Milestones of EU Criminal Law for Defence Lawyers

Barcelona, 6-7 May 2024

FACE-TO-FACE

EXCELLENCE IN EUROPEAN LAW

Speakers

María Barbancho, Criminal Lawyer, Member of the Committee of International Relations, ICAB, Barcelona

Vânia Costa Ramos, Defence Lawyer, Vice-Chair of the European Criminal Bar Association (ECBA), Lisbon

Giedrius Danėlius, Partner, NOOR, Lithuanian Bar Association, Vilnius

Balázs Gyalog, Defence Lawyer, Gyalog Law Firm, Budapest

André Klip, Professor of Criminal Law, Criminal Procedure and the Transnational Aspects of Criminal Law, University of Maastricht

Ignacio de Lucas Martín, European Prosecutor, Luxembourg

Holger Matt, Defence Lawyer, Honorary Professor, Johann Wolfgang Goethe University, Frankfurt

Key topics

- The development of European criminal law
- Legal remedies and procedural safeguards in the EU
- Applying the principle of ne bis in idem
- Gathering evidence thorough the European Investigation Order and its implications for the defence
- Double defence: Representing a client in European Arrest Warrant and other cross-border proceedings
- Equality of arms through a strong network of defence lawyers in Europe

Language
English

Event number
324DT106

Organisers
ERA (Cornelia Riehle) in cooperation with the Barcelona Bar Association (ICAB)

Co-funded by
the European Union

european.law

Monday, 6 May 2024

09:15 Arrival and registration of participants

09:30 **Welcome words**
Joaquim de Miquel (Secretary of ICAB) & Viktor Vádasz (Director of Programmes, ERA)

PART I: MILESTONES OF EUROPEAN CRIMINAL JUSTICE

Chair: Cornelia Riehle

09:35 **Setting the scene:**
From mutual legal assistance to the European Public Prosecutor's office: 25 years of European criminal justice
- Instruments of mutual recognition
- Other law enforcement measures

André Klip

10:30 Discussion

10:45 **25 years of European criminal justice from the perspective of the defence**
- The roadmap for strengthening procedural rights
- Equality of arms through a strong network of defence lawyers in Europe
- Support offered by the CCBE, ECBA, and other networks
- Available websites, tools, and handbooks
- Challenges ahead

Holger Matt

11:30 Coffee break

Chair: Cornelia Riehle

12:00 **A case example: legal remedies and procedural safeguards in the EU**
- The jurisdiction and role of the Court of Justice of the European Union (CJEU) in dealing with criminal matters
- The preliminary reference procedure
- Violation of Directives

Vânia Costa Ramos

13:00 Lunch

PART II: EUROPEAN CRIMINAL JUSTICE IN DAILY PRACTICE

Chair: Giedrius Danėlius

14:00 **Applying the principle of ne bis in idem**
The principle defined under the latest case law of the CJEU and ECtHR
Balázs Gyalog

14:30 **Workshop: practical cases on ne bis in idem**
In two groups, participants will work on practical cases looking at different issues infringing the principle of ne bis in idem
Balázs Gyalog and Vânia Costa Ramos

15:30 Coffee break

16:00 **Gathering of evidence thorough the European Investigation Order (EIO): implications for the defence**
Vânia Costa Ramos

Objective

Training of defence lawyers with special regard to European criminal law has gained more and more importance over the years. This is not only due to the rising number of measures regarding European instruments of mutual recognition and cooperation in criminal matters like the EAW and the EIO, but also to those instruments being applied in a common manner, which, in turn, is resulting in rising numbers of cases in which such instruments are part of the proceedings.

Hence, this seminar seeks the momentum to offer a first insight into the main issues of European criminal justice exclusively targeted at defence lawyers. Participants will have the possibility to get to know each other and make contact with colleagues from all over the EU to further their professional networks.

About the Project

This seminar is part of a large-scale project co-financed by the European Commission entitled "European Criminal Law for Defence Lawyers". Fifteen interactive, practice-oriented activities will be implemented within this project ranging from face-to-face seminars and conferences to webinars and eLearning tools. For more information, see: https://training-for-defence.era.int/

Who should attend?

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

Venue

ICAB Training Centre
Carrer de Mallorca 283
08037 Barcelona
Spain

CPD

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

16:30 **Workshop: practical cases on the EIO**
In two groups, participants will work on practical cases illustrating the active involvement of defence lawyers in the EIO process.
Vânia Costa Ramos and María Barbancho

17:30 End of first day

20:00 Dinner offered by the organisers

Tuesday, 7 May 2024

09:15 Visit of ICAB old library

09:45 Registration of participants

Part IIII: A new player: Working with the EPPO

Chair: María Barbancho

10:00 **The establishment of the European Public Prosecutor's Office (EPPO) and the role of defence lawyers in EPPO proceedings**
Ignacio de Lucas Martín (online)
Holger Matt

11:00 Coffee break

PART IV: Most used: The European Arrest Warrant

Chair: Vânia Costa Ramos

11:30 **Understanding the Framework Decision on the European Arrest Warrant (EAW)**
- Scope and content of the Framework Decision
- Appointment of the lawyer
- Refusal grounds
- Guarantees
- Procedural stages in the executing state
- The role of the lawyer in the issuing state

María Barbancho

12:00 **Workshop: how is a defence lawyer involved in an EAW case?**
In two groups, participants will work on two different cases. The cases will illustrate the cross-border cooperation between two defence lawyers retained or appointed in an EAW case.
María Barbancho and Giedrius Danėlius
Vânia Costa Ramos and Holger Matt

12:45 **Debriefing on the EAW case studies**
María Barbancho, Vânia Costa Ramos, Holger Matt

13:30 End of seminar

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

Your contacts

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Save the date

Annual Conference on White-Collar Crime in the EU 2024
Trier & Online, 12-13 March 2024

Summer Course on European Criminal Justice
Online, 17-21 June 2024

Apply online for "Milestones of European Criminal Justice" online:
www.era.int/?132820&en

Co-funded by the European Union.

Application

MILESTONES OF EU CRIMINAL LAW FOR DEFENCE LAWYERS

Barcelona, 6-7 May 2024 / Event number: 324DT106/jr

Terms and conditions of participation

Selection

1. Participation is only open to lawyers in private practice from eligible EU Member States (Denmark does not participate in this EU Justice Programme), Albania and Kosovo*.

   The number of open places available is limited (10 places). Participation will be subject to a selection procedure. Selection will be according to professional eligibility, nationality and then "first come, first served".

   Interested defence lawyers from Croatia should apply via the Croatian Bar Association.
   Interested defence lawyers from Hungary should apply via the Budapest Bar Association.
   Interested defence lawyers from Latvia should apply vias the Latvian Council of Sworn Advocates.
   Interested defence lawyers from Lithuania should apply via the Lithuanian Bar Association.
   Interested defence lawyers from Portugal should apply via the Portugues Bar Association.
   Interested defence lawyers from Spain should apply via ICAB.

2. Applications should be submitted before **10 March 2024**.
3. A response will be sent to every applicant after this deadline. **We advise you not to book any travel or hotel before you receive our confirmation**.

Registration Fee

4. €120 including documentation, coffee breaks, lunch and dinner.

Travel and Accommodation Expenses

5. Participants will receive a fixed contribution towards their travel and accommodation expenses and are asked to book their own travel and accommodation. **The condition for payment of this contribution is to sign all attendance sheets at the event.** The amount of the contribution will be determined by the EU unit cost calculation guidelines, which are based on the distance from the participant's place of work to the seminar location and will not take account of the participant's actual travel and accommodation costs.
6. Travel costs from outside Spain: participants can calculate the contribution to which they will be entitled on the European Commission website (https://era-comm.eu/go/calculator, table 2). The distance should be calculated from their place of work to the seminar location.
7. For those travelling within Spain, the contribution for travel is fixed at €52 (for a distance between 50km and 399 km). Please note that no contribution will be paid for travel under 50km one-way. For more information, please consult p.10 on https://era-comm.eu/go/unit-cost-decision-travel
8. International participants will receive a fixed contribution of €117 per night for up to two nights' accommodation. National participants travelling more than 50km one-way will receive a fixed contribution of €117 for one night accommodation. For more information, please consult p.14 on https://era-comm.eu/go/unit-cost-decision-travel.These rules do not apply to representatives of EU Institutions and Agencies who are required to cover their own travel and accommodation.
9. Successful applicants will be sent the relevant claim form and information on how to obtain payment of the contribution to their expenses. Please note that no payment is possible if the registered participant cancels their participation for any reason.

Participation

10. Participation at the whole seminar is required and participants will be asked to sign attendance sheets daily.
11. 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.
12. The participant will be asked to give permission for their address and other relevant information to be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest.
13. A certificate of attendance will be sent electronically after the seminar.

* 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.

Apply online for "Milestones of EU Criminal Law for Defence Lawyers" online:

www.era.int/?132820&en

Venue

ICAB Training Centre,
C/Mallorca 283,
08037 Barcelona, Spain

Language

English

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324DT106

BACKGROUND DOCUMENTATION

Milestones of EU criminal law for defence lawyers

Barcelona, 6-7 May 2024

Co-funded by the European Union

****** All documents are hyperlinked ******

A) The institutional framework for criminal justice in the EU

A1) Main treaties and conventions

A1-01	Protocol (No 36) on Transitional Provisions
A1-02	Consolidated version of the Treaty on the functioning of the European Union, art. 82-86 *(OJ C 326/47; 26.10.2012)*
A1-03	Consolidated Version of the Treaty on the European Union, art. 9-20 *(OJ C326/13;, 26.10.2012)*
A1-04	Charter of fundamental rights of the European Union *(OJ. C 364/1; 18.12.2000)*
A1-05	Explanations relating to the Charter of Fundamental Rights *(2007/C 303/02)*
A1-06	Convention implementing the Schengen Agreement of 14 June 1985 *(OJ L 239; 22.9.2000, P. 19)*

A2) Court of Justice of the European Union

A2-01	European Parliament Fact Sheets on the European Union: Competences of the Court of Justice of the European Union, April 2023
A2-02	Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, OJ L 111, 17 April 2019
A2-03	Consolidated Version of the Statute of the Court of Justice of the European Union (01 August 2016)
A2-04	Consolidated version of the Rules of Procedure of the Court of Justice (25 September 2012)

A3) European Convention on Human Rights (ECHR)

A3-01	Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14 together with additional protocols No. 4, 6, 7, 12 and 13, Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms

	as amended by Protocols Nos. 11, 14 and 15, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, Council of Europe
A3-02	Guide on the case-law of the European Convention on Human Rights: European Union law in the Court's case-law, Council of Europe, updated on 31 August 2022
A3-03	Case of Dolenc v. Slovenia (Application no. 20256/20), Strasbourg 22 February 2024
A3-04	CASE OF KACZMAREK v. POLAND (Application no. 16974/14), Strasbourg 22 February 2024
A3-05	Case of Diaconeasa v. Romania (Application no. 53162/21) Strasbourg 20. February 2024
A3-06	Case of Lypovchenko and Halabudenco v The Republic of Moldova and Russia (Applications nos. 40926/16 and 73942/17) Strasbourg 20. February 2024
A3-07	CASE OF ŢÎMPĂU v. ROMANIA (Application no. 70267/17), Strasbourg 05 December 2023
A3-08	Case of Grzeda v. Poland (Application no. 43572/18), Strasbourg, 15 March 2022
A3-09	Case of Mihalache v. Romania [GC] (Application no. 54012/10), Strasbourg, 08 July 2019
A3-10	Case of Altay v. Turkey (no. 2) (Application no. 11236/09), Strasbourg, 09 April 2019
A3-11	Case Beuze v. Belgium (Application no. 71409/10), Strasbourg, 09 November 2018
A3-12	Case of Vizgirda v. Slovenia (Application no. 59868/08), Strasbourg, 28 August 2018
A3-13	Case of Şahin Alpay v. Turkey (Application no. 16538/17), Strasbourg, 20 March 2018
A3-14	Grand Chamber Hearing, Beuze v. Belgium [GC] (Application no. 71409/10), Strasbourg, 20 December 2017
A3-15	Case of Blokhin v. Russia (Application no. 47152/06), Judgment European Court of Human Rights, Strasbourg, 23 March 2016
A3-16	Case of A.T. v. Luxembourg (Application no. 30460/13), Judgment European Court of Human Rights, Strasbourg, 09 April 2015
A3-17	Case of Blaj v. Romania (Application no. 36259/04), Judgment European Court of Human Rights, Strasbourg, 08 April 2014
A3-18	Case of Boz v. Turkey (Application no. 7906/05), Judgment European Court of Human Rights, Strasbourg, 01 October 2013 (FR)
A3-19	Case of Pishchalnikov v. Russia (Application no. 7025/04), Judgment European Court of Human Rights, Strasbourg, 24 October 2009
A3-20	Case of Salduz v. Turkey (Application no. 36391/02), Judgment, European Court of Human Rights, Strasbourg, 27 November 2008

A4) Brexit

A4-01	Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United

	Kingdom of Great Britain and Northern Ireland, of the other part *(OJ L 149, 30.4.2021)*
A4-02	Eurojust: Judicial cooperation in criminal matters between the European Union and the United Kingdom from 1 January 2021, 1 January 2021

B) Mutual legal assistance

B1) Legal framework

B1-01	Council Act of 16 October 2001 establishing in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union *(2001/C 326/01), (OJ C 326/01; 21.11.2001,P. 1)*
B1-02	Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union *(OJ C 197/1; 12.7.2000, P. 1)*
B1-03	Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ L 292, 21.10.2006, p. 2–19)
B1-04	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters *(Strasbourg, 8.XI.2001*)
B1-05	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters *(Strasbourg, 17.III.1978*)
B1-06	European Convention on Mutual Assistance in Criminal Matters *(Strasbourg, 20.IV.195*9)
B1-07	Third Additional Protocol to the European Convention on Extradition (*Strasbourg, 10.XI.2010*)
B1-08	Second Additional Protocol to the European Convention on Extradition *(Strasbourg, 17.III.1978)*
B1-09	Additional Protocol to the European Convention on Extradition (*Strasbourg, 15.X.1975*)
B1-10	European Convention on Extradition (*Strasbourg, 13.XII.1957*)

B2) Mutual recognition: the European Arrest Warrant

B2-01	European Parliament resolution of 20 January 2021 on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI)), *(OJ C 456, 10.11.2021)*
B2-02	Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial *(OJ L 81/24; 27.3.2009)*
B2-03	Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States *(OJ L 190/1; 18.7.2002, P. 1)*
B2-04	Case law by the Court of Justice of the European Union on the European Arrest Warrant – Overview, Eurojust, 15 March 2020
B2-05	Case C-397/22, GER, Judgement of the Court (Seventh Chamber) of 21 December 2023

B2-06	Case C-396/22, GER, Judgment of the Court (Seventh Chamber) of 21 December 2023
B2-07	Case C-261/22 Judgment of the Court (Grand Chamber) of 21 December 2023
B2-08	Case C-142/22, OE, Judgment of the Court (Second Chamber), 6 July 2023
B2-09	Case C-699/21, E.D.L, Judgment of the Court (Grand Chamber), 18 April 2023
B2-10	Joined Cases C-514/21 and C-515/21, LU and PH, Judgment of the Court (Fourth Chamber), 23 March 2023
B2-11	Case C-158/21, Puig Gordi and Others, Judgment of the Court (Grand Chamber), 31 January 2023
B2-12	Case C-168/21, Procureur général près la cour d'appel d'Angers, Judgment of the Court (Third Chamber), 14 July 2022
B2-13	Joined Cases C-562/21 PPU and C-563/21 PPU, Openbaar Ministerie (Tribunal établi par la loi dans l'État membre d'émission), Judgment of the Court (Grand Chamber), 22 February 2022
B2-14	Case C-649/19, Spetsializirana prokuratura (Déclaration des droits), Judgement of the Court (Fifth Chamber), 28 January 2021
B2-15	Case C-414/20 PPU, MM, Judgment of the Court (Third Chamber), 13 January 2021
B2-16	Joined Cases C-354/20 PPU and C-412/20 PPU, Openbaar Ministerie (Indépendance de l'autorité judiciaire d'émission), Judgement of the Court (Grand Chamber), 17 December 2020
B2-17	Case C-416/20 PPU, Generalstaatsanwaltschaft Hamburg, Judgement of the Court (Fourth Chamber), 17 December 2020
B2-18	Case C-584/19, A and Others, Judgement of the Court (Grand Chamber), 8 December 2020
B2-19	Case C-510/19, AZ, Judgement of the Court (Grand Chamber), 24 November 2020
B2-20	Case C-717/18, X (European arrest warrant – Double criminality) Judgement of the Court of 3 March 2020
B2-21	Case C-314/18, SF Judgement of the Court of 1 March 2020
B2-22	Joined Cases C-566/19 PPU (JR) and C-626/19 PPU (YC), Opinion of AG Campos Sánchez-Bordona, 26 November 2019
B2-23	Case C-489/19 PPU (NJ), Judgement of the Court (Second Chamber) of 09 October 2019
B2-24	Case 509/18 (PF), Judgement of the Court (Grand Chamber), 27 May 2019
B2-25	Joined Cases C-508/18 (OG) and C-82/19 PPU (PI), Judgement of the Court (Grand Chamber), 24 May 2019
B2-26	The Guardian Press Release: Dutch court blocks extradition of man to 'inhumane' UK prisons, 10 May 2019
B2-27	Case 551/18, IK, Judgement of the Court of 06 December 2018 (First Chamber)
B2-28	CJEU Press Release No 141/18, Judgement in Case C-207/16, Ministerio Fiscal, 2 October 2018
B2-29	CJEU Press Release No 135/18, Judgement in Case C-327/18 PPU RO, 19 September 2019
B2-30	Case C-268/17, AY, Judgement of the Court of 25 July 2018 (Fifth Chamber)
B2-31	Case C-220/18 PPU, ML, Judgement of the Court of 25 July 2018 (First Chamber)
B2-32	Case C-216/18 PPU, LM, Judgement of the Court of 25 July 2018 (Grand Chamber)

B2-33	InAbsentiEAW, Background Report on the European Arrest Warrant - The Republic of Poland, Magdalena Jacyna, 01 July 2018
B2-34	Case C-571/17 PPU, Samet Ardic, Judgment of the court of 22 December 2017
B2-35	C-270/17 PPU, Tupikas, Judgment of the Court of 10 August 2017 (Fifth Chamber)
B2-36	Case C-271/17 PPU, Zdziaszek, Judgment of the Court of 10 August 2017 (Fifth Chamber)
B2-37	Case C-579/15, Popławski, Judgement of the Court (Fifth Chamber), 29 June 2017
B2-38	Case C-640/15, Vilkas, Judgement of the Court (Third Chamber), 25 January 2017
B2-39	Case C-477/16 PPU, Kovalkovas, Judgement of the Court (Fourth Chamber), 10 November 2016
B2-44	Case C-452/16 PPU, Poltorak, Judgement of the Court (Fourth chamber), 10 November 2016
B2-41	Case C-453/16 PPU, Özçelik, Judgement of the Court (Fourth Chamber), 10 November 2016
B2-42	Case C-294/16 PPU, JZ v Śródmieście, Judgement of the Court (Fourth Chamber), 28 July 2016
B2-43	Case C241/15 Bob-Dogi, Judgment of the Court (Second Chamber) of 1 June 2016
B2-44	C-108/16 PPU Paweł Dworzecki, Judgment of the Court (Fourth Chamber) of 24 May 2016
B2-45	Cases C-404/15 Pál Aranyosi and C-659/15 PPU Robert Căldăraru, Judgment of 5 April 2016
B2-46	Case C-237/15 PPU Lanigan, Judgment of 16 July 2015 (Grand Chamber)
B2-47	Case C-168/13 PPU *Jeremy F / Premier ministre*, Judgement of the court (Second Chamber), 30 May 2013
B2-48	Case C-399/11 *Stefano Melloni v Ministerio Fiscal*, Judgment of of 26 February 2013
B2-49	Case C-396/11 Ciprian Vasile Radu, Judgment of 29 January 2013
B2-50	C-261/09 Mantello, Judgement of 16 November 2010
B2-51	C-123/08 Wolzenburg, Judgement of 6 October 2009
B2-52	C-388/08 Leymann and Pustovarov, Judgement of 1 December 2008
B2-53	C-296/08 Goicoechea, Judgement of 12 August 2008
B2-54	C-66/08 Szymon Kozlowski, Judgement of 17 July 2008

B3) Mutual recognition: freezing and confiscation and asset recovery

B3-01	Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point Letter to the Chair of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (Brussels 14 February 2024)
B3-02	European Judicial Network (for information on mutual recognition of freezing and confiscation orders, including on competent authorities), 14 December 2020, last reviewed on 24 July 2023
B3-03	Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation *(Brussels, 25.5.2022, COM (2022) 245 final)*

B3-04	Proposal for a Regulation of the European Parliament and of the Council establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010, *(Brussels, 20.7.2021 COM(2021) 421 final)*
B3-05	Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019, laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA
B3-06	Regulation 2018/1805 of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders, L 303/1, Brussels, 14 November 2018
B3-07	Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, L 284/22
B3-08	Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance), PE/72/2017/REV/1 OJ L 156, p. 43–74, 19 June 2018
B3-09	Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA
B3-10	Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (Text with EEA relevance)
B3-11	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance)
B3-12	Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (Text with EEA relevance)
B3-13	Consolidated text: Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union
B3-14	Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community
B3-15	Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (2001/500/JHA)
B3-16	Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (2000/642/JHA)

B4) Mutual recognition: Convictions

B4-01	Proposal for a Regulation of the European Parliament and of the Council on the transfer of proceedings in criminal matters, COM/2023/185 final, 5 April 2023

B4-02	Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention *(OJ L 294/20; 11.11.2009)*
B4-03	Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions *(OJ L 337/102; 16.12.2008)*
B4-04	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union *(OJ L 327/27; 5.12.2008)*
B4-05	Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings *(OJ L 220/32; 15.08.2008*)
B4-06	Case C-234/18, Judgment of 20 March 2020
B4-07	Case C-390/16, Dániel Bertold Lada, Opinion of AG Bot, delivered on 06 February 2018
B4-08	Case C-171/16, Trayan Beshkov, Judgement of the Court (Fifth Chamber), 21 September 2017
B4-09	Case C-528/15, Policie ČR,Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie v Salah Al Chodor, Ajlin Al Chodor, Ajvar Al Chodor, Judgement of the Court (Second Chamber), 15 March 2017
B4-10	Case C-554/14, Ognyanov, Judgement of the Court (Grand Chamber), 8 November 2016
B4-11	Case C-439/16 PPU, Milev, Judgement of the Court (Fourth Chamber), 27 October 2016
B4-12	C-294/16 PPU, JZ v Śródmieście, Judgement of the Court (Fourth Chamber), 28 July 2016
B4-13	C-601/15 PPU, J. N. v Staatssecretaris voor Veiligheid en Justitie, Judgement of the Court (Grand Chamber), 15 February 2016
B4-14	C-474/13, Thi Ly Pham v Stadt Schweinfurt, Amt für Meldewesen und Statistik, Judgement of the Court (Grand Chamber), 17 July 2014
B4-15	Joined Cases C-473/13 and C-514/13, Bero and Bouzalmate, Judgement of the Court (Grand Chamber), 17 July 2014
B4-16	C-146/14 PPU, Bashir Mohamed Ali Mahdi, Judgement of the Court (Third Chamber), 5 June 2014
B4-17	Case C-383/13 PPU, M. G., N. R., Judgement of the Court (Second Chamber), 10 September 2013

B5) Mutual recognition in practice: evidence and e-evidence

B5-01	Council Decision (EU) 2023/436 of 14 February 2023 authorising Member States to ratify, in the interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence (ST/6438/2022/INIT, OJ L 63, 28.2.2023)
B5-02	SIRIUS 2023 report: Navigating the new era of obtaining e-evidence
B5-03	Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings, *(OJ L 191, 28.7.2023)*
B5-04	Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings, *(OJ L 191, 28.7.2023)*
B5-05	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, *(Brussels, 20.7.2021, COM(2021) 409 final)*
B5-06	Joint Note of Eurojust and the European Judicial Network on the Practical Application of the European Investigation Order, June 2019
B5-07	EURCRIM, "The European Commission's Proposal on Cross Border Access to e-Evidence – Overview and Critical Remarks" by Stanislaw Tosza, Issue 4/2018, pp. 212-219
B5-08	Recommendation for a Council Decision authorising the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, COM(2019) 70 final, Brussels, 05 February 2019
B5-09	Annex to the Recommendation for a Council Decision authorising the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, COM(2019) 70 final, Brussels, 05 February 2019
B5-10	Fair Trials, Policy Brief, „The impact on the procedural rights of defendants of cross-border access to electronic data through judicial cooperation in criminal matters", October 2018
B5-11	ECBA Opinion on European Commission Proposals for: (1) A Regulation on European Production and Preservation Orders for electronic evidence & (2) a Directive for harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings, Rapporteurs: Stefanie Schott (Germany), Julian Hayes (United Kingdom)
B5-12	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130/1; 1.5.2014)
B5-13	Guidelines on Digital Forensic Procedures for OLAF Staff" (Ref. Ares(2013)3769761 - 19/12/2013, 1 January 2014
B5-14	ACPO Good Practice Guide for Digital Evidence *(March 2012)*
B5-15	Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters *(OJ L, 350/72, 30.12.2008*)

B5-16	Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence *(OJ L 196/45; 2.8.2003*)

B6) Criminal records, Interoperability

B6-01	Regulation of the European Parliament and of the Council on the automated search and exchange of data for police cooperation, and amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, (EU) 2019/817 and (EU) 2019/818 of the European Parliament and of the Council
B6-02	Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Kyrgyz Republic, of the other part
B6-03	Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726) (*OJ L135/85, 22.05.2019*)
B6-04	Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816 (*OJ L 135/85, 22.05.2019*)
B6-05	Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (*OJ L 135/27, 22.05.2019*)
B6-06	Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third-country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA, PE-CONS 87/1/18, Strasbourg, 17 April 2019
B6-07	Report from the Commission to the European Parliament and the Council concerning the exchange through the European Criminal Records Information System (ECRIS) of information extracted from criminal records between the Member States. *(COM/2017/0341 final, 29.06.2017)*
B6-08	Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States *(OJ L 93/23; 07.4.2009)*
B6-09	Council Decision on the exchange of information extracted from criminal records – Manual of Procedure *(6397/5/06 REV 5; 15.1.2007)*
B6-10	Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record *(OJ L 322/33; 9.12.2005)*

B7) Conflicts of jurisdiction – *Ne bis in idem*

B7-01	Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (*OJ L 328/42; 15.12.2009, P.42*)

B7-02	European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 15.V.1972)

C) Procedural guarantees in the EU

C-01	Report from the Commission to the European Parliament and the Council on the implementation of Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, COM/2023/44 final, 1 February 2023
C-02	Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, *(OJ L 86, 24.3.2023)*
C-03	FRA Report, Presumption of innocence and related rights – Professional perspectives, Luxembourg, 31 March 2021
C-04	FRA Report, Rights in practice: Access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings, Luxembourg, 27 September 2019
C-05	Report from the Commission to the European Parliament and the Council on the implementation of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third person informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, COM/2019/560 final, 26 September 2019
C-06	Report from the Commission to the European Parliament and the Council on the implementation of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, COM/2018/857 final, 18 December 2018
C-07	Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, COM/2018/858 final, 18 December 2018
C-08	Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297/1, 4.11.2016)
C-09	Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132 1; 21.5.2016)
C-10	Directive 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (11.3.2016; OJ L 65/1)
C-11	Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294/1; 6.11.2013)

C-12	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (1.6.2012; OJ L 142/1)
C-13	Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings *(OJ L 280/1; 26.10.2010*)
C-14	C-209/22 - Rayonna prokuratura Lovech, TO Lukovit (Fouille corporelle), 7 September 2023
C-15	C-660/21 - K.B. and F.S. (Relevé d'office dans le domaine pénal), 22 June 2023
C-16	C-430/22, C-468/22 - VB (Information du condamné par défaut), 8 June 2023
C-17	C-608/21 - Politseyski organ pri 02 RU SDVR, 25 May 2023
C-18	C-694/20 - Orde van Vlaamse Balies i in., 8 December 2022
C-19	C-348/21 - HYA and Others (Impossibilité d'interroger les témoins à charge), 8 December 2022
C-20	C-347/21 - DD (Réitération de l'audition d'un témoin), 15 September 2022
C-21	C-242/22 PPU - TL () and de traduction), 1 August 2022
C-22	C-564/19 - IS (Illégalité de l'ordonnance de renvoi), 23 November 2021
C-23	C-282/20 - ZX (Régularisation de l'acte d'accusation), 21 October 2021
C-24	C-649/19 - Spetsializirana prokuratura (Déclaration des droits), 28 January 2021
C-25	Case C-659/18, Judgement of the Court of 2 March 2020
C-26	Case C-688/18, Judgement of the Court of 3 February 2020
C-27	Case C467/18, Rayonna prokuratura Lom, Judgment of the Court of 19 September 2019
C-28	Case C-467/18 on directive 2013/48/EU on the right of access to a lawyer in criminal proceedings, EP, Judgement of the court (Third Chamber), 19. September 2019
C-29	Case C377/18, AH a. o., Judgment of the Court of 05 September 2019
C-30	Case C-646/17 on directive 2012/13/EU on the right to information in criminal proceedings, Gianluca Moro, Judgement of the Court (First Chamber), 13 June 2019
C-31	Case C-8/19 PPU, criminal proceedings against RH (presumption of innocence), Decision of the Court (First Chamber), 12. February 2019
C-32	Case C646/17, Gianluca Moro, Opinion of the AG Bobek, 05 February 2019
C-33	Case C-551/18 PPU, IK, Judgment of the Court (First Chamber), 6 December 2018
C-34	Case C-327/18 PPU, RO, Judgment of 19 September 2018 (First Chamber)
C-35	Case C-268/17, AY, Judgment of the Court (Fifth Chamber), 25 July 2018
C-36	Case C-216/18 PPU, LM, Judgment of 25 July 2018 (Grand Chamber)
C-37	Joined Cases C-124/16, C-188/16 and C-213/16 on Directive 2012/13/EU on the right to information in criminal proceedings Ianos Tranca, Tanja Reiter and Ionel Opria, Judgment of 22 March 2017 (Fifth Chamber)
C-38	Case C-439/16 PPU, Emil Milev (presumption of innocence), Judgment of the Court (Fourth Chamber), 27 October 2016
C-39	Case C-278/16 Frank Sleutjes ("essential document" under Article 3 of Directive 2010/64), Judgment of 12 October 2017 (Fifth Chamber)
C-40	C-25/15, István Balogh, Judgment of 9 June 2016 (Fifth Chamber)
C-41	Opinion of Advocate General Sharpston, delivered on 10 March 2016, Case C543/14
C-42	C-216/14 Covaci, Judgment of 15 October 2015 (First Chamber)

D) Victims´ Rights

D-01	Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA *(COM/2023/424 final, 12 July 2023)*
D-02	Commission Staff Working Document: Evaluation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA *(SWD/2022/0179 final, 28 June 2022)*
D-03	FRA Report: "Underpinning victims' rights: support services, reporting and protection", 22 February 2023
D-04	Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence *(COM/2022/105 final, 8 March 2022)*
D-05	D4-01 Victim Support Europe, Paper: Victim Support and Data Protection, 1st March 2021
D-06	European Union Agency for Fundamental Rights (FRA), Report: Crime, safety, and victims' rights – Fundamental Rights Survey, 19 February 2021
D-07	European Commission, EU Strategy on victims' rights (2020-2025), COM (2020) 258 final, Brussels, 24 June 2020
D-08	Factsheet – EU Strategy on Victims' Rights (2020-2025), 24 June 2020
D-09	Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA *(COM/2020/188 final, 11 May 2020)*
D-10	European Commission, Executive Summary of the Report on strengthening Victims´ Rights: From Compensation to Reparation – For a new EU Victims´ Rights Strategy 2020-2025, Report of the Special Adviser Joëlle Milquet to the President of the European Commission, Brussels, 11 March 2019
D-11	European Commission Factsheet: The Victims' Rights Directive: What does it bring?, February 2017
D-12	European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
D-13	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
D-14	Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
D-15	Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
D-16	Website of the European Union Agency for Fundamental Rights (FRA) – Victims' rights
D-17	Victim Support Europe
D-18	European Commission: Victims' Rights Platform
D-19	EC Coordinator for victims' rights

E) Criminal justice bodies and networks

E1) European Judicial Network

E1-01	European Judicial Network, The Report on activities and management 2019-20
E1-02	Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (*OJ L 348/130, 24.12.2008, P. 130*)

E2) Eurojust

E2-01	Eurojust quarterly newsletter
E2-02	Eurojust Guidelines on Jurisdiction
E2-03	Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences *(OJ L 148, 31.5.2022)*
E2-04	Guidelines for deciding on competing requests for surrender and extradition, October 2019
E2-05	Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA

E3) Europol

E3-01	The European Union Agency for Law Enforcement Cooperation in Brief, 17 January 2023
E3-02	Case T-578/22: Action brought on 16 September 2022 — EDPS v Parliament and Council, *(OJ C 424, 7.11.2022)*
E3-03	Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation, *(OJ L 169, 27.6.2022)*
E3-04	Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA

E4) European Public Prosecutor's Office

E4-01	EPPO: Internal Rules of Procedure, 29 June 2022
E4-02	European Public Prosecutor's Office: the Court clarifies the exercise of judicial review of cross-border investigation measures by national courts
E4-03	Commission Implementing Regulation (EU) 2022/1504 of 6 April 2022 laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the creation of a central electronic system of payment information (CESOP) to combat VAT fraud, *(OJ L 235, 12.9.2022)*

E4-04	Commission Implementing Decision (EU) 2021/856 of 25 May 2021 determining the date on which the European Public Prosecutor's Office assumes its investigative and prosecutorial tasks, *(OJ L 188, 28.5.2021)*
E4-05	Working Arrangement between Eurojust and EPPO, 2021/00064, February 2021
E4-06	Working Arrangement establishing cooperative relations between the European Public Prosecutor's Office and the European Union Agency for Law Enforcement Cooperation, January 2021
E4-07	Regulation (EU, Euratom) 2020/2223 of the European Parliament and of the Council of 23 December 2020 amending Regulation (EU, Euratom) No 883/2013, as regards cooperation with the European Public Prosecutor's Office and the effectiveness of the European Anti-Fraud Office investigations, *(OJ L 437, 28.12.2020)*
E4-08	Commission Delegated Regulation (EU) 2020/2153 of 14 October 2020 amending Council Regulation (EU) 2017/1939 as regards the categories of operational personal data and the categories of data subjects whose operational personal data may be processed in the index of case files by the European Public Prosecutor's Office, *(OJ L 431, 21.12.2020)*
E4-09	Council Implementing Decision (EU) 2020/1117 of 27 July 2020 appointing the European Prosecutors of the European Public Prosecutor's Office, *(OJ L 244, 29.7.2020)*
E4-10	Decision 2019/1798 of the European Parliament and of the Council of 14 October 2019 appointing the European Chief Prosecutor of the European Public Prosecutor's Office (*OJ L 274/1, 28.10.2019*)
E4-11	Opinion on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) as regards cooperation with the European Public Prosecutor's Office and the effectiveness of OLAF investigations Committee on Civil Liberties, Justice and Home Affairs, Rapporteur for opinion: Monica Macovei, 11.1.2019
E4-12	German Judges' Association: Opinion on the European Commission's initiative to extend the jurisdiction of the European Public Prosecutor's Office to include cross-border terrorist offences, December 2018 (only available in German)
E4-13	Communication from the Commission to the European Parliament and the European Council: A Europe that protects: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes, Brussels, 12.9.2018, COM(2018) 641 final
E4-14	Annex to the Communication from the Commission to the European Parliament and the European Council: A Europe that protects: an initiative to extend the competences of the European Public Prosecutor's Office to cross-border terrorist crimes, Brussels, 12.9.2018, COM (2018) 641 final
E4-15	Council Implementing Decision (EU) 2018/1696 of 13 July 2018 on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing Enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')
E4-16	Annex to the Proposal for a Council Implementing Decision on the operating rules of the selection panel provided for in Article 14(3) of Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO"), Brussels, 25.5.2018, COM(2018) 318 final)

E4-17	Csonka P, Juszczak A and Sason E, 'The Establishment of the European Public Prosecutor's Office : The Road from Vision to Reality', Eucrim - The European Criminal Law Associations' Forum, 15 January 2018
E4-18	Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')
E4-19	Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, *(OJ L 198, 28.7.2017)*

F) Data Protection

F-01	European Data Protection Board (EDPB)
F-02	European Data Protection Supervisor (EDPS)
F-03	Proposal for a Regulation of the European Parliament and of the Council amending Council Decision 2009/917/JHA, as regards its alignment with Union rules on the protection of personal data *(COM/2023/244 final, 11.5.2023)*
F-04	Directive (EU) 2022/228 of the European Parliament and of the Council of 16 February 2022 amending Directive 2014/41/EU, as regards its alignment with Union rules on the protection of personal data, *(OJ L 39, 21.2.2022)*
F-05	Directive (EU) 2022/211 of the European Parliament and of the Council of 16 February 2022 amending Council Framework Decision 2002/465/JHA, as regards its alignment with Union rules on the protection of personal data, *(OJ L 37, 18.2.2022)*
F-06	European Parliament Legislative Observatory, Police cooperation - joint investigation teams: alignment with EU rules on the protection of personal data, 2021/0008(COD)
F-07	EPPO College Decision 009/2020, Rules concerning the processing of personal data by the European Public Prosecutor's Office, 28 October 2020
F-08	Communication from the Commission to the European Parliament and the Council: Way forward on aligning the former third pillar acquis with data protection rules, *(COM (2020) 262 final, 24 June 2020)*
F-09	Council Decision (EU) 2016/2220 of 2 December 2016 on the conclusion, on behalf of the European Union, of the Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offences, *(OJ L 336, 10.12.2016)*
F-10	Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, *(OJ L 119/132; 4.5.2016)*
F-11	Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (4.5.2016; OJ L 119/89)

G) Police Cooperation in the EU

G-01	Directive (EU) 2023/977 of the European Parliament and of the Council of 10 May 2023 on the exchange of information between the law enforcement authorities of Member States and repealing Council Framework Decision 2006/960/JHA, *(OJ L 134, 22 May 2023)*
G-02	Council Recommendation (EU) 2022/915 of 9 June 2022 on operational law enforcement cooperation, *(OJ L 158, 13 June 2022)*
G-04	Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation ("Prüm II"), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817, and 2019/818 of the European Parliament and of the Council, *(COM/2021/784 final, 8 December 2021)*
G-08	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/1862 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters as regards the entry of alerts by Europol, *(COM(2020) 791 final, Brussels, 9 December 2020)*
G-10	Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU Regulation (EU) 2022/1190 of the European Parliament and of the Council of 6 July 2022 amending Regulation (EU) 2018/1862 as regards the entry of information alerts into the Schengen Information System (SIS) on third-country nationals in the interest of the Union, *(OJ L 185, 12.7.2022)*
G-11	Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations, *(OJ L 210, 6.8.2008)*
G-12	Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime *(OJ L 210/12; 06.08.2008)*
G-13	Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime *(OJ L 210/1; 06.08.2008)*
G-14	Council Framework Decision of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union *(OJ L 386/89; 29.12.2006, P. 89)*

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Milestones on EU Defence Rights

6 May 2024 Barcelona ERA

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Which defence rights?

Charter of Fundamental Rights;
Framework Decision 2008/675 on Taking Account of Convictions;
Framework Decision 2008/829 on Supervision Measures;
Directive 2010/64 on Interpretation and Translation;
Directive 2012/13 on the Right to Information;
Directive 2013/48 on the Right of Access to a Lawyer;
Directive 2016/343 on the Presumption of Innocence and the Right to be Present;
Directive 2016/680 on Protection with Regard to the Processing of Personal Data;
Directive 2016/800 on Procedural Safeguards for Accused Children;
Directive 2016/1919 on Legal Aid;
Recommendation 2023/681 pre-trial detention and detention conditions.

Procedure Rights for all criminal proceedings

- Dir 2010/64 on Interpretation and Translation
  - 1 August 2022, Case C-242/22 (deadlines start running after being able to understand)
  - Numerous vulnerabilities on interpretation and translation
- Dir 2012/13 on the Right to Information
  - 25 May 2023, C-608/21, Art. (8(1) and 6(2))
  - 22 June 2023, C-660/21 (conseq. Violation Dir.)
  - Issues concerning Letter of Rights: no MS uses the Directive model
  - Maastricht students testing of LoR

  https://czasopisma.kul.pl/index.php/recl/article/view/16236

Directives 2013/48 – 2016/800 – 2016/1919

- *Dir 2013/48 on the Right of Access to a Lawyer*
- 7 September 2023, C-209/22 (suspect and accused)
- OAG 11 April 2024, C-15/24 (illiterate waiving rights)
- Reference C-644/23 follow up to 569/20 (info to absconded accused)

- *Dir 2016/800 on Accused Children*
- OAG 22 Feb 2024, C-603/22 (minor turning 18 during trial)

- *Dir 2016/1919 on Legal Aid*
- Ref.C-530/23, Baralo (legal aid psych. patient)

Dir 2016/343 on the Right to be Present and Presumption of Innocence

- 19 May 2022, 569/20, efforts on reaching the accused
- 15 Sept 2022, C-347/21, witness hearing/ presence accused
- 8 December 2022, C-348/21, witness testimony
- 25 May 2023, C-608/21, (range 6(2) and 8(1)),
- 8 June 2023, C-430/22 (must fugitives be informed of review possibility after in absentia?)
- OAG 18 April 2024, C-760/22; and references C-255/23; C-285/23 participation online? See

https://brill.com/view/journals/eccl/32/1/article-p1_001.xml?language=en

  - NB: summons of accused is problematic in some MSs

What kind of issues?

- What if evidence was produced in a police interrogation without the assistance of an interpreter in violation of Directive 2010/64?
- What if the accused has only been informed about his rights several days after his arrest in violation of Directive 2012/13?
- What if counsel could be consulted before the first interrogation, but was not admitted to be present at it in violation with Directive 2013/48?
- What if the holder of parental responsibility was not informed of the arrest of his/her child, as prescribed by Directive 2016/800?
- What if an indigent accused was not afforded legal aid in violation of Directive 2016/1919?

Potential procedural consequences of violations

- Decided on the basis of national law?
- Decided on the basis of Union law?
  - *1. Violations that can be repaired*
  - *2. Violations that affect a single piece of evidence*
  - *3. Violations that affect the proceedings against the accused as a whole*

Differences between ECHR and EU

- Supervisory mechanism
- Effective remedy
- Preliminary rulings

- Relationship ECHR, Charter, general principles and defence directives

Preliminary references criminal matters since 1 August 2012

- Bulgaria 70
- Italy 63
- Germany 48
- Netherlands 35
- Poland 25
- France 23
- Belgium 19
- Ireland 18
- Romania 15
- Slovakia 11
- Spain 7
- Hungary 7
- Austria 6
- Latvia 6
- Croatia 5
- Finland 4
- Sweden 4
- Denmark 3
- Estonia 2
- Cyprus 2
- United Kingdom 2
- Greece 1
- Lithuania 1
- Luxembourg 1
- Portugal 1
- Czech Republic 1
- Malta 0
- Slovenia 0

National criminal courts

- BG Spetsializiran nakazatelen sad 32
- NL - Rechtbank Amsterdam 25
- BG - Sofiyski gradski sad 17
- I - Corte suprema di cassazione 13
- PL - Sąd Okręgowy w Warszawie 10
- I - Tribunale di Bari 8
- IRL - Supreme Court 7
- D - Bundesgerichtshof 7
- ROM - Înaltă Curte de Casaţie şi Justiţie 7
- IRL - High Court 6
- F - Cour de Cassation 6
- D - Kammergericht Berlin 6

Consequences of preliminary references

- 30 March 2023, C-269/22, certain facts proven already
- 17 May 2023, C-176/22, stay proceedings after reference?

There it is: the EPPO

- 21 December 2023, C-281/22
- C-292/23 no judicial oversight with EPPO?

Other cases

- 12 January 2023, C-583/22 on taking into account FD 2008/675
- 5 October 2023, C-219/22 FD 2008/675

- 17 November 2022, C-350/21 on Dir. 2016/680, no unlimited retention of traffic data
- 26 January 2023, C-205/21 on Dir. 2016/680, no systematic biometric data all accused

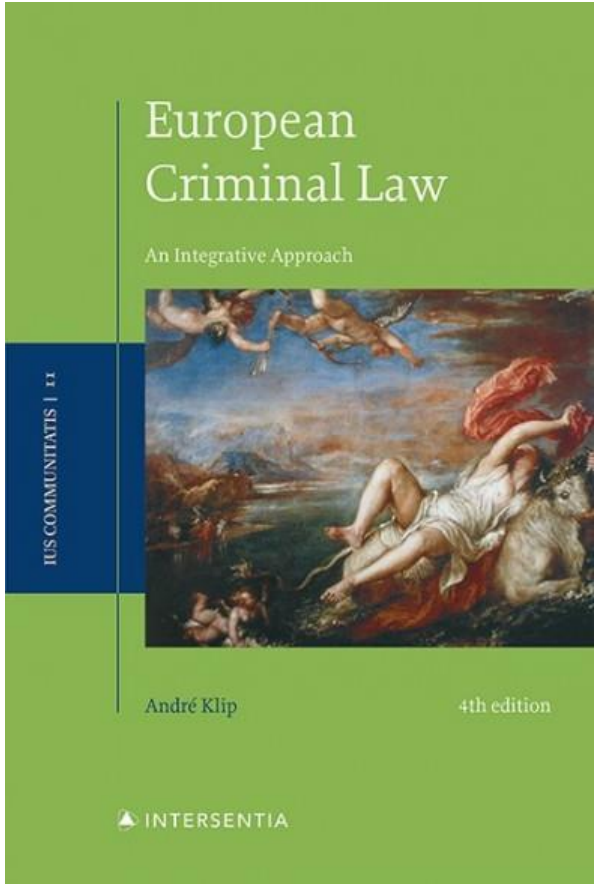
New references EAW

- C-722/23 and C-91/24 EAW 4(6) refusal on detention conditions leading to exec sentence?
- C-798/23 EAW in absentia, which trial resulted in the decision? See 396/22 and 398/22 of 21 December 2023
- C-40/24 EAW in absentia, is the retrial enough to compensate violations defence rights?
- C-95/24 EAW 4(6) exchange for 2008/909 also in absentia?

- Research on EAW financed by the Commission:
- https://www.inabsentieaw.eu/
- https://improveaw.eu/
- https://mutualrecognitionnextlevel.eu/

Conclusions

- Impact of EU Defence Rights' Directives is faster and more immediate
- EU rights have added value to ECHR
- AFSJ empowers the accused to prevent violations
- More preliminary references needed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4th edition
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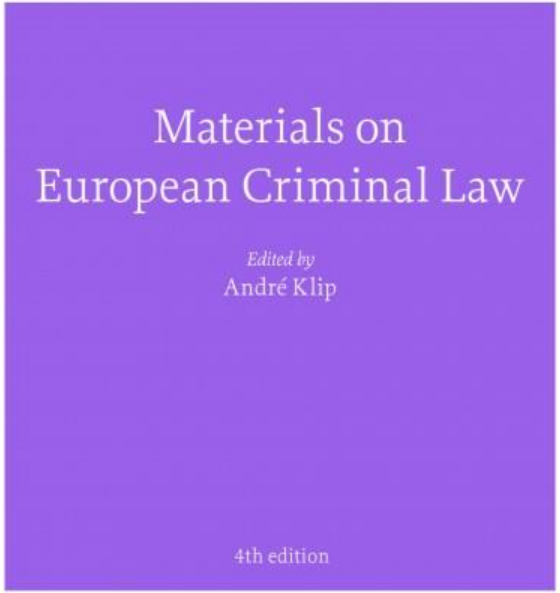
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European Criminal Law
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4th edition
INTERSENTIA

Milestones of EU Criminal Law for Defence Lawyers

Gathering of evidence through the European Investigation Order (EIO): implications for the defence

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Summary:

Selected cases and some practical insights on the European Investigation Order (EIO)

1) The basics
2) CJEU Cases
3) Dual defence

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(1) The Basics

What is an "EIO"?

- MR instrument to request for the taking / gathering / transferring of evidence located in another MS
- Applicable to any type of evidence, except to the cases of JIT's and cross-border police observations
- Applicable at any procedural phase (i.e. "investigation" is a not to be read literally as in "investigation stage")

NOTE:

- *does not apply to summons of witnesses or accused or experts to appear in proceedings in the territory of a different MS – this is not an act of taking / gathering / transferring of evidence*
- not to be confused with summons that the authorities in the executing Member State may send to such persons in order to summon them to appear in the territory of said MS in the context of the execution of an EIO for questioning / depositions etc sent by the authorities of another MS –> in this case, the EIO applies

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(1) The Basics

For what may I use an "EIO"? Examples

- The Portuguese PPO is conducting an investigation for fraud and wants to interview a suspect who lives in Spain → may issue an EIO asking the Spanish authorities to conduct an interview (with or without their presence) / or to authorize an interview by video-conferencing
- The German authorities are conducting an investigation of fraud and ML and wants to obtain documents in respect of bank accounts in Portugal to which the funds were transferred and then laundered → may issue an EIO and send it to the Portuguese authorities in order to obtain such evidence
- The Dutch authorities are conducting an investigation for drugs trafficking and want to intercept a phone number being used in Portugal → may issue an EIO and send it to the Portuguese authorities in order to obtain such evidence, or (if no technical assistance is needed in PT) and EIO asking the PT to authorise the continuation of the interception in the Portuguese territory
- The Portuguese authorities have brought a defendant living in Germany to trial for an offence of coercing and resisting arrest. They want him to participate in the trial by video-conferencing and issue an EIO to the German authorities to that end.
- The Portuguese EdP wants to obtain evidence in EPPO proceedings which is located in a non-participating Member State, i.e. Hungary → they may issue an EIO to that end

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(1) The Basics

For what may I not use an "EIO"? Examples

- The Portuguese PPO is conducting an investigation for fraud and wants to a suspect who lives in Spain to appear in Portugal to be interviewed → it may not issue an EIO asking the Spanish authorities to summon him to appear in Portugal → MLA Convention of 2000 between EU MS + CoE conventions still apply…
- The German authorities are conducting an investigation of fraud and ML and want to:
  - impose a coercive measure obliging the suspect who lives in Portugal to appear weekly at the local police station in Portugal → they may not issue an EIO and send it to the PT authorities to that end, they will need to use FD 2008/829/JHA
  - freeze the assets held in the bank account to which the amounts of the victims were transferred for the purposes of returning it to the victims → they may not issue an EIO and sent it to the PT authorities to that end, they will need to use Regulation 1805/2018
- The handling EdP in France wants to interview a witness in Portugal → they do not need to issue an EIO → in the context of EPPO proceedings, the EdP may assign directly the taking of evidence to an EdP in another MS

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(1) The Basics

For what should I use an "EIO"?

- **PRINCIPLE OF PROPORTIONALITY**
- EIO instead of or in replacement of an EAW

Case Example – Alternatives to EAW – MLA and the EIO

- Investigations for Fraud and ML ES, PT (and other)
- ES issued multiple EAW for "criminal prosecution"
- 2 PT citizens arrested in PT - while in detention – summoned by MLA to appear in ES
- During EAW proc. – requests for video link in PT and ES – refused
- 1 surrendered – 1 refused (after request for info)
  - Are Articles 18(1)(a) and 19 EAW applied in practice?
  - **<u>What is the potential of the EIO – Recital 26 and Article 24 EIO?</u>**
  - What is the repercussion in the EAW process?

(see ECBA statement of principles on the use of video-conferencing in criminal cases in a post-COVID-19 world: https://ecba.org/extdocserv/publ/ECBA_STATEMENT_Mutualrecognitionextraditiondecisions_21June2022.pdf)

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(1) The Basics

Can the defence lawyer issue an "EIO" in order to gather evidence located in the territory of another EU MS?

- No, because the EIO is a "judicial decision"

BUT

- The defence laywer may request the judicial authorities to issue an EIO in order to obtain evidence for the defence
- Problems:
  - Equality of arms?
  - Judicial review in case of denial?
  - Direct gathering of evidence?

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(1) The Basics

Can the defence lawyer issue an "EIO" in order to gather evidence located in the territory of another EU MS?

Article 1

The European Investigation Order and obligation to execute it

1. A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ('OGthe issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence in accordance with this Directive.

3. The issuing of an EIO may be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure.

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(1) CJEU Cases

- **Concepts of "judicial authority" and "issuing authority"**
  - C-584/19
  - C-16/22
- **Legal remedies**
  - C-324/17 (*Gavanozov I*)
  - C-852/19 (*Gavanozov II*)
- **Communications, traffic and location data**
  - C-724/19 (traffic and location data associated with telecommunications)
  - C-670/22 (EncroChat)

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(1) CJEU Cases

- **Concepts of "judicial authority" and "issuing authority"**
  - C-16/22 ("MS")

Düsseldorf Tax Office for Criminal Tax Matters - investigating tax evasion (manager of a plc, suspected of having failed to declare, 2015 to Feb 2020, turnover from running a brothel, tax impact of c. EUR 1.6 M

Collect, from a bank located in Austria, documents relating to two bank accounts opened in MS's name, concerning the period from 1 January 2015 to 28 February 2020.

Possible in Austria by order of a PP, following a court authorisation. Austrian court authorised the measure, and prossecutor orderd execution. MS appealed.

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(1) CJEU Cases

- **Concepts of "judicial authority" and "issuing authority"**
  - C-16/22 ("MS")

Is the Düsseldorf Tax Office for Criminal Tax Matters a 'judicial authority', within the meaning of Article 1(1) of Directive 2014/41, or an 'issuing authority', within the meaning of Article 2(c) thereof?

Article 1(1)(subpara 1) and Article 2(c)(i) Directive 2014/41/EU mean that:

- **a tax authority** of a MS which, while being part of the executive of that MS, conducts, in accordance with national law, criminal tax investigations autonomously, instead of PPO and assuming the rights and the obligations vested in the latter, **cannot be classified as a 'judicial authority'** and an 'issuing authority', within the meaning, respectively, of each of those provisions;
- It **is, on the other hand, capable of falling within the concept of an 'issuing authority'** within the meaning of Article 2(c)(ii) of that directive, provided that the conditions set out in that provision are met

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(1) CJEU Cases

- **Concepts of "judicial authority" and "issuing authority"**
  - C-16/22 ("MS")

35. It follows that Article 2(c) of Directive 2014/41 reflects, in points (i) and (ii) thereof, the distinction, inherent in the principle of the separation of powers which characterises the operation of the rule of law, between the judiciary and the executive. Judicial authorities are traditionally construed as the authorities that administer justice, unlike, inter alia, administrative authorities, which are within the province of the executive (see, to that effect, judgment of 10 November 2016, Poltorak, C-452/16 PPU, EU:C:2016:858, paragraph 35).

36. It follows from the foregoing that, in the light of its wording, Article 2(c) of Directive 2014/41 distinguishes between two categories of issuing authorities, which are mutually exclusive. The situation of any authority which is not explicitly referred to in the list set out in Article 2(c)(i) must be examined pursuant to Article 2(c)(ii).

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(1) CJEU Cases

- **Concepts of "judicial authority" and "issuing authority"**
  - C-16/22 ("MS")

Article 2

Definitions

For the purposes of this Directive the following definitions apply:

(a) 'issuing State' means the Member State in which the EIO is issued;

(b) 'executing State' means the Member State executing the EIO, in which the investigative measure is to be carried out;

(c) 'issuing authority' means:

(i) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or

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

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

Gavanozov was accused in Bulgaria of participating in a criminal association to commit VAT fraud by importing sugar from other MS, namely CZ, through Company X, represented by Y, through shell companies, and of subsequently having sold that sugar on the Bulgarian market without assessing or paying value added tax (VAT), by submitting incorrect documents according to which that sugar had been exported to RO. There was evidence of contact between Gavanozov and Y, and there was an exclusive representation contract with the company.

Issuing of an EIO by the Specialised Criminal Court in BUL to CZ for: (i) Search and seizure in the premises of company X (to determine whether the contract was included in the company's documentation and whether there were any documents relating to the execution of the contract), (ii) Search and seizure in the premises of Y's home (to determine whether it had documentation relating to the activity that was the subject of the accusation); (iii) Interviewing witness Y (non wanting to come to Bulgaria)

BUL Court did not no what to put in Section J of the EIO Form (Annex A) in respect of legal remedies.

Questions to the CJEU on legal remedies and the compatibility of Bulgarian law with the Directive

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

- Are national legislation and case-law consistent with Article in so far as they preclude a challenge, either directly as an appeal against a court decision or indirectly by means of a separate claim for damages, to the substantive grounds of a court decision issuing an EIO for a search on residential and business premises and the seizure of specific items, and allowing examination of a witness?
- Does Article 14(2) grant, in an immediate and direct manner, to a concerned party the right to challenge a court decision issuing na EIO even where such a procedural step is not provided for by national law?
- Is the person against whom a criminal charge was brought, in the light of Article 14(2), in conjunction with Article 6(1)(a) and Article 1(4), a concerned party, within the meaning of Article 14(4), if the measures for collection of evidence are directed at a third party?
- Is the person who occupies the property in which the search and seizure was carried out or the person who is to be examined as a witness a concerned party within the meaning of Article 14(4), in conjunction with Article 14(2)?

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

- This case raises the question of the "**legal remedies**" relating to the EIO and regulated in Article 14 of the Directive (in other language versions: "Rechtsbehelfe"; "vías de recurso"; "recours"; "mezzi d'impugnazione").

- The Anglo-Saxon terminology "legal remedies" seems more appropriate than the PT or ES versions (”avenues for appeal”), because what is regulated are, strictly speaking, "legal remedies", in the sense,
  - on the one hand, of the **procedural mechanisms** available to procedural subjects to complain about an act that violates a right (the appeal, or the right to plead nullity, for example) and,
  - on the other hand, although less pronounced, **substantive remedies**, in the sense of the legal consequences of the violation of the rights in question (the exclusion of evidence or a reduction in the sentence, for example).

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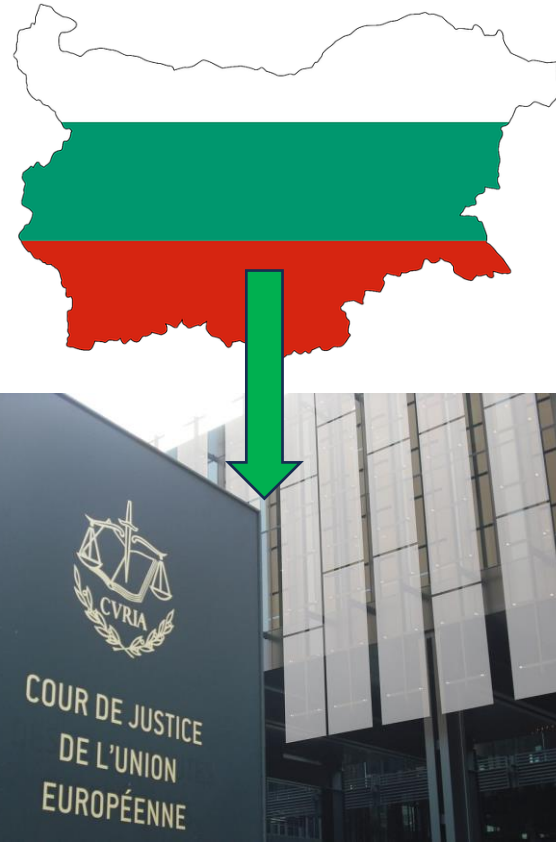
(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)



Three **highly significant** questions:

- Compatibility of national law that does not provide for "remedies" to review the substantive grounds underlying the issuance of an EIO to search and seize a personal or business address and the examination of witnesses with Article 14 of Directive 2014/41.

- Susceptibility of grounding the right to ”legal remedies" directly on the provision of Article 14(2) of the Directive, i.e. a procedural remedy under European law.

- Standing of the accused and the person targeted by the search or whose questioning is sought to make use of these remedies.

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

AG Bot Proposal:

- Article 14 must be interpreted as precluding the legislation of a MS, such as the Bulgarian legislation, which does not provide for a legal remedy against the substantive reasons for an investigative measure indicated in an EIO, and the issuance of an EIO by the authorities of that Member State

- Article 14 cannot be relied on by an individual before a national court to challenge the substantive reasons for issuing an EIO if remedies are not available under national law in a similar domestic case.

- The concept of 'party concerned' within the meaning of Directive includes a witness subject to the investigative measures requested in an EIO and the person against whom a criminal charge has been brought but who is not subject to the investigative measures indicated in an EIO.

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

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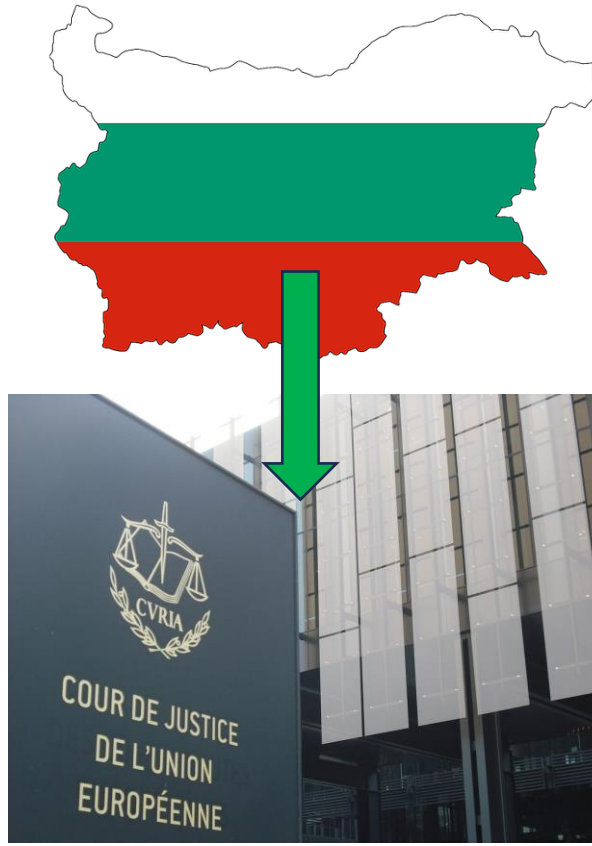

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The Court provides only one answer...:

- Article 5(1), read in conjunction with Section J of the form set out in Annex A, must be interpreted as meaning that the judicial authority of a MS does not, when issuing a EIO, have to include in that section a description of the legal remedies, if any, which are provided for in its MS against the issuing of such an order.

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

Question #1 - was Bulgarian law compatible with Article 14 of the Directive, which did not provide for "legal remedies" to review the substantive grounds for issuing an EIO?

- The CJEU regrettably did not reply, because it transformed the questions in the preliminary reference into a formal issue on how to fill in the form, which, in my view, was a secondary issue.

Unlike the Court, the AG had recognized (§§6, 7) that:

- "Since the investigative measures ordered by the competent authorities to obtain evidence in criminal matters may be particularly intrusive inasmuch as they are liable to affect the right to a private life of the persons concerned, EU legislation must find a balance between the effectiveness and speed of investigative procedures, on the one hand, and the protection of the rights of the persons subject to those investigative measures on the other."

- Although it was the first time it would interpret the Directive, the case offered the CJEU, "an opportunity to take a position on that important but delicate balance".

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

Tackling the issue, the Advocate General had no hesitation in saying that :

(ss 51-64)

a)) Art. 14 presupposed that MSs would have available legal remedies to challenge the substantive grounds for issuing an EIO, which followed from Art. 13(2), under which "the transfer of the evidence may be suspended, pending a decision regarding a legal remedy ...", so the "EU legislature fully envisaged that remedies would be available"

b) That it was "obvious" that the EU legislator had assumed that such remedies existed in similar national cases, as followed from Article 14(1), which requires MS to provide for equivalent remedies in EIO matters.

c) That such an interpretation of Directive 2014/41 was "*all the more warranted in the light of the fact that the investigative measures ordered by the competent authorities in criminal investigations with the legitimate aim of gathering evidence may be intrusive and undermine the fundamental rights — recognised inter alia by the Charter — of the persons concerned.*"

(please write to the author

(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

Tackling the issue, the Advocate General had no hesitation in saying that :

(ss 51-64)

d) also because taking into account "the particular characteristics of criminal penalties, every aspect of procedures giving rise to such penalties must be accompanied by specific safeguards to ensure respect for the fundamental rights of the persons involved."

e) This meant that "he need for effective judicial review to ensure respect for fundamental rights by national courts, which has been repeatedly underlined, is especially acute in the context of judicial cooperation in criminal matters, and the ability to challenge the substantive reasons for an EIO is therefore particularly important."

e) Pointing out that "the Court takes the view that it is for the national courts to ensure the full application of EU law in all Member States and to ensure judicial protection of the rights of individuals under that law (see judgment of 25 July 2018, Minister for Justice and Equality (Deficiencies in the system of justice) (C-216/18 PPU, EU:C:2018:586, paragraph 50 and the case-law cited)" (fn 17)

(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

Looking at the **specific case of Bulgaria, the Advocate General had no hesitation** in concluding that domestic law was incompatible with EU law, as a result of the referring court's own explanation of the applicable national law and the ECtHR's findigns of violation in respect of Bulgaria (§65, and footnote 19).

Consequences of incompatibility?

A) constitute grounds for refusal of execution under Article 11(1)(f) in conjunction with Article 14(2) of the Directive;
B) allow recourse to a legal remedy based directly on the provisions of the Directive, in particular Article 14(2);
C) allow the substantive grounds to be challenged in the executing state
D) make EIO issued by Bulgaria insusceptible of being regonised and enforced (due to violations of EU law);
E) constitute grounds for infringement proceedings for violation of EU law;
F) constitute grounds for an action for non-contractual liability for breach of EU law?

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

By way of conclusion, the Advocate General also brings up **a particular concept of the effectiveness of the EIO mechanism,** stating that the EU legislator

"*acompanied the implementation of the EIO with* ***safeguards intended to protect the rights of persons subject to the investigative measures****. Therefore****, if a Member State chooses*** *not to transpose Directive 2014/41 in that respect,* ***not to introduce those safeguards and therefore not to respect the balance created by that directive between the intrusiveness of investigative measures and the right to challenge them, it cannot take advantage of the EIO mechanism****."* (§§88-89).

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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

Question #2 – who had standing to make use of legal remedies against the issuing of an EIO?

The Advocate General also recalled that

- the need for effective judicial protection to ensure the full application of EU law in all Member States, as well as the judicial protection of the rights of litigants arising from it, **also covered the rights of third parties other than the defendant,** since "Article 1(4) of Directive 2014/41 [...] did not limit the obligation to respect fundamental rights to the rights of defense of persons subject to criminal proceedings" (§§58-64 and 101 et seq)
- that there were **several provisions in the Directive that referred to the concept of "party concerned" or "person concerned",** namely Articles 5(1)(c), 13(2), 14 and 22, 11(1)(f), in conjunction with Recital 19 and Article 14, and that the "use of different terms" was "highly significant", given that the investigative measures under the EIO could refer to both the "suspect" or "accused" and "third parties" and could therefore undermine their rights, which applied to witness Y in the case.
- that, although the **Directive** does not harmonize the legal framework for investigative measures and the corresponding legal remedies in the MS, it did **provide for guarantees for the benefit of the "party concerned" and that this concept should be interpreted autonomously,** including third parties who are the subject of investigative measures, as well as persons who are the subject of criminal charges, even if they are not directly targeted by the investigative measures, as these can always affect their interests in the proceedings because the evidence gathered can be used against them.

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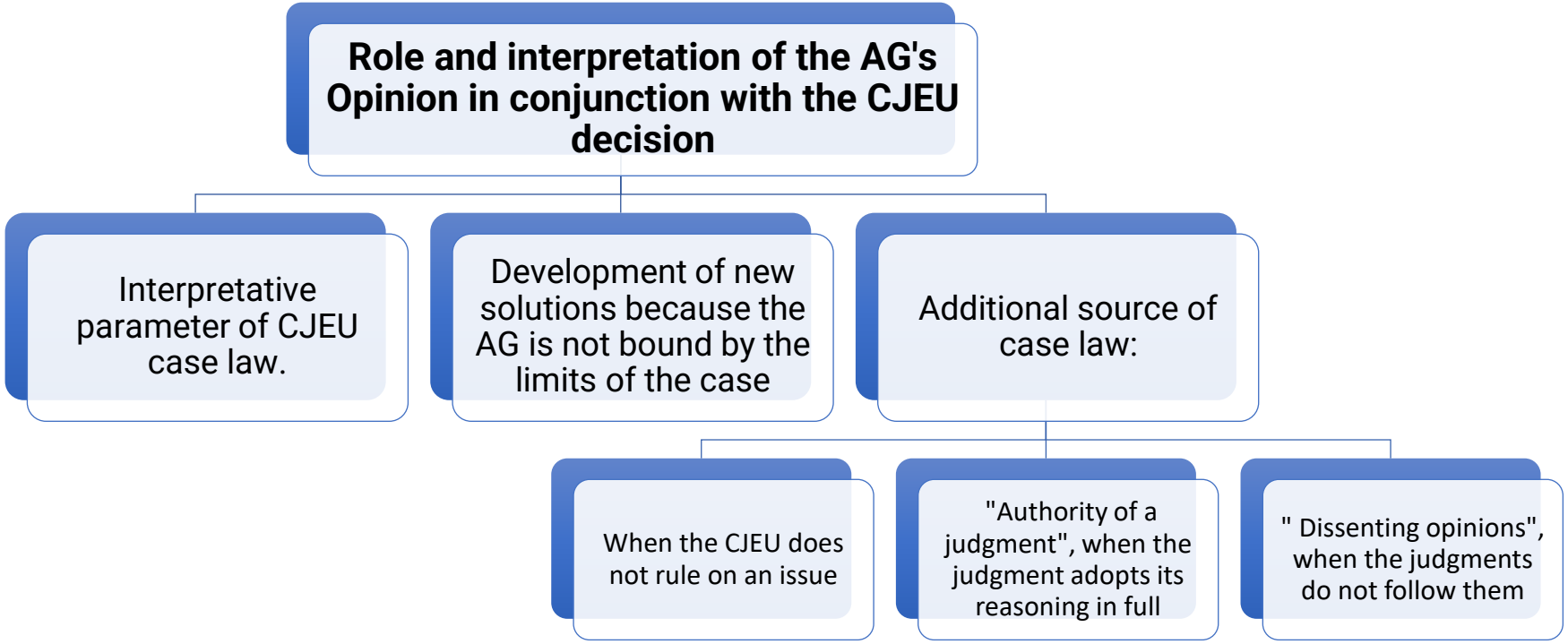
(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

How should we interpret the CJEU's "evasion" of the express ruling on questions referred for a preliminary ruling?



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(1) CJEU Cases

- **Legal remedies**
  - C-324/17 (*Gavanozov I*)

Why did the Court avoid to decide?	Did it not agree?
	Did it consider that it was too early for a decision that could have a significant impact on the very operation of the EIO scheme?
	Do subsequent decisions give any indication of why this was the case?

  - C-852/19 (*Gavanozov II*)

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

Key issue: What happens if there is no remedy to vindicate one's fundamental rights in the cross-border context in criminal cases?

- From a certain perspective this judgment represents a step further in the protection of persons affected by an EIO
- However, from another viewpoint, the reliance on the role of the issuing MS aggravates existing problems.
- Many questions remain open, namely what will happen in cases
  - (i) where infringements stemming from the lack of procedural remedies have not been previously found by consistent European Court of Human Rights (ECtHR) case law, or
  - (ii) where there is no effective substantive remedy to redress the violation of fundamental rights, namely where evidence thereby obtained will not be excluded.

See: Vânia Costa Ramos, "*Gavanozov II* and the need to go further beyond in establishing effective remedies for violations of EU fundamental rights", *EU Law Live*, 22 November 2021

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

Must a Member State establish a remedy against the issuing of an EIO?

- CJUE squarely concluded that, where investigative measures affect fundamental rights protected by EU law, the persons affected need to be able to challenge their lawfulness and proportionality before a court and to ask for adequate compensation in case of a finding of unlawfulness.
- measures impinge upon the right to respect for private and family life, home and communications, and the right to property (Articles 7 and 17(1) of the Charter), as well as the right against arbitrary and disproportionate interference by the State in one's private sphere, a general principle of EU law, respectively (§§ 31-33 and 44-47)
- Since 'substantive reasons' to issue an EIO may only be challenged in the issuing MS (Article 14(2) EIO Directive) the CJEU concluded that this MS had to establish a judicial remedy in respect thereof. Otherwise its legislation would be inconsistent with Article 14 EIO Directive, read in the light of Article 47 of the Charter (§50).

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

Does the lack of a remedy affect the mutual recognition system?

- EAW field: CJUE had ruled that even where there is evidence of systemic or generalized deficiencies concerning the independence of the judiciary, such deficiencies do not necessarily affect every decision of the courts of that MS, and could therefore not suspend the functioning of the EAW (L and P, C-354/20 PPU and C-412/20 PPU, §50)

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

- **Gavanozov II goes a step further:** for the first time ever in the field of EU criminal law, the Court recognizes circumstances that trigger the suspension of a MR instrument, ruling that authorities of a MS, in the case at hand Bulgaria, cannot issue an EIO.
  - MR principle: executing authority may only derogate from rule that it should recognize and enforce an EIO in exceptional circumstances of serious risks of violation of fundamental rights to be verified on a case-by-case basis (Article 11(1)(f)).
  - Basis: mutual trust, which in turn is grounded on the rebuttable presumption that other MS respect EU law and in particular fundamental rights.
  - Presumption clearly rebutted due to multiple cases of violation declared by the ECtHR, and even acknowledged by the relevant MS: CJEU thus rules that the issuing of the EIO itself would not be compatible with the principles of mutual trust and sincere cooperation (Article 4(3) TEU), the latter requiring the issuing MS to create the conditions to allow the executing authorities to cooperate in accordance with EU law.

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

- AG Bobek Opinion on the case: incompatible with MR, MT and sincere cooperation to allow a MS aware of the incompatibility of its acts with the minimum safeguards in relation to fundamental rights to benefit of the MR system, since those acts could not generate mutual trust, but rather mutual distrust.
- Allowing incompatible EIOs to enter the system: shift all responsibility for the protection of fundamental rights to the Executing Authorities (agreeing with AG Bot in Gavanozov I, §§84-87).
- EA "may realise this in some cases, while being blissfully unaware in others": a "game of 'Russian roulette' with individual rights", conceptually wholly incompatible with the approach taken by the MR system – IA knows there is a breach, but would simply leave it to the vigilance of the EA to see whether the latter will realise → selective regard for the fundamental rights of the individuals involved in the process.
- executing MS potentially complicit in those infringements should it fail to detect and prevent them. "[…] run the risk of failing to uphold the requirements laid down by the ECtHR in Avotiņš and thus trigger their responsibility under international law»

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

- AG Bobek Opinion on the case:
- «**if the approach is that, from a certain point onwards, the executing Member State is no longer obliged to recognise or to enforce acts coming from certain issuing Member States, is it not also inherent in that statement that the issuing Member State, when it knows that it is in non-compliance, ought to be prevented from having recourse to a system of judicial cooperation, the entry requirements for which it no longer meets?**»
- «also **much more proportionate**. Instead of burdening the entire system of judicial cooperation (and all the individual actors in the Member State) with the task of examining, in each individual case, again and again, whether or not grounds for refusal to recognise and execute an EIO have been given, is it not more reasonable temporarily to suspend the recognised and acknowledged problematic source so that it may first secure compliance with the minimum standards before being re-admitted? […] all the more warranted as, in contrast to a situation where the potential systemic failure must be shown to result in a threat to the individual situation of the person concerned, in the case of deficient sectoral regulation relating to one issue alone, **it is clear that the issuing of any act that would be compliant is not possible**. **All of the acts issued will, by default, be tainted because the legislation under which they are issued was itself incompatible."**

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

- AG Bobek Opinion on the case:

"In short, whoever wishes to use the system of judicial assistance and mutual recognition under Directive 2014/41, or under any other instrument of judicial cooperation and mutual recognition for that matter, **must come, metaphorically speaking, with clean hands, or rather, cannot come with hands that are knowingly dirty.** The **failure to observe that rule of basic hygiene, which has been repeatedly recognised and systematically emphasised, may indeed lead to that person being asked to leave the room and to come back only after having found some soap and carried out the necessary procedures."**

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

The Court followed suit:

- Article 14 read in conjunction with Article 24(7) and Article 47 of the Charter must be interpreted as precluding legislation of a MSwhich has issued a EIO that does not provide for any legal remedy against the issuing of a EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference.

- Article 6, read in conjunction with Article 47 of the Charter and Article 4(3) of the Treaty on European Union, must be interpreted as precluding the issuing, by the competent authority of a MS, of a EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, where the legislation of that Member State does not provide any legal remedy against the issuing of such a EIO

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(1) CJEU Cases

- **Legal remedies**
  - C-852/19 (*Gavanozov II*)

Unresolved matters:

- Concentration of remedies in the issuing State – A remedy sufficiently available? (impact… *pending EPPO case C-281/22…*)
- Substantive remedies? Effectiveness?

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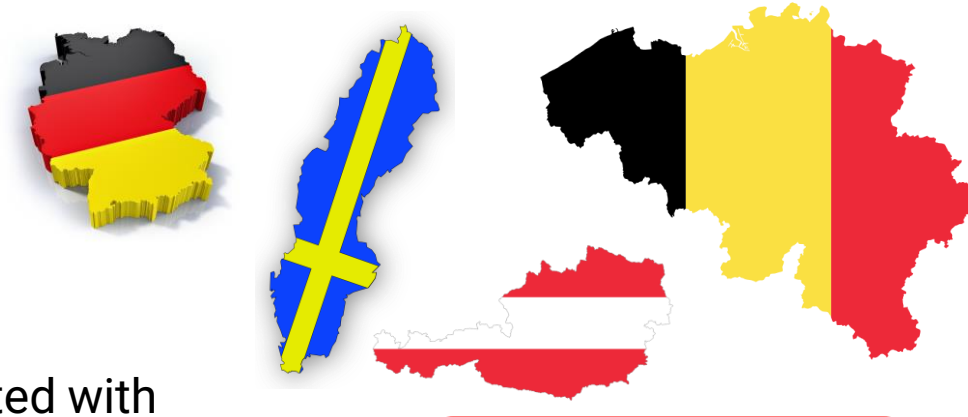
(1) CJEU Cases



- **Communications, traffic and location data**
  - C-724/19 (traffic and location data associated with telecommunications)

Suspicion that financial resources used to commit terrorist acts were collected and made available in Bulgaria and abroad. In the course of the investigation, evidence was gathered concerning HP's activities.

Issuing of 4 EIO for collecting traffic and location data associated with telecommunications by the PPO sent to BE, DE, AUS, SE authorities, stating HP was suspected of financing terrorist activities and that, in the context of that activity, he had had phone conversations with persons residing in the territory of those MS.

Replies of ME and execution of EIO (BE with court order) contains information on the telephone communications from HP's phone and that that information is of some importance in order to determine whether HP has committed an offence. Info was used to bring an indictment.

In order to determine whether that accusation is well founded, the referring court asks whether it is lawful to request the collection of traffic and location data associated with telecommunications by means of the four EIOs, and whether, therefore, it may, in order to establish the offence of which HP is accused, use the evidence gathered by means of those orders.

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-724/19 (traffic and location data associated with telecommunications)

- Article 2(c) of Directive 2014/41 refers to national law to designate the competent issuing authority. Under Bulgarian law, pursuant to Article 5(1)(1) of the ZEZR, that is the public prosecutor. However, that court notes that, in a similar domestic case, the authority with competence to order that traffic and location data associated with telecommunications be obtained is a judge of the first instance court having jurisdiction in the case concerned and that the public prosecutor has, in such a situation, only the power to make a reasoned request to that judge. Thus, the referring court asks whether, having regard in particular to the principle of equivalence, competence to issue an EIO may be governed by the national measure transposing Directive 2014/41, or whether Article 2(c) of that directive confers competence on the authority which is competent to order that such data be obtained in a similar domestic case.

- May the recognition decision, taken by the competent authority of the executing State on the basis of Directive 2014/41 and necessary in order to require a telecommunications operator of that MS to disclose traffic and location data associated with telecommunications, validly replace the decision which should have been taken by the judge of the issuing State in order to safeguard the principles of legality and inviolability of private life. It asks, more specifically, whether such a solution would be compatible with, in particular, Article 6 and Article 9(1) and (3) of that directive.

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-724/19 (traffic and location data associated with telecommunications)

- Article 2(c)(i) of Directive 2014/41/EU must be interpreted as **precluding a public prosecutor from having competence to issue, during the pre-trial stage of criminal proceedings, an EIO, within the meaning of that directive, seeking to obtain traffic and location data associated with telecommunications, where, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking access to such data**.

Note: In addition, in order to provide the referring court with a full answer, it must be added that, in the judgment of 2 March 2021, Prokuratuur (Conditions of access to data relating to electronic communications) (C-746/18, EU:C:2021:152, paragraph 59), the Court held that Article 15(1) of Directive 2002/58, read in the light of Articles 7, 8 and 11 and Article 52(1) of the Charter, must be interpreted as precluding national legislation that confers upon the PPO, whose task is to direct the criminal pre-trial procedure and to bring, where appropriate, the public prosecution in subsequent proceedings, the power to authorise access of a public authority to traffic and location data for the purposes of a criminal investigation.

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-724/19 (traffic and location data associated with telecommunications)

- Article 6 and Article 9(1) and (3) must be interpreted as meaning that **recognition, on the part of the executing authority, of an EIO** issued with a view to obtaining traffic and location data associated with telecommunications **may not replace the requirements applicable in the issuing State, where that EIO was improperly issued by a public prosecutor,** whereas, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking to obtain such data.
  - It follows from a combined reading of those provisions that the executing authority cannot remedy non-compliance with the conditions laid down in Article 6(1)
  - The division of competences between the IA and the EA: essential element of the MT which must govern the exchanges between the MS participating in a European investigation procedure as provided for by Directive 2014/41. If the EA were able, by means of a recognition decision, to remedy non-compliance with the conditions for issuing an EIO, laid down in Article 6(1), the balance of the EIO system based on MT would be called into question, since that would amount to giving the EA the power to review the substantive conditions for issuing such an EIO.
  - By contrast, in accordance with Article 9(3), the EA is to return the EIO to the issuing State where it receives an EIO which has not been issued by an issuing authority as specified in Article 2(c)

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

Police find drug gang's sound-proofed torture chamber dubbed 'the treatment room' with dentist chair, pliers, scalpels and hedge cutters hidden in Dutch sea container

- Dutch police found the torture chamber in a warehouse south of Rotterdam
- French police discovered its existence after cracking phone system EncroChat
- Officers found torture chamber in a raid after alerting potential victims to hide

By JORDAN KING and MILLY VINCENT FOR MAILONLINE
PUBLISHED: 14:01 BST, 7 July 2020 | **UPDATED:** 17:11 BST, 2 November 2020

https://www.dailymail.co.uk/news/article-8498195/Dutch-police-arrest-6-men-uncover-makeshift-torture-chamber.html#v-1600768040914208982

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Six arrested after 'Dutch torture chambers' found

7 July 2020

https://www.bbc.com/news/uk-53263310

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EncroChat messages reveal at least ten cases of 'bent coppers' leaking info

Featu

INSÓLITOS

Fotografia de queijo ajuda polícia britânica a deter traficante de droga

POLÍCIA DE MERSEYSIDE

The dismantling of an encrypted phone solution used by organised crime groups

Interception and analysis of millions of messages exchanged between criminals planning serious criminal acts

This intensive operation informed hundreds of ongoing investigations, providing insights and access to new evidence to tackle international criminal networks involved in drug smuggling, money laundering and other forms of serious and violent crime, including murder, extortion, robbery, grievous assault and hostage taking.

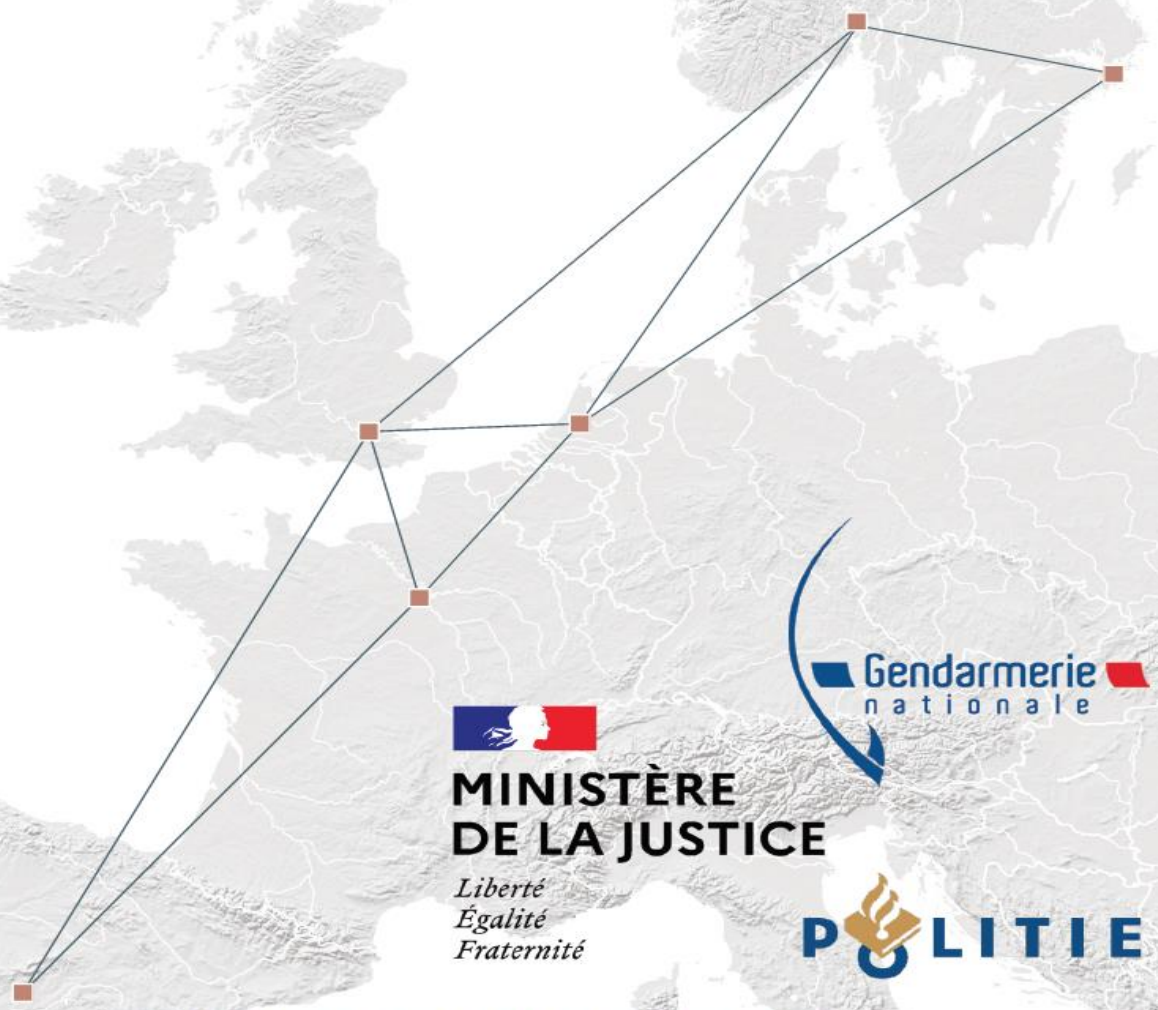
Intensive analysis was undertaken by Europol.

Five coordination meetings were held at Eurojust, with the active participation of national police forces and Europol to ensure smooth communication and coordination between all parties to the JIT. Two of these meetings also involved other countries, including Spain, Sweden, the UK and Norway. **Daily coordination meetings** between involved law enforcement partners were held at Europol.

A **joint investigation team (JIT) agreement** was signed between the national police and judicial authorities of France and the Netherlands in April 2020, supported by the French and Dutch Desks at Eurojust and by Europol.

The case was opened by the French Desk and brought to the Dutch Desk at Eurojust in April 2019.

In 2017, **French police and judicial authorities began investigating** phones using the secured communication tool *EncroChat*, an encrypted phone solution widely used by criminal networks across the globe.



https://www.eurojust.europa.eu/ar2020/7-casework-crime-type/72-encrochat-dismantling-encrypted-network-used-criminal-groups

Wahl, Thomas

https://eucrim.eu/news/dismantled-encryption-networks-german-courts-confirmed-use-of-evidence-from-encrochat-surveillance/

[...] Although **Germany was seemingly not involved in the initial joint investigation**, the surveillance brought to light a bulk of data that led to follow-up criminal investigations in other European countries. The decision of the Higher Regional Court of Bremen (handed down in December 2020) and the decision of the Higher Regional Court of Hamburg (handed down in January 2021) in two separate cases confirm that the collection of evidence by French authorities can also be used in German criminal proceedings if the interception of the surveillance reveals criminal activities from persons residing in Germany (in the cases at issue: drug trafficking offences). **The information was lawfully made available to the German Federal Police Office via the exchange of spontaneous information and intelligence** in accordance with Framework Decision 2006/960/JHA. [...]

Wahl, Thomas, ZIS 7-8/2021

https://www.zis-online.com/dat/artikel/2021_7-8_1452.pdf

New paradigm?

"Damit folgt nicht der Beweis der Fall, sondern der Fall dem Beweis"

["thus, the evidence does not emerge as a result of the case, but rather the case emerges as a result of the evidence"]

To find out more about Encrochat:

- https://www.vice.com/en/article/3aza95/how-police-took-over-encrochat-hacked
- https://www.aljazeera.com/opinions/2020/7/25/the-encrochat-police-hacking-sets-a-dangerous-precedent
- https://podtail.com/pt-PT/podcast/crime-world/episode-25-the-encrochat-phone-hack-and-why-no-one/

(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

1. Interpretation of the concept of 'issuing authority' under Article 6(1) of Directive 2014/41, 1 in conjunction with Article 2(c) thereof:
(a) Must a EIO obtaining evidence already located in the ES (in casu: France) be issued by a judge where, under the law of the IS(in casu: Germany), the underlying gathering of evidence would have had to be ordered by a judge in a similar domestic case?
(b) In the alternative, is that the case at least where the ES carried out the underlying measure on the territory of the IS with the aim of subsequently making the data gathered available to the investigating authorities in the IS, which are interested in the data for the purposes of criminal prosecution?
(c) Does an EIO for obtaining evidence always have to be issued by a judge (or an independent authority not involved in criminal investigations), irrespective of the national rules of jurisdiction of the issuing State, where the measure entails serious interference with high-ranking fundamental rights?

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

2. Interpretation of Article 6(1)(a) of Directive 2014/41:

(a) Does Article 6(1)(a) of Directive 2014/41 preclude an EIO for the transmission of data already available in the executing State (France), obtained from the interception of telecommunications, in particular traffic and location data and recordings of the content of communications, where the interception carried out by the executing State covered all the users subscribed to a communications service, the EIO seeks the transmission of the data of all terminal devices used on the territory of the issuing State and there was no concrete evidence of the commission of serious criminal offences by those individual users either when the interception measure was ordered and carried out or when the EIO was issued?

(b) Does Article 6(1)(a) of Directive 2014/41 preclude such an EIO where the integrity of the data gathered by the interception measure cannot be verified by the authorities in the executing State by reason of blanket secrecy?

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

3. Interpretation of Article 6(1)(b) of Directive 2014/41:

(a) Does Article 6(1)(b) of Directive 2014/41 preclude an EIO for the transmission of telecommunications data already available in the ES(France) where the executing State's interception measure underlying the gathering of data would have been impermissible under the law of the IS (Germany) in a similar domestic case?

(b) In the alternative: does this apply in any event where the ES carried out the interception on the territory of the issuing State and in its interest?

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

4. Interpretation of Article 31(1) and (3) of Directive 2014/41:

(a) Does a measure entailing the infiltration of terminal devices for the purpose of gathering traffic, location and communication data of an internet-based communication service constitute interception of telecommunications within the meaning of Article 31 of Directive 2014/41?

(b) Must the notification under Article 31(1) of Directive 2014/41 always be addressed to a judge, or is that the case at least where the measure planned by the intercepting State (France) could be ordered only by a judge under the law of the notified State (Germany) in a similar domestic case?

(c) In so far as Article 31 of Directive 2014/41 also serves to protect the individual telecommunications users concerned, does that protection also extend to the use of the data for criminal prosecution in the notified State (Germany) and, if so, is that purpose of equal value to the further purpose of protecting the sovereignty of the notified Member State?

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

5. Legal consequences of obtaining evidence in a manner contrary to EU law

(a) In the case where evidence is obtained by means of an EIO which is contrary to EU law, can a prohibition on the use of evidence arise directly from the principle of effectiveness under EU law?

(b) In the case where evidence is obtained by means of an EIO which is contrary to EU law, does the principle of equivalence under EU law lead to a prohibition on the use of evidence where the measure underlying the gathering of evidence in the executing State should not have been ordered in a similar domestic case in the issuing State and the evidence obtained by means of such an unlawful domestic measure could not be used under the law of the issuing State?

(c) Is it contrary to EU law, in particular the principle of effectiveness, if the use in criminal proceedings of evidence, the obtaining of which was contrary to EU law precisely because there was no suspicion of an offence, is justified in a balancing of interests by the seriousness of the offences which first became known through the analysis of the evidence?

(d) In the alternative: does it follow from EU law, in particular the principle of effectiveness, that infringements of EU law in the obtaining of evidence in national criminal proceedings cannot remain completely without consequence, even in the case of serious criminal offences, and must therefore be taken into account in favour of the accused person at least when assessing evidence or determining the sentence?

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

Judgment of 30.04.2024

1. **Article 1(1) and Article 2(c) of Directive 2014/41/EU [...] must be interpreted as meaning that a European Investigation Order (EIO) for the transmission of evidence already in the possession of the competent authorities of the executing State need not necessarily be issued by a judge where, under the law of the issuing State, in a purely domestic case in that State, the initial gathering of that evidence would have had to be ordered by a judge, but a public prosecutor is competent to order the transmission of that evidence.**

2. **Article 6(1) of Directive 2014/41 must be interpreted as not precluding a public prosecutor from issuing an EIO for the transmission of evidence already in the possession of the competent authorities of the executing State where that evidence has been acquired following the interception, by those authorities, on the territory of the issuing State, of telecommunications of all the users of mobile phones which, through special software and modified hardware, enable end-to-end encrypted communication, provided that the EIO satisfies all the conditions that may be laid down by the national law of the issuing State for the transmission of such evidence in a purely domestic situation in that State.**

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(1) CJEU Cases

- **Communications, traffic and location data**
  - C-670/22 (EncroChat)

Judgment of 30.04.2024

3. **Article 31 of Directive 2014/41 must be interpreted as meaning that a measure entailing the infiltration of terminal devices for the purpose of gathering traffic, location and communication data of an internet-based communication service constitutes an 'interception of telecommunications', within the meaning of that article, which must be notified to the authority designated for that purpose by the Member State on whose territory the subject of the interception is located. Should the intercepting Member State not be in a position to identify the competent authority of the notified Member State, that notification may be submitted to any authority of the notified Member State that the intercepting Member State considers appropriate for that purpose.**

4. **Article 31 of Directive 2014/41 must be interpreted as being intended also to protect the rights of those users affected by a measure for the 'interception of telecommunications' within the meaning of that article.**

5. **Article 14(7) of Directive 2014/41 must be interpreted as meaning that, in criminal proceedings against a person suspected of having committed criminal offences, national criminal courts are required to disregard information and evidence if that person is not in a position to comment effectively on that information and on that evidence and the said information and evidence are likely to have a preponderant influence on the findings of fact.**

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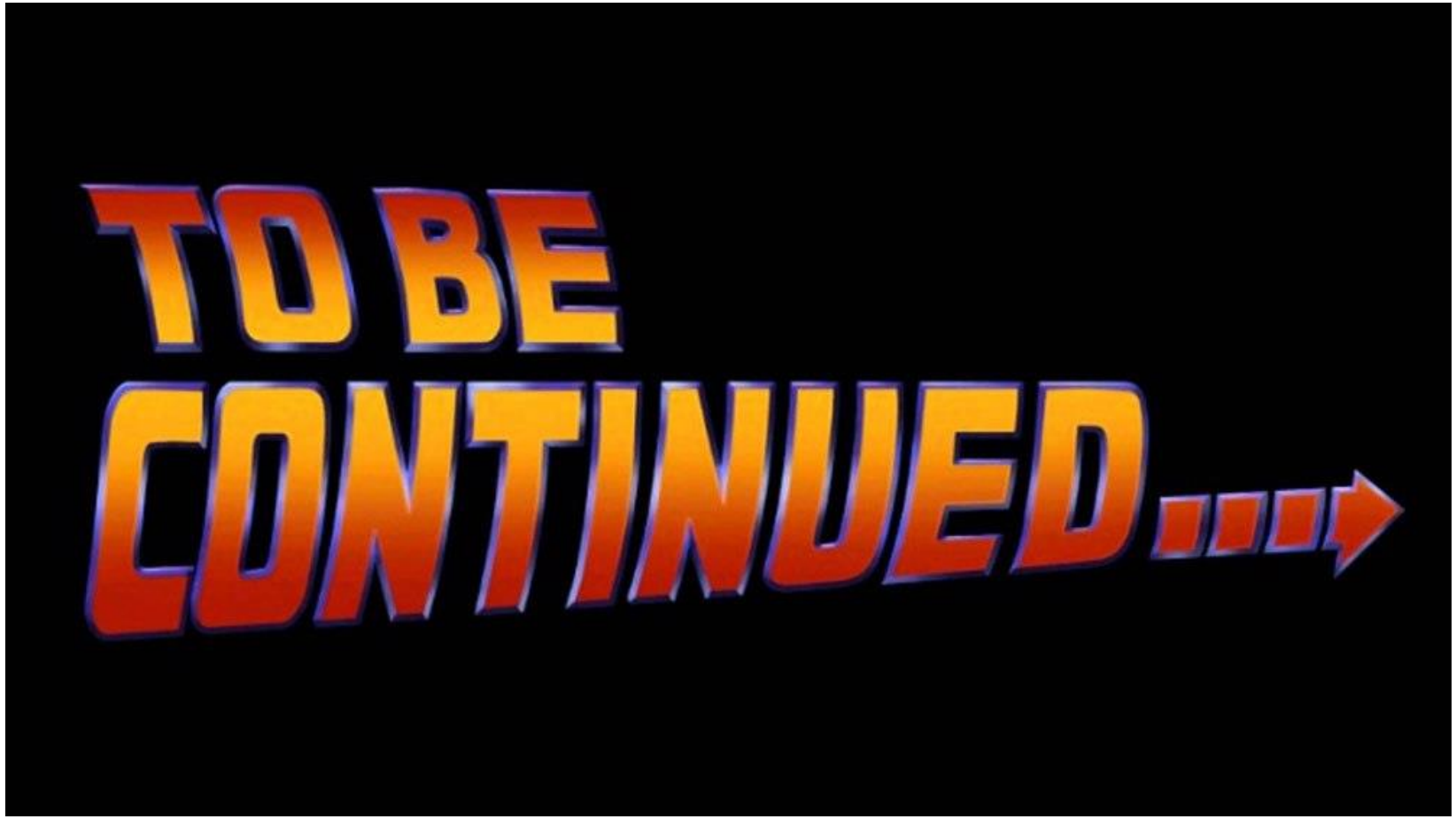
(1) CJEU Cases



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(1) CJEU Cases

- **Further pending cases**
  - C-760/22

Question referred (from Bulgaria)
Is the right of a defendant to be present at his or her trial, as provided for in Article 8(1) of Directive 2016/343, read in conjunction with recitals 33 and 44 of that directive, infringed if, at his or her express request, he or she takes part in the court hearings being conducted in the criminal case in question via an online link, in a situation where he or she is defended by a lawyer mandated by him or her and present in the courtroom, and where that link enables him or her to follow the course of the proceedings and to adduce and be given access to evidence, where he or she can be heard without technical hindrances and he or she is guaranteed an effective and confidential means of conferring with his or her lawyer?

- **Further pending cases**
  - C-255/23

Questions referred (from Latvia)
1. Do Articles 1(1), 6(1)(a) and 24(1), second subparagraph, of Directive 2014/41 1 permit legislation of a Member State **according to which a person residing in a different Member State may, without a European investigation order being issued, participate by videoconference, as an accused person,** in judicial proceedings**, where the accused person is not being heard in that phase of the proceedings, that is to say, where no evidence is being gathered, provided the person directing the proceedings in the Member State in which the case is being tried is able, by technical means, to verify the identity of the person in the other Member State and provided that person's rights of the defence and assistance by an interpreter are ensured**?

2. If the answer to the first question is in the affirmative, **could the consent of the person who is to be heard constitute an independent or supplementary criterion or prerequisite** for that person to participate by videoconference in the judicial proceedings in question, where no evidence is being gathered in that phase of the proceedings, if the person directing the proceedings in the Member State in which the case is being tried is able, by technical means, to verify the identity of the person who is in the other Member State and provided that person's rights of the defence and assistance by an interpreter are ensured?

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(1) CJEU Cases

➢ Further pending cases

➢ C-285/23

Questions referred (from Lavtia)

Must **Article 24(1) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters be interpreted as meaning that the hearing of an accused person by videoconference includes the situation where the accused person participates in the trial in a criminal case in a different Member State by videoconference from that person's Member State of residence**?

Must Article 8(1) of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings 1 be interpreted as meaning that the **right of accused persons to attend the oral procedure may also be ensured by an accused person participating in the trial in a criminal case taking place in a different Member State by videoconference from that person's Member State of residence?**

Does participation by an accused person in the trial in a case that takes place in a different Member State by videoconference from the Member State of residence equate to that person's physical presence at the hearing before the court in the Member State which is hearing the case?

Where the reply to the first and/or second questions is in the affirmative, **may the videoconference be arranged only via the competent authorities of the [executing?] Member State?**

Where the reply to the fourth question is in the negative, may the court in the Member State which is hearing the case enter into contact directly with an accused person who is in a different Member State and send that person the link in order to join the videoconference?

Is it compatible with maintenance of the single area of freedom, security and justice of the Union to arrange such a videoconference otherwise than via the competent authorities of the **[executing?]** Member State?

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3) Dual defence

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Dual (sometimes triple…) defence

- A team of lawyers of the Executing and Issuing States
- Coordination / Division of Tasks / Holistic Approach
- Effectiveness of the defence and the rights of defence - *trans-border perspective*

Towards a global defence…

Ramos, V. C. (2023). The EPPO and the equality of arms between the prosecutor and the defence. New Journal of European Criminal Law, 14(1), 43-70. https://doi.org/10.1177/20322844231157078

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date: 28 September 2023

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Thank you for your attention!
Questions or remarks?

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Milestones of EU Criminal Law for Defence Lawyers

A case example: legal remedies and procedural safeguards in the EU

Case C-242/22 PPU (TL)
Judgment of 01.08.2022

06.05.2024

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How does EU Law impact into our practice?
An example of application ot EU Directives on Procedural Rights

1 – How to use EU law, even where domestic law has not implemented explicitly into domestic law?

2 – How to get to the EU Courts?

1 – How to use EU law, even where domestic law has not implemented explicitly into domestic law?

Case C-242/22 PPU (TL)

Judgment of 01.08.2022

How to invoke EU Procedural Rights Directives in a country where they have not been implemented into domestic law?

The accused (TL), a Moldovan national speaking Romanian, had been convicted by the Portuguese courts for coercion and resistance against a public official, dangerous driving and driving without a permit. The sentence of 3 years imprisonment was suspended and subject to probation.

Later on, the court revoked the suspension and ordered the enforcement of the term of imprisonment. The accused was detained and put in prison for enforcement of his sentence.

After being detained, his newly appointed defence lawyer invoked violations of his **rights to information on his rights and charges (Directive 2012/13/EU)** and of his **right to translation and interpretation (Directive 2010/64/EU)**.

Portugal had indicated to the Commission that it did not consider it necessary to take measures to transpose the Directives as national legislation already met the requirements of the Directives. The Commission had initiated two infringement proceedings against Portugal to verify whether the Directives were actually being complied with.

The context of domestic law – statement of identity and residence (SIR)

- In Portuguese criminal proceedings, all accused persons must undersign a Statement of Identity and Residence ("SIR"). This is a coercive measure and implies, inter alia:
  - That all future notifications of the accused will be sent to that address, without acknowledgement of receipt. The mere “proof of deposit” of the letter in the mailbox at said address suffices to consider that the person has been notified of all relevant decision.
  - The obligation to inform the authorities on any absences from that address exceeding 5 days, or any changes of address, subject to the notifications made at the address on the SIR being valid.
  - Trial may be conducted in absentia in case of non-appearance if the summons were sent to the address on the SIR and the accused does not appear.
  - In case of a conviction, the SIR remains valid until the sentence has been served.
- In the case of TL, after the sentence was imposed, all letters in respect of summons to appear at the social services were sent to that address, in Portuguese, but he never responded. The court also notified him to appear in order to give explanations about the failure to comply with his obligations under the probation regime.
- The accused never responded or appeared in court.

What were the issues invoked by the accused

- The new defence lawyer filed a request invoking the nullity of:
  - The formal placement as an accused;
  - The SIR,
  - The notifications summoning the accused to appear in court
  - The decision revoking the suspended sentence.
- Grounds:
  - The accused was unaware of the obligation to inform the authorities of his change of residence, as well as of the consequences of non-compliance with this obligation, since the SIR was written in Portuguese, and had not been translated and he had never benefited from the assistance of an interpreter.
  - The summons and the court decisions rendered were neve translated into a language he spoke or understood.

The context of domestic law – translation and interpretation

PT-CCP as in force at the time of the case – one single Article concerning interpretation and translation: Article 92 (does not differentiate between the concepts of interpreter / translator)

- Para. 2: where a person who does not understand or is not fluent in Portuguese has to intervene in proceedings, a fit and proper interpreter is appointed at no charge to that person.
- Para. 6: when there is a need to translate documents from a foreign language that have not been submitted in an authenticated translation, an interpreter will also be appointed.
- Para 3: an additional interpreter may be appointed for lawyer-client conversations.
- **No explicit provisions about the translation of any specific documents**, but some case law indicating that it is mandatary to translate at least the indictment (based on ECHR), the judgment and other decisions which have to be personally served to the accused (*which is not the case for appellate judgments*).

The context of domestic law – translation and interpretation

What is the situation in your countries? **(ES / GR / RO / CZ / LV / HU / IR / IT / NL / MT / LT / PL / FI / BE / BG)**

- No explicit transposition of the Directive in this respect?
- Is the domestic law compliant? Does it establish what are essential documents that have to be translated?
- What is the interpretation of the courts?

The context of domestic law – remedies in the field of translation and interpretation

Consequence of the violation of those provisions?

- Judicial dissensus but mostly considered **reparable nullity** (Article 120, para 2, c), PT-CCP: "*the lack of appointment of an interpreter, in those instances where the law establishes it as mandatory*".

This nullity has to be invoked by the interested persons within particular deadlines (120, para 3, and Article 105, para 1, PT-CCP):

- If the affected person participates in the procedural act, before that act is finished;
- If the nullity occurs in the investigative stage, up to 5 days after the notification of the order closing the investigation, or, in case the pre-trial judicial phase is requested, until the closing of the pre-trial debate.
- In special procedural forms (abbreviated, summary proceedings, etc.), at the beginning of the trial hearing.
- In other cases, within 10 days for the notification of the act.

The context of domestic law – translation and interpretation

What is the situation in your countries? **(ES / GR / RO / CZ / LV / HU / IR / IT / NL / MT / LT / PL / FI / BE / BG)**

- Is there a deadline to invoke a violation of the right to interpretation and translation?
- Which deadline?
- What is the substantive remedy, in case of finding of a violation?

The context of domestic law – right to information on rights

Formal placement as accused person, from the moment where (Article 57-59 CCP):

- An investigation where there is a reasonable suspicion against them is ongoing and they have to make a statemen before any judicial authority or police body;
- a coercive or patrimonial guarantee measure must be imposed on a specific person;
- a suspect is arrested
- a police report has been drawn up identifying a person as an alleged offender and that person has been informed on the content thereof, unless the report is manifestly ill-founded.
- in the course of an interview with someone other than an accused person a reasonable suspicion that they committed a criminal offence arises;
- the person may also request to be placed as an accused whenever investigations conducted for purposes of confirming a suspicion personally affect him (explicitly for interviews, in practice also during searches, etc.)
- At the latest, when an indictment is brought against a person, or the pre-trial judicial phase is opened against them

The context of domestic law – right to information on rights

Formal placement as accused person has as a consequence:

- Notification to the person concerned that as of that moment they have the status of accused in criminal proceedings
- **Notification that they are entitled to the rights** and bound by the duties laid down in Art. 61 CCP, which are listed on a **"letter of rights and duties" (*"placement as an accused"*)** that is given to that person.
- If necessary, a verbal explanation of those rights and duties shall be given.
- Indication of the particulars of the case files and the identification of the defence lawyer, if one has been appointed.

The context of domestic law – right to information on rights

Content of the rights in the letter of rights at the time of the facts of the case (Article 61 CCP):

- to be present in all procedural acts that directly concern them;
- to be heard by the court or the investigating judge whenever they must hand down a decision that personally affects them;
- to be informed on the charges against them prior to making any statements before any entity;
- To remain silence and against self-incrimination;
- to appoint a defence lawyer of theirchoice or to ask the court to appoint them one;
- to be assisted by a defence lawyer in any procedural acts where they take part and to consult in confidence including while in detention;
- to intervene in the inquiry and judicial pre-trial stage, submitting evidence and making applications for carrying out of any acts which they deem necessary;
- to be informed on their rights by the judicial authority or criminal police body before which they must appear;
- to appeal, according to the law, against any decisions made to their detriment

NO information on the right to translation and interpretation

The context of domestic law – remedies in the field of information on rights

Consequence of the violation of those provisions at the time of the facts of the case ?

- If a person is not placed as an accused in contravention of the CCP provisions, or, although placed as one, the legal formalities have not been complied with, **any statements made by that person (as well as any secondary evidence causally linked thereto**) cannot be used (Article 58, para 5, and 122 PT-CCP).
- **Reparable nullity** (Article 120, para 2, d), PT-CCP: "*the insufficiency of the inquiry of the pre-trial judicial stage, due to the omission of legally mandatory acts, and the subsequent omission of procedural acts which could have been essential for truth-seeking".*
- **This nullity has to be invoked by the interested persons within particular deadlines (120, para 3, and Article 105, para 1, PT-CCP) – *see above***
- Judicial dissensus: *could it be an exclusionary rule subject to the regime of Article 126, para 1 and 2, CCP, which may be invoked at any time during the proceedings until the final decision?*

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An association of European defence lawyers

The context of domestic law – right to information on rights

What is the situation in your countries? **(ES / GR / RO / CZ / LV / HU / IR / IT / NL / MT / LT / PL / FI / BE / BG)**

- Is there a deadline to invoke a violation of the right to information on rights?
- Which deadline?
- What is the substantive remedy, in case of finding of a violation?

The facts of the CASE – proceedings before the domestic courts – Court of Appeal of Évora Judgment of 08.03.2022

- The first instance court in Portugal dismissed the nullity claim as **untimely**, in accordance with the provisions of article 120(3) of the CCP
- The **Court of Appeal** ruled that the Directives me the requisites for **direct effect, since (i) the time-limit for transposition into domestic law had expired; (ii) the provisions were sufficiently clear, precise and unconditional and (iii) conferred a right upon private persons**, thus they would apply to the case and prevail over domestic law
- Finding that it was clear that Portuguese law was not compliant with the Directives, as the document at stake were "essential documents" which had not been translated, decided to **make a preliminary ruling reference to the CJEU**, asking for clarification on whether Articles 1 to 3 of Directive 2010/64/EU and Article 3 of Directive 2012/13/EU, alone or in conjunction with Article 6 of the ECHR, could be interpreted as meaning that they do not preclude a provision of national law which imposes a penalty of relative nullity, which must be pleaded, for failure to appoint an interpreter and to translate essential procedural documents for an accused person who does not understand the language of the proceedings, and which permits the rectification of that type of nullity owing to the passage of time?
- The Court also requested that the procedure be treated as urgent, as the person was in detention and the maintenance of the person in custody depended on the outcome of the question under dispute.

(*first preliminary reference ever in Portugal in respect of PRDs)*

The facts of the CASE – CJEU Ruling
Case C-242/22 PPU (TL) - Judgment of 01.08.2022

- Articles 1 to 3 Directive 2010/64/EU and Article 3 Directive 2012/13/EU have **direct effect** and prevail over domestic law.

- In particular, **Article 2(1) and 3(1) Directive 2010/64 and 3(1)(d) Directive 2012/13 state,** in a **precise and unconditional manner**, the **content and scope of the rights** of every suspected or accused person to receive interpretation services and the translation of essential documents, and to be informed of those rights, those provisions **must be regarded as having direct effect,** with the result that **any person benefiting from those rights may rely on them against a Member State, before the national courts**.

The facts of the CASE – CJEU Ruling
Case C-242/22 PPU (TL) - Judgment of 01.08.2022

- **3 procedural acts** at issue in the main proceeding **are essential documents** - written translation should have been provided - Article 3(1) of Directive 2010/64.

- These acts are "**an integral part of the procedure which established the criminal liability of TL**", they are "ancillary to the sentencing of the person concerned and which still form part of the criminal proceedings"
- Sentencing and decisions depriving of liberty are explicitly mentioned in Directive 2010/64, Articles 1(2) and 3(2))

  (vs the situations in judgments of 16 December 2021, AB and Others (Revocation of an amnesty) (C-203/20, EU:C:2021:1016) and of 9 June 2016, Balogh (C-25/15, EU:C:2016:423)

- These provisions have to be interpreted in line with Articles 47 and 48(2) CFREU thus their application "to those acts is fully justified by the objectives pursued by those directives", to ensure a fair trial and the rights of defence, and thus to strengthen mutual trust.

The facts of the CASE – CJEU Ruling
Case C-242/22 PPU (TL) - Judgment of 01.08.2022

- **Article 2(5) and 3(5) Directive 2010/64** – MS to ensure that, in accordance with procedures in national law, the persons concerned have **the right to challenge a decision finding that there is no need for interpretation or translation**

- But none of the Directive establishes the consequences of an infringement

- These provisions have to be interpreted in line with Articles 47 and 48(2) CFREU and the **principle of effectiveness and equivalence**

The facts of the CASE – CJEU Ruling
Case C-242/22 PPU (TL) - Judgment of 01.08.2022

- In the absence of specific EU rules, the rules implementing the rights which individuals derive from EU law are a matter for the domestic law - principle of the **procedural autonomy of the MS; but**

  - must not be less favourable than those governing similar domestic actions (principle of **equivalence**);

  - nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (principle of **effectiveness**)

The context of domestic law – remedies

What is the situation in your countries? **(ES / GR / RO / CZ / LV / HU / IR / IT / NL / MT / LT / PL / FI / BE / BG)**

- Are the remedies applied to the violation of EU rights the same as for those established in domestic law?
- May those remedies be exercised in a manner which does not render them nugatory or excessively difficult?

The facts of the CASE – CJEU Ruling
Case C-242/22 PPU (TL) - Judgment of 01.08.2022

- **Domestic rules cannot undermine objective pursued by directives**: safeguarding the fairness of criminal proceedings and ensuring respect for the rights of the defence of suspects and accused persons

- There would be a **violation of the Directives if the time limit to raise the violation of their provisions would begin to run before the person concerned has been informed, in a language which they speak or understand:**

  - Of the **existence and scope** of their right to interpretation and translation

  - Of the **existence and content** of the essential document in question and the effects thereof.

- **National court must rule on whether the person was informed on the rights; they were not informed on the documents thus the referring court has to decide whether interpretation of domestic law in conformity with EU law is possible, otherwise it must disapply the domestic provisions**

The facts of the CASE – Follow up at national level – Judgment of the Évora Court of Appeal 02.08.2022, case no. 53/19.8GACUB-B.E1, Rapporteur Maria Clara Figueiredo

- The procedural acts that are aimed at informing the accused and ensure the rights of defence must be translated, otherwise these rights would be void.

- This is the case of the following, which should be considered "essential documents":

  - the SIR (196 PT-CCP),

  - the notification with a view to revoking the suspended sentence (Article 495(2) PT-CCP),

  - the order revoking the suspended a sentence,

(the formal placement as an accused under Article 58 CCP is also mentioned, but in the case it had been translated)

The facts of the CASE – Follow up at national level – Ju

Judgment of the Évora Court of Appeal 02.08.2022, case no. 53/19.8GACUB-B.E1, Rapporteur Maria Clara Figueiredo

- Primacy of EU law, also recognised in Article 8, par 4, of the Portuguese Constitution

- **National Court disapplied the domestic rule that would have precluded the accused of raising the violation of the Directives at this stage due to the passage the time due to its incompatibility with Articles 47 and 48(2) CFREU (and Article 6 ECHR), and Articles 2(1), 3(1) Directive 2010/64/EU and 3(1)(d) Directive 2012/13/EU**.

- The Court declared the **nullity** of the SIR, the notification for the hearing before the revocation of the suspended sentence, the order revoking the sentence, and the **consequent nullity of all acts that took place after the SIR**

- **The Court ordered the immediate release of the accused**

2 – How to get to the EU Courts?

Preliminary references to the CJEU

Preliminary reference to the CJEU?

Article 267

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

(a) the **interpretation** of the Treaties;

(b) the **validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union**;

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

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

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

Requisites – example of the case of TL

- Whenever a question of interpretation of EU Law is raised in a case pending before a national court, that court may or must - depending on whether or not its decision is subject to appeal - refer the matter to the CJEU, which is a consequence of the loyal cooperation which must exist between the national courts and the courts of the Union, within the scope of their respective jurisdictions (Article 4(3) of the Treaty on European Union [TEU]) and a manifestation of the dialogue and mutual respect which must exist between those courts.
- The decision of the court is not subject to ordinary appeal – the Court of Appeal is obliged to refer the question set to the CJEU by means of a reference for a preliminary ruling.
- None of the circumstances in which, according to the CJEU the national court is exempt from this referral, since neither the acts that we intend to apply are clear in themselves, nor do we find in the CJEU's case law any clarification of them with regard specifically to their impact on the issue that we have set out above. There are therefore no exemptions from the obligation to refer under Cilfit case law - acte éclairé and acte clair.

Enforcing a failure to refer a preliminary question to the CJEU?

- Art. 267(3) TFEU – Courts of last instance shall refer a request for preliminary ruling to the CJEU
- Sincere cooperation (Article 4, para 3, TEU)
- Problem: **no right** to obtain a preliminary reference;
- Right to request it and to obtain a reasoned decision that is not arbitrary, under the ECHR (Article 6 ECHR), but only means of enforcement is the ECtHR

https://ks.echr.coe.int/documents/d/echr-ks/refusals-to-request-a-preliminary-reference-to-the-cjeu

- "Complaint" to the EU in order to trigger infringement proceedings under Art. 258 TFEU

(interesting recent case: C-516/22, 14.03.2024: https://curia.europa.eu/juris/document/document.jsf?text=&docid=283829&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=668610)

- Suing for damages – Köbler, C-224/01

https://curia.europa.eu/juris/document/document.jsf?docid=48649&doclang=EN

- Complaints before constitutional courts to challenge the decision of last-instance national courts not to request a preliminary ruling?

(e.g. BVerfG: https://www.bverfg.de/e/rk20171006_2bvr098716.html)

Suing for damages – Köbler, C-224/01

34. It must be stressed, in that context, that a court adjudicating at last instance is by definition the last judicial body before which individuals may assert the rights conferred on them by Community law. Since an infringement of those rights by a final decision of such a court cannot thereafter normally be corrected**, individuals cannot be deprived of the possibility of rendering the State liable in order in that way to obtain legal protection of their rights**.

Conditions governing State liability

51. [...] **the rule of law infringed must be intended to confer rights on individuals**; the **breach must be sufficiently serious**; and there must be a **direct causal link between the breach of the obligation incumbent on the State and the loss or damage sustained by the injured parties [...]**

52.State liability for loss or damage caused by a decision of a national court adjudicating at last instance which infringes a rule of Community law is governed by the same conditions.

53. With regard more particularly to the second of those conditions and its application with a view to establishing possible State liability owing to a decision of a national court adjudicating at last instance, regard must be had to the specific nature of the judicial function and to the legitimate requirements of legal certainty, as the Member States which submitted observations in this case have also contended. State liability for an infringement of Community law by a decision of a national court adjudicating at last instance can be incurred only in the exceptional case where the court has manifestly infringed the applicable law.

54. In order to determine whether that condition is satisfied, the national court hearing a claim for reparation must take account of all the factors which characterise the situation put before it.

55. **Those factors include, in particular, the degree of clarity and precision of the rule infringed, whether the infringement was intentional, whether the error of law was excusable or inexcusable, the position taken, where applicable, by a Community institution and non-compliance by the court in question with its obligation to make a reference for a preliminary ruling under the third paragraph of** Article 234 EC.

56. In any event, an infringement of Community law will be sufficiently serious where the decision concerned was made in manifest breach of the case-law of the Court in the matter”

Other ideas?

Can a request be made for a preliminary ruling on the interpretation of Article 267 TFUE, namely its compatibility with the Charter, when a refusal to refer would deprive an individual of the access to the Court competent to decide on the validity or interpretation of EU Law?

Practical tools

1) Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2019/C 380/01)
2) Toolkit: Preliminary ruling requests for the CJEU, Fair Trials (2020)
3) CCBE “Practical Guidance for Advocates before the Court of Justice of the European Union in Preliminary Reference cases”
4) **Attend the ERA Course on Trier, 8-10 October 2025 “The role of the CJEU for defence lawyers” ! See https://training-for-defence.era.int/**

Are you a criminal practitioner? Join the ECBA!

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Thank you for your attention!

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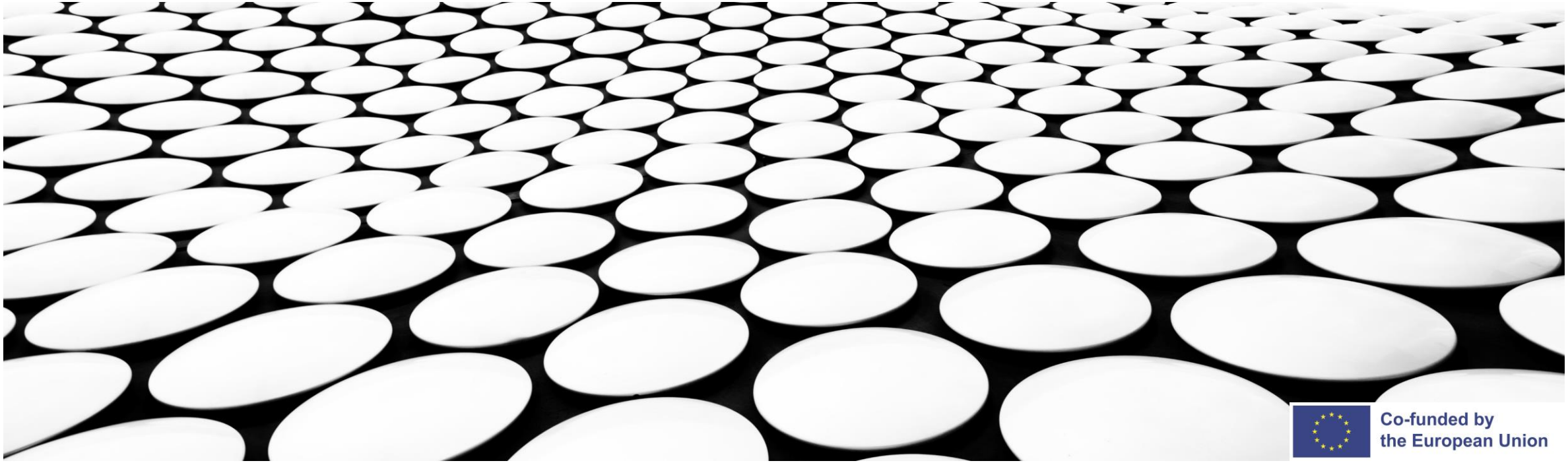
APPLYING THE PRINCIPLE OF NE BIS IN IDEM

ENSURING LEGAL INTEGRITY: INTERPRETING THE PRINCIPLE OF NE BIS IN IDEM IN EU COURT CASE LAW

DR. GYALOG BALÁZS LAWYER AND SECRETARY GENERAL OF THE BUDAPEST BAR ASSOCIATION



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INTRODUCTION

- "NE BIS IN IDEM" - "NOT TWICE FOR THE SAME THING"
- CASE I. HUNGARY – AUSTRIA C-790/23
- CASE II. HUNGARY – CROATIA C-268/17

CHANGES OF CIRCUMSTANSES

- THE FREE MIGRATION CREATED THE CROSS BORDER CRIMES
- BESIDE THE NATIONAL CRIME THE INTERNATIONAL CRIME BECAME MORE IMPORTANT
- THE NEED OF NEW AND EFFECTIVE INTERNATIONAL COOPERATIONS
- MUTUAL TRUST AND MUTUAL RECOGNITION

„INTERNATIONAL” PRINCIPLES

- RULE OF CRIMINAL LAW
- NO CRIME SHOULD REMAIN UNPUNISHED
- INNOCENT PERSON SHOULD NOT RECEIVE DISADVANTAGE
- ANY PERSON WHO COMMITS A CRIME SHOULD ONLY BE JUDGED ONCE
- PROHIBITION OF DOUBLE PENALTY
- RES IUDICATA
- **NE BIS IN IDEM**

LEGAL FRAMEWORK OF NE BIS IN IDEM

- EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR) PROTOCOL 7 ARTICLE 4
- THE RIGHT NOT TO BE TRIED OR PUNISHED TWICE

LEGAL FRAMEWORK (EU)

- ARTICLE 54 OF THE **CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT (CISA)** PROHIBITS PROSECUTION IN ANOTHER CONTRACTING PARTY FOR THE SAME ACTS AFTER A TRIAL HAS BEEN FINALLY DISPOSED OF, PROVIDED CERTAIN CONDITIONS ARE MET.
- ARTICLE 54 OF THE CISA,
- ARTICLE 57(1) OF THE CISA

LEGAL FRAMEWORK (EU)

- ARTICLE 50 OF THE **CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION** REINFORCES THIS PRINCIPLE, KNOWN AS *NE BIS IN IDEM*, ENSURING PROTECTION AGAINST DOUBLE JEOPARDY.

RECOGNITION PROCEDURE VS EU COOPERATION

- DECISION GIVEN BY A COURT OUT OF THE EU RECOGNTION PROCEDURE NEEDS TO BE DONE FOR THE ACCEPTANCE OF A FOREIGN COURT DECISION AND ONLY COURT DECISION
- NOT AN AUTOMATIC RECOGNITION, DETAILED EXAMINATION OF THE CRIMINAL PROCEDURE AND THE COURT DECISION
- IN THE EU: MUTUAL TRUST AND MUTUAL RECOGNITION; THERE IS ONLY A NARROW SCOPE OF EXAMINATION
- NOT ONLY COURT BUT ALSO PROSECUTION DECISIONS ARE ACCEPTABLE

ROLE OF THE EU COURT

- PRELIMINARY RULINGS ON THE INTERPRETATION OF THE EU LAW AND THE VALIDITY OF THE LEGAL ACTS
- JUDGEMENT OF 28. 9. 2006 — CASE C-467/04
- ENSURING THE RIGHT OF FREE MOVEMENT

CONTENT OF THE PRINCIPLE OF NE BIS IN IDEM

- THE SIGNIFICANCE OF THE DECISION-MAKING AUTHORITY - C-187/01; C-385/01.
- CONCEPT OF THE SAME CRIMINAL OFFENSE - C-436/04
- ISSUE OF SUBSTANTIVE JUDGEMENT - C-469/03; C-486/14
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LEGAL FRAMEWORK (HUNGARY)

- PARAGRAPH XXVIII(6) OF THE HUNGARIAN CONSTITUTION/BASIC LAW
- PARAGRAPH 4 (3) ON HUNGARIAN CRIMINAL PROCEDURE
- PARAGRAPH 4 (7) ON HUNGARIAN CRIMINAL PROCEDURE

LEGAL FRAMEWORK (AUSTRIA)

- PARAGRAPH 190 OF THE CODE OF CRIMINAL PROCEDURE ENTITLED '**CLOSURE OF THE INVESTIGATION PROCEDURE**', IS WORDED AS FOLLOWS: 'THE PROSECUTION MUST DISCONTINUE THE CRIMINAL PROCEEDINGS AND CLOSE THE INVESTIGATION PROCEDURE
- UNDER PARAGRAPH 193 OF THE CODE OF CRIMINAL PROCEDURE ENTITLED '**CONTINUATION OF THE PROCEEDINGS**

BACKGROUND –CASE IN AUSTRIA

1. ON 22 AUGUST 2012, THE WKSTA BROUGHT CRIMINAL PROCEEDINGS IN AUSTRIA AGAINST TWO PERSONS OF AUSTRIAN NATIONALITY FOR SUSPICION OF MONEY LAUNDERING, EMBEZZLEMENT AND CORRUPTION,
2. THE ACCUSED WAS NOT INTERVIEWED AS A SUSPECT
3. BY ORDER OF 3 NOVEMBER 2014, THE WKSTA TERMINATED THE PRE-TRIAL INVESTIGATION

BACKGROUND –CASE IN HUNGARY

1. ON 10 APRIL AND 29 AUGUST 2019, THE HUNGARIAN INVESTIGATIVE ATTORNEY OFFICE (KNYF) FILED AN INDICTMENT TO THE BUDAPEST METROPOLITAN COURT ON THE BASIS OF WHICH CRIMINAL PROCEEDINGS WERE BROUGHT IN HUNGARY AGAINST THE ACCUSED FOR ACTS OF CORRUPTION.

BACKGROUND – CASE IN HUNGARY

1. THE BUDAPEST METROPOLITAN COURT - UPON OUR PROPOSAL - DECIDED TO REFER THE FOLLOWING QUESTIONS TO THE EU COURT OF JUSTICE FOR A PRELIMINARY RULING

CASE STUDY: EU COURT OF JUSTICE DECISION – C-790/2023

1. THE GIVEN PERSON DOES NOT NEED TO BE INTERROGATED AS A SUSPECT;
2. THE INVESTIGATION SHOULD BE SUBSTANTIVE AND DETAILED;
3. A FINAL DECISION IS NECESSARY, TO BE MADE BY A COMPETENT CRIMINAL AUTHORITY;
4. IT IS NOT A PROBLEM IF THE TERMINATION DECISION IS LEGALLY FINAL, HOWEVER, IN THE CASE OF NEW FACTS OR EVIDENCE, THE PROCEEDINGS CAN BE REOPENED IF THE STATUTE OF LIMITATIONS HAS NOT EXPIRED.

CASE STUDY: DISPUTE BETWEEN HUNGARY AND CROATIA REGARDING ‚NE BIS IN IDEM' – C-268/17

- THE REQUEST HAS BEEN MADE IN PROCEEDINGS CONCERNING THE ISSUE OF A EUROPEAN ARREST WARRANT (EAW) AGAINST A HUNGARIAN NATIONAL, BY THE COUNTY COURT ZAGREB, CROATIA.
- ARTICLE 1 OF **FRAMEWORK DECISION 2002/584** A JUDICIAL DECISION ISSUED BY A MEMBER STATE
- ARTICLE 2 OF THE FRAMEWORK DECISION, 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.
- ARTICLE 4 OF FRAMEWORK DECISION ENTITLED 'THE EXECUTING JUDICIAL AUTHORITY MAY REFUSE TO EXECUTE THE EAW

CASE STUDY: DISPUTE BETWEEN HUNGARY AND CROATIA REHARDING ‚NE BIS IN IDEM'

- A HUNGARIAN NATIONAL WHO IS A CHAIRMAN OF THE BOARD OF DIRECTORS OF A HUNGARIAN OIL COMPANY, WAS INDICTED IN CROATIA ON 31 MARCH 2014 ON CHARGES OF ACTIVE CORRUPTION. IN THE INDICTMENT ISSUED BY OFFICE FOR SUPPRESSION OF CORRUPTION AND ORGANISED CRIME, CROATIA
- HUNGARIAN AUTHORITY WAS REQUESTED TO PROVIDE INTERNATIONAL LEGAL ASSISTANCE BY INTERVIEWING A SUSPECT AND DELIVERING A SUMMONS TO HIM. HOWEVER, NO ACTION WAS TAKEN ON THAT REQUEST BY HUNGARY,
- HUNGARIAN ATTORNEY GENERAL OPENED ON 14 JULY 2011, AN INVESTIGATION, WHICH INVESTIGATION WAS TERMINATED BY DECISION OF THE HUNGARIAN NATIONAL BUREAU OF INVESTIGATION ON 20 JANUARY 2012 ON THE GROUND THAT THE ACTS COMMITTED DID NOT CONSTITUTE A CRIMINAL OFFENCE UNDER HUNGARIAN LAW.
- THAT INVESTIGATION WAS OPENED, WITH THE CRIMINAL OFFENCE AGAINST AN UNKNOWN PERSON, AND THE PERSON SUSPECTED IN CROATIA WAS INTERVIEWED AS A WITNESS ONLY AND THE HIGH-RANKING CROATIAN POLITICIAN TO WHOM THE MONEY WAS ALLEGEDLY PAID WAS NOT INTERVIEWED.
- ON 1 OCTOBER 2013, CROATIA, ISSUED AN EAW AGAINST THE HUNGARIAN CITIZEN
- HUNGARY REFUSED THE EAW
- FOLLOWING THE HUNGARIAN PERSON'S INDICTMENT IN CROATIA, A NEW EAW WAS ISSUED ON 15 DECEMBER 2015, HOWEVER, IT WAS NEVER EXECUTED BY HUNGARY.

CASE STUDY: DISPUTE BETWEEN HUNGARY AND CROATIA REHARDING ‚NE BIS IN IDEM'

- THE CROATIAN COURT DECIDED TO CONTINUE THE PROCEEDINGS AND TO REFER QUESTIONS TO THE COURT OF JUSTICE FOR A PRELIMINARY RULING

CASE STUDY: DISPUTE BETWEEN HUNGARY AND CROATIA REHARDING ‚NE BIS IN IDEM'

- THE PRINCIPLE *NE BIS IN IDEM* ENSURES NO ONE IS TRIED OR PUNISHED TWICE FOR THE SAME OFFENSE, BUT IT APPLIES ONLY TO THOSE FINALLY JUDGED IN A MEMBER STATE.
- THE DECISION TERMINATING AN INVESTIGATION, WITHOUT PROCEEDINGS AGAINST THE REQUESTED PERSON, CANNOT BE USED TO REFUSE EXECUTING THE EAW.
- ARTICLE 4(3) PROVIDES OPTIONAL GROUNDS FOR NON-EXECUTION, BUT REFUSAL BASED ON SUCH GROUNDS MUST BE NARROWLY INTERPRETED TO PREVENT CIRCUMVENTING THE OBLIGATION TO EXECUTE AN EAW.
- ULTIMATELY, DECISIONS TERMINATING INVESTIGATIONS WHERE THE REQUESTED PERSON WAS ONLY A WITNESS CANNOT BE RELIED UPON TO REFUSE EXECUTING THE EAW UNDER FRAMEWORK DECISION.

CASE STUDY: THE AFTERMATH OF THE CASE IN HUNGARY

- HUNGARIAN LAW ABOUT THE PRIVATE PROSECUTION PROCEDURE.
- AS A RESULT, NO SUBSTANTIVE DECISION WAS ULTIMATELY MADE IN HUNGARY REGARDING THE CASE IN QUESTION, THUS THE NE BIS IN IDEM PRINCIPLE CANNOT BE APPLIED.
- IN MY LEGAL OPINION, A LEGALLY BINDING SUBSTANTIVE DECISION MADE IN A PRIVATE PROSECUTION PROCEDURE SUBSTANTIATES THE ESSENTIAL ELEMENTS NECESSARY FOR ESTABLISHING THE "NE BIS IN IDEM" PRINCIPLES AS LISTED IN MY INTRODUCTION.

THANK YOU FOR YOUR ATTENTION