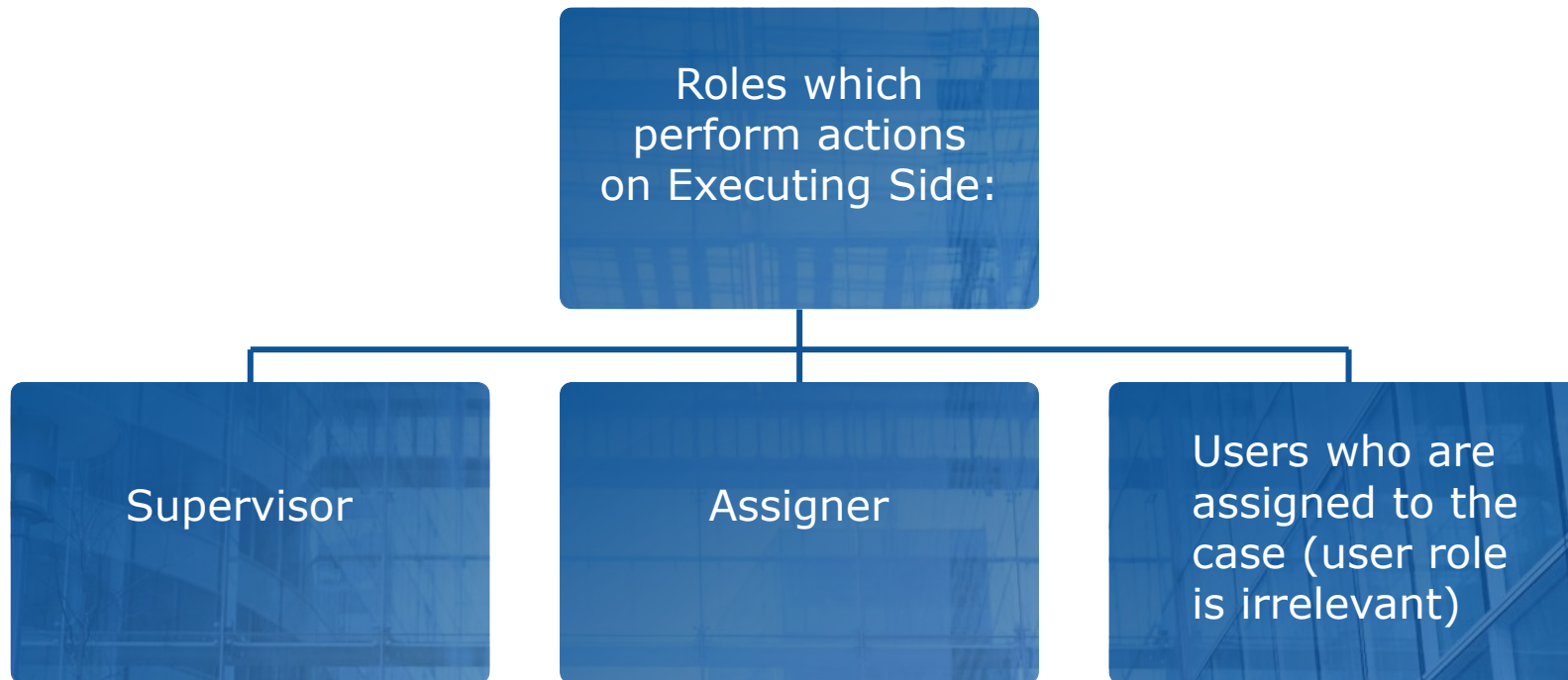
ARTICLE 10 - RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE

3. The executing authority may also **have recourse to an investigative measure other than that indicated in the EIO** where the investigative measure selected by the executing authority would **achieve the same result by less intrusive means** than the investigative measure indicated in the EIO.
4. When the executing authority decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the issuing authority, which may **decide to withdraw or supplement the EIO**.
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E-EVIDENCE DIGITAL EXCHANGE SYSTEM – RECEIVING EIOS

Executing Authority side - EIO



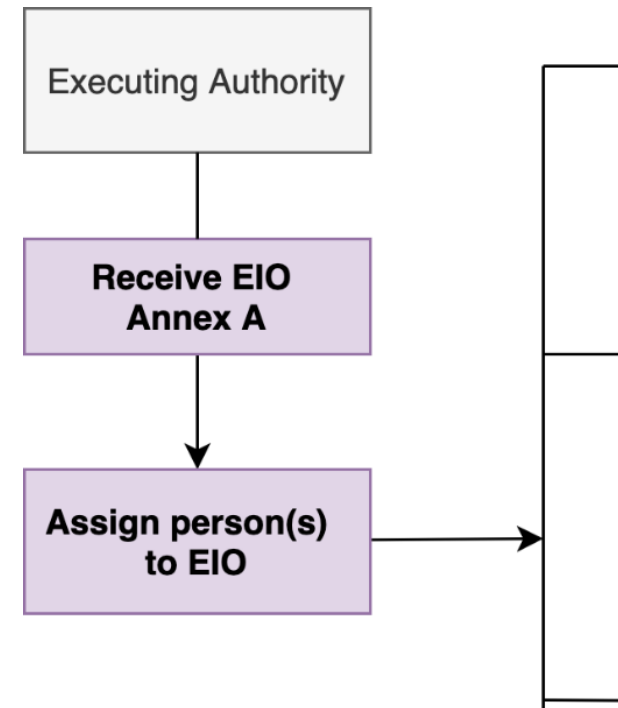
Assigner

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



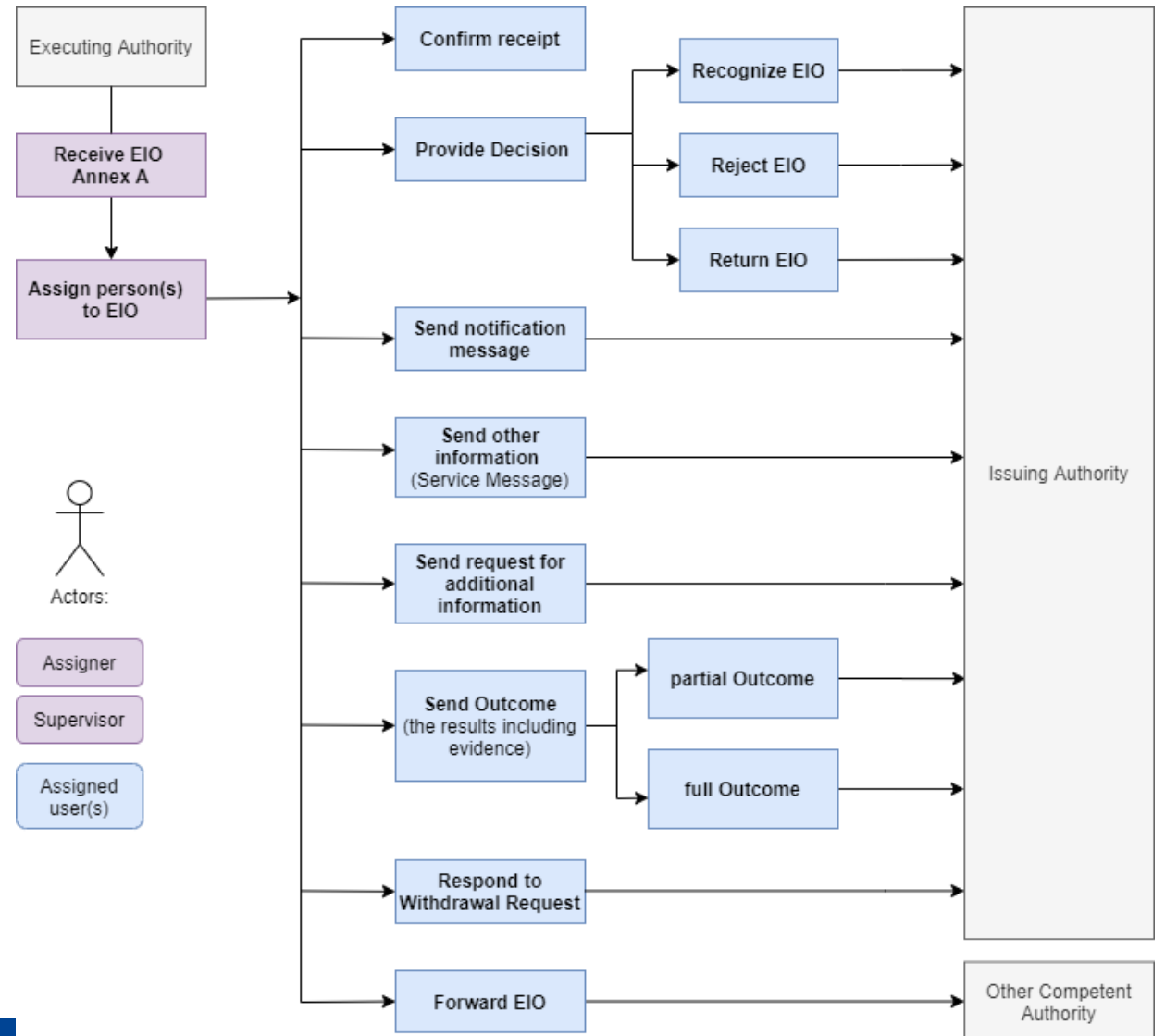
Supervisor on Executing Side

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

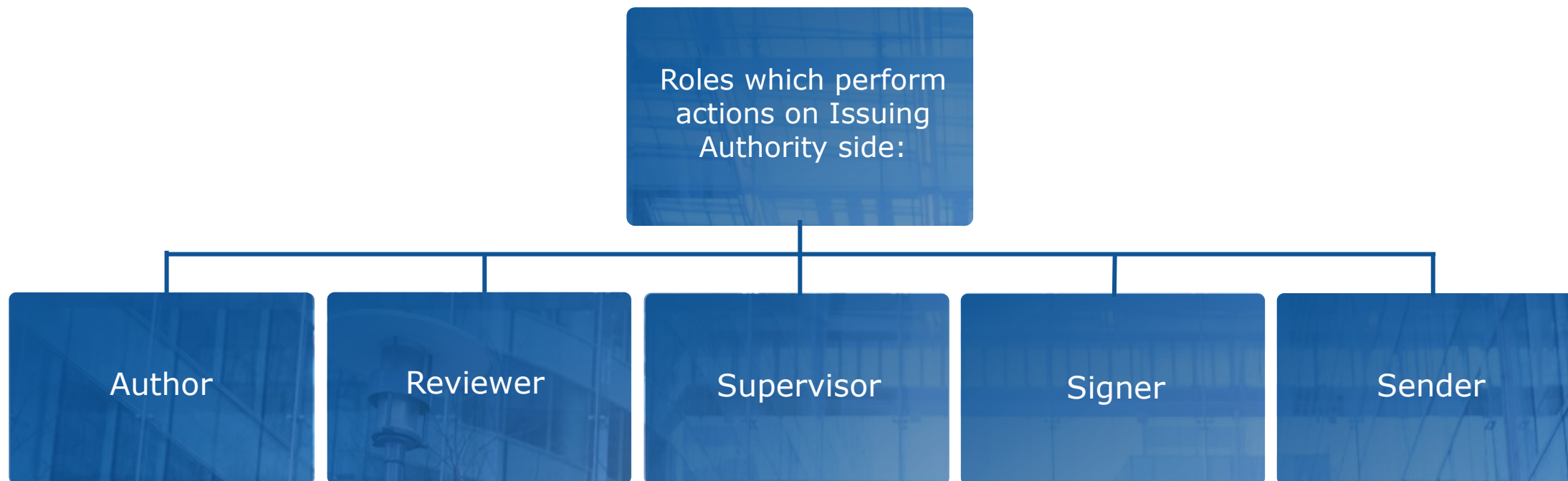
Document Workflow – EIO Received



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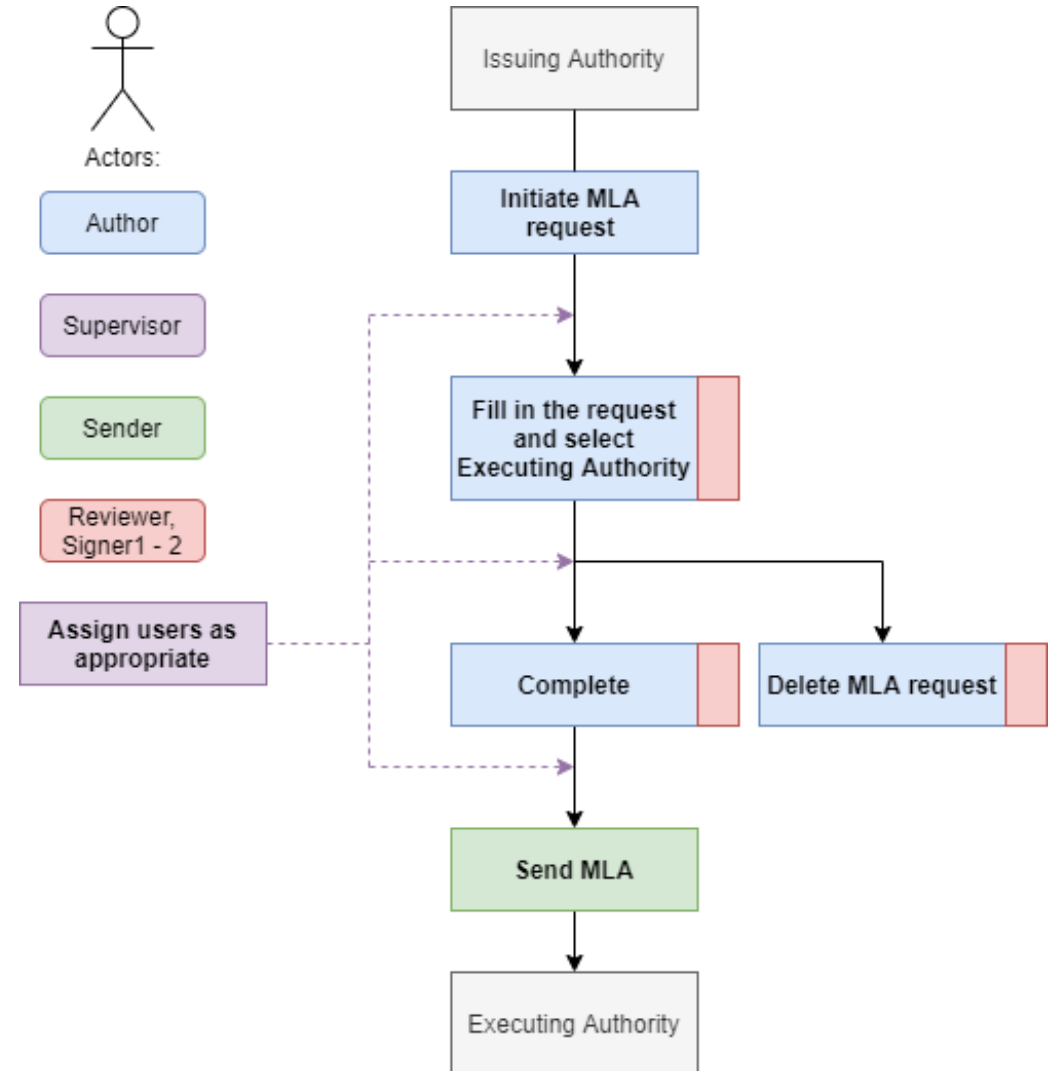
Issuing Authority side - MLA



Document Workflow – MLA Draft



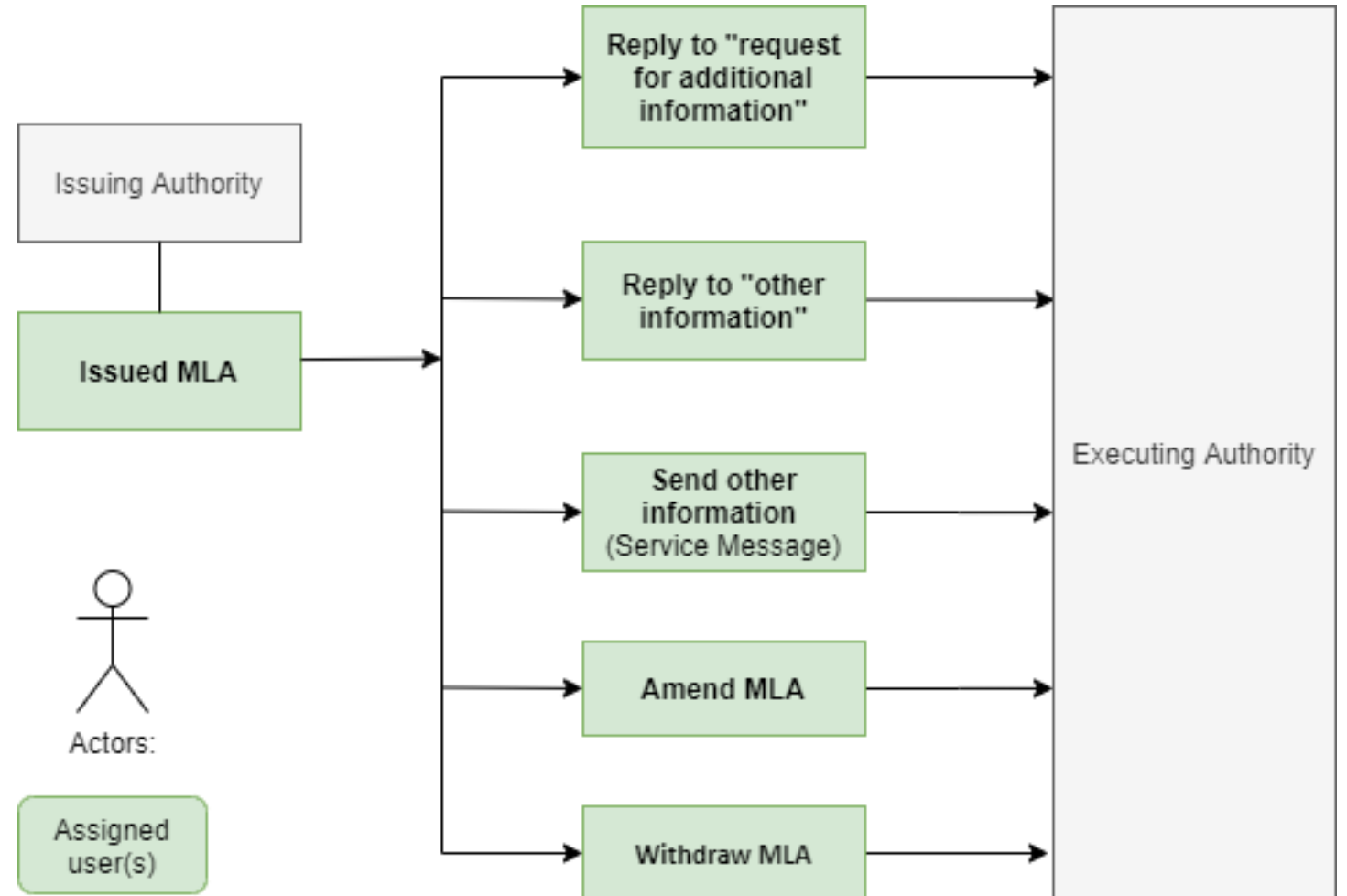
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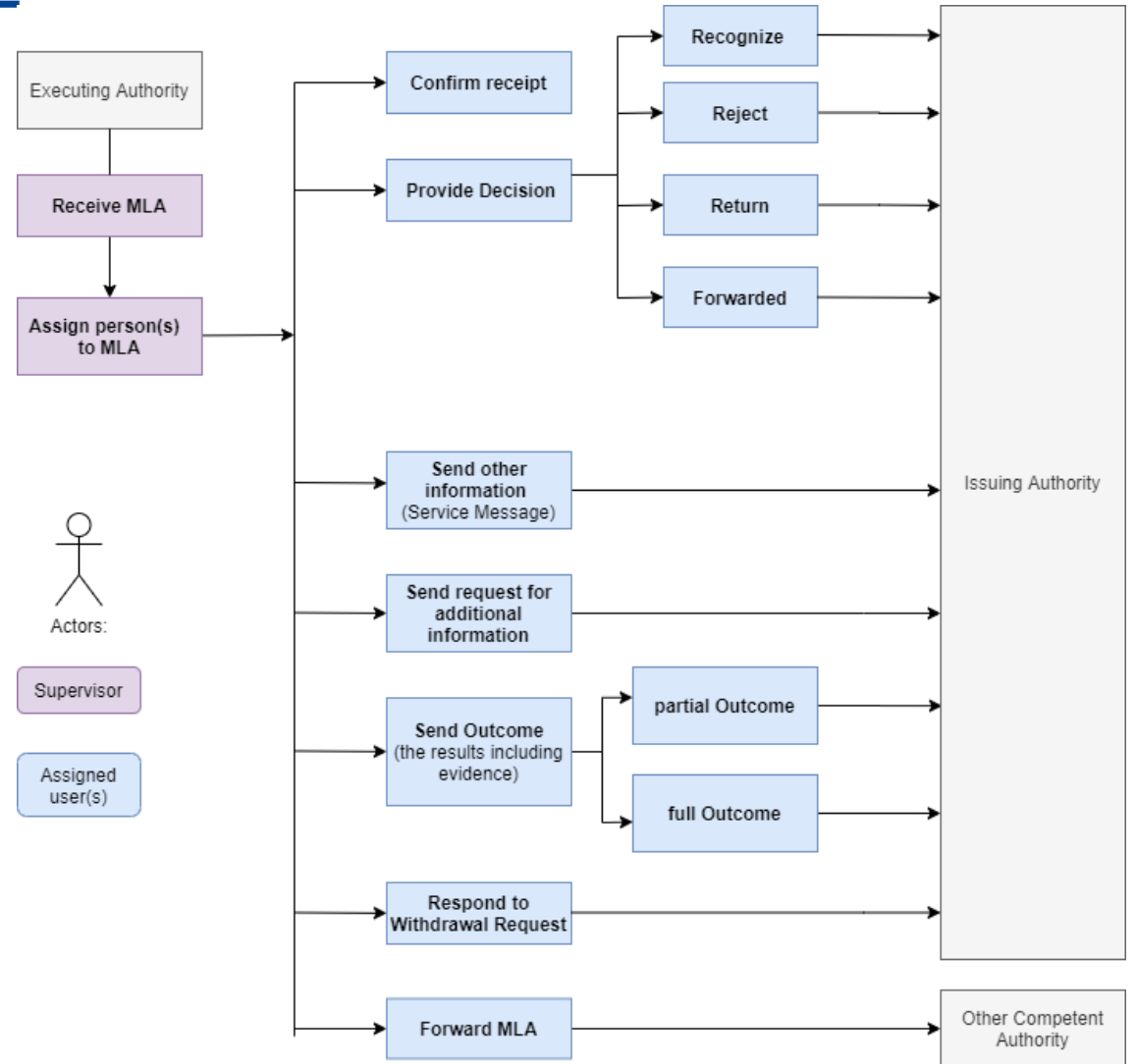
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Document Workflow – MLA Received



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Issuing Authority side - ITN

Roles which perform actions
on Issuing Authority side:

Author

Reviewer

Signer 1

Signer 2

Sender

Supervisor

Document Workflow – ITN Draft



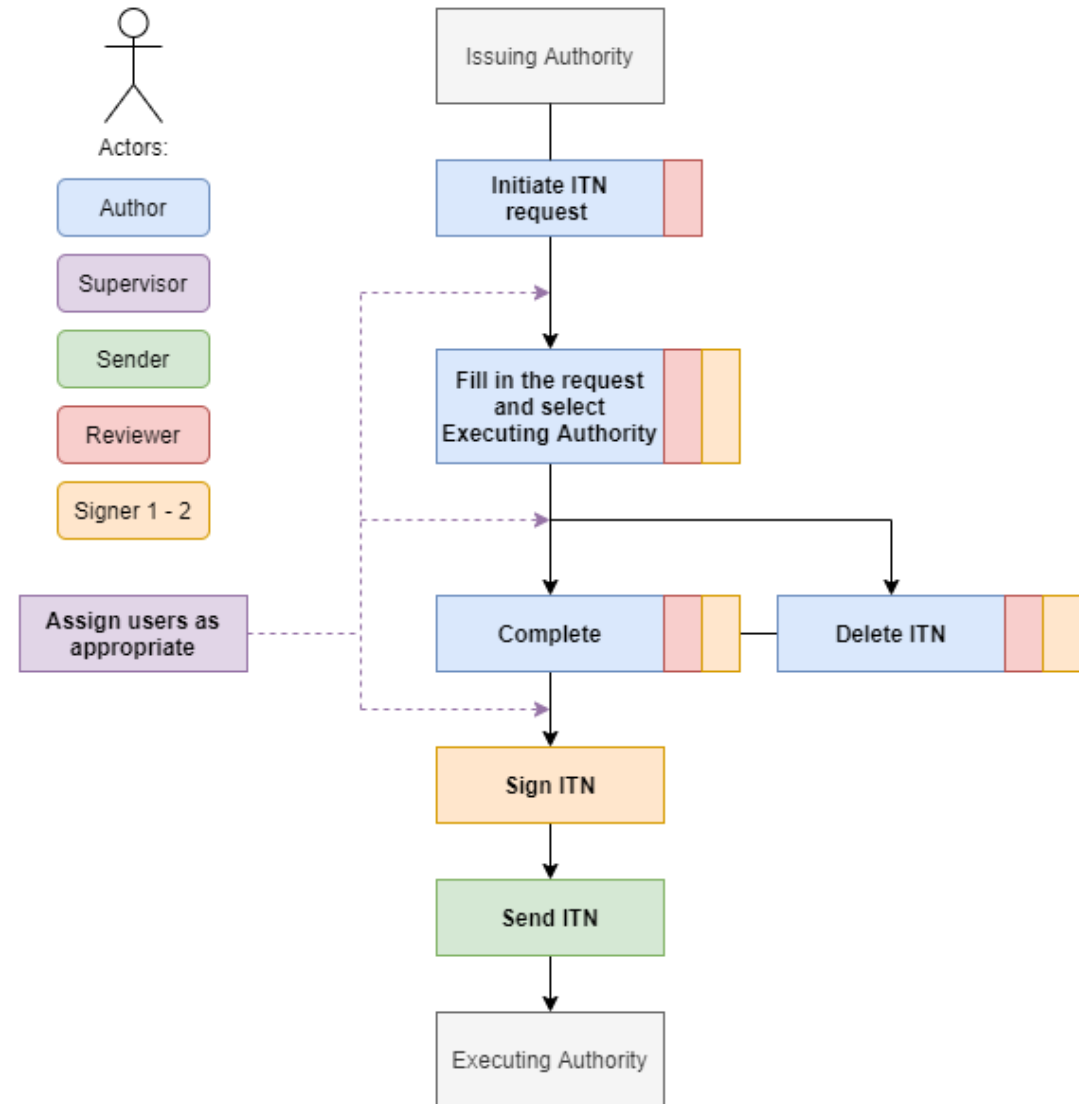
ITN / Annex C tab contains a digital version of the EIO Annex C form along with vertical navigation for Annex C sections. It is visible for all cases, including drafts, issued and received cases.



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



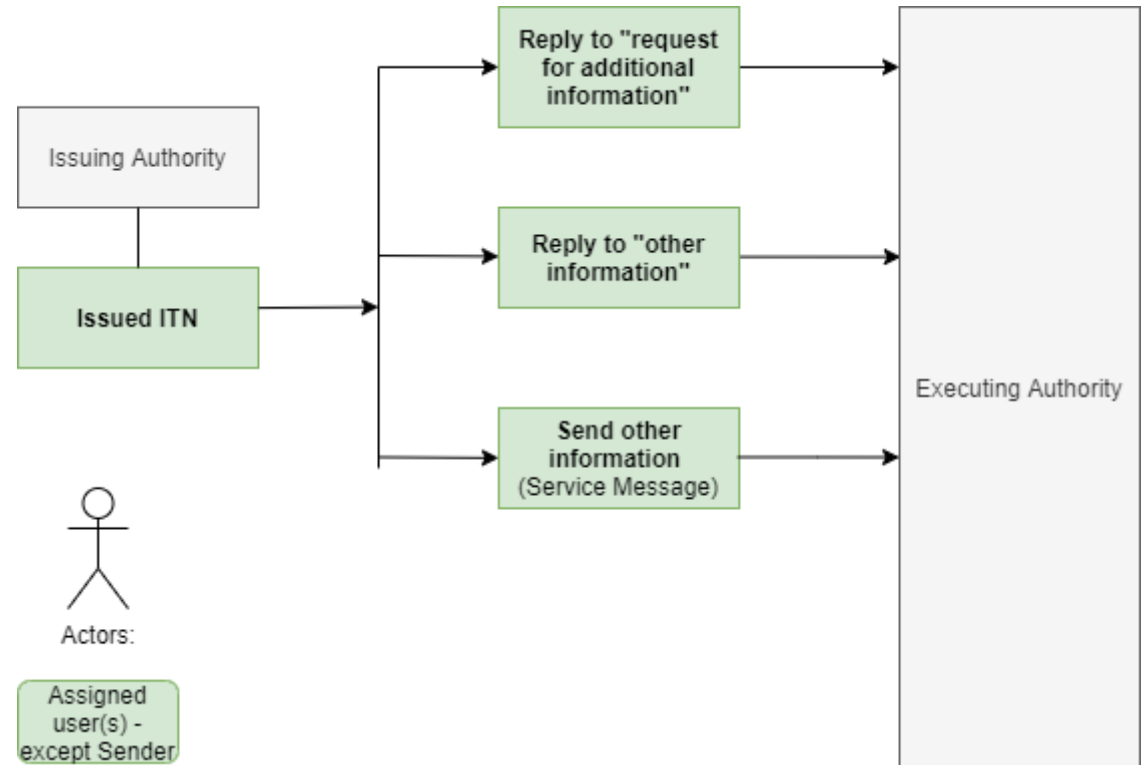
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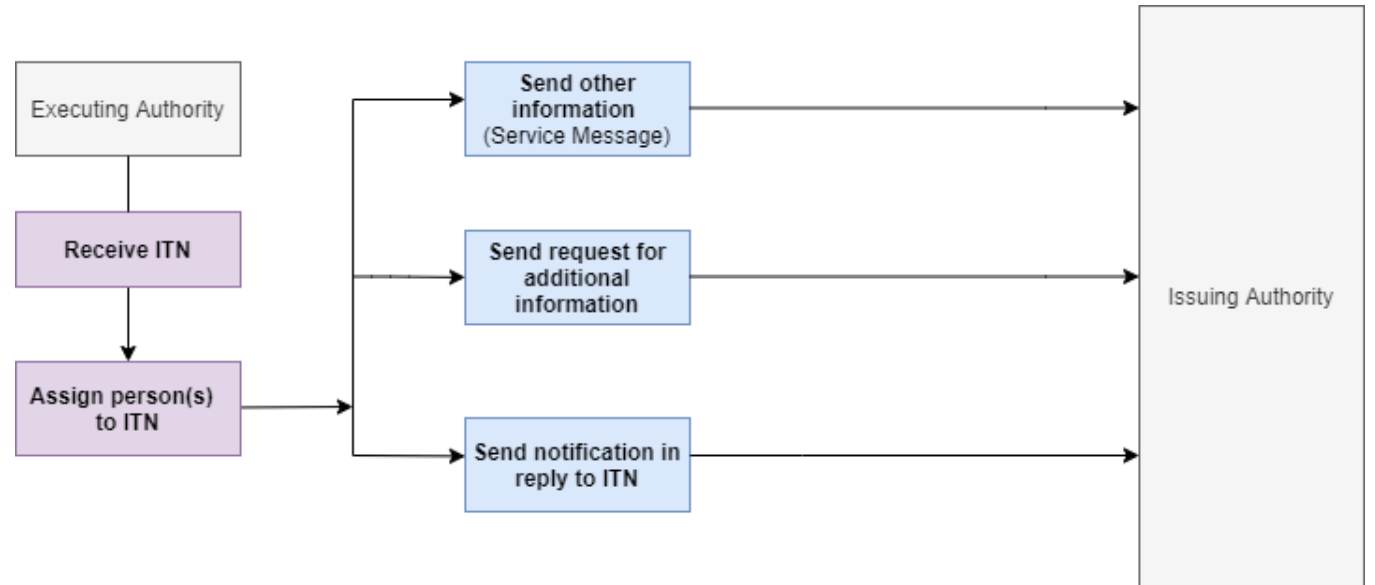
Document Workflow – ITN Issued



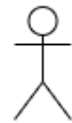
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Document Workflow – ITN Received



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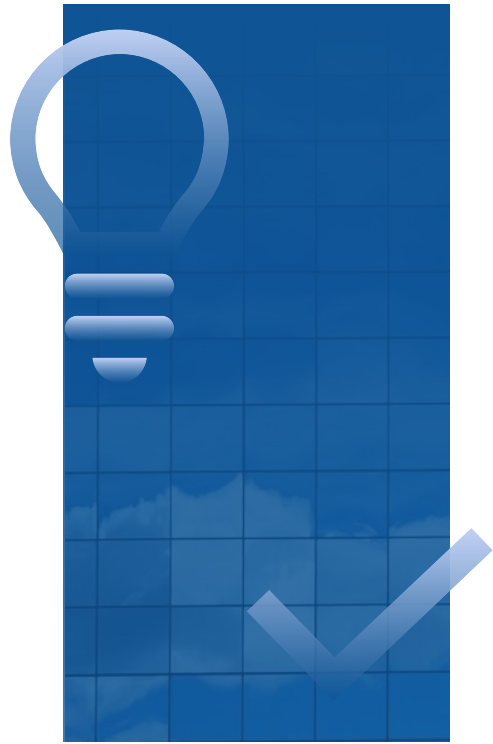


Actors:

Supervisor

Assigned
user(s)

Good practices about user assignment



Managing users and authorities is processed outside the RI portal. Providing users and managing authorities is technical process, however business decision are crucial regarding what has to be implemented.

Signing PDF documents

- Signing options in Adobe Acrobat Reader



- Public trusted vs local trusted signatures



- Identity recognition



- Circle of trust



- Examples



Acrobat
Document

CONCLUDING REMARKS



THANK YOU & SEE YOU ON 9TH DECEMBER