

Cross-Border Procedures and the EAW

TRAINING FOR DEFENCE LAWYERS

Online, 11 November 2026

ONLINE

EXCELLENCE IN EUROPEAN LAW

Speakers

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Irene specialises in criminal law, European judicial proceedings, and human rights, with particular expertise in cases involving the European Public Prosecutor's Office (EPPO), cybercrime, and EU law.

Key topics

- The EAW procedure from the perspective of the defence
- Defence strategies: challenging surrender and protecting the rights of the requested person
- Twenty years of CJEU case law: the development of mutual trust, mutual recognition and fundamental rights
- The future of EAW practice: cross-border defence, digitalisation and emerging challenges

Language
English

Event number
326DT124

Organiser
Cornelia Riehle (ERA)

Co-funded by the European Union.

european.law

Cross-Border Procedures and the EAW

Wednesday, 11 November 2026

14:15 Connecting to the videoconference platform

14:30 Opening of the online seminar

14:35 **The Life Cycle of a European Arrest Warrant: Acting for the Defence**

- The EAW framework, objectives and key principles
- The different stages of an EAW case: issuing, arrest, hearing, surrender and subsequent proceedings
- The role of the defence lawyer in the issuing and executing State
- Defence strategy: procedural rights, grounds for non-execution, deadlines and practical challenges from the first client meeting onwards

Irene Lepre

15:30 Discussion followed by a break

15:45 **Twenty Years of CJEU Case Law: The Changing Nature of Mutual Trust**

- The evolution of the EAW through CJEU case law
- Mutual trust and mutual recognition: principles, limits and practical realities
- Fundamental rights as a constraint on surrender: prison conditions, judicial independence, fair trial rights and ne bis in idem
- Current debates: conditional mutual trust, proportionality, the future of the EAW and implications for defence lawyers

Lorenzo Bernardini

16:30 Discussion followed by a break

16:45 **Defence Strategies in European Criminal Proceedings: Looking Beyond the EAW**

- Building an effective cross-border defence strategy: cooperation with foreign counsel and managing multi-jurisdictional cases
- Using EU procedural rights and mutual recognition instruments in practice
- The future challenges for the defence: digitalisation, electronic evidence, remote proceedings and equality of arms

Jean-Christophe De Block

17:45 Discussion followed by a break

18:00 End of the online seminar

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



Times indicated are CET
(Central European Time)

Objective

This online seminar will focus on the European Arrest Warrant (EAW) from the perspective of the defence, while also exploring its wider context within EU criminal justice cooperation. It will examine how to effectively represent clients in EAW and cross-border proceedings, including the practical role of defence lawyers, defence rights and strategies for challenging surrender. The seminar will explore key developments in the case law of the CJEU, including the evolving relationship between mutual trust, mutual recognition and fundamental rights. It will also address broader defence strategies in European criminal proceedings, including cross-border cooperation, EU procedural rights and the impact of digitalisation on defence practice.

Who should attend?

Lawyers in private practice with an interest in criminal law in the EU and who are citizens of eligible EU Member States participating in the EU Justice Programme (Denmark does not participate), Albania, Bosnia and Herzegovina, Kosovo*, Moldova 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.

Interactive online seminar

The online seminar will be hosted on the Zoom videoconference platform. You will be able to interact immediately and directly with our top-level speakers and other participants. We will make the most of the technical tools available to deliver an intensive, interactive experience. The highest security settings will be applied to ensure that you can participate safely in this high-quality online conference.

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Terms and conditions of participation

- No registration fee.
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- 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.
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- A certificate of attendance will be issued after the webinar to all those that participated in the entire event.

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Training for Defence

This online seminar is part of a broader project on European Criminal Law for Defence Lawyers supported by the European Commission. Further information about the European Criminal Law for Defence Lawyers project: training-for-defence.era.int

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Cross-Border Procedures and the EAW

European Criminal Law for Defence Lawyers in a Transforming Digital Landscape

Online, 11 November 2026 (326DT124)

Co-funded by the European Union

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Background documentation

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

A) Extradition and Mutual Legal Assistance

A1	European Convention on Extradition (Strasbourg, 13.XII.1957)
A2	European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20.IV.1959)
A3	Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978)
A4	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001)

A5	Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 29 May 2000; OJ C 197, 12.7.2000, p. 1)
A6	Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Council Act of 16 October 2001; OJ C 326, 21.11.2001, p. 1)
A7	Agreement between the European Union and Iceland and Norway on the surrender procedure (OJ L 292, 21.10.2006, p. 2)
A8	Extradition Hub – international database of extradition and European Arrest Warrant case law

B) Conflicts of Jurisdiction and Transfer of Proceedings

B1	European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 15.V.1972)
B2	Convention on the Transfer of Sentenced Persons (ETS No. 112, Strasbourg, 21.III.1983)
B3	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, 15.12.2009, p. 42)
B4	Eurojust Guidelines for deciding 'Which jurisdiction should prosecute?' (2016)
B5	Eurojust: Case-law by the Court of Justice of the European Union on the principle of ne bis in idem in criminal matters
B6	Eurojust Report on the transfer of proceedings in the European Union (2023)
B7	Regulation (EU) 2024/3011 of 27 November 2024 on the transfer of proceedings in criminal matters

C) European Arrest Warrant and Mutual Recognition

C1	Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
C2	Commission Notice – Handbook on how to issue and execute a European Arrest Warrant (C/2023/1270, 15.12.2023)
C3	FRA: European Arrest Warrant proceedings – Room for improvement to guarantee rights in practice (26 March 2024)

C4	Eurojust: Case-law by the Court of Justice of the European Union on the European Arrest Warrant – 2025
C5	Eurojust: Summary of the report on the speciality rule under the European Arrest Warrant (13 May 2026)
C6	Extradition Hub: Global database entirely dedicated to Extradition and European Arrest Warrant case law, built around the concrete case.
C7	Council Framework Decision 2009/299/JHA of 26 February 2009 on decisions rendered in the absence of the person concerned at the trial
C8	Council Framework Decision 2008/909/JHA on mutual recognition of judgments imposing custodial sentences or measures involving deprivation of liberty
C9	Council Framework Decision 2008/947/JHA on mutual recognition of judgments and probation decisions
C10	Council Framework Decision 2009/829/JHA on supervision measures as an alternative to provisional detention
C11	European Committee for the Prevention of Torture: A decency threshold for prisons – criteria for assessing conditions of detention.

D) Digitalisation, Electronic Evidence and Remote Proceedings

D1	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters
D2	Eurojust: Case-law by the Court of Justice of the European Union on the European Investigation Order (2025)
D3	Regulation (EU) 2023/1543 on European Production Orders and European Preservation Orders for electronic evidence
D4	Directive (EU) 2023/1544 laying down harmonised rules on designated establishments and legal representatives for gathering electronic evidence
D5	Eurojust meeting report on the EU e-Evidence package
D6	Directive (EU) 2016/680 (Law Enforcement Directive)
D7	Regulation (EU) 2023/2844 on the digitalisation of judicial cooperation and access to justice in cross-border matters

D8	Directive (EU) 2023/2843 as regards digitalisation of judicial cooperation

E) Procedural and Fundamental Rights

E1	Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391)
E2	FRA / ECtHR: European Arrest Warrant and Fundamental Rights – ECtHR and CJEU Case-Law, Joint Factsheet (18 June 2024)
E3	Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings
E4	Directive 2012/13/EU on the right to information in criminal proceedings
E5	Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings
E6	Directive (EU) 2016/343 on the presumption of innocence and the right to be present at the trial
E7	Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings
E8	Directive (EU) 2016/1919 on legal aid for suspects and accused persons and for requested persons in EAW proceedings

Training for Defence

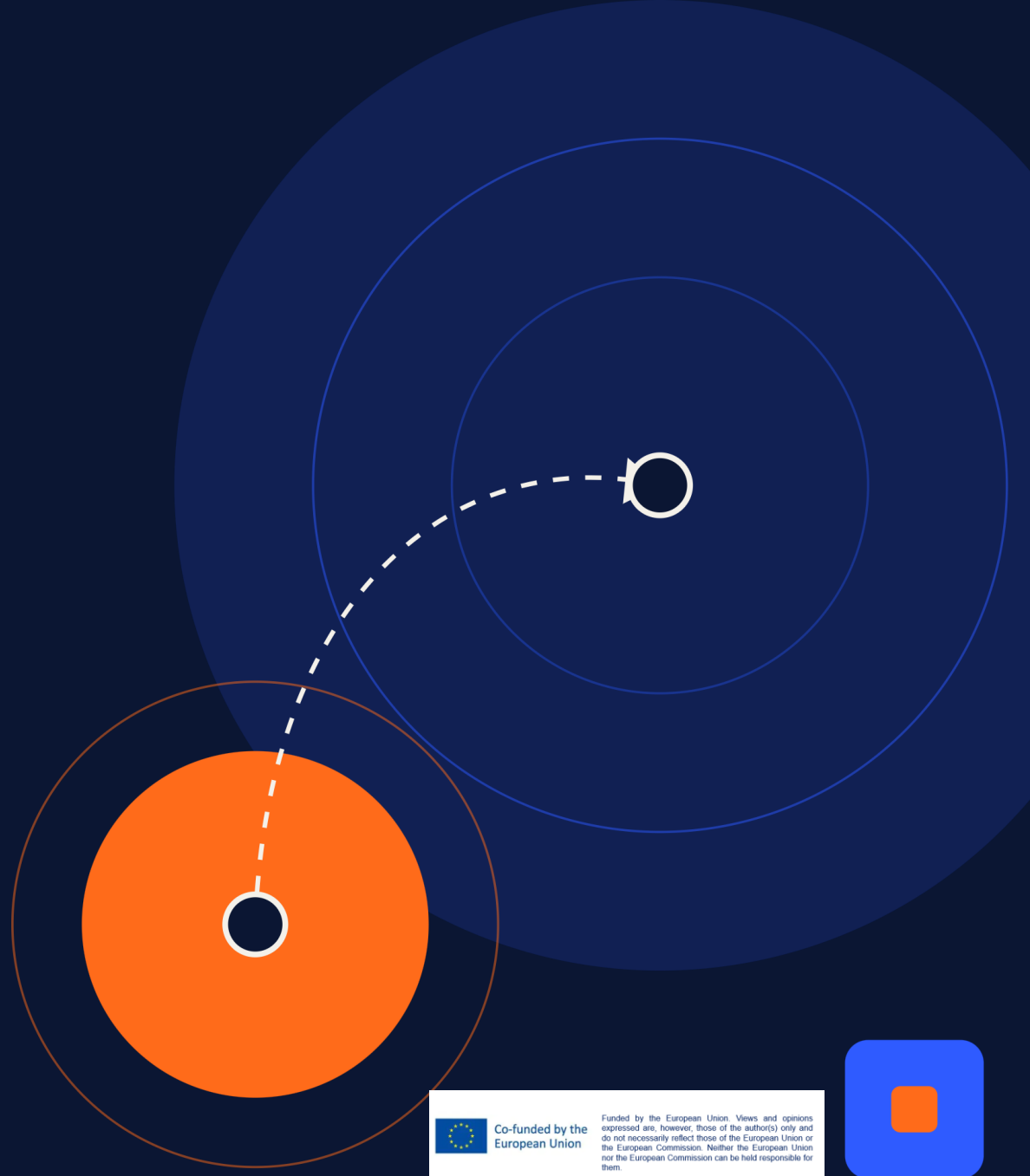
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CROSS-BORDER PROCEDURES AND THE EAW

The Life Cycle of a European Arrest Warrant

Acting for the Defence



Irene Lepre

Criminal defence lawyer · Studio Legale Lepre · Naples

Organised by **ERA – Academy of European Law**
Training for defence lawyers · Online, 11 November 2026

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2024 · WITH CONSENT

24

days

average time from arrest to surrender when the requested person consents

BEFORE WE START

The fastest tool in European criminal justice

57.65	days on average **without** consent
14,458	EAWs issued by the Member States in 2024

Every day on that calendar is a decision for the defence.

Source: European Commission, EAW statistics for 2024

SETTING THE SCENE

What an EAW is, and where it comes from

ART. 1(1), FD 2002/584/JHA

"The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order."

1999 Tampere: mutual recognition becomes the "cornerstone"

2002 Framework Decision 2002/584/JHA adopted

2004 **Applies from 1 January and replaces extradition between Member States**

Government to government → judge to judge

No ministers

Tight deadlines

The breakthrough: 32 categories without double criminality

THE KEY IDEA

“Trust is mutual, but not blind.”

After K. Lenaerts, *La vie après l’avis: Exploring the principle of mutual (yet not blind) trust*, Common Market Law Review, 54 (2017)

A presumption is not an act of faith.

Art. 1(3) FD · Art. 6 TEU · Charter of Fundamental Rights — *Aranyosi* (2016), *LM* (2018)

SCOPE · ART. 2 FD 2002/584/JHA

The thresholds

1 · Can an EAW be issued?

12 months

Prosecution EAW: the offence must carry a maximum penalty of at least 12 months · Art. 2(1)

4 months

Conviction EAW: the sentence actually imposed must be at least 4 months · Art. 2(1)

Below these thresholds, no EAW can be issued.

2 · Is double criminality checked?

32 offences

No, if the offence falls within one of the **32 categories** and carries a maximum penalty of at least **3 years** in the issuing State · Art. 2(2)

Yes, it may be required for all other offences · Arts 2(4) and 4(1)

Categories, not defined offences: the issuing State does the classifying · serious, often cross-border · a mixed list

KEY PRINCIPLES

The rules of the game: four principles

Mutual recognition

The issuing State's decision is executed in the executing State without any review of the merits: no new trial, no assessment of the evidence.

So: execution is the rule; refusal is the exception.

Art. 1(2) FD

Fundamental rights

The Framework Decision leaves the obligation to respect fundamental rights untouched: it is the outer limit, and it applies to every EAW.

So: in exceptional circumstances, even a valid warrant may go unexecuted if there is a real risk of a breach.

Art. 1(3) FD · Art. 6 TEU · Charter · *Aranyosi*

Proportionality

It is assessed by the issuing authority before issuing: seriousness of the offence, likely penalty, less intrusive alternatives.

So: as a rule, the executing State cannot refuse because it considers the EAW or the penalty disproportionate.

Commission Handbook 2023 · *Tagu*, C-583/24

An exhaustive list of grounds

Surrender may be refused only on the grounds set out in the Framework Decision: Arts 3, 4 and 4a.

So: the executing State cannot add grounds of its own drawn from national law.

Puig Gordi, C-158/21

For the defence: the grounds are only those listed, so each one has to be tested against the facts of the case; fundamental-rights argument needs specific, up-to-date evidence about the person and the prison.

THE STAGES OF AN EAW CASE

Five stages, two States, one clock

Issuing State Executing State

01

Issuing

A judicial authority adopts the national decision and issues the EAW, which is entered in the **Schengen Information System (SIS)**, the database every police force checks.

Before day 0

→

02

Arrest

The person is arrested in the executing State and informed of the EAW. They are entitled to an interpreter, a translation of the warrant and a lawyer in both States.

Day 0

→

03

Hearing and decision

The requested person states whether they consent to surrender. If not, the defence raises the grounds for refusal and the executing judicial authority rules on surrender.

10 or 60 (+30) days

→

04

Surrender

The person is handed over to the authorities of the issuing State. Surrender may be postponed for serious humanitarian reasons, or deferred if the person faces proceedings in the executing State.

≤ 10 days from the decision

→

05

After surrender

Speciality: no prosecution for other offences committed before surrender. Custody abroad is deducted from the sentence. Where return was guaranteed, a national or resident serves the sentence in the executing State.

In the issuing State

The stages play out in two States, so the client needs two lawyers, one in the issuing State and one in the executing State, working together · Art. 10, Directive 2013/48/EU

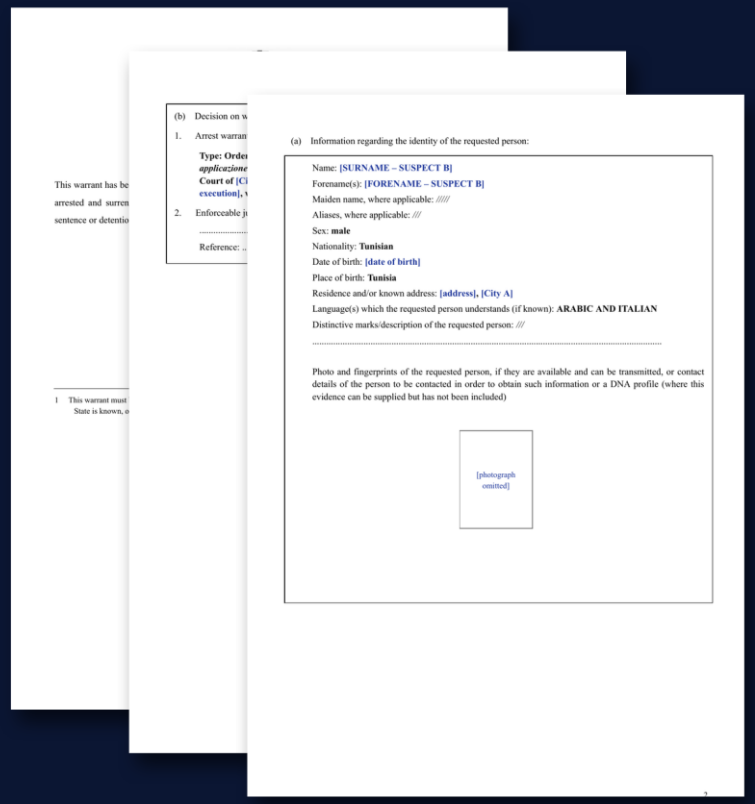
Prosecution EAW and conviction EAW: what changes

	Prosecution EAW	Conviction EAW
Purpose	To conduct a criminal prosecution: the person has not yet been finally convicted.	To enforce a custodial sentence or detention order already imposed.
What it rests on	A national coercive measure, such as a domestic arrest warrant or detention order.	An enforceable conviction.
Threshold · Art. 2(1)	An offence carrying a maximum penalty of at least 12 months.	A sentence of at least 4 months actually imposed.
Nationals and residents	Surrender goes ahead, but it may be made conditional on the person being returned to serve any sentence in the executing State (Art. 5(3)).	Surrender may be refused if the executing State undertakes to enforce the sentence itself (Art. 4(6)).
Trial in absentia · Art. 4a	Not relevant: there is no conviction yet.	Relevant: check whether the person was informed, was represented, or is entitled to a retrial.
If the client consents	They will stand trial in the issuing State, where they can contest the merits.	They will serve the sentence in the issuing State.

In practice: this is the first thing to establish at the first meeting, because it changes the available grounds for refusal, the guarantees to seek and the advice on consent.

LIVE READING · FORM AND CONTENT

Reading an EAW, section by section



(a) Information regarding the identity of the requested person:

Name: [SURNAME – SUSPECT B]
Forename(s): [FORENAME – SUSPECT B]
Maiden name, where applicable: ////
Aliases, where applicable: ///
Sex: **male**
Nationality: **Tunisian**
Date of birth: [date of birth]
Place of birth: **Tunisia**
Residence and/or known address: [address], [City A]
Language(s) which the requested person understands (if known): **ARABIC AND ITALIAN**
Distinctive marks/description of the requested person: ///

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

[photograph omitted]

Form anonymised for teaching purposes · open the full EAW

- **a** **Identity** — nationality, residence
- **b** **Underlying decision** — does it exist? (*Bob-Dogi*)
- **c** **Penalty** — thresholds, proportionality
- **d** **In absentia** — the Art. 4a conditions
- **e** **Offences** — facts and the list box ticked; territoriality
- **f** **Other circumstances** — optional information
- **g** **Property** — seizure and handover, Art. 29
- **h** **Life sentence** — guarantee of review, Art. 5(2)
- **i** **Issuing authority** — is it judicial? contact details for Art. 15(2)

STAGE 01 · ISSUING · THE PRECONDITIONS OF THE WARRANT

Four preconditions the defence can challenge

When? As a rule, the person, and therefore their lawyer, only learns of the EAW on arrest. From then on, the lawyer in the issuing State can challenge these preconditions using national remedies, starting with the underlying decision. Where the proceedings are already known, they can act earlier, for instance by offering voluntary appearance or a remote hearing.

1 · Is there a national decision?

An EAW cannot stand on its own: it must be based on a separate national decision, an arrest warrant or a judgment.

Why it matters: it is the first level of protection: a national court has already assessed the deprivation of liberty.

Bob-Dogi, C-241/15 (2016)

2 · Is the issuer a judicial authority?

It must be independent of the executive. The police, a ministry, or a prosecutor open to instructions from the minister **do not qualify**. An independent prosecutor **does**, provided its decision can be reviewed by a court.

Why it matters: otherwise the warrant must not be executed.

Poltorak, Kovalkovas (2016) · *OG and PI, PF, JR and YC* (2019)

3 · Is it proportionate?

Before issuing, the authority weighs the seriousness of the offence, the likely penalty and the likelihood of detention after surrender.

Why it matters: the check belongs to the issuing State, so that is where the defence must raise it.

Commission Handbook 2023

4 · Was there a less intrusive alternative?

A European Supervision Order, with non-custodial measures, or a videoconference hearing through a European Investigation Order.

Why it matters: if all that is needed is to hear the person, arrest and surrender are not necessary.

FD 2009/829/JHA · Directive 2014/41/EU

EPPO In EPPO proceedings, the handling European Delegated Prosecutor issues the EAW or asks the competent national authority to issue it, depending on national law · Art. 33(2), Regulation (EU) 2017/1939

STAGE 02 · ARREST · IN THE EXECUTING STATE

Day 0: the rights of the arrested person



Interpretation and translation

If they do not understand the language, they are entitled to an interpreter and a written translation of the EAW.

In practice: check that the translation exists and is accurate; the decision on consent depends on it.

Directive 2010/64/EU

Letter of rights

They receive a written letter of rights, in the version designed for EAW proceedings.

In practice: check that they received it, in a language they understand.

Directive 2012/13/EU, Art. 5 and Annex II

Two lawyers

They have a lawyer in the executing State and may appoint another in the issuing State to assist the first.

In practice: they must be told of this right straight away.

Directive 2013/48/EU, Art. 10

Legal aid in both States

If they cannot afford a lawyer, the State pays: in the executing State and, where necessary, in the issuing State too.

In practice: apply at once, in both countries.

Directive (EU) 2016/1919, Art. 5

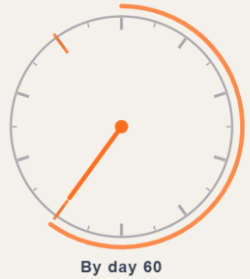
Information · Art. 11 FD — on arrest, the person must be told that there is an EAW, what it contains and that they may consent to surrender.

Custody or release · Art. 12 FD — the executing judicial authority decides, and may impose measures against absconding: custody is not automatic.

Defence move: call the colleague in the issuing State straight away, because the file and the facts are there.

STAGE 03 · HEARING AND DECISION · IN THE EXECUTING STATE

When the court can say no: grounds for refusal



Mandatory

Art. 3

The court must refuse if:

- the offence is covered by an amnesty in the executing State, which had jurisdiction to prosecute it;
- the person has already been finally judged for the same acts in a Member State (ne bis in idem);
- the person was below the age of criminal responsibility under the law of the executing State.

Optional

Art. 4

The court may refuse if, among other things:

- the conduct is not an offence in the executing State (only outside the list of 32);
- for the same acts there are pending proceedings, a decision not to prosecute or a final judgment;
- prosecution is time-barred, where the executing State had jurisdiction;
- the person is a national or resident and will serve the sentence there (conviction EAW, para. 6);
- the offence was committed, even in part, in the executing State (para. 7).

Trial in absentia

Art. 4a

Convicted without appearing in person: refusal is possible, unless the person:

- knew of the trial in due time;
- was defended by a lawyer they had instructed;
- is entitled to a retrial or an appeal.

Conditional surrender

Art. 5

Surrender goes ahead, subject to a guarantee:

- for a life sentence, that a review of the sentence is guaranteed;
- for a national or resident sought for prosecution, that they will be returned to serve any sentence in the executing State.

Above all, fundamental rights. Where there is evidence of deficiencies in the issuing State (prison conditions or judicial independence, for example) and a real risk to this person, the court requests information and postpones its decision; if the risk cannot be ruled out, it may bring the procedure to an end.

Aranyosi (2016) · *LM* (2018) · *Dorobantu* (2019)

TIME LIMITS · ART. 17 TO DECIDE · ART. 23 TO SURRENDER

Watch the clock: one deadline to decide, another to surrender



The first deadline depends on the client's choice: with consent, the decision comes within 10 days; without it, within 60, extendable by 30 in exceptional cases, with reasons given to the issuing authority.

With consent

≤ 10 days | ≤ 10 days — final decision within 10 days of consent, then surrender within 10 days of the decision

Without consent

Final decision within 60 days of arrest | +30 days, exceptional cases | ≤ 10 days

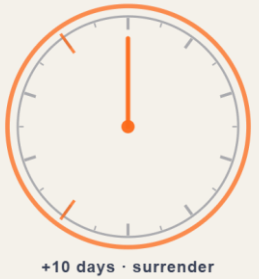
Day 0 · 10 · 60 · 90

What if the court decides late? The person is not released automatically. Custody can continue only if its overall length remains reasonable: the court must check this, and the defence must ask it to. · *Lanigan*, C-237/15 PPU (2015)

What if surrender does not happen in time? Once the Art. 23 time limits expire, a person still in custody must be released. **In practice:** log the dates of arrest, consent and final decision from day one. · Art. 23(5)

STAGES 04–05 · SURRENDER AND BEYOND

The case does not end at the border: surrender and what follows



Surrender

In the executing State: when and how the person is handed over.

Art. 23 Within 10 days of the final decision; if circumstances beyond control prevent it, a new date is set.

Art. 23(4) It may be postponed temporarily for serious humanitarian reasons, such as a serious illness.

Art. 24 It may be deferred if the person is to be tried or is serving a sentence in the executing State, or it may take place temporarily.

After surrender

In the issuing State: the safeguards that flow from the way the person got there.

Art. 26 Time spent in custody in the executing State is deducted from the sentence.

Art. 27 Speciality: no prosecution or detention for other offences committed before surrender, save for exceptions (such as a waiver).

Art. 28 Onward surrender to another Member State, or extradition to a third State, generally needs the executing State's consent.

Art. 5(3) Where return was guaranteed, a convicted national or resident goes back to serve the sentence in the executing State (FD 2008/909/JHA).

In practice: after surrender the work passes to the lawyer in the issuing State, who must secure the deduction of custody and enforce speciality.

STAGE 03 · HEARING AND DECISION · CONSENT

Consent to surrender: when it is genuinely informed

What it means. The person agrees to be surrendered without contesting it. It is not an admission of guilt: it concerns only the surrender procedure.

What it entails

- The decision comes within 10 days instead of 60.
- The person gives up the chance to rely on the grounds for refusal.
- It does not automatically waive **speciality**, the rule that, after surrender, a person cannot be prosecuted or detained for offences committed before surrender other than those in the EAW: waiving it requires a separate statement.
- In principle it cannot be revoked, unless the executing State provides otherwise.

When it is valid

- It is given before the executing judicial authority.
- The person is entitled to legal assistance.
- It is voluntary and given in full awareness of the consequences.
- It is formally recorded.

When it is genuinely informed

The lawyer must be able to answer yes to each point:

- The client has read the EAW in their own language.
- They know whether it is a prosecution or a conviction EAW.
- They understand the timing, the effect on the grounds for refusal and on speciality, and that consent is final.
- They know which grounds for refusal they would have, and what they are giving up.

In practice: before consenting, check the available grounds with the colleague in the issuing State. Only then is consent a choice rather than a surrender.

THE TWO LAWYERS

Two lawyers, one case: who does what

Lawyer in the issuing State

Works on the underlying decision from which the EAW derives.

- Obtains the national decision and the case file.
- Challenges the underlying decision through national remedies.
- Seeks withdrawal of the EAW or an alternative: voluntary appearance, a remote hearing.
- Gathers evidence for the other lawyer: service of the trial summons, prison conditions.
- After surrender, enforces speciality and the deduction of custody.

The link is a right: the person may appoint a lawyer in the issuing State to assist the lawyer in the executing State.

Art. 10, Directive 2013/48/EU · legal aid: Art. 5, Directive (EU) 2016/1919

Lawyer in the executing State

Works on the EAW and the surrender procedure.

- Checks that the form is complete, translated and consistent with the facts.
- Documents the client's nationality, residence and ties.
- Identifies the grounds for refusal and the guarantees to seek.
- Explains to the client what consent entails.
- Applies for release or alternative measures and monitors the time limits.

In practice: the two lawyers need to talk at once. One holds the file and the information, the other is working against the procedure's tight deadlines: without that exchange, neither can defend the client properly.

DEFENCE STRATEGY · DAY 0 OR DAY 1

The first client meeting: eight things to do, in this order

01

Go through the form with the client

Prosecution or conviction EAW? Which facts, what penalty? Is a list box ticked? Was there a trial in absentia?

02

Find out who the client is

Nationality, residence, work and family in the executing State may open the way to refusal or to a return guarantee: document them at once.

Arts 4(6) and 5(3) · *Kozłowski*

03

Check the rights

Did they have an interpreter, a translation of the EAW and a letter of rights? Do they have a lawyer in the issuing State? Do they need legal aid?

04

Decide on consent

It speeds up surrender, but means giving up any opposition. Speciality needs a separate waiver. In principle consent is final: the client must know this beforehand.

Art. 13

05

Go through the grounds

Test each mandatory and optional ground, the in absentia rules and the guarantees to request.

Arts 3, 4, 4a and 5

06

Assess fundamental rights

Is there a real risk, such as prison conditions or judicial independence? Gather up-to-date reports and documents on the person.

07

Draw up the calendar

Log the deadlines: 10 or 60 (+30) days for the decision, then 10 for surrender.

08

Apply for release

Custody is not automatic: apply at once for release or an alternative measure, with safeguards against absconding.

Art. 12 · *Tsachkov*

PRACTICAL CHALLENGES

The plot thickens: four recurring problems

The EAW is incomplete or badly translated

The court should not reject it outright: it urgently requests supplementary information from the issuing authority.

In practice: state precisely what is missing and why it matters to the decision.

Art. 15(2)

The file is in the other State

The lawyer in the executing State has no access to the file behind the warrant.

In practice: get it from the colleague in the issuing State, from the very first days.

Art. 10, Directive 2013/48/EU

Competing requests for the same person

Two EAWs from different States, or an EAW and an extradition request: the choice turns on seriousness, place, dates and purpose; where there are several EAWs, Eurojust may be consulted.

In practice: the choice decides where, and with what safeguards, the person will be tried.

Art. 16

A new EAW after a refusal

The issuing State may issue a fresh warrant for the same acts, provided it is proportionate and its execution would not breach fundamental rights.

In practice: a refusal does not close the case: prepare the defence against the next warrant.

Puig Gordi, C-158/21 (2023)

RECENT CASE LAW · 2024–2026

How the EAW is evolving: five recent judgments of the Court of Justice

29 Jul 2024 ***Alchaster*, C-202/24 · GC surrender to the United Kingdom**	**The issue:** the rules on early release became stricter after the offence: is there a risk of a heavier penalty than the one applicable when it was committed? **The Court:** the executing judicial authority must assess that risk itself in the light of the principle of legality of penalties (Art. 49 Charter), seeking information and assurances from the requesting State.	More safeguards
21 May 2026 ***Khuzdar*, C-95/24 referred by the Court of Appeal of Naples**	**The issue:** national law allowed surrender of a resident to be refused, so that the sentence could be served in the executing State, only if the judgment could be recognised there. **The Court:** that limitation is not permitted: the court must be able to have the sentence enforced on its own territory. And for trials in absentia, whether the person was informed may also be judged from their own conduct.	More room to refuse for residents; less for in absentia
4 Jun 2026 ***Rugu* and *Aucroix*, C-722/23 and C-91/24 · GC**	**The issue:** if surrender is refused because of a risk to fundamental rights (Art. 1(3)), does the convicted person escape punishment? **The Court:** no: the executing State must of its own motion request the judgment from the issuing State and enforce the sentence on its own territory (FD 2008/909/JHA).	No impunity
15 Oct 2026 ***Tsachkov*, C-580/24**	**The issue:** national law required the person to be kept in custody until surrender, without exception. **The Court:** that is contrary to the Framework Decision: the court must be able to weigh the circumstances of the case before keeping the person in custody (Arts 12 and 23(5)).	More safeguards
3 Nov 2026 ***Tagu*, C-583/24 · GC**	**The issue:** can surrender be refused because the penalty in the issuing State appears disproportionate? **The Court:** only on objective, reliable, specific and properly updated evidence of a manifest and serious breach of proportionality, and where that State offers no effective remedy.	Fewer refusals

THE TREND

What it means for the defence: growing difficulties

The evidential bar is higher

General references are not enough to rely on fundamental rights: you need objective, reliable, specific and up-to-date evidence about the issuing State and about the person.

Tagu (2026)

Refusal does not mean freedom

Even when surrender is refused, the person still serves the sentence: in the executing State rather than the issuing State.

Rugu and *Aucroix, Khuzdar* (2026)

The dialogue between authorities decides

The court seeks information and assurances from the issuing State. The defence must suggest the right questions and challenge vague answers.

Alchaster (2024)

One space remains: personal liberty

Custody pending surrender cannot be automatic: the court must look at the individual case.

Tsachkov (2026)

In short: today the defence needs documents and evidence about the specific case, not just appeals to principle.

TO CLOSE

There can be no cooperation at the expense of requested persons and of their rights of defence.

Thank you for your attention · Irene Lepre, avvocata

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OUTLINE OF TOPICS

The Life Cycle of a European Arrest Warrant: Acting for the Defence

Irene Lepre, avvocata · ERA online seminar “Cross-Border Procedures and the EAW” · 11 November 2026, 14:35–15:30

The common thread of the talk is time. The EAW is built for speed: from the arrest of the person, which marks “day zero”, strict time limits run for the hearing, the decision and surrender. A clock, which appears in the background of the slides and moves forward stage by stage, marks these deadlines. The point is that every day on that calendar corresponds to a decision for the defence: reading a foreign document, contacting the colleague in the other State, assessing the grounds for refusal, deciding whether to consent. Following the warrant from issuing to the return to the issuing State, the talk sets out, for each institution, the principle, the reason behind it and the practical choices that time forces on the defence lawyer. One underlying question runs through it: how far the speed of cooperation is compatible with the time needed for an effective defence. In short, the talk is an overview: it does not claim to go into the detail of each institution, but aims to convey the overall picture and its underlying logic from the defence perspective; specific points can be taken up in the discussion.

1. Why time matters

On average, surrender takes 24 days if the person consents and about 58 if they do not. For the defence lawyer, those days are the real constraint: the talk follows the EAW as a clock that starts on the day of arrest, “day zero”.

2. What an EAW is, and where it comes from

The context in which Framework Decision 2002/584/JHA was adopted: a still intergovernmental setting, under the pressure of the post-9/11 period. Its main innovation: for 32 categories of offence, double criminality is no longer checked. Extradition between governments becomes surrender between judges.

3. Prosecution EAW and conviction EAW

The first serves to put a person on trial, the second to enforce a sentence already imposed. Telling them apart comes first, because the thresholds, the grounds for refusal, the guarantees and the consequences of consent all differ.

4. Mutual trust

The system presumes that every Member State respects fundamental rights, and execution is the rule. The presumption can be rebutted, but only with evidence: this is where the defence comes in, as shown by the shift from near-absolute trust (*Radu*, *Melloni*) to rebuttable trust (*Aranyosi*, *LM*).

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5. The thresholds and the 32 listed offences

What the system's numbers mean: a maximum penalty of 12 months for a prosecution EAW, a sentence of 4 months for a conviction EAW, 3 years for listed offences. What the 32 offences have in common, and how the defence can check the classification ticked on the form.

6. The rules of the game

I will outline the four principles on which the system rests (mutual recognition, fundamental rights as the outer limit, proportionality, an exhaustive list of grounds for refusal), what each one means and how it shapes the defence lawyer's work.

7. Five stages, on a real case

A map of the procedure (issuing and SIS alert, arrest, hearing and decision, surrender, return to the issuing State) and a section-by-section reading of a redacted warrant issued in EPPO proceedings, showing where defence points usually lie.

8. Issuing: what can be challenged

The defence usually learns of the warrant only on arrest. From then on, the lawyer in the issuing State can challenge its preconditions: a valid national decision, a genuinely judicial issuing authority, proportionality and the availability of less intrusive tools. With a note on warrants in EPPO proceedings.

9. Day zero: the rights of the arrested person

What a person arrested in a foreign country is entitled to: an interpreter, a translation of the warrant, a letter of rights, a lawyer in both States and legal aid. And the choice, between arrest and decision, between custody and alternative measures.

10. When the court can say no

Requests for supplementary information and how the defence can use them; refusal for a risk to fundamental rights and the evidence it requires; warrants that in fact pursue investigative aims. Then the grounds for refusal used most in practice: nationals and residents, trials in absentia, territoriality, ne bis in idem.

11. Time limits

10 days to decide with consent, 60 (extendable by 30) without, then 10 days for surrender. What happens when deadlines expire, and how such compressed timeframes affect the effectiveness of the defence.

12. After surrender

The case returns to the issuing State, but the way the person got there carries safeguards: time spent in custody abroad is deducted, and the speciality rule bars prosecution for acts other than those for which the person was surrendered.

13. Consent to surrender

The most delicate choice for the client: what it entails, when it is valid and, above all, when it is genuinely informed. A practical checklist for the lawyer before the client signs what is, as a rule, an irrevocable step.

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14. Two lawyers, one case

The lawyer in the executing State works within the limits of the Framework Decision; the lawyer in the issuing State can act on the underlying decision and has access to the file. Who does what, and how to coordinate in the first few days, when the case is often decided.

15. Strategy in practice

The first client meeting in eight steps, and four recurring problems: incomplete or badly translated warrants, no access to the file abroad, competing requests for the same person, and a new warrant after a refusal.

16. Where the EAW is heading

Five recent judgments of the Court of Justice (2024–2026: *Alchaster*, *Khuzdar*, *Rugu*/*Aucroix*, *Tsachkov*, *Tagu*) and the trend they reveal: a higher evidential bar for the defence, refusal no longer meaning impunity, and the central role of dialogue between authorities.

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I. [n. CMS]/[anno] cms
Proc. [n. R.G.N.R.]/[anno] rgnr

[Sede], [data]

Al G.I.P. presso il
Tribunale di [sede]
c.a. dott. [nome del G.I.P.]

OGGETTO: **[INDAGATO A] e [INDAGATO B]** –richiesta emissione M.A.E.;

RIFERIMENTO: o.c.c. emessa dal G.I.P. presso il Tribunale di [sede] ed eseguita in data [data]

1

Con la presente si richiede emissione di Mandato di arresto d'Europeo a carico dei nominati in oggetto poiché in sede di esecuzione gli stessi on sono stati reperiti nel territorio nazionale come da allegate note di PG.

Si allegano gli atti come sopra indicato.

Si porgono distinti saluti.

I Procuratori Europei Delegati
[nome PED] - [nome PED]
(firme omesse)

Documento anonimizzato a fini didattici: i dati in blu sono segnaposto.

EUROPEAN PUBLIC PROSECUTOR'S OFFICE

I. [CMS no.]/[year] cms
Proc. [RGNR no.]/[year] rgnr

[City], [date]

To the Judge for Preliminary Investigations (GIP)
at the Court of [city]
Attn.: Judge [name]

SUBJECT: [SUSPECT A] and [SUSPECT B] – request to issue an EAW;

REFERENCE: pre-trial custody order (o.c.c.) issued by the GIP at the Court of [city] and executed on [date]

1

We hereby request that a European Arrest Warrant be issued against the persons named in the subject line since, when the order was to be executed, they could not be found on national territory, as stated in the attached judicial police (PG) reports.

The documents referred to above are attached.

Yours faithfully,

The European Delegated Prosecutors
[EDP name] – [EDP name]
(signatures omitted)

TRIBUNALE DI [città B]
Ufficio del Giudice per le Indagini Preliminari
Dott. [nome del G.I.P.]
Tel [n. telefono]
[PEC ufficio G.I.P.]
[e-mail cancelleria G.I.P.]
[e-mail dei funzionari di cancelleria]

AL MINISTERO DELLA GIUSTIZIA
DIREZIONE GENERALE DELLA GIUSTIZIA PENALE
UFFICIO II ROMA
[PEC]

AL MINISTERO DELL'INTERNO
DIREZIONE CENTRALE POLIZIA CRIMINALE
SERVIZIO PER LA COOPERAZIONE INTERNAZIONALE DI POLIZIA
DIVISIONE INTERPOL S.I.R.E.N.E.
ROMA
[PEC]

A S.E. IL PROCURATORE GENERALE
PRESSO LA CORTE DI APPELLO
[città B]
[PEC ufficio estradizioni]

ALLA PROCURA DELLA REPUBBLICA
PRESSO IL TRIBUNALE SEDE
DOTT [PED 1] E DOTT.SSA [PED 2]

ALLA GUARDIA DI FINANZA
NUCLEO DI POLIZIA ECONOMICO FINANZIARIA [città B]

Oggetto: mandato d'arresto europeo nei confronti di INDAGATO B nato in Tunisia il [data di nascita] – Proc. Penale RG NR [n.]/[anno] NR Eppo - GIP [n.]/[anno]

Si trasmette per l'esecuzione e per quanto di rispettiva competenza, l'allegato mandato di arresto europeo emesso dal GIP Dr. Ssa [nome del G.I.P.] nei confronti del nominato in oggetto.

[città B] [data]

Il Funzionario Giudiziario
[nome del funzionario]
(firma omessa)

COURT OF [City B] (*Tribunale di* [City B])
Office of the Judge for Preliminary Investigations
Judge [name of the GIP]
Tel. [telephone no.]
[certified e-mail (PEC) of the GIP Office]
[e-mail of the GIP registry]
[e-mail addresses of registry staff]

TO THE MINISTRY OF JUSTICE
DIRECTORATE-GENERAL FOR CRIMINAL JUSTICE
OFFICE II – ROME
[certified e-mail (PEC)]

TO THE MINISTRY OF THE INTERIOR
CENTRAL DIRECTORATE OF CRIMINAL POLICE
INTERNATIONAL POLICE COOPERATION SERVICE
INTERPOL – S.I.R.E.N.E. DIVISION
ROME
[certified e-mail (PEC)]

TO HIS EXCELLENCY THE PROSECUTOR GENERAL
AT THE COURT OF APPEAL OF
[City B]
[certified e-mail (PEC) of the extradition office]

TO THE PUBLIC PROSECUTOR'S OFFICE (*PROCURA DELLA REPUBBLICA*)
AT THE COURT OF THIS SEAT
[EDP 1] AND [EDP 2]

TO THE GUARDIA DI FINANZA
ECONOMIC AND FINANCIAL POLICE UNIT OF [City B]

Subject: European arrest warrant concerning SUSPECT B, born in Tunisia on [date of birth] – Criminal proceedings RGNR No [no.]/[year] EPPO No – GIP No [no.]/[year]

The attached European arrest warrant, issued by the GIP, Judge [name of the GIP], against the above-named person, is hereby transmitted for execution and for any action within your respective competence.

[City B], [date]

The Court Official (*Funzionario giudiziario*)
[name of the official]
(signature omitted)

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ALLEGATO

MANDATO D'ARRESTO EUROPEO[1]

Il presente mandato è stato emesso da un'autorità giudiziaria competente. Chiedo che la persona menzionata appresso sia arrestata e consegnata ai fini dell'esercizio dell'azione penale o dell'esecuzione di una pena o misura di sicurezza privative della libertà.

1 Il presente mandato deve essere redatto o tradotto in una delle lingue ufficiali dello Stato membro diesecuzione, se noto, o in qualsiasi altra lingua accettata da tale Stato.

ANNEX

EUROPEAN ARREST WARRANT[1]

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

1 This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

a) Informazioni relative all'identità della persona ricercata:

Cognome: **[COGNOME – INDAGATO B]**

Nome: **[NOME – INDAGATO B]**

Cognome da nubile, se del caso: /////

Pseudonimi, se del caso: ///

Sesso: **maschile**

Nazionalità: **tunisina**

Data di nascita: **[data di nascita]**

Luogo di nascita: **Tunisia**

Residenza e/o indirizzo noto: **[indirizzo] [città A]**

Se noto: lingua o lingue che la persona ricercata comprende: **ARABO E ITALIANO**

Segni particolari/descrizione della persona ricercata: ///

.....

Fotografia e impronte digitali della persona, ove siano disponibili e possano essere trasmesse, o estremi della persona da contattare per ottenere tali dati o un profilo del DNA (ove tali dati possono essere comunicati, ma non sono stati trasmessi)

[fotografia omessa]

(a) Information regarding the identity of the requested person:

Name: **[SURNAME – SUSPECT B]**

Forename(s): **[FORENAME – SUSPECT B]**

Maiden name, where applicable: /////

Aliases, where applicable: ///

Sex: **male**

Nationality: **Tunisian**

Date of birth: **[date of birth]**

Place of birth: **Tunisia**

Residence and/or known address: **[address], [City A]**

Language(s) which the requested person understands (if known): **ARABIC AND ITALIAN**

Distinctive marks/description of the requested person: ///

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

[photograph omitted]

b) Decisione sulla quale si basa il mandato d'arresto europeo:

1. Mandato d'arresto o decisione giudiziaria che abbia la stessa forza:

Tipo: Ordinanza di applicazione della misura della custodia cautelare in carcere emessa e depositata dal G.I.P. presso il Tribunale di [città B] il [data dell'ordinanza], eseguita nei confronti degli altri indagati in data [data di esecuzione], con esito negativo nei confronti di INDAGATO B

2. Sentenza esecutiva: .....

.....

Numero di riferimento: .....

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type: Order applying the precautionary measure of pre-trial detention in prison (*ordinanza di applicazione della misura della custodia cautelare in carcere*), issued and filed by the GIP at the Court of [City B] on [date of the order], executed against the other suspects on [date of execution], with a negative outcome as regards SUSPECT B

2. Enforceable judgement: .....

.....

Reference: .....

c) Indicazioni sulla durata della pena

1. Durata massima della pena o misura di sicurezza privative della libertà previste per il reato/i reati:
   Quindici anni di reclusione;

2. Durata della pena o misura di sicurezza privative della libertà inflitta:

   Pena residua da scontare: .....

   .....

   .....

d) Pregasi indicare se l'interessato è comparso personalmente al processo terminato con la decisione:

1. Qualora sia stata contrassegnata la casella 2, si prega di confermare l'esistenza di uno dei seguenti elementi:

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):
   Fifteen years' imprisonment;

2. Length of the custodial sentence or detention order imposed:

   Remaining sentence to be served: .....

   .....

   .....

(d) Indicate if the person appeared in person at the trial resulting in the decision:

1. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.4. l'interessato non ha ricevuto personalmente la notifica della decisione, ma

- l'interessato riceverà personalmente la notifica di tale decisione senza indugio dopo la consegna, e
- al momento della notifica della decisione, l'interessato sarà espressamente informato del diritto a un nuovo processo o ad un ricorso in appello cui l'interessato ha il diritto di partecipare e che consente di riesaminare il merito della causa, comprese le nuove prove, e che può condurre alla riforma della decisione originaria, e
- l'interessato sarà informato del termine entro cui deve richiedere un nuovo processo o presentare un ricorso in appello, che saràdi 10 giorni.

2. Qualora siano state contrassegnate le caselle 3.1b, 3.2 o 3.3, si prega di specificare come sia stata soddisfatta la pertinente condizione:

.....

.....

3.4. the person was not personally served with the decision, but

- the person will be personally served with this decision without delay after the surrender; and
- when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and
- the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be 10 days.

2. If you have ticked the box under point 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....

.....

e) Reati:

Il presente mandato è emesso per un totale di: **8 reati.**

Descrizione delle circostanze dei reati, compresi il momento (la data e l'ora) il luogo e il grado di partecipazione della persona ricercata

a) per il delitto di cui agli artt. 291 quater, commi 1°, 2° e 4° e 291 ter, comma 2 lettera e), come richiamata dall'art. 291 quater, comma 4, D.P.R. n. 43 del 23.01.1973D.P.R. n. 43 del 23/01/1973, 61 bis c.p., *per essersi associati tra loro e con altri soggetti in corso di identificazione, al fine di commettere più reati di contrabbando di tabacchi lavorati esteri (art. 291 bis d.P.R. 43/1973) ed in particolare:*

- ***INDAGATO B****, rivestendo il ruolo di* ***capo, promotore e finanziatore*** *del sodalizio, occupandosi di curare l'attivazione di referenti in Tunisia per l'approvvigionamento di tabacchi lavorati esteri da introdurre illegalmente in Italia, assicurando la disponibilità di natanti necessari per il trasbordo dai pescherecci dalle coste tunisine e per il successivo sbarco sul territorio italiano, reclutando scafisti per la guida dei natanti, organizzando la ricezione dei T.L.E. in Italia, anche attraverso mezzi di trasporto terrestri e curando l'occultamento della merce in vista della rivendita per la successiva commercializzazione al dettaglio, reperendo mezzi di comunicazione sicuri, tra cui utenze fittiziamente intestate a terzi e strumenti per la navigazione, come GPS nautici utilizzati per l'incontro in mare tra le imbarcazioni provenienti dalla Tunisia e dall'Italia, gestendo i proventi realizzati anche ripartendoli tra gli associati, finanziando personalmente l'acquisto della merce di contrabbando, nonché dei natanti, curando i rapporti coi successivi acquirenti di T.L.E. instaurando uno stabile e continuativo canale di vendita individuato nel sodalizio diretto da INDAGATO G con cui concorda modalità, termini di consegna e pagamento dei T.L.E.;*
- ***INDAGATO C****, cooperando con INDAGATO B nelle medesime* ***condotte di organizzazione*** *del sodalizio criminoso, occupandosi del prelievo di T.L.E. in mare organizzando la ricezione del carico in Italia, anche attraverso mezzi di trasporto ed il successivo occultamento in vista della commercializzazione al dettaglio, occupandosi dello stoccaggio e della successiva rivendita, cooperando con il promotore nella ricerca degli acquirenti e conducendo le trattative e fissando il prezzo di acquisto e le modalità di consegna, partecipando, con INDAGATO D, al ritiro, nel tratto di mare prospiciente la Tunisia, dei T.L.E. da altre imbarcazioni ed introducendoli in Italia a bordo dei natanti armati dall'organizzazione cui partecipa, con il supporto a terra di INDAGATO E, INDAGATO F e del promotore INDAGATO B.*
- ***INDAGATO D****, cooperando con il promotore INDAGATO B nelle medesime condotte di* ***organizzazione*** *del sodalizio criminoso, occupandosi del prelievo dei T.L.E. in mare per curarne l'introduzione nel territorio italiano reclutando scafisti per la guida dei natanti e ponendosi anche personalmente alla guida dei medesimi, organizzando la ricezione del carico in Italia, anche attraverso la predisposizione dei mezzi di trasporto ed il successivo occultamento della merce in vista della commercializzazione al dettaglio, provvedendo allo stoccaggio, all'occultamento della merce ed alla successiva rivendita, coadiuvando il promotore nel reperire gli strumenti per la navigazione, come GPS nautici, partecipava, unitamente al sodale INDAGATO N n.m.i., al ritiro, nel tratto di mare prospiciente la Tunisia, dei T.L.E.*

(e) Offences:

This warrant relates to in total: **8 offences.**

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person

a) for the offence under Article 291-quater(1), (2) and (4) and Article 291-ter(2)(e), as referred to in Article 291-quater(4), of Presidential Decree (D.P.R.) No 43 of 23.01.1973 Presidential Decree (D.P.R.) No 43 of 23/01/1973 [sic], and Article 61-bis of the Criminal Code (c.p.), *for having associated with one another and with other persons currently being identified, for the purpose of committing several offences of smuggling foreign manufactured tobacco (Article 291-bis of D.P.R. 43/1973), and in particular:*

- ***SUSPECT B****, acting as* ***head, promoter and financier*** *of the association, taking charge of activating contacts in Tunisia for the supply of foreign manufactured tobacco to be illegally brought into Italy, ensuring the availability of the vessels needed for transhipment from the fishing boats off the Tunisian coast and for the subsequent landing on Italian territory, recruiting boat pilots (scafisti) to steer the vessels, organising the reception of the T.L.E. in Italy, including by means of land transport, and arranging for the concealment of the goods pending their resale for subsequent retail distribution, procuring secure means of communication, including telephone lines fictitiously registered in the names of third parties, and navigation instruments, such as marine GPS devices used for meetings at sea between the vessels coming from Tunisia and from Italy, managing the proceeds obtained, including by sharing them among the members, personally financing the purchase of the contraband goods and of the vessels, and handling relations with the subsequent buyers of T.L.E., establishing a stable and continuous sales channel through the association headed by SUSPECT G, with whom he agrees on the arrangements, delivery terms and payment for the T.L.E.;*
- ***SUSPECT C****, cooperating with SUSPECT B in the same* ***organisational conduct*** *of the criminal association, taking charge of collecting T.L.E. at sea, organising the reception of the cargo in Italy, including by means of transport, and its subsequent concealment pending retail distribution, handling storage and subsequent resale, cooperating with the promoter in seeking buyers, conducting negotiations and setting the purchase price and the delivery arrangements, participating, with SUSPECT D, in the collection, in the stretch of sea off Tunisia, of T.L.E. from other vessels and bringing them into Italy on board vessels fitted out by the organisation in which he participates, with onshore support from SUSPECT E, SUSPECT F and the promoter SUSPECT B.*
- ***SUSPECT D****, cooperating with the promoter SUSPECT B in the same* ***organisational*** *conduct of the criminal association, taking charge of collecting T.L.E. at sea in order to bring them into Italian territory, recruiting boat pilots to steer the vessels and also personally steering them, organising the reception of the cargo in Italy, including by arranging means of transport, and the subsequent concealment of the goods pending retail distribution, handling storage, concealment of the goods and their subsequent resale, assisting the promoter in procuring navigation instruments, such as marine GPS devices, participated, together with fellow member SUSPECT N (not further identified – n.m.i.), in the collection, in the stretch of sea off Tunisia, of T.L.E.*

da imbarcazione proveniente dal paese nord africano e introducendoli in Italia con natanti armati dall'organizzazione cui partecipa, con il supporto a terra di INDAGATO E, INDAGATO F e del promotore INDAGATO B, fornendo essenziale contributo logistico ponendo a disposizione del sodalizio un immobile sito in in [città A] [indirizzo], quale deposito ove occultare i T.L.E. introdotti in Italia e offrendo ospitalità ai sodali INDAGATO C e INDAGATO N;

- ***INDAGATO E** cooperando con INDAGATO B nelle medesime condotte di **organizzazione** del sodalizio criminoso, fornendo un sostanziale contributo nelle attività connesse alla cessione della merce illecita agli acquirenti di [città B] INDAGATO G, INDAGATO H, INDAGATO I e INDAGATO L pure partecipando personalmente, in più occasioni alla cessione dei T.L.E., fornendo supporto a terra, con INDAGATO F e INDAGATO B, per l'arrivo in Italia dei natanti condotti da INDAGATO D e INDAGATO C, fornendo apporto logistico per il perseguimento dei fini associativi, provvedendo al noleggio delle autovetture utilizzate per trasportare i T.L.E. dai luoghi di sbarco ai depositi e poi a [città B] e ponendo a disposizione del sodalizio un immobile sito in in [città A] [indirizzo], utilizzato quale deposito ove occultare i T.L.E. introdotti in Italia, percependo da INDAGATO B i proventi, frutto della cessione di T.L.E. agli acquirenti di [città B] e distribuendoli anche tra gli altri sodali;*
- ***INDAGATO F**, cooperando con il promotore INDAGATO B nelle medesime condotte poste in essere dal sodalizio criminoso, fornendo contributo nella cessione della merce illecita agli acquirenti INDAGATO H, INDAGATO I e INDAGATO L partecipando personalmente, in più occasioni, alla cessione dei T.L.E., fornendo supporto a terra, unitamente a INDAGATO E e al promotore INDAGATO B, all'arrivo in Italia dei natanti condotti da INDAGATO D e INDAGATO C, fornendo apporto logistico per il perseguimento dei fini associativi, ponendo a disposizione del sodalizio la propria autovettura utilizzata per trasportare i T.L.E. dai luoghi di sbarco ai depositi e da questi ultimi a [città B].*

***Con l'aggravante di cui all'art. 61 bis c.p.,** di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia).*

***Con l'aggravante di cui all'art. 291 ter, comma 2 lettera e), come richiamata dall'art. 291 quater, comma 4, D.P.R. n. 43 del 23.01.1973** di essersi avvalsi di disponibilità finanziarie costituite in Stati che non hanno ratificato la Convenzione di Strasburgo del 8 novembre 1990 sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato, e che comunque non hanno stipulato e ratificato convenzioni di assistenza giudiziaria con l'Italia aventi ad oggetto il delitto di contrabbando.*

Fatti commessi all'estero (Tunisia) ed in Italia ([città A], [città B], [città C] e [città D]) dal 22 marzo 2022 ed in permanenza, trattandosi di attività criminale in corso.

INDAGATO B - INDAGATO E

***b) per i reati di cui agli artt. 110 c.p., 293, 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43,** per avere, in concorso tra loro e con altri soggetti rimasti ignoti, posto in essere, in modo non equivoco, atti idonei diretti in modo non equivoco all'introduzione nel territorio nazionale di 544 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 5400 kg., ed in particolare organizzavano le attività propedeutiche al trasporto dei T.L.E. a bordo di uno dei gommoni nella disponibilità del sodalizio cui partecipano dalle coste tunisine a quelle italiane, provvedendo al reperimento e alla preparazione dei T.L.E. in Tunisia, reclutando e istruendo due scafisti rimasti ignoti,*

from a vessel coming from the North African country and in bringing them into Italy on vessels fitted out by the organisation in which he participates, with onshore support from SUSPECT E, SUSPECT F and the promoter SUSPECT B, providing an essential logistical contribution by making available to the association a property located in [City A], [address], as a depot in which to conceal the T.L.E. brought into Italy, and offering hospitality to fellow members SUSPECT C and SUSPECT N;

- ***SUSPECT E**, cooperating with SUSPECT B in the same **organisational** conduct of the criminal association, making a substantial contribution to the activities connected with the sale of the illicit goods to the buyers from [City B] SUSPECT G, SUSPECT H, SUSPECT I and SUSPECT L, also personally taking part, on several occasions, in the sale of the T.L.E., providing onshore support, with SUSPECT F and SUSPECT B, for the arrival in Italy of the vessels steered by SUSPECT D and SUSPECT C, providing logistical support for the pursuit of the association's aims, arranging the hire of the cars used to transport the T.L.E. from the landing sites to the depots and then to [City B], and making available to the association a property located in [City A], [address], used as a depot in which to conceal the T.L.E. brought into Italy, receiving from SUSPECT B the proceeds of the sale of T.L.E. to the buyers from [City B] and also distributing them among the other members;*
- ***SUSPECT F**, cooperating with the promoter SUSPECT B in the same conduct carried out by the criminal association, contributing to the sale of the illicit goods to the buyers SUSPECT H, SUSPECT I and SUSPECT L, personally taking part, on several occasions, in the sale of the T.L.E., providing onshore support, together with SUSPECT E and the promoter SUSPECT B, upon the arrival in Italy of the vessels steered by SUSPECT D and SUSPECT C, providing logistical support for the pursuit of the association's aims, making available to the association his own car, used to transport the T.L.E. from the landing sites to the depots and from the latter to [City B].*

***With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.),** of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia).*

***With the aggravating circumstance under Article 291-ter(2)(e), as referred to in Article 291-quater(4), of Presidential Decree (D.P.R.) No 43 of 23.01.1973,** of having made use of financial resources held in States that have not ratified the Strasbourg Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and that, in any event, have not concluded and ratified agreements on mutual legal assistance with Italy covering the offence of smuggling.*

Acts committed abroad (Tunisia) and in Italy ([City A], [City B], [City C] and [City D]) from 22 March 2022 and continuing, since the criminal activity is ongoing.

SUSPECT B - SUSPECT E

***b) for the offences under Article 110 of the Criminal Code (c.p.) and Articles 293, 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973,** for having, acting in concert with one another and with other persons who remain unidentified, carried out, unequivocally, acts suitable for and unequivocally directed at bringing into national territory 544 cases of contraband foreign manufactured tobacco, with a total weight of approximately 5,400 kg, and in particular organised the activities preparatory to transporting the T.L.E. on board one of the rubber dinghies available to the association in which they participate from the Tunisian coast to the Italian coast, procuring and preparing the T.L.E. in Tunisia, recruiting and instructing two boat pilots who remain unidentified,*

organizzando il varo dell'imbarcazione con un camion munito di gru, provando il gommone in acqua prima della partenza, noleggiando un furgone da utilizzarsi per trasportare i T.L.E. attesi dalla costa al luogo individuato per occultarli; evento non verificatosi per cause indipendenti dalla loro volontà.

***Con l'aggravante di cui all'art. 61 bis c.p.,** di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia);*

***Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73** di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita.*

Fatti commessi in [città A], in data 08 aprile 2022.

INDAGATO B - INDAGATO E - INDAGATO D

***c) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43,** per avere, in tempi diversi e con più azioni esecutive del medesimo disegno criminoso, in concorso tra loro e con altri soggetti rimasti ignoti, introdotto nel territorio nazionale 54 casse di tabacchi lavorati esteri di contrabbando, per un peso complessivo di circa 544 kg., trasbordandole a largo delle coste tunisine da un'imbarcazione inviata da un gruppo criminale operante in Tunisia in un gommone condotto da INDAGATO D e da altro soggetto ignoto, che effettuavano lo scarico della merce sulla costa di [città A], ricevuta da INDAGATO B e INDAGATO E per il successivo trasporto su mezzi noleggiati a tal fine, ed occultata in un nascondiglio predisposto in vista della successiva vendita.*

***Con l'aggravante di cui all'art. 61 bis c.p.,** per aver commesso i fatti avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia).*

***Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73** per aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita.*

***Con l'aggravante di cui all'art. 291 ter, comma 2 lettera e), come richiamata dell'art. 291 quater, comma 4, D.P.R. n. 43 del 23.01.1973** di essersi avvalsi di disponibilità finanziarie costituite in Stati che non hanno ratificato la Convenzione di Strasburgo del 8 novembre 1990 sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato, e che comunque non hanno stipulato e ratificato convenzioni di assistenza giudiziaria con l'Italia aventi ad oggetto il delitto di contrabbando.*

Fatti commessi in Tunisia e [città A] in data 27 aprile 2022.

INDAGATO B - INDAGATO E - INDAGATO I - INDAGATO M

***d) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43,** per avere, in tempi diversi e con più azioni esecutive del medesimo disegno criminoso, in concorso tra loro venduto, trasportato e acquistato 54 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 540 kg., proveniente dall'importazione dalla Tunisia avvenuta in data 27 aprile 2022, realizzandone il trasporto da [città A] a [città B], la consegna, il trasporto dal luogo della consegna a quello designato per l'occultamento, anche utilizzando mezzi di trasporto appartenenti a persone estranee al reato e realizzando una staffetta al fine di eludere eventuali controlli delle forze dell'ordine.*

***Con l'aggravante di cui all'art. 61 bis c.p.,** di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia).*

***Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73** di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita.*

Fatti commessi in [città A] e [città B] in data 28 aprile 2022.

INDAGATO B - INDAGATO E - INDAGATO D

organising the launch of the vessel using a truck equipped with a crane, testing the dinghy in the water before departure, and hiring a van to be used to transport the expected T.L.E. from the coast to the place chosen to conceal them; the result did not occur for reasons beyond their control.

***With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.),** of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia);*

***With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73** of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose.*

Acts committed in [City A] on 8 April 2022.

SUSPECT B - SUSPECT E - SUSPECT D

***c) for the offences under Article 81, second paragraph (cpv.), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973,** for having, at different times and through several acts in furtherance of the same criminal design, acting in concert with one another and with other persons who remain unidentified, brought into national territory 54 cases of contraband foreign manufactured tobacco, with a total weight of approximately 544 kg, transhipping them off the Tunisian coast from a vessel sent by a criminal group operating in Tunisia into a rubber dinghy steered by SUSPECT D and by another unidentified person, who unloaded the goods on the coast of [City A], where they were received by SUSPECT B and SUSPECT E for subsequent transport in vehicles hired for that purpose, and concealed in a hiding place prepared with a view to their subsequent sale.*

***With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.),** for having committed the offences with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia).*

***With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73** for having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose.*

***With the aggravating circumstance under Article 291-ter(2)(e), as referred to in Article 291-quater(4), of Presidential Decree (D.P.R.) No 43 of 23.01.1973,** of having made use of financial resources held in States that have not ratified the Strasbourg Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and that, in any event, have not concluded and ratified agreements on mutual legal assistance with Italy covering the offence of smuggling.*

Acts committed in Tunisia and [City A] on 27 April 2022.

SUSPECT B - SUSPECT E - SUSPECT I - SUSPECT M

***d) for the offences under Article 81, second paragraph (cpv.), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973,** for having, at different times and through several acts in furtherance of the same criminal design, acting in concert with one another, sold, transported and purchased 54 cases of contraband foreign manufactured tobacco, with a total weight of approximately 540 kg, originating from the importation from Tunisia that took place on 27 April 2022, carrying out its transport from [City A] to [City B], its delivery and its transport from the place of delivery to the place designated for its concealment, including by using vehicles belonging to persons unconnected with the offence and by using an escort vehicle (staffetta) in order to evade any checks by law enforcement.*

***With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.),** of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia).*

***With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73** of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose.*

Acts committed in [City A] and [City B] on 28 April 2022.

SUSPECT B - SUSPECT E - SUSPECT D

e) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43, *per avere, in tempi diversi e in esecuzione dello stesso disegno criminoso, in concorso tra loro e con altri soggetti rimasti ignoti, introdotto nel territorio nazionale 12 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 120 kg., trasbordandoli da un'imbarcazione inviata da un gruppo criminale operante in Tunisia in un gommone, posto a disposizione da INDAGATO B, condotto da INDAGATO D che effettuava lo scarico della merce sulla costa di [città A], per poi, su indicazione di INDAGATO E, trasportarla ed occultarla presso la propria abitazione in vista della successiva vendita.*

Con l'aggravante di cui all'art. 61 bis c.p., *di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia).*

Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 *di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita.*

Fatti commessi in [città A] in data 18 maggio 2022.

INDAGATO B - INDAGATO E - INDAGATO D - INDAGATO C - INDAGATO I – (INDAGATO L solo per la contestazione)

f) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43, *per avere, in tempi diversi ed in esecuzione dello stesso disegno criminoso, in concorso tra loro, detenuto e trasportato 12 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 120 kg., INDAGATO B, INDAGATO E, INDAGATO D e INDAGATO C curandone il trasporto da [città A], dove erano detenute presso l'abitazione di INDAGATO D, a [città B] dove venivano consegnate a INDAGATO I e INDAGATO L che le detenevano presso l'abitazione di INDAGATO L per poi restituirle a INDAGATO B, INDAGATO E, INDAGATO C e INDAGATO D con quest'ultimo che ne curava il trasporto fino alla propria abitazione a [città A] in vista della successiva vendita.*

Con l'aggravante di cui all'art. 61 bis c.p., *di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia).*

Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 *di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita.*

Fatti commessi in [città A] e [città B] in data 19 maggio 2022.

INDAGATO B - INDAGATO E - INDAGATO C - INDAGATO F - INDAGATO H

g) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter e 293 D.P.R. del 23 gennaio 1973 n. 43, *per avere, in tempi diversi e con più azioni esecutive del medesimo disegno criminoso, in concorso tra loro, detenuto e trasportato al fine della successiva rivendita ad INDAGATO H, 12 casse di T.L.E. di contrabbando, per un peso complessivo di circa 120 kg., in particolare INDAGATO B e INDAGATO C concordando con l'acquirente INDAGATO H modalità e tempi per la cessione, INDAGATO E e INDAGATO F, eseguendo le disposizioni impartite da INDAGATO B, curandone il trasporto da [città A], dove le casse erano detenute presso l'abitazione di INDAGATO D, a [città B] e, in seguito alla revoca dell'acquisto, provvedendo al trasporto dei T.L.E. da [città B] a [città A], utilizzando per il trasporto un'autovettura noleggiata e con INDAGATO H che concordava con i venditori i dettagli della cessione, monitorava il luogo designato per la consegna, al fine, di individuare eventuali attività delle forze dell'ordine, e proposto modalità alternative per*

e) for the offences under Article 81, second paragraph (cpv.), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, *for having, at different times and in execution of the same criminal design, acting in concert with one another and with other persons who remain unidentified, brought into national territory 12 cases of contraband foreign manufactured tobacco, with a total weight of approximately 120 kg, transhipping them from a vessel sent by a criminal group operating in Tunisia into a rubber dinghy made available by SUSPECT B and steered by SUSPECT D, who unloaded the goods on the coast of [City A] and then, on the instructions of SUSPECT E, transported them to and concealed them at his own home with a view to their subsequent sale.*

With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), *of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia).*

With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 *of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose.*

Acts committed in [City A] on 18 May 2022.

SUSPECT B - SUSPECT E - SUSPECT D - SUSPECT C - SUSPECT I – (SUSPECT L only as regards the charge)

f) for the offences under Article 81, second paragraph (cpv.), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, *for having, at different times and in execution of the same criminal design, acting in concert with one another, held and transported 12 cases of contraband foreign manufactured tobacco, with a total weight of approximately 120 kg, SUSPECT B, SUSPECT E, SUSPECT D and SUSPECT C arranging for their transport from [City A], where they were held at the home of SUSPECT D, to [City B], where they were delivered to SUSPECT I and SUSPECT L, who held them at the home of SUSPECT L and then returned them to SUSPECT B, SUSPECT E, SUSPECT C and SUSPECT D, the latter arranging for their transport to his own home in [City A] with a view to their subsequent sale.*

With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), *of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia).*

With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 *of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose.*

Acts committed in [City A] and [City B] on 19 May 2022.

SUSPECT B - SUSPECT E - SUSPECT C - SUSPECT F - SUSPECT H

g) for the offences under Article 81, second paragraph (cpv.), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis, 291-ter and 293 of Presidential Decree (D.P.R.) No 43 of 23 January 1973, *for having, at different times and through several acts in furtherance of the same criminal design, acting in concert with one another, held and transported, for subsequent resale to SUSPECT H, 12 cases of contraband T.L.E., with a total weight of approximately 120 kg; in particular, SUSPECT B and SUSPECT C agreeing with the buyer SUSPECT H on the arrangements and timing of the sale, SUSPECT E and SUSPECT F, following the instructions given by SUSPECT B, arranging for their transport from [City A], where the cases were held at the home of SUSPECT D, to [City B] and, after the purchase was called off, transporting the T.L.E. from [City B] to [City A], using a hired car for the transport, and SUSPECT H agreeing with the sellers on the details of the sale, monitoring the place designated for delivery in order to detect any law enforcement activity, and proposing alternative arrangements for*

pervenire all'acquisto dei T.L.E.

***Con l'aggravante di cui all'art. 61 bis c.p.**, di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia);*

***Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73** di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita.*

Fatti commessi in [città A] e [città B] in data 26 maggio 2022.

INDAGATO B - INDAGATO E - INDAGATO G - INDAGATO F

***h) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter D.P.R. del 23 gennaio 1973 n. 43**, per avere, in tempi diversi ed in esecuzione dello stesso disegno criminoso, in concorso tra loro, venduto, trasportato ed acquistato 12 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 120 kg., in particolare INDAGATO F, INDAGATO B e INDAGATO E curandone il trasporto da [città A] a [città B] con un'autovettura intestata ad INDAGATO F unitamente ad altra intestata a terzo in funzione di staffetta, con a bordo INDAGATO B e INDAGATO E e INDAGATO G, concordando con i venditori le modalità, il prezzo e il luogo dove eseguire la cessione, acquistando i T.L.E. e corrispondendone il pagamento quantificato in euro 12.550.*

***Con l'aggravante di cui all'art. 61 bis c.p.**, di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia).*

***Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73** di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita.*

Fatti commessi in [città A] e [città B] il 30 maggio 2022.

1. Contrassegnare la menzione appropriata, qualora si tratti di uno o più dei seguenti reati, quali definiti dalla legge dello Stato membro emittente e puniti in detto Stato membro con una pena o una misura di sicurezza privative della libertà della durata massima di almeno tre anni:

X partecipazione a un'organizzazione criminale;

0 terrorismo;

0 tratta di esseri umani;

0 sfruttamento sessuale dei bambini e pornografia infantile;

0 traffico illecito di stupefacenti e sostanze psicotrope;

0 traffico illecito di armi, munizioni ed esplosivi;

0 corruzione;

X frode, compresa la frode che lede gli interessi finanziari delle Comunità europee ai sensi della convenzione del 26 luglio 1995 relativa alla tutela degli interessi finanziari delle Comunità europee;

X riciclaggio di proventi di reato;

completing the purchase of the T.L.E.

***With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.),** of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia);*

***With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73** of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose.*

Acts committed in [City A] and [City B] on 26 May 2022.

SUSPECT B - SUSPECT E - SUSPECT G - SUSPECT F

***h) for the offences under Article 81, second paragraph (cpv.), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973,** for having, at different times and in execution of the same criminal design, acting in concert with one another, sold, transported and purchased 12 cases of contraband foreign manufactured tobacco, with a total weight of approximately 120 kg; in particular, SUSPECT F, SUSPECT B and SUSPECT E arranging for their transport from [City A] to [City B] in a car registered in the name of SUSPECT F, together with another car registered in the name of a third party acting as an escort vehicle (staffetta), with SUSPECT B, SUSPECT E and SUSPECT G on board, agreeing with the sellers on the arrangements, the price and the place of the sale, purchasing the T.L.E. and paying for them the sum of EUR 12,550.*

***With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.),** of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia).*

***With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73** of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose.*

Acts committed in [City A] and [City B] on 30 May 2022.

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

X participation in a criminal organisation;

0 terrorism;

0 trafficking in human beings;

0 sexual exploitation of children and child pornography;

0 illicit trafficking in narcotic drugs and psychotropic substances;

0 illicit trafficking in weapons, munitions and explosives;

0 corruption;

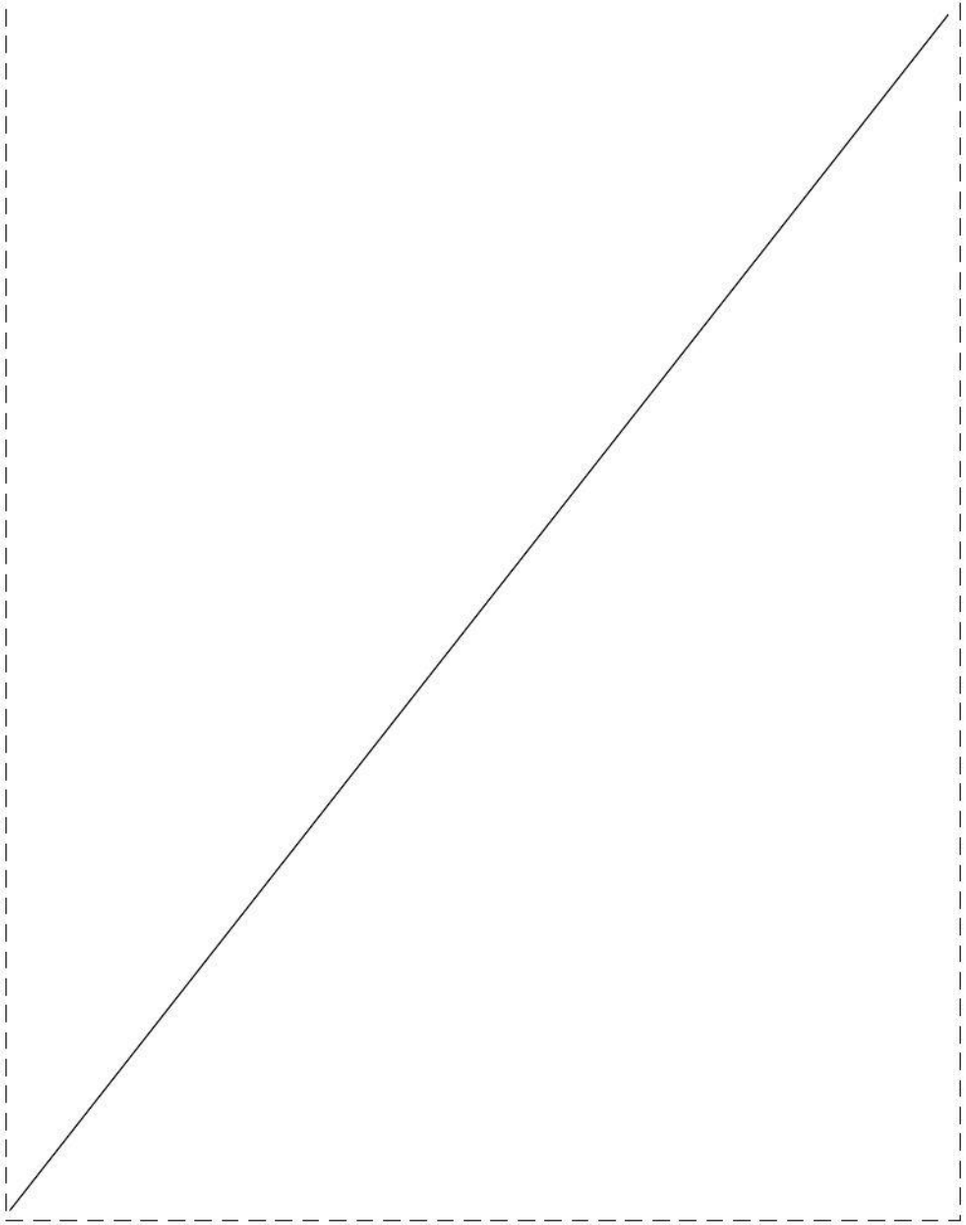
X fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;

X laundering of the proceeds of crime;

0 falsificazione di monete, ivi compresa la contraffazione dell'euro;

0 criminalità informatica;

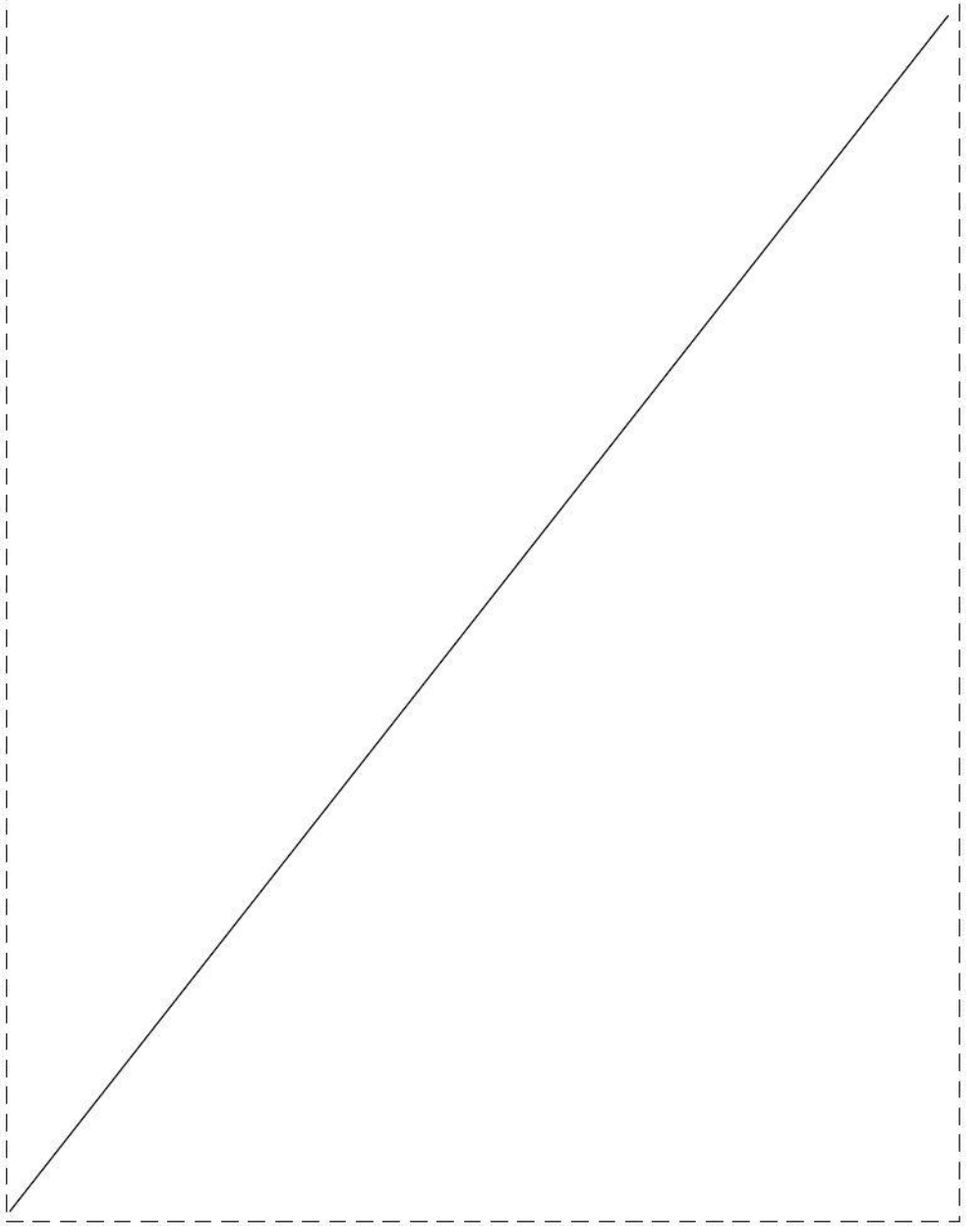
0 criminalità ambientale, compreso il traffico illecito di specie animali protette e il traffico illecito di specie e di essenze vegetali protette;



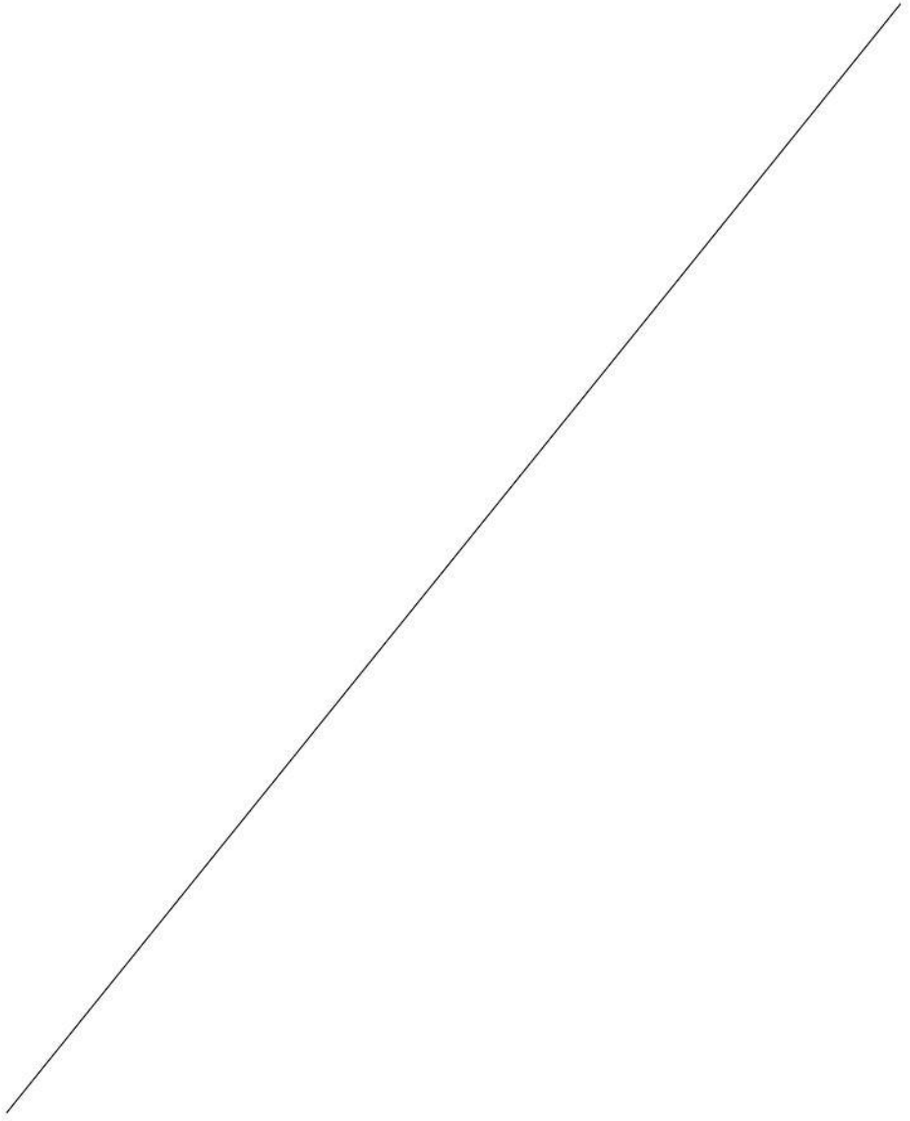
0 counterfeiting of currency, including the euro;

0 computer-related crime;

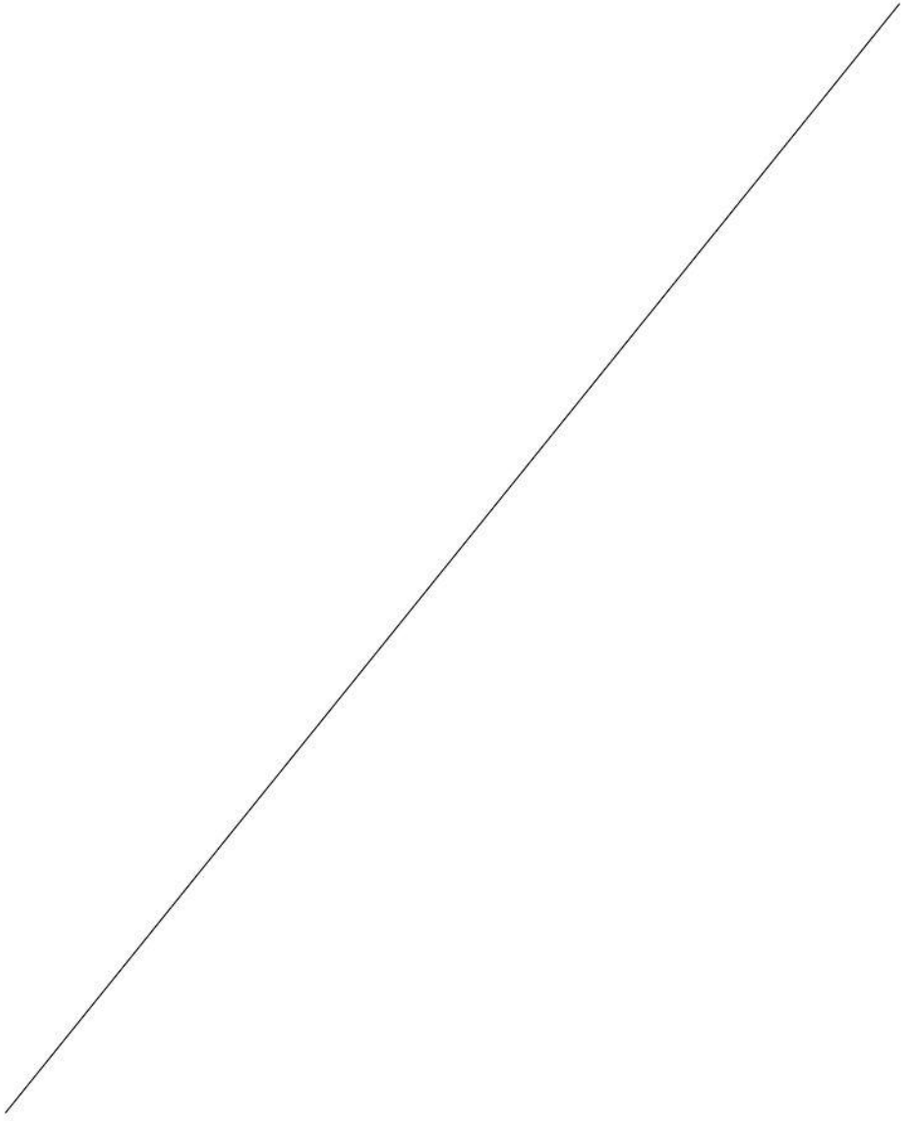
0 environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;



0 favoreggiamento dell'ingresso e del soggiorno illegali;
0 omicidio volontario, lesioni personali gravi;
0 traffico illecito di organi e tessuti umani;
0 rapimento, sequestro e presa di ostaggi;
0 razzismo e xenofobia;
0 furti organizzati o con l'uso di armi;
0 traffico illecito di beni culturali, compresi gli oggetti d'antiquariato e le opere d'arte;
0 truffa;



0 facilitation of unauthorised entry and residence;
0 murder, grievous bodily injury;
0 illicit trade in human organs and tissue;
0 kidnapping, illegal restraint and hostage-taking;
0 racism and xenophobia;
0 organised or armed robbery;
0 illicit trafficking in cultural goods, including antiques and works of art;
0 swindling;



0 falsificazione di mezzi di pagamento;

0 traffico illecito di sostanze ormonali ed altri fattori di crescita;

0 traffico illecito di materie nucleari e radioattive;

0 traffico di veicoli rubati;

0 stupro;

0 incendio doloso;

0 reati che rientrano nella competenza giurisdizionale della Corte penale internazionale;

0 dirottamento di aereo/nave;

0 sabotaggio.

II. Descrizione circostanziata del reato/dei reati che esulano dalle fattispecie enumerate al precedente punto I:

f) Altre circostanze pertinenti (facoltativo):

(N.B.: possono essere incluse, in tale sede, eventuali osservazioni relative all'extraterritorialità, all'interruzione dei termini di prescrizione e ad altre conseguenze del reato)

Trattasi di associazione a vocazione e operatività transnazionale

g) Il presente mandato si applica anche al sequestro e alla consegna dei beni che possono essere necessari come prova.

Il presente mandato si applica anche al sequestro e alla consegna dei beni che sono stati acquisiti dalla persona ricercata a seguito del reato:

Descrizione e ubicazione dei beni (se noti):

.....

.....

.....

0 forgery of means of payment;

0 illicit trafficking in hormonal substances and other growth promoters;

0 illicit trafficking in nuclear or radioactive materials;

0 trafficking in stolen vehicles;

0 rape;

0 arson;

0 crimes within the jurisdiction of the International Criminal Court;

0 unlawful seizure of aircraft/ships;

0 sabotage.

II. Full descriptions of offence(s) not covered by section I above:

(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

This is an association with a transnational vocation and transnational operations

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....

.....

.....

h) Il reato/i reati in base ai quali il mandato d'arresto europeo è stato emesso è/sono punibile/i con una pena o una misura di sicurezza privative della libertà a vita / hanno comportato l'inflizione di siffatta pena o misura:

– il sistema giudiziario dello Stato membro emittente prevede la revisione della pena inflitta – su richiesta o al più tardi dopo 20 anni – affinché la pena o la misura in questione non sia eseguita,

e/o

– il sistema giudiziario dello Stato membro emittente prevede l'applicazione di misure di clemenza alle quali la persona ha diritto in virtù del diritto o della prassi dello Stato membro emittente, affinché la pena o la misura in questione non sia eseguita.

i) Autorità giudiziaria che ha emesso il mandato:

Denominazione ufficiale: **Giudice per le Indagini Preliminari presso Tribunale di [città B]**

Nome del rappresentante[1]: **[nome del G.I.P.]**

Funzione (titolo/grado): **Giudice per le Indagini Preliminari**

Numero di riferimento del fascicolo: **[n.]/[anno] R.G.N.R. E.P.P.O.; [n.]/[anno] R.G. G.I.P.**

Indirizzo: **Tribunale di [città B] – Ufficio G.I.P. – [indirizzo], [città B]**

Numero di telefono: - **[n. telefono] - [n. telefono]**

E-mail: **[e-mail del G.I.P.]**

Estremi della persona da contattare per prendere le necessarie disposizioni pratiche relative alla consegna:
Procura Europea di [città B]
PM dott. [PED 1] e dott. Ssa [PED 2]
Tel. [n. telefono]

[PEC della Procura europea]

1 Nelle varie versioni linguistiche si farà riferimento al "titolare" dell'autorità giudiziaria.

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

– the legal system of the issuing Member State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,

and/or

– the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name: **Judge for Preliminary Investigations (*Giudice per le indagini preliminari*) at the Court of [City B]**

Name of its representative[1]: **[name of the GIP]**

Post held (title/grade): **Judge for Preliminary Investigations**

File reference: **[no.]/[year] R.G.N.R. E.P.P.O.; [no.]/[year] R.G. G.I.P.**

Address: **Court of [City B] – GIP Office – [address], [City B]**

Tel. No.: - **[telephone no.] - [telephone no.]**

E-mail: **[e-mail of the GIP]**

Contact details of the person to contact to make necessary practical arrangements for the surrender:
European Public Prosecutor's Office, [City B] (*Procura europea*)
Public Prosecutors (PM) [EDP 1] and [EDP 2]
Tel. [telephone no.]

[certified e-mail (PEC) of the EPPO office]

1 In the different language versions a reference to the "holder" of the judicial authority will be included.

In caso di designazione di un'autorità centrale per la trasmissione e la ricezione amministrative di mandati d'arresto europei:

Denominazione dell'Autorità centrale: **MINISTERO DELLA GIUSTIZIA – D.A.G. – D.G.G.P. UFFICIO II**

Persona da contattare, se del caso (titolo/grado e nome): **MINISTERO DELLA GIUSTIZIA – DIRETTORE UFFICIO II**

Indirizzo: **VIA ARENULA 70, 00186 ROMA**

Nr. di telefono: (codice del Paese) (codice della città): **[n. telefono]**

Nr. di Fax: (codice del Paese) (codice della città) **[n. fax]**

E-mail: **[e-mail Ufficio II]**

Firma dell'autorità giudiziaria emittente e/o del suo rappresentante

.....

Nome: **[NOME DEL G.I.P.]**

Funzione (titolo/grado): **GIUDICE DELLE INDAGINI PRELIMINARI**

Data: **[data di emissione]**

Timbro ufficiale (se disponibile)

IL GIUDICE
Dr. [nome del G.I.P.]
(firma omessa)

TRIBUNALE DI [città B]
Depositato in Cancelleria
[città B], il [data]

L'ASSISTENTE GIUDIZIARIO
[nome del funzionario]
(firma e timbro omessi)

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority: **MINISTRY OF JUSTICE – D.A.G. (Department for Justice Affairs) – D.G.G.P. (Directorate-General for Criminal Justice), OFFICE II**

Contact person, if applicable (title/grade and name): **MINISTRY OF JUSTICE – DIRECTOR OF OFFICE II**

Address: **VIA ARENULA 70, 00186 ROME**

Tel. No.: (country code) (area/city code) (...) **[telephone no.]**

Fax No.: (country code) (area/city code) (...) **[fax no.]**

E-mail: **[e-mail of Office II]**

Signature of the issuing judicial authority and/or its representative:

.....

Name: **[NAME OF THE GIP]**

Post held (title/grade): **JUDGE FOR PRELIMINARY INVESTIGATIONS**

Date: **[date of issue]**

Official stamp (if available)

THE JUDGE
[name of the GIP]
(signature omitted)

COURT OF [City B]
Filed with the Registry (*depositato in cancelleria*)
[City B], [date]

THE JUDICIAL ASSISTANT (*assistente giudiziario*)
[name of the official]
(signature and stamp omitted)

FORM A – Informazioni supplementari –Art. 26 Decisione SIS II
MAE: Mandato d'Arresto Europeo
I riferimenti MAE rimandano alla sezione pertinente del modello MAE

Dettagli del formulario

Date + time of message	001	A CURA DI SIRENE
Message reference number	002	A CURA DI SIRENE
Sending SIRENE	003	A CURA DI SIRENE
Destination SIRENE	004	A CURA DI SIRENE
Schengen reference number	005	A CURA DI SIRENE
Important notice	311	A CURA DI SIRENE

Extradition or surrender	239	A CURA DI SIRENE
Sequence number of EAW	272	A CURA DI SIRENE

Identità

Main record	316	A CURA DI SIRENE
Identity alias number	310	A CURA DI SIRENE
Cognome	006	[COGNOME – INDAGATO B]
Nome	007	[NOME – INDAGATO B]
Nome alla Nascita	008	
Nome(i) usato(i) in precedenza	266	
Data di Nascita	009	[data di nascita]
Luogo di Nascita	010	TUNISIA
Sesso	012	MASCHILE
Cittadinanza	013	TUNISINA
Alias	011	///

Informazioni supplementari sull'identità

Ultimo Indirizzo Conosciuto	061	
Lingue parlate o comprese	238	ITALIANO – ARABO
Descrizione della Persona	058	
Fotografia (Riferimenti)	059	[fotografia omessa]
Impronte (Riferimenti)	060	
codice DNA	237	
Dati personali divergenti	275	
Origine del Passaporto	050	
Codice Unico Identificativo	051	
Data del Documento	052	
Luogo di Emissione del Documento	053	
Autorità Emittente	054	
Data di Scadenza	055	

A FORM – Supplementary information – Article 26 of the SIS II Decision
EAW: European Arrest Warrant
EAW references refer to the relevant section of the EAW form

Form details

Date + time of message	001	TO BE COMPLETED BY SIRENE
Message reference number	002	TO BE COMPLETED BY SIRENE
Sending SIRENE	003	TO BE COMPLETED BY SIRENE
Destination SIRENE	004	TO BE COMPLETED BY SIRENE
Schengen reference number	005	TO BE COMPLETED BY SIRENE
Important notice	311	TO BE COMPLETED BY SIRENE

Extradition or surrender	239	TO BE COMPLETED BY SIRENE
Sequence number of EAW	272	TO BE COMPLETED BY SIRENE

Identity

Main record	316	TO BE COMPLETED BY SIRENE
Identity alias number	310	TO BE COMPLETED BY SIRENE
Surname	006	[SURNAME – SUSPECT B]
Forename(s)	007	[FORENAME – SUSPECT B]
Name at birth	008	
Previously used name(s)	266	
Date of birth	009	[date of birth]
Place of birth	010	TUNISIA
Sex	012	MALE
Nationality	013	TUNISIAN
Alias	011	///

Additional information on identity

Last known address	061	
Languages spoken or understood	238	ITALIAN – ARABIC
Description of the person	058	
Photograph (references)	059	[photograph omitted]
Fingerprints (references)	060	
DNA profile	237	
Divergent personal data	275	
Passport origin	050	
Unique identification number	051	
Date of the document	052	
Place of issue of the document	053	
Issuing authority	054	
Expiry date	055	

Nome del Padre	056	
Nome della Madre	057	

Informazioni sul Mandato\Decisione

b1 Mandato di Arresto o Decisione Giuridica equipollente	240	ORDINANZA DI APPLICAZIONE DI MISURA CAUTELARE PERSONALE
Data di emissione del Mandato di Arresto	032	[data di emissione]
Autorità Giudiziaria Emittente	035	GIUDICE INDAGINI PRELIMINARI TRIBUNALE DI [città B]
Sentenza esecutiva per MAE	241	
Num. Rif. Decisione	037	ORDINANZA FASCICOLO [n.]/[anno] RG GIP
Data della Decisione	036	
Durata della pena massima irrogabile	034	ANNI QUINDICI DI RECLUSIONE
Data della sentenza	038	
Pena residua da scontare	039	

Notificazioni o comunicazioni della decisione a comparire, interessato comparso personalmente o decisione emessa *in absentia*

Processo celebrato in presenza dell'imputato	294	
Data citazione fatta alla persona	296	
Atto di citazione notificato con altri mezzi	297	
Difeso *in absentia* da legale nominato d'ufficio	298	
Data esecutività sentenza	300	
Sentenza non appellata	301	
Termine di scadenza del ricorso	302	
Termine per la revisione del processo o di ricorso	303	
Condizioni pertinenti	244	

Informazioni sul reato

Numero Totale di Reati	245	8
Date di commissione dei reati	042	DAL MARZO 2022 A OGGI
Luogo di commissione del reato	043	ITALIA ([città B], [città A]), TUNISIA
Descrizione delle circostanze di fatto	044	INDAGATO B - INDAGATO E - INDAGATO D - INDAGATO C - INDAGATO F a) per il delitto di cui agli artt. 291 quater, commi 1°, 2° e 4° e 291 ter, comma 2 lettera e), come richiamata dall'art. 291 quater, comma 4, D.P.R. n. 43 del 23.01.1973D.P.R. n. 43 del 23/01/1973, 61 bis c.p., per essersi associati tra loro e con altri soggetti in corso di identificazione, al fine di commettere più reati di contrabbando di tabacchi lavorati esteri (art. 291 bis d.P.R. 43/1973) ed in particolare: - INDAGATO B, rivestendo il ruolo di capo, promotore e finanziatore del sodalizio, occupandosi di curare l'attivazione di referenti in Tunisia per l'approvvigionamento di tabacchi lavorati esteri da introdurre illegalmente in Italia, assicurando la

Father's name	056	
Mother's name	057	

Information on the warrant/decision

(b)1 Arrest warrant or equivalent judicial decision	240	ORDER APPLYING A PERSONAL PRECAUTIONARY MEASURE (*ORDINANZA DI APPLICAZIONE DI MISURA CAUTELARE PERSONALE*)
Date of issue of the arrest warrant	032	[date of issue]
Issuing judicial authority	035	JUDGE FOR PRELIMINARY INVESTIGATIONS, COURT OF [City B]
Enforceable judgment for EAW	241	
Decision reference number	037	ORDER, FILE [no.]/[year] RG GIP
Date of the decision	036	
Maximum length of the sentence that may be imposed	034	FIFTEEN YEARS' IMPRISONMENT
Date of the judgment	038	
Remaining sentence to be served	039	

Service or notification of the summons, person appeared in person or decision rendered *in absentia*

Trial held in the presence of the accused	294	
Date of summons served in person	296	
Summons served by other means	297	
Defended *in absentia* by court-appointed counsel	298	
Date on which the judgment became enforceable	300	
Judgment not appealed	301	
Time limit for appeal	302	
Time limit for retrial or appeal	303	
Relevant conditions	244	

Information on the offence

Total number of offences	245	8
Dates of commission of the offences	042	FROM MARCH 2022 TO DATE
Place of commission of the offence	043	ITALY ([City B], [City A]), TUNISIA
Description of the factual circumstances	044	SUSPECT B - SUSPECT E - SUSPECT D - SUSPECT C - SUSPECT F a) for the offence under Article 291-quater(1), (2) and (4) and Article 291-ter(2)(e), as referred to in Article 291-quater(4), of Presidential Decree (D.P.R.) No 43 of 23.01.1973 Presidential Decree (D.P.R.) No 43 of 23/01/1973 [*sic*], and Article 61-bis of the Criminal Code (c.p.), for having associated with one another and with other persons currently being identified, for the purpose of committing several offences of smuggling foreign manufactured tobacco (Article 291-bis of D.P.R. 43/1973), and in particular: - SUSPECT B, acting as head, promoter and financier of the association, taking charge of activating contacts in Tunisia for the supply of foreign manufactured tobacco to be illegally brought into Italy, ensuring the

		disponibilità di natanti necessari per il trasbordo dai pescherecci dalle coste tunisine e per il successivo sbarco sul territorio italiano, reclutando scafisti per la guida dei natanti, organizzando la ricezione dei T.L.E. in Italia, anche attraverso mezzi di trasporto terrestri e curando l'occultamento della merce in vista della rivendita per la successiva commercializzazione al dettaglio, reperendo mezzi di comunicazione sicuri, tra cui utenze fittiziamente intestate a terzi e strumenti per la navigazione, come GPS nautici utilizzati per l'incontro in mare tra le imbarcazioni provenienti dalla Tunisia e dall'Italia, gestendo i proventi realizzati anche ripartendoli tra gli associati, finanziando personalmente l'acquisto della merce di contrabbando, nonché dei natanti, curando i rapporti coi successivi acquirenti di T.L.E. instaurando uno stabile e continuativo canale di vendita individuato nel sodalizio diretto da INDAGATO G con cui concorda modalità, termini di consegna e pagamento dei T.L.E.; - INDAGATO C, cooperando con INDAGATO B nelle medesime condotte di organizzazione del sodalizio criminoso, occupandosi del prelievo di T.L.E. in mare organizzando la ricezione del carico in Italia, anche attraverso mezzi di trasporto ed il successivo occultamento in vista della commercializzazione al dettaglio, occupandosi dello stoccaggio e della successiva rivendita, cooperando con il promotore nella ricerca degli acquirenti e conducendo le trattative e fissando il prezzo di acquisto e le modalità di consegna, partecipando, con INDAGATO D, al ritiro, nel tratto di mare prospiciente la Tunisia, dei T.L.E. da altre imbarcazioni ed introducendoli in Italia a bordo dei natanti armati dall'organizzazione cui partecipa, con il supporto a terra di INDAGATO E, INDAGATO F e del promotore INDAGATO B. - INDAGATO D, cooperando con il promotore INDAGATO B nelle medesime condotte di organizzazione del sodalizio criminoso, occupandosi del prelievo dei T.L.E. in mare per curarne l'introduzione nel territorio italiano reclutando scafisti per la guida dei natanti e ponendosi anche personalmente alla guida dei medesimi, organizzando la ricezione del carico in Italia, anche attraverso la predisposizione dei mezzi di trasporto ed il successivo occultamento della merce in vista della commercializzazione al dettaglio,

		availability of the vessels needed for transhipment from the fishing boats off the Tunisian coast and for the subsequent landing on Italian territory, recruiting boat pilots (*scafisti*) to steer the vessels, organising the reception of the T.L.E. in Italy, including by means of land transport, and arranging for the concealment of the goods pending their resale for subsequent retail distribution, procuring secure means of communication, including telephone lines fictitiously registered in the names of third parties, and navigation instruments, such as marine GPS devices used for meetings at sea between the vessels coming from Tunisia and from Italy, managing the proceeds obtained, including by sharing them among the members, personally financing the purchase of the contraband goods and of the vessels, and handling relations with the subsequent buyers of T.L.E., establishing a stable and continuous sales channel through the association headed by SUSPECT G, with whom he agrees on the arrangements, delivery terms and payment for the T.L.E.; - SUSPECT C, cooperating with SUSPECT B in the same organisational conduct of the criminal association, taking charge of collecting T.L.E. at sea, organising the reception of the cargo in Italy, including by means of transport, and its subsequent concealment pending retail distribution, handling storage and subsequent resale, cooperating with the promoter in seeking buyers, conducting negotiations and setting the purchase price and the delivery arrangements, participating, with SUSPECT D, in the collection, in the stretch of sea off Tunisia, of T.L.E. from other vessels and bringing them into Italy on board vessels fitted out by the organisation in which he participates, with onshore support from SUSPECT E, SUSPECT F and the promoter SUSPECT B. - SUSPECT D, cooperating with the promoter SUSPECT B in the same organisational conduct of the criminal association, taking charge of collecting T.L.E. at sea in order to bring them into Italian territory, recruiting boat pilots to steer the vessels and also personally steering them, organising the reception of the cargo in Italy, including by arranging means of transport, and the subsequent concealment of the goods pending retail distribution,

		provvedendo allo stoccaggio, all'occultamento della merce ed alla successiva rivendita, coadiuvando il promotore nel reperire gli strumenti per la navigazione, come GPS nautici, partecipava, unitamente al sodale INDAGATO N n.m.i., al ritiro, nel tratto di mare prospiciente la Tunisia, dei T.L.E. da imbarcazione proveniente dal paese nord africano e introducendoli in Italia con natanti armati dall'organizzazione cui partecipa, con il supporto a terra di INDAGATO E, INDAGATO F e del promotore INDAGATO B, fornendo essenziale contributo logistico ponendo a disposizione del sodalizio un immobile sito in in [città A] [indirizzo], quale deposito ove occultare i T.L.E. introdotti in Italia e offrendo ospitalità ai sodali INDAGATO C e INDAGATO N; - INDAGATO E cooperando con INDAGATO B nelle medesime condotte di organizzazione del sodalizio criminoso, fornendo un sostanziale contributo nelle attività connesse alla cessione della merce illecita agli acquirenti di [città B] INDAGATO G, INDAGATO H, INDAGATO I e INDAGATO L pure partecipando personalmente, in più occasioni alla cessione dei T.L.E., fornendo supporto a terra, con INDAGATO F e INDAGATO B, per l'arrivo in Italia dei natanti condotti da INDAGATO D e INDAGATO C, fornendo apporto logistico per il perseguimento dei fini associativi, provvedendo al noleggio delle autovetture utilizzate per trasportare i T.L.E. dai luoghi di sbarco ai depositi e poi a [città B] e ponendo a disposizione del sodalizio un immobile sito in in [città A] [indirizzo], utilizzato quale deposito ove occultare i T.L.E. introdotti in Italia, percependo da INDAGATO B i proventi, frutto della cessione di T.L.E. agli acquirenti di [città B] e distribuendoli anche tra gli altri sodali; - INDAGATO F, cooperando con il promotore INDAGATO B nelle medesime condotte poste in essere dal sodalizio criminoso, fornendo contributo nella cessione della merce illecita agli acquirenti INDAGATO H, INDAGATO I e INDAGATO L partecipando personalmente, in più occasioni, alla cessione dei T.L.E., fornendo supporto a terra, unitamente a INDAGATO E e al promotore INDAGATO B, all'arrivo in Italia dei natanti condotti da INDAGATO D e INDAGATO C,

		handling storage, concealment of the goods and their subsequent resale, assisting the promoter in procuring navigation instruments, such as marine GPS devices, participated, together with fellow member SUSPECT N (not further identified – *n.m.i.*), in the collection, in the stretch of sea off Tunisia, of T.L.E. from a vessel coming from the North African country and in bringing them into Italy on vessels fitted out by the organisation in which he participates, with onshore support from SUSPECT E, SUSPECT F and the promoter SUSPECT B, providing an essential logistical contribution by making available to the association a property located in [City A], [address], as a depot in which to conceal the T.L.E. brought into Italy, and offering hospitality to fellow members SUSPECT C and SUSPECT N; - SUSPECT E, cooperating with SUSPECT B in the same organisational conduct of the criminal association, making a substantial contribution to the activities connected with the sale of the illicit goods to the buyers from [City B] SUSPECT G, SUSPECT H, SUSPECT I and SUSPECT L, also personally taking part, on several occasions, in the sale of the T.L.E., providing onshore support, with SUSPECT F and SUSPECT B, for the arrival in Italy of the vessels steered by SUSPECT D and SUSPECT C, providing logistical support for the pursuit of the association's aims, arranging the hire of the cars used to transport the T.L.E. from the landing sites to the depots and then to [City B], and making available to the association a property located in [City A], [address], used as a depot in which to conceal the T.L.E. brought into Italy, receiving from SUSPECT B the proceeds of the sale of T.L.E. to the buyers from [City B] and also distributing them among the other members; - SUSPECT F, cooperating with the promoter SUSPECT B in the same conduct carried out by the criminal association, contributing to the sale of the illicit goods to the buyers SUSPECT H, SUSPECT I and SUSPECT L, personally taking part, on several occasions, in the sale of the T.L.E., providing onshore support, together with SUSPECT E and the promoter SUSPECT B, upon the arrival in Italy of the vessels steered by SUSPECT D and SUSPECT C,

		fornendo apporto logistico per il perseguimento dei fini associativi, ponendo a disposizione del sodalizio la propria autovettura utilizzata per trasportare i T.L.E. dai luoghi di sbarco ai depositi e da questi ultimi a [città B]. Con l'aggravante di cui all'art. 61 bis c.p., di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia). Con l'aggravante di cui all'art. 291 ter, comma 2 lettera e), come richiamata dall'art. 291 quater, comma 4, D.P.R. n. 43 del 23.01.1973 di essersi avvalsi di disponibilità finanziarie costituite in Stati che non hanno ratificato la Convenzione di Strasburgo del 8 novembre 1990 sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato, e che comunque non hanno stipulato e ratificato convenzioni di assistenza giudiziaria con l'Italia aventi ad oggetto il delitto di contrabbando. Fatti commessi all'estero (Tunisia) ed in Italia ([città A], [città B], [città C] e [città D]) dal 22 marzo 2022 ed in permanenza, trattandosi di attività criminale in corso. INDAGATO B - INDAGATO E b) per i reati di cui agli artt. 110 c.p., 293, 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43, per avere, in concorso tra loro e con altri soggetti rimasti ignoti, posto in essere, in modo non equivoco, atti idonei diretti in modo non equivoco all'introduzione nel territorio nazionale di 544 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 5400 kg., ed in particolare organizzavano le attività propedeutiche al trasporto dei T.L.E. a bordo di uno dei gommoni nella disponibilità del sodalizio cui partecipano dalle coste tunisine a quelle italiane, provvedendo al reperimento e alla preparazione dei T.L.E. in Tunisia, reclutando e istruendo due scafisti rimasti ignoti, organizzando il varo dell'imbarcazione con un camion munito di gru, provando il gommone in acqua prima della partenza, noleggiando un furgone da utilizzarsi per trasportare i T.L.E. attesi dalla costa al luogo individuato per occultarli; evento non verificatosi per cause indipendenti dalla loro volontà. Con l'aggravante di cui all'art. 61 bis c.p., di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia);

		providing logistical support for the pursuit of the association's aims, making available to the association his own car, used to transport the T.L.E. from the landing sites to the depots and from the latter to [City B]. With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia). With the aggravating circumstance under Article 291-ter(2)(e), as referred to in Article 291-quater(4), of Presidential Decree (D.P.R.) No 43 of 23.01.1973, of having made use of financial resources held in States that have not ratified the Strasbourg Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and that, in any event, have not concluded and ratified agreements on mutual legal assistance with Italy covering the offence of smuggling. Acts committed abroad (Tunisia) and in Italy ([City A], [City B], [City C] and [City D]) from 22 March 2022 and continuing, since the criminal activity is ongoing. SUSPECT B - SUSPECT E b) for the offences under Article 110 of the Criminal Code (c.p.) and Articles 293, 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, for having, acting in concert with one another and with other persons who remain unidentified, carried out, unequivocally, acts suitable for and unequivocally directed at bringing into national territory 544 cases of contraband foreign manufactured tobacco, with a total weight of approximately 5,400 kg, and in particular organised the activities preparatory to transporting the T.L.E. on board one of the rubber dinghies available to the association in which they participate from the Tunisian coast to the Italian coast, procuring and preparing the T.L.E. in Tunisia, recruiting and instructing two boat pilots who remain unidentified, organising the launch of the vessel using a truck equipped with a crane, testing the dinghy in the water before departure, and hiring a van to be used to transport the expected T.L.E. from the coast to the place chosen to conceal them; the result did not occur for reasons beyond their control. With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia);

		Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita. Fatti commessi in [città A], in data 08 aprile 2022. INDAGATO B - INDAGATO E - INDAGATO D c) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43, per avere, in tempi diversi e con più azioni esecutive del medesimo disegno criminoso, in concorso tra loro e con altri soggetti rimasti ignoti, introdotto nel territorio nazionale 54 casse di tabacchi lavorati esteri di contrabbando, per un peso complessivo di circa 544 kg., trasbordandole a largo delle coste tunisine da un'imbarcazione inviata da un gruppo criminale operante in Tunisia in un gommone condotto da INDAGATO D e da altro soggetto ignoto, che effettuavano lo scarico della merce sulla costa di [città A], ricevuta da INDAGATO B e INDAGATO E per il successivo trasporto su mezzi noleggiati a tal fine, ed occultata in un nascondiglio predisposto in vista della successiva vendita. Con l'aggravante di cui all'art. 61 bis c.p., per aver commesso i fatti avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia). Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 per aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita. Con l'aggravante di cui all'art. 291 ter, comma 2 lettera e), come richiamata dell'art. 291 quater, comma 4, D.P.R. n. 43 del 23.01.1973 di essersi avvalsi di disponibilità finanziarie costituite in Stati che non hanno ratificato la Convenzione di Strasburgo del 8 novembre 1990 sul riciclaggio, la ricerca, il sequestro e la confisca dei proventi di reato, e che comunque non hanno stipulato e ratificato convenzioni di assistenza giudiziaria con l'Italia aventi ad oggetto il delitto di contrabbando. Fatti commessi in Tunisia e [città A] in data 27 aprile 2022. INDAGATO B - INDAGATO E - INDAGATO I - INDAGATO M

		With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose. Acts committed in [City A] on 8 April 2022. SUSPECT B - SUSPECT E - SUSPECT D c) for the offences under Article 81, second paragraph (*cpv.*), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, for having, at different times and through several acts in furtherance of the same criminal design, acting in concert with one another and with other persons who remain unidentified, brought into national territory 54 cases of contraband foreign manufactured tobacco, with a total weight of approximately 544 kg, transhipping them off the Tunisian coast from a vessel sent by a criminal group operating in Tunisia into a rubber dinghy steered by SUSPECT D and by another unidentified person, who unloaded the goods on the coast of [City A], where they were received by SUSPECT B and SUSPECT E for subsequent transport in vehicles hired for that purpose, and concealed in a hiding place prepared with a view to their subsequent sale. With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), for having committed the offences with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia). With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 for having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose. With the aggravating circumstance under Article 291-ter(2)(e), as referred to in Article 291-quater(4), of Presidential Decree (D.P.R.) No 43 of 23.01.1973, of having made use of financial resources held in States that have not ratified the Strasbourg Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and that, in any event, have not concluded and ratified agreements on mutual legal assistance with Italy covering the offence of smuggling. Acts committed in Tunisia and [City A] on 27 April 2022. SUSPECT B - SUSPECT E - SUSPECT I - SUSPECT M

		d) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43, per avere, in tempi diversi e con più azioni esecutive del medesimo disegno criminoso, in concorso tra loro venduto, trasportato e acquistato 54 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 540 kg., proveniente dall'importazione dalla Tunisia avvenuta in data 27 aprile 2022, realizzandone il trasporto da [città A] a [città B], la consegna, il trasporto dal luogo della consegna a quello designato per l'occultamento, anche utilizzando mezzi di trasporto appartenenti a persone estranee al reato e realizzando una staffetta al fine di eludere eventuali controlli delle forze dell'ordine. Con l'aggravante di cui all'art. 61 bis c.p., di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno Stato (Italia, Tunisia). Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita. Fatti commessi in [città A] e [città B] in data 28 aprile 2022. INDAGATO B - INDAGATO E - INDAGATO D e) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43, per avere, in tempi diversi e in esecuzione dello stesso disegno criminoso, in concorso tra loro e con altri soggetti rimasti ignoti, introdotto nel territorio nazionale 12 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 120 kg., trasbordandoli da un'imbarcazione inviata da un gruppo criminale operante in Tunisia in un gommone, posto a disposizione da INDAGATO B, condotto da INDAGATO D che effettuava lo scarico della merce sulla costa di [città A], per poi, su indicazione di INDAGATO E, trasportarla ed occultarla presso la propria abitazione in vista della successiva vendita. Con l'aggravante di cui all'art. 61 bis c.p., di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia).

		d) for the offences under Article 81, second paragraph (*cpv.*), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, for having, at different times and through several acts in furtherance of the same criminal design, acting in concert with one another, sold, transported and purchased 54 cases of contraband foreign manufactured tobacco, with a total weight of approximately 540 kg, originating from the importation from Tunisia that took place on 27 April 2022, carrying out its transport from [City A] to [City B], its delivery and its transport from the place of delivery to the place designated for its concealment, including by using vehicles belonging to persons unconnected with the offence and by using an escort vehicle (*staffetta*) in order to evade any checks by law enforcement. With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia). With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose. Acts committed in [City A] and [City B] on 28 April 2022. SUSPECT B - SUSPECT E - SUSPECT D e) for the offences under Article 81, second paragraph (*cpv.*), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, for having, at different times and in execution of the same criminal design, acting in concert with one another and with other persons who remain unidentified, brought into national territory 12 cases of contraband foreign manufactured tobacco, with a total weight of approximately 120 kg, transhipping them from a vessel sent by a criminal group operating in Tunisia into a rubber dinghy made available by SUSPECT B and steered by SUSPECT D, who unloaded the goods on the coast of [City A] and then, on the instructions of SUSPECT E, transported them to and concealed them at his own home with a view to their subsequent sale. With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia).

		Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita. Fatti commessi in [città A] in data 18 maggio 2022. INDAGATO B - INDAGATO E - INDAGATO D - INDAGATO C - INDAGATO I – (INDAGATO L solo per la contestazione) f) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter, D.P.R. del 23 gennaio 1973 n. 43, per avere, in tempi diversi ed in esecuzione dello stesso disegno criminoso, in concorso tra loro, detenuto e trasportato 12 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 120 kg., INDAGATO B, INDAGATO E, INDAGATO D e INDAGATO C curandone il trasporto da [città A], dove erano detenute presso l'abitazione di INDAGATO D, a [città B] dove venivano consegnate a INDAGATO I e INDAGATO L che le detenevano presso l'abitazione di INDAGATO L per poi restituirle a INDAGATO B, INDAGATO E, INDAGATO C e INDAGATO D con quest'ultimo che ne curava il trasporto fino alla propria abitazione a [città A] in vista della successiva vendita. Con l'aggravante di cui all'art. 61 bis c.p., di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia). Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita. Fatti commessi in [città A] e [città B] in data 19 maggio 2022. INDAGATO B - INDAGATO E - INDAGATO C - INDAGATO F - INDAGATO H g) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter e 293 D.P.R. del 23 gennaio 1973 n. 43, per avere, in tempi diversi e con più azioni esecutive del medesimo disegno criminoso, in concorso tra loro, detenuto e trasportato al fine della successiva rivendita ad INDAGATO H, 12 casse di T.L.E. di contrabbando, per un peso complessivo di

		With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose. Acts committed in [City A] on 18 May 2022. SUSPECT B - SUSPECT E - SUSPECT D - SUSPECT C - SUSPECT I – (SUSPECT L only as regards the charge) f) for the offences under Article 81, second paragraph (*cpv.*), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, for having, at different times and in execution of the same criminal design, acting in concert with one another, held and transported 12 cases of contraband foreign manufactured tobacco, with a total weight of approximately 120 kg, SUSPECT B, SUSPECT E, SUSPECT D and SUSPECT C arranging for their transport from [City A], where they were held at the home of SUSPECT D, to [City B], where they were delivered to SUSPECT I and SUSPECT L, who held them at the home of SUSPECT L and then returned them to SUSPECT B, SUSPECT E, SUSPECT C and SUSPECT D, the latter arranging for their transport to his own home in [City A] with a view to their subsequent sale. With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia). With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose. Acts committed in [City A] and [City B] on 19 May 2022. SUSPECT B - SUSPECT E - SUSPECT C - SUSPECT F - SUSPECT H g) for the offences under Article 81, second paragraph (*cpv.*), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis, 291-ter and 293 of Presidential Decree (D.P.R.) No 43 of 23 January 1973, for having, at different times and through several acts in furtherance of the same criminal design, acting in concert with one another, held and transported, for subsequent resale to SUSPECT H, 12 cases of contraband T.L.E., with a total weight of

		circa 120 kg., in particolare INDAGATO B e INDAGATO C concordando con l'acquirente INDAGATO H modalità e tempi per la cessione, INDAGATO E e INDAGATO F, eseguendo le disposizioni impartite da INDAGATO B, curandone il trasporto da [città A], dove le casse erano detenute presso l'abitazione di INDAGATO D, a [città B] e, in seguito alla revoca dell'acquisto, provvedendo al trasporto dei T.L.E. da [città B] a [città A], utilizzando per il trasporto un'autovettura noleggiata e con INDAGATO H che concordava con i venditori i dettagli della cessione, monitorava il luogo designato per la consegna, al fine, di individuare eventuali attività delle forze dell'ordine, e proposto modalità alternative per pervenire all'acquisto dei T.L.E. Con l'aggravante di cui all'art. 61 bis c.p., di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia); Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita. Fatti commessi in [città A] e [città B] in data 26 maggio 2022. INDAGATO B - INDAGATO E - INDAGATO G - INDAGATO F h) per i reati di cui agli artt. 81 cpv. e 110 c.p., 291 bis e ter D.P.R. del 23 gennaio 1973 n. 43, per avere, in tempi diversi ed in esecuzione dello stesso disegno criminoso, in concorso tra loro, venduto, trasportato ed acquistato 12 casse di tabacco lavorato estero di contrabbando, per un peso complessivo di circa 120 kg., in particolare INDAGATO F, INDAGATO B e INDAGATO E curandone il trasporto da [città A] a [città B] con un'autovettura intestata ad INDAGATO F unitamente ad altra intestata a terzo in funzione di staffetta, con a bordo INDAGATO B e INDAGATO E e INDAGATO G, concordando con i venditori le modalità, il prezzo e il luogo dove eseguire la cessione, acquistando i T.L.E. e corrispondendone il pagamento quantificato in euro 12.550.

		approximately 120 kg; in particular, SUSPECT B and SUSPECT C agreeing with the buyer SUSPECT H on the arrangements and timing of the sale, SUSPECT E and SUSPECT F, following the instructions given by SUSPECT B, arranging for their transport from [City A], where the cases were held at the home of SUSPECT D, to [City B] and, after the purchase was called off, transporting the T.L.E. from [City B] to [City A], using a hired car for the transport, and SUSPECT H agreeing with the sellers on the details of the sale, monitoring the place designated for delivery in order to detect any law enforcement activity, and proposing alternative arrangements for completing the purchase of the T.L.E. With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia); With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose. Acts committed in [City A] and [City B] on 26 May 2022. SUSPECT B - SUSPECT E - SUSPECT G - SUSPECT F h) for the offences under Article 81, second paragraph (*cpv.*), and Article 110 of the Criminal Code (c.p.), and Articles 291-bis and 291-ter of Presidential Decree (D.P.R.) No 43 of 23 January 1973, for having, at different times and in execution of the same criminal design, acting in concert with one another, sold, transported and purchased 12 cases of contraband foreign manufactured tobacco, with a total weight of approximately 120 kg; in particular, SUSPECT F, SUSPECT B and SUSPECT E arranging for their transport from [City A] to [City B] in a car registered in the name of SUSPECT F, together with another car registered in the name of a third party acting as an escort vehicle (*staffetta*), with SUSPECT B, SUSPECT E and SUSPECT G on board, agreeing with the sellers on the arrangements, the price and the place of the sale, purchasing the T.L.E. and paying for them the sum of EUR 12,550.

		Con l'aggravante di cui all'art. 61 bis c.p., di aver commesso il fatto avvalendosi del contributo di un gruppo criminale organizzato impegnato in attività criminali in più di uno stato (Italia, Tunisia). Con l'aggravante di cui all'art 295, comma 2 lettera d), D.P.R. 43/73 di aver commesso il fatto associandosi per commettere delitti di contrabbando ad una organizzazione a tal fine costituita. Fatti commessi in [città A] e [città B] il 30 maggio 2022.
Grado di Partecipazione	045	ORGANIZZATORE DELL'ASSOCIAZIONE CRIMINALE E CONCORRENTE NEI REATI FINE
Testo Legale Applicabile	040	Artt.. 291 quater, bis e ter DPR n. 43/63, 61 bis c.p.;
Reati MAE	247	

Informazioni complementari
Solo se compilato nel MAE

Altre circostanze pertinenti per il caso	267	
Motivo del Sequestro di beni	249	
Descrizione dei beni	250	
Ergastolo e/o atto di clemenza	268	

Autorità Giudiziaria: informazioni specifiche

Nome dell'A.G. che ha emesso il mandato	251	GIUDICE PER LE INDAGINI PRELIMINARI del TRIBUNALE DI [sede – nell'originale è indicato un tribunale diverso]
Nome del rappresentante dell'A.G. emittente	259	[NOME DEL G.I.P.]
Funzione (Titolo/Grado)	252	GIUDICE INDAGINI PRELIMINARI
Nr riferimento fascicolo	031	[n.]/[anno] RGNR EPPO; [n.]/[anno] RGGIP
Indirizzo AG emittente	254	Tribunale di [città B] – Ufficio G.I.P. – [indirizzo], [città B]
Numero di telefono AG emittente	255	[n. telefono] - [n. telefono]
Numero di fax AG emittente	256	
Indirizzo posta elettronica AG emittente	257	[e-mail del G.I.P.] [PEC ufficio G.I.P.] [e-mail del funzionario]
Estremi della persona da contattare per necessarie disposizioni pratiche relative alla consegna (Autorità Giud.)	258	Procura Europea di [città B] PM dott. [PED 1] e dott. Ssa [PED 2] Tel. [n. telefono] [PEC della Procura europea]

Informazioni specifiche dell'autorità centrale del MAE (solo se l'Autorità centrale è coinvolta in conformità del diritto nazionale)

Nome dell'autorità centrale	260	**Ministero della Giustizia**
Indirizzo dell'autorità centrale	293	**Via Arenula 70 – 00186 Roma**
Persona di contatto dell'Autorità Centrale	261	**Direttore Ufficio II - DG Giustizia Penale**
Telefono (Autorità Centrale)	262	**[n. telefono]**
Numero Fax (Autorità Centrale)	263	**[n. fax]**
Indirizzo E-Mail	264	**[e-mail Ufficio II]**

Informazioni specifiche dell'autorità giudiziaria che ha firmato il MAE.

		With the aggravating circumstance under Article 61-bis of the Criminal Code (c.p.), of having committed the offence with the contribution of an organised criminal group engaged in criminal activities in more than one State (Italy, Tunisia). With the aggravating circumstance under Article 295(2)(d) of Presidential Decree (D.P.R.) 43/73 of having committed the offence by joining, in order to commit smuggling offences, an organisation set up for that purpose. Acts committed in [City A] and [City B] on 30 May 2022.
Degree of participation	045	ORGANISER OF THE CRIMINAL ASSOCIATION AND ACCOMPLICE IN THE TARGET OFFENCES (*REATI FINE*)
Applicable legal provisions	040	Articles 291-quater, 291-bis and 291-ter of D.P.R. No 43/63 [*sic*: 43/73], Article 61-bis c.p.;
EAW offences	247	

Complementary information
Only if completed in the EAW

Other circumstances relevant to the case	267	
Reason for seizure of property	249	
Description of the property	250	
Life sentence and/or act of clemency	268	

Judicial authority: specific information

Name of the judicial authority which issued the warrant	251	JUDGE FOR PRELIMINARY INVESTIGATIONS of the COURT OF [seat – the original names a different court] [*sic*]
Name of the representative of the issuing judicial authority	259	[NAME OF THE GIP]
Post held (title/grade)	252	JUDGE FOR PRELIMINARY INVESTIGATIONS
File reference	031	[no.]/[year] RGNR EPPO; [no.]/[year] RG GIP
Address of the issuing judicial authority	254	Court of [City B] – GIP Office – [address], [City B]
Telephone number of the issuing judicial authority	255	[telephone no.] - [telephone no.]
Fax number of the issuing judicial authority	256	
E-mail address of the issuing judicial authority	257	[e-mail of the GIP] [certified e-mail (PEC) of the GIP Office] [e-mail of the official]
Contact details of the person to contact to make necessary practical arrangements for the surrender (judicial authority)	258	European Public Prosecutor's Office, [City B] Public Prosecutors (PM) [EDP 1] and [EDP 2] Tel. [telephone no.] [certified e-mail (PEC) of the EPPO office]

Specific information on the EAW central authority (only if the central authority is involved in accordance with national law)

Name of the central authority	260	**Ministry of Justice**
Address of the central authority	293	**Via Arenula 70 – 00186 Rome**
Contact person of the central authority	261	**Director of Office II – Directorate-General for Criminal Justice**
Telephone (central authority)	262	**[telephone no.]**
Fax number (central authority)	263	**[fax no.]**
E-mail address	264	**[e-mail of Office II]**

Specific information on the judicial authority which signed the EAW.

Nome del firmatario	269	[NOME DEL G.I.P.]
Funzioni del firmatario	270	GIUDICE INDAGINI PRELIMINARI
Data della firma	271	[data di emissione]

IL GIUDICE
Dr. [nome del G.I.P.]
(firma omessa)

DEPOSITATO IN CANCELLERIA
[città B], [data]

Il Funzionario Giudiziario
[nome del funzionario]
(firma e timbro omessi)

Name of the signatory	269	[NAME OF THE GIP]
Post held by the signatory	270	JUDGE FOR PRELIMINARY INVESTIGATIONS
Date of signature	271	[date of issue]

THE JUDGE
[name of the GIP]
(signature omitted)

FILED WITH THE REGISTRY (*DEPOSITATO IN CANCELLERIA*)
[City B], [date]

The Court Official (*Funzionario giudiziario*)
[name of the official]
(signature and stamp omitted)

Nota sulla versione anonimizzata

Documento anonimizzato a fini esclusivamente didattici. Il testo della scansione originale è stato ricomposto, pagina per pagina, mantenendone struttura, sezioni, riquadri e impaginazione; i dati sostituiti sono indicati in blu tra parentesi quadre.

INDAGATO B = persona ricercata; **INDAGATI C–N** = coindagati (lettere assegnate in modo costante in tutto il documento; N = soggetto «n.m.i.», non meglio identificato); **città A–D** = località italiane dei fatti (A e B ricorrono più spesso; B è anche la sede degli uffici giudiziari); **PED 1–2** = procuratori europei delegati. Sono stati omessi anche: date di nascita e date processuali, numeri di registro, indirizzi, recapiti telefonici ed e-mail, fotografia, firme e timbri. Restano visibili: Stati coinvolti (Italia, Tunisia), date e quantitativi dei singoli fatti, norme contestate e dati istituzionali dell'Autorità centrale.

Il testo è riprodotto fedelmente, compresi refusi e incongruenze dell'originale (per es. la duplicazione «D.P.R. n. 43 del 23.01.1973D.P.R. n. 43 del 23/01/1973», «D.P.R. n. 43/63» nel campo 040 del Form A, l'indicazione di un tribunale diverso nel campo 251, le voci dell'elenco dei reati assenti nell'originale e la numerazione dei punti della sezione d). La pagina 2 dell'originale è bianca.

A fronte è riportata la traduzione inglese: i criteri adottati sono illustrati nella nota del traduttore in calce alla versione inglese.

Sigle, istituzioni e termini giuridici usati nel documento sono spiegati nel glossario alla pagina seguente.

Translator's note

1. Standard form text

All the pre-printed text of the European arrest warrant form – heading, introductory statement, sections (a) to (i), the list of offences in section (e), the central-authority and signature blocks and the footnotes – is reproduced verbatim from the official English version of the form annexed to Council Framework Decision 2002/584/JHA, as amended by Framework Decision 2009/299/JHA (consolidated version, Council doc. 13297/11). It has not been translated afresh. The numbering, layout and omissions of the Italian document are kept as they are (e.g. the reduced numbering of points in section (d) and the items of the offence list that are missing in the original); the point numbered "1." before the list of offences in section (e) is given the official number "I.", consistent with point "II." of the original.

2. Information entered by the issuing authority

The content entered in the form is translated in full, without omissions, additions or explanations within the text. Italian legal concepts that have no exact English equivalent are rendered by a functional equivalent, with the Italian term in italics in brackets at first occurrence (e.g. *custodia cautelare in carcere*, *staffetta*, *scafisti*). Provisions are cited in the English format (e.g. Article 291-quater(4) of Presidential Decree (D.P.R.) No 43 of 23 January 1973). Italian abbreviations are kept and explained below. Dates are given in an unambiguous format. Obvious errors in the original are reproduced and flagged with [*sic*]; mere typing slips that do not affect the meaning are not reproduced.

3. SIS II "A Form" (SIRENE)

Field codes are authoritative and are kept unchanged. Labels already in English in the original are kept; Italian labels are translated literally; the value "A CURA DI SIRENE" is rendered as "TO BE COMPLETED BY SIRENE".

4. Anonymisation

SUSPECT B = requested person; **SUSPECTS C–N** = co-suspects (letters used consistently throughout; N = person "n.m.i.", not further identified); **City A–D** = Italian places where the acts were committed (B is also the seat of the judicial offices); **EDP 1–2** = European Delegated Prosecutors. Also omitted: dates of birth and procedural dates, register numbers, addresses, telephone numbers and e-mail addresses, photograph, signatures and stamps. Retained: States involved (Italy, Tunisia), dates and quantities of the individual acts, provisions charged, and institutional details of the central authority. Placeholders are shown in blue in square brackets.

5. Glossary

Abbreviations, institutions and Italian legal terms used in the document are explained in the glossary on the next page.

Glossario

SIS II – Sistema d'informazione Schengen di seconda generazione: banca dati comune agli Stati Schengen in cui sono inserite, tra l'altro, le segnalazioni di persone ricercate per l'arresto ai fini di consegna o estradizione (art. 26 della decisione 2007/533/GAI, oggi regolamento (UE) 2018/1862). Il MAE viene diffuso in tutta l'area Schengen proprio attraverso la segnalazione SIS.

SIRENE – *Supplementary Information Request at the National Entries*: l'ufficio nazionale, presente in ogni Stato Schengen e attivo 24 ore su 24, che scambia con gli omologhi stranieri le informazioni supplementari sulle segnalazioni SIS. In Italia è la Divisione S.I.R.E.N.E. del Servizio per la cooperazione internazionale di polizia (Ministero dell'Interno).

Form A (SIRENE) – Modulo standard del Manuale SIRENE che accompagna la segnalazione per l'arresto: riporta i dati del MAE in campi numerati (i codici, es. 006, 044, sono identici in tutte le lingue) e consente alle polizie degli altri Stati di eseguire l'arresto anche prima della trasmissione del MAE.

MAE / EAW – Mandato d'arresto europeo (decisione quadro 2002/584/GAI; in Italia legge 22 aprile 2005, n. 69): decisione giudiziaria emessa da uno Stato membro per ottenere da un altro Stato membro l'arresto e la consegna di una persona ai fini dell'azione penale o dell'esecuzione di una pena.

Elenco dei 32 reati – Categorie della sezione e) (art. 2, par. 2, decisione quadro) per le quali, se punite con almeno tre anni nel massimo, la consegna avviene senza verifica della doppia incriminazione.

GIP / G.I.P. – Giudice per le indagini preliminari: giudice che, nella fase delle indagini, decide sulle richieste del pubblico ministero che incidono sui diritti fondamentali (misure cautelari, intercettazioni, archiviazione). Qui è l'autorità giudiziaria emittente, avendo disposto la custodia cautelare.

Ordinanza di custodia cautelare in carcere (o.c.c.) – Provvedimento del giudice che dispone la misura cautelare personale più grave prima della condanna (art. 285 c.p.p.). È la «decisione giudiziaria che abbia la stessa forza» di un mandato d'arresto su cui si fonda il MAE processuale (sezione b).

PM – Pubblico ministero: il magistrato che dirige le indagini ed esercita l'azione penale.

EPPO / Procura europea – Organo dell'UE (regolamento (UE) 2017/1939), operativo dal 2021, competente per i reati che ledono gli interessi finanziari dell'Unione, come l'evasione dei dazi doganali, risorsa propria dell'UE, legata al contrabbando. Opera negli Stati tramite i procuratori europei delegati.

PED / EDP – Procuratore europeo delegato: magistrato nazionale che agisce per conto dell'EPPO applicando il diritto processuale nazionale.

Procuratore generale presso la Corte d'appello – Ufficio del pubblico ministero di secondo grado, competente tra l'altro in materia di estradizione e consegna (la lettera è indirizzata al suo ufficio estradizioni).

Autorità centrale – Autorità designata dallo Stato (art. 7 decisione quadro) per la trasmissione e ricezione amministrativa dei MAE; in Italia il Ministero della Giustizia – Dipartimento per gli affari di giustizia (D.A.G.), Direzione generale della giustizia penale (D.G.G.P.), Ufficio II.

Guardia di Finanza – Forza di polizia a ordinamento militare competente in materia economico-finanziaria e doganale; il Nucleo di polizia economico-finanziaria ne è il reparto investigativo.

R.G.N.R. / R.G. G.I.P. – Registro generale delle notizie di reato (della procura) e registro generale dell'ufficio GIP: i numeri identificano il procedimento presso i due uffici.

c.p. / c.p.p. – Codice penale / codice di procedura penale. Art. 81 cpv. c.p.: reato continuato; art. 110 c.p.: concorso di persone nel reato; art. 61-bis c.p.: aggravante della transnazionalità.

cpv. – Capoverso: il secondo comma di un articolo.

D.P.R. 43/1973 (TULD) – Testo unico delle disposizioni legislative in materia doganale. Artt. 291-bis (contrabbando di tabacchi lavorati esteri), 291-ter (circostanze aggravanti), 291-quater (associazione per delinquere finalizzata al contrabbando di tabacchi), 293 (equiparazione del tentativo al reato consumato), 295 (aggravanti del contrabbando).

Reati fine – I singoli delitti commessi in attuazione del programma dell'associazione, distinti dal reato associativo.

T.L.E. – Tabacchi lavorati esteri: prodotti del tabacco di provenienza estera.

n.m.i. – Non meglio identificato.

Scafisti / staffetta – Conducenti di imbarcazioni usate per traffici illeciti / veicolo che precede il carico per segnalare controlli di polizia.

PEC – Posta elettronica certificata: e-mail con valore legale di raccomandata.

In absentia – Processo celebrato senza la presenza dell'imputato (sezione d) e decisione quadro 2009/299/GAI).

Glossary

SIS II – Second-generation Schengen Information System: the database shared by the Schengen States in which, among other things, alerts are entered on persons wanted for arrest for surrender or extradition purposes (Article 26 of Decision 2007/533/JHA, now Regulation (EU) 2018/1862). The EAW is circulated throughout the Schengen area by means of the SIS alert.

SIRENE – Supplementary Information Request at the National Entries: the national office, present in every Schengen State and operating 24/7, that exchanges supplementary information on SIS alerts with its foreign counterparts. In Italy it is the S.I.R.E.N.E. Division of the International Police Cooperation Service (Ministry of the Interior).

A Form (SIRENE) – Standard form of the SIRENE Manual that accompanies an alert for arrest: it sets out the EAW data in numbered fields (the codes, e.g. 006, 044, are identical in all languages) and allows the police of other States to make the arrest even before the EAW itself is transmitted.

EAW / MAE – European arrest warrant (Framework Decision 2002/584/JHA; in Italy Law No 69 of 22 April 2005): a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a person for the purposes of a criminal prosecution or the execution of a sentence.

List of 32 offences – Categories in section (e) (Article 2(2) of the Framework Decision) for which, if punishable by a maximum of at least three years, surrender is granted without verification of double criminality.

GIP / G.I.P. – *Giudice per le indagini preliminari*, Judge for Preliminary Investigations: the judge who, during the investigation stage, rules on prosecution requests affecting fundamental rights (precautionary measures, interceptions, dismissal). Here the GIP is the issuing judicial authority, having ordered the pre-trial detention.

Pre-trial detention order (*ordinanza di custodia cautelare in carcere*, o.c.c.) – The court order imposing the most severe personal precautionary measure before conviction (Article 285 of the Code of Criminal Procedure). It is the "judicial decision having the same effect" as an arrest warrant on which a prosecution EAW is based (section (b)).

PM – *Pubblico ministero*, Public Prosecutor: the magistrate who directs the investigation and brings the prosecution.

EPPO / *Procura europea* – European Public Prosecutor's Office, an EU body (Regulation (EU) 2017/1939) operational since 2021 and competent for offences affecting the EU's financial interests, such as the evasion of customs duties – an EU own resource – linked to smuggling. It acts in the Member States through European Delegated Prosecutors.

EDP / PED – European Delegated Prosecutor (*procuratore europeo delegato*): a national prosecutor acting on behalf of the EPPO and applying national procedural law.

Prosecutor General at the Court of Appeal – Public prosecution office at appeal level, competent inter alia in extradition and surrender matters (the letter is addressed to its extradition office).

Central authority – Authority designated by a Member State (Article 7 of the Framework Decision) for the administrative transmission and reception of EAWs; in Italy the Ministry of Justice – Department for Justice Affairs (D.A.G.), Directorate-General for Criminal Justice (D.G.G.P.), Office II.

Guardia di Finanza – Italian police force with military status, competent for economic, financial and customs matters; the Economic and Financial Police Unit (*Nucleo di polizia economico-finanziaria*) is its investigative branch.

R.G.N.R. / R.G. G.I.P. – General register of crime reports (kept by the prosecution office) and general register of the GIP office: the numbers identify the proceedings in each office.

c.p. / c.p.p. – *Codice penale* / *codice di procedura penale*, Criminal Code / Code of Criminal Procedure. Article 81, second paragraph, c.p.: continuing offence; Article 110 c.p.: participation of several persons in an offence; Article 61-bis c.p.: aggravating circumstance of transnationality.

cpv. – *Capoverso*: the second paragraph of an article.

D.P.R. 43/1973 (TULD) – Presidential Decree No 43 of 23 January 1973, Consolidated Text of Customs Law. Articles 291-bis (smuggling of foreign manufactured tobacco), 291-ter (aggravating circumstances), 291-quater (criminal association for tobacco smuggling), 293 (attempt treated as the completed offence), 295 (aggravating circumstances of smuggling).

Target offences (*reati fine*) – The individual offences committed to carry out the association's programme, as distinct from the offence of association itself.

T.L.E. – *Tabacchi lavorati esteri*: foreign manufactured tobacco.

n.m.i. – *Non meglio identificato*: not further identified.

Scafisti* / *staffetta – Pilots of boats used for illicit trafficking / a vehicle driving ahead of the load to warn of police checks.

PEC – *Posta elettronica certificata*: certified e-mail with the legal value of registered mail.

In absentia – Trial held without the accused being present (section (d) and Framework Decision 2009/299/JHA).

SDU
University of
Southern Denmark

20 Years of CJEU case-law The Changing Nature of Mutual Trust

Mutual trust, mutual recognition and recent CJEU judgments on the EAW



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Co-funded by the European Union

Funded by the European Union. Views and opinions expressed are, however, those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the European Commission can be held responsible for them.

Setting the scene

(1) **Historical development** of judicial cooperation in criminal matters





(2) **Mutual recognition** and **mutual trust**

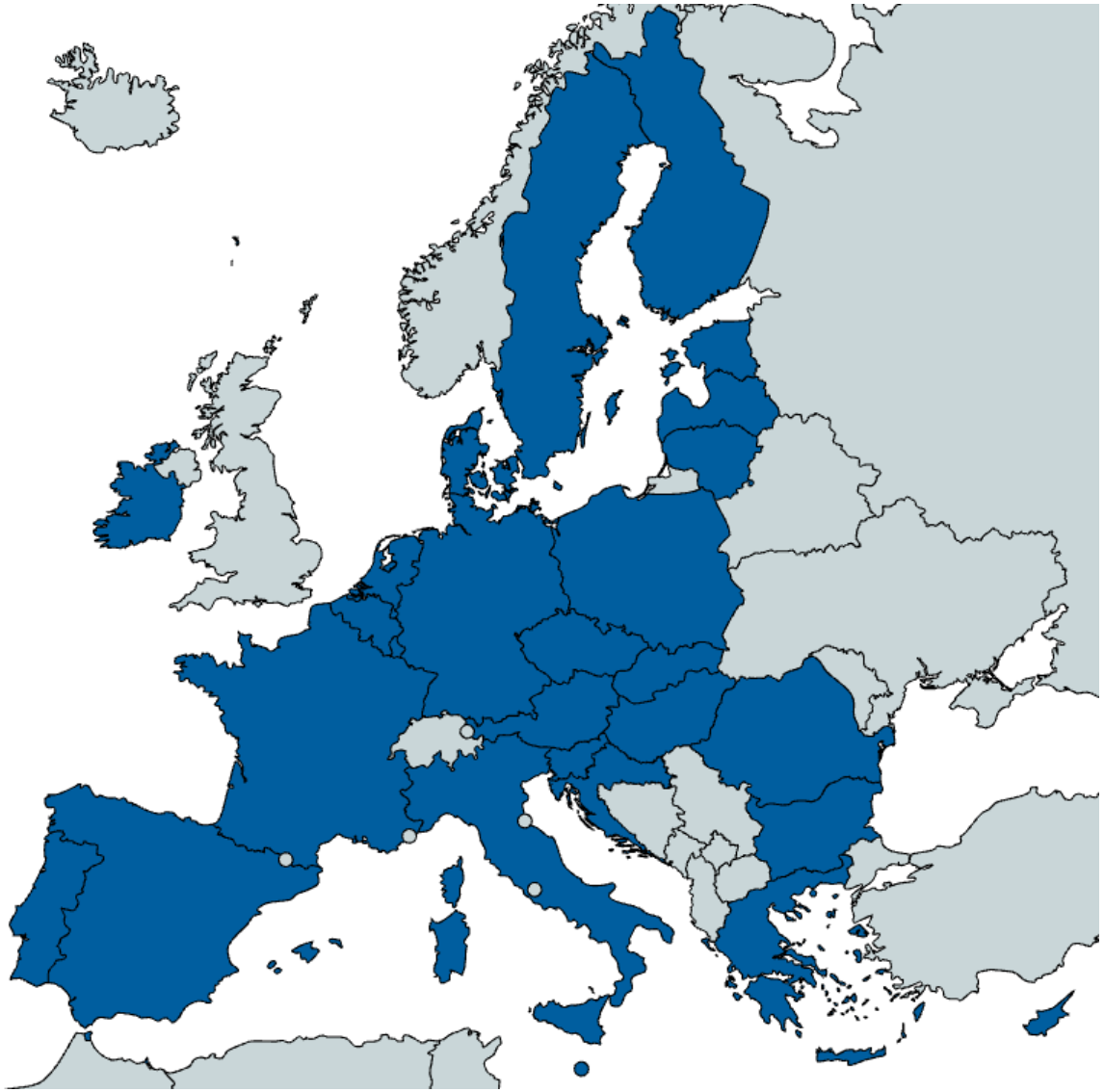
(3) The EAW



(4) Selected **judgments** from the CJEU

CVRIA

(1) Historical development of judicial cooperation in criminal matters – Introduction



- EU judicial cooperation began as a **promise of speed**
- After persons, goods, service and capitals… **decisions, orders, evidence, investigative measures, convicted persons etc.** should **move freely across borders** as well
- Core tension between **efficiency** (execution of decisions across the EU) and **defense rights** (how to safeguard them in cross-border scenarios?)

How criminal law became a driving force for European integration

FACULTY OF LAW, ECONOMICS AND FINANCE

European integration



the process whereby European states have developed **close forms of cooperation** and **deepen their unity** in economic, political, social, and legal domains



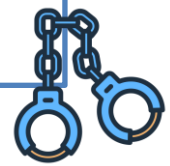
Shared rights

Common values



strong, multifaceted and far-reaching **integrating forces**

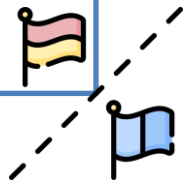
BUT ⟶ criminal law was largely **peripheral** in this process





Enforcement of EU law didn't require **harmonizing *criminal*** law

Deeply rooted in **domestic traditions**



Paradigm shift

Cross-border crimes

Expansion of competence in criminal matters (⟶ **CJEU**)

Harmonization

Mutual recognition

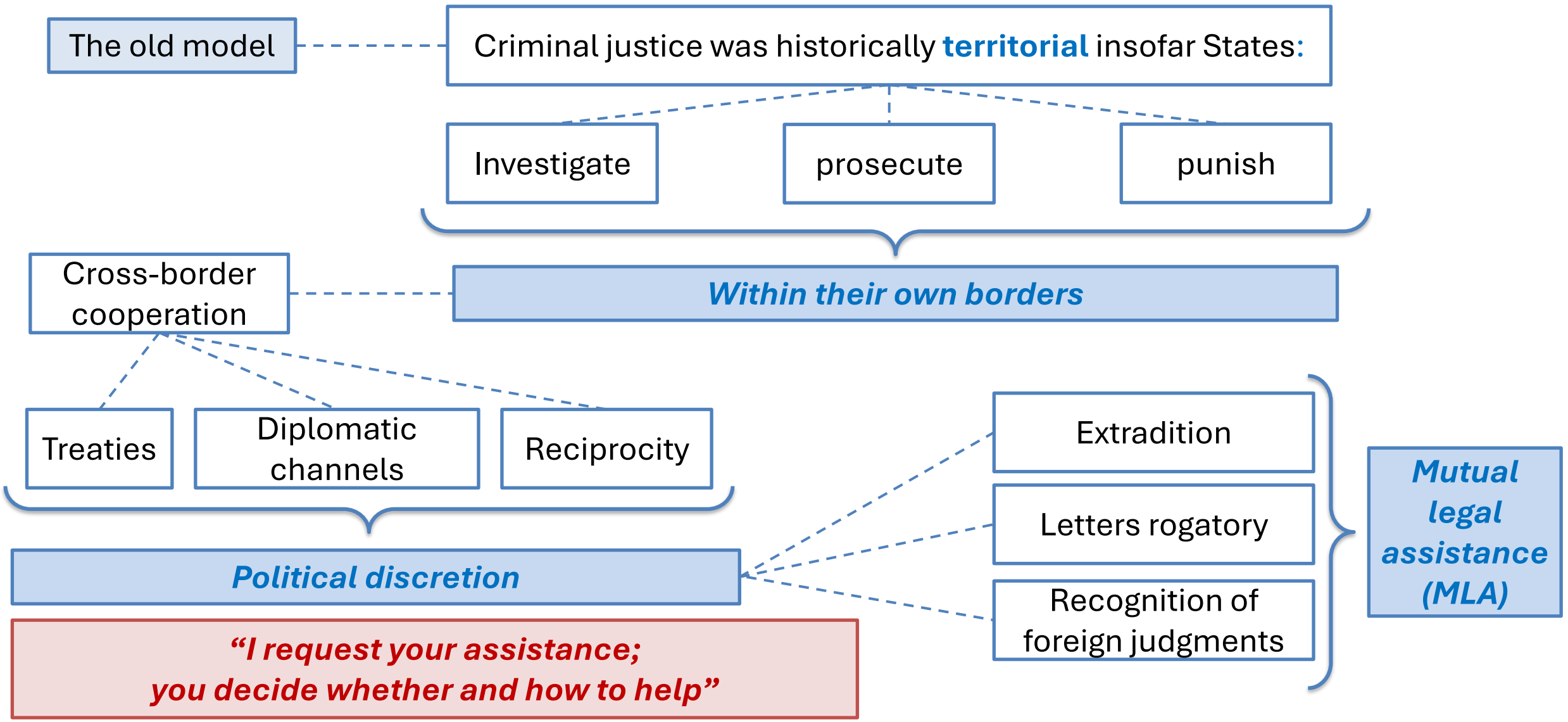
Growing importance of the 'language of rights' (De Burca) (⟶ **CJEU**)



Charter

TFUE

Before EU judicial cooperation – diplomacy and territoriality



A case-study – extradition





State A





State B

It is an instrument of **mediated cooperation**

- Based on **formal requests** between States
- Political decisions made by **the executive**
- Broad **double criminality** exceptions ("I don't consider it a crime, I don't surrender the person"

- Slow
- Fragmented
- Politically filtered

Efficiency problem



An extradition request did **not** circulate as "naturally operative" law, but required **political filter**

The Times, They Are A-Changin' - The road to Tampere

1957 – **European Convention on Extradition**

1959 – **European Convention on MLA**

1990 – **Schengen Framework**

Emerging consensus among MS…

1992/1993 – Maastricht Treaty

"Third Pillar" – Justice and Home Affairs (JHA), which included **intergovernmental cooperation** between member states on cross-border issues like **police and judicial cooperation in criminal matters**, asylum, immigration, and border control

First attempt to "institutionalize" judicial cooperation in criminal matters

1999 – Tampere European Council

Mutual recognition shall become the "**cornerstone**" of judicial cooperation in criminal matters

Constitutional "birth certificate" of modern judicial cooperation across the Union

"I commit to recognize your act; you will recognize mine"

The Times, They Are A-Changin' - The road to Lisbon

2001 – Twin Towers

The birth of the first mutual recognition instrument – the European Arrest Warrant (**EAW**)

First major instrument of mutual recognition

2009 – Lisbon Treaty

Integration of the former Third Pillar into the EU legal order

Judicial cooperation becomes "constitutionalized" in the EU legal order

Article 82 TFEU

Stronger role for the CJEU

Ordinary legislative procedure to elaborate **minimum rules** on mutual recognition (**Directives** or **Regulations**)

Minimum rules on rights of the defense as well

Zooming in mutual recognition – what is and what is not

What is mutual recognition?

"I recognize your act *as if* it could operate in my legal order"

It comes from **internal market**

Not full harmonization

Not blind acceptance

Not identical criminal procedure

Recognition **first** ("by default")

Refusal should happen **exceptionally**

Presumption that judicial decisions or act from another Member State ***should be executed***

What are the main innovations?

Faster

Between **judicial authorities**

With **common rules**

Zooming in mutual recognition – managing differences…

"Please, assist me"

"Recognize this decision unless EU law allows a refusal"

Trial structures

Evidentiary rules

Remedies

Investigative measures

National systems remain **different**

What **impact** in the field of criminal justice?



Differences are **not** treated as a **danger**

but MR here is **more sensitive** than in **internal market**

MR creates a **presumption**

Executing authority should ***normally*** execute

Refusal grounds are **exhaustive** and to be interpreted **narrowly**

Zooming in mutual trust – the invisible engine

Can mutual recognition really rely on **presumptions** only? Not exactly…

If MS don't trust each others, MR **collapses**. Therefore…

MR needs **mutual trust**

Condition of cooperation

Limit on refusal

Engine of mutual recognition

Political expectation

Criminal justice systems are **broadly compliant with FR**

Legal obligation

MS **must presume compliance** *unless* exceptional circumstances arises

Zooming in mutual trust – *Dorobantu* (C-128/18)

46 Both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 36, and of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 49).

47 Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but also, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the European Union (judgments of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 37 and the case-law cited, and of 25 July 2018, *Generalstaatsanwaltschaft (Conditions of detention in Hungary)*, C-220/18 PPU, EU:C:2018:589, paragraph 50).

Zooming in mutual trust – the *Aranyosi* turning point

Is thus mutual trust a **blind** trust?
Not exactly...



State A ← State B

Early CJEU case-law leaned toward **automatic execution** (e.g. EAW, C-396/11, *Radu*)

Trust can be **rebutted**

Aranyosi and Căldăraru (GC, C-404/15)

Article 4 CFR

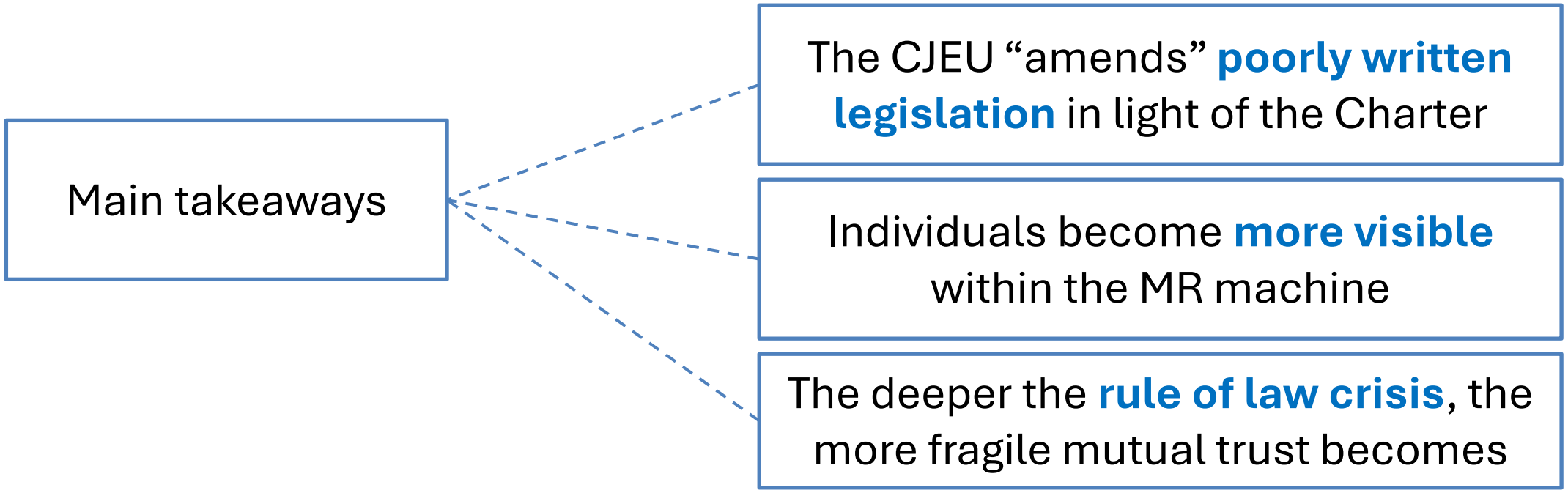
Systemic or general deficiencies in **detention conditions**

Individual risk

Request for (1) ***supplementary information****,*
(2) ***postponement*** *or*
(3) ***refusal*** *if the risk cannot be dispelled*

Zooming in mutual trust – beyond detention

- From Article 4 Charter to Article 47 Charter
  - *LM* / *Minister for Justice and Equality* ⟶ fair trial concerns and judicial independence.
  - *Openbaar Ministerie* ⟶ tribunal established by law.
  - *Puig Gordi* ⟶ scope of fair-trial risk assessment.



Mutual recognition and fundamental rights

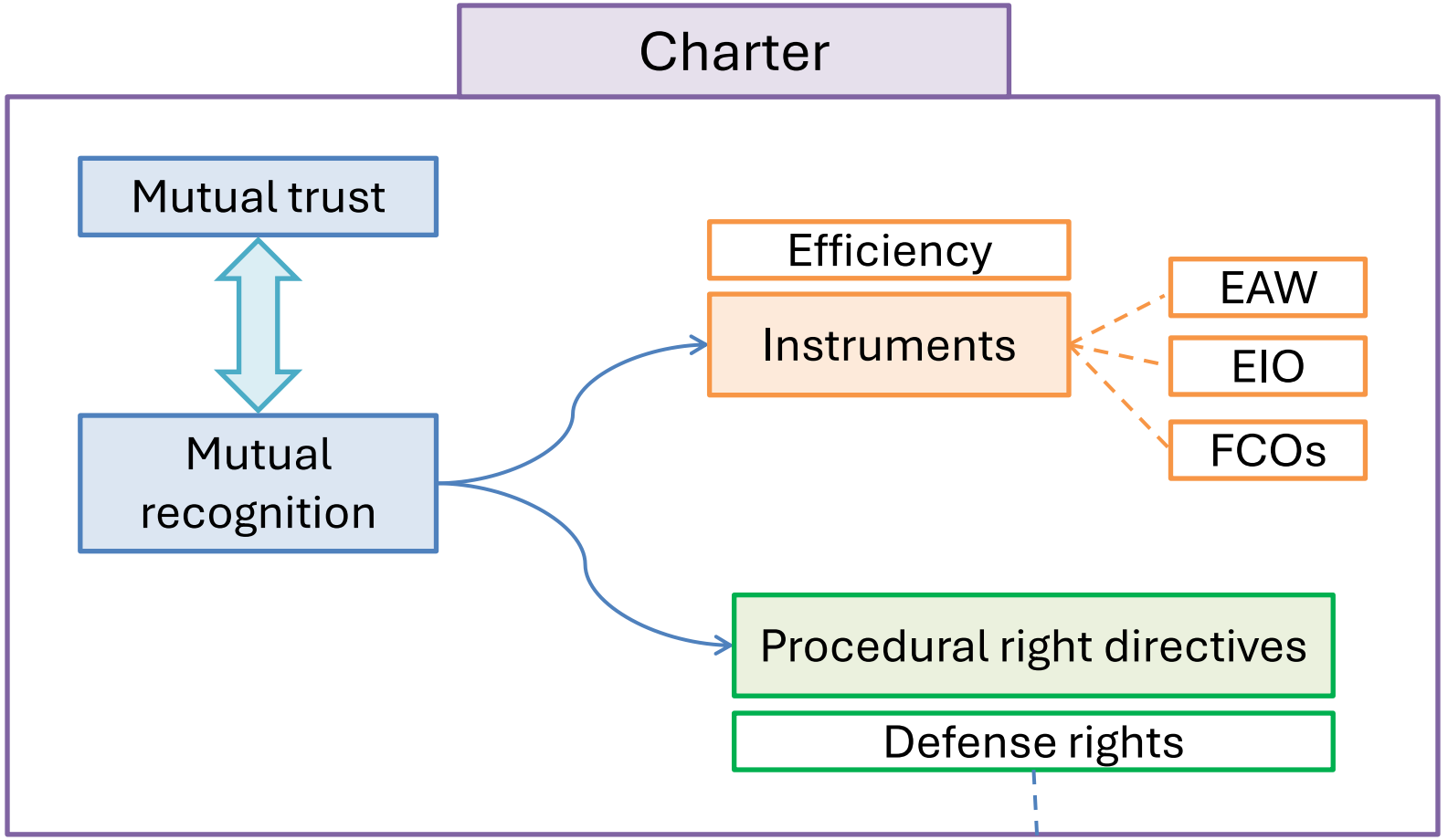
Minimum rights are the "**price**" of *maximum* circulation

But they provide a **shared grammar**

They do not eliminate **procedural diversity**

They give MR **legitimacy** by creating **common minimum guarantees**

They are not completely "external" to cooperation



The EAW – *people* circulate

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

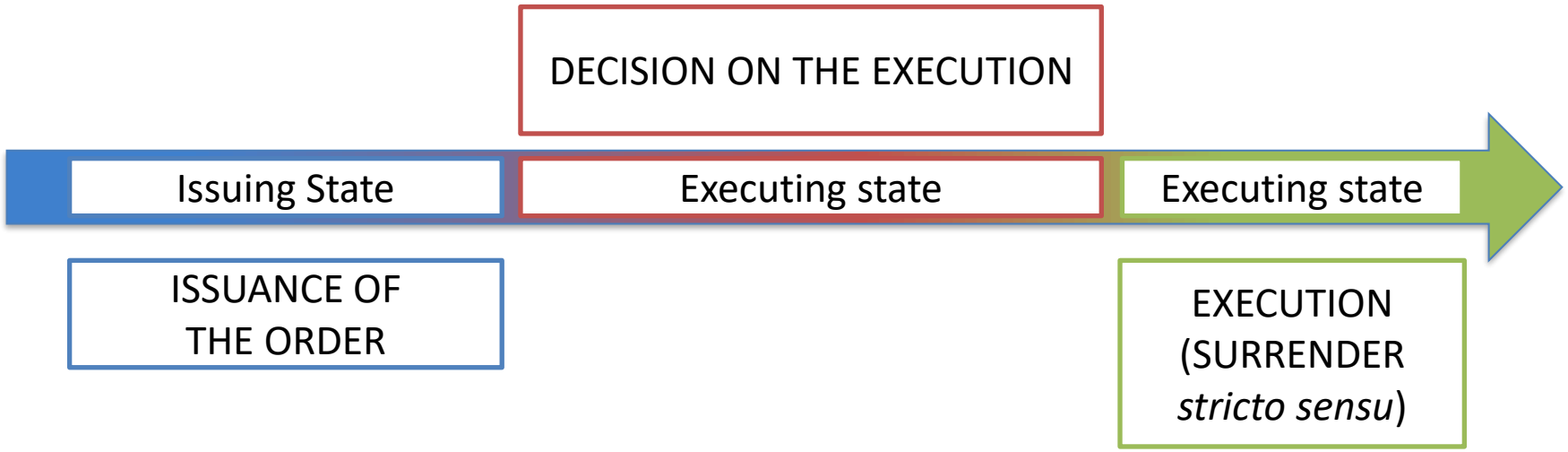
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

FD 2002/584/JHA

e.g. pre-trial detention

e.g. a final judgment

Default rule ⟶ execution
Refusal ⟶ exception


DECISION ON THE EXECUTION
Issuing State
Executing state
Executing state
ISSUANCE OF THE ORDER
EXECUTION (SURRENDER *stricto sensu*)

For which criminal offences can an EAW be issued? (1)

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 2(1) and (4) – **GENERAL RULE**

Offence punishable by ≥ 12 months imprisonment (prosecution)

Sentence of ≥ 4 months already imposed (execution)

Threshold assessed under issuing State law

"Double criminality" requirement - Executing authority may verify whether the conduct constitutes an offence domestically

No requirement of identical definitions + focus on facts (not on labels)

For which criminal offences can an EAW be issued? (2)

Article 2(2) and (3) – ***AD HOC* RULES** - The ”famous” list of 32 offences

- For some offences, the **double criminality** check does **not** apply.
- Conditions:
  - Offence included in the **closed list**
  - Maximum penalty **≥ 3 years** in issuing State
- Consequence - **no verification of constituent elements by executing State**
- Trust-based categorization by issuing authority
- List reflects areas of serious cross-border crime, including:

— participation in a criminal organisation,

— terrorism,

— trafficking in human beings,

— sexual exploitation of children and child pornography,

— illicit trafficking in narcotic drugs and psychotropic substances,

— illicit trafficking in weapons, munitions and explosives,

— corruption,

— illicit trafficking in nuclear or radioactive materials,

— trafficking in stolen vehicles,

— rape,

— arson,

— crimes within the jurisdiction of the International Criminal Court,

— unlawful seizure of aircraft/ships,

Can the executing authority refuse to execute EAWs?

Executing authority

Mandatory grounds for refusal (Article 3)

- Amnesty in the executing state
- Ne bis in idem
- Below age of criminal responsibility

N.B. These grounds are **exhaustive** – no additional mandatory grounds are allowed

Optional grounds for refusal (Article 4)

- Lack of double criminality (Art. 2(4) cases)
- Ongoing domestic prosecution for same acts
- Final domestic decision not to prosecute
- Statute of limitations expired under executing law
- National or resident ⟶ execution of sentence domestically
- Territoriality ⟶ offence committed partly or wholly domestically

+ an **additional optional ground**, i.e. trials *in absentia* (Article 4a)

Refusal possible if person **did <u>not</u> appear at trial**. Execution allowed if:

- Timely personal summons or equivalent notice;
- Representation by chosen or appointed lawyer;
- Right to retrial or appeal upon surrender.

Wrap up

UNIVERSITÉ DU LUXEMBOURG

- **First set of decisions on human rights**: the EAW execution **cannot be refused** on HR grounds
  - Right to be heard (***Radu**, C-396/11*)
  - Right to be present at trial – in absentia (***Melloni**, C-399/11*)

- **Second set of decisions**: in exceptional circumstances, an executing authority must refrain from giving effect to an EAW if it finds that exists a real risk of inhuman and degrading treatment for:
  - Conditions of detentions (***Aranyosi and Caldararu** C-404/15, **ML** C-220/18, **Dorobantu**, C-128/18*)
  - Serious, chronic or irreversible illness of the requested person (***E.D.L.** Motifs de refus fondé sur la maladie*, C-699/21)

- **Third set of decisions**: Real risk of breach of the right to fair trial:
  - Deficiencies in the system of justice (***Minister for Justice and equality** C-216/18*)
  - Independency of the issuing authority (***Openbaar Ministerie**, C-562/21*)
  - The right to a tribunal previously established by law (***Openbaar Ministerie** C-562/21; **Minister for Justice and equality** C-216/18; **Puig Gordi and others** C-158/21)*

(2) The role of the CJEU in the field of criminal justice (I)

- At least - **three jurisprudential strands** before the CJEU

The role of the **CJEU** in the field of **criminal justice**

(2a) One step ***forward*** – Thicker fair trial and defence rights

(2b) One step ***back*** – Judicial cooperation as a blurred background for integration

(2c) One step… ***aside***? – National autonomy as a no man's land

Degree of integration

(2) The role of the CJEU in the field of criminal justice (IV)

Melloni (C-399/11)

Anacco (C-504/24 PPU)

European Arrest Warrant (**EAW**) execution

FD 2002/584/JHA

- CJEU **prioritizes EAW execution** over national constitutional protections
- "**Millimetric approach**": States must adhere to **exact EU standards**, no more, no less;
- **Risk**: Higher national protections may hinder judicial cooperation
- CJEU's reliance on "**consensus**" raises questions about **bold rights protection**

Requesting MS



Requested MS



Higher standards

Can Italy **refuse** to execute the EAW on the basis of its higher procedural standards?

Recent CJEU case-law -- five different questions

TAGU	3 NOV	May the executing court reassess a sentence?
TSACHKOV	15 OCT	Must the person be detained before surrender?
RUGU AND AUCROIX	4 JUN	What follows from serious prison-condition concerns?
KHUZDAR	21 MAY	How do in-absentia safeguards affect local enforcement?
RASTOSHEV	12 FEB	Can a territorial ground lead to automatic refusal?

TAGU (C-583/24, 3 November 2026)

Can the executing court review the proportionality of a foreign sentence?

Romania requested the surrender of DZ to serve a seven-year sentence for importing small quantities of cannabis and MDMA. The Amsterdam court referred a question concerning Article 49(3) of the Charter.

CASE AT A GLANCE

7 YEARS

Final sentence imposed in Romania

3 g + 4

Cannabis (3 g) and MDMA tablets (4)

The question was whether the executing court could refuse surrender on proportionality grounds.

Conviction in Romania; surrender proceedings in the Netherlands.

01

ROMANIA · 20 DEC 2023

The Constanța Court of Appeal imposed a final seven-year prison sentence on DZ. He had attended his trial.

02

EAW · 9 JAN 2024

The Constanța Court of First Instance sought surrender to enforce that sentence. The offence concerned importing 3 g of cannabis and four MDMA tablets.

03

AMSTERDAM · 2024

The Dutch court found no refusal ground under Articles 3, 4 or 4a. It asked whether Article 49(3) could nonetheless prevent surrender.

DZ referred to personal consumption; the Dutch court did not re-examine his criminal liability.

The question combines mutual recognition and Article 49(3)

FD 2002/584

Execution is the general rule

- Article 1(2): execute EAWs under mutual recognition.
- Article 1(3): fundamental rights remain applicable.
- Articles 3, 4 and 4a do not list harsh sentencing as a refusal ground.

CHARTER · ART 49(3)

Proportionality of penalties

- The severity of penalties must not be disproportionate to the offence.
- Drug-law harmonisation sets minimum rules, not identical national sentences.
- The issuing State primarily reviews the sentence and available appeals.

The referral concerned a possible exceptional fundamental-rights objection, not an ordinary appeal.

The Court applies a two-step assessment under Article 49(3)

A difference between national sentencing levels does not by itself establish a Charter breach.

1) STRUCTURAL EVIDENCE	Identify reliable, specific and current evidence of systemic/generalised failings or failings affecting an objectively identifiable group.
2) INDIVIDUAL RISK	If the first step is met, examine whether the requested person faces a real risk of a disproportionate sentence.
APPLICATION TO DZ	The Court found that Romanian law allowed individualisation, reductions and review; the first step was not met.

Without the required evidence of deficiencies, Article 49(3) did not justify refusal in this case.

What Tagu adds to EAW fundamental-rights review.

LEGAL PRINCIPLE

The Court applies the two-step approach to Article 49(3). It does not authorise the executing court to reassess an individual sentence.

SCOPE OF THE TEST

A structural failure must involve a manifest and serious proportionality breach and a lack of effective judicial redress.

PRACTICAL ANALYSIS

Separate a comparison of penalties from evidence about sentencing practice, individualisation and the remedies available in the issuing State.

Discussion: What evidence could establish the first step under Article 49(3)?

TSACHKOV (C-580/24, 15 October 2026)

Can detention become mandatory once a court orders surrender?

An Austrian EAW was being executed in Bulgaria. LY had been released on bail, but Bulgarian law required detention in prison as soon as the executing court approved surrender.

CASE AT A GLANCE

4 JUL 2024

EAW issued by Austria

7 AUG 2024

LY released on bail in Bulgaria

The CJEU considered the decision to detain and the place of detention separately.

LY was on bail while the EAW was being considered

01

AUSTRIA · 4 JUL 2024

The Eisenstadt prosecutor issued an EAW to prosecute LY for an alleged burglary involving 61 wheel-and-tyre sets valued at €150,990.

02

BULGARIA · 4–7 AUG

LY was arrested on 4 August. The Sofia City Court released him on bail on 7 August, finding no risk of absconding.

03

HEARINGS · AUG 2024

LY consented to surrender but opposed detention pending transfer. Bulgarian law required custody when surrender was authorised.

The referring court considered detention unnecessary in LY's particular circumstances.

The executing court must decide whether detention is needed

ARTICLE 12

Individual decision

- The executing judge decides whether custody should continue.
- Provisional release is possible at any time under national law.
- Authorities must address the risk of absconding.

ARTICLES 23 + 6

Transfer and liberty

- Article 23 sets time limits for physical surrender.
- Article 23(5) requires release if the relevant limits expire.
- Article 6 Charter protects against unjustified deprivation of liberty.

The question concerns detention after a surrender order, not whether LY can travel to Austria himself.

The Court distinguishes detention from detention facilities

Article 12 continues to apply after a positive surrender decision.

INDIVIDUAL ASSESSMENT	A rule requiring custody in every case after a surrender decision is incompatible with Article 12.
RELEVANT FACTORS	The executing court must consider matters such as absconding risk, elapsed time and the expected duration of transfer.
PLACE OF CUSTODY	EU EAW rules do not prohibit detention in prison when custody is otherwise justified.

Mandatory custody is precluded; prison detention as such is not prohibited.

Judicial control continues until physical surrender.

LEGAL PRINCIPLE

A surrender order does not replace the judicial assessment required before depriving a person of liberty.

LIMIT OF THE RULING

The judgment does not establish an unconditional right to bail or prescribe a special detention facility.

PRACTICAL ANALYSIS

Ask for a reasoned custody decision using bail history, absconding risk, alternatives and the planned transfer date.

Discussion´-- How much weight should a prior finding of no absconding risk carry?

RUGU & AUCROIX
(Joined Cases C-722/23 and C-91/24, 4 June 2026)

Can Belgium enforce a sentence after refusing surrender over prison conditions?

Belgian courts refused to execute Romanian and Greek EAWs because of risks linked to detention in the issuing States. The Belgian Court of Cassation asked whether the foreign sentences could instead be enforced in Belgium.

CASE AT A GLANCE

2 EAWs

Romania and Greece sought enforcement

BELGIUM

Both requested persons lived there

Two Belgian proceedings raised the same legal question

01

Rugu --> ROMANIA / BELGIUM

An August 2023 Romanian EAW sought enforcement of a four-year human-trafficking sentence. Belgian judges refused surrender over detention conditions.

02

Aucroix --> GREECE / BELGIUM

A March 2016 Greek EAW sought enforcement of a five-year sentence. In 2024, a Belgian court refused surrender due to HL's vulnerabilities and conditions.

03

COURT OF CASSATION

The Belgian court asked whether EAW Article 4(6) could or had to be applied after the fundamental-rights refusal to allow local enforcement.

The CJEU took the Belgian refusal decisions as the starting point; it did not reassess the risks.

Refusal of surrender and transfer of enforcement are distinct

FD 2002/584

Two EAW provisions

- Article 1(3), read with Charter Article 4: refuse unsafe surrender.
- Article 4(6): optional non-execution coupled with local sentence enforcement.
- The conditions and purposes of these routes are different.

FD 2008/909

Transfer of sentences

- Article 4(5): executing State may ask for the foreign judgment and certificate.
- The issuing State is not obliged to transmit the documents.
- Recognition and enforcement follow the separate 2008/909 rules.

Article 4(6) cannot be added after a completed Article 1(3) refusal.

The Court identifies the correct follow-up procedure

Refusal on fundamental-rights grounds ends the EAW surrender procedure.

EAW REFUSAL ENDS	The executing court cannot add Article 4(6) after refusal under Article 1(3) and order local enforcement on that basis.
REQUEST DOCUMENTS	The executing State must initiate a request under FD 2008/909 Article 4(5) for the judgment and certificate.
SEPARATE RECOGNITION	Local enforcement remains subject to the 2008/909 process; the issuing State is not automatically required to transmit.

The Court required a request for transfer, not immediate enforcement in Belgium.

The judgment separates two legal mechanisms

LEGAL PRINCIPLE

Fundamental-rights refusal remains effective, while the separate sentence-transfer instrument addresses enforcement.

LIMIT OF THE RULING

Belgium must request the papers, but the issuing State retains its role under FD 2008/909; execution is not assured.

PRACTICAL ANALYSIS

Document the reason for non-surrender and immediately pursue a judgment/certificate request through the transfer framework.

Discussion -- What options remain if the issuing State declines to transmit the judgment?

KHUZDAR (C-95/24, 21 May 2026)

When can Italy enforce a Slovak conviction delivered in absentia?

ATAU was convicted in Slovakia after a trial he did not attend. Years later, he was arrested in Italy and asked to serve the sentence there. The Naples court faced different national rules for EAW refusal and sentence recognition.

CASE AT A GLANCE

5 YEARS

Slovak prison sentence imposed in 2010

19 JUN 2023

ATAU arrested in Italy

The CJEU considered awareness of the trial and whether Italian law left discretion to recognise the judgment.

The case concerns one conviction and two recognition procedures

01

SLOVAKIA · 2010

ATAU received a five-year sentence after a trial he did not attend. A lawyer represented and defended him at that trial.

02

EAW · 2015 / ITALY · 2023

A Slovak court issued an enforcement EAW in October 2015. ATAU was arrested in Italy in June 2023 and asked to serve the sentence there.

03

INFORMATION FROM SLOVAKIA

Slovak authorities said ATAU knew proceedings were ongoing but had not been informed of the trial date and place after leaving his address.

ATAU's actual knowledge, conduct and legal representation required assessment by the Italian court.

EAW refusal and recognition of the sentence intersect

FD 2002/584

Articles 4(6) and 4a

- Article 4(6) permits local enforcement rather than surrender in certain cases.
- Article 4a protects persons tried in absentia.
- The executing authority must assess the applicable safeguards.

FD 2008/909

Articles 9(1)(i) and 25

- Article 9(1)(i) is an optional ground for non-recognition after trial in absentia.
- Prior knowledge and actual representation matter.
- Article 25 coordinates sentence recognition with EAW local enforcement.

The Italian court asked how these two instruments should be interpreted consistently.

The Court requires a contextual assessment of defence rights

An absent defendant's procedural position must be established from the relevant evidence.

CONSISTENT RULES	Italy cannot make sentence recognition automatically impossible where the EAW local-enforcement rules would permit it.
NOTICE AND COUNSEL	Knowledge of the scheduled date and place may be inferred from the person's conduct; actual representation must be verified.
OPTIONAL REFUSAL	Even without a listed exception, Article 9(1)(i) permits recognition if the defence rights were respected.

Recognition is not automatic: the national court must establish the relevant safeguards.

The focus is on real knowledge and a genuine defence.

LEGAL PRINCIPLE

Rules governing EAW refusal and cross-border enforcement should not produce contradictory treatment of the same conviction.

EVIDENTIAL QUESTION

Knowledge that proceedings exist is different from knowledge of the trial date and place; the court may examine deliberate avoidance.

PRACTICAL ANALYSIS

Check summons and service, conduct after release, counsel's mandate and defence, retrial rights and any express waiver.

Discussion: When can avoidance of service support a finding of informed waiver?

RASTOSHEV (C-715/25, 12 February 2026)

Does conduct partly in Bulgaria require refusal of a French EAW?

French authorities sought XM for prosecution over alleged offences linked to tennis-match manipulation in several countries. XM argued that Bulgaria should refuse surrender because some alleged conduct occurred there.

CASE AT A GLANCE

SEP 2025

French EAW issued for prosecution

ART 4(7)(a)

Optional territorial refusal ground

The CJEU considered whether a territorial connection can make refusal automatic.

France sought prosecution; Bulgaria considered surrender.

01

FRANCE · 18 SEP 2025

A Marseille judge issued an EAW for XM in an investigation of alleged match-fixing, fraud, corruption and money laundering.

02

BULGARIA · 20 OCT 2025

The Sofia City Court ordered execution of the EAW. XM appealed because parts of the alleged activity took place in Bulgaria.

03

PRELIMINARY REFERENCE

Bulgarian courts differed on whether territorial links alone justified refusal. No Bulgarian prosecution for these acts had begun.

The allegations concerned activities between 2018 and 2024 in several States.

Article 4(7)(a) gives the executing judge a choice

ARTICLE 4(7)(a)

Territorial ground

- An EAW may be refused if the acts are regarded as occurring partly or wholly locally.
- The text says “may refuse”, not “shall refuse”.
- The authority must consider whether local prosecution is appropriate.

ARTICLE 1(2)

Mutual recognition

- EAW execution remains the ordinary rule.
- Optional grounds are exceptional and require assessment.
- The risk of no prosecution may be relevant in a cross-border case.

National case-law cannot replace this discretionary rule with automatic refusal.

The appropriate forum depends on the particular case.

The Court required an assessment based on objective circumstances.

TERRITORIAL LINKS	Consider the alleged conduct, international dimension, where the harm occurred and the victims' location.
PROSECUTION STATUS	Consider evidence and witnesses, as well as the progress of criminal proceedings in each State.
JUDICIAL DISCRETION	A partial Bulgarian territorial connection alone cannot settle the question whether surrender is refused.

The CJEU did not select the forum; it ruled out an automatic territorial refusal.

Territorial jurisdiction is relevant, but not conclusive.

LEGAL PRINCIPLE

Article 4(7)(a) preserves discretion to assess which State is better placed to prosecute a cross-border case.

APPLICATION

There was an active French prosecution and no Bulgarian prosecution for these allegations at the time of the reference.

PRACTICAL ANALYSIS

Record the location of conduct, victims and evidence, the status of each investigation and the risk of non-prosecution.

Discussion: What changes if both States have advanced prosecutions?

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Thank you for your attention!

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Cross-border Criminal Defence

European Arrest Warrants, procedural safeguards, e-evidence and equality of arms

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Cross border - the defence perspective

Cross-border proceedings change the architecture of defence work.

- Free movement of persons
- A client may be investigated in one Member State, while data, witnesses and related transactions are situated in other Member States
- European instruments transformed cross-border investigations; defence powers and procedural remedies remain, to a considerable extent, national
- The defence must identify the origin of each measure, the competent authority, the applicable rights and the appropriate avenues for legal challenge
- A position adopted in one jurisdiction may have consequences for the case in another.

Three practical questions

How to approach a new cross-border case?

DECISION

Where?

Which authority actually takes the decision?

→

TIMING

When?

What can the defence do before the opportunity is lost?

→

COOPERATION

Who?

Which lawyer needs to become involved in which State?

DEFENCE METHOD **Locate** the decision, **act** at the right time and **coordinate** with foreign lawyers.

EAW: surrender is not the trial

The defence must distinguish the surrender procedure from the underlying case.

- Proceedings in the executing State focus on surrender: conditions, procedural safeguards and grounds for refusal
- Counsel in the issuing State can examine the national arrest warrant, the status of proceedings and available domestic remedies
- Coherent defence strategy
- Decision in one jurisdiction may affect proceedings in the other

Two lawyers, one defence strategy

EAW · COORDINATED DEFENCE

EXECUTING STATE

Surrender counsel

Surrender conditions, refusal grounds and deadlines

ISSUING STATE

Domestic counsel

Underlying warrant, proceedings and national remedies

TOGETHER

Common case strategy

Avoid inconsistent statements and missed remedies

Before surrender: go back to basics

National Law & EAW

- Act in the issuing State – consult local counsel on available remedies, including retrial or appeal
- Asses whether the underlying national decision can be challenged or reconsidered
- Examine the grounds for refusing surrender under the EAW Framework
- Prison conditions, risk of inhuman or degrading treatment....

EU rights: make them effective

Minimum guarantees matter when counsel must act across borders

- Cross-border proceedings pose practical challenges to effective exercise of defence rights
- EU procedural rights instruments establish minimum safeguards right to interpretation and translation, information, access to a lawyer, presumption of innocence, legal aid…
- The EU Charter of Fundamental Rights and the right to a Fair Trial: access to evidence, challenges, objections, effective remedies
- Actively Exercise the right to information: formal notification of an accusation does not necessarily provide sufficient information to prepare an effective defence

Access to counsel in EAW proceedings

Coordination between counsel is essential.

- Counsel in the executing State handles the surrender procedure
- Counsel in the issuing State: Examines the underlying warrant, investigation, available legal remedies and possible alternatives
- Early coordination is essential: Cross-border cooperation may help resolve the underlying case, challenge the warrant or identify alternatives before surrender takes place.

An EAW rights checklist

Ensure that important rights are considered before the procedural moment has passed
Not in order of priority, as all elements are equally important

- Initial assessment: right to information, underlying judicial decision, legal and detention status, applicable procedural deadlines
- Validity and scope of EAW
- Cross-border coordination and surrender
- Defence strategy in the issuing State
- Procedural rights and safeguards

Key takeaway

*Procedural rights must be exercised **proactively** and in **coordination** across borders, rather than merely invoked as abstract guarantees or after the opportunity to exercise them has passed.*

Digital evidence crosses borders

Regulation (EU) 2023/1543

- Digital evidence challenges traditional boundaries: Data may be stored in across multiple countries, controlled by foreign service providers or rapidly deleted
- E-Evidence Regulation (EU) 2023/1543 (applicable since 18 August 2026)
  - European Production Orders: Obtain specified electronic evidence
  - European Preservation Orders: Prevent data from being deleted or altered
- Faster cross-border investigations, with less systematic involvement of authorities in the enforcing Member State

From legal assistance to recognition

The Legal route determines the available remedies

- **Mutual Legal Assistance**
  One State requests evidence from another State, which executes the request under its own national law, reflecting the territorial nature of investigative powers.

- **E-evidence Regulation - Mutual recognition**
  Remain subject to safeguard and grounds for refusal, including fundamental-rights concern

- **Importance for defence lawyers:**
  Distinguish between the legality of an investigative measure and the legality of its execution

Production, Preservation and Reliability of Evidence

Digital evidence must be assessed for legality, completeness and reliability.

- **European Production Orders vs. Preservation Orders**
  - Preservation: Prevents loss or alteration of data
  - Production: Requires disclosure of specified data
  - Different safeguards for subscriber, identification, traffic and content data.
- **Legality ≠ Reliability**
  - Lawfully obtained evidence may still be incomplete or misleading.
  - Messages can be misleading without the full conversation.
  - Account identification does not establish who actually used the account.
- **Examine the technical and procedural history**
  - What was requested and what was produced?
  - Cooperate with foreign counsel to obtain information and challenge the evidence.

Three priorities for defence lawyers

Identify, Examine & Assess

1. **Identify the legal basis of the evidence**: EIO, E-Evidence order, domestic measure or another procedure

2. **Examine legality**: Proportionality, scope, privileges, procedural safeguards and available remedies

3. **Assess reliability**: Completeness, extraction methods, chain of custody and potentially missing exculpatory material

Defence rights and digital evidence?

Digital evidence crosses borders

- Defence rights and remedies remain largely national
- The defence may request orders through national authorities but has no uniform EU right to compel production directly (E-evidence and EIO)
- **Electronic evidence requires a procedural map**
  - Who obtained the evidence?
  - Under which legal authority?
  - Where can the defence effectively challenge it?
- **Geographical complexity:**
  Users, providers and servers may be located in different countries, challenging traditional territorial.

Mutual trust does not exclude scrutiny

We must identify the available safeguards and invoke them before the competent authorities

- Mutual recognition: Judicial decisions are recognised and executed across Member States
- Mutual trust: Member States are presumed to comply with EU law and fundamental rights
- Defence safeguards: Mutual trust is not absolute. Defence lawyers must examine potential fundamental-rights violations and invoke the applicable safeguards

Mutual trust facilitates cooperation but does not replace effective judicial scrutiny

E-evidence may disappear

Consider preserving digital evidence as early as possible

- Exculpatory messages, location data and account records may be deleted or become unavailable over time
- Consider how the client can lawfully preserve relevant material and whether a request can be submitted
- Article 1(2) allows the defence to request the competent authority to issue an order, in accordance with national procedural law
- The Regulation does not grant defence lawyers a uniform EU-wide power to compel the direct production of evidence

Digital tools: useful, not infallible

The lawyer remains responsible for verifying the analysis.

- Search tools and AI can help organise and analyse large case files, translations, phone extractions, financial records…
- AI-generated summaries may omit relevant details, misidentify speakers or fabricate references. Verify findings and citations against the original sources
- Data protection & confidentiality: before uploading client material, assess data storage, access, retention, onward disclosure and potentials use for AI model training
- Professional secrecy: Cross border information sharing & technology choices must comply with professional secrecy obligations and applicable national rules on legal privilege

The equality of arms

Ensures that the accused has a reasonable and effective opportunity to present their case and challenge the evidence, without being placed at a substantial disadvantage vis-à-vis the prosecution.

Equality of Arms in Criminal Proceedings

Ensuring a fair balance between the prosecution and the defence

- Access to evidence: The defence may face difficulties obtaining evidence held in another Member State
- Procedural imbalance: Investigative powers available to prosecuting authorities may not be equally accessible to the defence
- Differences between national legal systems may complicate challenges to evidence obtained abroad.
- Identify procedural disadvantages early, request access to relevant evidence and make effective use of available legal remedies.

EPPO Investigations: Structural Asymmetry and Defence Rights

Equality of arms concerns an effective opportunity, not identical powers.

- Structural asymmetry: The EPPO benefits from an integrated European structure, while defence lawyers operate under different national procedural systems
- Equality of arms: This asymmetry may create practical disadvantages in accessing evidence and exercising defence rights
- Judicial review: Identify the competent authorities, applicable national law and available remedies
- Defence strategy: Early cross-border coordination is essential to secure evidence, challenge investigative measures and ensure effective judicial protection

Remote proceedings

Convenience vs. procedural fairness

- Efficiency vs. fair trial rights: video hearings may reduce travel and delays, but effective participation must be assessed on case-by-case basis
- Effective participation: Ensure that the client can see and hear the evidence, follow interpretation and communicate confidentially with counsel
- Nature of the hearing: Procedural hearings raise different concerns from hearings involving witness testimony or credibility assessments
- Confidentiality and safeguards: Consider the client’s location, presence of third parties, external pressure, in particular when the client is in detention

Effective Cross-Border Defence: Key Takeaways

Coordinate early, act strategically and manage the case as a whole

- **Coordinate from the outset:** Identify all relevant jurisdictions, ongoing proceedings, investigative measures and deadlines
- **Develop a coherent defence strategy:** Avoid contradictory positions and ensure arguments are legally appropriate and consistent across jurisdictions
- **Manage evidence and remedies:** Track how evidence was obtained, identify available challenges and assign responsibilities to the appropriate counsel

Conclusion: Effective Cross-Border Defence

01	European cross-border cooperation	Decisions and evidence increasingly move across borders, with proceedings in one Member State directly affecting those in another.
02	Proactive approach	Identify the applicable EU instrument, competent forum, available remedies and relevant deadlines.
03	The essential response	Act early, cooperate internationally and protect procedural rights before opportunities are lost.