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European Arrest Warrant proceedings –
safeguards for requested persons

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Table of Contents

EXECUTIVE SUMMARY	1
INTRODUCTION	3
RESEARCH FINDINGS	5
1. Right to information	5
a. Legal overview	5
b. Right to information in practice	6
• Provision of information	6
• Information about the EAW – content and procedure.....	7
• Information on consenting to surrender	8
• Understanding of information	9
c. Discussion of findings	10
2. Right to interpretation and translation	12
a. Legal overview	12
b. Interpretation and translation in practice.....	13
• Provision of interpretation.....	13
• Translation of documents	15
• Interpretation of consultations with lawyers	16
c. Discussion of findings	17
3. Right to access to a lawyer	18
a. Legal overview	18
b. Right to access to a lawyer in practice	19
• Information about legal assistance	19
• Legal assistance in executing state	20
• Legal assistance in issuing state	24
• Communication between the lawyers in both states	26
c. Discussion of findings	27
4. Issuing and Execution of the EAW	29
a. Legal overview	29
b. Issuing and Execution of the EAW in practice	33
• Factors considered when issuing the EAW	33
• Factors considered when executing the EAW.....	35
c. Discussion of findings	41
5. Use of digital and technological tools in EAW proceedings	42
a. Legal overview	42
a. Discussion of findings	46

List of Tables

Table 1: Sample professionals	3
Table 2: Are persons arrested on an EAW informed about their procedural rights?.....	7
Table 3: Are persons arrested informed of the contents of the EAW against them?	8
Table 4: Are the requested persons informed about what consenting to their surrender entails?	8
Table 5: Dual representation (in law)	18
Table 6: Cost-free legal assistance (in law)	19
Table 7: Are persons informed of their right to access a lawyer?	20
Table 8: Information on dual representation, interview findings	20
Table 9: Facilitating dual legal representation, interview findings (executing MS).....	25
Table 10: Providing dual legal representation, interview findings (issuing MS).....	26
Table 11: Cost-free legal assistance, interview findings	27
Table 12: Use of technological tools (in law)	42
Table 13: Use of digital tools, interview findings.....	46

EXECUTIVE SUMMARY

This report looks at the application of the procedural safeguards of persons arrested in Finland on a European Arrest Warrant (EAW) issued by another Member State. It is based on a desk research and interviews with defence lawyers, prosecutors and judges engaged in surrender proceedings. The main focus of the study is the application of procedural rights as guaranteed by the Directive 2010/64/EU on the right to interpretation and translation,¹ the Directive 2012/13/EU on the right to information in criminal proceedings,² and particularly, the Directive 2013/48/EU on the right to access to a lawyer.³ The application of the proceedings and fundamental rights guaranteed under the 2002 European Arrest Warrant Framework Decision (FD) are moreover examined.⁴ The FD is implemented in Finland through the Act on Extradition on the Basis of an Offence between Finland and Other Member States of the European Union (*laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä/lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen*) (hereafter 'the EU Extradition Act').⁵ As such, the report presents findings on the implementation of the rights and practices laid out in said instruments, i.e., the right to information; linguistic rights; the right to a lawyer; practices applied when issuing and executing an EAW; as well as the use of digital tools in EAW proceedings.

Regarding the provision of information, the practice clearly shows an effort to comply with the legal requirements. The methods used might not, however, always be suitable to ensure that requested persons fully understand their rights, at least from the very outset of the proceedings. Indeed, although requested persons are provided a written notice of rights by the police in a language that they understand, as well as information about the content of the EAW, practice indicates that the information must often be re-explained by the courts. Whether requested persons have understood the information that has been provided is nevertheless continuously examined by the authorities and verified in court, at the latest. A requested person will thus not be surrendered without first having been effectively provided information about the EAW and their rights.

Furthermore, as requested persons are arranged a state-appointed interpreter, the requirement of providing cost-free interpretation is implemented in practice. The need for interpretation is initially assessed by the police. While remote interpretation is possible, for instance, if a suitable interviewer is not available in person, it is an exception to the main rule. Certain possible shortcomings could be identified regarding the right to translations: indeed, findings show that translations of some documents, particularly the EAW, are not always provided in writing. Worth noting is that the EU Extradition Act exceptionally allows for the oral translation of the EAW, if providing a translation in writing is not required by the legal protection of the requested person.

¹ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ 2010 L 280.

² Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ 2012 L 142.

³ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ 2013 L 294

⁴ Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, OJ 2002 L 190, 18 July 2002.

⁵ Finland, [Act on Extradition on the Basis of an Offence Between Finland and Other Member States of the European Union \(*laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä/lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen*\)](#), Act No. 1286/2003, 1 January 2004.

Requested persons are moreover provided information about the right to a lawyer both in the executing and the issuing Member State. The replies varied, however, when it came to the means of appointing a lawyer in the issuing state. While no definite conclusion could be drawn, findings indicate that requested persons' right to double representation is fulfilled in practice. A room for improvement regarding the knowledge of this right could nevertheless be identified. Requested persons always have the right to privately meet and consult with their lawyers and to have their lawyer present at all hearings. Described as challenges relating to legal representation were the limited number of lawyers in Finland experienced in surrender proceedings as well as their expertise. These challenges are a consequence of the relatively low number of EAW cases in Finland, but possibly also due to a lack in training. The challenges mentioned adversely impact the legal protection of requested persons, as pointed out by one interviewee.

The legal conditions for issuing an EAW are observed in practice: the request to surrender must be based on a court decision to remand, and an EAW issued only if the length of the most severe punishment for the offence is at least one year of imprisonment. Notably, in practice, an EAW is rarely issued for acts for which the most severe punishment is imprisonment of less than two years. Assessing the proportionality of the measures has a key role both when judges decide whether to remand, and when prosecutors decide on issuing an EAW.

Worth noting is that the possibilities to refuse execution based on the EU Extradition Act are slightly broader than what is prescribed in the FD. Most notably, the EU Extradition Act includes mandatory grounds of refusal based on human rights considerations and the personal circumstances of the requested person that go beyond the wording of the FD. Findings demonstrate that the legal grounds for execution are followed in practice; a refusal to execute can only be based on the grounds set out in law, and not, for instance, on general legal principles such as the proportionality principle. The individual circumstances of requested persons are taken into account both before executing and issuing an EAW (in the latter case, provided that such circumstances are known by the authorities). The threshold for applying the express refusal ground relating to personal circumstances was nevertheless described as high. The detention conditions and rule of law considerations are moreover assessed in line with the case-law of the CJEU, i.e., through a two-step test where both the general and the person specific situations are considered. The principle of mutual trust was highlighted by most interviewees. The Finnish authorities use multiple sources in assessing the detention conditions of the issuing state, including FRA's database on the conditions on detention, case-law of the CJEU and the website of the European Judicial Network. Notably, practice shows that the Finnish authorities can contact the authorities of the issuing state to suggest, for instance, postponing the proceedings or using other measures, such as a European Investigation Order (EIO), if surrender would appear inhumane or disproportionate.

The study finally identifies several benefits of an increased digitalisation of EAW proceedings. Digital tools – such as remote hearings and the exchange of information through digital means – could, among other things, expedite the proceedings, as well as lessen unnecessary transportations and deprivations of liberty.

INTRODUCTION

FRANET Finland conducted eight individual and semi-structured interviews between April and July 2022. Four of the interviewees were defence lawyers, all of which are specialized in criminal law, and have experience of EAW-matters. The other four interviewees were judicial authorities: two district court judges and two prosecutors. Five of the interviews were conducted via electronic means of communication, Zoom and Skype, whereas the other three were conducted face-to-face. All interviews were held in Finnish. The interviewees were provided with FRA's support letter, consent form and data protection notice, as well as general information about the project, well in advance of the interview. All interviews were audio recorded with the consent of the interviewees.

Finding lawyers with extensive experience of surrender matters in Finland proved to be somewhat challenging. Indeed, as will be discussed in the report, only a limited number of lawyers in Finland are specialised in EAW proceedings. Assistance in identifying suitable interviewees were provided by both the District Court of Helsinki and the Supreme Court of Finland. Legal experts at the Supreme Court and the Prosecutor's Office of Southern Finland moreover assisted in selecting suitable judges and prosecutors.

The interviewer received training from a senior colleague experienced in interview techniques.

The average length of the interviews was 65 minutes. The interviewees were cooperative and willing to share their knowledge regarding the themes of the interview. They were open about their own experiences and perceptions regarding surrender proceedings.

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4

Table 1: Sample professionals

Code	Group	Expertise in EAW proceedings	Gender
1	Defence lawyer	Attorney, first EAW case 16 years ago. Assisted requested persons both when Finland has issued and executed EAWs.	M
2	Defence lawyer	Attorney, worked with criminal law, including EAW-matters, for 10 years.	M
3	Defence lawyer	Attorney, worked with criminal law for 10 years. Assisted a few persons arrested on an EAW issued by another Member State.	M
4	Defence lawyer	Licensed legal counsel, assisted approximately 5 persons arrested on an EAW issued by another Member State.	F
5	Prosecutor/Judge	Judge, four years of experience of executing EAWs.	F
6	Prosecutor/Judge	Prosecutor, 14 years of experience of issuing EAWs, 12 years of experience of proceedings relating to execution.	F

7	Prosecutor/Judge	Prosecutor, over 10 years of experience of issuing EAWs, 7 years of experience of proceedings relating to execution.	F
8	Prosecutor/Judge	Judge, 8 years of experience in executing EAWs.	F

The report is based on a desk research and semi-structured interviews. The desk research was based on relevant national legislation and their preparatory work, case law, policy documents and academic literature. Its purpose was to provide an overview of the legal provisions concerning procedural rights of persons requested in EAW proceedings in Finland. Accordingly, the desk research served as the key document upon which the legal overviews for the respective themes of this report are based. The interviews were audio recorded and transcribed. The data from the interview transcripts was compiled into separate interview reports, approved by FRA. A comparative analysis across the interview reports was conducted to look for any patterns or divergencies. The questions provided by FRA in the templates for the desk research and for the interviews served as guidance when compiling the final report. A special focus was given to recurring themes, promising practices, and diverging views between and within the respective groups of professionals (lawyers/judicial authorities). Aspects highlighted by FRA when evaluating the interview reports were also emphasized.

The report is divided into five main sections. Examined in the first three substantive sections are the procedural rights of persons arrested on an EAW to information, interpretation and translations, and a lawyer. The national practices for issuing an executing an EAW are examined in chapter four, whereas the use of digital and technical tools in EAW proceedings are the focus of chapter five. All five sections are divided into a legal overview on the one hand, and an analysis of the interview results on the other. At the end of each section is a discussion of findings, summarizing the key findings and takeaways regarding the application of procedural safeguards for respective theme.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

The right to information is regulated in chapter 2 of the Finnish EU Extradition Act. Section 20 stipulates that **the police shall, without delay, provide a person who is arrested for the purpose of executing an EAW with a Letter of Rights**. The Letter of Rights must contain information about the person's right to: information on the contents of the request; be assisted by a legal counsel; have a defence counsel appointed; interpretation and translation; decide whether to consent to the surrender; be heard at a district court; and obtain information on a judgment rendered in absentia, on which a request for surrender is based. Additional requirements regarding the right to information of persons under the age of 18 are laid down in subsection 2 of section 20a of the EU Extradition Act.

As noted above, **the requested person must be informed about the contents of the EAW against them**. In this regard section 21 of the EU Extradition Act furthermore stipulates that when a requested person has been taken into custody or otherwise found in Finland due to a request for surrender, the National Bureau of Investigation (*keskusrikospoliisi/centralkriminalpolisen*) shall, without delay, serve the requested person with the request for apprehension and surrender in a verifiable manner and explain its contents.

The EU Extradition Act obliges the authorities to inform requested persons about what consenting to their surrender entails. According to section 21, the National Bureau of Investigation must notify requested persons about the possibility of consenting to surrender, and the possibility of consenting to prosecution, punishment, or deprivation of liberty in the requesting Member State for an offence committed prior to surrender other than the one for which surrender is requested (i.e., renouncing the speciality rule). Requested persons shall moreover be notified about the possibility of consenting to being subsequently surrendered to another Member State. **The consequences of giving the relevant consents shall moreover be explained**.

The EU Extradition Act moreover includes a provision on the declaration of consent. Section 29 stipulates that requested persons shall declare in the district court session whether they consent to the surrender and to renouncing the speciality rule. According to subsection 2 of said provision, the district court shall inform the requested person of the consequences of the consent. It is also worth noting that Finland has made the following statement under Article 13 (4) of the FD to the General Secretariat of the Council: "In Finland, consent to surrender and, where appropriate, express renunciation of entitlement to the speciality rule referred to in Article 27 (2) may be revoked. Consent may be revoked in accordance with domestic law until surrender has been executed."⁶ Accordingly, as stipulated in section 30 of the EU Extradition Act, **requested persons can revoke their consent until the decision on surrender has been enforced**.

The EU Extradition Act includes certain safeguards ensuring that the information provided has been fully understood by requested persons. First, the requirement to inform about the consequences of the consents (section 21, subsection 1 and section 29, subsection 2 of the EU Extradition Act), as noted above. Second, **the obligation of the National Bureau of Investigation to draw up and submit to the**

⁶ Official Journal of the European Communities, [Statements made by certain Member States on the adoption of the Framework Decision](#), L 190/19, 18.7.2002.

competent prosecutor a written record of the measures taken and the information received (section 21, subsection 4 of the EU Extradition Act)

In case requested persons have not been provided with information about the EAW or their rights during the proceedings, **the requested person may appeal the district court decision at the Supreme Court if the Supreme Court grants leave to appeal** (section 37 of the EU Extradition Act). The appeal may concern both the substantive conditions for surrender and the surrender procedure, including the right to information. If a procedural error, such as the failure to provide information regarding the EAW procedure, is discovered after a judgment has become final, the requested person may file a complaint as regulated in chapter 31, section 1 of the Code of Judicial Procedure (*oikeudenkäymiskaari/rättegångsbalk*).⁷ If the complaint is successful, the final judgment will be annulled. The requested person can moreover file an administrative complaint concerning the unlawful conduct or failure to fulfil an obligation by the authorities, as per section 53a of the Administrative Procedure Act (*hallintolaki/förvaltningslag*).⁸

b. Right to information in practice

- Provision of information

Persons arrested on an EAW in Finland are informed about their rights, as noted by all interviewees. **The interviewees' replies varied, however, when it comes to how such information is provided.** Three lawyers and both prosecutors noted that the information is provided both orally and in writing. According to the prosecutors, requested persons are informed about their rights in writing upon arrest, whereafter the information is gone through orally during the police hearing concerning the notifications and inquiries that must be made under section 21 of the EU Extradition Act. Both judges noted that the information is provided in writing. One of them expressly mentioned that the information is handed through a written notice of rights. Both prosecutors and one lawyer also pointed out that the information about the rights of requested persons is handed through a ready-made document (although without mentioning the name 'written notice of rights').

FI: Keskusrikospoliisi tai poliisi ylipäätään ottaa henkilön kiinni ja silloin kirjallinen ilmoitus oikeuksista annetaan.

ENG: The National Bureau of Investigation, or the police in general, arrests the person and then a written notice of rights is provided. (Judge/Finland)

One lawyer noted that the information is given orally. The same interviewee noted that the information must be provided very soon after the apprehension, since the court session regarding remand must take place within four days of the apprehension [see Coercive Measures Act, Chapter 3, section 5 in this regard]. **The information about the rights of requested persons is provided by the police**, as noted by most interviewees. Two lawyers moreover highlighted the role of the lawyer in handing such information. Indeed, one of them noted that the authorities do not necessarily have the legal knowledge to explain the content of the rights in detail. The interviewee nevertheless noted that the information had always been initially provided by the police.

FI: Joskushan viranomaistieto voi olla sellaista luettelomaista...poliisin henkilökunnalla ei välttämättä ole sellaista koulutusta, että voisi kovin yksityiskohtaisesti kertoa niitten oikeuksien sisällöstä. Mutta sitä varten on avustaja, jonka pitää se tehdä.

⁷ Finland, [Code of Judicial Procedure \(oikeudenkäymiskaari/rättegångsbalk\)](#), Act No. 4/1734, 1 September 1736.

⁸ Finland, [Administrative Procedure Act \(hallintolaki/förvaltningslag\)](#), Act No. 434/2003, 1 January 2004.

ENG: Sometimes the information provided by the authorities can be catalogue-like...the personnel of the police do not necessarily have the kind of education that would enable them to explain the content of the rights in great detail. But for this reason, there is a lawyer. (Lawyer/Finland)

Table 2: Are persons arrested on an EAW informed about their procedural rights?

	L 1	L 2	L 3	L 4	J 1 (J)	J 2 (P)	J 3 (P)	J 4 (J)	Total
YES	X	X	X	X	X	X	X	X	8/8
In writing (Letter of Rights)	-	-	-	-	X	-	-	X	2/8
Orally	X	-	-	-	-	-	-	-	1/8
In writing (Letter of Rights) and orally	-	X	X	X	-	X	X	-	5/8

The interviewees brought up several rights about which requested persons are informed, including linguistic rights, the right to a lawyer, the grounds for the arrest/deprivation of liberty and the grounds for refusal. One prosecutor noted that the SIRENE bureau, operating in connection with the National Bureau of Investigation, is contacted after the arrest, after which a chief of investigation is appointed for the matter. The chief of investigation handles the practical process and the communication with the requested person.

- Information about the EAW – content and procedure

According to all interviewees, **requested persons arrested in Finland are informed about the contents of the EAW against them. The information is provided by the police**, as noted by most of the interviewees.

Fi: Siinä on se tiedoksiantokuulustelu, jossa EAW, eli pidätysmääräys, aina käännetään jollekin kielelle. Parhaimmassa tapauksessa se annetaan kirjallisena sellaisella kielellä, jota luovutettavaksi vaadittu ymmärtää, eli joka on hänen äidinkieltensä.

ENG: A translation of the EAW, i.e., the arrest warrant, is provided at the police hearing concerning the notifications and inquiries that must be made under section 21 of the EU Extradition Act. In the best-case scenario, it is given in writing in a language that the requested person understands, i.e., in the person's mother tongue. (Lawyer/Finland)

One lawyer noted that the information about the contents of the EAW is generally provided by the lawyer, after having received such information from the authorities. One prosecutor similarly pointed out that although the information is initially provided by the police, it is ultimately also provided by the lawyer. According to the interviewee, the EAW and its Finnish translation are attached to a written record, which will be handed over to the lawyer. The interviewee presumed that the lawyer goes through the information provided therein with the requested person.

Fi: No kun minä luulen, että se on tietenkin se tutkija, mutta viime kädessä se on myöskin se avustaja, koska se avustaja saa sen valmistuneen pöytäkirjan. Mutta tietenkin silloin etukäteen niin minä luulen, että se tutkijan kautta täytyy tulla.

ENG: Well, I believe that it is of course the detective, but ultimately also the lawyer since the lawyer receives the completed written record. But of course, I believe it must come through the detective beforehand. (Prosecutor/Finland)

According to most interviewees, requested persons receive the information about the contents of the EAW both orally and in writing. One judge mentioned that the information is given in writing, whereas one lawyer noted that the information is only provided orally. Several interviewees mentioned that the EAW is interpreted and translated, if needed.

Table 3: Are persons arrested informed of the contents of the EAW against them?

	L 1	L 2	L 3	L 4	J 1 (J)	J 2 (P)	J 3 (P)	J 4 (J)	Total
YES	X	X	X	X	X	X	X	X	8/8
NO	-	-	-	-	-	-	-	-	-
In writing	-	-	-	-	-	-	-	X	1/8
Orally	-	-	-	X	-	-	-	-	1/8
In writing and orally	X	X	X	-	X	X	X	-	6/8

- Information on consenting to surrender

Requested persons are informed about what consenting to their surrender entails, as noted by all judicial authorities and two lawyers. Information on consenting to surrender is provided by several actors, including by the police, the judges, and the lawyers. One prosecutor had themselves occasionally explained the matter to requested persons.

FI: Annetaan, se [mitä luovuttamiseen suostuminen käytännössä tarkoittaa] selostetaan jo poliisissa. Laki lähtee siitä, että...tuomarin velvollisuus on tiedustella tältä luovutettavaksi pyydetyltä nämä suostumukset, ja...selostaa sen suostumuksen merkitys.
 ENG: Yes, they are informed already by the police [about what consenting to their surrender entails]. According to the law...it is the duty of a judge to inquire about these consents from the requested person...and to explain their meaning. (Judge/Finland)

One lawyer indicated that although such information is formally provided, it is not explained at length by the authorities nor necessarily even by the lawyer. One prosecutor pondered why some people consent and others do not. The interviewee believed that for some it is clearly a matter of principle. For others, the decision might be impacted by how well the lawyer can explain what consenting to the surrender entails. Most interviewees replied positively to the question of whether requested persons are informed about renouncing the 'speciality rule,' meaning that if they consent to surrender, they might be prosecuted or detained for previous offences not specified in the current warrant. According to one lawyer, the question of consenting to renouncing the speciality rule is one of the standard questions in a form used by the police during the hearing concerning the notifications and inquiries that must be made under section 21 of the EU Extradition Act. One prosecutor nevertheless noted that many Finnish actors, including some of the prosecutors and the media, have certain difficulties in grasping the content and scope of the speciality rule.

Table 4: Are the requested persons informed about what consenting to their surrender entails?

	L 1	L 2	L 3	L 4	J 1 (J)	J 2 (P)	J 3 (P)	J 4 (J)	Total
YES	X	-	X	-	X	X	X	X	6/8
NO	-	-	-	-	-	-	-	-	-
Don't know/remember	-	X	-	-	-	-	-	-	1/8
Did not answer	-	-	-	X	-	-	-	-	1/8

- Understanding of information

Requested persons generally understand the information provided, as noted by most interviewees. One lawyer disagreed, most notably because according to them, the documents are usually long and complicated. One judge, one prosecutor, and one lawyer believed that it would be noticed during the process if the requested person would not have understood. Most interviewees moreover highlighted the role of the lawyers in explaining the information provided. One prosecutor noted, for instance, that up to a certain point one must trust that the lawyers will take care of their duties. One judge pointed out that **it is generally presumed that requested persons have discussed with their defence counsels, who have explained what the information means**. Conversely, one lawyer indicated that as a legal expert one might easily think that the information provided by the authorities is clear and comprehensive.

FI: Täytyy myös tiettyä itsekriittisyyttä harjoittaa, kun tavallaan nämä jutut ovat itselle ihan tuttuja ja selviä, niin sitä helposti ajattelee, että 'nythän tämä poliisi selvitti tämän asian ihan selkeästi ja ymmärrettävästi'. Sitten sitä tietysti miettii, että toinen ei tietenkään ole ihan samassa asemassa.

ENG: You must also exercise a certain amount of self-criticism...as these things are quite familiar and clear to yourself, it is easy to think that 'this police officer explained this matter quite clearly and understandably.' Then, of course, one must keep in mind that the other party is, of course, not in the same position. (Lawyer/Finland)

According to most interviewees the authorities examine whether requested persons have understood the information provided. As noted by two lawyers, the authorities, particularly the police, ask the requested person in the beginning of the process whether they have understood the information provided. **One lawyer nevertheless perceived such inquiries as rather formal and questioned whether the authorities genuinely can tell whether the requested person has understood the information provided**. The margin of error is greater in this regard if the person providing the information does not have in-depth knowledge of the relevant legislation or if they do not fully understand the content of the information themselves, another lawyer observed.

FI: Varmasti selvittää...mutta oletan, että siinä nyt tietysti se kysymys on enemmän... 'oletko ymmärtänyt?'. Ja sitten se, että onko aidosti ymmärtänyt, niin siinä nyt aina on virhemahdollisuus.

ENG: I am sure that they do examine...but I assume that the question is more like 'have you understood?' And when it comes to whether the person has truly understood, there is always a possibility of error. (Lawyer/Finland)

One judge noted that matters relating to the requested person's rights are re-examined in the court hearing concerning surrender. **It is part of a judge's duties to examine whether requested persons have understood the information provided**, another judge pointed out. One lawyer similarly highlighted that the judges of course verify whether the requested person has understood what they were told. According to the interviewee, a judge would not decide on a matter if it could be noticed that the person has not at all understood what the matter concerns. It was pointed out by a prosecutor that examining whether requested persons have understood the information is not, in a sense, the responsibility of the prosecutors, although they of course take part in the extradition process. Primarily, it is the responsibility of the court.

FI: Meillä sen luovutusasian istunnossa käydään asiaa vielä läpi, eli siinä kyllä tulee selväksi, että onko henkilö ymmärtänyt. Käydään myös läpi nämä suostumusasiat vielä uudemman.

ENG: The matter is gone through again in the court hearing concerning the surrender, i.e., it does become clear, whether the person has understood [the information provided]. Matters of consent are also reviewed once again. (Judge/Finland)

FI: No se ei oikeastaan syyttäjälle niin kun siinä mielessä kuulu. Toki osana sitten sitä luovutuskäsittelyä, mutta kyllähän se viime kädessä on tuomioistuimen tehtävä, joka meillä on täytäntöönpanosta vastaava viranomaiskin. Heidän tehtävä on selvittää ne sisällöt ja tietysti sitten se, että antaako henkilö ne suostumuksensa vai eikö anna.

ENG: Well, it does not really in a sense belong to the prosecutor. Sure, as part of the surrender proceedings, but it is ultimately the task of the court, which is the authority responsible for execution in Finland. It is their job to clarify the contents, and of course whether the person gives their consents or not. (Prosecutor/Finland)

Another prosecutor highlighted that if it would appear from the discussion with the requested person, or their body language, that the information is not understood, then of course the prosecutor will intervene. Said prosecutor usually finds out beforehand how experienced the requested person's lawyer is. If needed, they can provide guidance on what to focus on. **Despite a general presumption that requested persons have been provided with information by their defence counsels, the information must nevertheless often be explained in court**, one judge noted.

FI: Kun heillä [luovutettavaksi pyydetyillä] on puolustaja, niin ajatushan tietysti on, että...puolustaja on niitä [annettua tietoa] selostanut. Mutta kyllä se tilanne usein on, että niitä joutuu ehkä enemmän selittämään heille. Puitepäätös on "kapulakieltä" se teksti, eli se ei auta, jos vaan lukee sen läpi. Vaan täytyy sillä tavalla pilkkomalla selostaa, niin kyllä he silloin ymmärtävät sen.

ENG: As they [requested persons] have a defence counsel, the idea is, of course...that the defence counsel has explained [the information provided]. Often, however, the information must be explained more thoroughly. The language of the framework decision is formal and complex, whereby it does not help to just read it through; instead, one must go through it bit by bit. Then they understand. (Judge/Finland)

c. Discussion of findings

All interviewees agreed that requested persons are initially informed about their rights by the police. The replies nevertheless varied as to how such information is provided: only one interviewee expressly mentioned that the information is handed out through a written notice of rights, whereas most interviewees merely noted that the information is provided in writing, or both in writing and orally. Notably, however, in the following section of this study regarding linguistic rights, most interviewees replied that a written notice of rights is provided in a language that the requested person understands. Arguably therefore, the legal requirement of providing a written notice of rights is fulfilled in practice. Findings similarly demonstrate that the requirement of providing information about the content of the EAW is adhered to by the authorities. According to most interviewees, such information is provided by the police both orally and in writing.

It is nevertheless worth noting that information provided by the police must often be supplemented. Indeed, as noted by several interviewees, lawyers have a key role in explaining the information provided. One judge moreover pointed out that certain information must often be re-explained in court. Findings thus indicate that the information about the rights of the requested person could be explained more comprehensively already from the outset of the proceeding.

The replies of the interviewees indicate certain difficulties when it comes to the obligation of the authorities to inform requested persons about what consenting to their surrender entails and about renouncing the speciality rule. Indeed, while most interviewees agreed that such information is provided by the police, most notably during the hearing concerning the notifications and inquiries that must be made under section 21 of the EU Extradition Act, one lawyer questioned whether the information is adequately explained. One prosecutor moreover indicated that there are certain limitations regarding the authorities' understanding of the speciality rule. The findings thus suggest that while information about the consequences of consenting is formally provided, it might not be explained in enough detail (by the authorities or the requested person's lawyer) in order for the person to truly understand the content of the information.

Findings finally show that the authorities examine whether requested persons have understood the information provided, as agreed by most interviewees. In this regard some interviewees nevertheless perceived the inquiries by the authorities as rather formal. It may moreover be noted that some replies indicate that the authorities, at least to a certain degree, presume that the information is explained in more detail by the requested persons' lawyers. If so, some of the responsibility of the authorities might be outsourced. However, since none of the representatives of the police were interviewed, it is not possible to draw any definite conclusions regarding how well the police fulfils its task of effectively providing the required information. The matter will in any event be verified in court. As noted by the judges, it is their duty to inquire whether requested persons have truly understood the information provided. The courts thus function as a sort of safety valve, ensuring that no-one is surrendered without having been effectively informed about the EAW and their rights.

2. Right to interpretation and translation

a. Legal overview

A defendant who does not speak Finnish, Swedish or Sámi has the right to cost-free interpretation in criminal proceedings, as stipulated in chapter 6 a, section 2, subchapter 3 of the Criminal Procedure Act (*laki oikeudenkäynnistä rikosasioissa/lag om rättegång i brottmål*).⁹ According to the provision, the court shall *ex officio* ensure that defendants receive interpretation. The Criminal Investigation Act (*esitutkintalaki/förundersökningslagen*) includes a corresponding provision.¹⁰ According to chapter 4, section 12, subsection 4 of said Act, **the criminal investigation authority shall find out whether the party needs interpretation and if so, make sure that interpretation is received**. A defendant may not be interrogated without interpretation, if he or she does not speak the language of the criminal investigation.¹¹ Said provision is referred to in section 21, subsection 2 of the EU Extradition Act, according to which it is applicable in surrender proceedings. The notifications and inquiries referred to in section 21 of the EU Extradition Act, described earlier, must moreover be made in a language that the requested person understands.

In accordance with section 20a of the EU Extradition Act, **a written notice of rights must be provided to defendants in a language that they understand**. The notifications and inquiries that must be made under section 21 of the EU Extradition Act, as described earlier in this report, must similarly be made in a language understood by the requested person. **Requested persons moreover have the right to receive a written translation of the request for apprehension and surrender (i.e., the EAW) into a language they understand** (section 21, subsection 2 of the EU Extradition Act). If the legal protection of the requested person does not require otherwise, said documents may be translated orally. The EU Extradition Act moreover includes a reference to relevant provisions of the Criminal Investigation Act regarding the translation of essential documents (section 21, subsection 3 of the EU Extradition Act). The provisions regarding the competency of translators and the appointment of a new translator, as described in more detail below, are likewise applicable.¹²

On the quality of interpretation and translation is regulated in chapter 6 a, section 6, subsection 1 of the Criminal Procedure Act, according to which **an interpreter or a translator must be a person who has the skills required for the task, is honest and otherwise suitable for the task**. The same requirements are laid down in the Criminal Investigation Act for interpretation and translation respectively (chapter 4, section 12, subsection 4 and section 13, subsection 4). Otherwise, the Finnish legislation does not lay down any educational or other requirements regarding the competency of interpreters or translators used in criminal processes.¹³ According to chapter 6 a, section 6, subsection 2 of the Criminal Procedure Act, however, **the court shall appoint a new interpreter or translator if the legal safeguards of the party require this**. The Criminal Investigation Act allows for the appointment of a new interpreter or translator also for another weighty reason.

⁹ Finland, [Criminal Procedure Act \(laki oikeudenkäynnistä rikosasioissa/lag om rättegång i brottmål\)](#) Act No. 689/1997, 1 October 1997.

¹⁰ Finland, [Criminal Investigation Act \(esitutkintalaki/förundersökningslag\)](#) Act No. 805/2011, 1 January 2014.

¹¹ Finland, Government bill No. 63/2013 ([hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta/regeringens proposition till riksdagen med förslag till lagar om ändring av lagen om rättegång i brottmål och av vissa andra lagar](#)), p. 13.

¹² Finland, Government bill No. 63/2013 ([hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta/regeringens proposition till riksdagen med förslag till lagar om ändring av lagen om rättegång i brottmål och av vissa andra lagar](#)), p. 36.

¹³ See further, Thörnqvist, L. (2016), '[Vieraskielisen asianosaisen oikeus tulkkaukseen ja käännöksiin rikosoikeudellisissa menettelyissä, Helsingin hovioikeuden julkaisuja](#)' in: Koponen, P., Lahti R., Konttinen-Di Nardo E. (eds.), *Kirjoituksia Prosessioikeudesta*, Helsinki, Helsingin hovioikeuden julkaisuja, pp. 422-425.

A defendant who is dissatisfied with the decision of the criminal investigation authority concerning interpretation or translation, can file an administrative complaint to the supervisor of the decision maker or to the prosecutor. In addition, **the defendant can invoke the lack of interpretation or translation, or their lack of quality, during the court proceedings.**¹⁴ If the court rejects the defendant's request, it should provide a statement of reasons in accordance with chapter 11, section 13, subsection 2 of the Criminal Procedure Act. The court decision may moreover be subject to an appeal.¹⁵ The court should also on its own initiative take steps to replace the interpreter or to obtain a new translation, if the quality of either does not correspond to what is required to ensure a fair trial.¹⁶ It is finally worth noting that the court can always let translate a document that has not already been translated at an earlier stage of the proceedings.¹⁷

b. Interpretation and translation in practice

- Provision of interpretation

Requested persons are provided with interpretation during the surrender proceedings, as noted by all interviewees. According to a judge, interpretation is conducted in the mother tongue of the requested person, or, if an interpreter in that language is not available, in a language understood by the person. The threshold for appointing an interpreter was described as low or very low. One lawyer noted that in practice, requested persons always have an interpreter. In the experience of another lawyer, an interpreter is generally appointed almost without asking the requested person. One judge similarly observed that providing interpretation and translation is nearly automatic.

FI: Kun kyse on ulkomaalaisesta henkilöstä, joka selvästi ei äidinkielenään puhu suomea, niin mun kokemus on se, että kyllä pääsääntöisesti se tulkki järjestetään melkeinpä niin kuin kysymättä.

ENG: When the requested person is a foreigner, who clearly does not speak Finnish as their mother tongue, in my experience an interpreter is generally appointed almost without asking. (Lawyer/Finland)

FI: Lähtökohtaisesti melkein kaikki kiinniotetut henkilöt tai luovutettavaksi pyydytetyt henkilöt ovat ulkomaalaisia, jolloin se on oikeastaan automaatio, että tulee tulkkaus ja käännökset.

ENG: In principle, almost all persons who are apprehended or requested for surrender are foreigners, whereby it is basically automatic, that interpretation and translations are provided. (Judge/Finland)

¹⁴ Finland, Government bill No. 63/2013 ([hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta/regeringens proposition till riksdagen med förslag till lagar om ändring av lagen om rättegång i brottmål och av vissa andra lagar](#)), p. 17.

¹⁵ Finland, Government bill No. 63/2013 ([Hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta/regeringens proposition till riksdagen med förslag till lagar om ändring av lagen om rättegång i brottmål och av vissa andra lagar](#)), pp. 15, 17.

¹⁶ Finland, Government bill No. 63/2013 ([hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta/regeringens proposition till riksdagen med förslag till lagar om ändring av lagen om rättegång i brottmål och av vissa andra lagar](#)), pp. 26-27.

¹⁷ Thörnqvist, L. (2016), 'Vieraskielisen asianosaisen oikeus tulkkaukseen ja käännöksiin rikosoikeudellisissa menettelyissä, [Helsingin hovioikeuden julkaisuja](#)' in: Koponen, P., Lahti R., Konttinen-Di Nardo E. (eds.), *Kirjoituksia Prosessioikeudesta*, Helsinki, Helsingin hovioikeuden julkaisuja, p. 428.

Interpretation is exceptionally not arranged, if the requested person speaks one of the languages that may be used in the Finnish criminal proceedings (Finnish or Swedish), as noted by a prosecutor and a judge. The same applies to the pre-trial investigation conducted by the police. Worth noting is that as a country with two official languages – Finnish and Swedish – the language of the proceedings in Finland varies depending on whether the court is uni- or bilingual. As the municipality of Helsinki is bilingual, so is the district court of Helsinki, to which the EAW cases in Finland are centralized. The choice of language in criminal cases is regulated in section 14 of the Finnish Language Act (*kielilaki/språklag*),¹⁸ and stipulates that the language of the defendant shall be used in bilingual courts. If the defendant speaks a language other than Finnish or Swedish, the court will decide on the language of the proceedings, keeping in mind the rights and interests of the parties. If the decision cannot be made on this basis, the language of the majority of the population in the court district shall be used (Finnish, when it comes to the district court of Helsinki). As noted above, a defendant in criminal proceedings who does not speak Finnish, Swedish or Sámi has the right to interpretation.¹⁹

Interestingly, one lawyer noted that interpreters are occasionally not used, if the mother tongue of the requested person is English, as the authorities might (sometimes falsely) trust their own language skills. Interpreters might also not be used upon request of the requested person. Indeed, both prosecutors knew of situations in which requested persons from Estonia had not wanted to use an interpreter, as they considered themselves to have good enough skills in Finnish to manage without one. One of the prosecutors noted that an interpreter is not appointed against the will of the requested person. The other prosecutor had experience of situations in which **the police had contacted the prosecutors and told that a requested person, who had decisively not wanted an interpreter, did in fact not have sufficient language skills in Finnish.** The interviewee had then requested the district court to get an interpreter in case the requested person would have needed one after all. One lawyer moreover indicated that there might be certain language-related challenges when it comes to Swedish-speaking requested persons. As noted above, the choice of language of the pre-trial investigation, and of the criminal process in bilingual courts, is decided based on the language of the defendant. Considering that the mother tongue of most authorities working in the capital region of Finland is Finnish, there might be a risk that the linguistic rights of Swedish speaking requested persons are not always adequately fulfilled.

The need for interpretation is initially assessed by the police, as noted by most interviewees. **An interpreter can also be arranged at a later stage,** as noted by one prosecutor. The initial assessment by the police is, however, rarely flawed. According to another prosecutor there are in total four actors who have contact with requested persons [and who may thus assess the need for interpretation]: the police, the lawyer, the prosecutor, and the judge. The need for interpretation is, however, usually assessed before the matter reaches the prosecutors and/or judges.

Se [tulkkauksen tarpeen arvioiminen] lähtee sieltä poliisista, tietenkin. Kun poliisi juttelee sen henkilön kanssa niin sehän...huomaa heti sen, että onko heillä yhteistä kieltä, eli että ymmärtääkö se suomea. Ja jos ei, niin he kyllä käyttävät hyvin herkästi sitä tulkkia.

ENG: It [assessing the need for interpretation] begins from the police, of course. When a police officer talks with the person the officer...notices right away, whether they have a

¹⁸ Finland, [Language Act](#), (*kielilaki/språklag*), Act No. 423/2003, 1 January 2004.

¹⁹ Please note that separate provisions apply regarding Sámi. In this regard, please see the [Sámi Language Act](#) (*saamen kielilaki/samisk språklag*), Act No. 1086/2003, 1 January 2004. For more information on Sámi language rights, see the [webpage](#) of the Sámi Parliament of Finland (in Finnish).

common language, i.e., whether the person understands Finnish. And if not, the threshold for using an interpreter is very low. (Prosecutor/Finland)

FI: Kyllä se alun perin [on poliisi]. Toki jos huomataan siinä pakkokenkäsitelyssä, että on vääränkielinen tulkki, tai että tarvittaisiin tulkki, niin tietenkin se sinne järjestetään. Mutta aika harvoin se alkuarvio sieltä poliisilta pieleen menee.

ENG: Initially [it is the police]. Sure, if it is noticed in the court hearing concerning coercive measures, that the interpreter uses the wrong language, or that an interpreter would be needed, then of course one will be arranged. But it is quite rare that the initial estimation by the police goes wrong. (Prosecutor/Finland)

Although the replies relating to the provision of interpretation were mostly positive, a few challenges were also brought up. Firstly, as already mentioned above, are the **challenges that relate to requested persons who speak English, Finnish (Estonians), and Swedish**. Secondly, as pointed out by a judge, there can be **certain limitations relating to the knowledge of interpreters**, having to do with the complicated terminology in EAW-matters, and the fact that the language at the court can be difficult to follow (although the judges attempt to use as plain language as possible). Accordingly, the interviewee noted that the quality of interpretation can always be improved, although there are naturally also interpreters who master the subject. Some have even requested the decision in order to improve their skills, which the interviewee was particularly happy about.

- Translation of documents

As a rule, requested persons are provided with translations, as noted by most interviewees. According to a prosecutor, the aim is to provide translations in the mother tongue of the requested person. According to most interviewees, a written notice of rights and the arrest warrant itself is provided in writing in a language that the requested person understands. One prosecutor consulted their email and used a pending case as an example; the police had provided the requested person with the EAW in the original language and a list of the rights referred to in section 20a of the EU Extradition Act [a written notice of rights], in the same language.

FI: Minä en ole koskaan kokenut sitä ongelmaksi näitä tulkkaus- ja käänntämisasiota. Ne ovat täällä hoidettu hyvin.

ENG: I have never experienced matters regarding interpretation and translation as a problem. These are handled well here. (Judge/Finland)

FI: Tässä asiassa mun mielestä meillä järjestelmä toimii todella hyvin. Kielellisten oikeuksien osalta, mä en muista, että mulla olisi ollut huomautettavaa.

ENG: In this matter, I think our system works very well. Regarding linguistic rights, I do not remember ever having had anything to remark. (Lawyer/Finland)

However, the interviewees also described certain challenges relating to the provision of translations. One prosecutor and one lawyer noted that **a written translation of the EAW is not necessarily always provided**. According to a prosecutor, **requested persons are sometimes dependent mainly on interpretation**. The interviewee moreover mentioned that the written record that is produced during the process is only provided in Finnish. One judge pointed out that although written translations of certain documents, such as the EAW and the contents of the case file, are not necessarily provided on the own initiative of the authorities, they are always provided upon request. Another judge mentioned

that **the EAW can become ambiguous when it is translated, as its content might change as a consequence of the translation.** Such situations have been resolved by asking for supplementary information. One lawyer moreover mentioned that despite the existence of ready-made translations, some translations might not be immediately available as new documents might come up during the process. As noted by the interviewee, the content of all documents is nevertheless interpreted.

FI: Välttämättä pidätysmääräystä ei aina anneta sellaisella kielellä, että hän [luovutettavaksi pyydetty] ymmärtää, mutta se sisältö kyllä tulkitaan aina.

ENG: The arrest warrant is not necessarily always provided in a language that they [requested persons] understand, but its contents will always be interpreted. (Lawyer/Finland)

- Interpretation of consultations with lawyers

Consultations with a lawyer are interpreted by a state-appointed interpreter, as noted by all interviewees. Interpreters usually participate in proceedings from the same space as the requested person, as both prosecutors and one lawyer pointed out. One of the prosecutors, who themselves had handled everything remotely during the pandemic, noted that through their screen, they could often see the requested person, a lawyer, and an interpreter in a room in Vantaa prison.

FI: Sanoisin, että se tulkki on varmaan aina silloin kun se kuulustelukin suoritetaan siten, että kuulustelija ja kuulusteltava on samassa tilassa, niin myös tulkki on siellä.

ENG: I would say that the interpreter is probably always [physically] present when the interrogation is carried out in a way that the interrogator and the interrogated person are in the same room. (Prosecutor/Finland)

FI: Tulkki on yleensä siellä, missä se luovutettavaksi pyydettykin on. Mutta saattaa olla myöskin, että luovutettavaksi pyydetty on videoyhteydellä vankilasta, ja tulkki olisi salissa. Mutta mun mielestä ne ovat enemmän niin kun siellä vieressä.

ENG: The interpreter is usually there, where the requested person is. But the requested person might also participate through video connection from the prison, and the interpreter from the courtroom. But in my opinion, the interpreters are more often next to the requested person. (Prosecutor/Finland)

One judge was similarly under the impression that interpreters more frequently assist in person than via online tools. **If an interpreter is not available in person, interpretation can be arranged via videoconferencing, or, if no other alternatives are possible, via phone,** two lawyers and one judge noted. One lawyer indicated that remote interpretation is used especially if an interpreter is not available in the area, for instance, because the requested person speaks an unusual language. A judge moreover pointed out that since an interpreter might not be available in person at the very moment of the arrest, remote interpretation might be used before the interpreter arrives.

FI: Aina ei saatavilla tulkkia – niin silloin sitä videopuolta...Olen ymmärtänyt, että välillä joudutaan turvautumaan puhelintulkkaukseen, kun ei ole muuta vaihtoehtoa.

ENG: Interpreters are not always available – in such case videoconferencing is used. To my understanding phone interpretation has been resorted to when there is no other alternative. (Judge/Finland)

FI: Erilaisten korona- ynnä muitten tilanteiden jälkeen niin on hyvinkin mahdollista, että pyritään järjestämään sitten etätulkkausta. Tai puhumattakaan jos henkilö puhuu vain jotain harvinaista kieltä, että sellaisia tulkkeja ei ole saatavilla...Varmaan pyritään siihen, että on vähintään videoyhteys, ja sitten huonoimmillaan puhelintulkkkaus.

ENG: After corona, among other things, it is quite possible that there are attempts to arrange remote interpretation. Not to mention if the person only speaks a rare language, and there are no such interpreters available... Probably the aim is to have at least video connection, and in the worst case, telephone interpretation. (Lawyer/Finland)

FI: Minulla on se käsitys, että silloin kun henkilö otetaan kiinni, niin välttämättä ihan siihen hetkeen ei ole heti saatavissa [tulkkausta] henkilökohtaisesti. Silloin käytetään mahdollisesti puhelintulkkausta tai muuta. Mutta sitten kun henkilöä kuulustellaan tai kun tuomioistuimessa järjestetään käsittelyä, niin sitten on kyllä pääsääntöisesti aina henkilökohtaisesti tulkkkaus. Poikkeustapauksissa sitten muuta.

ENG: When the requested person is arrested, interpretation in person might not necessarily be available at that very moment. In that case, telephone interpretation or other means may be used. But when a person is interrogated or when hearings are held in court, interpretation in person is, as a rule, always provided. Exceptionally other arrangements can be used. (Judge/Finland)

c. Discussion of findings

All interviewees noted that requested persons are provided with a state-appointed interpreter during the surrender proceedings. The requirement of providing cost-free interpretation is thus implemented in practice. Most interviewees noted that the need for interpretation is initially assessed by the police, and if necessary, an interpreter can also be arranged at a later stage of the process. While several interviewees mentioned the possibility of using remote interpretation, interpretation in person was described as the main rule. Certain challenges regarding interpretation could be noted when it comes to requested persons who speak English or Finnish (mainly Estonians), as the authorities or the requested person themselves might occasionally trust their language skills excessively, as well as Swedish speaking requested persons, in situations where the authorities lack sufficient language skills in Swedish. One interviewee moreover noted that the complicated terminology of the EAW proceedings might occasionally reflect negatively on the quality of interpretation. The qualification of interpreters did not otherwise come up in the interviewees' replies, which might be considered understandable considering the lack of legal requirements regarding accreditation.

The findings show that the legal requirements regarding the provision of translations are fulfilled in practice; indeed, most interviewees agreed that a Letter of Rights and the request for surrender are provided to the requested person in writing in a language that they understand. Certain possible shortcomings could nevertheless be identified. As noted by a few interviewees, written translations of some documents, particularly the EAW, are not necessarily always provided by the authorities, at least at their own initiative. It is, however, worth noting that the EU Extradition Act allows for the oral translation of the EAW, if the legal protection of the requested person does not require that the request be translated in writing. As the circumstances of the cases in which a written translation of the EAW had not been provided were not discussed by the interviewees, it is not possible to say whether the requested persons' legal protection in those situations would have preconditioned providing a written translation. Accordingly, while no definite conclusions may be drawn as to whether the legal requirements regarding the provision of translations are fully adhered to in practice, the replies do not, as such, indicate otherwise.

3. Right to access to a lawyer

a. Legal overview

The right to a lawyer is regulated in section 20 of the EU Extradition Act. Subsection 1 of said provision stipulates that a person whose surrender is requested has the right to be assisted by a legal counsel. Subsection 2 moreover stipulates that **the requested person shall be appointed a defence counsel if the person so requests**. Indeed, the government bill states that a defence counsel should generally be appointed only upon request of the requested person. The general preconditions for appointing a defence counsel, stipulated in the Criminal Procedure Act, are not, however, applicable in surrender proceedings.²⁰ Importantly, according to section 20, subsection 2 of the EU Extradition Act, the court shall order a reasonable remuneration to be paid to the defence counsel from state funds. It is clarified in the government bill that, **the compensation for the requested person's defence council must always be borne by the state**.²¹

If a requested person does not wish to exercise the right to a lawyer, the police must first ensure that the person has sufficient information about the right to be assisted by a legal counsel and have a defence counsel appointed, as well as the right to subsequently revoke the waiver of said rights (section 20 b of the EU Extradition Act). According to the government bill, the person must also be informed that the costs of a defence counsel are paid from state funds.²²

As noted earlier, **the police must inform requested persons arrested in Finland of their right to a lawyer**, as part of the Letter of Rights. According to section 21 b of the EU Extradition Act, **they must moreover be informed of their right to have a legal counsel appointed in the issuing Member State**. As elaborated in the government bill, the task of the legal counsel in the issuing state is to assist the lawyer of the requested person in Finland by providing the lawyer with information and advice so that the requested person can effectively exercise his or her rights under the FD.²³ Information about the right to a lawyer in the issuing Member State shall be provided in a language that the requested person understands, and an entry of providing such information be made in the written record that is handed over to the prosecutor. If the requested person wishes to exercise this right, the National Bureau of Investigation shall, without delay, inform the competent authority of the requesting Member State of this (section 21 b, subsection 2, EU Extradition Act).

Table 5: Dual representation (in law)

Does the law of the executing MS foresee that the person arrested has a right to have the assistance of a lawyer in the issuing Member State and informed of this right?	
Country: Finland	YES

²⁰ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi/Regeringens proposition till Riksdagen med förslag till lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen samt till vissa lagar som har samband med den](#)), p. 37.

²¹ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi/Regeringens proposition till Riksdagen med förslag till lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen samt till vissa lagar som har samband med den](#)), p. 37.

²² Finland, Government bill No. 99/2016 ([hallituksen esitys eduskunnalle laiksi esitutkintalain muuttamisesta ja eräiksi siihen liittyviksi laeiksi/regeringens proposition till riksdagen med förslag till lag om ändring av förundersökningslagen och till vissa lagar som har samband med den](#)), p. 32.

²³ Finland, Government bill No. 99/2016 ([hallituksen esitys eduskunnalle laiksi esitutkintalain muuttamisesta ja eräiksi siihen liittyviksi laeiksi/regeringens proposition till riksdagen med förslag till lag om ändring av förundersökningslagen och till vissa lagar som har samband med den](#)), p. 32.

Table 6: Cost-free legal assistance (in law)

Free of cost lawyer provided in law	When your country is an executing state	When your country is an issuing state (e.g., to assist the lawyer in the executing state)
Country: Finland	YES	NO

When Finland is acting as the issuing state, and the competent authority of the executing state informs the Finnish authorities that a requested person wishes to appoint a legal counsel in Finland, the Finnish authorities shall, without undue delay, submit information facilitating the appointment of a counsel to the requested person (section 57a of the EU Extradition Act). According to the government bill, this could for instance be carried out by providing a list of lawyers handling EAW-cases in Finland, as suggested in recital 46 of Directive 2013/48/EU on the right of access to a lawyer.²⁴

The same remedies as described in relation to the right to information apply in situations where requested persons have not had access to a lawyer or have not been informed about the right to dual representation. The prohibition to use evidence obtained in an unlawful manner, as stipulated in chapter 17, section 25 of the Code of Judicial Procedure (*oikeudenkäymiskaari/rättegångsbalk*)²⁵, might moreover be applicable. According to subsection 3 of said provision the court may not use evidence that has been unlawfully obtained if it would endanger the conduct of a fair trial. Accordingly, **if the use of evidence obtained in violation of the defendant's right to use a lawyer would jeopardize the right to a fair trial, the court must refrain from using such evidence.** A case in point is the Supreme Court decision *KKO 2012:45*, in which the defendant was questioned without the presence of a lawyer. According to the Supreme Court, the defendant's right to a defence and the right not to self-incriminate had been violated, whereby the statements made during the pre-trial investigation could not be used.²⁶

- b. Right to access to a lawyer in practice
 - Information about legal assistance

Persons arrested on an EAW issued by another Member State are informed about their right to be assisted by a lawyer in the proceedings in Finland, as noted by all interviewees. All interviewees moreover agreed that the information on the right to a lawyer is provided by the police. Both prosecutors noted that the information might moreover be provided to requested persons by the police through the prison staff.

FI: Käytännössä jos kiinnioton jälkeen tulee ensin passitus Vantaan vankilaan, ja sitten siellä todennäköisesti, joko niin että poliisi käy siellä itse, tai sitten että ollaan niin kun vankilan henkilökunnan kautta yhteydessä ja kerrotaan, että on oikeus asianajajaan.

ENG: In practice, if the requested person is transferred to the Vantaa Prison after the arrest, then probably either the police goes there themselves, or contacts the prison staff and informs about the right to a lawyer. (Prosecutor/Finland)

²⁴ Finland, Government bill No. 99/2016 ([hallituksen esitys eduskunnalle laiksi esitutkintalain muuttamisesta ja eräiksi siihen liittyviksi laeiksi/regeringens proposition till riksdagen med förslag till lag om ändring av förundersökningslagen och till vissa lagar som har samband med den](#)), p. 33.

²⁵ Finland, [Code of Judicial Procedure \(oikeudenkäymiskaari/rättegångsbalk\)](#), Act No. 4/1734, 1 September 1736.

²⁶ Finland, Supreme Court (*Korkein oikeus/Högsta domstolen*), [KKO:2012:45](#), 9 May 2012.

Some variation could nevertheless be noted in the interviewees' replies regarding how information about the right to a lawyer is provided. One judge, one prosecutor and two lawyers noted that the information is provided both orally and in writing. According to one prosecutor and one judge, the information is provided at least in writing, whereas two lawyers were of the view that the information is usually provided orally.

Table 7: Are persons informed of their right to access a lawyer?

	L 1	L 2	L 3	L 4	J 1 (J)	J 2 (P)	J 3 (P)	J 4 (J)	Total
YES	X	X	X	X	X	X	X	X	8/8
NO	-	-	-	-	-	-	-	-	-
In writing	-	-	-	-	-	X	-	X	2/8
Orally	X	X	-	-	-	-	-	-	2/8
In writing and orally	-	-	X	X	X	-	X	-	4/8

Most interviewees held that requested persons are informed about the right to a lawyer also in the issuing state. One judge referred to the law and noted that the police is responsible to inform the requested person about the right to appoint a legal counsel in the requesting Member State [see section 21 b of the EU Extradition Act in this regard]. According to another judge, the police inquires whether the requested person wants a lawyer in the issuing state, and whether they already have someone in mind. The inquiry is made, by the latest, at the police hearing concerning the notifications and inquiries that must be made under section 21 of the EU Extradition Act, as noted by both prosecutors and one lawyer. One prosecutor moreover pointed out that a notification about whether the requested person has been informed about the right to a lawyer in the issuing state is made in the written record.²⁷ One lawyer was nevertheless sceptical as to whether the authorities differentiate between the lawyer in the executing and issuing state when providing information about the right to a lawyer. Another lawyer was unsure whether the information about the right to a lawyer in the issuing state is provided by the authorities, but noted that the information will in any event be provided by the person's lawyer in Finland.

Table 8: Information on dual representation, interview findings

Are persons arrested on an EAW informed by the authorities of their right to have the assistance of a lawyer in the issuing Member State?									
	L 1	L 2	L 3	L 4	J 1 (J)	J 2 (P)	J 3 (P)	J 4 (J)	Total
YES	X	-	-	X	X	X	X	X	6/8
NO	-	-	-	-	-	-	-	-	-
Don't know/remember	-	X	X	-	-	-	-	-	2/8

- Legal assistance in executing state

When it comes to choosing and contacting a lawyer in the executing state, the police first inquires whether the requested person already has a lawyer in mind, as noted by both prosecutors and one lawyer. Several interviewees moreover pointed out that requested persons are free to use a lawyer that they know from before. **The replies varied regarding the role of the police in choosing a lawyer if the requested person is not already familiar with a lawyer in Finland.** According to half of the interviewees, the requested person is provided with a list of lawyers by the police, from which they

²⁷ On the obligation to draw up a written record, see section 21, subsection 4 of the EU Extradition Act.

can choose a lawyer of their liking. The replies varied as to whether the list contains the contact details of lawyers specifically handling EAW cases, criminal lawyers, or attorneys in general. According to the other half of the interviewees, the lawyer is chosen by the police. One lawyer, for instance, doubted that requested persons are provided with a list of lawyers, and questioned whether it would even be appropriate.

FI: Vähän ehkä epäilen. Ja se ei ehkä välttämättä ole minun mielestäni edes tarkoituksenmukaista, jos tavallaan ajatellaan sitä, että jos olisi vaikka se asianajajaluettelo, niin kuitenkin aika harva hoitaa näitä asioita, niin se olisi aika tavallaan haasteellista koettaa sieltä ummikkona, ulkomaalaisena sattumanvaraisesti löytää joku [joka hoitaa luovuttamisasioita].

ENG: I doubt it. And it would not necessarily even be appropriate, in my opinion, since, if we think about, for instance, a [general] list of attorneys, there are few who handle these types of matters. It would be challenging for a foreigner, not knowing the language, to randomly try to find someone [who handles surrender cases]. (Lawyer/Finland)

Regardless of how the lawyer is chosen, most interviewees were of the view that **it is the police who ultimately contacts the lawyer**. Indeed, one of the lawyers mentioned that they had always been contacted by the police.

FI: Oletan niin, että henkilöillä, jotka otetaan täällä kiinni, jos he ovat ulkomaalaisia, niin hänellä ei ole tietoa avustajista. Oletan, että silloin poliisi soittaa tai ottaa yhteyttä näihin puolustajiin, jotka yleensä näitä EAW-asioita hoitaa.

ENG: I assume that the persons arrested here, if they are foreigners, do not have knowledge of lawyers. I assume that the police calls or otherwise contacts those defence counsels who usually handle EAW-matters. (Judge/Finland)

FI: Minä oletan, että siellä on varmaan semmoinen avustajien lista siellä KRP:llä, jotka näitä hoitaa.

ENG: I presume that the National Bureau of Investigation has a list of lawyers who handle these types of matters. (Prosecutor/Finland)

FI: Heillä täytyy olla jonkinlainen lista, että ketkä näitä [EAW-asioita] yleensä hoitaa. Mutta siellä on useampi, koska se ei ole aina se sama, koska...jos siellä suosittaisiin jotain yhtä, kahta niin kyllähän se näkyisi meilläkin.

ENG: They must have some sort of list of lawyers that usually handle these [EAW cases]...there must be several, as it is not always the same...if they would favour one or two, then surely, we would notice it too. (Prosecutor/Finland))

FI: KRP kysyy ensin, että onko jotain omaa avustajaa tiedossa, ja sitten jos ei ole niin KRP katsoo heidän omasta listastansa sellaisia, jotka ovat hoitaneet aikaisemmin.

ENG: The National Bureau of Investigation first asks if the requested person has a lawyer of their own in mind, and if not, the National Bureau of Investigation looks in their own list for lawyers who have handled [EAW-cases] before. (Lawyer/Finland)

Requested persons are allowed to use a phone to contact a lawyer, as noted by several interviewees. None of the interviewees expressly mentioned the right to use the internet. According to one lawyer, the possibility to use a phone or the internet depends on the nature of the offence. Another lawyer

pointed out that there is a charge to use the phone in prison, and that there have been certain challenges in this regard.

FI: Jos siellä on joku sellainen rikosepäily, johon liittyy vaikka pelkoja siitä, että häivytetään todistelua, voi olla, että silloin otetaan omat puhelimet pois, ja tietenkään silloin ei pääse verkossa olemaan.

ENG: If the suspected criminal activity would involve, for instance, a fear of evidence being destroyed, their personal phones might be taken away, and they are of course not allowed to be online. (Lawyer/Finland)

As noted by one prosecutor, **a lawyer is appointed at an early stage of the process.** According to the interviewee, the prosecutors request the name of the lawyer from the police before they make the request for remand to the district court. As the interviewee explained, this must be made before noon on the third day from the day of the apprehension, in accordance with the Coercive Measures Act [see chapter 3, section 4]. One lawyer commended the police for the appointment of lawyers early on in the process.

FI: Ylipäänsä se, että pyritään [poliisi] huolehtimaan siitä, että on avustaja prosessin alusta asti.

ENG: [The police] attempts to make sure, that there is a lawyer straight from the beginning of the process. (Lawyer/Finland)

Persons arrested on an EAW can privately meet and consult with their lawyers in the executing state, as noted by all interviewees. The negotiations between the lawyer and the requested person usually take place before the police hearing and before court hearings. One prosecutor more specifically explained that requested persons and their lawyers typically negotiate before the court hearing regarding remand, before the police hearing concerning the notifications and inquiries that must be made to the requested person in accordance with section 21 of the EU Extradition Act, and before the surrender hearing in court. One judge and one lawyer mentioned that the more detailed negotiations usually take place after the court hearing regarding remand, because of practical difficulties relating to the short time limits.²⁸

FI: Kyllä, on mahdollisuus [tavata ja konsultoida avustajiaan], ja näin tapahtuukin...Ihan missä vaiheessa vain.

ENG: Yes, they can, and they do [meet and consult with their lawyers] ... at any stage they want. (Lawyer/Finland)

All interviewees moreover replied positively to the question of whether requested persons have the right to have their lawyer present at hearings at all times. It is mentioned in the pre-trial investigation record whether a lawyer has been present, as noted by a judge. One prosecutor found it unlikely that a judge would otherwise even agree to handle a surrender case. According to one lawyer the timetables for hearings are usually set by the authorities without consulting the lawyer first, whereby lawyers must often use substitutes who are necessarily not as well informed about the matter.

²⁸ The interviewees are presumably referring to chapter 3, section 5 of the Coercive Measures Act, according to which a request for remand regarding a person under arrest shall be taken up for consideration within four days of the apprehension.

FI: Siis on oikeus [avustajan läsnäoloon], ja käytännössä näin tapahtuu. En usko, että kukaan tuomari suostuisi edes käsittelemään luovutusasiaa, ilman että siellä olisi se...avustaja paikalla, tai hänen pyytämänsä sijainen.

ENG: There is a right [to the presence of a lawyer], and in practice, this is what happens. I do not think that any judge would agree to even handle a surrender case, without the...lawyer being present, or their deputy. (Prosecutor/Finland)

The replies regarding the tasks of the lawyer in the executing state were broad and relatively general to their nature. One lawyer, for instance, noted that lawyers of course provide legal assistance, which, among other things, entails explaining the relevant legislation; the grounds for arresting the person; the grounds for surrendering the person; what the consequences of surrendering might be; and how the requested person can proceed when it comes to, for instance, consenting and refusal. The lawyer also provides an estimation of the possible outcomes and inquires whether the requested person wishes to challenge the request for surrender. According to one judge, the lawyer goes through what the matter concerns, the rights of the requested person, what it means if the requested person consents or does not consent to the surrender, and on what grounds the person can oppose the surrender. In other words, the interviewee noted that the lawyer informs the requested person of the applicable legislation and naturally also assists during the hearings and court sessions. According to one prosecutor, the lawyer might also request the prosecutor in the issuing state to provide certain documents and information relating to, for instance, *in absentia* decisions or to the personal circumstances of the requested person, in order to assess the existence of certain grounds for refusal.

The interviewees identified certain challenges relating to legal representation. As noted by a judge and a lawyer, **only few lawyers in Finland are experienced in surrender proceedings**. The judge explained that this has to do with the relatively low number of such proceedings in Finland. According to the lawyer, there is only a limited number of lawyers specialised in criminal law in general, and even a smaller number of lawyers specialised in EAW proceedings. Accordingly, while it is generally challenging to get in touch with a lawyer with experience of surrender proceedings, it can be extremely difficult outside of larger cities.

FI: Haasteita meidän Suomen näkökulmassa on siinä, eli meidän omissa avustajissa, että meillä on aika vähän henkilöitä, joille tämä pidätysmääräys on tuttu, johtuen tietysti siitä, että meillä ei määrällisesti näitä ole hirveästi. Eli meillä ei ole kauheasti erikoistumista, meillä ei ole kansallista koulutusta...ehkä syyttäjille jonkun verran, mutta tuomareille eikä avustajille sitä ei juurikaan ole. Eli tavallaan sellainen ammattitaidon kehittyminen voi olla sellainen pieni ongelma.

ENG: Challenges from our Finnish perspective, i.e., regarding our lawyers, are that we have quite few persons who are familiar with the arrest warrant, which of course has to do with the fact that we do not have too many of these cases. Consequently, we do not have much specialisation. Nor do we have national training...maybe for prosecutors, but there is little to none for judges and lawyers. In other words, the development of professional skills could be a challenge. (Judge/Finland)

FI: Käytännön haaste on, että juuri siihen problematiikkaan [EAW-asioihin] erikoistuneen avustajan saaminen voi olla haastavaa, ja erityisesti pääkaupunkiseudun tai suurempien kaupunkien ulkopuolella jopa lähes mahdotonta.

ENG: A practical challenge is that getting a lawyer specialised in precisely these issues [EAW-matters] can be challenging, and particularly outside of the capital region or larger cities, almost impossible. (Lawyer/Finland)

Certain limitations were moreover identified regarding the lawyers' expertise in EAW matters. One lawyer and one judge believed such shortcomings to follow from the lawyers' lack of experience in EAW matters, which, as noted above, is a consequence of the limited number of these cases in Finland. Another judge moreover highlighted that there is almost no training for lawyers or judges. The interviewee thus viewed the development of the lawyers' and the authorities' professional skills as a challenge. One prosecutor pointed out that lawyers who are unexperienced in EAW matters often focus on aspects relating to the criminal process instead of on the surrender process. The interviewee indicated that this is the case particularly when requested persons have chosen a lawyer themselves; usually someone who has assisted them before, but who does not necessarily have experience in EAW matters. **One judge hoped for an improvement in the expertise of lawyers, as it would improve the legal protection of requested persons and the processing of matters in general.** Other challenges mentioned were the process of choosing and getting in touch with a lawyer in the issuing state, as well as disagreements between lawyers and prosecutors regarding certain instruments and proceedings.

FI: Osaamisessa ja aktiivisuudessa välillä tuntuu, että on haasteita siinä mielessä, että avustajilla ei ole kaikilla sellaista kattavaa kokemusta näistä [EAW-kysymyksistä] ...puolustajien näkökulmasta osaamisen parantaminen on sellainen, mitä joskus aina välillä toivoo.

ENG: Regarding the expertise and activity [of lawyers], it sometimes feels as if there are challenges in the sense that not all lawyers have comprehensive experience of these [EAW-matters] ...Improving the expertise of lawyers is something that one occasionally hopes for. (Judge/Finland)

FI: Se ei ole viranomaisille tuttu. Se ei ole avustajille tuttu...Niitä sen verran vähän vielä tehdään. Siitä ei synny sellaista kokemusta. Ja sittenhän se on myös niin, että on olemassa aivan marginaalisesti mitään case-lainsäädäntöä, sen enempää kansallista kuin eurooppalaistasoista.

ENG: It is not familiar to the authorities. It is not familiar to the lawyers...These matters are still handled so rarely. It does not give rise to experience. (Lawyer/Finland)

- Legal assistance in issuing state

When asked how requested persons practically choose and get in contact with a lawyer in the issuing state, **most judicial authorities noted that the Finnish authorities inform the competent authorities of the issuing state of the person's request to appoint a lawyer there.** These interviewees presumed that the authorities in the issuing state are contacted by the prosecutor. More specifically, as noted by one of the judges, it is the prosecutor who contacts the issuing state on behalf of the police. Indeed, according to section 21 b of the EU Extradition Act, the National Bureau of Investigation is the responsible authority for informing the authorities of the issuing state about the request to appoint a lawyer there. The other judge similarly presumed that it is either the National Bureau of Investigation or the prosecutor, who informs the competent authorities of the requesting state of the requested person's request to appoint a lawyer there. **One prosecutor presumed that the Finnish prosecutors**

contact the authority who has signed the EAW and request for a list of lawyers who could possibly assist in the case.

The lawyers interviewed highlighted the role of lawyers in Finland in establishing the contact to a lawyer in the issuing state. One lawyer, for instance, had themselves contacted a law firm in the issuing state for the requested person to receive a lawyer there. In contrast to the other judicial authorities, one prosecutor similarly presumed that the lawyer in the issuing state is contacted by a lawyer in Finland. The prosecutor noted, however, that the Finnish authorities would intervene if a requested person would not, upon request, have been appointed a lawyer in the issuing state with the assistance of their lawyer in Finland. According to the interviewee, they themselves would, for instance, contact the issuing state through their contact points or through the SIRENE-bureau. **Notably, however, several lawyers were somewhat sceptical as to whether the authorities assist in appointing a lawyer in the issuing state.** However, only one of them expressly noted that assistance is not provided. Conversely, one lawyer believed that the Finnish authorities do assist in this regard and noted that they inquire whether the requested person wants the issuing state to facilitate the appointment of a lawyer there.

One lawyer argued that it would be difficult for the Finnish authorities to obtain information about lawyers specialized in EAW matters in another Member State. The lawyer noted that choosing and contacting a lawyer in the issuing state is handled by the authorities in the issuing state once the requested person has been surrendered. Another lawyer noted that they had not encountered that the police would provide the requested person with a list of available lawyers in the issuing state or take any other measures in order to appoint a lawyer there. It is worth restating, however, that if the requested person wishes to exercise the right to appoint a lawyer in the issuing state, the EU Extradition Act merely obliges the Finnish Authorities to inform the authorities of that state about this. As provided by Directive 2013/48/EU, it is the duty of the authorities in the issuing state to provide information facilitating the appointment of a lawyer there. As suggested by the directive, such information may, for instance, be provided in the form of a list of suitable lawyers. Accordingly, the Finnish authorities are not obliged themselves to obtain such information.

Table 9: Facilitating dual legal representation, interview findings (executing MS)

Is assistance provided by the authorities in appointing a lawyer in the issuing Member State when execution proceedings are ongoing? (When your country is an executing state)			
Interviewees	YES	NO	Didn't know/answer/remember
L 1	X	-	
L 2	-	X	
L 3	-	-	X
L 4	-	-	X
J 1 (J)	X	-	
J 2 (P)	X	-	-
J 3 (P)	X	-	-
J 4 (J)	X	-	-
Total	5/8	1/8	2/8

The replies varied somewhat regarding the tasks of the lawyer in the issuing state. **Several interviewees noted that the lawyer in the issuing state can provide supplementary information relating to the surrender process.** Indeed, one judge and one lawyer noted that they had experience of situations where the lawyer in the issuing state had provided additional information relating to the

prison conditions in the issuing state. According to another lawyer, however, they had never received additional information from the lawyer in the issuing state. Some of the replies highlighted the lawyer’s role in the criminal proceedings of the issuing state following the surrender.

FI: Minä olen kyllä kaikki todisteet joutunut hankkimaan itse.

ENG: I for one have had to gather all evidence myself. (Lawyer/Finland)

Notably, **according to one prosecutor the possibility to appoint a lawyer in the issuing state has been used only in isolated cases** during the time that the relevant provision has been in force.²⁹ In any case, said prosecutor had never themselves had to contact another state in this regard. Conversely, one lawyer noted that they had never encountered a situation in which the requested person would not have had a lawyer in the issuing state. It might be noted, however, that the replies indicate that the questions relating to dual representation might have been misunderstood to some extent. Indeed, when asked about the right to a lawyer in the issuing state, some replies (mostly the lawyers’) focused on the tasks of the lawyer in the issuing state during the national criminal process, instead of discussing the lawyer’s role in assisting the lawyer in the executing state, prior to surrender. One lawyer, for instance, noted that the lawyer in the issuing state does not assist their counterpart in the executing state, but rather takes over the case once the requested person has been surrendered.

Table 10: Providing dual legal representation, interview findings (issuing MS)

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing in another MS? (When your country is an issuing state)			
Interviewees	YES	NO	Didn’t know/answer/remember
L 1			X
L 2			X
L 3			X
L 4			X
J 1 (J)			X
J 2 (P)			X
J 3 (P)			X
J 4 (J)			X
Total			8/8

The question of whether assistance is provided in appointing a lawyer in Finland, for the purpose of assisting in the execution proceedings, did not come up in any of the interviews.

- Communication between the lawyers in both states

The question of communication between the lawyers in both states came up only in a few interviews. One lawyer noted that the contact between the lawyers in both states can be initiated if the requested person knows a lawyer in the issuing state from before. Thereafter, the lawyers can negotiate and exchange information with each other. According to the interviewee, if the requested person does not know a lawyer in the issuing state, it is difficult to establish such a link. Another lawyer noted that they had used the internet to find a lawyer for the requested person in the issuing state. According to a third lawyer, digital tools make the communication between the lawyers in both states easier. It was mentioned that the lawyers use email or videoconferencing as means for communicating with each

²⁹ The interviewee is presumably referring to section 21 b of the EU Extradition Act, in force since 27 November 2016.

other. One lawyer envisaged that it would be useful to establish a data base for the exchange of documents. Consequently, no documents would have to be separately sent between the lawyers.

- Free of cost access to a lawyer

As noted by most interviewees, requested persons are informed about the right to state-funded legal assistance when arrested on an EAW issued by another Member State. One prosecutor, for instance, mentioned that a defence counsel is always appointed, and the remuneration always borne by the state. The replies varied somewhat regarding whether the Finnish authorities assist in appointing a legal aid lawyer in the issuing state. While some interviewees replied positively, others noted that the process of appointing a lawyer in the issuing state must be resolved by the issuing state itself. Indeed, according to one judge, the starting point in law is that the authorities in Finland inform the issuing state about the person’s request to appoint a lawyer there [see section 21 b, subsection 2 of the EU Extradition Act in this regard], whereafter the matter is resolved by the authorities in the issuing state.

Table 11: Cost-free legal assistance, interview findings

Free of cost lawyer provided	When your country is an executing state		When your country is an issuing state for the purposes of procedures in the executing MS (e.g., to assist the lawyer in the executing state)		
	YES	NO	YES	NO	Didn't know/answer/remember
Interviewees					
L 1	X	-	-	-	X
L 2	X	-	-	-	X
L 3	X	-	-	-	X
L 4	X	-	-	-	X
J 1 (J)	X	-	-	-	X
J 2 (P)	X	-	-	-	X
J 3 (P)	X	-	-	-	X
J 4 (J)	X	-	-	-	X
Total	8/8	-	-	-	8/8

The question of whether a cost-free lawyer is provided in Finland, acting as the issuing state, for the purpose of assisting the lawyer in the executing state, did not come up in any of the interviews.

c. Discussion of findings

The findings demonstrate that the obligation to provide information about legal assistance is fulfilled in practice: indeed, all interviewees noted that information is provided about the right to a lawyer in the surrender proceedings when Finland is acting as the executing state. Most interviewees moreover noted that information is also provided regarding the right to a lawyer in the issuing state. Information about the right to a lawyer is provided by the police. No conclusions could be drawn about the means of providing such information (orally, in writing or both), as the replies varied greatly in this regard. Findings show that requested persons are informed about, and indeed provided with, state-funded legal assistance, as most interviewees agreed that the remuneration of a defence counsel is born by the state.

When it comes to choosing and contacting a lawyer for the surrender proceedings in Finland, the police first inquires whether the requested person already has a lawyer in mind. The person is free to use such a lawyer. The replies indicate that the National Bureau of Investigation has an internal list of

lawyers who have handled EAW cases in the past. No definite conclusion could, however, be drawn as to whether such a list is provided to the requested person, or if the lawyer is chosen from the list by the police itself. The replies nevertheless indicate that it is the police who ultimately contacts the lawyer. As noted by all interviewees, requested persons always have the right to privately meet and consult with their lawyers and to have their lawyer present at all hearings.

As matters of concern regarding legal representation, the interviewees described the limited number of lawyers in Finland experienced in EAW matters, as well as certain shortcomings regarding their expertise. These challenges were described as having to do with the relatively low number of EAW cases in Finland, but possibly also due to a lack in training. As noted by one interviewee, said challenges adversely impact the legal protection of requested persons.

As noted above, findings show that requested persons are informed about the right to a lawyer in the issuing state. The replies varied, however, when it came to the means of appointing such a lawyer if the requested person wishes to exercise this right. According to some – mostly judicial authorities – the Finnish authorities inform the authorities of the issuing state about the person’s request to appoint a lawyer there, and request for a list of lawyers who could assist in the matter. This view corresponds with the law. Others highlighted the role of lawyers in appointing a lawyer in the issuing state. Accordingly, while no definite conclusion can be drawn, findings indicate that requested persons’ right to double representation is fulfilled in practice. The different answers may, at least to some extent, be explained by the fact that requested persons only rarely exercise the right to have a lawyer appointed in the issuing state, as noted by one interviewee. The interviewees’ experience of the matter might thus be limited. Indeed, a general confusion regarding the role of the lawyer in the issuing state could be noted. In fact, there are certain indications pointing to a lack of training for most professional groups concerned, including the police (as concerns the necessity to explain the content of rights of the requested persons) as well as the lawyers (concerning the particularities of the EAW proceedings).

4. Issuing and Execution of the EAW

a. Legal overview

a.1 – issuing

The competent authorities for issuing an EAW are laid out in section 54 of the EU Extradition Act. The provision stipulates that an EAW for the purpose of prosecution is issued by the prosecutor, whereas an EAW for the purpose of sentencing is issued by the prosecutor upon the proposal of the Central Administration of the Criminal Sanctions Agency (*Rikosseuraamuslaitos/Brottspåföljdsmyndigheten*).

According to section 53 subsection 1 of the EU Extradition Act, **apprehension and surrender of a person staying in another Member State to Finland may be requested for the purpose of prosecution, if the most severe punishment under Finnish law for the act on which the request is based is imprisonment for at least one year.** The surrender of the person is possible if the act constitutes an offence in accordance with the legislation of the executing state (requirement of double criminality). The one-year-requirement is elaborated upon in the government bill, stating that consideration should only be made to the penalty scale of the offence. In other words, other provisions of the Finnish Criminal Code, on the basis of which the imposed penalty could potentially become shorter than what is stated in the penalty scale, should not be considered.³⁰ Reductions based on youth, attempt (where the substantive crime is not completed) or complicity (involvement in a criminal act) do therefore not apply.³¹ The one-year-requirement is moreover considered for each offence separately; the normal rules of joint custodial sentences where less serious acts could jointly result in longer sentences than one year, are not considered.³²

An EAW issued for the purpose of prosecution must be based on a court decision on remand (section 53, subsection 1 of the EU Extradition Act). The decision on remand may be considered to constitute an “enforceable judicial decision”, in accordance with article 8(1)(c) of the Framework Decision (FD), as preconditioned by the CJEU in its case-law.³³ In practice, a request for surrender is thus preceded by a request for remand for absent suspects, in accordance with chapter 2, section 11, subsection 3 of the Coercive Measures Act.³⁴ According to said provision, a person whose surrender to Finland is to be requested, may be remanded if the person is suspected on probable grounds for an offence and the most severe punishment provided for is imprisonment for at least one year. There should moreover be grounds to suspect that the requested person will not arrive voluntarily to Finland for the consideration of the charges, based on the personal circumstances of the requested person, the number and nature of the offences contained in the request for extradition, or other corresponding circumstances. **Indirectly therefore, the decision of a prosecutor to issue an EAW, including its proportionality, is subject to a pre-judicial review by a court.**

³⁰ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi/regeringens proposition till Riksdagen med förslag till lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen samt till vissa lagar som har samband med den](#)), p. 52.

³¹ Office of the Prosecutor General (*Valtakunnansyyttäjän toimisto/Riksåklagarens byrå*), (2020), EAW-handbook for prosecutors, (*Eurooppalainen pidätysmääräys: Syyttäjän käsikirja*), p. 6. Available upon request from the Office of the Prosecutor General.

³² Office of the Prosecutor General (*Valtakunnansyyttäjän toimisto/Riksåklagarens byrå*), (2020), EAW-handbook for prosecutors, (*Eurooppalainen pidätysmääräys: Syyttäjän käsikirja*), p. 6

³³ See *C-648/20 PPU*, joined cases *C-566/19 PPU* and *C-626/19 PPU*, *C-414/20 PPU*, *C-625/19 PPU*, and *C-627/19 PPU*.

³⁴ See also Fredman, M. (2021), *Rikosasianajajan käsikirja*, Helsinki, Alma Talent, p. 1072.

An EAW may be issued for the enforcement of a custodial sentence, if an enforceable judgment has been issued in Finland for the act on which the request is based and the sanction imposed is imprisonment for at least four months (section 53, subsection 2 of the EU Extradition Act). It is noted in the government bill that even if the remaining penalty would be less than four months, an EAW may be issued, although it is questioned whether such a request would be appropriate.³⁵

If the offence is one of the “catalogue crimes” listed in section 3 of the EU Extradition Act, and the most severe punishment for it under Finnish law is a custodial sentence of at least three years, an EAW may be issued regardless of whether the offence is criminalized in the executing state (section 53, subsection 3 of the EU Extradition Act).³⁶ If the request concerns an offence that fulfils said conditions, the requested Member State must be informed of this. Section 53, subsection 3 is applicable in relation to both requests for the purpose of prosecution and the enforcement of sentencing. In the latter case the requirements set in section 53, subsection 2, as described above, must be met.³⁷

Surrender may finally be issued for accessory offences, as stipulated in section 53, subsection 4 of the EU Extradition Act. The provision is considered to have relevance mainly for offenses for which the maximum penalty is less than one year or for which the requested person would have been sentenced to imprisonment for less than four months.³⁸ Indeed, it is stated in the prosecutors’ handbook on the European arrest warrant that an EAW may not be issued, if none of the acts have a maximum sentence of at least one year.³⁹ In other words, **an EAW can encompass accessory offences that do not meet either the one-year requirement or the four-month-requirement for issuing an EAW, as described above, if the EAW is based on one or several offences that meet said requirements.** It is finally worth noting that the government bill states that since the FD does not contain a corresponding provision, another Member State is not obliged to accede to the request in respect of accessory offences.⁴⁰

There are no special legal avenues for challenging the issuing of an EAW. It is, however, possible to file an extraordinary appeal against the court decision to remand, in accordance with chapter 3, section 19 of the Coercive Measures Act (*pakkokeinolaki/tvångsmedelslag*).⁴¹ **If the decision on remand upon which the EAW is based is revoked, so is the EAW.** In the case *HelHo 2008:21* a decision to remand by the district court was repealed by the Helsinki Court of Appeal, since the requested person was found to already have been convicted in another Member State of the same act. The extradition request lapsed at the same time.⁴² **Accordingly, as the decision to remand is a prerequisite for issuing**

³⁵ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi/regeringens proposition till Riksdagen med förslag till lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen samt till vissa lagar som har samband med den](#)), p. 52.

³⁶ See also Office of the Prosecutor General (*Valtakunnansyyttäjän toimisto/Riksåklagarens byrå*), (2020), EAW-handbook for prosecutors, (*Eurooppalainen pidätysmääräys: Syyttäjän käsikirja*), p. 7.

³⁷ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi/regeringens proposition till Riksdagen med förslag till lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen samt till vissa lagar som har samband med den](#)), p. 52.

³⁸ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi/regeringens proposition till Riksdagen med förslag till lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen samt till vissa lagar som har samband med den](#)), pp. 52-53.

³⁹ Office of the Prosecutor General (*Valtakunnansyyttäjän toimisto/Riksåklagarens byrå*), (2020), EAW-handbook for prosecutors, (*Eurooppalainen pidätysmääräys: Syyttäjän käsikirja*), p. 9.

⁴⁰ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi](#)), p. 52-53.

⁴¹ Finland, *Coercive Measures Act, (Pakkokeinolaki/Tvångsmedelslag)*, Act No. 806/2011, 1 January 2014.

⁴² Finland, Helsinki Court of Appeal (*Helsingin hovioikeus/Helsingfors hovrätt*), *HelHo:2008:21*, 21 January 2007.

an EAW, in principle, the EAW can be indirectly challenged by a complaint against the decision to remand.

a.2 – execution

The competent authority for executing an EAW is stipulated in section 11 of the EU Extradition Act. According to said provision, this competency is centralised to the District Court of Helsinki. The general conditions for executing an EAW are laid out in section 2 of the EU Extradition Act. According to it **the most severe punishment for the act on which the request is based must be a custodial sentence of at least one year under the law of the requesting Member State.** The offence should also be criminalized under Finnish law or constitute an offence in Finland if committed under corresponding circumstances. The importance of the requirement of double criminality is, however, limited in practice by the catalogue of 32 criminal offences in section 3 of the EU Extradition Act (corresponding to the offences listed in Article 2(2) of the FD) in respect of which surrender shall be granted, regardless of whether the act on which the request is based constitutes an offence under Finnish law or not. For the requirement of double criminality not to apply, the most severe punishment for the act under the law of the requesting state must be a custodial sentence of at least three years.

As will be examined, **the grounds for refusal in the Finnish EU Extradition Act are slightly broader than those included in the FD.**⁴³ The mandatory grounds for refusal are laid down in section 5. In contrast to the FD, **the EU Extradition Act includes an express mandatory ground for refusal based on reasonable grounds to suspect a violation of fundamental rights and freedoms.** According to section 5, subsection 1, paragraph 6, surrender shall be refused “if there are reasonable grounds to suspect that the requested person is in danger of being subject to capital punishment, torture or other treatment violating human dignity or to persecution threatening his or her life or liberty or to other persecution because of his or her origin, membership in a particular social group, religion, belief or political opinion, or there are reasonable grounds to assume that the person would be subjected to a violation of his or her human rights or constitutional legal protection, freedom of expression, or freedom of association.”

The provision has been considered by the Supreme Court of Finland three times. In *KKO 2020:25* the Supreme Court found that the conditions of imprisonment in Romania, with a personal space of less than three square meters, created a strong presumption of human rights violations based on the case law of the ECtHR. This presumption was not found to be rebutted simply because, according to a report provided by the Romanian authorities, the doors of the cells were open during the day. Extradition was thus refused.⁴⁴ In *KKO 2021:24*, also concerning the prison conditions in Romania, the Supreme Court came to the opposite conclusion. In this case, the Romanian authorities had provided an assurance that the requested person would be provided with sufficient personal space. Thus, by e.g., referring to the *Dorobantu* case of the Court of Justice of the European Union (CJEU), the Supreme Court did not consider there to be such exceptional circumstances or precise information, that would, in light of the assurance to the contrary, establish a real risk of inhuman or degrading treatment within the meaning of the Charter.⁴⁵ Similarly, in *KKO 2017:11*, concerning the prison conditions in Bulgaria, the Supreme Court did not find a ground for refusal pursuant to section 5, subsection 1, paragraph 6,

⁴³ On the material grounds for refusal, see Tolttila, K. (2020) *Eurooppalainen pidätysmääräys ja rikoksentehtäjän luovuttamisen aineelliset edellytykset – EU:n luovuttamislainsäädäntö Suomessa*, Suomalainen Lakimiesyhdistys.

⁴⁴ Finland, Supreme Court (*Korkein oikeus/Högsta domstolen*), [KKO:2020:25](#), 17 March 2020.

⁴⁵ Finland, Supreme Court (*Korkein oikeus/Högsta domstolen*), [KKO:2021:24](#), 16 April 2021.

based on information provided by the prosecutor about the conditions in the prison in which the requested person was to serve the sentence.⁴⁶

Moreover, according to section 5, subsection 2 of the EU Extradition Act, **surrender shall be refused if it would, in view of the age, health or other personal circumstances or special circumstances of the person concerned, be unreasonable for humanitarian reasons** and the unreasonableness could not be avoided by delaying the execution. As all the grounds in section 5, it is a mandatory ground for refusal. A corresponding ground for refusal is not provided in the FD.

The provision was considered by the Supreme Court of Finland in *KKO 2022:29*, concerning the surrender of a requested person, an Estonian citizen, to Poland. The requested person argued that the surrender would be unreasonable for humanitarian reasons due to the situation in Poland after the Russian attack in Ukraine. After having considered the case law of the CJEU, the Supreme Court held that there did not exist reasonable grounds to believe that a surrender to Poland would subject the requested person to a real risk of inhumane or degrading treatment, or a violation of the person's right to a fair trial. Interestingly, the court moreover considered whether the surrender would be hindered by reasons of proportionality. Indeed, the district court had held that surrendering the requested person would be contrary to the proportionality principle, because, among other things, the act on which the request was based was of minor interest and because the right to bring charges in relation to it had become time-barred under Finnish law. Another argument was the fact that Estonia had refused to surrender the person to Poland before being arrested in Finland. Contrary to the district court, **the Supreme Court held that extending the grounds for refusal to principles of general nature, such as the proportionality principle, would undermine the principle of mutual recognition and its uniform interpretation.** Accordingly, and since the general conditions for surrender were met, the surrender to Poland had to be granted.⁴⁷

Worth noting is that some grounds for refusal that are discretionary in the FD are implemented as mandatory in the EU Extradition Act. These concern the surrender of Finnish nationals for the enforcement of a custodial sentence, when the requested person requests to serve the sentence in Finland, as well as offences committed in Finland (section 5, subsection 1, paragraphs 4 and 5). The discretionary grounds for refusal are laid out in sections 6 and 6a of the EU Extradition Act.

The Finnish authorities may place certain conditions on the surrender. According to section 8, subsection 1 of the EU Extradition Act, surrender of a Finnish citizen for the purpose of prosecution shall be made subject to the condition that the person will be returned to Finland immediately after the judgment has become final, if the person has, in connection with the consideration of the surrender matter, requested to serve the sentence in Finland. Consequently, **Finnish citizens always have the right to serve their sentence in Finland.**⁴⁸ Subsection 2 stipulates that if the requested person is habitually resident in Finland, the above-mentioned condition *may* be set, provided that it is justified on the basis of the personal circumstances of the requested person or for another specific reason. In *KKO 2015:99*, the Supreme Court held that the requested person had integrated into Finnish society to such an extent that it was justified to impose a return condition in accordance with section

⁴⁶ Finland, Supreme Court (*Korkein oikeus/Högsta domstolen*), [KKO:2017:11](#), 15 March 2017.

⁴⁷ Finland, Supreme Court (*Korkein oikeus/Högsta domstolen*), [KKO: 2022:29](#), 21 April 2022.

⁴⁸ Finland, Government bill No. 88/2003 ([hallituksen esitys Eduskunnalle laiksi rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä sekä eräiksi siihen liittyviksi laeiksi/regeringens proposition till Riksdagen med förslag till lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen samt till vissa lagar som har samband med den](#)), p. 27.

8, subsection 2. The fact that the requested person had not committed any crimes while living in Finland, was considered a factor pointing towards integration.⁴⁹

It is finally worth mentioning that **the court may decide to delay the enforcement if there are circumstances that make the surrender unreasonable for humanitarian reasons** (Section 47 of the EU Extradition Act). **The court may also postpone the enforcement for the purpose of prosecuting the requested person in Finland** for an act other than the one on which the EAW is based, or, if the person has already been sentenced, for the purpose of serving the sentence passed (section 49, subsection 1 of the EU Extradition Act). According to section 49, subsection 2, the requested person may also be *temporarily surrendered* to the requesting Member State.

b. Issuing and Execution of the EAW in practice

- Factors considered when issuing the EAW

All interviewees noted that **the legal requirements for issuing an EAW must be followed**. According to a prosecutor the evidence must be such that the threshold for prosecution is clearly exceeded; accordingly, there must be probable reasons to believe that the requested person has committed the offence upon which the EAW is based. The possible sanction of the offence must moreover be a certain type of prison sentence. Indeed, as noted by a prosecutor, **the length of the most severe punishment must be at least one year of imprisonment** [see section 53 of the EU Extradition Act]. It was pointed out by a lawyer and both judges, that **the request for surrender must be based on a court decision to remand**. [see section 53 of the EU Extradition Act and chapter 2, section 11, subsection 3 of the Coercive Measures Act]. One of the judges elaborated on the factors considered by the court before making said decision. According to the interviewee, the judges review the prerequisites for remanding a person in accordance with the Coercive Measures Act. In this context, the judges assess whether there are probable grounds to suspect a person of an offence as well as the proportionality and reasonableness of remanding the person.

Aspects relating to proportionality were also frequently mentioned. Both prosecutors noted that the EAW must be in line with the proportionality principle. Most notably, they highlighted that the EAW must be justified considering the consequences it will have on the requested person's liberty. Indeed, one of the prosecutors highlighted that **the EAW must be proportionate to the fact that the requested person's liberty can be deprived for weeks or even months in the executing state**. The other prosecutor had once estimated that the EAW will be surrendered to Finland approximately 70 days after the arrest [during the time which the person might have been detained]. Both judges moreover noted that **from the judges' perspective, proportionality is assessed as part of the decision on remand, upon which the EAW is based**. Although most interviewees believed that proportionality is a key factor considered before issuing an EAW, one interviewee disagreed, and indicated that an EAW can be issued if the prerequisites set in law are met.

Fi: Me tiedetään, että se johtaa sitten vapaudenmenetykseen siellä toisessa maassa, ja riippuen tietysti maasta, se voi sitten olla viikkoja tai jopa kuukausia. Eli se [EAW] täytyy niin kuin suhteuttaa siihen.

⁴⁹ Finland, Supreme Court (*Korkein oikeus/Högsta domstolen*), [KKO:2015:99](#), 22 December 2015.

ENG: We know that it will lead to a deprivation of liberty in the other country, and depending on the country, it could be weeks or months. In other words, it [the EAW] must be proportionate to this. (Prosecutor/Finland)

The seriousness of the offence as well as the likely penalty it would entail are the most important factors when assessing the proportionality of issuing an EAW, as noted by both prosecutors. Regarding the seriousness of the offence, one prosecutor believed that Finnish prosecutors apply higher minimum maximum penalties than what is required by law. Indeed, according to the interviewee, **an EAW is rarely issued for acts for which the most severe punishment is a custodial sentence of less than two years, whereas the EU Extradition Act only requires a one-year minimum maximum penalty.** Accordingly, prosecutors will generally not issue an EAW in less serious cases. The case is moreover considered in its entirety; if, for instance, there are several co-defendants and all of them need to be present at the same time, the interviewee believed that the most severe punishment could be shorter than if the requested person was the only defendant. The seriousness of the offence was moreover mentioned by a lawyer and a judge. From the judges' perspective, the seriousness of the offence is considered when assessing the proportionality of deciding to remand the person.

Fi: Ei ihan pikku asioissa lähdetä niitä nyt sitten antamaan...Voisin hyvin kuvitella, että me emme lähde tuollaisesta niin sanotusti vähintään vuosi vankeutta jutusta...Jonkin verran saatetaan näitä, joissa on vähintään kaksi vuotta, siis se niin kuin rangaistusmaksimi.

ENG: We will not issue them in small matters...I could well imagine that we will not issue [an EAW] in a so-called one year of imprisonment matter...To some extent when the maximum penalty is at least two years. (Prosecutor/Finland)

Regarding the likely penalty, **both prosecutors noted that if the offence would merely lead to a fine, an EAW is by no means issued.** The likely penalty does not necessarily have to be unconditional imprisonment, as noted by one of the prosecutors. **If the likely penalty is probation [ehdollinen vankeus/villkorligt fängelse], however, prosecutors only issue an EAW if the estimated length of the probation is long enough.** According to the interviewee, the EAW would otherwise not be proportionate, considering that the requested person is deprived of their liberty in the executing state prior to the surrender, whereas the penalty itself would not lead to an actual deprivation of liberty. The prosecutor posed the following rhetorical question: if, for instance, an offence would lead to 30 days of probation, is it right, that the person is detained 2,5 months in another country? The other prosecutor indicated that in practice, the prosecutors assess whether the EAW would lead to unconditional imprisonment in case of conviction in Finland. One judge moreover noted that the likely penalty is considered as part of the proportionality assessment when deciding on the matter of remand.

Both prosecutors mentioned the likelihood and the estimated length of detention in Finland after the surrender as factors taken into account before issuing an EAW. A judge and a lawyer believed that a general presumption for issuing an EAW is the existence of a real prospect of the requested person being sentenced to imprisonment. One prosecutor highlighted the importance of estimating whether there will be any time left to serve once the time of the deprivation of liberty in the executing state is reduced. If not, the prosecutor noted, the process has not been right. The prosecutor moreover noted that the length of the detention should make sense from an economic point of view. This, the interviewee pointed out, follows from section 9 of the Act on the Prosecution Service,

according to which the prosecutor shall ensure that criminal liability is exercised in a fair, expeditious and *financial* manner.

Other aspects considered before issuing an EAW and mentioned during the interviews were the interest of the plaintiff, the importance of solving the crime, and the possibility to hear the person via videoconferencing or to use other instruments such as a European Investigation Order (EIO).

Notably, the replies to the question of whether the EAW can be challenged because of proportionality concerns based on the particular facts of the case varied between lawyers on the one hand and judicial authorities on the other. All lawyers replied positively to the question. One lawyer noted, however, that **since requested persons usually receive information about the EAW only once, they are arrested, in practice, there is no real possibility of challenging the EAW before the arrest.** The same was indicated by one judge.

FI: Se todellinen mahdollisuus riitauttaahan tulee sitten siinä yhteydessä, kun tämä henkilö jossakin ulkomaalaisessa valtiossa otetaan kiinni ja hän siellä hankkii avustajan, ja he rupeavat vastustamaan sitä luovutusvaatimusta.

ENG: The real opportunity to challenge [an EAW] comes when the person is arrested in some foreign country and gets a lawyer there, and they begin to oppose the request to surrender. (Lawyer/Finland)

In contrast to the lawyers, most judicial authorities replied negatively to the question. Instead, they indicated that **while the EAW itself cannot be separately challenged, the decision to remand, upon which the EAW is based, can be subject to a complaint.** Indeed, as noted by a prosecutor, it is possible to file a complaint against the decision to remand in accordance with the Coercive Measures Act [see chapter 3, section 19 of the Coercive Measures Act]. The prosecutor moreover noted that if the decision to remand is revoked, the preconditions for issuing an EAW will not be met. Similarly, one judge pointed out that since the decision to remand is a prerequisite for issuing an EAW, in principle, the EAW can indirectly be challenged through a complaint. The interviewee had encountered such complaints, although quite rarely. Since the decision to remand is not yet a surrender matter, the complaint is handled by the Court of Appeal [and not by the Supreme Court, as regarding appeals over the district court decision on surrender]. Another judge moreover noted that when requested persons are surrendered to Finland, the question of their detention is immediately raised again, and the conditions for detention re-examined.

FI: Pakkokeinopäätöksestä voi kannella. Ja jos pakkokeinopäätös sieltä tippuu, niin käytännössä silloin EAW:n antamisen edellytykset poistuvat.

ENG: The decision to remand may be subject to a complaint. And if the decision to remand is dropped, then in practice, the conditions for issuing an EAW cease to exist. (Prosecutor/Finland)

FI: Siitä kun syyttäjä antaa EAW:n...ei ole valitusmahdollisuutta. Se vangitsemispäätös on se, mistä voi kannella.

ENG: When it comes to the EAW issued by the prosecutor, there is no possibility to appeal. It is the decision to remand, that may be the subject of a complaint. (Judge/Finland)

- Factors considered when executing the EAW

A refusal to execute an EAW can only be based on parameters set out in law, as noted by most judicial authorities. Indeed, one judge noted that it is not possible to challenge an EAW issued by another Member State if the conditions for execution laid out in law are met. One prosecutor similarly noted that, considering the principle of mutual trust, the authorities can only operate with the mandatory and discretionary grounds for refusal. It was expressly noted by one prosecutor and one judge that **the execution of an EAW cannot be refused (solely) based on the proportionality principle.** Both interviewees referred to a recent preliminary ruling of the Supreme Court of Finland, according to which the proportionality principle does not constitute a ground for refusal [see *KKO 2022:29*]. The interviewees moreover noted that execution cannot be refused based on proportionality considerations even when the EAW concerns minor offences. The judge viewed this as a challenge. One lawyer noted that if the legal parameters are met, proportionality concerns cannot be assessed, whereas another presumed that if such concerns exist, the court can decide not to execute the EAW.

Fi: Jos laissa annetut parametrit täyttyvät, se on meille riittävää. Kun tämä perustuu siihen keskinäiseen luottamukseen. En koe edes, että me voisimme lähteä riitauttamaan sitä toisen jäsenvaltion antamaa pidätysmääräystä, jos laissa säädetyt edellytykset täytäntöönpanolle täyttyvät.

ENG: If the parameters set in law are met, that is sufficient for us. Since they [the surrender proceedings] are based on mutual trust. I do not even think that we could challenge an arrest warrant issued by another member state, if the conditions for enforcement laid down in law are met. (Judge/Finland)

Fi: Jos vain luovuttamisen edellytykset ovat olemassa, ja toinen valtio on sen suhteellisuuden arvioinut, niin kyllä me sitten täytäntöön pannaan.

ENG: If only the conditions for extradition are met, and the other country has made a proportionality assessment, then yes, we will enforce it. (Prosecutor/Finland)

Fi: Jos rima ylittyy, niin periaatteessa sen jälkeen ei [oikeasuhteisuutta arvioida].

ENG: If the threshold has been exceeded, then basically it [proportionality] is not considered after that. (Lawyer/Finland)

The Finnish authorities can get in touch with the authorities in the issuing Member State to discuss the possibilities to withdraw the EAW and possibly use other measures, as noted by all judicial authorities and one lawyer. Worth noting is that there is no such obligation under secondary EU, as compared to, for instance, the obligation under Article 15(2) of the FD to request for supplementary information if the information communicated by the issuing state is insufficient. **The finding thus supports the picture of judges and prosecutors in Finland being concerned with human rights implications beyond their obligations under secondary EU law.** Only one interviewee, a lawyer, noted that to their knowledge the authorities had never contacted issuing state and proposed using alternative measures. Several other interviewees, however, brought up situations in which this had been the case: one judge, for instance, knew that the Finnish authorities had proposed using other instruments, such as an EIO, or postponing the proceedings, in situations where surrender had appeared inhumane. Another judge mentioned that the issuing state had been contacted in situations concerning minor offences. One prosecutor and one lawyer knew of situations in which a prosecutor had inquired whether other means, such as videoconferencing, could be used. The prosecutor could

remember at least one case where such a request had been successful. **Notably, however, the inquiries in question are made only rarely and in exceptional situations, as noted by one prosecutor.**

The detention conditions in the issuing state are considered by the Finnish authorities when deciding on the execution of an EAW, as noted by most interviewees. In assessing such conditions, the authorities use FRA's database on the conditions on detention, case-law of the CJEU, the website of the European Judicial Network, and other public sources. If any of the sources or other circumstances suggest that the prison conditions are inhumane, the authorities can request for supplementary information from the issuing state. One prosecutor indicated, however, that due to a presumption that all Member States adhere to the same rules protecting human rights, there is a certain threshold for requesting supplementary information.

FI: Julkisia lähteitä, ja sitten ne kyselevät toisiltaan. Siis tiedän, että esimerkiksi suomen viranomaiset ovat lähettäneet kysymyksen vastaanottavan valtion...viranomaiseen, rikosseuraamusvirastoon, tai mikä siellä nyt ikinä näitä vastaavia asioita hoitaa...ihan yksityiskohtaisia kysymyksiä, joissa on kysytty esimerkiksi sitä, kuinka monta henkeä on sellissä, millaiset lämmitysolosuhteet. Korkein oikeus on ollut hyvin aktiivinen tässä.

ENG: Public sources, and they ask each other. I know that, for example, the Finnish authorities have sent a question to authorities of the receiving state, the Criminal Sanctions Agency, or whichever authority that handles these matters....detailed questions about, for instance, how many people are in a cell, what kind of heating systems. The Supreme Court has been very active in this regard. (Lawyer/Finland)

In general, all judicial authorities perceived the data regarding the conditions of detention as sufficient and reliable, at least for the purpose of assessing the need to request for supplementary information. According to two lawyers, however, the reliability varies, most notably depending on the issuing state. One lawyer did not perceive the information provided by the authorities as reliable; the interviewee indicated that the authorities attempt to present their prison conditions in a better light than what they are.

FI: Eihän meillä mitään oikeaa tietoa [vankilaolosuhteista] ole ...viranomainen ei varmasti tule sanomaan, että heidän vankiloissansa on niin huonot olosuhteet, että 'ei tänne ketään pidä luovuttaa'...lopullisen totuuden selvittäminen on käytännössä mahdotonta.

ENG: We do not have any real information [about the conditions of detention]...the authorities will certainly not say that the conditions in their prisons are so bad that 'no one should be surrendered here'...finding out the truth is practically impossible. (Lawyer/Finland)

The matter of a written assurance provided by the issuing state was moreover brought up by some interviewees. If the issuing state gives an assurance that the prison conditions will be humane (e.g., that the person can serve their sentence in a certain type of cell), the principle of mutual trust, among other things, mandates the Finnish authorities to execute the EAW, as noted by a prosecutor and a judge. The assurance must be trusted, even though the prison conditions in general would be inhumane, if the conditions are fulfilled for the requested person in question, the prosecutor elaborated. A request to surrender may similarly be refused only based on prison conditions that a particular individual will be subjected to, i.e., not based on general grounds, as noted by another prosecutor.

When it comes to rule of law considerations, the principle of mutual trust was highlighted. As noted by all judicial authorities and two lawyers, if there is no reason to suspect that the procedural rights of the requested person are jeopardized, the information provided by the issuing state will be trusted. If, for instance, the EAW is filled in correctly and appears to be comprehensive, it will not be questioned, one prosecutor pointed out. It was nevertheless noted by all judicial authorities that **if a credible claim or suspicion regarding rule of law considerations would come to the attention of the authorities, the matter is investigated by way of requesting for supplementary information.** As indicated by one judge, supplementary information is requested more frequently than before, following the fundamental rights friendly preliminary rulings of the CJEU. Notably, however, the interviewee mentioned that **the time limits for executing an EAW – which are shorter in the Finnish legislation than in the FD – are often exceeded, when supplementary information is requested.**

FI: [Miettii mahdollisia ongelmia täytäntöönpanoon liittyen] ...Jos on jokin ongelma, niin se kai useimmiten liittyy siihen, että täytyy pyytää toisesta valtiosta jotain lisätietoja. Ja sitten on hirveä kiire, ja se toinen valtio ei vastaa niin kun siinä ajassa mitä oletetaan tai toivotaan.

ENG: [Thinks about potential issues regarding execution] ...If there is any challenge, then I guess it usually has to do with having to ask another state for supplementary information. And then there is a terrible hurry, and the other state will not respond in such time that was presumed or hoped for. (Prosecutor/Finland)

The division of labour between the relevant judicial authorities when it comes to requesting supplementary information was discussed by one judge. The interviewee mentioned that the judges and prosecutors, together with the police, apply the idea of “chain thinking”. This idea dictates the order in which certain matters should be conducted. In particular, the interviewee mentioned that the police should attempt to inquire about the requested person’s standing in relation to the refusal grounds, whereas the prosecutors should request for supplementary information before the matter reaches the court. If, however, the EAW form is completed ambiguously, the prosecutors occasionally do not understand to request for the required supplementary information. In such cases the information is requested by the district court. A prosecutor mentioned an exceptional case where supplementary information was requested due to certain shortcomings in the EAW, after which it was discovered that the EAW had been issued on wrong grounds. It was nevertheless indicated by a judge that challenges relating to the procedural rights of requested persons are rare.

FI: Käsitykseni on, että Suomessa viranomaisten yhteistyö pidätysmääräykseen liittyen toimii hyvin...Jos tarvitaan toisesta jäsenvaltiosta lisäselvitystä, asia on käytännössä järjestetty niin, että syyttäjä pyytää, koska heillä on ehkä suoremmat kontaktit, ja helpommin saatavissa tietoa. Tämä varmasti osaltaan mahdollistaa sen, että me pysymme määräajoissa ja pystymme asioita käsittelemään asianmukaisesti ja kohtuullisessa ajassa.

ENG: My perception is that the co-operation between the authorities regarding the arrest warrant works well in Finland...If we need supplementary information from another Member State, this is in practice requested by the prosecutors, since they have, perhaps, more direct contacts [to other Member States] and can access the information more easily. This for sure contributes to allowing us to keep deadlines, handle cases properly and within a reasonable time. (Judge/Finland)

All interviewees noted that the right to a fair trial is considered before executing an EAW. One lawyer noted that such considerations are made *ex officio* by the Finnish authorities. The interviewee found it nearly impossible to imagine that the authorities would execute an EAW if a judgment would have been given in violation of the right to a fair trial. One judge noted that the right to a fair trial, as well as detention conditions, are considered in line with the case-law of the CJEU, i.e., in relation to both the general situation in the issuing state, and the person specific situation of the requested person. A categorical refusal to execute arrest warrants issued by certain Member States, based on prison conditions or considerations relating to the independence of the courts, is thus not possible. The interviewees moreover pointed out that linguistic rights, the right to a lawyer and the existence of an appeals procedure in the issuing state are also considered.

The consideration of a requested persons procedural rights is highlighted when the EAW concerns an *in absentia* decision. As pointed out by a judge, such decisions are assessed in relation to the FD and the conditions laid out in the national legislation [see section 6a of the EU Extradition Act]. The judge moreover noted that all conditions laid out in the provision must be met in order for the EAW to be executed. The interviewee highlighted that one must be very careful when going through the provided information. According to several interviewees the authorities consider, among other things, how the requested person has been served with the summons, and particularly, whether the person can have their case reassessed by appealing or applying for a retrial of the case.

FI: Tarkan harkinnan paikka, nuo poissaolotuomioasiat, täytäntöönpano EAW. Ne pitää käydä ihan sen pykälän kanssa läpi, kohta kohdalta...Niissä on oikeasti niin kirjavaa se, että miten on menetelty, että se on todella haastavaa välillä. Ja niitä lisätietoja todella usein joudutaan pyytämään.

ENG: In absentia judgments, when executing an EAW, are a matter of careful consideration. They must be gone through by examining the provision, paragraph by paragraph...The proceedings in these cases vary greatly, whereby it can be very challenging at times. And supplementary information must very often be requested. (Judge/Finland)

The individual situation of the requested person is considered by the Finnish authorities before executing an EAW, as noted by all interviewees. Indeed, as pointed out by several interviewees, the EU Extradition Act includes an express refusal ground regarding the personal circumstances of the requested person [see section 5, subsection 2]. The surrender proceedings may thus be denied based on exceptional humanitarian reasons, as noted by all interviewees. The threshold for refusing to surrender based on such grounds was nevertheless described as very high.

FI: Kyllä [luovuttamismenettelystä voidaan kieltäytyä humanitäärisistä syistä], EU-Luovutuslaissa säädetyin perustein, se on 5 pykälä 2 momentti...Sen soveltamiseen on erittäin korkea kynnyks.

ENG: Yes, [the surrender procedure may be denied in view of exceptional humanitarian reasons], according to the grounds provided in the EU Extradition Act, i.e., section 5, subsection 2...The threshold for its application is very high. (Lawyer/Finland).

Kyllä ne ottavat [luovutettavaksi pyydetyn yksilöllisen tilanteen huomioon]. Mutta kuten minä sanoin, se laki on niin väkevä, että ei se oikein auta, vaikka olisi mikä.

ENG: Yes, they do [consider the individual situation of the requested person]. But as I said, the legislation is so strict that it does not really help, no matter what it would be. (Lawyer/Finland)

One judge noted that while individual circumstances may be considered, the weight which they are given varies. According to one prosecutor, if the personal circumstances are assessed, they typically concern the requested person's state of health. According to some of the interviewees, circumstances such as gender and family ties are not considered. Both prosecutors noted that not only are individual circumstances considered before executing an EAW, but also before issuing one. The circumstances must, however, be known by the Finnish authorities. If, for instance, the authorities have been informed that the person is in hospital, they would most likely use other measures than an EAW, for instance an EIO.

FI: Terveysthuolto on varmaankin sellainen, että...jos se [hoito] ei voi keskeytyä, eikä sitä saa siellä toisessa maassa, niin se voisi olla este.

ENG: Health care is probably such...that if it [treatment] cannot be interrupted, and it is not available in the other country, then it could be an obstacle. (Lawyer/Finland)

FI: Tässäkin tilanteessa, jos ajatellaan vaikka terveydentilaa esimerkiksi, lähtökohta on se, että luotetaan siihen, että toisessa valtiossa, vankilaolosuhteissakin terveydenhuolto järjestyy.

ENG: Also in this situation, if we think about, for instance, the state of health, as a starting point we trust that healthcare will be provided in the other state, even in prison. (Lawyer/Finland)

FI: [Luovutettavaksi pyydetyn] perhetilannetta ei ole huomioitu. Minulla on ollut sellainen tapaus, jossa luovutettavaksi pyydetyllä oli paljon pieniä lapsia [ja henkilö luovutettiin tästä huolimatta].

ENG: The family situation [of the requested person] has not been considered. I have had a case in which the requested person had many small children [and was nevertheless surrendered]. (Lawyer/Finland)

Delaying the proceedings due to humanitarian reasons, such as pregnancy or childbirth, is moreover possible [regarding delaying, see section 47 of the EU Extradition Act]. One judge mentioned that surrender is usually postponed due to a pending lawsuit against the requested person in Finland, in order for the person to be able to take part in the trial here [regarding postponement, see section 49, subsection 1 of the EU Extradition Act]. One prosecutor noted that **delaying/postponing the execution is the primary alternative compared to refusal**.

It is finally worth noting that both judges brought up a need to review the EU Extradition Act, at least in part. One judge particularly pointed out that a reform would be necessary when it comes to the so-called *force majeure* clause laid out in section 46, subsection 2 of the Act. Said provision allows for agreeing on a new date for surrender if the surrender of the requested person within the original time limit is prevented by circumstances beyond the control of Finland. The interviewee mentioned ambiguities regarding the definition of 'force majeure' and the authority that has competence to

decide on the existence of force majeure.⁵⁰ Another judge highlighted a need to review the national legislation in light of developments in case-law.

FI: Kansallinen lainsäädäntö on jo aika vanhaa, eli tietynlainen kokonaisuudistus tai kokonaistarkastelu olisi ehkä paikallaan, huomioiden sen, että EUT:n ratkaisukäytäntöä ja KKO:n ratkaisukäytäntöä on tullut.

ENG: The national legislation [in Finland] is quite old, whereby a certain comprehensive reform or review might be appropriate, given that the case-law of the CJEU and the Supreme Court of Finland has developed. (Judge/Finland)

c. Discussion of findings

The replies of the interviewees indicate that the legal conditions for issuing an EAW for the purpose of prosecuting are observed in practice: the request to surrender must be based on a court decision to remand, and an EAW issued only if the length of the most severe punishment for the offence is at least one year of imprisonment.⁵¹ Aspects relating to proportionality were moreover highlighted. Proportionality is assessed both by the judges before deciding whether to remand, and by the prosecutors before issuing an EAW. Notably, according to one prosecutor an EAW is rarely issued for acts for which the most severe punishment is a custodial sentence of less than two years. Said statement thus indicates that the Finnish prosecutors apply stricter requirements as to the seriousness of the offence than what is required by law (the one-year-requirement). The replies varied regarding the possibility to challenge the issuing of an EAW. Whereas all lawyers noted that the EAW can be challenged, most judicial authorities noted that while there are no specific avenues for challenging an EAW as such, a complaint may be filed against the decision on remand, upon which the EAW is based. As noted earlier in the report, the EAW is revoked if the complaint against the decision to remand succeeds.

Findings moreover indicate that the legal grounds for execution are followed in practice. Indeed, the interviewees highlighted that a refusal to execute can only be based on the grounds laid out in law. Notably, by referring to the conclusion of the Supreme Court of Finland in its recent preliminary ruling *KKO 2022:29*, two judicial authorities expressly noted that execution may not be refused merely based on the proportionality principle. The personal circumstances of the requested person, rule of law considerations and detention conditions are nevertheless considered before executing an EAW. Several interviewees, including all judicial authorities, mentioned the possibility of contacting the issuing state in order to discuss the possibility to withdraw the EAW or to use other measures in situations where surrender would appear inhumane or disproportionate.

The detention conditions and the fulfilment of rule of law considerations are considered before executing an EAW, as noted by most interviewees. Both aspects are considered in line with the case-law of the CJEU, i.e., in relation to the both the general and person specific situation, as indicated by several interviewees. The principle of mutual trust was moreover highlighted. Supplementary information regarding the conditions of detention or considerations relating to the rule of law will

⁵⁰ The matter was recently considered by the Supreme Court of Finland in *KKO 2022:36*. The Supreme Court pointed out that there is a need to specify the EU Extradition Act regarding situations where surrender cannot be enforced due to *force majeure*, to better correspond with Article 23 of the FD. Please see para. 17 of the judgment.

⁵¹ Issuing for the purpose of enforcing a custodial sentence was not discussed by the interviewees.

therefore not be requested unless there are credible reasons to believe, for instance, that the requested person will be subjected to inhumane treatment, or that the person will not have access to a fair trial. Several judicial authorities particularly highlighted the need for careful scrutiny of the conditions set out in law when it comes to *in absentia* decisions.

Findings moreover demonstrate that the individual circumstances of requested persons are taken into account both before executing and issuing an EAW, provided that such circumstances are known by the authorities. Several interviewees referred to the express refusal ground regarding personal circumstances in the EU Extradition Act. In practice, however, the threshold for refusing to surrender based on such grounds was described as high. Execution may moreover be delayed due to humanitarian reasons, or postponed due to a pending trial in Finland. Such measures are favoured in relation to refusal, as noted by one interviewee.

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

According to section 30a of the EU Extradition Act **video conference or another suitable technical means of communication where the participants have an audio and visual connection with each other may be used during the surrender proceedings.** If the district court deems it necessary, however, the requested person shall be brought to the court. A corresponding provision is found in the Coercive Measures Act concerning the remand hearing (chapter 3, Section 6, subsection 4). The Finnish authorities, when issuing an EAW, may similarly request permission from the executing state to hear the requested person, as provided in section 63, subsection 2 of the EU Extradition Act. Said provision stipulates that the hearing shall be conducted in accordance with the Act on International Legal Assistance in Criminal Cases (*laki kansainvälisestä oikeusavusta rikosasioissa/lag om internationell rättshjälp i straffrättsliga ärenden*).⁵² Sections 11a and 11b of said Act allow for the hearing of witnesses, experts, plaintiffs, and defendants via videoconferencing.

Interpretation can similarly be conducted by way of using digital tools. Chapter 6a, section 2, subsection 5 of the Criminal Procedure Act stipulates that **interpretation may be arranged with the use of video conference or another suitable technical means of communication where the persons participating in the hearing have audio and visual contact with one another, or by telephone, if the court deems this appropriate.** The application of the provision is, in other words, at the discretion of the court. According to the government bill, interpretation via digital tools could particularly be used in situations of urgency or situations requiring interpretation of a rare language.⁵³

Table 12: Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an	Facilitating the provision of	Remote examination of witnesses or the person	Communication with involved foreign	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State	Facilitating access to a lawyer in the executing Member
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⁵² Finland, Act on International Legal Assistance in Criminal Cases ([laki kansainvälisestä oikeusavusta rikosasioissa/lag om internationell rättshjälp i straffrättsliga ärenden](#)), Act No. 4/1994, 15 January 1994.

⁵³ Finland, Government bill No. 63/2013 ([hallituksen esitys eduskunnalle oikeudenkäynnistä rikosasioissa annetun lain ja eräiden muiden lakien muuttamisesta/regeringens proposition till riksdagen med förslag till lagar om ändring av lagen om rättegång i brottmål och av vissa andra lagar](#)), p. 22.

	executing state)	interpretation	arrested (when an issuing state).	authorities (both executing – issuing states).		(when an executing state)	State (when an issuing state)
Finland	YES	YES	YES	NO	YES	NO	NO

In addition to what is mentioned above, only a limited number of legal norms exist regarding the communication or the exchange of information between the authorities in both states. The EU Extradition Act includes certain instructions on how the EAW should be submitted by using technological tools: if the location of the requested person is known, the issuing state may submit the EAW directly to the other Member State through international channels of communication (see section 13, subsection 2 and section 55, subsection 2). If the person’s location is unknown, the authorities shall submit the request to the information system referred to in the Convention implementing the Schengen Agreement on the gradual abolition of checks at common borders or to another corresponding system (see sections 13, subsection 1 and section 55, subsection 1). If the requested person wants to appoint a lawyer in Finland (when Finland is the issuing state), the Finnish authorities must submit information facilitating the appointment of a lawyer, using the same channels of communication as when submitting the EAW (see section 57 a). No similar instructions regarding the channels of communication are provided for situations where Finland is the executing state, and the requested person wishes to appoint a lawyer in the issuing state.

b. Interview findings

When it comes to the use of digital tools, videoconferencing was particularly highlighted. As noted by a lawyer, the possibility to use remote hearings is up to the discretion of the judge. One of the judges similarly noted that if it is found appropriate by the court, the requested person can, for instance, participate directly from prison. **Several interviewees noted that the pandemic has accelerated the use of videoconferencing.** One prosecutor noted that they had participated in hearings only via digital tools since the beginning of the pandemic. However, although the use of videoconferencing has increased internally, this development might not have been as significant regarding communication with other Member States, as pointed out by another prosecutor. One of the judges estimated that the use of remote hearings will only increase in the future, although to which extent depends on the national legislation of Member States. One judge also pointed out that **the Finnish legislation equates remote hearings with hearings in person** [see section 30a of the EU Extradition Act]. Both judges and one prosecutor moreover referred to **research by forensic psychologists showing that remote hearings do not differ from hearings in person**, for instance, when it comes to assessing evidence.

FI: Meillä kansallinen laki rinnastaa videokuulemisen henkilökohtaiseen kuulemiseen, että...näytön arvioinnin näkökulmasta – näin oikeuspsykologin selostavat – siihen liittyen ei ole ongelmaa. Mutta tietysti nämä tietyt takeet liittyen turvallisuuteen ja tällöisiin on syytä pitää mielessä.

ENG: In Finland our national law equates video hearings with hearings in person, so from the perspective of evaluating evidence – the forensic psychologists explain – there are no issues. But, of course, these certain guarantees related to security and to other similar circumstances should be kept in mind. (Lawyer/Finland)

Notably, most interviewees believed that an increased use of videoconferencing could lead to fewer EAWs issued, or to the withdrawal of an already issued EAW. As pointed out by several of the interviewees, however, **the use of remote hearings depends on the circumstances of the case, particularly the seriousness of the offence**. Participation in person is beneficial at least when it comes to serious offences, large-scale drug-related offences, and offences with several co-defendants, as one judge observed. The interviewee noted that in an ideal situation, the most serious offences as well as large-scale processes in general would be handled via EAWs whereas minor offences would be handled by way of videoconferencing. Similarly, one prosecutor hoped that EAWs would still be issued in relation to offences that are assessed to most likely lead to a custodial sentence; otherwise, the person would have to be sought for again for the enforcement of the sentence.

FI: Osallistuminen oikeudenkäyntiin asianosaisena toiseen valtioon, niin jos sen saa sujuvammaksi, niin silloinhan tämän [pidätysmääräyksen] käyttöala tavallaan selkeytyy siten, että se on sitten vakavammassa asioissa, ja sitten sellaisissa, joissa on laajempi prosessi vireillä...Muita asioita saataisi käsiteltyä sillein, että henkilö osallistuisi oikeudenkäyntiin toisessa valtiossa videoyhteyden avulla. Se olisi aika ideaali.

ENG: If the participation of parties to a trial abroad can be made smoother, the field of application for this [the arrest warrant] would become clearer in the sense that it would be applied in more serious cases as well as cases where there is a broader process pending...Other cases could be handled so that the person could participate in a trial in another state via videoconferencing. This would be rather ideal. (Judge/Finland)

FI: ilman muuta näkisin, että digitalisaatiolla voidaan...vähentää sitä EAW:n tarvetta. Sellaisissa epäselvissä kysymyksissä, joissa pohditaan sitä, että onko tarvetta EAW:ta käyttää, niin voitaisiin tällainen alustava kuuleminen järjestää...siinä valtiossa, jossa henkilö oleskelee, ja jos se sitten johtaisi siihen, että tutkimusviranomainen toteaisi, että ei henkilöllä ole mitään tekemistä sen kanssa, niin sitten EAW:ta ei tarvittaisi.

ENG: I would without doubt say that digitalisation can...reduce the need for EAWs. In unclear situations...a hearing could be held in the State where the person resides. If it would lead to the investigative authority finding that the person has nothing to do with it, the EAW would not be needed. (Lawyer/Finland)

The interviewees identified several benefits of an increased digitalization for the surrender process. **According to the interviewees, digital tools – and particularly the use of remote hearings – could lessen unnecessary transportations, deprivations of liberty and restrictions of requested persons' freedom of movement**. As pointed out by a judge, these benefits could be achieved particularly in situations where the potential penalty would in any case be completed in the executing state. The interviewees moreover highlighted that participation via videoconferencing is more humane and less burdensome for requested persons and witnesses than travelling to another Member State. One judge noted that the element of travelling is inevitably linked to risks; indeed, if travelling is completely hindered, as it sometimes is, matters get considerably more complicated. The increased usage of digital tools would be beneficial in terms of judicial economy, particularly by eliminating the costs for unnecessary transportations, one prosecutor and two lawyers observed.

FI: Minä en itse näe riskinä sitä, että henkilö osallistuisi videon välityksellä. Minä en näe siinä lähtökohtaisesti eroa, siihen kun henkilö osallistuu henkilökohtaisesti. Jos...se on hänelle ok, minusta se voi olla ainoastaan positiivinen asia...Ja jos meillä vielä olisi sellainen tapaus, että...mahdollinen rangaistus joka tapauksessa suoritettaisiin siinä

maassa, jossa hän on, niin vältetään sellaista aivan turhaa kuljettamista ja vältetään turhia vapaudenmenetyksiä, tai ainakin vapaudenmenetykset jäisivät lyhyemmiksi.

ENG: I do personally not see participation via videoconference as a risk. In principle I do not see it as different from participating in person. If...it is ok for the requested person, I think it can only be a positive thing...And if we would have a case...where the sentence would in any case be served in the country in which the person is, unnecessary transportation and unnecessary deprivation of liberty would be avoided, or at least the deprivations of liberty would be shorter. (Judge/Finland)

FI: Se [etäkuuleminen] keventäisi sitä paljon ja olisi prosessiekonomisesti järkevämpää.

ENG: It [remote hearings] would alleviate the burden of the process greatly, and moreover make sense in terms of judicial economy. (Lawyer/Finland)

FI: Tietenkin sitä liikkumisvapautta ei niin rajoitettaisi.

ENG: Of course, the freedom of movement would not be limited in the same extent. (Lawyer/Finland)

Several interviewees moreover pointed out that digitalization could expedite the surrender process, for instance, by eliminating the time used for travelling and for sending documents between Member States. In this regard one lawyer suggested establishing a shared data base, which the legal representatives and/or judicial authorities involved could access. One judge noted that the District Court of Helsinki and the Supreme Court have an internal arrangement for the exchange of information in EAW-matters: a shared online data storage system, where all the documents are transferred. The interviewee has worked as a referendary at the Supreme Court and could thus from own experience tell that the arrangement has made the process much smoother and provided the Supreme Court with more time to meet its time limits (which the interviewee mentioned to be short, particularly if the court must request for a preliminary ruling from the CJEU).

FI: Olemme perustaneet verkkolevyn käräjäoikeuden ja korkeimman oikeuden välille, ja asiakirjaliikenne hoituu sieltä...Se on sujuvoittanut tätä todella paljon, ja sinne [korkeimpaan oikeuteen] on tullut lisää aikaa.

ENG: We have established an online data storage system between the district court and the Supreme Court. The exchange of documents takes place there...It has facilitated this very much and provided the Supreme Court with more time. (Judge/Finland)

The interviewees' replies indicated that digitalisation could moreover facilitate the use of defence rights. Indeed, as noted by one lawyer, the communication between the lawyer in the executing and the lawyer in the issuing state is facilitated by using digital tools. The lawyers have, for instance, used email and videoconferencing as means for the purpose of communication. A shared data base, as referred to above, was noted as an additional means of expediting the exchange of information between the authorities and legal representatives involved. **Digitalisation was found to facilitate the provision of interpretation.** If an interpreter is not available in person, for instance, if the requested person speaks an unusual language, interpretation can be arranged via videoconferencing or, as a last resort, via phone [see chapter 6 a, section 2, subsection 5 of the Criminal Procedure Act].

Although several interviewees could only see benefits with the use of digital tools, some risks were nevertheless identified: security concerns, the risk of hybrid influencing, differences in the technical equipment's used by Member States, and challenges relating to the assessment of requested persons'

state of health in order to tell whether they can take part in a hearing, when participating remotely. One judge noted that new information systems will be taken into use following the so-called AIPA-project. The goal of the project is to move over to an electronic and shared system between the Public Prosecutors Office and the general courts.⁵⁴ The interviewee moreover **hoped for a swift implementation of the e-Evidence Digital Exchange System (e-EDES)**; it would facilitate the exchange of information between Member States and speed up the surrender process, among other things, because all material could be found in one place. The interviewee was under the impression that the system is or will be taken into use by the end of this year by some of the Member States with whom Finland cooperates the most, and thus feared that the exchanging of information will suffer, if the system is not taken into operation also in Finland.

Table 13: Use of digital tools, interview findings.

Interviewees per Country	Conducting EAW hearings (when an executing state)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing state).	Communication with involved foreign authorities (both executing – issuing states).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing state)	Facilitating access to a lawyer in the executing Member State (when an issuing state)
L 1	YES	YES	-	-	-	-	-
L 2	YES	YES	-	YES	-	(NO)	-
L 3	-	YES	-	-	-	(NO)	-
L 4	YES	-	-	-	-		
J 1 (J)	YES	-	-	YES	-	-	-
J 2 (P)	YES	(YES)	-	YES	YES	-	-
J 3 (P)	YES	YES	(YES)	-	-	(YES)	-
J 4 (J)	YES	YES	(YES)	YES	-	(YES)	-
TOTAL	7 YES	6 YES	2 YES	4 YES	1 YES	2 YES 2 NO	-

Please note that a parenthesis is used to describe that the interviewee’s reply was not fully clear. A hyphen indicates that the matter did not come up during the interview.

a. Discussion of findings

The findings demonstrate that technical means of communication are used in practice, as all interviewees mentioned that remote hearings have been used in surrender proceedings. Technical means of communication are moreover used for the provision of interpretation. According to several interviewees the use of videoconferencing has been accelerated by the pandemic. The interviewees were highly positive to the idea of an increased use of digital tools in EAW processes and identified several benefits linked thereto. Such benefits relate particularly to the use of remote hearings (e.g.,

⁵⁴ For more information about the project, please see the [webpage of the National Courts Administration \(Tuomioistuinvirasto/Domstolsverket\)](#) (in Finnish).

by limiting unnecessary travelling and saving resources in terms of judicial economy) but also to the exchange of information by digital means (e.g., by expediting the process). Notably, several judicial authorities referred to research according to which remote hearings do not differ from hearings in person, among other things, for the purpose of assessing evidence. While most interviewees believed that the use of remote hearings could lead to fewer EAWs issued, and that videoconferencing could be used for considering minor offences, some nevertheless advocated the use of hearings in person particularly in serious and large-scale-processes. One interviewee hoped for a swift implementation of the e-EDES system, as it would expedite the surrender process by facilitating the exchange of information with other Member States.

CONCLUSION

The results of this study show that the procedural rights of requested persons are generally ensured during the surrender proceedings in Finland. As such, the findings demonstrate that persons arrested on an EAW in Finland are informed about their rights and about the content of the EAW issued against them. Cost-free interpretation is provided almost without exception. If an interpreter is not available in person, requested persons can use interpretation via videoconferencing, or via phone as a last resort. Requested persons are provided a cost-free lawyer from the very beginning of the proceedings and have the right to privately meet and discuss with their lawyer at any point. The legal requirements are moreover adhered to both when issuing and executing an EAW. Worth noting is that the EU Extradition Act includes certain refusal grounds that consider human rights implications beyond what is required by secondary EU law. As pointed out by several interviewees, execution may only be refused based on legal grounds, and not on general legal principles such as the proportionality principle, as held by the Supreme Court of Finland in *KKO 2022:29*. The personal circumstances of the requested person as well as rule of law and detention conditions are considered before executing an EAW. The principle of mutual trust was moreover highlighted. The findings show that the Finnish actors are positive towards an increased digitalization of surrender proceedings, and that the use of particularly remote hearings was advanced by the pandemic. The interviewees identified several benefits of using digital tools, including a speedier process and a lesser need for unnecessary travel.

Several promising practices were moreover highlighted. The findings show that the Finnish authorities have at several times contacted the authorities of the issuing state in order to find alternative solutions to the EAW if, for instance, it has appeared inhumane or disproportionate in relation to the seriousness of the offence. Another promising practice is that the authorities use multiple sources to assess the detention conditions of the issuing state, including the relevant database of FRA and the case-law of the CJEU. The co-operation and division of labour between the authorities was moreover commended. It was particularly pointed out that the authorities apply an idea of “chain thinking”, which was usually referred to by the interviewees when discussing the matter of requesting for supplementary information. As a promising practice regarding digitalisation was mentioned the joint data base for the exchange of information relating to EAW proceedings, established between the District Court of Helsinki and the Supreme Court of Finland. According to one interviewee, the data base has expedited the proceedings noticeably.

Certain challenges were nevertheless identified. First, regarding the right to information, practice shows that the information provided by the police must often be re-explained. There thus seems to be a need for measures ensuring that requested persons effectively understand the information provided to them from the very outset of the proceedings. Findings moreover indicate that matters of consent are not always explained in enough detail, and that there might be certain gaps when it comes to knowledge about the so-called speciality rule. Second, practice shows that while translations are usually provided, a written translation of the EAW is not necessarily always handed out. It is, however, worth noting that the EU Extradition Act allows for providing an oral translation of the EAW, if the legal protection of the person does not require providing it in writing. A third challenge relates to the limited number of lawyers in Finland experienced in EAW proceedings. Improvements regarding the expertise of such lawyers were also hoped for. Moreover, while requested persons are informed about the right to a lawyer in the issuing state, in practice, this right is rarely exercised. Possible limitations regarding the knowledge of the content and scope of the right to dual representation, particularly among lawyers, could be observed. A fourth challenge relates to Finland frequently

exceeding its time limits for execution, after having had to request for supplementary information. Implementing the e-EDES system was hoped for in order to facilitate the exchange of information between Member States, thus expediting the proceedings. Finally, in light of developments in case-law, a partial reform of the EU Extradition Act was deemed necessary.

Accordingly, as ways forward FRANET Finland suggests reviewing the need for legislative changes and, most importantly, increasing the awareness of procedural rights by introducing education and training for actors involved in the surrender proceedings. Furthermore, on an EU-level, team Finland suggests investigating the possibilities for an increased use of remote hearings.