



The Role of the Court of Justice of the EU for Defence Lawyers

Training for Defence Lawyers

Trier, 8-10 October 2025



EXCELLENCE IN
EUROPEAN LAW⁷

Speakers

Vânia Costa Ramos, Defence Lawyer, Partner at Carlos Pinto de Abreu e Associados, Lisbon, Chair of the European Criminal Bar Association (ECBA)

Jurian Langer, Head of the European Law Division of the Legal Affairs Department, Dutch Ministry of Foreign Affairs and Head Agent for the Dutch government in proceedings before CJEU, Visiting Professor at the Free University Amsterdam, Deputy Judge, criminal law section, District Court, Amsterdam

Adrian Sandru, Criminal Defence Lawyer, Sandru Avocati & LEXURE Hub, Member of the ECBA Advisory Board, Bucharest

Sören Schomburg, Defence Lawyer, Partner at Knauer, Member of the ECBA Advisory Board, Berlin

Key topics

- The CJEU's approach to criminal justice
- Practical advice on making references for preliminary rulings
- Actions for annulment in criminal law
- Case law on ne bis in idem, the EAW and third state extradition, the EIO, EU procedural rights in criminal matters, and further criminal justice cooperation.

Language
English

Event number
325DT19

Organisers
ERA (Cornelia Riehle)

The Role of the Court of Justice of the EU for Defence Lawyers

Wednesday, 8 October 2025

08:45 Arrival and registration of participants

09:00 **Welcome and introduction to the programme**
Cornelia Riehle (ERA)

Part I – PROCEEDINGS BEFORE THE CJEU IN CRIMINAL MATTERS

09:05 **Basics of European criminal law**
Jurian Langer

09:45 Discussion

10:00 **Reference for a preliminary ruling**
Jurian Langer

10:45 Discussion

11:00 Coffee break

11:30 **Actions for annulment**
Jurian Langer

12:15 Discussion

12:30 Lunch

Part II – THE EUROPEAN ARREST WARRANT (EAW), THIRD COUNTRY EXTRADITION, AND THE EUROPEAN INVESTIGATION ORDER (EIO)

13:30 **CJEU case law**

- Interpretation of what constitutes a judicial authority for the purpose of issuing or executing an EAW
- Grounds for non-execution, double criminality
- The two-step test for the execution of an EAW and the deficiency of the rule of law
- Recent case law on the EIO

Vânia Costa Ramos and Sören Schomburg

15:00 Discussion

15:15 Coffee break

Part III – NE BIS IN IDEM: A QUESTION OF DUAL SOVEREIGNTY

15:45 **CJEU case law**

- Third country extradition and ne bis in idem after Breian and Kamekris
- “Corporate Double jeopardy”? – impact of the Volkswagen case on the legal practice; the coordination-requirement as black-box?
- Same same but different? – difficulties in determination of idem in defense practice

Vânia Costa Ramos and Sören Schomburg

16:15 Discussion

Part IV – DECISIONS ON THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE

16:00 **CJEU case law**

- Judicial review of EPPO acts – interpretation of Article 42 and national limitations
- Cross-border evidence collection – mutual recognition, defence safeguards and admissibility
- EPPO and OLAF cooperation – two voices, one orchestra? Institutional interplay and procedural harmony

Adrian Sandru

Objective

This seminar will provide lawyers with an update on the workings of the European Court of Justice (CJEU) and its case law in European criminal justice. Advice on making valid applications to it will be given, enabling the participants to apply their knowledge of substantive EU law before the CJEU.

The second day of the seminar will consist of a visit to the CJEU, including a presentation of the Court and guided tour. Participants will have the opportunity to get to know each other and to network with colleagues from across the EU.

About the Project

Training defence lawyers with special regard to European criminal law has gained more and more importance in recent years. Hence, this seminar is part of a large-scale project co-financed by the European Commission entitled “European Criminal Law for Defence Lawyers”. Fifteen interactive, practice-oriented activities will be implemented within this project ranging from face-to-face seminars and conferences to webinars and eLearning courses. For more information, see: <https://training-for-defence.era.int/>

Who should attend?

Defence lawyers, who are citizens of eligible EU Member States participating in the EU Justice Programme (Denmark does not participate), Albania, Bosnia and Herzegovina, Kosovo* and Ukraine.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ opinion on the Kosovo declaration of independence.

Venue

ERA Conference Centre
Metzer Allee 4
54295 Trier
Germany

CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). Participation in the full programme of this event corresponds to **9 CPD hours**. A certificate of participation for CPD purposes with indication of the number of training hours completed will be issued on request. CPD certificates must be requested at the latest 14 days after the event.

- 16:45 Discussion
17:00 End of first day
19:00 Dinner offered by the organisers

Thursday, 9 October 2025

Part V – VISIT TO THE CJEU

- 07:00 Departure by coach from ERA to Luxembourg
08:00 Arrival and registration at the CJEU – security check
08:45 Briefing of case T-55/25 Weight Doctors / EUIPO (Endo-Sleeve) by Mr M. Brisse, Legal Secretary, chambers of Judge Kecsmár, president of chamber
09:30 Hearing of case T-55/25 Weight Doctors / EUIPO (Endo-Sleeve) (Marque de l'Union européenne – Demande d'enregistrement du signe verbal Endo-Sleeve – Rejet partiel de la demande)
11:15 Break
11:30 Guided tour of the Court's buildings
12:15 Return to ERA and free afternoon

Friday, 10 October 2025

Part V – PRACTICAL ADVICE FOR DEFENCE COUNSEL

- 09:00 **Practical advice for defence counsel litigating in the CJEU**
Strategy – Written pleadings – oral advocacy
Adrian Sandru and Sören Schomburg
- 09:45 **Workshop: drafting a preliminary ruling request**
Sören Schomburg
- 11:00 Coffee break
- 11:30 **Workshop: drafting an action for annulment**
Adrian Sandru
- 12:45 Closing remarks
Cornelia Riehle
- 13:00 End of seminar

For programme updates: www.era.int
Programme may be subject to amendment.



Times indicated are CEST
(Central European Summer Time)

Your contacts



Cornelia Riehle
Deputy Head of Section
European Criminal Law
E-Mail: criehle@era.int



Julia Reitz
Assistant
Tel.: +49(0)651 9 37 37 323
E-Mail: jreitz@era.int

Save the date

**15th EDEN Conference on Data
Protection in Law Enforcement**
Valletta, 21 - 22 October 2025

**Annual Conference on EU Criminal
Justice 2025**

Valletta & Online, 20 - 21 November 2025

Sanctions in the EU's External Relations
Trier & Online, 27– 28 November 2025

Apply online for “The role of the
CJEU for defence lawyers”:

www.era.int/?133781&en



Co-funded by the European Union.

The content of this programme reflects
only ERA's view and the Commission is
not responsible for any use that may be
made of the information it contains.

Application

The Role of the Court of Justice of the EU for Defence Lawyers

Trier, 8-10 October 2025 / Event number: 325DT19



Apply online for “The role of the Court of Justice of the EU for defence lawyers”: www.era.int/?133781&en

Terms and conditions of participation

Selection

- Participation is only open to lawyers in private practice from eligible EU Member States (Denmark does not participate in this EU Justice programme), Albania, Bosnia and Herzegovina, Kosovo* and Ukraine. Participation will be subject to a selection procedure. Selection will be according to professional eligibility, nationality and then “first come, first served”.
- Applications should be submitted before **30 September 2025**.
- A response will be sent to every applicant after this deadline. **We advise you not to book any travel or hotel before you receive our confirmation.**

Registration Fee

- €110 including documentation, coffee breaks, lunch and dinner.

Travel and Accommodation Expenses

- Participants will receive a fixed contribution towards their travel and accommodation expenses and are asked to book their own travel and accommodation. **The condition for payment of this contribution is to sign all attendance sheets at the event.** The amount of the contribution will be determined by the EU unit cost calculation guidelines, which are based on the distance from the participant’s place of work to the seminar location and will not take account of the participant’s actual travel and accommodation costs.
- Travel costs from outside Germany: participants can calculate the contribution to which they will be entitled on the European Commission website (<https://era-comm.eu/go/calculator>, table 2). The distance should be calculated from their place of work to the seminar location.
- For those travelling within Germany, the contribution for return travel is fixed at €64 (for a distance between 50km and 399 km). Please note that no contribution will be paid for travel under 50km one-way. For more information, please consult p.10 on <https://era-comm.eu/go/unit-cost-decision-travel>
- Accommodation costs: International participants will receive a fixed contribution of €119 per night for up to three nights’ accommodation. National participants travelling more than 50km one-way will receive a fixed contribution of €119 for three nights’ accommodation. For more information, please consult p.14 on <https://era-comm.eu/go/unit-cost-decision-travel>.
- These rules do not apply to representatives of EU Institutions and Agencies who are required to cover their own travel and accommodation.
- Successful applicants will be sent the relevant claim form and information on how to obtain payment of the contribution to their expenses. Please note that no payment is possible if the registered participant cancels their participation for any reason.

Participation

- Participation at the whole seminar is required and participants will be asked to sign attendance sheets daily.
- A list of participants including each participant’s address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
- The participant will be asked to give permission for their address and other relevant information to be stored in ERA’s database in order to provide information about future ERA events, publications and/or other developments in the participant’s area of interest.
- A certificate of attendance will be sent electronically after the seminar.

Venue

ERA Conference Centre
Metzer Allee 4
54295 Trier
Germany

Language

English

Contact

Julia Reitz
Assistant
Tel.: +49(0)651 9 37 37 323
E-Mail: jreitz@era.int



The Role of the Court of Justice of the EU for Defence Lawyers

Training for Defence Lawyers

Trier, 8-10 October 2025 (325DT19)

Background documentation

Table of contents with hyperlinks



Co-funded by the
European Union

The table of contents below is hyperlinked, with each entry taking you to the respective document on the web.

A) The institutional framework for criminal justice in the EU

A1) Main treaties and conventions

A1-01	Protocol (No 36) on Transitional Provisions
A1-02	Statewatch Analysis, "The Third Pillar acquis" after the Treaty of Lisbon enters into force, Professor Steve Peers, University of Essex, Second Version, 1 December 2009
A1-03	Consolidated version of the Treaty on the functioning of the European Union, art. 82-86 (OJ C 326/47; 26.10.2012)
A1-04	Consolidated Version of the Treaty on the European Union, art. 9-20 (OJ C326/13; 26.10.2012)

A1-05	Council of Europe Warsaw Convention (No. 198) Warsaw Convention
A1-06	Charter of fundamental rights of the European Union (OJ. C 364/1; 18.12.2000)
A1-07	Explanations relating to the Charter of Fundamental Rights (2007/C 303/02)
A1-08	UN Convention for the Suppression of the Financing of Terrorism 1999
A1-09	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime – Strasbourg 1990
A1-10	EU Vienna Convention 1988
A1-11	Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 239; 22.9.2000, P. 19)
A1-12	European Convention on the Transfer of Proceedings in Criminal Matters, Strasbourg 15.5.1972
A1-13	Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols (ETS No. 005; 3.5.1953)

A2) Court of Justice of the European Union (CJEU)

A2-01	Statute of the Court of Justice of the EU
A2-02	Rules of Procedure of the Court of Justice (1-9-2024)
A2-03	InfoCuria, Case-law, the Court of Justice of the European Union

A3) European Convention on Human Rights (ECHR)

A3-01	Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14 together with additional protocols No. 4, 6, 7, 12 and 13, Council of Europe
A3-02	Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11, 14 and 15, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, Council of Europe
A3-03	Judgments and decisions, Hudoc Database, the European Court of Human Rights
A3-04	ECHR Knowledge Sharing platform (ECHR-KS), the European Court of Human Rights
A3-05	Human rights handbooks, Practical guides to the implementation of the European Convention on Human Rights, Council of Europe

A4) CJEU – relevant cases

A4-01	Case C-530/23 – Judgment of the Court 8 May 2025 - Criminal proceedings against Prokurator Rejonowy we Włocławku
A4-02	Case C-168/21 – Opinion of Advocate General Rantos delivered on 31 March 2022 – Request for a preliminary ruling from the Cour de cassation
A4-03	Case C-632/22 – Judgment of the Court 11 July 2024 – Reference for a preliminary ruling – Regulation (EC) No. 1393/2007
A4-04	Case C-168/21 – Judgment of the Court of July 2022 – Request for a preliminary ruling from the Court de cassation
A4-05	Case C-852/19 – Judgement of the Court of 11 November 2021 – Criminal proceedings against Ivan Gavanzov
A4-06	Case C-665/20 PPU – Judgement of the Court of 29 April 2021 – Request for a preliminary ruling from the Rechtbank Amsterdam
A4-07	Case-354/20 – Judgement of the Court of 17 December 2020 – Request from the Rechtbank Amsterdam
A4-08	Case-584/19 – Judgment of the Court 8 December 2020 – Criminal proceedings against A and Others
A4-09	Case-314/18 – Judgement of 11 March 2020 – Request for a preliminary ruling from the Rechtbank Amsterdam
A4-10	Case-508/18 and C-82/19 27 May 2019 – Judgment of the Court – Police and judicial cooperation in criminal matters – European arrest warrant
A4-11	Case C-452/16 – Judgment of the Court of 10 November 2016. Openbaar Ministerie v Krzysztof Marek Amsterdam
A5-12	Case C-453/16 – Judgment of the Court of 10 November 2016 - Execution of a European arrest warrant issued against Halil Ibrahim Özçelik
A5-13	Case C-105/03 – Criminal proceedings against Maria Pupino. Reference for a preliminary ruling: Tribunale di Firenze - Italy
A4-14	Case 14/83 – Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen

B) Mutual legal assistance

B-01	Council Act of 16 October 2001 establishing in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2001/C 326/01), (OJ C 326/01; 21.11.2001, P. 1)
B-02	Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197/1; 12.7.2000, P. 1)
B-03	Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ L 292, 21.10.2006, p. 2-19)
B-04	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001)
B-05	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 17.III.1978)
B-06	European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20.IV.1959)
B-07	Third Additional Protocol to the European Convention on Extradition (Strasbourg, 10.XI.2010)
B-08	Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978)
B-09	Additional Protocol to the European Convention on Extradition (Strasbourg, 15.X.1975)
B-10	European Convention on Extradition (Strasbourg, 13.XII.1957)

C) Mutual recognition

C1) European Arrest Warrant

C1-01	European Arrest Warrant proceedings - Room for improvement to guarantee rights in practice, 26 March 2024
C1-02	European Parliament resolution of 20 January 2021 on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI)), (OJ C 456, 10.11.2021)

C1-03	Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81/24; 27.3.2009)
C1-04	Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190/1; 18.7.2002, P. 1)
C1-05	Case law by the Court of Justice of the European Union on the European Arrest Warrant – Overview, Eurojust, October 2023
C1-06	Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings, 27 September 2019

C2) Freezing and confiscation and asset recovery

C2-01	Proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (15 May 2024)
C2-02	Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, 2.05.2024
C2-03	Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849
C2-04	Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019, laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA
C2-05	Regulation 2018/1805 of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders, L 303/1, Brussels, 14 November 2018
C2-06	Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, L 284/22
C2-07	Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance), PE/72/2017/REV/1 OJ L 156, p. 43–74, 19 June 2018
C2-08	Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

C2-09	Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies
C2-10	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)
C2-11	Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006
C2-12	Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA
C2-13	Council Framework Decision 2008/841/JHA of October 2008 on the fight against organised crime
C2-14	Council Framework Decision 2003/5777/JHA July 2003 on the execution in the European Union of orders freezing property or evidence

C3) Convictions

C3-01	Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294/20; 11.11.2009)
C3-02	Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337/102; 16.12.2008)
C3-03	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327/27; 5.12.2008)
C3-04	Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (OJ L 220/32; 15.08.2008)

C4) Evidence and e-evidence

C4-01	Regulation (EU) 2025/13 of the European Parliament and of the Council of 19 December 2024 on the Collection and transfer of advance passenger information and for the prevention, detection investigation
C4-02	Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L, 2023/2844, 27.12.2023)
C4-03	Council Decision (EU) 2023/436 of 14 February 2023 authorising Member States to ratify, in the interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence (ST/6438/2022/INIT, OJ L 63, 28.2.2023)
C4-04	SIRIUS 2023 report: Navigating the new era of obtaining e-evidence
C4-05	Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings, (OJ L 191, 28.7.2023)
C4-06	Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings, (OJ L 191, 28.7.2023)
C4-07	Joint Note of Eurojust and the European Judicial Network on the Practical Application of the European Investigation Order, June 2019
C4-08	EURCRIM, "The European Commission's Proposal on Cross Border Access to e-Evidence – Overview and Critical Remarks" by Stanislaw Tosza, Issue 4/2018, pp. 212-219
C4-09	Recommendation for a Council Decision authorising the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, COM(2019) 70 final, Brussels, 05 February 2019
C4-10	Annex to the Recommendation for a Council Decision authorising the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, COM(2019) 70 final, Brussels, 05 February 2019
C4-11	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive

	95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (OJ L 119, 4.5.2016, p. 1-88)
C4-12	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130/1; 1.5.2014)
C4-13	Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L, 350/72, 30.12.2008)

D) Criminal records, Interoperability

D-01	Regulation on the automated search and exchange of data for police cooperation, and amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, (EU) 2019/817 and (EU) 2019/818 of the European Parliament and of the Council
D-02	Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726) (OJ L135/85, 22.05.2019)
D-03	Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (OJ L 135/85, 22.05.2019)
D-04	Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135/27, 22.05.2019)
D-05	Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA
D-06	Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA, PE-CONS 87/1/18, Strasbourg, 17 April 2019
D-07	Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93/23; 07.4.2009)

D-08	Council Decision on the exchange of information extracted from criminal records – Manual of Procedure (6397/5/06 REV 5; 15.1.2007)
D-09	Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record (OJ L 322/33; 9.12.2005)

E) Conflicts of jurisdiction – Transfer of Proceedings

E-01	Regulation (EU) 2024/3011 of the European Parliament and of the Council of 27 November 2024 on the transfer of proceedings in criminal matters
E-02	Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673
E-02	Eurojust Report on the transfer of proceedings in the European Union (Eurojust 18 January 2023)
E-03	Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union
E-04	Case-law by the Court of Justice of the European Union on the Principle of ne bis in idem in Criminal Matters, Eurojust, December 2021
E-05	Guidelines for deciding 'Which jurisdiction should prosecute?' (Eurojust 16 December 2016)
E-06	Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328/42; 15.12.2009, P.42)
E-07	European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 15.V.1972)

F) Procedural guarantees in the EU

F-01	Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297/1, 4.11.2016)
F-02	Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132 1; 21.5.2016)

F-03	Directive 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (11.3.2016; OJ L 65/1)
F-04	Directive 2013/48/EU 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 L 294/1; 6.11.2013)
F-05	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (1.6.2012; OJ L 142/1)
F-06	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 L 280/1; 26.10.2010)

G) Protecting Victims' Rights

G-01	Joint Report on the European Protection Order – Perspectives from the judiciary and support services (Eurojust / European Institute for Gender Equality, February 2025)
G-02	Directive (EU) 2024/1385 of 14 May 2024 on combating violence against women and domestic violence (OJ L, 2024/1385, 24.5.2024)
G-03	Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (COM/2023/424 final, 12 July 2023)
G-04	FRA Report: “Underpinning victims’ rights: support services, reporting and protection”, 22 February 2023
G-05	European Commission, EU Strategy on victims' rights (2020-2025), COM (2020) 258 final, Brussels, 24 June 2020
G-06	Factsheet – EU Strategy on Victims’ Rights (2020-2025), 24 June 2020
G-07	Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters
G-08	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
G-09	Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order

G-10	Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
G-11	Website of the European Union Agency for Fundamental Rights (FRA) – Victims' rights
G-12	Victim Support Europe
G-13	European Commission: Victims' Rights Platform
G-14	EC Coordinator for victims' rights

EU litigation in criminal matters

JURIAN LANGER

8 OKTOBER 2025



Co-funded by
the European Union

Outline

- Part I: basics & general observations
- Part II: preliminary reference procedure
- Part III: action for annulment

Part I

Basics & general observations

Basics I

- Specific legislative competences:
 - ✓ Article 82: minimum rules criminal procedure
 - ✓ Article 83: minimum rules definition of criminal offences and sanctions
 - ✓ Article 325: implementing measures combating fraud
- Other areas of EU law:
 - ✓ **C-746/18, *Prokuratuur***
 - ✓ **C-548/21, *Bezirkshauptmannschaft Landeck***

Basics II

- **(A) Criminal prosecution or (B) criminalisation infringes classical free movement rights:**
 - ✓ A) Portuguese businessman in pre-trial detention
 - ✓ A) Prosecution in Luxembourg for offense for which the person was acquitted in another Member State
 - ✓ B) German import ban for screws without import permit
- **Accusation is (partly) based on secondary EU legislation:**
 - ✓ Membership criminal organization (Framework Decision 2008/841/JHA)
 - ✓ Terrorism (Directive 2017/541/EU)
 - ✓ Child pornography (Directive 2011/92/EU)
 - ✓ Money laundering (Framework Decision 2001/500/JHA and Directive 2018/1673/EU)
 - ✓ Racism and xenophobia (Framework Decision 2008/913/JHA)
 - ✓ Trafficking (Directive 2011/36/EU)
 - ✓ Opium (Framework Decision 2004/757/JHA)

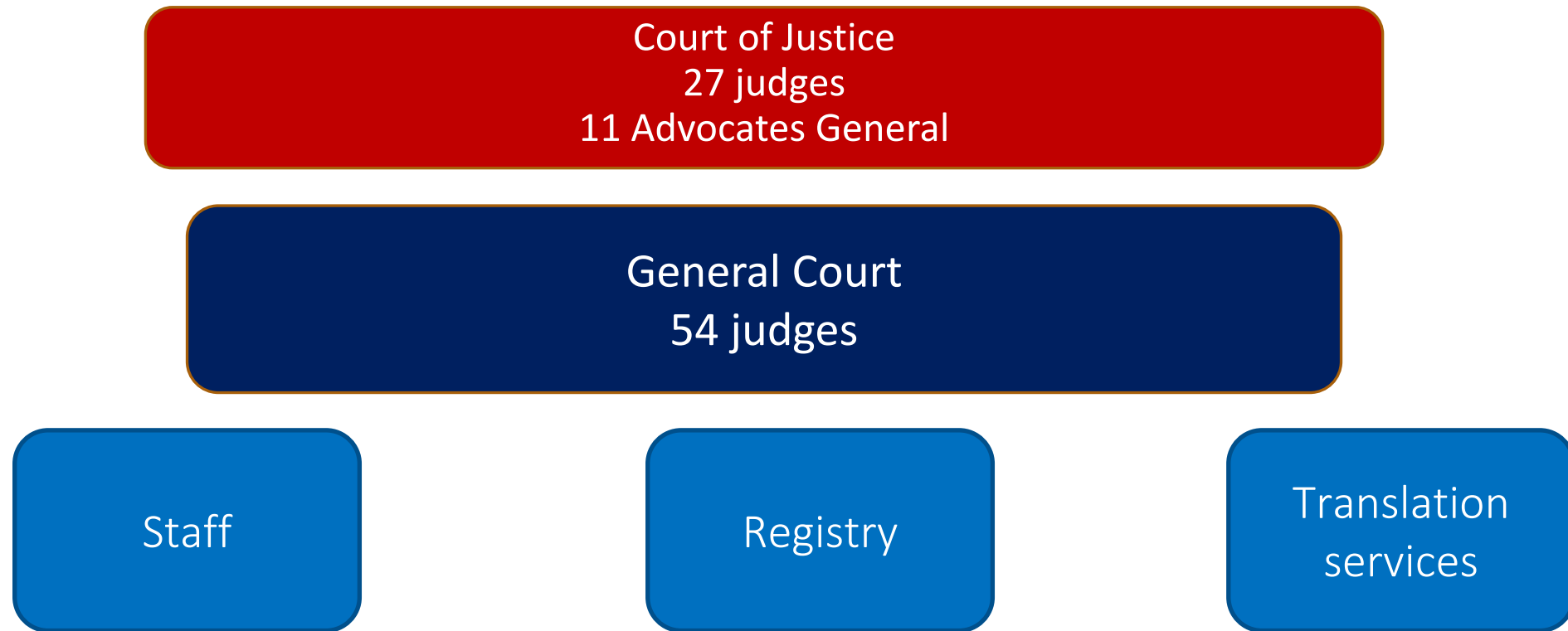
Basics III

- **(Part of) procedure is based on secondary EU legislation:**
 - ✓ European arrest warrant (Framework Decision 2002/584/JHA)
 - ✓ Confiscation (Framework Decision 2005/212/JHA)
 - ✓ Mutual recognition of criminal judgments (Framework Decisions 2008/947/JHA and 2009/299/JHA)
 - ✓ European Investigation Order (Directive 2014/41/EU)
 - ✓ E-evidence Regulation (Regulation 2023/1543/EU)
 - ✓ Confiscation without prior conviction (Directive 2024/1260)
- **Participant involved in proceeding derives rights from secondary EU legislation**
 - ✓ Right to interpreter (Directive 2010/64/EU)
 - ✓ Right to information in criminal proceedings (Directive 2012/13/EU)
 - ✓ Victim rights (Directive 2012/29/EU)
 - ✓ Right to legal counsel (Directive 2013/48/EU)
 - ✓ Right to legal aid (Directive 2016/1919/EU)
 - ✓ Presumption of innocence (Directive 2016/343/EU)

...nowadays



Court of Justice as institution



Types of procedures

- Preliminary reference procedure
 - National judge asks question regarding validity and/or interpretation of EU law
 - Non-contentious proceedings
- Direct action
 - Infringement procedure
 - Action for annulment
 - Appeal/review
- Opinion

1 October 2024: transfer jurisdiction to General Court

- References are submitted to Court of Justice, but requests falling exclusively within specific areas are transferred to General Court:
 - VAT
 - Excise duties
 - Customs Code
 - Tariff classification under Combined Nomenclature
 - Passenger compensation cases
 - Scheme for greenhouse gas emission allowance trading

Observations

- Working language = French
- System of cabinets
- Court works in chambers of 3, 5, Grand Chamber or full-court
- No specialized chambers!

The team



Statistics 2024

- Court of Justice/General Court:
 - Total new cases: 2092
 - Total cases completed: 1687
 - Cases pending: 2990
- Court of Justice:
 - New cases: 821
 - Completed cases: 783
 - Cases pending: 1149
 - Preliminary references: 518
 - Top references: 1) GER: 94, 2) BUL:51, 3) POL: 48
 - Transfer to General Court: 57 out of 66 cases (1 October 2024 – 30 June 2025)

Part II

Preliminary reference procedure

Starting point

‘In proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts or tribunals and the Court of Justice, the national court or tribunal alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court or tribunal before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions which it submits to the Court.’

Case C-561/19, *Consorzio Italian Management*, para. 35



Continuation of main proceedings?

“The preservation of the effectiveness of that procedure is not made impossible in practice or excessively difficult by a national rule which makes it possible, between the date on which a request for a preliminary ruling is made to the Court and the date of the order or judgment by which the Court answers that request, to continue the main proceedings in order to carry out procedural steps, which the referring court considers necessary and which concern aspects unrelated to the questions referred for a preliminary ruling, namely procedural steps which are not such as to prevent the referring court from complying, in the main proceedings, with that order or that judgment.” (C-176/22, BK, para. 28)

The need for speed

- PPA (article 105):
 - Main proceedings relate to person in detention and answers to questions asked are relevant to continuation of that detention (**order of 10 July 2014, C-181/14, G, para 10**)
 - Serious uncertainty regarding fundamental issue in a large number of criminal cases (**order of 28 January 2017, C-42/17, MAS, paras 8-10**)
- PPU (article 107)
 - PPU requires questions regarding Title V instrument

If not, we still need speed

- No PPA/PPU, but:

“That being so, in the light of the matters relied on by the referring court, it has been decided to give the present case priority, pursuant to Article 53(3) of the Rules of Procedure...” (C-480/21, WO & JL, para. 24)

Procedure

- Who participates?
- Two phases: written and oral

Written phase

- Registration of reference & translation
- Notification of case
- Written observations within 2 months & translation
- Notification of all observations submitted & request for oral hearing

The day in court



Oral phase

- Short pleadings
- Possibility of written questions in advance or in chambers
- Format: pleadings, Q&A and reply
- Fixed order of parties, LS and institutions
- Announcement of the date of the opinion of Advocate General

Part III

Action for annulment

General requirements

- Act of EU body/institution:
 - ✓ **T-550/20, Sharpston**
 - ✓ **T-192/16, Turkey deal**
- Act intended to produce legal effects:
 - ✓ **T-137/22, NL/Commission**
 - ✓ **T-469/20, NL/Commission**

Applicant

- Privileged applicant
- Non-privileged applicants:
 - ✓ Addressee
 - ✓ Natural and legal persons directly and individually concerned
 - ❑ **T-706/22, Nicoventures**
 - ✓ Regulatory acts directly affecting persons and not requiring implementing measures
 - ❑ **C-583/11 P, Inuit Tapiriit Kanatami**
 - ❑ **T-262/10, Microban**



Appeal period

- Appeal period = 2 months
- Calculation of appeal period:
 - ✓ Date of publication
 - ✓ Date of notification
 - ✓ 'Day on which it came to the knowledge of the applicant'
- Important: articles 58-62 RP – section 4 'time limits'
- Sometimes things go wrong (or very wrong):
 - ✓ **T-542/13, NL/Commission**

Practical notes

- E-curia is mandatory
- Formal requirements: stay cool!
- Registry is helpful:
 - ✓ [Aide-mémoire - Requête \(europa.eu\)](#)
 - ✓ [Modèle de requête - Recours directs\(sauf affaires de propriété intellectuelle\) \(europa.eu\)](#)
- And, be precise!

*“It is not for the Court to supplement the arguments put forward by the applicant in the application, by searching for and, if necessary, identifying, in one or more of the [**] annexes thereto, evidence capable of substantiating his claims (see, to that effect, judgment of 13 February 2025, Commission and Others v Carpatair, C-244/23 P to C-246/23 P, EU:C:2025:87, paragraph 77).”*

Written phase

- Application: registration + service + publication
- Exception of inadmissibility?
- Statement of defence
- Reply & Rejoinder
- Request for hearing



Oral phase

- Report for the hearing
- Short pleadings
- Possibility of asking questions in advance or in chambers
- Format: pleadings, Q&A, and reply

After the hearing

- AG's opinion?
- Judgment
- Appeal?

Intervention

- Articles 142-145 RP
- Accessory to main proceedings, but with right to appeal
- Luxury position for privileged parties, but other parties must demonstrate direct and actual interest
- Intervention period: 6 weeks after publication in OJ

Special procedures

- Interim measures: article 279 and Article 156 RP
 - ✓ Accessory procedure
 - ✓ Requirements: urgency, application is prima facie justified, and balancing all interests involved
 - ✓ Appeal is possible
- Expedited procedure:
 - ✓ Article 152 RP
 - ✓ Separate document at time of filing application or statement of defence

And, here it is all decided...



We want you!





Vânia Costa Ramos,
ECBA Chairperson
Defence Lawyer, Portugal



Adrian Sandru,
ECBA Advisory Board
Defence Lawyer, Romania



Sören Schomburg,
ECBA Advisory Board
Defence Lawyer, Germany

CJEU CASE LAW

The European Arrest Warrant (EAW)
Third Country Extradition
The European Investigation Order (EIO)
Ne Bis In Idem



PART V: PRACTICAL ADVICE FOR DEFENCE COUNSEL LITIGATION IN THE CJEU



AGENDA



- **The CJEU - Before we start**
- **Preliminary Ruling**
- The national level - How to apply for a referral?
- The CJEU level – What happens and what can you do?
- **Action for Annulment**
- **Practical Advice for both procedures**

PROCEEDINGS BEFORE THE CJEU



Preliminary ruling,
Art. 267 TFEU



Infringement
procedure,
Art. 258 TFEU



Action for
annulment,
Art. 263 TFEU



Actions for
failure to fulfil
obligations,
Art. 265 TFEU

INVOLVED PARTIES



European Court of Justice



Advocate General



Registry



Parties to the initial procedures



Other State Parties involved



COMPOSITION

Grand Chamber (15 judges)

Chamber with three judges

Chamber with five judges



WORKING MATERIALS



Toolkits from Fair Trials, Practice Directions and CCBE-Guidance

Our vision:
A world where every person's right to a fair trial is respected.

Fair Trials – Preliminary Reference Toolkit

Last updated end of July 2020

Leap
Legal Experts Advisory Panel

Official Journal of the European Union EN L series 2024/2173 30.8.2024

Practice directions to parties concerning cases brought before the Court

TABLE OF CONTENTS
(References are to the relevant numbered points)

I. GENERAL PROVISIONS	1 – 12
The stages in the procedure before the Court and their essential characteristics	1
Representation of the parties before the Court	2 – 4
Costs of proceedings before the Court and legal aid	5 – 8
Protection of personal data	9 – 11
Identification of anonymised preliminary ruling cases	12
II. THE WRITTEN PART OF THE PROCEDURE	13 – 61
The purpose of the written part of the procedure	13
The written part of the procedure in references for a preliminary ruling	14 – 17
The written part of the procedure in direct actions	18 – 24
The application	18 – 19
The defence	20 – 21
The reply and rejoinder	22
Request for an expedited procedure	23
Applications for suspension of operation or for interim measures (Interim proceedings)	24
The written part of the procedure in appeals	25 – 38
The appeal	26 – 31
The response	32 – 33
The cross-appeal	34
The response to the cross-appeal	35
The reply and rejoinder	36 – 37
Appeals brought under Article 57 of the Statute	38
Confidentiality in appeals	39 – 40
Intervention in direct actions and appeals	41 – 47
The application to intervene	41
Observations on the application to intervene	42
The statement in intervention	43
Observations on the statement in intervention	44
Applications to intervene made out of time	45
Intervention in the context of an application for interim measures or an expedited procedure	46
No intervention in references for a preliminary ruling	47
The form and structure of procedural documents	48 – 54
The lodging and transmission of procedural documents	55 – 61

EL: http://data.europa.eu/eli/proc_rules/2024/2173/oj 1/19

Council of Bars & Law Societies of Europe
Association internationale sans but lucratif

Rue Joseph II, 40/8 - B-1000 Brussels
T.: +32 (0)2 234 65 10 - F.: +32 (0)2 234 65 11
Email: ccbe@ccbe.eu - www.ccbe.eu
Follow us on [Twitter](#) [LinkedIn](#) [Facebook](#)

PRACTICAL GUIDANCE FOR ADVOCATES BEFORE THE COURT OF JUSTICE IN PRELIMINARY REFERENCE CASES

This practical guidance is addressed principally to those appearing for the first time in the Court of Justice of the EU or who appear infrequently. It has been drafted by the Permanent Delegation to the Court of Justice of the Council of Bars and Law Societies of Europe (CCBE) in order to enhance the efficiency of the preliminary reference procedure. The consolidated version of the Court of Justice's 2012 Rules of Procedure, as amended in 2013, and the other texts governing the procedure before the Court are available online at the address http://curia.europa.eu/jcms/jcms/Jo2_7031

Note that written pleadings can be filed on-line using the e-Curia system.

This guidance addresses three areas:

1. Written pleadings
2. Oral pleadings
3. Practical issues

On the same page, see in particular also:

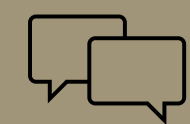
- Advice to Counsel appearing before the Court
- Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings
- Practice directions to parties concerning cases brought before the Court

LEGAL MATERIAL

Some relevant material to take along!

- Consolidated version of the Treaty on European Union
- Consolidated version of the Treaty on the Functioning of the European Union
- Statute of the Court of Justice of the European Union
- [Rules of Procedure of the Court of Justice](#)
- [Practice directions to parties concerning cases brought before the Court](#)
- [Conditions of Use of e-Curia](#)

SOME BASICS



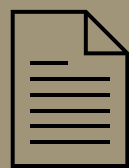
Language



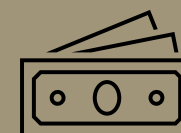
Communication



Dress



Power of Attorney



Cost / Legal Aid

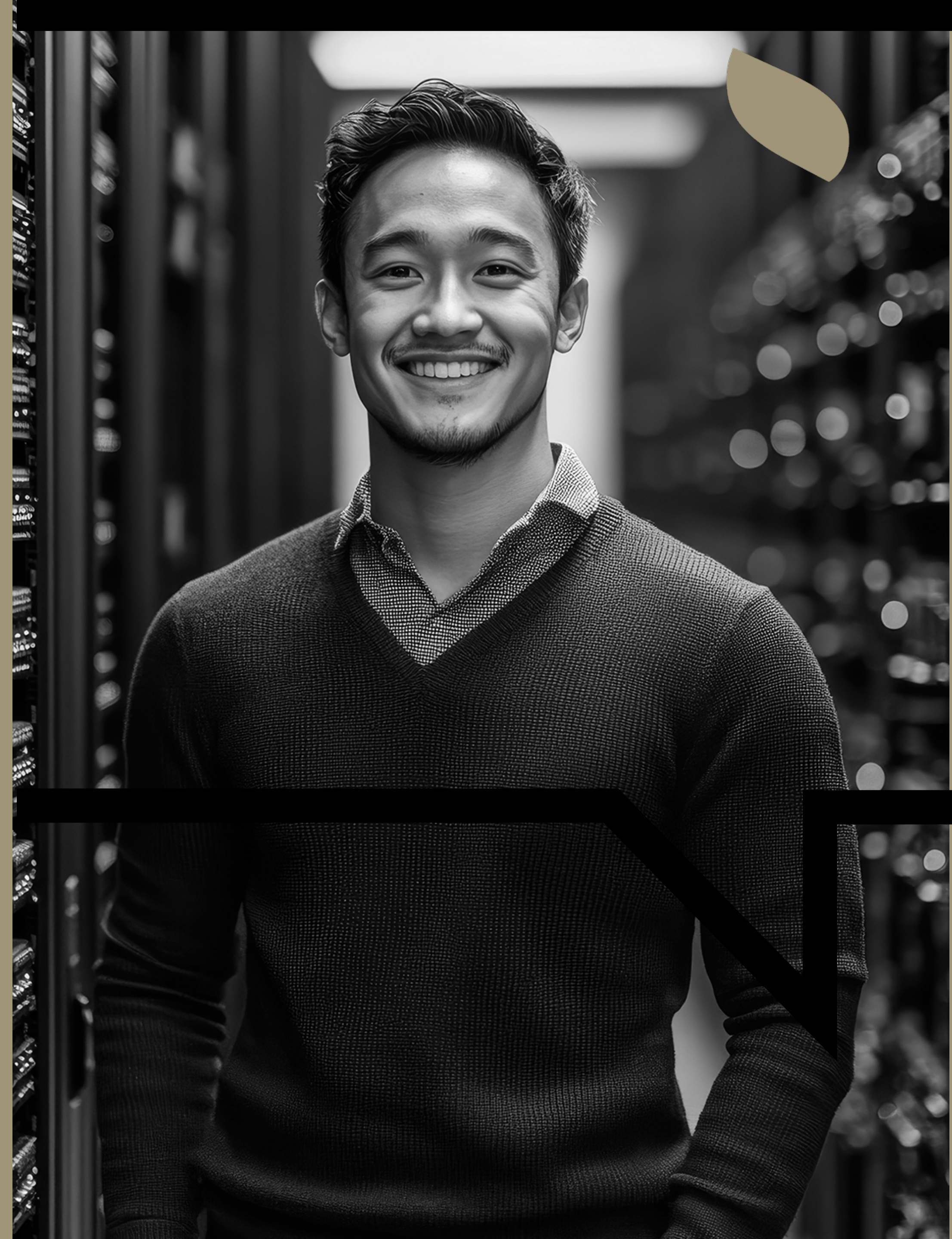


Anonymity



Deadlines

**Ask the
registry!**



SOME MORE BASIS



Written Pleadings



Oral Pleadings

A CORE RULE



DON'T LITIGATE ON THE FACTS!

PRELIMINARY RULINGS



How to get there?

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the **interpretation of the Treaties**; [...]

Where such a question is **raised before any court or tribunal** of a Member State, that court or tribunal **may**, if it considers that a decision on the question is **necessary to enable it to give judgment, request the Court to give a ruling thereon.**

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is **no judicial remedy under national law**, that court or tribunal **shall bring** the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the **minimum of delay.**

1. Interpretation and application of EU law

2. No theoretical / hypothetical questions! Must be relevant!

3. Acte clair/acte éclairé?

4. Duty to refer!

5. PPU

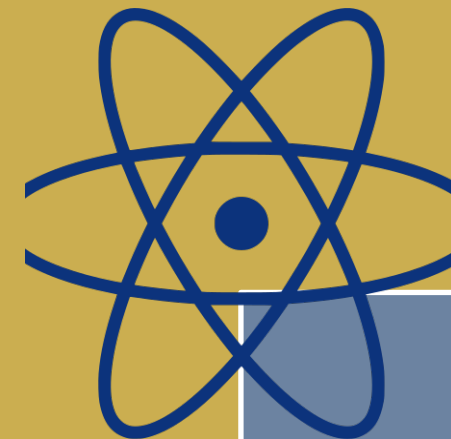
NATIONAL PROCEEDINGS

How to obtain the referral?



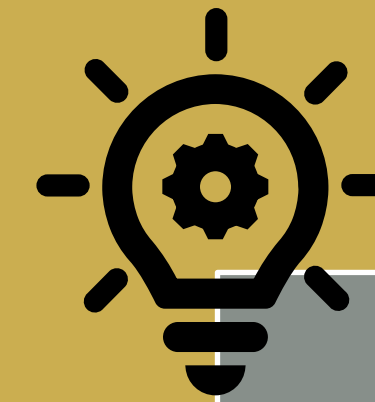
Interpretation of EU-law

1. Material law
 - a. Fundamental Rights
 - b. Offence based on EU-law?
 - c. Data protection
2. Procedural law



No theoretical question!

- Show the practical impact of your interpretation!



Acte clair/acte éclairé?

- Research in CJEU cases
- Ask colleagues in other jurisdictions how their courts treat the same question

NATIONAL PROCEEDINGS

Interpretation of EU-law - Remember Jurian Langer!



Basics II

- **(A) Criminal prosecution or (B) criminalisation infringes classical free movement rights:**
 - ✓ A) Portuguese businessman in pre-trial detention
 - ✓ A) Prosecution in Luxembourg for offense for which the person was acquitted in another Member State
 - ✓ B) German import ban for screws without import permit
- **Accusation is (partly) based on secondary EU legislation:**
 - ✓ Membership criminal organization (Framework Decision 2008/841/JHA)
 - ✓ Terrorism (Directive 2017/541/EU)
 - ✓ Child pornography (Directive 2011/92/EU)
 - ✓ Money laundering (Framework Decision 2001/500/JHA and Directive 2018/1673/EU)
 - ✓ Racism and xenophobia (Framework Decision 2008/913/JHA)
 - ✓ Trafficking (Directive 2011/36/EU)
 - ✓ Opium (Framework Decision 2004/757/JHA)

NATIONAL PROCEEDINGS

Interpretation of EU-law - Remember Jurian Langer!



Basics III

- **(Part of) procedure is based on secondary EU legislation:**
 - ✓ European arrest warrant (Framework Decision 2002/584/JHA)
 - ✓ Confiscation (Framework Decision 2005/212/JHA)
 - ✓ Mutual recognition of criminal judgments (Framework Decisions 2008/947/JHA and 2009/299/JHA)
 - ✓ European Investigation Order (Directive 2014/41/EU)
 - ✓ E-evidence Regulation (Regulation 2023/1543/EU)
 - ✓ Confiscation without prior conviction (Directive 2024/1260)
- **Participant involved in proceeding derives rights from secondary EU legislation**
 - ✓ Right to interpreter (Directive 2010/64/EU)
 - ✓ Right to information in criminal proceedings (Directive 2012/13/EU)
 - ✓ Victim rights (Directive 2012/29/EU)
 - ✓ Right to legal counsel (Directive 2013/48/EU)
 - ✓ Right to legal aid (Directive 2016/1919/EU)
 - ✓ Presumption of innocence (Directive 2016/343/EU)

NATIONAL PROCEEDINGS

Your application



- I. Facts**
- II. Criteria of 267 TFEU**
 1. Question of EU law
 2. Relevant to the matter
 3. No acte clair/eclairé
- IV. Question to be raised under Art. 267 TFEU**
- V. Obligation to refer to CJEU**
- VI. Urgent preliminary ruling procedure**

PRELIMINARY RULINGS



Help the national Judge!

Be
clear/be
simple

Remember
Art. 267
TFEU

Draft the
referral?

Get the
prosecutor
involved?

Suggest
specific
questions?

NATIONAL PROCEEDINGS

Duty to refer - And what if the judge is still not convinced?

Para 267 para 3:

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is **no judicial remedy under national law**, that court or tribunal **shall bring** the matter before the Court.

- Refer to the relevant question and the obligation and the relevance of 267 TFEU from the start
- Use national appeal
- The CJEU is the judge prescribed by law! What does your national constitution say on that?
- Recourse to the ECtHR?

NATIONAL PROCEEDINGS

PPU - Urgent preliminary ruling procedure

Para 267 para 4:

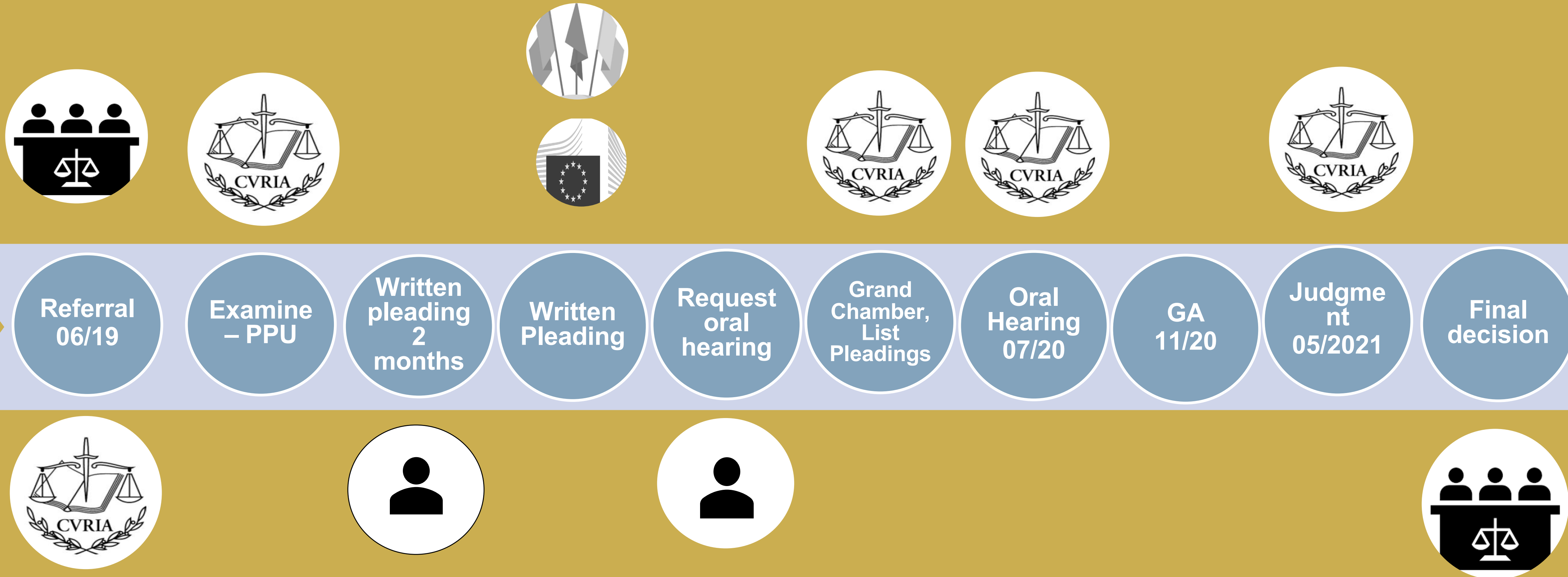
If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Art. 107 Rules of Procedure of the Court of Justice

- In particular – imprisonment
- But also in family law matters
- **Reduces average proceeding from 17 months vs. 3 months in PPU**



PRELIMINARY RULING



PRELIMINARY RULINGS

Written Pleadings

- Don't repeat the case
- ✓ Answer the court's questions if raised
- ✓ write clear and simple
- ✓ Use margin numbers
- ✓ Use E-Curia

Written
pleading
2
months



Possible structure:

- Question
 - Applicable national and EU-law
- Argument why the case needs to be decided in your interpretation
- Suggested answer to Question

PRELIMINARY RULINGS



Before you travel to LUX: Remember the Interpreter



1. Presentation of the parties' arguments (15 minutes each)

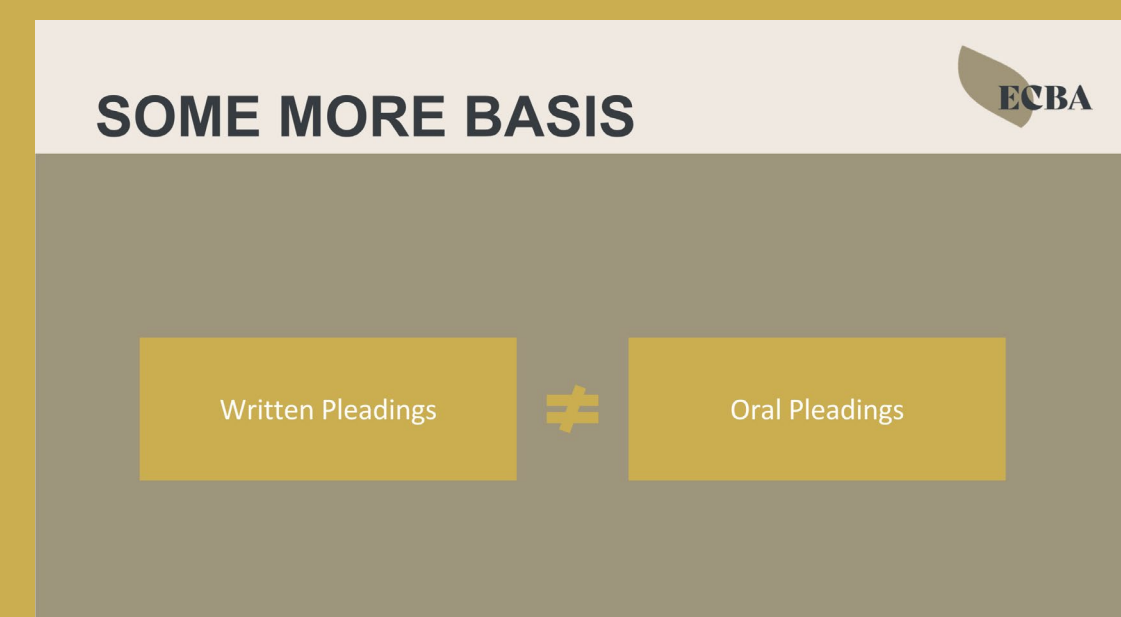
- One speaker!
- Parties of the main proceedings before the referring court
- Member States in alphabetical order
- the institutions of the Union



2. Opportunity of reply (5 minutes each)

- Representatives of the parties or the other participants have the opportunity of replying briefly

3. Questions by the court



PRELIMINARY RULING - PPU



Referral
06/22

Examine
- PPU

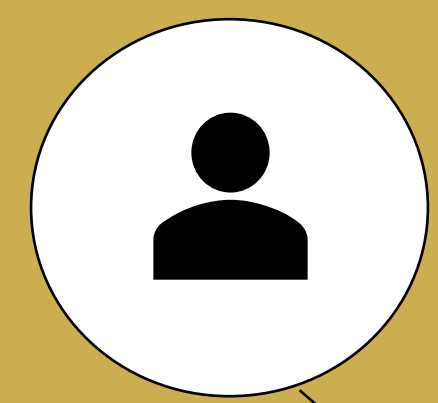
Written
pleading
08/22

Oral
Hearing
09/22

GA
10/22

Judgment
10/22

Final
decision



- 15 pages
- Only the parties directly involved





THANK YOU FOR YOUR ATTENTION!

Adrian Sandru
Solicitor / Founder
Sandru Avocati

&

Sören Schomburg
Rechtsanwalt / Partner
Knauer Partnerschaft v. Rechtsanwälten mbB

Direct judicial Review in the EU

Actions for Annulment & Pleas of

Understanding EU Procedural Remedies through Fundamental Rights



Statistical Snapshot: Annulment Actions 2009–2022

Recent empirical research by **Gentile (2023)** provides valuable insight into how annulment actions function in practice before the General Court. The data reveals important patterns fundamental rights arguments and the practical challenges facing applicants.

7,586

Total Annulment Actions

Filed before the General Court during the 13-year period studied

830

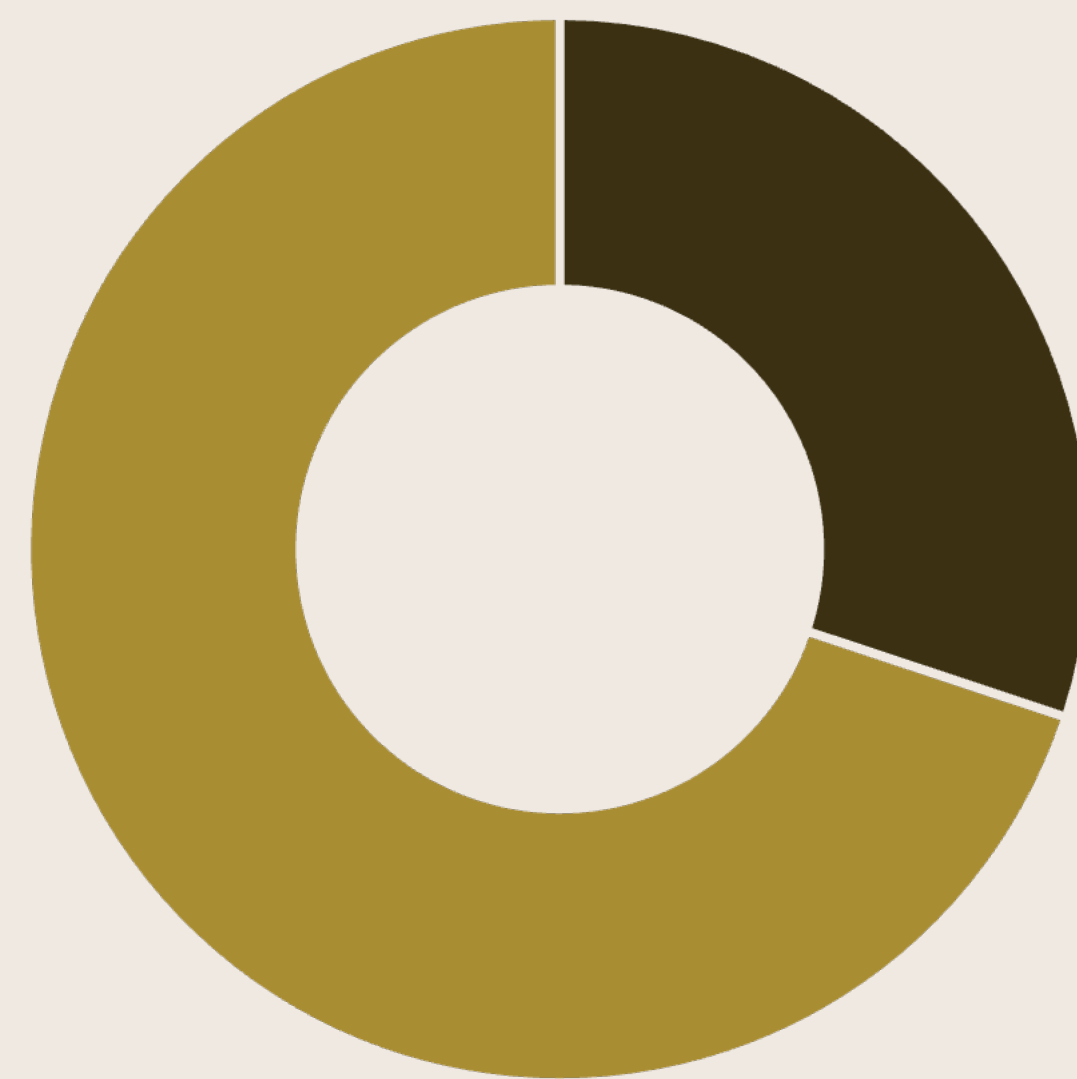
Fundamental Rights Cases

Actions that invoked pleas based on violations of rights

312

Rights-Based Annulments

Successful annulments where fundamental rights arguments proved decisive



Effective Protection Other Rights

Procedural Dominance

Approximately **30% of fundamental rights pleas** invoked *effective protection* under Article 47 of the Charter— demonstrating that **dominates over substance** in contemporary rights-based litigation.

Why these remedies matter to your practice

EU lawyers must possess a thorough understanding of how to **challenge EU acts** effectively within the framework of Union law. The remedies available through judicial review are not merely academic concepts—they represent essential tools for protecting client interests and upholding the rule of law.



Key Procedural Tools

The *action for annulment* (Article 263)
the *plea of illegality* (Article 277 TFEU)
the principal mechanisms for challenging
validity of EU acts.



Rule of Law Guarantee

Both remedies ensure effective judicial
protection under **Article 19 TEU** and **Article 47**
Article 47 of the Charter, safeguarding the
the constitutional foundations of the Union.
Union.



Defence Applications

These tools prove vital when EU acts
affect individual rights— particularly in
proceedings, data transfer restrictions,
access to justice claims.

Action for Annulment Under Article 263 TFEU



The action for annulment represents the most direct remedy for challenging the legality of EU acts. When successful, it results in the contested act being declared void *ex tunc*—meaning declared void *ex tunc*—meaning the act is treated as having never existed, with retroactive invalidity.

Purpose and Effect

The primary purpose is to **annul an EU act** that breaches higher law, whether procedural defects, substantive violations of Treaty provisions, or fundamental rights. The remedy protects the integrity of the EU legal order unlawful acts from the system.

Grounds for Review

Article 263 TFEU specifies four **grounds** upon which annulment may be sought: sought:

Lack of Competence

The EU institution acted beyond its powers or encroached upon reserved to Member States or other institutions.

Procedural Defects

Infringement of an essential procedural requirement, such as failure to consult consult required bodies or provide adequate reasoning

Substantive Illegality

Infringement of the Treaties or of any rule of law relating to their including violations of fundamental rights.

Misuse of Powers

The institution used its powers for purposes other than those for which they were they were conferred—a ground rarely invoked but theoretically available.

Who may bring an action for annulment

Standing requirements under Article 263 TFEU create a **three-tier system** of applicants, each with different conditions for bringing proceedings. Understanding essential for assessing whether judicial review is available in any given case.



Privileged Applicants

Member States, the European Parliament, the Council, and the Commission enjoy automatic standing. They may challenge any EU act without demonstrating individual interest or direct effect.



Non-Privileged Applicants

Natural and legal persons face the most restrictive standing requirements. They may challenge acts only if addressed to them directly, or if the act is of *direct and individual concern* to them under the stringent *Plaumann* test.




Semi-Privileged Applicants

The Court of Auditors, European Central Bank, and Committee of the Regions have automatic standing, but only for the purpose of protecting their own prerogatives—this is conditional.



Regulatory Acts Exception

A limited exception exists for **regulatory acts** that are of direct concern and do not entail implementing measures—this allows challenges without proving individual concern, though interpretation remains narrow.

 **The Plaumann Test:** An act is of individual concern to a person only if it affects them *"by reason of certain attributes which are peculiar to them or by reason of circumstances which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons."* This test has proven exceptionally difficult to satisfy in practice.

Which acts can be challenged

Not every EU measure is subject to judicial review. The act must produce binding *à-vis* third parties— a requirement that ensures courts focus on measures that legal positions rather than internal or preparatory acts.

The landmark *AETR* judgment (C-22/70) established the foundational principle: any measure measure "intended to have legal effects" falls within the scope of reviewable acts, regardless of its regardless of its formal designation.

Excluded Categories

- **Soft law instruments** (recommendations, opinions) generally escape review rights or create obligations
- **Preparatory acts** and internal administrative measures
- **Measures confirmatory** of earlier decisions already subject to challenge



Contemporary Jurisprudence

Recent scholarship, including *Gentile's 2020 analysis in the European Constitutional Law Review*, highlights how highlights how the Court has refined the reviewability test—particularly concerning acts that appear non-appear non-binding but nevertheless produce concrete legal consequences for third parties.

Access Limitations

Standing restrictions continue to limit **non-economic actors'** access to justice, particularly acts affect diffuse interests such as environmental protection or consumer rights— an ongoing scholarly and judicial debate.

Procedure and Strict Deadlines

Timing is critical in annulment proceedings. Article 263(6) TFEU imposes a **two-month time limit** that runs from publication in the Official Journal, notification to the applicant, or—in the absence of either—the date when the applicant acquired knowledge of the act. This deadline is *mandatory* and jurisdictional; missing it renders the action inadmissible regardless of the merits.

Filing Through e-Curia

All applications must be filed via the **e-Curia digital system**, which provides secure electronic lodgement and case Practitioners should familiarise themselves with technical requirements well before deadlines approach, as system accepted as grounds for extension.

Formal Requirements

The application must be drafted with precision, adhering to the requirements set out in **Articles 119–120 of the Rules of Procedure of Procedure**. Defective applications risk rejection or requests for rectification that consume precious time.

1 Parties and Addresses

Full identification of the applicant and defendant institution, including official addresses and representative contact details

2 Subject-Matter of Proceedings

Precise identification of the contested act, including publication or notification references

3 Form of Order Sought

Clear statement of the relief requested—typically annulment of the act in whole or in part

4 Pleas in Law and Arguments

Detailed legal grounds and supporting arguments, with references to relevant case law and legal provisions

5 Annexes and Evidence

Supporting documents, including the contested act, relevant correspondence, and evidentiary materials

6 Signature and Date

Formal signature by the lawyer or agent, with date of lodgement clearly indicated

e-Curia

Home > [Request to open an account](#)

In order to use e-Curia, a request to open an account must be submitted in accordance with the steps set out below. The steps for opening an account vary depending on whether the user selects the standard procedure or the special procedure. The standard procedure is used to open an account in order to exchange procedural documents with the Court of Justice or the General Court. The special procedure, which applies to urgent situations, allows an account to be opened provisionally for the lodging of procedural documents with the General Court only.

Standard procedure	<p>The standard procedure enables an account to be opened in order for procedural documents to be exchanged with the Court of Justice or the General Court. It is available to a party's representative ('representative' account), or, in the context of a request for a preliminary ruling, to a person acting on behalf of a court or tribunal of a Member State, or of a non-member State, which is authorised to refer a request for a preliminary ruling ('court' account) or to a person authorised, under national procedural rules, to be self-represented or to represent a party before the referring court or tribunal ('authorised person' account). It will take several days to process the request and you will be informed by email of its progress.</p> <p style="text-align: right;">Request to open an account</p>
Special procedure (General Court only)	<p>If you have not taken the steps required to open an account under the standard procedure in good time before the expiry of a time limit for lodging a procedural document with the General Court, it is possible for you to open an account on a provisional basis in order to lodge that document under the special procedure.</p> <p>This procedure is reserved for persons authorised to represent a party before the General Court, in accordance with Article 19 of the Statute of the Court of Justice of the European Union.</p> <p style="text-align: right;">Provisional opening of an account</p>

Fundamental Rights in Annulment Cases

When fundamental rights arguments succeed in annulment proceedings, they typically concern **procedural rather than substantive rights**. This pattern reflects administrative action and the Court's developed jurisprudence in areas of procedural protection.

Effective Judicial Protection

Article 47 of the Charter—guaranteeing the right to an effective remedy and fair trial—appears most frequently frequently and successfully in annulment actions, particularly where access to justice is restricted.

Good Administration

Article 41 Charter rights include proper reasoning, files, and impartial decision-making. Violations of procedural guarantees frequently result in

Rights of Defence

The right to be heard and to have access to one's before adverse decisions prove essential in proceedings—their breach often proves fatal to acts.

Presumption of Innocence

Particularly relevant in competition and sanctions cases, where punitive measures require proof of wrongdoing according to criminal law standards

Proportionality of Penalties

Fines and sanctions must be proportionate to the infringement—violate fundamental rights and general principles of EU law

📌 **Substantive Rights Appear Less Frequently:** Rights such as property, equality, privacy, and data protection feature less prominently in successful annulment actions. This may reflect both the difficulty of proving substantive violations and the Court's tendency to resolve cases on procedural grounds where possible.



PLEA OF ILLEGALITY (Art. 277 TFEU) TFEU)



The Plea of Illegality: A Subsidiary Form of Review



While the action for annulment provides a direct means to challenge the legality of EU acts, the plea of illegality (Article 277 TFEU) offers a crucial allows parties to indirectly contest the legality of a general act, like a regulation, when it forms the basis of a decision directly affecting them in proceeding. This indirect challenge ensures that even general acts, which might not be directly amenable to annulment by individuals, can still be preventing the application of unlawful norms and complementing the direct review mechanisms.

1

A Subsidiary Form of Review

Allows challenge of a general act within the context of another legal case.

2

Effect: Inapplicable Inter Partes

Renders the contested act inapplicable only to the parties involved in that involved in that specific case, not universally.

3

No Two-Month Time Limit

Can be raised even after the strict two-month deadline for actions has passed.

4

Ensures Completeness of Remedies

Complements the EU system of legal remedies, as highlighted in MPEiPro MPEiPro Article 277 commentary.

Conditions & Limits for the Plea of Illegality

The plea of illegality is a powerful tool for indirect review, but its application is subject to stringent conditions and limitations designed to maintain legal certainty and the hierarchical structure of the EU legal system. Understanding these restrictive aspects is crucial for practitioners.

1 The act must be of general application

The plea can only be directed against acts of general application, such as regulations, directives, or decisions addressed to all Member States, which serve as the legal basis for an individual decision directly affecting the applicant.

2 There must be a direct link between that act and the contested individual measure

The general act whose legality is challenged must form the indispensable legal basis for the individual act (e.g., a decision) that the applicant seeks to annul in the main proceedings.

3 The plea must rely on grounds similar to Art. 263 TFEU

The alleged illegality of the general act must be based on one of the grounds for annulment enumerated in Article 263 TFEU (lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers).

4 The party must have standing in the main case

The party raising the plea must have legitimate standing to challenge the individual measure in the main proceedings. The plea of illegality cannot create standing where none exists for the direct challenge of the individual act.

5 If accepted → the act is inapplicable for that dispute (no erga omnes effect)

Should the plea be successful, the general act is declared inapplicable only to the parties involved in that specific dispute, and only for the purposes of that dispute. It does not have erga omnes effect, unlike an action for annulment.

Strategic Use of the Plea of Illegality

The plea of illegality under Article 277 TFEU, though subsidiary, serves as a vital strategic tool for individuals and individuals and entities seeking to challenge EU acts. It is particularly useful when direct avenues of review are closed or ineffective, offering a 'constitutional safety valve' to ensure the rule of law within the EU legal the EU legal order.

Use when:

- **The underlying regulation is illegal:** When general act, such as a regulation or believed to be unlawful and forms the specific decision impacting the applicant.
- **The direct action would be inadmissible or time- or time-barred:** If a direct action for annulment against the general act is not possible possible due to issues of standing or the expiration of the strict two-month time limit. limit.

Special Focus: Criminal Law & Sanctions Contexts

This remedy often finds significant application concerning criminal law and sanctions. It allows challenging of procedural frameworks general acts that underpin adverse individual decisions, ensuring that fundamental rights, the rights of defence and the presumption of innocence, are respected even when substantive merits of a general act is difficult.

Ultimately, courts treat the plea of illegality as a constitutional safety valve, preserving effective judicial protection (EP Brief 2019).





PRACTICAL GUIDANCE FOR PRACTITIONERS



Structure of an Action for Annulment

01

Heading and Introductory Formula

- Court: General Court of the European Union
- Reference & date
- Identification of the contested act (title, date, issuing body)
- Statement of representation and legal basis: Article 263 TFEU and Articles 119–120 of the Rules of Procedure of the CJEU

03

Relevant Law

- EU law: Article 263(4) and (6) TFEU, Charter of Fundamental Rights (Arts. 41, (Arts. 41, 47, 48), and relevant Regulations or Directives
- National law: only provisions necessary to show the domestic legal (e.g. criminal procedure rules, national implementation)

02

Context and Facts

- Short chronology explaining how the act was adopted and how it affects the applicant
- Clear, factual narrative showing causal link between EU act and consequences

04

Objective of the Application

The applicant requests the annulment of [Act], as adopted in violation of EU law of EU law and fundamental procedural guarantees.

Admissibility Requirements



To be declared admissible, the action must satisfy all conditions of Article 263 TFEU:

Condition	What must be shown
Standing	The applicant is directly and individually concerned by the act (non-privileged applicant)
Direct effect	The act produces binding legal consequences vis-à-vis the applicant — it modifies their legal
Legal interest	Annulment would bring a concrete benefit (e.g. removal of negative legal or procedural effects)
Time limit	Action filed within two months from publication, notification, or date of knowledge

📄 Each of these conditions should appear under a separate heading in the application, with short factual justification (1 paragraph each).

'The applicant became aware of the act on [date]; therefore, this action is filed within the time limit under Article 263(6) TFEU.'

Grounds for Annulment (Illegality)



Each action must include clear and structured pleas in law. Common structure: one ground per section, each with three steps.

01

1. Legal basis

Start with a short reference to the applicable rule of "Under Article 41 of the Charter, EU institutions must fairness, impartiality, and respect for the rights of

02

2. Factual breach

Explain precisely what went wrong in the contested "The institution failed to inform the applicant of their remain silent and to make observations before final report."

03

3. Consequence

End with a legal conclusion: "This omission constitutes a a breach of essential procedural requirements and infringes infringes the applicant's rights of defence, rendering the act the act void."

Possible grounds include:

Lack of competence

Violation of procedural guarantees / rights of defence

Infringement of higher EU law (Treaties, Charter, secondary legislation)

Misuse of powers

Form of order sought: 'The applicant respectfully requests the General Court to annul [Act] and order the defendant institution to pay the costs.'



THANK YOU FOR YOUR ATTENTION!

Adrian Sandru
Solicitor / Founder
Sandru Avocati

&

Sören Schomburg
Rechtsanwalt / Partner
Knauer Partnerschaft v. Rechtsanwälten mbB



Vânia Costa Ramos,
ECBA Chairperson
Defence Lawyer, Portugal



Adrian Sandru,
ECBA Advisory Board
Defence Lawyer, Romania



Sören Schomburg,
ECBA Advisory Board
Defence Lawyer, Germany

CJEU CASE LAW

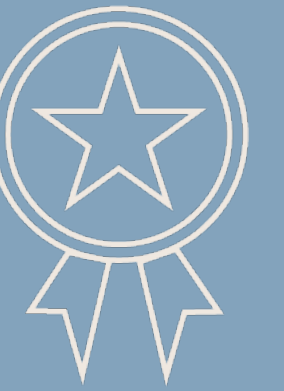
The European Arrest Warrant (EAW)
Third Country Extradition
The European Investigation Order (EIO)
Ne Bis In Idem



THE ECBA (EUROPEAN CRIMINAL BAR ASSOCIATION)

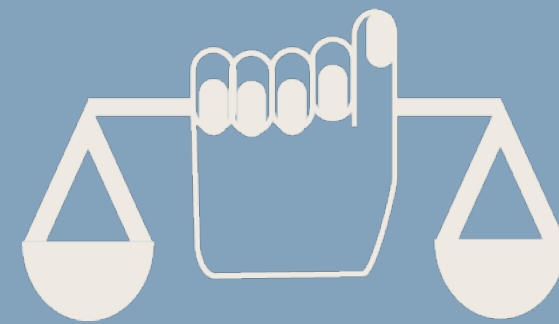


The ECBA is the key association for criminal lawyers in Europe, working to strengthen rights and cross-border collaboration.

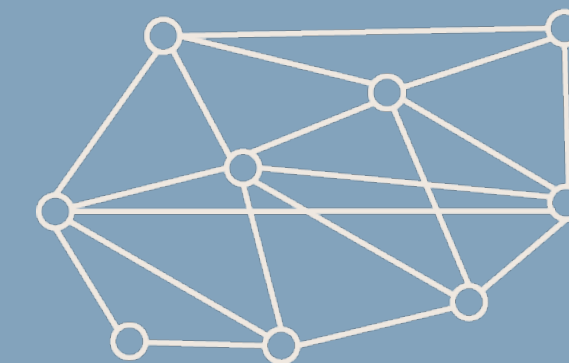


Defence of rights

Improve procedural rights and defend European standards of criminal law.

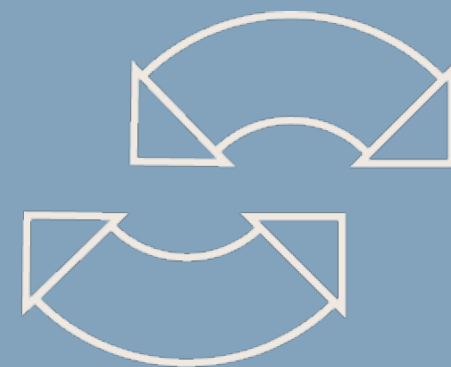


European network



Collaboration

Facilitate cooperation between lawyers for cross-border criminal cases.



Established 1998



ECBA FIND-A-LAWYER



<https://www.ecba.org/contactslist/contacts-search-country.php>



- **An online directory of experienced criminal lawyers.**
- **Allows you to find a lawyer in another Member State for colleagues and clients**
- **A key tool for strengthening cooperation between lawyers.**

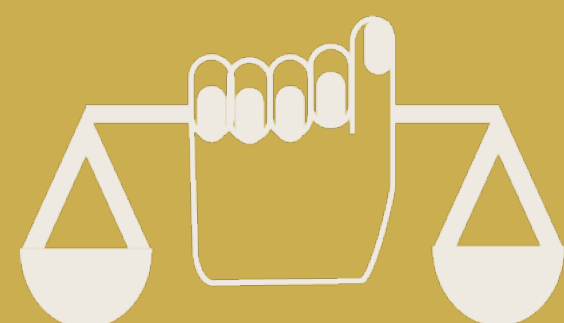


JOIN THE ECBA!



Are you a criminal lawyer or involved in European criminal law?

Would you like to contribute to the defense of fundamental rights at the European level?



Want to join an active, committed and influential network?

👉 Join the ECBA! www.ecba.org

✉ For any questions or exchanges, do not hesitate to contact us:

secretariat@ecba.org



Follow us: <https://www.linkedin.com/company/european-criminal-bar-association/?viewAsMember=true>

AGENDA




EAW




EUROPEAN INVESTIGATION ORDER



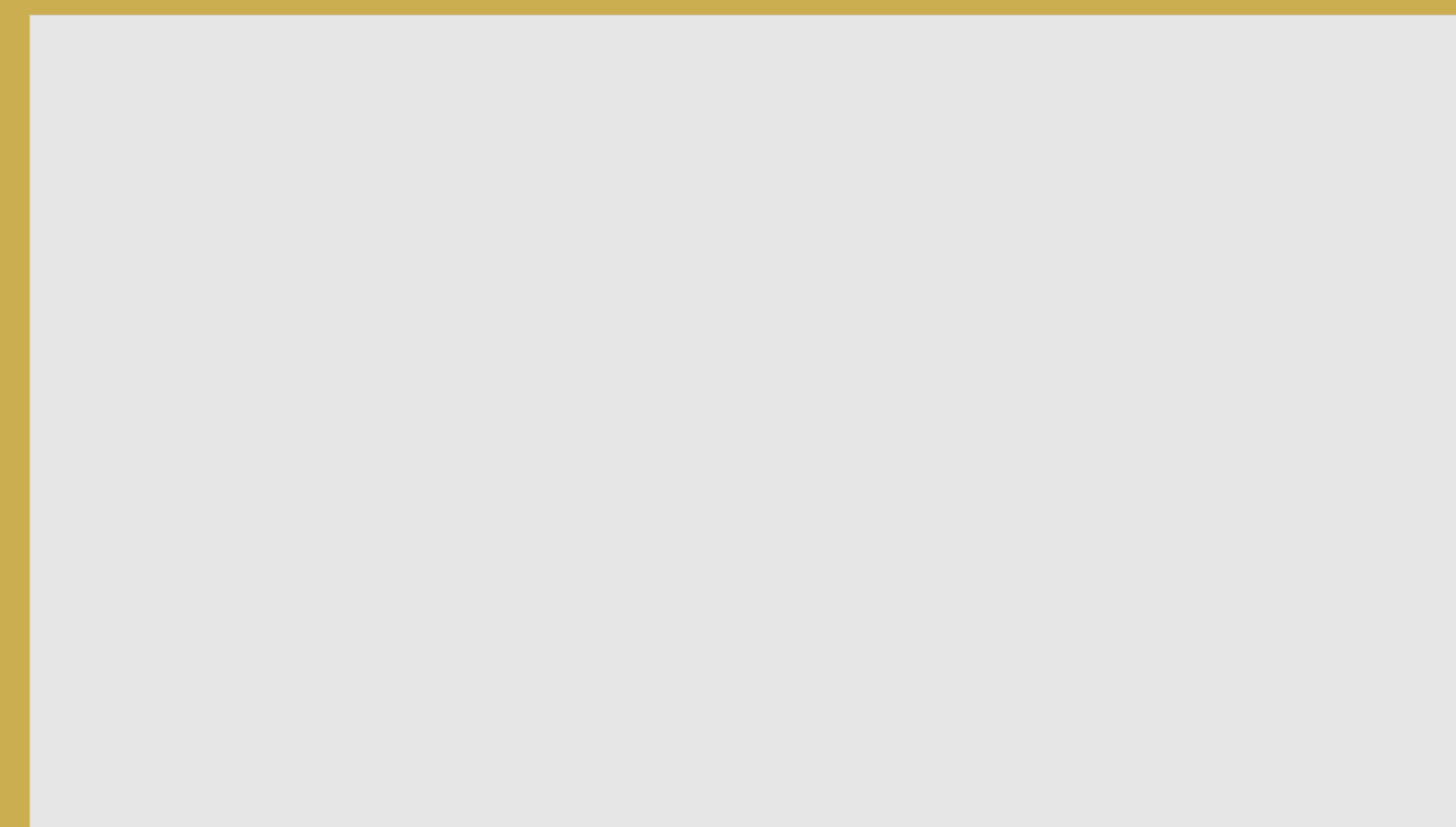
10.10.2025



**PART III:
NE BIS IN IDEM**
A Question of Dual Sovereignty



CJEU Case Law | Vânia Costa Ramos & Sören Schomburg



PART II: THE EUROPEAN ARREST WARRANT (EAW), THIRD COUNTRY EXTRADITION AND THE EUROPEAN INVESTIGATION ORDER (EIO)



1

European Arrest Warrant (EAW)

- Judicial Authority
- Judicial Protection
- Grounds for non-execution
- Two step test and the rule of law

2

European Investigation Order (EIO)

- Basics
- Judicial Authority
- Judicial Review

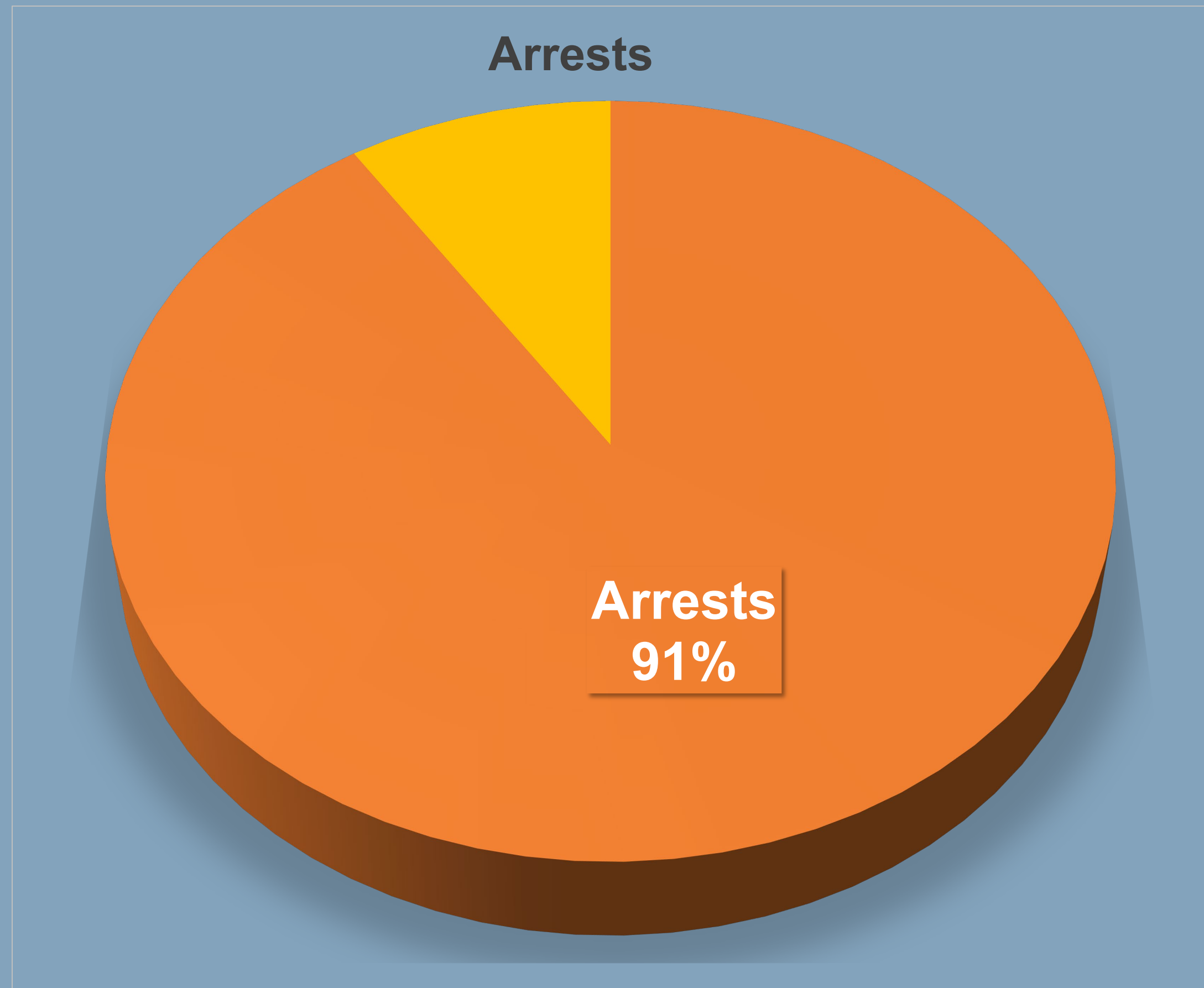


EAW



EUROPEAN ARREST WARRANT

Chances of Defence



EUROPEAN ARREST WARRANT

Judicial Authority

C-206/20 (Ruse)

- EAW can not be issued by public prosecutor if the decision is not reviewed by *another* judicial authority
- Interpretation of JA in Art. 6 (1), 6 (2) EAW FD are identical – issuing and executing JA

Poltorak (C-452/16 PPU); C-508/18 & C-82/19 (StA Lübeck); C-453/16 (Özcelik)

- Judicial Authority has to be objective and independent, can not be subject to executive direction

EUROPEAN ARREST WARRANT

Judicial Authority

CJEU C-510/19 (Openbaar Ministerie), C-58/21 (Puig Gordi)






- Requirements of JA: participation in administration of criminal justice, objective, independent, effective judicial protection
- Deficiencies of justice system in general can lead to all courts of the Member state failing to fall within JA
- But: Executing JA may not verify whether EAW was issued by competent JA

CJEU 492/22 (CJ)

- JA has exclusive competence to postpone surrender – release if postponed by non-JA?

EUROPEAN ARREST WARRANT

Judicial Authority

	GER	POR	ROM	YOUR COUNTRY?
 Judge	✓	✓	✓	
 Prosecutor	✗	✓	✗	
 Police	✗	✗	✗	
 Tax authorities	✗	✗	✗	
 Customs	✗	✗	✗	

Have to issue national AW

(CJEU C-241/15 (Bob-Dogi); C-414/20 (MM))

EUROPEAN ARREST WARRANT

Judicial Protection

CJEU C-509/18 (PF); C-566/19
& C-626/19; C-414/20 (MM)

- There must be **dual level of protection** of procedural and fundamental rights, in addition to national level: Issue of EAW by the issuing judicial authority
- Judicial protection must be **effective**
- If the court finds that the EAW was issued in violation of EU law, this does not automatically require the release. It is up to the national law of the issuing MS to determine the legal consequences
- **C-105/21 (Spetsializirana prokuratura)**: Does not require that the right to challenge the issue of an EAW before surrender.
- Must be read in context of C-414/20 (**MM**), whereby the a court, which is called upon to decide on the lawfulness of the provisional detention of a person surrendered in execution of an EAW, must declare its jurisdiction to review the conditions under which that warrant was issued where an action has been brought before it to challenge its validity in light of EU law.

EUROPEAN ARREST WARRANT

Refusal grounds

Health conditions – risk of serious illness
CJEU C-699/21 (E.D.L.)



In Absentia convictions: CJEU C-270/17 PPU (Tupikas); C-271/17 PPU (Zdziaszek); C-571/17 PPU (Ardic); C-504/24 PPU (Anacco)



Detention conditions:
CJEU C-404/15, C-659/15 PPU (Aranyosi und Căldăraru); C-220/18 PPU (ML); C-128/18 (Dorobantu); C-699/21



Violation of the fair-trial-principle
– CJEU C-216/18 PPU (LM)

EUROPEAN ARREST WARRANT

Two-Step-Assessment: Example of detention conditions

First Step: Deficiencies

Consider whether there are substantial grounds to believe that the person would face a real risk of inhumane treatment, relying on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are **deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention.**

When determining whether there are refusal grounds against an EAW

Second Step: Individual assessment

Whenever the existence of such a risk is identified, further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State.

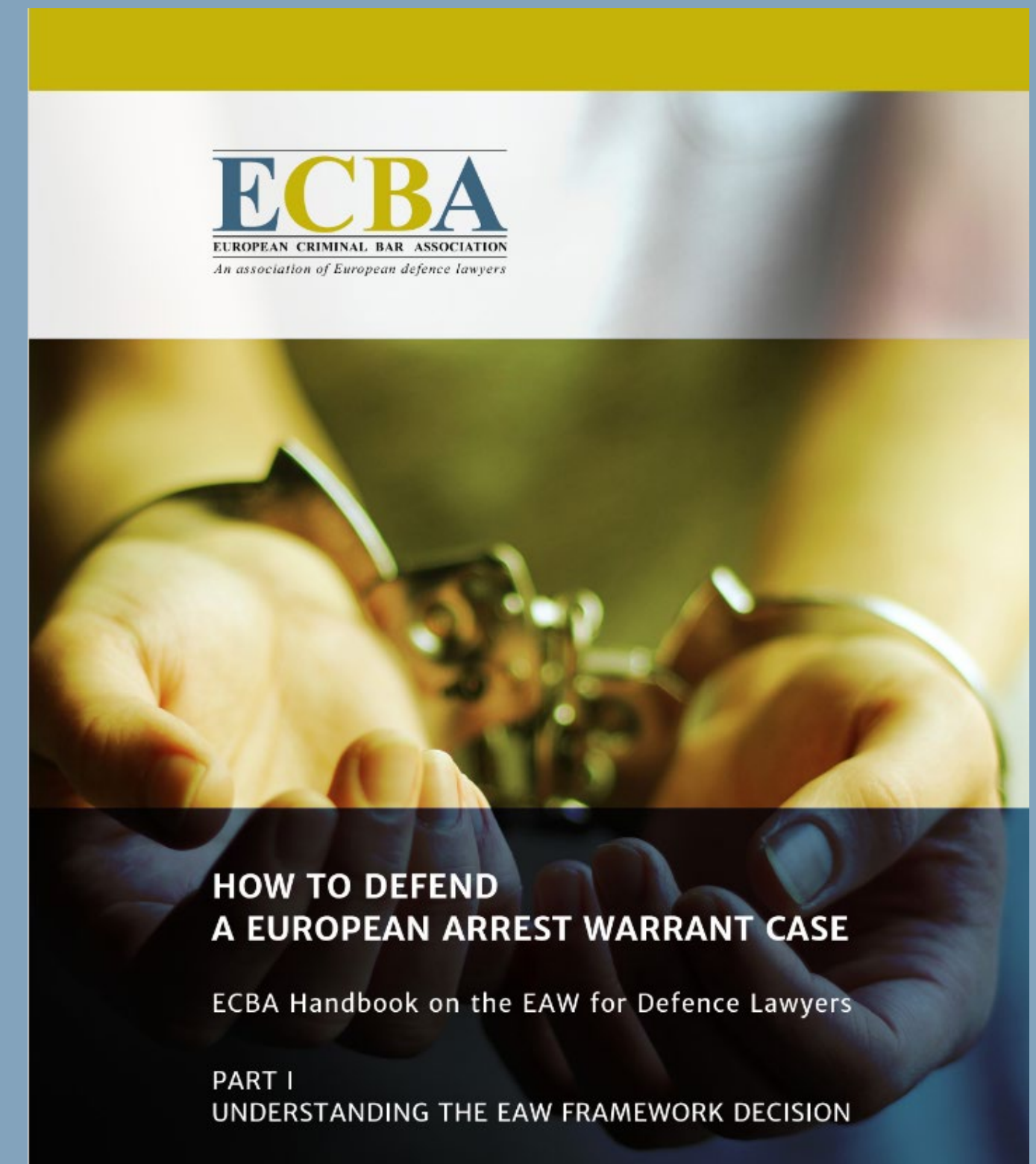
EUROPEAN ARREST WARRANT



Working Guides for CJEU Case Law



<https://www.ecba-eaw.org/extdocserv/ECBA-Handbook-on-the-EAW-Palma-Edition-2017-v1-6.pdf>



<https://www.eurojust.europa.eu/sites/default/files/assets/files/overview-case-law-cjeu-eaw-17-12-2024.pdf>



EUROPEAN INVESTIGATION ORDER

10.10.2025



PART II: THE EUROPEAN ARREST WARRANT (EAW), THIRD COUNTRY EXTRADITION AND THE EUROPEAN INVESTIGATION ORDER (EIO)



1

European Arrest Warrant (EAW)

- Judicial Authority
- Grounds for non-execution
- Two step test and the rule of law

2

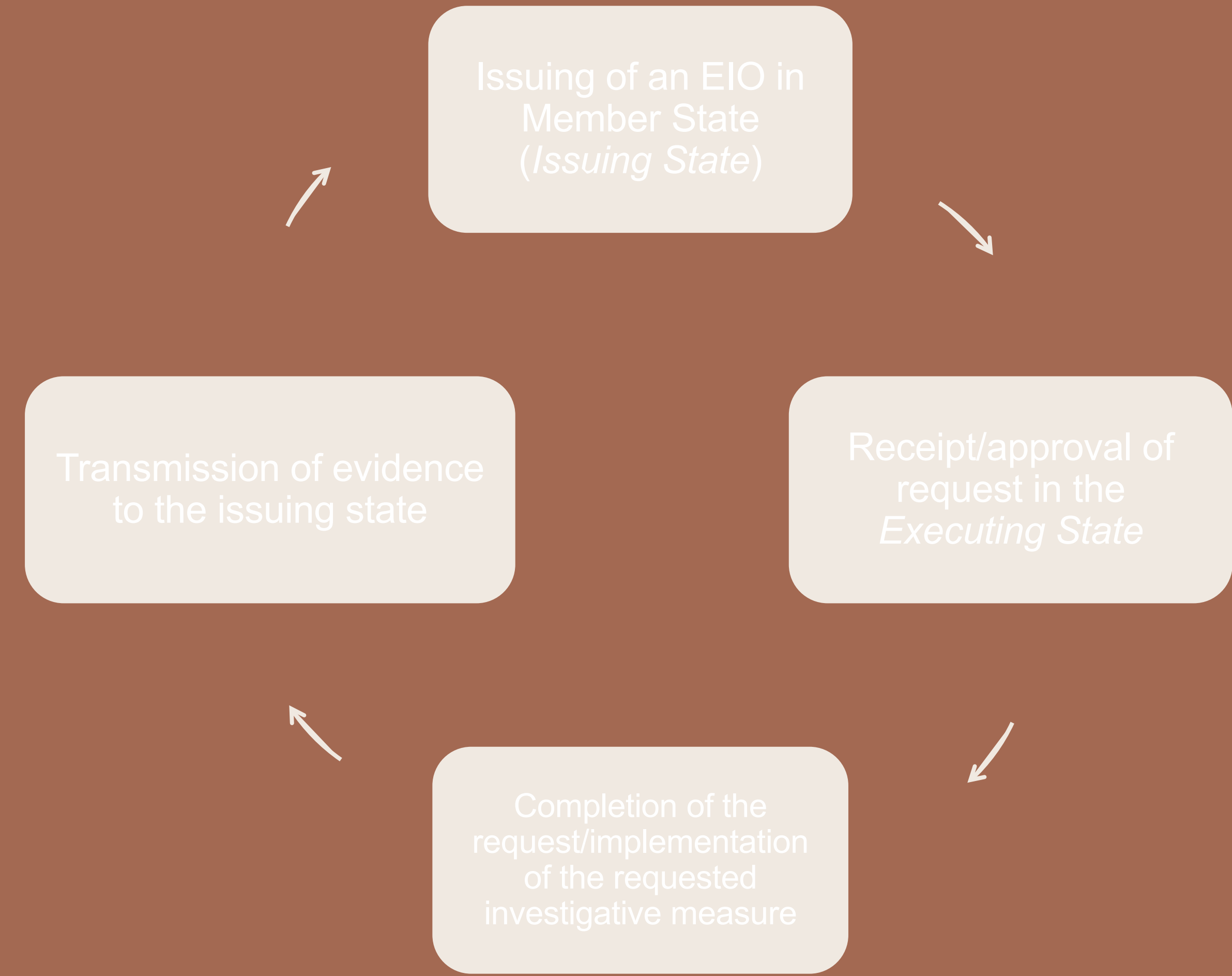
European Investigation Order (EIO)

- Basics
- Judicial Authority
- Judicial Review



EUROPEAN INVESTIGATION ORDER

Procedure



EUROPEAN INVESTIGATION ORDER

Basics

EIO

Based on EIO Directive 2014/41

Over 5.000 EIOs dealt with by EUROJUST in 2022

Instrument to request for the taking / gathering / transferring of evidence located in another MS

Types of evidence:

- Questioning of witness or accused in person or via video
- Financial information
- Transfer
- Undercover investigation
- Telecommunication monitoring

CJEU C-583/23 (Delda)

A request to serve a person an indictment does **not** constitute an EIO

A request to remand a person in custody pending trial for purposes other than those referred to in Art. 22, 23 EIO DIR, or to require him to make a bail payment, does **not** constitute an EIO

A request to allow a person to make observations **constitutes** an EIO, insofar as that request is intended to gather evidence

Yet to be determined?

JIT's and cross-border police observations

EPPO

Searches of lawyers premises and LPP

Document access for defence



EUROPEAN INVESTIGATION ORDER

Judicial & Issuing Authority

Authority

Issued by judge or public prosecutor

Other EAW

Can be applied by defence lawyer

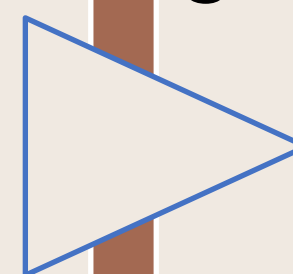
ft Wien); C-16/22 Encrochat)

Public prosecutor can be a judicial authority & issuing authority

Art. 2 (c) EIO Directive:



“issuing authority” means:

- (i) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
- (ii) **any other competent authority as defined by the issuing state** which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. In addition, before it is transmitted to the executing authority the EIO shall be **validated**, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 6.1, by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the EIO has been validated by **a judicial authority**, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO



EUROPEAN INVESTIGATION ORDER

Judicial & Issuing Authority

	GER	POR	ROM	YOUR COUNTRY?
 Judge	✓	✓	✓	
 Prosecutor	✓	✓	✓	
 Police	✗	✗	✗	
 Tax Authorities	✗	✗	✗	
 Customs	✗	✗	✗	

EUROPEAN INVESTIGATION ORDER

Judicial protection

CJEU C-324/17 (Gavanozov); C-852/19 (Gavanozov II)

The judicial authority issuing an EIO is not required to include a description of the legal remedies available in the issuing Member State.

Art. 14 EIO DIR precludes national legislation that does not provide for any legal remedy against the issuing of an EIO for searches, seizures and the hearing of witnesses via videoconference. In such circumstances, Article 6 EIO DIR does not allow the competent authority of a Member State to issue an EIO.

No statement as to what constitutes an effective substantive remedy!

Suspension of an MR instrument

Does your national law provide judicial remedies against EIOS?

Refusal Grounds

- Immunity or freedom of the press / speech
- National security reasons
- Not a criminal procedure
- Ne Bis In Idem
- Extraterritoriality and double criminality
- Fundamental rights



EIO WORKING GUIDE FOR CJEU CASE LAW

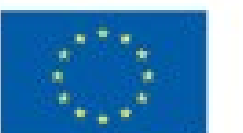
<https://www.eurojust.europa.eu/publication/case-law-court-justice-european-union-european-investigation-order>



European Union Agency for
Criminal Justice Cooperation

Case-law by the Court of Justice
of the European Union on the
European Investigation Order

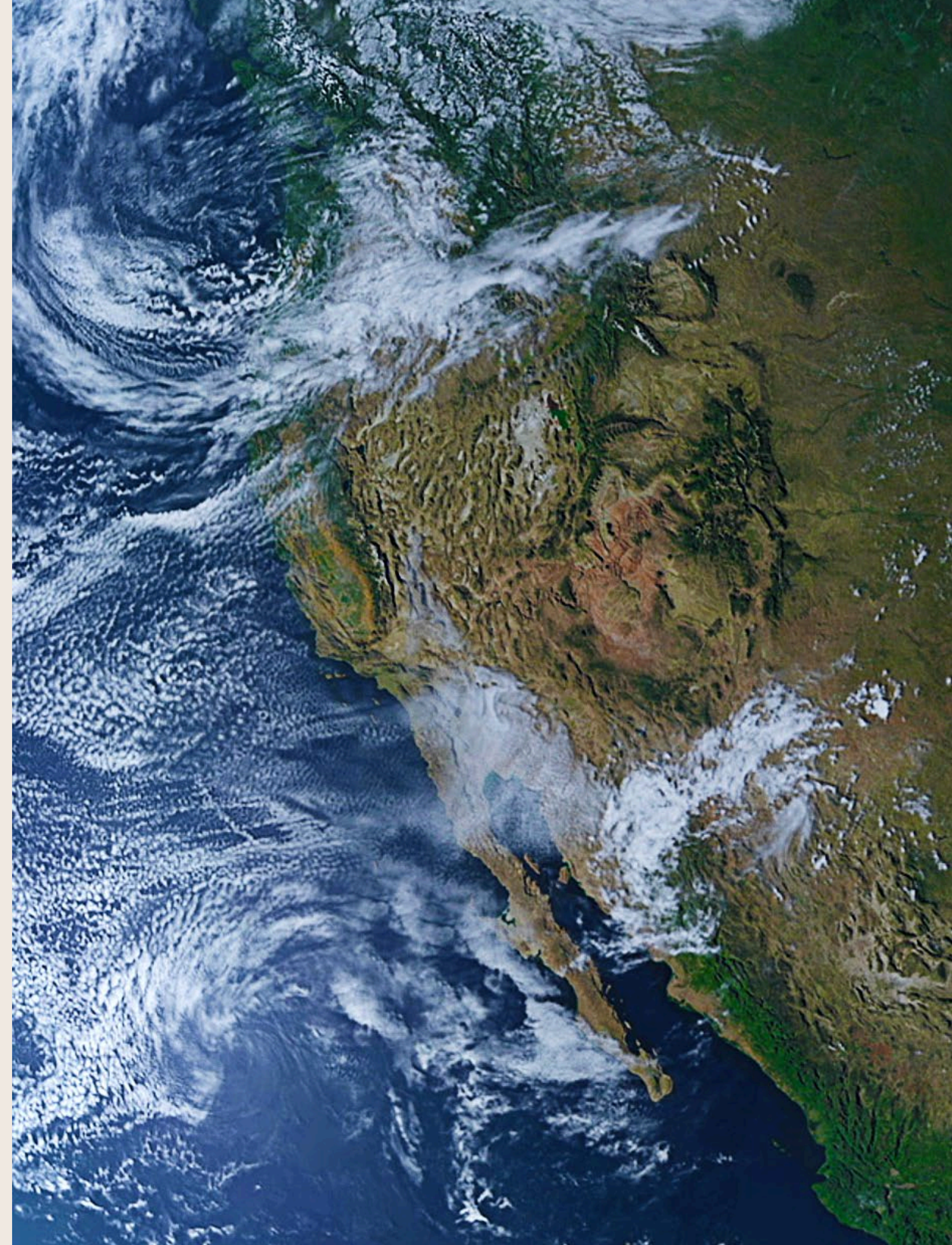
July 2025





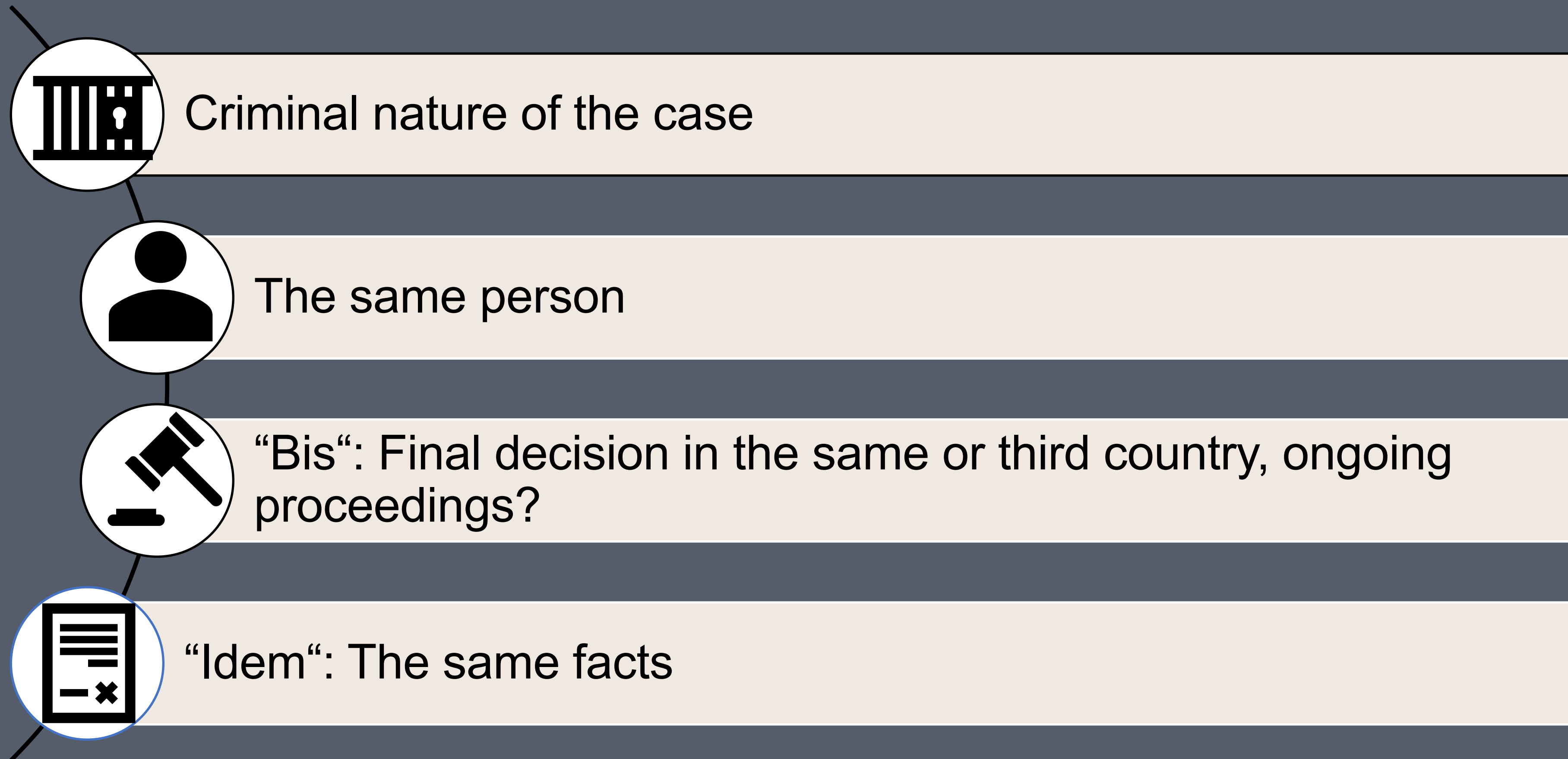
PART III: NE BIS IN IDEM

A Question of Dual Sovereignty



NE BIS IN IDEM

Basic requirements



NE BIS IN IDEM



Developing case-law (1/2)

- Gözütok and Brügge judgment of 11.11.2003, joined cases C-187/01 and C-385
- Miraglia judgment of 10.03.2005, case no. C-469/03
- Van Esbroeck judgment of 9.03.2006, case no. C-436/04
- Van Straaten judgment of 28.09.2006, case no. C-150/05
- Gasparini judgment of 28 September 2006, case no. C-467/04
- Kretzinger judgment of 18 July 2007, case no. C-288/05

NE BIS IN IDEM



Developing case-law (2/2)

- **Kraaijenbrink judgment of July 18, 2007, case no. C-367/05**
- **Bourquain judgment of December 11, 2008, case no. 297/07**
- **Turanksý judgment of 22 December 2008, case no. C-491/07**
- **Mantello judgment of 16 November 2010, case no. C-261/09**
- **Zoran Spasic judgment, 27 May 2014, Case No. C-129/14 PPU**
- **M judgment, 5 June 2014, Case No. C-398/12**

NE BIS IN IDEM

Exceptions

CJEU C-365/21 (MR), 23rd March 2023

- In cross-border prosecutions, the identity of the material act must be assessed **narrowly** and may require exact sameness, not just similarity.
- The exception to ne bis in idem concerning national security does not violate Art. 50 of the Charta

CJEU C-802/23 (MSIG), 12th September 2025

Identity of the material act is given in situations where a person is prosecuted in one MS for terrorist acts when that person was previously convicted in another MS for **participation in a terrorist organization** for the **preparation** of terrorist acts provided that it is **the same behavioral acts regardless of how they are legally qualified**

NE BIS IN IDEM

Corporate Double Jeopardy?

CJEU C-27/22 (Volkswagen)

- Ne Bis In Idem applies to administrative sanctions
- Restriction if Member states coordinate accumulative sanctions

1

Proportionality

2

Predictability

3

Coordination

Does your national law provide access to Eurojust coordination documents?

Blackbox!?



NE BIS IN IDEM

In extradition context



Priority of the national EAW

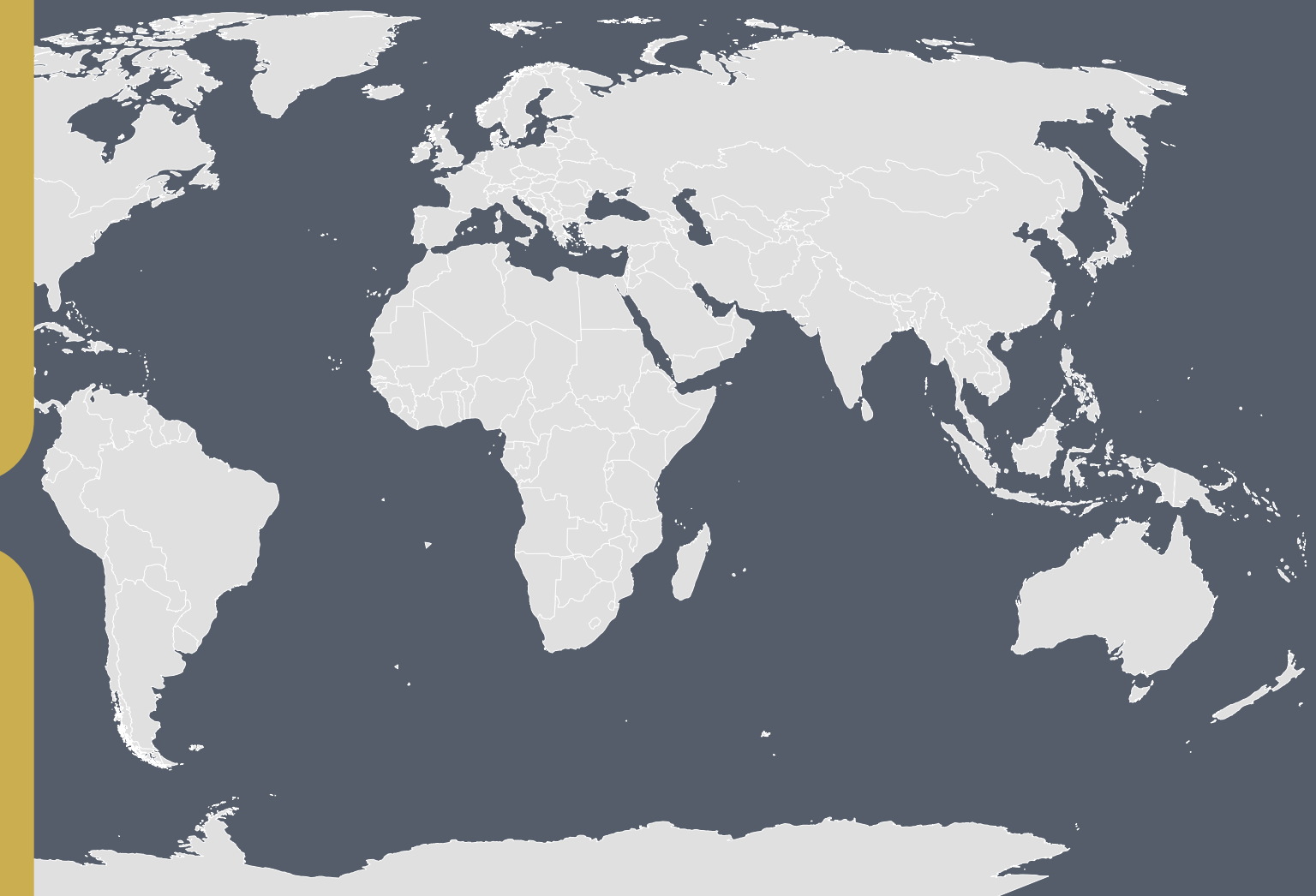
- CJEU C-182/15 (*Petruhhin*)

- CJEU C-191/16 (*Pisciotti*)



Efforts to take over by the Member State of residence (CJEU C-237/21 (*S.M.*))

No 'duty to rescue' CJEU C-398/19 (*Extradition to Ukraine*)



NE BIS IN IDEM

In extradition context

CJEU C-505/19 (WS)

- Warrants, extradition and arrest are inadmissible if a final court decision has been issued in another contracting or Member State

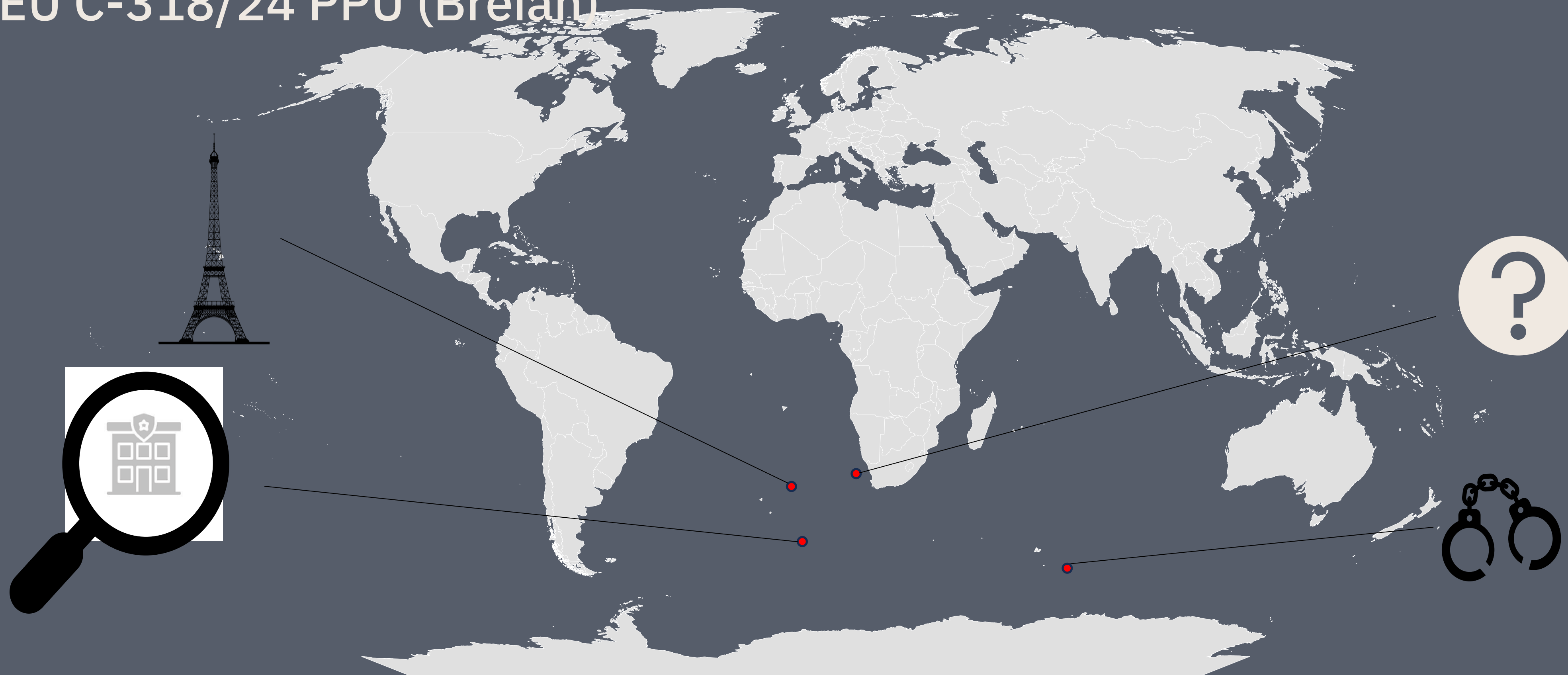
CJEU C-435/22 PPU (HF)

- Third-country nationals may not be extradited to a third country if he has already been convicted in another MS for the same offence



NE BIS IN IDEM

CJEU C-318/24 PPU (Breian)



NE BIS IN IDEM

Binding effect of extradition decisions

CJEU C-219/25 (Kamekris)

- No general binding effect of extradition decisions but duty to consider



CJEU: A COHERENT APPROACH TO MUTUAL RECOGNITION OF EXTRADITION DECISIONS?



- Asylum
(C-352/22)
- *Ne bis in idem*
(C-505/19;
C-435/22 PPU)

- Political
prosecution
- Detention
conditions & torture
Art. 3 ECHR
- Statute of
limitations
- Art. 6 ECHR

ECBA STATEMENT ON MUTUAL RECOGNITION OF EXTRADITION DECISIONS

https://ecba.org/extdocserv/publ/ECBA_STATEMENT_Mutualrecognitionextraditiondecisions_21June2022.pdf



NE BIS IN IDEM WORKING GUIDES FOR CJEU CASE LAW

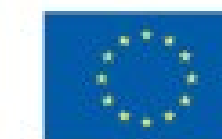
<https://www.eurojust.europa.eu/sites/default/files/assets/2024-cjeu-case-law-on-ne-bis-in-idem.pdf>



European Union Agency for
Criminal Justice Cooperation

Case-law by the Court of Justice
of the European Union on the
principle of *ne bis in idem* in
criminal matters

February 2024





THANK YOU FOR YOUR ATTENTION!

Vânia Costa Ramos
Advogada / Partner
Carlos Pinto de Abreu e Associados

&

Sören Schomburg
Rechtsanwalt / Partner
Knauer Partnerschaft v. Rechtsanwälten mbB

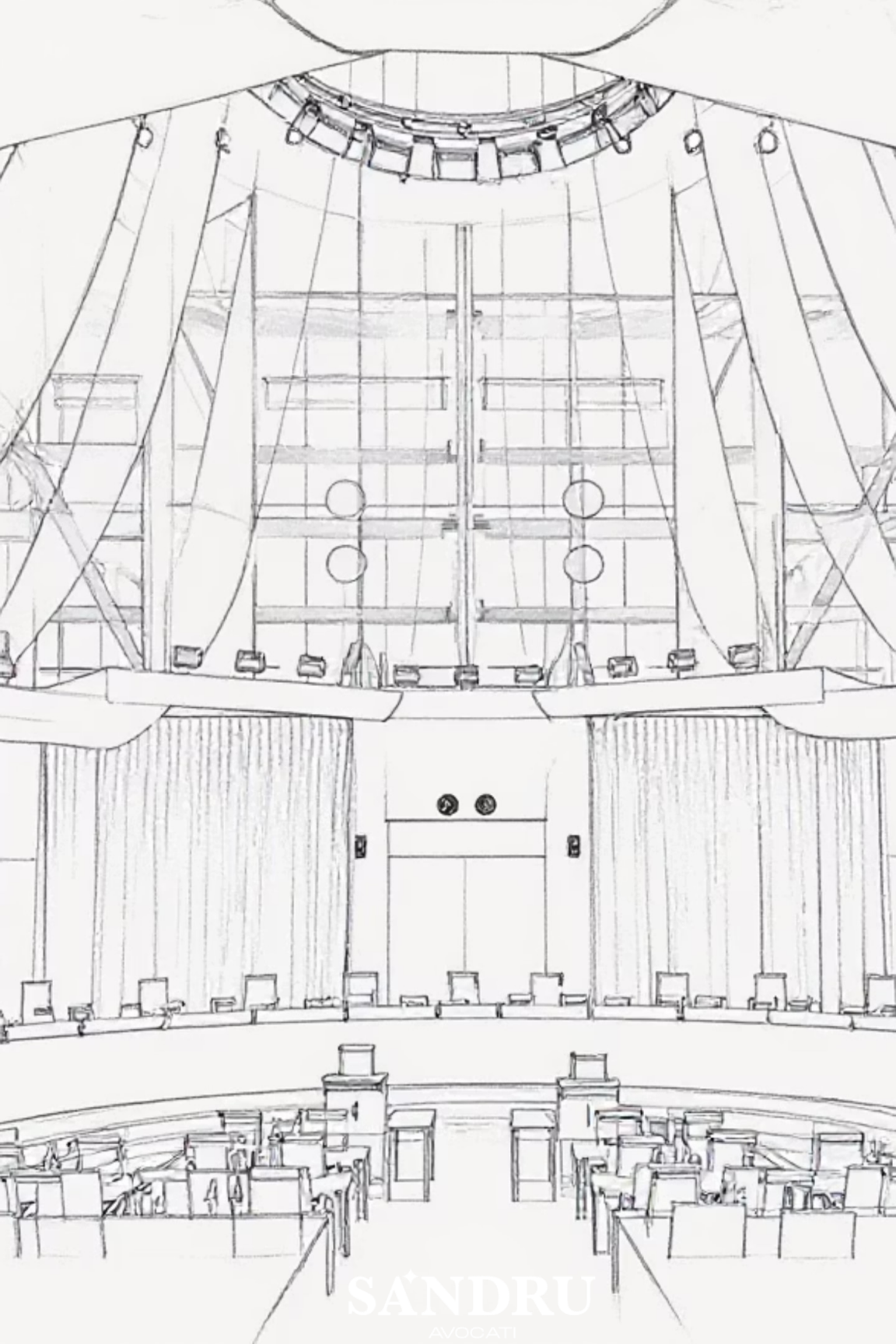
Judicial Review of EPPO Acts and Cross-Border Evidence Collection

Insights from Recent CJEU Case Law

Adrian Şandru

ECBA Advisory Board, Criminal Defence Lawyer

Bucharest Romania



Opening Remarks



ECBA Framework

European Criminal Bar Association
perspectives on judicial
cooperation and defence rights



EPPO Structure

European Public Prosecutor's Office
exercising investigative and
prosecutorial powers across
Member States



CJEU Guidance

Court of Justice providing
interpretative clarity on procedural
autonomy and fundamental rights

This presentation examines the evolving jurisprudence shaping the relationship between European prosecution mechanisms and national procedural safeguards.

EPPO: Open the investigation



- EPPO receives a piece of information from EU bodies or national authorities (art. 24 para 1-5)
- Registration of the information (case management system) - art. 24 para 6
- Verification of the information (art. 24 para 6): two options:
 - a) No grounds to initiate an investigation (art. 24 para 7)
 - b) Initiation of the investigation (art. 26 para 1)

In the view of EctHR the `reasonable time` may begin to run from the start of the preliminary investigation (Ringeisen v. Austria para. 110; Subinsli v. Slovenia para. 65-68).

The EPPO Structure

Central level vs national level

Regulation (EU) 2017/1939

Central level:
The European Chief
Prosecutor
The EPPO College

Strategic competence

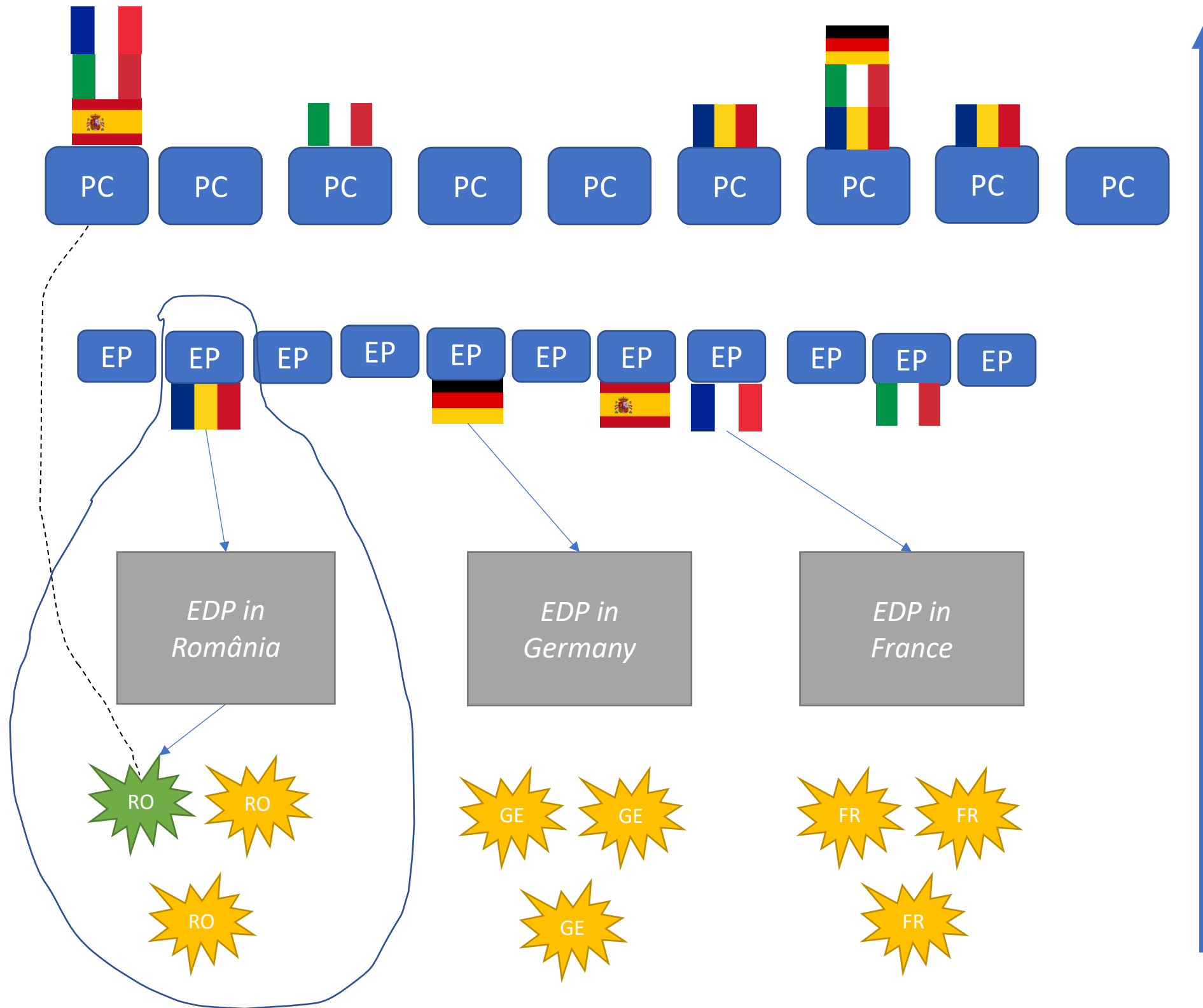
Central level:
15 Permanent Chambers (PC)
24 European prosecutors (EP)

Operational competence

Decentralized level:
European delegated prosecutors (EDP) in every 22 + 2 states (Sweden and Poland)



Decision taking during the investigation



- The investigation is monitored and controlled by a randomly appointed PC (other PC than those in which the EP from the same MS is a member)
- The investigation is supervised by the EP
- The investigation is carried out by the EDP in every MS

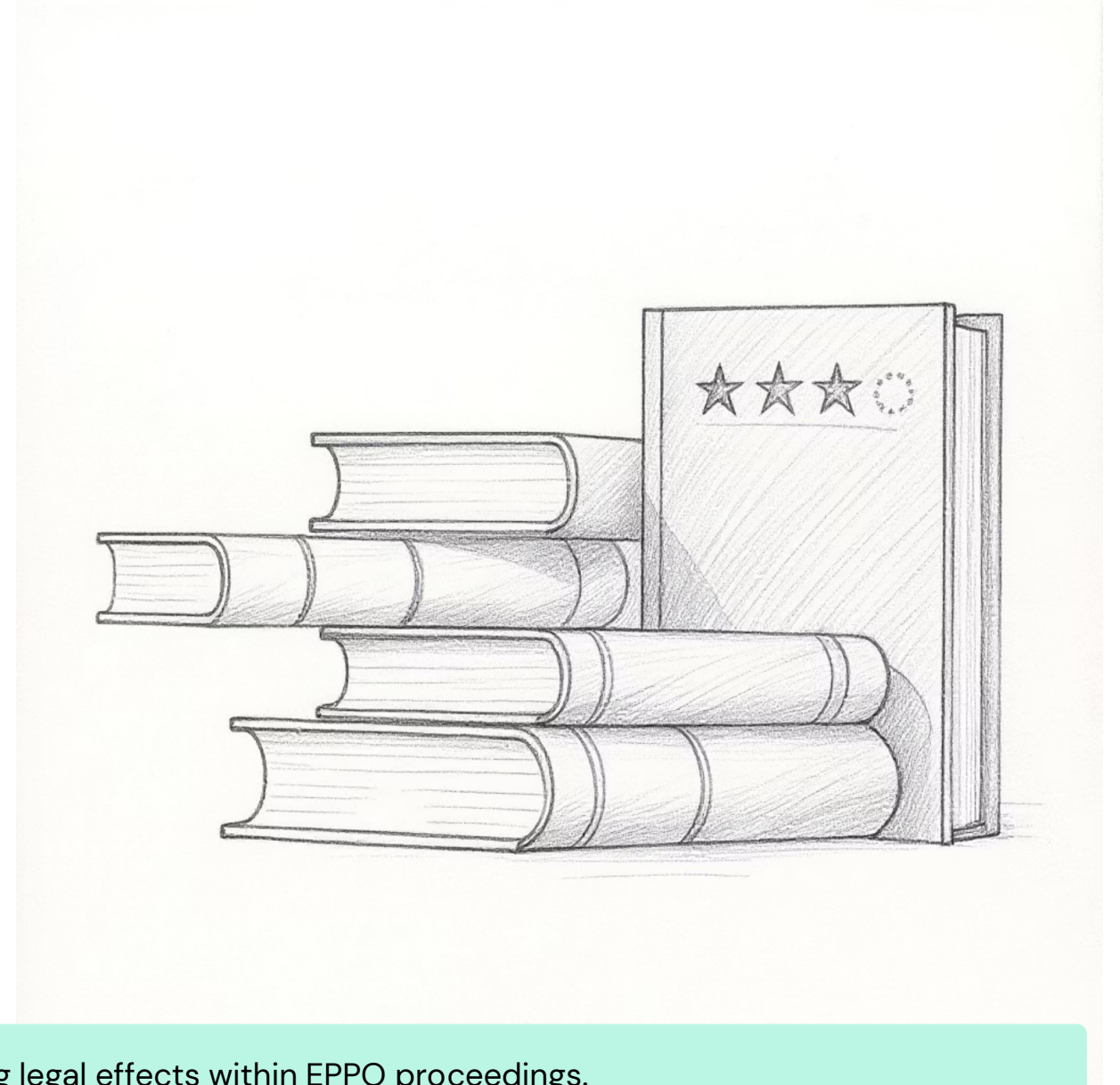
The Legal Framework: CJEU and the EPPO

Shaping procedural autonomy and defence rights

Regulation (EU) 2017/1939 establishes the foundation, with Article 42 guaranteeing judicial review of EPPO procedural acts before national courts.

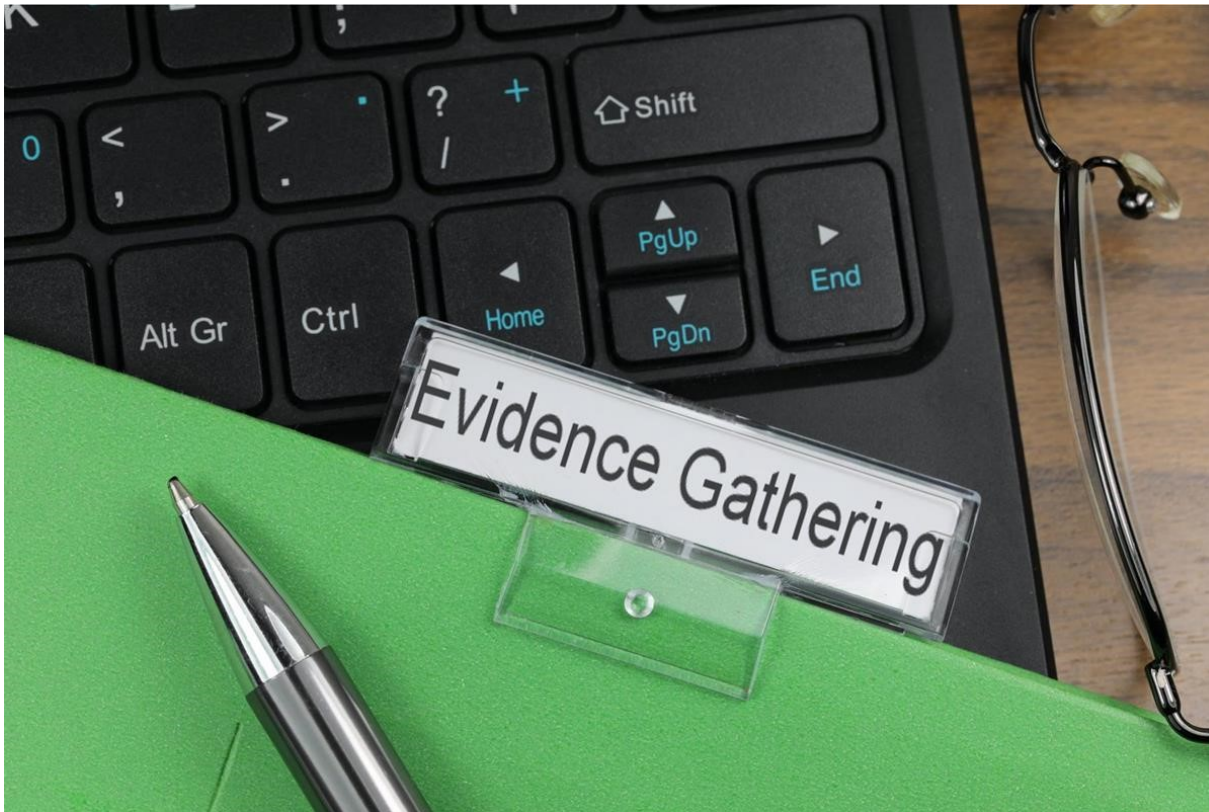
Recent CJEU case law increasingly defines the **limits of national procedural autonomy**, ensuring Member States cannot undermine effective judicial protection.

The intersection of judicial review, evidence admissibility, and institutional cooperation between OLAF and EPPO creates a complex landscape requiring careful navigation.



Article 42 serves as the cornerstone for ensuring that individuals can challenge acts producing legal effects within EPPO proceedings.

Cross-Border Evidence Collection



- When the EDP handling the case shall decide on the adoption of the necessary measure, he/she assigns it to one/more EDP located in the Member State where the measure needs to be carried out.
- Information to the supervising EP
- The justification and adoption of such measure shall be governed by the law of the Member States' of the handling EDP
- The national law of the MS of the handling EDP does not require the judicial authorisation, but the law of MS of the assisting EDP requires it: the assisting EDP shall obtain the authorisation in accordance with his/her national law.
- The authorisation is refused: the handling EDP withdraws the application
- The national law of the MS of the handling EDP requires the judicial authorisation, but the law of the MS of the assisting EDP does not require it: the handling EDP shall obtain the authorisation and transmit it to the assisting EDP with the assignment
- CJEU case case C-281/22 G.K and Others

Case Study: C-281/22 G.K



Key Issue

Whether national courts can refuse to review EPPO procedural acts that produce legal effects on individuals' rights



CJEU Holding

Article 42(1) mandates effective judicial protection before national courts. Member States cannot exclude review of acts generating legal consequences for defence rights.



Practical Impact – Legal doctrine view

N. Franssen, *The judgment in G.K. e.a. brought the EPPO a pre-Christmas tiding of comfort and joy but will that feeling last?*, Dr. H.H. Herrnfeld, *Yes Indeed, Efficiency Prevails*, V. C. Ramos, *The EPPO and the equality of arms between the prosecutor and the defence.*



Case Study: C-292/23 – I.R.O. and F.J.L.R.



Central Question

Can Spanish procedural law restrict judicial review of European Delegated Prosecutor acts without violating EU guarantees?



Legal Framework

Analysis centers on Article 42(1) read in conjunction with Article 19 TEU and Article 47 Charter of Fundamental Rights



Expected Outcome

National rules must ensure meaningful right to challenge EPPO acts affecting individual rights and freedoms

Nature of the Act

Focus on whether procedural decisions produce independent legal effects warranting judicial scrutiny

Hierarchical Clarity

Anticipated clarification on primacy of EU procedural guarantees over national procedural autonomy traditions

Case Study: T-103/23 – VCS vs EPPO



Central Question

Can the General Court review an investigative act of the EPPO in the view of EU law autonomy?



Legal Framework

Article 42(1) read in conjunction with Article 19 TEU and Article 47 Charter of Fundamental Rights



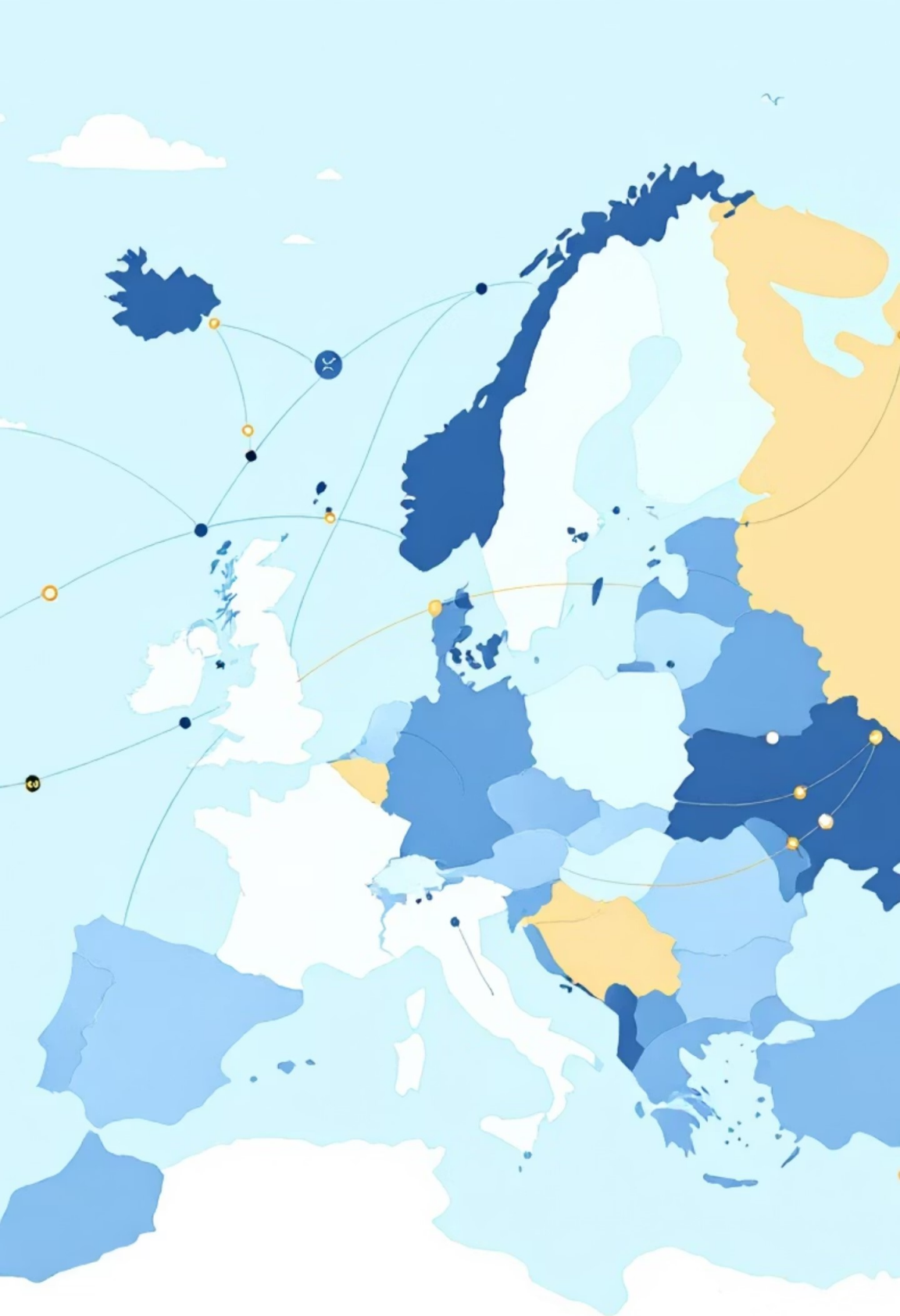
Outcome

National courts should review EPPO acts and shall use preliminary reference (267 TFEU) for the CJEU to review EPPO Acts

Nature of the Act

Decision of the PC is an investigative acts that produces effects vis a vis third parties.

CJEU's role is limited to preliminary rulings on validity under Article 42(2), not direct annulment by the EU courts in many cases.



Cross-Border Evidence Collection

From mutual recognition to mutual trust

01

EPPO Powers

Article 31 EPPO Regulation authorizes investigative measures across Member States without traditional mutual legal assistance delays

02

Defence Safeguards

EU Directives 2010/64 (interpretation/translation), 2012/13 (information rights), and 2013/48 (access to lawyer) apply throughout – art. 41 EPPO Regulation

03

Admissibility Questions

Legality of evidence gathered via EPPO cross-border cooperation depends on respect for both EU standards and national procedural rules

04

Jurisprudential Links

Jurisprudence could be build on principles from Aranyosi and Căldăraru regarding fundamental rights protection in mutual recognition

Two voices, one orchestra?



Key Coordination Points

- **Article 101** of Regulation 2017/1939 governs information exchange between EPPO and OLAF
- OLAF retains administrative investigation powers while EPPO exercises criminal jurisdiction
- CJEU emphasizes procedural harmony and consistency in defence rights across both mechanisms

Two voices, one orchestra?



Legal basis

- **Article 101** of Regulation 2017/1939 governs information exchange between EPPO and OLAF
- Article 12c, 12d, 12e, 12f of the OLAF Regulation:
- **Non-duplication of investigations**
- **Complementary investigations**
- **Point 6 of the Working Arrangement between EPPO and OLAF – support, complementary investigations and other operational cooperation**
- Case T 200/25 Giftrans and Giurgiuman v Commission

Key Takeaways

1

Judicial Protection Reinforced

CJEU consistently strengthens effective judicial protection as the cornerstone of all EPPO proceedings, ensuring individuals can meaningfully challenge acts affecting their rights

2

Autonomous EU Standard

Article 42 EPPO Regulation interpreted as establishing an autonomous EU standard that Member States must respect, limiting national procedural discretion

3

OLAF Cooperation Framework

Cooperation with OLAF must respect defence rights and procedural fairness principles throughout both administrative and criminal phases

4

Evolving Jurisprudence

Future cases will continue refining the delicate balance between investigative efficiency and procedural guarantees for the accused



Open Questions and Future Developments

Scope of "Legal Effect"

How far does the concept of "legal effect" under Article 42 extend? Which preparatory or interim acts trigger the right to judicial review?

EPPO–OLAF Regulation

Should the interface between EPPO and OLAF be further regulated through detailed guidelines, or will case-by-case jurisprudence suffice?

Procedural Diversity Limits

To what extent may Member States maintain procedural diversity without breaching the effectiveness principle required by EU law?

Effective Remedies

How will national courts ensure effective remedies for procedural breaches without compromising the speed and efficiency of EPPO investigations?

Thank you for your attention!

Are you a criminal lawyer or involved in European criminal law?

Would you like to contribute to the defence of fundamental rights at the European level?

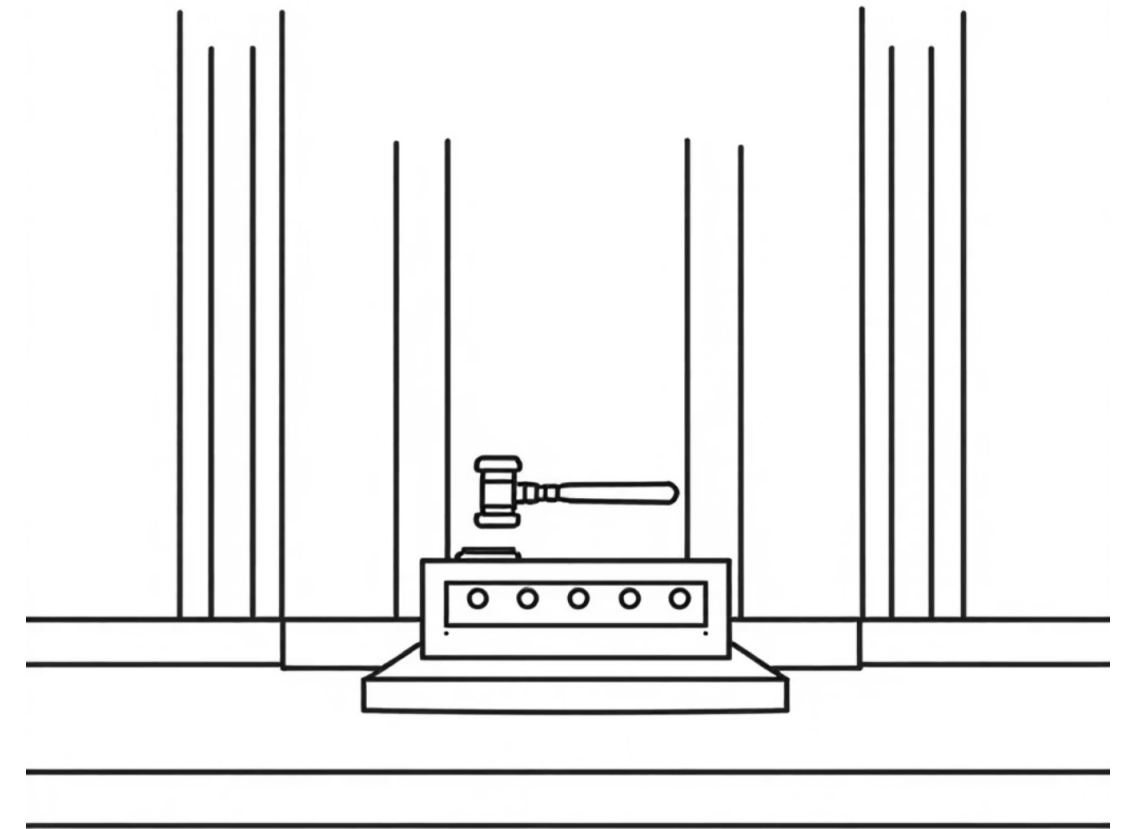
Want to join an active, committed and influential network?

Join the ECBA! www.ecba.org

For any questions or exchanges, do not hesitate to contact us:

secretariat@ecba.org

Adrian ŞANDRU – ECBA ADVISORY BOARD, CRIMINAL DEFENCE LAWYER,
ROMANIA



ECBA

