Council of the
European Union

Brussels, 7 June 2024
(OR. en)

9393/1/24
REV 1

COPEN 215
JAI 717
CATS 29
EVAL 9
EUROJUST 28
EJN 13

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 SLOVAKIA**

ANNEX

EVALUATION REPORT ON THE

10th ROUND OF MUTUAL EVALUATIONS

on the implementation of the European Investigation Order (EIO)

REPORT ON SLOVAKIA

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1. EXECUTIVE SUMMARY

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ('the Directive') responded to a well-identified practical need for a comprehensive system based on mutual recognition, for obtaining evidence in cases with a cross-border dimension, and for replacing the previous fragmented evidence-gathering system, while taking into account the flexibility of the traditional system of mutual legal assistance ('MLA'). Moreover, the European Investigation Order ('EIO') was intended to create a high level of protection of fundamental rights and to implement the practical experience gathered, based on direct communication between European judicial authorities. Consequently, the EIO struck a balance between the approaches to mutual recognition and mutual assistance. After the Directive had been in effect for more than five years, it was decided, within the 10th round of mutual evaluations, to assess the application of the main instrument for gathering evidence.

The information provided by the Slovak Republic ('Slovakia') in the questionnaire and during the on-site visit was detailed and comprehensive, and the evaluation visit was both well prepared and well organised by the Slovak authorities. The evaluation team got a good overview of the Slovak system, which enabled the expert team to identify some key issues that need to be addressed at national and European level, resulting in the recommendations made below in Chapter 22.2.

During the evaluation, one of the most discussed topics was the grounds for non-execution. Slovak law not only allows for non-recognition but also permits the EIO to be returned without a decision being issued. Furthermore, Slovakia transposed all the grounds for non-execution as mandatory, in contrast to the Directive itself, which contains only optional grounds for non-execution. Slovakia also decided not to transpose the ground for non-execution related to double criminality, however, in practice, it is still applied.

It should be noted that there is ongoing legislation on international judicial cooperation in criminal matters, which will also touch upon the grounds for non-execution in Act No 236/2017 Coll. on the European Investigation Order in criminal matters and amending certain acts ('EIO Act'). At the moment, however, the transposing legislation does not contain all necessary criteria for assessing double criminality and refers to the subsidiary application of the Criminal Procedural Code ('CPC'). In addition, the Order of the Prosecutor General of 13 December 2016 on the procedure for prosecutors in international judicial cooperation in criminal matters ('Order') provides binding guidelines for public prosecutors on the application of both the CPC and the EIO Act.

As in the opinion of the evaluation team there might be a contradiction between the relevant provisions of the CPC and the above-mentioned Order in regard of the review of double criminality, the evaluation team welcomes the new endeavour to amend the EIO Act.

Certainly, one strength of the Slovak system is the experience and knowledge of the practitioners. Based on the information gathered, the Regional Prosecutor's Offices ('RPO') regularly discuss the practical application of the Directive.

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

- providing for a possibility for consent to use information already handed over between law enforcement authorities, or by way of spontaneous information exchange, as evidence in judicial criminal proceedings;
- addressing the issue of the underlying national order, taking into account the relevant case law of the CJEU;
- clarifying the applicability of the rule of speciality;
- extending the application of Articles 24 and 25 of the Directive on the participation of the accused/convicted person throughout the main trial via videoconference from another Member State in order to allow for such person to present evidence, comment on pieces of evidence previously introduced and ask questions;
- allowing for the executing State to transfer its duties of subsequent control of the interception to the issuing State.

2. INTRODUCTION

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

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

The aim of the 10th round of mutual evaluations is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also – and in particular – relevant practical and operational aspects linked to the implementation of the Directive. This will allow areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

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

Slovakia was the eighth Member State evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 29 June 2022 by a silence procedure[2].

[1] Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.
[2] ST 10119/22.

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in the evaluations to be carried out. Pursuant to a written request sent to delegations on 15 June 2022 by the Secretariat of the Council of European Union, Member States have nominated experts with substantial practical knowledge in the field.

Each evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the 10th round of mutual evaluations, it was agreed that the European Commission and the European Union Agency for Criminal Justice Cooperation ('Eurojust') should be invited as observers[3].

The experts entrusted with the task of evaluating Slovakia were Ms Tuuli Eerolainen (Finland), Ms Světlana Kloučková (Czechia), and Ms Judit Szabó (Hungary). The following observers were also present: Ms Elisabet Castello (Eurojust), together with Ms Mária Bačová 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 Slovakia's detailed replies to the evaluation questionnaire, and the findings from the evaluation visit carried out in Slovakia between 20 and 22 June 2023, where the evaluation team interviewed the representatives of the following authorities: the Ministry of Justice, the Specialised Criminal Court, Michalovce District Court, the General Prosecutor's Office ('GPO'), Žilina RPO, Košice RPO, Bratislava RPO and the District Prosecutor's Office ('DPO') Bratislava I. After the on-site visit, a videoconference with a representative of the Bar Association took place as well.

3. TRANSPOSITION

The Directive has been transposed into Slovak law by the EIO Act. Aspects not covered or only partly covered by that law are governed by the CPC. Furthermore, the criminal liability of legal persons is regulated by Act No 91/2016 Coll.

[3] ST 10119/22.

4. COMPETENT AUTHORITIES

4.1. Issuing authorities

In pre-trial proceedings, the competent prosecutor is the issuing authority. If a court order is needed during the investigation, a district court located at the seat of the regional court issues the national decision that is attached to the EIO. During the main trial, the issuing authority is the president of the chamber or the judge.

For the temporary transfer of a person held in custody in another Member State or Slovakia, the court is the only competent authority that can issue an EIO. In pre-trial proceedings, the court decides on a proposal from, or after a written statement by, the prosecutor.

4.2. Executing authorities

The executing authority is the RPO in whose territory the investigative measure is to be carried out, regardless of the stage of the criminal proceedings.

Specific competence is laid down for the execution of interception and recording of telecommunications with the technical assistance of Slovakia, where the Bratislava RPO (Krajská prokuratúra Bratislava) is the competent executing judicial authority. The authority competent to authorise the interception and recording of telecommunications further to a request that they take place on Slovakia's territory without the technical assistance of Slovakia - or to authorise the continuation thereof and related measures - is the Bratislava Municipal Court I (Mestský súd Bratislava I). These rules on special competence are considered as best practice by the evaluation team (*see Best practice No 1*).

If several RPOs are competent, the EIO is executed by the RPO which has received it or to which it has been forwarded by an authority which is not competent , provided that the RPO is competent for the execution of at least one investigative measure. If the competent RPO cannot be determined, the authority which is not competent forwards the EIO to the GPO to decide which RPO is to deal with its execution. The GPO forwards the EIO to the RPO in whose jurisdiction the most demanding investigative measure is to be carried out.

If the issuing authority requests in the EIO that the investigative measure be carried out by a court, based on its admissibility in criminal proceedings in the issuing State, the prosecutor submits the EIO for the execution of this part to the district court in whose area the investigative measure is to be carried out.

If the EIO solely concerns an investigative measure which is to be executed by a court, based on its admissibility in criminal proceedings in the issuing State, the authority competent to execute that EIO is the district court in whose area the investigative measure is to be carried out (see also Chapter 9).

If, according to Slovak law, the execution of the investigative measure requires a court order[4], the authority competent to issue such an order is the district court at the seat of the regional court in the area of the RPO responsible for executing the EIO. In case of the Bratislava RPO, the Bratislava I Municipal Court is competent, and in the case of the Košice RPO, the Košice I Municipal Court is competent (Section 7(4) of the EIO Act).

In urgent cases or for other serious reasons, the RPO may execute the investigative measure itself, even outside its jurisdiction. The executing RPO may also request the cooperation of another RPO, or the DPO if that is more effective for execution of the EIO. This possibility of cooperation between the executing RPO and other PPOs in Slovakia ensures the efficient and swift execution of the EIO. However, only the executing RPO which coordinates the execution of the EIO in Slovakia, communicates with the issuing authority in another Member State.

[4] temporary transfer of persons; monitoring in the territory of another Member State or Slovakia; covert investigation in another MS; interception and recording of telecommunications with the technical assistance of Slovakia; cross-border interception without technical assistance from another MS; storage, release or removal of stored computer data including traffic data; house searches.

4.3. Central authorities

Slovakia has not designated a central authority. However, the Ministry of Justice assists in identifying the information required to determine competence or in verifying the requirements for recognition and enforcement of EIOs. The GPO has the same task in relation to the DPOs and RPOs.

If an RPO notifies the GPO about a problematic case and it can be assumed that the case might be of relevance at national level, the GPO requests practical information from all RPOs and, if needed, provides guidance. However, in more complicated cases, the assistance of the EJN and Eurojust is sought.

In the light of the above, it is not clear to the experts why the GPO has not been notified as a central authority under Article 33(1) point c) of the Directive (*see Recommendation No 1*).

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

The issuance of an EIO can be requested by an accused person, or by a lawyer acting on their behalf, within the framework of the relevant rights of the defence under national criminal procedural law. In that case, the option of a formal decision to refuse does not exist. Also, the victim has the right to request the issuance of the EIO from the prosecutor. Neither the accused person nor the defence counsel has a right of appeal if the court does not grant their motion or application and does not issue an EIO. When no EIO is issued following a request made by the accused person or the victim, it is possible to apply for a review of the conduct of the proceedings including the decisions of the prosecutor. The final judgment contains a justification of the decision not to issue an EIO.

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

Investigative measures within the scope of the EIO are regulated by the EIO Act and subsidiarily in the CPC. The Slovak authorities claimed that they had not experienced any significant problems determining which investigative measures an EIO can be issued for.

The Slovak executing authorities reported that the EIOs are executed without any problems when issued for the purpose of obtaining information or evidence which is in the possession of the executing authority; or to obtain information contained in databases held by the police or judicial authorities; the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State; for non-coercive investigative measures or to identify persons holding a subscription to a specified phone number or IP address.

In Slovakia, the EIO is most often applied during the pre-trial proceedings. Under Slovak law, an EIO can be applied at all stages of the criminal procedure, including the enforcement procedure, if it is necessary to carry out an investigative measure to obtain evidence. The Slovak executing authorities received an EIO issued during the enforcement procedure, which was partially executed by carrying out the hearing of the person.

In one exceptional case, an EIO was executed at the stage of the enforcement procedure in order to hear a person for the purposes of a decision on good behaviour during the probation period of a suspended sentence. The EIO was executed following a decision by the issuing authority, but execution related only to the part concerning the hearing of the person, not the part on ensuring that person's presence throughout the public court proceedings.

An EIO can be issued if the location of the person concerned by the investigative measure is known; for this purpose, the Slovak authorities use a form of international police cooperation. The EIO is issued only when the search for a person is linked to a request for a hearing of the person. In such cases, the EIOs were executed by the authorities of the executing State.

An EIO was also issued for the purpose of identifying the exact address of an indicted person who was subsequently served a decision, on the grounds that the law of the other Member State also allowed the use of an EIO for the service of documents if it is linked to other investigating measures.

The Slovak practitioners acting as executing authorities also reported cases where the EIO was issued to confirm the whereabouts of persons and to subsequently hear those persons. The EIOs were executed as far as possible. Checks were carried out at the place of residence based on to the Slovak population register, inquiries about whereabouts were made via the persons' employers / family members, inquiries were made about their telephone numbers via telecommunications operators, and the persons concerned were contacted by telephone. However, the Slovak authorities also require that, if possible, the data on the place of residence are checked in advance by police cooperation.

The Slovak executing authorities reported several cases in which EIOs were used to request copies of court decisions or decisions of the police authorities, including entire criminal files, as well as to request the service of documents (e.g. indictments, orders to continue the prosecution etc.), but also in conjunction with other investigative measures (e.g. the subsequent hearing of a person), the final examination of the file after the closing of the investigation by the person entitled to do so (e.g. by the accused person held in custody in the executing State). For this purpose, the file concerned was also lent to the executing authority, and the EIOs were executed.

In exceptional cases, EIOs have also been received for the sole purpose to execute a procedural measure, such as the service of a summons for the main hearing. In such cases, the EIO has been returned to the issuing authority without execution.

In another case, a Slovak court sent an MLA request to the competent authority of another Member State for the execution of the service of procedural documents. However, the central authority of that Member State refused to execute it, stating that the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ('2000 MLA Convention') was not an appropriate legal basis and requested an EIO.

In the opinion of the expert team, there was no legal basis for the refusal. The Slovak authorities have also encountered cases where the execution of EIOs would concern a request to serve documents without a follow-up measure – a person's hearing or a request to study the investigation file.

Slovakia has not had any cases where EIOs have been issued to obtain the personal data needed for the enforcement of an administrative decision.

Nor has Slovakia had any cases where a Member State, which is a party to a joint investigation team ('JIT'), issued an EIO on behalf of the JIT. There was one case where it was necessary to ask for consent of the JIT members to provide evidence obtained on the basis of an EIO – the consent was given by the non-participating Member State.

The EIO Act provides that an issuing authority can also be a non-judicial authority of a Member State competent to issue an EIO following its law, provided that a judicial authority of that Member State has validated the EIO in question. The bodies in question are administrative authorities in the framework of penal administrative law as established in certain Member States.

In another case, an EIO was issued for the purposes of discreet surveillance of a person with the aim of subsequent detention based on a European arrest warrant ('EAW'). The EIO was not executed on the grounds that it did not concern an investigative measure to obtain evidence and the CPC does not allow for such a procedure.

In another case, an EIO was issued by the competent court during the enforcement procedure to obtain evidence concerning the place of residence of a person on the territory of another Member State. This EIO concerned the obtaining of evidence in the territory of another Member State by covert measures. As under Slovak law, the enforcement procedure is part of the criminal procedure, the Slovak court stated that there was no obstacle to applying a covert measure. It may be noted that evidence can also be obtained covertly, if it is necessary for further proceedings or decisions since the enforcement procedure is part of the criminal proceedings.

5.1. Use of information obtained through police cooperation as evidence

There was also an EIO requesting authorisation to use as evidence information already obtained via the cooperation of Financial Intelligence Units, i.e., a subsequent validation of intelligence. It was impossible to proceed as requested and the EIO was returned by the Slovak executing authorities without execution because the judicial authority was not competent to decide on the changed nature of the information provided since it was not evidence and it had been provided for a different purpose determined by the Financial Intelligence Unit.

The Slovak practitioners also mentioned a case involving spontaneous exchange of information. The Slovak authorities obtained a case file from the executing State under Article 21 of the European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters. However, they evaluated it as a spontaneous exchange of information under Article 7 of the 2000 MLA Convention. Since the case file obtained in this way is not considered as evidence, Slovakia issued an EIO in order to use the information gathered as evidence, which was granted by the executing State.

The experts do not wish to question the legality of this procedure but would point out that the purpose of issuing an EIO is to request an investigative measure[5] and thus obtain evidence that the issuing State does not yet have (Articles 1(1) and 5(1)(e) of the Directive). They would also draw attention to Article 1(4)[6] and recital (14)[7] of Directive (EU) 2023/977 on the exchange of information between law enforcement authorities of the Member States.

However, the experts are of the opinion that in the future it would be appropriate to ask for such consent based on the Directive. It must be underlined that the situation described above differs from that set out in Article 10(2)(a) of the Directive.

[5] or receiving evidence already in the possession of the executing authorities.

[6] 'This Directive does not establish any right to use the information provided in accordance with this Directive as evidence in judicial proceedings. The Member State providing the information may consent to its use as evidence in judicial proceedings'.

[7] 'Member States providing information according to this Directive should be allowed to consent, at the time of providing the information or thereafter, to the use of that information as evidence in judicial proceedings, including, where necessary under national law, through the use of instruments regarding judicial cooperation in force between the Member States. Member States, if they wish to use this possibility, via judicial cooperation, to grant such consent to the use of information provided at law enforcement level as evidence in criminal proceedings, may of course introduce in their national laws on judicial cooperation the possibility of requesting and granting such consent on the basis of a request for legal assistance.'

The subsequent consent, coupled with the use of information already provided, can be very useful in practice in cases where the operational information provided is, for example, footage from a CCTV camera placed in a public area, and which is received via law enforcement cooperation. If it is assessed in the issuing State that such a recording should be used as evidence, it may no longer be possible to request the recording again by issuing an EIO, as the recording may no longer exist in the executing State[8]. The law enforcement authority in the executing State may also have already deleted it after concluding that they did not have sufficient grounds to initiate criminal proceedings.

Detailed analyses[9] of this situation have already been made by the European Judicial Network ('EJN'), which also provides Member States with advice on implementing subsequent consent in such cases[10]. Subsequent consent would, in fact, be needed both for information received through police channels and also via spontaneous information exchange.

In the opinion of the evaluation team, the Directive could in future provide for a possibility to request consent to use information already handed over between law enforcement authorities or by way of spontaneous information exchange as evidence in criminal proceedings (*see Recommendation No 19*), e.g. by using a simplified form as a new Annex to the Directive that would contain details of the issuing authority, the executing authority, the list of operational information provided at law enforcement level and details of the criminal proceedings in which the information provided would be used as evidence.

[8] In accordance with the relevant EU data protection rules, the operator of an industrial camera is obliged to delete the recording after approximately one week.
[9] Note 15966/22 by the General Secretariat of the Council - Current issues of EIO concerning certain investigative measures of the 59th Plenary Meeting of the European Judicial Network (EJN)(Prague, Prague Congress Centre, 9-11 November 2022), Brussels, 13 December 2022.
[10] Note 15296/22 by the General Secretariat of the Council - Comments and Conclusions of the 59th Plenary Meeting of the European Judicial Network (EJN)(Prague, 9-11 November 2022), Brussels 13 December 2022.

6. CONTENT AND FORM

6.1. Challenges

In general, the Slovak authorities do not have problems with filling in Annex A. However, the practitioners think there is room for improvement and therefore they made the following suggestions in relation to Annex A:

- the prosecution service suggested that it could be made more user-friendly (so that it is clear where annexes belong and where to indicate the questions to be put to the persons concerned);
- more space could be added for the name and address of the specific judicial authority to which the EIO is addressed. This information could be included in section A under the specification of the executing State;
- a specific section could be added for the judicial validation.

Nonetheless, the Slovak practitioners find the form clear and easy to understand.

In cases where the EIO has not been translated, the executing judicial authority immediately asks the issuing authority to remedy this within the stipulated time limit and warns it that otherwise the EIO will be returned without execution.

The Slovak authorities have not encountered any orally issued EIOs issued orally, when acting either as the issuing or executing authority.

6.2. Language regime

The EIO Act governs the language regime as laid down by Article 5(2) of the Directive: the declarations of the Member States form part of the notifications by the Member States in accordance with Article 33(1)(b) of the Directive.

An EIO addressed to the Slovak authorities must be drawn up in the official language or in a language specified in Slovakia's declaration as the executing State. Slovakia accepts EIOs in the Slovak language. There is one exception, however: based on a bilateral agreement, Czech authorities may transmit EIOs in the Czech language. Slovakia should consider accepting another language in addition to the official language, preferably English, in the spirit of Article 5(2) and recital (14) of the Directive (*see Recommendation No 2*). Furthermore, in accordance with recital (14) of the Directive, Member States are invited to indicate, in their declaration concerning the language regime, another language in addition to those in their official language which is commonly used in the Union (see *Recommendation No 10*).

The Slovak issuing authority arranges for the translation by a translator from a list drawn up in accordance with Act No 382/2004 Coll. on experts, interpreters and translators. The expert team considered this special legal act – which is a suitable tool for enhancing the professionalism of translators and the accuracy of translations – as a best practice (*see Best practice No 2*).

The Slovak issuing authorities reported problems finding translators for less frequent languages. This problem was solved by hiring a translator registered in Czechia to be sworn in according to Slovak national law. However, these translations were first done into Czech then translated into Slovak (when necessary), which gave rise to additional costs.

The Slovak executing authorities stated that the majority of EIOs meet all language requirements. There have been EIOs with incomprehensible content, poor quality translations, content that did not correspond to the original and where certain points were translated incorrectly or ambiguously (e.g. concerning the procedural position – suspected or accused person), or where the translator has translated not only the filled-in text but also the form itself. Such cases led to changes in the graphic layout of the EIO form and made it difficult to understand what the issuing authority was requesting. The issuing authority was notified, and no such shortcomings have occurred since.

Some Member States use machine translation, causing the text to be ambiguous and resulting in the EIO being returned.

In one specific case, the EIO was issued for controlled delivery. The EIO was received with a translation into English only and containing a request for controlled delivery without delay in relation to the illicit transport of a large amount of drugs. The issuing authority was informed in writing that an EIO only has the legal effect of receipt if received in the Slovak language or with a translation into Slovak attached, since the Slovak authorities are not authorised to carry out investigative measures based on an EIO received in another language (except for Czechia, as mentioned above). An EIO relating to controlled delivery received by a competent judicial authority in a language other than Slovak or without a translation into the Slovak language is considered as operational information only and does not have the legal effect of a duly received EIO.

In practice, Slovakia accepts working translations into the Slovak language done by their national representation at Eurojust.

6.3. Multiple requests in one EIO

When an EIO seeks the execution of several investigative measures, they are usually included in one EIO and transmitted to one competent executing judicial authority. In each case, it is assessed whether it is more appropriate to issue one EIO or to split it into several EIOs and transmit them for execution to different executing authorities based on their local jurisdiction. When EIOs concerning the same case have been sent to several Member States, this is stated in the EIO.

In cases involving multiple executing authorities, a centralised point of coordination does not seem necessary. In complex cases, the execution of EIO is usually coordinated by Eurojust. Where parallel investigative measures were ongoing in several Member States (namely a house search and a search of non-residential and other premises), the procedures were coordinated in cooperation with Eurojust. Preliminary meetings took place at Eurojust with members of the prosecution and investigators from the participating Member States to coordinate the steps.

There was a case in which the issuing authority transmitted an EIO to several RPOs without it being clear from the content of the EIO that this was what it was doing. As a result, a number of Slovak executing authorities attempted to execute the EIO simultaneously. Therefore, if an issuing authority transmits an EIO to several executing authorities in the same Member State, it is necessary to mention this in the EIO. This information could be included in section D of Annex A (*see Recommendation No 11*).

6.4. Additional EIOs, splitting of EIOs, conditional EIOs

When acting as the issuing Member State, a situation may arise where for the same investigative measure, an EIO has already been issued by the same authority. The EIO Act provides for the obligation to state this information in the interests of more efficient cooperation between the Member States.

When acting as the executing State, Slovak practitioners encountered no significant problems concerning additional EIOs, split EIOs or conditional EIOs. They are quite frequent and are being executed according to the requirements of the issuing State.

When acting as both the issuing and the executing authority, Slovak practitioners have encountered conditional EIOs (e.g. the identification of an account holder and their subsequent hearing).

There was another case where, after receiving the results of the execution of an EIO, the issuing State requested the hearing of another person on the basis of a letter only. In this case, the RPO asked for a new EIO to be issued.

In cases where, during the execution of an EIO, it became clear that it would be appropriate to carry out an additional investigative measure not indicated in the EIO, the issuing authority was informed without delay, and it was pointed out that the additional investigative measure could only be carried out on the basis of an additional EIO. In some cases, however, the issuing authority replied only after multiple requests or did not react at all. Therefore, the EIO was returned without being executed.

Whenever the Slovak executing authorities deem it necessary to make minor corrections in the EIO, they do not request a new EIO, only the correct information. In such cases, they accept scanned copies sent by e-mail.

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

The Slovak issuing authorities examine the necessity and proportionality in each individual case, taking into account the facts; the available evidence; the rights of the person concerned and whether the investigative measure indicated in the EIO could have been ordered under the same conditions in a similar domestic case; the expected result of the legal assistance provided and whether the necessary evidence could have been obtained by other means, such as from publicly accessible sources.

Before issuing an EIO, as a main rule, the taking of all other evidence available in the territory of Slovakia is usually required. The investigative measure has to be sufficiently justified by the available evidence before the EIO is issued.

Regarding proportionality, the cost-effectiveness and efficiency of the requested measures are examined, i.e. whether the result obtained by the EIO is proportionate to the costs incurred and the seriousness of the offence. In some cases, it was difficult to determine these limits (see Chapter 17).

The low value of damages caused is not a reason for not issuing an EIO, if its issuance is necessary for the purpose of obtaining evidence. Under the principle of legality, the Slovak authorities must deal with all criminal offences. In such cases, they apply the principle of proportionality and, consider which investigative measure is the most appropriate.

The hearings of accused persons, victims and witnesses of Slovak nationality were requested via EIOs only when it was otherwise impossible to arrange for their presence at a hearing in Slovakia (summons).

As the executing authority, Slovak practitioners have not encountered any cases where a requested investigative measure was deemed unnecessary or disproportionate. In the opinion of the evaluation team, however, executing authorities should, in general refrain from assessments of this kind.

The Slovak practitioners reported cases where they received EIOs for the seizure of objects based on a warrant for a search of non-residential premises or a house search, with no justification provided. From the content of the EIO, no clear connection could be made between the investigative measure requested and the object of the criminal proceedings (description of the act). In many such cases, the only reason given for the requested investigative measure was the existence of invoices issued by the company concerned by the requested measure, dating back three or more years prior to the issuing of the EIO. In such cases, a clarification of the causal link was sought through a request for supplementary information.

As a result, a less invasive investigative measure was proposed by the Slovak executing authorities, as the requested measure appeared to interfere disproportionately, and without justification, with human rights (e.g. voluntary surrender of an object, obtaining an object from an accountant, from the tax authority, etc.). In such cases, the EIOs were executed if the issuing authority clarified and specified the necessity or proportionality of the EIO in question.

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACTS

The possibility of transmitting the EIO electronically depends on the level of security and the use of a qualified electronic signature.

Since at the moment, there is no access to a secured encrypted platform for transmission, the competent Slovak judicial authorities insist on the transmission of EIOs by post. Of course, in urgent cases, it is possible to execute an EIO before its service by post based on an electronically transmitted copy. In case, where there has been an urgent need to execute a legal assistance measure in real time and covertly, SIENA has been used with the assistance of the police and Europol.

The transmission of EIOs by electronic means would be sufficient if the issue of the authentication of the transmitting authority and the security of the information channel were resolved. In some cases, the electronic signatures of the authorities of different Member States cannot be identified, the various systems used are not compatible, and the electronic signature appears to be missing from the document. As a result, transmitting EIOs per post is considered to be more secure.

EIOs transmitted electronically via Eurojust are also accepted; the original is not required in such cases. The original EIO is necessary when a court order is required for the execution of the investigative measure.

Considering the above-mentioned difficulties, all Member States, including Slovakia are encouraged to should speed up the process of joining e-EDES to e-EDES (see *Recommendations Nos 3* and *12).*

To identify the competent executing authority, the Slovak issuing authorities are primarily using the EJN Atlas, or, in problematic cases the EJN contact point or Eurojust.

It should be noted, however, that in the case of some Member States, the EJN Atlas is not regularly updated, and the contact information is not always available, which makes direct contact impossible (*see Recommendation No 13*).

Whenever an executing authority was incorrectly identified, the receiving authority transmitted the EIO to the competent executing authority and informed the issuing authority via Annex B. In cases where the Slovak issuing authority cannot correctly determine the competent executing prosecution service, the EIOs are frequently sent to the GPO, which then forwards the EIO to the competent RPO directly, with a simultaneous notification via Annex B.

The experience of the courts is that when they encounter problems identifying the competent authority or finding an address, they ask the Ministry of Justice for assistance.

After the EIO has been transmitted, communication takes place directly between the issuing and executing authorities (by phone, e-mail or post) in most cases. Where no response is received from the executing State, Slovak issuing authorities contact the EJN contact point, and if that deems to be unfruitful, they contact Eurojust.

In some complex cases, the EIO was transmitted simultaneously to Eurojust to facilitate communication and speed up the execution of the EIO. The assistance of Eurojust was used mainly in criminal cases in which the information obligation towards Eurojust had been complied with, and the case had been registered with Eurojust, as well as in urgent and complex cases and in cases requiring coordination in several Member States.

The Ministry of Justice and the GPO have also provided assistance.

9. RECOGNITION AND EXECUTION, FORMALITIES

The Slovak executing authorities received several EIOs where section I of Annex A had not been completed. In such cases, supplementary information was requested from the issuing judicial authority, specifying the formalities applicable to the execution of the requested measure.

If section I had not been completed, the measures were executed in accordance with Slovak law. If an EIO was issued for the hearing of a person, and no information about their rights had been attached to or included in the EIO, that was also requested as supplementary information. It would be useful if the issuing Member States provided information about the rights of the person to be heard and a list of questions to be asked during the hearing, in order to avoid additional delays in requesting additional information *(see Recommendation No 14)*. There were no cases where the issuing authority subsequently raised objections in relation to the modalities for the execution of the investigative measure.

When acting as the issuing State, Slovakia repeatedly encountered cases where the execution of EIOs to hear persons as a witness was refused as the executing authority considered that there was a suspicion that the person in question had committed an offence and should therefore be heard as a suspect. Only after the Slovak issuing authorities provided the executing authorities with the explanation that Slovak law does not regulate the procedural status of a suspect or the information of a suspect of their rights did the executing authority proceed with the execution of the measure in accordance with the requirements.

In one case, an EIO was issued to hear a witness, and under Slovak law witnesses must be informed of their rights. Since the executing authority concluded that this person was a suspect, he was informed about his rights as a suspect in accordance with the law of the executing State as a suspect. In accordance with Slovak law, a person is considered to be a witness until he or she is formally charged with a crime. Following this, the person is considered to be an accused person, since the category of 'suspect' is missing from Slovak procedural criminal law. All hearings must be repeated following a change in the procedural status. This may cause misunderstandings/problems in other Member States.

The Slovak issuing authorities also reported cases where the formalities had not been complied with. In one case, a request was made to allow the presence of the defence counsel and to provide information about the date of the execution of the investigative measure.

In practice, EIOs were encountered in which the executing authority did not comply with the formalities and procedures: they were primarily related to missing information or late information about the date of a person's hearing at which the suspected person or their defence counsel had the right to be present. There were also cases where the persons whose hearing was requested were not informed of their rights following Slovak law, although such information had been attached, or where documents were not received in advance of a hearing in accordance with the procedural requirements.

In each case where the procedural formalities required under Slovak law were not complied with, it was necessary to ask the executing authority to execute the measure again because the lack of compliance caused the evidence taken to be illegal or inadmissible in the proceedings.

In the light of the above, it is necessary to underline that Member States, acting as executing authorities, should, as far as possible, respect formalities, requested by the issuing authorities (*see Recommendation No 15*).

When executing an EIO it is necessary to adhere to the formalities and procedures explicitly indicated by the issuing authority, provided they are not contrary to the fundamental principles of Slovak law. The issuing authority may ask to assist in the execution of investigative measures; in that case, the participating authorities of the issuing State are bound by the law of the executing State.

If the issuing authority requests in the EIO that the investigative measure be carried out by a court, based on its admissibility in criminal proceedings in the issuing State, the prosecutor submits the EIO, for the execution of this part to a district court in whose area the investigative measure is to be executed.

9.1. The matter of the underlying judicial decision

In response to the judgment of the CJEU in Case No C-724/19 (*HP)*, the Slovak issuing authorities introduced the practice of attaching the court decision to the EIO which is in accordance with Section 1(2) of the EIO Act in conjunction with Section 533a of the CPC.

Following the abovementioned judgment, the EIO was accepted in cases where it was issued by a court or by another judicial authority, provided a court order was attached ordering the execution of such measure. Non-compliance with this requirement would make recognising and executing this part of the EIO impossible.

In the opinion of the expert team, requiring the underlying judicial order to be attached to the EIO can be extremely burdensome, even in the most simple cases, let alone when the EIO is aiming at interception, or if the documents in the issuing State are subject to a classified regime. The evaluation team identified two solutions to address the issue of the underlying judicial order. The first could be a clear reference in Annex A to the judicial decision taken at national level. A more elaborate solution would be to introduce a validation mechanism, although there might be Member States where this option would cause difficulties.

In conclusion, the expert team would invite the EU legislator to address the issue of the underlying national order in the context of a revision of the Directive, taking into account the relevant CJEU case law *(see Recommendation No 19).*

10. RULE OF SPECIALITY

The EIO Act does not contain any specific provision concerning the rule of speciality. Nevertheless, the underlying national legislation – Article 482(2) of the CPC – foresees an obligation to observe the reservation of speciality from other Member States. This provision, however, seems – similarly to Article 19 of the Directive – to refer to confidentiality rather than to the rule of speciality as understood in mutual legal assistance in general.

As an issuing authority, Slovakia always requests the executing authority's consent if there is a need to use evidence obtained in other proceedings, i.e. for a different offence.

Under Slovak national law, the identity of the specific criminal conduct must be maintained throughout the proceedings (criminal prosecution opened, criminal charges brought, indictment). The indictment cannot therefore be changed. If the offence changes slightly but is fundamentally the same or very similar, it is considered to be the same offence. In these cases, Slovakia does not seek the consent of the executing State.

If the Slovak authorities obtain information when executing an EIO of another Member State, according to which there is reason to suspect a crime other than the crime for which the EIO was issued, and if it falls within Slovak jurisdiction, they must open a new investigation, since under Slovak law, the prosecutor must prosecute all criminal offences brought to his or her attention in the course of his or her duties. The principle is also applied to offences that have been committed outside Slovakia. In these cases, the Slovak authorities consult with the issuing State but do not necessarily ask for consent.

When Slovakia acts as the executing State and the issuing State would need to use the evidence gathered through the EIO, the consent given is based on Article 19(3) of the Directive and the request of the issuing judicial authority. The issuing State is, therefore, informed that the results provided cannot be used for any purpose other than that for which they were provided to the issuing State. Otherwise, the consent of the competent Slovak judicial authority is required.

This rule of speciality is laid down in Section 482 of the CPC. The expert team noted that there are differing interpretations of Article 19(3) of the Directive among the Member States. Some – like Slovakia – interpret the abovementioned provision as the rule of speciality while other Member States do not.

As there are different opinions among the Member States on whether or not this article should be interpreted as a rule of speciality, or should merely, and in accordance with the heading of the article, be applied for reasons of confidentiality, the expert team and the Slovak authorities as well would welcome a clarification by the Union legislator in order to have a unified approach *(see Recommendation No 19)*.

11. CONFIDENTIALITY

Slovakia has not encountered any problems relating to the rules on disclosure in other Member States. They did not send or receive any notifications under Article 19(2) of the Directive stating that 'the executing authority cannot comply with the requirement of confidentiality'.

When Slovakia acts as the executing State, its legislation does not require disclosure of the EIO at any stage during the criminal proceedings to the person concerned, the suspect or the accused.

In national proceedings, the EIO and the evidence gathered by using it may already be disclosed during the pre-trial investigation (provided it does not endanger the investigation) to a limited circle of persons: the accused person, the defence counsel, the victim, the victim's lawyer, the participating person (a person whose item, monetary sum, or asset was – or will be – seized, the notifier) and the appointed guardian.

The legal representatives of the accused person, of the victim and of the participating person also have that right, if they have been deprived of their capacity to act or if their capacity to act is limited. Other persons can inspect the investigation file with the consent of the law enforcement authority in pre-trial proceedings or with the consent of the chamber president in court proceedings, provided the inspection is necessary for them to exercise their rights.

The EIO and the evidence obtained on the basis thereof form part of the investigation file and are therefore accessible to anyone who under national law has the right to inspect the file. A number of specific exceptions are set out in Section 69 of the CPC[11].

The EIO becomes part of the investigation file following the receipt of the (at least partial) results transmitted by the execution authority. However, the police officer's application where applicable, to issue an EIO already forms part of the file before the EIO is processed. Until the investigation is completed, the prosecutor may, pursuant to Section 69(2) of the CPC, deny authorised persons access to the file or any part thereof. Throughout the pre-trial proceedings, it is therefore possible to ensure compliance with the request of the executing State that provided the evidence that it not be disclosed for the time being.

When executing an EIO, the obligation to take due account of the confidentiality of the investigation applies. If this condition cannot be met, it is obligatory for those concerned to inform each other. The issuing State only discloses the evidence obtained only to the extent indicated in the EIO or as authorised by the executing authority. The Slovak banks do not disclose to the customers concerned or other third persons that information has been transmitted to the issuing State or that an investigation is being carried out.

11 Article 69 of the CPC:
(2) During the preliminary hearing, the law enforcement authority may deny the right to inspect the files and any other related rights under Subsection 1 for important reasons, in particular, if it is not possible to take such measures that would prevent the hindrance or significant obstruction of achieving the purpose of the criminal prosecution. Upon the request of the person whom the denial concerns, the public prosecutor is obligated to urgently review the severity of the grounds on which those rights are denied by the law enforcement authority. The superior public prosecutor is, at the request of the person whom the denial concerns, obligated to urgently review the severity of the grounds on which the right to inspect the file and other related rights, as referred to in Subsection 1, were denied by the public prosecutor for serious reasons. These rights cannot be denied to the accused, the defence counsel or the victim once they have been advised on the possibility of inspecting the files.

If the execution of an EIO is discussed at a coordination meeting bilaterally or in Eurojust, the notes from the meeting are only part of the supervising prosecutor's file and are not accessible to anyone but a superior prosecutor's office in the event of a review of the prosecutor's actions.

There was a case where – during the execution of the EIO in Slovakia – consent was given to make public information transmitted on the basis of an EIO, except for the names of the persons concerned. It was about a terrorism case where there was a request for the information to be disclosed in a public meeting of the national parliament in the issuing State.

Protected connections, such as Eurojust connections for example, are used to ensure the confidentiality of the evidence collected.

12. GROUNDS FOR NON-EXECUTION

Slovakia transposed all grounds for non-execution as mandatory, as opposed to the Directive, which only foresees optional grounds for non-execution (*see Recommendation No 4*). Slovakia also introduced a new ground for non-execution: in accordance with Article 11 point h) of the EIO Act, the executing judicial authority shall refuse to execute the EIO if other obstacles preventing the execution of the EIO exist.

This new ground for non-execution refers to situations where, for example the measure could not be carried out for technical reasons (certain types of communication interception), or in numerous other cases where the execution of the EIO was formally possible but in practice not feasible:

- a company's headquarters were to be searched but the company only had a virtual office;
- the person to be heard did not have a place of residence in Slovakia;
- the issuing State did not transmit supplementary information that had been requested within the set time limit, while the EIO could not be executed without it and so was returned without being executed (e.g. no response from the issuing authority to multiple requests for supplementary information for almost two years; after the EIO was returned unexecuted, the issuing authority provided the supplementary information and the EIO was executed);
- refusal of an EIO issued in non-criminal proceedings.

The most frequent reason for non-execution is that it would not have been possible to carry out the investigative measure in a similar case under national law and another investigative measure yielding the same result could not be used (Section 11(1) point g) of the EIO Act) (e.g. the offence concerned was not of the type required to carry out the investigative measure, based on Section 116 of the CPC).

Another reason for the rejection of an EIO is lack of double criminality[12]. Due to its importance, this topic is handled in Chapter 12.1.

In addition, Slovak law not only allows for a non-recognition, but also allows for the EIO to be returned without a decision, similarly to the situations referred to in Article 9(3)[13] and Article 10(5) of the Directive[14]. In addition to these scenarios, Section 10 of the EIO Act provides that the EIO shall be returned without a decision, if

- the EIO was not issued to carry out an investigative measure to obtain evidence;
- supplementary information without which the EIO cannot be recognised and executed has not been provided within the specified time limit.

The Slovak executing authorities have encountered many cases where the EIO is being returned without a decision. However, in such cases, the Slovak executing authority must still, in an accompanying letter, give the reasons for returning the EIO. The most frequent reason for the EIO being returned by the Slovak authorities without execution was that the EIO had not been issued to obtain evidence (Section 10(1) point b) of the EIO Act).

[12] Section 1(2) of the EIO Act in conjunction with Sections 537(3) and 539(1) of the CPC.
[13] 'Where an executing authority receives an EIO which has not been issued by an issuing authority as specified in Article 2(c), the executing authority shall return the EIO to the issuing State.'
[14] 'Where, in accordance with paragraph 1, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.'

When evaluating conformity with the conditions for the execution of an EIO, the Slovak executing authorities reported the following issues:

- incomplete or manifestly incorrect EIOs;
- the EIO did not contain the list of questions to be put to the person to be heard;
- less frequently, the EIOs did not contain sufficient information on the factual circumstances or the legal classification of the conduct was missing;
- the procedural status of the person concerned by the investigative measure was missing[15];
- in one case, a legal person was indicated in the EIO as concerned by the investigative measure, but no company of that name and with that registered office existed on the territory of the Slovakia.

In relation to incomplete EIOs, it should be mentioned that in general, there are still quite a few EIOs being issued by various issuing authorities, where the description of the offence is not satisfactory. Therefore, the evaluation team would invite the issuing authorities to ensure that the offence is described in a clear manner (*see Recommendation No 16*).

As the issuing State, the most frequent ground for non-execution encountered was the lack of double criminality. Cases of factual impossibility were also reported. For instance, in a case the whereabouts of the person to be heard could not be established. In another case, the residence of the person concerned had not been identified, although an alleged address of the person had been provided, as part of the execution of the EIO. Their bank details were obtained, but the bank account holder or authorised account user was not heard because that person was a foreign national residing in a third country.

During the on-site visit, the Slovak authorities stated that a legislative change was expected which would touch on the grounds for non-recognition.

[15] These were cases in which the judicial authority of the issuing State had highlighted in the form that it requested the 'hearing of a suspected or accused person', but in the text, that person was referred to as both suspected and accused.

12.1. Double criminality

The evaluation team received several versions of the interpretation of double criminality from the Slovak representatives. Section 4(3) and (4) of the EIO Act apply to double criminality:

‘(3) If the EIO concerns a criminal offence punishable in the issuing State by a custodial sentence with the upper limit of the term of imprisonment of at least three years and is described in the EIO by the competent authority of the issuing state as belonging to one or more categories of criminal offences set out in Annex 1 (that implements Annex D to the Directive), the executing judicial authority shall not verify whether the offence is a criminal offence according to the law of the executing state.

(4) In order to classify a criminal offence to which the EIO relates to one of the categories of criminal offences set out in Annex 1, the denomination of the criminal offence or its constituent elements in the law of the issuing state does not have to tally with the denomination used in the law of the executing state’.

As far as Slovakia is the executing State, Article 11(1)g) of the Directive has not been implemented. Since there is no provision in the EIO Act stating that double criminality is not reviewed and the execution of an EIO can be rejected under Section 11(1) point h) of the EIO Act (other obstacles preventing the execution of the EIO), it is necessary to proceed in accordance with the CPC on the basis of Section 1(2) of the EIO Act. In accordance with Section 537(3) of the CPC in conjunction with Section 539(1) of the CPC, there is a double criminality requirement for taking of evidence required by a court order.

The expert team was informed by Slovak authorities that the conditions for the review of double criminality are also regulated in Article 18(4) of the Order. This provision stipulates that double criminality is assessed in cases of requests for judicial cooperation in pre-trial proceedings, if an order of the court or of the prosecutor is required for the execution of the act of legal assistance. The practitioners interviewed provided differing opinions on the practical application of the above mentioned provision.

In any case, the EIO Act regarding the refusal of the EIO contains Section 11(1) point h), which refers to "other obstacles" preventing the execution of the EIO although Article 11(1) of the Directive does not contain this ground for refusal. As a consequence, Slovak executing authorities according their information refuse to execute an EIO in relation to double criminality on the basis of Section 11(1) point h) of the EIO Act.

The experts are of the opinion that non-compliance with the conditions for approving coercive measures and double criminality are two different matters. The Directive also distinguishes between them - failure to comply with the conditions is stipulated in Article 11(1) point h) of the Directive and double criminality is regulated in Article 11(1) point g) of the Directive.

According to the information from the Slovak authorities, a draft law on international judicial cooperation in criminal matters is currently being drafted in Slovakia, which should unify the applicable rules on the assessment of double criminality for cases of mutual legal assistance.

Section 11(1) point g) of the Directive is not clearly transposed in Section 11(1) of the EIO Act. Section 11(1) point h) of the EIO Act provides that an EIO may be refused if there is any other obstacle to the EIO being executed, which is not a ground for refusal under Article 11(1) of the Directive. The experts are of the opinion that the grounds for non-execution relating to the lack of double criminality should be expressly provided for, as it is in Article 11(1) point g) of the Directive *(see Recommendation No 4).*

In addition to pointing out the contradiction between Section 537(3) in conjunction with Section 539(1) of the CPC and Article 18(4) of the Order, the experts also question whether the conditions for reviewing double criminality, which are directly related to the interference with the rights of persons, can be regulated in the internal rules of the prosecution[16].

16 After the on-site visit it has been explain by the Slovak authorities that the Order came into force on 1 January 2017, i.e. at a time when there was no law on EIO - it was only effective sometime in October 2017. The cases in which the Order explicitly applies to EU legal instruments are made explicit in the Order. This is evident from the Order's scheme.

The provisions on double criminality are relevant exclusively to legal aid. The Order does not apply to the EIO at all in this part and, if it does, only in a subsidiary way and to the extent that the question is not dealt with at all by the EIO Act or the CPC. Since the Order is not expressly extended in the legal aid part to the EIO, the EIO Act or the CPC clearly regulates the issue, the conditions set out in the Order cannot be invoked or applied in the case of assessing double criminality - requiring an order from the court or the prosecutor. The Order cannot impose additional conditions which are not specified in the law. For cases where a prosecutor's order is required, it is not double criminality that is assessed, but the conditions for the execution of the measure in a similar national case (intentional offence, etc.).

In accordance with Article 10 of the Directive, any non-coercive investigative measure as defined by the law of the executing State must always be available. i.e. double criminality may only be required in the case of coercive measures. Article 10(2) of the Directive is fully transposed in Section 15(2) of the EIO Act.

In accordance with Section 15(1) of the EIO Act an EIO may not be executed if the investigative measure indicated therein is not governed by Slovak law or could not be carried out in a similar domestic case within the criminal proceedings conducted in Slovakia, and if it is not possible to have recourse to another investigative measure which would achieve the same result and would not be more intrusive to the rights of the person concerned than the investigative measure indicated in the EIO.

This provision must not apply if, among other things, the EIO has been issued to carry out an investigative measure under Slovak law that does not require a decision to be issued by a judicial authority and does not interfere with fundamental rights and freedoms, in accordance with Section 15(2) point e) of the EIO Act.

The lack of double criminality is the most frequent reason for the non-execution of EIOs issued by Slovak authorities. The Slovak issuing authorities reported cases of non-execution involving evading alimony or maintenance obligations, or cases where the quantity of a drug was insufficient for the conduct to qualify as a criminal offence in the executing State. There have also been cases where Slovakia and the executing State had different ages for criminal liability. Regarding the categories of offences listed in Annex D, Slovakia, as the issuing State, has not faced any problems.

12.2. Fundamental rights and fundamental principles of law

The execution of the EIO has been refused when the issuing State has requested the presence of the accused not only during the hearing but throughout the entire trial. According to the Slovak authorities, this requested measure would contradict Article 48 of the Slovak Constitution[17]. The experts' team does not share the view of the Slovak authorities that letting the person be heard and thereby allowing them to find what other evidence is presented in the case would be against fundamental principles of law and refers to decisions of the ECHR which relate to Article 6, paragraph 3, letter c) of the European Convention on Human Rights and from which it follows that ensuring participation in the main trial in the form of a videoconference in itself does not contradict the Convention if it serves a legitimate aim and the arrangements for the giving of evidence are compatible with the requirements of respect for due process[18]. Nevertheless, the evaluation team also refers to the preliminary question of Latvia of 3 May 2023 asked in the Linte case, dealt with before the CJEU under the number C-285/23[19], which concerns the possibility of participation of the accused in a different Member State in the main trial by means of a videoconference, which has not been answered yet by the Court of Justice.

Slovakia has also refused to execute an EIO where the issuing authority requested that a sentenced person residing in Slovakia be present and heard via videoconference in order to decide on the conversion of a suspended custodial sentence. The execution of the EIO to the extent requested was rejected, invoking the rights of the person. The details of hearings via videoconference are dealt with under Chapter 19.3.

[17] Article 48 of the Constitution:
1) No one can be taken away from his lawful judge. The jurisdiction of the court shall be established by law.
2) Everyone has the right to hear his case in public without unnecessary delay and in his presence and to be able to comment on all the evidence presented. The public can only be excluded in cases established by law.
[18] Marcello Viola v. Italy, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-77246%22]}
Sakhnovskiy v. Russia, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-101568%22]}
Boyets v. Ukraine, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-180492%22]}
Dijkhuizen v. the Netherlands https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-210486%22]}
[19] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62023CN0285

13. TIME LIMITS

In the experience of the Slovak issuing authorities, the time limits are mainly dependent on the number and complexity of the investigative measures requested. Not all Member States complied with the time limits for execution, and only some of them provided information on the grounds for delay. There were cases where the results of the execution had not been received even several months after the time limit had expired, without any reason given (*see Recommendation No 17).*

Compliance with time limits by the executing States varied considerably. When time limits are not complied with, the Slovak issuing authority first sends reminders in its own right, and subsequently via EJN and Eurojust.

In cases of urgency, this circumstance was indicated, and justification was provided in section B of Annex A. The urgency of the EIO is mainly assessed on the basis of the following criteria: prosecution while in custody; risk of evidence being destroyed; imminent date for execution of the investigative measure requested; securing of certain information and objects to prevent their removal; and coordination of several countries in processing the EIO relating to the same criminal case. In some cases, the urgency was due to the nature of the evidence, i.e., the evidence requested was only available for a limited period (data stored only for a limited period). In most cases, the executing authority had considered the urgency of the matter; the most frequent shortcoming was a failure to execute the EIO swiftly in a custodial criminal case.

In the case of the Slovak executing authorities, based on the written answers, the time limits are complied with in most cases, except for EIOs which requested numerous investigative measures to be carried out by several RPOs or for which the evidence had to be obtained from other entities (banks, tax authorities). As a rule, if no decision on the execution of the EIO can be taken within 30 days, the issuing authority is, notified.

According to the Slovak authorities, additional information has often been requested because there was inadequate information on the offence in question, on the questions to be put to the witness, or information on rights etc. If the EIO was not executed within 90 days of the decision taken on its recognition, the issuing authority was notified of the reasons for non-compliance within the set time limit and on the expected time of execution. In most cases, the Slovak executing authorities also send partial results, i.e. the measures executed so far.

On the basis of the criteria presented, the Slovak executing authorities take into consideration the matter of urgency. The following situations are processed as a priority:

- suspected or accused person held in custody;
- EIOs where the date of the trial has been set;
- the date of a videoconference has been indicated;
- risk of evidence being destroyed, e.g. deletion of computer data or telecommunications data and/or where the relevant measures are to be taken in cooperation with another country or other countries to prevent the perpetrators from communicating with one another.

According to the statistics provided, the Slovak authorities have had only one case where the execution of the EIO was postponed.

14. LEGAL REMEDIES

Legal remedies equivalent to those available in a similar domestic case are available against the investigative measures indicated in the EIO. These legal remedies are also set out in the EIO form sent to another Member State.

There are no legal remedies against the issuance of an EIO, but the person concerned can file a constitutional complaint, i.e. any natural or legal person who complains that the issuance of an EIO constitutes an infringement of their fundamental rights or freedoms or human rights as established by an international agreement by which Slovakia is bound, has the right to complain to the Constitutional Court.

During the on-site visit, the Slovak executing authorities explained that in general, they do not request information about legal remedies as they use the information contained in the document ’Questionnaire and compilation of replies on the impact of the judgment of the CJEU in Case C-582/19 (*Gavanozov II*)’ of May 2022, drawn up by Eurojust and EJN.

15. TRANSFER OF EVIDENCE

In accordance with the EIO Act, the executing judicial authority must transfer the evidence obtained on the basis of the EIO to the issuing State without undue delay.

The executing authority must transfer evidence obtained with the participation of representatives of the authorities of the issuing State to a representative of the issuing authority directly if requested in the EIO, if this procedure is not contrary to Slovak law, or if so agreed between the executing and the issuing authority. Where evidence is transmitted to the representative of the issuing State directly, this fact must be recorded in a protocol.

Where a decision by a judicial authority is necessary to ensure the execution of an investigative measure, this evidence may only be transferred to the issuing State after that decision becomes final. Before the decision becomes final, the evidence may only be transferred if the EIO provides sufficient grounds that an immediate transfer of evidence is essential for preventing the frustration of investigation or the violation of individual rights; the evidence must not be transferred before it becomes final if such transfer would cause a severe infringement of the rights of the person concerned.

When transferring evidence, the executing judicial authority must indicate whether the evidence is to be returned as soon as it is no longer needed in the issuing State.

At the request of the issuing authority, the executing judicial authority may temporarily transfer the evidence to such authority for the taking of evidence for an agreed period, provided that the issuing authority returns it within an agreed period.

16. OBLIGATION TO INFORM

The Slovak issuing authorities repeatedly experienced cases with some Member States where Annex B was not received within the set time limit or was not received at all (*see Recommendation No 18*). In such cases, the executing authorities were reminded and asked to confirm the receipt of the EIO. In some cases, when Annex B was not received, there was no reply to the reminder and only the EIO results were transmitted, Slovak authorities also used EJN, Eurojust, or the Slovak Ministry of Justice or the GPO.

The Slovak executing authorities usually send the Annex B: it is sent to the issuing authority electronically within seven days of receipt of the EIO. Despite receiving Annex B with the information on the correct executing authority, some Member States continue to send documents to an authority other than the competent executing authority.

In general, Slovak practitioners find Annex B fit for the intended purpose. However, in addition to the reference number of the issuing authority, it would be helpful to have more information in Annex B (e.g. name of the accused, name of the victim, etc.). Whenever incorrect reference numbers were provided, the Slovak issuing authorities had difficulties in identifying the criminal proceedings and the EIO Annex B had been sent for.

17. COSTS

From the point of view of Slovakia as the executing State, costs incurred during the execution of the EIO on the territory of Slovakia are, as a rule, borne by the Slovak authorities. If the costs are exceptionally high, the issuing authority is notified without delay, and an agreement can be reached with the issuing authority on keeping the EIO in force and the amount of the costs for the issuing authority.

There was a case concerning an EIO relating to seized computer data where an agreement had to be reached with the issuing authority on the storage of a large volume of data from computers seized during a house search. It was clear from experience that media storage could be provided, but the volume of the data seized was not known in advance.

In case of an EIO relating to certain investigative measures (hearing), the issuing authorities (present at the hearing) required a Slovak interpreter. However, the Slovak interpreters who had been contacted had had bad experiences with the payment of their interpreting fees and refused to interpret or were only willing to do so for a fee applicable in the issuing State. Eventually, an interpreter was found who was willing to interpret, and a prior agreement was reached with the issuing authority that it would guarantee the payment of her fee and accept an invoice in an appropriate form.

The Slovak issuing authorities have not had problems or negative experiences related to costs. As the issuing State, Slovakia bears the costs not borne by the executing State if the costs are deemed exceptionally high by the executing State. This is only possible in exceptional situations where no agreement can be reached with the authority of the executing State with regard to the bearing of such costs. As the issuing authority, Slovakia has not encountered cases where the executing State considered the costs for the execution of the required measures to be exceptionally high.

In the event of exceptionally high costs, the issuing authority should be informed and asked to undertake to cover them. The costs of providing legal assistance to a foreign judicial authority are linked to the result that can be expected from the legal assistance (conditions of necessity and proportionality).

The amount also depends on the nature of the measure, the time needed to carry it out and how difficult it is, as well as on any related extra costs involved, e.g. expert reports or postal charges for sending large quantities of seized objects, documents, etc. (the issue of postal charges has so far always been resolved in agreement with the issuing State and by delivering the items via a police attaché).

Problems can also arise in connection with the costs for the transfer of evidence, e.g. a motor vehicle, specific objects (weapons, etc.), where the transfer requires special measures that give rise to exceptionally high costs. The issuing authority would always be informed of this, given an estimate of costs and asked for its opinion on carrying out the measure and the payment of the costs.

The costs for appointing a mandatory defence counsel should be borne by the relevant issuing authority. A different rule applies to costs in the case of an EIO issued by the Slovak authorities for the temporary transfer of persons to another Member State and their return to Slovakia where the costs are borne by Slovakia.

Neither the Slovak issuing nor the executing authorities have encountered cases in which EIOs have been delayed or not executed due to exceptionally high costs.

18. COORDINATION

In most cases, where parallel investigative measures were ongoing in several Member States (namely a house search and a search of non-residential and other premises), the procedures were coordinated in cooperation with Eurojust. Preliminary meetings took place in Eurojust with members of the RPO and investigators from the Member States involved in order to coordinate the steps.

The Slovak practitioners reported no difficulties in relation to coordination. The assistance of Eurojust and the EJN was not always necessary. In such cases, the precise date was usually agreed directly between the relevant police authorities of the Member States involved, the date suggested by the issuing authority was accepted, and the RPO ensured that all the necessary orders for the carrying out investigative measures were issued on time.

The Slovak authorities reported a case where an urgent and coordinated action involving the authorities of another Member State was required to arrest a suspect, access an unencrypted device, secure evidence, and copy data. Within four days, an EIO and an EAW were issued, together with their translations, and delivered to the Slovak executing authorities. In addition, the necessary court approval could be secured and accordingly, the requested investigative measures could be carried out. There was very good cooperation at both judicial and police level, including a good flow of data, good coordination between the domestic authorities, and smooth and direct communication.

Some cases require a combination of more than one legal tool for judicial cooperation. For example:

- they require an Annex C for cross-border interception of telecommunications;
- they require an MLA request for cross-border surveillance, including GPS;
- they require an EIO for cross-border controlled delivery.

19. SPECIFIC INVESTIGATIVE MEASURES

19.1. Temporary transfer

The Slovak authorities stated that they had had no cases in which they had requested temporary transfer.

From the point of view of the issuing State, the EIO Act provides for two possibilities:

(i) the person is to be temporarily transferred from Slovakia to another Member State for the purpose of carrying out an act of evidence (Section 20 of the EIO Act - Article 23 of the Directive);
(ii) the person is to be temporarily transferred from another Member State to Slovakia for the purpose of carrying out an act of evidence (Section 22 of the EIO Act - Article 22 of the Directive).

As regards i), under Article 20 (1)(2)(3) of the EIO Act, the Slovak authorities can issue such an EIO if the general conditions for issuing an EIO are met (Section 5(3) of the EIO Act) and

a) the person in question does not have the status of an accused person in the proceedings conducted abroad (in another criminal case in which he or she is prosecuted in another Member State to which he/she is to be temporarily transferred) and consents to the temporary transfer; and

b) the temporary transfer must not prolong the duration of custody in the territory of Slovakia or the serving of a custodial sentence in the territory of Slovakia (in another criminal case in which he or she is being prosecuted or has been convicted in Slovakia).

The procedure is carried out by a court within the territorial circuit where the person is remanded in custody or is serving a custodial sentence. In pre-trial proceedings, the court decides on a motion or on the basis of a written statement by the supervising prosecutor.

The issuing and executing authorities must make the necessary arrangements and determine a reasonable time limit within which the temporarily transferred person must be returned to the territory of Slovakia.

With regard to ensuring that a temporarily transferred person is held in custody during his or her temporary transfer, the Slovak authorities have not registered any problems. In accordance with the EIO Act, if the executing State permits the temporary transfer of a person to the territory of Slovakia, the chair of the panel of judges and, in pre-trial proceedings, the judge in the pre-trial proceedings must decide at the prosecutor’s request that the person will be held in custody during the temporary transfer. The decision must indicate that custody commences on the day the person is taken over.

The Slovak judicial authorities also confirmed that the EIO Act does not provide for a particular procedure for the consent of the person It does, however, contain a provision referring to subsidiary application of the CPC.

It has been brought to the attention of the Slovak authorities that in accordance with Article 23(2) in conjunction with Article 22(2)(a) of the Directive, the lack of consent of the person concerned is only an optional ground for the non-execution of an EIO. However, Section 20(2)(a) of the EIO Act provides that the person's consent is mandatory for issuing an EIO. The Slovak authorities presented that this matter is being analysed in the framework of the works on the new legislation covering the international judicial cooperation.

The expert team is of the opinion that if there are no legal grounds for a witness to refuse to testify, it is his/her duty to testify or to participate in the gathering of evidence. Therefore, the Directive correctly states that the lack of consent of the person concerned should only be a possible reason for not being able to carry out the temporary transfer. As a result of the way Slovakia has transposed this provision, it is preventing itself from carrying out certain investigative measures which cannot be carried out without the presence of a witness, such as the reconstruction at the crime scene.

As regards ii), in accordance with Article 22 of the EIO Act, the Slovak issuing authority may issue the EIO for the purposes of the temporary transfer of a person who is in custody, or who is serving a custodial sentence in another Member State for the gathering of evidence, to the territory of Slovakia. The provisions of Part Five of the CPC apply to the proceedings mutatis mutandis.

If the executing State agrees to the temporary transfer of a person to the territory of Slovakia, the chair of the panel of judges and, in pre-trial proceedings, the judge for pre-trial proceedings, decides at the prosecutor's request that the person will be held in custody during the temporary transfer in the territory of Slovakia. The decision must indicate that custody commences on the day that person is taken over on the territory of Slovakia.

The temporarily transferred person may not be prosecuted, sentenced, or otherwise deprived of personal liberty for an offence which was committed before entering the territory of Slovakia and which was not indicated in the EIO.

As the executing State:

The Slovak authorities stated that they had had no cases in which they had recognised and executed an EIO concerning the temporary transfer.

The EIO Act provides for two possibilities:

i. the person is to be temporarily transferred from Slovakia to another Member State for the purpose of carrying out an act of evidence (Section 21 of the EIO Act - the transposition of Article 22 of the Directive);
ii. the person is to be temporarily transferred from another Member State to Slovakia for the purpose of carrying out an act of evidence (Section 23 of the EIO Act - the transposition of Article 23 of the Directive).

As regards i) under Article 21(1) of the EIO Act, besides the grounds for non-execution specified in Article 11 of the Directive, the execution of the EIO must also be refused where:

a) the person has the status of an accused person in the proceedings conducted abroad;
b) the person does not consent to the temporary transfer;
c) the temporary transfer would prolong the duration of custody in the territory of Slovakia or the serving of a custodial sentence in the territory of Slovakia.

The EIO Act refers only to 'the accused person' since the temporary transfer concerns only persons in custody, and according to the CPC only an accused person, not a suspect, can be in custody.

As regards ii) In accordance with Section 23 of the EIO Act, Section 22 of the EIO Act must apply mutatis mutandis to the proceedings concerning such EIOs.

Article 21(1)(b) of the EIO Act has not been transposed in line with Article 22 of the Directive, which treats a person's non-consent as an optional ground, not a mandatory one. The experts are of the opinion that if Slovakia insists - contrary to the Directive - on a person's consent, Slovakia will prevent the other Member States from taking evidence which requires the physical presence of the temporarily transferred person during the taking of evidence. The Slovak authorities informed that this matter is being analysed in the framework because of the works on the new legislation covering the international judicial cooperation.

Article 22(3) of the Directive (the opinion of the legal representative, if necessary, in view of a person's age or physical or mental condition) is not transposed in the EIO Act. However, the CPC applies subsidiarily (Article 1(2) of the EIO Act). The requirement of legal representation in such a situation is set out in Section 37 of the CPC (mandatory defence).

19.2. Hearing in person

In the experience of the Slovak practitioners, the hearing in person is the most frequent investigative measure requested and executed on the basis of an EIO.

The Slovak issuing authorities always include a list of questions to be asked. Similarly, they always attach information on the procedural rights and ask the executing authorities to instruct the person in accordance with Slovak law. Doubts about the admissibility of this evidence in the proceedings before the Slovak court are thus eliminated.

There is usually no problem with the procedural status of the person being questioned. However, there is one exception. In principle, the CPC does not have the procedural status of suspect. A person can be a witness, an injured witness or an accused person. For the accusation, some conditions must be met. Therefore, they must first interview the person as a witness, collect evidence and then decide whether to charge the person with a crime. However, the executing authority may, under its own law, consider the person to already be a suspect. Slovakia had a few cases with some Member States in past, where they needed to clarify the procedural status of the person. There seem to be no problems in this regard at present.

Given that the description of the offence in the EIO is usually very brief and that the Slovak executing authorities do not know the entire file, the Slovak authorities consider it essential for the issuing authority to include in the EIO a list of questions to be asked. Likewise, the issuing authority should attach to the EIO instructions under their law for the person being questioned.

Therefore, if the issuing authority does not include questions in the EIO, the Slovak executing authorities will always ask the issuing authority for additional information. If the issuing authority still does not provide the questions, the Slovak authorities will then carry out the hearing by simply asking the person for his or her opinion on the description of the offence.

The experts agree that if the issuing authority specifies the questions to be asked in the EIO, the content value of the hearing is significantly higher. Therefore, they recommend to other Member States that they require their issuing authorities to state in the EIO the questions to be asked to persons that are due to be heard.

Although the CPC does not include 'suspect' as procedural status, EIOs concerning the hearing of a suspect can only be executed only as hearings of a witnesses or accused persons. If a person's procedural status is not entirely clear, the Slovak authorities will always request additional information.

19.3. Hearing by videoconference

The Slovak authorities can issue an EIO to hear an accused person, a witness or an expert present on the territory of the executing State via technical equipment for audio and video transmission in accordance with Article 24(1) of the EIO Act, both during the investigation and during the main trial. An arrangement is made with the executing judicial authority on the details, including the measures to protect the rights of the person to be heard. When an interpreter is needed for the hearing, the Slovak issuing authority must ask the executing judicial authority to arrange for an interpreter to be present. If the executing judicial authority does not possess the appropriate technical means for a hearing to be held using audio-visual transmission equipment, the issuing authority may agree to provide such means.

The hearing is conducted by the issuing authority. During the hearing, the authorities of the executing State ensure that the fundamental principles of the executing State's legal order are not violated. Alternatively, the executing authority can conduct the hearing under the guidance of the Slovak issuing authority in line with the CPC.

Only eight of the EIOs issued by Slovak authorities were aimed at hearing by videoconference, which is an extremely low number. So far, the Slovak practitioners have not encountered any refusals.

The Slovak prosecutors informed the expert team that there were not many cases of videoconferences in the pre-trial stage, as everything would have to be repeated during the main trial. They only see the benefit of holding a videoconference at the pre-trial stage in exceptional situations where, e.g., a person refuses to participate at the hearing in person but agrees to a hearing via videoconference.

The defence lawyers confirmed that there were a few cases where videoconferencing was used for a hearing at the trial stage; however, it is very rare at the pre-trial stage. In most cases the prosecutors insist that the person appears for questioning in person. In one case, a cooperating defendant did not want to travel to Slovakia for an interview and therefore asked to be interviewed via videoconference. His request was rejected by the Special Prosecutor's Office.

As the executing State, under Section 25(1) of the EIO Act, if the conditions are met for the execution of an EIO to hear a suspected or accused person, a witness or an expert present on the territory of Slovakia via technical equipment for audio and video transmission, the executing judicial authority allows the issuing authority to conduct such a hearing.

There are currently no separate provisions for hearing a suspected person. This measure can nonetheless be carried out by the executing authority on the understanding that the person to be heard should have a status equivalent to that of the accused and should consent to a hearing by videoconference. The Slovak authorities have not encountered any problems in relation to the procedural status of the person.

In accordance with Section 25(2) of the EIO Act, which is not in line with the Directive, the executing judicial authority must refuse to execute the EIO if a person questioned is a suspect or an accused person who does not agree with this way of conducting the questioning[20]. If the person to be heard is a suspect or accused person, the executing judicial authority summons them to the hearing in such a way that allows them reasonable time to exercise their rights and prepare a defence. Slovakia is aware of the problem and the matter is being analysed in line of the works on the new legislation.

At the same time the executing judicial authority informs the person of their rights under the law of the issuing State. A hearing via technical equipment for audio and video transmission is conducted by the issuing authority or under its guidance in accordance with the law of the issuing State. The suspected person only receives information as per the relevant legal provisions of the issuing authority.

The Slovak executing authorities have refused the execution of EIOs, for example in the following instances:

- an EIO was received which was to ensure the participation of a convicted person throughout the hearing of a convicted person. The EIO was not executed because the Slovak law does not allow such participation in court proceedings, the videoconference can only be used to conduct a hearing of a person;
- a request to hear the accused person and, in particular, to ensure his/her participation in the main trial via videoconference was refused because this would violate Article 48 of the Slovak Constitution (see Chapter 12.2);
- the request for a hearing as part of a public hearing, as well for the purpose of a decision whether the convicted person had complied with the conditions of probation. The case led to further questions concerning the right of the convicted person to a fair trial including the right of defence and the right to physical presence in court proceedings;
- a hearing was refused because the issuing authority failed to ensure that the right of defence could be properly exercised (see Chapter 12.2.).

[20] In addition, a person cannot be temporarily transferred for the purpose of conducting a hearing in person in the issuing State on the grounds of mandatory refusal if that person does not consent to the temporary transfer.

The physical presence of a defence counsel on the territory of Slovakia during an assisted video hearing could only be approved if it could be adequately ensured that the accused could consult with their defence counsel without anybody hearing the discussions, i.e., that the conditions of confidentiality and the proper conduct of consultations with the defence counsel would be met, i.e. in a manner equivalent to physical presence.

The executing judicial authority also refuses to execute an EIO if the suspected or accused person to be heard does not consent to a hearing conducted in this manner. The opinion of the suspected or accused person on this manner of hearing is sought before the videoconference takes place. The Slovak authorities encountered cases where due to a lack of consent, the EIO was not executed.

The majority of the EIOs issued for a hearing via videoconference are executed by the Slovak authorities. It is important to note that the Slovak executing authorities always ask the issuing authorities whether they require a videoconference to be conducted by a court or if it would be sufficient if a prosecutor conducted the videoconference.

The Slovak authorities raised the question of the interpretation of Article 24(5) point e) of the Directive, which provides that the suspected or accused persons must be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the laws of the executing State and the issuing State. Section 25(6) of the EIO Act provides that it should be the executing judicial authority that informs a person about his or her procedural rights under the law of the issuing State. Questions have been raised about whether the executing judicial authority can adequately inform a person in advance about their rights under the law of the issuing State when the authority may not be sufficiently familiar with that law.

Article 24(5) point e) of the Directive does not explicitly impose this obligation on the executing authority but merely provides that the person is to be informed of his or her procedural rights including under the law of the issuing State, before the hearing. In the opinion of the expert team, it would better serve the interest of the persons to be heard, if they received information about the applicable law of the issuing State from the issuing authority.

Therefore, in the expert's view, it is sufficient for the executing authority to verify the person's identity and to inform him or her in accordance with the law of the executing State at the beginning of the videoconference. The executing authority then hands over the floor to the issuing authority, which informs the person in accordance with the law of the issuing State.

In no circumstance is it possible for the authorities of another Member State to question a person on the territory of another Member State by videoconference without the knowledge and involvement of the Slovak authorities.

19.3.1. Common issues related to hearing via videoconference

Neither the Directive, nor the relevant Slovak legislation regulate the option of conducting the entire public hearing or main trial by videoconference.

The Slovak authorities objected to using videoconferencing for the entire main trial on constitutional grounds. In addition, they mentioned the technical issues tied to ensuring a confidential connection between the accused and the defence counsel.

The expert team considers that the confidential and direct nature of the communication between the defendant and the defence can be resolved by proper technical equipment in courtrooms, where the accused and the defence counsel are allowed to communicate through separate and secure telephone lines, with the accused having their defence counsel both with them and in the courtroom where the main trial is taking place.

It was noted during the evaluation visit that it would be advisable in the future for the Directive to cover the possibility of using videoconference not only for the hearing of a person but also for the entire court proceedings in justified cases, subject to an agreement between the issuing and executing States. This would be particularly appropriate for hearings concerning the courts' decision on whether a convict conditionally released from a prison has proved his or her probationary status. These proceedings are very short. Apart from questioning the convicted person, only a few reports need to be read.

When asked whether the presence of the person via videoconference could currently be resolved by a combination of issuing an EIO (for the purpose of questioning the person by videoconference) and a request for legal assistance (requesting that the person's presence be ensured by videoconference for the remainder of the trial), the Slovak authorities stated that this would be highly problematic. The main reason is that different authorities decide on the execution of EIOs and on MLA requests.

To this end, the expert team invites the Union legislator to explore the possibility of extending Articles 24 and 25 of the Directive so as to allow for the participation of the accused/convicted person in the entire main trial via videoconference from another Member State so that such persons may present evidence, comment on pieces of evidence previously introduced and ask questions (*see Recommendation No 20*).

Another horizontal issue to be mentioned is the lack of proper technical infrastructure as the RPOs have no proper videoconferencing equipment. It is, however, possible for the police to lend the necessary equipment to the RPOs, if needed, on a case-by-case basis.

There are several practical issues relating to the use of videoconferencing tools in courtrooms. One of them concerns the workload of the courts. When videoconferences took place in parallel, connection issues were encountered in addition to other technical and logistical challenges.

Considering the above-mentioned difficulties, Slovakia is encouraged to continue the digitalisation of the courts and the prosecution service – including further equipping them with videoconferencing tools (*Recommendation No 3).*

19.4. Hearing by telephone conference

If the conditions are met for the execution of an EIO for hearing a witness or an expert present on the territory of Slovakia via telephone conference but it is not possible to use videoconferencing equipment, the Slovak executing authority allows the issuing authority to conduct a hearing by telephone conference. In no circumstance is it possible for the authorities of another Member State to question a person on the territory of Slovakia by telephone without the knowledge and involvement of the Slovak authorities.

No cases have been reported involving Slovakia either as executing or issuing State.

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

Under the CPC, it is possible to request banking information in criminal proceedings regarding any criminal offence. However, the extent of disclosure of banking information must be proportionate to the offence. Under Section 3(5) of the CPC, a prosecutor is entitled to request banking information (as well as data that are the subject of trade secrets or tax secrets, or data from the records of book-entry securities) in pre-trial proceedings, and in proceedings before a court from the chairman of the senate. Therefore, it is also legitimate to issue an EIO in pre-trial proceedings requesting banking information. The disclosure of banking information may concern persons of any procedural status.

As the issuing State, the Slovak authorities have to justify the necessity and proportionality, and also state the reasons why it deems that the account is held in a bank or a financial institution in another Member State and, at the same time, provide any available information that may facilitate the execution of the EIO. The Slovak authorities were not aware of any cases where an EIO related to banking information was refused in another Member State.

As the executing State, under Article 28(2) of the EIO Act, the executing judicial authority provides the issuing authority with information insofar as the information in the possession of the bank or the financial institution on Slovakia’s territory is known.

In addition to the grounds referred to in Article 11 of the EIO Act, the executing judicial authority must refuse to execute the EIO, where requesting such information for criminal proceedings conducted in Slovakia in a similar domestic case would not be possible.

Should the requested period in the EIO exceed the period the crime was committed in, the executing judicial authority consults the issuing authority and asks for a justification of such period.

Banking information is always requested from the bank's headquarters in Slovakia. Banks may not inform the client that banking information for his or her account has been requested. EIOs requesting the search of the bank premises to obtain banking information are executed by issuing a production order for the relevant documents or information addressed to the financial institutions.

It must be noted that banking information alone is considered evidence, not the amount held in the account. Therefore, if the issuing State wants to both obtain banking information and seize the money in the account, both an EIO and a freezing order must be issued based on Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders (see Chapter 21.9.2).

Regarding the identification of the bank account and its holder, the Slovak authorities informed the evaluation team that the Central Register of Bank Accounts, to be managed by the Ministry of Finance, should start operating at the end of 2023. Not only will a special unit of the financial police service, the Financial Directorate, the Customs Office, the Tax Office and other investigating authorities but also law enforcement authorities or a court for the purpose of criminal proceedings will have access to it.

19.6. Covert investigations

Under Slovak law, covert investigation means pretended transfer and use of an agent. An EIO for the purpose of conducting a covert investigation can only be issued if the conditions for issuing an order in an equivalent domestic case under Slovak law are met and once an order has been issued under Section 112 or Section 117 of the CPC.

Even if there are no precise statistics, it is obvious that there is only a small number of cases per year involving covert investigative measures. The complexity of such measures has to be acknowledged; there is a need for coordination not only between the judicial authorities, but also between the police authorities at international level, including the special units carrying out these acts. Moreover, in practice, these cases are usually urgent, with the operational reality and needs changing rapidly, which can also lead to disputes over the local competence of the executing authority. In the light of the above and taking into account the territory of Slovakia and the expected low number of cases, Slovakia might consider designating a single RPO to handle covert investigative measures *(see Recommendation No 7)*.

19.6.1. The use of covert agents

Using an agent is only permissible for detecting, investigating and convicting perpetrators of crimes, corruption, extremism, abuse of authority of a public official or legalising the proceeds of crime. A person acting under a false or covert identity is called an agent. The agent is usually a police officer, but in cases of corruption and terrorism an agent can be anyone, not just a police officer in accordance with Section 10(19) of the CPC.

The order for the use of an agent is issued by the Senate president, and in the pre-trial phase, by the judge for pre-trial proceedings at the prosecutor's request. The prosecutor's request, the court order and the EIO are treated as classified information, but on the territory of Slovakia only. The EIO sent to the other Member State is in unclassified and includes a national court decision if requested by the executing State.

The actions of the agent must be in accordance with the purpose of the EIO Act, together with the CPC, and must be proportionate to the illegality of the action in question. The agent may not initiate the commission of a crime; this does not apply in cases of corruption of a public official or a foreign public official, and if the established facts indicate that the perpetrator would have committed such a crime even if the order to use the agent had not been issued.

It must be underlined that the CPC does not in principle require an EIO, provided that a court order in Slovakia has been issued, and the competent Slovak authorities have agreed to the agent's presence on Slovak territory.

Before issuing an EIO, the issuing authority must agree with the executing judicial authority on the arrangements concerning the covert investigation, particularly the duration of the covert investigation and the conditions for the deployment and legal status of the undercover operative. The Slovak authorities issued only a few EIOs for covert investigations involving agents and have not reported any difficulties.

From the point of view of the executing State, if the conditions for the execution of an EIO for the purpose of ensuring cooperation in a covert investigation with Slovakia have been met, the executing judicial authority, when issuing an order for a pretended transfer or for the use of an agent in the territory of Slovakia, must proceed mutatis mutandis following the provisions of Sections 112 and 117 of the CPC.

The EIO must be delivered to the RPO in whose district the agent's activities are likely to take place. The RPO that received the EIO must apply for authorisation by the district court of the seat of the RPO.

19.6.2. Pretended transfer

A pretended transfer[21] may be performed in criminal proceedings for an intentional criminal offence for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, for corruption or another deliberate criminal offence, for which an international treaty obliges action, if it can be reasonably expected that facts of importance for the criminal proceedings may be revealed by it.

[21] A pretended transfer means the pretence of purchase, sale or other transfer of the subject of the performance, the possession of which requires a special permit, but where the possession of such permit is prohibited as a result of a criminal offence or the intention to commit a criminal offence.

The public prosecutor or the presiding judge must issue a warrant for the pretended transfer, which must be performed by a State authority referred to in Section 110(2) of the CPC. The same rules apply as those set out above for using classified information in connection with agents.

In the case of an EIO concerning a pretended transfer, the locally competent RPO not only accepts the EIOs but also authorises the investigative measure.

The Slovak practitioners encountered only one case concerning a pretended transfer using Slovak agents and no problems were encountered.

19.7. Interception of telecommunications including data on telecommunications operations and data transmitted by means of a computer system

19.7.1. Interception and recording of telecommunications in the Slovak law

In accordance with Section 115 (1) of the CPC, an order for the interception and recording of telecommunications can be issued in criminal proceedings if it can be reasonably expected that it can help to establish all the facts relevant to the criminal proceedings in serious offences, corruption cases, criminal offences of extremism, misconduct in public office, money laundering under Sections 233 and 234 of the Criminal Code or another intentional criminal offence the performance of which obliges action under an international treaty, and if the intended purpose cannot be achieved by other means or, if achieving it by other means would present considerable difficulty.

For an intentional criminal offence other than the ones referred to in Section 115(1) of the CPC, a warrant for the interception and recording of telecommunication operations can only be issued with the consent of the user of the telecommunications equipment used for interception or recording[22].

The warrant for the interception and recording of telecommunications requires a judicial order.

[22] If it is found during the interception and recording of telecommunication operations that the accused has communicated with their defence counsel, such information may not be used for the criminal proceedings and must be destroyed without undue delay in a prescribed manner. This shall not apply if it concerns information which relates to a case in which the lawyer does not represent the accused as their defence counsel.

If it is a matter of urgency and the interception and recording of telecommunications are not linked to entry into a private space and a written warrant from the judge for the preliminary hearing cannot be obtained in advance, the warrant may be issued by the public prosecutor. The warrant must be confirmed by the judge for the preliminary hearing no later than within 24 hours, otherwise the information thus obtained cannot be used for the criminal proceedings and must be destroyed in the manner prescribed without undue delay.

The warrant for the interception and recording of telecommunication operations must be issued in writing and justified by its merits, for each user address or device individually. The warrant must state the user address or device and the name of the person concerned by the interception and recording of telecommunication operations if known, and the period during which the interception and recording of telecommunications operations will be performed.

The interception and recording period may last up to six months. At the preliminary hearing and at the request of the public prosecutor, this period may be extended by two months at a time.

The competent police department performs the interception and recording of telecommunications operations. A non-classified transcription of the telecommunications recording signed by the police officer or interpreter who did the transcription is entered in the case file. If the verbatim transcript contains classified information, it is classified in accordance with the relevant rules.

If the intercept is to be used as evidence, it must be accompanied by a verbatim transcription of the recording made by the police officer, must contain the relevant facts, must state the place, time, and the authority, and must include a note on the legality of the interception. The intercepts are stored on appropriate media as a part of a file. A copy can be requested by the prosecutor, by the accused person, or by his or her defence counsel.

The intercept can only be used as evidence after the interception and recording of telecommunications have been completed. If justified by the circumstances of the case, recordings of telecommunications can be submitted to a court during preparatory proceedings even without a transcription, provided the accompanying report contains all the necessary information including information on the persons concerned, and provided the recording is comprehensible.

In accordance with Section 115 (8)(9)(10) of the CPC, if the interception and recording of telecommunication operations did not find any facts relevant to the criminal proceedings, the law enforcement authority or the competent police department must destroy such recordings without undue delay in the prescribed manner. A confirmation of the destruction of the recordings must be entered in the case file[23].

19.7.2. General rules for the application of the EIO for interception of telecommunication

In cases where several Member States could provide technical assistance for the interception and recording of telecommunications, the Slovak authorities shall send the EIO to only one of them, giving priority to the Member State where the subject of the interception is present or believed to be present. If the circumstances of the case so require, the Slovak issuing authority may request the executing judicial authority to transcribe, decode or decrypt the recording of telecommunications. The costs are borne by the Slovak authorities.

[23] Any known person who does not have the possibility of inspecting the file under this Act, if known, must be informed of the destruction of the record by the police officer or public prosecutor whose decision finally disposed of the case and, in court proceedings, by the president of the chamber of the court of first instance after the final disposition of the case. This does not apply if the person concerned has the possibility to look into the file, or in proceedings concerning a particularly serious crime or a crime committed by an organised group, a criminal group or a terrorist group, or if more than one person was involved in the criminal offence if the criminal prosecution has not been legally terminated in relation to at least one of them, or if the purpose of the criminal proceedings could be frustrated by the provision of such information.

The information must include the name of the court which issued or confirmed the order for interception and recording of telecommunications traffic, the duration of the interception, the date of its termination and, in addition, a mention of the right to apply to the Supreme Court for a review of the lawfulness of the order for interception and recording of telecommunications traffic within two months of its receipt. The information must be given by the authority whose decision finally terminated the case and, in court proceedings, by the president of the chamber of the court of first instance within three years of the final termination of the prosecution.

If the interception cannot be executed without a decision by the Slovak authorities, the competent Slovak court may issue a decision on interception in line with Section 533a of the CPC which is attached to the EIO.

In 2022 Slovakia issued two EIOs concerning the interception of telecommunications. They did not encounter any cases where the executing authority refused to execute an EIO on the grounds that the requested measure was unavailable in a similar domestic case in the executing Member State. The immediate transmission of intercepted telecommunications to Slovakia (Article 30(6)(a) of the Directive) is not applied.

The Slovak executing authorities assess the conditions for the interception of telecommunications under the relevant provisions of the CPC, as they do for domestic cases. The requirements set out in Section 115 of the CPC must be met; a double criminality test is conducted, and a check is made as to whether the offence is listed in Section 115(1) of the CPC.

Since all major operators are based in Bratislava, Slovakia made the notification pursuant to Article 33(1) point (a) of the Directive that EIOs for interception of telecommunications may only be delivered to the RPO in Bratislava, which will apply to the competent court to issue an order.

The issuing authority is duly informed of the fact that the interception period may last up to six months and would have to be extended every two months thereafter.

If the issuing authority asks the Slovak executing judicial authority to transcribe, decode or decrypt the recording of telecommunications, Slovakia may ask for the costs thereof. The possibility of immediately transmitting the intercepted telecommunications depends on their capacity as well as on technical and human resources; in practice, the information is transmitted to the issuing authority within a short time based on an agreement.

In 2022, Slovakia executed eighteen EIOs concerning the interception of telecommunications. The authorities did not encounter any cases of refusals. The immediate transmission of intercepted telecommunications to Slovakia is not applied.

In a criminal matter other than one in which the interception and recording of telecommunication operations were performed, the recording may only be used as evidence if there are criminal proceedings for a criminal offence referred to in Subsection 1. This fact must be brought to the attention of the issuing authority in the other Member State (referring to Article 19(3) of the Directive).

The Slovak executing authorities assume that the issuing authority should take measures pursuant to the abovementioned legal provisions. The experts are of the opinion that the obligation to delete the data should be a prerequisite for the provision of the data and that this obligation should be duly regulated in the Directive as well.

Article 30(5) of the Directive stipulates that the executing State may make its consent subject to any conditions which would be observed in a similar domestic case. However, the discussion of this issue within the European Judicial Network in 2022 has shown that international cooperation experts are not unanimous on whether it is possible to transfer the subsequent control of interception to the issuing State under this provision. It would therefore be advisable for the Union legislator to examine under which conditions it would be possible to allow for the executing State to delegate its duties of subsequent interception control to the issuing State *(see Recommendation No 21).*

19.7.3. Interception of telecommunications without technical assistance required from the Member State concerned

From the point of view of the issuing State, where an order has been issued for the interception and recording of telecommunications to be carried out from Slovakia in the territory of another Member State without its technical assistance (‘cross-border interception’), the prosecutor or after the indictment the court shall inform the authority of that Member State about such interception without undue delay after becoming aware of the fact, during the interception, that the subject of interception is, will be, or has been present on the territory of that Member State. However, this applies only to the interception of telecommunications, not to so-called spatial interception, e.g. in a vehicle.

Where Slovakia acts as the executing State, it has to be underlined that the Bratislava District Court I (Okresný súd Bratislava I) has exclusive competence for cross-border interceptions. Since 1 June 2023 it is the Municipal Court in Bratislava, since all district courts in Bratislava have been merged into one municipal court. Slovakia submitted an amendment to the notification to the Commission but the information tools of EJN have not been updated accordingly. This should be done, in order to facilitate cooperation *(see Recommendation No 8).*

As the main criteria, the court assesses the facts of the case, the seriousness of the criminal activity, the legal classification of the conduct and the principles of proportionality and subsidiarity.

No statistical data is available on the number of incoming or outgoing notifications based on Article 31 of the Directive.

19.7.4. Obtaining data transmitted by means of a computer systems

The order for the obtaining and communication of data on telecommunications traffic are subject to telecommunications secrecy or to which the protection of personal data applies, which are necessary for the clarification of facts relevant to criminal proceedings can be issued under Section 116(1) of the CPC under the following conditions:

- if it is necessary for the clarification of facts relevant to criminal proceedings carried out for a deliberate offence for which the law provides for a penalty of imprisonment of at least three years for the offence of protection of privacy in the home under Section 194a, fraud under Section 221, dangerous threats under Section 360, dangerous stalking under Section 360a, dissemination of an alarm report under Section 361, incitement under Section 337, approval of an offence under Section 338, for an offence causing grievous bodily harm or death, or for another intentional offence for which an international treaty obliges action;

- if the purpose pursued cannot be achieved in any other way or would otherwise be substantially impeded.

This order must be issued by the president of the chamber and, prior to the commencement of criminal prosecution or, in preparatory proceedings, by the judge for the pre-trial proceedings at the public prosecutor's request, which must be in writing and must also be substantiated by the facts of the case.

The order for the obtaining and communication of data on telecommunications traffic must be issued in writing and state the reasons; the order must also include the manner, extent and time limit for the communication of the data. Where the order concerns a specific user, it must state the user's identity, if known. If the order relates to future communication, the obtaining and communication of such data may take a maximum of six months. This period may be extended by two months in the preparatory proceedings, on the basis of a written and reasoned application by the public prosecutor. The order for the obtaining and notification of data on telecommunications traffic must be served on the undertaking providing public networks or services (Section 116 (2) of the CPC).

Under Section 116(3)(4) and (5) of the CPC, if the data obtained do not contain facts relevant to the criminal proceedings, the authority whose decision has finally terminated the case must destroy the data without delay. The destruction of data on telecommunications traffic must be notified in writing to the person concerned if known - this does not apply in cases where the person concerned has the possibility to inspect the file under this Act or in proceedings concerning a serious crime or a crime committed by an organised group, a criminal group or a terrorist group, or if more than one person was involved in the criminal offence, if the criminal prosecution has not been validly terminated in respect of at least one of them, or if the purpose of the criminal proceedings could be frustrated by the provision of such information. The provisions of Section 116(1) to (5) of the CPC apply equally to data transmitted through a computer system.

The authority that authorised the investigative measure in the executing State is obliged to check a number of circumstances during the interception - whether the reasons for the interception still exist, whether the communication between the accused and his or her lawyer have been intercepted, etc. However, this check is particularly difficult for the executing State when the communication is in the language of the issuing State. Moreover, whether the reasons for the interception continue to exist can best be assessed by the issuing State.

Also if the authority of the executing State is obliged to inform the person concerned about the interception and to delete the data once the criminal proceedings have been completed (which may be several months or years after the interception), as the authorities of Slovakia are under Section 116(3),(4) and (5) of CPC, the question is whether the executing State can fulfil these obligations within the framework of international cooperation, particularly in a situation where the issuing authority has asked for data to be transmitted immediately under Article 30(6)(a) of the Directive.

Should the executing authority ask the issuing authority whether it has completed the criminal proceedings, even after several years? If it were possible to delegate these checks to the issuing State, the delays in transferring interception records to the issuing State would be avoided and the standard of respect for human rights in criminal proceedings would be better ensured.

19.8. Investigative measures involving the gathering of evidence in real time, continuously and over a certain period

Article 28 of Directive is transposed in Sections 29 and 30 of the EIO Act. It concerns in particular:

a) monitoring of banking or other financial transactions that are being carried out through one or more specified accounts;

b) controlled deliveries; or

c) monitoring/surveillance of persons and items.

The Slovak issuing authority must agree with the executing judicial authority on the necessary arrangements concerning all these investigative measures. Competence regarding the execution, management and control of these measures lies with the competent authority of the executing State.

The Slovak executing judicial authority must agree with the issuing authority on the necessary arrangements related to the execution of an EIO in the territory of Slovakia and ensure the management, control and execution of measures requested under the law of Slovakia.

19.8.1. Monitoring of banking or other financial transactions that are being carried out through one or more specified accounts

The Criminal Code does not contain a specific provision on the monitoring of bank account transactions. That is why the general provision of Section 3(5) of the Slovak CPC is used for this purpose: in the pre-trial proceedings the prosecutor can request banking information, and once the indictment has been filed, the court can do so too.

The Slovak executing authorities have not encountered an EIO issued for the monitoring of a bank account.

19.8.2. Controlled deliveries

Under Section 111 of the CPC, controlled delivery means monitoring the movement of a consignment from the sender to the addressee during its transit, export or import, if the circumstances of the case justify the assumption that a shipment contains specific items[24] without the required permits, for the purpose of apprehending persons who take part in the handling of such shipments.

[24] narcotic substances; psychotropic substances; precursors; poisons; nuclear or other radioactive materials; hazardous chemical substances; counterfeit or altered money; counterfeit or altered securities; counterfeit, altered or illegally produced custom stamps; postal stamps; labels and postal stamps; electronic means of payment or another payment card or item capable of such function; firearms or weapons of mass destruction; ammunition and explosives; cultural heritage items or other items that require special permissions for their possession; items intended to commit a criminal offence; or items obtained by committing a criminal offence.

The chairman of the Senate issues the order to track the shipment's movement before the initiation of the criminal prosecution: in pre-trial proceedings, the prosecutor issues the order. The investigative measure is carried out by the police in cooperation with the customs authorities, who must agree on such a procedure in advance.

The police can start tracking the shipment without a warrant if the matter cannot be delayed and the warrant cannot be obtained in advance. The police will inform the prosecutor about this action without delay. If the prosecutor does not issue an order within 48 hours, the shipment tracking must be terminated, and the information obtained cannot be used and must be destroyed in the prescribed manner without delay. The police must terminate the monitoring of the shipment upon written order of the prosecutor f it is clear that the nature of the shipment poses a serious risk of endangering life or health, or causing significant property damage, or if there is a serious risk that such a shipment will not be able to be further monitored even without a written order.

A controlled delivery can be a shipment with either the original or replaced content, depending on the particular case. During the tracking of the shipment, the police can take the necessary measures to ensure that the cargo or items replacing it are sent from the territory of Slovakia to a foreign country, or vice-versa, with the knowledge of, and under the control of, the customs authorities.

Any supervising prosecutor can issue an EIO concerning controlled delivery.

Any RPO can execute an EIO concerning controlled delivery based on the consignment's entry point into Slovakia. If the case concerns several Member States, Eurojust is contacted. The EIO shall contain be at least one estimated point of entry, which establishes the competence of the RPO. Any changes in the point of entry should have no effect on the competence of the RPO. However, there were differing experiences in this regard. By default, however, the RPO receiving the EIO should be in charge of its execution.

19.8.3. Monitoring/surveillance of persons and items

19.8.3.1. Surveillance of persons and items

Under Section 113 of the CPC, surveillance of persons and items (surveillance) means acquiring information on the movements and activities of persons or the movement of items in a classified manner. Surveillance may be performed in criminal proceedings involving an intentional criminal offence if it can be reasonably assumed that it will reveal facts relevant to the criminal proceedings. If necessary, means of recording the course of action and technological surveillance resources may be used.

The presiding judge, before the commencement of the criminal prosecution, or the public prosecutor in the preliminary hearing, must issue a warrant for surveillance in writing.

If it is necessary that the surveillance is performed on premises that are not publicly accessible, or if technical resources are to be utilised during the surveillance and the surveillance is not associated with entry into a dwelling, the warrant for the surveillance must be issued by the presiding judge, before the commencement of the criminal prosecution, or, at the preliminary hearing, by the judge for preliminary hearing at the public prosecutor's request, if the facts necessary to the criminal proceedings cannot otherwise be obtained during the surveillance. The warrant must indicate the other premises or land that are not publicly accessible where the surveillance is to take place and the type of technical resources that are to be used.

In urgent cases, the judge for the preliminary hearing of the court under whose jurisdiction the surveillance is to be performed may issue the warrant instead of the competent judge for the preliminary hearing. Upon entering non-residential premises or land that is not publicly accessible, no action other than that necessary to conduct the surveillance may be performed.

The request must be justified by the suspicion of the commission of a specific criminal activity and the data held on the persons and items under surveillance, provided such information is known. The warrant must specify the period during which the surveillance is to be performed, which however must not exceed six months. The authority that issued the warrant for the surveillance may extend the surveillance period in writing, but by no more than six months at a time. If the surveillance lasts longer than twelve months, the warrant for the surveillance before the onset of the criminal prosecution and at the preliminary hearing shall be issued by the judge for the preliminary hearing.

In a criminal matter other than one in which surveillance was performed, the recording may only be used as evidence if there are criminal proceedings for an intentional criminal offence in that matter at the same time.

The Slovak authorities consider that Article 28 of the Directive is only applicable for surveillance measures to be executed on the territory of one Member State only. Cross-border surveillance is considered an investigative measure for which an MLA request is necessary. If the Slovak executing authorities receive an EIO requesting cross-border surveillance, they regard the content of the EIO as an MLA request and execute it as such.

Under Article 34(4) of the Directive, Slovakia notified the Commission about the application of the Treaty between Slovakia and the Czech Republic on legal assistance provided by judicial bodies and on the settlement of certain legal relations in civil and criminal matters, which entered into force on 1 December 2014.

The above-mentioned treaty contains a provision that further facilitates cooperation between these states in cases where the surveillance is carried out by technical means only (typically GPS), not requiring the assistance of the other State. In such cases, the border crossing of the technical equipment must be reported to the other State at the level of police authorities, and the prosecutor of the State which ordered the surveillance must urgently ask the judicial authority of the other State to agree to the use of the recording obtained as evidence in criminal proceedings.

Only the Bratislava RPO receives EIOs and forwards them to the District PPOs for processing in order to submit a request for a surveillance warrant to the district courts where the border is likely to be crossed. Only a few cases are reported per year.

19.8.3.2. Surveillance with using of video, audio or audio-visual recordings

Under Section 114 of the CPC, in criminal proceedings for an intentional criminal offence for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, or for corruption or another deliberate criminal offence, for which an international treaty obliges action, a video, audio or audio-visual recording may be made if it may be reasonably assumed that facts important to the criminal proceedings will thereby be revealed[25].

The order for the preparation of the video, audio or audio-visual recordings requires a judicial order. In urgent cases, if there is no need to enter a private place and a written warrant from the judge for the preliminary hearing cannot be obtained in advance, the public prosecutor may issue the warrant, subject to a confirmation by the judge for the preliminary hearing no later than within 24 hours, otherwise the warrant expires, and the information obtained cannot be used in the criminal proceedings and must be destroyed in a prescribed manner without undue delay.

The preparation of video, audio or audio-visual recordings associated with direct entry into a private space is only permitted in criminal proceedings for a crime, corruption, abuse of authority of a public official, money laundering or for another intentional criminal offence, for which an international treaty obliges action, and only with the prior consent of the presiding judge before the onset of the criminal prosecution, or at the preliminary hearing, the judge for the preliminary hearing.

[25] In a criminal matter other than one in which video, audio or audio-visual recordings were prepared, the recording may only be used as evidence if there are criminal proceedings for an intentional criminal offence in that matter at the same time and for which the law stipulates a prison sentence with an upper penalty limit exceeding three years, corruption, abuse of authority of a public official, money laundering, or another intentional criminal offence for which an international treaty obliges action. This circumstance is brought to the attention of the issuing State.

The use of malware is also covered by Section 114 of the CPC.

Similarly to the case above (surveillance without audio or video recording), the EIO can only be issued or executed under Sections 29 and 30 of the EIO Act if the persons and items are monitored within Slovakia. In cases where prior authorisation for such an act is requested (the person being monitored has not yet entered the territory of the Slovak Republic), an MLA request application must be submitted. Unfortunately, neither Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, nor the EAW Act, nor any other treaty allows for the subsequent authorisation of audio or video surveillance (spatial interception) after the person under surveillance has entered the territory of Slovakia. If it is established that such recording is being continued in the territory of Slovakia, such monitoring must be terminated immediately.

There seem to be rather few cases, but these measures tend to be urgent and a significant effort needs to be made to gather all the necessary judicial approvals. The geographical circumstances are also rather specific, as, for example, near Bratislava there is an area with border to three other Member States.

From the point of view of concentration of experience and easy coordination of cross-border surveillance, it would be appropriate to establish one single authority with special competence (see Chapter 19.6 and *Recommendation No 7*).

19.9. Other investigative measures

19.9.1. Searches in residential and non-residential premises

In accordance with the Section 100 of the CPC, house searches are ordered by the president of the Senate, and before the initiation of criminal prosecution or in pre-trial proceedings by the judge for pre-trial proceedings at the request of the public prosecutor. In urgent cases, the presiding judge and, in the preliminary hearing, the judge for the preliminary hearing in whose jurisdiction the search is to be performed may do so instead of the competent presiding judge or, at the preliminary hearing, the judge for the preliminary hearing. The search warrant must be issued in writing and justified.

The Slovak issuing authorities do not automatically attach a national order to the EIO. They provide it on request by the executing State. The domestic home search order is classified as 'restricted' but is only valid on the territory of Slovakia. This means that a document crossing a border can be treated as unclassified. The Slovak authorities have not encounter any problems in this regard.

From the point of view of the executing State, the EIO is sent to the RPO in whose jurisdiction the property to be searched is located. Slovakia had cases of searches in non-residential premises where representatives of the issuing authority were also present. In such cases, the evidence seized was handed over directly.

The EIO has to contain a description of the items to be seized. If this information is missing it must be requested as additional information, otherwise the judge cannot issue the order. The Constitutional Court has confirmed this practice[26].

[26] Decision of the Constitutional Court no. III. ÚS/455/2022 dated 08.12.2022 in the case of the complainant Branislav Zurian, where the Constitutional Court emphasizes the need for a proper specification of things that are searched for during a house search.

19.9.2. Seizure of items as evidence

Article 32 of the Directive is transposed in Sections 37 and 38 of the EIO Act. It must be underlined that the EIO can only be used for the seizure of items for evidential purposes (see Chapter 19.5).

The Slovak authority may issue an EIO for the purpose of seizing an item which is located in the executing State and is to be used as evidence. The EIO must specify whether the item is to be handed over to Slovakia or is to be seized in the executing State for the period specified in the EIO.

If an item seized in the executing State on the basis of an EIO is no longer needed for further proceedings and its forfeiture or confiscation is out of the question, the Slovak issuing authority must notify the executing judicial authority to that effect. The Slovak issuing authorities also take into account the change in the reason for the seizure. If evidence is produced, e.g. an expert examination of the seized item, and the item is no longer needed for further evidence, the item must either be returned to the victim or a motion for confiscation filed in court proceedings. The Slovak authorities will then issue a freezing order.

The Slovak executing authorities must assess, typically within 24 hours of receiving an EIO, whether the conditions for its execution are met and notify the issuing authority to that effect. If the issuing authority requests the handover of the item, the procedure under Section 18 of the EIO Act (transfer of evidence) applies.

Where circumstances permit, before lifting or restricting the seizure of an item, the Slovak executing judicial authority must notify the issuing authority to that effect. If the issuing authority notifies the Slovak executing authority that the seizure of an item is no longer necessary or is only partially necessary, if it revokes or withdraws the EIO, or fails to respond within a reasonable time even to a repeated request as to whether the grounds for the seizure continue to apply, the Slovak executing authority must proceed mutatis mutandis in accordance with Sections 97 and 98 of the CPC (return of items).

20. STATISTICS

Article 42 of the EIO Act stipulates the obligation to provide the Ministry of Justice with information about EIOs, but only upon request. The Ministry of Justice has not issued any general instructions to provide statistical data on an annual basis.

The Ministry of Justice has ongoing discussions with the analytics centre, which is in charge of gathering statistical data with the aim of providing more accurate statistical data in general. It is also presumed that the e-Evidence Digital Exchange System will bring about a major change.

The public prosecution service keeps data on EIOs in its case management system called PTCA. Statistical data is also provided in the report on the activities of the prosecution service that is sent to the Parliament.

Slovakia provided statistical data about the number of EIOs covering five years, from 2017 to 2021.

RPO	Outgoing	Incoming	Refusals		Postponements	
			Outgoing	Incoming	Outgoing	Incoming
Banska Bystrica	922	637	2	6	-	-
Bratislava	1560	2321	21	89	-	1
Košice	1584	749	3	-	-	-
Nitra	2508	946	2	-	-	-
Trenčín	725	500	5	-	-	-
Trnava	1156	732	4	-	-	-
Prešov	1542	471	-	-	-	-
Žilina	1079	585	-	-	-	1
Total / RPO	**11076**	**6941**	**37**	**95**	**-**	**2**
Courts	99	123	-	-	-	-
TOTAL	**11175**	**7064**	**37**	**95**	**-**	**2**

The data of the Bratislava RPO include cases where the EIO was returned without execution under Sections 10 and 11 of the EIO Act, and cases where an EIO could not be executed for objective reasons.

The Bratislava RPO handles the highest number of incoming EIOs - almost 130% more than Nitra (in second place), due to its special competence regarding interception.

21. TRAINING

According to the situation as of 27/07/2023, there are a total of 254 judges in the courts dealing with criminal proceedings and 1 022 prosecutors in total in the Prosecution Service. The Justice Academy – under the aegis of the Ministry of Justice - provides training on the EIO on a regular basis. From 2017 to 2022, four dedicated events were organised with 150 participants. The experts therefore recommend that Slovakia should continue its training activities in the field of the EIO (*see Recommendation No 9*).

Training also takes place during work meetings organised by a superior authority within the prosecution service.

There are also meetings twice a year with PPOs specialised in international cooperation where they provide information about complex cases (*see Best practice No 3*). The minutes of the meetings are published on the Intranet and are thus available for every prosecutor. Furthermore, there are monthly meetings at the RPOs to discuss the practical application of the Directive (*see Best practice No 4*).

There are also training activities organized at regional level. For example, the Kosice RPO organises meetings for the international departments of the prosecutor's offices twice a year, sometimes in cooperation with the Prešov RPO. In addition, the Slovak practitioners also have the possibility of participating in training activities organized by the Czech Judicial Academy.

Information about EIOs is also part of the training for candidate prosecutors, so that once they become prosecutors, they are able to use the EIO in practice.

A Judiciary Network for Criminal Matters has been established in Slovakia, with members/contact points present at every court. Training is also provided for the members of the network both on a regular and an ad hoc basis.

There is no specialization among judges for international cooperation but clerks are specialized through dedicated training activities organised by the Judicial Academy. Clerks are higher court officials with a law degree and every judge has one working with them. The clerks also consult informally with the Ministry of Justice or the PPO. Annex A is drawn up entirely by the clerks.

There is an e-platform (Intranet) for prosecutors, with the following information available: the Instruction of the GPO on international cooperation; the minutes of relevant meetings within the prosecution service; instructions on how to proceed with certain investigative measures; various guidelines; information about Eurojust, EJN, OLAF, case law, the national network, handbooks, list of contacts, guidance, etc. It is accessible to all PPOs.

The Ministry of Justice has information on its Intranet about the Member States, as well as instructions, the case law of different international courts and practical information about mutual legal assistance, information about extradition, forms, best practices and language regimes. The Ministry of Justice produced two manuals (Brexit and a manual related to Russia, Belarus and Ukraine). Only judges from the regional, district and special courts and judicial assistants/clerks have access to the intranet of the Ministry of Justice. The Supreme Court has a separate intranet. There is ongoing consultation and dialogue between the Ministry of Justice and the courts, and the EJN contact network, with the Ministry of Justice providing methodological guidance.

The National Desk at Eurojust regularly organises lectures and workshops at the Justice Academy and participates in the meetings of RPOs and the GPO. Workshops for judges and senior court officials are also planned for the future.

In 2023, Slovakia joined the TREIO project. The GPO plans to participate in the training activities and to set up a group of trainers in order to prepare prosecutors for the digitalisation of judicial cooperation.

The Slovak Bar Association also organises training and seminars for lawyers, advocates and junior lawyers. There are also topics on judicial cooperation, e.g. one of the courses focused on procedural safeguards and the EU instruments etc. Training specifically on the topic of the EIO was also organised.

22. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

22.1. Suggestions by Slovakia

Slovakia has the following suggestions regarding the revision of Annex A, where the form could

- start with a description of the act, followed by a summary of the investigation already carried out and finally the requested measures;

- include a box indicating the number of documents annexed to the EIO and a description of the content;

- provide, in the case of a request for the taking of statements from a witness, suspect or accused person, an obligation for the issuing authority to include the list of questions to be put to the person to be heard, to be included in section C or in a separate Annex;

- have an updated version of section F, making it more understandable, especially highlighting the relationship between points a) and c).

The form contains a section for adding any further information that could be considered to be of use to the issuing authority for the successful outcome of the cooperation procedure. This space could be used to alert the issuing authority to the incomplete or incorrect completion of the form set out in Annex A and to invite the issuing authority to make all necessary or appropriate additions and/or corrections.

Slovakia advises to the other Member States to provide their judicial authorities with regular specialised training on judicial cooperation instruments and to make efforts to notifying judges as EJN contact points. Furthermore, Member States should use short sentences and at the same time avoid copying the text of the domestic order when issuing an EIO, especially in cases of cascading EIOs.

The Slovak authorities would also welcome a handbook on the EIO, including current difficulties such as the scope, and links to other instruments; proportionality; rule of speciality; the type of investigation measures allowed in the executing Member State; the difficulties resulting from the differences between national legal systems and the admissibility of the evidence in the issuing Member State; differing interpretations of certain grounds for non-execution; legal remedies; handling of e-evidence and big data evidence packages etc.

22.2. Recommendations

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

Based on the findings, the evaluation team identified several recommendations for the attention of the Slovak authorities. Furthermore, based on the various good practices, related recommendations are being put forward to the EU, its institutions and to EJN as well.

Slovakia should conduct an 18-month follow-up to the recommendations referred to below after this report has been adopted by COPEN.

22.2.1. Recommendations to Slovakia

Recommendation No 1: Slovakia is invited to supplement its notification pursuant to Article 33(1)(c) of the Directive - concerning Article 7(3) – to designate the GPO as the central authority (see Chapter 4.3).

Recommendation No 2: Slovakia should consider accepting EIOs in a language, which is commonly used in the Union, in addition to EIOS in its official language, in the spirit of Article 5(2) and recital (14) of the Directive, preferably English (see Chapter 6.2).

Recommendation No 3: Slovakia is encouraged to speed up the process of joining e-EDES (see Chapter 8).

Recommendation No 4: Slovakia is encouraged to amend the EIO Act in order to make the grounds for non-recognition optional instead of mandatory (see Chapter 13).

Recommendation No 5: Slovakia is encouraged to make sure that the lack of double criminality is explicitly indicated as a ground for non-recognition, by clearly transposing Article 11(1)(g) of the Directive (see Chapter 12.1).

Recommendation No 6: Slovakia is encouraged to continue the digitalisation of the courts and the prosecution service – including further equipping them with videoconferencing tools (see Chapter 19.3).

Recommendation No 7: Slovakia might consider designating a single RPO to handle EIOs relating to covert investigations, controlled delivery and other forms of real time evidence gathering (see Chapter 19.6 and 19.8.3.2).

Recommendation No 8: Slovakia should ensure that the recent changes in the competence for interception of telecommunications are reflected in the EJN information tools (see Chapter 19.7).

Recommendation No 9: Slovakia should continue its training opportunities on the topic of the EIO (see Chapter 21).

22.2.2. Recommendations to the other Member States

Recommendation No 10: In accordance with recital (14) of the Directive, Member States are invited to indicate, in their declaration concerning the language regime, another language in addition to those in their official language which is commonly used in the Union (see Chapter 6.2).

Recommendation No 11: Issuing authorities should always indicate whether the EIO or another related request/order is being sent to multiple executing authorities in the same Member State, for the sake of coordination (see Chapter 6.3).

Recommendation No 12: Member States should speed up the process of joining e-EDES (see Chapters 8*).*

Recommendation No 13: Member States should regularly update the EJN Atlas, including the e-mail addresses and phone numbers of competent authorities (see Chapter 8).

Recommendation No 14: Issuing authorities should clearly identify the procedural status of the person to be heard and provide the executing authorities with information about the rights of a person to be heard and a list of questions to be asked (see Chapter 9).

Recommendation No 15: Member States, acting as executing authorities, should, as far as possible, respect any formalities requested by the issuing authorities (see Chapter 9).

Recommendation No 16: Issuing authorities should ensure that the offence subject to the EIO is described in a clear manner (see Chapter 12).

Recommendation No 17: Member States should comply with time limits, but if this is not possible, they should inform the issuing authority of the reasons (see Chapter 15).

Recommendation No 18: Member States are reminded to send the Annex B systematically (see Chapter 16).

22.2.3. Recommendations to the institutions

Recommendation No 19: The Union legislator is encouraged to amend the Directive

- by providing a possibility for consent to use information already handed over between law enforcement authorities, or by way of spontaneous information exchange, as evidence in judicial criminal proceedings (see Chapter 5.1);

- by addressing the issue of the underlying national order or validation by the court of an EIO issued by the prosecutor, taking into account the relevant case law of the CJEU (see Chapter 9.1);

- by clarifying the applicability of the rule of speciality (see Chapter 10);

Recommendation No 20: The Union legislator is invited to consider amending the Directive by extending the application of Articles 24 and 25 of the Directive for the participation of the accused/convicted person in the entire court proceedings via videoconference from another Member State in order to allow for such person to present evidence, comment on pieces of evidence previously introduced and ask questions if the issuing and executing authorities agree on a case by case basis (see Chapter 19.3).

Recommendation No 21: The Union legislator is invited to examine under which conditions it would be possible to allow for the executing State to transfer its duties of subsequent control of the interception to the issuing State, particularly in cases of transmitting telecommunications immediately to the issuing State (see Chapter 19.7.2).

22.3. Best practices

Slovakia is commended for:

1. establishing a single authority competent for handling Annex C issued for interception and recording of telecommunications under Article 31 of the Directive (see Chapter 4.2);
2. the special law on translators and languages experts thus enhancing the professionalism of translators and accuracy of translations (see Chapter 6.2);
3. the twice-yearly meetings of prosecutors specialised in international cooperation in criminal matters organised by the GPO's international department (see Chapter 21);
4. the monthly meetings at the RPOs to discuss the practical application of the Directive (see Chapter 23).

Monday 19 June 2023

Arrival of the evaluation team in Bratislava

Internal meeting of the evaluation team

Tuesday 20 June 2023

9:00 - 9:15	Welcome
9:15 - 10:30	Presentations; the national framework of and practice on the issuing and execution of an EIO
10:30 - 10:45	Coffee break
10:45 - 12:00	Meeting with practitioners
12:00 - 13:00	Lunch break
13:00 - 16:00	Continuation of the meeting with practitioners
18:00 - 19:30	Internal meeting of the evaluation team

Wednesday 21 June 2023

9:00 - 10:30	Meeting with practitioners
10:30 - 10:45	Coffee break
10:45 - 12:00	Continuation of the meeting with practitioners
12:00 - 13:00	Lunch break
13:00 - 16:00	Continuation of the meeting with practitioners
18:00 - 19:30	Internal meeting of the evaluation team

Thursday 22 June 2023

9:00 - 11:00	Meeting with practitioners
11:00 - 11:15	Coffee break
14:15 - 12:30	Wrap-up meeting
16:00 - 17:30	Internal meeting of the evaluation team

Friday 23 June 2023

9:00 - 11:00	Internal meeting of the evaluation team

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH
2000 MLA Convention	Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union
CATS	Coordinating Committee in the area of police and judicial cooperation in criminal matters
CJEU	Court of Justice of European Union
CPC	Criminal Procedure Code
DPO	District Prosecutor's Office
EAW	European Arrest Warrant
EIO	European Investigation Order
Eurojust	European Union Agency for Criminal Justice Cooperation
Directive	Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
EJN	European Judicial Network
EIO Act	Act No 236/2017 Coll. concerning the European Investigation Order in criminal matters and amending certain acts
GPO	General Prosecutor Office
JIT	Joint Investigation Team
Joint Action	Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.
MLA	mutual legal assistance

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH
Order	Order of the Prosecutor General of 13 December 2016 on the procedure of prosecutors in international judicial cooperation in criminal matters
Slovakia	Slovak Republic
RPO	Regional Prosecutor Office