

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Justice, Finland

Act on the Implementation of the Directive Regarding the European Investigation Order in Criminal Matters

(430/2017; amendments up to 464/2023 included)

By decision of Parliament, the following is enacted:

Chapter 1

General provisions

Section 1

Implementation of the Directive

The provisions of a legislative nature in Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, hereinafter *the Directive*, shall have the force of law unless otherwise provided in this Act.

At the time of the entry into force of this Act, the government plenary session may decide on the continued application of an existing international agreement or arrangement referred to in Article 34(3) of the Directive.

Section 2

Scope of application

The Directive and this Act apply to:

- 1) the recognition and execution of a European Investigation Order, hereinafter *EIO*, issued by a competent authority of a European Union Member State and sent to Finland;
- 2) the sending of an EIO issued by a competent Finnish authority to another European Union Member State for recognition and execution.

This Act does not apply in relation to the Republic of Ireland or the Kingdom of Denmark.

Section 3

Content and form of an EIO

An EIO shall be issued in the manner laid down in Article 5 of the Directive by means of a form conforming to the model annexed to the Directive (OJ, L 130, 1 May 2014).

Section 4

Central authority

The Ministry of Justice is the central authority referred to in Article 7(3) of the Directive. The Ministry of Justice is responsible for assisting the competent authorities in communications relating to the transmission of an EIO.

Chapter 2

Recognition and execution of an EIO in Finland

Section 5

Executing authorities

In Finland, the executing authorities referred to in Article 2(d) of the Directive are the police, border guard and customs authorities.

The Helsinki District Court and the prosecutors in the judicial district of the Helsinki District Court are also executing authorities. However, the hearing of witnesses, experts and parties to the matter in court shall be conducted by the district court in whose judicial district the person to be heard has their domicile, place of habitual residence or place of ordinary residence. For a special reason, another district court or prosecutor may also act as the executing authority.

The decision on the recognition and execution of an EIO is made by the authority within whose competence the measure requested in the EIO would fall in Finland under corresponding circumstances. However, a district court or a prosecutor may also decide on the recognition and execution when this is to be considered appropriate based on the request of the issuing authority or otherwise.

Section 6

Recording of decisions on recognition and execution

The executing authority shall record a decision on recognition and execution.

Section 7

Validation of decisions on recognition and execution

A police authority, a border guard authority or a customs authority may submit a decision to refuse the recognition and execution of an EIO to a prosecutor for validation.

Section 8

Execution of an EIO

Unless otherwise provided in the Directive or this Act, an EIO shall be executed in compliance with the procedure laid down in Finnish law.

When the district court referred to in section 5, subsection 2 hears witnesses, experts or parties, a prosecutor shall be present at the hearing, if the district court considers such presence necessary.

Section 9

Use of coercive measures

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

If the execution of an EIO requires the use of a coercive measure referred to in subsection 1, the use of the coercive measure is conditional upon its use being permitted under Finnish law, had the act on which the EIO is based been committed in Finland under corresponding circumstances.

When the use of a coercive measure has not been restricted to certain offences or to offences punishable by a certain threshold under the Coercive Measures Act (806/2011), the use of the coercive measure does not require the act on which the EIO is based to be punishable under Finnish law, if the issuing authority has indicated, in accordance with Article 11(1)(g) of the Directive, that the act is an act referred to in subsection 4 for which the most severe punishment provided in the law of the issuing State is a custodial sentence or a detention order for a period of at least three years.

The offences referred to in subsection 3 above are:

- 1) participation in a criminal organisation,
- 2) terrorism,
- 3) trafficking in human beings,
- 4) sexual exploitation of children and child pornography,
- 5) illicit trafficking in narcotic drugs and psychotropic substances,
- 6) illicit trafficking in weapons, munitions and explosives,
- 7) corruption,
- 8) fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests (Finnish Treaty Series 85/2002),
- 9) laundering of the proceeds of crime,
- 10) counterfeiting currency, including of the euro,

- 11) computer-related crime,
- 12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- 13) facilitation of unauthorised entry and residence,
- 14) murder, grievous bodily injury,
- 15) illicit trade in human organs and tissue,
- 16) kidnapping, illegal restraint and hostage-taking,
- 17) racism and xenophobia,
- 18) organised or armed robbery,
- 19) illicit trafficking in cultural goods, including antiques and works of art,
- 20) swindling,
- 21) racketeering and extortion,
- 22) counterfeiting and piracy of products,
- 23) forgery of administrative documents and trafficking therein,
- 24) forgery of means of payment,
- 25) illicit trafficking in hormonal substances and other growth promoters,
- 26) illicit trafficking in nuclear or radioactive materials,
- 27) trafficking in stolen vehicles,

28) rape,

29) arson,

30) crimes within the jurisdiction of the International Criminal Court,

31) unlawful seizure of aircraft/ships,

32) sabotage.

However, the provisions laid down in subsections 2 and 3 do not apply to the execution of an EIO relating to a money laundering offence in a situation where the person suspected of the offence referred to in the EIO is an accomplice to the offence by which the assets were obtained from another or which generated the proceeds, or to a data retention order referred to in chapter 8, section 24 of the Coercive Measures Act.

A warrant for controlled delivery may be granted when the act on which the EIO is based meets the conditions laid down in section 2, subsection 1 and section 3 of the Act on Extradition on the Basis of an Offence Between Finland and Other Member States of the European Union (1286/2003).

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

If the EIO concerns the hearing, in a criminal investigation or in court, of a person suspected of an offence or a defendant in criminal proceedings pending in another European Union Member State, the person to be heard may not be arrested, remanded or subjected to a travel ban due to the act on which the EIO is based.

Section 10

Disclosure of surplus information and personal identifying characteristics

If the execution of an EIO requires the disclosure of surplus information referred to in chapter 10, section 55 of the Coercive Measures Act to another European Union Member State, the

prerequisite for the disclosure is that the information could, under section 56 of the said chapter, be used in Finland in a corresponding situation.

The provisions laid down in chapter 9, section 3, subsection 2 of the Coercive Measures Act apply to the disclosure of the information referred to in the said subsection.

Section 11

Right of refusal of a witness, an expert and a person to be heard in a criminal investigation

A person who, on the basis of an EIO issued by another European Union Member State, is to be heard as a witness or an expert in a Finnish court or appears in a criminal investigation for hearing has the right to refuse to give evidence or make a statement if the person has the right or obligation to do so under the law of Finland or the issuing Member State. The law of the issuing Member State is taken into account if the right or obligation to refuse to give evidence is stated in the EIO or if the issuing authority confirms this on the request of the competent Finnish authority.

Section 12

Temporary transfer of a person held in custody from Finland to another Member State

The decision on the recognition and execution of an EIO referred to in Article 22 of the Directive, issued by another European Union Member State and concerning the temporary transfer of a person held in custody from Finland to the said Member State, is made by the district court referred to in section 5, subsection 2.

The prosecutor referred to in section 5, subsection 2 shall submit to the district court a request for a decision on recognition and execution. The request shall be made in writing and it shall explain the grounds for refusal. The EIO issued by the other Member State shall be appended to the request.

A defence counsel shall be appointed for the person to be transferred. The district court shall order a reasonable remuneration to be paid from state funds to the defence counsel. The provisions of chapter 2 of the Criminal Procedure Act (689/1997) apply to the appointment of the defence counsel and to the defence counsel in other respects.

The person to be transferred shall be heard in person. The prosecutor and the defence counsel shall be present at the session. Consent to the transfer shall be given in session and recorded in the minutes. Before consenting, the person to be transferred shall be informed of the significance of consent in the consideration of the matter.

The person to be transferred shall be informed of the district court decision and the right to request a review of the decision in accordance with section 20, subsection 5.

In other respects, the provisions of the Coercive Measures Act concerning the consideration of remand matters apply to the consideration of the matter, as appropriate.

The period of time for which the person is held in custody due to the temporary transfer shall be deducted from any subsequent sentence to be imposed in Finland as provided in chapter 6, section 13 of the Criminal Code (39/1889).

Section 13

Temporary transfer of a person held in custody from another Member State to Finland, transit and custody

The decision on the recognition and execution of an EIO referred to in Article 23 of the Directive issued by another European Union Member State and concerning the temporary transfer of a person held in custody from the said Member State to Finland is made by the prosecutor referred to in section 5, subsection 2.

The prosecutor referred to in section 5, subsection 2 also decides on the transportation of a person held in custody through the territory of Finland. The competent authority of the other Member State shall supply the prosecutor deciding on transit with information about the identity of the person to be transported through Finland and about the EIO.

A person transferred to or transported through Finland shall be kept in custody unless the other European Union Member State from which the person was transferred requests that the person be released. The provisions of the Remand Imprisonment Act (768/2005) apply to the keeping of persons in custody, as appropriate.

Section 14

Transportation of a person and transfer of evidence to the issuing Member State

In situations referred to in sections 12 and 13, the National Bureau of Investigation is responsible for the transportation of the person.

When necessary, the National Bureau of Investigation is responsible for the arrangements relating to the delivery of evidence obtained as a result of the execution of an EIO.

Section 15

Hearing by videoconference or telephone

As provided in Article 24 of the Directive, a witness, an expert or an injured party may be heard by videoconference or other audiovisual transmission.

On the written request of a competent authority of the issuing Member State, the district court referred to in section 5, subsection 2 may decide that a person is heard as a witness in a manner in which the person's identity and contact details are not revealed (*anonymous witness*) if:

- 1) the witness has been granted anonymity in the issuing Member State; and
- 2) anonymity could also be granted in a corresponding situation under chapter 5, section 11a, subsection 1 of the Criminal Procedure Act.

The district court may also decide on anonymity on the written application of the prosecutor, the suspect or the defendant, if anonymity could be granted in a corresponding situation under chapter 5, section 11a, subsection 1 of the Criminal Procedure Act. The competent authority of the issuing Member State shall be heard in the matter.

The request or application or an appendix to such shall indicate the person who is requested to be heard as an anonymous witness, information on the said person's desire to be heard as an anonymous witness, and the facts and evidence submitted by the issuing Member State or the applicant in support of the request.

The judge who decides on the presentation of anonymous testimony hears the witness by videoconference as provided in Article 24. If the said judge is unable to conduct the hearing, the judge conducting the hearing instead of this judge shall review the material accumulated in the procedure concerning the decision on anonymity.

In other respects, the provisions of chapter 5, sections 11a–11e of the Criminal Procedure Act apply to deciding on the presentation of anonymous testimony. The hearing of a witness may be carried out if the decision is final or if it shall be complied with under section 11e, subsection 3.

As provided in Article 25 of the Directive, a witness, an expert or an injured party may be heard by telephone conference.

Section 16

Hearing of a suspect or defendant by videoconference

A suspect in a criminal investigation or a defendant in a criminal case may be heard by videoconference or other audiovisual transmission as provided in Article 24 of the Directive.

The prerequisite for the hearing of a defendant in a criminal case is that the defendant consents to it and that the hearing, taking into consideration the nature of the matter and other circumstances, does not compromise the defendant's legal protection. The district court referred to in section 5, subsection 2 decides on the hearing.

A defendant or a suspect to be heard by videoconference or other audiovisual transmission has the right to counsel. A defence counsel shall be appointed for the defendant and the suspect at their request. The district court shall order a reasonable remuneration to be paid from state funds to the defence counsel. The provisions of chapter 2 of the Criminal Procedure Act apply to the appointment of the defence counsel ex officio and to the defence counsel in other respects, as appropriate.

Before a defendant and a suspect is asked for their consent to be heard by videoconference, they shall be informed of the significance of the consent and their right to counsel as well as their right to have a defence counsel appointed for them. The giving of consent shall be included in the recording.

The provisions on the service of a summons in criminal cases shall be observed in summoning the defendant to be heard in a district court. The summons shall inform the defendant of their rights and request the defendant to notify the district court in writing within the time limit set by the court whether they consent to be heard by videoconference.

Section 17

Covert activity and pseudo-purchase

In order to execute an EIO, covert activity may be undertaken and pseudo-purchases may be made in the manner referred to in Article 29 of the Directive for the purpose of investigating an offence in accordance with the provisions of chapter 10 of the Coercive Measures Act.

When deciding on the recognition and execution of an EIO concerning covert investigation, the competent authority of the issuing State may be given the right, in order to investigate an offence, to engage in covert activity and to make a pseudo-purchase in the territory of Finland in accordance with the provisions of chapter 10 of the Coercive Measures Act. An equivalent right may be given to a public official of another European Union Member State on the basis of an EIO issued by a competent Finnish authority.

A public official of another European Union Member State acting in the territory of Finland under subsection 2 may be given the right to carry a weapon if this is necessary due to the nature of the activity pursued. The weapon may only be used in situations of self-defence as referred to in chapter 4, section 4 of the Criminal Code. The decision on the right to carry a weapon is made by a commanding police officer.

Section 18

Imposition of conditions in decisions concerning coercive telecommunications measures

When a court, due to an EIO referred to in Article 30(2) or a notification referred to in Article 31(1) of the Directive, makes a decision concerning telecommunications interception in accordance with chapter 10, section 5 of the Coercive Measures Act, it shall impose a condition under which the authority of the issuing or notifying European Union Member State shall comply with the provisions of chapter 10, sections 52 and 55 and with the provisions of section 56 of the Coercive Measures Act concerning the cases in which surplus information may be used. Equivalent conditions shall be

imposed when making a decision on the use of the other coercive measures referred to in the said sections in the territory of Finland. In addition, the court shall impose other conditions necessary for the legal protection of the person who is the object of the measure.

Section 19

Notifications concerning telecommunications interception

The notifications referred to in Article 31 of the Directive are received and made by the National Bureau of Investigation. Having received a notification, the National Bureau of Investigation shall submit the matter to a court for resolution without delay.

Section 20

Request for a review

A review of a measure to be executed in Finland is requested in compliance with the provisions on requesting a review of the said measure laid down in Finnish law. A person with the right to request a review may, on the same occasion, request a review of the decision on the recognition and execution of the EIO.

A person who under subsection 1 has the right to request a review is informed of the decision on the recognition and execution of the EIO in Finland and the right to request a review of the decision on the same occasion as the person is informed of the right to request a review of a measure to be executed in Finland.

Apart from what is provided in subsection 1, a review of a decision on the recognition and execution of an EIO in Finland may not be requested.

Subsection 4 was repealed by Act 1212/2021.

A person to be transferred may request a review, by appeal, of a decision referred to in section 12 and section 23, subsection 2 in compliance with the provisions on requesting a review of a district court decision. The matter shall be considered urgently.

Unless otherwise ordered by the court considering the matter, a request for a review does not prevent the execution of the measure or decision.

Section 21

Language and translations

An EIO to be transmitted to Finland and a transit request referred to in section 13 shall be drawn up in Finnish, Swedish or English, or a translation into one of these languages shall be appended to it. The executing authority may also accept an EIO drawn up in another language when there is no other impediment to its acceptance.

When necessary, the executing authority is responsible for the translation of the EIO into Finnish or Swedish.

Chapter 3

Issue of an EIO in Finland

Section 22

Authorities competent to issue an EIO

As provided in Article 2(c)(ii) of the Directive, an EIO may be issued in Finland by a public official with the power of arrest and the powers of head investigator in the Police, Customs or the Border Guard. In such a case, the EIO shall be validated by a prosecutor.

As provided in Article 2(c)(i), an EIO may also be issued by a prosecutor, a district court, a court of appeal and the Supreme Court.

Section 23

Issue of an EIO

An EIO may be issued in a criminal case the consideration of which falls within the competence of an authority mentioned in section 22.

If a measure requested in an EIO would in Finland under corresponding circumstances require a decision by an authority other than the issuing or validating authority, such a decision shall be obtained as the basis for the EIO.

The decision to issue an EIO referred to in Article 23 of the Directive for the purpose of temporarily transferring a person held in custody in Finland to another European Union Member State is made by the district court referred to in section 5. The prosecutor referred to in section 22 shall submit a request for a decision on the issue of the EIO to the district court. In other respects, the provisions of section 12, subsections 3–7 apply to the procedure.

Section 23a (1212/2021)

Request for a review of an EIO

On the request of a person whom an EIO issued or validated by a prosecutor concerns, a district court shall examine whether the conditions for issuing the EIO exist. The provisions of chapter 3, section 1 of the Coercive Measures Act apply to the consideration of the request. The request shall be made in writing within 60 days of the date on which the person is deemed to have been informed of the EIO. The matter may also be decided in the court office without holding a hearing, if the district court deems this appropriate.

A complaint may be filed against an EIO issued by a district court or a court of appeal or against a district court decision referred to in subsection 1. The complaint shall be filed within 60 days of the date on which the person is deemed to have been informed of the EIO or, in a situation referred to in subsection 1, within 60 days of the date on which the district court decision was issued.

In situations referred to in subsections 1 and 2, the public official with the power of arrest who issued the EIO and the prosecutor who validated the EIO or the prosecutor who issued the EIO shall be given an opportunity to be heard.

A request for a review referred to in this section does not prevent the recognition and execution of an EIO in another Member State, unless otherwise ordered by the court considering the request for a review.

Section 24

Language and translations

An EIO shall be drawn up in an official language of the executing Member State or another language accepted by it or be translated into such a language.

Unless otherwise agreed, the issuing authority is responsible for the translation of the EIO into the language referred to in subsection 1.

Chapter 4

Miscellaneous provisions

Section 25

Non-disclosure, obligation to remain silent and restrictions on the use of information

An EIO transmitted to Finland by the competent authority of another European Union Member State and its execution in Finland are subject to the provisions laid down in Finland on non-disclosure, the obligation to remain silent and the right to obtain information in a corresponding matter.

The consideration in court of an EIO issued by a competent Finnish authority and the evidence, documents and information transmitted to Finland under an EIO issued by a competent Finnish authority are in Finland subject to the provisions laid down in Finland on non-disclosure, the obligation to remain silent and the right to obtain information in a corresponding matter.

(1212/2021)

In addition to the provisions of subsections 1 and 2, the conditions and procedures imposed by the competent authority of the other European Union Member State concerning non-disclosure, the obligation to remain silent or restrictions on the use of the information shall be observed.

Subsection 4 was repealed by Act 464/2023.

Section 26

Entry into force

This Act enters into force on 3 July 2017.

The provisions of law in force at the time of the entry into force of this Act apply to requests for legal assistance transmitted before this Act's entry into force.

In relation to a Member State that has not implemented the Directive by the time of the entry into force of this Act, the provisions in force at the time of the entry into force of this Act apply until the Member State concerned has implemented the Directive.