Instruments of Mutual Recognition: The EAW and EIO in practice

Training for Defence Lawyers

Budapest, 25-26 September 2025

FACE-TO-FACE

EXCELLENCE IN EUROPEAN LAW

Speakers

Silvia Allegrezza, Associate Professor in Criminal Law, Department of Law, Faculty of Law, Economics and Finance, University of Luxembourg, Luxembourg

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

Katarzyna Dąbrowska, Partner, Pietrzak Sidor & Partners, Warsaw

Sándor Ésik, Defence Lawyer, Budapest

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

Gábor A. Szücs, Defence Lawyer, Budapest

Key topics

- The range of EU mutual recognition instruments and how they interact
- Practitioners' insights into the use of the European Arrest Warrant
- Gathering evidence thorough the European Investigation Order and its implications for the defence
- CJEU case law
- Double defence: Representing a client in European Arrest Warrant and other cross-border proceedings
- Equality of arms through a strong network of defence lawyers in Europe

Language
English

Event number
325DT18

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

BUDAPESTI ÜGYVÉDI KAMARA

Co-funded by the European Union

european.law

Instruments of Mutual Recognition: The EAW and EIO in practice

Thursday, 25 September 2025

08:45 Arrival and registration of participants

09:00 **Welcome and introduction to the programme**
Representative of Budapest Bar Association & Cornelia Riehle (ERA)

PART I: Understanding mutual recognition

Chair: Cornelia Riehle

09:05 **The range of EU mutual recognition instruments and how they interact**
- Instruments of mutual recognition
- EU Agencies and Networks supporting the judiciary
- Other law enforcement measures

Silvia Allegrezza

09:45 **Mutual recognition from the perspective of the defence**
- The roadmap for strengthening procedural rights
- Equality of arms through a strong network of defence lawyers in Europe
- Support offered by the CCBE, ECBA, and other networks
- Available websites, tools, and handbooks

Holger Matt

10:30 Discussion

10:45 Coffee break

11:15 **A case example: legal remedies and procedural safeguards in the EU**
- The jurisdiction and role of the Court of Justice of the European Union (CJEU) in dealing with criminal matters
- The preliminary reference procedure
- Violation of directives

Gábor A. Szücs

12:15 Discussion

12:30 Lunch

PART II: The EAW

Chair: Holger Matt

13:45 **The EAW and how it functions as an instrument of mutual recognition**
- Scope and content of the Framework Decision
- General principles and distinctive features
- Issuing and executing EAWs
- Double criminality
- Grounds for refusal to execute
- CJEU case law affecting its use

Silvia Allegrezza

14:30 **A lawyer's role in EAW proceedings**
- Appointment of the lawyer
- The role of the lawyer in the issuing state
- Deficits in EAW proceedings: access to case files
- Defence and procedural rights

Katarzyna Dąbrowska

15:15 Coffee break

Objective

This seminar will focus on the main EU mutual recognition instruments in criminal matters from the perspective of the defence. The seminar will show how best to represent a client in European Arrest Warrant and other cross-border proceedings. It will explain the legal instrument and consider the case law of the Court of Justice of the European Union (CJEU) that has influenced its operation, as well as the issues of mutual trust and recognition of judicial decisions in the context of the use of the EAW. Insights will be shared from practitioners familiar with the instrument who have been involved in EAW proceedings. The gathering of evidence through the European Investigation Order (EIO) and its implications for the defence will also be explained. Practical cases on the EIO will illustrate the active involvement of defence counsel in the EIO process. Participants will have the opportunity to meet and network with colleagues from across the EU.

About the Project

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

Who should attend?

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

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

Venue

Budapest Bar Association
Szalay utca 7.
1055 Budapest

15:45 **Workshop: how is a defence lawyer involved in an EAW case?**
In two groups, participants will work on two different cases. The cases will illustrate the cross-border cooperation between two defence lawyers retained or appointed in an EAW case.
Katarzyna Dąbrowska

16:45 End of the first day

19:30 Dinner offered by the organisers

Friday, 26 September 2025

PART III: The EIO

Chair: Katarzyna Dąbrowska

09:00 **Practical issues concerning the European Investigation Order**
Scope – issuing and executing – filling in the form – CJEU case law and the EncroChat case
Silvia Allegrezza

09:45 **Gathering of evidence thorough the European Investigation Order (EIO): implications for the defence**
María Barbancho

10:30 Coffee break

11:00 **Workshop: practical cases on the EIO**
In two groups, participants will work on practical cases illustrating the active involvement of defence lawyers in the EIO process.
María Barbancho

12:00 **The new e-evidence dossier of the EU: Regulation (EU) 2023/1543, the European Production and Preservation Orders, and the involvement of service providers**
Sándor Ésik

12:30 Closing
Cornelia Riehle

12:45 End of the seminar

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

Times indicated refer to the local time in Budapest

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 **10 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.

Your contacts

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Save the date

Summer Course on European Criminal Justice
Online, 23-27 June 2025

Apply online for "Instruments of Mutual Recognition: The EAW and EIO in practice":
www.era.int/?133721&en

Co-funded by the European Union.

Application

Instruments of Mutual Recognition: The EAW and EIO in practice

Budapest, 25-26 September 2025 / Event number: 325DT18

Terms and conditions of participation

Selection

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

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

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

2. Applications should be submitted before **6 July 2025**.
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 Hungary: 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 Hungary, the contribution for travel is fixed at €28 (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 will receive a fixed contribution of €105 per night for up to two nights' accommodation. National participants travelling more than 50km one-way will receive a fixed contribution of €105 per night for one night's 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 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.

Hotel recommendations

15. ERA neither provides nor endorses local accommodation recommendations. Kindly consult available online booking platforms.

*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 "Instruments of Mutual Recognition: The EAW and EIO in practice": www.era.int/?133721&en

Venue

Budapest
Hungary

Language

English

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Instruments of Mutual Recognition: The EAW and EIO in practice

Training for Defence Lawyers

Budapest, 25 – 26 September 2025 (325DT18)

Background documentation

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Co-funded by the European Union

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A) The institutional framework for criminal justice in the EU

A1) Main treaties and conventions

A1-01	Protocol (No 36) on Transitional Provisions
A1-02	Consolidated version of the Treaty on the functioning of the European Union, art. 82-86 (OJ C 326/47; 26.10.2012)
A1-03	Consolidated Version of the Treaty on the European Union, art. 9-20 (OJ C326/13;, 26.10.2012)
A1-04	European Convention on the Transfer of Proceedings in Criminal Matters, Strasbourg 15.5.1972
A1-05	Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols (ETS No. 005; 3.5.1953)

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

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

A3) CJEU – relevant cases

A3-01	Case C-530/23 – Judgment of the Court 8 May 2025 - Criminal proceedings against Prokurator Rejonowy we Włocławku
A3-02	Case C-168/21 – Opinion of Advocate General Rantos delivered on 31 March 2022 – Request for a preliminary ruling from the Cour de cassation
A3-03	Case C-632/22 – Judgment of the Court 11 July 2024 – Reference for a preliminary ruling – Regulation (EC) No. 1393/2007
A3-04	Case C-168/21 – Judgment of the Court of July 2022 – Request for a preliminary ruling from the Court de cassation
A3-05	Case C-852/19 – Judgement of the Court of 11 November 2021 – Criminal proceedings against Ivan Gavanozov
A3-06	Case C-665/20 PPU – Judgement of the Court of 29 April 2021 – Request for a preliminary ruling from the Rechtbank Amsterdam

A3-07	Case-354/20 – Judgement of the Court of 17 December 2020 – Request from the Rechtbank Amsterdam
A3-08	Case-584/19 – Judgment of the Court 8 December 2020 – Criminal proceedings against A and Others
A3-09	Case-314/18 – Judgement of 11 March 2020 – Request for a preliminary ruling from the Rechtbank Amsterdam
A3-10	Case-508/18 and C-82/19 27 May 2019 – Judgment of the Court – Police and judicial cooperation in criminal matters – European arrest warrant
A3-11	Case C-452/16 – Judgment of the Court of 10 November 2016. Openbaar Ministerie v Krzysztof Marek Amsterdam
A3-12	Case C-453/16 – Judgment of the Court of 10 November 2016 - Execution of a European arrest warrant issued against Halil Ibrahim Özçelik
A3-13	Case C-105/03 – Criminal proceedings against Maria Pupino. Reference for a preliminary ruling: Tribunale di Firenze - Italy
A3-14	Case 14/83 – Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen

B) Mutual legal assistance

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

B-07	Third Additional Protocol to the European Convention on Extradition (Strasbourg, 10.XI.2010)
B-08	Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978)
B-09	Additional Protocol to the European Convention on Extradition (Strasbourg, 15.X.1975)
B-10	European Convention on Extradition (Strasbourg, 13.XII.1957)

C) Mutual recognition

C1) European Arrest Warrant

C1-01	European Arrest Warrant proceedings - Room for improvement to guarantee rights in practice, 26 March 2024
C1-02	European Parliament resolution of 20 January 2021 on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI)), (OJ C 456, 10.11.2021)
C1-03	Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81/24; 27.3.2009)
C1-04	Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190/1; 18.7.2002, P. 1)
C1-05	Case law by the Court of Justice of the European Union on the European Arrest Warrant – Overview, Eurojust, October 2023
C1-06	Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings, 27 September 2019

C2) Evidence and e-evidence

C2-01	Regulation (EU) 2025/13 of the European Parliament and of the Council of 19 December 2024 on the Collection and transfer of advance passenger information and for the prevention, detection investigation
C2-02	Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice

	in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L, 2023/2844, 27.12.2023)
C2-03	Council Decision (EU) 2023/436 of 14 February 2023 authorising Member States to ratify, in the interest of the European Union, the Second Additional Protocol to the Convention on Cybercrime on enhanced cooperation and disclosure of electronic evidence (ST/6438/2022/INIT, OJ L 63, 28.2.2023)
C2-04	SIRIUS 2023 report: Navigating the new era of obtaining e-evidence
C2-05	Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings, (OJ L 191, 28.7.2023)
C2-06	Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings, (OJ L 191, 28.7.2023)
C2-07	Joint Note of Eurojust and the European Judicial Network on the Practical Application of the European Investigation Order, June 2019
C2-08	EURCRIM, "The European Commission's Proposal on Cross Border Access to e-Evidence – Overview and Critical Remarks" by Stanislaw Tosza, Issue 4/2018, pp. 212-219
C2-09	Recommendation for a Council Decision authorising the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, COM(2019) 70 final, Brussels, 05 February 2019
C2-10	Annex to the Recommendation for a Council Decision authorising the opening of negotiations in view of an agreement between the European Union and the United States of America on cross-border access to electronic evidence for judicial cooperation in criminal matters, COM(2019) 70 final, Brussels, 05 February 2019
C2-11	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (OJ L 119, 4.5.2016, p. 1–88)
C2-12	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130/1; 1.5.2014)
C2-13	Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L, 350/72, 30.12.2008)

D) Conflicts of jurisdiction – Transfer of Proceedings

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

E) Procedural guarantees in the EU

E-01	Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297/1, 4.11.2016)
E-02	Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132 1; 21.5.2016)
E-03	Directive 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (11.3.2016; OJ L 65/1)

E-04	Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294/1; 6.11.2013)
E-05	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (1.6.2012; OJ L 142/1)
E-06	Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280/1; 26.10.2010)

Instruments of Mutual Recognition: The EAW and EIO in practice
ERA Training for Defence Lawyers
Budapest, 25-26 September 2025

The range of EU mutual recognition instruments and how they interact

Prof Silvia Allegrezza

Co-funded by
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Outline

- Before mutual recognition
- Cassis de Dijon
- From Tampere to Lisbon via New York
- Mutual recognition in the AFSJ: a list
- Terminology
- A methodology, a strategy, a principle
- Limits to Mutual recognition
- the two-steps test
- the main actors of judicial cooperation
- Europol
- Eurojust

Historical and legal bakground – Before Mutual Recognition

- **1957** ⟶ **CoE** Convention on Extradition
- **1959** ⟶ CoE Convention on Mutual Legal Assistance
- **1975** ⟶ Additional Protocol
- **1978** ⟶ Second additional Protocol
- **1989** ⟶ Agreement on simplification and modernisation

of methods of transimitting extradition requests

1957 Convention

Art. 1. **Obligation to extradite**

- *The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.*

Extraditable offences (double criminality)

- offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.
  - Conviction or detention order passed: at least of 4 months

- Art. 1. **Obligation to extradite**
  - Exception 1: sensitive offences
    - political offences (but no genocide or war crimes) or discriminatory offences, millitary offences, fiscal offences, crime committed in own territory, capital punishment, lapse of time, non bis in idem
  - Exception 2: nationals – *aut dedere aut judicare*
    - Art. 6 s. 2: *If the requested Party does not extradite its national, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.*
- Request in writing and to be communicated "through the diplomatic channel"
- Obligation to extradite also tempered by procedure + Reasons shall be given for any complete or partial rejection
  - 2 stages: (i) **Judicial** control over general legal conditions + **Political** assessment (Minister)

Why the States may need to cooperate?

Extradition: physical surrender of the requested person who can be a suspect or a convict.

Mutual legal assistance: forms of assistance that are directed to produce evidence at trial in the requesting state.

Victims protection in cross-border cases

Transfer of criminal proceedings: transmit of criminal proceedings to the state deemed to be in the best position to try the case.

Transfer of sentenced persons: trial in one state (usually *locus delicti*) whereas enforcement of sentence in the state where the sentenced person lives.

International validity of foreign criminal judgments: taking into consideration by a country's judicial authorities of judgments handed down previously by the courts or tribunals of another country, in order to produce certain effects provided for under their national criminal law, such as to establish recidivism

Ne bis in idem: prohibition to prosecute or try twice a same person for the same fact.

MLA instruments:

- are slow and largely inefficient;
- do not impose any standard forms to be used when issuing a request for obtaining evidence located in another Member State;
- do not provide for any deadlines for executing the request.

Historical and legal bakground – Before the EAW (II)

The **European Union**: the European Political Cooperation (EPC),

- **1987** ⟶ Agreement on the application among the Member States of the EC of the Council of Europe Convention on the transfer of sentenced persons
- **1987** ⟶ Agreement among the Member States of the EC on the application of the ne bis in idem principle,
- **1989** ⟶ Agreement between the Member States of the EC on the simplification and modernisation of the methods of transmitting extradition requests (also known as the Telefax Agreement),
- **1990** ⟶ the Agreement between the Member States of the EC on the transfer of proceedings in criminal Matters
- **1990** ⟶ Schengen Treaty
- **1991** ⟶ Convention of between the Member States of the EC, with regard to the enforcement of foreign criminal sentences
- **1995** ⟶ Simplified extradition procedure between Member States
- **1996** ⟶ Convention on extradition between Member States
- **1999** ⟶ European Council (**Tampere conclusions**)

- *Koen Lenaerts, CJEU President*

- *”The principle of mutual recognition in the Area of Freedom, Security and Justice (the ‘AFSJ’) illustrates the fact that EU law is no longer confined to economic matters relating to the establishment and functioning of the internal market. EU law has evolved with the adoption of successive Treaty reforms so that it now impacts upon rules which had traditionally been reserved to the nation-State”.*

Introduction: a matrix

WHY	HOW
Cross-border criminality (outside the Union)	**No integration** Traditional cooperation (Mutual legal assistance)
Cross-border criminality (inside the Union) Single market-4 freedoms An area of Freedom, Security and Justice (AFSJ)	H**orizontal cooperation** schemes: - Mutual Recognition - EU actors - EUROPOL - EUROJUST - Liaison magistrates - European judicial network
Digitalization	**Partial Harmonisation** of criminal procedure
Protecting the EU core interest (the EU budget)	**Vertical integration** = EPPO

Mutual recognition

- The Cassis de Dijon Principle in the EU belongs to the cornerstone of the EU internal market and refers to a decision of the European Court of Justice (ECJ) of 1979. At that time the German Federal Monopoly Administration for Spirits had prohibited the importation of a French red currant liqueur (cassis from Dijon), because it did not meet the German regulations in regard to the alcohol content. A lawsuit was brought, which the importer finally won.
- The ECJ stated that the limitation of the free movement of goods could only be permitted in exceptional cases, for example in order to protect the health of the public, to protect the consumers or if a general public interest existed.
- **The Cassis de Dijon Principle consequently stipulates that the member States mutually recognize each of their regulations, as long as no generally binding EU regulations exist.**

- CJEU, Cassis de Dijon, *"There is therefore no valid reason why, provided that (the goods) have been legally produced and marketed in one of the member States, the alcoholic beverages should not be introduced into any other Member State"*

- Food safety introduced many exceptions to MR

- The application by analogy of that principle was a **UK initiative.**

- In 1998, the UK Presidency of the EU was successful in convincing the European Council to have recourse to that principle as a means of enhancing the ability of national legal systems to work closely together

- **Presidency Conclusions, Cardiff, 1999**: the European Council stated that the Council should 'identify – between Member States – the scope for greater mutual recognition of decisions of each other's courts'.4 In essence, that principle would seek to facilitate 'the recognition by each Member State of decisions of courts from other Member States with a minimum of procedure and formality'.
- MR as the right avenue to overcome the opposition of some Member States to the harmonisation of substantive aspects of their criminal laws
  - The principle would strike the right balance between 'unity and diversity'.
  - mutual recognition leaves the substantive criminal laws of the Member States largely untouched
  - Change everything while nothing changes…

- A year later, in its **1999 Tampere Conclusions**, the European Council 'endors[ed] the principle of mutual recognition which […] should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union

- In the 1999 Tampere Conclusions, the European Council emphasised mutual recognition as the foundation for judicial cooperation in civil and criminal matters within the EU.

- **VI. Mutual recognition of judicial decisions**
- 33. Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.
- 35. With respect to **criminal matters**, the European Council urges Member States to speedily ratify the 1995 and 1996 EU Conventions on extradition. It considers that the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons, in compliance with Article 6 TEU. Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial. The European Council invites the Commission to make proposals on this matter in the light of the Schengen Implementing Agreement.
- 36. The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State's authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.

Historical and legal bakground – Before the EAW (IV)

- The development of mutual recognition and…

- in 2009, the Lisbon Treaty enshrined the principle of mutual recognition in criminal matters into EU primary law through Title V of Part III of the TFEU, encompassing Articles 67, 70, 81, and 82 TFEU.

- As the law of the EU now stands, it is safe to say that the principle of mutual recognition is a constitutional principle that underpins the AFSJ

MR between the Internal Market and the AFSJ

From a theoretical standpoint, the successful application of the principle of mutual recognition to the internal market requires a fair balance between 'individual freedom' and 'public interests'.

This means, in essence, that neither the fundamental freedoms that protect economic operators nor legitimate objectives of public interest are absolute.

in the AFSJ, neither the free movement of judicial decisions nor the fundamental rights of the persons concerned by those decisions are absolute.

In the EU legal order, individual freedom and public interest are both subject to limitations.

A special MR for the ASFJ

- Möstl: *"Whilst in the context of the internal market, the principle of mutual recognition supports individual freedom, in the AFSJ it is the other way around: that principle limits individual freedom".*

- Lenaerts: "*That is why the principle of mutual recognition in the AFSJ is* ***subject to stricter conditions and limits****.*
- *Notably,* ***limitations on fundamental rights*** *must, in accordance with Article 52(1) of the Charter of Fundamental Rights of the European Union (the 'Charter'),* ***be 'provided for by law'****.*
- *Whilst the principle of mutual recognition in the context of the internal market is* ***enforced by national courts*** *through the direct effect of the relevant Treaty provisions, the operation of the same principle in the AFSJ* ***rests on legislative acts*** *adopted at EU level.*
- *Legislative inaction at that level cannot be replaced by interest-driven litigation"*

- 1. FD 2002/584 (**EAW**)
- 2. FD 2003/577 (**Freezing orders**)
- 3. FD 2005/214 (**Financial penalties**)
- 4. FD 2006/783 (**Confiscation orders**)
- 5. FD 2008/909 (**Custodial sentences**)
- 6. FD 2008/947 (**Probation measures**)
- 7. FD 2009/829 (**Supervision measures**)
- 8. FD 2009/948 (**Conflicts of jurisdiction**)
- 9. Directive 2011/99 (**EPO**)
- 10. Directive 2014/41(**EIO**)
- 11. Regulation 1805/2018 (**FCOs**)
- 12. E-evidence package
  - Regulation 2023/1543
  - Directive 2023/1544

Changes in terminology

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Traditional MLA

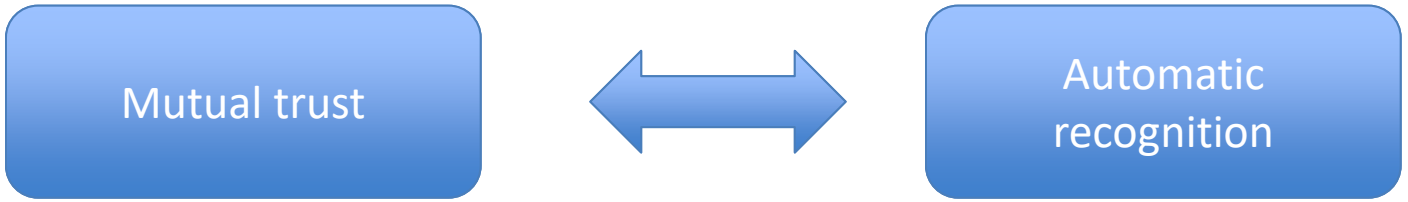
- Request
- Requesting State
- Requested State
- General grounds for refusal
- Double criminality
- No standard form
- No deadlines
- No language rules
- Controls and validation by the Ministry of justice

Mutual recognition

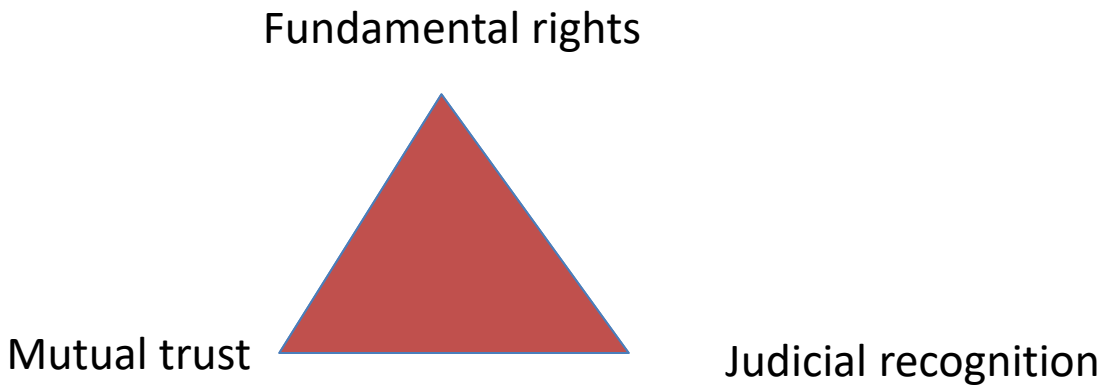
- Order
- Issuing Member State
- Executing Member State
- Few grounds for refusal
- Limited double criminality
- Standard form
- Deadlines
- Language rules
- Judicial control

- A national decision adopted by judicial authority of a MS will be automatically executed by law law enforcement authorities of another MS
- MR as a methodology
  - It implies mutual trust
  - It implies automaticity
  - It implies no control – or very limited control – by executing MS
  - It requires the ban – or very limited presence – of grounds for refusal
- MR as a strategy:
  - It creates extraterritoriality of national decisions
  - It avoids the need to harmonize national legislations across the EU
  - It avoids the need to reform national law
- MR as a principle: methodological mistake

- Maximalist approach to mutual recognition



- Balanced approach to mutual recognition



- What is mutual trust? What does the principle of mutual trust actually convey?
- Is it a judicially enforceable principle?
- Is it just a programmatic norm of constitutional importance?
- Is it possible for EU law to build mutual trust?

What is mutual trust? What does the principle of mutual trust actually convey?

- The principle of ‘mutual trust’ is not defined in the Treaties.
- Some scholars have posited that that principle is not amenable to judicial review.
- it is a constitutional axiom that must inspire legislative action at EU level,but does not give rise to judicially enforceable standards.

- But… Opinion 2/13
- the ECJ noted that the accession agreement to the ECHR suffered from three shortcomings that could imperil the ‘intrinsic nature’ of the EU.
- 1. no provision of that agreement ensured coordination between Article 53 ECHR and Article 53 of the Charter.
- 2. no provision of that agreement ensured coordination between the preliminary ruling procedure and Protocol No 16 of the ECHR.
- 3. the accession agreement to the ECHR made no reference to the principle of mutual trust.

Maximalist approach:
The Opinion 2/13: Mutual trust as a constitutional principle of fundamental importance for the EU

- The CJEU has elevated mutual trust to a constitutional principle – comparable to primacy and direct effect. In Opinion 2/13, the CJEU deemed the draft agreement on EU accession to the European Convention on Human Rights (ECHR) incompatible with EU law due in part to its insufficient consideration of the principle of mutual trust

- 191. it should be noted that the principle of mutual trust between the Member States is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, judgments in N. S. and Others, C-411/10 and C-493/10, EU:C:2011:865, paragraphs 78 to 80, and Melloni, EU:C:2013:107, paragraphs 37 and 63).

- 192.Thus, when implementing EU law, the Member States may, under EU law, be required to **presume that fundamental rights have been observed** by the other Member States, so that not only may **they not demand a higher level of national protection of fundamental rights** from another Member State than that provided by EU law, but, save in exceptional cases, **they may not check** whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU.

- A principle?
- Only among MS
- No mention of the citizens'' trust toward justice system

Maximalist approach:
The Opinion 2/13: Mutual trust as a constitutional principle of fundamental importance for the EU

- Precedents:

- *Brügge*, the ECJ held that the operation of the *ne bis in idem* principle enshrined in Article 54 CISA required 'the Member States [to] have mutual trust in their criminal justice systems'.

- *Rinau*, a child abduction case relating to the interpretation of the Brussels II *bis* Regulation,21 the ECJ held that '[that] Regulation is based on the idea that the recognition and enforcement of judgments given in a Member State must be based on the principle of mutual trust and the grounds for non-recognition must be kept to the minimum required'.

- *N.S.*, an asylum case concerning the Dublin Regulation, the ECJ held that 'the raison d'être of the European Union and the creation of an [AFSJ are] based on mutual [trust] and a presumption of compliance, by other Member States, with [EU] law and, in particular, fundamental rights'.

- What is interesting about the *N.S.* judgment is that the ECJ did not ground the principle of mutual trust in the particular context of the Dublin Regulation, but qualified it as a constitutional principle.

- Article 82(2) TFEU expressly provide that judicial cooperation seeks to establish minimum rules concerning the mutual admissibility of evidence between Member States, the rights of individuals in criminal procedures, the rights of the victims of crime, and any other specific aspect of criminal procedure which the Council has identified in advance by a decision

- Roadmap on strengthening procedural rights (Stockholm Programme, 2010);
- Directive 2010/64/EU, right to interpretation and translation
- Directive 2012/13/EU, right to information
- Directive 2013/48/EU right to access to a lawyer
- Directive 2016/343/EU on the presumption of innocence
- Directive 2016/1919/EU on legal aid

- And for the victim: directive 2012/29/EU
- New draft under discussion

- Recital 8 Dir 2013/48: 'Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust and to the promotion of a fundamental rights culture in the Union.'

- ECHR, Tarakhel v Switzerland, 4 November 2014 :
  - Need of an individual assessment
- ECHR, MSS v Belgium and Greece, The presumption of compliance with FR is rebuttable

- The final consolidated version of the Accession Agreement (2023): accession "[s]hall not affect the application of the principle of mutual trust within the European Union. *In this context, the protection of human rights guaranteed by the Convention shall be ensured* (emphasis added)".

- the explanatory report particu-larly points towards the fact that the CJEU has, since Opinion 2/13, increasingly recognised limits to the operation of mutual recognition mechanisms in light of a real and individual risk of a violation of art. 3 ECHR (prohibition of inhuman and degrading treatment).

First, the application of that principle may be limited to situations where the benefits of judicial cooperation outweigh the harm caused to the person concerned.

- Fundamental rights clause
- Proportionality
- Ex: EAW and minor offences
- European handbook on how to issue a [EAW] included proportionality

Second, the margin of discretion that secondary EU legislation leaves to the Member States may limit the principle of mutual recognition.

Third and last, primary and secondary EU law may identify situations where the principle of mutual recognition ceases to operate. No open clause in criminal matters on national and European public-policy exceptions to mutual recognition.

- Non-execution grounds that relate to amnesty and immunity,
- prescription,
- the age of criminal responsibility,
- judgments rendered *in abstentia*
- custodial life sentences

Introducing grounds of refusal based on FR

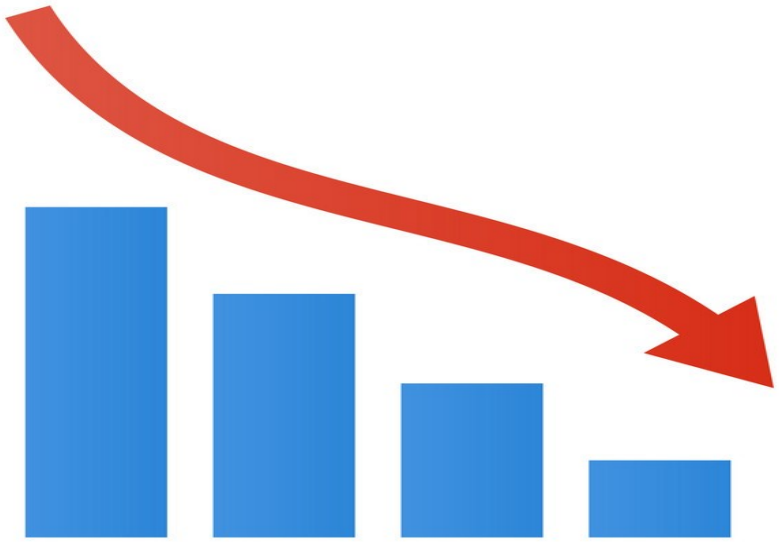
- In the EIO
- In national leglslation
- Via the intervention of the Court of justice (Aranyosi)

Adding a general clause related to proportionality

Introducing a specific counter measure

- European supervision order for bail decisions

The decreasing curve of Mutual Recognition in relation to the EAW



First set of decisions on human rights: the EAW execution cannot be refused on HR grounds

Second set of decisions: in exceptional circumstances, an executing authority must refrain from giving effect to an EAW if it finds that exists a real risk of inhuman and degrading treatment

Third set of decisions: Real risk of breach of the right to fair trial

Fundamental rights as a ground for refusal (II)

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

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

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

Fundamental rights as a ground for refusal (I)

Mutual trust is **not absolute** ⟶ fundamental rights **set limits**

Article 4 of the **EU Charter of Fundamental Rights**: absolute prohibition of inhuman or degrading treatment

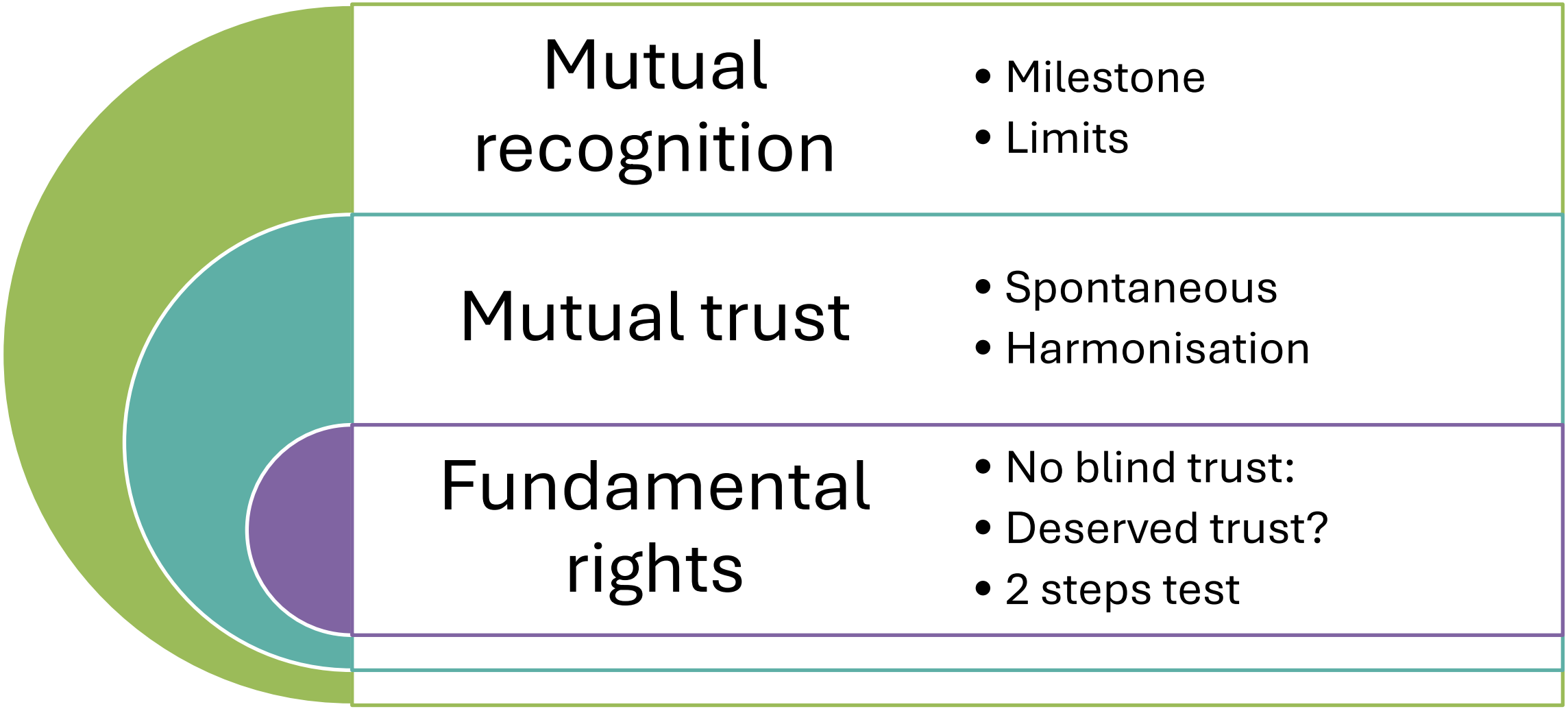
Interplay with **Article 3 ECHR**: no derogation, even in times of emergency

Key jurisprudence:

- ECJ, ***Radu*** (2013) ⟶ no automatic surrender without right to be heard
- ECJ, ***Melloni*** (2013) ⟶ primacy of EU law over higher domestic protection if EU standard met
- ECJ, ***Aranyosi and Căldăraru*** (2016) ⟶ obligation to assess detention conditions in issuing State
- ECJ, ***Dorobantu*** (2019) ⟶ real and individual risk must be considered
- ECJ, ***ML*** (2021) ⟶ stricter scrutiny of prison conditions in issuing MS
- ECJ, ***EDL*** (2022) ⟶ health vulnerabilities of requested person can justify refusal
- ECJ, ***OG*** (2023) ⟶ executing MS may refuse surrender of a third-country national residing or staying on its territory

A **shift from automatic trust to conditional trust** in EAW execution?

Fundamental rights as a ground for refusal (VI)



"[...] Even the most serious deficiencies do not on their own allow courts in other Member States to refuse automatically to execute any arrest warrant issued by that Member State."

Two-steps test:

- 1. Systemic or generalized deficiencies or deficiencies affecting an objectively identifiable group of persons to which the requested person belongs (systemic assessment),
- 2. Specific and precise analysis of the individual situation of the requested person (specific assessment). It implies the duty to ask information to the issuing authority.


Mutual trust
not blind trust
merited trust
increased controls of the executing authorities
harmonisation
end of automaticity

A final remark: harmonization and mutual recognition

- *Article 82 TFEU: the EU may harmonise specific elements of domestic criminal procedure 'To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension'.*
- *(a) mutual admissibility of evidence between member states;*
- *(b) the rights of individuals in criminal procedure;*
- *(c) the rights of victims of crime;*
- *(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision.*

- *Is harmonization serving mutual recognition?*

Case C-219/25 PPU [Kamekris], 19 June 2025

Factual background and key circumstances

- **KN** holds **Greek and Georgian nationalities,** sentenced **in absentia to life imprisonment by the Municipal Court of Poti (Georgia).** The offences, committed in Georgia and Türkiye in 2008 and 2009, involved the international trafficking of particularly large quantities of cocaine as part of an organised gang, preparations for the commission of group murder and the illegal possession of firearms.
- Red alert by Georgian authorities asking for extradition.
- **Belgian court** refused to extradite on the basis of Belgian extradition legislation and Article 3 ECHR finding that there were compelling grounds for believing that the extradition of KN to Georgia would expose him to a **denial of justice** and a **real risk of inhuman or degrading treatment**.

Issue: Arrested in France, a Montepellier court asks: 'Must [Article] 67(3) and [Article] 82(1) TFEU, in conjunction with Articles 19 and 47 of [the Charter], be interpreted as meaning that a MS is obliged to **refuse to execute an extradition** request for a citizen of the EU to a third country when another MS has **previously refused to execute** the same extradition request on FR grounds of torture or inhuman or degrading treatment enshrined in Article 19 CFR and the right to a fair trial enshrined in the second paragraph of Article 47 CFR?'

Case C-219/25 PPU [Kamekris], 19 June 2025

Findings

- the context of the preliminary ruling question must be seen in its "Petruhhin" case law, i.e. that **nationals of other EU** Member States (here: Greece) **must enjoy their rights of free movement** and **non-discrimination** (Arts. 18 and 21 TFEU) as Union citizens
- the authorities and courts of the EU MS **must refuse extradition** to third countries if the Union citizen would be **exposed to an infringement of his/her fundamental rights** guaranteed by the Charter, in particular Art. 19.

- The **principle of mutual recognition does not apply** **to decisions refusing extradition requests adopted by EU Member States.**
  - It is clear from the wording of Arts. 67(3) and 82(1) TFEU that **they do not, as such, establish an obligation of mutual recognition of judgments and judicial decisions in criminal matters adopted in the Member States**, but merely provide that judicial cooperation in criminal matters in the Union is **based on the principle of such recognition**;
  - The mutual recognition instruments in place, such as the FD on EAW and the FD 2008/909/JHA on the application of the principle of MR to judgments in criminal matters **do not provide for an obligation of mutual recognition in the context of extradition requests from third countries**

MR and risks associated to the rule of law

"mutual trust must not be confused with 'blind trust'.
K. Lenaerts quoting L. Bay Larsen
'[t]rust takes years to build, seconds to destroy and forever to repair'.

- *Petra Bard: Judicial cooperation in criminal matters is like a canary in a Coal Mine to check the level of respect of rule of law*
- *the EU cannot remain an entity based on the rule of law, if its constituent parts are disrespecting the rule of law.*
- *Two possible solutions exist, both imperfect. First, mutual trust-based laws must be suspended vis-.-vis rule of law violator Member States. This would clearly destroy the EU as a Rechtsgemeinschaft, but that still is the lesser evil, since the alternative is following the mutual recognition-based laws.*
- *However, that might lead to the acknowledgment of judgments that violate human rights, which in turn destroys the EU as a Wertegemeinschaft.*

Öberg quoting Barkow: How powers are divided between the member states and the Union in the politically sensitive field of criminal procedure is a pivotal question of federalism

- Focus on the actors of police and judicial cooperation in criminal matters

EU judicial actors

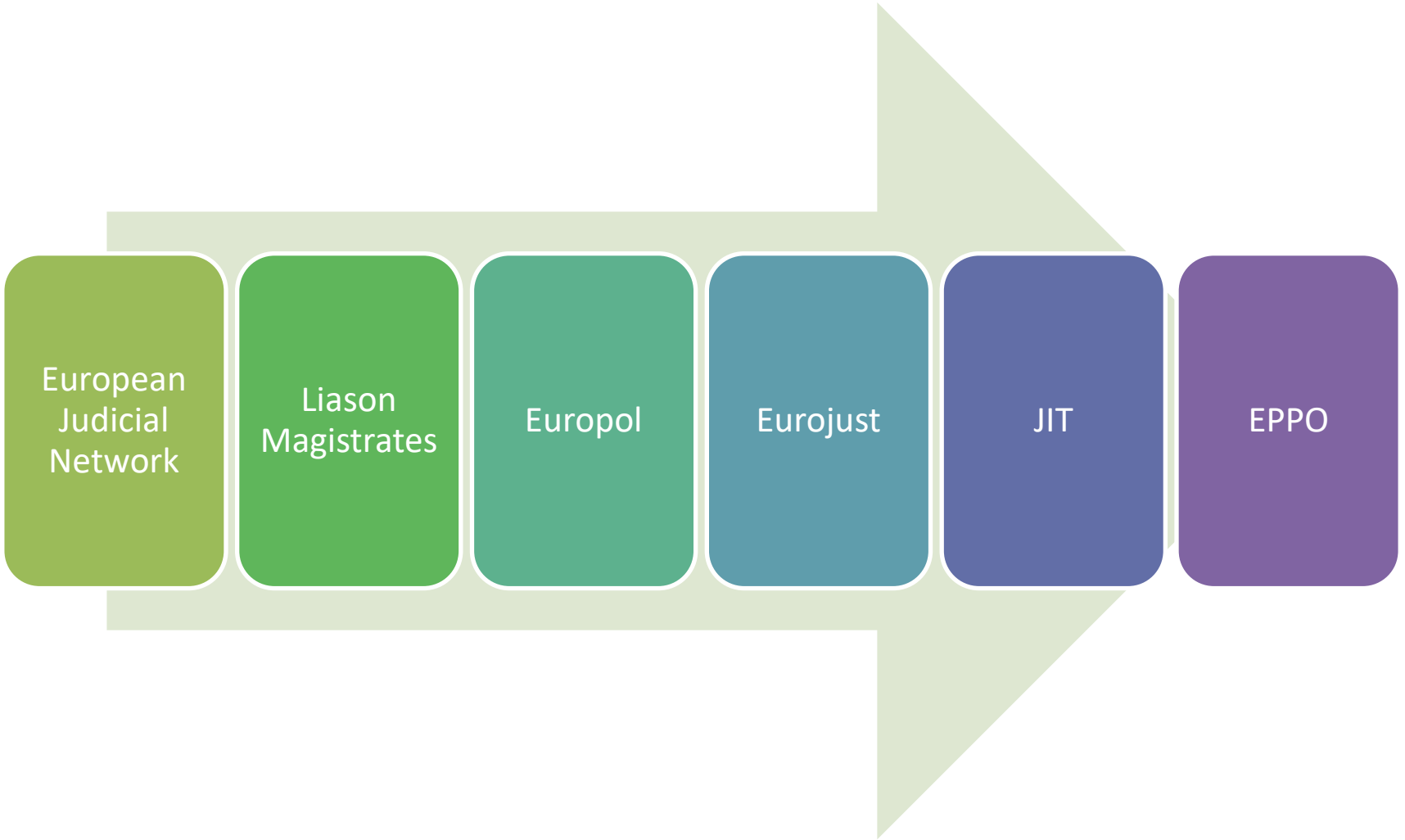
- Strengthening of **Eurojust** (article 85 TFEU)
  - Possibility to confer binding powers as to initiation of criminal investigations, coordination of investigations, and resolution of conflicts of jurisdiction

- Establishment of a **European Public Prosecutor Office** (86 TFEU)

- Strengthening of **Europol** (article 87 TFEU)

Cooperation

- **Judicial v police**
  - Judicial cooperation
    - Between judicial authorities
    - For repression of crime – reactive approach
  - Police cooperation
    - Between police forces
    - For repression and prevention of crimes – reactive but also proactive approach


European Judicial Network
Liason Magistrates
Europol
Eurojust
JIT
EPPO

EU Actors

Europol

- Police cooperation
- Horizontal cooperation between LEAs
- Coordination + analysis /Non-operational powers
- Cross-border cases

Eurojust

- Judicial cooperation
- Horizontal cooperation between judicial authorities
- Coordination/Non operational powers
- Cross-border cases

OLAF

- Administrative investigations
- Non-necessarily cross-border cases
- Step up the fight against illegal activity affecting the financial interest of the EU

EPPO

- Vertical integration
- Operational powers (powers to investigate, prosecute and bring to judgment)
- Not-necessarily cross-border
- Against PIF crimes

Police cooperation

- Haphazard development
  - Greater impulse before WW1 and WW2
  - After WW2 more emphasis on judicial cooperation
    - particularly at COE level
  - 1970's debate to establish common European body (European FBI)
    - German approach
    - Interpol v TREVI (Terorrism, Radicalism, Extremism et Violence Internationale, 1976)

- **2 main line of developments**
  1. Allow greater reciprocal help in prevention and repression
     - Particularly by exchanging information (**information ≠ evidence**)
     - Operational competences limited (see CISA 1990)
  2. Establish "Common European Police Hub"

- Schengen agreement 14 June 1985
- Convention implementing Schengen Agreement (CISA): 1990

- Internal borders v external borders

- Internal borders may be crossed without checks
  - But possible to still introduce “checks” for limited period
    - public or national security
    - abolition of checks on persons at internal borders shall not affect the provisions laid down in Article 22, or the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

- POLICE COOPERATION - Article 39
- *1. The Contracting Parties undertake to ensure that their police authorities shall, in compliance with national law and within the scope of their powers, assist each other for the purposes of preventing and detecting criminal offences, in so far as national law does not stipulate that the request has to be made and channelled via the judicial authorities and provided that the request or the implementation thereof does not involve the application of **measures of constraint** by the requested Contracting Party. Where the requested police authorities do not have the power to deal with a request, they shall forward it to the competent authorities.*

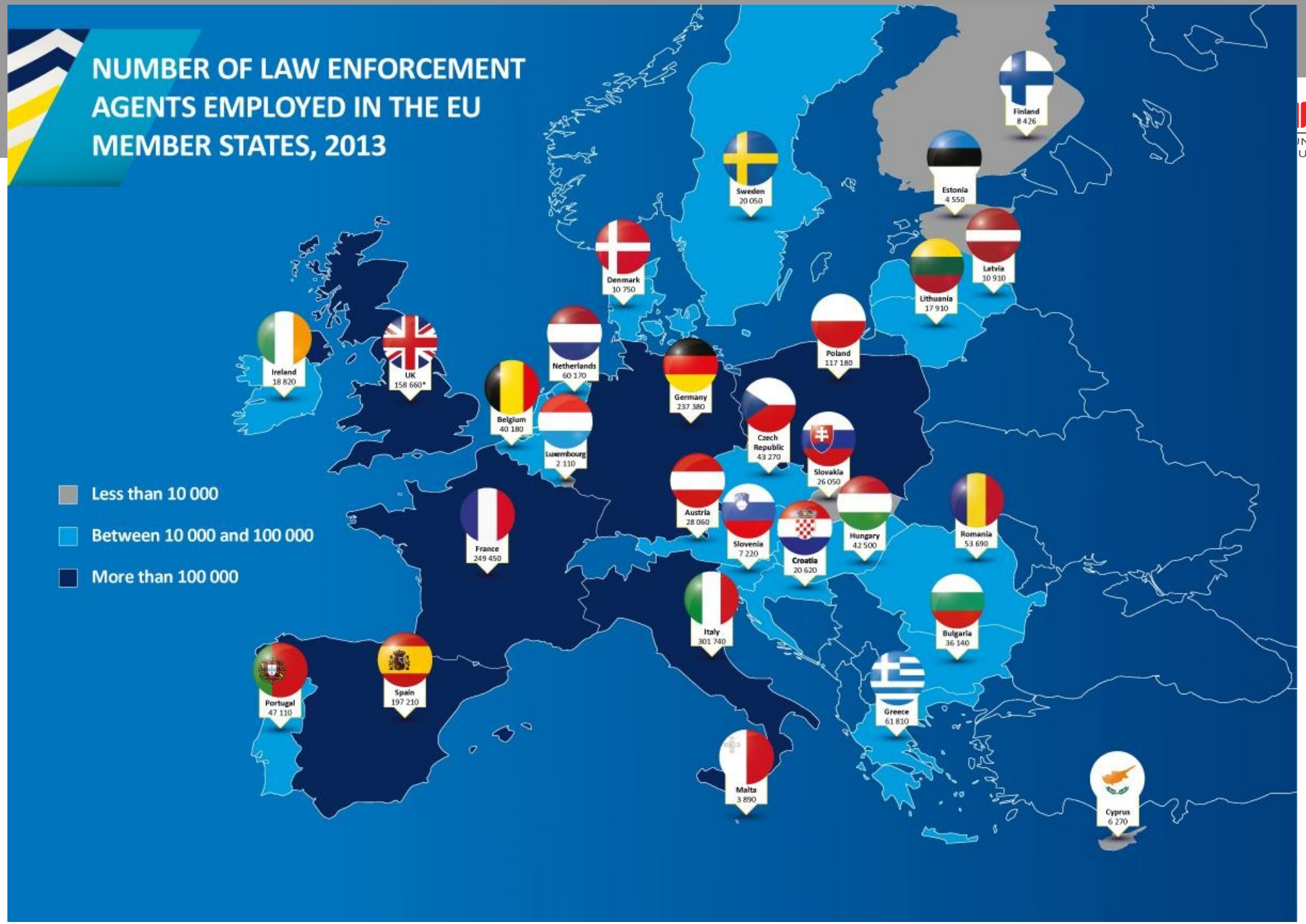
- **Article 40 CISA**
- *1. Officers of one of the Contracting Parties who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence* ***shall be authorised to continue their surveillance in the territory of another Contracting Party*** *where the latter has authorised cross-border surveillance in response to a request for assistance made in advance. Conditions may be attached to the authorisation.*
- On request, the surveillance will be entrusted to officers of the Contracting Party in whose territory this is carried out.

- Article 41 CISA 1990

- 1. Officers of one of the Contracting Parties who are pursuing in their country an individual caught in the act of committing or of participating in one of the offences referred to in paragraph 4 shall be authorised to continue pursuit in the territory of another Contracting Party without the latter's prior authorisation where, given the particular urgency of the situation, it is not possible to notify the competent authorities of the other Contracting Party by one of the means provided for in Article 44 prior to entry into that territory or where these authorities are unable to reach the scene in time to take over the pursuit.
- The same shall apply where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty.
-

EUROPOL

- Police cooperation
- European FBI?
- Article 88 TFEU
- From Convention to Decision
- (Dec. 6 April 2009, 2009/371)
- To **Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA**


NUMBER OF LAW ENFORCEMENT AGENTS EMPLOYED IN THE EU MEMBER STATES, 2013
Less than 10 000
Between 10 000 and 100 000
More than 100 000
Finland 8 426
Sweden 20 050
Estonia 4 550
Latvia 10 910
Lithuania 17 910
Denmark 10 750
Poland 117 180
Ireland 18 820
UK 158 660*
Netherlands 60 170
Belgium 40 180
Germany 237 380
Luxembourg 2 110
Czech Republic 43 270
Slovakia 26 050
Austria 28 060
Slovenia 7 220
Croatia 20 620
Hungary 42 500
Romania 53 690
France 249 450
Italy 301 740
Bulgaria 36 140
Spain 197 210
Portugal 47 110
Greece 61 810
Malta 3 890
Cyprus 6 270

Europol Article 88 TFEU

- 1. Europol's mission shall be to **support and strengthen** action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.
- 2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:
- (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.
- These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.
- 3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

It supports the law enforcement activities of EU Member States in areas such as:

- Illicit drug trafficking
- Terrorism
- Cybercrime
- Illegal immigrant smuggling, trafficking in human beings and child sexual exploitation
- Counterfeiting and product piracy
- Money-laundering
- Forgery of money and other means of payment - Europol acts as Europe's Central Office for combating euro counterfeiting

Tasks:

- Facilitating the exchange of information and criminal intelligence between EU law enforcement authorities by way of the Europol Information and Analysis Systems and the Secure Information Exchange Network Application (SIENA)
- Supporting the operations of national authorities by providing operational analysis
- Generating strategic reports (e.g. threat assessments) and crime analysis on the basis of information and intelligence supplied by Member States, generated by Europol or gathered from other sources
- Providing expertise and technical support for investigations and operations carried out within the EU

Europol has set up several specialised units to respond to these threats:

- the European Cybercrime Centre
- the European Migrant Smuggling Centre
- the European Counter Terrorism Centre
- the Intellectual Property Crime Coordinated Coalition
- the European Financial and Economic Crime Centre
- FIU.net (not anymore)
- the EU Internet Referral Unit, which detects and investigates malicious content on the internet and social media networks.

- Problems of control (potential ‘bureaucratic drifts’)
- Problems of coordination
- Problems of legitimacy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europol.europa.eu/media-press/newsroom/news/dismantling-encrypted-criminal-encrochat-communications-leads-to-over-6-500-arrests-and-clo...
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PARTNERS & COLLABORATION
CAREERS & PROCUREMENT
MEDIA & PRESS
PUBLICATIONS & EVENTS
SEARCH
CONTACT
LANGUAGE
Home / Media & Press
NEWS
Dismantling encrypted criminal EncroChat communications leads to over 6 500 arrests and close to EUR 900 million seized
Judiciary and law enforcement present first overview of results
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Comments
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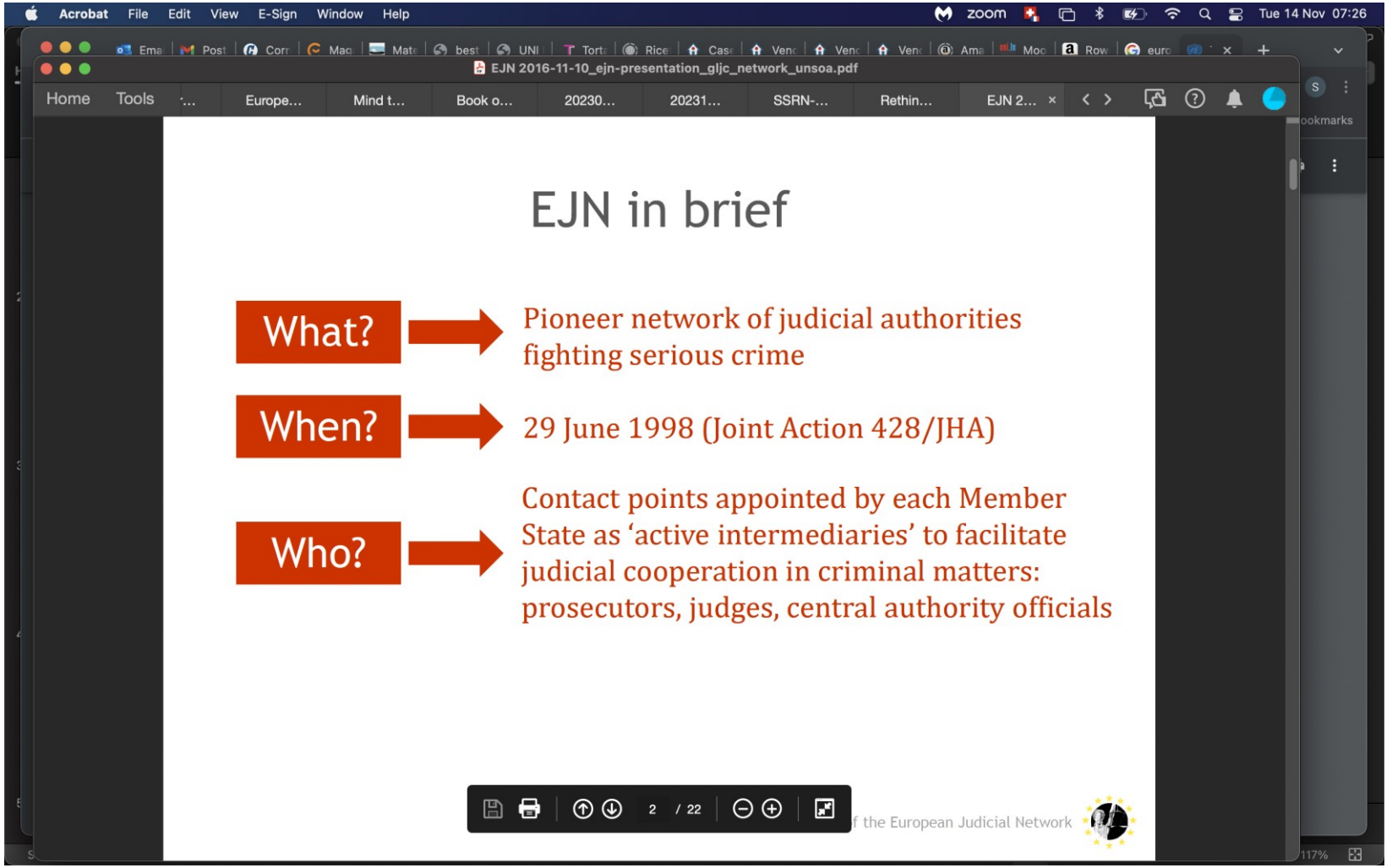
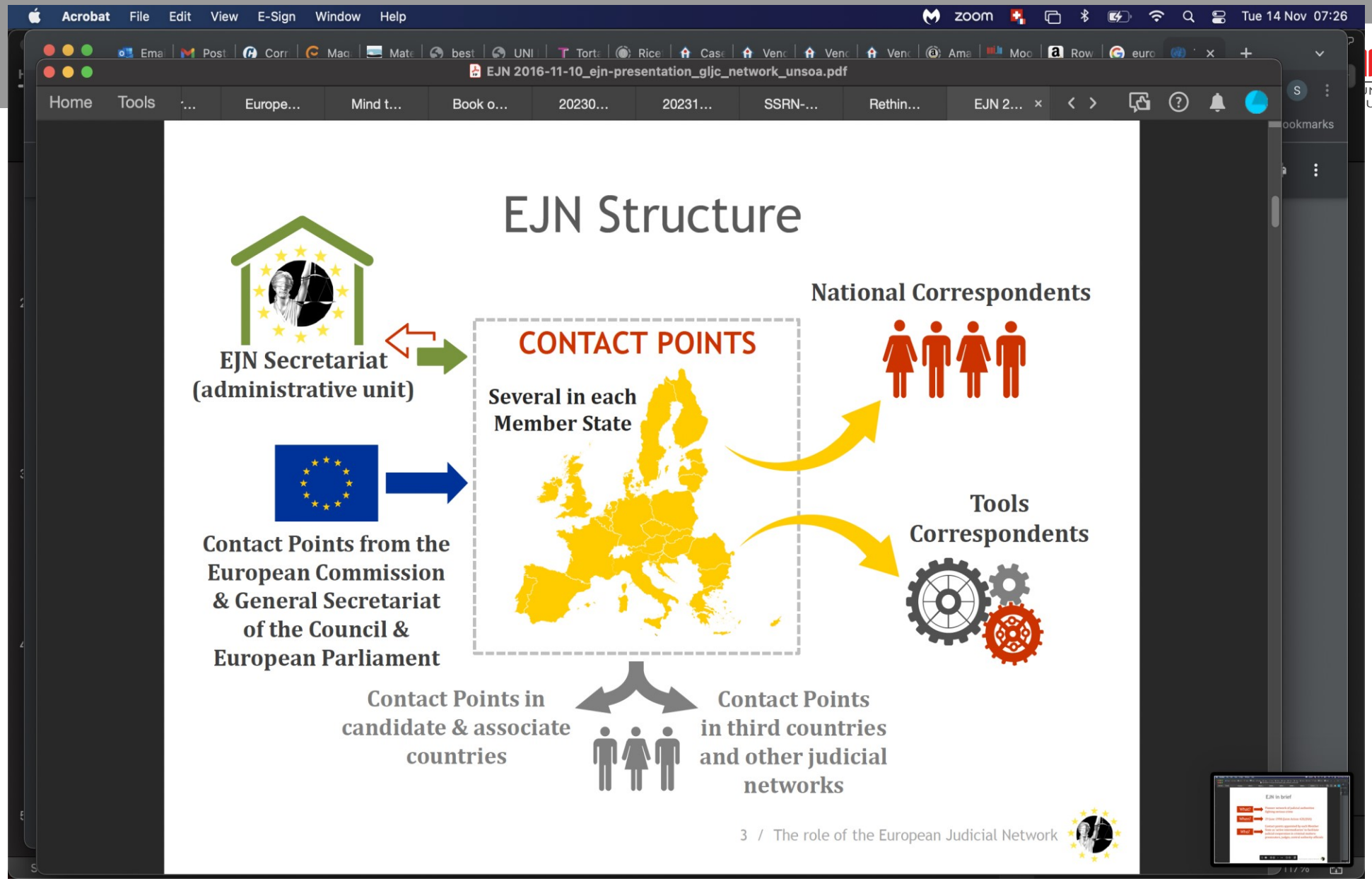
The European judicial network


EJN 2016-11-10_ejn-presentation_gljc_network_unsoa.pdf
EJN in brief
What?
Pioneer network of judicial authorities fighting serious crime
When?
29 June 1998 (Joint Action 428/JHA)
Who?
Contact points appointed by each Member State as 'active intermediaries' to facilitate judicial cooperation in criminal matters: prosecutors, judges, central authority officials
2 / 22
f the European Judicial Network


EJN 2016-11-10_ejn-presentation_gljc_network_unsoa.pdf
EJN Structure
EJN Secretariat
(administrative unit)
CONTACT POINTS
Several in each
Member State
National Correspondents
Tools
Correspondents
Contact Points from the
European Commission
& General Secretariat
of the Council &
European Parliament
Contact Points in
candidate & associate
countries
Contact Points
in third countries
and other judicial
networks
3 / The role of the European Judicial Network

EUROJUST

- EU's Judicial Cooperation Unit in criminal matters ⇒ Permanent body of judicial cooperation
  - Created by Council Decision of 28 February 2002
  - Seat in The Hague (NL)
  - Has legal personality
  - Composed of 27 EU prosecutors / judges (one from each Member State)
  - Aim:

'to deal more effectively with serious cross border crime, particularly when it is organised, and involves two or more Member States' (Council Decision of 14 December 2000)

Eurojust in the Treaty

- 85 TFEU
- Support and strenghten judicial cooperation
- Tasks:
  - Initiation criminal investigations and prosecutions
  - Coordination of investigations and prosecutions
  - Facilitate cooperation practices
- Binding powers!

Eurojust at a glance

EUROJUST

What is Eurojust?

Eurojust is the **EU Agency for Criminal Justice Cooperation.** We are a specialised hub providing tailor-made support to **prosecutors and judges** from across the EU and beyond.

To effectively tackle cross-border crime, we also host **networks** and run several **programmes and projects.**

Why Eurojust?

Working across 27 judicial systems is complex. Through our unique know-how, we ensure that national borders are no obstacle to prosecuting criminals and getting justice done. In addition to our **legal expertise,** we provide **secure meeting rooms** with **state-of-the-art IT systems** and **interpretation facilities,** as well as a **24/7 on-call service.**

Who do we work with?

In addition to working with national authorities across the EU, we have **Contact Points** in over 70 countries worldwide, as well as several **Liaison Prosecutors** from third countries posted at Eurojust. This global network works alongside EU Member States to provide support to cross-border investigations.

We also have strong partnerships with other **EU Justice and Home Affairs agencies** as well as international partners.

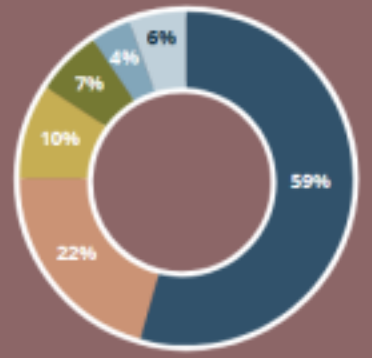
- EU Member States
- Liaison Prosecutors posted at Eurojust
- International Judicial Contact Points

What is our impact?

Each year, **Eurojust contributes** to the arrest or surrender of **thousands of suspects** and the seizure or freezing of **billions of euros** worth of criminal assets.

Moreover, we help to deliver **justice to thousands of victims,** ensuring their identification, rescue and protection.

Top 5 crime types addressed by Eurojust in 2024



How do we work?

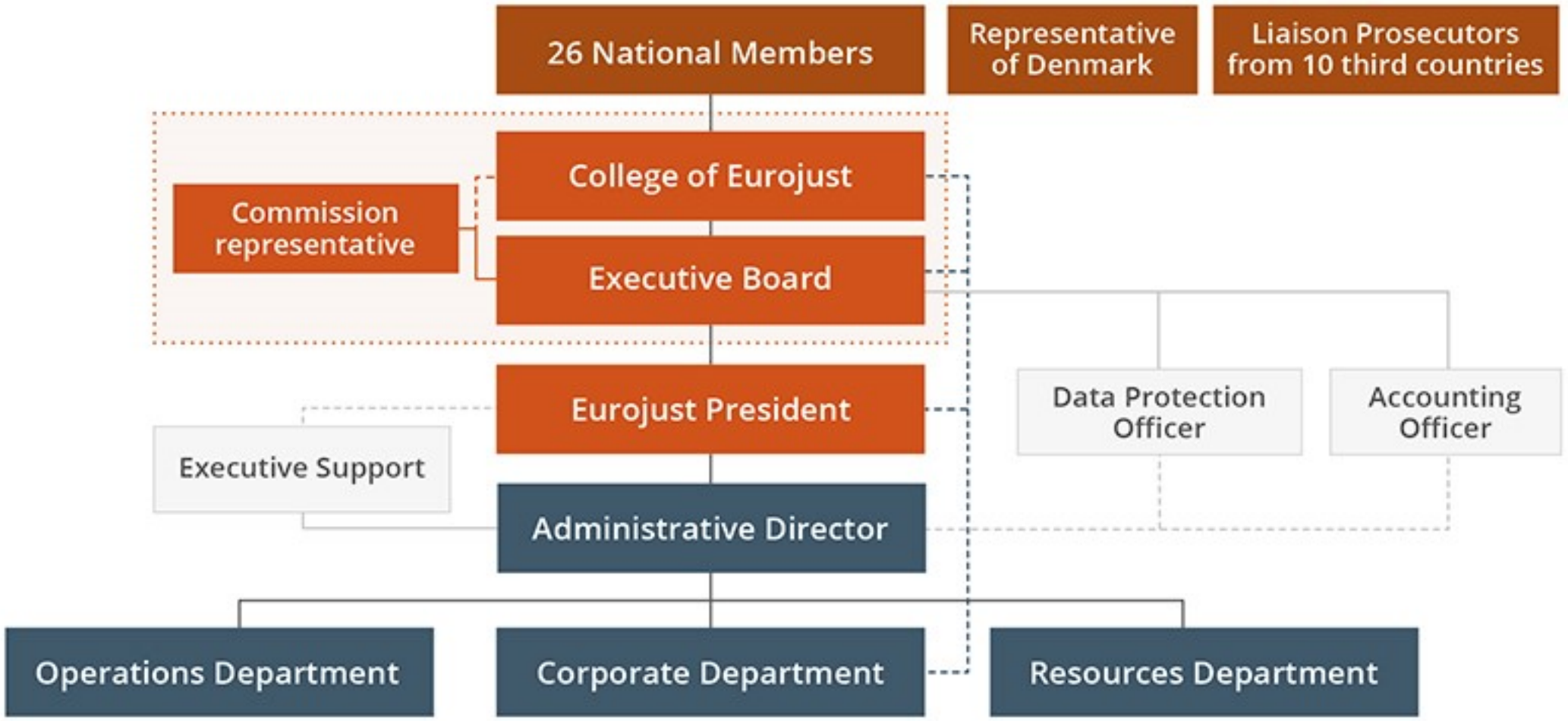
We provide **our services** to national authorities throughout all stages of the criminal justice chain, from when a case is opened by a Member State until justice gets done in court:

- In **coordination meetings,** we bring together prosecutors from all over Europe to work on cross-border crime cases.
- We support **joint investigation teams** – logistically, financially and with expertise.
- From our **coordination centre,** joint action days against criminal networks are steered in real time, with arrests and searches taking place simultaneously in multiple countries.

More information: www.eurojust.europa.eu

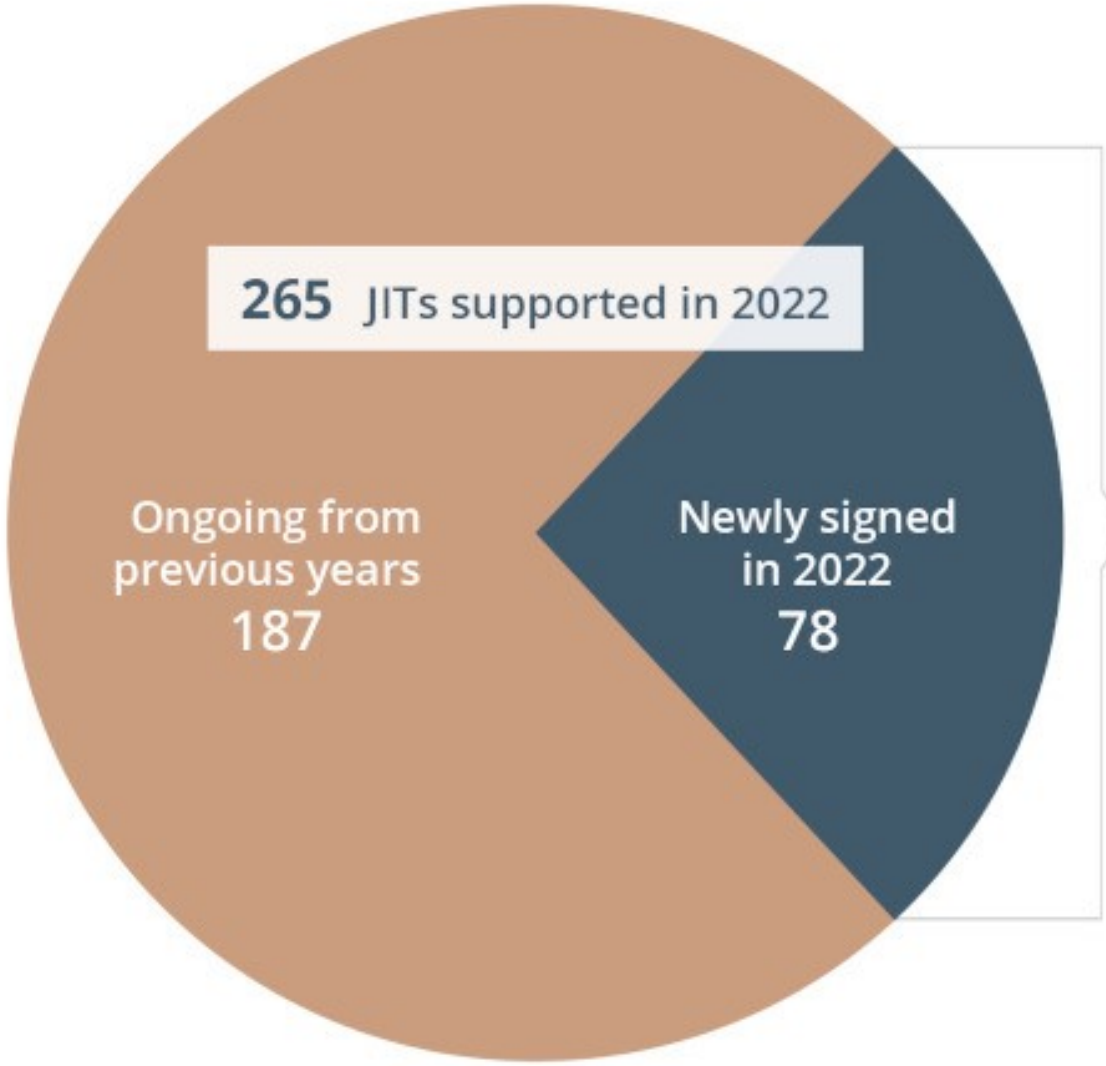
Follow Eurojust on @Eurojust

Eurojust's organisational structure in 2021

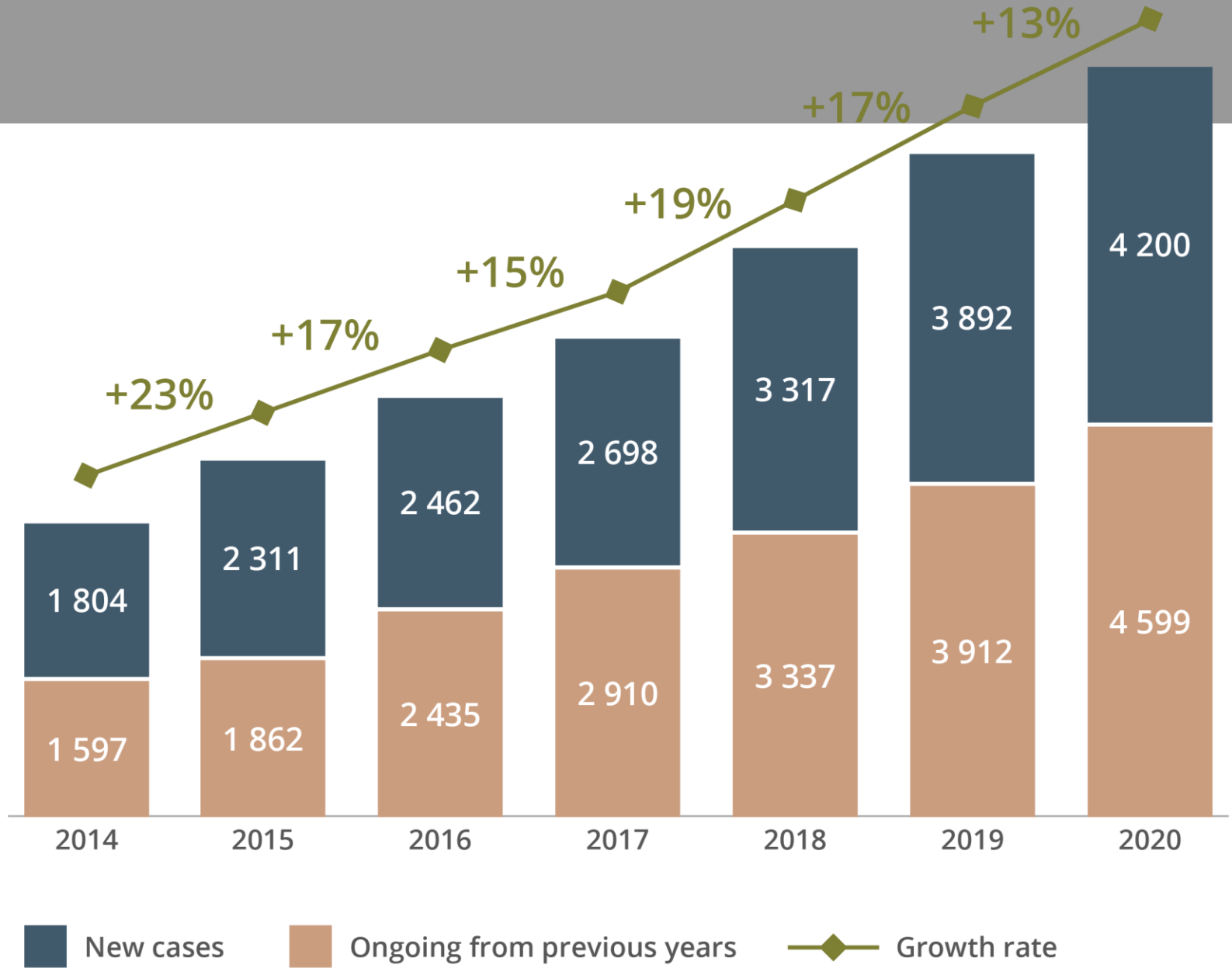


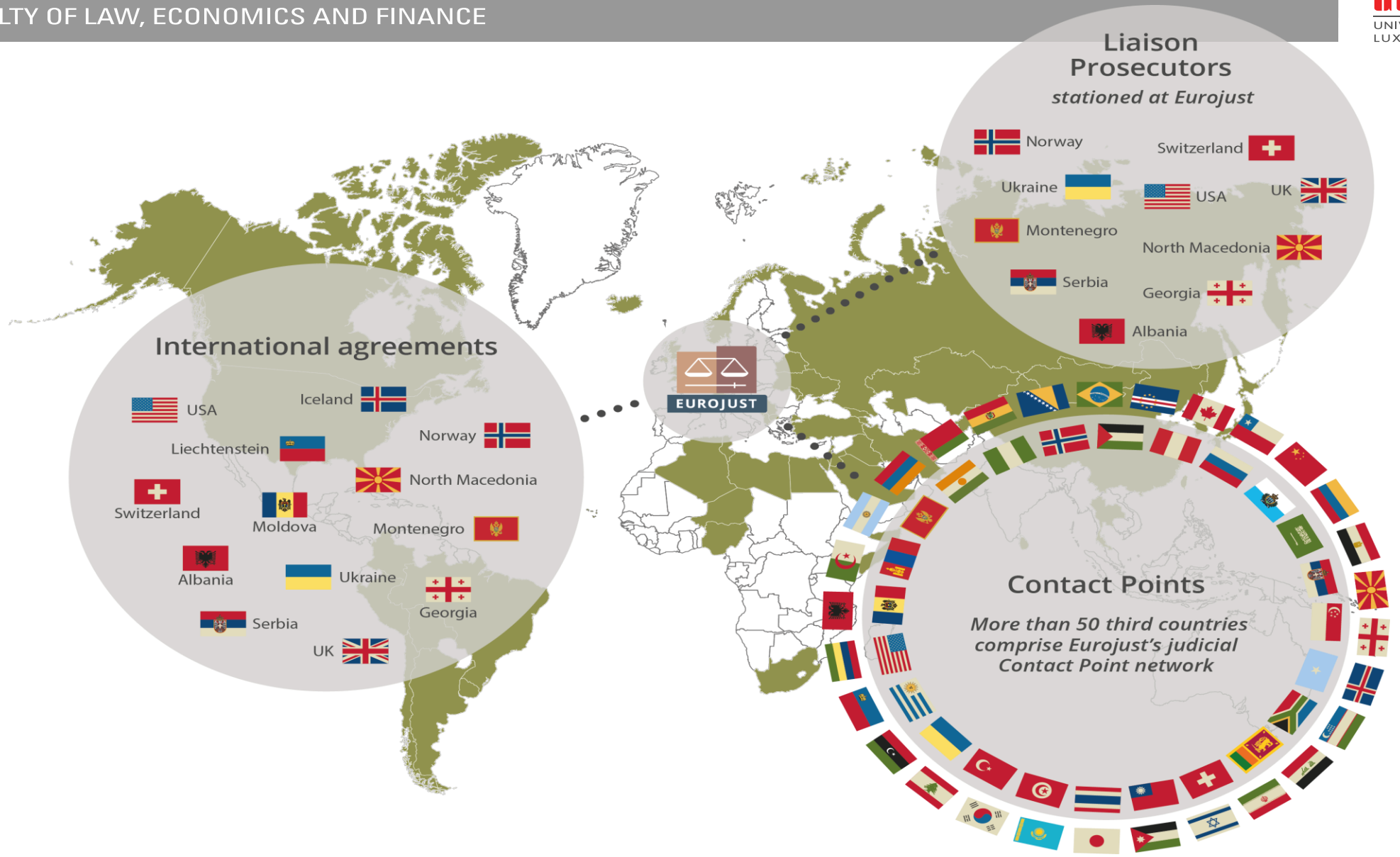
Eurojust ctivities:

- coordinate parallel investigations;
- organise coordination meetings, involving the judicial authorities and law enforcement concerned;
- set up and/or fund joint investigation teams (JITs) in which judicial authorities and law enforcement work together on transnational criminal investigations, based on a legal agreement between two or more countries; and
- plan joint action days, steered in real time via coordination centres held at Eurojust, during which national authorities may arrest perpetrators, dismantle organised crime groups and seize assets.



- Drug trafficking, 24
- Money laundering, 21
- Swindling and fraud, 16
- Trafficking in human beings, 9
- Migrant smuggling, 7
- Terrorism, 3
- Crimes involving mobile organised crime groups (MOCGs), 3
- Corruption, 1
- Core international crimes, 1


+23%
+17%
+15%
+19%
+17%
+13%
1 804
2 311
2 462
2 698
3 317
3 892
4 200
1 597
1 862
2 435
2 910
3 337
3 912
4 599
2014
2015
2016
2017
2018
2019
2020
New cases
Ongoing from previous years
Growth rate


Liaison Prosecutors
stationed at Eurojust
Norway
Switzerland
Ukraine
USA
UK
Montenegro
North Macedonia
Serbia
Georgia
Albania
International agreements
USA
Iceland
Liechtenstein
Norway
North Macedonia
Switzerland
Moldova
Montenegro
Albania
Ukraine
Georgia
Serbia
UK
EUROJUST
Contact Points
More than 50 third countries comprise Eurojust's judicial Contact Point network

Thank you for your attention!

silvia.allegrezza@uni.lu

Instruments of Mutual Recognition: The EAW and EIO in practice
ERA Training for Defence Lawyers
Budapest, 25-26 September 2025

The EAW and how it functions as an instrument of mutual recognition

Prof Silvia Allegrezza

Co-funded by the European Union

Outline

Historical and legal background

Prohibition of inhuman and degrading treatments

- *Radu*
- *Melloni*
- *Dorobantu*
- *Araynosi and Căldăraru*
- *ML*
- *EDL*
- *OG*

Right to a fair trial: The indipendence of the issuing judicial authority of the EAW

- *L and P*
- *X and Y*

Rights of defence: Access to a lawyer, right to information and conviction *in absentia*

- *Anacco*
- *RQ*
- *Minister for Justice and Equality*
- *TR*

Historical and legal bakground – Before the EAW (I)

- **1957** ⟶ **CoE** Convention on Extradition
- **1959** ⟶ CoE Convention on Mutual Legal Assistance
- **1975** ⟶ Additional Protocol
- **1978** ⟶ Second additional Protocol
- **1989** ⟶ Agreement on simplification and modernisation of methods of transimitting extradition requests

1957 Convention

Art. 1. **Obligation to extradite**

- *The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.*

Extraditable offences (double criminality)

- offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.
  - Conviction or detention order passed: at least of 4 months

- Art. 1. **Obligation to extradite**
  - Exception 1: sensitive offences
    - political offences (but no genocide or war crimes) or discriminatory offences, millitary offences, fiscal offences, crime committed in own territory, capital punishment, lapse of time, non bis in idem
  - Exception 2: nationals – *aut dedere aut judicare*
    - Art. 6 s. 2: *If the requested Party does not extradite its national, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.*
- Request in writing and to be communicated "through the diplomatic channel"
- Obligation to extradite also tempered by procedure + Reasons shall be given for any complete or partial rejection
  - 2 stages: (i) **Judicial** control over general legal conditions + **Political** assessment (Minister)

Historical and legal bakground – Before the EAW (II)

The **European Union**: the European Political Cooperation (EPC),

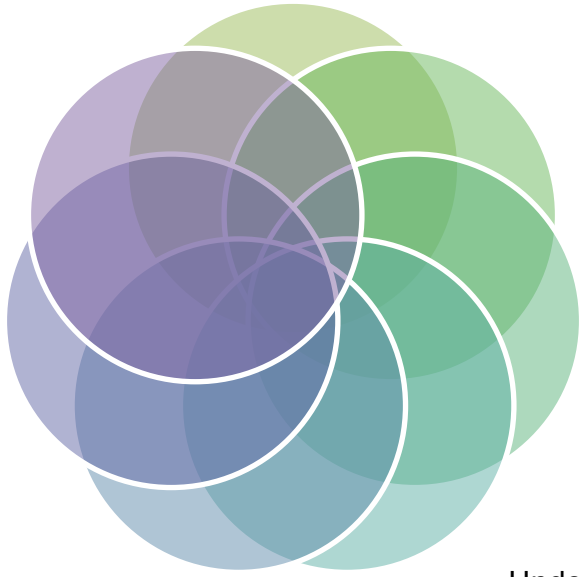
- **1987** ⟶ Agreement on the application among the Member States of the EC of the Council of Europe Convention on the transfer of sentenced persons
- **1987** ⟶ Agreement among the Member States of the EC on the application of the ne bis in idem principle,
- **1989** ⟶ Agreement between the Member States of the EC on the simplification and modernisation of the methods of transmitting extradition requests (also known as the Telefax Agreement),
- **1990** ⟶ the Agreement between the Member States of the EC on the transfer of proceedings in criminal Matters
- **1990** ⟶ Schengen Treaty
- **1991** ⟶ Convention of between the Member States of the EC, with regard to the enforcement of foreign criminal sentences
- **1995** ⟶ Simplified extradition procedure between Member States
- **1996** ⟶ Convention on extradition between Member States
- **1999** ⟶ European Council (**Tampere conclusions**)

Historical and legal bakground – Before the EAW (III)

Mutual Recognition (MR) is the cornerstone of judicial cooperation in criminal matters (Arts 67(3) and 82(1) TFEU)

- in principle to all criminal offences, not only to those harmonised by the EU (Art 83 TFEU)

'*I recognize your act, you recognize mine*'



The MR instruments **apply**

Imperative: 'let aside the differences': Underlying logic of 'order' as opposed to the previous logic (COE and intl Treaties) of 'request'

MR instruments

- Origins in the common market: Cassis de Dijon
- First, EAW (from extradition to surrender)
- Then, EFO, ECO, EEW, EEO, ESO, EPO, EIO, E-evidence

Underlying obligation to surrender made more stringent but not a categorical imperative (refusal grounds)

Historical and legal bakground – Before the EAW (IV)

- The development of mutual recognition and…

Historical and legal bakground – The EAW (I)

Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States – amended by Framework Decision 2009/299/JHA

- first instrument in the field of judicial cooperation in criminal matters implementing the principle of MR
- it intends to ensure that open borders and free movement within the EU are not exploited by those seeking to evade justice
- Old legal structure: need for an **update**

Historical and legal bakground – The EAW (II)

The EAW is:

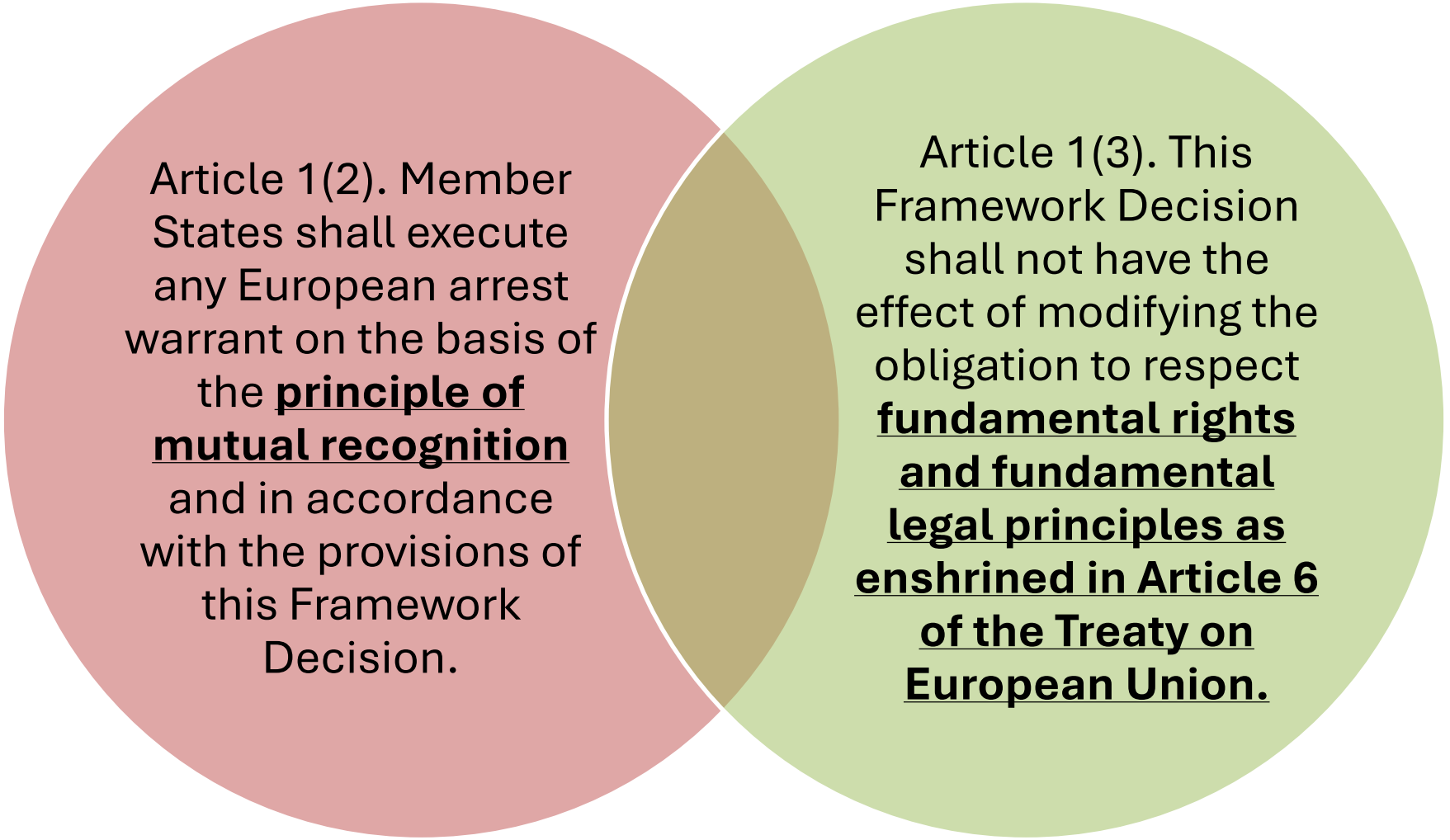
A **simplified** cross-border judicial surrender **procedure** replacing extradition procedures

- **Article 1** ⟶ Definition of the European arrest warrant and obligation to execute it

1. *The EAW is a judicial decision issued by a MS 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.***

Historical and legal bakground – The EAW (III)

GENERAL PRINCIPLES

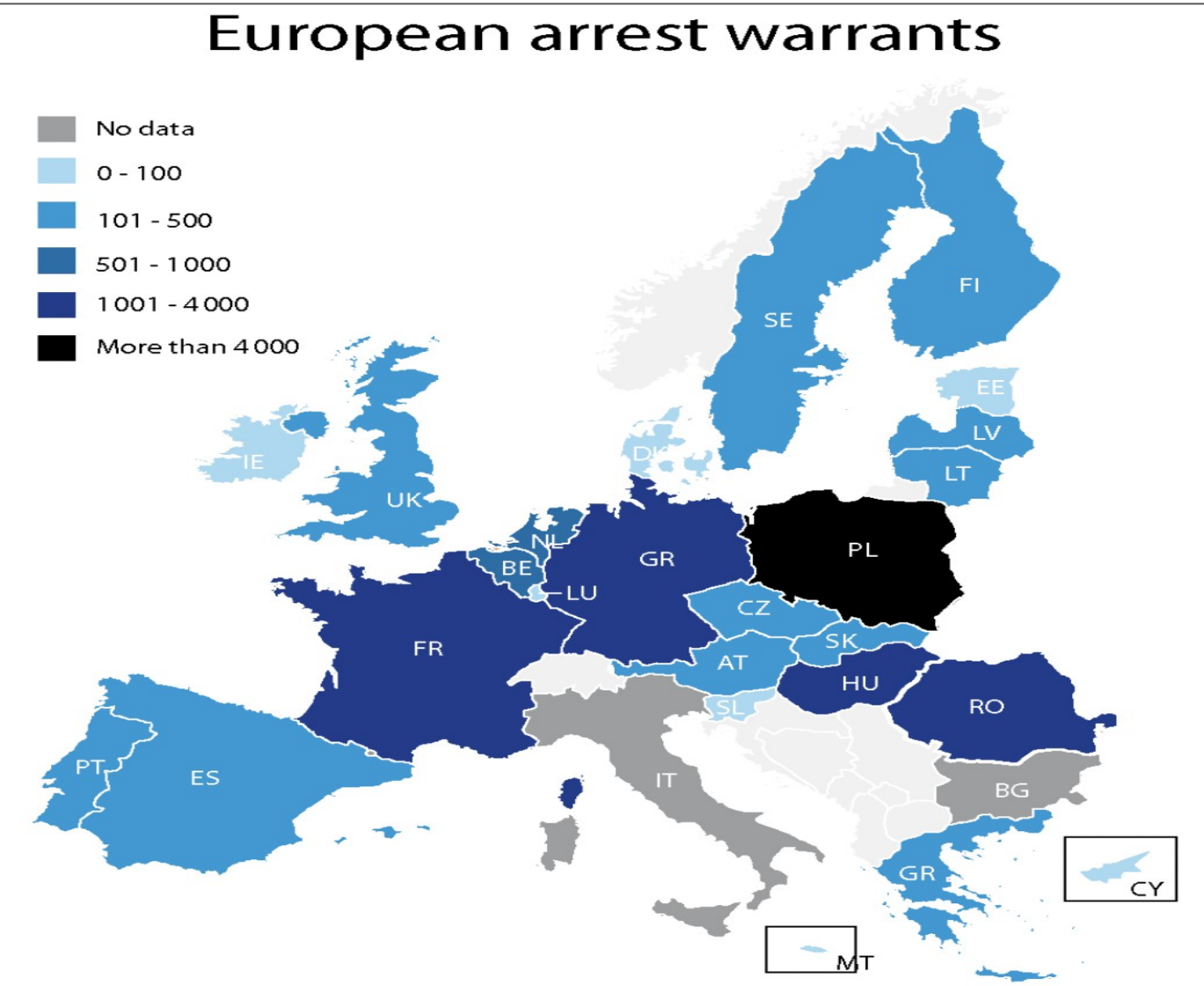


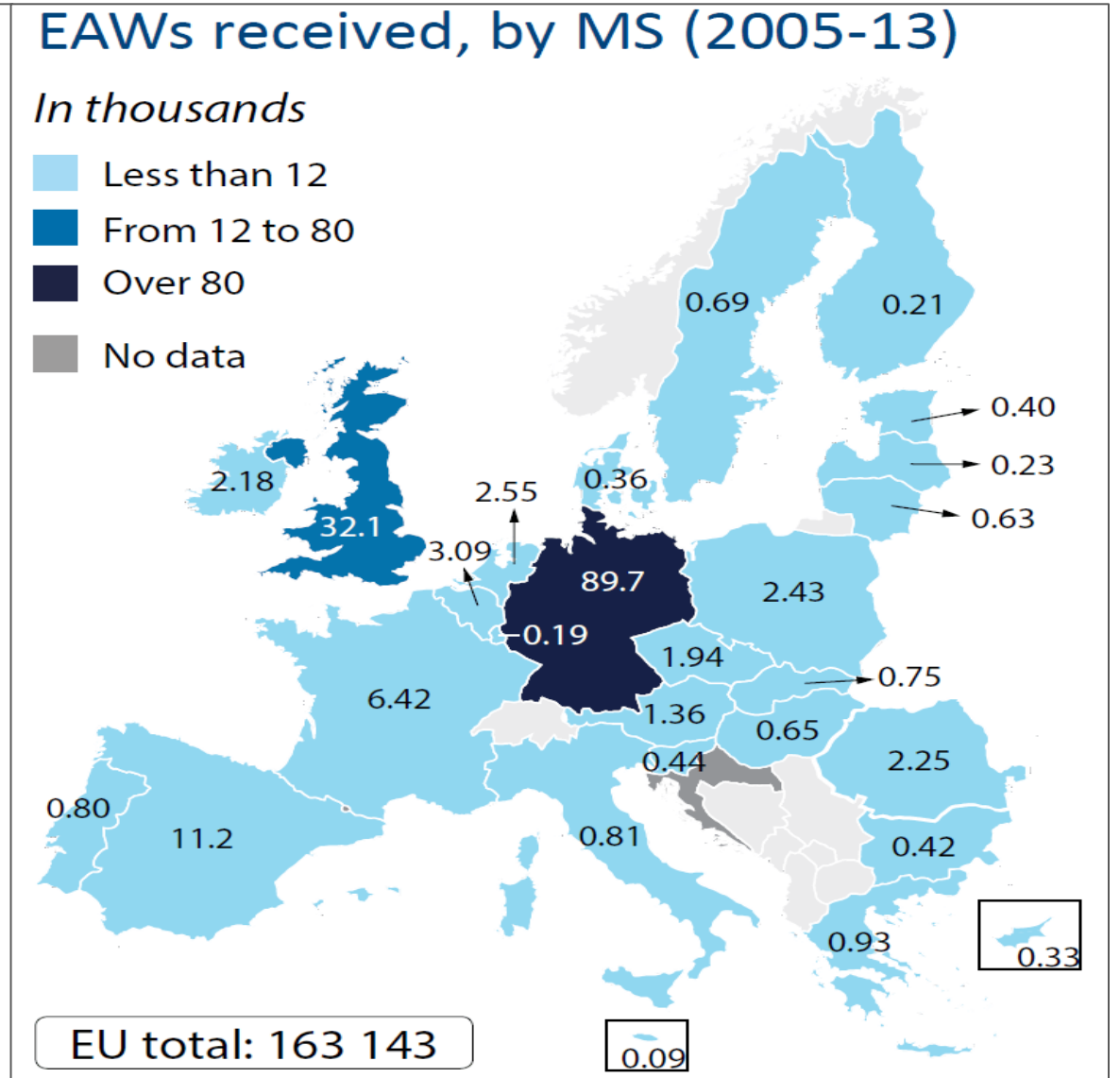
Historical and legal bakground – The EAW (IV)

- 1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by:
  - a **custodial sentence**
  - **EAW** ⟶ for the purpose of **execution**
  - for sentences of at least four months

- or a **detention order** for a maximum period of at least **12 months** ⟶ **in procedendo** (EAW for the purpose of **prosecution** as the proceedings is still ongoing)

Historical and legal bakground – The EAW (V)





Historical and legal bakground – The EAW (VI)

- **TIME**
  - In 2018, on average the requested persons were surrendered:
    - with consent – in **16,4 days**
    - without consent – in **45 days**.
  - In 2019, on average the requested persons were surrendered:
    - with consent – in **16,7 days**
    - without consent – in **55,75 days**.
  - In 2020, on average the requested persons were surrendered:
    - with consent – in **21,25 days**
    - without consent – in **72,45 days.**
  - In 2021, on average the requested persons were surrendered:
    - With consent – in **20,14 days**
    - Without consent – **53,72 days.**

EAWs	2014	2015	2016	2017	2018	2019	2020	2021
Issued	14.948	16.144	16.636	17.491	17.471	20.226	15.938	14.789
Executed	5.535	5.304	5.812	6.3	6.976	5.665	4.397	5.144

Historical and legal bakground – The EAW (VII)

WHAT ARE THE MAIN DIFFERENCES WITH EXTRADITION?

No involvement/decision of political authorities/Direct contact of judicial authorities

No prima facie assessment of evidence

Limited grounds for refusal

Abolition of control on political nature of offence

Innovation with regard to surrender of nationals: no pure prohibition surrender of nationals/residents

Innovation with regard to double criminality

Time limits: (10 – 60 – 90 days)

- From more than 1 year to less than 50 days

Standardized form

CONTENT AND FORM OF THE EAW (Article 8)

1. The European arrest warrant shall **contain the following information** set out in accordance with the form contained in the Annex:

- (a) the identity and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect,
- (d) the nature and legal classification of the offence
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing MS;
- (g) if possible, other consequences of the offence.

Historical and legal bakground – The EAW (IX)

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

Name: .....

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable: .....

Sex: .....

Nationality: .....

Date of birth: .....

Place of birth: .....

Residence and/or known address: .....

Language(s) which the requested person understands (if known): .....

.....

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

(b) Decision on which the warrant is based:

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

   Type: .....

2. Enforceable judgement: .....

   .....

   Reference: .....

Historical and legal bakground – The EAW (X)

FACULTY OF LAW, ECONOMICS AND FINANCE

(c) Indications on the length of the sentence:

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

.....

.....

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

.....

Remaining sentence to be served: .....

.....

.....

(e) Offences:

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

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

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

.....

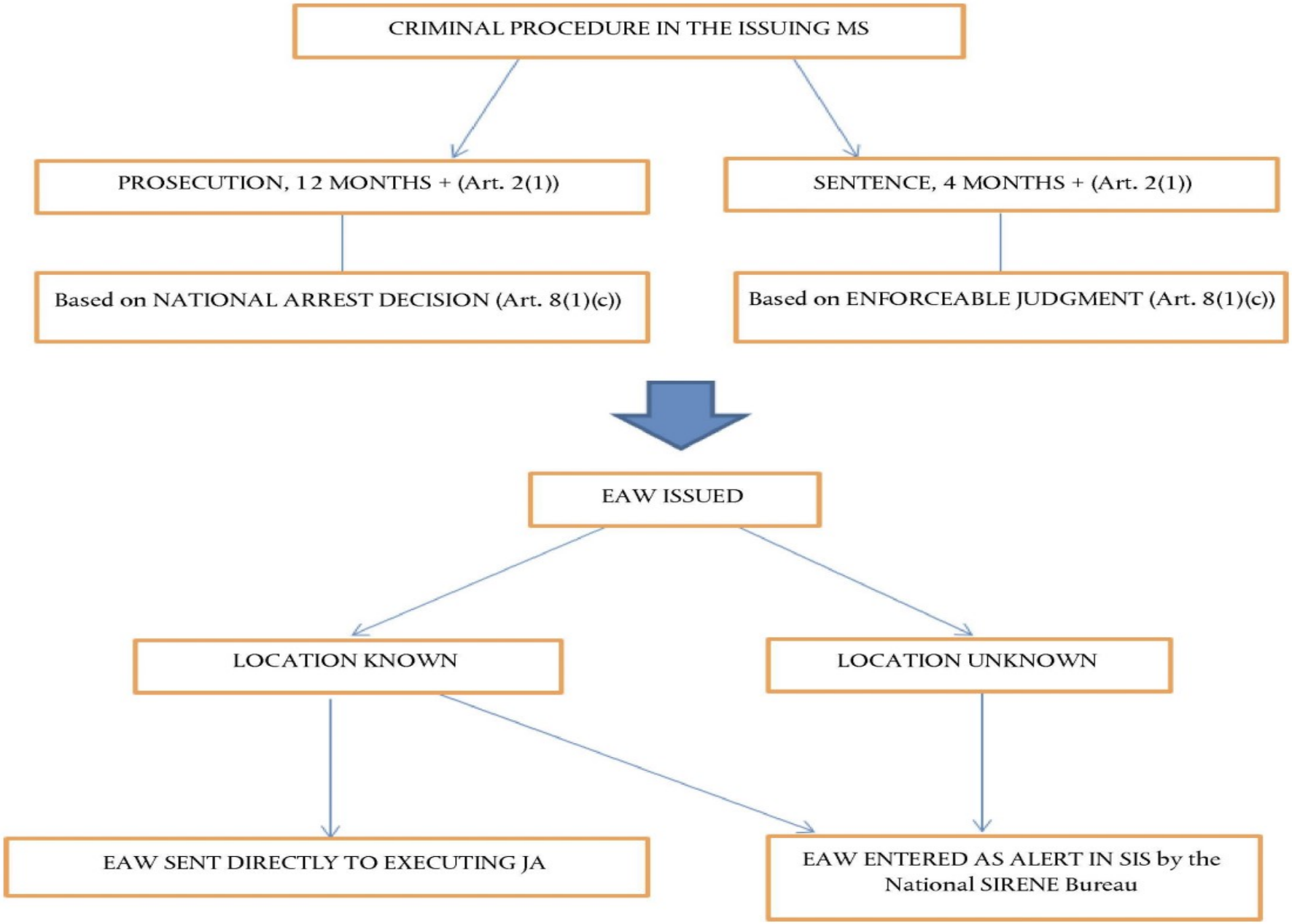
.....

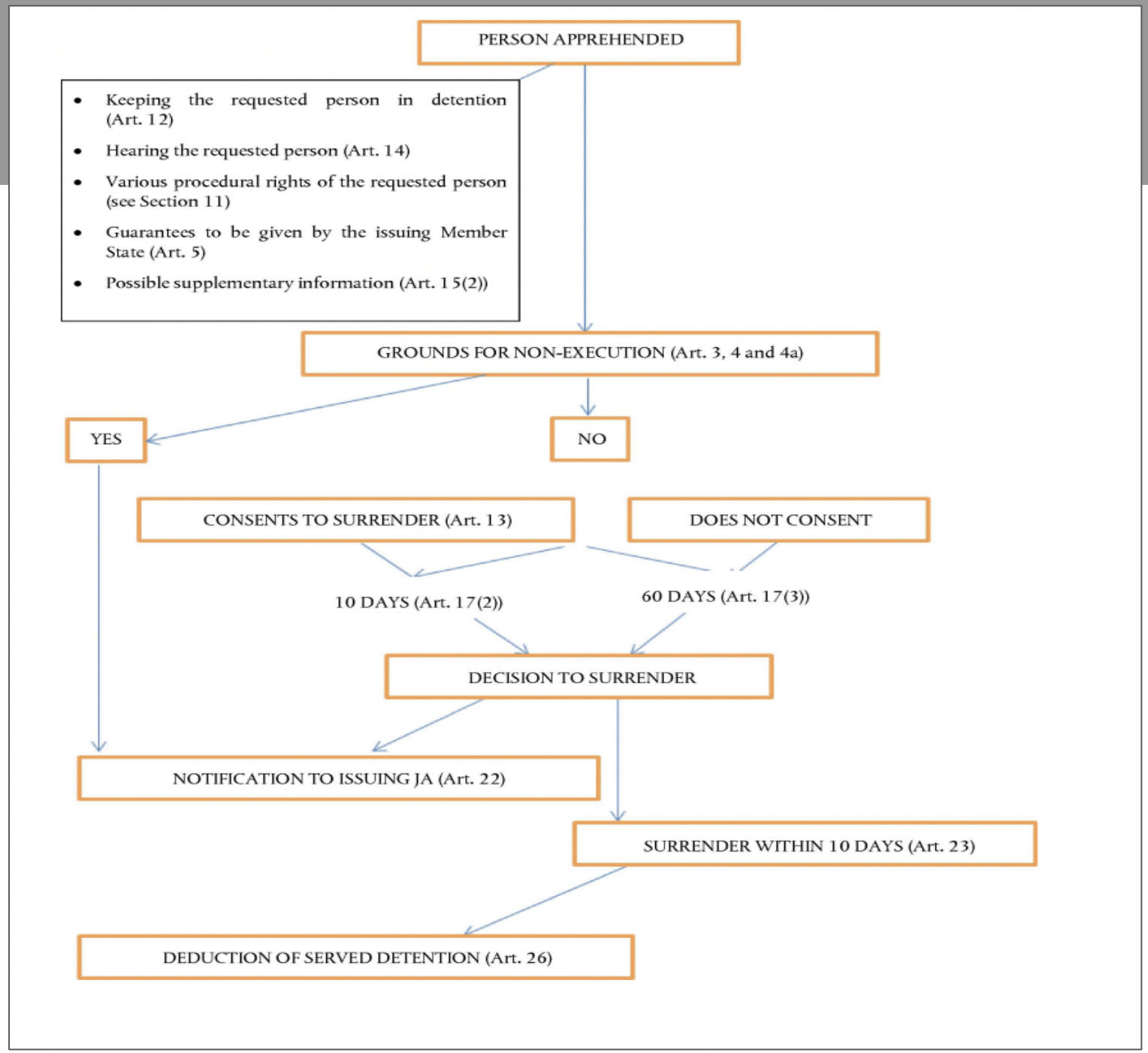
.....

.....

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

- ☐ participation in a criminal organisation;
- ☐ terrorism;
- ☐ trafficking in human beings;
- ☐ sexual exploitation of children and child pornography;
- ☐ illicit trafficking in narcotic drugs and psychotropic substances;
- ☐ illicit trafficking in weapons, munitions and explosives;
- ☐ corruption;
- ☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting of currency, including the euro;
- ☐ computer-related crime;
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;


CRIMINAL PROCEDURE IN THE ISSUING MS
PROSECUTION, 12 MONTHS + (Art. 2(1))
SENTENCE, 4 MONTHS + (Art. 2(1))
Based on NATIONAL ARREST DECISION (Art. 8(1)(c))
Based on ENFORCEABLE JUDGMENT (Art. 8(1)(c))
EAW ISSUED
LOCATION KNOWN
LOCATION UNKNOWN
EAW SENT DIRECTLY TO EXECUTING JA
EAW ENTERED AS ALERT IN SIS by the National SIRENE Bureau


PERSON APPREHENDED
Keeping the requested person in detention (Art. 12)
Hearing the requested person (Art. 14)
Various procedural rights of the requested person (see Section 11)
Guarantees to be given by the issuing Member State (Art. 5)
Possible supplementary information (Art. 15(2))
GROUNDS FOR NON-EXECUTION (Art. 3, 4 and 4a)
YES
NO
CONSENTS TO SURRENDER (Art. 13)
DOES NOT CONSENT
10 DAYS (Art. 17(2))
60 DAYS (Art. 17(3))
DECISION TO SURRENDER
NOTIFICATION TO ISSUING JA (Art. 22)
SURRENDER WITHIN 10 DAYS (Art. 23)
DEDUCTION OF SERVED DETENTION (Art. 26)

Historical and legal bakground – The EAW (XI)

- No distinction between *crimes* and *délits*
- **Double criminality**: Crime for which extradition is sought punishable in both countries (requesting and requested State)
  - List of 32 offences: no check on double criminality
    - Presumption of existence of equivalent crime
    - 'tick box' exercise
  - «***Other offences***»: check on double criminality required

- List of 32 crimes for which there is no requirement that the act is a criminal offence in both countries.

- The only requirement for these categories is that the offence must be *punishable by* ***at least 3 years*** *of imprisonment in the issuing country.*

- Offences or categories of offences?
- Conformity with the legality principle?

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

Limitation of double criminality

➢In cases where double criminality can still be checked, the CJEU clarified that the executing authority must consider the condition met:

"where the factual elements underlying the offence would also, **per se**, be subject to a criminal sanction in the territory of the executing State if they were present in that State"

➢Other elements, such as the interest protected, are not relevant: In this analysis it is irrelevant whether the laws infringed concern a legal interest of the Issuing State, but rather whether, if the conduct had been committed in the territory of the Executing State, 'it would be found that a similar interest, protected under the national law of that State, had been infringed' (CJEU, C- 289/15, Grundza (case on the FD 2008/909/JHA - transfer of prisoners - but rationale extensible to EAW)

PART I – PROHIBITION OF INHUMAN OR DEGRADING TREATMENT. DETENTION CONDITIONS, HEALTH RISKS RESULTING FROM SURRENDER. THE RIGHT TO SERVE THE SENTENCE IN THE EXECUTING MEMBER STATE

Fundamental rights as a ground for refusal (I)

Mutual trust is **not absolute** ⟶ fundamental rights **set limits**

Article 4 of the **EU Charter of Fundamental Rights**: absolute prohibition of inhuman or degrading treatment

Interplay with **Article 3 ECHR**: no derogation, even in times of emergency

Key jurisprudence:

- ECJ, ***Radu*** (2013) ⟶ no automatic surrender without right to be heard
- ECJ, ***Melloni*** (2013) ⟶ primacy of EU law over higher domestic protection if EU standard met
- ECJ, ***Aranyosi and Căldăraru*** (2016) ⟶ obligation to assess detention conditions in issuing State
- ECJ, ***Dorobantu*** (2019) ⟶ real and individual risk must be considered
- ECJ, ***ML*** (2021) ⟶ stricter scrutiny of prison conditions in issuing MS
- ECJ, ***EDL*** (2022) ⟶ health vulnerabilities of requested person can justify refusal
- ECJ, ***OG*** (2023) ⟶ executing MS may refuse surrender of a third-country national residing or staying on its territory

A **shift from automatic trust to conditional trust** in EAW execution?

Fundamental rights as a ground for refusal (II)

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

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

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

Fundamental rights as a ground for refusal (III)

The **golden rule**: Executing an EAW is a duty for the executing judicial authority

Exceptions: grounds for refusal listed in the FD EAW (Articles 3, 4 and 4a)

Refusal to execute is intended to be an **exception** which must be interpreted strictly (*Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU and C-563/21 PPU)

rules derogating from the principle of mutual recognition stated in Article 1(2) cannot be interpreted in a way which would **frustrate the objective** (of the EAW) which is to **facilitate and accelerate surrenders** between the judicial authorities of the Member States in the light of the mutual confidence which must exist between them (Generalbundesanwalt beim Bundesgerichtshof (Speciality rule), C-195/20 PPU)

Fundamental rights as a ground for refusal (IV)

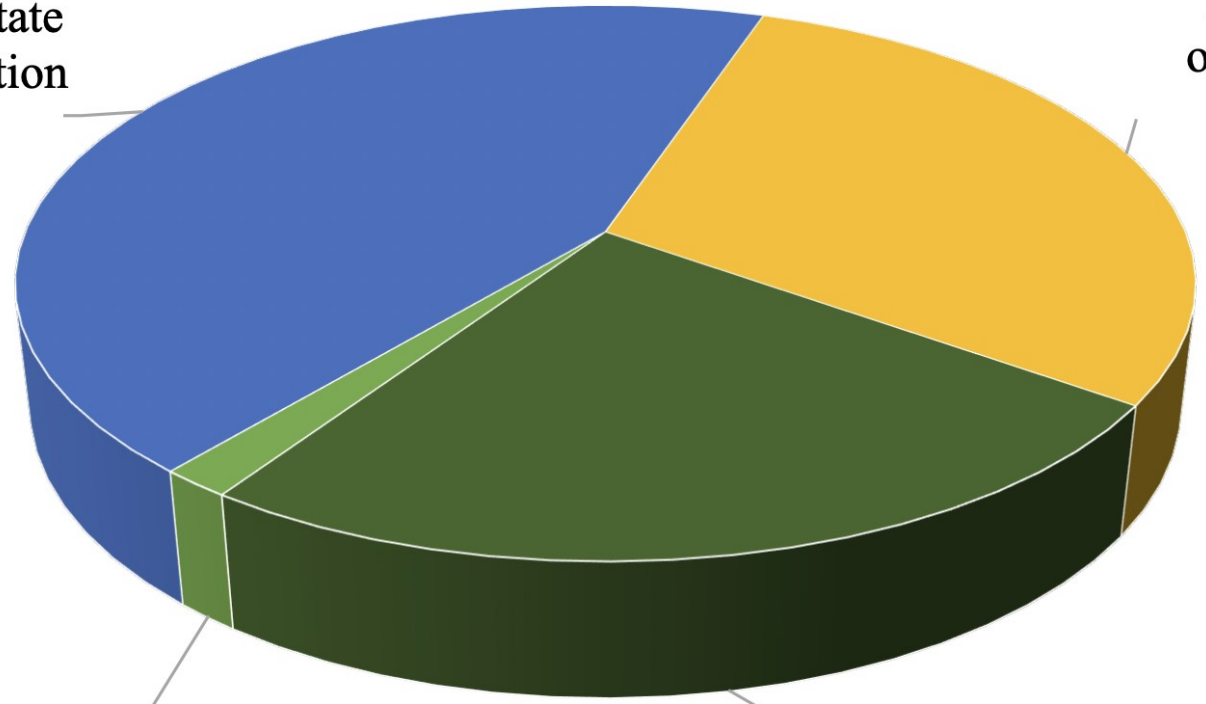
Article 3: ***Mandatory*** grounds for refusal amnesty

- Amnesty
- *Ne bis in idem* (sentence served or no longer executable)
- Person under the age of criminal responsibility

Article **4 and 4a**: ***Optional*** grounds for refusal

- Absence of dual criminality for crimes outside list, etc.
- Territoriality: ongoing prosecution for the same act in the executing MS
- Other forms of *ne bis in idem* (i.e., final judgement in third state)
- Territoriality: statute-barred prosecution or punishment (if the executing MS has jurisdiction)
- Final judgment from a third country
- Nationality: national or resident of the executing MS. Execution of the sentence/detention order in the executing MS)
- *In absentia* decisions

Grounds for non-execution (Article 3, Articles 4 and 4a):



Article 4(6): the executing Member State undertakes the execution of the sentence, **44%**

Article 4: other optional grounds, **30%**

Article 3: mandatory grounds, **2%**

Article 4a: in absentia, **24%**

Fundamental rights as a ground for refusal (V)

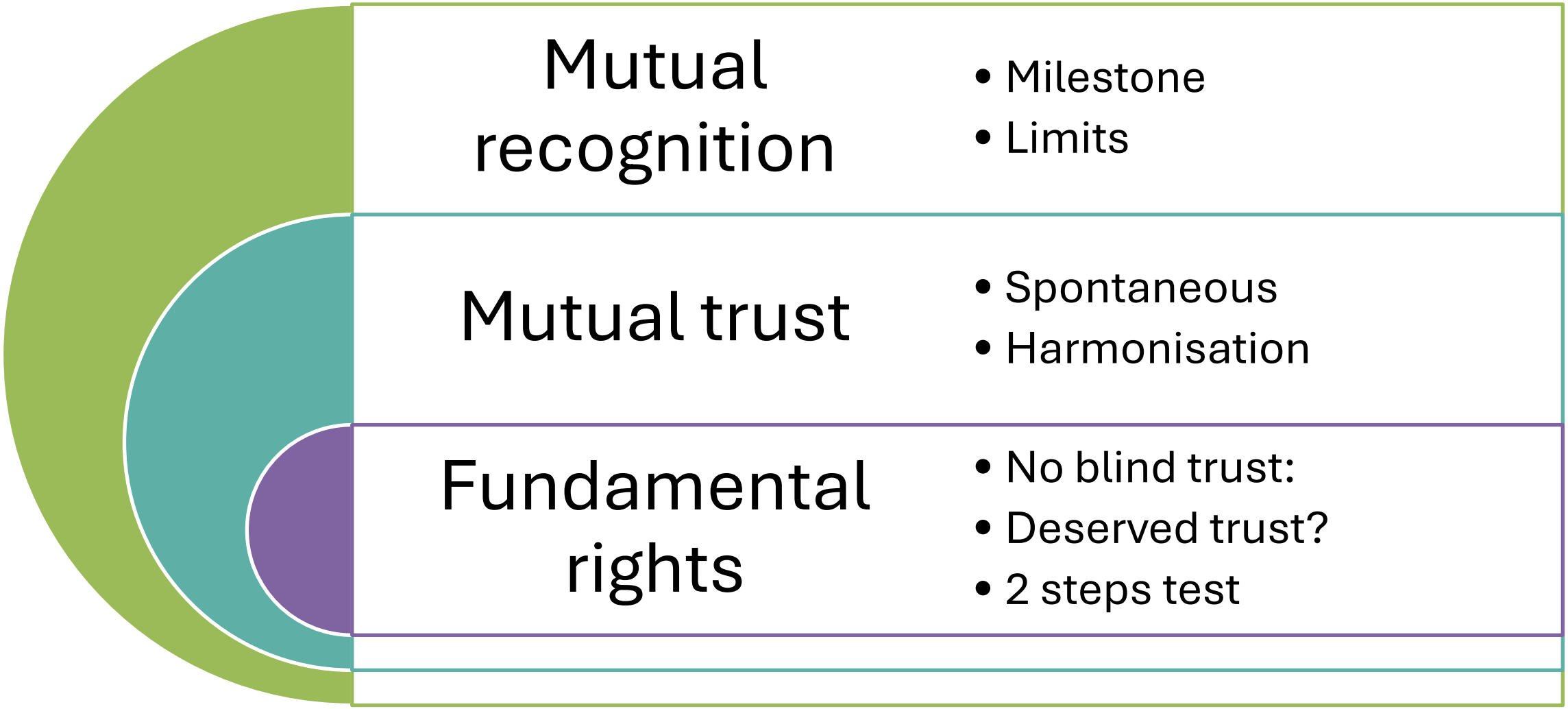
- **Grounds for refusal** = Exhaustive nature of the grounds for refusal

➢ No explicit ground for refusal on fundamental rights in the EAWFD (but general non-affection clause in Article 1(2) and Preamble)

- What about compliance w. Human Rights?
  - E.g. person has been tortured/will be tortured, person has not received fair trial/will not receive fair trial

- ***How to judge this?***
  - Retrospective violation/prospective violation
  - Could further information be requested from the issuing authority?
  - Risk of breaching mutual trust

Fundamental rights as a ground for refusal (VI)



Poor detention conditions (I)

Violations of **absolute rights** (prohibition of torture and inhuman or degrading treatment or punishment, and prohibition of slavery and forced labour)

- Joined Cases C-404/15 & 659/15 PPU, Aranyosi and Caldararu (detention conditions in Romania)
- Case C-220/18 PPU ML (detention conditions in Hungary)
- Case C-128/18 Dorobantu
- (detention conditions in Romania)

Poor detention conditions (II): Aranyosi

- A. forced entry to private places for stealing in Hungary
- Hungarian Court issues two EAW
- Aranyosi arrested in Germany
  - detention conditions in many Hungarian prisons under minimum standards
    - conviction for overcrowding by ECtHR (art. 3 ECHR – art. 4 CFEU
  - German Prosecutor requests information to Hungarian counterpart

Surrender?

- **CJEU:**
- Protection art. 4 CFEU (and 3 ECHR) is absolute
- Evidence real risk ➔ executing authority bound to recognise it
  - Obligation to request further information under art. 15(2) FD
  - Postponement of execution
  - After reasonable time final decision

"[...] Even the most serious deficiencies do not on their own allow courts in other Member States to refuse automatically to execute any arrest warrant issued by that Member State."

Two-steps test:

- 1. Systemic or generalized deficiencies or deficiencies affecting an objectively identifiable group of persons to which the requested person belongs (systemic assessment),
- 2. Specific and precise analysis of the individual situation of the requested person (specific assessment). It implies the duty to ask information to the issuing authority.

EAW and right to health (I)

Article 1(3) EAW FD – MS shall respect fundamental rights as enshrined in Article 6 TEU, among others:

- Article **3** of the Charter – right to **personal and mental integrity**;
- Article **4** of the Charter – prohibition of **inhuman** and degrading treatments;
- Article **35** of the Charter – right to **healthcare**.

Case C-699/21 – **E.D.L.** (*ground for refusal based on illness*)

- Croatia (issuing MS) ⇒ Italy (executing MS)
- Defendant suffering from a **psychotic disorder** requiring **treatment** with **medications** and psychotherapy + **risk of suicide if detained**;
- EAW execution would **interrupt** E.D.L.'s treatment;
- How to reconcile **chronic illness of potentially indefinite duration** with EAW execution?

EAW and right to health (II)

- Preliminary reference. Whether the executing authority:

(i) must request from the issuing authority **information** about the existence of such a risk to be ruled out and

(ii) whether it must **refuse to surrender** the defendant if it **does not obtain**, within a reasonable period of time, the **assurances** required to rule out that risk.

Grand Chamber

(1) suspension of the surrender	(2) suspension of the surrender	(3) refusal of the surrender
Manifest risk endangering their **health**	Genuine risk of: • significant **reduction** in their **life expectancy**; • rapid and irreversible **deterioration** of their state of **health**	Exceptional scenario
Article **23(4) EAW FD**	Ask the issuing authority to provide all **information**	In light of the **information provided** and **available** to the executing authority
Minimum degree of **severity**		Risk of **inhuman and degrading treatments** cannot be ruled out within a **reasonable period of time**

EAW and motherhood:
Case C-261/22, GN, 21 December 2023

1. Respect for private and family life – Article 24(2) and (3) – Taking into consideration the best interests of the child
2. A court cannot refuse to execute an EAW on the **sole ground** that the requested person is the **mother of young children living with her**.
3. However, that court may exceptionally refuse that person's surrender if two conditions are satisfied:
    1. first, there must be a **real risk** of breach of the mother's fundamental right to respect for her private and family life and of disregard for the best interests of her children, on account of **systemic or generalised deficiencies** in the conditions of detention of mothers of young children and of the care of those children in the State issuing the EAW
    2. second, there musts be substantial grounds for believing that, in the light of their personal situation, **the persons concerned will run that risk** on account of those conditions.

(GN, Case C-261/22, 2023)

The right to serve the sentence in the executing Member State

- Nationals, residents and persons staying in the executing MS
- What about third-country nationals resident in the executing MS? Can the EAW be refused and the sentence executed in the executing MS?
- CJEU 6 June 2023, **O.G.** C-700/21

> «*the executing judicial authority must make an **overall assessment** of all the specific elements that characterise that national's situation which are capable of showing that there are, between that person and the executing Member State, **connections demonstrating that he or she is sufficiently integrated into that State** such that the execution in that Member State of the custodial sentence or detention order pronounced against that person in the issuing Member State will **contribute to increasing the chances of social rehabilitation** after that sentence or detention order has been executed*».

- Those elements include the family, linguistic, cultural, social or economic links

PART II – RIGHT TO A FAIR TRIAL. THE INDEPENDENCE OF THE ISSUING JUDICIAL AUTHORITY OF THE EAW

Right to a Fair Trial: The independence of the issuing judicial authority of the EAW (I)

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DIVISION OF COMPETENCES

Issuing Member State

Adoption of the warrant:
Grounds/ necessity of EAW
3 reasons:

1. execution of pre-trial detention order
2. Execution of sentence
3. Questioning suspect

Type of crime and recurrence of listed offence

Executing Member State

Control purpose within the Framework Decision

Application of grounds for refusal

Incl. double criminality (non list offences)

Assessment of the interests of the requested person

Right to a Fair Trial: The independence of the issuing judicial authority of the EAW (II)

- CJEU: "*an executing judicial authority must not give effect to an EAW which **does not meet the minimum requirements** on which its validity depends*" ((*Puig Gordi and Others, C-158/21*); *Minister for Justice and Equality (Levée du sursis)* C-514 and 515/21).

- Requirements:
  - '**an arrest warrant**' (Article 8(1)(c) EAW FD):the CJEU held that if no 'national arrest warrant', separate from the EAW, exists, the EAW does not satisfy the requirements as to lawfulness laid down in Article 8(1) EAW FD and the executing authority must refuse to give effect to it (*Bob-Dogi, C-241/15*)
  - the '**penalty imposed** if there is a final judgment' (Article 8(1)(f) EAW FD),
  - the notions of '**judicial decision**' (Article 1(1) EAW FD)
  - '**judicial authority**' (Article 6(1) EAW FD): autonomous concept
  - And **effective judicial protection**: The CJEU also clarified that the requirements of effective judicial protection, that must be afforded to a person who is the subject of an EAW for the purpose of criminal prosecution, presuppose that **either the EAW or the national arrest warrant on which it is based be subject to judicial review by a court in the issuing Member State prior to the surrender of the requested person** (*Svishtov Regional Prosecutor's Office C-648/20*; *Prosecutor of the regional prosecutor's office in Ruse, Bulgaria C-206/20*)

Right to a Fair Trial: The independence of the issuing judicial authority of the EAW (III)

- **Judicial decision.** the CJEU specified that EAWs issued by the **Swedish National Police Board** and the **Ministry of Justice of the Republic of Lithuania** were not 'judicial decisions' in the meaning of Article 1(1) EAW FD (*Poltorak*; *Kovalkovas*).

- However, EAWs issued by a **public prosecutor** can fall within that concept, despite the fact that those public prosecutors are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, provided that:
  - those arrest warrants are **subject to endorsement by a court**
  - that **reviews independently and objectively**,
  - having access to the **entire criminal file**
  - **the conditions of issue and the proportionality** of those arrest warrants,
  - adopting an **autonomous deci**sion which gives them their final form (*NJ (Parquet de Vienne)*).

Issuing judicial authority: autonomous concept

Def: judicial authority of the issuing MS which is competent to issue a EAW ***under national law*** (Art 6(1))

'issuing authority' is an autonomous concept that has been subject to **autonomous interpretation** by the CJEU.

It has to fulfil three **cumulative** criteria:

- the authority should participate in the ***administration of criminal justice*** ≠ ministries or police services
- it must act ***independently*** in the execution of its functions ≠ subject to directions or instructions from the executive in *specific cases* – not simply general instructions on criminal policy
- the decision to issue a EAW must be capable of being the subject, in the issuing MS, of court proceedings which **meet in full the requirements inherent in effective judicial protection at least, at one of the two levels of that protection** (when issuing the national or when issuing the European arrest warrant)

“Issuing judicial authority”

Swedish national police Board (C-452/16 Poltorak)

Lithuanian Ministry of Justice (C-477/16 Kovalkovas)

For the purpose of prosecution: Joined Cases C-508/18 and C-82/19 PPU (German Public Prosecutor’s Office) → **NO → they may be subject to directions or instructions from the executive in specific cases**

Joined Cases C-566/19 PPU and C-626/19 PPU (French Public Prosecutor’s Office but EAW based on a national arrest warrant adopted by a investigating judge. Doubts concern hierarchical prosecutorial constraints) → **YES**

Case C-625/19 PPU (Swedish Prosecution Authority) → **YES**

For the purpose of prosecution:

Case C-627/19 PPU (Belgian Public Prosecutor’s Office) but EAW for the purpose of execution → **YES**

« Executing authority »

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- **autonomous concept:** judicial authority of the executing MS competent to execute a EAW ***under national law*** (Art 6(2))
  - the CJEU considered its case law on the concept of 'issuing judicial authority' to be transferable to the concept of 'executing judicial authority'
  - three cumulative criteria (see previous slide)
  - Case Case C-510/19: *Dutch Public Prosecutor's Office*: Since the Dutch public prosecutor may receive instructions from the Dutch Minister of Justice in specific cases, he/she **does not constitute an "executing judicial authority."** Therefore, the consent given by the Netherlands to disapply the specialty rule is void.

Focus on effective judicial review

autonomous concept but procedural autonomy

It applies on to the EAW issued for the purpose of prosecution

It is problematic when the EAW is issued by a prosecutor

A duty to check conditions and proportionality

for the MS but national rules vary significantly

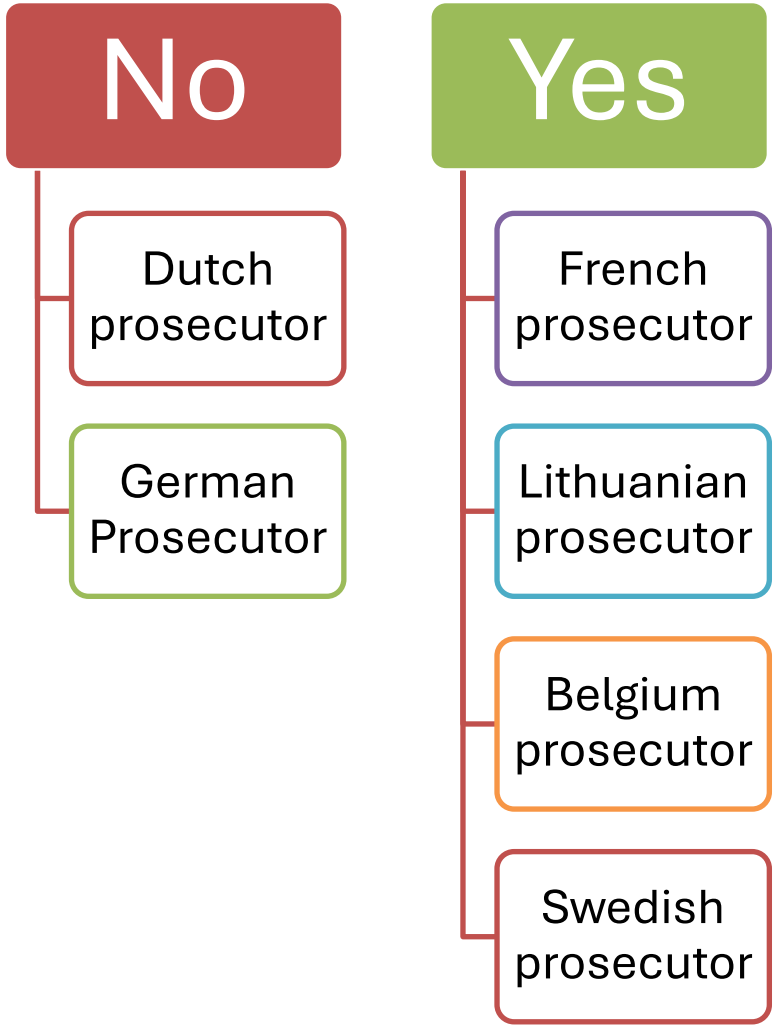
- Option one: A separate right to appeal against the prosecutorial decision to issue an EAW
- Option two: A court's review before, concomitantly or after the surrender (*Parquet général du Grand-Duché de Luxembourg and de Tours C-566/19; Openbaar Ministerie (Swedish Public Prosecutor's Office C-625/19)*
- Option three: when there is not such a possibility, a review together with the lawfulness of provisional detention order must be granted (*MN, C-414/20*)

Focus on effective judicial review

- However, a judicial authority, when issuing an EAW, is under **no obligation** to forward to the person who is the subject of that arrest warrant the **national decision on the arrest and information on the possibilities of challenging that decision** while that person is still in the executing Member State and has not been surrendered (*Spetsializirana prokuratura (Informations sur la decision nationale d'arrestation), C-105/21*).

Prosecutors as executing authorities

Joined Cases C-508/18 (OG) and C-82/19 PPU
Case 510/19



C-556/19 PPU and C-626/19 PPU, Case C-625/19 PPU, and Case C-627/19 PPU

Fair trial rights

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Serious violations of **fair trial rights**, e.g., violation of the right of access to an independent and impartial tribunal:

- Case C-216/18 PPU, LM → deficiencies concerning the independence of the judiciary in the Member State in Poland = systematic **breach of rule of law**

- Joined Cases C-562/21 & C-563/21, X and Y → deficiencies concerning the independence of the judiciary in the issuing Member State (Poland), in particular as regards the procedure for the appointment of the members of the judiciary = systematic **breach of rule of law**

Fair trial rights (independence of the judiciary)

Polish EAW: LM has committed offences of trafficking in narcotic drugs and psychotropic substances in Poland

He was found in Ireland

LM did not consent to the surrender to Polish authorities: risk of denial of justice because of Polish reforms created an issue on independence of the judiciary: reasoned proposal of the Commission for Council to determine serious breach of values under art. 2 TEU

Irish authorities: reference for preliminary ruling

If there is cogent evidence that conditions in the issuing MS are incompatible with the fundamental right to a fair trial because the system of justice itself in the issuing MS is no longer operating under the rule of law, is two-step test still necessary?

ANSWER: Yes, two-stage examination: ‘systemic’ assessment (reasoned proposal relevant!) + specific assessment.

If real risk of breach of right to an independent tribunal + to a fair trial: executing authority may refrain

- in “exceptional circumstances,” the CJEU admits
  - 1. not only the fundamental rights embodied in Art. 4 CFR but also those laid down in **Art. 47(2) CFR are suitable for enabling the executing authority to refrain from executing an EAW.**

  - The main reasons are as follows:
    - A simplified surrender system involving only judicial authorities can only work if the **independence** of the authorities in the issuing State is guaranteed;
    - effective judicial protection implies independence and impartiality of these courts.

- 2. the CJEU largely extends the application of the "*Aranyosi & Căldăraru test*" to the right to a fair trial, i.e., **a two-step assessment is necessary**:

  - First step: **systemic or generalised deficiencies in abstracto**
    - Based on objective, reliable, specific, and properly updated material concerning the operation of the system of justice in the issuing MS, the executing authority must assess whether there is a **real risk** of the fundamental right to a fair trial being breached that is connected to a lack of independence of the courts in the issuing Member State, on account of **systemic or generalised** deficiencies there. In other words, the executing court must be convinced that an danger to the fundamental rights of the individual exists *in abstracto* (as standardised in Art. 47(2) CFR).

  - Second step: **probability that the danger will be realised *in concreto*.**
    - The executing authority must **specifically and precisely assess** whether, in the particular case, there are substantial grounds for believing that the requested suspect will run the real risk of being subject to a breach of the **essence** of his fundamental right to a fair trial, as laid down in Art. 47 CFR.

- In contrast to ***Aranyosi & Căldăraru***, where the CJEU only required the national judge to ascertain the presence of an **individualised risk**, the test in *LM* requires the national judge to consider all the individual circumstances of the case and obliges the judge to carry out **two sub-steps**:

  - Asking first whether the risk established in the first step applies **at the level of the court** with jurisdiction over the criminal proceedings to which the requested person (extraditee) will be subject;

  - Asking secondly whether the risk exists in the case of the requested person himself/herself, having regard **to his/her personal situation, as well as to the nature of the crime for which he/she is being prosecuted**.

Joined Cases C-354/20 & C-412/20 PPU, *L and P*

- independence – as a requirement inherent in the concept of 'issuing judicial authority' – requires that there are **statutory rules and an institutional framework** capable of guaranteeing that the issuing judicial authority **is not exposed**, when adopting a decision to issue such an arrest warrant, **to any risk of being subject, inter alia, to an instruction in a specific case from the executive** (Joined Cases C-508/18 and C-82/19 PPU – see previous slides)
- systemic or generalised deficiencies so far as concerns the independence of the issuing Member State's judiciary, however serious, **are not sufficient, on their own, to enable an executing judicial authority to consider that all the courts of that Member State fail to fall within the concept of an 'issuing judicial authority',**
- otherwise, risk of an **automatic refusal** to execute any EAW issued by that Member State → *de facto* suspension of the implementation of the EAW mechanism in relation to that Member State

PART III – RIGHTS OF THE DEFENCE

General remarks

- (No) Right to be present at trial (***Melloni***, C-399/11)
- Judgment *in absentia* = **optional** ground for refusal (Art 4a)
- But the executing authority **cannot refuse** to execute notwithstanding the absence of the person concerned at the trial when:
  - official notification and not appearance (awareness of the proceedings, Case *Zdziasek* C-271/17 PPU + Case *Dworzecki* C- 108/16 PPU), or
  - Effective legal representation, or
  - right to retrial (Case *Generalstaatsanwaltschaft Hamburg* C-416/20 PPU)

C-504/24 PPU - *Anacco*

Factual background

- Issuing State: **Belgium** – EAW issued for enforcement of a 2-year custodial sentence;
- Requested Person: **RT**, French-Malian national with a diplomatic passport, arrested in **Italy**.
- Offence at stake: Removal of child abroad in violation of custody orders (Belgian Criminal Code).

Key circumstances

- RT **tried in absentia** in Belgium; **not** served with **indictment**; **no lawyer** present at trial.
- Italian court questioned whether surrender was permissible under **Italian constitutional standards and EU law** (i.a. Articles 6 TEU, 48 and 52 Charter)
- Under Belgian law, RT could request a **retrial** or appeal within 15–30 days of surrender.

Urgency

Case referred under urgent preliminary ruling procedure due to RT's **continued detention in Italy** since June 2024.

C-504/24 PPU - *Anacco*

Core legal question

Can the executing Member State (Italy) refuse surrender under EU law where the person: (i) was tried ***in absentia***; (ii) was **neither represented** by a **lawyer**, nor **notified** with an **indictment**, **BUT** (iii) will have access to **retrial**/**appeal** rights after surrender?

Decision

Article 4a(1)(d) FD 2002/584, read with Article 6 TEU and Articles 47–48(2) of the Charter, does **not** allow **refusal** in this case. The Framework Decision ***exhaustively*** **lists the grounds for refusal**; **lack of legal representation at the trial is not one of them**.

Key takeaways

- The ECJ affirms strict mutual recognition: Member States **cannot add extra grounds** for refusal, even for *higher constitutional standards*;
- The **right to a retrial** or appeal with full participation satisfies EU fundamental rights.
- The ruling echoes ***Melloni*** and ***Dorobantu***: **EU law sets the standard**; national constitutional protection cannot prevail where EU law is harmonised.

Factual background

- Issuing State: **Czech Republic** – EAW for enforcement of 15-month custodial sentence.
- Requested person: **Czech national**, arrested in Berlin in 2021; had moved to **Germany** and did not inform Czech authorities.
  - **1st instance (Czech Republic)**: RQ **appeared** in person and was convicted.
  - **Appeal (Czech Republic)**: RQ **did not appear** and was **not represented by counsel**; the appeal court reduced the sentence.

Key Circumstances

- Summons for appeal sent to address provided by RQ; not collected, but deemed ***served*** under **Czech law**.
- German law absolutely **prohibits surrender** where the person was convicted *in absentia*.
- German court questioned whether EU law **allows such an *automatic* refusal** despite Article 4a(1) FD 2002/584.

C-398/22 – *RQ*

Core legal questions

1. Does the "**trial resulting in the decision**" under Article 4a(1) refer to the appeal (not first instance)?
2. Can national law absolutely prohibit surrender for convictions in absentia, **contrary to the *optional* nature of refusal** under EU law?

Key findings

- Appeal proceedings resulting in a final conviction fall within the meaning of "trial resulting in the decision" – even if **favorable** to the accused.
- National laws **cannot *automatically* exclude surrender** due to in absentia convictions. Such laws violate Article 4a(1), which provides ***optional* refusal** and must be interpreted strictly.
- German courts must interpret national law as far as possible in light of the FD; but cannot go contra legem (cf. *Popławski*)

Takeaways

- The Court: (i) reinforces strict mutual recognition and **limits national discretion**; (ii) confirms the **primacy of EU law**, even over well-established national procedural guarantees; (iii) confirms and **clarifies prior case-law** (e.g., *Tupikas*, *Melloni*) on trials in absentia and limits to refusal under Article 4a.

Factual background

- EAWs issued **by Hungary and Poland** for executing custodial sentences initially suspended.

1. Case C-514/21 – *LU* (Hungary)
   - **2007**: **LU convicted** in person in Hungary for offences committed in 2005. Sentenced to 1 year imprisonment, **suspended for 2 years**.
   - **2010**: **Convicted again (*in absentia*)** for non-payment of child support during probation ⟶ this triggered **revocation** of the earlier suspended sentence.
   - **2012**: Hungarian court **revoked suspension** and **ordered LU to serve the 2007 sentence**. LU was **absent** from this hearing; was **not served** with a **summon**; a court-appointed lawyer represented him. He tried and failed to obtain a retrial.
   - **2017**: Hungary issued **an EAW to Ireland** for the 11 months remaining on his original sentence.

Issue ⟶ Should Ireland **execute** an EAW when the **revocation** of **suspension** was based on a **conviction *in absentia***, without proper safeguards?

Factual background

2. Case C-515/21 – *PH* (Poland)

- **2015**: PH **convicted in person** in Poland; sentence of 1 year **suspended** for 5 years.
- **2017**: PH **convicted again (in absentia)** of a second offence ⟶ **automatic revocation** of the earlier **suspended** sentence (mandatory under Polish law).
  - He was **unaware of the hearing**; did **not appear or appoint a lawyer**.
- **2019**: Poland issued an EAW for PH to serve the 2015 sentence.

Issue ⟶ Can surrender be refused when the **suspension** was **revoked** due to an ***in absentia* conviction**, **without any right to retrial**?

Key findings

- Article 4a(1) ***allows* the executing authority to *refuse*** surrender where the person was absent at the trial leading to the custodial sentence, **unless certain procedural guarantees** (listed in a–d) **are met**.
- The Court clarified that:
  - Only the **criminal conviction** that ***directly* triggered** the enforceable sentence and the EAW qualifies as the "**decision**" under Article 4a(1).
  - A **revocation order** (e.g., reinstating a suspended sentence) **does *not* count** as the "**decision**" (unless it changes the nature/length of the sentence or revisits guilt).

- If the **second conviction** (in absentia) **made the EAW possible** (by revoking suspension), it must be treated as the **trial** "**resulting in the decision**" under Article 4a(1).

- The executing authority **may refuse surrender** if the second conviction occurred *in absentia* **and** the **EAW lacks evidence of procedural safeguards**.

Key findings

When can a surrender be refused?

- Executing authority **may** refuse surrender if:
  1. The decisive second conviction occurred **in absentia**, and
  2. The EAW does **not** certify that the person was:
     - properly informed of the trial,
     - defended by counsel, or
     - entitled to a retrial or appeal (**Art. 4a(1)(a)-(d)**).

- **Limits on refusal**:
  - The **revocation order** itself (e.g., reinstating a suspended sentence) **cannot** justify refusal **unless there is a systemic risk to a fair trial** (Art. 1(3) FD + Article 47 Charter).
  - Similarly, a surrender can **not** be made **conditional** on a retrial or re-examination of that revocation or the *in absentia* conviction.
    - **But** the executing authority ***can*** request **information** under Art. 15(2) FD to **verify if a retrial or procedural remedy is possible**.

- Overall ⟶ EAW execution **is the rule**, but fair trial guarantees must be respected when the decisive conviction was in absentia.

Factual background and key circumstances

- **German court** asked to the ECJ whether surrender under an EAW can be ***refused*** when the sentence was issued *in absentia* **without guarantee of retrial**.

- Person concerned: **TR**, **Romanian** national, **convicted *in absentia* in Romania** for multiple criminal offences.
- EAWs Issued by Romanian courts in 2019 and 2020 for enforcement of custodial sentences.
- **TR's conduct**: Fled to Germany in 2018 *to evade proceedings*; was represented by lawyers in Romania.
- Proceedings:
  - First-instance: defended by a lawyer of his choice.
  - Appeal: defended by court-appointed counsel.

- Issue ⟶ Romanian authorities refused to guarantee a retrial; German court questioned **compatibility with Directive 2016/343** (Articles 8-9 – right to be present at trial).

Findings

- Art. 4a FD sets an **exhaustive list** of exceptions allowing refusal where the conviction occurred in the person's absence.
- Execution *must proceed* if one of the exceptions in Art. 4a(1)(a)-(d) is satisfied – including:
  - The person was **aware of the trial** and **represented by a lawyer** (Art. 4a(1)(b)).
  - The person **absconded**, impeding personal service (**confirmed here**).

- **Dir 2016/343 (Article 8-9)** recognizes the right to be present at trial and to a new trial if convicted in absentia. However, **cannot be relied upon** by the executing authority to **expand refusal grounds** under FD2002/584.
- EAW system is grounded on **mutual trust** and **recognition of final decisions** among Member States. Only the grounds ***explicitly* listed** in the Framework Decision may justify refusal.

Main finding ⟶ The **absence of retrial guarantees** under Directive 2016/343 does **not** justify refusal. Where the person fled and was legally represented, the EAW **must be executed**. Any rights under Directive 2016/343 must be asserted before courts of the issuing State, **not used to block surrender** (para 47).

Findings

- the context of the preliminary ruling question must be seen in its "Petruhhin" case law, i.e. that **nationals of other EU** Member States (here: Greece) **must enjoy their rights of free movement** and **non-discrimination** (Arts. 18 and 21 TFEU) as Union citizens
- the authorities and courts of the EU MS **must refuse extradition** to third countries if the Union citizen would be **exposed to an infringement of his/her fundamental rights** guaranteed by the Charter, in particular Art. 19.

- The **principle of mutual recognition does not apply** **to decisions refusing extradition requests adopted by EU Member States.**
  - It is clear from the wording of Arts. 67(3) and 82(1) TFEU that **they do not, as such, establish an obligation of mutual recognition of judgments and judicial decisions in criminal matters adopted in the Member States**, but merely provide that judicial cooperation in criminal matters in the Union is **based on the principle of such recognition**;
  - The mutual recognition instruments in place, such as the FD on EAW and the FD 2008/909/JHA on the application of the principle of MR to judgments in criminal matters **do not provide for an obligation of mutual recognition in the context of extradition requests from third countries**

Factual background and key circumstances

On June 28, 2022, P.P.R. was arrested in Paris (France) and surrender proceedings were initiated against him. Said proceedings were terminated by a judgment of the Court of Appeal of Paris, France dated November 29, 2023. The executing judicial authority in France has refused, in a decision that has become final, to surrender the requested person (hereinafter the "sentenced person").

According to the referring court, the Paris Court of Appeal based its refusal on the existence of a risk of breach of the fundamental right to a fair trial by an independent and impartial tribunal established in advance by law, enshrined in the second paragraph of **Article 47 of the Charter**.

The Paris Court of Appeal also considers that there are systemic or general failings in Romania with regard to the swearing in of judges, and in particular it doubts whether two of the three judges who handed down the prison sentence actually took the oath.

Issues: 1. whether there is an obligation for the executing judicial authority to refuse or for the issuing authority to withdraw an EAW already considered to violate fundamental rights by a judicial authority of another Member State (first question);

2. whether irregularities in the taking of a judge's oath may constitute an infringement of the right to a fair trial under Article 47 of the Charter (second question);

Case C-318/24 PPU Breian, June 2024

Findings

Question no. 1‘no provision of framework decision 2002/584 provides for the possibility or the obligation, for an executing authority of a Member State to refuse to execute a European arrest warrant solely on the ground that its execution has been refused by another Member State, without carrying out its own verification of the existence of a reason to justify its non-execution’ (para. 39).

Question no. 2, that ‘*an uncertainty relating to the question of whether the judges of a Member State, before taking up their duties, **have taken the oath** provided for in their internal law, cannot be considered to constitute a systemic or generalised deficiency with regard to the independence of the judiciary in that Member State, where domestic law provides for effective judicial remedies that allow for any failure to take the oath by the judges who handed down a given judgment to be challenged, and for the annulment of that judgment’* (para. 87), leaving it to the referring court to ascertain whether such remedies exist in national law.

Thank you for your attention!

silvia.allegrezza@uni.lu

A CASE EXAMPLE: LEGAL REMEDIES AND PROCEDURAL SAFEGUARDS IN THE EUROPEAN ARREST WARRANT – ANALYSIS OF CJEU C-488/19 JR CASE

Co-funded by the European Union

OVERVIEW OF THE EUROPEAN ARREST WARRANT (EAW) FRAMEWORK

Framework Decision 2002/584/JHA

This Framework Decision establishes the legal basis for the European Arrest Warrant and its implementation across member states.

KEY LEGAL INSTRUMENTS AND FRAMEWORK DECISIONS

Framework Decision 2002/584/JHA

This Framework Decision establishes the legal basis for the European Arrest Warrant and its implementation across member states.

Procedural Rules

Procedural rules define how the EAW is executed, ensuring consistency and fairness in judicial cooperation.

Cross-Border Judicial Recognition

The legal instruments enable judicial decisions to be recognized and enforced across different countries seamlessly.

Scope of Crimes and Surrender Conditions

Defines applicable crimes covered by the EAW and the conditions under which surrender is granted.

LEGAL REMEDIES AND PROCEDURAL SAFEGUARDS IN EAW PROCEEDINGS

Judgment of the Court (First Chamber) of 17 March 2021

JR

Request for a preliminary ruling from the High Court (Irlande)

Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Scope – Article 8(1)(c) – Concept of ‘enforceable judgment’ – Offence giving rise to a conviction by a court of a third State – Kingdom of Norway – Judgment recognised and enforced by the issuing State by virtue of a bilateral agreement – Article 4(7)(b) – Grounds for optional non-execution of the European arrest warrant – Extra-territorial offence

Case C-488/19

AVAILABLE LEGAL REMEDIES AGAINST EAW DECISIONS

Grounds for Challenge

EAW decisions can be challenged due to procedural irregularities, lack of jurisdiction, or threats to fundamental rights.

Judicial Review Process

Judicial review allows national courts to assess the validity of EAW decisions and ensure compliance with legal standards.

Appeals Mechanism

Appeals provide a formal process to contest EAW decisions within national legal frameworks.

ROLE OF NATIONAL AND EU COURTS IN SAFEGUARDING RIGHTS

National Courts' Role

National courts evaluate procedural and fundamental rights compliance within their jurisdictions.

Role of the CJEU

The Court of Justice of the EU offers interpretative guidance to ensure consistent rights protection across Member States.

CASE STUDY: CJEU C-488/19 JR – BACKGROUND AND PROCEEDINGS

FACTUAL BACKGROUND

JR is a Lithuanian national. In January 2014, he was arrested in Norway in possession of a significant quantity of narcotic substances which he had undertaken to supply from Lithuania in return for money. By judgment of 28 November 2014, he was sentenced by a Norwegian court – namely, the Heggen og Frøland tingrett (Heggen and Frøland District Court, Norway) – to a term of imprisonment of four years and six months for the offence of 'unlawful delivery of a very large quantity of narcotic substances', punishable under the Norwegian Criminal Code. That judgment became final.

By judgment of 18 June 2015, the Jurbarko rajono apylinkės teismas (District Court, Jurbarkas, Lithuania) recognised, by virtue of the Bilateral Agreement of 5 April 2011, the Norwegian judgment of 28 November 2014 so that the sentence could be executed in Lithuania.

On 7 April 2016, the Norwegian authorities surrendered JR to the Lithuanian authorities. In November 2016, the competent authorities released JR on parole, accompanied by 'intensive supervision' measures. JR having evaded the conditions imposed on him, the Marijampolės apylinkės teismo Jurbarko rūmai (District Court, Marijampolė, Chamber of Jurbarkas, Lithuania) ordered, by decision of 5 February 2018, that the remainder of the sentence of imprisonment – namely one year, seven months and 24 days – be executed.

JR absconded and went to Ireland. On 24 May 2018, the Lithuanian authorities issued a European arrest warrant with a view to his surrender. In January 2019, JR was arrested in Ireland and sentenced to a term of imprisonment for offences committed in that Member State (Ireland) in connection with possession of narcotic drugs. According to the referring court, namely the High Court (Ireland), that sentence was to expire on 21 October 2019.

At the same time, the procedure for the execution of the European arrest warrant was implemented. Before the referring court, JR disputes his surrender to the Lithuanian authorities on the ground that, first, only the Kingdom of Norway could request his extradition and, second, because of the extra-territorial nature of the offence at issue, that is to say that it was committed in a State other than the issuing State, namely Lithuania, Ireland must refuse to execute the warrant.

The High Court is of the opinion that Framework Decision 2002/584 must be applied in the present case. While the sentence in question was imposed in a third State, it was nonetheless recognised and executed in a Member State. Article 1 of that framework decision thus allows the latter State to issue a European arrest warrant in order to execute the remaining sentence.

LEGAL QUESTIONS REFERRED TO THE CJEU

2 main questions;

(1) Does Framework Decision [2002/584] apply to the situation where the requested person was convicted and sentenced in a third State but, by virtue of a bilateral treaty between that third State and the issuing State, the judgment in the third State was recognised in the issuing State and enforced according to the laws of the issuing State?

(2) If so, in circumstances where the executing Member State has applied in its national legislation the optional grounds for non-execution of the European arrest warrant set out in Article 4(1) and Article 4(7)(b) of Framework Decision [2002/584], how is the executing judicial authority to make its determination as regards an offence stated to be committed in the third State, but where the surrounding circumstances of that offence display preparatory acts that took place in the issuing State?'

SIMPLIFIED;

- the issue of extraterritoriality, with regard to Norway (points 46 - 56 ref.: C 241/15 Bob-Dogi)
- guarantees of legal execution (point 73)

CJEU JUDGMENT AND ITS IMPLICATIONS

JUDGEMENT OF THE CJEU

- This request for a preliminary ruling concerns the applicability of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), and the interpretation of Article 4(1) and (7)(b) thereof.

- The request has been brought in proceedings concerning the execution, in Ireland, of a European arrest warrant issued against JR for him to serve, in Lithuania, a custodial sentence imposed on him by a Norwegian court for drug trafficking. That judgment has been recognised by the Republic of Lithuania by virtue of the bilateral Agreement on the recognition and enforcement of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty concluded between the Kingdom of Norway and the Republic of Lithuania on 5 April 2011 ('the Bilateral Agreement of 5 April 2011').

IMPORTANCE IN MY POINT OF VIEW

In relation to extraterritoriality.

The fact that, in the present case, the Lithuanians could have carried out the procedure for the transfer of the enforcement of the sentence at JR's request, but instead issued a decision recognizing and enforcing the sentence, was the best possible solution.

While in the first case there would have been no basis for issuing an EAW in the event of an escape, and Ireland would have been fully entitled to refuse to surrender JR in the present case, the recognition rendered this possibility null and void, as confirmed by the CURIA.

So the acts of recognition and enforcement constitute judicial decisions, for the purposes of those provisions, where they have been adopted by the judicial authorities of a Member State for the purpose of executing a custodial sentence. In so far as those acts allow a judgment to be enforced, in that same Member State, it is appropriate to treat them, as the case may be, as an ‘enforceable judgment’ or an ‘enforceable decision’. They fall within the scope of Articles 1 and 2 of Framework Decision 2002/584, provided that the sentence in question is a custodial sentence of at least four months.

IMPACT ON FUTURE EAW CASES AND EU LEGAL PRACTICE

There is a fundamental tendency for Member States to try to expand the possibilities for refusing to execute EAWs and to subject them to their own national assessment. a.k.a. Violation of the directive?

On the one hand, this is acceptable, especially when it comes to a Member State's own citizens, as a form of self-defense, providing much greater scope for legal remedies.

On the other hand, it simply neglects, delays, and interprets the content of the EAW according to its own understanding, as the UK has done for years.

The trends are varied (e.g., Poland and Sweden have received repeated warnings from the EU Commission for five years now for transposing the code into their own national law in a manner that does not comply with the code). In practice, the aim is to delay implementation, e.g. The Commission sent Poland a reasoned opinion in April 2024 and has now deemed that its national authorities have failed to sufficiently transpose the framework, prompting action with the EU's top court.

Joined by Poland in this referral was Sweden, which was sent a letter of formal notice in February 2021 regarding its failed transposition of the framework's provisions related to the potential for the issuing judicial authority to temporarily transfer or request to hear an individual while awaiting the decision to surrender. Sweden had also failed to correctly implement provisions related to hearing requirements pending a decision.

After a follow-up notice in February 2024, and a reasoned opinion in October 2024, the Commission also deemed Swedish authorities' actions to be insufficient. The end result, as with any provision that is perceived or actually infringes on the sovereignty of a Member State, or appears to infringe on it, is that the EU reaches its own limits.

The question arises again as to whether the future lies in a federal system (United States of Europe) or primarily in an economic union of Member States. The current trend, particularly in light of developments over the past few years, supports the latter position.

It is not my place to judge this, and I believe that it will remain unresolved during my lifetime.I wish the young people every success in this, the member states much greater respect for each other, and those present a very good appetite for lunch.

Thank you.

Pietrzak Sidor & Wspólnicy

ECBA

A LAWYER`S ROLE IN EAW PROCEEDINGS

advocate Katarzyna Dąbrowska

the partner at Pietrzak Sidor&Partners, Warsaw, Poland
the member of the Advisory Board of the European Criminal Bar Association

Co-funded by the European Union

Pietrzak Sidor & Wspólnicy

GOT A CALL!

Pietrzak Sidor & Wspólnicy

ACCESS TO LAWYER

Art. 10 right to access a lawyer in EAW proceedings

- **p. 1 and 2 – access to a lawyer in executing state**
- **p. 3 – mutatis mutandis of basic rules concerning access to a lawyer in criminal proceedings** (such as communication, confidentiality)
- **p. 4 – dual representation**

Member states do not reflect the right to appoint a lawyer in issuing state

Member states do not clearly ensure that requested persons receive information in undue time

10 members states do not transpose the requirements for the competent authority of the issuing state to provide without undue delay the requested persons with information to help them to appoint a lawyer there

- **p.5 – communication between member states, notification of willingness to appoint a lawyer in issuing state**

In 7 member states the legislation lacks the requirements that the competent authority in the executing state promptly informs the competent authority in the issuing state

Art. 5 – applicability of right to legal aid in EAW proceedings

National legislation in 12 member states does not fully comply with Article 5(2) of the Directive mainly due to a lack of specific provisions giving effect to the Directive`s requirements or due to the absence of clear cross-reference extending the application of provisions on criminal proceedings or legal aid to cover European arrest warrant proceedings.

Art. 7 – quality of legal aid

This requirement of the Directive is also a matter of practical implementation that may not always require transposition by taking legislative measures, if there is an appropriate legal framework. However, in 3 member states, no specific rules could be indetified in national law giving effect to Article 7(1) of the Directive. Issues have been found in 11 member stated that have taken specific measures with respect to Article 7 (1) of the Directive. These issues are mainly due to the underfunding of the legal aid system, the lower fees paid to legal aid lawyers or the inadequacy of selection systems for legal aid lawyers, which may have negative implications for the quality of legal aid. Special accreditation or selection systems for legal aid lawyers set up in 4 member states are also not necessarily sufficient in themselvees to ensure the quality of legal aid services.

Pietrzak Sidor & Wspólnicy

DUAL REPRESENTATION

Legal analysis on the part of the issuing and executing state:

- analysis of the legal assumptions for issuing the order and its implementation and their compilation,
- analysis of the status of the case constituting the basis for issuing the order,
- analysis of the possibility of carrying out an effective defense.

Practical problems:

- The specificity of EAW cases and their understanding by defense lawyers;
- Availability of information about lawyers in another country;
- Communication in a foreign language;
- Access to a court-appointed lawyer.

Pietrzak Sidor & Wspólnicy

FINALLY APPOINTED AS A DEFENCE LAWYER!

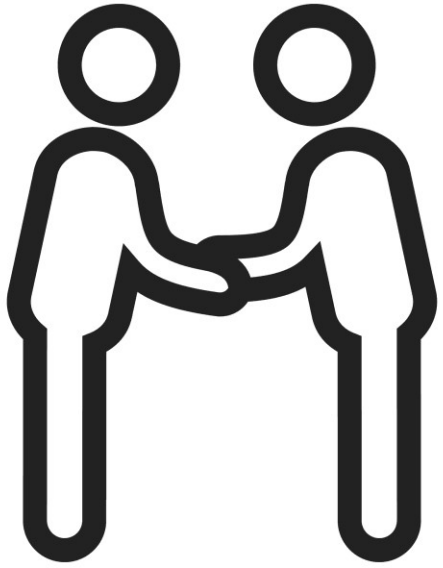
Pietrzak Sidor & Wspólnicy

PREVENTIVE MEASURES

- Different practice, often pre-trial detention due to lack of permanent residence and, consequently, possibility of flight;
- Obligations to the Member State issuing the EAW *versus* the freedoms and rights of the prosecuted person;
- The Framework Decision does not establish a maximum duration of any possible pre-trial detention;
- Alternatives.

Pietrzak Sidor & Wspólnicy

Finally to meet my Client!



INTERPRETATION AND TRANSLATION

art. 2 p. 2 – interpretation for accused/suspect in communication with Defence lawyer

→Preambule 19 Communication between suspected or accused persons and their legal counsel should be interpreted in accordance with this Directive. Suspected or accused persons should be able, inter alia, to explain their version of the events to their legal counsel, point out any statements with which they disagree and make their legal counsel aware of any facts that should be put forward in their defence.

→Preambule 20 For the purposes of the preparation of the defence, communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings, or with the lodging of an appeal or other procedural applications, such as an application for bail, should be interpreted where necessary in order to safeguard the fairness of the proceedings.

Art.2 p. 7 direct application to the proceedings for execution of EAW

art. 5 - concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9); mainly to safeguard the fairness of the proceedings.

Art. 5 – Letter of rights in EAW

However, for the remaining Member States (10) the national legislation does not ensure that the written information is provided in a simple and accessible language. Due to the absence of a national model it could not be established whether this requirement is fulfilled

In several Member States there are no separate provisions regulating the obligation to provide information on the rights of suspects and accused persons in European arrest warrant proceedings. A 'bridge provision' means the rules applicable in criminal proceedings also apply to European arrest warrant proceedings. This raises concerns as the content of the Letter of Rights under Article 4 of the Directive varies from the one required under Article 5.

Finally, one Member State does not require a Letter of Rights for European arrest warrant proceedings. In two other Member States it is unclear whether the relevant information is provided in writing.

Pietrzak Sidor & Wspólnicy

LET`S WORK ON THE MERITS!

ACCESS TO THE CASE FILES

Art. 7 – right to have access to the case files

p. 1 essential documents enabing challenging the arrest

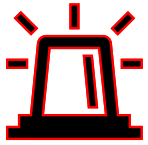
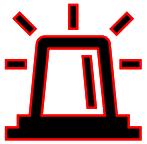
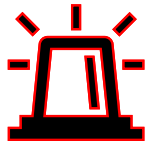
The assessment of national implementing measures shows that the understanding of 'essential documents' as well as the overall scope of access differs in various Member States.

Only few Member States specify the criterion of 'essential documents'. One Member State lists essential documents; another Member State explicitly defines and names essential documents. Two other jurisdictions also provide for a definition, but the decision on this matter remains with the custody officer or the court. The remaining Member States do not define what constitutes essential documents.

p. 2 – right to access all materials

A majority of Member States fully transposed this provision. However, issues arise where the access to the case file is granted but the case file does not contain all material evidence. In some cases evidence that is kept outside the case file is not made accessible, or only at the trial stage.

ACCESS TO THE CASE FILES

CASE C 649/19 SPETSIALIZIRANA PROKURATURA, 28.01.2021

Article 4 (in particular Article 4(3)), Article 6(2) and Article 7(1) 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 must be interpreted as meaning that the rights referred to therein do not apply to persons who are arrested for the purposes of the execution of a European arrest warrant.

Pietrzak Sidor & Wspólnicy

LAWYER'S PERSPECTIVE - PROPORTIONALITY

- No indication in the Framework Decision, a postulate for the implementation of the EAW derived from the general principles of European law, never explicitly indicated in the Framework Decision;
- Inconsistent practice;
- Discussions both as to the possibility of introducing a principle into the framework decision and as to the method of regulation;
- Preventive measures and proportionality;
- Possibility to use other instruments of international cooperation.

Pietrzak Sidor & Wspólnicy

.....What`s lawyer`s role in EAW proceedings

?

Pietrzak Sidor & Wspólnicy

Access to a lawyer (in both states)

Legal aid

Reinforcing procedural safeguards and fundamental rights in European Arrest Warrant proceedings (Fair Trials)

Interpretation and translation

Access to the case files

Pietrzak Sidor & Wspólnicy

ECBA

Thank you for your attention.

Advocate Katarzyna Dąbrowska

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Pietrzak Sidor & Wspólnicy

ECBA

How is a Defence lawyer involved in an EAW case?

advocate Katarzyna Dąbrowska

the partner at Pietrzak Sidor&Partners, Warsaw, Poland
the member of the Advisory Board of the European Criminal Bar Association

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- German citizen with Polish roots
- Criminal case concerning trade of explosives without a license
- Similar business activity in Germany and Polish; Polish company had German Clients
- Lawyer in issuing and executing state appointed

Pietrzak Sidor & Wspólnicy

WHAT SHOULD YOU DO AS THE FIRST STEP

?

CONTACT THE OTHER LAWYER !!!

Pietrzak Sidor & Wspólnicy

WHAT SHOULD YOU ANALYSE

?

Pietrzak Sidor & Wspólnicy

- Is there opportunity to fight against issuance of the EAW?
- What should be taken into account at the issuing of the EAW what while executing EAW?
- Access to the case files.
- Analysis of the proces of issuingg and executing in both states – determine differences, see if they can be used to fight the EAW in the light of the procedural rights
- Analyse differences in the rights of the suspect / sentences in the light of the procedural rights.
- How to lower possibility of arrest.
- Analyse the grounds of refusal.
- Secure/prepare evidence.
- Prepare for surrender

Pietrzak Sidor & Wspólnicy

ECBA

Thank you for your attention.

Advocate Katarzyna Dąbrowska

dabrowska@pietrzaksidor.pl

Prof. Silvia Allegrezza
University of Luxembourg

Instruments of Mutual Recognition: The EAW and EIO in practice
ERA Training for Defence Lawyers
Budapest, 25-26 September 2025

Practical Issues Concerning the EIO

ERA Budapest, 26 September 2025

Co-funded by the European Union

OUTLINE

- The basics of the EIO
- Practical issues
  - Object of a specific CJEU decision
  - Signaled by practitioners
- Concept of issuing authority
- EIO to serve an indictment and custody order?
- The Encrochat case
  - Transmission of pre-collected evidence
  - Notification of Article 31
- EIO and tracking activities
- EIO and the principle of speciality
- EIO, videoconferencing and the right to be digitally present (Bissilli)
- EIO and other judicial cooperation tools

Gathering evidence – Historical EU legal framework

Mutual Legal Assistance (1959 and 2000)

FD 2003/577 on freezing orders (not in force)

FD 2008/978 on European Evidence Warrant (not in force)

Directive 2014/41 regarding the European Investigation Order

Regulation 2023/1543 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings

Regulation (EU) 2018/1805, adopted in 2018, focuses on the mutual recognition and execution of freezing and confiscation orders within the European Union

The EIO (Directive)

What is it?

- A judicial decision issued in or validated by the **judicial authority** in one EU country to have **investigative measures to gather or use evidence** in **criminal matters** carried out in another EU country: Art. 1(1), EIO Dir.
- Based on **mutual recognition**.
- **Rights of the defence** in criminal proceedings (cf. Art. 48, CFREU, Art. 6 TEU) to be **respected and ensured**: Art. 1(4).

What does it do?

- Creates a single, comprehensive framework for obtaining evidence, thereby—
- Facilitating evidence-gathering activities in cross-border criminal investigations; and
- Providing a more efficient system with direct contact between judicial authorities, and with clear deadlines for recognition and execution.
- Covers '**any investigative measure**' to obtain evidence: Art. 3.

EIO Scope

Material

- All investigative measures aiming to gather all types of evidence in criminal matters including the obtaining of existing evidence (including evidence « already in the possession » of another MS)

Procedural

- Criminal proceedings (pre-trial and trial)
- Administrative or civil proceedings which may give rise to proceedings before a criminal court (pre-trial and trial)
- Doubts about post-conviction use of

Territorial

- All EU MS except IE and DK
- Principle of **mutual recognition**
  - (Limited) oversight over requirements to issue an EIO
  - Possible recourse to different type of investigative measure
  - Principle of equivalence

ing

fundamental rights

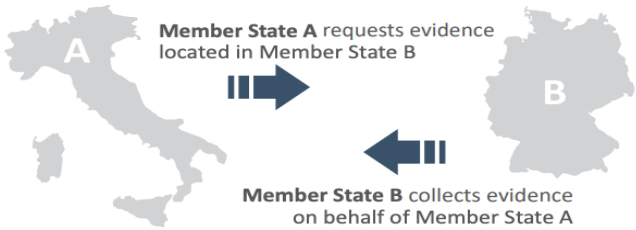
EUROJUST

European Investigation Order

KEY FEATURES

- EU Directive on the EIO (2014/41) of 3 April 2014
- Mutual recognition of judicial decisions
- Replaces Letters of Request for investigative measures
- Deadline for transposition: 22 May 2017
- Obtains evidence located in another EU Member State
- Simplifies and accelerates cross-border criminal investigations

HOW IT WORKS



Examples of investigative measures:

- Obtaining existing evidence
- Hearings of witnesses and suspects
- (House) searches
- Checks on bank accounts/financial operations
- Interception of telecommunications
- Temporary transfer of persons in custody
- Preservation of evidence

LIFE CYCLE OF AN EIO

1 - DRAFTING of EIO by judicial authority in Member State A

2 - TRANSMISSION of EIO to judicial authority in Member State B

3 - RECOGNITION of EIO in Member State B

4 - EXECUTION of EIO in Member State B

EIO CASES

EUROJUST IDENTIFIES CHALLENGES AND BEST PRACTICE IN EIO CASES

Creates a single comprehensive instrument with a large scope

Sets strict deadlines for gathering the evidence requested
Limits the reasons for refusing such requests

Reduces paperwork by introducing a single standard form

Protects the fundamental rights of the defence

Some definitions (Article 2)

Issuing authority

- judge, court, **public prosecutor** or investigating judge (= **judicial authorities**)
- **public prosecutor** regardless of any relationship of legal subordination that might exist between that public prosecutor or public prosecutor's office and the executive of that Member State and of the exposure of that public prosecutor or public prosecutor's office to the risk of being directly or indirectly subject to orders or individual instructions from the executive when adopting a European investigation order (Case C-584/19) ≠ EAW
- '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 competent to order the gathering of evidence in accordance with national law.'
- non-judicial authorities + **validation by a judicial authority** Note CJEU case law: C-584/19 *Staatsanwaltschaft Wien*, C-66/22 *Staatsanwaltschaft Graz*

Executing authority

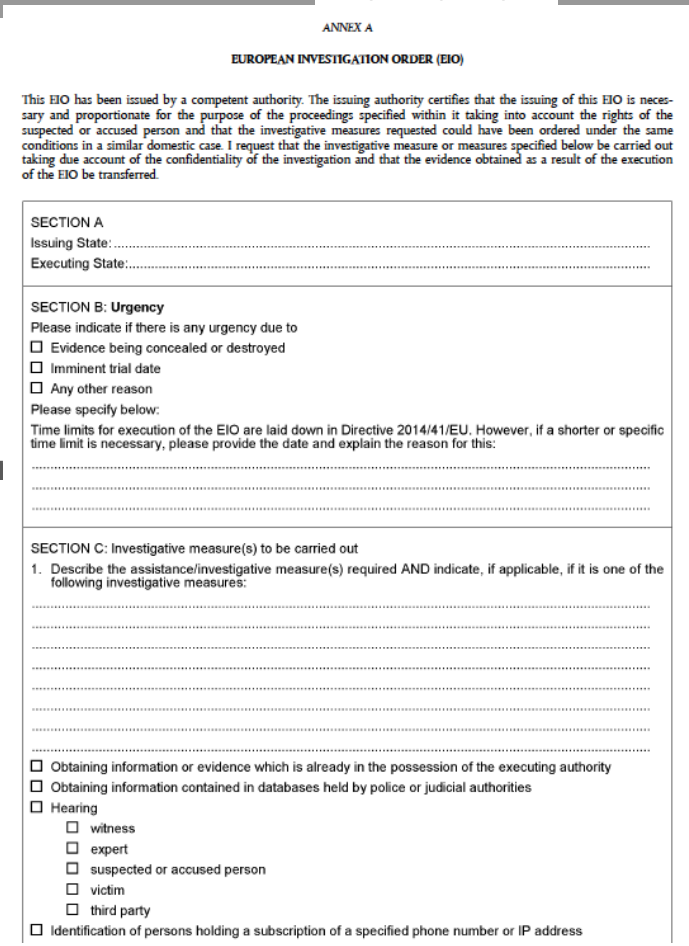
- authority competent to recognize an EIO and ensure its execution
- **court authorization** if so required by national law

Double authorization if so required by the law of the issuing and executing MS?

EIO Structures and Mechanisms: Consent and Form—Art. 5

UNIVERSITÉ DU

- Content and Form of EIO: Art. 5, EIO Dir.
  - Form in Annex A of Directive ⟶
  - Must contain, in particular:
    - Data about issuing authority;
    - **Object** of and **reason** for EIO;
    - Necessary information available on person(s) concerned;
    - **Description** of the criminal act subject to investigation or proceedings + **applicable provisions** of **cri**
    - **Description** of the **investigative measure(s)** requested and **evidence** to be obtained.



ANNEX A

EUROPEAN INVESTIGATION ORDER (EIO)

This EIO has been issued by a competent authority. The issuing authority certifies that the issuing of this EIO is necessary and proportionate for the purpose of the proceedings specified within it taking into account the rights of the suspected or accused person and that the investigative measures requested could have been ordered under the same conditions in a similar domestic case. I request that the investigative measure or measures specified below be carried out taking due account of the confidentiality of the investigation and that the evidence obtained as a result of the execution of the EIO be transferred.

SECTION A

Issuing State: .....

Executing State: .....

SECTION B: **Urgency**

Please indicate if there is any urgency due to

☐ Evidence being concealed or destroyed

☐ Imminent trial date

☐ Any other reason

Please specify below:

Time limits for execution of the EIO are laid down in Directive 2014/41/EU. However, if a shorter or specific time limit is necessary, please provide the date and explain the reason for this:

.....

.....

.....

SECTION C: Investigative measure(s) to be carried out

1. Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures:

.....

.....

.....

.....

.....

.....

.....

☐ Obtaining information or evidence which is already in the possession of the executing authority

☐ Obtaining information contained in databases held by police or judicial authorities

☐ Hearing

- ☐ witness
- ☐ expert
- ☐ suspected or accused person
- ☐ victim
- ☐ third party

☐ Identification of persons holding a subscription of a specified phone number or IP address

EIO Structures and Mechanisms: Conditions for Issuing—Art. 6

- **Two conditions**:
  - (a) issuing of EIO is **necessary** and **proportionate** for the purposes of the proceedings, taking into account the rights of the suspect or accused; and
  - (b) the investigative measure(s) indicated could have been ordered under **the same conditions in a similar domestic case**.
- Conditions to be assessed by the issuing authority in each case.
  - Availability of legal remedies in the issuing state to challenge the EIO? Mandatory after *Gavanozov II*

Dialogue:

- Where executing authority has reason to believe conditions have **not been met**, they **may consult** issuing authority on importance of executing EIO: Art. 6(3).
  - After consultation, issuing authority may decide to **withdraw EIO**.

EIO Structures and Mechanisms III: Recognition and Execution—Art. 9

- **General rule: recognition and execution are a duty**

Executing authority to **recognise an EIO**, without any further formality being required (**principle of mutual recognition**), as if measure had been ordered by domestic authority: Art. 9(1).

Execution:

- Time limits
- Recognition within 30 (+30) days
- Execution in principle within 90 days
- **Applicable law** = law of the **executing state (*lex loci*)** possible with certain formalities expressly indicated by the issuing authority (***lex fori***) provided that such formalities are not contrary to the fundamental principles of law of the executing MS

  - **Unless**: grounds for non-recognition or non-execution (Art. 11), or postponement (Art. 15).

EIO Structures and Mechanisms: Different Type of Investigative Measure—Art. 10

- Executing authority has some **margin of appreciation**.
- Executing authority 'shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO' when: Art. 10(1).

- **Conditions**:
  - Investigative measure indicated **does not exist** under law of executing State; **or**
  - Investigative measure indicated **is not available** in **similar domestic case**.

- Executing authority may also have recourse to different investigative measure where different investigative measure would **achieve same result by less intrusive means** than the investigative measure indicated in EIO: Art. 10(3).

- Issuing authority must be informed: can withdraw/supplement EIO: Art. 10(4).

- **Note:** if investigative measure indicated ≠ exist, ≠ available and recourse to different measure ≠ possible ⟶ **no execution**: Art. 10(5).

EIO upon request of the defence

Right of the suspect/accused person to request the issuing of an EIO ***in conformity with national criminal procedure*** (Art 1(3))

- Is the issuing authority obliged to accept the request?
- Should the issuing MS provide for such a right albeit not available in domestic cases?

EIO Structures and Mechanisms: Grounds for Non-Recognition, Non-Execution—Art. 11

- EIO may be **refused** where:
  - **Immunity/privilege** or rules on determination and limitation of criminal liability (freedom of the press + expression in other media);
  - Execution would harm essential **national security interests**, jeopardise source of the information, or involve use of classified information;
  - Issued re: **minor or administrative offences** (only potential, subsequent competence of criminal court) and measure not available in similar domestic case;
  - Execution would be contrary to ***ne bis in idem***;
  - No territorial link to issuing State, but (at least partial) link to executing State;
  - **Incompatibility with fundamental rights (Art. 6 TEU + Charter)**;
  - Conduct for which EIO issued ≠ offence in executing State; **lack of double criminality**
    - **Note**: exception here list of 32 offences set out in Annex D. Include corruption, rape, terrorism, trafficking, laundering, murder, *etc*.
  - Measure available only for offences punished by a certain threshold.
  - Many MS made all of them as mandatory

EIO, MR and fundamental rights: provisional conclusions

1. Limitations to mutual recognition

- Provisions of EIO Directive allow executing authority to—
  - shift from indications in EIO, for reasons of proportionality; and
  - refuse recognition or execution on various grounds, incl. fundamental rights
  - Does not accept lex fori when contrary to fundamental principles
- Has this shifted our understanding of mutual recognition? **Yes** ⟶ cannot be blind but must be **earned**.
  - How? Through protection of fundamental rights.
  - Cf. *Gavanozov II*

2. Fundamental rights protection under the EIO Directive

- Art. 1(4): Directive shall not modify obligation to respect fundamental rights and legal principles as enshrined in Art. 6 of TEU, including defence rights.
- Art. 11(f): EIO may be refused where 'there are substantial grounds to believe that the execution of the investigative measure… would be **incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter**.'

- Practical issues:
  - Case-law
  - Final Report 10th round of evaluation, General secretariat of the Coundil, 29 October 2024

C-6C-66/20 – *XK*
Concept of issuing authority

Factual background and key circumstances

- An EIO was issued by the **German Tax Office** (Münster) ⟶ ***Trento's Public Prosecutor*** (Italy), requesting a search of a business premise in a tax evasion case involving an individual (XK).

- The German authority (an *administrative* body) did **not have the EIO validated** by a judicial authority, as required under **Article 2(c)(ii) of Directive 2014/41/EU**.

- The Italian Public Prosecutor questioned whether such a **non-validated EIO** from a non-judicial authority was **lawful** and referred the question to the ECJ.

Can an administrative authority like the German Tax Office be considered an "issuing authority" under **EIO Directive**, **without** judicial validation of the EIO?

- **Directive 2014/41/EU – Article 2(c)(ii)** ⟶ Allows administrative authorities to issue EIOs ***only if validated*** by a judicial authority (judge, prosecutor, etc.).

Findings

- Preliminary question ⟶ whether the **Procura di Trento** qualifies as a "***court or tribunal***" entitled to make a reference under Art. 267 TFEU.

- The ECJ found the request **inadmissible**:

  - The *Procura* was not acting in a judicial capacity but as an **executing authority** under **Directive 2014/41**;

  - A body may refer under **Article 267 TFUE** *only if* exercising a **judicial function** and **ruling in a dispute**. This was not the case here.

  - The Court did **not** address whether the EIO required validation due to inadmissibility.

When the office of an Italian public prosecutor, such as the Public Prosecutor's Office, Trento, acts as an authority for the execution of an EIO within the meaning of Article 2(d) of Directive 2014/41, it does **not** act in proceedings which are *intended to result in a judicial decision*.

Factual background and key circumstances

- The **Düsseldorf Tax Office** for Criminal Tax Matters (**Germany**) investigated a suspected EUR 1.6 million tax fraud and **issued an EIO to Austria**.
- The EIO sought **banking information** on the suspect (MS) from an Austrian bank.
- The EIO was **not validated by a judicial authority**. It was issued *directly* by the German tax office, which claimed the status of "**judicial authority**" under German law.
- Austrian Proceedings ⟶ MS **appealed** the EIO's **execution**, arguing the issuing authority **lacked judicial character** under EIO Directive.
- The *Oberlandesgericht Graz* asked the ECJ whether such a tax office qualifies as a "judicial authority" or "issuing authority" under **Article 1(1)** and **Article 2(c)(i)** of the EIO Directive.

C-16/22 – *Sta* C-16/22 – *Staatsanwaltschaft Graz*
Tax authorities as issuing authority

- **FINDINGS**

Main question ⟶ Can a tax authority that assumes prosecutorial powers under national law be treated as a "judicial authority" or "issuing authority" under **Article 2(c)(i)** of **Directive 2014/41/EU**?

- The ECJ found that:
  - The tax office **cannot** be classified under **Article 2(c)(i)** – it is **not** a court, judge, investigating judge, or public prosecutor.
  - EIO Directive distinguishes between **judicial authorities** (Art. 2(c)(i)) and ***other* authorities** (Art. 2(c)(ii)) – categories are **mutually exclusive**.
  - A tax authority *may* fall under Art. 2(c)(ii), but **only if the EIO is validated by a judicial authority**.

- Finding ⟶ The German tax office, as *part of the executive*, may **not** issue an EIO autonomously without judicial validation. It cannot therefore be considered neither an "issuing authority" nor a "judicial authority" within the meaning of the EIO Directive.
- Exception ⟶ But such an authority is, on the other hand, **capable** of falling within the concept of an "**issuing authority**" within the meaning of Article 2(c)(ii) of that Directive, ***provided that the conditions set out in that provision are met***. i.e. it is necessary that the EIO issued by it is **validated by a judicial authority** before being transmitted to the executing authority.

Case C-724/19 – *HP* *issuing authority going beyond national powers*

Factual background and key circumstances

- **Bulgarian** authorities investigated suspected terrorist financing and participation in a criminal organization.
- A Bulgarian **public prosecutor** issued **four EIOs** to obtain **traffic and location data** on HP from **Austria**, **Germany**, **Sweden**, and **Belgium**.
- **BUT** ⟶ In Bulgaria, such data can be collected **only by judicial order** *in similar domestic cases*.
- The EIOs were issued **without prior judicial authorization**, contrary to Bulgarian procedural norms for similar internal investigations.
- Questions referred ⟶ The Bulgarian court asked whether (1) this practice complied with the **EIO Directive**, and (2) the recognition of the EIO by other Member States could "*cure*" the procedural defect.

Findings

- First question ⟶ The ECJ emphasizes a **teleological** and **contextual** reading of the EIO Directive, focusing on **Articles 6(1)(a) and (b)**.
  - (A) Necessity and proportionality
    - Article 6(1)(a) requires the **issuing** authority to assess if the measure is **necessary** and **proportionate**, considering suspects' rights.
    - Such an assessment *presumes* the authority can lawfully order the **same measure *domestically***.
  - (B) Domestic equivalence principle:
    - **Article 6(1)(b)** ⟶ An EIO may only be issued where the investigative measure "*could have been ordered under the same conditions in a similar domestic case*."
    - Therefore, if Bulgarian law reserves the power to a judge, the **prosecutor lacks competence** to issue the EIO.
  - (C) Rejection of functional equivalence
    - The Court **rejects** any "functional" approach allowing a prosecutor to issue an EIO if they could request it internally from a judge.
    - **Emphasizes the formal symmetry between internal and cross-border procedural safeguards**.

Answer ⟶ **only the judge, who would be competent domestically, may issue the EIO for traffic data.**

Findings

- Second question

  ⟶ **Articles 9(1) and 9(3)**: Executing authority *may* refuse execution if issuing authority **is not competent**.

  - Allowing recognition to **validate** an improperly issued EIO would **undermine mutual trust** and **grant the executing State *de facto* review powers over issuing standards** – this is **contrary** to the Directive's design.

- Answer ⟶ Recognition by the executing State **cannot substitute** for the **absence of judicial authorization** required in the issuing State

Legal remedies

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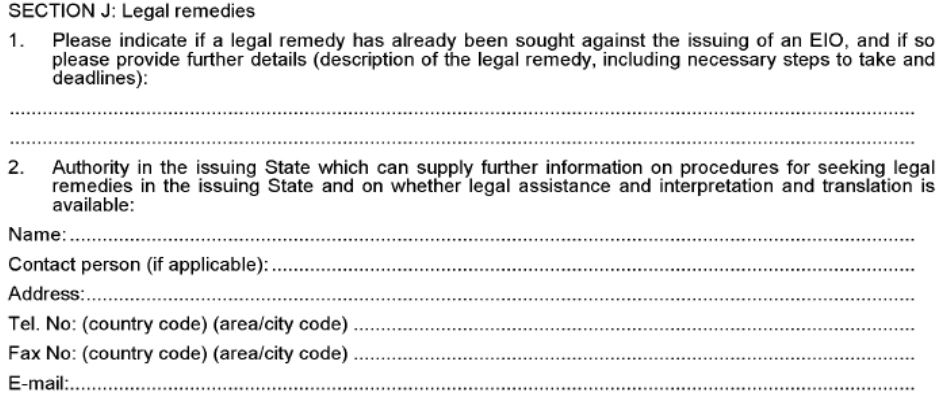
- Member States shall ensure legal remedies **equivalent** to those available in a similar domestic case are applicable to investigative measures indicated in EIO: Art. 14(1).
- **SEPARATION MODEL:**
- Substantive **reasons** for **issuing EIO** may be challenged only in action brought in **issuing State,** without prejudice to guarantees of fundamental rights in executing State: Art. 14(2).
  - **Recognition and execution** of EIO must be challenged in executing State: Art. 9, Art. 11.
- **General rule**: legal challenge against EIO ≠ suspend execution of investigative measure.
  - Exception: if suspension provided for in similar domestic case(s): Art. 14(6).
  - Information of the person concerned about the available legal remedies (in both the issuing and executing MS) subject to confidentiality requirements (Arts 14(3) + 19)

See also: Section J, Annex A Form



SECTION J: Legal remedies

1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

.....

.....

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:.....

Contact person (if applicable):.....

Address:.....

Tel. No: (country code) (area/city code) .....

Fax No: (country code) (area/city code) .....

E-mail:.....

Gavanozov II (C-852/19): duty to offer legal remedy in Issuing MS

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- **Background of the case**
- The case at issue (C-852/19, *Ivan Gavanozov II*)
- follow-up of Gavanozov I: the CJEU which answered the question how the Bulgarian authorities should fill in the EIO form if **legal remedies are not foreseen in the Bulgarian legal order**
- The case in the main proceedings concerns criminal investigations against *Ivan Gavanozov* for **large-scale VAT fraud**. The Bulgarian authorities wished to request searches and seizures and a witness hearing from Czechia on the basis of an EIO, although Bulgarian law lacks any legal remedy both against the issuance of the EIO and the lawfulness of searches and seizures/witness hearings. The referring court opposed to this idea and asked the CJEU:

- **QUESTIONS:**
  - CJEU asked if national legislation which does not provide for any legal remedy against issuing of EIO for, *inter alia*, search and seizures, is compatible with EIO Directive.

Gavanozov II (C-852/19): duty to offer legal remedy in Issuing MS

- **Decision**
  - Art. 14(1) and Art. 1(4) of Directive 2014/41 regarding the EIO read in light with Art. 47 of the Charter **does not leave discretion to an EU Member State whether it provides for legal remedies against the issuance of an EIO and investigative measures during the investigative phase**.
  - It must be interpreted as **precluding legislation** of a Member State which has issued an EIO that **does not provide for any legal remedy against the issuing of an EIO**' (CJEU, C-852/19, Gavanozov II)

- They justified this conclusion by the concept of **mutual recognition and mutual trust**

- This includes the persons' right to **contest the need and/or lawfulness of an EIO** and to obtain appropriate redress if an investigative measure has been unlawfully ordered or carried out.

- **Since the lack of legal remedies against the investigative measures in question and the issuance of an EIO in the current Bulgarian legislation infringes Art. 47(1) of the Charter and also rebuts the presumption of mutual trust, Bulgaria is not able to issue EIOs anymore.**

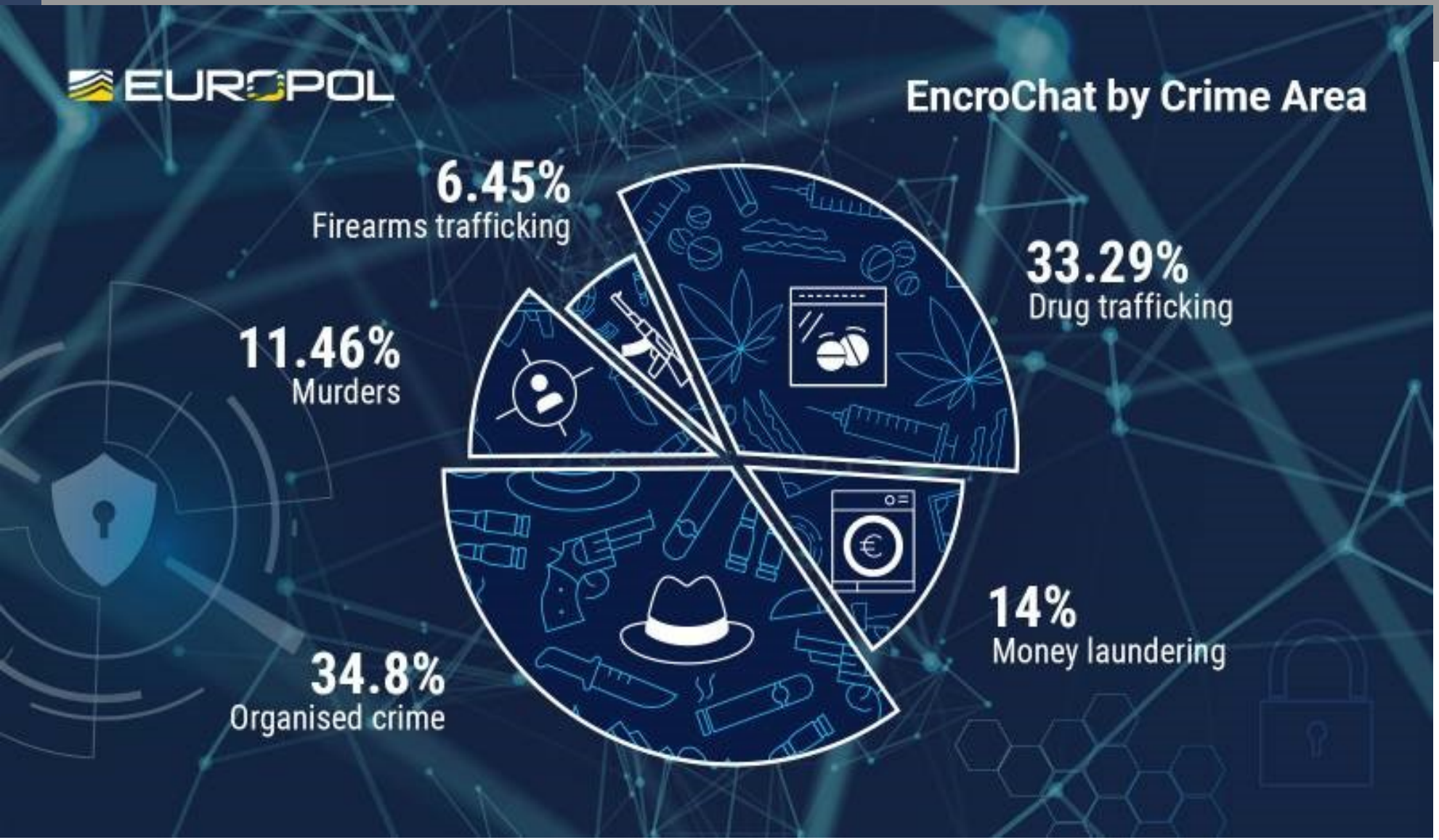
Gavanozov II (C-852/19): duty to offer legal remedy in Issuing MS

C-852/19 Gavanozov II in a nutshell:

- The person concerned must have a **means of challenging the issuance** of an **EIO** concerning the measures in question
- National law which does not provide for such a remedy is contrary to Union law
  - This in itself, according to AG Bot, should trigger the ground for refusal in Article 11(f) of Directive (EU) 2014/41
- Authorities of states whose law does not provide any means of challenging the issuance of an EIO **may not use the EIO mechanism** for transnational evidence-gathering

The Encrochat case: Background

- The service company EncroChat provided **encrypted mobile phones** that were often to exchange Encrypted messaging service
- • February 2020 JIT between FR and NL authorities → system infiltrated via malware that was disseminated to devices as a simulated software update
- With the assistance of Dutch experts and authorisation by a French investigative judge, the French police were able to install a **Trojan software** on the terminal devices in Roubaix via a simulated update and thus read the chat messages of **thousands of users in real time**
- 9 March 2020: videoconference organised by **Eurojust** in which FR + NL authorities give information about their investigations, GER authorities interested in data of German users
- This led to several follow-up investigations, including in Germany.
- Starting June 2020 PPO Frankfurt issues EIOs requesting authorisation from FR authorities to use those data and Lille Criminal Court authorises
- • PPO Frankfurt **divides national proc**eedings + reassigned investigations to local PPOs ❼ MN to Berlin


EUROPOL
EncroChat by Crime Area
6.45%
Firearms trafficking
33.29%
Drug trafficking
11.46%
Murders
14%
Money laundering
34.8%
Organised crime


EUROPOL
EncroChat in Numbers
6 658
arrests
EUR 900 million
in criminal funds
270.2 t
of drugs
971
vehicles
271
properties
923
weapons
83
boats
40
planes
(seized)

CJEU Case C-670/22, *M.N.*: Encrochat

- **The questions**
- The Regional Court of Berlin submitted a series of questions on the lawfulness of the EIOs to the ECJ relating to the following issues:

- 1. The German public prosecutor's competence to **issue an EIO** for which a judge authorisation would be needed in German law;

- 2. The **admissibility of the EIO** pursuant to Art. 6(1) EIO Directive; whether the issuance of an EIO is permitted for the transfer of **data acquired** from the interception of telecommunications, even if there is **no individualised suspicion** based on **reasonable grounds** for the commission of serious crimes and no data integrity verification,

- 3. Correct application and interpretation of Art. 31 EIO Directive, which regulates the **surveillance of telecommunications** without the technical assistance of a Member State;

- 4. The **consequences** of a possible infringement of EU law for the national criminal proceedings.

.

CJEU Case C-670/22, *M.N.*: Encrochat

- **The CJEU decision**
- **Question n. 1.** whether, in the event of evidence transmission, the EIO needs to be issued by a judge, the CJEU affirmed the view expressed in the academic literature interpreting Article 6 (1) in conjunction with Article 2 (c) of the EIO Directive:
- - the term 'issuing authority' includes **any public authority, competent under the law of the issuing State for the transmission of already collected evidence in a similar domestic case**.
- - Concept of "**similar domestic case**": **(Art. 6(1)(b)** a distinction must be made between two differing situations. –
- - 1. When the investigative measure indicated in the EIO consists of **obtaining existing** evidence **already in the possession** of the competent authorities of the executing State, that is to say, the transmission of that evidence to the competent authorities of the issuing State.
- - 2. The second situation concerns circumstances in which the **collection of evidence** is sought via a specific investigative measure, i.e., the evidence does not yet exist.
- - **As it falls within the first, an authorisation by a judge is, hence, not necessary.**

CJEU Case C-670/22, *M.N.*: Encrochat

- **The CJEU decision**
- **Question 2+3. Conditions** for issuing and transmitting an EIO: where such evidence was gathered through **interception** on the **territory of the issuing MS** of telecommunications of **all users** of the communication service that enabled end-to-end encrypted communication through special software and modified hardware.

- Confronting questions (ii) and (iii) in line with the principle of mutual recognition, **it established that issuing authorities cannot subject already conducted measures to their domestic proportionality and necessity standards, nor can they challenge their lawfulness anew**.

- Follow-up statements:
- - the German authorities could only assess the **proportionality and necessity of the transmission** itself, not the measure used by the French authorities to acquire the evidence.

- - the possibility of reassessment is guaranteed against both the issuance and the execution of the EIO, under the **'separation model'** of legal remedies outlined in Article 14 of the Directive.

CJEU Case C-670/22, *M.N.*: Encrochat

- **The CJEU decision**
- **Set of Questions n. 4: Who must be notified under Art. 31 of the EIO Directive, if at all?**
-

- "Telecommunications" ex Art. 31(1) Dir. 2014/41 ➐ all processes of remote transmission of information (C- 670/22, MN, §§ 111-112)
- • EncroChat infiltration = **interception of telecommunications** (C-670/22, MN, § 114)
- • Authority competent to receive notification not specified by Dir. 2014/41, thus: MS must **designate**, if intercepting authority not able to identify ➐ notification to *any* authority considered appropriate (in case that authority must forward to actually competent authority) (C-670/22, MN, §§ 117-118)
- • Art. 31 Dir. 2014/41 does not only guarantee respect of **sovereignty** but **also intended to protect the rights of persons affected by the measure** (C-670/22, MN, §§ 124-125)

CJEU Case C-670/22, *M.N.*: Encrochat

- **The CJEU decision**
- **Set of Questions n. 4: Who must be notified under Art. 31 of the EIO Directive, if at all?**

- The ECJ first clarified that the concept of "telecommunications" used in Art. 31 of the EIO Directive must be given an **independent and uniform interpretation throughout the EU**.
- Considering the wording, context, and objective of Art. 31, the ECJ found that the infiltration of terminal devices for the purpose of gathering communication data as well as traffic or location data from an internet-based communication service indeed **constitutes an "interception of telecommunications"** within the meaning of Art. 31(1) of Directive 2014/41.
- Which authority must be notified?
- Art. 31(1) ("competent authority") and the EIO form leave this question open.
- It follows that the Member States on whose territory the subject of the interception is located must designate the authority for the purpose of notification.
- However, the intercepting Member State (here: France) can submit the notification to any appropriate authority of the notified Member States (here: the PP in Germany) if it is not in a position to identify the competent authority in that State.

CJEU Case C-670/22, *M.N.*: Encrochat

- **The CJEU decision**
- Question 4:
- the referring court asked whether, in accordance with the principle of effectiveness, evidence acquired through the mechanism of an EIO should be excluded from criminal proceedings if it was collected in violation of EU law.

- **A new exclusionary rule?**
- -
- - the Court introduced a **new approach to evidence admissibility**, departing from its traditional **unequivocal deference** to national procedural laws of the Member States. (principle of **procedural autonomy**, Member States are entrusted with the competence to establish procedural rules for actions aiming at safeguarding rights deriving from EU law, on condition that they conform with the principles of **equivalence and effectiveness)**.

- • Article 14(7) Dir. 2014/41 requires that in criminal proceedings in the issuing MS the rights of the defence and fairness of the proceedings are respected when assessing evidence obtained through an EIO
- • Information and evidence must be **disregarded** if a party is **not able to comment effectively** and the information/evidence is likely to have a **preponderant influence on the findings of fact** (C-670/22, MN, §§ 130-131)

CJEU Case C-670/22, *M.N.*: Encrochat

- **Key Takeaways:**

- **Distinction**: EIO for gathering evidence and for **transmitting** evidence that is already in the possession of the competent authorities of the executing MS ➐ see also Opinion of AG Ćapeta, § 19
- • Art. 31 Dir. 2014/41 is not only a **guarantee** for sovereignty but also **for individual rights at stake** (right to respect for private life and communications)
- • **Common concept of interception missing**, investigative measures in EncroChat are heterogeneous and interception, decryption, digital searches in serves, informatic interception, transfer of already collected evidence… we are lost in translation and lost in legal categories ➐ minimum harmonisation of investigative measures needed
- • Despite procedural autonomy in this field, CJEU states obligation to **disregard evidence if person concerned is not in a position to effectively comment and if that evidence is likely to have a preponderant influence on findings of fact**

CJEU Case C-583/23 Delda: Material scope of the EIO

- The ECJ had to decide whether French authorities were to refuse the execution of a Spanish order that requested first **to serve on an accused person an indictment** related to her, accompanied by an **order that that person be remanded in custody** and make a bail payment and, second, to allow that person to make observations on the matters set out in that indictment.
- In essence, the ECJ had to define the **concept of "investigative measure"** for law enforcement purposes within the meaning of Arts. 1 and 3 of Directive 2014/41.

- **Answer of the ECJ: the investigative measure must aim to ensure that the issuing Member State obtains "evidence".** And evidence is identified as objects, documents or data pursuant to the EIO Directive.

- The ECJ concludes that
- **- neither an order by which a judicial authority of one MS requests a judicial authority of another MS to serve on a person an indictment**
- **- nor an order to request a judicial authority of a MS to remand a person in custody pending trial or to require the person concerned a bail payment, does constitute a EIO.**

EIO and videoconferencing

- EIO and videoconferencing
  - possible under Article 24
    - Need of consent
    - Refusal based on fundamental rights: immediacy and right to be present
    - Possible to stretch application of the EIO?

EU Legal framework on digitalisation: historical continuity

- - Silence of the **Charter**
- - Silence of **Stokholm directives**
- - **2023**: **European Declaration on Digital Rights and Principles for the Digital Decade** (2023/C 23/01)
- - **2020:** Digital Agenda
- - **CAAS 2000:** Videoconference (Cross-border)
- - **Regulation (EU) 2023/2844** on the *digitalization of judicial cooperation and access to justice in cross-border criminal matters* (**13.12.2023 – eJustice Regulation**)
- **- Regulation 2023/2844 (e-Justice Regulation)**
  - securing reliable and time-efficient communications between courts and competent authorities for effective judicial cooperation
  - legal framework of electronic trasmission of documents; (e-seals, e-signatures)
  - rules on use of videoconferencing in criminal proceedings;
  - Recital 43 – not applicable to hearings for taking evidence

- **- Directive (EU) 2023/2843** *amending certain acts of EU law as regards digitalisation of judicial cooperation* (**13.12.2023 – eJustice Directive**)

Factual background

- Main proceedings before the *Tribunale di Firenze* against HG, accused of:
  - Leading a transnational drug trafficking organization (active from 2007 to 2009).
  - Committing criminal acts while residing in Belgium.

- Procedural developments:
  - HG is currently **detained in Belgium** for other offenses.
  - Trial in Italy **delayed** due to **Belgian refusal** to allow HG's remote participation.

- Judicial cooperation attempted:
  - Italy issued a **EIO** under **Directive 2014/41/EU** for HG's **videoconference hearing**.
  - Belgium **refused** execution, citing: (i) **incompatibility** with its own legal system and (ii) potential breach of **fair trial** standards.

Legal framework and point of conflicts (I)

- Relevant legal instruments:
  - Directive 2014/41/EU:
    - **Article 24** ⟶ allows EIO for **videoconference** hearing
    - **Articles 10 and 11** ⟶ general **grounds for non-execution**.
    - **Article 22** ⟶ EIO for **temporary transfer** of detained persons
  - Charter of Fundamental Rights (Article 47) and Article 6 TEU ⟶ **fair trial** and **mutual recognition**.

- Italian law (post-*Riforma Cartabia*):
  - Allows **defendant participation via videoconference** with safeguards.
  - Defendant has a **right** to be **examined** if requested ⟶ considered a "means of evidence".

- Belgian position:
  - Refusal grounded on: (i) domestic legal limits (⟶ videoconference **not allowed** for accused); (ii) protection of **fundamental rights** under national law and constitutional case-law; (iii) general **administrative instructions** (Memo 880/2021).

Legal framework and point of conflicts (II)

- The "clash"
  - Issuing authority (Italy) ⟶ EIO aimed at **collecting evidence** and ensuring defendant's **presence**.
  - Executing authority (Belgium) ⟶ Refusal based on **domestic limits** and **constitutional interpretation**.

- Disputed grounds for refusal
  - **Non-availability of act in domestic case** (⟶ **Article 10**) (possibly inapplicable under **Article 24**?)
  - **Fundamental principles** of Belgian law (**Art. 24(2)(b)**).
  - No **explicit** refusal based on **lack of consent** from the accused.

- Potential alternative ⟶ **Temporary transfer** under **Article 22**, but also **rejected** by Belgium as not being an "investigative act"

Case C-325/24 – *Bissilli*

Questions referred to the CJEU

- Can an EIO under **Article 24** be used for **videoconference hearings** that serve **both evidence-gathering and participation** purposes, when EAW is unavailable?
- Can **Article 10** justify refusal where such an investigative act (videoconference) is **not available in a domestic Belgian case** – despite Article 24 not listing this reason?
- Does **Article 11(1)(f)** (in light of **Article 47 CFREU**) prevent refusal where the **issuing state provides sufficient procedural guarantees**?
- Can the **"fundamental principles" clause** (Article 24(2)(b)) be invoked **generally**, or must it be **interpreted strictly and case-specifically**?
- Can **Article 22** support an EIO for **temporary transfer** of the accused for a hearing deemed "evidentiary" (*valenza istruttoria*) under national law?

- Can an EIO under **Article 24** be used for **videoconference hearings** that serve **both evidence-gathering and participation** purposes, when EAW is unavailable?

- 47. In the light of the foregoing, I consider that the answer to the first question referred for a preliminary ruling must be that Article 24 of Directive 2014/41, read together with Article 3 and in the light of recitals 25 and 26 of that directive, must be interpreted as permitting an EIO to be issued for the hearing by videoconference at the hearing of oral argument of an accused person who is in custody in the executing State, provided that the purpose of the EIO is to gather evidence, since the fact that the issuing authority also seeks to enable the accused person to be present at the hearing by videoconference does not, in itself, preclude the issuing of that order.

- 1. an alternative measure to a hearing by videoconference is easily conceivable, such as the temporary transfer of the accused person, within the meaning of Article 22 of Directive 2014/41, to be heard or questioned at the hearing in the issuing State. That measure would certainly have achieved the same result as the investigative measure indicated in the EIO.

- Second, I would point out that Article 24(2) of that directive states that, in addition to the grounds for non-recognition or non-execution referred to in Article 11 thereof, execution of an EIO for the purpose of a hearing by videoconference may be refused if the suspected or accused person does not consent or if the execution of such an investigative measure in a particular case would be contrary to fundamental principles of the law of the executing Member State. It seems to me that that provision, as drafted, is intended to specify all the grounds for non-recognition or non-execution that may be relied on when executing an EIO, the purpose of which is to organise a hearing of a person by videoconference.

- 53. In the third and last place, for the sake of completeness, I would like to point out that Article 10(3) of Directive 2014/41 provides that the executing authority may 'also' have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result as the investigative measure indicated in the EIO by *less intrusive* means, *in particular in terms of interference with fundamental right*s. (While, in the present case, the Belgian judicial authorities do not appear to have considered the possibility of having recourse to other investigative measures, such a possibility cannot be ruled out, in particular, in so far as a transfer, within the meaning of Article 22 of Directive 2014/41, as indicated above, would have achieved the same result and, according to the logic of national law, which is not obvious, however, would have implied less interference with the fundamental rights of the accused person.
- 54. In the light of the foregoing, I propose that the answer to the second question referred for a preliminary ruling should be that Article 10 of Directive 2014/41, read together with Article 24 thereof, **must be interpreted as meaning that an executing judicial authority cannot refuse to execute an EIO the purpose of which is to organise a hearing by videoconference of a person as an accused person during his or her trial, on the ground that such a measure would not be authorised in a similar domestic case.**

- Does **Article 11(1)(f)** (in light of **Article 47 CFREU**) prevent refusal where the **issuing state provides sufficient procedural guarantees**?

- 66. In the light of the foregoing, I propose that the answer to the third question referred for a preliminary ruling should be that Article 11(1)(f) of Directive 2014/41, read in the light of Articles 47 and 48 of the Charter, must be interpreted as meaning that the execution an EIO for the hearing by videoconference of an accused person who is in custody in the executing State may not be refused by the executing authority unless there are substantial grounds to believe, on the basis of actual and specific indications, that that hearing would infringe the fundamental rights of the accused person, in particular his or her right to a fair trial and his or her rights of defence in accordance with the second paragraph of Article 47 and Article 48(2) of the Charter.
- Can the **"fundamental principles" clause** (Article 24(2)(b)) be invoked **generally**, or must it be **interpreted strictly and case-specifically**?
- 2. In the light of the foregoing, I propose that the answer to the fourth question referred for a preliminary ruling should be that Article 24(2)(b) of Directive 2014/41 must be interpreted as meaning that the application of the ground for refusal laid down by that provision, namely that it is contrary to the fundamental principles of the law of the executing State, may be based on general directives, which are neither binding nor absolute, issued within the executing Member State, provided that the executing authority carries out an examination which takes account of all the relevant circumstances of the case, including the requirements contained in the national law of the issuing State to guarantee the rights of defence of the accused person.

Application (or not) of the rule of speciality

some Member States consider it necessary to obtain the **consent of the executing State to use the evidence gathered through an EIO in different criminal proceedings;**

Dir 2014/41 only states that : Art. 22(8).Without prejudice to paragraph 6, **a transferred person** shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the issuing State for acts committed or convictions handed down before his departure from the territory of the executing State and which are not specified in the EIO.

Art. 19 (3) the issuing authority shall, in accordance with its national law and unless otherwise indicated by the executing authority, not disclose any evidence or information provided by the executing authority, except to the extent that its disclosure is necessary for the investigations or proceedings described in the EIO.

Source: provisions of national law or a general principle of international judicial cooperation. It is a way to grant full respect of necessity and proportionality

They differ on how to assess the consent.

Application (or not) of the rule of speciality

other Member States consider it unnecessary ;

They apply the Law enforcement directive : *Directive provides for the free flow of data, thus allowing for evidence to be used in other proceedings, as long as the data protection principles are abided by and the executing State has not expressly stated that the evidence can only be used for the purposes outlined in the EIO.*

Accidental discovery: during the execution of an EIO, information becomes available that a crime other than the one that gave rise to the issuing of the EIO has been committed on the territory of that Member State, they will open a domestic investigation. Some of them are obliged to do so, as they are bound by the legality principle.

In order to ensure consistency, the Directive should be amended to clarify whether or not the rule of speciality applies in the context of the EIO and whether the issuing MS should alert the executing MS in case of a new investigation

Need of a legislative amendment for:

- Application of th principle of speciality
- Whether surveillance measures conducted by technical means (GPS-tracking and bugging of vehicles) fall within the scope of the concept of interception in relation to Article 31.
- Spontaneous information exchange
- Use of videoconferencing to allow participation to trial
- More user-friendly form:
  - More tick-boxes:
    - The phase of the investigation
    - Separate the defendant from victim or witness
    - A box for the list of questions
    - Add to Section D (indication of a previous EIO) an additional box in relation to potential EAW (house search + arrest), JIT, MLA, F&C

- Focus on the actors of police and judicial cooperation in criminal matters

EU judicial actors

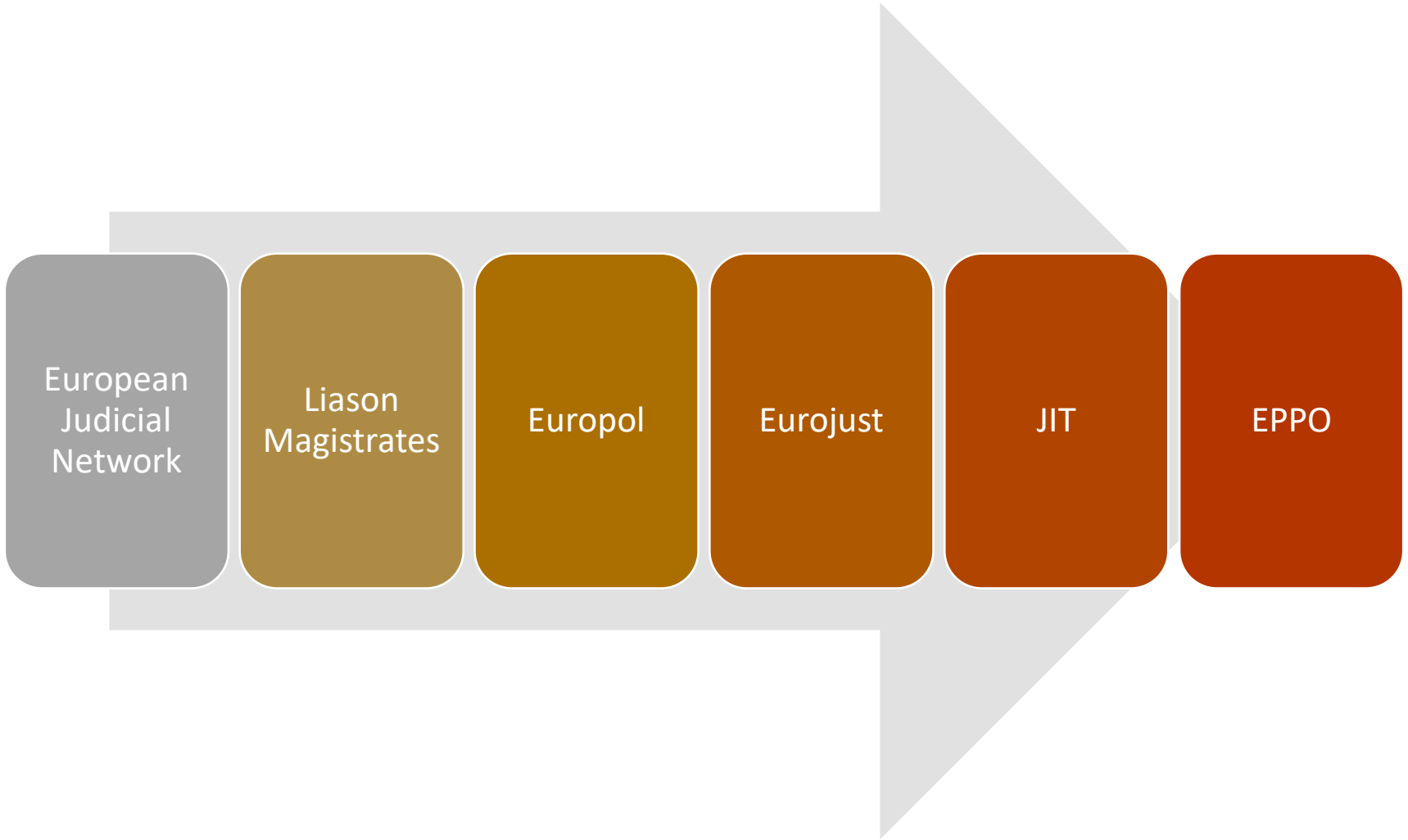
- Strengthening of **Eurojust** (article 85 TFEU)
  - Possibility to confer binding powers as to initiation of criminal investigations, coordination of investigations, and resolution of conflicts of jurisdiction

- Establishment of a **European Public Prosecutor Office** (86 TFEU)

- Strengthening of **Europol** (article 87 TFEU)

Cooperation

- **Judicial v police**
  - Judicial cooperation
    - Between judicial authorities
    - For repression of crime – reactive approach
  - Police cooperation
    - Between police forces
    - For repression and prevention of crimes – reactive but also proactive approach


European Judicial Network
Liason Magistrates
Europol
Eurojust
JIT
EPPO

EU Actors

Europol

- Police cooperation
- Horizontal cooperation between LEAs
- Coordination + analysis /Non-operational powers
- Cross-border cases

Eurojust

- Judicial cooperation
- Horizontal cooperation between judicial authorities
- Coordination/Non operational powers
- Cross-border cases

OLAF

- Administrative investigations
- Non-necessarily cross-border cases
- Step up the fight against illegal activity affecting the financial interest of the EU

EPPO

- Vertical integration
- Operational powers (powers to investigate, prosecute and bring to judgment)
- Not-necessarily cross-border
- Against PIF crimes

Police cooperation

Police cooperation

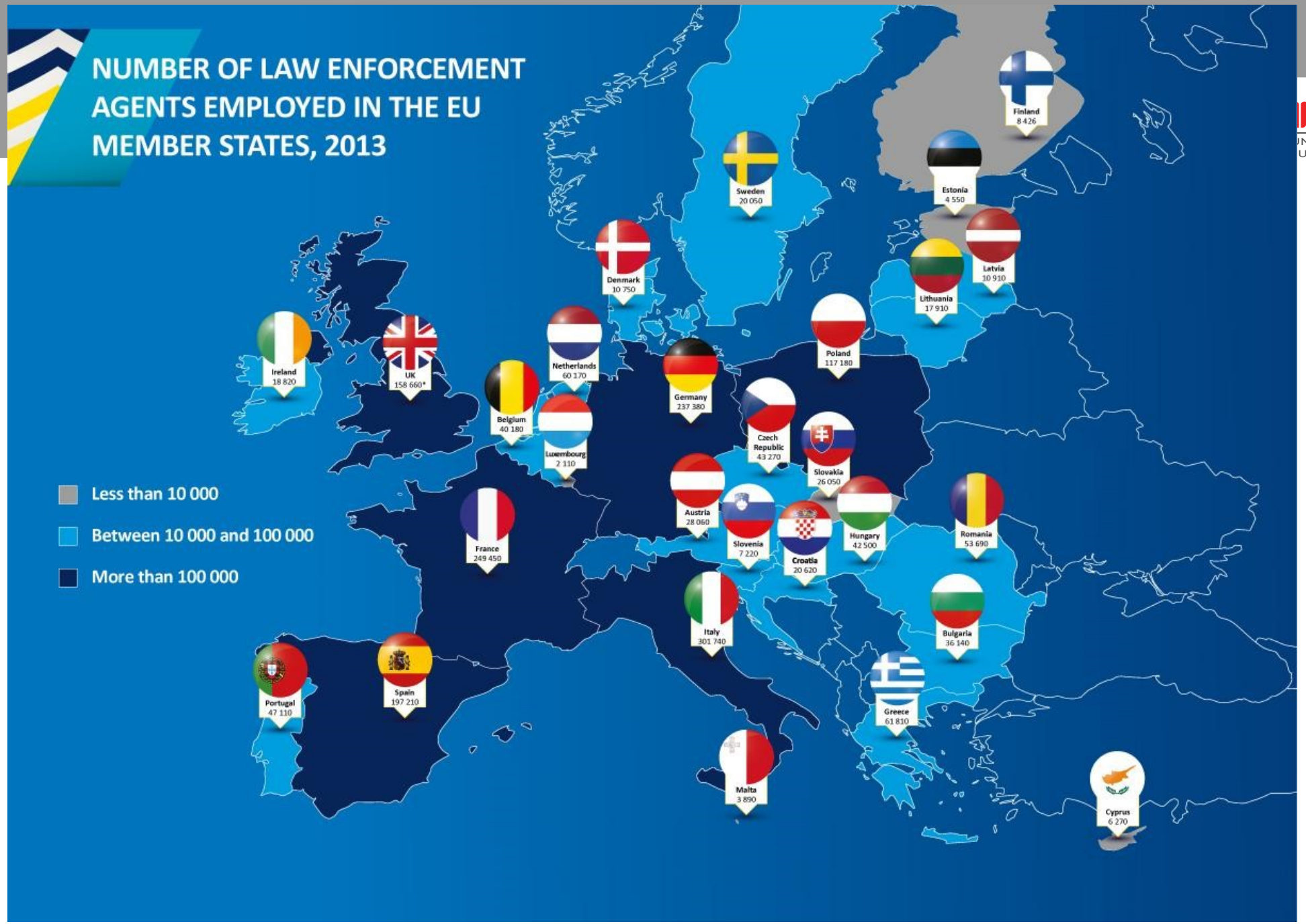
- Haphazard development
  - Greater impulse before WW1 and WW2
  - After WW2 more emphasis on judicial cooperation
    - particularly at COE level
  - 1970's debate to establish common European body (European FBI)
    - German approach
    - Interpol v TREVI (Terorrism, Radicalism, Extremism et Violence Internationale, 1976)

- **2 main line of developments**
  1. Allow greater reciprocal help in prevention and repression
  - Particularly by exchanging information (**information ≠ evidence**)
  - Operational competences limited (see CISA 1990)
  2. Establish "Common European Police Hub"

- Schengen agreement 14 June 1985
- Convention implementing Schengen Agreement (CISA): 1990
- Internal borders v external borders
- Internal borders may be crossed without checks
  - But possible to still introduce “checks” for limited period
    - public or national security
    - abolition of checks on persons at internal borders shall not affect the provisions laid down in Article 22, or the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

EUROPOL

- Police cooperation
- European FBI?
- Article 88 TFEU
- From Convention to Decision
- (Dec. 6 April 2009, 2009/371)
- To **Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA**


NUMBER OF LAW ENFORCEMENT AGENTS EMPLOYED IN THE EU MEMBER STATES, 2013
Less than 10 000
Between 10 000 and 100 000
More than 100 000
Finland 8 426
Sweden 20 050
Estonia 4 550
Latvia 10 910
Lithuania 17 910
Denmark 10 750
Poland 117 180
Ireland 18 820
UK 158 660*
Netherlands 60 170
Belgium 40 180
Germany 237 380
Luxembourg 2 110
Czech Republic 43 270
Slovakia 26 050
Austria 28 060
Slovenia 7 220
Croatia 20 620
Hungary 42 500
Romania 53 690
France 249 450
Italy 301 740
Bulgaria 36 140
Spain 197 210
Portugal 47 110
Greece 61 810
Malta 3 890
Cyprus 6 270

Europol Article 88 TFEU

- 1. Europol's mission shall be to **support and strengthen** action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.
- 2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:
- (a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.
- These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.
- 3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

It supports the law enforcement activities of EU Member States in areas such as:

- Illicit drug trafficking
- Terrorism
- Cybercrime
- Illegal immigrant smuggling, trafficking in human beings and child sexual exploitation
- Counterfeiting and product piracy
- Money-laundering
- Forgery of money and other means of payment - Europol acts as Europe's Central Office for combating euro counterfeiting

Tasks:

- Facilitating the exchange of information and criminal intelligence between EU law enforcement authorities by way of the Europol Information and Analysis Systems and the Secure Information Exchange Network Application (SIENA)
- Supporting the operations of national authorities by providing operational analysis
- Generating strategic reports (e.g. threat assessments) and crime analysis on the basis of information and intelligence supplied by Member States, generated by Europol or gathered from other sources
- Providing expertise and technical support for investigations and operations carried out within the EU

Europol has set up several specialised units to respond to these threats:

- the European Cybercrime Centre
- the European Migrant Smuggling Centre
- the European Counter Terrorism Centre
- the Intellectual Property Crime Coordinated Coalition
- the European Financial and Economic Crime Centre
- FIU.net (not anymore)
- the EU Internet Referral Unit, which detects and investigates malicious content on the internet and social media networks.

- Problems of control (potential ‘bureaucratic drifts’)
- Problems of coordination
- Problems of legitimacy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Tue 14 Nov 07:40
europol.europa.eu/media-press/newsroom/news/dismantling-encrypted-criminal-encrochat-communications-leads-to-over-6-500-arrests-and-clo...
EUROPOL
ABOUT EUROPOL
OPERATIONS, SERVICES & INNOVATION
CRIME AREAS
PARTNERS & COLLABORATION
CAREERS & PROCUREMENT
MEDIA & PRESS
PUBLICATIONS & EVENTS
SEARCH
CONTACT
LANGUAGE
Home / Media & Press
NEWS
Dismantling encrypted criminal EncroChat communications leads to over 6 500 arrests and close to EUR 900 million seized
Judiciary and law enforcement present first overview of results
27 JUN 2023
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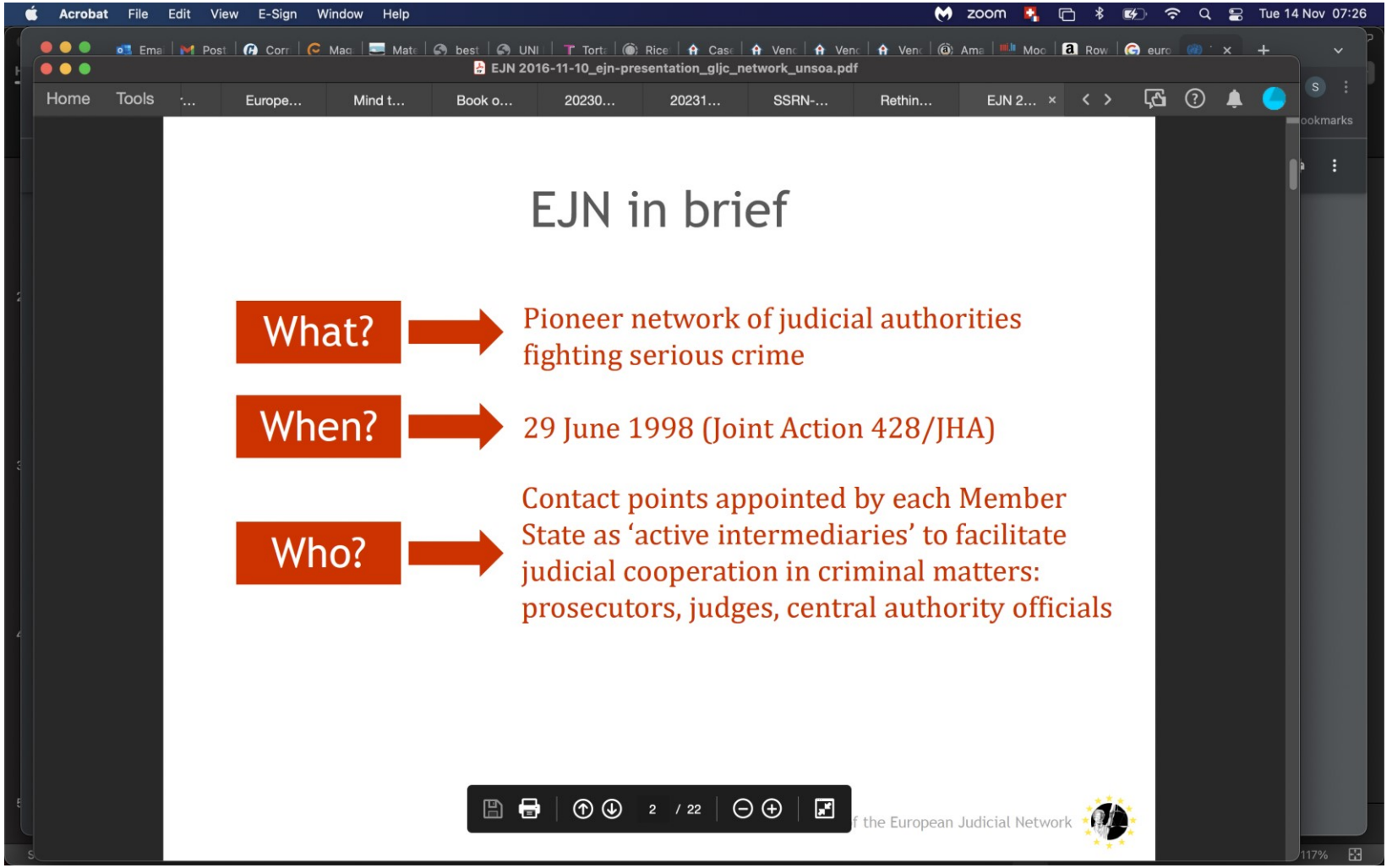
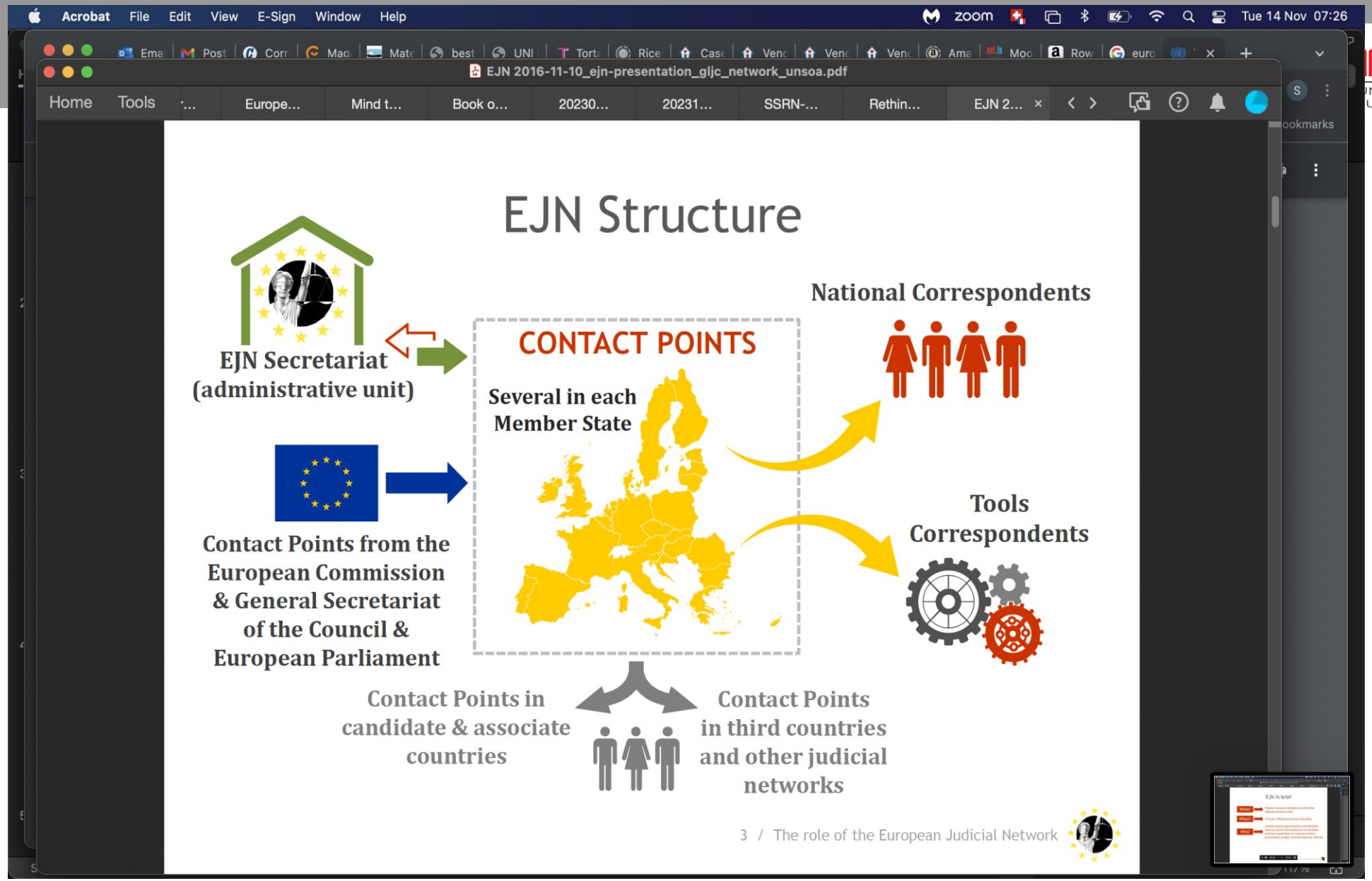
Accept only essential cookies
Slide 19 of 130
English (United Kingdom)
Accessibility: Investigate
Notes
Comments
83%

The European judicial network


EJN 2016-11-10_ejn-presentation_gljc_network_unsoa.pdf
EJN in brief
What?
Pioneer network of judicial authorities fighting serious crime
When?
29 June 1998 (Joint Action 428/JHA)
Who?
Contact points appointed by each Member State as 'active intermediaries' to facilitate judicial cooperation in criminal matters: prosecutors, judges, central authority officials
2 / 22
f the European Judicial Network


EJN 2016-11-10_ejn-presentation_gljc_network_unsoa.pdf
EJN Structure
EJN Secretariat
(administrative unit)
CONTACT POINTS
Several in each
Member State
National Correspondents
Tools
Correspondents
Contact Points from the
European Commission
& General Secretariat
of the Council &
European Parliament
Contact Points in
candidate & associate
countries
Contact Points
in third countries
and other judicial
networks
3 / The role of the European Judicial Network

EUROJUST

- EU's Judicial Cooperation Unit in criminal matters ⇒ Permanent body of judicial cooperation
  - Created by Council Decision of 28 February 2002
  - Seat in The Hague (NL)
  - Has legal personality
  - Composed of 27 EU prosecutors / judges (one from each Member State)
  - Aim:

'to deal more effectively with serious cross border crime, particularly when it is organised, and involves two or more Member States' (Council Decision of 14 December 2000)

Eurojust in the Treaty

- 85 TFEU
- Support and strenghten judicial cooperation
- Tasks:
  - Initiation criminal investigations and prosecutions
  - Coordination of investigations and prosecutions
  - Facilitate cooperation practices
- Binding powers!

Eurojust at a glance

EUROJUST

What is Eurojust?

Eurojust is the **EU Agency for Criminal Justice Cooperation.** We are a specialised hub providing tailor-made support to **prosecutors and judges** from across the EU and beyond.

To effectively tackle cross-border crime, we also host **networks** and run several **programmes and projects.**

Why Eurojust?

Working across 27 judicial systems is complex. Through our unique know-how, we ensure that national borders are no obstacle to prosecuting criminals and getting justice done. In addition to our **legal expertise,** we provide **secure meeting rooms** with **state-of-the-art IT systems** and **interpretation facilities,** as well as a **24/7 on-call service.**

Who do we work with?

In addition to working with national authorities across the EU, we have **Contact Points** in over 70 countries worldwide, as well as several **Liaison Prosecutors** from third countries posted at Eurojust. This global network works alongside EU Member States to provide support to cross-border investigations.

We also have strong partnerships with other **EU Justice and Home Affairs agencies** as well as international partners.

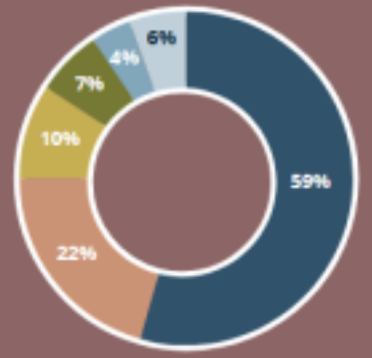
- EU Member States
- Liaison Prosecutors posted at Eurojust
- International Judicial Contact Points

What is our impact?

Each year, **Eurojust contributes** to the arrest or surrender of **thousands of suspects** and the seizure or freezing of **billions of euros** worth of criminal assets.

Moreover, we help to deliver **justice to thousands of victims,** ensuring their identification, rescue and protection.

Top 5 crime types addressed by Eurojust in 2024



How do we work?

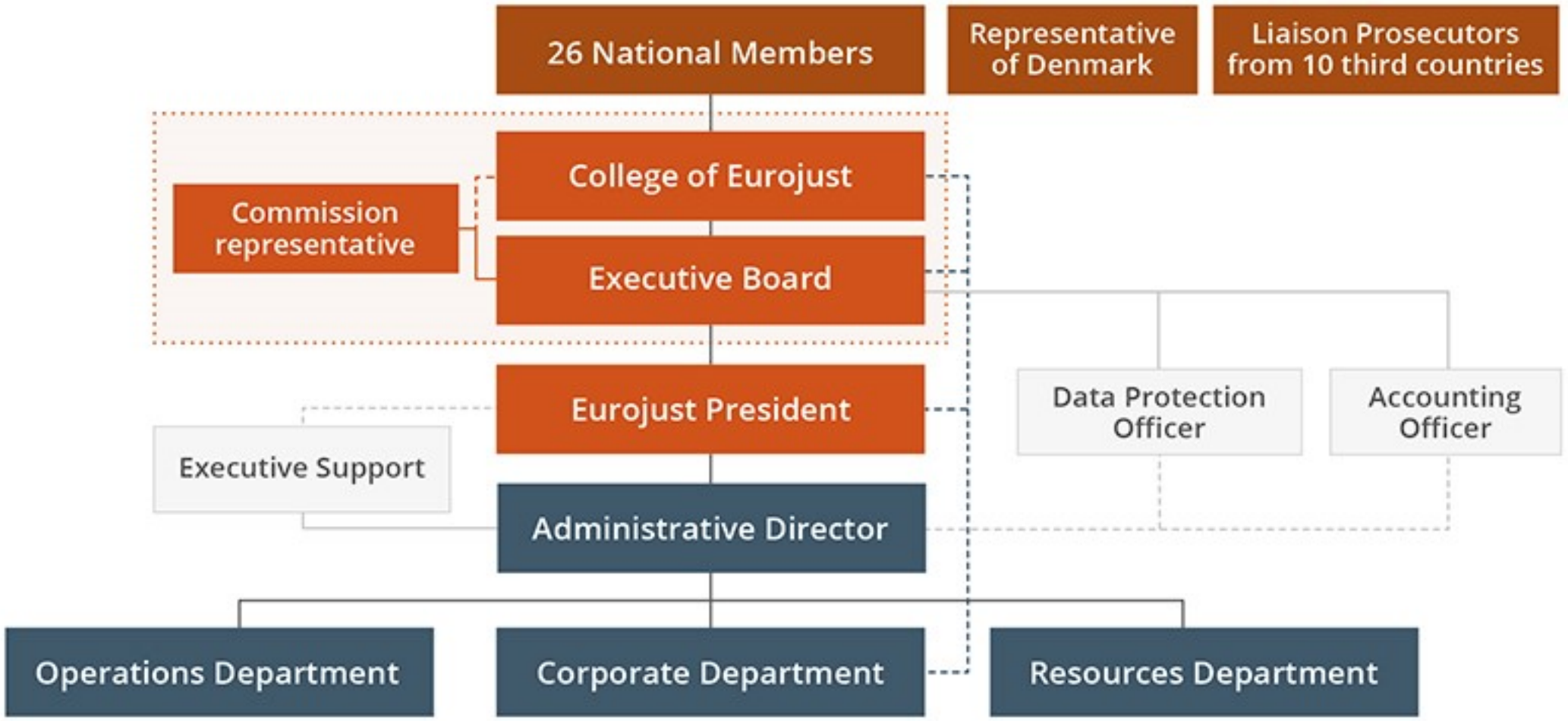
We provide **our services** to national authorities throughout all stages of the criminal justice chain, from when a case is opened by a Member State until justice gets done in court:

- In **coordination meetings,** we bring together prosecutors from all over Europe to work on cross-border crime cases.
- We support **joint investigation teams** – logistically, financially and with expertise.
- From our **coordination centre,** joint action days against criminal networks are steered in real time, with arrests and searches taking place simultaneously in multiple countries.

More information: www.eurojust.europa.eu

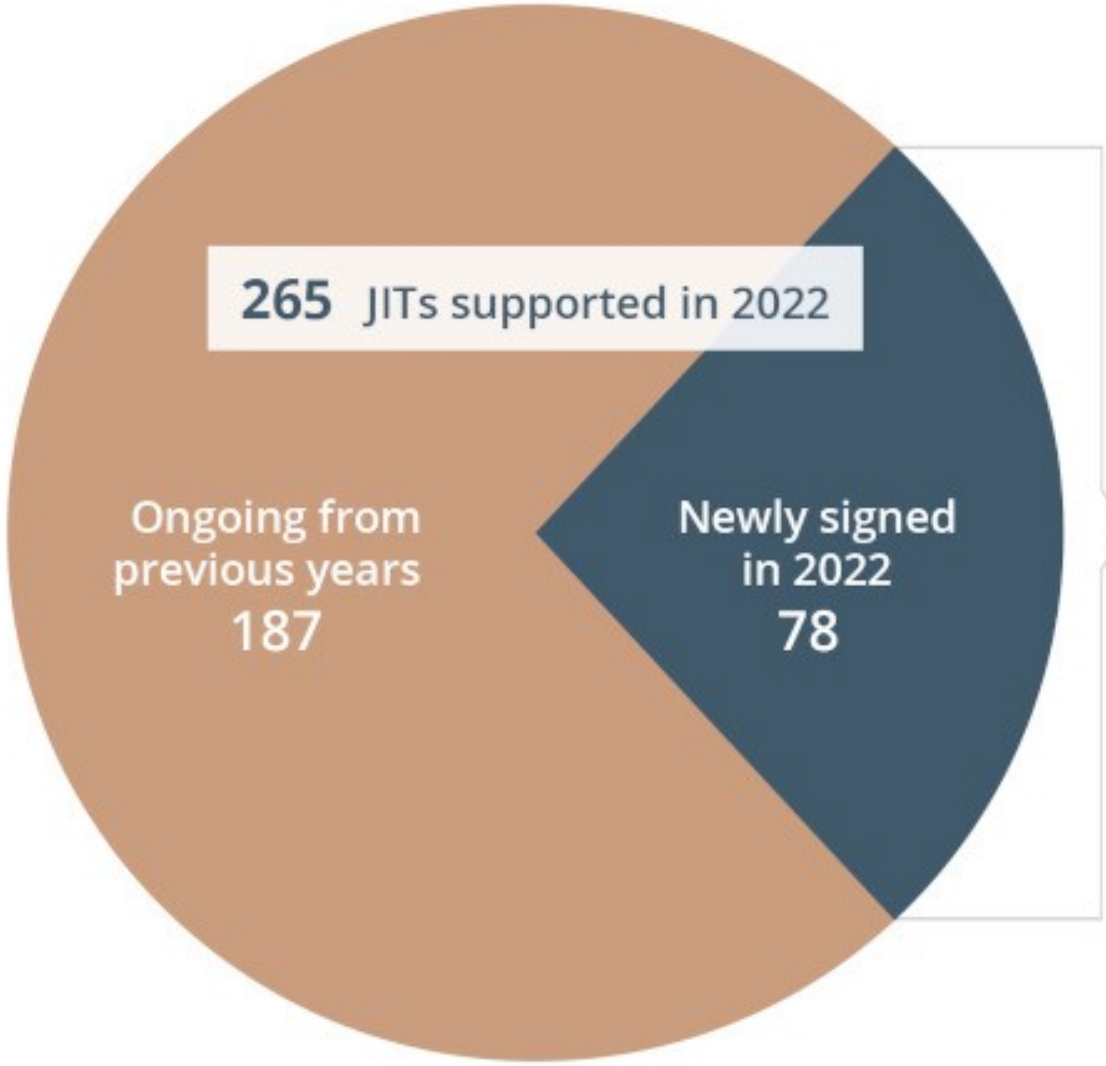
Follow Eurojust on @Eurojust

Eurojust's organisational structure in 2021

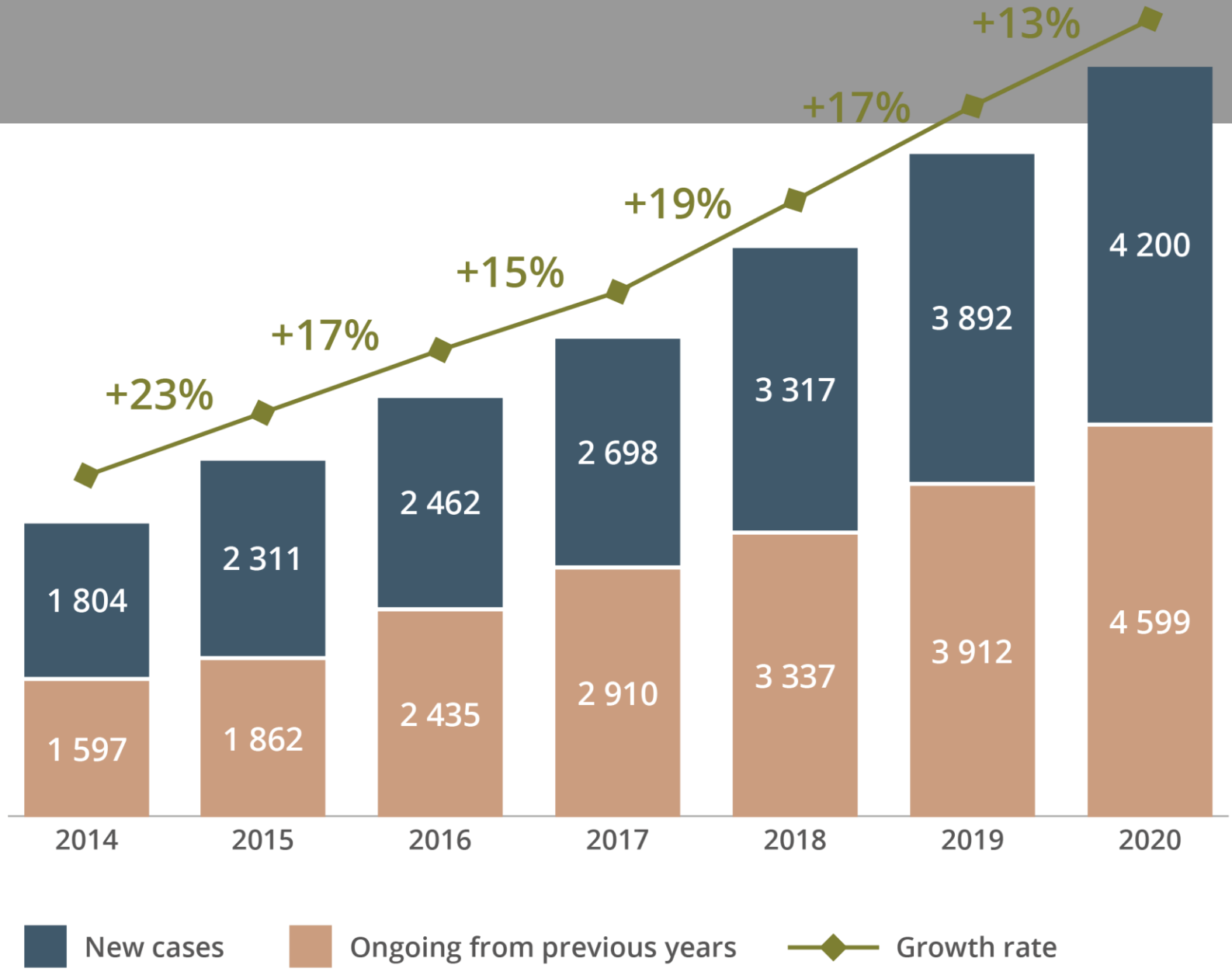


Eurojust ctivities:

- coordinate parallel investigations;
- organise coordination meetings, involving the judicial authorities and law enforcement concerned;
- set up and/or fund joint investigation teams (JITs) in which judicial authorities and law enforcement work together on transnational criminal investigations, based on a legal agreement between two or more countries; and
- plan joint action days, steered in real time via coordination centres held at Eurojust, during which national authorities may arrest perpetrators, dismantle organised crime groups and seize assets.



- Drug trafficking, 24
- Money laundering, 21
- Swindling and fraud, 16
- Trafficking in human beings, 9
- Migrant smuggling, 7
- Terrorism, 3
- Crimes involving mobile organised crime groups (MOCGs), 3
- Corruption, 1
- Core international crimes, 1


+23%
+17%
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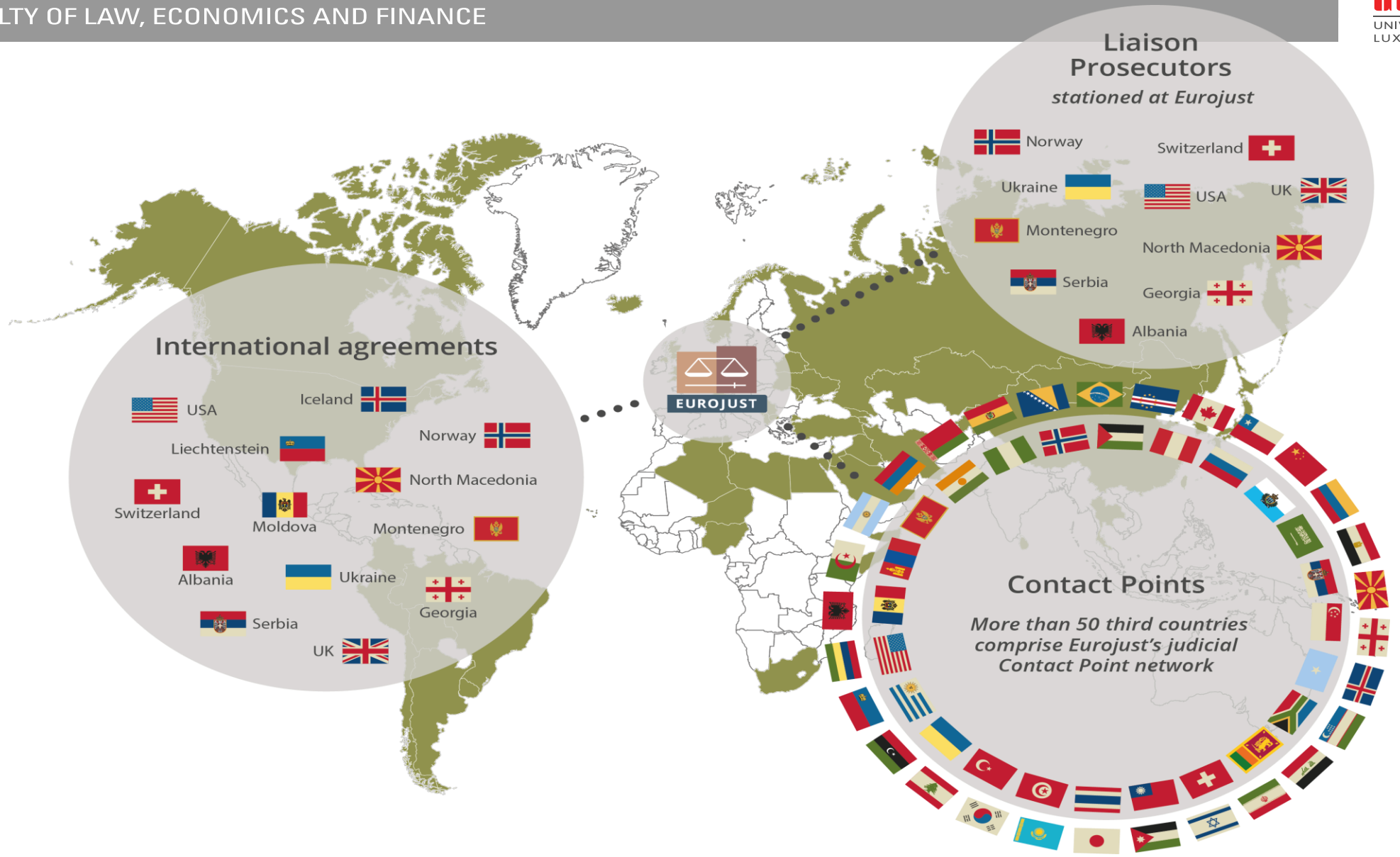
+19%
+17%
+13%
1 804
2 311
2 462
2 698
3 317
3 892
4 200
1 597
1 862
2 435
2 910
3 337
3 912
4 599
2014
2015
2016
2017
2018
2019
2020
New cases
Ongoing from previous years
Growth rate


Liaison Prosecutors
stationed at Eurojust
Norway
Switzerland
Ukraine
USA
UK
Montenegro
North Macedonia
Serbia
Georgia
Albania
International agreements
USA
Iceland
Liechtenstein
Norway
North Macedonia
Switzerland
Moldova
Montenegro
Albania
Ukraine
Georgia
Serbia
UK
EUROJUST
Contact Points
More than 50 third countries comprise Eurojust's judicial Contact Point network

UNIVERSITÉ DU LUXEMBOURG

Thank you for your attention!

silvia.allegrezza@uni.lu

Thank you for your attention!

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

abogado Maria Barbancho
adwokat Katarzyna Dąbrowska

Co-funded by the European Union

Pietrzak Sidor & Wspólnicy

ECBA

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THE EUROPEAN INVESTIGATION ORDER – DEFINITION (ART. 1 P. 1 OF THE DIRECTIVE)

judicial decision which has been issued or validated by a judicial authority of a Member State to have one or several specific investigative measure(s) carried out in another Member State (the executing state) to obtain evidence in accordance with the Directive.

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Main assumption of the Directive

» Proportionality rule – applied by the issuing state

→ investigative measure proprotionate, adequate and applicable in the case at hand

→ evidence sought is necessary and propotionate for the purpose of the proceedings

→ chosen investigative measure is necessary and proportionate fot the gathering of teh evience conerned

» Respect to:

→ fundamental rights such as presumption of innocence, rights to defence

→ Directives concerning procedural rights in crminal proceedings

→ *ne bis in idem rule*

→ protection of personal data

- Availability of legal remedies
- Effectivness – possibility of executing state to use another type of investigative measure than the one chosen by the issuing state
- Precedence over conventions concluded within the Counci of Europe concerning mutual assistance
- Costs on the side of the executing state

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WHEN YOU CAN USE EIO?

- The german prosecutor is conducting an investigation for fraud and wants to interview a suspect who lives in Spain → may issue an EIO asking the Spanish authorities to conduct an interview (with or without their presence) / or to authorize an interview by video-conferencing.
- The french authorities are conducting an investigation of fraud and and wants to obtain documents in respect of bank accounts in Portugal to which the funds were transferred and then laundered → may issue an EIO and send it to the Portuguese authorities in order to obtain such evidence.
- The italian authorities are conducting an investigation for drugs trafficking and want to intercept a phone number being used in Portugal → may issue an EIO and send it to the Portuguese authorities in order to obtain such evidence.
- The Portuguese authorities have brought a defendant living in Germany to trial for an offence of coercing and resisting arrest. They want him to participate in the trial by video-conferencing and issue an EIO to the German authorities to that end.
- The Spanish European delegated prosecutor wants to obtain evidence in EPPO proceedings which is located in a non-participating Member State, i.e. Hungary → may issue an EIO to that end.

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WHEN YOU CAN NOT USE AN EOI?

- For summon somebody to appear in front of the court -Mutual Assistance in Criminal Matters.
- The German authorities are conducting an investigation of fraud want to:
- Impose a coercive measure obliging the suspect who lives in Spain to appear weekly at the investigating judge
- Freeze the assets held in the bank account to which the amounts of the victims were transferred for the purposes of returning it to the victims - Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.
- The European delegated prosecutor in Spain wants to interview a witness in Portugal

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Barbancho Legal / INTERNATIONAL DEFENSE IN SPAIN

CASE C-583/23, DELDA, JUDGMENT OF 9 JANUARY 2024

Articles 1 and 3 EIO DIR mean that:

1) a request to serve on a person the indictment relating to him or her does not, as such, constitute an EIO;

2) a request to remand person in custody pending trial for purposes other than those referred to in Articles 22 and 23 EIO DIR, or to require him or her to make a bail payment, does not constitute an EIO;

3) a request to allow a person to make observations on the matters set out in the indictment relating to him or her constitutes an EIO, insofar as that request for a hearing is intended to gather evidence.

→ investigative measure' refers to any investigative act intended to establish a criminal offence, the circumstances in which it was committed and the identity of the perpetrator, thus aimed at obtaining evidence.

Art. 2 c – issuing authority means:

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

MS C-16/22 ("MS")

» German Tax authorities issued an EOI to gather information about a bank account under the name of the defendant, who was investigated of tax fraud. according to german national law, the tax office can undertake criminal tax investigations. Austria executed the EOI. MS appealed.

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

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

» **a tax authority** of a MS which, while being part of the executive of that MS, conducts, in accordance with national law, criminal tax investigations autonomously, instead of PPO and assuming the rights and the obligations vested in the latter, **cannot be classified as a 'judicial authority'** and an 'issuing authority', within the meaning, respectively, of each of those provisions;

» It **is, on the other hand, capable of falling within the concept of an 'issuing authority'** within the meaning of Article 2(c)(ii) of that directive, provided that the conditions set out in that provision are met

Pietrzak Sidor & Wspólnicy

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Barbancho Legal / INTERNATIONAL DEFENSE IN SPAIN

» CASE C-724/19 SPETSIALIZIRANA PROKURATURA, 16 DECEMBER 2021

Q: Does Article 2(c)(i) EIO DIR preclude a public prosecutor from having competence to issue, during the pre-trial stage of criminal proceedings, an EIO seeking to obtain traffic and location data associated with telecommunications where, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking access to such data? Does recognition of that EIO by the executing State replace the court order required under the law of the issuing State, where that EIO was improperly issued by a public prosecutor?

A: Article 2(c)(i) EIO DIR precludes a public prosecutor from having competence to issue, during the pre-trial stage of criminal proceedings, an EIO seeking to obtain traffic and location data associated with telecommunications where, in a similar domestic case, the judge has exclusive competence to adopt such an investigative measure.

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

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

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

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The art of procedure is in reality nothing but the art of administering evidence.

Jeremy Bentham

Actual problem: lack of willingness on the part of Member States to accept harmonisation of the national rules on gathering evidence in criminal proceedings.

LACK OF LEGAL CERTAINTY not only to ensure the admissibility of cross-border evidence but also to provide for an adequate protection of the defendants' rights in this area,

With the increase in volume and importance of cross-border investigations in the EU, ensuring the admissibility of evidence gathered in another Member State at trial has become crucial, both for efficient law enforcement and for the protection of fundamental rights.

In accordance with Art. 6 of the ECHR and Arts. 47 and 48 CFR, it must be ensured that evidence gathered in cross-border investigations does not lead to its unlawful or unfair use.

ECHR upheld the position that the admissibility, probative value and burden of proof must be given to the specific national legal systems. The Court does not act as fourth instance examining admissibility and exclusionary rules on evidence.

- The 2009 Green Paper and the European Investigation Order: details the procedures for requesting and exchanging evidence between EU Member States but created no rules on evidence gathering and admissibility.
- On 5 May 2023, the Europea Law Institute (ELI) adopted a Proposal for Directive of the European Parliament and of the Council on Mutual Admissibility of Evidence and Electronic Evidence in Criminal Proceedings (hereinafter the ELI Proposal), which is the result of a two-year project.
- The EPPO: power to gather and present evidence before national courts. The relevant legal framework does not set standards for gathering evidence. Member States clearly refused to agree on rules for the gathering and admissibility of evidence in EPPO investigation.
- The E-Evidence Package: in response to the increasing demand for cross-border electronic information, in April 2018 the European Commission proposed an "E-evidence package" to create a tool for law enforcement agencies to obtain electronic data from other countries. The texts of the proposed regulation and directive do not address common standards on gathering or admissibility of evidence.
- Procedural Rights Directives: the question of evidence exclusion as a remedy for violation of these rights was a key issue during negotiations but none of the Directives provides clear provisions on this.

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.....WHAT`S LAWYER`S ROLE IN EIO PROCEEDINGS

?

Report on EUROJUST`s CASEWORK (2020)

- Defining the scope of the EIO
- Claryfing the content of the EIO
- Bridging differences between national legal systems
- Ensuring correct and restrictive interpretation of the grounds for non-execution
- Speeding up the execution of EIO
- Facilitating direct contact and exchange of infromation between issuing and executing authorities
- Addressing language issues
- Encouraging the use of Annex B (confirmation of the receipt of an EIO) and Annex C (notification concerning intercepion of telecommunications) of the Directive
- Transmitting EIO to the competent authorit
- Coordinating the execution of EIOs with other instruments.

MOST IMPORTANT PROBLEMS – PERSONAL PERSPECTIVE

1. Interrogation.

→ preserving proper procedure in the light of the procedural standing (witness/suspect)

→ appropriate authority conducting interrogation – court/investigative authorities

→ form of interrogation – interrogation in person, by means of electronic communications, in written form

→ service of correspondence

2. Legally protected secrecy.

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EUROPEAN INVESTIGATION ORDER

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Co-funded by the European Union

A prosecutor in Spain is investigating a case of online fraud. It is suspected that the defrauded money was transferred to a bank account in Germany, held by a third person.

The Spanish prosecutor issues a European Investigation Order (EIO) to the German authorities, requesting:

» Identification of the bank account holder.

» The account's transactions over the last 12 months.

» Copies of the documents used to open the account (KYC).

The defence lawyer in Spain argues that:

» The EIO violates the principle of proportionality, since the request for 12 months of bank records is too broad.

» The suspect was not notified and had no opportunity to challenge the issuing of the EIO in Spain.

» Bank data is part of the right to privacy (Articles 7 and 8 of the EU Charter), so a prior judicial authorisation in Spain should have been required.

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- Can the German judicial authority refuse to execute the EIO on the grounds of disproportionality?
- Is prior judicial authorisation in Spain required to obtain bank data via an EIO?
- Does the suspect have a right to challenge the issuing of the EIO in the issuing state (Spain)?
- What safeguards regarding data protection and fundamental rights must be respected?

» Proportionality

The CJEU has stressed that all measures of judicial cooperation must respect proportionality (e.g. Case C-324/17, Gavanozov II). However, it is mainly the issuing state (Spain) that assesses necessity and proportionality. The executing state (Germany) may only refuse execution on the specific grounds provided in Directive 2014/41/EU (Articles 11–12).

» Judicial authorisation

According to CJEU rulings (Case C-724/19, Spetsializirana prokuratura on traffic data, and Case C-793/19, SpaceNet), access to sensitive data may require prior judicial review to protect fundamental rights. Still, the Court distinguishes between highly intrusive data (traffic/telecom data) and mere bank identification data, where a prosecutor's request may suffice if national law allows it.

» Right to challenge

The suspect must have effective remedies in the issuing state (Spain), in line with Article 14 of the EIO Directive and the EU Charter. Lack of notification at the time of issuance does not invalidate the EIO, but the suspect should be able to challenge it afterwards.

» Data protection and fundamental rights

Transmission of personal data must respect the EU Charter (Articles 7 and 8) and EU data protection rules. In Case C-746/18, Prokuratuur, the Court held that access to sensitive information requires judicial or independent oversight, with clear justification and time limits.

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CONCLUSIONS:

- Germany must execute the EIO unless a clear ground for refusal exists.
- Spain must justify necessity and proportionality, though prior judicial approval is not always required for basic bank data.
- The suspect has the right to challenge the EIO in Spain, not in Germany.
- Both states must ensure proportionality, data protection, and effective remedies.

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The new e-evidence dossier of the EU: Regulation (EU) 2023/1543, the European Production and Preservation Orders, and the involvement of service providers

Co-funded by the European Union

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Agenda

- Introduction
- Overview of the EU's Digital Regulation Efforts
- E-Evidence Regulation and Its Context
- How the EPPO Direct Model Works
- Potential problems
- The American Context: The CLOUD Act
- EPPO SWOT Analysis

- Conclusion

Key EU Digital Regulations: DMA and DSA

- Digital Markets Act (DMA)
  - Targets major online platforms known as "gatekeepers"
  - Aims to promote fair competition in digital markets
- Digital Services Act (DSA)
  - Establishes rules for online platforms
  - Focuses on reducing illegal content and disinformation
- Both Acts introduced in 2022
  - Part of the European Union's digital regulatory framework

The Intended Role of the e-Evidence Regulation

- New E-Evidence Regulation
  - Provides an additional tool for law enforcement agencies
  - Enhances existing legal frameworks for digital investigations
- Purpose of the Regulation
  - Aims to introduce direct access to electronic evidence
  - Supports more efficient law enforcement processes
- Impact on Law Enforcement
  - Facilitates cross-border investigations
  - Improves the ability to gather digital evidence quickly

E-Evidence Regulation and Its Context

Feature	European Arrest Warrant (EAW)	European Investigation Order (EIO)	European Production & Preservation Order (EPPO)
Primary Focus	Surrender of a Person	Cross-border evidence gathering	Electronic evidence (e-evidence)
Core Subject	A person	Any type of evidence	Digital data
Mechanism	Authority ➡ Authority	Authority ➡ Authority	Authority ➡ Service Provider (Direct)
Key Advantage	Replaces slow extradition	Single, comprehensive framework	Bypasses national authorities for speed
Speed	Fast	Faster than old systems	Extremely fast

- European Arrest Warrant (EAW) Model
  - Streamlines arrests
- European Investigation Order (EIO) Model
  - Enables collaboration between authorities for evidence gathering
- European Public Prosecutor's Office (EPPO) Model
  - Introduces a business-to-consumer (B2C) framework
  - Allows authorities to contact service providers directly
- Key Distinction
  - EPPO's direct outreach to service providers sets it apart from EAW and EIO

The Two Orders

1

European Production Order to produce and transfer data

2

European Preservation Order to freeze and secure data (possibly for a Production order

Subcriber data (the eaiser kind)

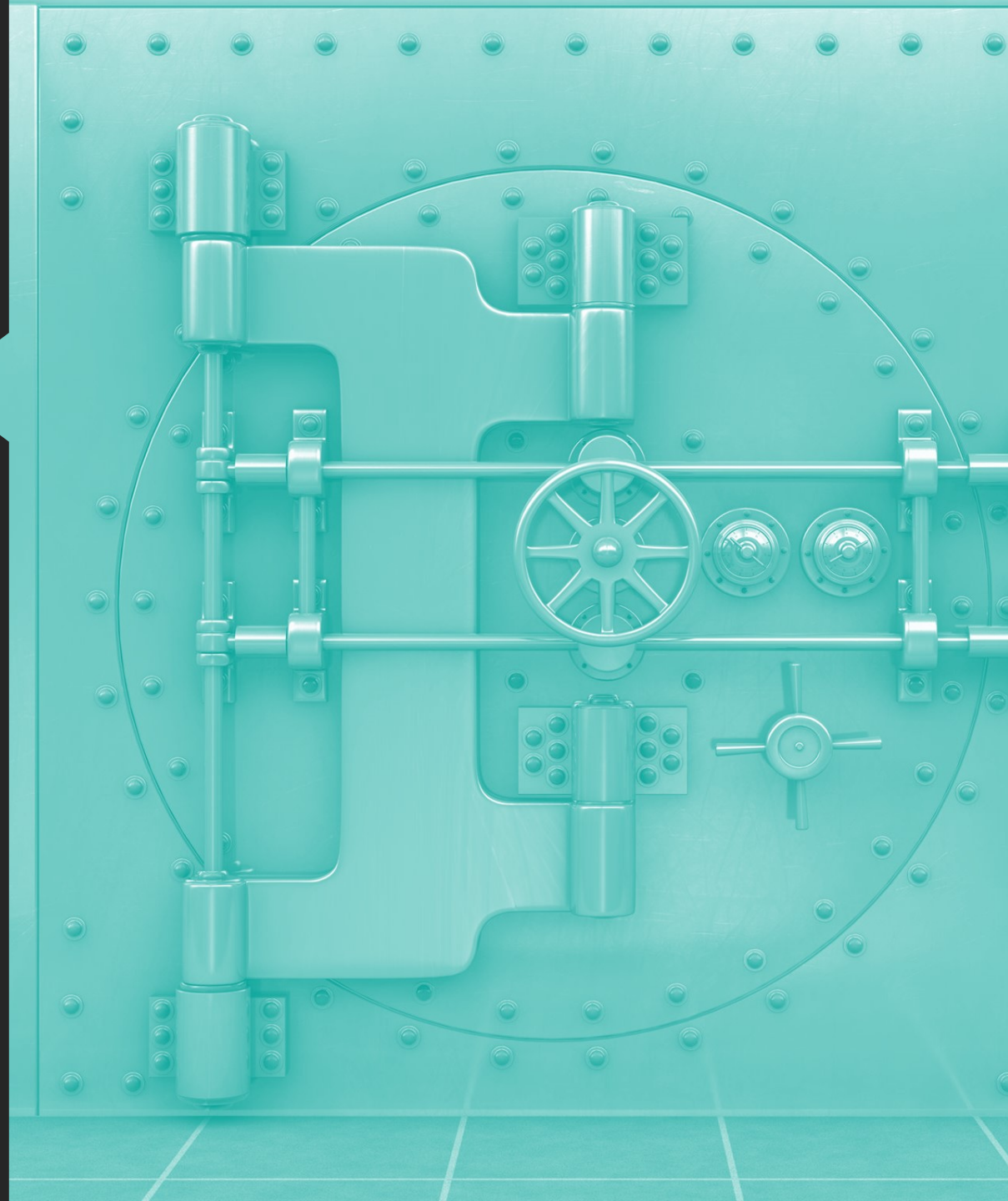
- **Information** a service provider holds about a customer's subscription.
- It includes data that identifies the subscriber:
- Name, date of birth, and addresses (postal or geographic).
- Billing, payment, and contact information like phone numbers or email addresses.
- **It also covers details about the service itself:**
- Type and duration of the service.
- Technical data and identifying measures used during initial registration or activation.
- Data for validating service use.
- **BUT not passwords or other means of authentification**

Traffic data (The geeky stuff)

- Generated by the service provider's systems and is separate from subscriber data.
- This includes the **metadata** of a communication or interaction, such as:
  - The **source and destination** of a message.
  - The **location of the device**.
  - **Date, time, duration, and size** of the interaction.
  - Technical details like **route, format, and the protocol** used.
- It also covers data related to a user's **access sessions**, such as:
  - The **date and time** of use.
  - **Log-in and log-off** times.

Content Data (The spicy stuff)

- Any data in a digital format, such as text, voice, videos, images and sound, other than subscriber data or traffic data;



Differences Between Subscriber, Traffic, and Content Data

- Subscriber and traffic data are fundamentally different from content data.
- Subscriber and traffic data are generally simpler and less sensitive.
- Obtaining content data can amount to borderline surveillance.
- Regular requests for data increase surveillance concerns.

Conditions for anb EPOC for Subscriber Data

- Taking into account the rights of the suspect or the accused person, and may only be issued if a similar order could have been issued under the same conditions in a similar domestic case.
- **For custodial sentences or detention orders of at least four months.**
- The sentence must be imposed through criminal proceedings.
- The decision must **not** have been rendered in absentia where the person convicted e absconded from justice.

Conditions of getting traffic data and content data

- A European Production Order to obtain traffic data, except for data requested for the sole purpose of identifying the user as defined in Article 3, point (10), of this Regulation or to obtain content data shall only be issued:
- (a) for criminal offences **punishable in the issuing State by a custodial sentence of a maximum of at least three years**; or
- (b) for the following offences, if they are wholly or partly committed by means of an information system:
- (i) offences as defined in Articles 3 to 8 of Directive (EU) 2019/713 of the European Parliament and of the Council (32);
  (ii)offences as defined in Articles 3 to 7 of Directive 2011/93/EU;
  (iii) offences as defined in Articles 3 to 8 of Directive 2013/40/EU;
- (c) for criminal offences as defined in Articles 3 to 12 and 14 of Directive (EU) 2017/541;
- (d**) 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, for criminal offences referred to in points (a), (b) and (c) of this paragraph.

EPOC regardless of the max punishment

- **Directive (EU) 2019/713**: This directive concerns **fraud and counterfeiting of non-cash means of payment**. It covers offenses like stealing and using credit card data, phishing for financial information, and using malware to commit payment fraud.
- **Directive 2011/93/EU**: This is the directive on **combating the sexual abuse and sexual exploitation of children and child pornography**. It criminalizes acts such as producing, distributing, or possessing child sexual abuse material, as well as soliciting children for sexual purposes.
- **Directive 2013/40/EU**: This directive targets **attacks against information systems**. This includes cybercrimes like illegal access to systems (hacking), illegally interfering with data or systems (e.g., denial-of-service attacks), and intercepting data.
- **Directive (EU) 2017/541**: This is the directive on **combating terrorism**. It covers a wide range of terrorist-related offenses, including directing or participating in a terrorist group, carrying out a terrorist attack, providing or receiving training for terrorism, public provocation to commit a terrorist offense, and financing terrorism.

Who's Who (Major Stakeholders)

Issuing Authorities (Competent Authorities of a Member State): law enforcement and judicial authorities (judges, courts, public prosecutors, or other designated authorities) in a Member State who issue a European Production Order or European Preservation Order to obtain electronic evidence. They are responsible for ensuring the legality and proportionality of the orders.

Enforcing Authorities (Competent Authorities of the Enforcing State): authorities in the Member State where the service provider is established or has its legal representative.

Service Providers: These are the companies that offer services in the European Union and hold the electronic evidence

Legal Representatives / Designated Establishments: The Regulation and an accompanying Directive (EU) 2023/1544 require service providers to appoint a legal representative or designate an establishment within the EU. This entity acts as the contact point for receiving and complying with the orders.

EPPO Workflow: Step-by-Step Process with Deadlines

The Issuing Authority Requires information from another Member State

The Issuing Authority issues either a European Preservation Order or Production Order.

Orders are sent directly to the service provider in another EU country.

A Notification to the Enforcing Authority is also sent

The Enforcing Authority may or may not intervene

Service providers must act immediately for preservation orders.

Emergency production orders must be fulfilled within 8 hours.

Standard production orders must be fulfilled within 10 days.

Requested evidence is transmitted directly back to the issuing authority.

Minimum Content of the Order

- the issuing authority and, where applicable, the validating authority;
- the addressee of the European Production Order
- the user, except where the sole purpose of the order is to identify the user, or any other unique identifier such as user name, login ID or account name to determine the data that are being requested;
- the requested data category to (subscriber, traffic, content)
- if applicable, the time range of the data for which production is requested;
- the applicable provisions of the criminal law of the issuing State;
- the duly justified reasons for the emergency;
- in cases where the European Production Order is directly addressed to the service provider that stores or otherwise processes the data on behalf of the controller, a confirmation that the conditions set out in paragraph 6 of this Article are met;
- the grounds for determining that the European Production Order fulfils the conditions of necessity and proportionality
- a summary description of the case.

European Production Order Certificate (EPOC) and European Preservation Order Certificate (EPOC-PR)

- The Adressee receives a Certificate
- Through the e-Codex system
- Most countries will use reference implementation
- The content of the Certificate, see prev. slide

Notification Requirements and Exceptions

- Notification is generally required in e-evidence procedures.
- EXCEPT:
- The requested data is only for identifying a user
- **The issuing authority has reasonable grounds to believe that: the offence has been committed, is being committed or is likely to be committed in the issuing State**;
- The person whose data is requested resides in the issuing State
- Emergency: threat to the life, physical integrity or safety of a person, or to a critical infrastructure,

Role of the Notified Enforcing Authority

The Enforcing Authority has 10 days to interject after notification.

ECJ Case Law Joined Cases Aranyosi and CăldăraruC-404/15 and C-659/15 highlight fair trial and inhuman treatment concerns.

In EIO and EAW, procedural and human rights must be considered carefully by enforcint authorities and courts

Under the EPPO regime, the Enforcing Authority's intervention is limited to an opportunity

Uncertain how ECJ will adapt principles laid down in EAW and EIO case law

Grounds of refusal (Article 12)

- **Immunity or Privilege:** The requested data is protected by legal immunities, privileges (like lawyer-client confidentiality), or rules protecting freedom of the press under the enforcing state's law.
- **Fundamental Rights Breach:** Executing the order would clearly violate a fundamental right protected under EU law.
- **Ne bis in idem (Double Jeopardy):** Executing the order would violate the principle that a person cannot be tried twice for the same crime.
- **Dual Criminality:** The act being investigated is not a crime in the enforcing state. However, this reason cannot be used if the offense is one of the serious crimes listed in the regulation's annex (e.g., terrorism, human trafficking) and is punishable by at least three years in prison in the issuing state.

Role of the addressee

- **Reporting Potential Legal Conflicts:** If the addressee believes the order interferes with legal immunities, privileges, or rules protecting freedom of the press, they must inform both the issuing and enforcing authorities.
- **Seeking Clarification for Flawed Orders:** If the EPOC is incomplete, contains obvious errors, or lacks sufficient information, the addressee must inform the authorities and request clarification. The obligation to produce the data is paused until the issue is resolved.
- **Informing about Impossibility:** If it is factually impossible to comply with the order for reasons not attributable to the addressee (e.g., the data does not exist), they must inform the authorities and explain the reasons.
- **Explaining Failure or Delay of Delivery:** For any other reason that they fail to provide the data completely or on time, the addressee must inform the authorities and provide an explanation.

Concerns About the E-Evidence Procedure: Notification and Legal Checks

- Enforcing Authority often remains uninformed during e-evidence requests.
- Addressee must perform legal checks, raising rule of law concerns.
- Addressee lacks detailed knowledge of issuing state's criminal laws.
- Questionable understanding of fundamental rights by the addressee.

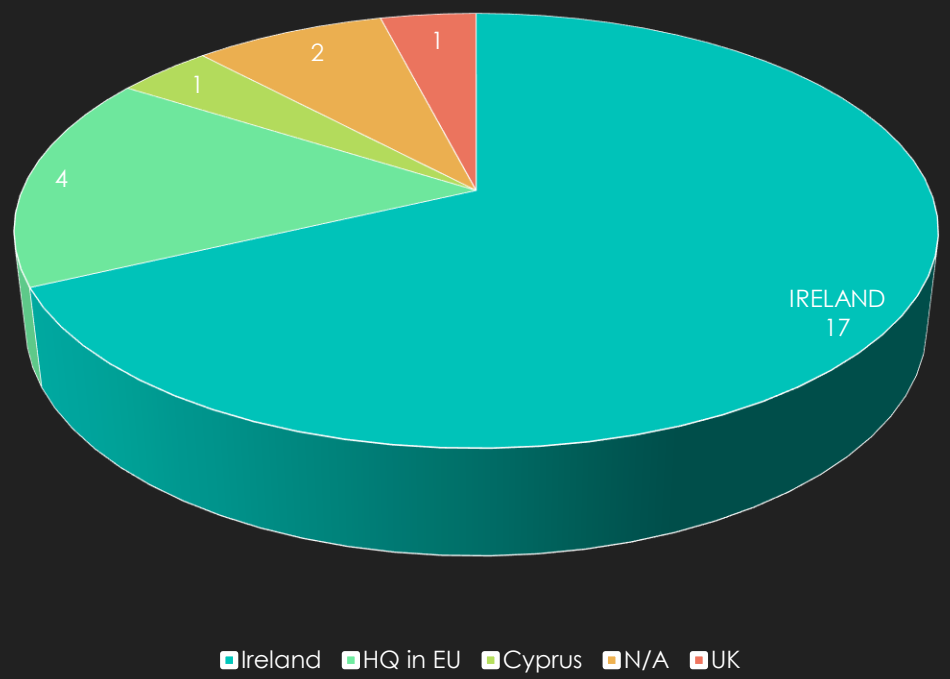
Concerns About the E-Evidence Procedure: Judicial Oversight and Deadlines

- Courts exercise extreme caution under ECJ case law for EIO and EAW.
- Unclear if service providers can match judicial levels of scrutiny.
- Tight deadlines impose pressure on thorough legal assessments.
- Risk of fundamental rights being compromised under time constraints.

Compliance Nightmare

- Companies don't have detailed knowledge of 27 different criminal procedures
- An EPOC is not a „warrant"
- The user can always sue
- Better play possum

The 26 Gatekeeper Companies in the EU and Their EU HQs



The American Counterpart: The CLOUD Act

- Clarifying Lawful Overseas Use of Data Act
- US service providers required to give data even if the servers (and data) are abroad
- Frictions with GDPR (Article 48)
- ~90% of Western data is stored in the US (Privacy Shield, Schrems II, EU-U.S. Data Privacy Framework (DPF)
- Big Tech has HQs in Ireland but data elsewhere
- Friction between EPOC and and CLOUD act is inevitable, E-evidence is not really an internal EU matter

EPPO SWOT Analysis

- Strengths of EPPO
  - Internal advantages that support EPPO's mission
- Weaknesses of EPPO
  - Internal limitations or areas for improvement
- Opportunities for EPPO
  - External factors that could benefit EPPO
- Threats to EPPO
  - External challenges or risks facing EPPO
- Purpose of SWOT Analysis
  - Helps identify strategic priorities for EPPO

Strengths	Weaknesses
Speed & Efficiency: Addresses the time-sensitive nature of digital evidence.	Constitutional & Rights Concerns: Bypassing national judicial oversight can raise questions about due process.
Harmonization: Creates a single, unified procedure across the EU.	Limited Judicial Review: The "enforcing authority" has a limited role, merely an opportunity to interject.
Targeted Tool: The specific focus on e-evidence is a modern solution to a modern problem.	Potential for Conflict: Clashes with other legal frameworks and national sovereignty principles.
Opportunities	**Threats**
Enhanced Law Enforcement: Improves the ability to fight serious organized and cybercrime.	Legal Challenges: The regulation may face challenges in national and European courts regarding its legality.
Global Cooperation: Could serve as a model for future international agreements on digital evidence.	Non-Compliance: Service providers might resist or find ways around the strict deadlines and obligations.
Increased User Security: By providing a clear legal framework, it can help standardize data handling practices.	Misuse of Power: Without robust oversight, there's a risk of the regulation being used for disproportionate surveillance.

Conclusion

- EPPO's Role in Judicial Cooperation
  - Represents significant progress for EU law enforcement
  - Facilitates direct collaboration beyond state boundaries
- Efficiency in Law Enforcement
  - Moves away from traditional state-to-state processes
  - Creates streamlined channels for evidence gathering
- Challenges in the New Model
  - Raises concerns about fundamental rights
  - Requires careful balance of power among authorities
- Adapting to Digital Crime
  - EU legal frameworks must evolve with technology
  - Ensures justice is maintained in digital environments