



# Procedural Rights in the EU

Training for defence lawyers

Lisbon, 8-9 July 2024



EXCELLENCE IN  
EUROPEAN LAW<sup>1</sup>

## Speakers

**Carlos de Almeida Lemos**, Lawyer, Matosinhos

**Ádám Békés**, Lawyer, Budapest

**Vânia Costa Ramos**, Defence Lawyer, Vice Chair of the ECBA, Lisbon

**Fernanda de Almeida Pinheiro**, President, Portuguese Bar Association, Lisbon

**Holger Matt**, Attorney, Honorary Professor, Johann Wolfgang Goethe University, Frankfurt

**Inês Carvalho Sá**, Defence Lawyer, Lisbon

**Ricardo Sardo**, Member General Council, Portuguese Bar Association, Lisbon

**Pavlos Topalnakos**, Supreme Court Attorney-at-Law, Professor at Hellenic Police Officers School, Thessaloniki

**Matylda Pogorzelska**, Project Officer, Justice, Digital and Migration Unit, European Union Agency for Fundamental Rights (FRA), Vienna

**Violeta Zeppa-Priedite**, Sworn Attorney-at-Law, Counsel, Head of Corporate Crime Investigations and Compliance, Sorainen, Riga

## Key topics

- Update on the state of play regarding the EU Directives on procedural rights, i.e. the right to information, legal aid and access to a lawyer, presumption of innocence, and the position of children in criminal proceedings
- Procedural rights in the context of the EAW
- The gathering of cross-border (e-)evidence and its admissibility
- The need for further measures in the EU

Language  
English

Event number  
324DT107

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



# Procedural Rights in the EU

**Monday, 8 July 2024**

08:30 Arrival and registration of participants

09:00 **Welcome and introduction to the programme**  
*Fernanda de Almeida Pinheiro* (Portuguese Bar Association) and *Cornelia Riehle* (ERA)

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## **PART I: Setting the scene: procedural rights in the EU**

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*Chair: Cornelia Riehle*

09:05 **From the Swedish Roadmap until today: status quo of the Directives on procedural rights**

The importance of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings for the development of procedural rights in the EU will be illustrated as well as an overview on the scope, content, and main features of the six Directives on procedural rights given.

*Holger Matt*

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## **PART II: Defending a case**

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*Chair: Holger Matt*

Based on case examples, the EU Directives on procedural rights will be presented referring to typical practical situations in criminal proceedings from the point of view of the defence.

09:45 **Access to a lawyer**

As a first step, the situation at the police station, the public prosecutor's office and first hearing at Court will be presented. The effects of Directive 2013/48 on access to a lawyer will be illustrated.

*Violeta Zeppa-Priedite*

10:30 Coffee break

11:00 **Legal aid**

In this presentation, we will look at issues of legal aid and how Directive 2016/1919 on legal aid attends to these issues. Differences in the EU Member States will be illustrated.

*NN*

11:45 **The right to information**

The presentation will illustrate the right to information under Directive 2012/13 with regard to the perspective of the suspect as well as access to the case file for the defence.

*Carlos de Almeida Lemos*

12:45 Lunch

14:00 **The right to interpretation and translation**

This part will look at issues arising with the quality of translations and the question which documents are relevant under Directive 2010/64

*Pavlos Topalnakos*

14:45 **Presumption of innocence**

Returning to the situation at the police station, this presentation will underline the importance of Directive 2016/343 on the presumption of innocence and its practical impact. Arising issues such as press and media will be illustrated.

*Ádám Békés*

15:30 Coffee break

## **Objective**

This seminar aims at presenting an update on the state of play regarding the six EU Directives on procedural rights. At the heart of the seminar will be the impact of the Directives on access to a lawyer, legal aid, the right to information, interpretation, and translation as well as the presumption of innocence. Furthermore, the seminar will present a detailed look at procedural rights in the context of the European Arrest Warrant and (e-)evidence-gathering. 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 Kosovo.

## **Venue**

Portuguese Bar Association  
Lg S Domingos, 14  
1169-060 Lisbon

## **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.

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### PART III: The position of children in criminal proceedings in the EU

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*Chair: Holger Matt*

16:00 **Criminal proceedings involving children and the impact of Directive 2016/800**  
*Inês Carvalho Sá*

17:00 End of first day

20:00 Dinner offered by the organisers

## Tuesday, 9 July 2024

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### PART IV: Procedural rights in the context of the EAW

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*Chair: Carlos de Almeida Lemos*

09:00 **Rights of requested persons in the EAW proceedings**  
This session will present the latest FRA research looking at the respect for procedural rights, including the right to dual legal defence, and other fundamental rights during EAW proceedings.  
*Matylda Pogorzelska*

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### PART VI: Procedural rights in the context of evidence gathering

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*Chair: Matylda Pogorzelska*

09:45 **The gathering of cross-border (e)evidence and its admissibility: Overview**

- EIO
- European Production and Preservation Orders
- eEvidence package
- eEDES

*Pavlos Topalnakos*

10:30 Coffee break

11:00 **The gathering of cross-border (e)evidence and its admissibility: Impact on procedural rights**  
*Vânia Costa Ramos*

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### PART VI: The need for further procedural rights in the EU

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*Chair: Cornelia Riehle*

11:45 **A new roadmap on minimum standards for certain procedural safeguards: possible future procedural rights in the context of the EAW, pre-trial detention, detention and evidence-gathering**  
*Vânia Costa Ramos*

12:15 Discussion

12:30 Closing words  
*Ricardo Sardo*

12:45 End of seminar

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For programme updates: [www.era.int](http://www.era.int)  
Programme may be subject to amendment.

### Your contacts



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### Save the date

**Summer Course on European Criminal Justice**

Online, 17-21 June 2024

Apply online for “Procedural Rights in the EU”:

[www.era.int/?132919&en](http://www.era.int/?132919&en)



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# Application

## Procedural Rights in the EU

Lisbon, 8-9 July 2024 / Event number: 324DT107



### 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 the 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 via 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 Portuguese Bar Association.  
Interested defence lawyers from Spain should apply via ICAB.

2. Applications should be submitted before **5 May 2024**.
3. A response will be sent to every applicant after this deadline. **We advise you not to book any travel or accommodation before you receive our confirmation.**

#### Registration Fee

4. €110 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 Portugal: 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 Portugal, the contribution for travel is fixed at €40 (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. Accommodation costs: international participants and national participants travelling more than 50km one-way will receive a fixed contribution of €109 per night for up to two nights' accommodation. National participants travelling more than 50km one-way will receive a fixed contribution of €109 for one night accommodation. For more information, please consult p.14 on <https://era-comm.eu/go/unit-cost-decision-travel>.
9. These rules do not apply to representatives of EU Institutions and Agencies who are required to cover their own travel and accommodation.
10. 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

11. Participation at the whole seminar is required and participants will be asked to sign attendance sheets daily.
12. 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.
13. 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.
14. 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  
"Procedural Rights in the  
EU":

[www.era.int/?132919&en](http://www.era.int/?132919&en)

#### Venue

Portuguese Bar Association  
Lg S Domingos, 14  
1169-060 Lisbon

#### Language

English

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## **BACKGROUND DOCUMENTATION**

**\*\*\* 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	Statewatch Analysis, "The Third Pillar <i>acquis</i> " after the Treaty of Lisbon enters into force, Professor Steve Peers, University of Essex, Second Version, 1 December 2009
A1-03	Consolidated version of the Treaty on the functioning of the European Union, art. 82-86 ( <i>OJ C 326/47; 26.10.2012</i> )
A1-04	Consolidated Version of the Treaty on the European Union, art. 9-20 ( <i>OJ C326/13; 26.10.2012</i> )
A1-05	Charter of fundamental rights of the European Union ( <i>OJ. C 364/1; 18.12.2000</i> )
A1-06	Explanations relating to the Charter of Fundamental Rights ( <i>2007/C 303/02</i> )
A1-07	Convention implementing the Schengen Agreement of 14 June 1985 ( <i>OJ L 239; 22.9.2000, P. 19</i> )
A1-08	Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols (ETS No. 005; 3.5.1953)

#### A2) Court of Justice of the European Union

A2-01	Court of Justice of the European Union: Presentation of the Court
A2-02	InfoCuria, Case-law, the Court of Justice of the European Union
A2-03	European Parliament Fact Sheets on the European Union: Competences of the Court of Justice of the European Union, April 2023
A2-04	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
A2-05	Consolidated Version of the Statute of the Court of Justice of the European Union (01 August 2016)
A2-06	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	Judgments and decisions, Hudoc Database, the European Court of Human Rights
A3-03	ECHR Knowledge Sharing platform (ECHR-KS), the European Court of Human Rights
A3-04	Human rights handbooks, Practical guides to the implementation of the European Convention on Human Rights, Council of Europe
A3-05	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
A3-06	Case of Dolenc v. Slovenia (Application no. 20256/20), Strasbourg 22 February 2024
A3-07	CASE OF KACZMAREK v. POLAND (Application no. 16974/14), Strasbourg 22 February 2024
A3-08	Case of Diaconeasa v. Romania (Application no. 53162/21) Strasbourg 20. February 2024
A3-09	Case of Lypovchenko and Halabudenco v The Republic of Moldova and Russia (Applications nos. 40926/16 and 73942/17) Strasbourg 20. February 2024
A3-10	CASE OF ȚÎMPĂU v. ROMANIA (Application no. 70267/17), Strasbourg 05 December 2023
A3-11	Case of Grzeda v. Poland (Application no. 43572/18), Strasbourg, 15 March 2022
A3-12	Case of Mihalache v. Romania [GC] (Application no. 54012/10), Strasbourg, 08 July 2019
A3-13	Case of Altay v. Turkey (no. 2) (Application no. 11236/09), Strasbourg, 09 April 2019
A3-14	Case Beuze v. Belgium (Application no. 71409/10), Strasbourg, 09 November 2018
A3-15	Case of Vizgirda v. Slovenia (Application no. 59868/08), Strasbourg, 28 August 2018
A3-16	Case of Şahin Alpay v. Turkey (Application no. 16538/17), Strasbourg, 20 March 2018
A3-17	Grand Chamber Hearing, Beuze v. Belgium [GC] (Application no. 71409/10), Strasbourg, 20 December 2017
A3-18	Case of Blokhin v. Russia (Application no. 47152/06), Judgment European Court of Human Rights, Strasbourg, 23 March 2016

A3-19	Case of A.T. v. Luxembourg (Application no. 30460/13), Judgment European Court of Human Rights, Strasbourg, 09 April 2015
A3-20	Case of Blaj v. Romania (Application no. 36259/04), Judgment European Court of Human Rights, Strasbourg, 08 April 2014
A3-21	Case of Boz v. Turkey (Application no. 7906/05), Judgment European Court of Human Rights, Strasbourg, 01 October 2013 (FR)
A3-22	Case of Pishchalnikov v. Russia (Application no. 7025/04), Judgment European Court of Human Rights, Strasbourg, 24 October 2009
A3-23	Case of Salduz v. Turkey (Application no. 36391/02), Judgment, European Court of Human Rights, Strasbourg, 27 November 2008

#### A4) Brexit

A4-01	Brexit publications and news published after 1 February 2020, European Commission (latest publication 16 May 2024)
A4-02	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 ( <i>OJ L 149, 30.4.2021</i> )
A4-03	Eurojust: Judicial cooperation in criminal matters between the European Union and the United Kingdom from 1 January 2021, 1 January 2021
A4-04	Draft Working Text for an Agreement on Law enforcement and Judicial Cooperation in Criminal Matters
A4-05	The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 (2019/742), 28th March 2019
A4-06	Brexit next steps: The European Arrest Warrant, House of Commons, 20 February 2020
A4-07	Brexit next steps: The Court of Justice of the EU and the UK, House of Commons, 7 February 2020
A4-08	The Law Society, "Brexit no deal: Criminal Justice Cooperation", London, September 2019
A4-09	European Commission, Factsheet, „A „No-deal“-Brexit: Police and judicial cooperation”, April 2019
A4-10	CEPS: Criminal Justice and Police Cooperation between the EU and the UK after Brexit: Towards a principled and trust-based partnership, 29 August 2018
A4-11	Policy paper: The future relationship between the United Kingdom and the European Union, 12 July 2018
A4-12	House of Lords, Library Briefing, Proposed UK-EU Security Treaty, London, 23 May 2018
A4-13	HM Government, Technical Note: Security, Law Enforcement and Criminal Justice, May 2018
A4-14	LSE-Blog, Why Britain’s habit of cherry-picking criminal justice policy cannot survive Brexit, Auke Williams, London School of Economics and Political Science, 29 March 2018
A4-15	House of Commons, Home Affairs Committee, UK-EU Security Cooperation after Brexit, Fourth Report of Session 2017-19, London, 21 March 2018
A4-16	HM Government, Security, Law Enforcement and Criminal Justice, A future partnership paper
A4-17	European Criminal Law after Brexit, Queen Mary University London, Valsamis Mitsilegas, 2017
A4-18	House of Lords, European Union Committee, Brexit: Judicial oversight of the European Arrest Warrant, 6 <sup>th</sup> Report of Session 2017-19, London, 27 July 2017



A4-19	House of Commons, Brexit: implications for policing and criminal justice cooperation (24 February 2017)
A4-20	Scottish Parliament Information Centre, Briefing, Brexit: Impact on the Justice System in Scotland, Edinburgh, 27 October 2016

## 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.1959)
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	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
B2-02	European Parliament resolution of 20 January 2021 on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI)), (OJ C 456, 10.11.2021)
B2-03	Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81/24; 27.3.2009)
B2-04	Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190/1; 18.7.2002, P. 1)
B2-05	Case law by the Court of Justice of the European Union on the European Arrest Warrant – Overview, Eurojust, 15 March 2020



B2-06	Case C-397/22, GER, Judgement of the Court (Seventh Chamber) of 21 December 2023
B2-07	Case C-396/22, GER, Judgment of the Court (Seventh Chamber) of 21 December 2023
B2-08	Case C-261/22 Judgment of the Court (Grand Chamber) of 21 December 2023
B2-09	Case C-142/22, OE, Judgment of the Court (Second Chamber), 6 July 2023
B2-10	Case C-699/21, E.D.L, Judgment of the Court (Grand Chamber), 18 April 2023
B2-11	Joined Cases C-514/21 and C-515/21, LU and PH, Judgment of the Court (Fourth Chamber), 23 March 2023
B2-12	Case C-158/21, Puig Gordi and Others, Judgment of the Court (Grand Chamber), 31 January 2023
B2-13	Case C-168/21, Procureur général près la cour d'appel d'Angers, Judgment of the Court (Third Chamber), 14 July 2022
B2-14	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
B2-15	Case C-649/19, Spetsializirana prokuratura (Déclaration des droits), Judgement of the Court (Fifth Chamber), 28 January 2021
B2-16	Case C-414/20 PPU, MM, Judgment of the Court (Third Chamber), 13 January 2021
B2-17	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
B2-18	Case C-416/20 PPU, Generalstaatsanwaltschaft Hamburg, Judgement of the Court (Fourth Chamber), 17 December 2020
B2-19	Case C-584/19, A and Others, Judgement of the Court (Grand Chamber), 8 December 2020
B2-20	Case C-510/19, AZ, Judgement of the Court (Grand Chamber), 24 November 2020
B2-21	Case C-717/18, X (European arrest warrant – Double criminality) Judgement of the Court of 3 March 2020
B2-22	Case C-314/18, SF Judgement of the Court of 1 March 2020
B2-23	Joined Cases C-566/19 PPU (JR) and C-626/19 PPU (YC), Opinion of AG Campos Sánchez-Bordona, 26 November 2019
B2-24	Case C-489/19 PPU (NJ), Judgement of the Court (Second Chamber) of 09 October 2019
B2-25	Case 509/18 (PF), Judgement of the Court (Grand Chamber), 27 May 2019
B2-26	Joined Cases C-508/18 (OG) and C-82/19 PPU (PI), Judgement of the Court (Grand Chamber), 24 May 2019
B2-27	The Guardian Press Release: Dutch court blocks extradition of man to 'inhumane' UK prisons, 10 May 2019
B2-28	Case 551/18, IK, Judgement of the Court of 06 December 2018 (First Chamber)
B2-29	CJEU Press Release No 141/18, Judgement in Case C-207/16, Ministerio Fiscal, 2 October 2018
B2-30	CJEU Press Release No 135/18, Judgement in Case C-327/18 PPU RO, 19 September 2019
B2-31	Case C-268/17, AY, Judgement of the Court of 25 July 2018 (Fifth Chamber)
B2-32	Case C-220/18 PPU, ML, Judgement of the Court of 25 July 2018 (First Chamber)

B2-33	Case C-216/18 PPU, LM, Judgement of the Court of 25 July 2018 (Grand Chamber)
B2-34	InAbsentiaEAW, Background Report on the European Arrest Warrant - The Republic of Poland, Magdalena Jacyna, 01 July 2018
B2-35	Case C-571/17 PPU, Samet Ardic, Judgment of the court of 22 December 2017
B2-36	C-270/17 PPU, Tupikas, Judgment of the Court of 10 August 2017 (Fifth Chamber)
B2-37	Case C-271/17 PPU, Zdziaszek, Judgment of the Court of 10 August 2017 (Fifth Chamber)
B2-38	Case C-579/15, Popławski, Judgement of the Court (Fifth Chamber), 29 June 2017
B2-39	Case C-640/15, Vilkas, Judgement of the Court (Third Chamber), 25 January 2017
B2-40	Case C-477/16 PPU, Kovalkovas, Judgement of the Court (Fourth Chamber), 10 November 2016
B2-41	Case C-452/16 PPU, Poltorak, Judgement of the Court (Fourth chamber), 10 November 2016
B2-42	Case C-453/16 PPU, Özçelik, Judgement of the Court (Fourth Chamber), 10 November 2016
B2-43	Case C-294/16 PPU, JZ v Śródmieście, Judgement of the Court (Fourth Chamber), 28 July 2016
B2-44	Case C241/15 Bob-Dogi, Judgment of the Court (Second Chamber) of 1 June 2016
B2-45	C-108/16 PPU Paweł Dworzecki, Judgment of the Court (Fourth Chamber) of 24 May 2016
B2-46	Cases C-404/15 Pál Aranyosi and C-659/15 PPU Robert Căldăraru, Judgment of 5 April 2016
B2-47	Case C-237/15 PPU Lanigan, Judgment of 16 July 2015 (Grand Chamber)
B2-48	Case C-168/13 PPU <i>Jeremy F / Premier ministre</i> , Judgement of the court (Second Chamber), 30 May 2013
B2-49	Case C-399/11 <i>Stefano Melloni v Ministerio Fiscal</i> , Judgment of of 26 February 2013
B2-50	Case C-396/11 Ciprian Vasile Radu, Judgment of 29 January 2013
B2-51	C-261/09 Mantello, Judgement of 16 November 2010
B2-52	C-123/08 Wolzenburg, Judgement of 6 October 2009
B2-53	C-388/08 Leymann and Pustovarov, Judgement of 1 December 2008
B2-54	C-296/08 Goicoechea, Judgement of 12 August 2008
B2-55	C-66/08 Szymon Kozłowski, Judgement of 17 July 2008

### B3) Mutual recognition: freezing and confiscation and asset recovery

B3-01	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
B3-02	Moneyval 64th Plenary Meeting report, Strasbourg, 5 January 2023
B3-03	<u>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</u> Letter to the Chair of the

	<u>European Parliament Committee on Civil Liberties, Justice and Home Affairs (Brussels 14 February 2024)</u>
B3-04	Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation ( <i>Brussels, 25.5.2022, COM (2022) 245 final</i> )
B3-05	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, ( <i>Brussels, 20.7.2021 COM(2021) 421 final</i> )
B3-06	FATF, COVID-19-related Money Laundering and Terrorist Financing Risk and Policy Responses, Paris, 4 May 2020
B3-07	Money-Laundering and COVID-19: Profit and Loss, Vienna, 14 April 2020
B3-08	FATF President Statement – COVID-19 and measures to combat illicit financing, Paris 1 April 2020
B3-09	Moneyval Plenary Meeting report, Strasbourg, 31 January 2020
B3-10	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
B3-11	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
B3-12	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
B3-13	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
B3-14	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
B3-15	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)
B3-16	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)
B3-17	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)
B3-18	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
B3-19	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
B3-20	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)

B3-21	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)
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#### B4) Mutual recognition: Convictions

B4-01	Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ( <i>OJ L 294/20; 11.11.2009</i> )
B4-02	Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ( <i>OJ L 337/102; 16.12.2008</i> )
B4-03	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ( <i>OJ L 327/27; 5.12.2008</i> )
B4-04	Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings ( <i>OJ L 220/32; 15.08.2008</i> )
B4-05	Case C-234/18, Judgment of 20 March 2020
B4-06	Case C-390/16, Dániel Bertold Lada, Opinion of AG Bot, delivered on 06 February 2018
B4-07	Case C-171/16, Trayan Beshkov, Judgement of the Court (Fifth Chamber), 21 September 2017
B4-08	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
B4-09	Case C-554/14, Ognyanov, Judgement of the Court (Grand Chamber), 8 November 2016
B4-10	Case C-439/16 PPU, Milev, Judgement of the Court (Fourth Chamber), 27 October 2016
B4-11	C-294/16 PPU, JZ v Śródmięście, Judgement of the Court (Fourth Chamber), 28 July 2016
B4-12	C-601/15 PPU, J. N. v Staatssecretaris voor Veiligheid en Justitie, Judgement of the Court (Grand Chamber), 15 February 2016
B4-13	C-474/13, Thi Ly Pham v Stadt Schweinfurt, Amt für Meldewesen und Statistik, Judgement of the Court (Grand Chamber), 17 July 2014
B4-14	Joined Cases C-473/13 and C-514/13, Bero and Bouzalmate, Judgement of the Court (Grand Chamber), 17 July 2014
B4-15	C-146/14 PPU, Bashir Mohamed Ali Mahdi, Judgement of the Court (Third Chamber), 5 June 2014
B4-16	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	Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ L, 2023/2844, 27.12.2023
B5-02	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)
B5-03	SIRIUS 2023 report: Navigating the new era of obtaining e-evidence
B5-04	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)
B5-05	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)
B5-06	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)
B5-07	The European Law Blog, „E-Evidence: The way forward. Summary of a Workshop held in Brussels on 25 September 2019, Theodore Christakis, 06 November 2019
B5-08	Joint Note of Eurojust and the European Judicial Network on the Practical Application of the European Investigation Order, June 2019
B5-09	European Commission, Press Release, „Security Union: Commission recommends negotiating international rules for obtaining electronic evidence”, Brussels, 05 February 2019
B5-10	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
B5-11	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
B5-12	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
B5-13	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
B5-14	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)
B5-15	Proposal for a Directive of the European Parliament and of the Council laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings, COM(2018) 226 final, Strasbourg, 17 April 2018
B5-16	Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters, COM(2018) 225 final, Strasbourg, 17 April 2018
B5-17	Frequently Asked Questions: New EU rules to obtain electronic evidence, 17 April 2018
B5-18	Non-paper from the Commission services: Improving cross-border access to electronic evidence: Findings from the expert process and suggested way forward (8 June 2017)
B5-19	Non-paper: Progress Report following the Conclusions of the Council of the European Union on Improving Criminal Justice in Cyberspace (7 December 2016)
B5-20	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (OJ L 119, 4.5.2016, p. 1–88)
B5-21	ENISA 2014 - Electronic evidence - a basic guide for First Responders (Good practice material for CERT first responders)
B5-22	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130/1; 1.5.2014)
B5-23	Guidelines on Digital Forensic Procedures for OLAF Staff” (Ref. Ares(2013)3769761 - 19/12/2013, 1 January 2014
B5-24	ACPO Good Practice Guide for Digital Evidence (March 2012)
B5-25	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)
B5-26	Agreement on mutual legal assistance between the European Union and the United States of America, (OJ L 181, 19.7.2003, p. 34–42)
B5-27	Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (Official Journal L 178/1, 17.7.2000)
B5-28	Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions ensuring security and trust in electronic communication - Towards a European Framework for Digital Signatures and Encryption (COM (97) 503), October 1997

#### 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
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	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	Case law by the Court of Justice of the European Union on the principle of ne bis in idem in criminal matters, Eurojust, April 2020  Case-law by the Court of Justice of the European Union on the Principle of ne bis in idem in Criminal Matters, Eurojust, December 2021
B7-02	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)
B7-03	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	Case C-670/22 - Landgericht Berlin (Encrochat) 30 April 2024
C-15	Case C-281/22 - Oberlandesgericht Wien 21 December 2023

C-16	C-209/22 - Rayonna prokuratura Lovech, TO Lukovit (Fouille corporelle), 7 September 2023
C-17	C-660/21 - K.B. and F.S. (Relevé d'office dans le domaine pénal), 22 June 2023
C-18	C-430/22, C-468/22 - VB (Information du condamné par défaut), 8 June 2023
C-19	C-608/21 - Politseyski organ pri 02 RU SDVR, 25 May 2023
C-20	C-694/20 - Orde van Vlaamse Balies i in., 8 December 2022
C-21	C-348/21 - HYA and Others (Impossibilité d'interroger les témoins à charge), 8 December 2022
C-22	C-347/21 - DD (Réitération de l'audition d'un témoin), 15 September 2022
C-23	C-242/22 PPU - TL ( ) and de traduction), 1 August 2022
C-24	C-564/19 - IS (Illégalité de l'ordonnance de renvoi), 23 November 2021
C-25	C-282/20 - ZX (Régularisation de l'acte d'accusation), 21 October 2021
C-26	C-649/19 - Spetsializirana prokuratura (Déclaration des droits), 28 January 2021
C-27	Case C-659/18, Judgement of the Court of 2 March 2020
C-28	Case C-688/18, Judgement of the Court of 3 February 2020
C-29	Case C467/18, Rayonna prokuratura Lom, Judgment of the Court of 19 September 2019
C-30	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-31	Case C377/18, AH a. o., Judgment of the Court of 05 September 2019
C-32	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-33	Case C-8/19 PPU, criminal proceedings against RH (presumption of innocence), Decision of the Court (First Chamber), 12. February 2019
C-34	Case C646/17, Gianluca Moro, Opinion of the AG Bobek, 05 February 2019
C-35	Case C-551/18 PPU, IK, Judgment of the Court (First Chamber), 6 December 2018
C-36	Case C-327/18 PPU, RO, Judgment of 19 September 2018 (First Chamber)
C-37	Case C-268/17, AY, Judgment of the Court (Fifth Chamber), 25 July 2018
C-38	Case C-216/18 PPU, LM, Judgment of 25 July 2018 (Grand Chamber)
C-39	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 Oprea, Judgment of 22 March 2017 (Fifth Chamber)
C-40	Case C-439/16 PPU, Emil Milev (presumption of innocence), Judgment of the Court (Fourth Chamber), 27 October 2016
C-41	Case C-278/16 Frank Sleutjes ("essential document" under Article 3 of Directive 2010/64), Judgment of 12 October 2017 (Fifth Chamber)
C-42	C-25/15, István Balogh, Judgment of 9 June 2016 (Fifth Chamber)
C-43	Opinion of Advocate General Sharpston, delivered on 10 March 2016, Case C543/14

## D) Approximating criminal law and Victims' Rights

### D1) Terrorism

D1-01	EU Centre of Expertise for Victims of Terrorism
D1-02	EU's Counter-Terrorism Coordinator

D1-03	The EU's response to terrorism, last update 21 March 2024
D1-04	Council Implementing Regulation (EU) 2024/329 of 16 January 2024 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, and repealing Implementing Regulation (EU) 2023/1505, OJ L, 2024/329, 16.1.2024
D1-05	European Union Terrorism Situation and Trend report 2023 (TE-SAT), 19 December 2023
D1-06	Eurojust Meeting on Counter-Terrorism, 16-17 November 2022, Summary of Discussions, 05 April 2023
D1-07	Eurojust Casework on Counter-Terrorism: Insights 2020 – 2021, December 2021
D1-08	Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online (Text with EEA relevance), (OJ L 172, 17.5.2021)
D1-09	European Commission, EU Handbook on Victims of Terrorism, January 2021
D1-10	2019 Eurojust Report on Counter- Terrorism, 09 December 2020
D1-11	Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond, 9 December 2020, COM(2020) 795 final
D1-12	Report from the Commission to the European Parliament and the Council based on Article 29(1) of 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, COM(2020) 619 final, Brussels, 30 September 2020
D1-13	Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, 24 July 2020, (COM (2020) 605 final)
D1-14	Council Conclusions on EU External Action on Preventing and Countering Terrorism and Violent Extremism, Brussels, 16 June 2020
D1-15	Terrorism Situation and Trend Report (TE-SAT) 2019
D1-16	Communication from the Commission to the European Parliament, the European Council and the Council, Twentieth Progress Report towards an effective and genuine Security Union, COM(2019) 552 final, Brussels, 30 October 2019
D1-17	Communication from the Commission to the European Parliament, and the Council, Towards better Implementation of the EU's anti-money laundering and countering the financing of terrorism framework, COM(2019) 360 final, Brussels, 24 July 2019
D1-18	Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA, L 123/18
D1-19	Commission Delegated Regulation (EU) 2019/758 of 31 January 2019 amending Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries, L 125/4 (Text with EEA relevance)

D1-20	Council Decision (CFSP) 2019/25 of 08 January 2019 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and repealing Decision (CFSP) 2016/1136, Brussels, 08 January 2019
D1-21	Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online, Brussels, 12.9.2018, (COM(2018) 640 final)
D1-22	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), (OJ L 156, 19.6.2018)
D1-23	Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327/20; 9.12.2017)
D1-24	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 (OJ L 88/6)
D1-25	Council Decision (CFSP) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP, (OJ L 255, 21.9.2016)
D1-26	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)
D1-27	Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, (OJ L 344, 28.12.2001)

D2) Trafficking in Human Beings, Migrant Smuggling and Sexual Exploitation of Children

D2-01	Saving lives at sea and fighting migrant smuggling, Eu Migration and asylum policy, last update 10 April 2024
<u>D2-02</u>	The EU adopts stronger rules to fight trafficking in human beings, European Commission, 27 May 2024
D2-03	Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013, 14 May 2024
D2-04	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on enhancing police cooperation in relation to the prevention, detection and investigation of migrant smuggling and trafficking in human beings, and on enhancing Europol's support to preventing and

	combating such crimes and amending Regulation (EU) 2016/794, COM/2023/754 final, 28 November 2023
D2-05	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA, COM/2023/755 final, 28 November 2023
D2-06	European Parliament Briefing: Preventing and combating trafficking in human beings, June 2023
D2-07	European Parliament Briefing: Anti-trafficking in human beings, June 2023
D2-08	European Parliament resolution of 15 September 2022 on human rights violations in the context of the forced deportation of Ukrainian civilians to and the forced adoption of Ukrainian children in Russia (2022/2825(RSP)), (OJ C 125, 5.4.2023)
D2-09	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, (COM/2022/732 final, 19 December 2022)
D2-10	Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions report on the progress made in the fight against trafficking in human beings (Fourth Report), (COM/2022/736 final, 19 December 2022)
D2-11	Commission Staff Working Document Impact Assessment Report accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, (SWD/2022/425 final, 19 December 2022)
D2-12	European Parliament resolution of 5 May 2022 on the impact of the war against Ukraine on women (2022/2633(RSP)), (OJ C 465, 6.12.2022)
D2-13	European Parliament At Glance: Russia's war on Ukraine: The risk of trafficking of human beings, May 2022
D2-14	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, 2022)
D2-15	European Migrant Smuggling Centre 6th Annual Report – 2022
D2-16	Europol: The challenges of countering human trafficking in the digital era, As of 6 December 2021
D2-17	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, (COM/2021/592 final, 29 September 2021)
D2-18	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, (COM/2021/171 final, 14 April 2021)
D2-19	Eurojust Report on Trafficking in Human Beings, Best practice and issues in judicial cooperation, February 2021
D2-20	Report from the European Commission to the European Parliament and the Council, Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU

	on preventing and combating trafficking in human beings and protecting its victims, (COM(2020) 661 final, Brussels, 20 October 2020)
D2-21	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, (COM (2020) 609 final, 23 September 2020)
D2-22	European Commission, Study on Data collection on Trafficking in Human Beings in the EU, September 2020
D2-23	Regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code), PE-CONS 29/19, Brussels, 15 May 2019
D2-24	European Migrant Smuggling Centre - EMSC
D2-25	European Migrant Smuggling Centre – 4th Annual Activity Report, The Hague, 15 May 2020
D2-26	Report from the European Commission to the European Parliament and the Council, Second report on the progress made in the fight against trafficking in human beings (2018) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM(2018) 777 final, Brussels, 03 December 2018
D2-27	European Institute for Gender Equality (EIGE) report: Gender-specific measures in anti-trafficking actions, 17 October 2018
D2-28	UNODC – Global Study on Smuggling of Migrants 2018, Vienna/New York, June 2018
D2-29	Council Conclusions on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021, Brussels, 9450/17, 19 May 2017
D2-30	Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

### D3) Cybercrime

D3-01	DRAFT REPORT on the proposal for a regulation of the European Parliament and of the Council Laying down rules to prevent and combat child sexual abuse (COM(2022)0209 – C9-0174/2022 – 2022/0155(COD))
D3-02	Fighting child sexual abuse online: what EU measures exist? Last update 11 April 2024
D3-03	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast), 6 February 2024
D3-04	Internet Organised Crime Threat Assessment (IOCTA) 2023
D3-05	European Parliament Legislative Train Schedule: Horizontal cybersecurity requirements for products with digital elements in “A Europe Fit for the Digital Age”, As of 20 September 2023
D3-06	European Parliament Legislative Train Schedule: Review of the Directive on security of network and information systems in “A Europe Fit for the Digital Age”, As of 20 September 2023
D3-07	European Parliament Legislative Train Schedule: Digital operational resilience for the financial sector in “A Europe Fit for the Digital Age”, As of 20 September 2023
D3-08	European Parliament Briefing: EU cyber-resilience act, May 2023
D3-09	Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity

	across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) (Text with EEA relevance), ( <i>OJ L 333, 27.12.2022</i> )
D3-10	Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (Text with EEA relevance), ( <i>OJ L 333, 27.12.2022</i> )
D3-11	Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC (Text with EEA relevance), ( <i>OJ L 333, 27.12.2022</i> )
D3-12	Proposal for a Regulation of the European Parliament and of the Council on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020, ( <i>COM/2022/454 final, 15 September 2022</i> )
D3-13	Internet Organised Crime Threat Assessment (IOCTA) 2021
D3-14	Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse (Text with EEA relevance), ( <i>OJ L 274, 30.7.2021</i> )
D3-15	European Commission, Public consultation on Fighting child sexual abuse: detection, removal and reporting of illegal content online, 11 February 2021
D3-16	European Judicial Cybercrime Network 9th Plenary Meeting - 2nd Outcome report 2020, 27 January 2021
D3-17	European Commission, Study on the retention of electronic communications non-content data for law enforcement purposes, Final report, September 2020
D3-18	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU strategy for a more effective fight against child sexual abuse, ( <i>COM (2020) 607 final, Brussels, 24 July 2020</i> )
D3-19	Internet Organised Crime Threat Assessment (IOCTA) 2020
D3-20	Internet Organised Crime Threat Assessment (IOCTA) 2019
D3-21	Special Eurobarometer 480, Report, "Europeans' Attitudes towards Internet Security", Brussels, March 2019
D3-22	Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA (Official Journal L 218/8 of 14.08.2013)
D3-23	Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA ( <i>OJ L 335; 17.12.2011</i> )
D3-24	Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems ( <i>OJ L 69/67; 16.3.2005</i> )
D3-25	Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography ( <i>OJ L 13/44; 20.1.2004</i> )
D3-26	Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (Strasbourg, 28.I.2003)
D3-27	Convention on Cybercrime (Budapest, 23.XI.2001)

#### D4) Protecting Victims' Rights



D4-01	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 ( <i>COM/2023/424 final, 12 July 2023</i> )
D4-02	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 ( <i>SWD/2022/0179 final, 28 June 2022</i> )
D4-03	FRA Report: "Underpinning victims' rights: support services, reporting and protection", 22 February 2023
D4-04	Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence ( <i>COM/2022/105 final, 8 March 2022</i> )
D4-05	D4-01 Victim Support Europe, Paper: Victim Support and Data Protection, 1st March 2021
D4-06	European Union Agency for Fundamental Rights (FRA), Report: Crime, safety, and victims' rights – Fundamental Rights Survey, 19 February 2021
D4-07	European Commission, EU Strategy on victims' rights (2020-2025), COM (2020) 258 final, Brussels, 24 June 2020
D4-08	Factsheet – EU Strategy on Victims' Rights (2020-2025), 24 June 2020
D4-09	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 ( <i>COM/2020/188 final, 11 May 2020</i> )
D4-10	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
D4-11	European Commission Factsheet: The Victims' Rights Directive: What does it bring?, February 2017
D4-12	Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters
D4-13	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
D4-14	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
D4-15	Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
D4-16	Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims
D4-17	Website of the European Union Agency for Fundamental Rights (FRA) – Victims' rights
D4-18	Victim Support Europe
D4-19	European Commission: Victims' Rights Platform
D4-20	EC Coordinator for victims' rights

## E) Criminal justice bodies and networks

### E1) European Judicial Network

E1-01	FICHES BELGES, Find and compare concise and practical legal information on the following judicial cooperation measure, European Judicial Network (EJN), 2024
E1-02	Search Competent Authorities (EIO), European Judicial Network (EJN), 2024
E1-03	European Judicial Network, The Report on activities and management 2019-20
E1-04	Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network ( <i>OJ L 348/130, 24.12.2008, P. 130</i> )

### E2) Eurojust

E2-01	Eurojust quarterly newsletter
E2-02	Eurojust Guidelines on Jurisdiction
E2-03	European Investigation Order, Eurojust 2024
E2-04	Eurojust Report on the transfer of proceedings in the European Union. 18 January 2023
E2-05	Working Arrangement Between The European Anti-fraud Office And the European Union Agency for Criminal Justice Cooperation, 29 March 2023
E2-06	Eurojust Annual Report 2022
E2-07	Eurojust collection of anniversary essays, 20 years of Eurojust: EU judicial cooperation in the making, 8 August 2022
E2-08	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 ( <i>OJ L 148, 31.5.2022</i> )
E2-09	The Impact of COVID-19 on Judicial Cooperation in Criminal Matters, Eurojust 17 May 2021
E2-10	Report on Eurojust's casework in the field of the European Investigation Order, November 2020
E2-11	Guidelines for deciding on competing requests for surrender and extradition, October 2019

### E3) Europol

E3-01	Europol Spotlight Series
E3-02	Europol Joint Reports
E3-03	Europol Consolidated Annual Activity Report (CAAR) 2022, 7 June 2023
E3-04	Europol Strategy: DELIVERING SECURITY IN PARTNERSHIP, 6 June 2023
E3-05	The European Union Agency for Law Enforcement Cooperation in Brief, 17 January 2023
E3-06	Europol Programming Document 2023 – 2025, Europol Public Information The Hague, 20 December 2022
E3-07	Case T-578/22: Action brought on 16 September 2022 — EDPS v Parliament and Council, ( <i>OJ C 424, 7.11.2022</i> )

E3-08	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)
E3-09	Europol Report – Beyond the Pandemic – How COVID-19 will shape the serious and organised crime landscape in the EU, 30 April 2020
E3-10	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	Csonka P, Juszcak A and Sason E, 'The Establishment of the European Public Prosecutor's Office : The Road from Vision to Reality', Eu crim - The European Criminal Law Associations' Forum, 15 January 2018
E4-14	Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')
E4-15	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)

#### E5) European Union Agency for Fundamental Rights (FRA)

E5-1	EU Charter of Fundamental Rights and its Case-law Database
E5-2	Criminal Detention Database 2015-2022
E5-3	The European Union Fundamental Rights Information System (EFRIS)
E5-4	Fundamental Rights Report 2024, 5 June 2024
E5-5	European Arrest Warrant proceedings - Room for improvement to guarantee rights in practice, 26 March 2024
E5-6	Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings, 27 September 2019

#### 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)

# Access to a lawyer. Directive 2013/48.



Lisabon, Portugal  
July 8, 2024

**SORAINEN**



Dr.iur. Violeta Zeppa-Priedīte  
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# Issues Addressed



## **Access to Fair Trial**

- the right to a defence

## **Directive 2013/48**

- general issues
- access to a lawyer
- who is a lawyer
- waiver

## **Case studies**

- ECHR, Court of Justice of the EU, Latvian Courts





# ACCESS TO FAIR TRIAL

- Articles 10, 11 of the **Universal Declaration of Human Rights**
- Article 6 of the **European Convention for the Protection of Human Rights** and Articles 2, 3, 4 of the **7th Protocol** to the Convention
- Chapter VI of the **Charter of Fundamental Rights of the EU**
- The principle includes several aspects, such as:
  - the principles of fairness, independence, and objectiveness of the court
  - the presumption of innocence and other procedural guarantees, incl. - **everyone has the right to a defence**

# THE RIGHT TO A DEFENCE

- **What does this Guarantee mean?**
  - the right to be informed of the charges in clear language and detail
  - the right to adequate time and resources to prepare one's defence
  - to defend oneself, or to obtain legal assistance of one's own choice, or free of charge assistance,
  - etc.
- **Is this Guarantee as a matter of course?**
  - World Justice Project (WJP), Annual WJP Rule of Law Index® report
- **Who is responsible for maintaining this Guarantee? Is this the State only?**

# DIRECTIVE 2013/48/EU, 22 October, 2013

- **MAIN FOCUS** – the rights of access to a lawyer in criminal proceedings & European arrest warrant proceedings
- **59 CONSIDERATIONS**, incl.
  - emphasising the importance of mutual trust between Member States in the recognition of judgments and decisions
  - stressing the need to promote minimum standards in the rights of suspects and accused persons, including access to legal counsel
  - emphasising the importance of the presence of a qualified lawyer
  - considering that common minimum rules cannot be sufficiently achieved by the Member State
- **GOAL** – setting minimum rules for the right of access to a lawyer at the EU level



# TRANSPOSITION of the DIRECTIVE

must be transposed by 27 November 2016 (Article 15)

## Article 3 (6) (b)

In exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, based on one of the following compelling reasons:

(a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;

(b) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy in criminal proceedings.

- **Judgement of the Court of Justice of the EU, 14 May 2024, Case C-15/24 PPU**, Sections 46 – 53, interpretation of Article 3(6)(b), <https://curia.europa.eu/juris/document/document.jsf?text=&docid=286041&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8416518>
  - In a situation where a provision of the Directive has not been transposed into national law, may the authorities of a Member State rely on an unconditional and sufficiently precise provision of the Directive in relation to a suspect or accused person?
  - Do individuals have a right to invoke the Member State in court if it has either failed to transpose the Directive into national law within the prescribed period or has transposed it incorrectly?

## ACCESS TO A LAWYER, Article 3

**Member States (MS) shall ensure that suspects and accused (S&A) have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.**

- (2) Access to a lawyer without undue delay.
  - defining specific points in time and events when legal aid should be provided from an earlier point in time
  - Section (5) sets up a temporary exception
- (3) Sets out the minimum activities and situations in which the right to a lawyer is to be ensured
  - Section (6) sets temporary exceptions
- (4) The obligation for MS to make general information available to facilitate the obtaining of a lawyer by S&A.



# WHO IS THE LAWYER ?

## ○ **Consideration (15)**

any person who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects or accused persons

## ○ **Criminal Procedure Law (Latvia) CPL**

- a sworn advocate
- an assistant of a sworn advocate
- a citizen of a European Union Member State who has acquired the classification of an advocate in one of the MS
- a foreign advocate in accordance with the international agreement regarding legal assistance binding on the Republic of Latvia



## WAIVER, Article 9

MS shall ensure that, in relation to any waiver of a right referred to in Articles 3 (and 10):

(a) the S&A has been provided, orally or in writing, with clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it;

and

(b) the waiver is given voluntarily and unequivocally





# WAIVER

- **CASE OF SIMEONOV v. BULGARIA** (Application no. 21980/04), Judgement of the ECHR, 12 May 2017, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-172963%22%5D%7D>
- **Judgement of the Court of Justice of the EU, 14 May 2024, Case C-15/24 PPU**  
Sections 71-80 ,  
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=286041&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=84165>  
[18](#)

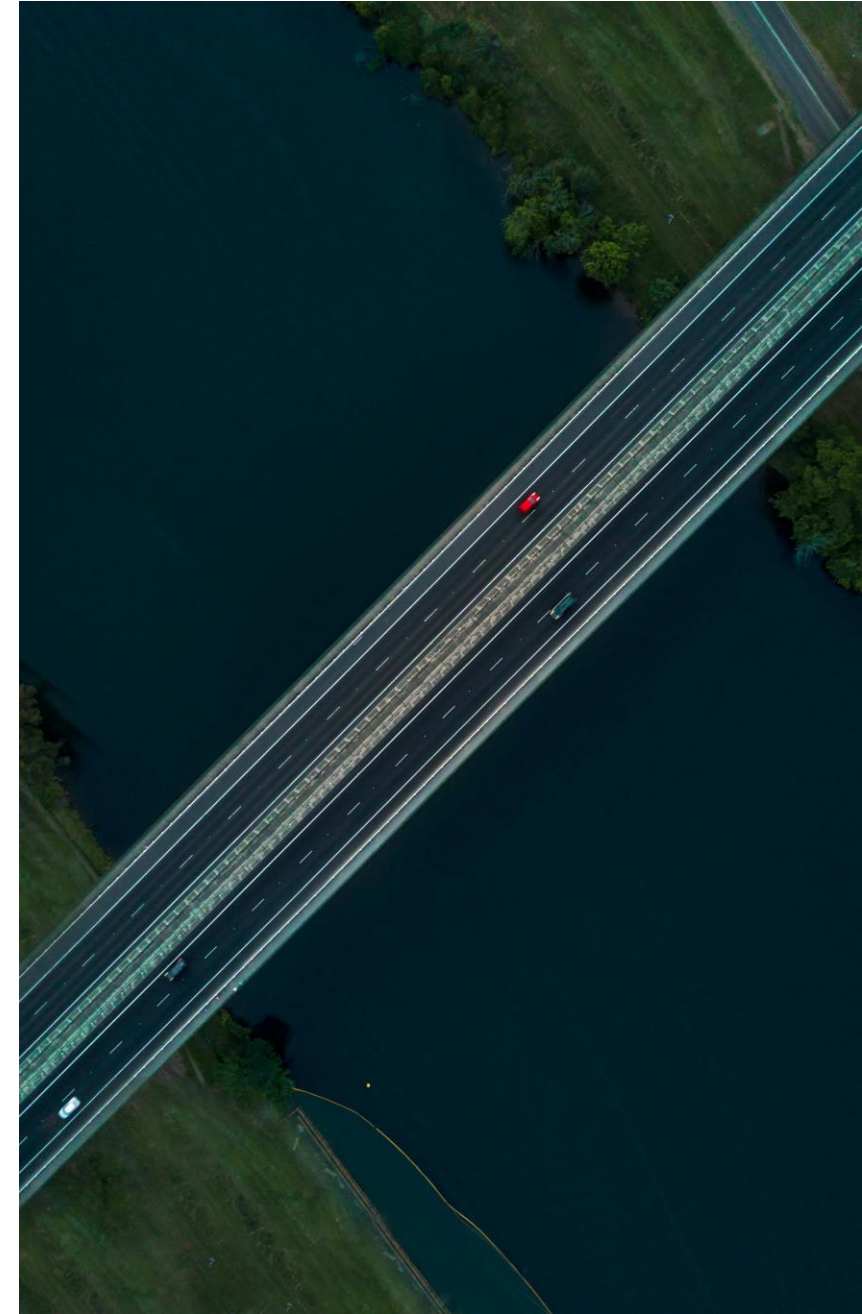
in any event, if the person heard by the police or by another law enforcement or judicial authority is in a position of vulnerability, those authorities are required to remind that person of the possibility of revoking his or her statement of waiver of his or her right of access to a lawyer before any investigative act is carried

# ACCESS TO A LAWYER - EXCEPTIONS

Judgement of the Court of Justice of the EU, 12 March 2020, Case C-659/18 Sections 29 - 48

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=18DB222C4215EB4AB78F230DB0F78980?text=&docid=224382&pageIndex=0&doclang=LV&mode=lst&dir=&occ=first&part=1&cid=8402934>

- It is apparent from the scheme and objectives of the Directive that the temporary exceptions from the right of access to a lawyer, which MS may provide for, are set out exhaustively in Articles 3(5) and (6).
- As regards the scheme of the Directive, paragraphs 5 and 6 of Article 3, as exceptions, must be interpreted strictly.
- Article 8 of the Directive refers only to exceptions provided for in Article 3(5) or (6) thereof.



# ADMISSIBILITY OF EVIDENCE

## Judgement of the Court of Justice of the EU, 14 May 2024, Case C-15/24 PPU

Sections 95- 98 <https://curia.europa.eu/juris/document/document.jsf?text=&docid=286041&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8416518>

### CONCLUSION

The obligation, arising from Article 12(2) of Directive 2013/48, to ensure that the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained in breach of the right to a lawyer, means that evidence on which a party is not in a position to comment effectively must be excluded from the criminal proceedings

### CONSIDERATIONS

- there is nothing in that directive obliges the court to automatically disregard all that evidence.
- it is for the national courts to assess whether that procedural shortcoming has been remedied in the course of the ensuing proceedings
- in the event that evidence has been collected in disregard of the requirements of that directive, it must be determined whether the criminal proceedings as a whole may be regarded as fair, taking into account a number of factors, including whether the statements taken in the absence of a lawyer are an integral or significant part of the probative evidence, as well as the strength of the other evidence in the file
- the obligation to ensure that the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained in breach of the right to a lawyer means that evidence on which a party is not in a position to comment effectively must be excluded from the criminal proceedings

**CASE OF SIMEONOV v. BULGARIA** (Application no. 21980/04), Judgement of the ECHR, 12 May 2017, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-172963%22%5D%7D>

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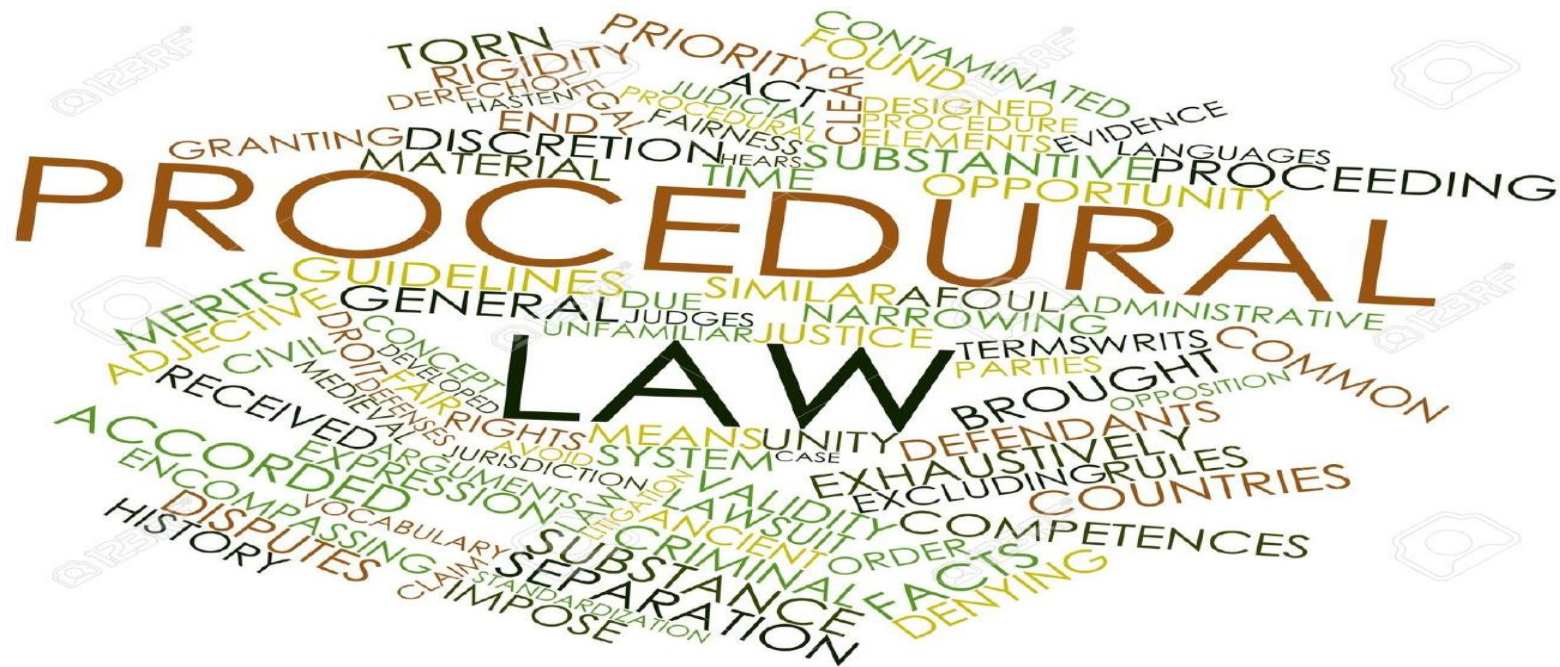
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## PROCEDURAL RIGHTS IN THE EU

## TRAINING FOR DEFENCE LAWYERS

LISBOA, 8 E 9 DE JULHO 2024



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# **THE RIGHT TO INFORMATION – DIRECTIVE 2022/13/EU**

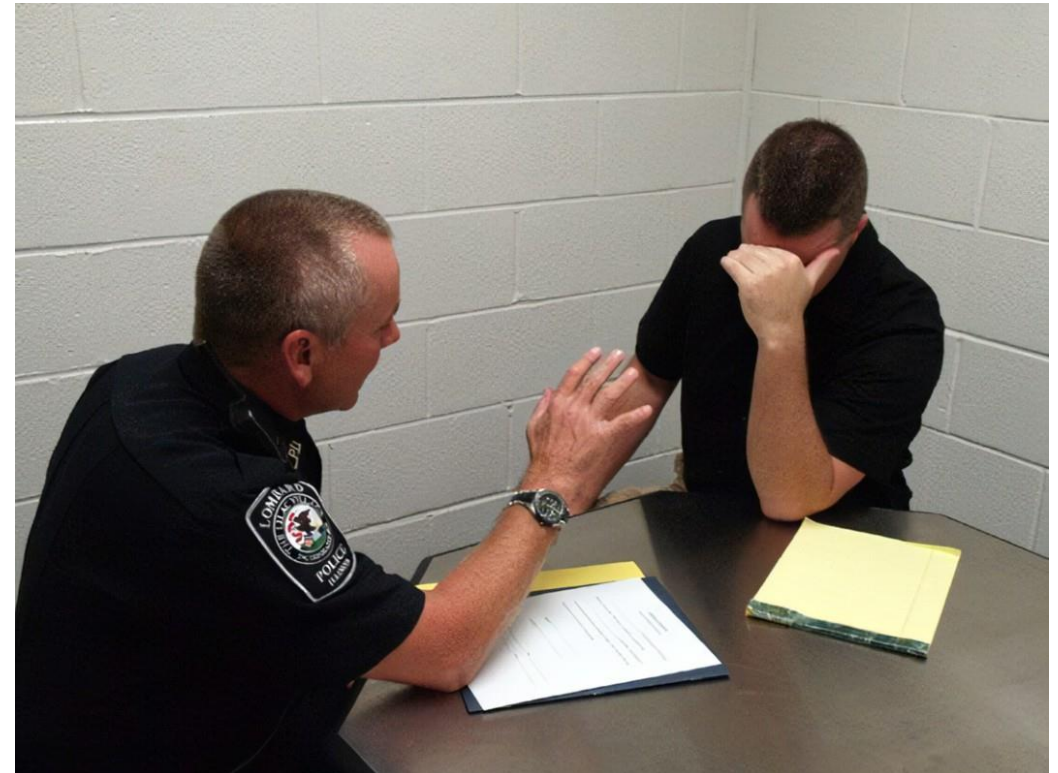


# THE PORTUGUESE INSIGHT

**EUROPEAN ARREST  
WARANT**

**VS.**

**INTERNAL CASE  
INVOLVING FOREIGN  
SUSPECTS**



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# **THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS**

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## **AGENDA**

**THE CASES EXPLORE THE APPLICATION OF  
DIRECTIVE 2010/64 AND ITS IMPLICATIONS  
ON MEMBER STATES' LEGAL OBLIGATIONS.**

**Dr. Pavlos Topalnakos, Lawyer, Professor of  
Procedural Criminal Law, Hellenic Police Officers  
School**



**Co-funded by  
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# CASE STUDY (I)

01

**CASE C-278/16  
(JUDGMENT OF 12.10.2017)**

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02

**CASE C-216/14 (JUDGMENT  
OF 15.10.2015)**

# CASE STUDY

At a police check conducted on 25 January 2014, it was determined, first, that Mr. C, a Romanian citizen, was driving, in Germany, a vehicle for which no valid mandatory motor vehicle civil liability insurance had been taken out and, secondly, that the proof of insurance, the so-called green card, submitted to the German authorities by the person concerned, was a forgery. Mr. C, who was questioned on those matters by the police, received the assistance of an interpreter. On 18 March 2014, at the end of the investigation, the Traunstein Public Prosecutor's Office made an application to the Local Court for it to issue a penalty order imposing a fine on Mr. C. The procedure laid down in respect of the issuing of such a penalty order is simplified and does not require a hearing or a trial inter partes. Issued by the court upon application by the Public Prosecutor's Office in the case of minor offences, that order is a provisional decision. Mr. C was served with the penalty order. The penalty order was drawn up in German and delivered with a translation into Romanian only of the information on the legal remedies stating that it would become legally binding and enforceable only if, Mr. C did not lodge an opposition within two weeks of its service, before the Court in writing or by making a statement recorded at the Court registry. It also requested that any written observations of the person concerned, including the objection lodged against that order, should be in German. Mr. C immediately brought an appeal against that order and the court decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling on two legal issues.

# DIRECTIVE 2010/64

**Article 1(1):** This Directive lays down rules concerning **the right to interpretation and translation** in criminal proceedings and proceedings for the execution of a European arrest warrant.

**Article 1(2):** The right referred to in paragraph 1 shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.

**Article 3(1):** Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

**Article 3(2):** Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

**Article 2(1):** Member States shall ensure that suspected or accused persons who do not speak or understand the language of the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

# GERMAN LAW ON THE JUDICIAL SYSTEM (THE GVG)

Paragraph 187(1) of the Gerichtsverfassungsgesetz (Law on the Judicial System, 'the GVG') provides that, for an accused who does not have a command of the German language, recourse must be had to an interpreter or translator in so far as that is necessary for the exercise of his rights of defence in criminal proceedings.

Paragraph 187(2) of the GVG provides that, as a rule, a written translation of custodial orders as well as of indictments, penalty orders and non-final judgments is necessary for the exercise of the rights of defence of an accused who does not have a command of the German language.

# German Code of Criminal Procedure (THE StPO)

Paragraph 37(3) of the Strafprozessordnung (Code of Criminal Procedure, 'the StPO') provides that, for an accused without a command of the German language, only the "judgment" (Urteil) must be served, together with its translation into a language the accused understands.

## QUESTION:

Does "judgment" under Paragraph 37(3) StPO include penalty orders?

If so, the service of the penalty order against Mr. C was void, as it was not provided with a complete translation.



## KEY LEGAL QUESTION (1)

Is Article 3 of Directive 2010/64 to be interpreted as meaning that the term “judgment” (Urteil) in Paragraph 37(3) of the StPO also includes penalty orders (Strafbefehle) within the meaning of Paragraph 407 et seq. of the StPO?

Should Article 3 of Directive 2010/64 be interpreted as stating that a measure, such as an order for minor offences sanctions is an essential document that requires a written translation for suspected or accused persons who don't understand the proceedings?

# **CJEU'S RULING:**

**The Court held that penalty orders in German law are based on a simplified procedure, with service only occurring after the Court has ruled on the accusation's merits and the accused person is informed of the accusation. If the accused person does not object within two weeks, the order becomes binding and the penalties become enforceable.**

**This makes the order both an indictment and a judgment under Article 3(2) of Directive 2010/64.**

**If the individual has no command of the language of the proceedings, that individual is unable to understand what is alleged against him, and cannot therefore exercise his rights of defence effectively if he is not provided with a translation of that order in a language which he understands.**

**SERVICE OF PENALTY ORDERS IN THE DEFENDANT'S LANGUAGE IS NECESSARY.**



## **KEY LEGAL QUESTION (2)**

**Are Articles 1(2) and 2(1) and (8) of Directive 2010/64 to be interpreted as precluding a court order that requires, under Paragraph 184 of the Law on the judicial system, accused persons to bring an appeal only in the language of the court, here in German, in order for it to be effective?**

**CAN APPEALS BE REQUIRED TO BE DRAFTED IN THE COURT'S  
LANGUAGE?**

# KEY LEGAL QUESTION (2)

## The Court's consistent view:

In interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part.

## Article 2 of Directive 2010/64:

Only suspected or accused persons who are unable to express themselves in the language of the proceedings, whether that be due to the fact that they do not speak or understand that language or the fact that they have hearing or speech impediments, are able to exercise the right to interpretation.

**THAT PERSON IS ABLE TO EXERCISE HIS RIGHT OF  
DEFENCE  
IN HIS OWN LANGUAGE.**

## Article 2 of Directive 2010/64:

Following the actual wording:

Oral interpretation of oral statements.

Proceedings such as police questioning, court hearings, interim hearings, and communication with legal counsel

Requiring Member States, enabling the persons concerned to take responsibility, as a matter of course, for the translation of every appeal brought by the persons concerned against a judicial decision which is addressed to them would go beyond the objectives pursued by Directive 2010/64 itself.

ECHR (Kamasinski v. Austria): If the accused person knows what is being alleged against him and can defend himself → a written translation of all items of written evidence or official documents in the procedure is not necessary

## KEY LEGAL QUESTION (2)

Consequently: The right to interpretation provided for in Article 2 of Directive 2010/64 concerns the translation by an interpreter of the oral communications between suspected or accused persons and the investigative and judicial authorities or, where relevant, legal counsel, to the exclusion of the written translation of any written document produced by those suspected or accused persons.

### **SUI GENERIS PROVISION OF GERMAN LAW:**

German law allows accused individuals to obtain a trial inter partes by lodgement of an objection against the penalty order, in the short period of two weeks from service of that order. This objection can be submitted in writing or orally at the competent court registry, and does not require a lawyer's involvement.

**1**

**A person can obtain free assistance from an interpreter or legal counsel if they lodge an objection orally at the competent national court registry. This allows them to fully exercise their right to be heard and submit their objection within two weeks of the order's service.**

**2**

**The right to translation provided for in Article 3(1) and (2) of Directive 2010/64 does not include, in principle, the written translation into the language of the proceedings of a document such as an objection lodged against a penalty order, drawn up by the person concerned in a language of which he has a command, but which is not the language of the proceedings.**

## **HOWEVER**

**Directive 2010/64 lays down only minimum rules.**

**Member States can extend the rights set out in that directive in order to provide a higher level of protection also in situations not explicitly dealt with in 2010/64.**

# **NOTE:**

- 1** Article 3(3) of Directive 2010/64 expressly allows the competent authorities to decide, in any given case, whether any document other than those provided for in Article 3(1) and (2) of that directive is essential within the meaning of that provision.
- 2** The referring court must determine whether the objection lodged in writing against a penalty order should be considered to be an essential document, the translation of which is necessary.





# **THE CJEU'S ANSWER TO THE PRELIMINARY QUESTION**

**It follows from all the foregoing that the answer to the first question is that Articles 1 to 3 of Directive 2010/64 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which, in criminal proceedings, does not permit the individual against whom a penalty order has been made to lodge an objection in writing against that order in a language other than that of the proceedings, even though that individual does not have a command of the language of the proceedings, provided that the competent authorities do not consider, in accordance with Article 3(3) of that directive, that, in the light of the proceedings concerned and the circumstances of the case, such an objection constitutes an essential document.**

# THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS

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## Case Study (II)

Based on CJEU's Judgment of 1.8.2022 - Case  
C-242/22 PPU

Dr. Pavlos Topalnakos, Lawyer, Professor of  
Procedural Criminal Law, Hellenic Police Officers  
School

# CASE C-242/22

On 10 July 2019, TL, a Moldavian citizen who does not have a command of the Portuguese language, was placed under judicial investigation, in Portugal, in connection with the offences of resisting and coercing an official, reckless driving of a road vehicle and driving without a valid license. The formal record of the placement under investigation was translated into Romanian, the official language of Moldova. On the same day, the judicial authorities in the course of the procedure and according to Article 196 CCP, asked TL to make a declaration of identity and residence (DIR), in which he should indicate his place of residence, place of work or any other address of his choice. The DIR was adopted by the competent authorities, without an interpreter being appointed and without that document being translated into Romanian. By judgment of 11 July 2019, which became final on 26 September 2019, TL was sentenced to 3 years' imprisonment, suspended for the same period with probation, an additional penalty prohibiting TL from driving motor vehicles for a period of 12 months and a fine of EUR 6 per day for 80 days, that is to say, a total of EUR 480. During the trial, TL was assisted by a lawyer and an interpreter.

With a view to implementing the probation scheme prescribed by the judgment of 11 July 2019, the competent authorities tried unsuccessfully to contact TL at the address stated in the DIR. TL was then summoned to appear by an order of the Tribunal Judicial da Comarca de Beja (District Court, Beja, Portugal) of 7 January 2021, notified on 12 January 2021 to the address indicated in the DIR, in order to be heard in respect of his failure to comply with the conditions of the probation scheme prescribed by the judgment of 11 July 2019. On 6 April 2021, a further notification of that order was made at the same address. Those two notifications were made in Portuguese. Since TL did not appear on the date indicated, that court, by order of 9 June 2021, revoked the suspension of the prison sentence. That order, which was notified on 25 June 2021 in Portuguese to TL at the address indicated in the DIR and to his lawyer, became final on 20 September 2021. On 30 September 2021, TL was arrested at his new address for the purpose of enforcing his sentence. He has been imprisoned since that date. On 18 November 2021, he brought an action seeking a declaration of the nullity of, inter alia, the DIR, the order of 7 January 2021 summoning him to appear and the order of 9 June 2021 revoking the suspension of the prison sentence. At first instance, the District Court dismissed the action on the ground that, although the procedural defects invoked by TL were established, they had been rectified, since TL had not invoked them within the periods laid down in Article 120(3) of the CCP. The Court of appeal had doubts as to whether that national provision is compatible with Directive 2010/64, read in conjunction with Article 6 ECHR and decided to stay the proceedings and to refer a question to the Court of Justice for a preliminary ruling which was reformulated by the CJEU as follows:



# THE COURT'S PRELIMINARY QUESTION

Can Article 2(1) and Article 3(1) of Directive 2010/64 read in the light of Article 47 and Article 48(2) of the Charter, must be interpreted as precluding national legislation under which, first, the infringement of the rights laid down in those provisions of those directives may be effectively invoked only by the beneficiary of those rights and, secondly, that infringement must be pleaded within a prescribed period, failing which the challenge will be time-barred?

# CHARTER OF FUNDAMENTAL RIGHTS OF EUROPEAN UNION

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**Article 47:** Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

**Article 48(2):** Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

# EUROPEAN CONVENTION ON HUMAN RIGHTS

## DIRECTIVE 2010/64

**Article 6(3):** Everyone charged with a criminal offence has the following minimum rights: ...(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

**Article 2(1):** Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

**Article 3(1):** Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.

**Article 3(2):** Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

# CODE OF CRIMINAL PROCEDURE OF PORTUGAL (THE CCP):

**Article 92(1):** The Portuguese language is to be used in both written and oral procedural acts, on pain of nullity.

**Article 92(2):** Where a person with no knowledge or command of Portuguese is required to take part in proceedings, a suitable interpreter must be appointed, free of charge for that person.

**Article 120(1):** Any nullity other than those referred to in the preceding article must be pleaded by the parties concerned and shall be subject to the rules laid down in the present article and in the following article.

**Article 120(2):** In addition to those penalised in other legal provisions, the following situations shall constitute nullities which must be pleaded: (c) failure to appoint an interpreter, in cases where the law deems it mandatory.

**Article 120(3):** The nullities referred to in the preceding paragraphs must be pleaded: (a) in the event of the nullity of an act at which the person concerned is present, before that act is finalised.

**Article 122 (1):** Nullities shall entail the invalidity of the act in which they are found, as well as that of ancillary acts which they may affect.

# 1. FIRST LEGAL ISSUE

The Portuguese law does not fully incorporate the directive's provision on the right of suspected or accused persons to receive the translation of essential documents, despite the transposition period being over.



The Court has held that if a Member State fails to implement a Directive correctly or within the prescribed period, the relevant provisions of the Directive have direct effect and apply directly to the dispute. This applies if the provisions are unconditional, clear, and precise enough to be relied upon by an individual and applied by a court.



The provisions in Article 2(1) and Article 3(1) of Directive 2010/64 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 since they 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.

# 2. SECOND LEGAL ISSUE

The directive applies from the moment individuals are informed by competent authorities of a Member State about their suspicion or accusation of committing a crime, until the conclusion of the proceedings which is understood to mean the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.



Can the revocation of the suspension be considered as a part of the criminal proceedings the purpose of which is to determine a person's criminal liability since such a procedure takes place, by definition, after the final determination of whether the suspected or accused person committed the offence in question?



As regards the DIR, this declaration, which is drawn up when a person is placed under investigation, constitutes a preliminary coercive measure that undoubtedly is a part of the criminal proceedings.



As regards the two orders that summoned TL to appear and revoked the suspension of the prison sentence, the Court also held that these orders constitute procedural acts which are ancillary to sentencing, falling within the meaning of Directive 2010/64.



# 3. THIRD LEGAL ISSUE

**DO THESE THREE PROCEDURAL ACTS (THE DIR & THE TWO ORDERS), CONSTITUTE ESSENTIAL DOCUMENTS OF WHICH A WRITTEN TRANSLATION SHOULD HAVE BEEN PROVIDED UNDER ARTICLE 3(1) OF DIRECTIVE 2010/64?**

## 01

The Court held that the DIR imposes obligations and procedural consequences for non-compliance. It requires individuals to declare their address and any other changes, and failure to comply with that coercive measure may result in the suspension of a sentence being revoked. The DIR is considered an essential document under Directive 2010/64, as it informs the competent authorities of the address at which that person is supposed to be available and it informs individuals of their obligations and related consequences throughout criminal proceedings. The document carries significant importance and is considered an "essential document" under Article 3(1) and (2) of the directive 2010/64.

## 02

The application of Directive 2010/64 to procedural acts relating to a potential revocation of the suspension of the prison sentence imposed on the person concerned, must be examined in the light of the objective of those directives, which is to ensure respect for the right to a fair trial, as enshrined in Article 47 of the Charter, and respect for the rights of the defence, as guaranteed in Article 48(2) of the Charter, and thus to strengthen mutual trust in the criminal justice systems of the Member States in order to increase the efficiency of judicial cooperation in that field.

## 03

The Court held that fundamental rights would be violated if a person, sentenced to suspended imprisonment with probation, was deprived of the opportunity to be heard due to the failure to translate the summons or provide an interpreter at the hearing regarding the revocation of the suspension. It is crucial for the person to receive the summons in a language they understand in order to be duly informed. The concept of "essential documents" under Article 3(2) includes any decision that takes away a person's liberty. Therefore, acts related to the potential revocation of a sentence suspension cannot be excluded from the scope of this directive, as they may result in imprisonment and interfere significantly with the person's fundamental rights during the criminal proceedings.

## 4. FOURTH LEGAL ISSUE

**Is it possible to interpret Articles 1 to 3 of Directive 2010/64 alone or in conjunction with Article 6 of the ECHR, 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?**

**Article 120 of the CCP:** the failure to appoint an interpreter during the drawing up of an act at which the person concerned is present may entail the nullity of that act, subject to the double condition that (i) the request for a declaration of nullity is made by that person and (ii) that request is made before the finalisation of that act.

**Article 2(5) and Article 3(5) of Directive 2010/64:** Member States require 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.

**The directive does not specify the consequences for violating rights such as the right to be informed of decisions, access to interpreters and translations, and the establishment of relevant documents.**



**In the absence of specific EU rules, Member States have the power to implement laws regarding individuals' EU rights. But these rules must be equivalent to those governing similar domestic actions (principle of equivalence) and not hinder excessively the exercise of the rights conferred by EU law (principle of effectiveness)**

# THE PRINCIPLE OF EFFECTIVENESS

01

Directive 2010/64 does not provide detailed rules for implementing rights, but those rules cannot undermine the objective pursued by those directives, namely safeguarding the fairness of criminal proceedings and ensuring respect for the rights of the defence of suspects and accused persons during those proceedings

02

Principle of effectiveness would be undermined if the period in which, under a national procedural provision, an infringement of the rights granted by Article 2(1) and Article 3(1) of Directive 2010/64 may be invoked began to run even before the person concerned was informed, in a language which he speaks or understands, first, of the existence and scope of his or her right to interpretation and translation and, secondly, of the existence and content of the essential document in question as well as its effects

03

Failure to understand the language of legal proceedings hinders one's ability to comprehend the significance of procedural actions and the option to request an interpreter or written translation, potentially resulting in forfeiting the right to challenge the validity of the act due to lack of information and time constraints. The immediacy of finalizing the document further complicates the situation.



# THE PRINCIPLE OF PRIMACY

**THE COURT HELD THAT SIMPLY APPLYING ARTICLE 120 OF THE CCP TO THE CASE AT HAND, AS DONE BY THE LOWER COURT, WAS INSUFFICIENT TO ENSURE COMPLIANCE WITH THE DIRECTIVE**

**The referring court must determine if national laws can be interpreted to meet the Directive's requirements and safeguard the right to a fair trial and defence.**

**If the referring court cannot interpret national legislation in line with EU law, it must prioritize EU law. The national court must fully implement EU law in the dispute, even if it means disregarding national legislation or practices that conflict with EU law. The national court does not need to wait for the national legislation to be changed or abolished through legislative or constitutional processes before applying EU law. The principle of primacy requires the national court to uphold EU law when interpreting laws in the EU legal framework.**

# THE CJEU'S ANSWER TO THE PRELIMINARY QUESTION

**In the light of the foregoing considerations, the answer to the question referred for a preliminary ruling is that Article 2(1) and Article 3(1) of Directive 2010/64 and Article 3(1)(d) of Directive 2012/13, read in the light of Articles 47 and 48(2) of the Charter and the principle of effectiveness, must be interpreted as precluding national legislation under which the infringement of the rights provided for by those provisions of those directives must be invoked by the beneficiary of those rights within a prescribed period, failing which that challenge will be time-barred, where that period begins to run before the person concerned has been informed, in a language which he or she speaks or understands, first, of the existence and scope of his or her right to interpretation and translation and, secondly, of the existence and content of the essential document in question and the effects thereof.**

# **THE RIGHT TO INTERPRETATION AND TRANSLATION IN CRIMINAL PROCEEDINGS**

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**Case Study (III)**  
**Based on CJEU's - Judgment of**  
**23.11.2021 - Case C-564/19**

**Dr. Pavlos Topalnakos, Lawyer, Professor of  
Procedural Criminal Law, Hellenic Police Officers  
School**

IS, a Swedish national of Turkish origin, was arrested in Hungary on 25 August 2015 and questioned as a 'suspect' on the same day for an alleged infringement of the provisions of Hungarian law governing the acquisition, possession, manufacture, marketing, import, export or transport of firearms or ammunition. The language of the judicial proceedings is Hungarian, which the accused does not speak. Before the questioning, IS requested the assistance of a lawyer and an interpreter. During the questioning, the officer in charge of the investigation had recourse to a Swedish-language interpreter. The lawyer noted that after lengthy questions the interpreter only speaks few words to his client and does not take notes of the questions. Similarly, during the private consultation with his client the interpreter only speaks few words when his clients pronounces long sentences. After that the lawyer raises the issue of quality of the interpretation. The policeman in charge refuses to provide another interpreter. IS was released after the questioning and returned to Sweden. IS was duly summoned to the address previously communicated and the letter was returned marked 'unclaimed'. The case came to the Court and IS did not appear on the indicated date.

The Court decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling based mainly on the fact that Hungary does not have an official register of translators and interpreters and that Hungarian law does not specify who may be appointed in criminal proceedings as an ad hoc translator or interpreter, nor according to what criteria, as only the certified translation of documents is regulated. In the absence of such law, neither the lawyer nor the court is able to verify the quality of the interpretation. In those circumstances, a suspect or accused person who does not speak Hungarian is informed, through an interpreter, of the suspicions against him or her and of his or her procedural rights at his or her first questioning in that capacity, but if the interpreter does not have the appropriate expertise, the right of the person concerned to be informed of his or her rights and his or her rights of defence could, in the referring judge's view, be infringed.

**CASE**  
**C-564/19**

# DIRECTIVE 2010/64

**Article 2(5):** Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

**Article 2(8):** Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

**Article 3(5):** Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for the translation of documents or passages thereof and, when a translation has been provided, the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.

**Article 3(9):** Translation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

**Article 5(1):** Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).

**Article 5(2):** In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.

**CODE OF  
CRIMINAL  
PROCEDURE  
OF HUNGARY  
(THE CCP):**

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**Article 78(1):** The CCP provides, in essence, that if a party to criminal proceedings wishes, for the purposes of those proceedings, to use a language other than Hungarian, he or she is entitled to use his or her mother tongue and to be assisted by an interpreter.

**Article 201(1):** Only an interpreter with an official qualification may be appointed in that capacity in criminal proceedings, but if it is not possible to make such an appointment, an interpreter with sufficient knowledge of the language concerned may be appointed.



# FIRST LEGAL ISSUE

01

**SHOULD ARTICLE 5 OF DIRECTIVE 2010/64 BE INTERPRETED AS REQUIRING MEMBER STATES TO CREATE A REGISTER OF INDEPENDENT TRANSLATORS AND INTERPRETERS OR TO ENSURE THAT THE ADEQUACY OF THE INTERPRETATION PROVIDED IN JUDICIAL PROCEEDINGS CAN BE REVIEWED?**

## **ARTICLE 5(2) OF DIRECTIVE 2010/64 USES THE VERB “ENDEAVOUR”**



The creation of a register of independent translators or interpreters who are appropriately qualified constitutes more a programmatic requirement than an obligation to achieve a certain result, which, moreover does not, in itself, have any direct effect.

## **ARTICLE 5(1) OF DIRECTIVE 2010/64**

Member States must take concrete measures to ensure that the interpretation and translation provided meets the quality required



Interpretation must be ‘of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence’.



# KEY OBJECTIVES

(A) The persons concerned should have knowledge of the case against them and be able to exercise their right of defence.

(B) Sound administration of justice.



The creation of a register of independent translators or interpreters is one of the means likely to contribute to the attainment of the above objectives.

Suspects or accused persons may have 'the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings'. However, such a possibility does not relieve Member States of their obligation, to take 'concrete measures' to ensure that the interpretation provided is of a 'sufficient quality'

- Ensuring that the accused person knows what is being alleged against him or her and can defend himself or herself
- The obligation of the competent authorities is not, therefore, limited to the appointment of an interpreter
- Failure on the part of the national courts to examine allegations that an interpreter provides inadequate services may entail an infringement of the rights of the defence
- Interpretation of a sufficient quality
- Independent translators and interpreters.

# FAIR TRIAL

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**The person must be aware of the reasons for his or her arrest or the accusations against him or her, and thus be able to exercise his or her rights of defence.**

# **THE CJEU'S ANSWER TO THE PRELIMINARY QUESTION**

**Article 5 of Directive 2010/64 must be interpreted as requiring Member States to take concrete measures in order to ensure that the quality of the interpretation and translations provided is sufficient to enable the suspect or accused person to understand the accusation against him or her and in order that that interpretation can be reviewed by the national courts.**

**THANK YOU!**

**DR. PAVLOS TOPALNAKOS, LAWYER,  
PROFESSOR OF PROCEDURAL CRIMINAL  
LAW, HELLENIC POLICE OFFICERS SCHOOL**

# PRESUMPTION OF INNOCENCE

## in practice

Adam BÉKÉS

Lawyer, Budapest Bar Association

Associate Professor – Faculty of Law And Political Sciences,  
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# The presumption of innocence and the right to a fair trial

- ▶ Articles 47 and 48 of the Charter of Fundamental Rights of the European Union
- ▶ Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms
- ▶ Article 14 of the International Covenant on Civil and Political Rights
- ▶ Article 11 of the Universal Declaration of Human Rights.



# The importance of Directive 2016/343 – key points

1. Presumption of innocence
2. Public references to guilt
3. Presentation of suspects and accused persons
4. Burden of proof
5. Right to remain silent and right not to incriminate oneself
6. Right to be present at the trial
7. Right to a new trial

Very strong connection with other fundamental rights – access to a lawyer, legal aid, right to information, effective interpretation – the aim to avoid improper compulsion by the authorities

# Highlighted aspects in projects

- ▶ Fair Trials toolkit

- ▶ <https://www.fairtrials.org/articles/information-and-toolkits/toolkit-the-presumption-of-innocence-directive/>

- ▶ Hungarian Helsinki Committee

- ▶ <https://helsinki.hu/en/suspects-in-restrains-the-importance-of-appearance-how-suspects-and-accused-persons-are-presented-in-the-courtroom-in-public-and-in-the-media-sir/>
- ▶ [https://helsinki.hu/wp-content/uploads/Legal-Comparative-Report-FINAL-Designed\\_2019\\_06\\_27-2.pdf](https://helsinki.hu/wp-content/uploads/Legal-Comparative-Report-FINAL-Designed_2019_06_27-2.pdf)
- ▶ [https://helsinki.hu/en/wpcontent/uploads/sites/2/2020/09/Toolkit\\_for\\_journalists.pdf](https://helsinki.hu/en/wpcontent/uploads/sites/2/2020/09/Toolkit_for_journalists.pdf)

- ▶ ECHR guide on article 6

- ▶ [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_6\\_criminal\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_6_criminal_eng)

# Remain silent and right not to incriminate oneself

## Art. 7.

Point 5. The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate **oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.**

- ▶ Murray, Saunders, Heaney and McGuinness

Point 4. Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.

- ▶ **what can be the offer or pressure for this cooperation without violation of Art. 7 or Art. 6 of ECHR**

# Famous cases - ECHR

- ▶ CASE OF JOHN MURRAY v. THE UNITED KINGDOM

- ▶ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57980%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57980%22]})

- ▶ CASE OF SAUNDERS v. UNITED KINGDOM

- ▶ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58009%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58009%22]})

- ▶ CASE OF JALLOH v. GERMANY

- ▶ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-76307%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-76307%22]})

# Case Murray

The applicant had been arrested on suspicion of offences relating to terrorism. He chose to remain silent during the questioning despite being cautioned that if he did so, under a national law, a court, judge or jury may draw negative inferences. Subsequently, in concluding that the applicant was guilty, the trial judge drew adverse inferences against the applicant from the fact the he chose to stay silent.

- ▶ The ECtHR held that its role was to assess whether the exercise by an accused of the right to silence cannot under any circumstances be used against him at trial or, alternatively, whether informing him in advance that, under certain conditions, his silence may be so used, is always to be regarded as "improper compulsion".

# Conclusion

The fact of remain silent is a **RIGHT**

cannot be risk in defence strategy

cannot be evidence

cannot avoid the right with tricky ways (questions, “friendly” small talks)

cannot be reference in sentencing

# Case Saunders

This case concerned a man who had been convicted of offences of conspiracy, false accounting and theft. During the investigation, the police relied on a domestic law which made it an offence to refuse to answer questions posed by Inspectors appointed by the Department of Trade and Industry, and provided that the answers to such questions would be admissible in court. Having been given the option of either incriminating himself or being found guilty of contempt of the court, the applicant agreed to answer questions and give statements during nine interviews, which were presented during his trial and taken into account in the assessment of guilt.

- ▶ The ECtHR stated that "the public interest cannot be invoked to justify the use of answers compulsorily obtained in a non-judicial investigation to incriminate the accused during the trial proceedings.



# Conclusion

We have to carefully approach the non-criminal proceedings

- ▶ Dawn raid
- ▶ OLAF, Authorities of competition, Tax authorities
- ▶ Difference between “client” and witness
- ▶ The results shall be used in criminal investigation?

# Case Jalloh

Upon his arrest on suspicion of involvement in a drug dealing offence, Mr Jalloh was seen swallowing a small plastic bag, which was believed to contain drugs. On authorisation of the public prosecutor, an emetic was forcibly administered in order to provoke the regurgitation of the bag. In the hospital, he was held down and immobilised by four police officers. **By force, the doctor injected him with apomorphine and administered the emetic through a tube introduced into his stomach through the nose which resulted in Mr Jalloh regurgitating one bag containing cocaine.**

# Case of Ibrahim and others v. UK

„It is important to recognise that the privilege against self-incrimination does not protect against the making of an incriminating statement *per se* but, **as noted above, against the obtaining of evidence by coercion or oppression.**”

▶ 3 detected problems:

- ▶ The first is where a suspect is **obliged to testify under threat of sanctions** and either testifies in consequence or is **sanctioned for refusing to testify**.
- ▶ The second is where physical or psychological pressure, often in the **form of treatment which breaches Article 3 of the Convention**, is applied to obtain real evidence or statements.
- ▶ The third is where the authorities use **subterfuge to elicit information that they were unable to obtain during questioning**.

# Witness v. defendant in the same procedure

**Case study:** Mr. M. was the CFO of company seated in Budapest. The CEO of the company committed offence misappropriation of funds between 2008 and 2010. When the foreign owner of the company made a due diligence, they discovered the false agreements and invoices. The owner obliged Mr. M to make a denunciation at the police. Mr. M. as witness and representative of the company was heard 12 times during the investigation. Just before the closing of the investigation Mr. M. became accused as aider of the CEO.

**Question:** *The witness testimonies of Mr. M. could be take into account in the court proceedings?*

# Pre-trial phase: incentives to encourage suspects to waive their right to a trial and plead guilty

- ▶ The disappearing trial – Jago Russel
  - ▶ <https://journals.sagepub.com/doi/10.1177/2032284417722281>
- ▶ Offering lower sentences
- ▶ Shortening the court proceedings

**Question:** The incentives could harm the right not to incriminate oneself?

# Make a plea agreement

- ▶ Formal truth vs. material truth – the reality
- ▶ Decision point at the lawyer: what is the correct strategy ? To make a good deal shall be enough? To be opportunist?
- ▶ Opportunist approach?

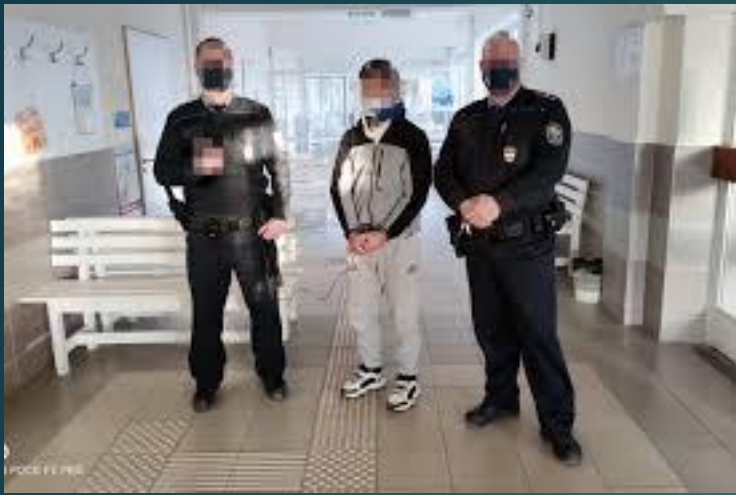


# Statistics from Hungary

- ▶ In Hungary, the statistics for the four years between 2019 and 2022 show that the offer of motions for simplified sentence in the total number of indictments (about 47-48 thousand per year) is about 70%, while the offer of moderate motions in the remaining indictments is practically complete, about 85%. The defendant accepts them in full, which is around 60%.
- ▶ This means that, for example, in 2022, out of 48,930 indictments, minus the number of simplified sentence and the number of accepted motions to quantify, only 6,134 indictments have actually been on trial, i.e. 12.5% of the total number of indictments.

# Presentation of suspects

- ▶ Shall take appropriate measures to ensure that suspects are not presented as being guilty through the use of measures of physical restraint
- ▶ Usage of handcuffs
- ▶ Usage of boxes in court rooms
- ▶ Clothes
- ▶ Walking around in the court building
- ▶ Usage of main entrance of the court



# Thank you for your attention

Contact details:

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# Procedural Rights in the EU Training for defence lawyers

## Rights of requested persons in the EAW proceedings

Lisbon, 8-9 July 2024

Dr. Matylda Pogorzelska



Co-funded by  
the European Union

# Sources

1. EAW FD
2. Fair trial rights as human / fundamental rights
3. Criminal Procedural Roadmap
4. FRA findings



Objective and Purpose:

- Abolish the system of extradition between Member States and replace with system of surrender between judicial authorities :
  - Introduction of simplified system of surrender of sentenced or suspected persons
  - Free movement of judicial decisions in criminal matters, covering pre-sentence and final decisions
- Member States must act collectively – action must be taken at Union level
- the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.
- EAW executions on the basis of the principle of mutual recognition

## Content

### ➤ *Scope – Art. 2:*

- EAW issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months.
- Certain offences if punishable by the issuing Member State for a custodial sentence of a maximum of three years can give rise to surrender pursuant to the EAW.

### ➤ *Rights and duties - Arts. 3 – 29:*

- Provides grounds for the non-execution of the EAW
- Guarantees given to certain Member States

### ➤ *Adopted/Transposition deadline:*

- 13 June 2002/31 December 2003

Rights of sovereign states v. rights of individuals

Principles of criminal justice

# EAW Framework decision

General  
obligation

## Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

# EAW Framework decision

## Article 11

### Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.
2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State

# EAW Framework decision

## Article 13

### Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, **the requested person shall have the right to legal counsel.**

## EAW Framework decision

### Article 14

#### Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.



## Fair trial rights

- **Art 6 ECHR**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(...)

- **Art. 47 of the Charter**

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

# ECtHR, Monedero Angora v. Spain (dec.), no. 41138/05, 7 October 2008

[ECHR-FRA factsheet on EAW](#)

- Facts – The applicant was arrested in Spain and taken into custody under an EAW issued by the French authorities. The applicant's surrender to the French authorities was granted by the Spanish authorities.
- Law – Article 6: The applicant complained of various violations of Article 6 of the Convention. The ECtHR pointed out that the extradition procedure did not involve the determination of the applicant's civil rights and obligations or of a criminal charge against him or her within the meaning of Article 6. It noted that the EAW procedure replaced the standard extradition procedure between member States of the EU and pursued the same aim, namely the surrender to the authorities of the applicant State of a person who was suspected of having committed an offence or who was trying to escape justice after having been convicted by a final decision. It concluded that this procedure did not concern the determination of a criminal charge. See also, to similar effect, ECtHR, West v. Hungary (dec.), no. 5380/12, 25 June 2019.
- Conclusion – Inadmissible (incompatible *ratione materiae*)

# CJEU - Joined Cases (HM) C-428/21 PPU and (TZ) C-429/21 PPU – right to be heard 26 Oct 2021

- **Context** – execution of two EAW in the Netherlands against HM and TZ, issued in Hungary and Belgium respectively (EAWs executed).
- A Hungarian court requested a consent from the Dutch court to prosecute HM for offences other than those on which his surrender was based, committed by him prior to his surrender. At that hearing, HM, who was assisted by a lawyer, stated that he did not wish to renounce his entitlement to the speciality rule.
- a Belgian court requested a consent from the Dutch court for the TZ's subsequent surrender to Germany, with a view to prosecution for other offences.

# Joined Cases (HM) C-428/21 PPU and (TZ) C-429/21 PPU – right to be heard 26 October 2021

- Articles 27(3)(g) and (4) and Article 28(3) of the EAW FD, read in the light of the right to effective judicial protection guaranteed by **Article 47 of the Charter of Fundamental Rights** of the European Union, must be interpreted as meaning that
- a person who has been surrendered to the issuing judicial authority pursuant to a European arrest warrant is entitled to be heard by the executing judicial authority when the latter receives from the issuing judicial authority a request for consent under those provisions of Framework Decision 2002/584; that hearing may take place in the issuing Member State – in which case the latter’s judicial authorities must ensure that the right to be heard of the person concerned is exercised properly and effectively – and may be held without the direct participation of the executing judicial authority.
- However, the executing judicial authority must ensure that it has sufficient information, in particular as regards the position of the person concerned, to allow it – while fully respecting his or her rights of defence – to take a fully informed decision on the request for consent made under Article 27(4) or Article 28(3) of Framework Decision 2002/584 and must ask, where appropriate, the issuing judicial authority to provide it, as a matter of urgency, with supplementary information.

**RESOLUTION OF THE COUNCIL of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings**

Action should be taken at the level of the European Union in order to strengthen the rights of suspected or accused persons in criminal proceedings. Such action can comprise legislation as well as other measures

## Council conclusions November 2020

“The Council emphasises the need to assess the practical effectiveness of procedural rights in proceedings in the issuing and executing Member States under the EAW Framework Decision. The report published by the FRA on 27 September 2019 (‘Rights in practice: access to a lawyer and procedural rights in criminal and EAW proceedings’), which covers the situation in eight Member States, is a valuable contribution in this regard. The Council invites the FRA to consider the possibility of continuing the study, extending it to all Member States and putting a special emphasis on the experiences of lawyers acting in surrender proceedings until 2022.”

# Responding to the Council's call

This report covers 19 EU Member States (**Belgium, Croatia, Cyprus, Czechia, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia, Spain and Sweden**) however at times there are references to other countries not covered by this particular research (such as Austria or France) or third countries (such as Turkey and the UK).

- Experts' meeting
- Desk research
- Fieldwork – interviews





Member State	Lawyers	Judges / Prosecutors	Requested persons	Lawyers on behalf of requested persons	Total number of interviewees
BE	4	4			8
CY	3	3	3	2	11
CZ	5	4			9
DE	5	5			10
EE	3	3			6
ES	5	5	3	2	15
FI	4	4	5		13
HR	4	5			9
HU	4	4			8
IE	4	4			8
IT	5	5	5		15
LT	4	4		5	13
LU	3	3			6
LV	4	4			8
MT	4	3			7
PT	4	5	5		14
SI	4	4			8
SK	4	5			9
SE	2	3			5
<b>Total</b>	<b>75</b>	<b>77</b>	<b>21</b>	<b>9</b>	<b>182</b>

# What is covered

- Issuing EAW – proportionality
- Executing EAW – fundamental rights
- Access to a lawyer in the executing MS
- Access to a lawyer in the issuing MS
- Experience of defence lawyers
- Right to information
- Right to interpretation and translation

# Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

## Article 1

### Subject matter and scope

This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

# Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

## Article 2 - Right to interpretation

7. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide persons subject to such proceedings who do not speak or understand the language of the proceedings with interpretation in accordance with this Article.

## Article 3 - Right to translation of essential documents

6. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State, with a written translation of that document.

7. As an exception to the general rules established in paragraphs 1, 2, 3 and 6, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

# National Laws

- All MSs provide for these rights
- The national laws of several Member States specifically refer to the use of digital tools and technology for interpretation during proceedings.
- In **some** Member States, legal measures are in place to help ensure the quality of interpretation.

## National practice

- Interpretation provided as a rule
- However at different time (immediately, later on during the proceedings)
- Interpretation in detention – seems to be problematic
- Quality of interpretation – challenging
- Availability of interpreters

*If the judge doesn't take the time to explain, if the interpreter is not qualified ... if the interpreter doesn't know what the principle of speciality is, how can they translate it to the person? Lawyer, Italy.*

*Training [of interpreters] is a massive issue ... It would almost take legally qualified people to act as interpreters, and we don't live in that kind of utopia ... Some kind of a legal criminology training, I think, would be very helpful. But ... the quality of training and the levels of qualifications and experience required in Ireland seem to be quite low. Lawyer, Ireland.*

# Challenges in hiring interpreters and translators

Findings also highlight challenges when providing interpretation for **non-EU or lesser spoken EU languages**. In cases of less common languages, identifying and quickly hiring interpreters seems to be not always possible.

*“Estonia has the biggest problem with interpreters. We have a relatively small number of minorities, and we have a very difficult situation with some interpreters. We have situations where even a Lithuanian interpreter cannot be found.” Judge, Estonia*

*“I think that when a document is translated orally, it is difficult to understand. [...] There were a lot of episodes when documents were very long, and you could see that they (the requested persons) didn't really understand what was being said to them anymore while it was being translated. For example, judging by myself, it would be very important for me to have a document to look at. If I haven't heard or understood it, it's much more comfortable to read it over than to ask again.” Lawyer, Latvia*



## Promising practice

In Hungary, when executing EAWs, all the professionals – including state-appointed interpreters - are members of a **specialised EAW team** at the Budapest-Capital Regional Court (*Budapesti Törvényszék*). This means that the judges usually work with the same interpreters who know the EAW process well. This ensures the quality of the interpretation. All the interviewed judges underlined the importance of working with specialised professionals, as this improves the effectiveness and quality of the EAW procedures.

## FRA opinion

Member States should ensure, in every case where it is necessary, **the availability of qualified interpreters and translators**. If there is a lack of suitable interpreters and translators, Member States are encouraged to cooperate with relevant national and European professional associations of legal translators and interpreters to develop **ways of sharing the pool of available interpreters and translators between Member States**.

Moreover, to ensure that interpretation and translation are of an adequate standard, Member States are encouraged to introduce **mechanisms for verifying interpreters' and translators' actual ability to understand, interpret and translate legal terms and concepts**.

FRA reiterates its opinion, previously presented in the report Rights of suspected and accused persons across the EU: Translation, interpretation and information, that Member States should consider introducing **relevant safeguards to maximise the quality** of translation and interpretation.

# Directive 2012/13/EU on the right to information in criminal proceedings

## Article 1

### Subject matter

This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

# Directive 2012/13/EU on the right to information in criminal proceedings

## Article 5

### Letter of Rights in European Arrest Warrant proceedings

1. Member States shall ensure that persons who are arrested for the purpose of the execution of a European Arrest Warrant are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing Framework Decision 2002/584/JHA in the executing Member State.
2. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex II.

# Directive 2012/13/EU on the right to information in criminal proceedings

## Letter of rights – EAW context

- A. Information about the European arrest warrant
- B. Assistance of a Lawyer
- C. Interpretation and translation
- D. Possibility to consent
- E. Hearing

## National laws

- Most Member States have relevant laws on the EAW-specific letter of rights that must be provided to the requested person in a language that they can understand.
- Some use generic letters of rights.

## National practice

The research shows that in general, requested persons are **informed about their rights, reasons for their arrest and the content of the EAW.**

The police provide requested persons with very basic information. The nuances of the EAW proceedings are explained by **defence lawyers or judicial authorities.**

*“I will not proceed any further until I am convinced that the parties have indeed understood their rights.”* Judge, Croatia



## Right to information

Interviewed lawyers emphasise, nevertheless, that in cases regarding EAW entries in the Schengen Information System (SIS), the information about the reasons for arrest and the EAW content **is often delayed by several days**.

Interviewed lawyers suggest that the information about rights is not always provided 'promptly' after a person's arrest. Interviewed lawyers suggest that in some Member States police officers do not explain any rights orally but, instead, hand out a Letter of Rights to the requested person.

There are also instances reported of requested persons being provided with a Letter of Rights applicable to general criminal proceedings and not to EAW proceedings, without the differences being explained to them. Judicial authorities interviewed in a few Member States referred in this context to manuals or checklists prepared for officers dealing with EAW, which help them to inform requested persons about their rights and specifics of the EAW proceedings.

## Promising practice – informing requested persons

Acknowledging that sometimes judges dealing with the EAW occasionally lack the necessary experience to inform requested persons of all relevant rights, the Munich Higher Regional Court has developed a check list form for judges that contains the pieces of information that need to be made known.

*“At the Munich Higher Regional Court, we have a form sheet for the judges, so that they have a kind of roadmap of everything that needs to be done and what needs to be announced to the requested persons, even if they [the judges] have never done it [EAW proceeding] before, which sometimes happens when the courts are on call at the weekend.”* Prosecutor, Germany.

## FRA opinion

Member States should consider developing **materials for police officers** responsible for arresting requested persons in EAW proceedings. Such materials could include a simple checklist to facilitate the prompt provision of information to requested persons and emphasise the need to orally explain crucial information.

In addition, national authorities could consider developing materials to assist police officers, judges and prosecutors in providing information to requested persons **in a simple way**. For example, they could produce leaflets or other explanatory materials that could be translated into the most commonly spoken languages. National authorities are encouraged to ensure that all documents provided to requested persons are written in simple and accessible language, avoiding legal jargon as far as possible. Member States could develop additional materials and briefings for police officers and legal professionals on the **various factors that can compromise an individual's ability to understand** the procedure and the consequences of various decisions.

Member States are encouraged to cooperate with the European Judicial Training Network and national bar associations to develop **training modules and materials**, such as checklists to help professionals dealing with EAW proceedings to ensure that requested persons are better informed.

# Directive 2013/48/EU

**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**

## Article 1

### Subject matter

This Directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA ('European arrest warrant proceedings') to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

# Directive 2013/48/EU

## Article 10

### The right to access to a lawyer in European arrest warrant proceedings

1. Member States shall ensure that a requested person has the right of access to a lawyer in the executing Member State upon arrest pursuant to the European arrest warrant.
2. With regard to the content of the right of access to a lawyer in the executing Member State, requested persons shall have the following rights in that Member State:
  - a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;
  - b) the right to meet and communicate with the lawyer representing them;
  - c) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing of a requested person by the executing judicial authority. Where a lawyer participates during the hearing this shall be noted using the recording procedure in accordance with the law of the Member State concerned.

# Directive 2013/48/EU

## Article 10

The right to access to a lawyer in European arrest warrant proceedings

3. The rights provided for in Articles 4, 5, 6, 7, 9, and, where a temporary derogation under Article 5(3) is applied, in Article 8, shall apply, mutatis mutandis, to European arrest warrant proceedings in the executing Member State.

Art. 4 – Confidentiality of communication

Art. 5 – The right to have a third person informed of the deprivation of liberty

Art. 6 – The right to communicate, while deprived of liberty, with third persons

Art. 7 – The right to communicate with consular authorities

Art. 8 – Temporary derogation

Art. 9 – Waiver of rights

# Directive 2013/48/EU

## Article 10

### The right to access to a lawyer in European arrest warrant proceedings

4. The competent authority in the executing Member State shall, without undue delay after deprivation of liberty, inform requested persons that they have the right to appoint a lawyer in the issuing Member State. The role of that lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under Framework Decision 2002/584/JHA.

5. Where requested persons wish to exercise the right to appoint a lawyer in the issuing Member State and do not already have such a lawyer, the competent authority in the executing Member State shall promptly inform the competent authority in the issuing Member State. The competent authority of that Member State shall, without undue delay, provide the requested persons with information to facilitate them in appointing a lawyer there.

6. The right of a requested person to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time-limits and the conditions defined under that Framework Decision, whether the person is to be surrendered.



# Directive (EU) 2016/1919

## on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

### Article 1

#### Subject matter

1. This Directive lays down common minimum rules concerning the right to legal aid for:
  - a. suspects and accused persons in criminal proceedings; and
  - b. persons who are the subject of European arrest warrant proceedings pursuant to Framework Decision 2002/584/JHA (requested persons).
  
2. This Directive complements Directives 2013/48/EU and (EU) 2016/800. Nothing in this Directive shall be interpreted as limiting the rights provided for in those Directives.

# Directive (EU) 2016/1919 on legal aid

## Article 5

### Legal aid in European arrest warrant proceedings

1. The executing Member State shall ensure that requested persons have a right to legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or until the decision not to surrender them becomes final.
2. The issuing Member State shall ensure that requested persons who are the subject of European arrest warrant proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid in the issuing Member State for the purpose of such proceedings in the executing Member State, in so far as legal aid is necessary to ensure effective access to justice.
3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to a means test in accordance with Article 4(3), which shall apply mutatis mutandis.

## National laws

When it comes to legal representation in the executing state, the right to access to a lawyer is **very well regulated**. As a rule, relevant laws provide that the authorities arresting a person based on an EAW should inform them about their right to be represented by a lawyer.

In addition, in the vast majority of the Member States, **legal representation is mandatory** in the event of deprivation of liberty.

The provision of state legal aid in the event that a requested person cannot afford to hire a lawyer privately is **equally common practice**.

In all Member States, the right to access to a lawyer includes the **right to consult a lawyer confidentially and to have a lawyer present at procedural acts**.

## National laws

Some Member States have legal provisions regulating access to a lawyer for the requested person **when they issue an EAW**.

Other Member States apply **general rules on access to a lawyer in domestic criminal proceedings**. The logic is that, for the state to issue an EAW, there must be either criminal proceedings or execution of sentence proceedings pending. Therefore, the requested person should benefit from all the rights that suspects or convicted persons have, including the right to legal assistance. However, the laws invoked in such cases do not specify that the right to legal assistance includes assistance in cases involving the execution of an EAW by another state and do not set out any procedure for appointing a lawyer.

Only a handful of Member States explicitly specify in their laws that, when these states execute an EAW, the requested **person has to be informed about their right to access to a lawyer in the issuing state**. Then, if the requested person wishes to benefit from legal assistance in the issuing state, the executing authorities inform the issuing authorities and leave it up to them to appoint a lawyer in accordance with their national laws.

## National practice

The research shows that the right to access to a lawyer in the executing state is overall **complied with**. In general, interviewees agree that requested persons are provided with legal assistance by public defenders.

*“To safeguard the exercise of their rights, requested persons need legal representation throughout; without a lawyer, it will be practically impossible to have their rights safeguarded.”* Lawyer, Cyprus

However, the research also shows that requested persons receive **little to no help from authorities when hiring a private lawyer**. Since requested persons do not always have connections in the executing state, they may face difficulties in finding a lawyer of their choice.

*“The police did not help me; they just gave me a phone to call and say I was arrested. There was no interpretation at the time, I did not understand much. No list of legal aid lawyers was given to me, nor was legal aid explained. I did not have an interpreter then. I was not given the chance to search on the internet for a lawyer. I chose my lawyer myself through my friends and I was allowed to contact him. When I mentioned the lawyer’s name, the police contacted him, there was no problem there.”*  
Requested person, Cyprus

Additionally, it appears from the interviews that while requested persons in general **have the possibility to meet their lawyers** before the hearing, consultations between a requested person and their lawyer are **sometimes rushed or held in a space that is not suitable**, such as a courthouse corridor.

*“I have never experienced a situation in which someone told me [to stop consulting], even at the police or in the detention facility or at the court. I’ve never been told: that’s enough, let’s go on. This has never happened to me.”* Defence lawyer, Czechia

*“Such an opportunity (to discuss with a lawyer in private) was not given at any stage. When I had my court hearing...my interpreter and lawyer were already sitting there. I was just brought to the hearing room, and then the session began.”* Requested person, Finland.



## Legal representation in the *issuing* state

The research shows that in practice, dual legal representation is a **rare occurrence**. Authorities **do not systematically inform** requested persons about this right and do not provide any assistance with appointment of a lawyer in the issuing state.

*“From what I know, they [the requested person] are never informed of this. I have to inform them of this need. This information is not in our law and no judge has time to read the directive.”* Lawyer, Portugal.

*“I had a lawyer in Germany, but he was located by my Cypriot lawyer. He was not identified by the court. No one told me that I was entitled to help to locate a lawyer in Germany, my lawyer tried hard to locate one. No one told me I was entitled to legal aid for the lawyer in Germany. The lawyer in Germany was very helpful.”* Requested person, Cyprus.

## Legal representation in the *issuing* state

Only a handful of Member States provide in the EAW form, which has to be completed by the issuing state authorities and forwarded to the executing state, the name of the lawyer representing a person in the issuing state or a list of lawyers potentially able to do so.

A Swedish example - when Sweden issues a EAW for prosecution, most requested persons have lawyers appointed to them. A prosecutor interviewed in Sweden explains that when a EAW is issued for prosecution, the court has to first issue a detention order *in absentia*. There is always a hearing where the person is appointed a public defence counsel, and this lawyer continues to represent the person as a lawyer in the issuing state.

## Legal representation in the *issuing* state

Many interviewed lawyers did not have that experience at all. There were some however, who did, and it changed their way of thinking about the benefits of dual legal representation.

*“At first, I was sceptical about the benefits of taking on a lawyer in the issuing country, but experience has shown that it is very useful. Why? Because that lawyer had the opportunity to get in touch with the issuing authority and to agree on the course of action in the issuing country. They practically agreed on a penalty. (...) Once there was a certain degree of likelihood that their agreement would be accepted, my client informed me that he now consents to surrender. After that, it went rather fast. The man sat in our custody for two months, only to be surrendered and brought before a judge (in the issuing country), where the prosecutor then requested that he be punished with a fine.”* Lawyer, Slovenia

# Representing requested persons – lawyers' voices

## Specialisation of lawyers

*“When selecting legal representation in extradition proceedings, no consideration is given to professional expertise. As a result, colleagues who accept such a mandate first have to familiarize themselves with the legal matter. This is very time-consuming since international criminal law is not taught during the course or during the legal clerkship. In addition, there is time-consuming research into the respective prison conditions or procedural rights, and in foreign languages, which represents an additional burden.”* Lawyer, Germany

# Representing requested persons – lawyers' voices

## Tight deadlines

- *“I have to defend the client in a very short time. The normal deadline for defence is between 5 to 10 days. It is normal for the courts to give 10 days, but 10 days is nothing...”* Lawyer, Portugal

## Representing requested persons – lawyers' voices

### *Very limited role of the lawyer defined by EAW rules*

*“So, the problem I had in one case, was that the requested person said that they had not committed anything [...]. And then I said that we cannot take a position on this before the court. You can discuss it there [in the issuing state]. But they felt completely innocent in this, and I cannot go into the merits of their case. That is the rule, so I can only plead on normal [i.e., formal] grounds, on procedural grounds which could possibly be grounds for refusal.” Lawyer, Hungary.*

## Representing requested persons – lawyers' voices

### Difficulties in communication between lawyers in both states

*“The person who, for example, wants to contest the grounds on the merits, must do so in the State that issued the arrest warrant. There is no system to connect the defender in Italy with a defender outside Italy. My impression is that it is still very much based on individual ability. So, if a person appoints a lawyer in Italy who perhaps belongs to a firm that has networks or contacts with other colleagues in the other state, it is fine, otherwise I have the impression that it is a problematic situation.”* Judge, Italy.



## Representing requested persons – lawyers' voices

### *Limited access to information*

*“The question is how effective is your lawyer in protecting your interest in terms of the EAW. If the lawyer does not have access to certain basic information from the requesting state, it is useless sending a lawyer that does not have all the information.”* Defence lawyer, Malta.

## FRA opinion – lawyer in the executing state

While Member States continue to fulfil their obligations to provide a requested person with access to a lawyer and to secure a public defender for them if necessary in the executing state, they are encouraged also to **develop a mechanism, in collaboration with bar associations, enabling requested persons to hire their own lawyer** if they wish to do so. Lists of lawyers with experience in EAWs, detailing the languages that they speak, could be provided to requested persons to facilitate their hiring a lawyer of their choice if they do not wish to benefit from the assistance of a public defender.

Member States should also ensure that **sufficient time and adequate facilities are available to enable requested persons to consult with their lawyers** before the first hearing. This could be achieved, for example, by having dedicated rooms in courthouses and making sure that the relevant procedures allow sufficient time.

## FRA opinion – lawyer in the issuing state

Member States should ensure **effective access to dual legal representation** in practice in line with their obligations under Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings. National authorities responsible for the administration of justice should develop guidance for police and judicial authorities highlighting the need to inform requested persons about this right without delay. Judicial authorities should verify at the first questioning whether a requested person is indeed aware of this right and whether they want to exercise it.

Issuing Member States are encouraged to **follow the good practice of including the name of the lawyer representing the requested person in the issuing state in the EAW form**. If a person does not have a lawyer appointed to represent them in the issuing state, Member States are encouraged, in cooperation with bar associations, to attach to the EAW form a list of lawyers specialising in EAW proceedings practising in the issuing state, specifying the languages that they speak.

Member States, in cooperation with EU bodies, are encouraged to take measures **to improve cooperation among lawyers** and help them gain a deeper understanding of the EAW

## Other rights

- *'False'* extraterritorial jurisdiction
- *Aranyosi* judgment - EU Member States prohibited from transferring people to places where their fundamental rights will be at risk
- Right to dignity and to freedom from inhuman and degrading conditions
- Extended – right to a fair trial

## Issuing and Execution of the EAW – focusing on proportionality

The research finds that while issuing the EAW, authorities tend to consider the proportionality of the measure - meaning balancing the intended objective against the measures necessary to achieve it. This is, however, **not systematic**.

*“Proportionality should be a key element, but it is not always. It should be a preponderant factor because, in fact, when fundamental rights are involved, proportionality and adequacy are criteria that must necessarily be considered. This is what is being discussed and sometimes it does not happen.”* Lawyer, Portugal

## Assessment of fundamental rights when executing the EAW

While executing the EAW, national authorities tend to rely on the principles of **mutual trust and mutual recognition** and only exceptionally consider whether and how the execution and then surrender of the requested person would affect their fundamental rights.

Additionally, some interviewed lawyers and judicial authorities consider that **all EU Member States respect fundamental rights at the same level** and therefore there is no need to examine these aspects.

*“The way our legislation handles the EAW procedure reflects the mentality that any EAW is believed to be a ‘DHL package’ procedure, where they arrest, bound, gag, and send them over as fast as possible. This is wrong and against the spirit of the law. As defence lawyers, we strongly contest the way Malta has implemented the Framework Decision because truly Malta has made a mess of it.”* Lawyer, Malta

Questions?

# Thank you!

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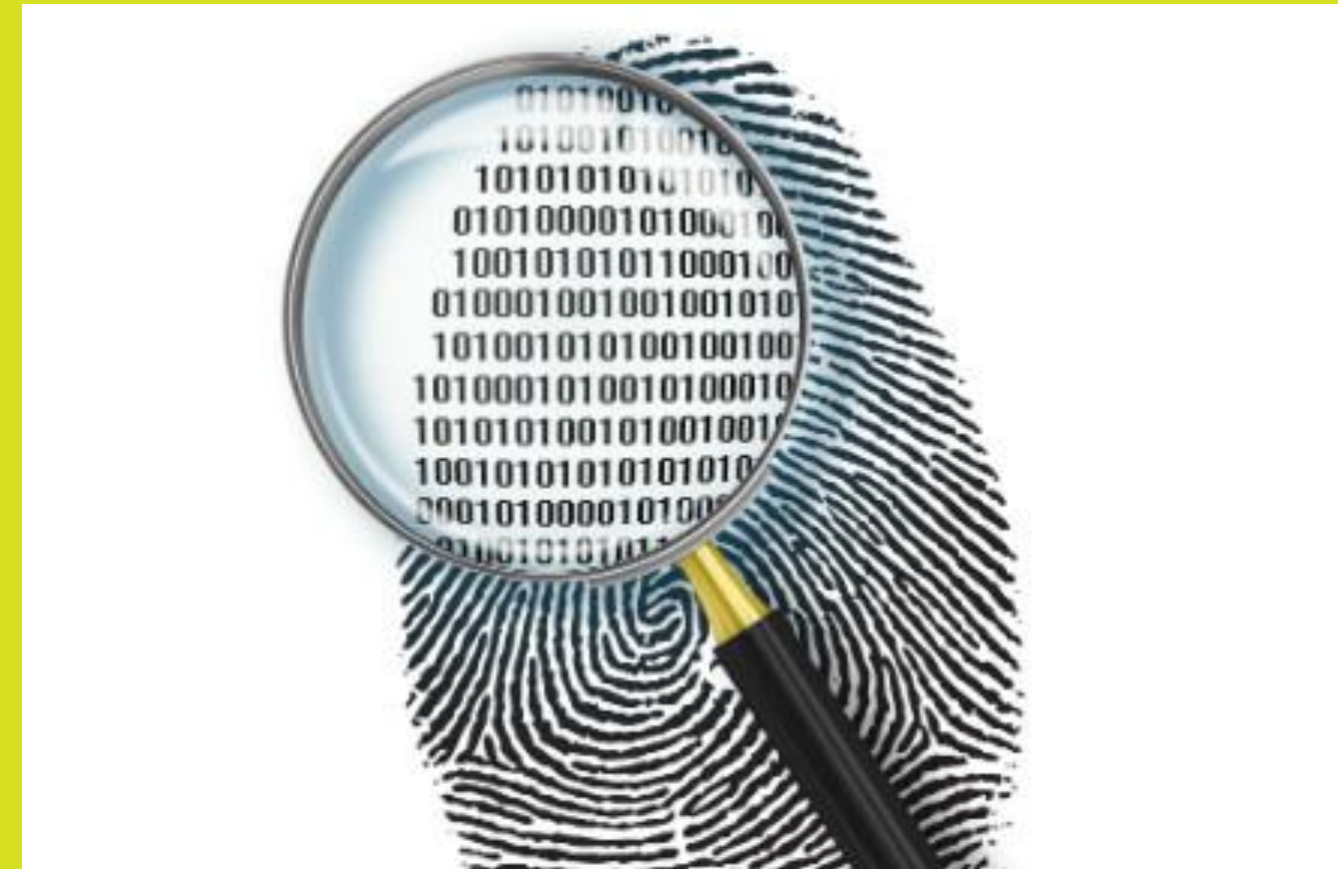


# THE GATHERING OF CROSS-BORDER (E)EVIDENCE AND ITS ADMISSIBILITY

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**Dr. Pavlos Topalnakos, Lawyer, Professor of  
Procedural Criminal Law, Hellenic Police Officers  
School**

## eEVIDENCE PACKAGE OVERVIEW



Co-funded by  
the European Union

# Agenda

01

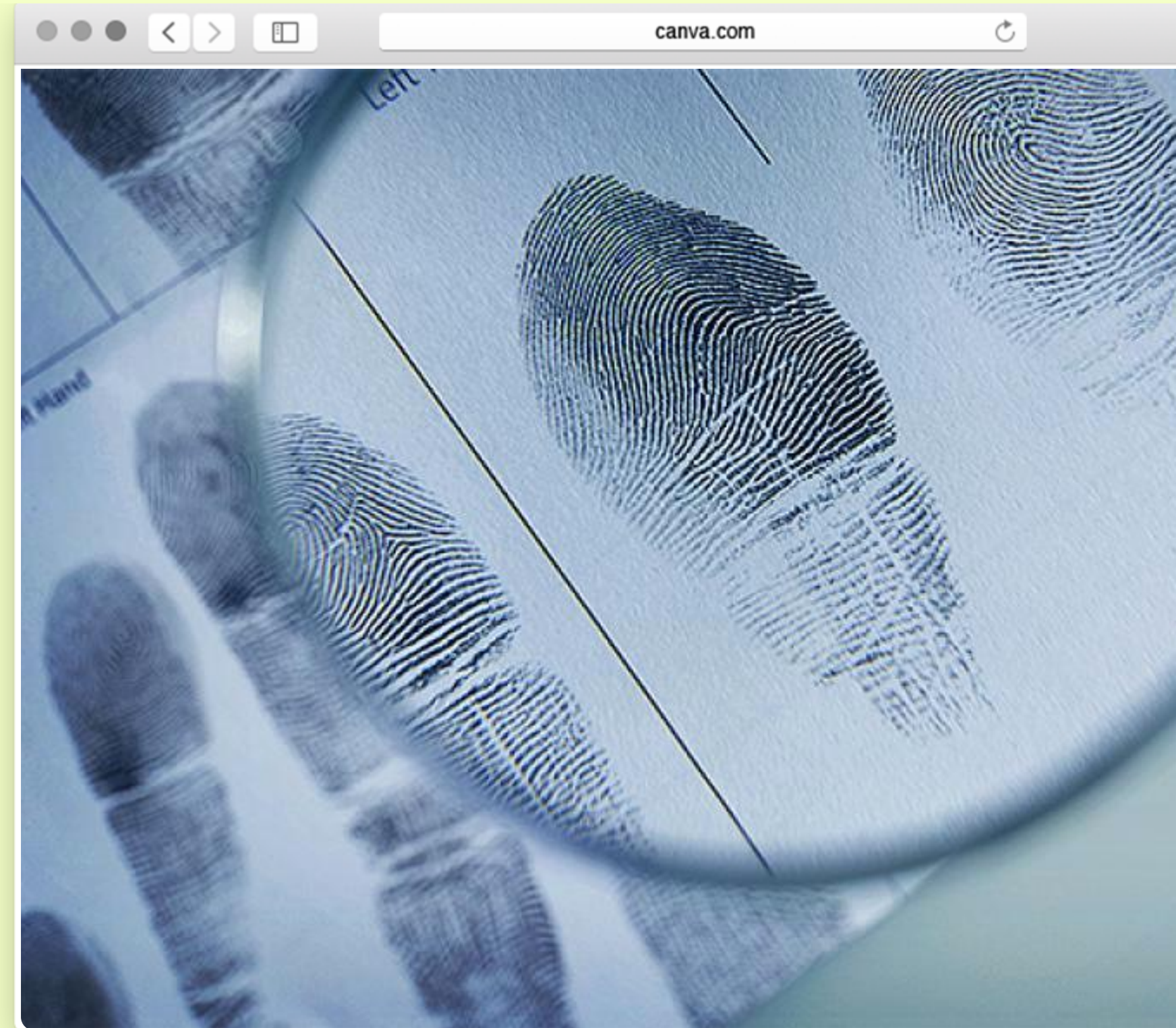
**EUROPEAN  
INVESTIGATION ORDER**

02

**EUROPEAN PRODUCTION  
AND PRESERVATION  
ORDERS**

# EUROPEAN INVESTIGATION ORDER

The European Investigation Order (EIO) established by Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 represents a great leap forward in cross-border judicial cooperation when it comes to evidence gathering and exchange. The Directive entered into force twenty days after its publication in the OJEU on May 1, 2014. The deadline for transposition ended on May 22, 2017. Currently, all Member States have transposed the Directive (with the exception of Ireland and Denmark as it does not apply to both).





# AIM OF THE DIRECTIVE

## THE LIFECYCLE OF AN EIO

**I. The issuing phase**

**II. The transmission phase**

**III. The recognition phase**

**IV. The execution phase**

**01**

The EIO is designed to streamline the process by which a country can request assistance from another in criminal investigations. The EIO is based on mutual recognition, therefore the executing judicial authority is, in principle, compelled to recognise and ensure the execution of the request from the other Member States.

**02**

The EIO is a judicial decision issued by the judicial authority in an EU Member State to request investigative action to collect or use evidence in criminal matters carried out in another EU Member State.

# ART. 1(1) OF THE DIRECTIVE

## THE EUROPEAN INVESTIGATION ORDER

The EIO is a judicial decision issued or validated by a judicial authority in a issuing member state to have one or several specific investigative measures carried out in another (the executing) member state to obtain evidence. The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State

# ART. 4 OF THE DIRECTIVE

## RATIONE MATERIAE

### AN EIO MAY BE ISSUED:

- With respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State
- In proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters
- In proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters
- In connection with the aforementioned proceedings which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

# SCOPE OF THE DIRECTIVE

## THE EIO SHALL COVER ANY INVESTIGATIVE MEASURE

### Recital 25 of the EIO DIR:

The Directive sets out rules for carrying out investigative measures at all stages of criminal proceedings, including during the trial phase. In some Member States, the EIO also applies to measures undertaken during the execution of a judgement

### CRITERIA ASSESSING WHETHER THE EIO DIR SHOULD APPLY (CUMULATIVELY):

- The order concerns an investigative measure to gather or use evidence
- The measure was issued or validated by a judicial authority
- The measure relates to Member States bound by the EIO DIR

### EIO DIR DOES NOT COVER:

- Setting up of a JIT and collection of evidence within a JIT
- Service and sending of procedural documents
- Spontaneous exchange of information
- Transfer of proceedings
- Freezing property for the purpose of subsequent confiscation
- Restitution: return of an object to victim
- Gathering of extracts of the criminal records register
- Police-to-police cooperation
- Customs-to-customs cooperation

# ART. 2 OF THE DIRECTIVE

## ISSUING AUTHORITY

A judge, a court, an investigating judge or a public prosecutor competent in the case concern

or

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

Note: before it is transmitted to the executing authority the EIO must be validated by a judge, court, investigating judge or a public prosecutor in the issuing State.

# ART. 6 OF THE DIRECTIVE

## CONDITIONS FOR ISSUING THE ORDER

- The issuing of the EIO must be necessary and proportionate for the purpose of the proceedings. The EIO leaves the proportionality check in the hands of the issuing authority [art. 6(1)], but, if the executing authority has reason to believe that this condition has not been met, it may consult the issuing authority [Art 6(3)].
- The investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.
- The conditions referred above shall be assessed by the issuing authority in each case.

**Transmission is made directly from the issuing authority to the executing authority**

**The executing authority is the ‘authority having the competence to recognise an EIO and ensure its execution’**

**RECOGNITION AND EXECUTION RULE:**

- The executing authority has the obligation to recognise and execute
- The execution is governed by the law of the executing Member State.
- The executing authorities should comply, as much as possible, with the formalities and procedures expressly indicated by the issuing authorities (Article 9(2) EIO), but the EIO should be executed, ‘in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State’ (Article 9(1) EIO)

# **RECOGNITION AND EXECUTION OF A EUROPEAN INVESTIGATION ORDER**

## **ART. 9 OF THE DIRECTIVE**



# **ART. 10 OF THE DIRECTIVE**

## **RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE**

### **THE EXECUTING AUTHORITY CAN HAVE RECOURSE TO ANOTHER INVESTIGATIVE MEASURE:**

- If the investigative measure indicated in the EIO does not exist under the law of the executing State  
or
- If the investigative measure indicated in the EIO would not be available in a similar domestic case.
- If the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.

### **INVESTIGATIVE MEASURES WHICH ALWAYS HAVE TO BE AVAILABLE UNDER THE LAW OF THE EXECUTING STATE**

- The obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence could have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO
- The obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings
- The hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State
- Any non-coercive investigative measure as defined under the law of the executing State
- The identification of persons holding a subscription of a specified phone number or IP address.

# GROUNDS FOR NON-RECOGNITION OR NON-EXECUTION ART. 11 OF THE DIRECTIVE

## THE RECOGNITION OR EXECUTION OF AN EIO CAN BE REFUSED IN THE EXECUTING MEMBER STATE IF:

- 01** The executing Member State makes it impossible to execute the EIO under the immunity or a privilege according to its law (Article 11(a) of the Directive)
- 02** The execution of the EIO would harm national security interest (Article 11(b) of the Directive)
- 03** The EIO was issued although the investigative measure would not be authorised in similar domestic case under the law of the executing Member State (Article 11(c) of the Directive)
- 04** The execution of the EIO would be contrary to the principle of ne bis in idem (Article 11(d) of the Directive)
- 05** The EIO was issued for criminal offence which was committed outside the territory of the issuing Member State but on the territory of the executing Member State although the conduct is not an offence in the executing Member State (Article 11(e) of the Directive)

**06** The execution of the investigative measure would be incompatible with Article 6 of the Treaty of European Union and the Charter of Fundamental Rights of the European Union according to the executing Member State's obligation (Article 11(f) of the Directive)

**07** The conduct for which the EIO was issued does not constitute an offence under the law of the executing Member State (double criminality principle) unless it concerns an offence listed within the categories of offences set out in Annex D (Article 11(g) of the Directive)

**The grounds for non-recognition provided for by the EIO DIR are contained in an exhaustive list, which needs to be interpreted restrictively, as these grounds constitute an exception to the principle of mutual recognition. Therefore, under the EIO regime, no margin is available to refuse the execution of EIOs on grounds that are not included in this list.**

# TIME LIMITS

## ART. 12 OF THE DIRECTIVE

The decision on the recognition or execution of the EIO shall be taken and the execution of the measure shall be carried out “with the same celerity and priority as for a national case”

### MANDATORY DEADLINES

- For taking the decision on recognition or execution after the receipt of the EIO by the competent executing authority: 30 days (+ 30 days).
- For taking the measure: 90 days after the decision on recognition or execution.
- Provisional measures: The issuing authority may issue an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the EIO. (Article 32)

# LEGAL REMEDIES

## ART. 14 OF THE DIRECTIVE

- Legal remedies available against an EIO should be at least equal to those available in a domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of such legal remedies, including by informing in due time any interested party about the possibilities and modalities for seeking those legal remedies.
- The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.
- Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.
- A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.

# ART. 22-31 OF THE DIRECTIVE

## SPECIFIC INVESTIGATIVE MEASURES

- Temporary transfer to the issuing state of persons held in custody for the purpose of carrying out an investigative measure
- Temporary transfer to the executing state of persons held in custody for the purpose of carrying out an investigative measure
- Hearing by videoconference or other audiovisual transmission
- Hearing by telephone conference
- Information on bank and other financial accounts
- Information on banking and other financial operations
- Investigative measures implying the gathering of evidence in real time, continuously and over a certain period of time
- Covert investigations
- Interception of telecommunications



## **ART. 24 OF THE DIRECTIVE**

### **HEARING BY VIDEOCONFERENCE**

A hearing of suspects/accused persons via videoconference may be requested under an EIO. Execution of an EIO may be refused if the suspected or accused person does not consent

A hearing of 'witnesses' or 'experts' via videoconference may be requested under an EIO.

An EIO could be used for the hearing of accused persons during trial and thus as a way to guarantee the participation of the accused in a criminal trial instead of a temporary transfer.

### **HEARING BY TELEPHONE CONFERENCE**

## **ART. 25 OF THE DIRECTIVE**

The EIO DIR provides for the possibility of witnesses and experts being heard by telephone conference, but seems to exclude this possibility for suspected and accused persons, since the wording of Article 25(2) EIO DIR does not make any reference to paragraphs 1 and 2 of Article 24 EIO DIR.

## **INFORMATION ON BANKING AND OTHER FINANCIAL OPERATIONS**

An EIO may be issued in order to obtain financial evidence concerning accounts, of whatever nature, held in any bank or any non-banking financial institution by a person subject to criminal proceedings. This possibility is not limited to suspects or accused persons, but also comprises any other person in respect of whom such financial information is found necessary, as long as the request is sufficiently motivated for use in the course of criminal proceedings.

## **GATHERING OF EVIDENCE IN REAL TIME**

Most Member States consider that the wording of Article 28 EIO DIR is sufficiently broad to leave room for measures such as video surveillance, tracking or tracing with the use of technical devices (GPS) and accessing a computer system.

## **INTERCEPTION OF TELECOMMUNICATIONS WITH TECHNICAL ASSISTANCE**

Possibilities to cooperate under this Directive on the interception of telecommunications should not be limited to the content of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for the purpose of obtaining less intrusive data on telecommunications. An EIO issued to obtain historical traffic and location data related to telecommunications should be dealt with under the general regime related to the execution of the EIO and may be considered, depending on the national law of the executing State, as a coercive investigative measure.

# **ART. 27 OF THE DIRECTIVE**

# **ART. 28 OF THE DIRECTIVE**

# **ART. 30 OF THE DIRECTIVE**

# ART. 31 OF THE DIRECTIVE

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## INTERCEPTION OF TELECOMMUNICATIONS WITHOUT TECHNICAL ASSISTANCE

Article 31 EIO DIR regulates the notification of a Member State where the subject of the interception is located, for which no technical assistance is needed. A lack of notification and/or a lack of approval could lead to concerns about the admissibility of the evidence.

Material scope of Article 31 EIO DIR: Differing views exist as to whether this provision also applies in the case of a covert listening device (e.g. 'bugging' of a car).



# E-EVIDENCE: A NEW SYSTEM FOR THE GATHERING OF ELECTRONIC EVIDENCE IN CRIMINAL PROCEEDINGS IN THE EU

## 01

Regulation (EU) 2023/1543 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (O.J. L 191, 28.7.2023, pp. 118-180)

## 02

Directive (EU) 2023/1544 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 (O.J. L 191, 28.7.2023, pp. 181-190).

**THE REGULATION APPLIES FROM  
18 AUGUST 2026.**

**THE DIRECTIVE MUST BE  
TRANPOSED INTO THE NATIONAL  
LAWS OF THE EU MEMBER STATES  
BY 18 FEBRUARY 2026**

# AIM OF THE REGULATION

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**NOTE:** there is no harmonised framework for cooperation with service providers, while certain third-country providers accept direct requests for data other than content data as permitted by their applicable national law.

- 01** Member States increasingly rely on voluntary direct cooperation channels with service providers where available, and they apply different national tools, conditions and procedures.
- 02** Establishing a faster and more effective alternative to current international cooperation and mutual legal assistance methods
- 03** Setting out the conditions under which an authority in a Member State can issue a European Production or Preservation Order in criminal proceedings, thereby directing a service provider operating in the Union but based or represented in another Member State to produce or preserve electronic evidence, irrespective of where the data is located

# AIM OF THE DIRECTIVE

To specify the rules for designating establishments and appointing legal representatives for certain service providers offering services within the Union, ensuring they can receive, comply with, and enforce orders and decisions issued by competent Member State authorities for collecting electronic evidence in criminal proceedings.



# THE EUROPEAN PRODUCTION AND PRESERVATION ORDERS (ART. 3 (1) & (2) OF THE REGULATION)

**European Production Order:** a decision which orders the production of electronic evidence, issued or validated by a judicial authority of a Member State and addressed to a designated establishment or to a legal representative of a service provider offering services in the Union, where that designated establishment or legal representative is located in another Member State bound by this Regulation; The Production Orders allow law enforcement authorities in one EU Member State to request electronic data from service providers (established or represented in another EU Member State) and hand them over

**European Preservation Order:** a decision which orders the preservation of electronic evidence for the purposes of a subsequent request for production, and which is issued or validated by a judicial authority of a Member State and addressed to a designated establishment or to a legal representative of a service provider offering services in the Union, where that designated establishment or legal representative is located in another Member State bound by this Regulation; Preservation Orders can be issued by law enforcement authorities to oblige service providers to preserve electronic data that can later be requested for production, so that the data are prevented from being deleted or overwritten

# RATIONE MATERIAE

**A.**

European Production Orders and European Preservation Orders may be issued only in the framework and for the purposes of criminal proceedings (not for prevention of crime), and for the execution of a custodial sentence or a detention order of at least four months, following criminal proceedings.

**B.**

They should only be issued for specific criminal proceedings concerning a specific criminal offence that has already taken place, after an individual evaluation of the necessity and proportionality of those orders in every single case, taking into account the rights of the suspect or the accused person.

**C.**

They may also be issued in proceedings relating to a criminal offence for which a legal person could be held liable or punished in the issuing State



# SCOPE OF THE REGULATION

**THE REGULATION APPLIES TO SERVICE PROVIDERS WHICH OFFER SERVICES IN THE UNION.**

## **ART. 3(3) OF THE REGULATION: SERVICE PROVIDER**

**ANY NATURAL OR LEGAL PERSON PROVIDING ONE OR MORE OF THE FOLLOWING CATEGORIES OF SERVICES EXCEPT FOR FINANCIAL SERVICES:**

Electronic communication services (which are the most relevant for gathering evidence in criminal proceedings), such as:

internet access services,

interpersonal communications services (e.g., messaging services, email services and internet telephony services)

Internet domain name and IP numbering services, such as IP address assignment, domain name registries and registrars, and related privacy and proxy services

Other information society services such as social networks, online marketplaces and other hosting service providers

# ART. 3(4) OF THE REGULATION

## OFFERING SERVICES IN THE UNION:

**THIS REGULATION SHOULD NOT ALLOW ANY ACCESS TO DATA OTHER THAN DATA RELATED TO THE SERVICES OFFERED TO THE USER IN THE UNION BY THOSE SERVICE PROVIDERS.**

- Enabling natural or legal persons in a Member State to use the aforementioned services.
- Having a substantial connection, based on specific factual criteria, to the Member State referred to in the first point.  

NOTE THAT: The mere accessibility of an online interface in the Union, such as for instance the accessibility of a website or an email address or other contact details of a service provider or an intermediary, taken in isolation, should be considered insufficient to determine that a service provider offers services in the Union within the meaning of this Regulation.
- Services offered exclusively outside the Union should not be included in the scope of this Regulation, even if the service provider is established in the Union.



# ELECTRONIC EVIDENCE

THE REGULATION APPLIES TO DATA STORED BY OR ON BEHALF OF A SERVICE PROVIDER, IN AN ELECTRONIC FORM. IT DOES NOT APPLY TO DATA ALLOWING LIVE MONITORING AND DATA THAT WILL BE CREATED IN THE FUTURE.

## EUROPEAN PRODUCTION AND PRESERVATION ORDERS CAN BE ISSUED FOR:

**Subscriber data:** Any data held by a service provider relating to the subscription to its services, pertaining to:

(a) the identity of a subscriber or customer, such as the provided name, date of birth, postal or geographic address, billing and payment data, telephone number, or email address

(b) the type of service and its duration, including technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer at the moment of initial registration or activation, and data related to the validation of the use of the service, excluding passwords or other authentication means used instead of a password that are provided by a user, or created at the request of a user

**Traffic data:** Data related to the provision of a service offered by a service provider which serve to provide context or additional information about such service and are generated or processed by an information system of the service provider, such as the source and destination of a message or another type of interaction, the location of the device, date, time, duration, size, route, format, the protocol used and the type of compression, and other electronic communications metadata and data, other than subscriber data, relating to the commencement and termination of a user access session to a service, such as the date and time of use, the log-in to and log-off from the service

# ELECTRONIC EVIDENCE

THE REGULATION APPLIES TO DATA STORED BY OR ON BEHALF OF A SERVICE PROVIDER, IN AN ELECTRONIC FORM. IT DOES NOT APPLY TO DATA ALLOWING LIVE MONITORING AND DATA THAT WILL BE CREATED IN THE FUTURE.

## EUROPEAN PRODUCTION AND PRESERVATION ORDERS CAN BE ISSUED FOR:

**Content data:** Any data in a digital format, such as text, voice, videos, images and sound, other than subscriber data or traffic data.

**Data requested for the sole purpose of identifying the user** (in the original COM proposal “**access data**”): This category is defined as “IP addresses and, where necessary, the relevant source ports and time stamp, namely the date and time, or technical equivalents of those identifiers and related information, where requested by law enforcement authorities or by judicial authorities for the sole purpose of identifying the user in a specific criminal investigation”.

**NOTE:** IP addresses, access numbers and related information **not requested for the sole purpose of identifying the user** in a specific criminal investigation, should be requested under the same regime as content data, as defined in the Regulation.

# ART. 4(1) OF THE REGULATION

There should always be a judicial authority involved

Traffic data & content data --> the issuing or validation of a European Production Order to obtain those data categories requires review by a judge

Fair trial: public prosecutors are to exercise their responsibilities objectively, taking their decision in relation to the issuing or validation of an order, solely on the basis of the factual elements

Validation by judicial authorities should be obtained before the order concerned is issued

Exceptions should only be made in validly established emergency cases & ONLY IF where the authority issuing the order concerned could issue an order in a similar domestic case under national law without prior validation.

## ISSUING AUTHORITY:

- **A judge, a court, or an investigating judge** competent in the criminal case can issue all kinds of orders for **all types of data** that can be requested as electronic evidence
- Other **designated investigating authorities** in criminal proceedings can also issue orders, but they must be **validated by the judicial authorities**
- **Public prosecutors** can issue European Production Orders to obtain **subscriber data** and “**data requested for the sole purpose of identifying the user**” as well as European Preservation Orders. For such orders, the public prosecutor is also a competent authority to validate orders from other investigating authorities (in addition to a judge, a court, or an investigating judge). If a public prosecutor wishes to obtain **traffic and content data**, his/her order must be **validated by a judge, a court, or an investigating judge.**
- The issuing of a European Production Order or of a European Preservation Order may also be requested by a **suspect** or an **accused person**, or by a **lawyer** on that person’s behalf within the framework of applicable defence rights in accordance with national criminal procedural law.

# ART. 7 OF THE REGULATION

Directive (EU) 2023/1544 ENSURES that the orders and decisions issued under the Regulation reach the right addressees: the private service providers.

Member States need to ensure that service providers offering services in the Union designate at least one addressee for the receipt of, compliance with, and enforcement of decisions and orders issued by the competent authorities (Art. 3 of the Directive)

Designated establishments or legal representatives of the service provider must be staffed with the necessary powers and resources to comply with the Orders (Art. 3(4) of the Directive)

**THE DIRECTIVE TARGETS THE SAME SERVICE PROVIDERS AS THOSE COVERED UNDER THE REGULATION!**

## THE ADDRESSEE:

EUROPEAN PRODUCTION ORDERS AND EUROPEAN PRESERVATION ORDERS SHALL BE ADDRESSED DIRECTLY TO A DESIGNATED ESTABLISHMENT OR TO A LEGAL REPRESENTATIVE OF THE SERVICE PROVIDER CONCERNED.

- **Establishment** means an entity that actually pursues an economic activity for an indefinite period through a stable infrastructure from where the business of providing services is carried out or the business is managed
- **Designated establishment** means an establishment with legal personality designated in writing by a service provider established in a Member State
- **Legal representative** means a natural or legal person appointed in writing by a service provider not established in a Member State

**NOTE:** In emergency cases it should be possible to address the EPOC or the EPOC-PR to any other establishment or legal representative of the service provider in the Union alongside or instead of pursuing enforcement of the initial order in accordance with this Regulation (Art. 7(2) of the Regulation)



# GROUNDS FOR NOT ISSUING THE ORDERS IN GENERAL

Where the issuing authority has grounds to believe that parallel criminal proceedings could be ongoing in another Member State, it should consult the authorities of that Member State.

In cases where data protected by professional privilege under the law of the issuing State are stored or otherwise processed by a service provider as part of an infrastructure provided to professionals covered by professional privilege ('privileged professional'), in their business capacity, it should only be possible to issue a European Production Order to obtain traffic data or to obtain content data where the privileged professional resides in the issuing State, where addressing the privileged professional might be detrimental to the investigation, or where the privileges were waived in accordance with the applicable law

The range and impact of immunities and privileges differ according to the applicable national law that should be taken into account at the time of issuing a European Production Order or a European Preservation Order. There is no common definition of what constitutes an immunity or privilege in Union law.

**THE PRECISE DEFINITION OF THOSE TERMS IS THEREFORE LEFT TO NATIONAL LAW**

# ART. 4 & 6 OF THE REGULATION

## CONDITIONS FOR ISSUING THE ORDERS

A EUROPEAN PRODUCTION AND PRESERVATION ORDER SHOULD ONLY BE ISSUED IF IT IS NECESSARY, PROPORTIONATE, ADEQUATE AND APPLICABLE TO THE CASE AT HAND.

### ● EUROPEAN PRODUCTION ORDER

To obtain **subscriber data** or **data requested for the sole purpose of identifying the user**:

may be issued for **all** criminal offences and for the execution of a custodial sentence or a detention order of at least four months following criminal proceedings, imposed by a decision that was not rendered in absentia, in cases where the person convicted absconded from justice

to obtain **traffic** or **content data**:

may be issued for criminal offences:

- **punishable in the issuing State by a custodial sentence of a maximum of at least three years**
- **OR a specific set of offences** connected with cyber-crime, fraud relating to non-cash means of payment, terrorism and sexual abuse of children if they are wholly or partly committed by means of an information system
- **or for the execution of a custodial sentence or a detention order of at least four months**, but only for criminal offences punishable in the issuing State by a custodial sentence of a maximum of at least three years, or – regardless of this threshold – for the specific list of offences

### ● EUROPEAN PRESERVATION ORDER

May be issued for all criminal offences, “if it could have been issued under the same conditions in a similar domestic case”, and for the execution of a custodial sentence or a detention order of at least four months following criminal proceedings, imposed by a decision that was not rendered in absentia, in cases where the person convicted absconded from justice.

# ART. 10 & 11 OF THE REGULATION

## EXECUTION OF THE ORDERS:

**A EUROPEAN PRODUCTION ORDER OR A EUROPEAN PRESERVATION ORDER SHALL BE TRANSMITTED TO THE ADDRESSEE AS THROUGH AN EUROPEAN PRODUCTION ORDER CERTIFICATE (EPOC) OR THROUGH EUROPEAN PRESERVATION ORDER CERTIFICATE (EPOC-PR).**

- Where a European Production Order is issued to obtain traffic or content data, the issuing authority shall notify the enforcing authority by transmitting the EPOC to that authority at the same time as it transmits the EPOC to the addressee but only if the crime has been committed, is being committed or is likely to be committed outside the issuing State's jurisdiction and the person whose data are requested resides outside the issuing State.
- Where a European Production Order is issued to obtain subscriber data or data requested for the sole purpose of identifying the user the issuing authority does not notify the enforcing authority.
- Where a European Preservation Order is issued, the issuing authority does not notify the enforcing authority.
- Where an EPOC has been issued and a notification to the enforcing authority is not required the addressee should ensure that the requested data are transmitted directly to the issuing authority or the law enforcement authorities at the latest within 10 days following receipt of the EPOC
- Where a notification to the enforcing authority is required, upon receipt of the EPOC, the service provider should act expeditiously to preserve the data
- The notification to the enforcing authority shall have a suspensive effect on the obligations of the addressee except in emergency cases
- In emergency cases, the service provider has 8 hours for transmitting the requested electronic data following receipt of the EPOC.
- If preservation is requested, the service provider is obliged to preserve the data for 60 days. The issuing authority can extend this period by an additional 30-day period.



# ART. 12 OF THE REGULATION

## GROUND FOR REFUSAL OF EUROPEAN PRODUCTION ORDER FOR THE ENFORCING AUTHORITY

THE ENFORCING AUTHORITY CAN RAISE THE FOLLOWING GROUNDS FOR REFUSAL IF IT WAS NOTIFIED:

- Where the data requested are protected by immunities and privileges granted under the law of the enforcing State or where the data requested are covered by rules on the determination or limitation of criminal liability that relate to freedom of the press or freedom of expression in other media
- Where there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the European Production Order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 TEU and in the Charter
- Where the execution of such order would be contrary to the principle of ne bis in idem
- Where double criminality requirement is not fulfilled unless the European Production Order concerns a listed offence with a specific threshold

### REFUSAL MUST BE RAISED WITHIN SPECIFIC DEADLINES:

- 10 days following the receipt of the notification in regular cases
- 96 hours following such receipt in emergency cases

The addressee and the issuing authority SHALL BE INFORMED. The addressee shall stop the execution of the European Production Order and not transfer the data, and the issuing authority shall withdraw the order.

### BEFORE DECIDING TO RAISE A GROUND FOR REFUSAL

The enforcing authority must contact the issuing authority and negotiate

The issuing authority may decide to adapt or to withdraw the European Production Order

Where the enforcing authority decides to raise grounds for refusal, it may indicate whether it objects to the transfer of all data requested in the European Production Order or whether the data may only be partly transferred or used under conditions specified by the enforcing authority.

# FOUNDATIONS FOR THE ADDRESSEE NOT TO COMPLY WITH THE ORDERS

## THE ADDRESSEE CAN RAISE LEGAL FOUNDATIONS NOT TO COMPLY WITH THE OBLIGATION TO PRODUCE OR PRESERVE THE REQUESTED DATA:

- Where it considers, based solely on the information contained in the EPOC or in the EPOC-PR that the execution of the ORDER could interfere with immunities or privileges, or with rules on the determination or limitation of criminal liability that relate to freedom of the press or freedom of expression in other media, under the law of the enforcing State, the addressee should inform the issuing authority and the enforcing authority (Art. 10(5))
- In the event of a de facto impossibility due to circumstances not attributable to the addressee (Art. 10(7))
- Where there is a conflict with an obligation under the applicable law of a third country (Art. 17).

**The service provider can seek clarification from the issuing authority**

**The issuing authority shall inform the issuing authority, as well as, where a notification to the enforcing authority took place, the enforcing authority, and provide the justification for not executing the EPOC or the EPOC-PR in a timely manner. The communication procedure should thus allow for the correction or reconsideration of the orders**

**Where the addressee does not comply with an EPOC within the deadline or with an EPOC-PR, without providing reasons accepted by the issuing authority, and, if applicable, where the enforcing authority has not invoked any of the grounds for refusal as provided for in this Regulation, it should be possible for the issuing authority to request the enforcing authority to enforce the European Production Order or the European Preservation Order**

# RIGHTS OF THE TARGETED PERSON

## ART. 13 OF THE REGULATION

The targeted person has the right to be informed of the production of data by the issuing authority on the basis of a European Production Order, unless a reason for delaying or restricting the information applies on the part of the issuing authority

## ART. 18 OF THE REGULATION

Any person whose data were requested via a European Production Order should have the right to effective remedies against that order. The right to effective remedies should be exercised before a court in the issuing State in accordance with its national law and should include the possibility of challenging the legality of the measure, including its necessity and proportionality, without prejudice to the guarantees of fundamental rights in the enforcing State, or other additional remedies in accordance with national law

According to the Regulation, Member States must lay down pecuniary penalties if service providers infringe the rules on the execution of European Production and Preservation Orders. It must be ensured that pecuniary penalties of up to 2% of the service provider's total worldwide annual turnover can be imposed.

When assessing in the individual case the appropriate pecuniary penalty, the competent authorities should take into account all relevant circumstances, such as the nature, gravity and duration of the breach, whether it was committed intentionally or through negligence, whether the service provider has been held responsible for similar previous breaches and the financial strength of the service provider held liable. In exceptional circumstances, that assessment could lead the enforcing authority to decide to abstain from imposing any pecuniary penalties.

# **PENALTIES FOR THE SERVICE PROVIDERS**

## **ART. 15 OF THE REGULATION**



# eEvidence Digital Exchange System (eEDES)

**9.6.2016, THE JUSTICE  
HOME AFFAIRS COUNCIL  
ADOPTS CONCLUSIONS  
ON IMPROVING CRIMINAL  
JUSTICE IN CYBERSPACE:**

**TECHNICAL POINT OF VIEW:  
2 ESSENTIAL COMPONENTS**

The Council requested from the Commission the creation of “a secure online portal” for the exchange of requests and responses in the context of judicial cooperation including electronic evidence. The Commission services started a consultation process with the Member States consisting in the creation of an Expert Group that discussed and agreed on the specifications of the system to be built. From the consultation with the Member States, a broad consensus emerged that the exchange platform should be based on e-CODEX. A majority of Member States requested the Commission to provide the online portal, as a “Reference Implementation”, which they could connect nationally to the e-CODEX network, in a “decentralised” set up. The European Commission started then the project of specifying and implementing the e-Evidence Digital Exchange System and its Reference Implementation Portal. The system was tested cross-border and went live in 2022.

- A secure communication channel for the evidence exchange. This is provided by e-CODEX, e-CODEX offers a European digital infrastructure for secure cross- border communication in the field of justice
- A communication tool. This is provided by the e-Evidence Digital Exchange System, developed and led by the European Commission. It is a platform capable of managing any EIO/MLA procedures/instruments, from the e-Forms to the whole business logic, relying on the e-CODEX structure.

**THANK YOU!**

**DR. PAVLOS TOPALNAKOS, LAWYER,  
PROFESSOR OF PROCEDURAL CRIMINAL  
LAW, HELLENIC POLICE OFFICERS SCHOOL**



## Procedural rights in the EU

## Training for defence lawyers

## Legal Aid

## Directive (EU) 2016/1919

Lisbon, 8 July 2024

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# 2009 Stockholm Roadmap

## Measure C: Legal Advice and Legal Aid

'The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; **the right to legal aid should ensure effective access to the aforementioned right to legal advice.**'




# EU Directive on Legal Aid

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L1919>

- 6<sup>th</sup> instrument under Art. 82(2)(b) TFEU
- Minimum level – ECHR
- Does not affect higher level of protection under national, international, ECHR of Charter (see also Article 11)
  
- Transposition deadline: 25.05.2019
- Does not apply in Ireland and Denmark



# Main Problems in respect of legal aid?

What are, in your opinion, the main  
challenges in the field of legal aid?

CRIB  
CRIMINAL BAR ASSOCIATION

*of European defence*

# Main Problems in respect of legal aid?

- Availability
  - When
  - What cases
  - What does it cover
  - Inadequacy of means test
- Quality
  - Independence
  - Training
  - Specialization requirements
  - Linguistic requirements
  - Cross-border cases
  - Funding



# Main Problems in respect of legal aid?

- Availability
  - When (police custody, in practice rare that lawyers attend in many countries; search and seizure...)
  - What cases (all criminal cases)
  - What does it cover (experts, preparation, expenses, interpreters)
  - Inadequacy of means test (does not cover all those who need)
- Quality
  - Independence (lawyer selection)
  - Training (adequate and ongoing training)
  - Specialization requirements (serious and complex cases, cross-border cases)
  - Linguistic requirements (no choice / selection of counsel with a common language)
  - Cross-border cases (no extra / additional arrangements or scheme)
  - Funding (totally insufficient and inadequate to actual workload, late payments)
  - Free choice of counsel (not possible to choose counsel that the person deems more competent or trusted)





# EU Directive on Legal Aid

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- Subject Matter, **Article 1**
- Scope, **Article 2**
- Legal aid in criminal proceedings, **Article 4**
- Legal aid in European arrest warrant proceedings, **Article 5**
- Decisions regarding the granting of legal aid, competent authority, **Article 6**
- Quality and training, **Article 7**



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# Subject Matter, **Article 1**

Legal aid for

- Suspects and accused in criminal proceedings
- Persons subject to a European Arrest Warrant (EAW)



Complements Directives 2013/48/EU (A2L) and 2016/800 (juveniles)

Legal Aid (art. 3) “**funding** by a Member State of the **assistance of a lawyer**, enabling the exercise of the right of access to a lawyer”



# Scope, Article 2 - Criminal proceedings and EAW

**Suspects / accused persons** in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU and who are:

- (a) **deprived of liberty;**
- (b) **required to be assisted by a lawyer in accordance with Union or national law;**  
or
- (c) **required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following:**
  - (i) identity parades;
  - (ii) confrontations;
  - (iii) reconstructions of the scene of a crime.



## Scope, Article 2 - Criminal proceedings and EAW

Persons who were not initially suspects or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.



Derogation for minor offences but in any event, this Directive applies when a decision on detention is taken, and during detention, at any stage of the proceedings until the conclusion of the proceedings.

EAW: “upon arrest in the executing Member State, to requested persons who have a right of access to a lawyer pursuant to Directive 2013/48/EU” (note: the right is also triggered for the issuing state)

# Legal aid in criminal proceedings, Article 4

- MS “shall ensure that suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require.”
- Means or merits test or combination of both, Article 4(2)
- Means test, Article 4(3):
- “all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State”



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# Legal aid in **criminal proceedings, Article 4**

- **Merits test**, Articles 4(4) and 9:

“seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake, in order to determine whether the interests of justice require legal aid to be granted”

Always met when:

- ✓ being brought before a competent court or judge in order to decide on detention
- ✓ during detention

Legal aid to be granted **without undue delay**, Article 4(5) (Recital 19):

“at the latest **before questioning** by the police, by another law enforcement authority or by a judicial authority, or **before the investigative or evidence-gathering acts** referred to in point (c) of Article 2(1) are carried out.”



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# • Legal aid in **European arrest warrant proceedings, Article 5**

- Legal aid **upon arrest** in the **executing Member State** and until surrender, or until refusal becoming final, Article 5(1)
- Legal aid the **issuing Member State** (EAW for purpose of conducting criminal prosecution), Article 5(2)

“the issuing Member State shall ensure that requested persons who are the subject of European arrest warrant proceedings for the purpose of conducting a criminal prosecution and who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid in the issuing Member State for the purpose of such proceedings in the executing Member State, in so far as legal aid is necessary to ensure effective access to justice

- **Means testing only Article 5(3)**



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- Decisions regarding the granting of legal aid, competent authority, **Article 6**

- Decisions on whether or not to grant legal aid and on the assignment of lawyers shall be made, **without undue delay**, by a competent authority. Member States shall take appropriate measures to ensure that the competent authority takes its decisions **diligently, respecting the rights of the defence.**
- Member States shall take necessary measures to ensure that suspects, accused persons and requested persons are **informed in writing if their request for legal aid is refused in full or in part.**



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## • Quality, Article 7

Article 7(1) of the Directive requires Member States to take necessary measures, including with regard to funding, to ensure that:

- (a) there is an **effective legal aid system** that is of an **adequate quality**; and
- (b) legal aid services are of a **quality adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.**

Art. 7(3) With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.





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- **Quality, Article 7**

Art. 7(3) With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, **Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.**

Art. 7(34) Member States shall take the necessary measures to ensure that suspects, accused persons and requested persons **have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, where the specific circumstances so justify.**



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- Remedies, **Article 8**

## Remedies

Member States shall ensure that suspects, accused persons and requested persons have **an effective remedy under national law in the event of a breach of their rights under this Directive.**



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- Vulnerable persons, **Article 9**

## Vulnerable persons

Member States shall ensure that the particular needs of vulnerable suspects, accused persons and requested persons are taken into account in the implementation of this Directive.



# EU Directive on Legal Aid – Implementation report



01.02.2023

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



<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0044>

# EU Directive on Legal Aid – Implementation report

- 22 MS: national provisions insufficient to fully comply with key provisions
- Scope:
  - suspects under the Directive not recognized as such in national law; legal aid only available once formal charges are issued; not covering all forms of deprivation of liberty during which legal aid should be granted
  - EAW: no provisions in the IssMS
- Promptness
  - Criminal proceedings (time for decision during custody)
  - EAW: failure to apply “upon arrest” in the ExecMS;
- Test:
  - EAW: merits test required in some states in violation of the Directive
- Quality:
  - No measures; underfunding; inadequacy of selection systems; deficiencies in accreditation or selection systems; replacement of lawyer

# Problems

- EAW:
- Systems lacking specialization
- Systems lacking language requirements
- Systems lacking training requirements
- Systems lacking free choice of counsel
- Insufficient funding of legal aid in EAW
- Means threshold too high (lack of consideration of specificities and added costs.)





# Problems

## Criminal proceedings:

- Systems lacking training requirements
- Systems lacking specialization
- Systems lacking language requirements for cross-border or foreign connection
- Systems lacking free choice of counsel
- Delayed provision, lack of information on the right to legal aid
- Insufficient funding of legal aid in complex cases and in cross-border cases
- Insufficient coverage (defensive investigations, expert witnesses, cross-border actions etc.)
- Means threshold too high (lack of consideration of price of lawyers, cost of case, cross-border nature, complexity, etc.)



## Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings: EFFECTIVENESS AND QUALITY OF LEGAL AID

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2013.378.01.0011.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2013.378.01.0011.01.ENG)

### Quality of legal assistance provided under legal aid schemes

17. Legal assistance provided under legal aid schemes should be of **high quality** in order to **ensure the fairness of proceedings**. To this end, **systems to ensure the quality** of legal aid lawyers should be in place in all Member States.

18. Mechanisms should be in place that allow the competent authorities to replace legal aid lawyers or require them to fulfil their obligations, if those lawyers fail to provide adequate legal assistance.

### Accreditation

19. A **system of accreditation for legal aid lawyers should be put in place** and maintained in each Member State.

20. Member States are invited to **establish criteria for the accreditation** of legal aid lawyers, taking into account best practices.

## Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings: EFFECTIVENESS AND QUALITY OF LEGAL AID

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2013.378.01.0011.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2013.378.01.0011.01.ENG)

### Training [...]

22. In order to ensure high quality legal advice and assistance, **training and the development of training programmes for lawyers that provide legal aid services should be encouraged.**

23. The **accreditation** of legal aid lawyers **should as far as possible be linked with an obligation to undergo continuous professional training.**

### Appointment of legal aid lawyers

24. The **preference and wishes of the suspects or accused persons and requested persons should as far as possible be taken into account** by the national legal aid systems in the choice of the legal aid lawyer.

25. The legal aid system should endeavour to ensure **continuity** in legal representation by the same lawyer, if the suspect or accused or requested person so wishes.

26. Transparent and accountable mechanisms should be put in place to ensure that suspects or accused persons and requested persons **can make an informed choice on legal assistance under the legal aid scheme, free from undue influence.**

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# Are you a criminal practitioner? Join the ECBA!

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[WWW.ECBA.ORG](http://WWW.ECBA.ORG)



**ECBA**  
EUROPEAN CRIMINAL BAR ASSOCIATION  
*An association of European defence lawyers*

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# Thank you for your attention!

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