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Subject:	**EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL EVALUATIONS** **9th round of Mutual Evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty** **REPORT ON FINLAND**

ANNEX

EVALUATION REPORT ON THE

NINTH ROUND OF MUTUAL EVALUATIONS

9th round of Mutual Evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty

REPORT ON FINLAND

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1. EXECUTIVE SUMMARY

The visit was well prepared by the Finnish authorities, and included meetings with the relevant actors with responsibilities in the field of European judicial cooperation as well as in the implementation and operation of European policies.

For the on-site visit, it was difficult to find a suitable time for the Finnish authorities, even after the restrictions imposed in connection with the COVID pandemic were lifted. Only one judge was available for the on-site visit.

Representatives of the Finnish authorities were open in their answers to the experts. It was evident to the experts that the Finnish representatives have a genuine desire to apply the EU legal framework covered by the ninth round of mutual evaluations, and that their conditions for doing so are good.

The four framework decisions (FDs) covered by the evaluation have been incorporated into the following four national Acts:

- **Act 1286/2003** on surrender procedures between Finland and the other Member States of the European Union.
  Finland has also applied the Nordic Extradition **Act 1383/2007**, which stipulates closer cooperation between the Nordic Countries (Finland, Iceland, Norway, Denmark and Sweden).
- **Act 1169/2011** on the national implementation of the provisions of a legislative nature in the FD on the transfer of sentenced persons within the European Union and on the application of the FD.
- **Act 1170/2011** on the national implementation of the provisions of a legislative nature in the FD on probation measures and alternative sanctions within the European Union and on the application of the FD.
- **Act 620/2012** on the national implementation of the provisions of a legislative nature in the FD on supervision measures imposed as an alternative to provisional detention and on the application of the FD.

Competent authorities under the FDs in question

Regarding **FD 2002/584/JHA**, the competent executing court is Helsinki District Court, and the competent prosecutors are those serving in the judicial district of Helsinki District Court. In the case of appeals, the Supreme Court makes the decision.

In 2017 Finland notified that the public prosecutor is competent to issue a European arrest warrant for the purpose of conducting a criminal prosecution or executing a custodial sentence.

The request for surrender to enforce a custodial sentence is made by the prosecutor based on a proposal by the Central Administration of the Criminal Sanctions Agency.

FD 2008/909/JHA establishes the Central Administration of the Criminal Sanctions Agency as the competent authority, as both executing and issuing authority. Any decision to adapt a sanction is made by Helsinki District Court. The requests for adaptation of the sentence are submitted to the court by a prosecutor based on a proposal by the Central Administration of the Criminal Sanctions Agency.

The Unit for International Judicial Assistance at the Ministry of Justice is the competent issuing and executing authority in cases where the person was not held criminally responsible due to his/her mental state and has been ordered to undergo involuntary psychiatric treatment.

Regarding **FD 2008/947/JHA**, the competent authority for forwarding a judgment under Article 5 of the FD and, where applicable, a probation decision to another Member State and for deciding on the enforcement of a judgment and probation decision sent to Finland is the Central Administration of the Criminal Sanctions Agency. The CSA is the competent authority on the adaptation of measures in question. However, if a court would be competent to decide on the measure in question in a corresponding national situation, the decision shall be made by the Helsinki District Court. In practice, in most cases, adaptation is decided by the Helsinki District Court. The CSA's competence in Finland is only to decide the supervision of conditionally released prisoners and the content of supervision. Other sanctions are imposed by a court in Finland.

In relation to FD **2009/829/JHA**, where Finland is the executing State, the authorities that are competent to recognise a decision on supervision measures are the District or Senior Specialised Prosecutors serving in the judicial district of the District Courts in the area of the jurisdiction where the supervision is to be carried out. According to Finland's notification to the Council of the European Union of 21.12.2012, when Finland is the issuing State, the competent authorities for deciding on supervision measures are:

- the Prosecutor assigned to the criminal case in question
- the court dealing with the arrest request (District Court, Appeal Court or Supreme Court)
- The Ministry of Justice has been designated as the central authority for decisions on supervision measures, with a limited role since judicial authorities have direct contacts.

FRAMEWORK DECISION 584/2002/JHA

As issuing State

Prosecutors are the only authorities competent to issue EAWs in Finland, both for prosecution and for enforcement of a custodial sentence.

According to the Act 32/19 on the National Prosecution Authority, the National Prosecution Authority is independent and autonomous, responsible for organising prosecutorial activities in Finland. Due to this status, prosecutors may not be directed or instructed by the executive, such as the Minister for Justice, in any way, including when it comes to deciding on whether to issue an EAW.

Prosecutors may issue an EAW for prosecution only based on the court detention order with this explicit purpose. The penalty under Finnish law for the act on which the request is based should be imprisonment for at least one year.

Prosecutors may issue an EAW for enforcement of a custodial sentence only based on an enforceable custodial sentence issued by a court; the sanction imposed should be imprisonment for at least four months.

The person against whom an EAW has been issued has the right of access to a lawyer. If the competent authority of another Member State informs Finland's competent authority that a requested person wishes to appoint a legal counsel in Finland, this authority, without undue delay, submits information facilitating the appointment of a counsel to the requested person via the competent authority of the other Member State.

Once the requested person is surrendered to Finland, the court will hold a new remand hearing not later than four days from the time of his/her arrival in Finland.

As executing State

Finland has a centralised judicial system (Helsinki District Court /Prosecutors of Southern Finland) for executing the EAW, which facilitates the proceedings, and the Finnish implementing law has established a judicial review, by appeal, at the Supreme Court, which must consider a surrender matter urgently, with a 20-day deadline for deciding.

Notification of the existence of an EAW is usually received through SIRENE or the National Bureau of Investigation (N.B.I.).

There are prosecutors on call from Friday 16:15 until Monday 8:00 for measures that cannot wait. The decision about arresting a person must be taken within 24 hours after he or she is placed in preventive detention by the police.

A person whose surrender is requested has the right to be assisted by a legal counsel and the right to appoint a legal counsel in the requesting Member State.

The competent prosecutor decides whether to continue the arrest of a requested person based on an EAW/NAW and presents the arrest decision to the court. The court determines whether detention or the imposition of a travel ban is the most appropriate measure under domestic law to ensure the execution of the EAW.

Prosecutors also request supplementary information from the issuing Member State, if it is needed, and find out if the requested person has ongoing criminal cases in Finland.

Citizenship is a mandatory ground for refusal to execute an EAW issued to enforce a custodial sentence in cases where the requested person requests permission to serve the custodial sentence in Finland, while residency is an optional ground for refusal, resulting in a difference in treatment between citizens and residents. According to Article 4(6) of the FD, both nationality and residency are optional grounds for non-execution.

According to Finland's law, the principle of territoriality is considered a mandatory ground for refusal in the situations:
"The act on which the request is based is, under chapter 1 of the Criminal Code, deemed to have been committed in whole or in part in Finland or on board a Finnish vessel or aircraft, and
a) the act or a corresponding act is not punishable in Finland; or
b) the right to bring charges, under Finnish law, has become time-barred, or a punishment could no longer be imposed or enforced."

However, according to FD, it should be an optional ground.

Revocation of consent may be made at any time before the execution of the EAW.

In cases where the requested person has consented to surrender, Helsinki District Court must decide on the surrender within three days after the consent has been given.

The District Court must decide on the surrender within 26 days after the requested person has been apprehended or found in Finland.
If the decision cannot be made within the said time-limits for a particular reason, it must be made as soon as possible.

The court, in its surrender decision, may order that a seized object or forfeited property be transferred to the requesting Member State if so requested by the prosecutor. Section 66 of the national Law lays down the rules for the search, seizure and transfer of property.

FRAMEWORK DECISION 2008/909/JHA

The provisions of Council Framework Decision 2008/909/JHA were implemented in Finland's legislation by Act No. 1169/2011. However, Section 1 of Act No. 1169/2011 states that the provisions of a legislative nature in FD 2008/909/JHA have the force of law unless otherwise provided in Act No. 1169/2011. Moreover, some provisions of Act No. 1169/2011 reference FD 2008/909/JHA.

The Central Administration of the Criminal Sanctions Agency (CSA) is the competent issuing and executing authority. The Criminal Sanctions Agency has direct contacts with the competent authorities listed on the EJN website – no other channels of contact are used.

Where a sentence concerns a measure involving deprivation of liberty other than a custodial penalty, the Ministry of Justice is the competent authority. The Ministry of Justice is the competent issuing and executing authority with respect to FD 909 when it comes to transferring a person (in or out) who has been found criminally unaccountable for his/her actions due to his/her mental condition and ordered to undergo involuntary psychiatric treatment for an indefinite period of time in an institution. The Ministry is the competent authority in granting permission for transit – the permission for the transit through Finland of a sentenced person whose transfer to another Member State has been requested is granted by the Ministry of Justice.

Any decision on the adaptation of a sanction under the conditions set out in Articles 8(2) and (3) of the Framework Decision is made by the Helsinki District Court. Requests for adapting a sanction are submitted by a prosecutor on the proposal of the Central Administration of the Criminal Sanctions Agency. Helsinki District Court has competence to deal with requests for consent to derogate from the specialty rule on the request of the member state executing the sentence. The case will be taken to court by prosecutor. When the sentence given in another Member State is executed in Finland and the prosecutor wishes to prosecute a new case (or the CSA to execute a new sentence) the person is asked to give their consent in the court of the area where they are serving the sentence. If no consent is given the prosecutor or ~~of~~ CSA will request consent from the issuing Member State.

Prisons and Community Sanctions Offices notify the sentenced persons of the decisions. In FD 909 transfers, the sentenced persons give their consent to a prison director who forwards it to the Central Administration of the Criminal Sanctions Agency. Certain prisons organise the transport of prisoners to another Member State in FD 909 transfers.

Finland as executing State

A request to transfer enforcement of a sanction is taken up for consideration without consulting the Central Administration of the Criminal Sanctions Agency, if the sentenced person is a Finnish citizen who:

a) is living in Finland; or

b) has been ordered to be deported or expelled to Finland on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment.

In other situations, the consent of the Central Administration of the CSA is required for a request to transfer enforcement of a sanction to be considered. Consent may be given if, due to the place of residence or other personal circumstances of the sentenced person or for special reasons, enforcement of the sanction in Finland would facilitate the reintegration of the sentenced person into society.

As executing State, Finland's legislation requires the judgment or a certified copy of it together with the certificate.

Finland as the issuing State

A prerequisite for forwarding a request to transfer enforcement of a sanction to a Member State is that the transfer would facilitate the reintegration of the sentenced person into society due to the nationality, place of residence or other personal circumstances of the sentenced person or for special reasons.

Helsinki District Court decides on granting permission for the prosecution, punishment or deprivation of liberty of a sentenced person transferred to another Member State due to an offence other than that for the enforcement of which he or she was transferred to the Member State in question. In other respects, the provisions of the Act on Surrender Procedures between Finland and Other Member States of the European Union on the granting of permission to derogate from the specialty rule apply to the conditions and procedure for granting such permission.

A translation of the judgment is not required; where necessary, the Central Administration of the CSA accepts the certificate if it is provided in Finnish, Swedish or English or accompanied by a translation into one of these languages. The CSA may also accept a certificate in other language if there is no other impediment to accepting it. There is an English translator available, working for CSA.

Criteria for assessing the facilitation of social rehabilitation

According to section 4 of Act 1169, consent may be given if, in view of the place of residence or other personal circumstances of the sentenced person or for special reasons, enforcement of the sanction in Finland would facilitate the reintegration of the sentenced person into society.

The assessments of the Criminal Sanctions Agency are based on social, financial and other ties, the place of residence of the sentenced person and the people close to him or her, language and cultural ties. This information is obtained by consulting the prison records and the statement made by the convicted person. There is no practical possibility to double check the information obtained from the convicted person (interviews with family, neighbours, or employer).

Where the Ministry of Justice is competent (medical sanction) it relies on the assessment of the Institute of Health and Welfare on the prognosis for achieving the purpose of the treatment.

Opinion and notification of the sentenced person

The **Central Administration of the CSA** ensures that the sentenced person can state his or her opinion or give his or her consent. The sentenced person is always heard when he or she is in Finland. The consent of the sentenced person is sought in the prison where the sentenced person is placed, and the consent is given to the prison director or an official responsible for the enforcement. A record is drawn up of the proceedings in which the consent is given and is attached to the certificate.

According to the **International Judicial Assistance Unit of the Ministry of Justice**, the staff of the mental health institute obtain the person's opinion and put it in writing, if necessary. The consent to transfer of enforcement can be given to the chief physician of the healthcare unit that is in charge of the treatment of the person on whom the medical sanction has been imposed.

Transfer decision communicated to the sentenced person

According to the Criminal Sanctions Agency (CSA), the sentenced person is informed in accordance with Article 6(4) when the certificate and the judgment are forwarded to the executing State. At that stage, the sentenced person is not provided with any other information regarding the transfer.

Legal counsel and legal remedies

Regardless of whether Finland is the executing or issuing State, the sentenced person has the right to use a legal counsel and, on request, may be assigned a defence counsel out of public funds. According to the national legislation, in the case of minors and the mentally impaired, the defence counsel is appointed ex officio (Chapter 2, Section 1 of the CPC). The sentenced person has the right to appeal against a transfer decision to Helsinki Administrative Court. The decision of Helsinki Administrative Court is not subject to appeal.

Adaptation of the sentence

Any decision to adapt a sanction is made by Helsinki District Court and requests for adapting a sanction are submitted by a prosecutor, on the basis of a proposal by the Central Administration of the Criminal Sanctions Agency. In some cases, the prosecutors have submitted requests for the adaptation of the sentence to the court even where they considered that it should not be adapted, as the sentenced person might have a different view. Also CSA may send the case to prosecutor in similar situations. The reason for this is that the person does not have the right to take the case directly to the court. The court decision on adaptation may be appealed before the courts of appeal.

In practice, the adaptation of the sentence is requested only after the CSA has decided to recognise the decision or the decision has been contested before Helsinki Administrative Court.

According to the Prosecution Service, the meaning of 'similar offence' can cover the whole range of crimes of the same kind but of different severity (e.g. petty theft – theft – aggravated theft), and the maximum sentence is the maximum of the severest offence in the category. Thus the problem, according to Finland's' authorities, is that in FD, there is no exact definition; therefore, the national authorities have to guess. According to the interviewed practitioners there should not, in this case, be a comparison with what the indictment would be, or would have been, in the particular case if it were prosecuted in the executing State. This has also been the (national) court's decision in a couple of cases.

As for the list of offences with no double-criminality check, the national legislation does not impose the condition that the upper limit of the penalty must be of 3 years' imprisonment in the issuing State (Article 7 of the FD), thus increasing the possibility of cooperation.

The national legislation does not expressly provide grounds for non-recognition and non-enforcement as indicated in Article 9 of the FD, except for double criminality. The national legislation has incompletely transposed the FD. Section 1 gives the FD the force of law and there are several references to the articles of the FD, making it difficult for practitioners to work with two legal instruments to which other national provisions are added (Coercive Measures Act, Criminal Procedure, Agreement with Nordic States, Mental Health Act). Some of the provisions in the FD are expressly transposed in the national legislation, while others are not and it is unclear if those that are not transposed are to be directly applied or not (e.g. the speciality rule is expressly indicated in the national legislation, but not the exceptions).

The evaluation team is of the opinion that national implementation legislation should transpose the provisions of the FD into national legislation in a predictable and clear way without references to the FD which lay down obligations for the MS and not for the courts and other competent authorities.

In cases when Finland refuses to execute an EAW on the basis of Article 4(6) of the FD, the CSA gives the court an informal opinion on whether the decision can be enforced and the procedure under FD 909 is started only after the issuing MS sends the certificate. If a person is surrendered on condition of being returned to serve their sentence in Finland, the procedure under FD 909 is automatic and issuing the certificate is mandatory.

When Finland is the executing State, the time-limits are not always respected, due to the national process. In particular, if the sentence needs to be adapted, the process will take longer due to the number of authorities involved and the separate appeals that can be interjected. In such cases, the issuing State is informed about the delay. When Finland acts as the issuing State, sometimes there are delays, but most of the time, the executing State does not notify Finland about the causes.

There are several competent authorities involved in the procedure (CSA, Ministry of Justice, prosecution office, courts) and two separate avenues of appeal before different courts (administrative court and district court). The procedure is sometimes lengthy and there have been cases where the request was rejected due to statute-bar limitations or on the basis of Article 9(1)(h) of the FD.

The split competence can lead to a risk of impunity in some situations. If both FDs 909 and 584 can be used to have a sentence executed, the initial choice is issuing a certificate under FD 909, and only if the conditions are not met does the CSA draft a proposal for the prosecutor to issue an EAW. In this case, there is a theoretical possibility for the prosecutor to decide not to issue the EAW, in which case the sentence will not be enforced. Also, in the case of refusal to execute the EAW under Article 4(6) of FD 584, the CSA issues an informal opinion on the possibility of enforcing the sentence in Finland, and only after Helsinki District Court decides to refuse the EAW, a separate procedure will take place, on the initiative of the issuing MS, and the CSA is the CA to decide on execution of the sentence.

One single body competent under FD 909 and simplified procedure could be a way to ensure that the risk of impunity is eliminated and the time-limits established in the FD are complied with.

If the person eligible for transfer asks for the sentence to be adapted, he or she does not have the legal possibility to take the case to a court to decide. It is only at the request of the prosecutor that the court can decide on the adaptation of the penalty. The expert team appreciate the prosecutors' practice of asking the court do decide even when they consider that there is no ground for adaptation, but the possibility should be provided for by law so that the person eligible for transfer can have access to a court.

A defence lawyer is not mandatory, but is designated ex officio in cases where persons are incapable of defending themselves and for minors.

The speciality rule is not mentioned in the criminal record after the transfer, so the national authorities prosecuting the transferred person may not be aware whether they should comply with it.

The staff of the CSA is not trained and there is no obligation to train them laid down in the national legislation. The CSA is an administrative body, so neither the MoJ nor the PO organises training for the CSA. Most of the staff are lawyers and they could attend training organised by the Bar Association. Joint training sessions involving all CAs could help unify case-law and disseminate information.

For issuing a certificate for a conviction *in absentia*, the CSA checks the decision for the necessary elements and can ask for supplementary information from the court. There have not been any problems with convictions *in absentia* because this possibility is very limited under the national legislation.

The team commends the CAs' effort to find solutions to improve cooperation under FD 909: regular combined meetings between the CAs involved, detailed handbooks issued by the PGO that are available to other practitioners as well and a useful tool for unified training, accepting certificates in English without requiring a translation.

FRAMEWORK DECISION 2009/947/JHA

The provisions of Council Framework Decision 2008/947/JHA were implemented in the Finland's legislation by the Act on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on Probation Measures and Alternative Sanctions within the European Union and the Application of the Framework Decision No 1170/2011 (hereinafter Act No 1170/2011).

This specific legislation is complemented by the general provisions of the Criminal Procedure Code. The Act on cooperation between Finland and other Nordic States is still applicable in relation to other Nordic States (Sweden, Denmark, Iceland and Norway) as notified under Article 23 of the FD.

Finland as executing State

The competent authority for the recognition, execution, and transfer of probation measures or alternative sanctions is the Central Administration of the Criminal Sanctions Agency, which decides on whether to send a request for the recognition and execution of a judgment and a probation decision to another Member State and on the execution of such a request sent by another Member State to Finland.

A request to transfer supervision is considered without consulting the CSA if the person subject to supervision or sentenced to an alternative sanction is a Finnish citizen and has consented to the supervision being carried out in Finland.

If the person subject to supervision or sentenced to an alternative sanction is not ordinarily resident in Finland, the consent of the CSA is required in order for a request to transfer supervision to be considered. Consent may be given if, due to the personal circumstances of the person subject to supervision or sentenced to an alternative sanction or for some other special reason, enforcement of the probation measure or alternative sanction in Finland would facilitate the reintegration of the person into society.

The Ministry of Justice has only a limited role, since there is a direct contact and the Ministry has not been designated as a central competent authority. Additional information, if needed, can be obtained either by direct contact or through the Ministry of Justice.

The CSA accepts the certificate referred to in Article 6 of the Framework Decision if it is provided in Finnish, Swedish or English or accompanied by a translation into one of these languages. However, it may also accept a certificate in a language other than Finnish, Swedish or English, if there is no other impediment to accepting it.

Persons subject to supervision or sentenced to an alternative sanction have the right to be informed of any decision in the case in a language they understand.

The national Act No 1170/2011 does not indicate the types of probation measures and alternative sanctions, as provided for in Article 4 of the FD. Instead, it covers both judgments such as conditional imprisonment and a decision on supervision of a person sentenced to conditional imprisonment and types of probation measure such as community sanctions .

Although the types of probation measures and alternative sanctions specifically listed in Article 4(1) of the FD must mandatorily be supervised under the FD, Section 2 of the national Act No 1170/2011 mentions only one type of probation measure, expressly referred to in the FD. Finland will supervise the probation measures referred to in Article 4(1) in accordance with its notification to the Council of 13 March 2012.

The grounds for refusal are not specifically mentioned, with the exception of the double criminality condition (Section 5), but according to Chapter 1 Section 1 of the national Act No 1170/2011, the provisions of a legislative nature of FD 947 have the force of law.

The main criterion indicated for choosing Finland as an executing State is citizenship, although the FD covers all European citizens lawfully and ordinarily residing in the executing State (residence) - Article 5(1) of the FD. As a result, a request by a non-citizen who has been lawfully and ordinarily residing in Finland can be rejected on this ground. The Finnish team mentioned that when considering whether to justify granting the request, the focus is not on the nationality of the person but rather on the factors mentioned in recital 14 of FD 947, so if the person has such social rehabilitation, workplace, or family ties in Finland as referred to in recital 14 of FD 947, that would justify granting the request to transfer probation, whether he or she is a Finnish citizen or not. There is no specific provision in the national legislation stating this.

According to Section 4(2) of the national Act No 1170/2011, for persons who are not ordinarily resident in Finland, consent to recognise the probation decision may be given if, due to the personal circumstances, enforcement in Finland would facilitate the reintegration of the person in society. This type of personal circumstance is not identified in the legislation and does not seem to comply with the provision laid down in Article 5(3) of the FD (*When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision*).

The decision to adapt a probation measure or an alternative sanction in accordance with Article 9 of the FD is made by the CSA, except when a national court would be competent to decide on the measure in question in a corresponding national situation, in which case Helsinki District Court decides on the request submitted by the prosecutor.

According to the Finnish team, the CSA is competent to adapt supervision of conditional release and the content of supervision, as well as probationary liberty under supervision. The court is competent to adapt community sanctions , juvenile punishment, monitoring of the sentence, supervision of conditionally sentenced prisoners and supervision of conditionally released prisoners.

The national Act No 1170/2011 does not have specific provisions for cases when consulting the issuing CA would be advisable. (Article 11(3) of the FD)

Decisions made by the CSA under this Act may be appealed against to Helsinki Administrative Court. The decision of Helsinki Administrative Court is not subject to appeal.

The national Act No 1170/2011 does not have specific provisions concerning an obligation to inform the issuing State in the cases indicated in Articles 16-18 of the FD.

Finland as issuing State

The CSA is competent to decide whether to forward a request to transfer supervision to a Member State, referred to in Article 5(1) and (2) of the Framework Decision.

The person concerned may also ask the CSA to forward the request, but ultimately it is the CA's decision. The Community Sanctions Office may also initiate the transfer of probation measures or alternative sanctions.

The prerequisites for forwarding a request to transfer probation measures or alternative sanctions are that the person in question consents to the transfer and that the transfer will facilitate their reintegration into society, based on personal circumstances or other special reasons.

The Ministry of Justice has again a very limited role, since there is direct contact between competent authorities.

The CSA is responsible for the translation of the certificate, the standard form for which is set out in the Annex of the Framework Decision, into a language accepted by the executing State.

A person subject to probation measures or sentenced to an alternative sanction has the right to legal counsel. A defence counsel is appointed by the CSA or by the court considering a matter referred to in this Act for a person subject to supervision or sentenced to an alternative sanction if he or she so requests.

The person subject to supervision or sentenced to an alternative sanction must be informed without delay of his or her right to legal counsel and to a court-appointed defence counsel. There is no legal provision specifying which authority this obligation is incumbent on, but the Criminal Procedure Code is applicable in this case.

If the person subject to supervision or sentenced to an alternative sanction is in a foreign state and a legal counsel has been appointed for him or her there, he/she may only have a defence counsel appointed for special reasons.

The person subject to supervision may be heard during the procedure according to the provisions of the Administrative Procedure Act.

According to Section 8(3) of the national Act No 1170/2011, persons subject to supervision or sentenced to an alternative sanction have the right to be informed of any decision in the case in a language they understand. The legal provisions do not indicate the authority which should ensure that this right is respected, or the right to be informed about the possibility to transfer a probation measure to another Member State.

Practitioners consider the recognition and transfer process quite complicated since many authorities are involved in this process (CSA, prosecution office and court). And the time-limit is longer if the person concerned files an appeal, so there is a huge delay in the execution.

Another challenging factor has been national law on the enforcement of community sanctions which states that a community sanctions sanction has to be completed within 15 months of the date when the judgment becomes enforceable. As a result, the time has usually expired when CSA receives a request for a transfer, or it elapses during the recognition and adaptation process. In such cases, the judgment is not enforceable in Finland. Due to the above, Finland has amended Act No 400/2015 on the Enforcement of Community Sanctions.

The evaluation team appreciate the amendments to the provision concerning the enforcement of community sanctions because this change will enable the recognition and enforcement of community sanctions since the enforcement period of 15 months will begin from the first meeting with the supervision officer.

However, practitioners also mentioned that they handled about 10 cases per year among Nordic countries based on the Act on cooperation among Finland and the other Nordic States. They noted that the procedure under the Act, as mentioned earlier, is faster than the process under FD 947 since it is sufficient if the judgment is enforceable and it does not have to be final. Also, sanctions are pretty similar among Nordic countries. Thus, practitioners find the procedure under FD 947 time-consuming and challenging to implement since it involves several authorities.

Application of FD 2009/829/JHA

The FD has been transposed into Finland's national legislation by **Act 620/2012** on the national implementation of the provisions of a legislative nature in the FD on supervision measures imposed as an alternative to provisional detention and on the application of the FD.

Unfortunately, there have been no cases in which Finland has been involved, either as issuing State or as executing State.

Where Finland is the issuing State, the competent authorities for deciding on supervision measures are:

- the prosecutor assigned to the criminal case in question;
- the court dealing with the arrest request (District Court, Appeal Court or Supreme Court).

A decision on supervision measures may be taken and sent to another Member State if the prerequisites for a travel ban under the Coercive Measures Act No 450/1987 are met and the suspect is ordinarily residing in another Member State and he/she has consented to such forwarding.

When Finland is the issuing State, the court considering a request for remand referred to in the Coercive Measures Act is competent to take a decision on supervision measures and send it to another Member State in cases where it receives the request for remand by a prosecutor. Prosecutors are competent if a request for remand has not been forwarded to the court.

According to the Act on the ESO, the competent authorities to recognise and execute a supervision measure (travel ban under Finland's legislation) are the district or senior specialised prosecutors operating within the jurisdiction of a particular District Court.

However, Finland's system distinguishes between basic and intensified travel bans and this is specified in the legislation. The intensified travel ban is a travel ban supervised by technical means that can be ordered when basic travel bans are considered inadequate, i.e. the person is required to stay in his or her home or other accommodation.

In such cases, according to the Coercive Measures Act, the competent authorities for execution are the courts and not the prosecutors. However, according to Section 4, Chapter 2 of the Act on the ESO, prosecutors are the only competent authority to recognise and enforce a decision on supervision measures (travel bans). Thus, the intensified travel ban cannot be imposed or recognised at all, since courts are not recognised as an executing authority under the Act on the ESO but they are the only competent one to issue the intensified travel ban in the national cases This problem is yet to be solved and is under consideration.

Where it is the executing State, Finland monitors supervision measures as referred to in Article 8(1) of the Framework Decision, not those referred to in Article 8(2).

A decision on supervision measures is accepted for recognition and enforcement in Finland if:

1) the person subject to supervision is ordinarily residing in Finland; and
2) the person subject to supervision consents to the execution of the supervision in Finland.

If the person subject to supervision is not ordinarily residing in Finland, a decision on supervision measures may be received with the consent of the authority competent to decide on recognition. Consent may be given if the person subject to supervision has requested that the supervision be carried out in Finland and this is considered justified due to the personal circumstances of the person subject to supervision or for other special reasons.

TRAINING

The National Courts Administration (NCA) in cooperation with the Judicial Training Board is the authority responsible for the training of judges. The purpose of the National Courts Administration is to ensure a favourable operating environment for the courts and to develop, plan and support the activities of the courts. Before 1.1.2020, national training was provided by the Ministry of Justice Training Unit in cooperation with the Judicial Training Board.

Training for prosecutors is provided by the Prosecutor-General's Office. Training for prosecutors includes regional training sessions, an online training module on the Intranet (new), a yearly two-days case training, handbooks (EAW, 909, 949, ESO) on the Intranet, which are also accessible to judges, and webinars (ESO, CJEU case-law etc.).

However, there is no systematic training at national level for the Criminal Sanctions Agency (CSA), which also plays an important role in the practical application of some instruments in the field of judicial cooperation in criminal matters. In this connection, it is necessary to establish a way that should provide other than just in house training to the officials of the Criminal Sanction Agency.

The training concerning Framework Decisions 2008/947/JHA and 2009/829/JHA should also focus raising awareness of these legal instruments and encouraging their practical application.

The competent judges of Helsinki District Court, the respective prosecutors and officials of the Criminal Sanctions Agency should have more opportunities to attend ERA and EJTN training activities or other activities abroad, particularly in connection with the EAW FD and FD 909.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, CATS decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of legal instruments in the field of mutual recognition and their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW'),

- Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('custodial sentences'),

- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures'),

- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle on mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on those specific aspects of these instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the link between the legal and operational links between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947 on probation and alternative measures and FD 2009/829 on ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also - and in particular - relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

More generally, promoting the coherent and effective implementation of this package of legal instruments at its full potential could make a significant contribution towards enhancing mutual trust among the Member States' judicial authorities and ensuring a better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input to Member States which may not have implemented all aspects of the various instruments.

Finland was the twenty-sixth Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended on the proposal of certain Member States and in the absence of any objections (ST 9278/19 REV 2).

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in the evaluations to be carried out. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request sent on Friday 17 May 2019 to delegations by the Secretariat of the Council of European Union.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJN should be invited as observers.

The experts entrusted with the task of evaluating Finland were Ms Isabelle Tocan (Romania), Ms Ana Noe Sebastian (Spain), and Mr Rastislav Mihalovič (Slovakia). Observers were also present: Ms Ana Wallis de Carvalho (Eurojust) together with Ms Maria Bačova from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the preparatory video-teleworking conference meeting (VTC) that took place on 6 July 2021, the evaluation visit that took place in Finland between 22 and 24 March 2022, and Finland's detailed replies to the evaluation questionnaire.

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

Finland transposed FD 2002/584/JHA into national legislation by a separate Act No. 1286/2003 (amendments up to 329/2019 included), the Act on Surrender Procedures between Finland and the other Member States of the European Union (Act on Surrender).

Concerning international mutual recognition, in Finland, except for the EAW, there is the Nordic arrest warrant (NAW) based on the multilateral convention of the Nordic Countries between Finland, Sweden, Iceland, Norway and Denmark. The Finnish authorities use the NAW rather than the EAW in cases where they are sure that the person subject to the surrender is staying in one of these countries. As practitioners noted, the NAW procedure is preferred because it is much easier, since there are no double criminality conditions set at all due to trust that if something is punishable in one of the Nordic countries, it is also punishable in Finland. In addition, the speciality rule is not so strict.

3.1. Authorities competent for the European Arrest Warrant (EAW)

3.1.1. Role of the central authorities

In accordance with the notification under Article 7 of the FD, the Ministry of Justice acts as the central authority which can be contacted in matters pertaining to the EAW.

Regarding the central authority's role , there are no provisions in Finnish national legislation on the central authority; its role is specified solely in the Finnish notification under Article 7: 'The Ministry of Justice acts as the Central Authority, which can be contacted in matters pertaining to the EAW. If needed, and in the absence of other appropriate transmission methods, the Ministry of Justice may receive EAWs for transmission to the competent prosecutor.' The Ministry of Justice is also the competent authority for granting permission for transit. Therefore, the International Judicial Assistance Unit of the Ministry of Justice does not maintain regular contacts with its foreign counterparts. Other than the occasional transmission of an EAW to the competent authority, the Ministry is not involved in the everyday operation of the EAW.

Furthermore, according to the notification under Article 7, the SIRENE Bureau also acts as a central authority which is competent to forward European arrest warrants and related correspondence to the competent prosecutors. However, arrest warrants and correspondence relating thereto may also be sent directly to the competent prosecutor.

The Finnish SIRENE Bureau has direct contacts if contact information is available. The Bureau uses e-mail, fax and phone with Finnish prosecutors and courts. With other Member States, the Bureau uses SIRENE channels. The Bureau has contacts with foreign counterparts almost on a daily basis.

The European Arrest Warrant is sent to the SIRENE Bureau by the competent prosecutor. An EAW for the purposes of criminal prosecution is always based on a detention order issued by the court for this particular purpose. An EAW for the purpose of executing a custodial sentence is always based on an enforceable judgement of a court, and the sanction imposed is imprisonment for at least four months.

In the SIRENE Bureau, the EAW is recorded in the international case management system. The operator in charge will check the personal data against the national registers (in order to check that the data is correct and for any additional information available).

If changes are needed, the prosecutor is contacted by email or phone. The prosecutor then sends the corrected and signed version back to the SIRENE Bureau.

The SIRENE Bureau creates an SIS alert, and the EAW is attached to it along with fingerprints and a photo. If wanted person’s location is already known, the EAW can be translated and sent directly to the executing Member State. The prosecutor can also send the EAW directly to the competent authority of the executing Member State, but must inform the SIRENE Bureau. The SIRENE Bureau fills in an A form based on the information in the EAW and circulates it to the Member States in the SIS.

The review period for SIS alerts is three years. The SIRENE Bureau then checks if the alert needs to be extended. The SIRENE Bureau also updates the alert when the right to prosecute regarding one of multiple offences has expired. The prosecutor is in charge of the time-limit for prosecution and must send an updated EAW to the SIRENE Bureau. If the requirements of the EAW cease to exist the prosecutor must immediately inform the SIRENE Bureau, which then deletes the alert.

3.1.2. Role of judicial authorities

The only competent judicial authority for the execution of EAWs is Helsinki District Court which, according to Section 11 of the Act on Surrender Procedures between Finland and the other Member States of the European Union, decides on surrender and on extending the requested person's detention in custody. Approximately 10 judges from this court deal with EAWs.

At the request of a Member State requesting apprehension and surrender, permission may be granted for the prosecution, punishment or deprivation of liberty in the said Member State of a person surrendered from Finland for an offence committed prior to the surrender other than the one for which the person was surrendered or for subsequent surrender of the person to another Member State. Pursuant to Section 51 of the abovementioned Act, Helsinki District Court has the competence to grant such permission.

The Court has direct contacts with other Member States' competent judicial authorities, but prosecutors mainly make requests for supplementary information. This is the practice agreed between Helsinki District Court and the Prosecution District of Southern Finland. In the experience of Helsinki District Court, the process is smoother and quicker this way.

Unless otherwise provided for, the District Prosecutors and Senior Specialised Prosecutors serving in the judicial district of Helsinki District Court are competent to perform the prosecutorial duties under the Act on Surrender Procedures between Finland and the other Member States of the European Union. For special reasons, other prosecutors may also be competent.

The Southern Finland Prosecutor's Office team consists of 15 prosecutors and one secretary. Every prosecutor is on call for approximately 4 weeks per year. The on-call prosecutor takes care of every execution case that comes to Finland that week.

A prosecutor of the Southern Finland Prosecutor's Office decides whether to arrest a requested person based on an EAW within 24 hours after the police apprehend them and presents the arrest decision and the case to Helsinki District Court. A prosecutor of the Southern Finland Prosecutor's Office also requests the supplementary information from the issuing Member State and finds out if there are ongoing criminal cases in Finland against the requested person, which would be a ground for postponing the surrender.

If the location of the requested person in Finland is known, the request may be submitted directly or through international communication channels to the competent prosecutor. The prosecutor must inform the National Bureau of Investigation of a request that has not been submitted through the National Bureau of Investigation. The police authorities make the practical arrangements.

3.1.3. Criminal Sanctions Agency

The Criminal Sanctions Agency is responsible for the enforcement of sentences in Finland. It operates under the direction of the Ministry of Justice and implements the criminal policy defined by the Ministry.

The primary duty of the Criminal Sanctions Agency is to see that the sentences passed by the courts are enforced lawfully and safely in Finland. In particular, the Agency's goal is to enhance the safety of society by decreasing the risk of sentenced offenders' reoffending.

In the Criminal Sanctions Agency, the planning of the sentence term of remand prisoners, sentenced prisoners, and community sanction clients as well as the enforcement of the sanction, i.e. the actual serving of the sentence including the release phase, form a coherent entity.

In relation to the EAW procedure, the Criminal Sanctions Agency submits a proposal to the prosecutor to issue an EAW to an EU Member State to surrender a person to Finland for the purpose of enforcing a prison sentence.

3. 1. 4. Procedure when Finland acts as the executing State

The surrender is granted if the most severe punishment for the act on which the request is based is a custodial sentence of at least one year under the law of the requesting Member State, and the act constitutes or would constitute an offence under Finnish law if committed in corresponding circumstances in Finland.

Where a person has been sentenced to a custodial sentence, the surrender is granted if the sanction imposed is a custodial sentence of at least four months and the act constitutes or would constitute an offence under Finnish law if it had been committed in corresponding circumstances in Finland.

Regardless of whether the act on which the request is based constitutes an offence under Finnish law, the surrender is granted if the act under the law of the requesting Member State is an act referred to in Article 2(2) of FD on EAW and the most severe punishment for the act under the law of the said Member State is a custodial sentence of at least three years. Furthermore, surrender to enforce a custodial sentence requires that the sanction imposed is a custodial sentence of at least four months.

As for the language regime, according to the Finnish Act on Surrender and the declaration, a request for the surrender must be drawn up in Finnish, Swedish or English and be attached to the request. The competent authority in Finland may execute a request even if it has been drawn up in a language other than Finnish, Swedish or English if there are no other impediments to the execution of the request (e.g. if the competent authority deciding on the EAW understands that language). However, when it goes to court, it must be translated into Finnish or Swedish. In that case, the National Bureau of Investigation is responsible for translating the request into Finnish or Swedish, depending on which of these languages is to be used when considering the surrender.

A person whose surrender is requested or who has been apprehended or otherwise found in Finland is informed by the police, in a written notice, of his or her rights.[1] In addition, the National Bureau of Investigation informs the requested person without delay of his or her right to appoint a legal counsel in the requesting Member State. If the requested person wishes to exercise the abovementioned right, the National Bureau of Investigation must, without delay, inform the competent authority of the requesting Member State of this.

According to the Finnish Act on Surrender, in the EAW proceedings it is not mandatory to provide a defence lawyer for a person subject to surrender. However, according to Section 1.3 of Chapter 2 of Act 689/1997, a public defence counsel is to be appointed to a suspect ex officio when:

(1) the suspect is incapable of defending himself or herself;

(2) the suspect has no public defender and is under 18 years of age unless it is apparent that he or she has no need of a public defender;

(3) the public defender retained by the suspect does not meet the qualifications required of a public defender or is incapable of defending the suspect in an appropriate manner; or

(4) there is another special reason for this.

[1] Section 20a (329/2019) of Act on Surrender - Written notice of rights
The police shall, without delay, inform a person whose surrender is requested or who has been apprehended or otherwise found in Finland in a written notice of his or her right to:
1) obtain information on the contents of the request for apprehension and surrender;
2) be assisted by a legal counsel;
3) have a defence counsel appointed for him or her, if the person whose surrender is requested so requests;
4) interpretation as well as translation of the request for apprehension and surrender as provided in section 21, subsections 2 and 3;
5) decide whether he or she consents to the surrender;
6) be heard at a district court concerning the contents of the request for surrender; and
7) obtain information on a judgment rendered in absentia, on which the request for surrender is based if he or she so requests.

However, practitioners at the meeting stated that in the EAW proceedings a person subject to surrender always has a defence counsel and interpreter. The court orders a reasonable remuneration to be paid to the defence counsel from State funds.

Concerning the speciality rule, it is Helsinki District Court which is competent to give the consent for the surrendered person to be prosecuted or to serve a sentence.

Helsinki District Court is competent to assess grounds for refusal. The prosecutors' role is to express their view on surrender and possible grounds for refusal that would impede the execution of an EAW. If further information is needed, Helsinki District Court asks a prosecutor of the Southern Finland Prosecution Office to provide it.

According to the Act on Surrender, where the requested person has consented to surrender, the district court must decide on the surrender within three days after consent has been given. Furthermore, the district court must decide on the surrender within 26 days after the requested person has been apprehended or found in Finland. If the decision cannot be made within the said time-limits for a particular reason, it must be made as soon as possible.

Practitioners at the meeting stated that they were able to comply with the time-limit prescribed by the Act on Surrender except in cases where additional information is needed and the requesting Member State does not submit this information in time.

A judicial review of Helsinki District Court's decision may be appealed to the Supreme Court. The Supreme Court does not automatically deal with the appeal lodged. The appeal process consists of two stages. In the first stage, the Supreme Court reviews the case to see whether there is a ground for changing the decision of the District Court and if they may allow an appeal. If there is a ground for an appeal, the Supreme Court grants leave to appeal. Otherwise, the Supreme Court does not accept the case for appeal. First-instance courts are not bound by interpretations of the Supreme Court's decisions but take them into account when making decisions.

Regarding multiple EAW requests, Finnish practitioners stated that they had not encountered such requests. However, according to Section 34 of the Act on Surrender, if several Member States have requested the surrender of the same person, the court shall, when deciding on the surrender, also decide to which Member State the person will be surrendered. When making the decision, the court must consider all the relevant circumstances, especially the nature and place of commission of the acts on which the requests are based, the dates on which the requests were presented, and whether a given request has been issued for prosecution or execution of a custodial sentence.

During the presentation given by Helsinki District Court, practitioners stated that in practice they have good cooperation with the prosecutor's office by exchanging supplementary information. However, they added that in Finland there are only few defence lawyers who appear in court in these matters and are experts in this field. This is because Finland does not have that many EAW cases..

3.1.5. Procedure when Finland acts as the issuing State

The apprehension and surrender of a person staying in another Member State to Finland may be requested for the purpose of prosecution, if the most severe punishment under Finnish law for the act on which the request is based is imprisonment for at least one year. The request must be based on a decision on remand.

The authority involved in the issuance of an EAW is the public prosecutor conducting the criminal case in question; however, a prosecutor may not issue an EAW unless the court has given a national arrest warrant with the purpose of allowing the prosecutor to issue it. Prosecutor may also decide after receiving the court order not to issue EAW. After receiving the court decision, the prosecutor fills in the description of the crime and the other relevant information in the EAW form and sends it to the SIRENE office responsible for entering the EAW into the Schengen Information System. Afterwards, a prosecutor may submit the EAW form directly to the competent authority of the other Member State or through international communication channels, and at the same time, informs the National Bureau of Investigation of the request.

A request may be made for apprehension and surrender to Finland for enforcement of a custodial sentence, if an enforceable judgment has been issued in Finland for the act on which the request is based and the sanction imposed is imprisonment for at least four months.

A request for surrender for the purpose of enforcement of a custodial sentence is made by the prosecutor based on a proposal by the Central Administration of the Criminal Sanctions Agency. The decision to submit an EAW proposal to the prosecutor to issue an EAW to surrender a person to Finland to enforce a prison sentence is made by the Chief Lawyer o the Central Administration of CSA.

However, before deciding on issuing an EAW, prosecutors are required, based on the Handbook, to verify whether any of the prosecutors have a criminal case that would be appropriate to add into the EAW form (with a necessary court order). This verification is possible due to the existence of a linked-up management system throughout Finland. Prosecutors also have access to the police register so they also can see cases which are under investigation. After contacting the respective prosecutor/s in charge of the other cases and mutual discussion and agreement, those crime cases are entered in the same EAW form.

If several prosecutors are conducting criminal prosecutions against the same person, the first prosecutor will issue an EAW for all offences. However, a detention order has to be issued for each criminal case. Practitioners remarked that they apply this procedure based on lessons learned because if more than one EAW was issued, some Member States consider these separate EAWs competing.

Should the competent authority of another Member State inform the Finnish competent authority that a requested person wishes to have a legal counsel appointed in Finland, it must, without delay, submit information facilitating the appointment of a counsel for the requested person.

A person surrendered from a Member State to Finland must not be prosecuted or punished or deprived of his or her liberty for an offence committed prior to the surrender other than the one on which the request for surrender was based. However, according to the Finnish Act on Surrender, the rule mentioned above does not apply if:

1) the surrendered person has had an opportunity to leave Finland, and he or she has not done so within 45 days of his or her final discharge or has returned to Finland after leaving Finland;
2) the offence is not punishable by a custodial sentence;
3) the criminal proceedings do not lead to a measure restricting the liberty of the surrendered person;
4) a punishment or measure not involving deprivation of liberty will be imposed on the surrendered person, in particular a financial sentence or a measure imposed instead of such a punishment, even if the punishment or measure may restrict the liberty of the person;
5) the person has consented to surrender and has renounced entitlement to invoke the prohibition referred to in subsection 1;
6) the person has, after his or her surrender, expressly renounced entitlement to invoke the prohibition referred to in subsection 1 concerning certain specific acts preceding the surrender; such renunciation shall be declared in the district court in the manner referred to in section 29[2];

[2] **Section 29 of the Act on Surrender - *Declaration of consent***

'The requested person shall declare in the district court session whether he or she consents to surrender or to prosecution, punishment or deprivation of liberty in the requesting Member State for an offence committed prior to surrender other than the one for which surrender is requested, or to possible subsequent surrender to another Member State. (658/2015)

Before receiving the consent, the district court shall inform the requested person of the consequences of giving the consents referred to in subsection 1.

An entry shall be made in the protocol of the consent referred to in subsection 1 and of the provision of information referred to in subsection 2 above'.

7) the Member State that has surrendered the person gives its consent to derogation from the prohibition; or
8) the Member State that has surrendered the person has notified the General Secretariat of the Council of the European Union that its consent to derogation from the prohibition is presumed to have been given unless the competent authority in a particular case states otherwise.

The consent may be requested by the prosecutor competent to prosecute the criminal case in question or, for special reasons, by another prosecutor based on a remand decision. A written statement of opinion by the person surrendered must be attached to the request.

3.2. The principle of proportionality

According to the Prosecution Service, Finnish prosecutors already applied the principle of proportionality before the fourth round of mutual evaluations. After implementing the EAW in Finland, the Prosecutor General's Office of Finland (PGO) issued a handbook in which the principle of proportionality was/is explained. In situations where there is doubt about applying the principle mentioned above, the prosecutors usually turn to the experts in the PGO for guidance. According to the handbook, a prosecutor must compare the severity of surrender and the suspected crimes (e.g. how severe an offence, damage caused, probable punishment and possibility to keep the suspect in custody after the surrender). Prosecutors are also advised to consider the particular situation and whether another instrument would be more appropriate for the situation (e.g. EIO, ESO).

In addition, the principle of proportionality is also noted in the explanatory memorandum of the legislation implementing the EAW (Government proposal 88/2003, p. 53). It states that the prosecutor should consider, among other things, whether the surrender procedure is the most appropriate way to deal with the matter or whether, for example, the transfer of proceedings to another Member State would be a more appropriate procedure. It also serves as additional guidelines for prosecutors if they are uncertain how to proceed, since it contains an extensive explanation.

According to the Act on Surrender Procedures between Finland and the other Member States of the European Union, Section 53(1), an EAW issued for the purpose of criminal prosecution is always based on a detention order issued by a court.

The detention order is issued based on the Coercive Measures Act (806/2011). According to Chapter 1, Section 2 of that Act (Principle of Proportionality), coercive measures may be used only when they may be deemed justifiable in consideration of the seriousness of the offence under investigation, the importance of clarifying the offence, the degree to which the use of the coercive measures infringes on the rights of the suspect in the offence or of others, and the other circumstances in the case. The national procedural rules also guarantee that the proportionality of the decision to issue an EAW is judicially reviewed. The judicial review taking into account the proportionality of the decision to issue an EAW is carried out on the enforceable judgement on which the EAW is based (see CJEU C-566/19, C-626/19, C-625/19 and C-627/19).

Moreover, the **Criminal Sanctions Agency (CSA**) has drawn up instructions on making a proposal for the issue of an EAW. According to the instructions, the factors that are taken into account when assessing the need to propose an EAW include the amount, nature, and, above all, the seriousness (type) of the offence(s), the dangerousness of the prisoner, and the expediency consideration (EAWs are not usually issued for short sentences). In addition, the possibility of transferring the enforcement of the judgment to another country is considered.

According to **the Prosecution Service,** prosecutors more often turn to the national EAW handbook, the guidelines of which do not differ from those in the Commission Handbook.

The Finland Prosecution Service suggested that, the EIO should be possible with regard to hearing a suspect through video conference, giving the suspect the possibility to be present throughout the court session without being surrendered. However, this seems not to be the case in many other Member States, resulting in unnecessary surrenders that could be avoided.

The **Criminal Sanctions Agency (CSA)** is familiar with the Commission Handbook. The instructions drawn up by the CSA are in line with the Handbook. The CSA is only competent to submit a proposal to the prosecutor to issue an EAW to enforce a prison sentence. The decision-making power rests with the prosecutor. Primarily, the CSA investigates the possibility of transferring the enforcement of the judgment to another country.

3.3.Exchange of information

As the executing State

Concerning requests for supplementary information, according to Section 31 of the Act on Surrender, the court may, where necessary, before making a decision, request supplementary information from the competent authority of the requesting Member State. A time-limit may be set for the submission of the information. The prosecutors ask for additional information from the other Member States, usually on their own initiative but also based on the judge's requests. This practice is considered very efficient since prosecutors have contact with the competent authorities of the other Member State when asking for information beforehand.

The Helsinki judicial authorities (HDC and Prosecution Service) stated that they complied with the time-limits set for recognition in most cases. However, when asking for additional information, they set the exact dates by which the information must be provided. Most issuing countries have adhered to the deadlines set. However, sometimes, the time-limit has been exceeded because a requested person specified the grounds for non-execution at the appeal stage. Therefore, there was no need for additional information until the appeal stage.

The problems arise when the issuing State does not want to give the information requested. There have usually already been some concerns in these cases, and this behaviour has only made it more evident. There have been situations where the requested information has not been provided, and the surrender has been refused. As the practitioner said, she remembered a case with Romania where they asked for information about prison conditions and had to send a request repeatedly.

According to Section 33 of the Act on Surrender, conditions concerning the return of the surrendered person and life sentences must be recorded in a court. Furthermore, the district court's decision must indicate any consent given by the requested person. If the district court agrees to extradition, the decision must also mention that the requesting Member State must comply with the provisions of Articles 27 (possible prosecution for other offences) and 28 (subsequent surrender or extradition) of the Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA). Also, information regarding the time the requested person has been in custody is mentioned in the decisions.

The Finnish authorities stated that when acting as executing State they transmit the necessary information ex officio.

Information deficits

As for information deficits, the Finnish judicial authorities stated that most EAWs were issued correctly, and there was no need to ask for supplementary information. However, in some cases, there was a need to ask for the further details concerning:

- the competent judicial authority;
- the date and the place where the alleged crime was committed;
- some specifics about the description of the offence;
- how many offences in total the EAW relates to;
- whether the offences are listed offences according to Article 2 of the FD or not;
- the prison conditions;
- where the sentence has been passed in absentia;
- how the requested person received the information about the trial and the sentence.

In some cases, clarification has also been needed as to whether the EAW was for prosecution or the execution of a prison sentence.

The prosecutors have frequently asked for supplementary information before lodging their request for surrender with the court.

The specific information has been asked for via e-mail, with a deadline set.

As the issuing State

Finnish practitioners stated that in some cases the information is not passed to Finland and police channels, EJN or Eurojust have to be used.

The Prosecution Service stated that when Finland acted as the issuing State, only in limited cases had some of the executing States requested 'unnecessary' information; however, they did not give any example of such unnecessary information asked for by an executing State. In one case, the Finnish authority provided additional information concerning the offence included in the list of 32 crimes (extortion) even though the Member State should not have asked for it, in the Finnish authority's view. It resulted in the refusal of surrender due to a lack of double criminality because the court in the requested State decided that the alleged act did not constitute an act of extortion.

Eurojust was involved in this case and closed the file in April 2021. The conclusion was that the brief description of the crime provided by the issuing authority was not consistent with the characterisation of a crime of attempted blackmail or extortion. The circumstances reflected in the EAW form were improper or flawed in that they did not provide an insight into the facts that would permit them to be classified in any criminal category, since an extrajudicial claim warning of criminal proceedings, if it is not accompanied by threat or intimidation beyond legal action, cannot be considered as either blackmail or extortion. Consequently, enforcement was denied.

They added that in situations where additional information is requested, Finland usually provides the requested information since the executing State would otherwise refuse to surrender the person in question. They also claimed that when acting as an executing State, in their view, Finland does not request (additional) information that would be inconsistent with the Framework Decision.

Concerning the Criminal Sanctions Agency (CSA), if they need to obtain supplementary information they send requests to prosecutors, because they are the competent authorities to issue an EAW for the purpose of enforcing a prison sentence. In addition, if needed, the Criminal Sanctions Agency (CSA) provides prosecutors with further information requested by an executing State; however, such requests are not made regularly.

3.4.Grounds for refusal

Citizenship is a mandatory ground for refusal to execute an EAW issued to enforce a custodial sentence in cases where the requested person requests permission to serve the custodial sentence in Finland while residency is an optional ground for refusal, resulting in a difference in treatment between citizens and residents. According to Article 4(6) of the FD, both nationality and residency are optional grounds for non-execution.

The mandatory grounds for refusal under Act No. 1286/2003 are broader than in the FD on the EAW.

According to the Finnish Act No. 1286/2003, surrender must be also refused if:

- the act on which the request is based deemed to have been committed in whole or in part in Finland or on board a Finnish vessel or aircraft, and

  a) the act or a corresponding act is not punishable in Finland; or

  b) the right to bring charges, under Finnish law, has become time-barred, or punishment could no longer be imposed or enforced;

- there are reasonable grounds to suspect that the requested person is in danger of being subject to capital punishment, torture or other treatment violating human dignity or to persecution threatening his or her life or liberty or to other persecution because of his or her origin, membership of a particular social group, religion, belief or political opinion, or there are reasonable grounds to assume that the person would be subjected to a violation of his or her human rights or constitutional legal protection, freedom of expression, or freedom of association.

Surrender must also be refused if it would, in view of the age, health or other personal circumstances or special circumstances of the person concerned, be unreasonable for humanitarian reasons and this unreasonableness cannot be avoided by delaying the execution under Section 47[3].

Grounds for refusal due to a judgment rendered in absentia are stipulated in Section 6a of Act No. 1286/2003 as discretionary grounds for refusal.

The conditions concerning the return of a surrendered person under Section 8 of Act No. 1268/2003 are as follows:

Surrender of a Finnish citizen for the purpose of prosecution shall be made subject to the condition that the person shall be returned to Finland, immediately after the judgment has become final, to serve a possible custodial sentence imposed on him or her, if the person has, in connection with the consideration of the surrender, requested permission to serve the sentence in Finland.

[3] Section 47 of Act No. 1286/2003 - Delay of enforcement
The court may delay the enforcement of a surrender decision if there exist circumstances that make the surrender unreasonable for humanitarian reasons. The surrender decision shall be enforced as soon as these circumstances have ceased to exist. The competent authorities shall then agree on a new surrender date. The requested person shall be handed over within ten days of the new date thus agreed.

If the requested person is habitually resident in Finland, the condition referred to in subsection 1 may be set, if the requested person has, in connection with the consideration of the surrender, requested permission to serve the sentence in Finland, and it is justified, in view of his or her personal circumstances or another special reason, to allow him or her to serve the possible custodial sentence in Finland.

3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention

As issuing State

When Finland acted as the issuing State, judicial authorities have not faced situations where an executing State raised arguments concerning detention conditions in Finland.

However, if such a situation occurred, the judicial authorities issuing the EAW would turn to the Criminal Sanctions Agency to provide the requested information. Moreover, practitioners stated in answers to the questionnaire that there had not been any requests regarding guarantees so far. Therefore, the decision regarding which authority would/should give the guarantees has not been made.

As the executing State, Finland's judicial authorities have raised questions about detention conditions from time to time. Nevertheless, practitioners stated that in most cases there is no considerable delay in executing the EAW. The reason could also be that prosecutors seek supplementary information on detention conditions beforehand. Practitioners from Helsinki District Court added that sometimes a short delay occurs in cases where a question concerning detention conditions is sent to the issuing Member State during the court proceedings.

However, when asking for additional information, judicial authorities set a deadline for issuing authorities for its submission, and they mostly comply with the deadline set. Besides setting the deadline, they inform the issuing State that non-compliance with the deadline may result in the surrender being refused.

Assessing the potential risk of violation of fundamental rights

The Finnish judicial authorities are aware that they are responsible for ensuring that everyone's fundamental rights are respected. They are also aware that some countries have problems with detention conditions. CJEU case-law lays the foundation for the evaluation, and when concerns arise, Finnish judicial authorities request additional information from the issuing State. When judicial authorities deal with cases where there are suspicions of risks based on recent developments, the judge takes these matters into consideration ex officio.

As regards assessing the potential risk of violation of fundamental rights in an EAW procedure, a judge hears the requested person and, based on his/her statement, makes a preliminary assessment of the situation.

The judge also consults the FRA's report 'Criminal detention conditions in the European Union: rules and reality', which outlines selected minimum criminal detention standards at the international and European level, and how they translate into national law. However, it is also essential that a requested person raises the objections about possible risks of violation of human rights if she/he is aware of that since, in some (not so evident) cases, the judge cannot predict the existence of a potential breach of human rights.

According to Helsinki District Court, judges follow the criteria mentioned in CJEU C- 404/15 Aranyosi and Caldararu, CJEU C-120/18 PPU ML and C-128/18 Dorobantu. Judges will assess the risk by analysing the information relating to general detention conditions. They will examine the information on ECHR practice, reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), reports by the European Union Agency for Fundamental Rights (FRA) or reports from any other objective source.

For instance, the ECHR judgment of 20.10.2016 in C-128, Muršić offers the criteria for analysing detention conditions. Most probably the Court would assess the size of the custody cell; how many persons are held in one particular cell (occupancy); the sanitary and other conditions of the detainee in the cell, access to running water and hygiene conditions, possibilities of physical exercise and fresh air and possibilities for activity and for connecting with the detainee's family. The variety of questions depends on the issuing State, because before additional information is requested, certain facts may already be available.

When requesting supplementary information concerning detention conditions, the questions put by the Finnish judicial authorities comprise two levels: firstly, whether there is objective, reliable, specific and adequately updated evidence for detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention - and secondly, if the response is yes, whether there are substantial grounds to believe that the requested person would be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment in the event of his surrender to that Member State.

The supplementary questions requested from the issuing Member States are as follows:

- the name/names of the detention facilities;
- size of the cell/cells the requested person would be detained or held in and the minimum individual space that would be reserved;
- number of persons accommodated in one cell;
- how many hours per day the requested person would spend in the cell;
- the sanitary and hygiene conditions in the cell: are the sanitary and hygiene facilities (toilet etc.) placed in the cell or outside the cell?;
- opportunities for exercise and recreational activities;
- possibilities of receiving visitors in the detention facilities and communicating with family and other persons;
- existence of a national or international mechanism to monitor the prison conditions.

Regarding refusal of recognition of EAWs, Helsinki District Court had refused surrender twice, in one case for prosecution and the other for execution. Therefore, both the EAWs were forwarded to the Supreme Court with the request for a preliminary ruling. In the first case, the refusal of surrender related to unsatisfactory detention conditions, based on the answer to the supplementary information stating that the surrendered person would be placed in a cell with less than $3m^2$ without providing the Finnish authorities with any guarantee. Supreme Court granted leave to appeal and refused the surrender of a person to Romania.

However, in the second case, Romanian authorities provided the HDC with a guarantee that they would ensure adequate prison conditions. Consequently, the Supreme Court decided to surrender the person in question.

Furthermore, practitioners noted that most EAW cases they have are with neighbouring countries such as Estonia and Sweden, and they know pretty well about the detention conditions in these countries. However, they also added that they would ask for additional information if they had any doubts.

The Finnish judicial authorities stated that they had not encountered any practical cases that would lead to impunity. They added that if they had such a situation, judicial authorities would raise questions about finding alternative solutions to avoid impunity during the court proceedings.

3.4.2. Refusal in the event of a judgment in absentia

According to Section 6a of the Finnish Act on Surrender, surrender may be refused if the EAW concerns the enforcement of a custodial sentence handed down in the absence of the defendant.

However, surrender is granted, if the requested person:

1) had been personally served with the summons in due time and thereby informed of the scheduled date and place of the court hearing which led to the judgment and was informed that a decision may be rendered even if he or she does not appear at the hearing;

2) had by other means effectively received official information on the scheduled date and place of the court hearing which led to the judgment, in such a manner that it can be unequivocally established that he or she was aware of the hearing and was informed that a decision may be rendered even if he or she does not appear at the hearing;
3) being aware of the trial, had given a mandate to a legal counsel, who was either appointed by the person concerned or by the State, to defend him or her at the trial and had indeed been defended by the said counsel at the trial;
4) has expressly stated that he or she will not contest the judgment or, after being served with the judgment and being expressly informed of the right to request a retrial or a review of the judgment, did not request a retrial or a review within the applicable time frame; in that case, a further requirement is that the person would have had the right to participate in the retrial or review, the merits of the case could have been re-examined, new evidence could have been admitted, and the retrial or review could have led to the original judgment being reversed; or
5) was not personally served with the judgment but will be personally served with it without delay after the surrender and will expressly be informed of his or her right to request a retrial or a review of the judgment and of the time frame within which he or she has to request such a retrial or review; in that case, a further requirement is that the person has the right to participate in the retrial or review, the merits of the case may be re-examined, new evidence may be admitted, and the retrial or review may lead to the original judgment being reversed.

According to Section 21a, if a request for surrender is based on a judgment rendered in absentia, and the requested person has not previously been provided with official information on the criminal procedure concerning him or her, the person may, upon being informed of the contents of the request for surrender, request that a copy of the judgment be submitted to him or her prior to surrender. The competent authority of the requesting Member State must, immediately after being informed of this request, submit a copy of the judgment to the requested person via the competent authority under the Act. The request to receive a copy of the judgment must not delay the surrender procedure or the process of issuing a decision on surrender. The judgment is submitted solely for information purposes, and it must not be considered as official service of the judgment.

The impact of the Tupikas, Zdziaszek and Ardic judgments

The Finnish judicial authorities believe that the impact of the Tupikas, Zdziaszek and Ardic judgments in absentia are significant. They added that it is the responsibility of the judicial authorities to assure themselves that the requested person received the information about the trial and the sentence where the judgment was issued in absentia. They stated that the Finnish legislation is in line with the Framework Decision for in absentia cases.

When Finland acted as the executing State, in every single EAW where the sentence had been handed down in absentia, and there was no explanation of how the requested person received the information about the trial and the sentence, additional information was requested. The time-limits for making a decision have not been exceeded except in one case. In total, they asked for additional information in three cases and in one case, the time-limit was exceeded. However, they added that in some older cases, it was difficult and sometimes impossible to find the information on how and when the summons was served on the suspect in the Court of Appeal phase.

Finland’s judicial authorities, as issuing authorities, have not encountered cases of refusal of judgments in absentia. They noted that the summons is always served in person. In Finland, a case may be heard and decided regardless of the defendant's absence if his or her presence is not necessary for the resolution of the case and if he or she has been summoned to the hearing under such a threat. The defendant may be sentenced to a fine or imprisonment for at least three months. With the defendant's consent, he or she can be sentenced to imprisonment for at most nine months. In Finland, a person can also give his or her consent that a case may be decided without holding the main hearing in written proceedings. In written proceedings, no punishment more severe than imprisonment for nine months may be imposed.

3.4.3. Other grounds for refusal

As the executing State

Finnish practitioners, as executing authorities, have not lately encountered cases where there was a ground for refusal based on the *ne bis in idem* principle.

However, from time to time, they have experienced EAW requests to enforce a custodial sentence linked to a mandatory ground for refusal, i.e. the requested person was a Finnish citizen and wanted to serve the custodial sentence in Finland. Thus, when the Finnish citizen informed the court that he wanted to serve a sentence in Finland, the surrender was refused in such a case.

They have also encountered EAW requests to enforce a custodial sentence linked to a discretionary ground for refusal. For example, cases where a person habitually resided in Finland and requested permission to serve the custodial sentence in Finland.

As for the other grounds for surrender, there was one case where the surrender of a person was requested for two crimes. However, the court refused the surrender due to a lack of double criminality in one crime. The first offence had related to the ’failure of a person to declare his change of address to the judicial register of perpetrators of sexual offences’, which is not a crime in Finland. Thus, the court decided to refuse surrender for the first offence, while for the second offence, the person was surrendered. The decision clearly stated the justification for refusal for the first offence.

In one case (KKO 2021:29), the District Court refused to execute an EAW issued for the enforcement of a custodial sentence because it was not possible to take over the execution of the prison sentence due to the statute limitation under Finnish law. After the appeal, the Supreme Court decided to surrender the requested person.

As the issuing State

According to the Prosecution Service, as issuing authorities, when deciding whether or not to issue an EAW, they use the national handbook to describe the crime in detail so that the executing authority receives a clear picture of the facts and may, e.g., assess double criminality (if needed) and possible *ne bis in idem* situations. However, the principles described in the Commission handbook are also set out in the national handbook.

The role of the person who is requested to be surrendered, has to be explained in cases where there are several suspects. In addition, the modus operandi (with or without violence, threat, etc.) even of a typical crime and the amount of damage has to be explained.

3.5.Further challenges

The jurisprudence of the CJEU (CJEU C-452/16 PPU and C-477/16 PPU) led to changes in the Act on Surrender Procedures between Finland and the other Member States of the European Union. Law 189/2017 amended Section 54 so that the Central Administration of the Criminal Sanctions Agency is no longer competent to request surrender to enforce a custodial sentence. Following the amendment, such a request is made by the prosecutor based on a proposal by the Central Administration of the Criminal Sanctions Agency. In addition, Section 58 was amended so that only a prosecutor and no longer the Central Administration of the Criminal Sanctions Agency is competent to request the consent of the Member State that has surrendered the person to enforce a sentence of imprisonment.

As for the other ground for refusal, during the meeting Finnish practitioners mentioned one pending EAW request , in which the Finnish Supreme Court asked the CJEU for a preliminary ruling. The case concerns the final phase of an EAW procedure, in which it has not been possible to execute final decisions on surrender issued for executing a sentence. As it was remarked, the surrender has been delayed partly for reasons relating to the Covid-19 pandemic but primarily because of legal obstacles to the application for asylum lodged by the individuals ordered to be surrendered.

The question was whether such reasons could be regarded as constituting force majeure circumstances preventing surrender within the meaning of Article 23(3) of the FD and enabling the time-limit for surrender to be extended. If action on the part of the judicial authority is required in order for the time-limit to be extended, the question was whether the lack of any such action after the time-limits have expired necessarily means that in such a case the person in detention must be released pursuant to Article 23(5) of the FD.

In connection with the above, a practitioner from the court stated that it is the National Bureau of Investigation that decides on the date of surrender and if they need to postpone it they set a new date. On the question raised by an expert of the evaluation team on who would interpret force majeure for the detention after the decision on surrender, whether it would be the court or prosecutor, they replied that they do not know since it was the first such case and their legislation does not say which would be the authority that decides about postponement as a proportional measure in such a case.

The decision of the Court of Justice of the European Union (C-804/21) of 28 April 2022 concluded as follows :

- the concept of 'force majeure' does not include the judicial obstacles to surrender resulting from legal action on the part of the person whose surrender is being decided on the basis of the Law of the executing Member State, when the final decision has been adopted by the executing judicial authority;
- the police cannot be responsible for considering if there is a case of 'force majeure', or for setting a new date for the surrender, because they are not included in the concept of 'judicial authority' under Articles 6 and 23(3) of FD 2002/584[4];
- if the person has not been surrendered within the time frame specified by the FD, he/she will have to be released, under Article 23(5);
- the Court has to make a decision in any case, to accept or refuse surrender;

[4] Section 23 of Act 1286/2003 - Request for supplementary information states*:*

'The prosecutor and the police may, when necessary, request supplementary information from the competent authority of the requesting Member State.'

- if the requested person has been released on the grounds of the expiration of the deadline, the judicial executing authority is obliged to adopt the necessary measures to avoid the suspect from fleeing, except deprivation of liberty.

During the discussion, the evaluation team found that Finland's legislation does not include a provision concerning limitations on keeping a person in pre-trial custody or ex officio re-evaluation of the reasons for pre-trial custody. Practitioners noted that they do not see this as a problem, since the person concerned might ask for a re-evaluation every two weeks.

In its assessment of whether domestic law provides sufficient procedural safeguards against arbitrariness, the ECHR may take into account the existence or absence of time-limits for detention as well as the availability of a judicial remedy. However, Article 5(1)(f) ECHR does not require States to establish a maximum period of detention pending deportation or automatic judicial review of immigration detention.

Practitioners noted that they are aware of needing their law to be redrafted as a whole, not just some parts, since it is 20 years old. Meanwhile, many Supreme Court and the CJEU decisions have been rendered and this calls for the redrafting of the related provisions. The redrafting of the national legislation has been on their agenda for several years; but due to a lack of resources, they have not been able to start on it. However, a working group worked on amendments to the Coercive Measures Act for a year and a half. Their report with suggestions was published for public consultations and comments which will subsequently be taken into consideration before drawing up the government proposal.

They also mentioned that in their national law there are references to the Coercive Measures Act that are not clear or are missing, e.g. limitation of communication of a person in custody with other persons.

The SIRENE Bureau has encountered some difficulties e.g. receiving the surrender decision after it has been taken. Sometimes if multiple EAWs have been issued, the Member State just deals with one EAW and takes a decision on that (disregarding the other EAWs). Or the Member State deals with all EAWs but just sends a decision on one EAW. The Bureau has seen a marked increase in the volume of information exchange (since the fourth mutual round of evaluations).

As for transit requests for the requested person, no significant problems have been encountered. However, in some cases, the NBI does not receive the surrender decision in time (sometimes a few days later), which minimises the time to arrange the surrender. They added that in the national process, there are also some shortcomings, i.e. when they have to send a reminder to prosecutors for submitting the surrender decision. Another challenge concerns the different procedures applied by some of the Member States through which transit has to be arranged. For example, they require the submission of the transit permit five working days before the planned transit (in the case of Frankfurt airport) and translated into the respective language. In some cases, the transit permit was refused during an ongoing surrender, so they had to find another means of transport.

Moreover, Finland's geographical location can give rise to challenges due to long distances and the lack of direct flights – sometimes even two stopovers are needed. Due to long distances, Finland has to respect the rest time rules and a surrender trip may last several days, which may cause problems with the time-limit.

Furthermore, different procedures at transit/stopover airports may create problems. In some Member States, the transit airport authorities are 'automatically' informed about the surrender. In addition, the local police will come directly to the plane/gate on arrival and provide a secure transfer to the next flight. Unfortunately, in many Member States this will not happen, even if requested. That causes problems from the legal point of view if the subject creates problems, tries to escape etc. Problems may also occur if the stopover lasts longer and no specific/separate area is in hand.

The Finnish authorities, when acting as issuing authorities, have faced difficulties in cases with multiple EAWs, one for prosecution and the second for a custodial sentence. In such cases, some Member States dealt with only one EAW and disregarded the other.

Challenges with regard to grounds for refusal in the event of judgments in absentia

Usually, it is a prosecutor who requests additional information before the date set for trial, and quite often they found information deficiencies and in some cases considered them at least misleading. These mainly concerned: how and when (or if at all) the suspect has been given information about the trial date and the consequences of not participating. As a result of this, with some Member States there is a need to ask for clarification every time. Especially in cases where the convicted person is a Finnish national and the sentence should be executed in Finland, this leads to difficulties.

Some Member States do not tick all boxes correctly and if they do, the section where they are supposed to provide an explanation of the particular case is not always filled in. Practitioners noted that there is one Member State (they refused to name this State) which they do not trust with regard to information provided in absentia cases since they had provided incorrect or misleading information, and not just a few times. As a consequence of this, Finnish practitioners were advised to always ask for supplementary information in in absentia cases.

Practitioners also noted that the concept of summoning in person should be interpreted everywhere in the same way but it is not, and in some countries handing over the summons to a family member is considered as serving it in person.

The Finnish judicial authorities are of the opinion that the issuing authority should as a rule provide more extensive information in the EAW whenever Article 4bis of the EAW FD applies. Also, reformulating the EAW form - the in absentia part - might help the issuing Member State to provide all the necessary information.

Practitioners mentioned one case in which the court decided against a prosecutor's opinion not to surrender the person with the justification that it was a minor offence, even though the maximum punishment was about three years of imprisonment. The prosecutor's opinion is that a judge should not refuse the surrender because he thinks it disproportionate, since proportionality was checked by the issuing State. Accordingly, the case was forwarded to the Supreme Court. The case was still ongoing.

According to Helsinki District Court, the EAW is a good tool for cooperation, but the problem is that some Member States issue EAWs for offences that are not serious. Mutual trust is the leading principle and is highly appreciated as such. However, a defence counsel may occasionally challenge the evidence in a way that undermines this trust. However, the mutual trust principle prevents the judge from examining the case on the merits. The best solution would probably be to use an EIO and video conference for the prosecution.

3.6.Statistics

Practitioners at Helsinki District Court noted that over the last 10 years they had dealt with a fairly steady number of cases, approximately 45; however, before the pandemic, they recorded an increase in the numbers to 75 cases a year and during the pandemic, the number decreased to a normal level (approximately 45 cases). EAW requests come mostly from neighbouring countries (Estonia, Sweden or Lithuania).

The Finnish authorities provided the evaluation team with the statistical data for 2019-2021.

In 2019, Finnish authorities issued 128 EAWs, of which 75 were for prosecution purposes. In 2020, the number of requests decreased (due to the pandemic) to 76 EAWs, of which 53 were for prosecution purposes. Finally, in 2021, 96 EAWs were issued, of which 69 were for prosecution purposes.

When Finland acted as the executing authority in 2019, they received 34 EAW requests, for two of which execution was refused, i.e. under Articles 4(6) and 1(3) of the FD. Out of the total number of requests, in 4 cases, the execution of EAWs concerned nationals or residents of Finland.

In 2020, Finland received 31 EAW requests, for three of which execution was refused:. two requests under Article 1(3) of the FD and one EAW due to trial in the absence of the accused (FD Article 4a as inserted by FD 2009/299/JHA). Out of the total number of requests, in two cases the execution of EAWs concerned nationals or residents of Finland.

In 2021, Finland received 28 EAW requests, among which execution was refused for three EAWs: two under Article 4(6) and one for another unspecified reason. Out of the total number of requests, in four cases the execution of EAWs concerned nationals or residents of Finland.

3.7.Conclusions

GENERAL CONCLUSIONS:

1. The Finnish EAW system seems to work properly, with a high level of understanding and cooperation between the different authorities involved.

The information given to the experts was clear and well prepared.

2. As issuing State:

2.1. Finland respects the principle of proportionality.

Prosecutors may issue an EAW for prosecution only if the person against whom an EAW is to be issued has been remanded by a court order, and the punishment under Finnish Law for the act on which the request is based must be imprisonment for at least one year.

Prosecutors may issue an EAW for enforcement of a custodial sentence only on the basis of an enforceable custodial sentence issued by a court for a sanction imposed of imprisonment for at least four months.

2.2. Finland respects the independence of prosecutors.

Prosecutors are the only competent authorities to issue EAWs in Finland for prosecution and enforcement of a custodial sentence.

According to Act No. 32/19 on the National Prosecution Authority, the national prosecution authority is independent, autonomous and responsible for organising prosecutorial activities in Finland. Due to this status, prosecutors may not be directed or instructed by the executive, such as the Minister for Justice, in any way, including when it comes to deciding on issuing an EAW.

2.3. As issuing State, prosecutors verify **the existence of ongoing investigations** concerning the person who is going to be requested for surrender, as was recommended in the fourth evaluation report .

2.4. As issuing State, according to the Surrender Act, it is not mandatory to assign a lawyer to a person against whom an EAW is issued; however, he/she has the right to request a lawyer to be given. In such a case, a lawyer is appointed to him/her. If the competent authority of another Member State informs the Finnish competent authority that a requested person wishes to appoint a legal counsel in Finland, this authority, without undue delay, must submit information facilitating the appointment of a counsel to the requested person. The information must be submitted to the competent authority of the other Member State.

3. Conclusions as executing State:

3.1. Experts have noted that several **recommendations from the 4th round of mutual evaluations** on the practical application of the EAW and corresponding surrender procedures between Member States had not been fully implemented, although they are more legislative matters than practical issues:

3.1a) The police are erroneously included in the concept of 'judicial authority':

Section 23 of the Finnish Law provides*: 'The prosecutor and the police may, when necessary, request supplementary information from the competent authority of the requesting Member State.'*

Article 15(2) of the FD reserves such activities for the executing judicial authority.

The report of the 4th round of mutual evaluations concluded that '*it would be advisable to modify the law so that the exercise of the power of enquiry to an issuing judicial authority would be reserved to an authority clearly recognisable to issuing Member States as "judicial".'*

This idea has also recently been considered in the CJEU decision of 28h April 2022 in case 804/2021, in which the Court concluded that the police cannot be responsible for considering whether there is a case of 'force majeure', or for setting a new date for the surrender, because they are not included in the concept of 'judicial authority' under Articles 6 and 23(3) of FD 2002/584.

3.1.b) <u>The territorial ground for refusal had been limited by introducing supplementary conditions for its application:</u>

'The act on which the request is based is, under chapter 1 of the Criminal Code, deemed to have been committed in whole or in part in Finland or on board a Finnish vessel or aircraft, and

a) the act or a corresponding act is not punishable in Finland; or
b) the right to bring charges, under Finnish law, has become time-barred, or a punishment could no longer be imposed or enforced.'

3.1.c) <u>Definition of custodial sentence</u>: Finland does not recognise psychiatric treatment as a criminal sanction in connection with the EAW and surrender procedures.

3.1.d) <u>Superintendence of undertakings received from issuing MS</u>: There is no authority in the European arrest warrant process responsible for ensuring that requested persons do in fact return (Section 8 of the Finnish law). This is relevant to all Member States.

3.2. With regard to the potential **risk of violation of fundamental rights** in relation to detention, there have been no claims against Finland.

3.3 Concerning **grounds for refusal**, the experts note that nationals and residents are not treated equally under Finnish law, specifically Sections 5, 6 and 8 of the Finnish law, as they are in Articles 4(6) and 5(3) of the FD.

3.4 A person whose surrender has been requested has the **right to be assisted** by a legal counsel. A defence counsel should be appointed if the person so requests.

3.5 Regarding **search and seizure** of property, the competent authority could decide on transfer to the requesting Member State in its surrender decision, if this is requested by the prosecutor.

3.6 Finland informs requesting Member States of the **duration of the deprivation of liberty** of the requested person. A person taken into custody can file a complaint with the Supreme Court against a district court decision concerning the duration of this custody.

4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION

The provisions of Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for their enforcement in the EU were implemented in Finland's legislation by the Act on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on the transfer of sentenced persons within the EU and the Application of Framework Decision No. 1169/2011, including amendments up to 39/2019 (Act No.1169/2011).

However, Section 1 of Act No.1169/2011 states that the provisions of a legislative nature in FD 2008/909/JHA have the force of law unless otherwise provided in Act No. 1169/2011. Moreover, some provisions of Act No. 1169/2011 reference FD 2008/909/JHA.

4.1. Authorities competent for the recognition of the judgment and execution of the sentence

The Central Administration of the Criminal Sanctions Agency (CSA) is the competent issuing and executing authority. They decide on whether to send to another Member State a request to transfer enforcement of a sanction and on whether to consent to the execution in Finland of such a request sent by another Member State. The Criminal Sanctions Agency has direct contacts with the competent authorities listed on the EJN website – no other channels of contacts are used.

However, in accordance with the notification under Article 2(1) of the FD, where a sentence concerns a measure involving deprivation of liberty other than a custodial penalty, the Ministry of Justice is the competent authority. The Ministry of Justice is the competent issuing and executing authority with respect to FD 909 when it comes to transferring a person (in or out) who has been found criminally unaccountable for his/her actions due to his/her mental condition and ordered to undergo involuntary psychiatric treatment for an undetermined period of time in an institution. The Ministry is the competent authority to grant permission for transit – permission for the transit through Finland of a sentenced person whose transfer to another Member State has been requested is granted by the Ministry of Justice.

However, the decision on adapting a sentence is made by a court.

According to Section 5 of Act No. 1169/2011, Helsinki District Court has the competence to deal with the matter of taking a sentenced person into custody after having been notified if a sentenced person is being kept in custody in the judicial district of Helsinki District Court. Helsinki District Court must deal with the matter urgently in accordance with the provisions governing the consideration of requests for remand and decide whether the measure is to remain in effect.

According to Section 7 Helsinki District Court has sole competence in Finland to adapt a sanction under the conditions set out in Article 8(2) and (3) of FD 909. Helsinki District Court has competence to deal with requests for consent to derogate from the specialty rule, if the sentenced person is serving a prison sentence in the judicial area of Helsinki District Court or if it is otherwise deemed appropriate.

Prisons and Community Sanctions Offices notify sentenced persons of the decisions. In FD 909 transfers, sentenced persons give their consent to the prison director who forwards it to the Central Administration of the Criminal Sanctions Agency. Certain prisons organise the transport of prisoners to another Member State in FD 909 transfers.

4.1.1. Procedure when Finland acts as the executing State

A request to transfer enforcement of a sanction is taken up for considerationwithout consulting the Central Administration of the Criminal Sanctions Agency, if the sentenced person is a Finnish citizen who:

a) is living in Finland; or

b) has been ordered to be deported or expelled to Finland on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment.

In other situations, the consent of the Central Administration of the CSA is required for a request to transfer enforcement of a sanction to be considered. However, if the sanction referred to in the request is any measure involving deprivation of liberty other than a prison sentence, consent must be given by the Ministry of Justice. Consent may be given if, due to the place of residence or other personal circumstances of the sentenced person or for special reasons, enforcement of the sanction in Finland would facilitate the reintegration of the sentenced person into society.

In order to ensure enforcement, a public official with the power of arrest may, in a situation referred to in Article 14 of the Framework Decision, take a sentenced person into custody, if so requested by the State in which the judgment was delivered (issuing State). The request may be addressed directly to the public official with the power of arrest. The district court in the judicial district in which the person is being kept in custody, the District Prosecutor or the Senior Specialised Prosecutor serving in that judicial district, and the Central Administration of the CSA must be notified without delay of the person’s being taken into custody.

After receiving such notification, the district court deals with the matter urgently in accordance with the provisions governing the consideration of requests for remand and decides whether the measure is to remain in effect. The district court must immediately notify the Central Administration of the CSA of its decision.

If the Central Administration of the CSA considers that there is an impediment to the enforcement of the sanction, it must order the immediate release of the person taken into custody. The person taken into custody must also be released if the Central Administration of the CSA has not received a request for enforcement with accompanying documents within 40 days of the person's being taken into custody. The person taken into custody should be released at the latest when the combined duration of deprivation of liberty in Finland and in the issuing State corresponds to the duration of the period for which the sentenced person would have been deprived of liberty if the sanction had been enforced in the issuing State.

The period of deprivation of liberty is deducted from the duration of the sanction to be enforced in accordance with Chapter 6, Section 13 of the Criminal Code.

Any decision to adapt a sanction under the conditions set out in Article 8(2) and (3) of the Framework Decision is made by Helsinki District Court. Requests for adapting a sanction are submitted by a prosecutor based on a proposal by the Central Administration of the CSA. The provisions on criminal procedure apply, where applicable, to adapting sanctions.

The sentenced person must be given an opportunity to be heard in a case involving the adaptation of a sanction. In dealing with such cases, the right to legal counsel and defence counsel apply.

4.1.2. Procedure when Finland acts as the issuing State

A prerequisite for forwarding a request to transfer enforcement of a sanction to a Member State is that the transfer would facilitate the reintegration of the sentenced person into society due to the nationality, place of residence or other personal circumstances of the sentenced person or for special reasons.

Transfer of enforcement of a sanction must be requested in accordance with Article 5 of the Framework Decision by forwarding the judgment or a certified copy of it together with the certificate for which the standard form is given in Annex I of the Framework Decision to the Member State referred to in subsection 1.

Helsinki District Court decides on granting permission for the prosecution, punishment or deprivation of liberty of a sentenced person transferred to another Member State due to an offence other than that for the enforcement of which he or she was transferred to the Member State in question. In other respects, the provisions of the Act on Surrender Procedures between Finland and Other Member States of the European Union on the granting of permission to derogate from the specialty rule apply to the conditions and procedure for granting such permission.

These decisions of Helsinki District Court may be appealed against to the Supreme Court in accordance with the provisions of the Act on Surrender Procedures between Finland and Other Member States of the European Union on appealing against district court decisions in surrender cases, as appropriate.

Decisions made by the Central Administration of the CSA or the Ministry of Justice under this Act may be appealed against to Helsinki Administrative Court as provided in the Administrative Judicial Procedure Act. Appeals must be considered as a matter of urgency. The decision of Helsinki Administrative Court is not subject to appeal.

The prosecutors of Southern Finland are the receiving authority for requests from the executing State to waive the speciality rule. Prosecutors make the necessary inquiries and take the case to Helsinki District Court, which decides.

4.2.Documents required for recognising the judgment and executing the sentence

As executing State, Finland's legislation requires the judgment or a certified copy of it together with the certificate

A translation of the judgment is not required; where necessary, the Central Administration of the Criminal Sanctions Agency is responsible for the translation of the certificate and the judgment into Finnish or Swedish. There is an English translator available, working for CSA.

According to the International Judicial Assistance Unit of the Ministry of Justice, it has not regularly had situations where additional documents were requested.

According to the Criminal Sanctions Agency, this is not usual. Occasionally, confirmation of some of the entries in the certificate has been requested.

4.3.Criteria for assessing the facilitation of social rehabilitation

According to Section 4 of Act 1169, consent may be given if, in view of the place of residence or other personal circumstances of the sentenced person or for special reasons, enforcement of the sanction in Finland would facilitate the reintegration of the sentenced person into society.

The assessments of the Criminal Sanctions Agency are based on social, financial and other ties, the place of residence of the sentenced person and those close to him or her, language and cultural ties. This information is obtained by consulting the prison records and the statement made by the sentenced person. There is no practical possibility to double check the information obtained from the sentenced person (interviews with family, neighbours, employer).

Where the Ministry of Justice is competent (medical sanction) it relies on the assessment by the Institute of Health and Welfare on the prognosis for achieving the purpose of the treatment.

4.3.1. Exchange of information between the issuing State and executing State

According to the Criminal Sanctions Agency (CSA), they occasionally request supplementary information on, for example, early or conditional release. However, the information needed varies. After the Căldăraru decision, information regarding conditions of detention in Romania was requested, but not from other MS. As an executing authority, the CSA receives very few certificates every year.

According to the Criminal Sanctions Agency (CSA), they do not usually consult with the competent authorities of the executing State. Where consultation is obligatory in the cases referred to in Article 4(1)(c), a written request for prior consent is sent to the competent authorities of the executing State. They do not inform the issuing MS before requesting adaptation of the sentence.

According to the CSA, there have not been any cases of opinions from the executing State stating that the enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society. They added that, if they had such cases, the opinion would be taken into consideration.

Information from the executing State to the issuing State is always provided without delay.

4.3.2. Opinion and notification of the sentenced person

The **Central Administration of the CSA** ensures that the sentenced person can state his or her opinion or give his or her consent. The sentenced person is always heard if he or she is in Finland. The consent of the sentenced person is asked in the prison where the sentenced person is placed, and the consent is given to the prison director or an official responsible for the enforcement. A record is drawn up of the proceedings in which the consent is given and is attached to the certificate. A legal counsel of the sentenced person has the right to participate in the hearing. The sentenced person can also give a written statement on the transfer. If the sentenced person is in another MS, a written statement is required and consent is never obtained through videoconference.

According to the **International Judicial Assistance Unit of the Ministry of Justice**, the staff of the mental health institute obtain the person's opinion and put it in writing, if necessary.

According to the Mental Health Act (No. 1116/1990), the healthcare unit in charge of the treatment of the person on whom a medical sanction has been imposed must inform the person about what transferring the medical sanction for enforcement to a foreign state involves and inquire if the person consents to a transfer. The consent to transfer of enforcement can be given to the chief physician of the healthcare unit that is in charge of the treatment of the person on whom the medical sanction has been imposed. When consent is given, the assistant assigned to the person and the trustee of the person, if appointed, must be present. The civil servant receiving the consent must ensure that the person on whom the medical sanction has been imposed understands the content of the consent. Minutes must be taken of the proceedings in which consent is given. The minutes must be forwarded to the National Institute for Health and Welfare and the Ministry of Justice.

The extent to which the opinion of the sentenced person is taken into account

According to the **International Judicial Assistance Unit of the Ministry of Justice**, in transfer proceedings where a person has been found criminally unaccountable for his/her actions and ordered instead to undergo involuntary psychiatric treatment, his/her opinion is a determining factor. However, according to the **Criminal Sanctions Agency**, in transfers where the consent of the sentenced person is not required, the opinion is not usually taken into account. Naturally, if the opinion of the sentenced person contains new information on, for instance social ties, the opinion is taken into account and may affect the decision-making.

Transfer decision communicated to the sentenced person

According to the International Judicial Assistance Unit of the Ministry of Justice, the person concerned is given the information as requested.

According to the Criminal Sanctions Agency (CSA), the sentenced person is informed in accordance with Article 6(4) when the certificate and the judgment are forwarded to the executing State. At that stage, the sentenced person is not provided with any other information regarding the transfer.

Legal counsel and legal remedies

Regardless of whether Finland is the executing or issuing State, the sentenced person has the right to use a legal counsel and, on request, may be assigned a defence counsel out of public funds. According to the national legislation, in the case of minors and mentally impaired persons, the defence counsel is appointed ex officio. The sentenced person has the right to appeal against a transfer decision to Helsinki Administrative Court. The decision of Helsinki Administrative Court is not subject to appeal.

4.4.Adaptation of the sentence

According to the Act on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on the Transfer of Sentenced Persons within the European Union and on the Application of the Framework Decision - Section 7 (adapting a sanction), any decision to adapt a sanction (under the conditions set out in Article 8(2) and (3) of the Framework Decision) is made by Helsinki District Court and requests for adapting a sanction are submitted by a prosecutor based on a proposal by the Central Administration of the Criminal Sanctions Agency. Thus, only the prosecutor may bring a proposal for the adaption of the sentence to court. In some cases, the prosecutors submitted requests for the adaptation of the sentence to the court even where they considered that it should not be adapted, but the sentenced person took a different view. The reason for this is that the sentenced person does not have the right to take the case directly to court.

In practice, the adaptation of the sentence is requested only after the CSA has decided to recognise the decision or the decision has been contested before Helsinki Administrative Court.

There is a difference of views on what 'similar offence' means. In some cases, where the ground for non-execution of surrender has been the Finnish nationality of the person and his or her wish to serve the sentence in Finland, the in absentia problem (not summoned in person and no knowledge of the proceedings) has been found as late as in the adaptation session.

According to the Criminal Sanctions Agency (CSA), they have had such cases and the CSA has submitted the adaptation proposal to the prosecutor. Finland as the issuing State has only had cases where the Netherlands as the executing State has adapted the sentences.

According to answers received from the Prosecution Service, from their point of view, 'similar offence' can cover the whole range of crime of the same kind but of different severity (e.g. petty theft – theft – aggravated theft) and the maximum sentence is the maximum of the most serious offence in the category. During the on-site meeting, they added that an EU-wide explanation of how the concept should be interpreted is needed. At the moment, different member states interpret it in different ways. According to the interviewed practitioners there should not, in this case, be a comparison with what the indictment would be, or would have been, in the particular case if it were prosecuted in the executing State. This has also been the (national) court's decision in a couple of cases.

In one case with Estonia, a drug trafficking offence included narcotics and other illegal substances that were not classified as drugs under Finnish legislation, and the penalty was adapted to the maximum penalty provided for smuggling. Also, in a case with Greece, a penalty for drug trafficking was compared to the maximum penalty provided for aggravated trafficking, even though the aggravating circumstances were not part of the facts (higher amount of drugs/selling to minors/ more serious drugs)

According to the Criminal Sanctions Agency, the threshold for consulting the prosecutor is low. There have not been any cases where the certificate has been withdrawn due to adaptation.

The adaptation is decided by the Helsinki District Court, and this decision can be appealed before the Helsinki Courts of Appeal. The sentenced person is invited to the court session and the decision of the court is delivered to the sentenced person afterwards.

4.5.Grounds for non-recognition or non-enforcement

According to the answer received from the Criminal Sanctions Agency, when Finland has been the issuing State, transfer proposals have usually been refused based on Article 9(1)(h), i.e. where less than six months of the sentence remain to be served. There have been several cases when requests issued by Finland were rejected due to statute-bar limitations.

When Finland has been the executing State, one case was refused based on Article 9(1)(i), i.e. where the judgment was rendered in absentia. There has been a case where the transfer was not finalised due to the prison conditions..

As for the list of offences with no double-criminality check, the national legislation does not impose the condition that the upper limit of the penalty must be of 3 years' imprisonment in the issuing State (Article 7 of the FD), thus increasing the possibility of cooperation. According to Section 6 of Act No.1169/2011, if a sanction has been imposed for an act referred to in Article 7(1) of the FD, consenting to a request to transfer its enforcement is not subject to the condition that the act constitutes an offence under Finnish law or would do so if committed in Finland in similar circumstances.

The national legislation does not expressly provide grounds for non-recognition and non-enforcement as indicated in Article 9 of the FD, except for double criminality. However, practitioners said to the evaluation team that in the Finnish legislation, the FD itself is considered as their law and this was chosen as a legislative technique so that the national legislation does not have to repeat everything[5]. In the practitioners' view, it is complicated to work with several laws and it would be more helpful and more transparent if Act No. 1169/2011 contained all the applicable articles of the FD as in the Surrender Act (EAW).

[5] Chapter 1, Section 1 - Implementation of the Framework Decision

The provisions of a legislative nature in Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, hereinafter the Framework Decision, shall have the force of law, unless otherwise provided in this Act.

Article 5 of Council Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, shall have the force of law.

According to the answer from the Criminal Sanctions Agency, in cases which start with a surrender request and where surrender is refused on the grounds that the sentenced person is a Finnish national and wishes to serve a sentence in Finland, the problem of an in absentia judgment may only be discovered in connection with the FD 909 transfer process. Therefore, the possibility of in absentia cases should be investigated already when making the surrender decision so that a situation does not arise where the sentenced person is not surrendered, nor is the judgement recognised and enforced.

In cases when Finland refuses to execute an EAW on the basis of Article 4(6) of the FD, the CSA gives the court an informal opinion on whether the decision can be enforced and the procedure under FD 909 is started only after the issuing MS sends the certificate. On the other hand, if a person is surrendered with the condition of being returned to serve their sentence in Finland, the procedure under FD 909 is automatic and issuing the certificate is mandatory.

4.6.Partial recognition

There had been no cases of partial recognition of judgments and so no difficulties in the consultation process provided for in Article 10(1).

Speciality rule

National legislation does not provide for other exceptions from the speciality rule, so the person transferred will not be held responsible for other offences in the cases provided for in Article 18(2) of FD 909. The application of the speciality rule is not mentioned in the criminal record, so unless the transferred person discloses it, the authority handling a new case after the transfer will not be informed. The application of the speciality rule is recorded in the client database of the Criminal Sanctions Agency.

Transit

Permission for the transit through Finland of a sentenced person whose transfer to another Member State has been requested is granted by the Ministry of Justice. The transit of Finnish citizens through Finland may be permitted if the conditions laid down in the national legislation and the Framework Decision for transferring a sentenced person to the executing State exist or if the sentenced person has consented to transit through Finland.

The transit request is accompanied by the certificate referred to in Article 4 of the Framework Decision.

4.7. Challenges relating to compliance with the deadline for recognition and enforcement

According to the Criminal Sanctions Agency, when Finland is the executing State, the time-limits are not always respected due to the national process. In particular, if the sentence needs to be adapted, the process will take longer due to the number of authorities involved and the separate appeals that can be interjected. In such cases, the issuing State is informed about the delay. When Finland acts as the issuing State, there are sometimes delays, but most of the time, the executing State does not notify Finland of the causes.

According to the International Judicial Assistance Unit of the Ministry of Justice, they have never executed a certificate.

4.8.Law governing the enforcement of the sentence

Finland does not have the possibility of the discretion referred to in Article 17(4) of the FD because the national law does not include such provisions. The explanatory memorandum of the national law states that the purpose of paragraph 4 of Article 17 of the FD is not to change the premise that the decision to grant conditional release is made in accordance with the law of the executing State. The aim is merely to offer some flexibility in situations where the provisions on access to conditional release differ considerably in the issuing State and the executing State. In international comparison, the Finnish legislation enables access to conditional release earlier than in most other European countries.

There has been only one case where the issuing State withdrew the certificate because the sentenced person would have been released on parole immediately after his transfer to Finland.

Problems related to the deduction of a period of deprivation of liberty already served

The total duration of the prison sentence already served, as indicated in sections i) 2.2 and 2.3 of the certificate from the issuing State, must be taken into account. So far, there has been no entry in section 2.3 in transfer cases or information on the days to be deducted from the sentence on the basis of the work carried out[6].

[6] CJEU: C-C554/14, Ognyanov, 8 November 2016, ECLI:EU:C:2016:835

4.9.Further challenges

Experience with organising the transfer

According to the Criminal Sanctions Agency (CSA), transferring a sentenced person within 30 days of the date on which the transfer decision has become final is sometimes difficult. In addition, it is not always clear which authority is responsible for the transit of prisoners. In Finland, the CSA is responsible for the transit but, in many countries, it is the police. The exchange of information and the agreement on the time of transit is normally carried out successfully through SIRENE.

According to the National Bureau of Investigation (NBI) SIRENE Finland/NCB Helsinki assists the CSA in relying on messages and practical information exchanged between the Member States. In some cases, the CSA requests assistance from the NBI in carrying out the transfer.

Legal or practical problems

According to the Prosecution Service, in one case, a Finnish national had been convicted in absentia and had the possibility of a new trial. The person wished to serve the sentence in Finland and would have been willing to give consent to the issuing State. According to the FD, consent is to be given in the issuing State (the state where the trial is held) and therefore the person had to be surrendered there for retrial. In such situations, it should be possible for consent to be given in the executing State, thus avoiding an unnecessary surrender.

According to the Criminal Sanctions Agency, the regulations concerning the adaptation could be clearer in the Framework Decision or they could be clarified more, for example, in the FD 909 Handbook. Some Member States apply Article 9(1)(h) as an absolute criterion for refusal, which makes it useless to request a transfer pursuant to FD 909 and difficult to meet the requirements of the EAW. The result may be that the sentence is not enforced before it falls under the statute of limitations.

According to the International Judicial Assistance Unit of the Ministry of Justice, there are no problems.

Section 7 of the Act on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on the Transfer of Sentenced Persons within the European Union and on the Application of the Framework Decision stipulates the right to appeal. Decisions made by the Central Administration of the CSA or the Ministry of Justice may be appealed before Helsinki Administrative Court. Appeals must be considered as a matter of urgency. The decision of Helsinki Administrative Court is not subject to appeal. These issues are related e.g. to expulsion, and for this reason the Administrative Court avenue has been considered justified – for instance taking into consideration the expertise of the Administrative Court. The district court decisions relating to the adaptation of sanctions may be appealed before a court of appeal. These issues fall within HDC's discretion.

According to Helsinki District Court as well as the Prosecution Service, there have been delays because the district court/appeal court has not been able to comply with the time-limits.

Before issuing the certificate the CSA checks the national database of cases pending and if another case is still ongoing, forwarding the certificate will be delayed until all cases have been resolved. This can lead to delays of up to one year. The national database does not cover appeals. Before deciding, the CSA contacts the prosecutor or the court to obtain an estimated date.

Suggestions on how to improve cross-border cooperation

According to the Criminal Sanctions Agency, the possibilities for sending the documents and information electronically should be improved. E-mail is not a safe channel.

4.10. Statistics

The Criminal Sanctions Agency keeps statistics.

According to the International Judicial Assistance Unit of the Ministry of Justice, one case has been issued, none executed.

The Finnish authorities provided the evaluation team with the following statistical numbers for the period 2018-2021.

As the executing State:

- a total of 12 completed transfers;
- no refusals;
- in three cases, the issuing State has withdrawn its certificate because the sentenced person had already been released in the issuing State before the certificate arrived in Finland.

As the issuing State:

- a total of 46 completed transfers;
- in six cases, the executing State has refused to recognise and enforce the sentence. In three cases the reason was Article 9 e) and in three cases Article 9 h);
- in four cases, the Criminal Sanctions Agency has withdrawn the certificate. The reason was the Covid-19 pandemic and its impact on carrying out the transfers in Finland.

4.11. Conclusions

The national legislation has incompletely transposed the FD. Section 1 gives the FD the force of law and there are several references to the Articles in the FD, making it difficult for practitioners to work with two legal instruments to which other national provisions are added (Coercive Measures Act, Criminal Procedure Code, Agreement with Nordic States, Mental Health Act). Some of the provisions in the FD are expressly transposed in the national legislation, while others are not and it is unclear if those that are not transposed are to be directly applied or not (e.g. the speciality rule is expressly indicated in the national legislation, but not the exceptions).

The evaluation team is of the opinion that the national implementing legislation should transpose the provisions of the FD into national legislation in a predictable and clear way without references to the FD which lay down obligations for the MS and not for the courts and other CAs.

There are several competent authorities involved in the procedure (CSA, Ministry of Justice, prosecution office, courts) and two separate avenues of appeal before different courts (administrative court and district court). The procedure is sometimes lengthy and there have been cases where the requests were rejected due to statute-bar limitations or on the basis of Article 9(1)(h) of the FD.

The split competence can lead to a risk of impunity in some situations. If both FDs 909 and 584 can be used to have a sentence executed, the initial choice is to issue a certificate under FD 909 and only if conditions are not met does the CSA draft a proposal for the prosecutor to issue an EAW. In this case, there is a theoretical possibility for the prosecutor to decide not to issue the EAW, in which case the sentence will not be enforced. Also, in case of refusal to execute the EAW under Article 4(6) of FD 584, the CSA issues an informal opinion on the possibility to enforce the sentence in Finland and, only after Helsinki District Court decides to refuse the EAW, a separate procedure will take place, on the initiative of the issuing MS, and the CSA is the CA to decide on execution of the sentence.

A single body competent under FD 909 and simplified procedure could be a way to ensure that the risk of impunity is eliminated and the time-limits established in the FD are complied with.

If the person eligible for transfer asks for an adaption of sentence, he or she does not have the legal possibility to take the case to a court to decide. It is only at the request of the prosecutor that the court can decide on the adaptation of the penalty. The evaluation team appreciate prosecutors' practice of asking the court do decide even when they consider there is no ground for adaptation, but the possibility should be provided for by law so that the person eligible for transfer can have access to a court.

A defence lawyer is not mandatory, but for minors and mentally impaired persons a defence lawyer is appointed ex officio.

The speciality rule is not mentioned in the criminal record after the transfer, so the national authorities prosecuting the transferred person may not be aware of the need to comply with it.

The staff of the CSA are not trained and there is no obligation to provide training for them under the national legislation. The CAS is an administrative body, so neither the Ministry of Justice nor the Prosecutor's Office organises training for the CSA. Most of the staff are lawyers, and they could attend trainings organised by the Bar Association. Joint training sessions involving all CAs could help unify case-law and disseminate information.

For issuing a certificate for a conviction is absentia, the CSA checks the decision for the necessary elements and can request supplementary information from the court. There have been no problems with convictions in absentia because this possibility is very limited under the national legislation.

5. LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES

5.1. Problems relating to the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences

5.1.1 - In absentia convictions

In cases that start with a surrender request and where the surrender is refused on the grounds that the sentenced person is a Finnish national and wishes to serve the sentence in Finland, the problem of an in absentia judgment might only be discovered in connection with the FD 909 transfer process. The possibility of an in absentia judgment should be investigated already when making the surrender decision, to avoid a situation where the sentenced person is not surrendered nor is the judgement recognised and enforced, thus entailing a risk of impunity.

If the requested person consents to be surrendered on the basis of an EAW issued to execute a penalty imposed *in absentia*, the consent is to be given in the issuing State (the state where the trial was held) and therefore the person has to be surrendered there for the new prosecution. In such situations, it should be possible to give consent in the executing State, thus avoiding an unnecessary surrender.

In cases under Article 4(6) of FD2002/584/JHA, when Finland acts as the executing State it requires the forwarding of a separate certificate (FD 909) and judgment together with the request for transfer.

5.1.2 - Nationals surrendered for criminal prosecution with the guarantee of being returned for execution (Article 5(3) of FD 2002/584/JHA).

In these cases, the CSA will initiate the procedure automatically, without checking the conditions under FD 909 in order to ensure the possibility of return.

5.1.3 - EAW refused on the ground of residency with an undertaking to execute of the sentence

During the EAW procedure, the CSA issues an informal opinion on the possibility of enforcing the sentence in Finland and, only after Helsinki District Court decides to refuse the EAW, a separate procedure will take place, on the initiative of the issuing MS, and the CSA is the competent authority to decide on execution of the sentence. In such case, there is a risk of impunity if conditions are not met under FD 909; this could be avoided with either a single procedure deciding on both the EAW and recognition of the sentence or with mandatory recognition in a separate procedure, even if the conditions are not met under FD 909. According to the Poplawski I and II decisions, the executing State must guarantee to effectively undertake the execution or surrender even if the conditions are not met.

5.2.Conclusions

If Finland refuses to execute an EAW under Article 4(6) and Article 5(3) of FD 584, then FD 909 is applicable mutatis mutandis, but because there is a distinct procedure and other CAs, some problems might appear.

In cases that start with a surrender request and where the surrender is refused on the grounds that the sentenced person is a Finnish national and wishes to serve a sentence in Finland, the recognition and enforcement of the sentence will take place later on, after the certificate issued under FD 909 is forwarded. During this procedure, the CAs have the possibility to refuse recognition and enforcement if the FD 909 conditions are not met, and thus the requested person might not serve the sentence either in Finland or in the issuing MS.

The risk of impunity could be avoided with either a single procedure deciding on both the EAW and recognition of the sentence or with mandatory recognition in a separate procedure, even if the conditions are not met under 909 FD. According to the Poplawski I and II decisions, the executing State must guarantee to effectively undertake the execution or surrender even if the conditions are not met.

On the other hand, for nationals are surrendered to Finland for criminal prosecution with the guarantee of being returned for execution, the CSA will initiate the procedure automatically, without checking the conditions under FD 909 in order to ensure the possibility of return.

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS

The provisions of Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions were implemented in the Finland's legislation by the Act on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on Probation Measures and Alternative Sanctions within the European Union and the Application of the Framework Decision No 1170/2011 (hereinafter Act No 1170/2011).

This specific legislation is complemented by the general provisions of the Criminal Procedure Code. The Act on cooperation between Finland and other Nordic States is still applicable in relation to other Nordic States (Sweden, Denmark, Iceland and Norway) as notified under Article 23 of the FD.

6.1.Authorities competent for Framework Decision 2008/947/JHA

6.1.1. When Finland acts as an executing State

The competent authority for the recognition, execution, and transfer of probation measures or alternative sanctions is the Central Administration of the Criminal Sanctions Agency, which decides on whether to send a request for the recognition and the execution of a judgment and a probation decision to another Member State and on the execution of such a request sent by another Member State to Finland.

The Criminal Sanctions Agency is responsible for the enforcement of sentences in Finland. It operates under the direction of the Ministry of Justice and implements the criminal policy defined by the Ministry. The primary duty of the Criminal Sanctions Agency is to see that the sentences passed by the courts are enforced lawfully and safely in Finland. In particular, the Agency's goal is to enhance the safety of society by decreasing sentenced offenders' risk of reoffending.

A request to transfer supervision is considered without consulting the CSA if the person subject to supervision or sentenced to an alternative sanction is a Finnish citizen and has consented to the supervision being carried out in Finland.

If the person subject to supervision or sentenced to an alternative sanction is not ordinarily resident in Finland, the consent of the CSA is required for a request to transfer supervision to be considered. Consent may be given if, due to the personal circumstances of the person subject to supervision or sentenced to an alternative sanction or for some other special reason, enforcement of the probation measure or alternative sanction in Finland would facilitate the reintegration of the person into society.

The Ministry of Justice has only a limited role, since there is direct contact and the Ministry has not been designated as a central competent authority. Additional information, if needed, can be obtained either by direct contact or through the Ministry of Justice.

The CSA accepts the certificate referred to in Article 6 of the Framework Decision if it is provided in Finnish and Swedish or English or accompanied by a translation into one of these languages. It may also accept a certificate in a language other than Finnish and Swedish or English, if there is no other impediment to accepting it.

Persons subject to supervision or sentenced to an alternative sanction have the right to be informed of any decision in the case in a language they understand.

According to Section 2 of the national Act No 1170/2011, the sanctions and probation decisions referred to in the Framework Decision are:

- Community sanctions ;
- Juvenile punishment,
- Monitoring sentence and conditional imprisonment;
- Decision on supervision of a person sentenced to conditional imprisonment,
- Decision on supervision of a conditionally released person,
- Decision on placement in probationary liberty under supervision.

The national Act No 1170/2011 does not indicate the types of probation measures and alternative sanctions, as provided in Article 4 of the FD. Instead, it covers judgments such as conditional imprisonment and decision on supervision of a person sentenced to conditional imprisonment together with types of probation measure such as community sanctions .

A. Types of alternative sanction and probation measures that Finnish authorities may recognise

Although the types of probation measures and alternative sanctions specifically listed in Article 4(1) of the FD must mandatorily be supervised under the FD, Section 2 of the national Act No 1170/2011 refers to only one type of probation measure expressly referred to in the FD (community sanctions). Finland will supervise the probation measures referred to in Article 4(1) in accordance with its notification to the Council of 13 March 2012.

B. Grounds for refusal

The grounds for refusal are not specifically mentioned, with the exception of the double criminality condition (Section 5), so there is a possibility for such a request to be refused on grounds other than the limited ones indicated in Article 11 of the FD.

Furthermore, the main criterion indicated for choosing Finland as an executing State is citizenship, although the FD covers all European citizens who are lawfully and ordinarily residing in the executing State (residence) - Article 5(1) of the FD. As a result, a request by a non-citizen who has been lawfully and ordinarily residing in Finland can be rejected on this ground. The Finnish team mentioned that when considering whether to justify consent to receive the request, the focus is not on the nationality of the person but rather on the factors mentioned in recital 14 of FD 947, so if the person has such social rehabilitation, workplace, or family ties in Finland as referred to in recital 14 of FD 947, that would justify consent to receive the request to transfer the probation, no matter whether he or she is a Finnish citizen or not. There is no specific provision in the national legislation stating so.

According to Section 4(2) of the national Act No 1170/2011, for persons who are not ordinarily resident in Finland, consent to recognise the probation decision may be given if, due to the personal circumstances, enforcement in Finland would facilitate the reintegration of the person into society. This type of personal circumstance is not identified in the legislation and does not seem to comply with the requirements of Article 5(3) of the FD (*When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision*).

C. Adaptation

Helsinki District Court decides on adapting measures which would apply in a corresponding national situation, such as community sanctions , juvenile punishment, monitoring of sentences and conditional release.

For instance, practitioners provided the evaluation team with one practical example where the Netherlands had imposed a sentence of conditional imprisonment + supervision + community sanctions . However, only a court can impose conditional imprisonment with supervision and community sanctions in Finland. Therefore, this sanction did not correspond to what could be imposed in Finland; consequently, Helsinki District Court decided to adapt it.

The Criminal Sanctions Agency thus only has the jurisdiction to decide if the conditionally released person is placed under supervision or not and, in general, on the contents of the supervisory measures included in the sanctions. A court of law imposes other community sanctions in Finland.

D. The time-limit for making a decision

For the two cases in which the probation decision was recognised and enforced, the 60 days allowed by Article 12(1) of the FD were exceeded (6 and 9 months) due to the procedure and the number of authorities involved.

E. The consultation with the issuing CA before deciding not to recognise the judgment or probation decision.

The national Act No 1170/2011 does not have specific provisions for cases where consulting the issuing CA would be advisable. (Article 11(3) of the FD)

F. Appeal

Decisions made by the CSA under this Act may be appealed against to Helsinki Administrative Court. Helsinki Administrative Court's decision is not subject to appeal.

G. Obligations under Articles 16-18 of the FD

The national Act No 1170/2011 does not have specific provisions on an obligation to inform the issuing State in the cases indicated in Articles 16-18 of the FD.

H. Problems with certificates

The Finnish authorities stated that they had not had any cases of incomplete certificates.

6.1.2. When Finland acts as the issuing State

The CSA is competent to decide whether to forward a request to transfer supervision to a Member State as referred to in Article 5(1) and (2) of the Framework Decision.

The interested person may also ask the CSA to forward the request, but ultimately it is the CA's decision. The Community Sanctions Office may also initiate the transfer of probation measures or alternative sanctions.

The prerequisites for forwarding a request to transfer probation measures or alternative sanctions are that the person in question consents to the transfer and that the transfer will facilitate his or her reintegration into society, based on personal circumstances or other special reasons.

The Ministry of Justice has again a very limited role, since there is direct contact between the competent authorities.

The CSA is responsible for the translation of the certificate, the standard form for which is given in the Annex of the Framework Decision, into a language accepted by the executing State.

A. The right to have a lawyer

A person subject to probation measures or sentenced to an alternative sanction has the right to legal counsel. A defence counsel must be appointed by the CSA or by the court considering a matter referred to in this Act for a person subject to supervision or sentenced to an alternative sanction if he or she so requests.

The person subject to supervision or sentenced to an alternative sanction must be informed without delay of his or her right to legal counsel and to a court-appointed defence counsel. There is no legal provision specifying which authority this obligation is incumbent on, but the Criminal Procedure Act is applicable in this case.

If the person subject to supervision or sentenced to an alternative sanction is in a foreign state and a legal counsel has been appointed for him or her there, he/she may have only a defence counsel appointed for special reasons.

B. Consent

As for consent, the CSA is in charge of sending the request to the sentenced person, by letter posted to his/her home address. The person concerned, after receiving the document, has a 10-day time limit to give his/her opinion on the transfer.

However, there is no obligation to inform the supervised person of his right to transfer supervision to the state of residence or a different state with which he/she has a connection. As practitioners said, it is the lawyer who informs the person concerned about the right to transfer or community sanctions offices who take care of the enforcement of the sanctions.

C. Hearing

The person subject to supervision may be heard during the procedure according to the provisions of the Administrative Procedure Act.

According to Section 8(3) of the national Act No. 1170/2011, persons subject to supervision or sentenced to an alternative sanction have the right to be informed of any decision in the case in a language they understand. The legal provisions do not indicate the authority that guarantees this right, or the right to be informed about the possibility to transfer a probation measure to another Member State.

D. Appeal

Decisions made by the CSA under this Act may be appealed against to Helsinki Administrative Court.

E. Certificate

The certificate is filled in by CSA staff. The CSA is also responsible for the translation of the certificate into a language accepted by the executing State.

6.2.Problems relating to the failure to apply Framework Decision 2008/947/JHA

The Finnish authorities provided the evaluation team with statistical data from which it is evident that Finland does not have a lot of experience in using FD 947 since the number of cases linked to FD 947 is quite low.

As the executing State, from 2015 to June 2021, Finland had received only 14 requests for recognition (from Estonia, Latvia, the Netherlands and Spain). Of these, recognition was granted in only two cases (in one of which the measures were adapted by Helsinki District Court). In one case, the consent necessary under Article 5(2) of the FD was not given because there were no personal circumstances that would facilitate the reintegration of the person into society (no family ties with Finland). In five cases, requests were withdrawn, and six cases are still pending. These pending cases relate to conditional sentence supervision and need to be forwarded to the prosecutor for adaptations. The CSA is trying to assess what to do with these cases since the period has already elapsed.

According to the Finnish team, another reason might be lack of awareness among the practitioners, even though practitioners have been provided with training and the necessary information is available on the CSA's website.

Finnish practitioners added that they have had more transfers among Nordic countries (at about 10 cases per year) based on the Act on cooperation among Finland and the other Nordic States (Sweden, Denmark, and Norway and vice versa). This concerns unconditional prison transfers and transfers of supervision and alternative sanctions. They also noted that this process is faster than using FD 947 because it is sufficient if the judgment is enforceable - it does not have to be final. This cooperation does not contain any specific conditions for the transfer. It is enough that the place of residence is in Finland or the other Nordic country or that the person lives there, and also sanctions are quite similar among Nordic countries. So, this is one of the reasons why the FD 947 has been applied in such a limited way.

Practitioners also consider the recognition and transfer process quite complicated since many authorities are involved in this process (CSA, prosecution office and court). And the time limit becomes longer if the person concerned appeals, so there is a huge delay in the execution.

Another challenging factor is national law on the enforcement of community sanctions, which states that a community service sanction has to be completed within 15 months of the date when the judgment becomes enforceable. As a result, the time has usually expired when the CSA receives a request for a transfer, or it elapses during the recognition and adaptation process. In such cases, the judgment is not enforceable in Finland. These provisions have been amended in autumn 2021 so that the supervision period starts from the first meeting with the supervision officer.

6.3.Conclusions

Application of FD 2008/947//JHA by practitioners is evidently still rare.

According to the Finnish team, the most probable cause is lack of awareness among practitioners even though training had been provided to them and the necessary information is available on the CSA's website.

However, practitioners also mentioned that they carried out about 10 cases per year among Nordic countries based on the Act on cooperation among Finland and the other Nordic States. They noted that the procedure under the Act, as mentioned earlier, is faster than the process under FD 947 since it is sufficient if the judgment is enforceable and it does not have to be final. Also, sanctions are pretty similar among Nordic countries. Thus, practitioners find the procedure under FD 947 time-consuming and challenging to implement since it involves several authorities.

Another factor is the national legislation concerning the enforcement of community service sanctions according to which the community service sanction had to be completed within 15 months of the date when the judgment becomes enforceable. It had happened several times that during the procedure for recognition and the enforcement this period had expired so the community service sanction was not enforceable in Finland.

The evaluation team appreciate the amendments to the provision concerning the enforcement of community sanctions because this change will enable the recognition and enforcement of community sanctions , since the enforcement period of 15 months will begin from the first meeting with the supervision officer.

The evaluation team is of the opinion that the national implementing legislation should have specific provisions referring to:

1. The type of judgments falling within the scope of the act (conditional release, suspended sentence, conditional sentence, probation decision) and types of probation measures to be executed;

2. Grounds for refusal - probation decisions issued in another MS are to be recognised and executed except in limited situations, as provided by Article 11 of the FD;

3. The situation of non-citizens who have been legally and ordinarily residing in Finland (the FD indicates residence as the criterion to choose the executing State that would presumably facilitate the fullest reintegration into society while enabling the person to preserve family, linguistic and cultural ties, rather than citizenship);

4. Clearly-specified personal circumstances to take into consideration when Finland is not the State of residence;

5. The specific authority that has the obligation to inform the person of his right to ask for the transfer of supervision;

6. Situations when Finnish authorities should consult with/inform the issuing CA.

7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)

FD 2009/829/JHA has been transposed into Finland's national legislation by Act No 620/2012 on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on Supervision Measures Imposed as an Alternative to Provisional Detention and on the Application of the Framework Decision, which came into force on December 2012.

7.1.Authorities competent for Framework Decision 2009/829/JHA

According to Section 4, Chapter 2 of the act on the ESO, the authorities competent to decide on recognition and adaptation on supervision measures are

1) District Prosecutor or a Senior Specialised Prosecutor serving in the judicial district of Helsinki District Court if supervision is to be carried out in the area of the jurisdiction of Helsinki Court of appeal;
2) District Prosecutor or a Senior Specialised Prosecutor serving in the judicial district of North Savo District Court, if supervision is to be carried out in the area of jurisdiction of East Finland Court of Appeal;
3) District Prosecutor or a Senior Specialised Prosecutor serving in the judicial district of Oulu District Court, if supervision is to be carried out in the area of jurisdiction of Rovaniemi Court of Appeal;
4) District Prosecutor or a Senior Specialised Prosecutor serving in the judicial district of Pirkanmaa District Court, if supervision is to be carried out in the area of jurisdiction of Turku or Vaasa Court of Appeal.

Any of the aforementioned district prosecutors may decide to recognise a decision independently of

the appeal court jurisdiction within which it is intended to organise the supervision, if this is deemed appropriate for purposes of execution of the decision on supervision measures or for any other special reason.

The authority deciding on recognition also has competence to decide on adaptation of the supervision measures.

The Ministry of Justice has been notified as central authority on the basis of Article 7 of FD 2009/829/JHA. An authority of another Member State may contact the International Judicial Assistance Unit of the Ministry of Justice in matters relating to a supervision measure. Thus, the Ministry of Justice has only a limited role, since there is direct contact between the competent authorities.

7.1.1. Procedure when the Finland acts as the executing State

A decision on recognition of a decision on supervision measures may be taken by any prosecutor mentioned above, irrespective of the court of appeal in the judicial district of which the supervision is to be carried out, if this is deemed appropriate from the perspective of the enforcement of the decision on supervision measures or for other special reasons. The authority competent to decide on recognition is also competent to decide on adaptation of supervision measures.

Supervision measures (travel ban) are listed in Section 2, Chapter 5 of the Coercive Measures Act, according to which a person subject to a travel ban may be obliged to:

(1) remain in the locality or area referred to in the decision;

(2) remain away from an area referred to in the decision;

(3) remain available at his or her residence or place of work at certain times;

(4) present himself or herself to the police at certain times;

(5) remain in an institution or hospital into which he or she has already been admitted or is to be admitted;

(6) refrain from contacting a person referred to in section 1, subsection 1, paragraph 2, or

(7) surrender his or her passport to the police.

(8) The decision on the travel ban may nonetheless include permission to leave the said locality or area in order to go to work or for another comparable reason.

Regarding the competency of prosecutors, Finnish practitioners pointed out during the on-site visit that they are not competent to decide about all the above-listed travel bans. Therefore, it is essential to note that Finland's system distinguishes between basic and intensified travel bans. The intensified travel ban is a travel ban supervised by technical means that can be ordered when basic travel bans are considered inadequate, i.e. requiring the person to stay in his or her home or other accommodation from 12 to 22 hours a day (preferably between 9 p.m. and 6 a.m. unless work, studies etc. demand otherwise).

In such cases, according to the amended Coercive Measures Act, the competent authorities for execution are the courts and not the prosecutors. However, according to Section 4, Chapter 2 of the Act on the ESO, prosecutors are the only competent authority for the recognition and enforcement of a decision on supervision measures (travel ban). Thus, the intensified travel ban cannot be imposed at all since courts are not recognised as an executing authority under the Act on the ESO.

However, practitioners pointed out that, on 10 July 2020, the Ministry of Justice took the first step to close the loophole in ESO provisions mentioned above and established a national working committee tasked with evaluating the possible need to amend the Coercive Measures Act regarding the travel ban and intensified travel ban. The working committee drew up a report which was published in January 2022 and proposed changes to the provisions in the Act on the ESO concerning the intensified travel ban. The next phase is to prepare a separate government proposal to be submitted to Parliament for evaluation and discussion.

The authority competent to decide on recognition may take a decision referred to in this section after consulting the police department within the area of operation of which the supervision is to be carried out.

A decision on supervision measures is accepted for recognition and enforcement in Finland if:

3) the person subject to supervision is ordinarily resident in Finland; and
4) the person subject to supervision consents to the execution of the supervision in Finland.

If the person subject to supervision is not ordinarily resident in Finland, a decision on supervision measures may be received with the consent of the authority competent to decide on recognition. Consent may be given if the person subject to supervision has requested that the supervision be carried out in Finland and this is considered justified due to the personal circumstances of the person subject to supervision or for other special reasons.

Other conditions for recognition are :

- List of offences (Article 14 of the FD): If the decision on supervision is related to these crimes, recognition is not subject to the condition that the act constitutes an offence under Finnish Law;
- Double criminality: If the decision is related to an act other than those referred to in Article 14(1) FD, recognition and enforcement of the decision in Finland is subject to the condition that the act constitutes an offence under Finnish Law or would do so if committed in Finland in similar circumstances.

The certificate referred to in Article 10 of the Framework Decision is accepted if it has been drawn up in Finnish and Swedish or English or is accompanied by a translation into one of these languages. The authority competent to decide on recognition may also accept a certificate in another language, if there is no other impediment to accepting it.

Persons subject to supervision have the right to be informed of any decision in the case in a language they understand.

The certificate should be sent directly to the competent prosecution area (residence of the person). However, suppose a person lives in a small locality, and a foreign authority cannot identify the competent authority in Finland; in that case, the certificate may be sent to the Prosecutor-General's Office, or via the EJN contact points.

A person subject to supervision may refer a decision on recognition for consideration to the district court of the judicial district in which the district prosecutor who decided on recognition serves. The district court is required to consider the matter without delay. However, the national Act 620/2012 does not contain any provisions related to the time-limits for deciding on recognising the supervision measures or hearing proceedings. The decision of the district court is not subject to appeal.

According to the authorities whom we met on 6 July 2021, it is possible to file a complaint, on which the appeal court decides.

The provisions of the Coercive Measures Act on the consideration of a travel ban apply to the matter referred above. The matter may be decided in chambers without holding a hearing, if the court deems this appropriate. If the matter is considered in an oral hearing, a decision in the case may also be rendered in the absence of the person subject to supervision.

According to Section 12, Chapter 5 of the Coercive Measures Act, the *decision of the court in the question of the travel ban is not subject to separate appeal. There could be an extraordinary appeal, on the basis of a procedural flaw, against the decision of the court on the travel ban.*

The authority competent to decide on recognition of travel ban may take a decision after consulting the police department within the area of operation of which the supervision is to be carried out. Once a decision on recognition of a decision on supervision measures has been taken, the police are responsible for executing the supervision.

According to the notification of the implementation of the Council Framework Decision by Finland and the national law, Section 4, the authority deciding on recognition has competence to decide on an adaptation of the supervision measures.

A decision on extension could be made by the court based on a proposal by the authority competent to decide on recognition, at the request of the competent authority of the issuing Member State.

According to Section 5 of the Law, the provisions of the Coercive Measures Act on the validity and rescission of a travel ban (Chapter 5, Section 8 and 9)[7] apply to the duration of supervision, as appropriate.

The surrender of a person subject to supervision is governed by the Act on surrender procedures between Finland and other Member States of the EU, but the consent is not subject to the condition that the most severe punishment under the law of the requesting Member State for the act on which the request is based is a custodial sentence of at least one year.

[7] Chapter 5, Section 8 - Rescission of a travel ban;
(1) The travel ban shall be rescinded in full or in part immediately when there are no longer prerequisites for keeping it in force as such.
(2) The travel ban shall be rescinded if no charges are raised within 60 days of the imposition of the ban. The court may, on the request of an official with the power of arrest made at the latest one week before the time limit, extend the time limit. The Court shall take the question up for consideration without delay and decide it by the time limit.
(3) A person on whom a travel ban is imposed has the right already before charges are brought to submit to the consideration of a court the question of the validity of the travel ban imposed by an official with the power of arrest.

The request shall be taken up for consideration within a week of its arrival at the court. The court shall rescind the ban in full or in part if, after having reserved the appropriate official with the power of arrest an opportunity to be heard, it deems that the prerequisites do not exist for keeping the travel ban in force.

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Chapter 5, Section 9 - Validity of a travel ban;
(1) A travel ban imposed before charges are brought is in force until the main hearing, unless the ban has been ordered to end before this or it is separately rescinded earlier.
(2) When a court discontinues or adjourns the main hearing in a case in which a travel ban has been imposed on the defendant, it shall order whether the travel ban remains in force.
(3) When deciding on the charges the court may impose a travel ban on the defendant or order that a travel ban imposed on him or her be extended, only if the defendant is sentenced to unconditional imprisonment.

A travel ban may be imposed on a defendant who is at liberty only at the request of the prosecutor or of an injured person who has requested that the defendant be punished.

The court may, on its own initiative, impose a travel ban on a remanded person or a person whose remand has been requested, as an alternative to remand.
Chapter 3, Section 15.1 - New remand hearing;
(1) If the suspect in an offence has been remanded, the court that considers the charges shall, on the request of the remanded person and up to the time when judgement is given, hold a new remand hearing without delay and at the latest within four days of the submission of the request. Before charges are brought, the new remand may be held also by the district court with jurisdiction over the place of remand. However, a new remand hearing need not be held before two weeks have elapsed since the previous remand hearing.

7.1.2. Procedure when Finland acts as the issuing State

Where Finland is the issuing State, the competent authorities for taking a decision on supervision measures are:

- the prosecutor assigned to the criminal case in question

- the court dealing with the arrest request (district court, appeal court or supreme court).

The authority referred to in Article 7 of the Framework Decision is the Ministry of Justice.

Authorities in the other Member States may contact their Ministry of Justice about questions relating to the procedure under the Framework Decision.

The authority that made the decision on supervision measures decides on the consequences of a breach of the terms of the decision on supervision measures and on other measures referred to in Article 18(1) of the Framework Decision. However, a court decides on the remand of a person subject to supervision.

A decision on supervision measures may be taken and sent to another Member State if the prerequisites for a travel ban under the Coercive Measures Act are met and the suspect is ordinarily residing in another Member State or the case concerns a Member State referred to in Article 9(2) of the Framework Decision. A further prerequisite is that execution of the supervision in another Member State can be considered justified due to the personal circumstances of the person subject to supervision or for other special reasons and that the person has consented to the execution of the supervision in that Member State. The provisions governing travel bans apply, as appropriate, to the contents of a decision on supervision measures.

When Finland is the issuing State, the Court considering a request for remand referred to in the Coercive Measures Act is competent to take a decision on supervision measures and send it to another Member State in cases where it receives the request for remand by a prosecutor . In all other cases, the competence lies with the prosecutor assigned to deal with the criminal case in question.

The travel ban imposed on the person subject to supervision must be in effect until a decision on recognition issued in another MS or information about the decision has been served on the person subject to supervision. If a travel ban is not considered sufficient to ensure the enforcement of the ESO, the person may be remanded (provided that the prerequisites for remand under national law are met).

According to Chapter 5, Section 1 of the Coercive Measures Act, the prerequisites for a travel ban are as follows:

A person who is suspected, on probable grounds in an offence may, instead of being arrested or remanded, be subjected to a travel ban if the most severe punishment provided for the offence is imprisonment for at least one year and, in view of the personal circumstances of the suspect or the other circumstances, there is reason to suspect that the suspect will:

(1) abscond or otherwise evade criminal investigation, trial or enforcement of punishment;

(2) hinder the investigation of the case by destroying, defacing, altering or concealing evidence, or influencing a witness, an injured person, an expert or an accomplice or

(3) continue his or her criminal activity.

A travel ban may not be imposed on a person suspected of having committed a criminal act when under the age of 15 years.

A travel ban will be imposed on the person subject to supervision, and it remain in effect until a decision on recognition issued in another MS, or notification of it, has been received and served on the person subject to supervision. If a travel ban is not considered sufficient to ensure the enforcement of the ESO, the person may be remanded (provided that the prerequisites for remand under national law are met).

According to Chapter 2, Section 5 and 1, the prerequisites for arrest/remand are as follows:

A person suspected, on probable grounds, of an offence may be arrested if:

(1) no punishment less severe than imprisonment for two years has been provided for the offence;

(2) a punishment less severe than imprisonment for two years has been provided for the offence, but the most severe punishment provided for exceeds imprisonment for one year, and having regard to the personal circumstances of the suspect or other factors there is reason to suspect that the suspect will :

(a) abscond or otherwise evade criminal investigation, trial or enforcement of punishment.

(b) hinder the investigation of the matter by destroying, defacing, altering or concealing evidence or influencing a witness, an injured party, an expert or an accomplice or

(c) continue his or her criminal activity;

(3) the identity of the suspect is unknown and he or she refuses to divulge his or her name or address or gives evidently false information regarding this or

(4) the suspect does not have a permanent residence in Finland and it is probable that she or he will evade criminal investigation, trial or the enforcement of punishment by leaving the country.

(5) A person suspected of having committed a criminal act when under the age of 15 years may not be arrested.

The decision imposing a travel ban must specify the offence, the grounds for the ban, the contents, the penalties for violation, the duration of the ban and the right to submit the validity of the travel ban to the consideration of the court. A copy of the decision must be given to the person on whom the travel ban is imposed.

The authority that decided on supervision measures fills in the certificate. According to the Law, the authority that decided on supervision measures is also responsible for translating the certificate into a language accepted by the executing State.

The authority that made the decision decides on the consequences of a breach of terms of the decision on supervision and on other measures referred to in Article 18 of the FD. However, a court decides on the remand of a person subject to supervision.

The Act on Surrender Procedures between Finland and Other Member States of the European Union applies to the procedure for surrendering a person subject to supervision to Finland.

A criminal suspect has the right to legal counsel and defence counsel; he/she may decide himself/herself, or the court makes the decision.

The provisions of Chapter 2 of the Criminal Procedure Code (689/1997)[8] apply to the appointment of a defence counsel.

[8] Chapter 2 of the Criminal Procedure Act (689/1997)
(1) A person suspected of an offence has the right himself or herself to take care of his or her defence in the criminal investigation and in the criminal proceedings.

(2) On the request of the suspect, a public defender to be appointed for him or her, if:
(1) he or she is suspected of or charged with an offence punishable by no less than imprisonment for four months or an attempt of or participation in such's an offence or
(2) he or she is under arrest or remanded for trial.

(3) A public defender is to be appointed for a suspect ex officio, when:
(1) the suspect is incapable of defending himself or herself;
(2) the suspect has no public defender and is under 18 years of age, unless is apparent that he or she has no need of a public defender;
(3) the public defender retained by the suspect does not meet the qualifications required of a public defender or is incapable of defending the suspect in an appropriate manner or
(4) there is another special reason for this.

If the person is in a foreign state and a legal counsel has been appointed for him or her there, the prerequisite for appointing a defence counsel is that there is a special reason for this from the perspective of the legal protection of the person subject to supervision. In this case, the defence counsel is appointed by the competent district court.

If the person is in a foreign state and a legal counsel has been appointed for him or her there, the prerequisite for appointing a defence counsel is that there is a special reason for this from the perspective of the legal protection of the person subject to supervision. In this case, the defence counsel is appointed by the competent district court.

The provisions of the Coercive Measures Act on request for a review of a court decision on a travel ban apply to a request for a review of a court decision in this matter.

A decision taken by a prosecutor may be referred for consideration to the district court of the judicial district where the prosecutor who took the decision serves. The decision of the district court is not subject to appeal. According to Section 12, Chapter 5 of the Coercive Measures Act, the court's decision in the question of the travel ban is not subject to separate appeal. However, there could be an extraordinary appeal, based on a procedural flaw, against the court’s decision on the travel ban.

7.2. Problems relating to failure to apply Framework Decision 2009/829/JHA

The Finnish authorities stated they had not had any cases under FD 2009/829/JHA so far, either incoming cases or outgoing cases; thus, they have no experience of applying this legal instrument in practice.

According to practitioners, the causes for not applying the FD as issuing State might be:

- Lack of awareness among practitioners on the existence and possibilities of use of the FD, even though prosecutors have a handbook on the ESO and the FD was also presented through webinars;

- The short period of detention constitutes another obstacle for its application. Practitioners remarked that, under the national law, the detention period is short and may be imposed only in serious cases, for example in drug offences. In such cases, prosecutors prefer to have the suspect available in Finland for criminal proceedings to be finalised within the detention period. Thus in serious cases, replacing detention by ESO measures is not an appropriate substitution;

- Finnish practitioners remarked that when they have such cases, they are unwilling to let the persons leave Finland, for instance in drug cases. There are certain risks associated with opting for an alternative to detention, which may explain why the FD is not used. An alternative to custody is not appropriate in all cases;

- Lawyers should be more active and should demand the use of this measure in the cases allowed by the law;

- The pandemic situation and lockdowns all over Europe have not helped in any way to apply the FD. And this applies not only to issuing them, but also executing States;

A problem in the executing of ESO in Finland is as described in point 7.1.1. there is a gap in the provisions of the Act on the ESO regarding the competent authorities for recognition and execution of supervision measures, specifically the intensified travel ban;

According to the Prosecution Service there is a need to find good examples from MS of using this instrument. Training at EU level is required. Other countries are not keen on using the FD because they have no practical experience.

According to the authorities we met on 6 July 2021, the use of the travel ban is more common than detention.

7.3. Conclusion

The FD in question has not been used in Finland; consequently, the Finnish authorities have no experience in this field.

The discussion revealed that awareness among practitioners of its existence and the possibilities of its use is weak, even though there is a handbook on FD 829 on the prosecutors' website. Also, it is advisable to provide practitioners with more training on this topic. However, as practitioners noted, they lack practical experience that could be presented as an example during training, even the experience of other Member States. Since many MSs do not use this FD, the Finnish authorities would appreciate international training on this FD, organised by one of the European Institutions (the European Commission, ERA, EIPA, EJN, EJTN or Eurojust).

There is a discrepancy after the change in the national law - the Coercive Measures Act - regarding enforced travel bans, (chapter 5 section 1a): prerequisites for an intensified travel ban), because in the ESO implementing 620/12, the only competent authority to decide on recognition of a decision on supervision measures is a prosecutor, but according to the national law on the enforced travel ban, prosecutors do not have competence in these cases.

Another thing that prevents them from using the FD is the fact that practitioners do not consider the replacement of pre-trial detention for supervision measures as appropriate since pre-trial detention is imposed only in severe cases where at least one precondition for pre-trial detention exists (that there is a reasonable concern that the person concerned will flee, hide or influence witnesses).

For less severe cases, one of the travel bans is more commonly used.

For the reason mentioned above, the implementation of this Framework Decision is considered not to be smooth or and efficient.

7.4. Bar Association

The evaluation team also had a chance to meet with representatives of Finland's Bar Association. They noted that the Chancellor of Justice supervises the Bar Association.* In connection with the Bar Association, there is an independent Disciplinary Board which carries out constant supervision of attorneys. The position of the Finnish Bar Association is based on the Advocates Act (496/1958). The Finnish Bar Association is an independent organization governed by public law. It is deemed important that both the Bar Associations and individual attorneys are independent of the government regarding the Rule of Law principle.

Before being accepted as a member, members of the Bar Association are, in addition to other membership preconditions stated in the 3 § of the Finnish Advocates act, obliged to have at least four years' experience as a lawyer, which of two years must be in a private law firm, in a public prosecutor's office or as a court trainee or equivalent and then pass the Bar examination, which is divided into three parts: the written test, ethical part and trial part. They also noted that a person could have appointed anyone as an attorney or defence counsel twenty years ago, which derived from historical custom. However, for twenty years now, this has been restricted, so defence counsels have to be qualified lawyers with a master's degree.

Since 2013 a person has to have either an attorney or a lawyer who is not a member of the Bar Association but must still have a licence to act as defence counsel.** Beside the Bar Association, other expert lawyers are constantly handling the new legislation and participating in various working groups. As a result, there are currently three different groups of legal professionals who are capable of representing clients before the Courts of Law; attorneys (lawyers that are members of the Finnish Bar Association and therefore may utilize the professional title “asianajaja/advokat”, licensed legal counsels who are granted a license by a separate Trial Counsel Board operation under the Finnish Ministry of Justice, and public legal aid attorneys who work as government officials in the public legal aid offices.

* The Finnish Bar association is under the supervision of the Chancellor of Justice; the Chancellor has the right to initiate proceedings towards an attorney if they neglect their duties as an Advocate. The Chancellor of Justice also has the right to demand that the Board of the Finnish Bar Association takes measures toward an attorney if the Chancellor sees that the said attorney does not have the right to be an attorney. Both the Board of the Finnish Bar Association and a single attorney are obliged to give the Chancellor of Justice the required information and statements that are deemed necessary for the Chancellor to fulfil the duties trusted to the Chancellor in the Finnish Advocates Act (The Finnish Act on Advocates, 6.3 § (1958/496).

**In Finland, there is no factual obligation for an individual to use an attorney except for the exemption of certain matters pursued in the Supreme Courts. However, a party has a right to utilize the services of a "legal agent/advisor"; in this case, they must be from one of the groups stated above. The Court can, however, either from an application or from its own indicative, order a legal advisor for the defendant in a criminal case if the defendant is, for example, being detained, a minor, or being charged with a serious crime. In this case, the ordered legal advisor must also be from one of the abovementioned groups.

Concerning specialisation of lawyers, they are indeed specialised, mainly those in law firms. However, the field of specialisation also involves the FDs covered by the evaluation. The Bar Association provided the National Bureau of Investigation and the police with a list of specialised lawyers who have experience in the particular field of law or cases related to these FDs (e.g. the EAW). However, a person subject to surrender does not have to select a lawyer from the list of specialised lawyers; he/she can choose any attorney or licensed lawyer.

Concerning the appointment of a lawyer, the law does not stipulate ex officio appointment. However, representatives of the Bar Association claimed that a defence counsel is always appointed in practice. They added that a person has to be informed about his/her right to a public defender, and if the person wishes to have a defence counsel[9], one must be appointed. However, a public defender has to be appointed for a person ex officio in cases stipulated in the CPC[10].

As emerged from the discussion, the Bar Association organises some training; however, training on the FDs covered by the evaluation has not taken place for a long time, except for the FD on the EAW. Members of the Bar Association are obliged to undergo 18 hours of training per year. The choice of which area they take these 18 hours of training in is up to lawyers. However, the Bar Association does not regularly check whether members of the Bar Association have fulfilled this obligation. Still, they can be asked to forward a list of all the training they have received for several years. However, the Bar Association provides regular training on the law governing civil and criminal procedure. A small part of that training is also dedicated to the law on the EAW. Training is provided by lawyers, magistrates or university professors.

The representatives of the Bar Association present during the meeting noted that concerning FDs 2000/909/JHA, 2008/947/JHA and 2009/829/JHA, they had no practical experience since officials handle the cases concerned and that they have not encountered any significant problem concerning the application of the FD on the EAW.

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9 Chapter 2, Section 1, para 2 - Counsel, of the CPC
2) On the request of the suspect, a public defender to be appointed for him or her, if:
(1) he or she is suspected of or charged with an offence punishable by no less than imprisonment for four months or an attempt of or participation in such an offence; or
(2) he or she is under arrest or remanded for trial.

10 Chapter 2, Section 1, para 3 - Counsel, of the CPC
(3) A public defender is to be appointed for a suspect ex officio, when:
(1) the suspect is incapable of defending himself or herself;
(2) the suspect has no public defender and is under 18 years of age, unless it is apparent that he or she has no need of a public defender;
(3) the public defender retained by the suspect does not meet the qualifications required of a public defender or is incapable of defending the suspect in an appropriate manner; or
(4) there is another special reason for this.

8. TRAINING

8.1.Training relating to FDs 2002/584/JHA and 2008/909/JHA

The National Courts Administration (NCA), in cooperation with the Judicial Training Board is the authority responsible for the training of judges related to the EAW and FD 909. The purpose of the National Courts Administration is to ensure a favourable operating environment for the courts and to develop, plan and support the activities of the courts.

Before 1.1.2020, national training was provided by the Ministry of Justice Training Unit in cooperation with the Judicial Training Board. Since 1.1.2020, national training has been provided by the National Courts Administration, which was established on that date.

The NCA is responsible for ensuring that the courts are able to maintain a high level of quality in the exercise of their judicial powers and that the administration of the courts is organised in an efficient and appropriate manner. There is no interference in the administration of justice by the judges.

The NCA, besides the other tasks, also performs duties in the area of training as follows:

- is in charge of maintaining and developing the information systems of the courts;

- is responsible for organising training for judges and other court personnel, in cooperation with the Judicial Training Board;

- participate in the overall development of the operation of the court system;

- promote, support and coordinate development projects concerning courts and their activities;

- participate in international cooperation in its field of activity;

The NCA organises training for judges and other court staff in cooperation with the Judicial Training Board. The Training Board consists of six representatives of the court system, and one representative each of the Prosecution Service, the Finnish Bar Association, legal research and teaching, and the National Courts Administration.

The Development Department has two teams: Competence Development, and General Development (most judges seconded from courts for a period of 3 years). In courts, the judges are generalists, but some types of case are handled by Helsinki District Court. EAWs are dealt with by approx. 10 judges and FD 909 is handled by the same department of Helsinki District Court as EAWs.

Judges are by the law required to maintain and develop their knowledge of the law, legal skills and abilities, and professional skills (Law on Courts, Chapter 9, Section 4). However, attendance at training is voluntary.

The NCA's activities also include, participation in an EIPA development project (incl. the EAW) and information platforms such as Intranet and e-Oppiva (platform with courses).

Training for prosecutors is provided by the Prosecutor-General's Office. The training of prosecutors consists of the following activities and elements:

- Basic courses for prosecutors, presentation of the instruments

- Courses on specific types of crime

- On-call related courses

- Regional training sessions

- Online training module in the Intranet (new)

- Case-based courses (two days, once a year)

- Handbooks (EAW, 909, 949, ESO) in the Intranet, which is also accessible to judges

- Webinars (ESO, CJEU case-law, etc.) and

- EJN CP annual training day(s).

EAW

The Prosecution Service organised a regional tour in 2020 to provide international training, which covered the EAW. The 2-3 hour international training package is part of the basic training of all Finnish prosecutors. The Prosecutor-General's Office organises two-day national simulation training events on the EAW and the EIO once or twice a year. Prosecution also takes part in EJTN simulation trainings when invited.

Helsinki District Court has appointed a judge in charge of following the latest CJEU case-law and giving internal training and instructions when needed. The Court has also added another judge to the role. The judge in charge gives new judges basic training and helps them with possible upcoming questions. In addition, monthly internal meetings with judges handling surrender are held to share current information.

The Central Administration of the Criminal Sanctions Agency (CSA) has a team of six public officials who specialise in the international enforcement of sentences. The CSA does not provide regular training on this matter for public officials. Training is provided for new employees in the team and for the whole team if there are any changes in the procedures.

The National Courts Administration (NCA) does not organise regular training on the EAW but instead of regular training it is organised when needed.. The EAW is one of the topics covered in the training for young judges. The National Courts Administration is a member of the EJTN (European Judicial Training Network). The EJTN regularly offers EAW training and the NCA sends judges to that training if it is needed. The NCA organised 1 webinar in 2021 and sent 2 judges to training events organised by the ERA and EIPA.

According to the Prosecution Service, a webinar for prosecutors has been held about the latest case-law of the CJEU. The video is available in the Intranet for those who did not attend the webinar to watch it afterwards.

At Helsinki District Court, the judges try to keep themselves updated to the recent case-law. Helsinki District Court also has monthly meetings, where current topics are discussed. There is a need for an active information channel that would provide equally accurate and up-to-date information.

According to the Criminal Sanctions Agency (CSA), the Central Administration of the CSA trains its own officials. There is no joint training with, for example, the prosecutors and Helsinki District Court. A national network meeting on topical matters linked to the surrender procedure is held once or twice a year. The participants are the Ministry of Justice, the Supreme Court, the CSA, the Prosecutor-General's Office, the prosecutors in Helsinki, Helsinki District Court, and the SIRENE Bureau within the National Bureau of Investigation.

According to the Prosecution Service, prosecutors (24 in the year 2020) and judges have participated in EJTN EAW simulations. The same kind of simulation has been organised nationally for prosecutors, with 61 participants to date. The EAW is also covered in all prosecutors' training.

At the national level, places at the EJTN training are reserved 50/50 for prosecutors and judges. According to Helsinki District Court, the problem with the EJTN training is that its content is mainly directed to prosecutors or investigating judges. But they approach the issue from a different angle. Since there are no investigating judges in Finland, the content of this training is not relevant to them as it lacks the theoretical and more analytical perspective that the judges would need. Thus, training directed to executing judges would be appreciated. However, due to the heavy workload, judges choose not to participate in the training that does not respond to their needs. Judges should participate in such training more because it is the only training on these subjects (apart from their internal training). Approximately 0-2 judges per year participate in EJTN training.

According to the Prosecution Service both the national and the Commission handbook, as well as a model form for issuing an EAW, are available on the national Intranet.

Helsinki District Court mentioned that they lack, and there is a need for, an active information channel that would provide accurate and up-to-date information. For the time being, Helsinki District Court produces a handbook of its own. HDC uses the Commission Handbook and material produced by Eurojust, and is able to consult the prosecutor's handbook to get a more comprehensive perspective on the question at hand as well. Helsinki District Court is used to receiving updated information from the Prosecutor-General's Office from time to time and vice versa, depending who gets the information first. The Helsinki District Court and the Prosecutor-General's Office actively exchange information.

The Criminal Sanctions Agency has drawn up instructions on how to make an EAW proposal to the prosecutor, which are updated as needed. The instructions and the Commission's Handbook are available as files, which all the officials in the team can access.

According to the Prosecution Service as well as the Ministry of Justice, the EJN Atlas is widely used and is a very useful reference site. The compendium has so far proven to be less than satisfactory: saving and re-opening the form is a challenge. Great hope is placed on the new Commission platform for sending and receiving EAWs and other instruments.

According to Helsinki District Court, judges are aware of the information available on the EJN website and generally it's a useful tool. As an executing authority in EAW matters, they do not make extensive use of the website. An idea for improvement would be to organise the database of relevant case-law by specific topics and legal articles or at least make the case-law easier to find quickly.

According to the Criminal Sanctions Agency, they use the EJN website regularly. The search function of the site is somewhat difficult to use, in their experience. In addition, it is not always possible to find, for example, updated contact information for the competent authorities.

FD 909

The NCA has offered training on FD 909 at the ERA , but there were no applications.

The Central Administration of the CSA has a team of six officials who specialise in the international enforcement of sentences. The CSA does not provide regular training on this matter for the officials. Training is provided for new employees in the team and for the whole team if there are any changes in the procedures.

Prosecutors are usually trained by the officials in the Prosecutor-General's Office. They also have national handbooks in addition to the Commission handbooks on EAW and on FD 909. The EAW is always a topic in national training for prosecutors. The Prosecution Service is not aware of there being any training on FD 909 at EU level.

According to Helsinki District Court there is a need for an active information channel that would provide as accurate and up-to-date information. They do not have an active external authority that provides training materials or useful information.

According to the Criminal Sanctions Agency (CSA), when necessary, the Central Administration of the CSA trains its own officials. They do not joint training with, for example, the Ministry of Justice, the prosecutors, and district courts. The Criminal Sanctions Agency (CSA) uses the Commission's FD 909 Handbook. The CSA has drawn up national instructions on how to fill in the certificate for the officials working in its team.

The Criminal Sanctions Agency is aware of the EJN website and uses it. The website contains a lot of information and so it is sometimes difficult to find the information they need. The website is mainly in English, so they do not always know, for example, which search word to use. The Criminal Sanctions Agency is also familiar with the work done by EuroPris and the online tools. It would be useful to have the Country Factsheet on Prison Sentence Execution for each country.

8.2.Training relating to FDs 2008/947/JHA and 2009/829/JH

There is no training centre within the Ministry of Justice to train judges, prosecutors, or criminal sanctions officials concerning FDs 2008/947/JHA and 2009 /829/JHA. Instead, each organisational component offers training for its staff.

The Prosecutor-General's Office provides training for prosecutors. A webinar on ESO took place in 2019. The video is published on the prosecutors' Intranet. Within the Prosecution Service, there are national handbooks on both FDs for prosecutors, which are also available to judges. The prosecutors' opinion is that there should be more training and awareness-raising since practitioners still have not understood the advantage of using these FDs. They also would welcome training at EU level.

The Central Administration of the CSA trains its own officials. It has a team of six officials who specialise in the international enforcement of sentences. Two of them attend the annual FD 2008/947/JHA and FD 2009/829/JHA experts' meeting organised by CEP. The CSA does not provide regular training on this matter for the officials. Training is provided for new employees in the team and for the whole team if there are any changes in the procedures. The CSA participated in a webinar organised by CEP in 2019. The CSA is drawing up national instructions on FD 2008/947/JHA for the officials working in its team. According to the CSA, more training on the FDs would be helpful. The number of transfers under FD 2008/947/JHA has been low in Finland; therefore, more training is needed.

Since 1.1.2020, the National Courts Administration (NCA) in cooperation with the Judicial Training Board has been responsible for providing training for judges and courts staff; however, no training has been provided yet.

To find a way to increase the use of the ESO, the Finnish authorities are seeking to organise a regional EJN meeting on the ESO with neighbouring countries and to find and invite countries who have already used the ESO successfully. In spring 2022, the EJN contact point organized the national training day concentrated on ESO, where an Italian colleague provided a presentation.
Conclusions

The training concerning Framework Decisions 2008/947/JHA and 2009/829/JHA should also focus on raising awareness of these legal instruments and encouraging their practical application.

The competent judges of Helsinki District Court, the prosecutors concerned and officials of the Criminal Sanctions Agency should have more opportunities to attend training activities organised by the ERA and EJTN or other activities abroad, particularly in connection with FD EAW and FD 909.

It is necessary to establish a body that should provide training to the officials of the Criminal Sanction Agency.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions by Finland

- improving EAW form in connection with in absentia decisions;
- accepting English in cooperation in criminal matters within EU;
- trying to find ways of using videoconference in order to lessen cases of surrender;
- organizing in EU level training on ESO;
- providing a unified content for the concept “similar offence”;
- organising EU-level (EJTN) training on EAW directed to executing judges;
- consider accepting EU funding applications for training on EU instruments directed for only national practitioners– trans-border training is great for learning how to deal with European colleagues but does not teach the participants the national processes, so it lacks the practical implementation at national level.

9.2. Recommendations

As regards the practical implementation and operation of the Directives and the Regulation, the team of experts involved in the evaluation of Finland was able to satisfactorily review the system in Finland.

Finland should conduct an 18-month follow-up to the recommendations referred to below after this report has been adopted by the Working Party concerned.

The evaluation team saw fit to make a number of suggestions for the attention of Finland’s authorities. Furthermore, based on the various good practices, related recommendations are also being put forward to the EU, its institutions and agencies, and to Eurojust and the EJN in particular.

9.2.1. Recommendations to Finland

Recommendation 1: (584) The evaluation team encourages Finland to redraft Section 23 of Act 1286/2003 without reference to the police, to be in line with Article 15(2) of FD 2002/584/JHA since such activities are reserved for the judicial authority.

Recommendation 2: (584) The mandatory grounds should be limited to the ones specified in Article 3 of FD 2002/584/JHA in order to align the respective provisions of Finnish law with FD 2002/584/JHA. It concerns to the territoriality principle and citizenship.

Recommendation 3: (584) It is recommended to specify in Finnish Law which is the authority competent to provide guarantees concerning Article 5.3 of the FD and detention conditions to the Executing Member State when Finland is the issuing Member State.

Recommendation 4: (909) To facilitate the use of the legislation concerning the FD 2008/909/JHA application by Finnish practitioners, the evaluation team advises using the same legislative technique as for the framework decision 2002/584/JHA to have all applicable provisions preferably in one act.

Recommendation 5: (909, 947) The evaluation team encourages Finland to simplify the procedure and the number of competent authorities in order to comply with the time- limits imposed by the FDs.

Recommendation 6: (909) Mentioning the speciality rule in the criminal record after the transfer or in another database that would be accessible to all CAs involved in prosecution, to ensure that all conditions under which the transfer was granted by the requested MS are respected.

Recommendation 7: (909) Specialised training for the staff of the CSA so that the main non-judicial authority involved would have access to the most recent developments in ECJ and ECHR case-law and to best practices adopted by other Member States.

Recommendation 8: (link between FDs 584 and 909) The evaluation team encourages Finland to identify a way to effectively guarantee that a custodial sentence issued in a different MS is executed when refusing an EAW under Article 4(6) of FD 584 (a single procedure where the conditions under both FD 584 and FD 909 are checked, or mandatory recognition under FD 909 in a subsequent procedure).

Recommendation 9 (909): National legislation should provide the transferred person with access to a court in cases where the adaptation of sentence is required (the adaptation of the sentence can only be referred to the court by a prosecutor).

Recommendation 10: (829) The Evaluation Team encourage Finland to deal with the legislation gap concerning the competence to decide on recognition and adaptation of an ESO. According to Act No 620/2012 the competence belongs to the prosecutors, who are the only competent authorities for the recognition of a decision on supervision measures (Section 4 Chapter 2 of 620/12,), however they do not have competence regarding intensified travel bans under the national law (Chapter 5, Section 1.a CMA).

Recommendation 11: (829, 947) Ensure more training for practitioners to raise awareness of the possibilities of using the FDs in practice and establish what hindrances they face in their use.

Recommendation 12: (947) Consider amending the national Act No 1170/2011 concerning criteria for recognition where the main criterion is citizenship, while in the FD it is the fact of being lawfully and ordinary resident.

Recommendation 13: (947) Clearly specify in Section 4, Article 2 of the Act what are the other special reasons for which the CSA may consent to recognition if a person is not residing in Finland.

Recommendation 14: (947) The evaluation team encourage Finland in its intention to amend the provisions concerning the enforcement of community sanctions so that enforcement is suspended until the first meeting with the supervision officer - thus avoiding the time-limit for execution elapsing during the recognition or adaptation process.

Recommendation 15: (947) Informing a person subject to probation about the possibility to transfer the alternative sanction or supervision measure should not be only for the lawyer to do, but also for to the public authority which decides on the sanction.

9.2.2. Recommendations to the other Member States

Recommendation 1: To consistently provide the information on the duration of the deprivation of liberty of the requested person to the other Member State.

Recommendation 2: To provide supplementary information requested in due time so that all time-limits imposed by the FD are respected (some Member States do not answer or they do so late)

Recommendation 3: To fill in the certificate completely and correctly with all relevant information regarding the description of the facts of the crimes committed and the circumstance of the trial in *in absentia* cases, taking into account the most recent ECJ case-law.

Recommendation 4: To accept certificates in a widely- used language other than the national language.

9.2.3. Recommendations to the Commission

Recommendation 1: To provide a clear definition of 'similar offence' as provided for by Article 8(2) of FD 909 (adaptation of the sentence to the maximum penalty provided for similar offences under the law of the executing State)

Recommendation 2: To organise international training on the FD on the ESO to enhance its use and make practitioners from all MSs understand its advantages.

9.3. Best practices

1. The evaluation team appreciate the amendments to the provision concerning the enforcement of community sanctions because this change will enable the recognition and enforcement of community sanctions, since the enforcement period of 15 months will begin from the first meeting with the supervision officer.

2. Accepting certificates not just in the executing Member State's language – Finnish and Swedish, but also in English

3. Regular combined meetings among CAs (Ministry of Justice, judges and prosecutors, twice a year) foster cooperation through updating each other on the most recent cases and seeking solutions to practical issues.

4. Training for prosecutors provided by the Prosecutor-General's Office is very well organised and consists of many activities. Moreover, the handbooks (EAW, 909, 949, ESO) in the Intranet of the Prosecutor-General's Office are accessible not only to prosecutors, but also to judges.

5. Smooth and fast cooperation among Finland and the other Nordic States (Sweden, Denmark, Iceland and Norway and vice versa) based on the Nordic cooperation agreement.

6. In cases when the requested person is surrendered under the condition of being transferred back to the executing State, the recognition procedure is mandatory even if the conditions under FD 909 are not met, thus the requesting Member State respects the conditions under which the surrender was executed.

7. Based on the recommendation made in the fourth round, prosecutors, before issuing an EAW, check in their database all prosecuted cases related to the person in question. If other prosecution proceedings are ongoing, they are included in one single EAW.

8. Finland has a centralised judicial system (Helsinki District Court / Prosecutors of Southern Finland) to execute the EAW, which contributes to the efficient application on the FD on the EAW in practice and speeds up the proceedings.

9. Very effective appeals proceedings in the EAW procedure based on a single-tier fast-track system, so the Supreme Court must decide within 20 days.

ANNEX A: IMPACT OF COVID AT THE BEGINNING OF THE PANDEMIC

EAW *-issuing of EAWs (suspension of issuing EAWs; impact on already issued EAWs; prioritization in issuing new EAWs + criteria)* *- execution and postponement of the actual surrender (legal bases, adequacy, release of requested persons, measures to prevent released persons from absconding)* *-expected resuming of surrenders* *-transit*	Impact on the issuing of EAWs Prosecutors only issue urgent EAWs. Impact on the execution of EAWs and postponement of the actual surrender It is considered that force majeure will prevent us from executing pick-ups. In such cases, the Member State surrendering the person will be asked for a temporary suspension until the exceptional conditions related to COVID-19 are lifted in the respective Member States so that the surrendered person can be picked up by the Finnish authorities. Consequently, it is the responsibility of the executing Member State to consider whether this time proves to be disproportionate, and thus it has to be considered if the individual should be released or placed under a travel ban. There have not so far been decisions to temporarily suspend the execution of EAWs. For the time being EAWs are being executed, but certain exceptions apply. In the event of an SIS Art. 26 hit and following remand in custody, the issuing Member State will be requested to confirm their ability to pick up the person after the decision is made. The decision to suspend a surrender is made on a case-by-case basis. However, should this time prove to be disproportionate, it has to be considered whether the individual should be released or placed under a travel ban. According to the Coercive Measures Act, Chapter 2 section 6, keeping a person remanded in custody could become unreasonable, if the transfer of the person is delayed due to travel restrictions. Pick-ups are carried out but the constant uncertainty related to the overall situation as well as the borders being closed and the availability of flights is taken into account when assessing the pick-ups. FI has had cases where other Nordic countries have picked up surrendered persons by car. Prosecutors have been instructed to ascertain whether the issuing State will in any case uphold the EAW and if they can pick up the person in question from Finland. If the issuing Member State upholds the EAW, the

	matter needs to be decided by a court. According to Helsinki District Court, they handle surrender cases in such a way that the person who is requested to be surrendered, will be heard via video from the prison. The competence of the District Court ends with the decision to surrender. Nevertheless, the Court may delay the enforcement of a surrender decision if there are circumstances that make the surrender unreasonable for humanitarian reasons. The surrender decision must be enforced as soon as these circumstances have ceased to exist. The competent authorities must then agree on a new surrender date. The requested person must be handed over within ten days of the new date thus agreed. The current measures in Finland: Issuing: Our NBI (National Bureau of Investigation) will if possible bring persons in custody in other states to Finland. Executing: the executing prosecutors or the NBI will contact the issuing authorities of the persons apprehended in Finland and ascertain whether they wish the surrender proceedings to go on and if it will be possible for them to come to pick the surrendered person up from Finland. Impact on surrenders by land The Covid-19 pandemic has not had any influence on the execution of surrenders or extraditions by land. Impact on surrender by air The Finnish authorities have not imposed travel restrictions which would have had a direct impact on the surrender procedures in Finland as a surrendering Member State. However, airlines have significantly reduced flights. Due to poor flight availability, in some cases Member States have been forced to request an extension to the surrender procedure in Finland. Due to the COVID-19 situation in five cases, the surrender from a Member State had to be postponed and the extension had to be requested (some on the initiative of Finland and some on the initiative of the Member State surrendering the person). The decision to suspend a surrender is made on a case-by-case basis. In some cases, due to postponement, the Member State has imposed a travel ban for the surrender.

	Legal basis for postponing the actual surrender Primarily Art. 23(3). Adequacy of these provisions At the moment they are sufficient, but the situation will have to be re-evaluated if the situation continues much longer. Meaning of 'circumstances beyond the control' The current situation is force majeure and therefore would be beyond the control of the Member States. This does not mean however that we should not seek to execute surrenders if there is a way to do so. Releases of requested persons following the postponement of the surrender No. Expected resuming of the surrender The Finnish authorities have not imposed travel restrictions which would have had a direct impact on the surrender procedures in Finland as an executing Member State. Transit The transit of persons under the FD EAW FD is possible and a negative COVID-19-test is not needed. However, the requirements mentioned above concerning surrender are applicable.
Precautionary measures for surrender, extradition and transfer - *COVID19 test* - *health certificate* - *quarantine* - *facial masks*	Precautionary measures As a precautionary measure, it is required that the requested person and the officials accompanying the requested person have no symptoms of a respiratory infection. The subject has to be 'fit to fly'. Finland is not requesting any negative COVID-19 test results or health certificate. The issuing Member State may have set terms preventing/complicating the surrender procedure (e.g. a certificate of a negative COVID 19 test result). All surrenders will be evaluated on a case-by-case basis. Airlines may have restrictions about the passenger's condition of health and they may have put additional precautionary measures in place. E.g., Finnair requires passengers to wear a mask covering their mouth and nose from boarding to leaving the aircraft. The mask can be a surgical mask or a mask

	made of fabric. In Finland: If the escort team members need to stay in Finland overnight, they should be prepared to stay at an airport hotel in self-imposed quarantine. To be considered case by case. Need (or not) for EU guidance on precautionary measures General guidelines for precautionary measures should be similar in issuing/transiting/executing Member States, especially regarding the requirements for escorts.
Extradition *-suspension* *-legal basis* *-third countries involved* *-expected duration of suspension*	Impact on extradition procedures No, Finland has not suspended extradition to third countries as such. We have one pending extradition from the U.S.A. and due to COVID-19 travel restrictions we have asked for an extension. The extradition date is still unknown.
Transfer of sentenced persons *-prioritization in issuing/execution*	Impact on the transfer of sentenced persons According to the Criminal Sanctions Agency (CSA) the transfer of prisoners is on hold for now. Transfers of prisoners are not possible for the moment. Regarding prioritization of FD 909 on custodial sentences, when the Criminal Sanctions Agency considers a request for a transfer of a prison sentence to another Member State it prioritizes cases where the sentenced person is already in the executing country. Furthermore, when a person is the subject of an EAW and the executing Member State has imposed a condition that the person is to be returned to the executing Member State to serve the custodial sentence there, these cases have priority over other transfers. There is no other prioritization.
SIRENE Bureaux *-working of SIS bureau* *-exchange of information with other SIS Bureaux*	Impact on the working of the SIRENE Bureau The SIRENE Bureau in Finland is working at present and has been working at full capacity during the COVID-19 situation. The 24/7 operation of our SIRENE Bureau has been ensured continuously. The efficiency of standby function of the SIRENE Bureau is currently good despite the summer holiday period. Due to the reduced execution of surrenders, extraditions and hit amounts, the human resources available are even exceptionally

	good compared to the normal summer holiday period. Impact on the exchange of information with other SIRENE Bureaux In the current COVID-19 situation, the international exchange of information has clearly decreased, compared to the same time in the previous year. The decrease is due to the travel restrictions in many countries. Due to the travel restrictions, the number of hits and the additional exchange of information has decreased. The COVID-19 situation has not had an influence on the time taken for the exchange of information with other Member States.
EIO and MLA *-prioritization in issuing/execution* *-electronic transmission* *-whom to contact*	Impact on the execution of EIOs and MLA requests The execution of EIOs is not limited to urgent cases, but some delays occurred during the peak of pandemic. The judicial authorities of other EU Member States issuing European Investigation Orders, are recommended to ask the competent judicial authorities in Finland, before issuing an EIO for videoconferencing, whether they are able to execute them. Electronic transmission and contact details Sending requests by email is more convenient. When contacting the police, the Interpol 24/7 or Europol Siena channels can also be used. If the case is important/urgent for, the police should also be reminded by telephone (the number is available in the EJN Atlas). Help can be obtained from the EJN, Eurojust or the Europol Finnish desk. Ordinary mail is not suitable for urgent cases because it is slow. It is not necessary to contact a central authority.
Freezing and confiscation orders *-prioritization in issuing/execution*	N/A
JITs *-prioritization and alternative telecommunication solutions*	N/A
Recommended channels for	The best channels to use for prosecutors and courts are Eurojust and the EJN. The Finnish SIRENE bureau is in service and able to contact all the

transmission of *-urgent requests* *-information exchange*	relevant actors relating to the practical arrangements for the surrender procedures. For the transmission of EIOs and MLA requests, see above, 'EIO and MLA'.
Any other relevant information	N/A

ANNEX B: PROGRAMME FOR THE ON-SITE VISIT

Programme of the VTC preparatory meeting with representatives of Finland

Thursday, 6 July 2021

[Venue: VTC meeting]

[Participants: representatives from Helsinki District Court, the Prosecutor General's Office and the Ministry of Justice]

9:30 - 9:45	Opening speeches, introduction of the host team and evaluation team;
9:45 - 12:00	Presentations provided by the Prosecutor-General's Office and the Helsinki District Court concerning FD 2008/947/JHA, followed by Q&A; discussion
12:00 - 12:30	Coffee break
12:30 - 14:00	Presentations by the Prosecutor-General's Office concerning FD 2009/829/JHA, followed by Q&A; discussion
15:00 - 16:30	Internal meeting of the evaluation team and observers.

Programme of the on-site evaluation visit with representatives of Finland

Monday, 21 March 2022

Arrival of the evaluation team in Finland

18:00 - Internal meaning of the evaluation team and an observer.

Tuesday, 22 March 2022

[Venue: Porkkalankatu 13, 00180 Helsinki]

[Participants: representatives of Helsinki District Court, the Prosecutor-General's Office, the Prosecutors' District of Southern Finland and the Ministry of Justice]

9:00 - 9:15	Welcoming speeches, introduction of the host team and evaluation team
9:15 - 12:00	Presentations by the Ministry of Justice and Helsinki District Court concerning FD 2002/584/JHA, followed by Q&A: discussion
12:00 - 12:30	Lunch break
12:30 - 14:30	Presentations by the Ministry of Justice and Helsinki District Court concerning FD 2009/909/JHA, followed by Q&A; discussion
14:30 - 14:40	Coffee break
14:40 - 16:30	Presentation by the Prosecutor-General's Office and the Prosecutors' District of Southern Finland concerning FD 2009/909/JHA, followed by Q&A: discussion
18:00 - 19:30	Internal meeting of the evaluation team and observers.

Wednesday, 23 March 2022

[Venue: Lintulahdenkuja 4, 00530 Helsinki]

[Participants: representatives of the Prosecutor-General's Office, the Criminal Sanctions Agency and the Ministry of Justice]

9:00 - 12:00	Presentations by the Prosecutor-General's Office, the Ministry of Justice and the District Prosecutor's Office concerning FD 2002/584/JHA, followed by Q&A: discussion
12:00 - 13:00	Lunch break
13:00 - 14:30	Presentation by the Criminal Sanctions Agency concerning FD 2009/909/JHA, followed by Q&A: discussion
14:30 - 14:50	Coffee break
14:50 -16:30	Presentation by the Criminal Sanctions Agency concerning FD 2002/584/JHA
17:00 - 18:30	Internal meeting of the evaluation team

Thursday, 24 March 2022

[Venue: Eteläesplanadi 10, 00130 Helsinki]

[Participants: representatives of the National Bureau of Investigation, the National Courts Administration, the Bar Association, the Ministry of Justice, the Prosecutor-General's Office and the Criminal Sanctions Agency]

9:00 -10:40	Presentation provided by the National Bureau of Investigation concerning FD 2002/584/JHA, followed by Q&A; discussion
10:40-11:30	Presentation provided by the National Courts Administration, followed by Q&A; discussion
11:45 - 12:30	Lunch break

12:30 - 14:00	Meeting with representatives of the Bar Association, Q&A; discussion
14:00 - 14:30	Coffee break
14:30 - 15:15	Additional discussion
15:15 - 16:00	Wrap-up meeting, presentation of the preliminary recommendations, final speeches
17:30 - 19:15	Internal meeting of the evaluation team

ANNEX C: PERSONS INTERVIEWED/MET

Venue: VTC meetings

Person interviewed/met	**Organisation represented**
Katariina Jahkola, Head of Unit	Ministry of Justice
Tuuli Eerolainen, State prosecutor	National Prosecution Authority
Heli Tamminen, Chief lawyer	Criminal Sanctions Agency
Anu Juho, Judge	Helsinki District Court
Essi Konttinen-di Nardo, Judge	Helsinki District Court
Mia Sandberg, Senior Specialist	Criminal Sanctions Agency
Maria Kulmala, Inspector	Criminal Sanctions Agency
Tanja Innanen, Senior Ministerial Adviser	Ministry of Justice
Joni Korpinen, Senior Specialist	Ministry of Justice

Tuesday 22 March, from 9:00 to 11:30

Venue: Helsinki District Court

Person interviewed/met	**Organisation represented**
Tuomas Nurmi, chief judge	Helsinki District Court
Essi Konttinen-Di Nardo, district judge	Helsinki District Court
Joni Korpinen, Senior Specialist	Ministry of Justice
Tanja Innanen, Senior Ministerial Adviser	Ministry of Justice
Taina Neira, Legal Adviser	Ministry of Justice

Tuesday 22 March 2022, from 12:40 to 14:30

Venue: Helsinki District Court

Person interviewed/met	**Organisation represented**
Essi Konttinen-Di Nardo, district judge	Helsinki District Court
Anna-Liisa Sandvik, Senior Specialist	Ministry of Justice
Taina Neira, Legal Adviser	Ministry of Justice

Tuesday 22 March 2022, from 14:40 to 16:30

Venue: Helsinki District Court

Person interviewed/met	**Organisation represented**
Tuuli Eerolainen, State Prosecutor	National Prosecution Authority
Yrjö Reenilä, Senior Specialised Prosecutor	National Prosecution Authority
Taina Neira, Legal Adviser	Ministry of Justice
Anna-Liisa Sandvik, Senior Specialist	Ministry of Justice
Joni Korpinen, Senior Specialist	Ministry of Justice

Wednesday, 23 March, from 9:00 to 11:30

Venue: The Prosecutor-General's Office

Person interviewed/met	**Organisation represented**
Tuuli Eerolainen, State Prosecutor	National Prosecution Authority
Sirpa Väätäinen, Senior Specialized Prosecutor	National Prosecution Authority
Joni Korpinen, Senior Specialist	Ministry of Justice
Tanja Innanen, Senior Ministerial Adviser	Ministry of Justice

Wednesday, 23 March 2022, from 12:40 - 14:30

Venue: The Criminal Sanctions Agency

Person interviewed/met	**Organisation represented**
Heli Tamminen, Chief Lawyer	Criminal Sanctions Agency
Mia Sandberg, Senior Specialist	Criminal Sanctions Agency
Anna-Liisa Sandvik, Senior Specialist	Ministry of Justice

Wednesday, 23 March 2022, from 14:40 - 16:30

Venue: The Criminal Sanctions Agency

Person interviewed/met	**Organisation represented**
Heli Tamminen, Chief Lawyer	Criminal Sanctions Agency
Mia Sandberg, Senior Specialist	Criminal Sanctions Agency
Tanja Innanen, Senior Ministerial Adviser	Ministry of Justice

Thursday, 24 March, from 9:00 to 10:30

Venue: The Ministry of Justice

Person interviewed/met	**Organisation represented**
Teemu Aittamaa	National Bureau of Investigation / SIRENE FI
Katja Sirola	National Bureau of Investigation / SIRENE FI
Päivi Heiskanen	National Bureau of Investigation
Joni Korpinen, Senior Specialist	Ministry of Justice
Tanja Innanen, Senior Ministerial Adviser	Ministry of Justice

Thursday, 24 March, from 10:40 to 11:30

Venue: The Ministry of Justice

Person interviewed/met	**Organisation represented**
Noora Aarnio	National Courts Administration, Senior Specialist
Joni Korpinen, Senior Specialist	Ministry of Justice
Tanja Innanen, Senior Ministerial Adviser (Skype)	Ministry of Justice

Thursday, 24 March, from 12:40 to 13:45 , Wrap-up meeting

Venue: The Ministry of Justice

Person interviewed/met	**Organisation represented**
Liina Kokko	the Finnish Bar Association
Jussi Sarvikivi	the Finnish Bar Association
Pekka Ylikoski	the Finnish Bar Association
Joni Korpinen, Senior Specialist	Ministry of Justice
Tanja Innanen, Senior Ministerial Adviser (Skype)	Ministry of Justice

Thursday, 24 March, from 14:00 - 15:30 - Wrap-up meeting

Person interviewed/met	**Organisation represented**
Tuuli Eerolainen, State Prosecutor	National Prosecution Authority
Essi Konttinen-Di Nardo, district judge (Skype)	Helsinki District Court
Heli Tamminen, Chief Lawyer	Criminal Sanctions Agency
Joni Korpinen, Senior Specialist	Ministry of Justice
Tanja Innanen, Senior Ministerial Adviser (Skype)	Ministry of Justice
Anna-Liisa Sandvik, Senior Specialist (Skype)	Ministry of Justice

ANNEX D: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CA/s		Competent authority/ies
CEP		Confederation of European Probation
CJEU		Court of Justice of the European Union
CSA		Criminal Sanctions Agency
CMA		Coercive Measures Act
CPC		Criminal Procedure Code
EAW		European arrest warrant
ECHR		European Court of Human Rights
ECJ		European Court of Justice
EJTN		European Judicial Training Network
ESO		European Supervision Order
ERA		Academy of European Law
FRA		Criminal Detention Database created by the European Union Agency for Fundamental Rights
FD		Framework Decision
HDC		Helsinki District Court
JHA		Justice and Home Affairs
NCA		National Courts Administration
NBI		National Bureau of Investigation
NCB		National Criminal Bureau
PGO		Prosecutor General Office