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Subject:	**EVALUATION REPORT ON THE TENTH ROUND OF MUTUAL EVALUATIONS** **On the implementation of the European Investigation Order (EIO)** **REPORT ON ROMANIA**

ANNEX

EVALUATION REPORT ON THE

10th ROUND OF MUTUAL EVALUATIONS

on the implementation of the European Investigation Order (EIO)

REPORT on ROMANIA

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1. EXECUTIVE SUMMARY

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('Directive') was a significant step forward in the domain of judicial cooperation in criminal matters based on the principle of mutual recognition, going beyond the previous regime of mutual legal assistance ('MLA'). The European Investigation Order ('EIO') has since become a core instrument in gathering evidence within the EU. However, to ensure more consistent application and smoother functioning of this instrument across the EU, several practical and legal challenges still need to be addressed.

The information provided by Romania in the questionnaire and during the on-site visit was rather detailed and comprehensive, and the evaluation visit was both well prepared and well organised by the Romanian authorities. The Romanian practitioners were also extremely open and flexible enough to discussing the strengths and weaknesses of the Romanian system. As a result, the evaluation team got an excellent overview of the Directive's application in Romania.

The evaluation team confirmed that the EIO generally works well in practice, and the Romanian practitioners were also satisfied with the mechanism. Nevertheless, the evaluation team identified some key issues that need to be addressed at national and European level, resulting in the recommendations made below in Chapter 22.2.

In particular, the evaluation team found that when transposing the EIO Directive into Romanian law, the Romanian legislator decided to keep certain elements of the MLA regime – e.g. direct contact (see Chapter 8.2) and the rule of specialty (see Chapter 10) – which do not seem to be fully in line with the principles of the Directive. The evaluation team is of the opinion that the application of elements rooted in traditional mutual legal assistance risk affecting the full and uniform application of the Directive (see Chapter 3).

That said, the high level of specialisation of the competent authorities and the level of coordination between them, as well as their willingness to cooperate in line with the principle of mutual trust seem to compensate for the above-mentioned shortcoming.

It should be noted that within the Prosecutor's Office attached to the High Court of Cassation and Justice, two independent structures with specific material competence have been set up: the Directorate for Investigation of Organized Crime and Terrorism ('the DIOCT') and the National Anti-Corruption Directorate ('the NAD'). Both the DIOCT and the NAD have set up a separate service for international cooperation with specialised prosecutors and translators, who make a significant contribution to the smooth application of mutual recognition instruments.

Furthermore, both structures have access to a technical infrastructure enabling the secure and fast transmission of data up to 75 gigabytes; that infrastructure is unavailable to the majority of the prosecution services across the Member States. However, the evaluation team is of the opinion that the level of specialisation and coordination seems lower when offences fall outside the competence of the DIOCT and the NAD..

In what concerns the rights of victims, the evaluation team particularly welcomes the fact that the law implementing the EIO goes beyond the requirements of Article 1(3) of the Directive, as the implementing provision also covers persons subject to the proceedings, namely the victim (see Best practice No 4) and suggests considering an amendment to the Directive, since this would allow the victim to request an EIO (see Recommendation No 23).

The evaluation team found evidence of a potential need to revise the Directive in several points. In their view, the key points where the EU legislator should consider amending the Directive are as follows:

- the forms;
- the rule of specialty;
- allow the victim to request an EIO;
- hear the accused via videoconference at trial to ensure their participation during trial;
- the concept of interception of telecommunications.

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997[1] (the 'Joint Action') established a mechanism for evaluating the application and implementation at national level of the international arrangements in the fight against organised crime.

In line with Article 2 of the Joint Action, the Coordinating Committee in the area of police and judicial cooperation in criminal matters ('CATS') agreed after an informal procedure following its informal meeting on 10 May 2022, and as set out in the Directive, that the 10th round of mutual evaluations would focus on the EIO.

The aim of the 10th round of mutual evaluations 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 the Directive. This will allow areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, strengthening coherent and effective implementation of this legal instrument would further enhance mutual trust among the Member States' judicial authorities and ensure better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice. Furthermore, the current evaluation process could provide helpful input to Member States in their implementation of the Directive.

[1] Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.

Romania was the ninth 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 29 June 2022 by a silence procedure[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. Pursuant to a written request sent to delegations on 15 June 2022 by the Secretariat of the Council of European Union, Member States have nominated experts with substantial practical knowledge in the field.

Each 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 10th round of mutual evaluations, it was agreed that the European Commission and the European Union Agency for Criminal Justice Cooperation ('Eurojust') should be invited as observers[3].

The experts entrusted with the task of evaluating Romania were: Ms Maria Rahoi (Hungary), Mr Federico Perrone Capano (IT) and Mr Hannu Koistinen (FI). Observers were also present: Ms Sofia Mirandola from Eurojust, Ms Filipa de Figueiroa Quelhas and Ms Emma Kunsági 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 Romania's detailed replies to the questionnaire, and the findings from the evaluation visit carried out in Romania between 23 and 25 May 2023; the evaluation team interviewed the representatives of the Ministry of Justice, the Public Prosecution Service, the judiciary, the law enforcement authorities and the Bar Association.

[2] ST 10119/22.
[3] ST 10119/22.

3. TRANSPOSITION

The Directive was implemented by Law No 236/2017 amending and supplementing Law No 302/2004 on international judicial cooperation in criminal matters ('Law No 302/2004'), which was published in the Official Gazette of Romania, Part I, No 993 of 14 December 2017. Law No 236/2017 entered into force within three days from the date of publication in the Official Gazette of Romania, in accordance with Article 78 of the Romanian Constitution. Since the Directive was implemented, there has been one amendment – relating to the competent authorities for videoconferences.

The Romanian system consolidates all instruments for international judicial cooperation in the same legislative act i.e. Law No 302/2004 on international judicial cooperation in criminal matters, which is considered to be a positive feature of the procedural rules in the field of mutual legal assistance *(see Best practice No 1).*

The implementation follows the Directive to the letter. Article 25 of the Directive on hearings by telephone conference has not been implemented as this investigative measure does not exist in Romanian law. Apart from that, implementation appears to be complete. The implementation does not, however, differentiate between the procedure for issuing an EIO and the procedure for executing one, although practitioners have claimed that this raises no problems for the application of the Directive.

The evaluation team found that national legislation provides some additional rules on the application of the EIO which follow the regime of the traditional MLA and do not fully comply with the principles of the Directive, such as direct contact (see Chapter 8.2) and the rule of speciality (see Chapter 10). During the on-site visit, the evaluation team was told that the transposition did not seek to make revolutionary changes to the previous MLA regime, as the EIO, despite being an instrument of mutual recognition, is still perceived as a special form of MLA. Consequently, during the transposition, the Romanian legislator kept certain elements that worked well in the MLA regime.

The evaluation team considers vital to stress that the objective of the Directive was to set up a new comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, which goes beyond the previous MLA regime. The use of mechanisms established in traditional mutual assistance practice for the application of the EIO, even if they have worked well in international judicial cooperation, is counter to the full and uniform application of the Directive.

4. COMPETENT AUTHORITIES

4.1. Specific rules on material competence and specialisation

In order to acquire a better understanding of the competence of the respective authorities, it is important to provide a short overview on the structure of the Prosecution Service with particular regard to specialised prosecutor's offices.

In Romania, prosecutors are organised into prosecutor's offices attached to the courts of law at jurisdictional level. The central body of the Prosecution Service is the Prosecutor's Office attached to the High Court of Cassation and Justice. Within the Prosecutor's Office attached to the High Court of Cassation and Justice, two independent structures have been set up with specific material competence: the DIOCT and the NAD.

Both the DIOCT and the NAD are organised at central level ('central structure') with their headquarters in Bucharest, and at territorial level ('territorial structure') with 14 services set up in cities where the headquarters of the Courts of Appeals are located. It is mandatory for the specialised prosecutors within the DIOCT and the NAD to carry out the criminal investigations into offences falling under the competence of the DIOCT and the NAD.

Under the relevant law[4], irrespective of whether or not the suspect holds public office, the DIOCT has material competence for:

1. certain serious offences committed in organised criminal groups (e.g. murder, unlawful deprivation of liberty, slavery, fraud committed using computer systems and electronic payment methods, trafficking in migrants, counterfeiting of currency and payment instruments, illegal access to a computer system; theft, robbery, computer fraud, embezzlement, bankruptcy fraud resulting in material damage of over RON 2 million);
2. trafficking in human beings and underage persons, disclosure of information classified as state secrets, tampering with computer data related to the authority of a foreign state, offences related to the security and integrity of computer systems and data, offences related to national security, offences related to nuclear activities, offences related to terrorism, drug trafficking;
3. money laundering of the proceeds of offences falling under the material competence of the DIOCT;
4. creation of an organised crime group for the purpose of any of the crimes provided for in points 1 and 2;
5. crimes related to those provided for in points 1-4.

The NAD is a prosecutor's office specialised in combating corruption offences.

Corruption offences (taking of a bribe, giving of a bribe, traffic of influence and buying of influence) and offences assimilated to those of corruption, as provided for in Law No 78/2000 and its subsequent amendments and additions, committed in one of the following circumstances, fall under the competence of the NAD:

[4] Article 11 of the Emergency Ordinance No 78/2016 of 16 November, 2016, for the organisation and operation of the Directorate for the Investigation of Organized Crime and Terrorism, as well as for the modification and completion of certain regulatory acts.

a) if, regardless of the capacity of the person who committed them, corruption offences caused material danger of more than EUR 200 000 in RON, or if the value of the goods or their sum yielded by the corruption offence is of more than EUR 10 000 in RON;
b) if, regardless of the value of the material damage or the sum of the goods in the corruption offence, corruption offences are committed by high- and medium-ranking state officials, judges, prosecutors, police and military officers, and other persons listed in more detail in Article 13(1) point b) of the Government Emergency Ordinance No 43 of April 4 2002.

The offences provided for by Article 246 (diversion of public tenders), Article 297 (abuse of office) and Article 300 (abuse of position) of the Criminal Code, if the material damage caused was higher than the equivalent of EUR 1 000 000 in RON; offences against the financial interests of the European Union also fall under the competence of the NAD.

Both the DIOCT and the NAD have set up separate departments for international cooperation with specialised prosecutors and translators.

The International Cooperation, Representation and Mutual Legal Assistance Service operates within the central structure of the DIOCT. The Service is a permanent point of contact in the cooperation/judicial assistance networks established at national and international level for crimes dealt with by the DIOCT as the competent criminal prosecution body under Romanian law.

One of the tasks of the International Cooperation, Representation and Mutual Legal Assistance Service is to exercise the prosecutor's powers provided for by Law No 302/2004 and ensure that the DIOCT complies with the provisions of agreements on mutual legal assistance in criminal matters.

The Department of International Cooperation and Programmes operates within the central structure of the NAD. This liaison office – with institutions similar to those in other states – implements international judicial cooperation activity in cases for which the NAD is responsible under the law and the international judicial cooperation tools Romania participates in. It supports the sections and services within the NAD to draw up and execute international judicial assistance in criminal matters and other forms of international judicial cooperation.

The Public Prosecutor's Office ('PPO') attached to the Bucharest Tribunal has a specific organisation for international judicial cooperation, with specialized prosecutors for cases involving cooperation with other Member States. The main task of this office is to execute EIOs e.g. in cases such as money-laundering, tax evasion, cybercrime, where there are requests for obtaining data on financial transactions.

The evaluation team considers that the specialisation in international judicial cooperation and the functioning of the support services make a major contribution to the proper application of mutual recognition instruments *(see Best practice No 2).*

4.2. Issuing authorities

The EIO is issued, during the investigation and prosecution phases, by the prosecutor conducting or supervising the criminal proceedings and, during the trial, by the competent judge (according to the rules of material, territorial and personal jurisdiction).

Whichever judicial authority is competent – depending on the stage of the proceedings – issues the EIO *ex officio* or at the request of the parties or the main parties to the proceedings in accordance with Article 330(1) of Law No 302/2004. The competent authorities are therefore the courts and the PPOs (judicial authorities).

4.3. Executing authorities

The competent PPO or court under Romanian law recognises and executes an EIO, also taking into account the stage of the criminal proceedings in which the EIO was issued. Territorial competence is determined based on the location where the investigative measure is to be carried out. Under Romanian law (Article 330(2) of Law No 302/2004), the DIOCT and the NAD, at the Prosecutor's Office attached to the High Court of Cassation and Justice, are to recognise and execute EIOs related to offences falling within their competence.

During the on-site visit, practitioners stated that, in cases where several investigative measures have to be carried out and when their execution falls within the territorial competence of different PPOs, it is possible to send one complex EIO to the central authority, which forwards it to the competent authorities for execution.

The experts considered it useful to recommend that the information provided in the *Fiches Belges* be amended to reflect this since it would significantly facilitate the issuing of EIOs to Romania *(see Recommendation No 1).*

Practitioners explained that, when EIOs falling within the competence of the DIOCT and the NAD contain multiple requests that have to be carried out in different localities, or in more complex cases, where action days with simultaneous searches have to be organised, a prosecutor in the DIOCT or the NAD is appointed to coordinate the execution (*see Best practice No 3*).

As regards cases falling outside the competence of the DIOCT or the NAD, in the case of EIOs requesting searches in the territory of Bucharest and other localities, as well as hearing witnesses, instead of sending the EIO to other PPOs, if the witness is residing in Bucharest, these authorities mandate the police to conduct the search. It is possible to appoint one authority, provided that the investigative measure has to be carried out in Bucharest.

If the PPO attached to the Bucharest Tribunal receives an EIO requesting simultaneous searches to be carried out across the country, it contacts the PPOs with territorial competence, which then coordinate the execution among themselves. One PPO is designated as the common point of contact and consults the issuing Member State about the details of the execution. However, each competent PPO takes a separate decision on the recognition of the EIO.

In the view of the evaluation team, it would be useful for the Romanian authorities to have provisions in place to enable coordination, also in cases falling outside the competence of the DIOCT, the NAD and the PPO attached to the Bucharest Tribunal (see Recommendation No 2), and to ensure that a designated authority coordinates in cases where several investigative measures need to be executed by different authorities *(see Recommendation No 3).*

4.4. Central authorities

The role of the central authorities is to facilitate communication between the issuing and executing authorities, in accordance with Article 330(3) of Law No 302/2004. The competent central authorities are:

- the PPO attached to the High Court of Cassation and Justice (through the competent structures, including the DIOCT and the NAD), in the case of EIOs which relate to investigation and prosecution activities;
- at the trial stage, the Ministry of Justice, in the case of EIOs which relate to trial activities or the enforcement of judgments.

The central authorities seem to be playing a rather important role, advising local PPOs in specific cases, including doing a quality check and taking care of translations.

4.5. The right of the suspected or accused person or victim to apply for an EIO

Under Article 330(1) of Law No 302/2004, the EIO is issued by the judicial authority either *ex officio*, or upon the request of the key subjects or the parties in the criminal proceedings, pursuant to the terms stipulated by the Criminal Procedure Code ('CPC'). The request is either approved or denied by the prosecutor/judge, depending on the circumstances of the case, the relevance or the usefulness of the evidence.

Under Article 32(2) of the CPC, parties to criminal proceedings are: the defendant, the civil party and the party with civil liability. Pursuant to Article 33 of the CPC, the key subjects are the suspect and the victim. Apart from rights and obligations which the law exclusively grants them, the suspect and the victim have the same rights and obligations as the parties.

The law implementing the Directive goes beyond the requirements of Article 1(3) of the Directive, as the implementing provision also covers persons subject to the proceedings, namely the victim. This supplements the victim's right under Directive 2012/29/EU[5] to provide evidence. The evaluation team welcomes this legislation *(see Best practice No* 4*)* and suggests considering an amendment to the Directive, since this would allow the victim to request an EIO *(see Recommendation No 23).*

It should be noted, that according to the lawyers, requests for EIOs made by the parties are rarely accepted by the prosecution, and are more likely to be accepted at the trial stage. According to the prosecutors, suspects and victims do not often request an EIO in practice, the majority of the EIOs are issued *ex officio*, as the burden of proof shifts to the authorities.

[5] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the right, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

The representatives of the Bar Association stressed that the rights of the defendant should be strengthened in EIO proceedings. In addition, it was proposed that interested persons, who are not parties to criminal proceedings but who are also affected by the restrictive measures applied against the assets of the suspect, should also be able to request an EIO.

5. SCOPE OF THE EIO AND ITS RELATIONSHIP WITH OTHER INSTRUMENTS

Under Romanian law, the purpose of the EIO is to gather evidence, namely, to have one or several specific investigative measures carried out in another Member State, to obtain evidence or to transmit evidence already in the possession of the competent authorities of the executing State in accordance with Article 328(2) point a) of Law No 302/2004.

As provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ('Convention') and in Framework Decision 2002/465/JHA[6], the EIO shall cover any investigative measure with the exception of setting up a joint investigation team ('JIT') and gathering evidence within a JIT, other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision 2002/465/JHA, in accordance with Article 328(2) point a) of Law No 302/2004.

The Joint Note by Eurojust and the European Judicial Network on the practical application of the EIO and the Eurojust note on the meaning of 'corresponding provisions' and the applicable legal regime in case of delayed transposition of the Directive have been disseminated to practitioners and have been consulted when necessary.

[6] Council Framework Decision No 2002/465/JHA of 13 June 2002 on joint investigation teams.

In practice, both from the perspective of the issuing and the executing Member State, the EIO was sometimes used for other related purposes, (i.e. for the service of procedural documents) or for the performance of activities related to other investigative measures for the purpose of obtaining evidence. For example, when the hearing of a person is necessary, the EIO sometimes contains the requests for a document to be handed over, i.e. a record of rights and obligations about the capacity in which the person is to be interviewed. Otherwise, when only a non-evidence-gathering activity is requested, as a rule, other cooperation instruments are used.

The general interpretation is that the EIO cannot be issued for service of procedural documents or to obtain copies of judgments. During the initial application of the legislation transposing the Directive, Romanian courts issued EIOs to serve documents or obtain court judgments but, following consultations and guidance from the central authorities, the appropriate instrument was chosen for such measures. There were also cases of other Member States issuing EIOs for the service of procedural documents, but they were considered MLA requests and were executed as such.

The handling of EIOs issued for measures that fall clearly outside the scope of the EIO as MLA requests is considered good practice by the evaluation team *(see Best practice No 5).* However, the judicial authorities of each Member State must respect the scope of the EIO and ensure that they use the appropriate instrument for judicial cooperation for the service of documents and other measures falling outside the scope of the EIO *(see Recommendation No 11).*

The Romanian authorities reported cases, both when acting as the issuing and executing Member State, where the EIO was issued for the purpose of locating a person. In general, police cooperation is used to locate persons, which is also the recommendation of the central authority. As an issuing state, EIOs were issued for measures involving the location of the person, such as a standard or video conference hearing of a person. If no other measures are in the same EIO, practical cases solely for localisation are unlikely to arise. However, the whereabouts of a person at a given point in time could constitute evidence in a trial and consequently, if the purpose is to use this information as evidence, locating a person could be the subject of an EIO.

Under Romanian law, the EIO can be issued in all stages of the criminal proceedings: at the pre-trial, preliminary chamber[7] and trial stage. There have been cases where EIOs were issued by the Romanian authorities at the enforcement stage (to obtain information required to resolve challenges related to enforcement) but such situations are rare and, in cases where copies of court decisions are requested, MLAs are issued instead. In general, most of the EIOs received by the Romanian authorities are issued at the investigation and prosecution stages. EIOs issued at the trial stage have also been received, but the Romanian authorities have not encountered EIOs issued at the enforcement stage. No significant difficulties were reported related to the different stages of the criminal proceedings.

The Romanian practitioners were not aware of cases where an EIO was issued to obtain personal data necessary for the enforcement of an administrative decision.

There have been cases, where problems occurred relating to the choice of instrument. These problems have been solved through consultations, both direct consultation and consultation through the central authorities, the European Judicial Network ('EJN') or Eurojust. In one case, where a pre-trial arrest warrant was issued, it created the conditions for issuing a European Arrest Warrant ('EAW').

The Ministry of Justice has prepared recommendations on the choice of the correct instrument, while the specialised international cooperation departments within the prosecution services are also available for consultation in the event of doubt.

[7] In accordance with the CPC, the role of the preliminary chamber is twofold: the preliminary judge verifies the clarity of the accusation and ensures the legality of the evidence. The preliminary judge also checks the admissibility of the evidence gathered. Once the case goes to the preliminary chamber, the investigation is over. The preliminary chamber can also decide that the:

- accusation is not clear;
- file should be sent back for further investigation;
- evidence was gathered illegally. The preliminary judge eliminates the evidence and can ask the prosecution whether the indictment stands also without the evidence.

There have been several cases (involving Romania both as the issuing and the executing authority) related to the use of the EIO to justify the use of information and evidence previously received from law enforcement authorities, and these have not raised problems. There have also been cases where, in order to issue EIOs, police cooperation was used to determine the addresses, for example, of the headquarters of companies, strictly for the purpose of establishing where evidence was to be administered and, implicitly, to identify the competent executing authority.

The Convention implementing the Schengen Agreement ('CISA') was indicated as a legal basis when cross-border surveillance was requested, without the ordering of any technical surveillance measures.

The Romanian practitioners stated that EIOs are regularly issued – usually by the DIOCT – to Member States not participating in the JIT. In such cases, the executing Member State is informed that the investigation in the framework of which the EIO is issued, is conducted in coordination with the JIT partners and is expressly asked to agree, that the relevant evidence can be shared with them in order to respect the principle of speciality. No problems have been encountered in this respect. One respondent did, however, indicate that it had issued an EIO to a non-participating Member State, which did not agree that the evidence obtained could be used in the JIT.

The NAD encountered a situation where, in the framework of a JIT, the executing Member State demanded that the other JIT member also issue an EIO with the same subject matter, even though the initial EIO issued by the NAD had specified that the evidence would not be used in the JIT but only in its own investigation.

Romanian law allows the execution of EIOs issued by administrative authorities if they are validated by a judicial authority. There are no special procedures in this respect. Under Article 336(6) of Law No 302/2004, if the Romanian executing authority receives an EIO that has not been issued or validated by a judicial authority, it is to return it.

6. CONTENT OF THE EIO FORM

6.1. Challenges related to the form

When the legislation transposing the Directive came into force, the Ministry of Justice issued a *circulaire* to the judicial authorities and EJN guidelines have also been disseminated.

The application of the EIO and the practical problems encountered were discussed during the meetings of the Romanian members of the EJN, which comprises practitioners (judges and prosecutors), representatives of the central authorities and members of the Romanian national desk at Eurojust.

The early stages of EIO application were problematic until practitioners (both in Romania and in other Member States) became more familiar with Annex A. For example, the fact that it is a standardised form gave rise to situations where the EIO was incomplete e.g. in section C, the boxes corresponding to the requested investigative measures were ticked but the measures were not described. In some cases, the nature of the measures could be deduced from section G on the factual situation. The problem has since been remedied, all the more so as section C of the form now contains both the request for description and the corresponding spaces and boxes to be ticked.

Another problem was that the relevant entries for enforcement measures were in both section C and the subsequent sections of the order, namely sections H and I. In the case of complex cases, the executing authority might not have observed the requirements of sections H and I, as compliance with them was also essential for the evidence obtained to be admissible. A good practice and recommendation would be to indicate expressly at the end of section C that the requirements in sections H and or I respectively must also be complied with.

In practice, situations have been encountered where the EIO lacked information, for instance on the extent of the damage caused by the criminal activity under investigation; or whether investigations are also being carried out in relation to certain offences, such as the setting up of an organized criminal group or trafficking in human beings. This information was essential in order to determine the competent prosecuting unit or court for recognition and execution. In other cases, the legal content of the offence was not included; the factual situation did not contain sufficient data to justify the requested measure; the description of the factual situation was not clear.

In other cases, the issuing authorities requested that certain persons be interviewed, without clarifying the procedural status of the person. There were also cases where the procedural rights and obligations of the person to be interviewed were not mentioned in the EIO.

The problems were solved through consultations, both directly and through the central authorities, the EJN, or Eurojust.

The Romanian practitioners had several observations regarding the improvement of the form. In their opinion, section B could be improved by citing more examples, such as:

- custodial measures are ordered in the case;
- the requested activity;
- the court has issued a warrant with a time limit;
- the preservation of evidence is about to expire;
- the statute of limitations is about to expire;
- coordination with other requests and measures is necessary.

Sections C and H do not mention the interception of communications, only telecommunications. In certain cases, only section C of the EIO was filled in with a description of the measure, but none of the more detailed measures listed were ticked.

Another shortcoming of the form reported by practitioners is that, where more than one person is involved or where more than one competent authority is involved in the executing Member State, there is no box/section indicating that the form contains several separate annexes. In other cases, particularly in the case of complex cases, references were made from one section to another and there were inconsistencies regarding the persons or companies concerned by the investigative measures requested. Another example was where computer data corresponding to an IP address and a certain date and time were requested but there was no mention of the time zone to which the given date and time referred.

The evaluation team concluded that the amendment of the EIO form could facilitate the application of the EIO *(see Recommendation No 23).*

6.2. Language regime

Romania accepts EIOs issued in Romanian, English or French. A translation into Romanian is required for urgent measures.

During the on-site visit practitioners explained that, while in practice they accept EIOs in English in urgent cases, the Romanian translation must be sent afterwards. The evaluation team is of the view that Romania should consider accepting EIOs in English in urgent cases *(see Recommendation No 4).*

The following problems were encountered in relation to the language regime:

- an EIO was transmitted by the foreign judicial authority without a translation into Romanian because it was urgent, even when a translation was desirable;
- the translation was not provided in the English/French/Romanian version of the form, but as a separate text;
- there were cases where the EIOs received were accompanied by an inadequate translation, or where inconsistencies were noticed between the original and the translation;
- documents drawn up by the Romanian judicial authority in Romanian, as the executing authority, and sent to the foreign judicial authority, were returned for translation into the language of the foreign judicial authority.

Although most Member States accept a language, other than their official language, some indicated that they would accept only their official language. In some cases, it was necessary to translate the EIO or documents issued to execute the EIO into rare languages for which there were either no authorised translators in Romania, or they were difficult to find. In some cases, the support of Eurojust was sought.

The evaluation team considers that all Member States should accept languages other than their official language, and that at least English should be accepted in urgent cases *(see Recommendation No 12).*

In order to prevent difficulties at the translation stage, all Member States should ask their practitioners to use brief sentences and precise language when filling out the EIO, and make an effort to edit the text of the national order, instead of copying it *(see Recommendation No 13).*

It should be noted that, under Article 333(7) of Law No 302/2004, the Romanian authorities may require the EIO and the attached documents to be translated into Romanian in the case of Member States which have stated that they accept only EIOs submitted in their national language. The evaluation team is of the opinion that such provisions inherited from traditional MLA practice should not be allowed in the application of mutual recognition instruments.

6.3. Handling additional and conditional EIOs

In relation to additional EIOs, the authorities of another Member State have issued an EIO for, among other things, searches with the participation of representatives of the issuing Member State. During searches on Romanian territory involving the participation of prosecutors and police officers from the issuing Member State, it became necessary to carry out a search of another property, and for this purpose, according to the rules of the Directive and Art 332(3) of Law 302/2004, an additional EIO was required.

However, this was not possible in the case in question, because, in the issuing Member State, the EIO could be issued only by the head of the public prosecutor's office or with their approval, and there was not enough time to do so, given the operational situation. A less intrusive measure was chosen, i.e. an order to hand over the documents to the representatives of the building concerned, a law firm, and the necessary evidence was obtained.

The evaluation team believes that granting national members the power foreseen under Article 8(3) point b) and (4)[8] of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing Council Decision 2002/187/JHA ('Eurojust Regulation') would greatly facilitate the resolution of such urgent cases *(see Recommendation No 14).*

Problems have arisen in relation to conditional EIOs when the same EIOs have requested several investigative measures e.g. obtaining information from the commercial register on the history of the persons with power of representation, and subsequently hearing those persons. In practice, the executing authorities were not only asked to carry out investigative measures, but also to analyse the evidence obtained and to take further action based on it.

Such EIOs are quite excessive, especially as it is difficult for the executing authority – which is not familiar with the investigation – to decide with certainty which further measures are necessary and appropriate for the investigation. In one case, the chosen solution was to communicate directly with the issuing authority and to send partial documents for analysis, with a request to specifically indicate the further investigative steps to be taken.

[8] '(3) With the agreement of the competent national authority, national members may, in accordance with their national law:…
(b) order, request or execute investigative measures, as provided for in Directive 2014/41/EU of the European Parliament and of the Council.
(4) In urgent cases where it is not possible to identify or to contact the competent national authority in a timely manner, national members shall be competent to take the measures referred to in paragraph 3 in accordance with their national law, provided that they inform the competent national authority as soon as possible.'

Other practitioners reported cases where EIOs were split: evidence was requested from the territorial jurisdiction of different prosecution units. In these cases, the EIO was partially executed and then forwarded to the other prosecution units for them to handle the requested measures under their jurisdiction.

6.4. Orally issued EIOs

The Romanian authorities are of the opinion that there are written means of communication (in particular e-mail) that can be used just as quickly as verbal means of communication, and they do not therefore accept EIOs issued orally. The expert team also considers that an EIO transmitted verbally is not as clear or precise as a written EIO transmitted by expedited means of communication. Also, certain measures require the submission of documents (e.g. authorisations issued by a magistrate).

Under Article 1 of the Directive, the EIO 'is a judicial decision issued or validated by a judicial authority'. An orally issued EIO cannot bear the markings of the issuing judicial authority, allowing for its authenticity or validity to be verified. Furthermore, an orally issued EIO cannot comply with Article 5 of the Directive: the EIO set out in Annex A 'shall be signed and its contents certified for conformity and accuracy by the issuing authority'.

In addition, according to Article 7 of the Directive, the EIO may be transmitted 'by any means capable of producing a written record' and an orally issued EIO cannot fulfil this condition. The question of the admissibility of evidence obtained also arises when an EIO is issued orally.

Nevertheless, the Romanian practitioners do not exclude the possibility of verbal consultations to facilitate the execution of the EIO or for further clarification, usually followed by written transmission. The evaluation team considers the use of verbal consultations good practice *(see Best practice No 6.).*

Preparations have also been made in practice when the imminent arrival of such an EIO, usually in the process of being drafted or issued in the issuing Member State, has been announced by telephone or email, i.e. the persons assisting in the execution of the measures, usually the police units with material and territorial competence, have been informed in order to save time and so that they can execute the investigation measures as quickly as possible.

7. NECESSITY, PROPORTIONALITY AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE

7.1. Necessity and proportionality check

As the EIO is issued for the purpose of taking evidence, the verification of admissibility conditions (including proportionality, which is a legal requirement, in particular in the case of measures involving interference with fundamental rights) is the responsibility of the judicial authority when ordering or granting the request for the taking of evidence.

The issuing of an EIO is justified by objective circumstances (in particular the cross-border nature of the case and the need to carry out investigative measures with the assistance of the authorities of another State). Proportionality is assessed in relation to the seriousness of the offence under investigation and the seriousness of the criminal conduct itself. The need for an EIO is assessed in relation to the level of usefulness of the investigative measure requested or the gathering of evidence in order to reach the threshold necessary for a conviction.

Other criteria are the amount of the damage, the date of the offence, the prospects of the investigation, the costs, the evidence adduced to date, the impossibility of obtaining evidence by other means, the object of the evidence, if it produces more costs than potential benefits, the impairment or defeat of a right or the impairment of a legitimate interest.

As the issuing Member State, there have been cases where the Romanian authorities have been asked to justify the proportionality of the measure, in which case the difficulties have been resolved through consultations. As the executing state, the Romanian authorities generally interpret the EU rule as meaning that the assessment of the proportionality of the measure is the responsibility of the issuing authority, which is familiar with the case in its entirety and is the only authority in a position to decide on the admissibility of evidence and how it should be administered.

As the executing authority, the Romanian practitioners reported situations where the issuing authorities have restricted the investigative measures requested. Thus, instead of transactions corresponding to all bank accounts of interest (in the order of hundreds), the most important transactions – made through several dozen bank accounts – were requested. Proportionality was invoked by the requested authorities when the volume of measures to be carried out was high in relation to their available resources.

7.2. Recourse to a less intrusive investigative measure

The Romanian practitioners provided several examples where, as executing authorities another, less intrusive measure, was executed or where the solutions were found through consultation with the issuing authorities. For example, a search was requested at the premises of a large internet provider and the servers were to be seized. However, the internet provider had a reputation and a history of responding and cooperating with the Romanian authorities, so the alternative measure of obtaining computer data under their control was used, obtaining the desired evidence through a less intrusive measure. In another case, a search was requested at an address housing a block of flats. In this case, additional checks were made and the space to be searched was restricted. In another case, persons were requested to be heard as suspects, although they apparently had no connection with the criminal activity. Here, the issuing authority indicated that it was requesting to hear the persons concerned as witnesses and not as suspects.

During the on-site visit, practitioners stated that, instead of a search, they would always use a less intrusive measure without informing the issuing Member State if the desired evidence could be obtained that way. For example, a search is subject to judicial authorisation. If the search is to obtain certain documents, instead of seeking a judicial authorisation for the search, the prosecutor may order the documents to be made available at short notice. Prosecutors also said that they are not usually notified by the executing Member States when an alternative measure is applied to execute the EIO.

The evaluation team is of the opinion that all Member States, including Romania, should inform the issuing Member State if they decide to use an investigative measure other than that provided for in the EIO prior to executing the EIO, in line with Article 10(4) EIO Directive *(see Recommendations No 5 and 15).*

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACTS

8.1. Transmission of the EIO

The Romanian practitioners consider that the electronic transmission of EIOs is sufficient. Generally, secure means of communication are used by the competent departments, which ensure the security of data at national level for the judicial authorities. Some of the practitioners are of the opinion that encryption should only concern the information flow (communication between servers), the integrity of the data of the sender/receiver should be ensured by the competent authorities through security measures on their own servers.

The NAD indicated that the following conditions are recommended for the protection of electronically transmitted data:

- servers involved in the transmission of data via e-mail must accept encrypted connections;
- documents transmitted should be digitally signed (a valid digital signature gives the recipient a solid basis for believing that the message was created by a known sender (authentication), to be sure that the sender cannot deny having sent the message (non-repudiation), and that the message has not been altered along the way (integrity);
- if the encryption of the data sent by email cannot be verified, the data can be archived with a complex password (minimum of 12 characters). The password will be sent via another communication channel;
- in the case of data transmitted on optical media, the archiving method with a complex password (minimum of 12 characters) will be used;
- in cases where USB or HDD media is used, it will be encrypted with a complex password (minimum of 12 characters); the password will be transmitted via another communication channel.

The creation of the secure means of communication is in the process of being established at Union level. At present the use of e-EDES is voluntary: not all Member States, including Romania, are taking part in the pilot project and also not all authorities of the Member States that take part in the project are connected. Although the system is still in the pilot phase, it will undoubtedly enhance the efficiency of the EIO. The evaluation considers that all Member States, including Romania, should speed up the implementation of the e-EDES system, in order to ensure the secure transmission of data *(see Recommendations No 6 and 16).*

8.2. Direct contacts

In principle, after the transmission of the EIO, the communication between the issuing and executing authority is direct, facilitated or, in very urgent cases, duplicated by communication through the central authority, the EJN or Eurojust (coordination role) or redirected to the competent authority.

Although direct contact is the main rule under the implementing legislation, this is not always the case in practice.

At the DIOCT, for example, EIOs are usually communicated by the International Cooperation Service, where prosecutors are familiar with how to identify competent executing authorities, so there have not been any problems. At the NAD, it is not the prosecutor handling the case who is responsible for the issuance of the EIO but the Service of International Cooperation and Programmes. International Cooperation Services may be responsible for the translation of the EIOs, the identification of the competent authorities, sending the EIOs to the competent authorities and following up on the execution of the EIOs. Direct contacts require adequate knowledge of languages which, according to the practitioners, may be lacking in some prosecution services.

The Romanian authorities send EIOs through Eurojust in complex cases e.g. when there are several executing States, when execution needs to be coordinated with other measures or, to shorten the execution time in urgent cases. Article 21(5) of the Eurojust Regulation[9] provides for rules on informing Eurojust in complex cases *(see Recommendation No 17)*. The Romanian practitioners seem to comply with these provisions.

[9] 'The competent national authorities shall inform their national members without undue delay of any case affecting at least three Member States for which requests for or decisions on judicial cooperation, including requests and decisions based on instruments giving effect to the principle of mutual recognition, have been transmitted to at least two Member States, where one or more of the following apply:

a) the offence involved is punishable in the requesting or issuing Member State by a custodial sentence or a detention order, the maximum period of which is at least five or six years, to be decided by the Member State concerned, and is included in the following list:
   i. trafficking in human beings;
   ii. sexual abuse or sexual exploitation including child pornography and solicitation of children for sexual purposes;
   iii. drug trafficking;
   iv. illicit trafficking in firearms, their parts or components or ammunition or explosives;
   v. corruption;
   vi. crime against the financial interests of the Union;
   vii. forgery of money or means of payment;
   viii. money laundering activities;
   ix. computer crime;
b) there are factual indications that a criminal organisation is involved;
c) there are indications that the case may have a serious cross-border dimension or may have repercussions at Union level, or that it may affect Member States other than those directly involved.'

Generally, when EIOs are transmitted through the central authority, the Romanian authorities indicate that there are several authorities involved; they coordinate directly with each other. In other cases, Eurojust coordinates.

The Romanian practitioners reported cases, where they encountered difficulties in identifying the competent executing authority, especially in the early stages of EIO application. The Romanian authorities called on the assistance of the central authority, the EJN contact points, Eurojust or the liaison magistrates. The EJN Atlas is also known and is used in practice.

There are situations, mainly during the investigation, where the central structure of the Prosecution Office attached to the High Court of Cassation and Justice, the DIOCT or the NAD undertake the coordination of the territorial offices. In other cases, judicial authorities applied the rules of the CCP governing the prorogation of jurisdiction, so that cases were joined to a single judicial authority (see also Chapter 4.3).

There were problems during the initial period of EIO application, leading to delays in execution, as some authorities were returning the EIO with the indication that they would only partially execute the EIO and, for the other measures, the EIO had to be forwarded to other competent authorities in the same Member State. However, practitioners who are more familiar with the requirements of the executing Member States communicate the order directly to all competent authorities, or, in urgent cases, the order is sent via Eurojust, which facilitates the transmission of the EIO to all competent executing authorities in the executing Member State.

9. RECOGNITION AND EXECUTION OF THE EIO AND FORMALITIES

9.1. Recognition and execution in line with the mutual recognition principle

The EIOs received by the Romanian authorities are handled in a practical way. The Romanian authorities confirmed that no separate decision is taken on the recognition of an EIO. Normally, after sending an Annex B, the Romanian authorities decide on the execution of the EIO. The evaluation team agrees with this approach; no separate decision on recognition is needed in practice, nor is it foreseen by the Directive.

Article 5 of the Directive does not require the underlying judicial decision of the competent authority of the issuing Member State to be attached to the EIO. In their replies to the questionnaire, the Romanian authorities stated that, in general, besides the EIO, the transmission of the judicial authorization in the issuing Member State is also requested. Before the evaluation visit, this requirement appeared to be questionable and not in line with the principle of mutual recognition.

During the discussions with Romanian judges, it became obvious that this requirement cannot be deemed general practice, but it does happen in some individual cases. And indeed, in some situations, it would be advisable – purely for information – to attach the underlying judicial decision to the EIO. In cases where the underlying judicial decision is described accurately in the EIO, there is no need for the underlying judicial decision to be attached. Furthermore, the judges also stated that, in urgent cases, they can forego the underlying judicial decision, or at least it does not have to be translated as a whole. The evaluation team was pleased with the flexible and pragmatic attitude of the Romanian judges.

9.2. Compliance with formalities

In general, the evaluation team considers it vital for the executing authorities to respect the formalities described by the issuing authorities, in order to ensure the admissibility of evidence (*see Recommendation No 18).*

The Romanian practitioners reported that they have not had any problems in complying with the formalities as executing authorities. In cases where section I of the EIO form is empty, the Romanian authorities apply Romanian procedural criminal law when executing the EIO.

Nor have the Romanian issuing authorities faced any significant issues relating to the admissibility of evidence stemming from non-compliance with certain strict formalities in Romanian legislation. Probable issues have been anticipated by the Romanian issuing authorities, and the authorities in the executing Member State have been informed accordingly.

The procedural rules for the hearing of a person in detention are a good example of strict formalities in Romanian legislation. When hearing a person in detention, the assistance of a lawyer is mandatory under Romanian law and the person cannot waive their right to it. If this formality is ignored, their testimony cannot be used as evidence. To avoid any issues with the admissibility of evidence, it is necessary for the Romanian authorities to underline the need for this formality.

In one specific case, a suspect detained in another Member State had to be heard. In accordance with Romanian law, in such cases legal assistance is mandatory, but this was not the case under the law of the Member State where the person was detained. Consequently, it was not possible to appoint a lawyer *ex officio* in the Member State affected.

The solution in this case was to issue an EIO for the hearing of the suspect, and to request the authorisation of the presence of the Romanian prosecutor, alongside the lawyer already appointed. It was not instantly clear whether the Romanian lawyer could perform his duties in the other Member State. In this specific case, no additional formalities had to be completed as the legal assistance provided by the Romanian lawyer was rather limited.

The Romanian judges stated that, since the Romanian legal framework is rather permissive, in a reverse situation they could have appointed a public defender.

10. RULE OF SPECIALITY

10.1. Rule of speciality in the Directive and in Romanian legislation

The Directive does not contain any particular provisions on the rule of speciality, whereas in other mutual recognition instruments e.g. the EAW, the rule of speciality is explicitly provided for. There are different opinions regarding the interpretation of the rule of speciality among the Member States, and opinions may also vary among the practitioners in a given Member State. Should the absence of a specific provision in the Directive, together with the fact that the Directive is based on mutual recognition, be interpreted as permission to use evidence without limitations? Or is the rule of speciality still considered a fundamental part of cross-border cooperation between the Member States? Both views could probably be argued. Both the Romanian practitioners and the evaluation team consider that it is both necessary and useful to clarify the application of the rule of speciality during the revision of the Directive *(see Recommendation No 23).*

Romania has transposed the Directive mainly by copying the text of the Directive with minor adjustments into national legislation. Nevertheless, Article 337(6) of Law No 302/2004 on international judicial cooperation in criminal matters on transfer of evidence refers to Article 243[10] of Law No 302/2004 on the rule of speciality. The rule of speciality is also mentioned e.g. in Article 335 as a ground for non-recognition or non-execution, stemming from the mutual legal assistance regime.

During the evaluation visit, the representatives of the Ministry of Justice stated that the legislator – and seemingly also the practitioners – consider the EIO as a special form of MLA. The rule of speciality – which serves as a protection measure – is an integral part of the MLA regime. Since the MLA system was working well in practice, the legislator also wanted to keep the integral parts of it in the application of the EIO (see also Chapter 3).

The Romanian authorities, both when acting as the issuing or executing authority, are bound by national legislation and therefore apply the rule of speciality provisions in the context of the EIO.

However, there is consensus in the evaluation team: the EIO is not a variant of the MLA but is an instrument of mutual recognition. Consequently, the Romanian legislator should have had a higher level of ambition than merely creating a new MLA form to be filled in. The Romanian legislator is invited to reconsider its approach to the rule of speciality *(see Recommendation No 7).*

[10] Article 243 of Law 302/2004:

(1) 'The evidence or information obtained by the Romanian judicial authorities based on a certain request for international legal assistance executed by the authorities of other countries cannot be used in other criminal cases than that specified in the request, without the prior consent of the competent authority of the requested State.

(2) The provisions of paragraph (1) shall also apply to the evidence or information obtained by the Romanian judicial authorities based on some requests for international judicial assistance executed by the Romanian authorities. The judicial authority which has executed the request or the central authority, as appropriate, shall make a mention in this respect, on the date of transmission of the evidence or information.'

10.2. The rule of speciality in practice in Romania

Romanian issuing authorities always seek the consent of the executing Member State if the evidence obtained through the EIO is needed in other proceedings. There is one exception to the notion of 'other proceedings': cases which are administratively separated from the case in which the EIO was issued are not considered as new proceedings and the rule of speciality is therefore not be applicable.

In the replies to the questionnaire, the Romanian authorities repeatedly mentioned issues with admissibility of evidence linked to the rule of speciality. The legality of evidence is examined in detail by the preliminary chamber. It is therefore understandable that Romanian prosecutors request the consent of the executing Member States and do not take any risks when it comes to the admissibility of evidence. Moreover, the application of the rule of speciality by the Romanian authorities has not led to any major difficulties in cross-border cooperation.

During the evaluation visit, the Romanian practitioners displayed a very positive and flexible approach to the application of the EIO. The Romanian authorities assured the evaluation team that, when applying the specialty rule, they do not require long or detailed descriptions, but that a simple request with a short description of the facts and applicable law usually suffices. If, after the execution of an EIO in Romania, an issuing authority needs the evidence gathered to be used also in other criminal proceedings, a request must be sent to the Romanian authorities; it may be sent by email without having to issue Annex A. Such requests have normally been accepted by the Romanian executing authorities. This simple method is sufficient to comply with the rule of speciality and to avoid possible problems related to the admissibility of evidence.

In accordance with Article 292 of the CPC, if it discovers that other offences have been committed, the prosecutor is responsible for informing the authorities in the issuing Member State. By communicating any such findings, the Romanian authorities ensure that the issuing authority can adjust the description of the facts in the EIO, and therefore avoid issues arising in relation to the rule of speciality.

In practice, when the issuing Member State seeks consent to use evidence obtained through an EIO in other proceedings, the Romanian authorities verify if there are fundamental rights issues e.g. whether the request would prejudice a national investigation or whether the requesting authority's legitimate interests are justified. Romania informed the evaluation team that, in practice, following the above analysis, consent was granted in all cases.

This application of the rule of speciality may come as a surprise for Member States that have taken a different view. It is therefore recommended that the executing Member States inform the issuing Member States about the rule of speciality. This information could be included e.g. in Annex B *(see Recommendation No 7 and 19)*.

There may be situations where the evidence obtained through the execution of the EIO is needed also in a domestic investigation; or where a separate investigation should be opened in the executing Member State, or the evidence is needed in the framework of a JIT. The Romanian authorities confirmed that such situations had arisen. The Romanian authorities informed the issuing Member State about an investigation opened based on the evidence gathered by means of an EIO and where they had successfully sought the consent of the issuing Member State. In some of the cases, the consultations had led to a JIT being set up.

The Romanian authorities systematically inform the issuing Member State about the opening of a new investigation. The evaluation team considers this a useful practice *(see Best practice No 7)*, which leads to a more effective and coordinated fight against crime.

11. CONFIDENTIALITY

The Romanian practitioners have not reported any issues related to confidentiality. The Romanian authorities respect the confidential nature of the investigation (Article 341 of Law No 302/2004) both when acting as the issuing and executing authority. This obligation applies both to the existence, as well as to the content, of the EIO. Also, if an issuing Member State indicates the need for certain formalities which aim to maintain confidentiality, the Romanian authorities comply. If a Romanian executing authority, is unable to maintain confidentiality in a particular case, the issuing authority is duly informed.

In situations where the person affected by the investigative measure requests access to the EIO case file from the Romanian executing authority, this is either forwarded to the issuing authority or decided upon by the Romanian executing authority after consultation with the issuing authority. The evaluation team agrees with this practice as the issuing authorities have the best overall picture of the investigation and are best placed to decide on the extent of confidentiality.

There are investigative measures where it is mandatory to inform the subject affected by the measure, however it may be possible to postpone provision of this information. In such cases, the prosecutor consults the issuing authority about the need to postpone.

Confidentiality issues may arise in situations where Romania is the issuing Member State. It may be important to take into account the interests of the executing state, if there is an ongoing investigation which is linked to a Romanian investigation. One problem that may arise with regard to the obligation to disclose the EIO in the course of the criminal investigation is when the defence counsel makes a request to be present at any procedural act in the case.

Since both Romanian law and practice treat the EIO as an act in domestic criminal proceedings, the same rules apply, meaning that the suspected or accused person has the right to consult the file, including the content of the EIO throughout the criminal proceedings. This right may not be denied, but, during the investigation, this right could be restricted on appropriate grounds.

However, at the trial stage, since the person cannot be convicted on the basis of documents to which they have not had access, the accused person must have access to the entire case file, including the content of the EIO.

In conclusion, there do not seem to be any concerns about the balance Romania has struck between the interest in maintaining the confidentiality of the investigation and the right to a fair trial.

12. GROUNDS FOR NON-EXECUTION

As mentioned in Chapter 9.1., no separation is made between recognition and execution. In practise, Annex B is first sent to confirm receipt, and then Romania executes the EIO. This means that no formal decision is made regarding recognition. Therefore, only the grounds for non-execution were of interest during the evaluation.

Article 11 of the Directive lists the grounds for non-recognition and non-execution. The number of cases of non-execution are low across Member States, but the Romanian practitioners reported examples of non-execution both as issuing and executing authorities. Romanian practitioners also stated that a consultation procedure should be launched whenever the existence of possible grounds for refusal under Article 11(4) of the Directive arises.

The Romanian authorities stated that the most common reasons for non-execution are natural ones. However, for example, if the person concerned is no longer within the territory of the executing state, or if the measure requested cannot be executed for some reason, it is not question of refusal within the meaning of Article 11 of the Directive.

As an issuing authority, Romanian practitioners have faced cases of non-execution, which are difficult to place under an explicit ground for non-execution as listed in Article 11 of the Directive:

- the measure requested by the EIO concerned banking information relating to the victim, and this measure was considered too intrusive by the executing Member State, thus not meeting the requirement of proportionality;
- in a case where the EIO was issued for the identification of assets and accounts, the executing Member State believed that the information could be gathered using police channels;
- the execution of an EIO was denied due to insufficient bank account details. It is not known whether Romanian authorities had been consulted before the non-execution;
- the measure requested would not have been available in a similar domestic case (see Article 11(1) point c) of the Directive).

12.1. Returning EIOs due to formal reasons or impossibility of execution

According to the Romanian practitioners, there have been cases where the execution of the EIO was not refused, but Romanian prosecutors had found it impossible to execute them. As a result, the EIOs have been returned to the issuing authorities. It should be noted that many reported EIOs, where Romania as executing state had 'returned [the EIO] to sender', were caused by poor translations or shortcomings in basic completion of Annex A.

The most frequent reasons for returning EIOs, due to formal reasons, were the following:

- missing translation;
- inconsistencies between the original version and the Romanian translation caused by very poor translation quality;
- EIOs where the Romanian translation was not included in Annex A, but was found in a separate document. It is not clear why the issuing authority did not use Annex A in Romanian, which can be found in the EJN Atlas;
- the description of the facts of the case was missing and section G was incomplete;

- an EIO requesting house searches where section G referred only to 'the judicial decision approving the measure in [the] issuing state' and the underlying judicial decision was not attached to the EIO;
- additional essential information was requested in order to establish the competent executing authority and the information was not provided within the given deadline;
- the investigative measures to be carried out were not indicated;
- the person affected could not be identified because the relevant sections were not completed;
- EIOs were issued that affected a very large number of people, requiring a very long time to search the databases and identify the competent authorities, leading to extra costs. In other words, the issuing authorities were passing the investigation onto Romania.

In such situations, the issuing authority was instructed to properly complete all the fields of the order with all known information and to address the EIO directly to the executing authorities.

The Romanian practitioners also informed the evaluation team that in the case of a request for the execution of an investigative measure that is not known under Romanian law, they should consult with the issuing authority, in order to identify an alternative measure. If the consultations do not lead to any result, the EIO is found to be impossible to execute.

12.2. Application of the grounds for non-execution listed in Article 11 of the Directive

The Romanian practitioners encountered cases where the dual criminality test was invoked, in the case of traffic offences which are not prosecuted in all jurisdictions. No cases were reported where the dual criminality test was invoked in relation to the investigative measures listed in Article 10(2) of the Directive.

There have been cases where Article 11(1) point d) on ne bis in idem was applied, in which the execution of an EIO was refused because the person concerned had been already heard as a suspect in the same criminal proceedings, the person was examined as a suspect rather than as a witness, or a person was already heard as a suspect through another EIO.

There have been cases where the measure was not available under national law for a similar offence (in the sense that it could not have been ordered in a similar domestic case), in which case either an examination of the possibility of an alternative measure was requested or, as a last resort, it was found impossible to execute the EIO.

No cases were reported where the execution of the EIO was refused by the Romanian authorities based on Article 11(1) point f) of the Directive, relating to Article 6 TEU and the Charter of Fundamental Rights of the European Union. However, there were more examples where Romania acted as an issuing Member State:

- the execution of an EIO issued for the hearing of a defendant via videoconference was refused, as in accordance with the legislation in the executing Member State, the participation of the defendant in the trial by videoconference would breach the right to a fair trial;
- the person supposed to be heard was a victim in the criminal proceedings but was a suspect in criminal proceedings in the other Member State;
- the execution of an EIO issued for temporary transfer was refused due to poor detention conditions.

The examples provided by the Romanian authorities confirmed, again, how difficult it can be to ensure the presence of the accused person during the main trial. Especially, much more flexible use would be made of videoconferences than has been the case thus far (see Chapter 19.2). The evaluation team considers that the legislator should clarify the implementation of the Directive to ensure the attendance of the accused person during the main trial *(see Recommendation No 23).*

13. TIME LIMITS

The Directive establishes certain time limits for the recognition and execution of an EIO. Celerity should be considered as one of the key points when examining the effectiveness of the application of the EIO. This aspect has been understood correctly by both the legislator and practitioners in Romania.

The evaluating team has not identified any cause for concern regarding time limits when Romania is the executing Member State. According to the Romanian practitioners they have usually been able to meet the deadlines, even in cases where the issuing authority – for justified reasons – requested a shorter deadline.

In exceptional cases, where the EIO contained numerous or time-consuming investigative measures, the time limits could not be complied with for objective reasons. In such cases, the issuing Member State is informed about the delay, and a consultation procedure takes place. Occasionally, where the time limits could not be complied with, the Romanian authorities have sent partial execution documents and carried out consultations with the issuing authority for the rest of the requested measures.

In the experience of the Romanian practitioners, the issues regarding deadlines are centred around certain Member States, which often do not inform the issuing authority of the delay or provide information as to the reason for the delay. The Romanian practitioners underlined the possibility of consultations, of providing reasons for requesting short deadlines. The evaluation team wishes to underline the importance of respecting the deadlines and informing the issuing Member State of delays and also of providing the reasons for the delay *(see Recommendation No 20).*

The experience of the Romanian authorities as issuing authorities would indicate that time limits are generally complied with, even in urgent cases. There have been situations where time limits are exceeded for objective reasons. The Romanian authorities stated that the support of central authorities, EJN or Eurojust is sometimes sought from the outset in case of an urgent EIO, in order to ensure its timely execution.

The evaluation team is of the opinion that section B should be used only with caution and only in cases in which there is real necessity for urgency. Romanian practitioners, appropriately, consider the following criteria:

- the risk of disappearance of evidence;
- imminent danger to an individual;
- the risk that the person concerned/witness will not be found otherwise;
- the time limits indicated by the issuing authority;
- the inherent urgency of certain measures based on the nature of the measures;
- other defendants in custody;
- preventive measures ordered in the case;
- if the statute of limitations is due to expire;
- the time of the offence;
- the duration of the proceedings;
- judicial authorisation limited in time for a special investigative measure.

14. LEGAL REMEDIES

Section J in Annex A is typically left empty, if no legal remedies have been applied in the issuing Member State. This practice is in accordance with the Gavanozov judgment (Case C-324/17) issued by the Court of Justice of the European Union ('CJEU'). Therefore, the person affected by the requested measure is not necessarily aware of legal remedies in the issuing Member State. During the on-the-spot visit, judges stated that section J in the EIO sheet is also, in practice, considered as the business of the issuing state, it would contravene the very idea of mutual recognition if the executing Member State would start to examine the applicable legal remedies in the issuing Member State.

In its judgment Gavanozov II (CJEU, case C-852/19) in 2021 the CJEU declared that Article 14 of the Directive must be interpreted as meaning that it opposes the rules of a Member State issuing an EIO which does not provide for any remedy against the issuance of an EIO having as its object the carrying out of searches and seizures as well as the organisation of a witness hearing by videoconference. In the majority of the Member States, including Romania, there is no legal remedy against the issuance of an EIO.

During the evaluation visit, the Romanian authorities confirmed that during the investigation, under Article 336 of the CPC, it is possible to lodge a complaint against the acts of and measures taken by the prosecutor including the decision to issue an EIO, or to close the case.

The right to make a complaint is available for anyone whose legitimate interests have been harmed. The complaint will be dealt with by the hierarchically superior prosecutor. Nevertheless, when the prosecutor decides to bring the case to court, the case is first submitted to the preliminary chamber, where the judge will verify the clarity of the accusation and ensure the legality of the evidence gathered. In case the preliminary chamber finds that the evidence was gathered illegally, the evidence will be excluded.

If the issuance of an EIO is necessary during trial, it is ordered by a resolution of the court, which can be appealed along with the merits of the case.

In conclusion, the Romanian authorities are convinced that the Gavanozov II judgment of the CJEU has no real effect in Romania as legal remedies against the issuance of an EIO have been already ensured in Romanian legislation.

During the execution of an EIO, the decisions taken by the Romanian judicial authorities are subject to appeal under the CPC, and in accordance with Article 338(1) of Law 302/2004, the same conditions and deadlines are to be applied as in domestic cases. The substantive reasons for issuing the EIO may only be challenged in an action brought before the issuing authority in accordance with Article 338(2) of the CPC.

The Romanian authorities use a search and a hearing during the investigation as an example to describe the use of the above-mentioned remedies. Similarly to national cases, a search must be authorised by a court before being carried out. The authorisation itself cannot be subject to appeal, but the manner in which the search is conducted can be subject to complaint against the acts of the prosecutor. Similarly, the manner in which the hearing was conducted by the prosecutor, can be the subject of a complaint against the acts of the prosecutor by any person whose legitimate interests were harmed.

Furthermore, if the legitimate interests of any person are harmed during the execution of any investigation measure, the person has the right to initiate a separate legal action. As a general remark, the legal remedy available for the measure itself is available also in respect of the manner in which it is to be fulfilled, namely for the decision to have it executed via an EIO.

The representatives of the Bar Association stated that the rights of the defendant should be strengthened in the context of the EIO. Compared to domestic cases, measures relating to the execution of an EIO move very quickly, where, in practice, a lawyer may have 30 minutes to prepare for a hearing with his or her client. Furthermore, the lawyers have minimal information about the content of the EIO itself, which makes the preparation even more difficult.

The Romanian authorities and also the representatives of the Bar Association were of the opinion that the notion of legal remedy must be interpreted in a broader sense, under the wider concept of the right to judicial protection within the meaning of Article 13 of the European Convention of Human Rights and Article 47 of the Charter of Fundamental Rights. However, opinions differ amongst prosecutors and legal counsels in terms of how well legal remedies, in a broader sense, are working in Romania.

15. TRANSFER OF EVIDENCE

Romania accepts EIOs signed in a traditional way and with an electronic signature. In general, Romanian judicial authorities consider the electronic transmission of evidence to be sufficient. At national level, secure means of communication are used to ensure the security of data. The NAD in particular has indicated specific conditions (e.g. encryption, strong passwords etc.) to secure authentication, non-repudiation and integrity of the evidence transmitted.

During the on-the-spot visit, the practical challenges relating to the transfer of electronic evidence were also discussed. Electronic data packages may contain excessive amounts of large files. On the subject of the transmission of intercepts, both the DIOCT and the NAD (including police) have sufficient technical infrastructure enabling secure and fast transmission of intercepts up to 75 gigabytes of data. This channel of communication (DIOCT and the NAD) is in use with certain other Member States with compatible systems. The evaluation team considers it promising that prosecutors in Romania, not only police, have such infrastructure available, as the situation does not seem to be as developed in other Member States *(see Best practice No 8.)*

The role of cross-border electronic evidence is increasing in accelerating pace, and more technical means are needed to help practitioners dealing with criminal proceedings in Member States. The technical solutions should be consistent at EU level. Once Member States have joined the e-EDES system, it will resolve some practical issues regarding transfer of evidence. The evaluation team hopes that all Member States will promptly join e-EDES, although it is clear that e-EDES will not solve all the current issues, including the transfer of larger files.

16. OBLIGATION TO INFORM - ANNEX B

In accordance with Article 12 of the Directive, the use of Annex B is mandatory to inform the issuing Member State about the receipt of the EIO. It also enables the issuing authority to, *inter alia*, have direct contacts with the executing authority and have information on the time limit.

The Romanian authorities reported cases where they have not received Annex B. In such cases, the executing authority was contacted directly, via EJN, Eurojust or the central authority. During the evaluation visit, it became clear that some Member States never send Annex B. Romanian practitioners also reported that another Member State is using Annex B to inform about potential delays in terms of the execution of EIO, which is considered a useful practice by Romanian authorities.

Annex B is not necessarily sent when Romania is the executing Member State. The main reason is typically merely human oversight. However, some more complex situations can occur. For example, when the EIO has been redirected within Romania, the executing authorities to whom the EIO is redirected do not necessarily send the Annex B to the issuing authority. This may be linked to the strengthened role of central authorities in Romania.

Romanian practitioners consider that Annex B may contain important information but is not always translated. The lack of translation might lead to the loss of important information. Therefore, Romanian authorities suggest that Annex B could contain a paragraph entitled: 'Use this section for an important message to the issuing authority, issued in its language, even using an unofficial translation'. This would encourage the executing authority to convey the important message in a way that is certain to be received by the issuing authority. Using English in Annex B would also solve this problem.

Annex B is an important part of the application of the EIO, for example, in creating direct contacts between the issuing and executing authorities The evaluation team strongly recommends that Romania and all other Member States systematically send an Annex B *(see Recommendations No 8 and 21).*

17. COSTS

Both as an issuing and executing Member State, the Romanian authorities have faced situations where the costs involved in providing the measure have been disproportionate. In general, these situations were solved through consultations. There were no difficulties experienced when conducting consultations with the authorities of another Member State as regards whether and how costs related to the execution of an EIO could be shared and whether the EIO could be amended. In the latter case, proposals for amendment were more likely to have been prompted by the fact that, in its original form, enforcement would have involved more time and human resources.

There was a case where the executing Member State proposed to share the costs related to the costs of a complex expert report.

The Romanian authorities have been asked to pay legal fees for a lawyer appointed at the request of the Romanian party, where assistance from a lawyer is not provided for by the law of the executing State in a similar domestic case. In view of the need to ensure the admissibility of evidence in criminal proceedings pending in Romania, the payment of costs was accepted.

There have been cases where, in a similar domestic case, the taking of evidence would have been considered disproportionate to the offence committed (in terms of gravity, the circumstances in which it was committed, which would have been sufficiently proven in other ways). In general, based on the premise of the issuing authority's discretion as to the proportionality of evidence, the tendency has been towards execution rather than refusal of execution.

The criteria for considering costs to be exceptionally high must consider the manifest disproportion between the damage or harm caused by the offence and the costs that would be incurred in carrying out the investigation, the seriousness of the offence committed, the possibility of recovering the damage and legal costs, etc. Exceptionally high costs may include, for example, complex forensic work, police operations or extensive surveillance activities carried out over a long period of time.

One of the responding courts indicated that it considered costs of more than EUR 3 000 to be exceptionally high. From the perspective of the DIOCT, exceptionally high costs could relate to assets requested to be seized for evidentiary purposes in accordance with Article 32 of the Directive, and because of the characteristics of their storage and management would involve exceptionally high costs, e.g. an aircraft.

In the opinion of the Romanian authorities, the cost of appointing a lawyer for compulsory legal aid cannot be considered an exceptionally high cost to be borne by the issuing Member State.

Romanian practitioners reported cases, both as issuing and executing authorities, where the execution of the EIO was delayed due to exceptionally high costs. There have also been cases where, given the risk of refusal to take evidence was deemed essential, the execution of the investigative measure was preferred, under conditions that could be agreed upon, or ultimately at the expense of the executing authority.

18. COORDINATION OF THE EXECUTION OF DIFFERENT EIOS IN DIFFERENT MEMBER STATES AND/OR IN COMBINATION WITH OTHER INSTRUMENTS

Romanian practitioners reported that cases in such parallel or linked proceedings were ongoing in several Member States, and searches and/other investigative measures had to be executed simultaneously in a single action day. Such cases have occurred in practice, especially in the DIOCT's area of competence, which involves combating crimes committed by groups and/or of a serious nature. Therefore, such situations, where cooperation and coordination with several states is required, is common practice. The support of Eurojust is used and in almost all cases the challenges are overcome.

During the evaluation, Eurojust provided statistics from the Eurojust Case Management System in relation to cases dealt with by Eurojust. It included information on: (i) the total number of EIO-related cases at Eurojust; (ii) the number of bilateral and multilateral cases involving the Romanian Desk at Eurojust; and (iii) the number of EIO-related cases in which the Romanian Desk was either 'requesting' or 'requested'.[11]

[11] 'Requesting' means that a Romanian national authority asked the Romanian Desk to open a case at Eurojust vis-à-vis one or more other Member State; 'requested' means that another Desk at Eurojust opened, at the request of its national authority, a case vis-à-vis the Romanian Desk.

EIO – all Eurojust	2017	2018	2019	2020	2021	2022	Total
Bilateral cases	51	561	988	1 295	1 900	2 295	**7 090**
Multilateral cases	37	231	338	462	415	412	**1 895**
Total cases	**88**	**792**	**1 326**	**1 757**	**2 315**	**2 707**	**8 985**

EIO - Romania	2017	2018	2019	2020	2021	2022	Total
Bilateral cases	3	45	99	163	202	178	**690**
Multilateral cases	1	50	46	80	64	61	**302**
Total cases	**4**	**95**	**145**	**243**	**266**	**239**	**992**

EIO - Romania	2017	2018	2019	2020	2021	2022	Total
Requesting cases	0	40	55	123	130	101	**449**
Requested cases	4	55	90	120	136	138	**543**
Total cases	**4**	**95**	**145**	**243**	**266**	**239**	**992**

During the on-site visit, practitioners from the DIOCT said that, in cases where the criminal activity involves several Member States, they organize a coordination meeting with Eurojust to identify the best method of cooperation. The evaluation team considers this as best practice *(see Best practice No* 9*).*

19. SPECIFIC INVESTIGATIVE MEASURES

19.1. Temporary transfer

In general terms, Articles 22 and 23 of the Directive regulate the temporary transfer to the executing Member State of persons held in custody, for the purpose of carrying out an investigative measure: the provision is aimed, in line with the purposes of the Directive, at regulating the temporary transfer of detainees, where their presence is necessary for the purpose of carrying out an investigative act.

This makes it possible to clearly distinguish the function of the temporary transfer, pursuant to Articles 22 and 23 of the Directive, from the temporary surrender aimed at participation in a trial (for the purposes of prosecution, including bringing that person before a court for the purposes of standing trial) requiring an EAW in accordance with Framework Decision 2002/584/JHA, as also referred to in recital (25) of the Directive.

The temporary transfer of persons held in custody is a specific investigative measure transposed in Articles 343 and 344 of Law No 302/2004 in line with Articles 22 and 23 of the Directive.

In accordance with Article 250(11) to (14) of Law No 302/2004, it is mandatory for an arrest warrant to be issued for the detention of the transferred person for the necessary duration, therefore there have been no problems in ensuring that the person temporarily transferred to Romania is held in custody during the transfer.

There is no special procedure to obtain the consent of the person, but the lack of consent may result in non-execution in accordance with Article 343(2) point b) of the Directive and also in line with Article 22(2) point a) of the Directive.

Article 250(5) of Law No 302/2004 provides that the judicial decision concerning the transfer shall be communicated to the Ministry of Justice and the Ministry of Administration and Interior. The Romanian authorities specified that this is purely for administrative purposes and practical issues connected to the execution of the transfer.

19.2. Hearing by videoconference

Hearing by videoconference (Article 24 of the Directive) is transposed under Article 345 of Law No 302/2004. Romanian practitioners emphasised that this measure is often used in both the investigative and trial phases, saving time and cost.

In accordance with Romanian law, the execution of the measure takes place at the seat of the prosecutor's office/court, depending on the phase of the criminal proceedings. This measure is taken in order to ensure the full legality of the hearing and the respect of fundamental rights. Romanian practitioners consider that the executing authority executes the measure according to its domestic law, under the conditions of legality and admissibility regulated by domestic law, with respect for fundamental rights and procedural guarantees (aspects which are not subject to the control of the issuing authority).

The Romanian authorities have clarified that from a practical point of view, almost every tribunal has the necessary equipment to establish a videoconference connection. After the experience of the difficulties related to COVID-19, many solutions were adopted in domestic cases as well, such as the use of tablets in courtrooms not equipped for videoconference and the use of WhatsApp for people suddenly affected by COVID-19. These solutions are used only for witnesses, in the case of hearings or the participation of defendants where all formalities have been respected.

Representatives from the judiciary who were interviewed during the evaluation visit reported that during the pandemic, WhatsApp or Skype have been used, without issuing an EIO, allowing witnesses to participate in the trial with their consent, even if they were located in another Member State. However, this practice was discontinued after the restrictions due to the pandemic were lifted.

Romanian practitioners encountered refusals on two occasions concerning a hearing held by videoconference of a defendant at trial. The executing Member States refused to execute the EIO because, in accordance with their domestic legislation, the participation of the defendant in the trial through videoconference would breach the right to a fair trial under the fundamental principles of their national law, even if the defendant agreed to participate in videoconference (see also Chapter 12.2.). However, several other countries execute similar EIOs, some Member States only for the actual hearing of the defendant, while others also for the participation of the defendant in the whole trial during several hearings[12].

No significant problems relating to the procedural status of the person to be heard have been identified by the Romanian judicial authorities. Also, Romanian law allows for a suspect to be heard via videoconference. The fact that the suspect did not consent to a hearing by videoconference cannot amount to a refusal of the executing authority, but rather qualifies as an impossibility of the execution of the EIO.

As a general rule, Romanian authorities would also execute an EIO for the purpose of hearing and participation of the accused person throughout the main trial leading to a conviction, but only if the EIO is specifically related to take evidence during the trial.

[12] A request for a preliminary ruling is currently pending before the CJEU, seeking a clarification precisely on whether an EIO can be issued to ensure the participation of the defendant at trial, see Case C-285/23 *Linte*.

19.3. Hearing by telephone conference

Law No 302/2004 does not provide for the possibility of a hearing by telephone conference, neither is a similar provision contained in the CPC.

The Romanian authorities clarified that if they receive an EIO issued for a telephone conference, the execution will not be refused; however, an alternative, such as a video conference, would be offered. In their opinion, the evidence gathered by way of a telephone conference would conflict with the fundamental principle of the immediacy of the criminal proceedings, and it would be a specific case for recourse (legal remedy), as it would constitute a violation of procedural guarantees. Another important practical aspect is that telephone conferences do not provide certain tools to identify the contacted person.

In practice, Romanian authorities could talk to victims on the phone, before drafting a memo on the discussion, but this would never be qualified as a statement, without visual contact with the person affected. This memo can, however, be used as evidence, specifically, in cases where identity needs to be protected.

The current legislation does not provide for a transposition of Article 25 of the Directive but in the opinion of the evaluation team, the possibility of hearings by telephone conference should be provided for in the legislation, at least for experts and witnesses (s*ee Recommendation No 9).*

19.4. Covert investigations

19.4.1. Relevant Romanian law

Article 148 of the CPC provides for the possibility of using undercover investigators and collaborators. The use of undercover investigators and collaborators means the use of a person with an identity other than their own in order to obtain data and information on the commission of a crime.

Authorisation to use undercover investigators may be ordered - ex officio or at the request of the criminal investigation body - by the prosecutor supervising or conducting the prosecution for a period of up to 60 days if:

a) there is reasonable suspicion of the preparation or commission of an offence listed in Article 148(1) point a)[13];
b) the measure is necessary and proportionate to the restriction of fundamental rights and freedoms, having regard to the specific features of the case, the importance of the information or evidence to be obtained or the seriousness of the offence;
c) the evidence or the location and identification of the offender, suspect or accused person could not be obtained in any other way or obtaining it would involve difficulties that would prejudice the investigation or the safety of persons or property of value is at risk.

[13] Article 148(1) point a) refers to offences against national security provided for in the Criminal Code and other special laws, as well as in the case of drug trafficking offences, offences against the doping substances regime, carrying out illegal operations with precursors or other products likely to have psychoactive effects, offences relating to non-compliance with rules on arms, munitions, nuclear materials, explosive materials and precursors of restricted explosives, trafficking in and exploitation of vulnerable persons, acts of terrorism or acts similar to terrorism, terrorist financing, money laundering, counterfeiting of coins, stamps or other valuables, forgery of electronic payment instruments, in the case of offences committed using computer systems or electronic means of communication, extortion, unlawful deprivation of liberty, tax evasion, in the case of corruption offences, offences related to corruption offences, offences against the financial interests of the European Union or other offences for which the law provides for a term of imprisonment of seven years or more or where there is a reasonable suspicion that a person is involved in criminal activities related to the offences listed above.

If the public prosecutor considers it necessary for undercover investigators to be able to use technical devices to obtain photographs or audio and video recordings, they may refer the matter to the judge of rights and freedoms with a view to issuing a warrant for technical surveillance.

Undercover investigators are operational workers within the criminal investigation police. For the investigation of crimes against national security and terrorist offences, undercover investigators may also include operational workers from state bodies who, according to the law, carry out intelligence activities to ensure national security.

Judicial bodies may use or make available to the undercover investigator any documents or objects necessary for carrying out the authorised activity. The activity of the person who provides or uses the documents or objects does not constitute a criminal offence. Undercover investigators may be heard as witnesses in criminal proceedings under the same conditions as threatened witnesses. The duration of the measure may be extended for duly justified reasons if the conditions listed above are met, each extension not exceeding 60 days.

The total duration of the measure, in the same case and in respect of the same person, may not exceed one year, with the exception of offences against life, national security, drug trafficking offences, doping offences, non-compliance with the regime governing weapons, ammunition, nuclear materials, explosive materials and restricted explosives precursors, trafficking in and exploitation of vulnerable persons, acts of terrorism or acts similar to terrorism, terrorist financing, money laundering and offences against the financial interests of the European Union.

In exceptional circumstances, if the conditions listed above are met and the use of the undercover investigator is not sufficient to obtain the data or information or is not possible, the prosecutor supervising or conducting the prosecution may authorise the use of a collaborator, who may be assigned an identity other than their own.

In accordance with Romanian law, even civilians can be selected as a collaborator, but any behaviour that is not covered by the mandate of the prosecutor is not covered by immunity. Romanian practitioners reported examples of this.

The thorny issue of the use of 'intermediary persons' (i.e. undercover agents not belonging to the police forces or, in any case, to national agencies) arises from the risk of using subjects who, being in touch with criminal contexts, could be at least 'opaque', with little control over the real purposes or utilities pursued by these people. The Romanian authorities have highlighted the fact that the persons concerned are not necessarily criminals, and have reported the case of employees of transport companies, who, due to the activity being performed, have, in some cases, transported drugs (even possibly without their knowledge, given the nature of the activity), throughout the territory of Romania.

Another example reported by the Romanian authorities related to the identification, as an intermediary, of an entrepreneur who lends himself to bribing a public official. Investigations in this sector are particularly complicated, due to the systemic nature of the phenomenon, and the possibility of making use of undercover agents, with criminological experience, is one of the most effective investigative tools[14].

The Romanian authorities reported a case where they used agents from other Member States. The agents were granted immunity, but would not be allowed to use force, which is the same statute as national undercover agents. During trial, they would be treated as a witness, and specifically as a collaborator of the national police body.

[14] see: Review in *Tradeoffs in Undercover Investigations: A Comparative Perspective* by Jacqueline E. Ross, in The University of Chicago Law Review, Vol. 69, No. 3 (Summer, 2002), pp. 1501-1541.

The real identity of undercover investigators and collaborators with an identity other than their own may not be disclosed. The prosecutor, the judge of rights and freedoms, the preliminary chamber judge or the court has the right to know the real identity of the undercover investigator and the collaborator, subject to professional secrecy. The undercover investigator, the collaborator, the informant, as well as their family members or other persons subject to threats, intimidation or acts of violence in connection with the work of the undercover investigator, informant or collaborator, may benefit from specific witness protection measures, according to the law.

Authorised participation in certain activities include:

- committing an act similar to the objective side of a corruption offence;
- carrying out transactions;
- operations or any kind of dealings in relation to property or a person suspected of being a missing person, a victim of human trafficking or kidnapping;
- carrying out operations involving drugs or doping substances and providing a service carried out with the authorisation of the competent judicial body, for the purpose of obtaining evidence.

Carrying out authorised activities by the person referred to above does not constitute an offence. The criminal liability of police officers, even whilst undercover, is specifically provided for in Articles 17 and 18 of Law No 302/2004.

The execution of these measures will be recorded in a report containing the dates on which the measure began and ended; details of the persons who carried out the authorised activities; a description of the technical devices used if authorised by the judge of rights and freedoms; the use of technical means of surveillance and the identity of the persons in respect of whom the measure was implemented.

19.4.2. Application of the EIO in case of covert investigations

Article 349(4) of the CPC provides that the conduct of investigations by undercover investigators within the territory of Romania should take place in accordance with Romanian law. The Romanian judicial authorities have the exclusive competence to act, conduct and control operations related to undercover investigations. The duration of the undercover investigation, the detailed conditions and the legal status of the agents concerned during the undercover investigation should be agreed between the issuing and the executing Member State, in accordance with their domestic law and procedures.

Romanian practitioners reported issues resulting from differences in national law, especially where the Member State did not have legislation regulating the use of collaborators, who are not police or law enforcement officers. There are many types of crime and criminal conduct where the involvement of a police officer is very difficult or even impossible, given the links between the members of the criminal group or the precautions taken by them. However, the use of a collaborator who is not a law enforcement agent is possible and very useful in these situations, but few Member States regulate this possibility. Therefore, the execution of Romanian EIOs issued for allowing a collaborator to travel to another Member State is often refused.

Romanian practitioners highlighted the difficulties associated with the lack of provision, in the legal systems of the other Member States, for the possibility of using civilians as collaborators, and the consequent impossibility of using EIO to obtain cooperation, in the case of extremely serious crimes.

The evaluation team considers allowing the use of civilians as collaborators in Romanian legislation to be very good practice and would encourage other Member States to consider introducing this possibility as well, if compatible with their legal systems and procedural guarantees *(see Best practice No* 10*).*

19.5. Interception of telecommunications

19.5.1. Relevant Romanian law

The interception of communications or any type of remote communication is used when communications are concerned that are carried out by telephone or other means of remote communication.

In accordance with Article 138 of the CPC, the interception of conversations or communications means intercepting, accessing, monitoring, collecting or recording communications made by telephone, computer system or any other means of communication, as well as recording traffic data indicating the source, destination, date, time, size, duration or type of communication made by telephone, computer system or any other means of communication. Therefore, in cases of communication without the use of the technical means mentioned above (live conversations inside a car or an apartment), the evidentiary procedure to be applied is video or audio surveillance.

Under Romanian law, the interception of telecommunications within the meaning of Articles 30 and 31 of the Directive covers only the interception of telecommunications. Other types of interception are regulated separately.

Article 138(1) of the CPC lists the categories of special surveillance and investigation methods:

a) interception of communications or any type of remote communication;
b) access to a computer system;
c) video, audio or photographic surveillance;
d) locating or tracking by technical means;
e) obtaining data regarding an individual's financial transactions;
f) withholding, handing over or searching postal items;
g) use of undercover investigators and collaborators;
h) authorised participation in specific activities;
i) controlled delivery;
j) obtaining traffic and location data processed by providers of public electronic communications networks or providers of electronic communications services to the public.

In accordance with Article 139 of the CPC, technical supervision can be ordered by the judge of rights and freedoms when the following conditions are cumulatively met:

- there is reasonable suspicion of the preparation or commission of one of the offences listed under Article 139(2)[15];
- the measure is proportionate to the restriction of fundamental rights and freedoms, having regard to the particular features of the case, the importance of the information or evidence to be obtained or the seriousness of the offence;
- the evidence could not otherwise be obtained or the obtaining of such evidence would involve particular difficulties that would prejudice the investigation or there is a danger to the safety of persons or property of value.

Romanian law provides for specific guarantees to protect the right of defence and the confidentiality of the conversations of lawyers, especially with their clients.

Technical surveillance may be ordered during criminal proceedings, for a maximum of 30 days, at the request of the prosecutor, by the judge hearing the case at first instance or by the appropriate court in the district in which the prosecutor who made the request is based. A new request for the approval of the same measure can be granted only if there are new facts or circumstances, which were not known at the time when the judge approved the previous request.

[15] Article 139(2) of the CPC reads as follows: 'Technical surveillance may be ordered in case of offences against national security provided for in the Criminal Code and special laws, as well as in the case of drug trafficking offences, offences against the regime of doping substances, the carrying out of illegal operations with precursors or other products likely to have psychoactive effects, offences relating to non-compliance with the regime of weapons, ammunition, nuclear materials, explosive materials and restricted explosives precursors, trafficking and exploitation of vulnerable persons, acts of terrorism, money laundering, counterfeiting of coins, stamps or other valuables, counterfeiting of electronic payment instruments, offences committed through computer systems or electronic means of communication, offences against property, extortion, rape, unlawful deprivation of liberty, tax evasion, offences related to corruption and offences similar to corruption, offences against the financial interests of the European Union or other offences for which the law provides for a penalty of imprisonment of 5 years or more.'

In urgent cases, the technical surveillance may be authorised also by the prosecutor, for a maximum of 48 hours, if obtaining the warrant from the judge would lead to a substantial delay of the investigation, the loss, altering or destruction of evidence, or it would jeopardise the safety of the injured person, witnesses or members of their families; and the conditions of Article 139 of the CPC are fulfilled.

The prosecutor must submit the case to the judge within 24 hours from the expiry of the measure, for validation. The submission must be accompanied by the minutes indicating the activities carried out and by the case file. The judge must decide within 24 hours. If the judge finds that the conditions for carrying out the activity were not respected, evidence thus obtained will be destroyed.

Romanian practitioners informed the evaluation team that it is possible to transmit the intercepted telecommunication immediately to the issuing Member State.

19.5.2. The application of Articles 30 and 31 of the Directive

A recurring problem across the Member States is the fact that a common definition of 'interception of telecommunication' does not exist within the European Union. Consequently, Member States have different interpretations and practices as to whether certain investigative techniques, such as GPS tracking, the bugging of a car or installing spyware on a device to intercept conversation at the source, or audio/video surveillance, fall under the legal regime of interception of telecommunications (Articles 30 and 31 of the Directive). In cases where Member States do not consider such investigative measures as interception of telecommunication, these measures fall under Article 28 of the Directive, which requires supplementary information and the issuance of an EIO (Annex A).

In practice, these different interpretations directly affect both the issuing and the executing Member State: it is not clear to the issuing Member State, whether a specific investigative measure that is not clearly categorised as ‘interception of telecommunications’, would fall under Article 30 and 31 (or even Article 28) of the Directive and whether it would be possible to request its authorisation *ex post* via an Annex C.

The measures in question mostly require execution as quickly as possible, therefore any hesitancy compromises the success of the investigation, especially where it is not possible to foresee in advance that the subject of the interception will enter the territory of another Member State. Recourse to Annex C could result in a refusal if the measure is considered outside the scope of ‘interception of telecommunication’ under the law of the executing Member State, therefore its authorisation could be requested only for the future via an Annex A but not retroactively.

The need to adopt a broader concept of ‘interception of communications’ appears all the more necessary when one considers that, in many cases, knowledge of the transfer abroad of an intercepted target only emerges during the interception and, in some cases, at an advanced stage. In such cases, the application of Article 28 and 30 of the Directive is not feasible, and the use of an ‘in progress’ or ‘ex post’ notification is indispensable, to safeguard the admissibility of the intercept and the results of the investigation.

It is often the case that, for example, the fact that a bugged vehicle (i.e. a vehicle where bugs have been installed for the interception of conversations taking place in the vehicle) is crossing borders only becomes apparent during the interceptions. It is therefore necessary to inform the country in which the interception was carried out, without any technical assistance required. In these cases, the possibility of applying Article 31 of the Directive appears to be highly recommendable – with a notification during or after the interception was carried out, under Article 31(1) point b).

For example, Romanian practitioners underlined that, in the case of a bugged car or a GPS tracking system installed in a car entering the territory of Romania, the notification provided for in Article 31 of and Annex C to the Directive would not be sufficient, although there were occasions where the notification was accepted. If the technical surveillance measure is ordered by the foreign judicial authority, but its enforcement must be carried out by the Romanian judicial authorities when the motor vehicle is travelling on national territory, the foreign authority will issue an EIO in accordance with Article 28 of and Annex A to the Directive, which should also mention the authorisation issued by the competent court.

In practice, however, ex post notification by means of an Annex C has been accepted, in some cases, under Article 31 of the Directive.

The evaluation team noted that for some of the above-mentioned measures for which the Romanian authorities would use an Annex A, authorities in other Member States would use an Annex C. These differences in interpretation can seriously hamper judicial cooperation as well as the admissibility of evidence in the issuing Member State. In the light of these findings, the evaluation team believes that there is a need for the EU legislator to clarify the concept of 'interception of telecommunications' (*see Recommendation No 23).*

In the opinion of Romanian practitioners, Article 31 could be improved by expressly introducing the possibility of notifying a Member State, even in the case of other types of interception carried out without technical assistance from the requested State, such as:

- installation of a direct listening device (bugging);
- installation of audio-video cameras;
- placing GPS tracking devices, etc.

The evaluation team agrees with the suggestion of the Romanian practitioners of introducing a common and broader definition of 'telecommunications interception'. They also suggest a more extensive application of Article 31 of the Directive, allowing for ex post notifications that would allow for a smoother practice of interception, which is indispensable for the fight against transnational crime, including organised crime *(see Recommendation No 22).*

20. STATISTICS

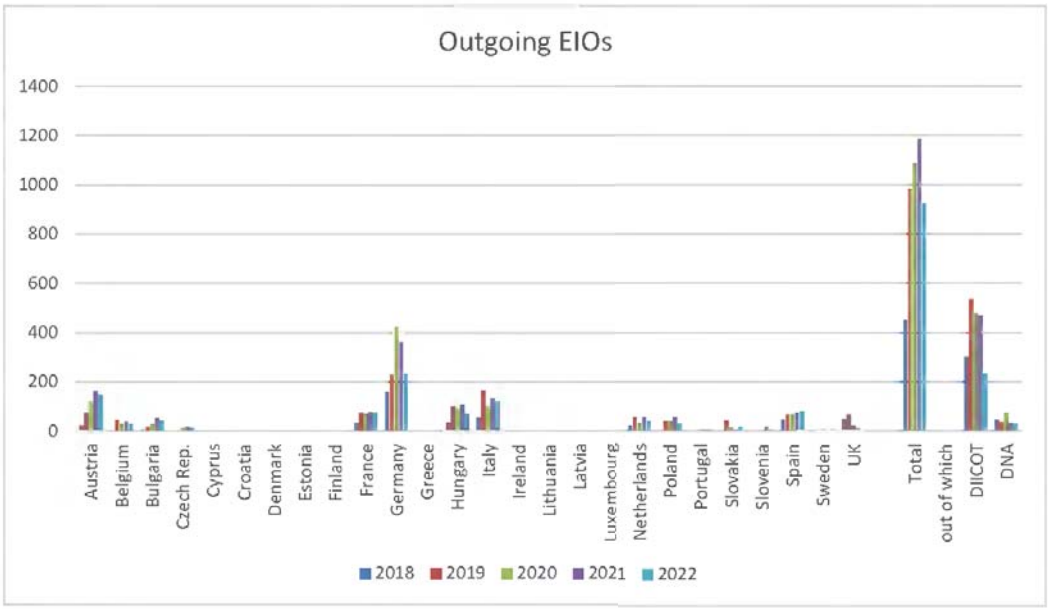
There is no statistical data available for 2017, as Law No 236/2017 entered into force in late 2017. It should be noted that the statistical data provided by the Romanian authorities is quite detailed and extensive *(see Best practice No 11).*

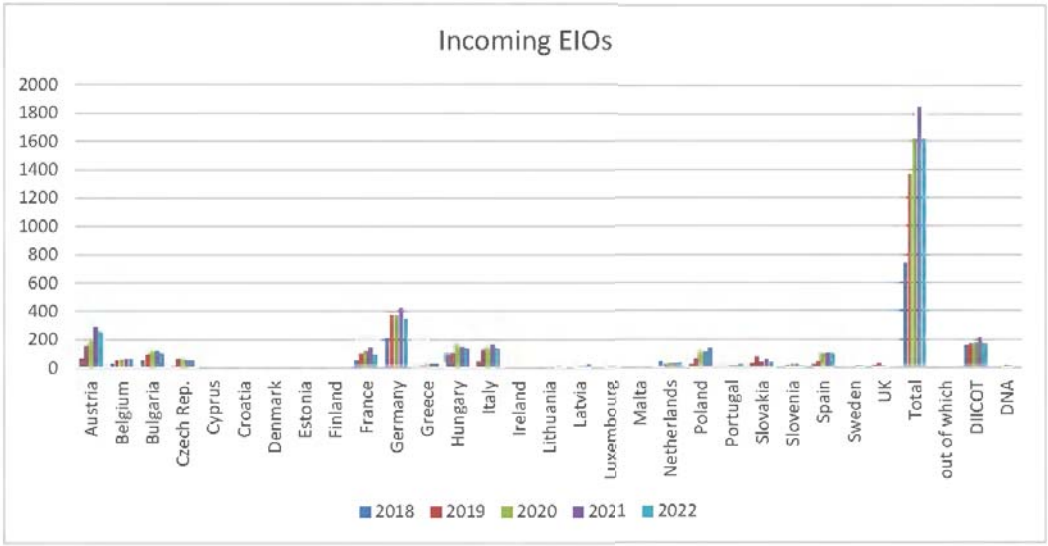
For the last five years, the central authority has registered the following activities related to the application of the EIO:

Outgoing EIOs				
	DIOCT	**NAD**	**Outside of the competence of both the DIOCT and the NAD**	**Total**
2018	**301**	**45**	**104**	**450**
2019	**534**	**37**	**414**	**985**
2020	**479**	**72**	**536**	**1 087**
2021	**469**	**32**	**686**	**1 187**
2022	**233**	**28**	**664**	**925**

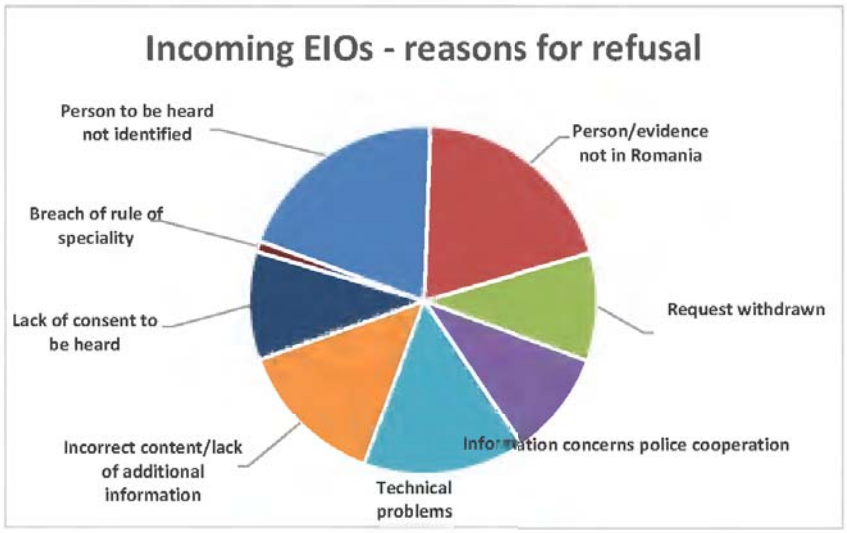
Incoming EIOs				
	DIOCT	**NAD**	**Outside of the competence of both the DIOCT and the NAD**	**Total**
2018	**156**	**9**	**575**	**740**
2019	**173**	**9**	**1 182**	**1 364**
2020	**176**	**16**	**1 417**	**1 609**
2021	**208**	**11**	**1 627**	**1 846**
2022	**174**	**4**	**1 434**	**1 612**

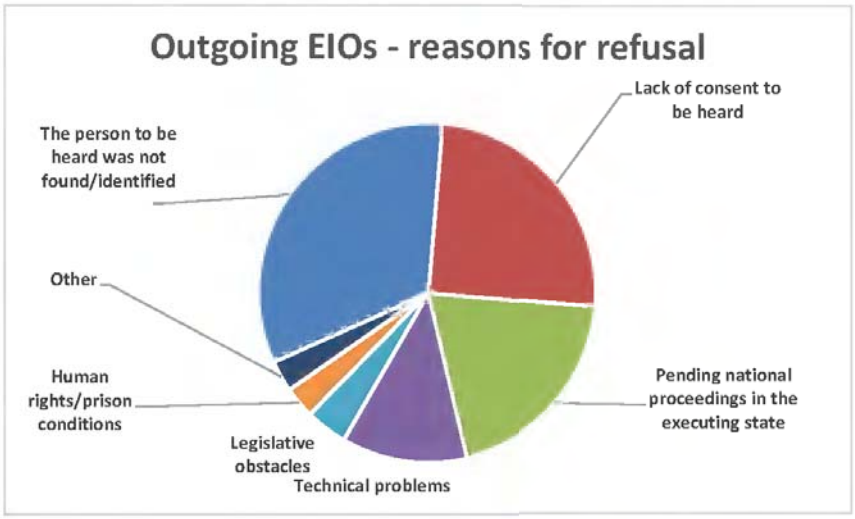
The tables below show a breakdown of the EIOs issued and received by each Member State.



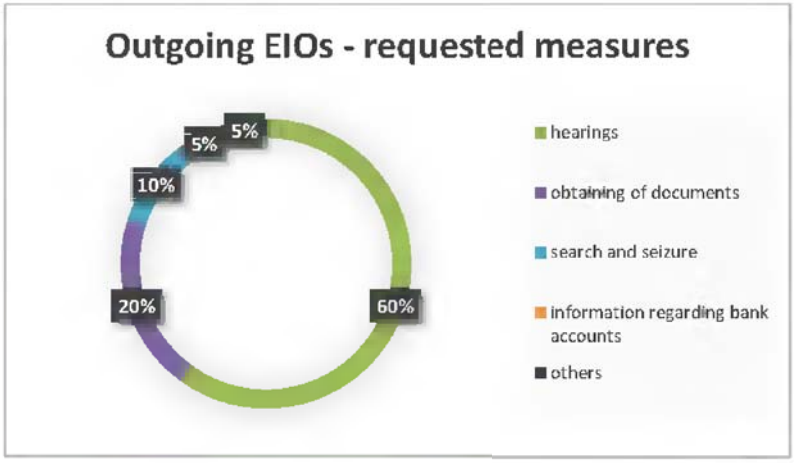


There is no data available on the number of EIOs refused or where the execution has been postponed. However, the Ministry of Justice was able to provide statistical data on the grounds for non-execution.

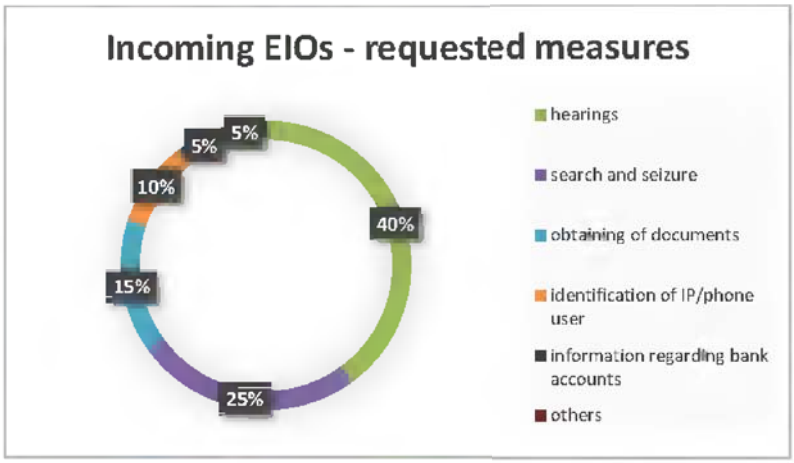




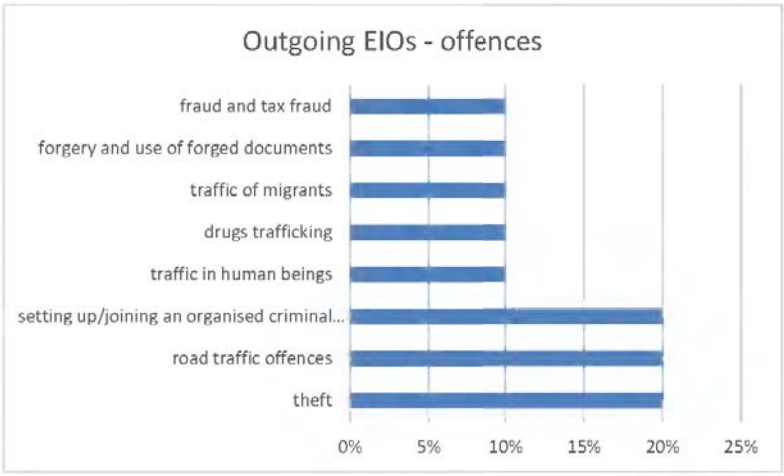
The Romanian authorities requested the following measures in the EIOs issued: hearings (60 %); obtaining documents (20 %); search and seizure (10 %); obtaining information regarding bank accounts (5 %); others (5 %).

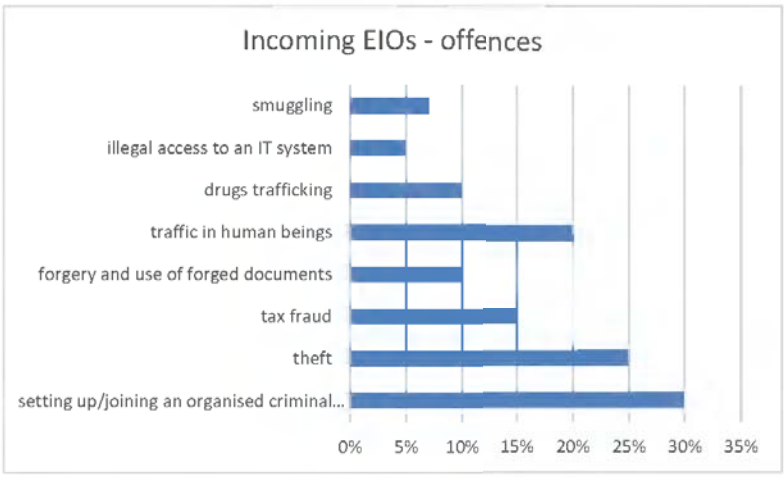


The Romanian authorities were requested to carry out the following measures in the EIOs received: hearings (40 %); search and seizure (25 %); obtaining documents (15 %); identification of IP/phone users (10 %); obtaining information regarding bank accounts (5 %); others (5 %).



The Romanian authorities also provided a breakdown on the type of offences, both for incoming and outgoing cases.





21. TRAINING

21.1. Training of clerks employed by courts and prosecution offices

Within the National School for Clerks ('NSC'), through the departments in its coordination, training activities were organised in a systematic and regular manner. Between 2020 and 2022, the Department for Continuous Professional Training organised the following activities.

For clerks within courts:

- A centralised seminar (cooperation in criminal matters, with a separate section dedicated to the EIO) – 20 participants in 2022;
- E-learning (2020-2022) – cooperation in criminal matters, with a separate section dedicated to the EIO (19 participants in 2020, 13 participants in 2021 and 25 participants in 2022);
- EIO tutorial on the NSC platform;

For clerks employed by public prosecutor offices (PPOs), an EIO webinar was held in 2020 with 27 participants.

Between 2020 and 2022, within the framework of initial professional training, during a course on International Judicial Cooperation, the NSC organised several seminars, with 20 participants in 2020, 20 participants in 2021 and 137 participants in 2022. The following subjects were discussed:

- assimilation of theoretical notions regarding cases when an EIO can be issued;
- creating the skills necessary in order to correctly fill in the EIO form;
- the specific competences required by clerks in the execution procedure.

Furthermore, besides these regular courses, the Department for International Relations of the NSC coordinated the following activities:

In 2018, participation, as partner, in implementing the project entitled European Judicial Training for Court Staff and Bailiffs, Promoting and Supporting European cross-border cooperation – EJT, co-financed by the EU Justice Programme, as part of a consortium, along with training institutions from France, Portugal, Spain, Belgium and Luxembourg, coordinated by Justice Cooperation International. The following activities took place within the framework of this project: three activities in the field of judicial cooperation in criminal matters, one activity in the field of judicial English and the e-Justice instruments. There were 12 participants (clerks from courts and prosecution offices in Romania). The activities concerned included theoretical and practical aspects related to the EIO.

Between 2021 and 2022, the NSC participated, as a support organisation, in the implementation of the project 'Better applying European criminal law: legal and language training events for court staff across Europe' – Court Staff Training, co-financed through the Justice Programme of the European Commission, coordinated by ERA and the European Judicial Training Network ('EJTN'). The project included 21 participants from Romania, who took part in five international seminars themed 'Better Applying Criminal Law: Legal English for Court Staff'. 23 clerks from Romanian courts also took part in a national seminar concerning judicial cooperation in criminal matters.

The training activities were intended to improve the knowledge and skills of court staff in the European Union, by creating customised materials and also by ensuring practical training in using EU criminal law instruments, such as the EIO, also helping improve participants' communication skills in English. 44 participants from Romania were trained during six training activities.

The evaluation team considers the provision of specialised training for clerks to be best practice (*Best practice No 12*).

21.2. Training of judges and prosecutors

Initial training is provided by the National Institute of Magistracy ('NIM'). The EIO is part of the initial training, including in separate sessions. Furthermore, responsibility for the continued professional training of judges and prosecutors falls under the responsibility of the NIM, the management of the courts and prosecution offices where they work, as well as every judge or prosecutor, through individual training. At central level, training activities are organised by the NIM, according to the programme of continued professional training approved by the Superior Council of Magistracy.

Continued decentralised training activities are coordinated by the NIM and consist of consultation, debates, seminars, sessions or round tables, periodically organised within courts and prosecution offices, under the coordination of the courts of appeal and prosecution offices attached to those courts. At the level of every court or prosecution office, there is a person in charge of continued decentralised training.

In respect of courses and seminars in the framework of continuous training, the most relevant are as follows:

- International cooperation in criminal matters, part of the project entitled 'Professional training and capacity building at the level of the judicial system', financed by the Justice Programme, within the Norwegian Financial Mechanism (March 2022, October 2022, November 2022, March 2023);
- The EIO in Practice (Basic) – EJTN Seminar, Austria (9 – 10 March 2023);
- Seminar organized by the European Union Agency for Law Enforcement Training – Cross-border Exchange of E-evidence (Budapest, 30 May – 3 June 2022);
- seminar organized by the European Institute of Public Administration – within the project Judicial Cooperation in Criminal Matters in the European Union's Area of Freedom, Security and Justice: Recent Developments and Topical Issues 2020 – 2021 – EIO (29 – 30 June 2021).

Prosecutors from the International Cooperation Service regularly provide professional guidance to other colleagues in the DIOCT, as part of the annual training programme or directly. Some prosecutors also participate as experts in training sessions organised by the NIM for other prosecutors and judges (several dozen trainees per year). Last but not least, prosecutors from the International Cooperation Service attend training sessions organised by police units for their staff (several hundred trainees per year).

According to data provided by the NAD, in 2021, a training course was organised in a decentralised system at the level of the NAD's International Cooperation and Programmes Service, on the subject of EIOs, with five persons being trained. In 2022, a training course was organised in a decentralised system at the level of the NAD - Territorial Service Braşov, on the subject of issuing and transmitting EIOs, with 19 persons being trained.

The courses are provided as part of the initial training for judges, prosecutors and court clerks at the NIM and the National School of Court Clerks, institutions which also organise continuing training activities.

At the same time, courts and prosecutors' offices have the possibility to organise training activities at decentralised level.

The quality of the decentralised training activities is assessed at several levels. Session participants complete evaluation forms in which they can anonymously express their views on the quality of the sessions. Those in charge of continued decentralised training within courts or prosecution offices are also able to insert their own remarks in the seminar report or the semester report which is forwarded to the NIM.

Furthermore, an assessment of the quality of the training activities, both centralised and decentralised, is finally performed by the Continued Training Department within NIM. Additionally, the NIM's Scientific Council takes into consideration the results of the professional training from previous years in order to draft the programme for continued professional training of judges and prosecutors.

The Ministry of Justice, as central authority, has had and continues to have an active role in disseminating relevant information to practitioners. Firstly, it drafted and sent a series of guidelines (including the EIO, which can be found on the intranet of the Ministry of Justice). Furthermore, the Ministry of Justice has made constant efforts to disseminate publications, guidelines and other relevant information (including those drafted by EJN, Eurojust) which came to its attention, via the Romanian Judicial Network in Criminal Matters. Contact points at the network are required to disseminate information.

The evaluation team considered obligatory initial training on judicial cooperation in criminal matters for judges and prosecutors to be best practice *(see Best practice No 13).*

In the opinion of the evaluation team, however, in order to facilitate direct contacts, Romania should organise language courses and separate training sessions on the EIO specifically for first-line practitioners. The evaluation team considers that it would be useful to produce a handbook or national guidelines for practitioners on the knowledge and practical experience of the EIO *(see Recommendation No 10).*

22. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

22.1. Suggestions by Romania

An example of good practice is that the concrete investigative measures at the end of section C should include a general request to carry out any investigative measures that may be necessary and useful in the course of the execution of the measures expressly listed above. This request, drafted in general and open terms, is likely to provide flexibility and space for the executing authority and may address particular situations, as the subject matter of the EIO is not a closed and fixed one.

The Romanian authorities suggest amending Annex A as follows:

- section C should state that the requirements of sections H and or I respectively must also be complied with;
- section B could be improved with more examples;
- a box or section should be included, indicating that the form contains several separate annexes.

Thee Romanian authorities have also suggested amending Annex B. The latter could contain a paragraph entitled: 'Please use this section for an important message to the issuing authority, issued in its language, even using an unofficial translation'. The Romanian authorities have also suggested allowing the possibility of issuing additional EIOs in a simplified form in exceptional cases.

22.2. Recommendations

Regarding the practical implementation and operation of the Directive, the team of experts involved in the assessment in Romania was able to review the system satisfactorily.

The evaluation team saw fit to make several suggestions for the attention of the Romanian authorities. Furthermore, based on the various examples of good practice, related recommendations are being put forward to the EU, its institutions and agencies, and to Eurojust in particular, as well as to the EJN. Romania should conduct an 18-month follow-up to the recommendations referred to below after this report has been agreed by COPEN.

22.2.1. Recommendations to Romania

Recommendation No 1: Romania should amend the *Fiches Belges* on the EJN website as – contrary to the information available currently – it is now possible to send complex EIOs to the central authority and multiple EIOs do not need to be sent (see Chapter 4.3).

Recommendation No 2: Romania should include a provision on the coordination of EIOs with multiple requests falling under the responsibility of several executing authorities for EIOs relating to offences outside of the competence of DIOCT and NAD and the PPO attached to the Bucharest Court (see Chapter 4.3).

Recommendation No 3: where several measures need to be executed in different authorities, Romania should ensure that a single authority coordinates the execution of the EIO (see Chapter 4.3).

Recommendation No 4: Romanian authorities should consider accepting EIOs in English in urgent cases (see Chapter 6.2).

Recommendation No 5: in cases of recourse to another investigative measure, the Romanian authorities should always inform the issuing authorities (see Chapter 7.2).

Recommendation No 6: Romania should speed up the implementation of the e-EDES (see Chapter 8.1).

Recommendation No 7: Romania should reconsider their approach to the rule of speciality, or at least make information available on the EJN Atlas. The application of the rule of speciality could also be included in Annex B (see Chapter 10.1 and 10.2).

Recommendation No 8: Romania should systematically send Annex B (see Chapter 16).

Recommendation No 9: the Romanian legislator should allow for hearing by telephone conference, at least in case of experts and witnesses (see Chapter 19.3).

Recommendation No 10: Romania should provide for training on the EIO, national guidelines, language training, in order to facilitate direct contact, with first-line practitioners being a priority (see Chapter 21.2).

22.2.2. Recommendations to other Member States

Recommendation No 11*:* Member States should respect the scope of the EIO (see Chapter 5).

Recommendation No 12: Member States should accept languages other than their official language, and English should be accepted at least in urgent cases (see Chapter 6.2).

Recommendation No 13*:* Member States should call on practitioners to use short sentences and precise language when filling out the EIO (see Chapter 6.2).

Recommendation No 14: Member States should consider granting the national members of Eurojust the power foreseen under Article 8(3)b and (4) of the Eurojust Regulation in urgent cases (see Chapter 6.3).

Recommendation No 15: in case of recourse to another investigative measure, the issuing authorities should always be informed (see Chapter 7.2).

Recommendation No 16: Member States should speed up the implementation of the e-EDES (see Chapter 8.1).

Recommendation No 17: Member States should introduce the information obligations in accordance with Art 21(5) of the Eurojust Regulation (see Chapter 8.2).

Recommendation No 18: Member States should comply with the formalities requested by the issuing authorities (see Chapter 9.2).

Recommendation No 19: Member States should make information available on the application of the rule of speciality (see Chapter 10.2).

Recommendation No 20: Member States should respect the deadlines and inform issuing Member State on delays, providing the reasons for the delay as well (see Chapter 13).

Recommendation No 21: Member States should systematically send Annex B (see Chapter 16).

Recommendation No 22: Member States should apply Article 31 of the Directive in a more extensive way, allowing for an ex post notification (see Chapter 19.5.2).

22.2.3. Recommendations to the European Union and its institutions

Recommendation No 23: The Commission is invited to consider revising the Directive in respect of the following key issues:

- to allow victims to request an EIO (see Chapter 4.5);
- making forms more user-friendly (see Chapter 6.1);
- the application of the rule of speciality (see Chapter 10.1);
- the application of the EIO to ensure the presence of the accused person throughout the main trial (see Chapter 12.2);
- the concept of interception of telecommunications (see Chapter 19.5.2).

22.3. Best practices

This section includes a list of best practices to be adopted by other Member States.

Romania is to be commended for:

1. consolidating all instruments for judicial cooperation in criminal matters in one legislative act (see Chapter 3);
2. certain prosecutors being specialised in international judicial cooperation (see Chapter 4.1);
3. cases falling within the competence of either the DIOCT or the NAD, where several measures need to be executed in different authorities, they ensure that a single authority coordinates the execution of the EIO (see Chapter 4.3);
4. allowing for the victim to request an EIO (see Chapter 4.5);
5. handling EIOs issued for measures clearly outside the scope as MLA requests (see Chapter 5);
6. verbal consultations to facilitate the execution of the EIO or for further clarification (see Chapter 6.4);
7. informing the issuing State about the opening of a new investigation (see Chapter 10.2);
8. the DIOCT and the NAD both having sufficient infrastructure to enable secure and fast transmission of data up to gigabytes (see Chapter 15);
9. the DIOCT calling on Eurojust's support in the event of criminal activity on the territory of the countries concerned, to organise a coordination meeting to identify the best method of cooperation (see Chapter 18);
10. allowing the use of civilians as collaborators (see Chapter 19.4.2);
11. gathering rather extensive and detailed statistical data on the EIO (see Chapter 20);
12. providing specialised trainings for clerks (see Chapter 21.1);
13. obligatory initial training on judicial cooperation in criminal matters for judges and prosecutors (see Chapter 21.2).

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

Venue: Ministry of Justice, Str. Apolodor nr. 17, sector 5, 050741 Bucureşti, România

23 May 2023	
09:30 – 10:30	Welcome and general presentation
10:30 – 10:45	Coffee break
10:45 – 12:00	Meeting with prosecutors
12:00 – 13:00	Lunch break
13:15 – 14:45	Continuation of discussions
14:45 – 15:00	Coffee break
15:00 – 16:30	Meeting with prosecutors and police officers

24 May 2023	
09:30 – 11:00	Meeting with judges
11:00 – 11:15	Coffee break
11:15 – 12:15	Meeting with representatives of the Bar Association
12:15 – 13:15	Lunch break
13:30 – 14:45	Meeting with prosecutors
14:45 – 15:00	Coffee break
15.00 – 16.30	Continuation of discussions

25th May 2023	
09:30 – 10:30	Debriefing
10:30 – 11:00	Coffee break
11:00 – 12:00	Preliminary conclusions

ANNEX B: LIST OF ABBREVIATIONS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	FULL NAME
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
central structure	Central level of both the DIOCT and the NAD
CISA	Convention implementing the Schengen Agreement
CJEU	Court of Justice of the European Union
Convention	Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union
CPC	Criminal Procedure Code
DIOCT	Directorate for Investigation of Organised Crime and Terrorism
Directive	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters
EAW	European Arrest Warrant
e-EDES	e-Evidence Digital Exchange System
EIO	European Investigation order
EJN	European Judicial Network
EJTN	European Judicial Training Network
Eurojust	European Union Agency for Criminal Justice Cooperation
Eurojust Regulation	Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA
JIT	Joint investigation team

Joint Action	Joint Action 97/827/JHA of 5 December 1997
Law No 302/2004	Law No 302/2004 on international judicial cooperation in criminal matters
MLA	Mutual legal assistance
NAD	National Anti-Corruption Directorate
NIM	National Institute of Magistracy
NSC	National School for Clerks
PPO	Public Prosecutor's Office
territorial structure	Territorial level of the DIOCT and the NAD