



Council of the
European Union

166093/EU XXVII. GP
Eingelangt am 08/12/23

Brussels, 8 December 2023
(OR. en)

14604/1/23
REV 1

COPEN 369
CATS 60
JAI 1364
EVAL 12
EUROJUST 39
EJN 19

NOTE

From: General Secretariat of the Council

To: Delegations

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

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

REPORT ON FINLAND

Table of Contents

Table of Contents	3
1. EXECUTIVE SUMMARY	6
2. INTRODUCTION	8
3. TRANSPOSITION OF DIRECTIVE 2014/41/EU	10
4. COMPETENT AUTHORITIES	10
5. SCOPE OF THE EIO AND RELATION TO OTHER INSTRUMENTS	14
6. CONTENT AND FORM OF THE EIO	16
6.1. General challenges	16
6.2. Language regime	19
6.3. Issuance of additional EIOs, splitting an EIO, conditional EIOs	20
6.4. Orally issued EIO	20
7. NECESSITY, PROPORTIONALITY AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE	21
8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACT	23
9. RECOGNITION AND EXECUTION OF AN EIO AND FORMALITIES	24
10. SPECIALITY RULE	25
11. CONFIDENTIALITY	26

12. GROUNDS FOR NON-EXECUTION	27
12.1. General	27
12.2. Ne bis in idem.....	28
12.3. Fundamental rights (Article 6 TEU and Charter).....	29
13. TIME LIMITS AND GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION	29
14. LEGAL REMEDIES	30
15. TRANSFER OF EVIDENCE	31
16. OBLIGATION TO INFORM - ANNEX B	31
17. COSTS	31
18. COORDINATION OF THE EXECUTION OF DIFFERENT EIOS IN DIFFERENT MEMBER STATES AND/OR IN COMBINATION WITH OTHER INSTRUMENTS	32
19. SPECIFIC INVESTIGATIVE MEASURES	33
19.1. Temporary transfer (Article 22-23).....	33
19.2. Hearing by videoconference.....	34
19.3. Hearing by telephone conference	38
19.4. Information on bank and other financial accounts and banking and other financial operations	38
19.5. Covert investigations	39
19.6. Interception of telecommunication.....	41
19.7. Other investigative measures.....	43
20. STATISTICS.....	44
21. TRAINING.....	45

22. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES.....	47
22.1. Suggestions by Finland	47
22.2. Recommendations	47
22.2.1. Recommendations to Finland.....	48
22.2.2. Recommendations to the other Member States.....	48
22.2.3. Recommendations to the European Union and its institutions.	49
22.3. Best practices	50

1. EXECUTIVE SUMMARY

The 10th round of mutual evaluations focusses on the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (EIO Directive). The aim of the evaluation is to consider not only the legal issues but also the practical and operation aspects linked to the implementation of the EIO Directive. It provides a valuable opportunity to identify areas for improvement as well as best practices to be shared among Member States. The evaluation further promotes the effective implementation of the instrument and aims to enhance mutual trust among the Member States' judicial authorities.

The visit was well prepared by the Finnish authorities. The replies to the questionnaire were sent in good time and provided the evaluation team with extensive information on the application of EIOs in Finland. The on-the-spot visit to Helsinki provided a good opportunity to have further in-depth discussions between the Finnish practitioners and the evaluation team. The Finnish practitioners were very open in their replies, and the evaluation team would like to particularly express their appreciation for the pleasant atmosphere throughout the whole visit.

All in all, the evaluation team was able to establish that the EIO works well in practice in Finland. From the discussions held with the practitioners during the visit, it was clear that Finland is to be commended for their overall flexible, pragmatic and efficient approach when executing EIOs (*see Best practice No 1*). Finnish practitioners think in possibilities, and judicial cooperation benefits greatly from their cooperative spirit.

Nevertheless, the evaluation team was able to identify some areas for improvement that need to be addressed at national and European level. As a result, the evaluation team has drafted several recommendations, which can be found in Chapter 22.

Finland has quite a unique position as regards the large role of the police in the EIO process. Finnish practitioners have explained that this could cause confusion with other Member States if, for example, they were to mistakenly send an EIO to the Finnish Prosecutor General's Office (PGO) instead of the police.

The EIO form was discussed multiple times during the visit, with the Finnish authorities expressing their desire to amend and improve Annex A in order to make it more user-friendly. The evaluation team agrees that an amendment to the form could further facilitate the use of EIOs (*see Recommendation No 15*).

Another important topic for Finnish practitioners, and especially for judges, is the application of the EIO to ensure the presence of the accused person throughout his/her entire trial via videoconference. In Finnish law it is possible to have an accused person attend the trial via videoconference, and the Finnish authorities believe that this can be a more proportionate measure than using a European Arrest Warrant (EAW). However, Finland has experienced that Member States have different views on whether or not this should be possible in the context of the EIO, and the evaluation team has established that a clarification from the EU legislators is needed on this matter (*see Recommendation No 14*).

Furthermore, discussions between the practitioners and the evaluation team have revealed that further clarification at EU level is needed regarding the concepts of speciality, the interception of telecommunications and the relation with the Convention implementing the Schengen Agreement (CISA), in order to further ensure smooth and effective judicial cooperation.

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997¹ ('the Joint Action') established a mechanism for evaluating the application and implementation at national level of international undertakings 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 that the 10th round of mutual evaluations would focus on the EIO.

The aim of the 10th round of mutual evaluations is to provide 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 Directive 2014/41/EU. This will permit shortcomings and areas for improvement to be identified, and also for best practices to be shared among Member States, thereby contributing to ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, promoting the coherent and effective implementation of this legal instrument at its full potential could significantly enhance mutual trust among the Member States' judicial authorities and ensure the 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 that may not have implemented all aspects of Directive 2014/41/EU.

Finland was the sixth Member State visited during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS.²

¹ Joint Action 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 organised crime.

² ST 10119/22 and WK 6508/2023.

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts for the evaluations to be carried out. Pursuant to a written request sent to delegations by the General Secretariat of the Council of the 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 Eurojust should be invited as observers.³

The experts entrusted with the task of evaluating Finland were Ms Anna Liljenberg Gullesjö (Sweden), Ms Julijana Stipišić (Croatia), and Ms Mari Vunk (Estonia). Observers were also present: Ms Leonie Luijt (Eurojust), together with Ms Anastasia Pryvalova 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 Finland's detailed replies to the evaluation questionnaire and the findings from the evaluation visit that took place in Finland between 25 and 27 April 2023, where the evaluation team interviewed the representatives of the Ministry of Justice, the Prosecutor General's Office, the National Prosecution Authority, the National Bureau of Investigation, the border guard, customs, Helsinki District Court, Oulu District Court and a member of the Finnish Bar Association.

³ ST 10119/22.

3. TRANSPOSITION OF DIRECTIVE 2014/41/EU

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) has been transposed in Finland by the Act on the Implementation of the Directive Regarding the European Investigation Order in Criminal Matters (430/2017, EIO Act).

In accordance with Section 26 of the Act, it entered into force on 3 July 2017.

Pursuant to Chapter 1, Section 1 of the EIO Act, the provisions of a legislative nature in the Directive shall have the force of law unless otherwise provided in this Act.

The above means that in Finland the Directive is directly applicable but it must be applied in conjunction with the EIO Act, which provides some clarifications regarding the Directive.

4. COMPETENT AUTHORITIES

Article 2 and 7(3) of the Directive are properly transposed in the EIO Act.

Pursuant to Chapter 1, Section 4 of the EIO Act, the central authority referred to in Article 7(3) of the Directive is the Ministry of Justice. In accordance with the Act, the Ministry of Justice is responsible for assisting the competent authorities in communications relating to the transmission of the EIO.

In Finland the actual role of the Ministry of Justice as a central authority for issuing and executing EIOs is modest, as they only assist when needed. The Ministry is not involved with the coordination of incoming and outgoing EIOs. If a Member State forwards their EIOs to the Ministry, they will be forwarded to the competent executing authority. The Ministry is most frequently asked for advice on EIOs by courts, regarding videoconferences, and it has prepared guidelines on this matter. The evaluation team sees the preparation of these guidelines as a best practice (*see Best practice No 5*).

One of the responsibilities of the Prosecutor General's Office is to train and advise prosecutors concerning the issuing and execution of EIOs, and the Office has also issued handbooks on this matter (*see Best practice No 5*).

Issuing authorities

Under Chapter 3, Section 22 of the EIO Act, the authorities competent to issue an EIO in Finland are the public official with the power of arrest and the power of head investigator in the police, customs or the border guard. In such cases the EIO is validated by a prosecutor.

An EIO may also be issued by a prosecutor, a district court, a court of appeal or the Supreme Court.

Furthermore, the decision to issue an EIO referred to in Article 23 of the Directive (temporary transfer of a person from Finland), is made exclusively by Helsinki District Court (Section 23 of the EIO Act). The prosecutor submits a request for a decision on the issuing of the EIO to Helsinki District Court (HDC). In practice this provision has never been used in Finland.

An EIO may be issued in a criminal case, the consideration of which falls within the competence of one of the authorities mentioned above.

In Finland the police play a major role in criminal proceedings, as criminal investigations are conducted by the police. In addition to the police, the border guard and customs may also conduct investigations in their respective areas of competence. The criminal investigation is directed by the head of investigation, who is an official with the power of arrest, and not by the prosecutor. The prosecutor acts as the head of investigation only when a police officer is suspected of committing a crime. In most cases EIOs are issued by the police, border guard or customs and validated by the prosecutor. Prosecutors are also competent to issue EIOs, but in practice that does not happen often.

The competence of Finnish police and prosecutors is not limited to their respective districts, which means that they have the jurisdiction to act throughout the whole country.

Prosecutors and investigative bodies work closely together, and EIOs are usually prepared in cooperation between the police, border guard or customs and the prosecutor's office. In most cases the EIO is validated by the prosecutor, who is already familiar with the case. If necessary EIOs can be validated on the weekend by the prosecutor on call.

If a criminal case is before a court, the EIOs concerning videoconference are issued by the court. However, if during trial proceedings other evidence needs to be gathered, the EIO will be issued by the prosecutor. Any district court can issue an EIO for hearing witnesses, experts and other parties in court proceedings in their pending cases.

Executing authorities

Pursuant to Section 5 of the EIO Act, the executing authorities in Finland are the police, border guard and customs authorities.

The HDC and the prosecutors in the judicial district of the HDC also act as executing authorities. The hearing of witnesses, experts and parties in a matter before a court is, however, conducted by the district court in whose judicial district the person to be heard has their domicile, place of habitual residence or place of ordinary residence. In special circumstances another district court or prosecutor may also act as the executing authority.

As in the case of the issuing of an EIO, the decision on the recognition and execution of an EIO referred to in Article 22 of the Directive (temporary transfer of a person from Finland) is made exclusively by the HDC (Section 12(1) of the EIO Act). The prosecutor shall submit to the HDC a request for a decision on recognition and execution.

The main authority that executes EIOs in Finland is the police, but EIOs can also be executed by the border guard and customs. The Finnish police consists of 11 police departments (plus the police authority of the Åland Islands) and the National Bureau of Investigation (NBI). It is the above-mentioned authorities that conduct preliminary investigations in Finland. The NBI has a special role in dealing with EIOs, and in principle they are the central authority within the police for incoming EIOs. The NBI is the 24/7 national Single Point of Contact mentioned in the EJA Atlas for EIOs at the preliminary investigation stage (excluding customs matters and Nordic states, because direct contact is allowed between the competent authorities). All incoming EIOs at the preliminary investigation stage (excluding customs matters) should be sent to the NBI. They execute EIOs by themselves or send them to local police departments for execution. If needed, the NBI also provides translation, assistance and guidelines to the local police.

If police require assistance to decide on the execution of an EIO, they may consult with the prosecutor, but in principle the police are responsible for the execution of the EIO. According to Section 7 of the EIO Act, the police authority, the border guard authority or the customs authority may submit a decision to refuse the recognition and execution of an EIO to a prosecutor for validation. However, during the visit the practitioners explained that this has never happened.

Finnish customs also have a contact point for international cooperation, and they are the executing authority for EIOs related to customs crimes.

EIOs regarding the hearing of witnesses, experts and parties to a matter before a court (videoconference EIOs) must be sent directly to the court of the region in which the person is known to reside.

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

Article 1(3) of the Directive is applied directly, which means that in Finland a suspected or accused person may request to issue an EIO. The Finnish authorities have explained that national procedures apply to this situation. The person who is suspected or has been charged with an offence would have the right, under national law, to request that a national authority carry out an investigative measure in order to obtain evidence. If the obtaining of evidence would require an EIO to be issued, the competent authority would issue an EIO under the same conditions as those under which an investigative measure would be carried out in the national procedure at the request of a party. Although the provision only mentions the right of a suspect to request an investigation order, Finnish authorities have explained that the victim could also request that evidence be obtained in the situations referred to above. The evaluation team welcomed this possibility (*see Best practice No 2*).

According to Chapter 3, Section 7 of the Criminal Investigation Act, investigative measures requested by a party shall be conducted if it can be demonstrated that they may affect the matter, and that they do not result in unreasonable expenses. In the course of a criminal investigation, the head investigator decides on the criminal investigative measures requested by a party. Once the matter has been transferred to the public prosecutor, the decision is up to the prosecutor.

At trial stage, the court and prosecutor can issue an EIO by request of the parties. Victims, defendants or lawyers on their behalf may appeal against the decision by the court not to issue an EIO.

During the meeting with the Finnish Bar Association, the representative explained that the possibility indeed exists in Finland for a defendant or victim to request an EIO, but in practice this option is used very rarely.

5. SCOPE OF THE EIO AND RELATION TO OTHER INSTRUMENTS

Article 3 of the EIO Directive is not transposed in the EIO Act, but in accordance with the EIO Act, Section 1(1) of the Directive is directly applicable.

Finland is of the opinion that under Article 1(1) of the Directive, an EIO can be issued or validated in order to obtain evidence. Measures such as summoning a person, requesting information on legislation, requesting information regarding previous criminality, or the transfer of proceedings, would not fall within the scope of the EIO.

The Finnish authorities reported no major issues regarding the investigative measures requested from other countries or from Finland. As an issuing State they request those investigative measures that are allowed by national law. Different authorities (mainly the police) have, however, occasionally encountered situations in which other Member States have requested the confiscation and return of funds, service of a summons or a copy of the judicial decision using an EIO. Copies of judicial decisions can be seen as evidence if they have evidentiary value for the issuing State. In such cases, where possible, the Finnish authorities interpret the Directive more broadly, and attempt to execute the EIO. Furthermore, Finnish practitioners explained that in most cases they would execute an MLA where the EIO would have been the appropriate instrument, which shows the flexible approach of the Finnish executing authorities.

Article 4 of the Directive is also applied directly in Finland. The Directive sets out rules on carrying out an investigative measure at all stages of criminal proceedings, including the trial phase (see recital 25 of the Directive). According to the Finnish authorities, an EIO can be issued in criminal proceedings and at any stage of the proceedings, from the initiation of a pre-trial investigation until the final conviction. In addition, according to the Finnish authorities the Directive can be interpreted such that an EIO may also include certain measures following criminal proceedings, e.g. obtaining location data in order to contact a convicted person (Section 9 of the EIO Act). However, the Finnish authorities have had no problems regarding this issue, as they have not received or forwarded any requests in the phase of executing a sentence or in the process of enforcing a final decision.

Under Section 9(1) of the EIO Act (use of coercive measures), the obtaining of location data in order to contact a suspect or convicted person may be carried out in order to execute an EIO. The Finnish authorities find it appropriate and reasonable to occasionally use an EIO for the purpose of locating persons, e.g., before planned action days or before issuing an EAW. However, the police are of the opinion that police cooperation channels should be used before considering issuing an EIO for this purpose.

Finland has not had any cases in which EIOs have been issued in order to obtain the personal data necessary for the enforcement of an administrative decision. According to the Finnish authorities, this would not fall within the scope of the EIO, and they would not execute such requests.

Regarding the relation between the EIO and the EAW, the Helsinki District Court has explained to the evaluation team that in some cases an EIO could be a more suitable instrument than an EAW. The Helsinki District Court finds that it should be possible to ensure the presence of an accused person throughout the entire court proceedings with an EIO, as it is a more sustainable and proportionate measure than an EAW.

The EIO is an instrument that is used for purpose of gathering evidence (see also recital 25 of the EIO Directive) and attending a trial does not always have this purpose. Therefore, the evaluation team would like to recommend that the Commission clarify the application of the EIO in connection with ensuring the accused person's presence at his or her trial (*see chapters 12.3 and 19.2, and Recommendation No 13*).

The Finnish authorities, when executing EIOs, have had several cases in which EIOs have been issued in order to authorise the information shared at the level of the police, and in order for this information to be used as evidence in court. It appears that some authorities instead use police cooperation as a first option and issue an EIO later, when it is needed to cover the use of the information in court. Some Finnish practitioners believe that this is due to the fact that the EIO as a cooperation instrument is too slow, as some Member States do not always comply with the established time limits.

Finnish customs prefer to use the Convention on mutual assistance and cooperation between customs administrations (Naples II) for cross-border cooperation.

Finland has not encountered any problems with EIOs in relation to JITs. The Finnish authorities explained that if a Member State that is a party to a JIT were to issue an EIO to Finland on behalf of the JIT, there would be no problem as long as it were clearly stated that the JIT exists, and how the information is to be shared.

To ensure that the executing authority has all relevant information concerning the execution of the EIO, the evaluation team would like to recommend that all Member States issuing an EIO mention all other instruments (such as an EAW or an existing JIT) that are connected to the same investigation (see *Recommendation No 6*).

6. CONTENT AND FORM OF THE EIO

6.1. General challenges

According to Section 3 of the EIO Act (Content and form of an EIO), an EIO shall be issued in the manner laid down in Article 5 of the Directive by means of a form conforming to the model annexed to the Directive.

Annex A to the EIO

Finnish practitioners point out that, in their opinion, the EIO form would need a lot of improvement in order to make it an effective tool in international cooperation. Annex A should be easy to fill in, and all of the necessary information should be conveniently placed and clearly visible. The police have pointed out that the UK, for example, is creating its own form, which is quite similar to Annex A, but it is an improved version. In their opinion, Annex A is too long and not user-friendly. The improvements should make it clearer and more functional.

Finnish practitioners specifically suggest, inter alia, that there should be a section in Annex A for the questions to be asked to the witness or suspect. Alternatively, there could be a box to be ticked if the questions are attached to the form in a separate document. Practitioners also suggest that there should be boxes to be ticked for attached documents to be shown to the person who is to be heard, and documents on rights and obligations to be given to the person. All related orders and requests should be filled in in section D, not just the earlier EIOs.

For EIOs relating to videoconferencing, the box for the victim is missing from section C (see also Chapter 20.2), and Finnish authorities would like to see a box to be ticked if the issuing authority also requests the presence of the accused or victim for the entire proceedings. The Finnish authorities state that EIOs relating to videoconferencing should also have a separate box where the date of the upcoming court hearing could be mentioned. Furthermore, practitioners mentioned that in Annex A the suspect or accused person are mentioned together in one box. This can cause confusion, as for some Member States the two definitions are very different, and different rules exist when executing a hearing to hear a suspect or an accused person.

Finland would also accept and prefer that a digital signature were used in all cases, while realising that this is not yet possible for all Member States.

Finnish practitioners have also pointed out that Annex A is technically difficult to change or process. For example, it is not possible to add extra textboxes to section E if several persons should be mentioned therein. Annex A also requires the repeating manual writing of information that will not be changed, which is usually included in letterheads or can be copy-pasted on plain sheets (the names, units and contact information of issuing officers, etc.). The macros of the form make it difficult to fill in or follow the form when information ‘jumps’ from one page to the next in an illogical manner.

In conclusion, the Finnish practitioners are of the opinion that Annex A would require major improvements. The evaluation team also acknowledges that an amendment to the forms could improve the application of the EIO, and invites the Commission to consider making some changes to the structure and substance of the form (*see Recommendation No 14*).

Quality of incoming EIOs

The Finnish police, which is the authority that mainly executes EIOs in Finland, have pointed out that there is a great variation between the content and quality of the EIOs issued by different Member States. During the evaluation meetings, Finnish police confirmed that they always seek to find ways to help other Member States and to execute EIOs. When some necessary information is missing from Annex A, they consult with the issuing State and request additional information.

As operative communication with some Member States is more difficult than with others, when needed the Finnish police use the help of Eurojust to receive additional information from the issuing State.

The Helsinki District Court has explained that they often decide to request additional information concerning legal remedies, as Section J of Annex A is often not completed (see also Chapter 16).

Quality of outgoing EIOs

Depending on the district, it appears that the main practical problem with the issuing of EIOs in Finland is quality. One of the reasons for this is that some police officers rarely issue EIOs. According to the NBI, the head of the investigation may contact the NBI for assistance when drafting an EIO. On the other hand, this assistance is not always sought. During the evaluation visit, the NBI explained that there are experts on international cooperation in each police district who can be consulted. However, other officials gave the impression that not everyone is aware of the existence of these experts. The evaluation team supports the initiative for the Finnish police to have experts on international cooperation in every police district. That is why it has been recommended that Finland further promote the existence of these experts, so that all practitioners could benefit from their assistance when needed (*see Recommendation No 1*).

Prosecutors may also experience issues when filling out the form, as not all of them work with EIOs frequently. However, all prosecutors can request advice from the Prosecutor General's Office.

6.2. Language regime

Under Section 21 of the EIO Act, Finland accepts EIOs in Finnish, Swedish or English. The Finnish executing authority may also accept an EIO drawn up in another language when there is no other impediment to its acceptance. In practice this means that if the person executing the EIO is, for example, fluent in German, the EIO may also be accepted in the German language. The Finnish approach to the language of the EIO is unique within the EU, and the evaluation team is of the opinion that Finland should be commended for their practical approach in this matter (*see Best practice No 3*). At the same time, the evaluation team suggests that the Finnish authorities include in the EJA Atlas that the Åland Islands are a Swedish-speaking region, so other Member States may directly choose to translate the EIO into Swedish (*see Recommendation No 2*).

Finnish practitioners find that all Member States should be encouraged to accept EIOs in English. In Finland some officials are able to fill in Annex A directly in English, thereby speeding up the whole process. According to Finnish practitioners, it should be possible to first send an English version, at least in urgent cases. In Finland, the National Bureau of Investigation usually takes care of translations but in urgent cases prosecutors with sufficient knowledge of the language have translated the EIOs by themselves. The NBI has in-house translators for Finland's neighbours and the main European languages. For other languages translations must be commissioned from translation bureaus.

It may be difficult to find a translator between Finnish and other languages, as the Finnish language is not very widely spoken. Finnish practitioners have explained that they would prefer to receive an EIO that has been accurately translated into English as opposed to a poor translation into Finnish.

In situations where other Member States do not accept EIOs in English, translation costs can be remarkably high for Finland. This could be avoided if all Member States accepted the use of English for EIOs. The evaluation team agrees that Member States should be encouraged to accept EIOs in English, especially in urgent cases (*see Recommendation No 7*).

6.3. Issuance of additional EIOs, splitting an EIO, conditional EIOs

When issuing EIOs, the Finnish authorities endeavour to make them as complete as possible in order to avoid any issues. Finland has not encountered any problems with the execution of their requests in other Member States in the area of additional or conditional EIOs.

When executing an EIO, Finnish authorities have a flexible approach to executing incoming additional EIOs, EIOs containing multiple requests or conditional EIOs. If the issuing State has split their request concerning the same case into several EIOs, Finland has no problem executing such requests. They are also willing to execute conditional EIOs where the execution of an investigative measure depends on the outcome of the execution of another investigative measure (e.g. to determine the owner of a particular bank account and hear the owner as a suspect).

There has been no practice regarding the need to split EIOs, but if the issuing State requested the hearing of several persons residing in different parts of Finland, the Finnish authorities would find a suitable approach and send the EIO to different regions for partial execution.

6.4. Orally issued EIO

Article 7(1) of the Directive is applied directly and accordingly, and EIOs must be transmitted in written form.

During the evaluation meetings, the Finnish authorities explained that they do not accept oral EIOs but in urgent cases they will start preparations for the execution of an EIO before the written form arrives. Preferably at least an email should be sent before the formal EIO. Finnish practitioners have explained that they will not hand over any evidence before a formal EIO has been received.

The courts have the possibility to start organising a video hearing based on a verbal notification, if the written EIO is to follow later. It might happen that the need to hear someone during the trial occurs unexpectedly, but in this case the court also needs sufficiently detailed information concerning the matter and the person to be heard.

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

Articles 6 and 10 of the Directive are directly applicable in Finland.

Necessity and proportionality

When issuing an EIO, the Finnish authorities rely on the criterion of proportionality laid down in the Finnish Coercive Measures Act and the Pre-Trial Investigation Act. The amount of work for the executing Member State and the resources used for translation are also taken into consideration.

According to Finnish practitioners, there have been cases where the prosecutor has not validated an EIO issued by police or customs authorities for reasons of proportionality. However, this happens rarely, and any difficulties can usually be discussed between the police and the prosecutor. According to Finnish prosecutors, it is easy to establish proportionality in the case of serious crimes. If prosecutors have questions regarding the proportionality of the request while issuing an EIO, they can always discuss it with the heads of department in their office or with the Prosecutor General's Office.

The courts are of the opinion that if someone has requested to hear a witness, expert or another party to judicial proceedings, and hearing the person is relevant to the case, the court will issue an EIO. Judges find that hearing a person via videoconference is often more proportionate than bringing him/her to Finland from abroad.

The Finnish authorities have never refused to execute an EIO on the grounds of proportionality or necessity, even though the police are of the opinion that some EIOs have been unnecessary, as the information could have also been obtained using police cooperation channels. Even if the question of necessity arises, the Finnish authorities would still execute the EIO (nor does the Directive provide grounds for refusal in such cases). The evaluation team agrees with the Finnish authorities that in some cases it may be useful to use police channels before issuing an EIO, for example to determine whether the person concerned is in fact in the executing Member State (*see Recommendation No 8*).

Recourse to a different type of investigative measure

During the evaluation meeting the NBI explained that if they find that another investigative measure would be more effective in achieving the same goals, they will initiate consultations with the issuing Member State instead of applying the requested investigative measure. For example, it is sometimes impossible to send servers to the issuing State, as their volume would be too large. Finnish police keep the desired end result in mind, and in cooperation with the issuing Member State they seek to find the easiest means to achieve the goal.

However, during the visit the evaluation team and practitioners also discussed what happens when Finland receives an EIO to hear a witness, and the Finnish authorities consider the person in question to be a suspect. In such cases the Finnish police do not consult with the issuing country prior to the hearing, and they execute the EIO by conducting a suspect interview. The evaluation team is of the opinion that before changing the status of the person to be heard, Finland should always consult with the issuing Member State, so as to prevent any possible problems for the issuing State later on in the proceedings (*see Recommendation No 3*).

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACT

As issuing State, Finnish practitioners actively use the EIJN Atlas in order to find the competent authority to forward the EIO. Unfortunately, the information in the EIJN Atlas is not always up to date. For example, matters might be more complicated in situations when the executing State has many different executing authorities and does not have one central authority that receives all EIOs. For that reason, the evaluation team would like to recommend that all Member States keep the information in the EIJN Atlas up to date (*see Recommendation No 9*). If the Atlas fails to give the answer, Finnish practitioners also use EIJN contact points and Eurojust when necessary. The police also use the assistance of Europol in coordinating the execution of EIOs.

The National Bureau of Investigation is the general executing authority in Finland, which means that all incoming EIOs from other Member States that are in the preliminary investigation stage (except for customs matters) should be forwarded to NBI. Some countries may not be accustomed to the fact that the Finnish police is the competent authority to receive an EIO, and as a result EIOs are sometimes sent to the Prosecutor's General Office, local prosecution districts or even to courts.

Finnish practitioners prefer to receive and send out all EIOs by electronic means, and they see no need to send paper versions by mail. They consider paper copies to be unnecessary, as they also use electronic archiving. Finland also seeks to use encrypted email exchange, but this is not always possible as some Member States are not used to working with electronic material or because of the incompatibility of the systems.

After the EIO has been transmitted, the Finnish authorities prefer direct communication between the issuing and executing country. If it is impossible to establish direct contact or the case is extremely urgent, help can be sought from Eurojust. The police have the experience that direct contact is easily established with neighbouring countries. With other Member States, Finland resorts to Eurojust more often. The Finnish courts also use direct contacts with the competent authorities in other Member States, and when necessary they also use the help of EIJN contact points and Eurojust.

9. RECOGNITION AND EXECUTION OF AN EIO AND FORMALITIES

Article 9 (2) of the Directive states that a special formal requirement or a special procedure must be observed in the execution of an EIO unless such formality or procedure is contrary to the fundamental principles of the laws of the executing State. Section 1 of the EIO Act states that ‘the provisions of a legislative nature in the Directive shall have the force of law unless otherwise provided in this Act’. Section 8 of the EIO Act states that ‘Unless otherwise provided in the Directive or this Act, an EIO shall be executed in compliance with the procedure laid down in Finnish law’. In conclusion, the starting point is that the EIO, which has been recognised through a declaration of enforceability, must be executed in the same manner as when a corresponding measure is executed in a Finnish preliminary investigation or criminal case. Under Article 9(2) the issuing authority can, however, request that a different procedure based on Finnish conditions be applied for enforcement. Hence, Article 9(2) is directly applicable in Finland, and there is no provision in the EIO Act that regulates the formalities and procedures indicated by the issuing Member State.

The reason for which the issuing authority would request certain formalities or procedures for execution is often due to the national rules on evidence admissibility. Failure to comply with the requested formality or procedure may result in the issuing authority being unable to use the evidence that has been obtained. The Finnish authorities take this into account when they consider whether a requested formality or procedure should be accepted. Police and prosecutors sometimes receive requests from issuing authorities regarding interrogations to be held on Finnish territory. In such cases Finland always invites the issuing authority to be present as observers. The practitioners have pointed out that the overall ambition is to execute the EIO as requested.

When issuing an EIO for hearing a suspect, Finland requests that the suspect be informed of their rights and duties under Finnish law. The practitioners have explained that the executing State usually complies with this formality. Other than that, Finland rarely has any requests for formalities or procedures. This has to do with the principle of the free assessment of evidence that applies in Finland. Therefore, there have not been any problems related to the admissibility of evidence stemming from non-compliance with certain formalities or procedures in the execution of the EIOs issued by Finland.

The evaluation team concludes that Finland has correctly transposed the Directive on this matter. Furthermore, the evaluation team is of the opinion that the Finnish approach and general ambition of executing incoming EIOs in accordance with the request from the issuing authority serves as a positive example to all Member States.

10. SPECIALITY RULE

Neither the EIO Directive nor the EIO Act contain a general rule of speciality, except in relation to the transfer of persons (Article 22(8) of the Directive). During the visit, Finnish practitioners also underlined that the EIO does not contain a general rule of speciality, and Article 19 of the Directive refers only to the confidentiality of the investigation.

Nevertheless, when asked if the Finnish authorities request consent from the executing State before using the obtained evidence in other proceedings, they replied that they usually do so to ensure that the evidence may in fact be used. In the questionnaire Finland stated that sometimes the pre-trial investigation authorities add a sentence in the EIO that unless otherwise notified by the executing authority, the information may be used in other proceedings in Finland. However, during the visit the prosecutors firmly stated that they do not agree with adding this sentence, and that permission is in any case always requested. In cases where the indictment has been changed, Finland follows the principles of CJEU ruling C- 388/08 PPU.

As executing authority, the Finnish authorities are also of the opinion that the issuing State must request permission before using the evidence in other proceedings. When Finland is asked for permission, the competent authorities assess whether the EIO would also have been executed for the other crime concerned. If that is the case, Finland will grant permission to the issuing State.

If the result of the execution of an EIO reveals that a crime other than that which gave rise to the issuing of the EIO ('accidental discovery') has been committed, the Finnish police and customs have stated that a new investigation may be launched. In such cases the issuing Member State is informed.

During the visit, the evaluation team and the interviewed practitioners expressed the need for further clarification at EU level regarding the applicability of the speciality rule. Further clarification is required to avoid the possibility that Member States treat this matter differently. The evaluation team invites the Commission to clarify, by amending the directive, the application of the rule of speciality regarding the EIO (*see Recommendation No 15*).

11. CONFIDENTIALITY

Article 19 of the Directive has been correctly transposed in Section 25 of the Act on Confidentiality and Restrictions on Information and Section 24(1) of the Act on Publicity in the Authorities Activities.

Section 25 of the Act on Confidentiality states that the same provisions regarding confidentiality and the right to receive information apply to the execution of an investigation order sent by another Member State as would apply in a similar domestic case in Finland.

The interviewed practitioners stated that they handle EIO cases in the same manner as if they were domestic cases, and that Finland has not encountered any problems related to confidentiality. Finnish judges have explained that they rarely encounter any issues in relation to confidentiality, as they are involved during the trial stage, where the information is already available to the parties to the proceedings.

12. GROUNDS FOR NON-EXECUTION

12.1. General

Article 11 of the Directive provides for optional grounds for the non-recognition or non-execution of an EIO. When transposed into national law, some Member States have transformed those optional grounds for refusal into mandatory ones. Since the Directive's legislative provisions have the force of law in Finland, the grounds for non-execution are correctly transposed in national law. Hence, Article 11 is directly applicable, and national rules regulate all grounds for refusal provided under the Directive as optional grounds for refusal, permitting the domestic judicial authorities to assess whether or not they exist in each single case. In addition, there are special provisions regarding coercive measures in Section 9 of the EIO Act. Under Section 9, the execution of coercive measures in the EIO requires their use to be permitted under Finnish national law in corresponding circumstances. The interviewed practitioners stated that the rules should be applied in the same manner as in national matters, and that the provisions must be in national law since they pertain to coercive measures. The grounds for refusal are to be interpreted in a restrictive manner, and the overall ambition is to execute the requested measure.

According to the Finnish police, the most frequently invoked reason for non-execution is insufficient or incomplete information in Annex A. Furthermore, the poor quality of translation often renders an EIO incomprehensible. These issues are encountered by Finland as executing or issuing authority. Before refusing to execute an EIO on these grounds, Finland always seeks to give the issuing State the opportunity to submit additional information.

According to the Helsinki District Court, non-execution most frequently occurs when the person to be heard does not consent to a hearing via videoconference. This problem is encountered as both executing and issuing authority.

During the visit, the Court also stated that when executing an EIO, one ground for non-execution has been the lack of (information on) legal remedies against the issuance of the EIO, after additional information was requested by Finland (Section J). However, following the *Gavanozov I* judgment by the CJEU (C-324/17), the issuing authority does not, when issuing an EIO, have to include in Section J a description of the legal remedies, if any, that are available in its Member State against the issuing of such an order. When issuing an EIO, Section J must only include the legal remedies that were sought in the specific case. Therefore, the existence of legal remedies in the issuing Member State need not be systematically verified, and the executing authority should assume that the EIO has been properly issued, and that legal remedies are available.

The evaluation team therefore sees it fit to recommend to Finland, in accordance with the principle of mutual recognition and trust, and CJEU case-law, that it not treat the lack of information on existing legal remedies as grounds for non-execution (*see Recommendation No 4*).

12.2. Ne bis in idem

The NBI explained that they have full access to the criminal report system of the police, border guard and customs. A basic check can be done to assess whether an incoming EIO has a connection to a national investigation. However, during the visit it was also made clear that, in practice, Finnish authorities also rely on the suspects or defendants themselves to alert authorities of a possible ne bis in idem infringement.

12.3. Fundamental rights (Article 6 TEU and Charter)

The Helsinki District Court has mentioned that the national legislation of certain Member States does not permit defendants to participate in a main trial by videoconference. In such Member States it is only permitted to hear the person via videoconference, but they cannot participate throughout the entire proceedings. That is why several Member States have refused to execute such EIOs from Finland.

Hearing defendants in criminal proceedings by videoconference is not contrary to the fundamental principles of Finnish law. In Finland, under Chapter 8, Section 13 of the Criminal Procedure Act, parties in criminal proceedings can participate in an oral hearing using a technical communication method where the participants in the hearing have voice and visual contact, if they agree and the court deems it appropriate (*see also Chapters 5 and 19.2*)

13. TIME LIMITS AND GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION

Article 12 of the Directive (time limits) is correctly transposed, since the article has the force of law in Finland and there is no separate provision in the EIO Act. During the visit, practitioners have shared some experiences with other Member States that do not comply with the established time limits when executing an EIO issued by Finland. On the other hand, the Finnish police has mentioned that insufficient recourses may also cause delays in executing an EIO. All in all, issues with time limits do not occur often, according to practitioners. The evaluation team would, however, like to underline that it is not possible to obtain a clear overview of how well time limits are respected when Finland is issuing or executing an EIO, because no statistics are available on the matter (*see also Chapter 20*).

The recognition and execution of an EIO can be postponed on the two grounds indicated in Article 15(1) of the Directive. Since the Directive's legislative provisions have the force of law in Finland, and there are no specific provisions regarding this issue in the EIO Act, Article 15 is correctly transposed. Neither during the visit nor in the replies to the questionnaire did Finland mention any specific issues concerning the grounds for the postponement of recognition or execution.

14. LEGAL REMEDIES

Under Article 14 of the Directive, Member States must ensure that legal remedies equivalent to those available in a similar domestic case are also applicable to the investigative measures indicated in the EIO. Nevertheless, the substantive reasons for issuing an EIO may be challenged only in the issuing Member State (Article 14(2)).

Section 20 of the Finnish EIO Act (Request for a Review) ensures that the decision on the recognition and execution of an investigative measure of an EIO can be challenged in Finland by way of legal remedies equivalent to those available in a similar domestic case, in conformity with Article 14(1) of the Directive. In the Finnish Coercive Measures Act, legal remedies are available against a house search (Chapter 8, Section 18) and seizure (Chapter 7, Sections 15 and 22). With regard to covert coercive measures, the decision concerning a court warrant is not subject to appeal. However, an extraordinary appeal on the basis of a procedural error may be lodged in this respect (Chapter 10, Section 43). No legal remedies are available for the hearing of persons during the preliminary or trial stage.

As a result of the *Gavanozov II* judgment by the CJEU (C-852/19), Finland amended its legislation, making it possible to appeal against the issuing of an EIO (Section 23a of the EIO Act). By request of a person concerned by an EIO issued or validated by a prosecutor, a district court shall examine whether the conditions for issuing the EIO exist. The person concerned (i.e. the suspect or witness) has 60 days from being informed of the EIO to file such a request. In practice, Finnish authorities have so far encountered a few cases in which the issuing of the EIO was (unsuccessfully) appealed. If a request for a review is successful, this would mean that the EIO should not have been issued. This decision may have an influence on the admissibility of evidence in the main trial, according to the Finnish practitioners.

Regarding secret coercive matters, the suspect must be informed in writing within one year of the termination of the use of the measure. Under Finnish law, it is possible to extend this term (see also Chapter 20.5).

All in all, the evaluation team is of the opinion that Finland has properly transposed the Directive with regards to the legal remedies.

15. TRANSFER OF EVIDENCE

Article 13 of the EIO Directive is directly applicable in Finland (Chapter 1, Section 1 of the EIO Act). Under Section 14 of the EIO Act, the NBI is responsible for arrangements relating to the delivery of evidence obtained as a result of an EIO, for the police and border guard. Customs have their own unit for the transfer of evidence. According to the NBI, no specific challenges have been faced where evidence has been transferred.

16. OBLIGATION TO INFORM - ANNEX B

Article 16 of the Directive, the obligation to inform by completing and sending the form set out in Annex B, is directly applied in Finland. Pursuant to the answers from the interviewed practitioners, the Finnish executing authorities are complying with the provisions by sending Annex B in time. Sending Annex B is a standard procedure in Finland. However, during the visit practitioners have stated that, as an issuing authority, they often do not receive Annex B in time, or they do not receive it at all.

The evaluation team would like to emphasise the importance of always sending Annex B in time, and it therefore makes a recommendation to all Member States in this regard (*see Recommendation No 10*).

17. COSTS

Article 21 of the EIO Directive is directly applicable in Finland.

Finland has not yet encountered any major difficulties regarding the costs related to the execution of an EIO. However, the police are of the opinion that questions regarding high costs might arise more often in the future, as there is a constant increase in the amount of online data related to cybercrime.

During the evaluation visit, the police described a situation where the issuing State had requested electronic data, not realising how large the volume of the data was. If Finnish police had sent all the requested data, it would have been a ferry load of hard disks, which would have been extremely expensive. In this situation the police consulted and coordinated the situation with the issuing State and agreed on a solution that involved reducing the volume of data.

Finnish practitioners have also pointed out that costs can be exceptionally high in situations where the issuing State has requested long-lasting actions or where there is a great deal of material to be translated.

Finnish practitioners generally find that since they receive a lot of help from other Member States, it is always reasonable to try to execute the EIOs they receive and to bear the costs, even in situations where the costs are higher than usual.

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

If there is a need to organise a joint action day in different Member States, the Finnish authorities contact Eurojust and/or Europol and use the help of their national desks to coordinate their actions. All possible challenges and obstacles are coordinated and resolved through Eurojust/Europol.

The only difficulty that the Finnish police has encountered regarding joint operations is the availability of resources and capacity on a particular day (in cases where Finland is the executing State).

19. SPECIFIC INVESTIGATIVE MEASURES

Section 9 of the Finnish EIO Act stipulates that the following coercive measures may be carried out in order to execute an EIO: confiscation and copying of a document; a search and a data retention order; cordoning off the site or object of an investigation; a test to determine the consumption of alcohol or other intoxicating substance; taking of personal identifying characteristics; preparation of a DNA profile; telecommunications interception; obtaining data other than through telecommunications interception; traffic data monitoring; obtaining location data in order to contact a suspect or convicted person; obtaining base station data; extended surveillance; covert collection of intelligence; technical surveillance; covert activity; pseudo-purchase; the controlled use of covert human intelligence sources; and controlled delivery.

Furthermore, the provisions of the Coercive Measures Act apply to the procedure to be observed in deciding on and using coercive measures in Finland.

19.1. Temporary transfer (Article 22-23)

Temporary transfer is regulated in Articles 22 and 23 of the EIO Directive, and this has been transposed into Finnish law in Sections 12, 13, 14 and 23 of the EIO Act. As already mentioned in Chapter 4 of this report (Competent Authorities), the EIO Act has appointed exclusive competence to the prosecutor and the Helsinki District Court respectively with regard to the temporary transfer of a person.

The decision on the recognition and execution of an EIO referred to in Article 22 of the Directive, issued by another Member State and concerning the temporary transfer of a person held in custody from Finland to the said Member State, is made by the Helsinki District Court (Section 12 of the EIO Act). The prosecutor must submit to the Helsinki District Court a request for a decision on recognition and execution. The person to be transferred must be heard in person, and the prosecutor and defence counsel must be present at the session. The consent to the transfer shall be given in the session and recorded in the minutes. Before consenting, the person to be transferred must be informed of the significance of consent in the consideration of the matter. The Finnish EIO Act does not include any special procedure to determine whether a person consents to his/her temporary transfer.

The decision on the recognition and execution of an EIO referred to in Article 23 of the Directive issued by another Member State and concerning the temporary transfer of a person held in custody from the said Member State to Finland, is made by the prosecutor (Section 13 of the EIO Act). When the person is in the executing State, the Finnish issuing authorities have no special procedure to ascertain the person's consent. According to practitioners, the executing State is in a better position to ascertain consent if the person is in their territory.

In the situations referred to in Sections 12 and 13, the National Bureau of Investigation is responsible for the transportation of the person (Section 14 of the EIO Act).

The decision to issue an EIO referred to in Article 23 of the Directive for the purpose of temporarily transferring a person held in custody in Finland to another European Union Member State is made by the Helsinki District Court. The prosecutor shall submit a request for a decision on the issuing of the EIO to the Helsinki District Court (Section 23 of the EIO Act).

In practice however, there have been no cases in Finland of the temporary transfer of a person in the context of the EIO Directive.

19.2. Hearing by videoconference

Hearing by videoconference (Article 24 of the EIO Directive) is transposed in Sections 15 and 16 of the Finnish EIO Act.

Pursuant to Section 15, a witness, an expert or an injured party in Finland may be heard by videoconference or other audio-visual transmission at any stage of the criminal proceedings. Furthermore, Section 15 specifically mentions the possibility of hearing a witness, suspect or defendant anonymously. The district court may decide to hear a person anonymously via videoconference if the issuing Member State makes such a request and if anonymity could also be granted in a similar matter under national law.

Under Section 16, a suspect in a criminal investigation or a defendant in a criminal case may be heard by videoconference or other audio-visual transmission, as provided in Article 24 of the Directive. The prerequisite for the hearing of a defendant in a criminal case is that the defendant consents to it and that the hearing, taking into consideration the nature of the matter and other circumstances, does not compromise the defendant's legal protection. The district court decides on the hearing. Mandatory consent only applies to defendants. Finnish practitioners have explained that in relation to suspects the lack of consent is not a mandatory basis for refusal.

Finland has had a few cases where the accused person (defendant) refused to be heard. This led automatically to non-execution of the EIO. However, in the experience of the practitioners, more often the accused person wants to be heard. Practitioners find that the videoconferencing is a 'softer' option compared to an EAW and surrender.

The practitioners explained that they usually do not have problems regarding videoconference. Finnish authorities are flexible and can even organise hearings in prisons or detention premises if necessary. Technical issues do, however, sometimes arise in connection with the compatibility of videoconference systems.

As a downside to this flexible approach, the Oulu District Court reported that courts in Northern Finland cooperate with Swedish courts informally and hearings are agreed via e-mail, without sending an EIO. This practice continues and Sweden requests hearings via email through other Finnish courts as well. Because of the problems this caused in court, judges at the Helsinki District Court have not accepted this procedure and request an EIO from Sweden as is formally required. In light of the sovereignty principle, the evaluation team wishes to recommend to all Member States that they do not conduct a hearing via videoconference in another Member State without using an EIO (*see Recommendation No 11*).

In relation to the status of the person to be heard via videoconference and the corresponding procedural guarantees to be applied, Finland made a remark that the box for ‘victim’ is absent in Annex A, section C, ‘hearing by videoconference’. Under the Finnish Code of Criminal Procedure, the victim has a very strong position in criminal proceedings and has different procedural rights from a witness during a videoconference. In Finland the victim is, for example, permitted to be present during the entire trial, whereas the witness is not. Furthermore, the formalities to be requested from the executing State are different depending on whether the hearing is a victim or witness hearing. Therefore, Finland would like to see the box for ‘victim’ added to the section on videoconference hearing.

Hearing of defendants by videoconference at trial

During the visit and in the replies to the questionnaire, the Finnish authorities provided information on the right of the defendant to be present for the entire duration of the trial via videoconference. The practitioners explained that an EIO must be issued in accordance with Article 6 of the Directive, which stipulates (among other things) that it must be the case that the investigative measure in the EIO could have been ordered under the same conditions in a similar domestic case.

Under Finnish national law, the accused person can participate in the main trial via videoconference. This is regulated in Chapter 8, Section 13 of the Criminal Procedure Act and in Chapter 17, Section 52 of the Code of Judicial Procedure. Parties to the criminal proceedings can participate in an oral hearing using a technical communication method, where the participants in the hearing have voice and visual contact with each other, where there is consent, and where the court considers it appropriate. Chapter 17, Section 52 of the Code of Judicial Procedure applies to hearing a defendant for evidentiary purposes using technical means of communication. Under Section 52, a party to be heard for evidentiary purposes may be heard via videoconferencing in the main hearing without being present in person if the court considers that appropriate and if: 1) the person to be heard cannot appear in the main hearing in person due to an illness or another reason; 2) the appearance of the person to be heard in the main hearing in person would, in comparison with the significance of the evidence, cause considerable expense or inconvenience; 3) the reliability of the testimony of the person to be heard can be reliably assessed without his or her presence in the main hearing; 4) the procedure is necessary in order to protect the person to be heard or a person with a relationship to such person from a threat against life or health; 5) the person to be heard has not reached the age of 15 years or his or her mental capacity is impaired; or if 6) the person to be heard in a criminal matter is in need of special protection for a reason other than that referred to in paragraph 4, particularly taking into consideration his or her personal circumstances and the nature of the offence.

This means that for Finland it is possible to issue and execute an EIO for the purpose of permitting a defendant to be present via videoconference during their trial. However, Finland has noted that many Member States refuse to execute an EIO if it involves hearing an accused person throughout the main trial. Finnish practitioners have explained that they understand the point of view that attending a trial is not for evidence purposes, but they consider that to be a better option for the defendant, also because the use of an EAW may be avoided. Finnish authorities are of the view that the EIO Directive establishes the minimum standards the Member States must comply with, but there is no hindrance to assisting in other situations as well.

The evaluation team is of the opinion that more clarification on the application of the EIO to ensure the presence of the defendant in the main trial would be beneficial to all Member States, in order to ensure a more coherent approach on the matter (*see Chapters 5 and 12.3 and Recommendation No 13*).

19.3. Hearing by telephone conference

Section 15(7) of the EIO Act stipulates that a witness, an expert or an injured party may be heard by telephone conference, as provided in Article 25 of the Directive. Legally, the process is the same as a hearing via videoconference.

The Finnish police cannot recall a hearing ever taking place via telephone conference. The Helsinki District Court explained that this measure is not often used, because legislation and jurisprudence impose strict limits on this. Using a telephone conference for a hearing is not considered appropriate in many cases, and judges prefer to use videoconferencing. Furthermore, Finland rarely encounters cases where another Member State issues an EIO to Finland for a telephone conference.

19.4. Information on bank and other financial accounts and banking and other financial operations

Articles 26 and 27 of the EIO Directive apply directly in Finland. According to Chapter 4, Section 3 of the Finnish Police Act, the police have the authority to order information from banks. It is possible to send out one order to all official banks in Finland, to which banks reply one by one. The border guard and Finnish customs have their own, similar legislation for bank inquiries. Under Finnish national law it is not necessary to hold an investigation to request banking information, as it may already be requested in a preliminary stage. When executing an EIO for banking information, Finnish law requires some connection between the bank account(s) and the crime, but it does not necessarily need to be connected to the suspect.

All in all, Finland did not report any problems in relation to requesting bank account information as issuing or executing State.

19.5. Covert investigations

Article 29 of the EIO Directive (covert investigations) has been transposed in Section 17 of the EIO Act (covert activity and pseudo-purchase) Furthermore, Chapter 10 of the Coercive Measures Act (from Section 27 onwards) explains how covert investigations and pseudo-purchase work in practice in Finland. In order to execute an EIO, covert activity may be undertaken and pseudo-purchases may be made in the manner referred to in Article 29 of the Directive for the purpose of investigating an offence in accordance with the provisions of Chapter 10 of the Coercive Measures Act.

The director of the NBI decides on undercover operations in the field. In Finland, it is not necessary to inform the public prosecutor before a covert investigation is conducted. However, practitioners explained that in large-scale investigations it is custom for the police to coordinate with the prosecutor regarding the covert activities. Only specially trained police officers are permitted to conduct an undercover investigation in the field. Finnish customs officers with special training for covert activities may only act undercover online. Customs officers with special training for covert activities may participate with police officers in covert action targeting crimes that are under customs competence (Customs Crime Control Act).

Covert activity refers to the extended collection of intelligence targeting a certain person or his or her activity through the use of infiltration, in which false, misleading or concealed information or register notations are used or false documents are prepared or used, in order to achieve the confidence needed for the collection of intelligence or to prevent the collection of intelligence from being revealed. A further prerequisite is that the collection of intelligence is to be deemed necessary in view of the degree to which the criminal activity is planned, organised or professional or in view of anticipated continuity or repetition.

Covert activity in a residence is permitted only if entry into or staying in the residence occurs with the active cooperation of the person using the residence, and separate provisions apply to searching a domicile.

When deciding on the recognition and execution of an EIO concerning covert investigation, the competent authority of the issuing State may be granted the right, in order to investigate an offence, to engage in covert activity and to make a pseudo-purchase in the territory of Finland in accordance with the provisions of Chapter 10 of the Coercive Measures Act. An equivalent right may be granted to a public official from another EU Member State on the basis of an EIO issued by a competent Finnish authority. The practitioners noted, however, that foreign agents may come to Finland to assist with the investigative measure, but they are not permitted to act independently.

A practical problem encountered by practitioners in Finland is the secure and reliable transmission of the EIO to the covert operations unit in the country of destination. The Finnish authorities hope that this issue will soon be tackled, once the e-EDES portal is fully operational. For the most sensitive coercive measures, the Finnish authorities sometimes resort to using the facilities of Eurojust.

Giving notice of the use of covert coercive measures

In Finland, notifying the suspect of the use of a secret coercive measure is an important provision in national law (Chapter 10, Section 60 Coercive Measures Act). Written notice must be given to the suspect concerning all secret coercive measures such as intercepting telecommunications or controlled delivery, once the matter has been submitted to the prosecutor or otherwise terminated (at the latest within one year after termination). A court may decide on the postponement of the notice or that no notice should be given at all. The only justification for non-notification is a danger to life and health. The court may postpone the notice for two years, if this would be justified in order to safeguard the present or future collection of intelligence, ensure national security or protect life or health.

In some cases notification as a general rule may complicate international cooperation in the fight against crime and affect the use of undercover activities or pseudo-purchase in joint operations in general, according to the Finnish practitioners. They have explained that in practice it is very important to have timely consultations with the issuing State in order to discuss possible risks. The evaluation team commends Finland for consulting with the issuing State at an early stage, in order to tackle possible difficulties in the execution of an EIO (*see best practice No 4*). Most covert operations are carried out with neighbouring countries, which makes it easier to discuss between issuing and executing authorities, according to the practitioners.

19.6. Interception of telecommunication

Articles 30 and 31 of the EIO Directive (interception of telecommunications with or without technical assistance from another Member State) have been transposed into Section 18 and 19 of the EIO Act. The interception of telecommunication is also regulated in Chapter 10 of the Coercive Measures Act. The procedure concerning execution of an EIO for the interception of telecommunications is the same as in domestic cases.

Chapter 10, Section 3(1) describes what is viewed as telecommunications interception under Finnish law, namely the monitoring, recording or other processing of a message transmitted through a public communications network in order to determine the contents of the message. Telecommunications interception may only target a message that originates from or is intended for a suspect. Paragraph 2 provides for a limitative list of offences for which the interception of telecommunications may be authorised. Under Section 5, the court shall decide on the interception of telecommunications on the basis of a request from an official with the power of arrest. The warrant may be given for at most one month at a time, and a court warrant is also needed for any extension of the interception. Sections 55 and 56 provide for the use of surplus information; information obtained through the interception of telecommunications, which is not connected to the offence or connected to another offence for which the warrant was not given. Section 18 of the EIO Act specifically mentions that the court must impose a condition under which the issuing State will comply with the provisions on using surplus information or information where interception is prohibited, such as communications between a suspect and their lawyer.

Furthermore, the Finnish Coercive Measures Act also provides for traffic data monitoring, which is different from the interception of telecommunications. Traffic data monitoring refers to the obtaining of a message's identifying data, obtaining location data or the temporary prevention of the use of the network address or terminal end device (Chapter 10, Section 6).

According to the Finnish authorities, recital 30 of the Directive means that cooperating on the interception of telecommunications covers not only the content of the message but also traffic data monitoring when it is not a question of obtaining historical data. Articles 10 and 11 of the Directive would apply to obtaining historical data. Therefore, in Finland, 'interception of telecommunication' as provided for in Articles 30 and 31 of the EIO Directive covers telecommunications interception and traffic data monitoring (excluding historical data).

In cases where a bugged car is travelling abroad or a GPS tracking system has been installed in a car travelling to Finland, an ex-post notification issued by means of Annex C under Article 31 of the Directive is not accepted, in accordance with its wording. According to the NBI, Article 40 of the Schengen Convention is primarily used in such situations.

The notifications referred to in Article 31 of the Directive are received and made by the NBI. When the NBI receives a notification, they submit the matter to a court for resolution without delay (Section 19 EIO Act).

In practice, there have been cases where a Finnish EIO for the interception of telecommunications was refused by the executing Member State. Once the EIO for interception of telecommunications was refused on the grounds that the argument presented for the necessity of the measure was insufficient.

As the executing authority, Finland can execute an EIO for a wiretap within a few days, depending on urgency. Furthermore, Finland can immediately transmit the intercepted telecommunications to the issuing State, and it has one common technical machinery for such measures.

The evaluation team notes that there are differences between Member States on what falls under the concept of telecommunications and when Annex C or Annex A respectively can be used. This can have a negative effect on judicial cooperation. Considering these findings, the evaluation team finds it appropriate to recommend to the EU legislator that the concept of ‘interception of telecommunications’ should be clarified (*see Recommendation No 16*).

At the same time, Member States have different approaches when it comes to cross-border surveillance and to what extent it is a measure of police (Article 40 CISA) or judicial cooperation. Furthermore, questions remain regarding the meaning of Article 34(1)(b) and recital 9 of the EIO Directive in light of the use of surveillance measures such as a GPS tracker or an audio/video recording device in a vehicle. The evaluation team would therefore like to invite the Commission to also clarify the application of the EIO Directive in relation to Article 40 CISA, especially with regard to measures covering the surveillance of vehicles with a GPS tracker or an audio/video recording device (*see Recommendation No 17*).

19.7. Other investigative measures

During the discussions on other investigative measures, the practitioners specifically mentioned the way in which house searches in Finland are organised. According to the Finnish Coercive Measures Act, it is possible to conduct a general or a special search of a domicile (Chapter 8, Section 1). A special search of a domicile refers to a search of premises in which it can be assumed that the object of the search would reveal information concerning a person who has the right not to testify in court.

The court decides on the application of a *special* search of a domicile and on the appointment of a search representative. For a *general* search of a domicile, however, the decision can be made solely by the head of investigation at the police, border guard or customs. This means that when Finland issues an EIO for a general house search, no court order can be attached or mentioned in the EIO, as it does not exist. The practitioners have mentioned that the absence of the court order in such cases frequently raises questions with the executing authorities, as in many Member States a court order would be required for a house search. Such issues can usually be resolved through consultations between the issuing and executing authorities.

In view of the evaluation team, Member States could consider making a brief reference to an existing court order or the absence thereof, in order to avoid the need for further consultations and to expedite the execution process (*see Recommendation No 12*).

20. STATISTICS

In the questionnaire, the Finnish authorities have provided some statistics on incoming and outgoing requests to the evaluation team. However, according to Finland the mentioned numbers were rough estimations and were not reliable. Furthermore, the numbers do not separate legal instruments.

It is therefore difficult for the evaluation team to obtain a reliable overview of the situation in Finland, as no real statistics are gathered.

There is no possibility to analyse the number of refusals, cases where the execution of the EIO has been postponed, whether Finland complies with the time limits laid down in the Directive, for which crimes Finland issues EIOs or the number of EIOs that different Finnish authorities issue/execute.

During the evaluation, the Finnish authorities pointed out that their digital systems (i.e. the case management system) does not provide the possibility to gather statistics on EIOs. A new system is in the making, but it is unclear when it will become operational. The evaluation team finds that until the necessary IT developments have been carried out, the statistics should be collected using other means.

The evaluation team notes that the lack of reliable statistics is a horizontal issue faced by many Member States. It is expected that the situation will improve greatly once the e-EDES platform becomes fully operational. Nevertheless, the evaluation team would like to recommend that Finland invest in gathering statistics, to make it possible to carry out a reliable analysis of the state of play of the EIO in Finland (*see Recommendation No 5*).

21. TRAINING

When the EIO was being implemented in Finland, the Office of the Prosecutor General, together with the NBI, organised an EIO training for all prosecutors and pre-trial investigation authorities. The Office also organises approximately four training sessions per year on international cooperation, and the EIO is also a part of those trainings. Furthermore, the Office of the Prosecutor General has issued a handbook on the EIO, which is available to all prosecutors via the intranet. The evaluation team welcomes the initiative of creating this handbook (*see Best practice No 5*).

In the Finnish police all districts are responsible for training their own personnel. There is also self-study material on the intranet and some possibilities to attend training sessions provided by CEPOL. Police authorities are also encouraged to use the materials on the EJM website.

The border guard had its last training on the EIO in 2017 (the aforementioned joint trainings), and no trainings on international cooperation have been organised since then.

Finnish customs participated in the joint training in 2017, and it also organises its own training sessions. The Enforcement Department of Finnish Customs and the Customs School offer general training on international cooperation for new officers. During the evaluation meeting, the police pointed out that in each police agency they have experts on international cooperation working in the analysis department who should be able to advise police officers on topics related to international cooperation.

The Helsinki District Court organises trainings for new judges starting work with MLAs and EIOs. The court has also written instructions entitled 'How to execute an EIO', and relevant materials are collected in their database. Furthermore, judges participate in trainings organised by the EJTJ (2-3 judges per year).

The National Court Administration (NCA), which is responsible for the training of judges and other court staff, does not organise any systematic training in the field of international cooperation. No training focused on the EIO has been organised, but the EIO was one of the topics in a training session on remote hearings. In 2021 webinars that also included the topic of the EIO were made available. The NCA also sends participants to the training sessions provided by the EJTN, ERA and EIPA. Judges may also use digital materials on their intranet, including the Handbook of the Office of the Prosecutor General on the EIO.

Together with the Ministry of Justice and the Prosecutor's Office, the NCA has applied for EU funding for a two-year project to develop a National EJM Network for cooperation in criminal matters, and it is to be commended for this initiative (*see Best practice No 6*). One of the topics in this project is the EIO. In addition, the NCA is participating in a training project led by the EIPA aimed at judges, prosecutors and lawyers, and one of the seminars will be devoted to the EIO.

During the evaluation meeting, the police pointed out that they would appreciate more training on the EIO and regular joint training sessions with the prosecutor's office.

Due to the above, the evaluation team would recommend that Finland provide police more training on the EIO, possibly in the format of joint trainings for all law enforcement authorities who work together in the area of the EIO (*see Recommendation No 1*).

22. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

22.1. Suggestions by Finland

The Finnish authorities have made several comments on the need to improve Annex A and make it more user-friendly. Suggestions to amend multiple sections of the form have been made by all competent authorities dealing with the EIO (see also Chapter 6.1).

Furthermore, the Finnish authorities believe that all Member States should be encouraged to accept EIOs in English, particularly in urgent cases. At the same time, Finland would prefer to receive an EIO that has been accurately translated into English than one that has been poorly translated into Finnish.

Lastly, Finnish practitioners have strongly argued that using the available police channels in preparation for sending an EIO could reduce unnecessary inquiries and help focus on asking the relevant questions from the executing authority.

22.2. Recommendations

Regarding the practical implementation and operation of the evaluated Directive 2014/41/EU, the team of experts involved in assessing Finland was able to review the system satisfactorily.

The evaluation team saw fit to make several suggestions for the attention of the Finnish authorities. Furthermore, based on the various good practices, related recommendations are being put forward to the EU. Finland should conduct an 18-month follow-up to the recommendations referred to below after this report has been approved by COPEN.

22.2.1. Recommendations to Finland

Recommendation No 1: To consider providing more training to the police, possibly in the format of joint training for all law enforcement authorities that work together in the area of the EIO. Furthermore, it is recommended that the existing police experts in international cooperation be further promoted at every police district, to ensure that all officials can benefit from their assistance (*Chapters 6.1 and 22*).

Recommendation No 2: To consider including in the EIJN Atlas that the Åland Islands are a Swedish-speaking region of Finland, for the convenience of the issuing Member State and the executing authority in Åland (*Chapter 6.2*).

Recommendation No 3: To consult with the issuing State before changing the status of the person to be heard, in order to prevent any possible problems later on in the proceedings (*Chapter 7*).

Recommendation No 4: In line with CJEU case-law, to reconsider the practice of treating the lack of information in the EIO on existing legal remedies as grounds for non-execution (*Chapter 12.1*).

Recommendation No 5: To consider investing in gathering statistics on the EIO (*Chapter 20*).

22.2.2. Recommendations to the other Member States

Recommendation No 6: When sending an EIO, Member States should mention all other instruments sent to the executing State (such as an EAW or existing JIT) that are connected to the same investigation, so that executing authorities possess all relevant information before executing the EIO (*Chapter 5*).

Recommendation No 7: To consider accepting EIOs in English, particularly in urgent cases (*Chapter 6.2*).

Recommendation No 8: Where possible, to consider using police channels to obtain information that could be valuable for the decision to issue an EIO to the executing Member State, in order to ascertain, for example, whether the person concerned is actually residing in that country (*Chapter 7*).

Recommendation No 9: To keep the information in the EJM Atlas up to date (*Chapter 8*).

Recommendation No 10: To send Annex B systematically (*Chapter 16*).

Recommendation No 11: In light of the sovereignty principle, not to conduct a hearing via videoconference in another Member State without using an EIO (*Chapter 19.2*).

Recommendation No 12: Member States could consider making a brief reference to an existing court order or the absence thereof, to avoid the need for further consultations and expedite the execution process (*Chapter 19.7*).

22.2.3. Recommendations to the European Union and its institutions.

Recommendation No 13: The Commission is invited to clarify the application of the EIO in connection with ensuring an accused person's presence at his or her trial (*Chapters 5 and 19.2*).

Recommendation No 14: The Commission is invited to consider making Annex A more user-friendly, in terms of both the substance and the structure of the form (*Chapter 6.1*).

Recommendation No 15: The Commission is invited to clarify the application of the speciality rule in relation to the EIO (*Chapter 10*).

Recommendation No 16: The Commission is invited to provide a clarification with regard to the concept of 'interception of telecommunications' (*Chapter 19.6*).

Recommendation No 17: The Commission is invited to provide a clarification regarding the application of the EIO Directive in relation to Article 40 CISA, especially with reference to the surveillance of vehicles where a GPS tracker or a device for audio/videorecording has been installed (*Chapter 19.6*).

22.3. Best practices

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

Finland is to be commended for:

1. Its generally flexible, pragmatic and efficient approach to executing EIOs (*Chapter 1*);
2. Introducing the possibility for victims to request an EIO (*Chapter 4*);
3. Accepting EIOs in English or in any other language when there is no other impediment to such acceptance (*Chapter 6.2*);
4. The practice of consulting with the issuing Member State at an early stage in the execution of the EIO in order to tackle possible problems (*Chapter 19.5*);
5. The handbooks and guidelines on the EIO created by the Prosecutor General's Office and the Ministry of Justice (*Chapters 4 and 21*);
6. Applying for EU funding for a two-year project to develop a national EJN network for cooperation in criminal matters (*Chapter 21*).

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

25 April 2023 – Ministry of Justice, Helsinki, Finland

09:30-12:00	Welcome speech and presentations: <ul style="list-style-type: none">- Ministry of Justice- Prosecutor General's Office- National Prosecution Authority- Police- Border Guard- Customs
12:00-13:00	Lunch
13:00-16:30	Meetings with the authorities that were present in the morning

26 April 2023 – Ministry of Justice, Helsinki, Finland

09:30-12:00	Meetings with representatives of the National Prosecution Authority, Prosecutor General's Office and Ministry of Justice (including the International Unit)
12:00-13:00	Lunch
13:00-15:00	Meetings with the representatives of the Helsinki District Court and the Oulu District Court
15:15-16:30	Meetings with the representative of the Finnish Bar Association

27 April 2023 – Ministry of Justice, Helsinki, Finland

09:30-10:30	Final Q&A with the representatives of the police, National Prosecution Authority, Prosecutor General's Office and the Ministry of Justice
10:30-12:00	Wrap-up meeting

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
CEPOL	European Union Agency for Law Enforcement Training
CISA	Convention implementing the Schengen Agreement
CJEU	Court of Justice of the European Union
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
EIO Act	Act on the Implementation of the Directive Regarding the European Investigation Order in Criminal Matters (430/2017)
EIPA	European Institute of Public Administration
EJN	European Judicial Network in criminal matters
EJTN	European Judicial Training Network
ERA	Academy of European Law
HDC	Helsinki District Court
JIT	Joint Investigation Team
MLA	Request for Mutual Legal Assistance
NBI	National Bureau of Investigation
NCA	National Court Administration
PGO	Prosecutor General's Office