

**324DT110**

**Webinar on cross-border procedures and the European arrest warrant**

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# Webinar on Cross-Border Procedures and the European Arrest Warrant

TRAINING FOR DEFENCE LAWYERS

Online, 24 April 2024



EXCELLENCE IN  
**EUROPEAN LAW**

## Speakers

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

**Katarzyna Dąbrowska**, Partner, Pietrzak Sidor & Partners, Warsaw

**Ramin Farinpour**, Senior Lawyer, European Criminal Law Section, ERA, Trier

**Kasper van der Schaft**, Senior Prosecutor, Head of the International Legal Assistance Centre, Amsterdam

## Key topics

- The European Arrest Warrant and how it functions in practice
- CJEU case law in relation to the European Arrest Warrant and the application of mutual trust and legal assistance
- Practitioners' insights into the use of the European Arrest Warrant

Language  
English

Event number  
324DT110

Organiser  
Ramin Farinpour (ERA)

# Cross-Border Procedures and the European Arrest Warrant

**Wednesday, 24 April 2024**

14:40 Connecting to the videoconference platform

15:00 **Opening of the webinar**  
*Ramin Farinpour*

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## I. AN INTRODUCTION TO THE EUROPEAN ARREST WARRANT (EAW)

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*Chair: Ramin Farinpour*

15:05 **The EAW and how it functions as an instrument of mutual recognition**

- General principles and distinctive features
  - Grounds for refusal to execute
  - CJEU case law affecting its use
- Silvia Allegrezza*

15:45 Discussion

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## II. PROSECUTORIAL INSIGHTS

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*Chair: Ramin Farinpour*

16:00 **Applying the EAW in practice**

- Issuing and executing EAWs
  - Double criminality
- Kasper van der Schaft*

16:45 Discussion

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## III. LAWYER'S INSIGHTS

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*Chair: Ramin Farinpour*

17:00 **A lawyer's role in EAW proceedings**

- Defence and procedural rights
- Katarzyna Dąbrowska*

17:45 Discussion

18:00 End of the webinar

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Programme may be subject to amendment.



Times indicated are CEST  
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## Objective

This three-hour long webinar, which forms a part of a larger project on European Criminal Law for Defence Lawyers, focuses on the European Arrest Warrant (EAW) and practical proceedings in its application. It will explain the legal instrument and look at Court of Justice of the European Union (CJEU) case law that has impacted its functioning, as well as the issues of mutual trust and recognition of judicial decisions within the context of the EAW's use. Insights from practitioners familiar with the instrument, who have been involved in EAW proceedings, will be shared.

## Who should attend?

Criminal defence lawyers

## Interactive online seminar

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

## Your contacts



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Assistant  
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## Terms and conditions of participation

- No registration fee.
- Participation is only open to lawyers in private practice who are citizens of eligible EU Member States participating in the EU Justice Programme (Denmark does not participate) Albania and Kosovo\*.
- A list of participants including each participant's working address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
- The participant will be asked to give permission for their address and other relevant information to be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest.
- A certificate of attendance will be issued after the webinar to those who attended the entire event.

\* 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.

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Barcelona, 6-7 May 2024

**The role of lawyers in protecting and promoting the rule of law and mutual trust**  
Trier, 16-17 September 2024

**Protection of legal privilege in criminal proceedings in the EU**  
Marbella, 3-4 October 2024

**Procedural Rights in the EU**  
Riga, 7-8 November 2024

**Instruments of mutual recognition: EAW, EIO**  
Budapest, March 2025

**Current developments in digitalisation in criminal proceedings**  
Vilnius, June 2025

**The scope and application of the EU Charter of Fundamental Rights**  
Trier, September 2025

**The role of the CJEU for defence lawyers**  
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Faculty of Law, Economics  
and Finance

*The European Arrest Warrant*

**Silvia Allegrezza**

  
UNIVERSITÉ DU  
LUXEMBOURG



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**ERA 24 April 2024**

# Outline:

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Origins and rationale

Main differences with extradition

Definitions

EAW: content, validity, procedure

Double criminality

Issuing and Executing authorities as EU autonomous concepts

Grounds for refusal

Fundamental rights as a limit to mutual recognition

the EAW and the ECHR

Conclusions

# Before the EAW...The role of the Council of Europe: Extradition Convention 1957

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- 1957 CoE Convention on Extradition
  - 1959 CoE Convention on Mutual Legal Assistance
  - 1975 Additional Protocol
  - 1978 Second additional Protocol
  - 1983 Convention on Transfer of Sentenced Persons
  - 1989 Agreement on simplification and modernisation of methods of transmitting extradition requests
- 
- Pure international law
  - Delays in execution
  - Political crimes

# Before the EAW...Extradition Convention 1957

## ■ 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



# Before the EAW...Extradition Convention 1957

## ■ Art. 1. Obligation to extradite

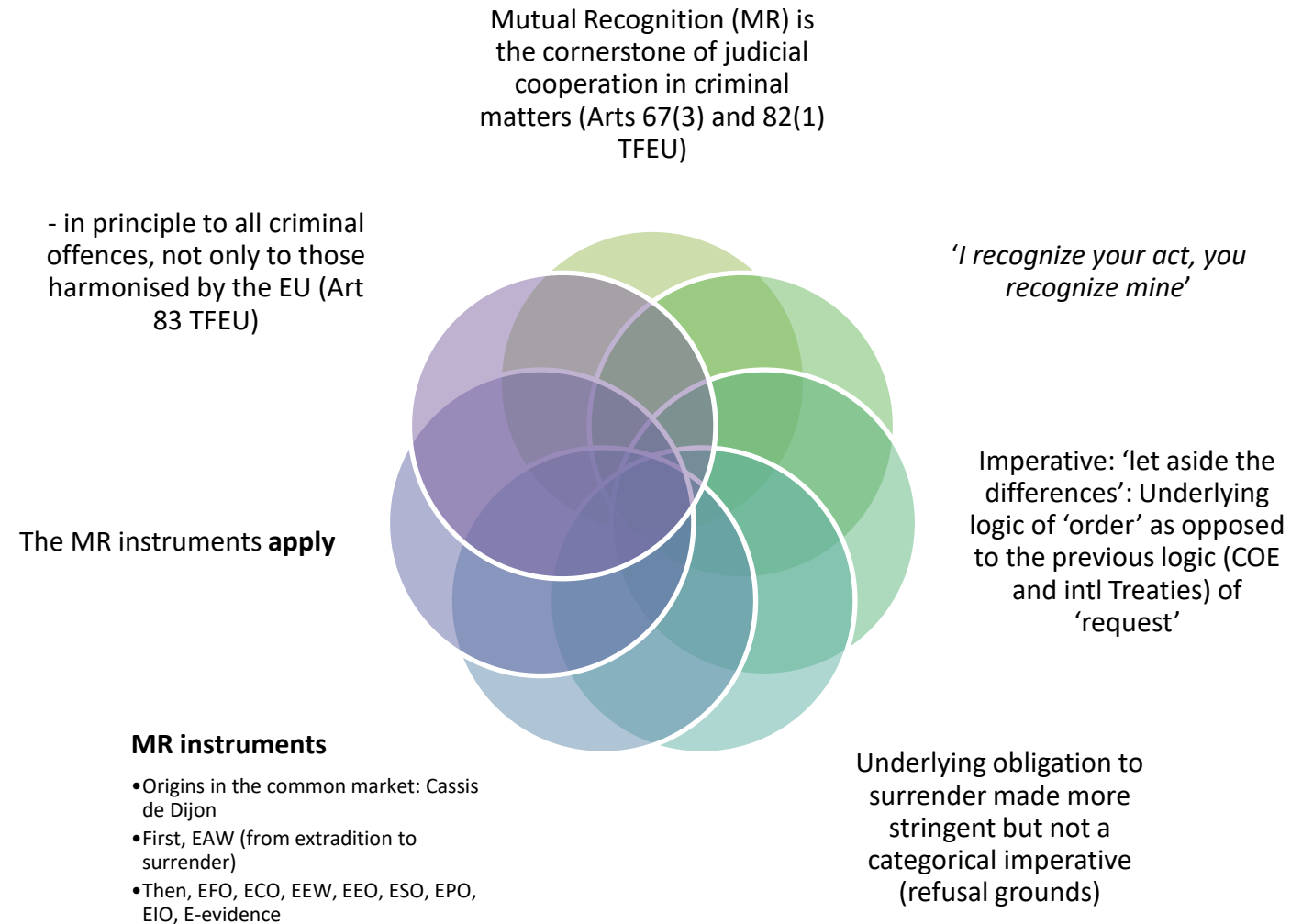
- Exception 1: sensitive offences
  - political offences (but no genocide or war crimes) or discriminatory offences, military offences, fiscal offences, crime committed in own territory, capital punishment, lapse of time, non bis in idem
- Exception 2: nationals – *aut dedere aut judicare*
  - Art. 6 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
  - 2 stages
    - Judicial control over general legal conditions
      - Including *prima facie* assessment of criminal case of foreign State
    - Political assessment (Minister)
      - Obligation tempered with considerations of political opportunity
- Reasons shall be given for any complete or partial rejection

# Before the EAW...

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- 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)...



And then....

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- The development of mutual recognition and...



# 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

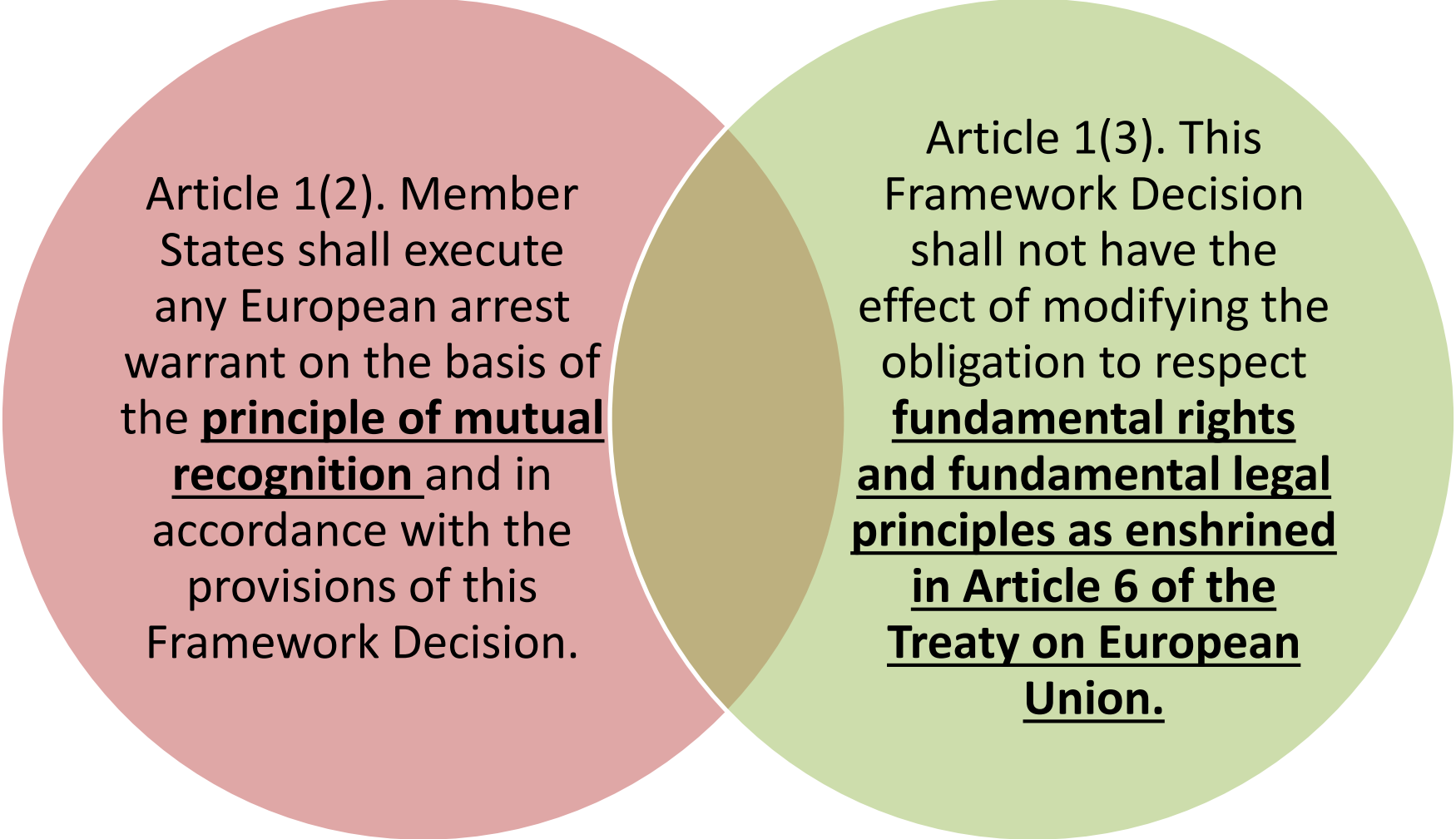


# An EAW is:

- 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.

# General principles


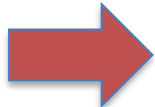
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Article 1(2). Member States shall execute any European arrest warrant on the basis of the **principle of mutual recognition** and in accordance with the provisions of this Framework Decision.

Article 1(3). This Framework Decision shall not have the effect of modifying the obligation to respect **fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.**

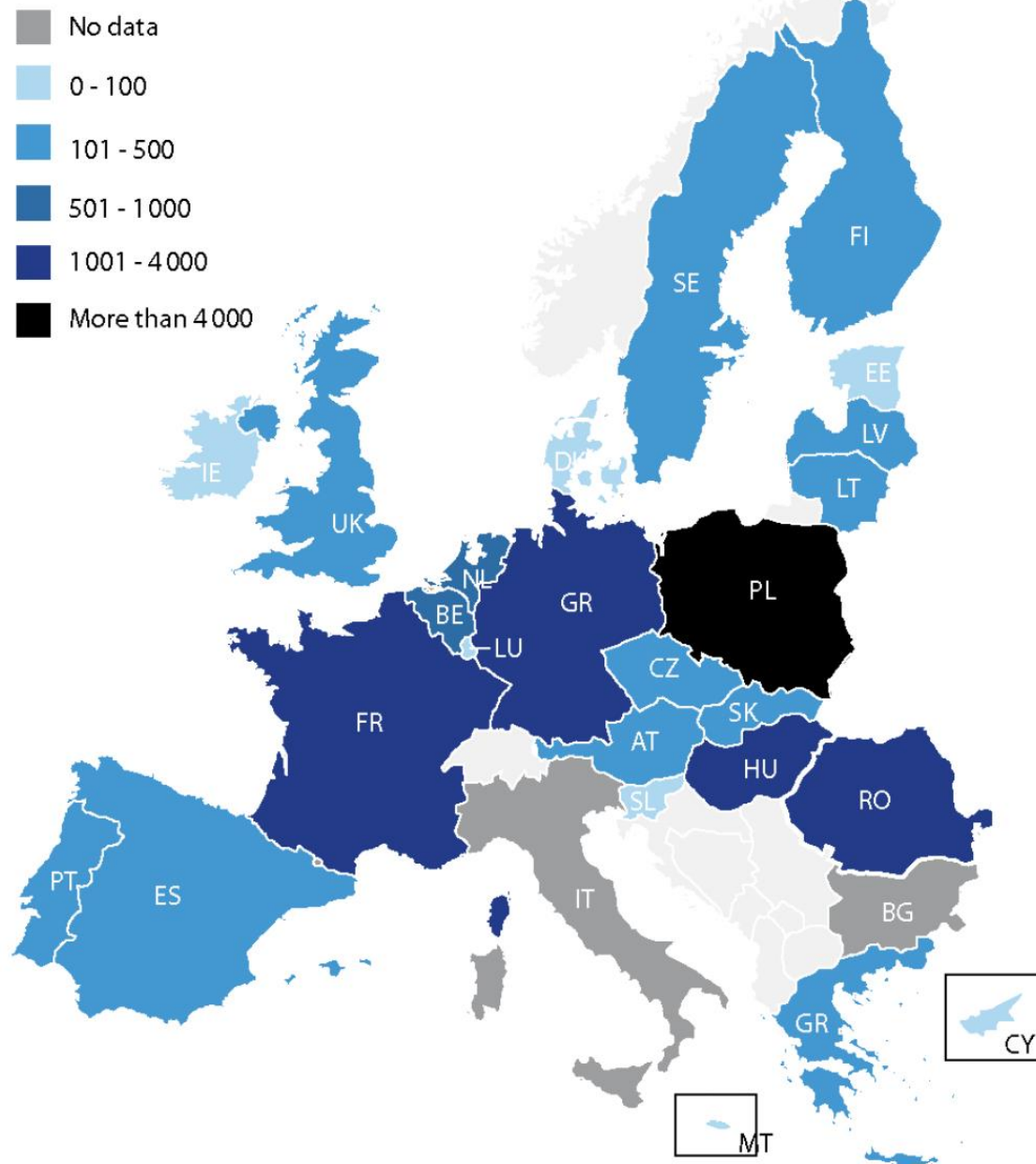
# Scope of the EAW (Article 2)

- 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) 

# Issued EAWs

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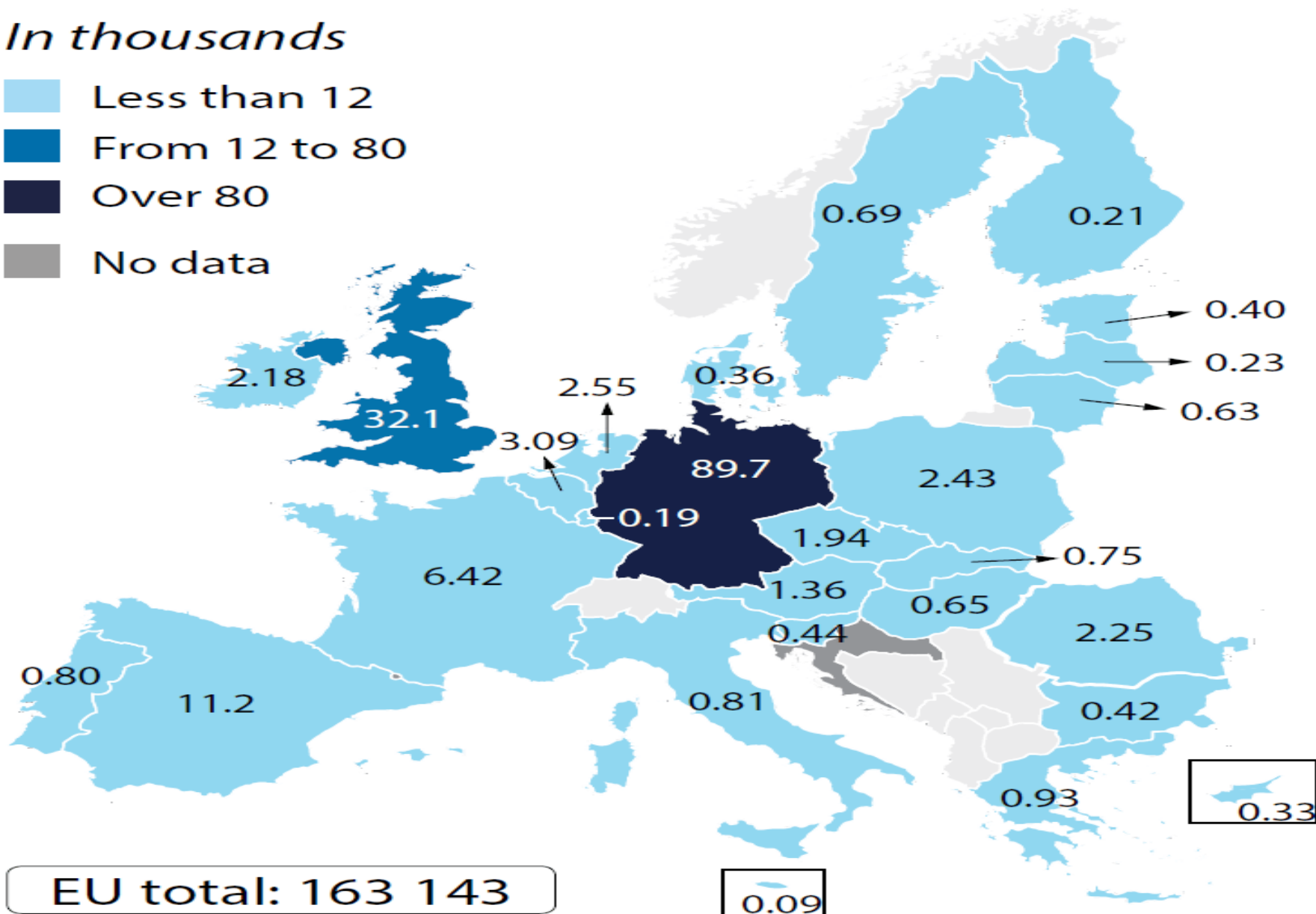
## European arrest warrants



# EAWs received, by MS (2005-13)

*In thousands*

- Less than 12
- From 12 to 80
- Over 80
- No data





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	6.311	6.976	5.665	4.397	5.144

## ■ 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**.

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

# Article 8 Content and form of the European arrest warrant

- 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.

(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: .....

# Annex: the Form

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(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:

.....  
.....  
.....

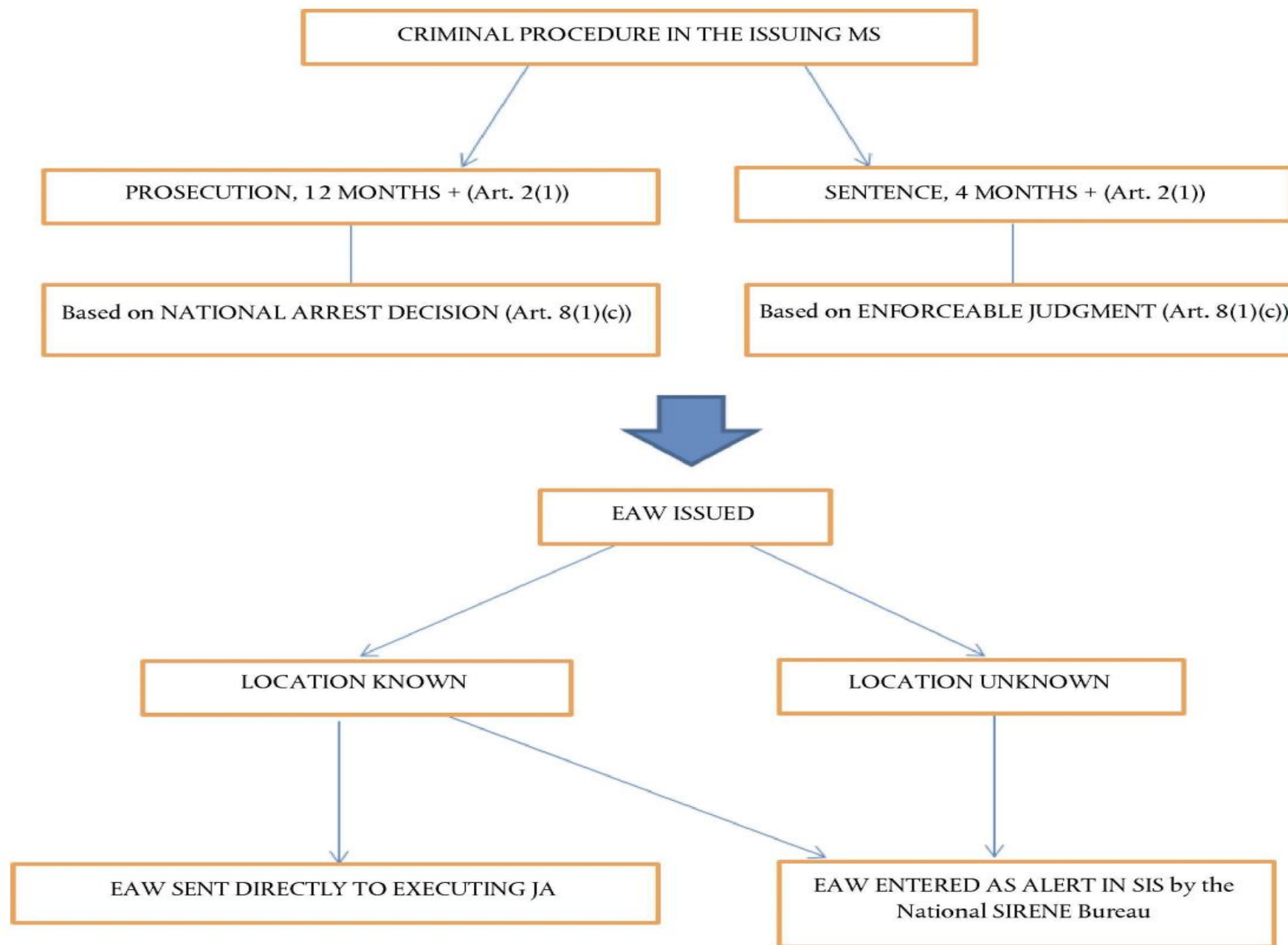
Nature and legal classification of the offence(s) and the applicable statutory provision/code:

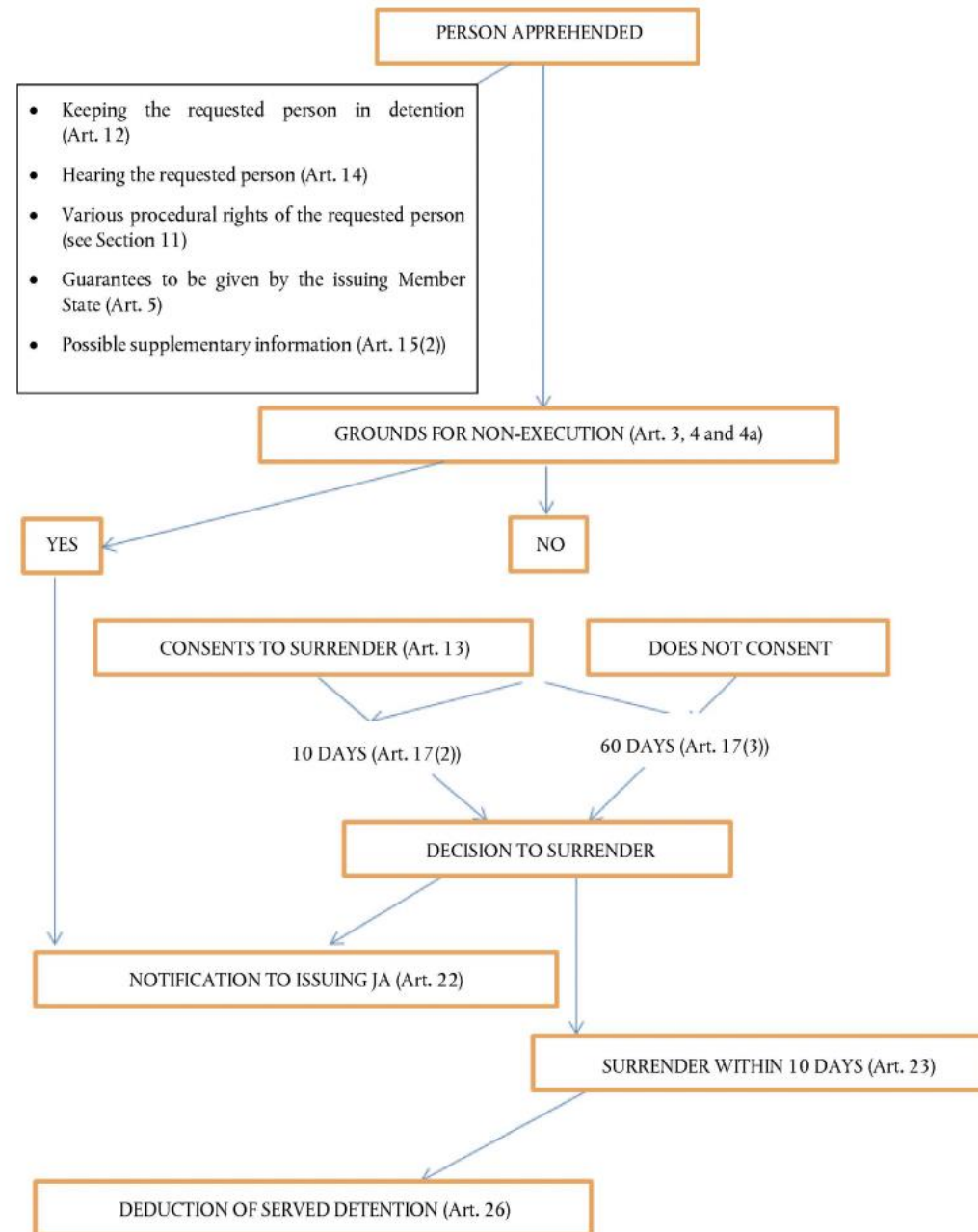
.....  
.....  
.....  
.....  
.....

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;







- Article 23(4) **Suspension**. The surrender may exceptionally be temporarily postponed for **serious humanitarian reasons**, for example:
  - if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health.
  - The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist.
  
- Article 24
  - **Postponed or conditional surrender**
    - 1. The executing judicial authority may, after deciding to execute the EAW, **postpone the surrender of the requested person** so that he or she may:
      - be prosecuted in the executing Member State or,
      - serve in its territory, a sentence passed for another crime
  
    - 2. Instead of postponing the surrender, the executing judicial authority may **temporarily surrender** the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities.

# For what crimes? Article 2(2) FD EAW

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- 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

# For what crimes?

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- 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?

The CJEU has held that Article 2(2) of the FD is not invalid on the ground that it infringes the principle of the legality of criminal offences and penalties”  
([Case C-303/05 \*Advocaten voor de Wereld VZW v Leden van de Ministerraad\*](#))

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

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➤ 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)

# CJEU K.L., JUDGMENT OF 14. 7. 2022 – CASE C-168/21

## PROCUREUR GÉNÉRAL PRÈS LA COUR D'APPEL D'ANGERS

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- Italian European arrest warrant to be executed in France against KL (highly sensitive: G7 Genoa)
  - Enforcement a custodial sentence of 12 years and 6 months
- Four sentences for four offences:
  - theft committed in conjunction with others and while carrying a weapon, punishable by 1 year's imprisonment;
  - devastation and looting for breach of the public peace (10 years' imprisonment);
  - carrying a weapon (9 months' imprisonment);
  - detonation of explosive devices (9 months' imprisonment).
- FRANCE: no same crime of devastation and looting for breach of the public peace but theft and damaging yes

# CJEU K.L., JUDGMENT OF 14. 7. 2022 – CASE C-168/21 PROCUREUR GÉNÉRAL PRÈS LA COUR D'APPEL D'ANGERS

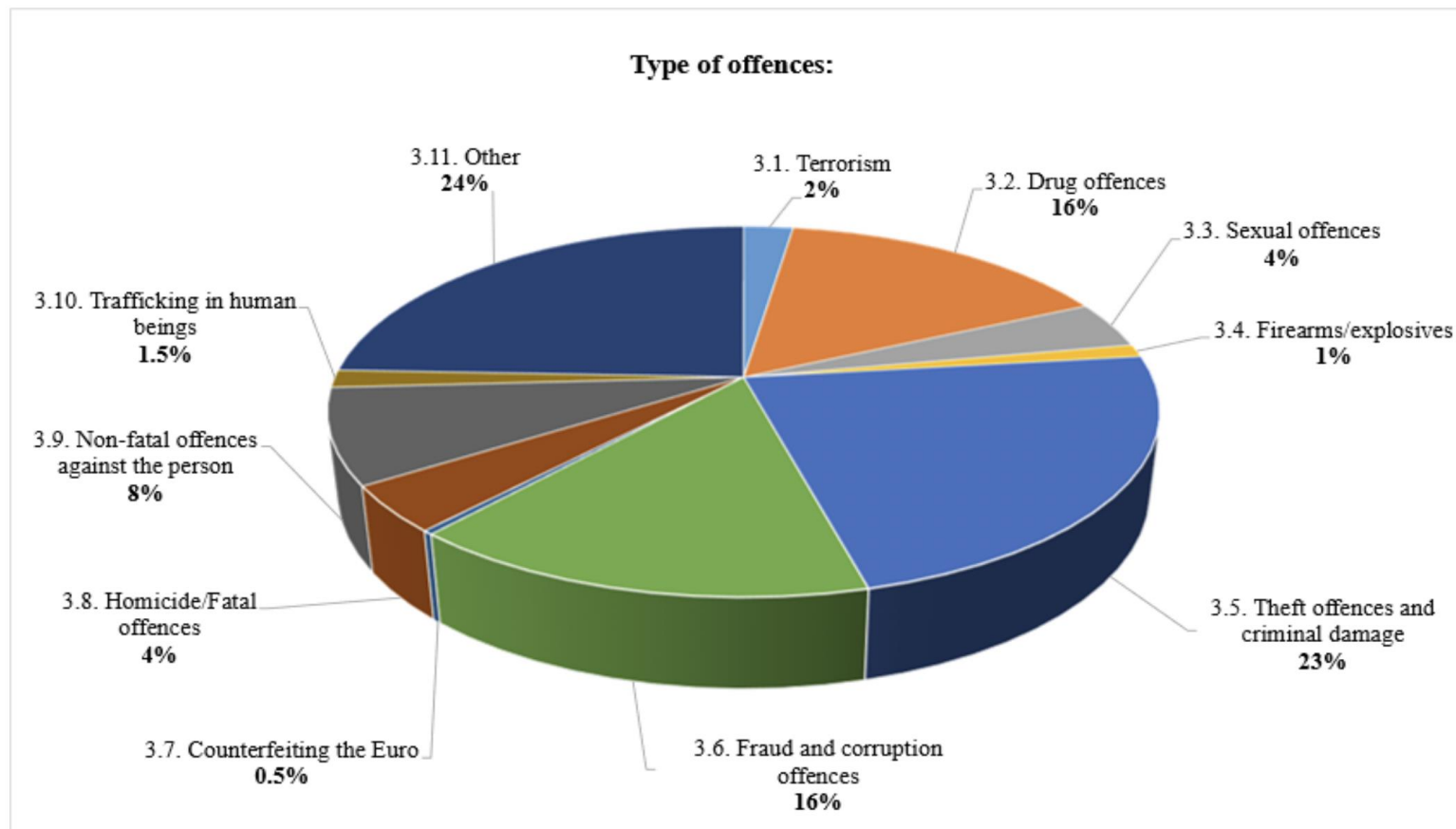
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- **CJEU: Restrictive Interpretation of double criminality:**
- Article 2(4) of that framework decision provides the executing Member State with **the option** of making execution of the European arrest warrant subject to the requirement that the condition of double criminality be met.
- That condition constitutes, in accordance with Article 4(1), a **ground for optional non-execution** of the EAW and thus an exception to the rule that the EAW must be executed,
- the scope of application of that ground for non-execution **must be interpreted strictly** in order to limit cases of non-execution (see, by analogy, judgment of 11 January 2017, Grundza, C-289/15, EU:C:2017:4, paragraph 46).
- the EU legislature does not require there to be an exact match between the constituent elements of the offence,
- impairment of that protected legal interest (breach of the public peace) is not a constituent element
- No refusal to execute EAW for purpose of a single offence consisting of multiple acts, only some of which constitute a criminal offence in the executing Member State.

# Type of offences for which the EAW is mostly used

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- Speciality rule (Art. 27(2) and (3) of FD2002/584 (FD EAW): persons surrendered may not be prosecuted, sentenced, or otherwise deprived of their liberty for an offence committed prior to their surrender other than that for which they were surrendered (Art. 27(2)).
- This principle does not apply, however, if the executing judicial authority that surrendered the person gives its consent (Art. 27(3)(g) FD EAW).

## 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

# Content and validity of the EAW: requirements as to the lawfulness of the EAW

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- 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)

▪



- **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 decision** which gives them their final form (*NJ (Parquet de Vienne)*).

# Issuing judicial authority: autonomous concept

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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”

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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

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## 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)

# Focus on effective judicial review

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➤ 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)*).

# Prosecutors as executing authorities

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

No

Dutch  
prosecutor

German  
Prosecutor

Yes

French  
prosecutor

Lithuanian  
prosecutor

Belgium  
prosecutor

Swedish  
prosecutor

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



- 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)
  - CJEU, C-168/21: Effects of mutual recognition:
    - while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 22 February 2022, Openbaar Ministerie (Tribunal established by law in the issuing Member State), C-562/21 PPU and C-563/21 PPU, EU:C:2022:100, paragraph 44 and the case-law cited).
    - executing judicial authorities may therefore, in principle, refuse to execute a European arrest warrant only on the grounds for non-execution exhaustively listed by Framework Decision 2002/584,
    - 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 (see, by analogy, judgment of 24 September 2020, Generalbundesanwalt beim Bundesgerichtshof (Speciality rule), C-195/20 PPU)

# Grounds for refusal

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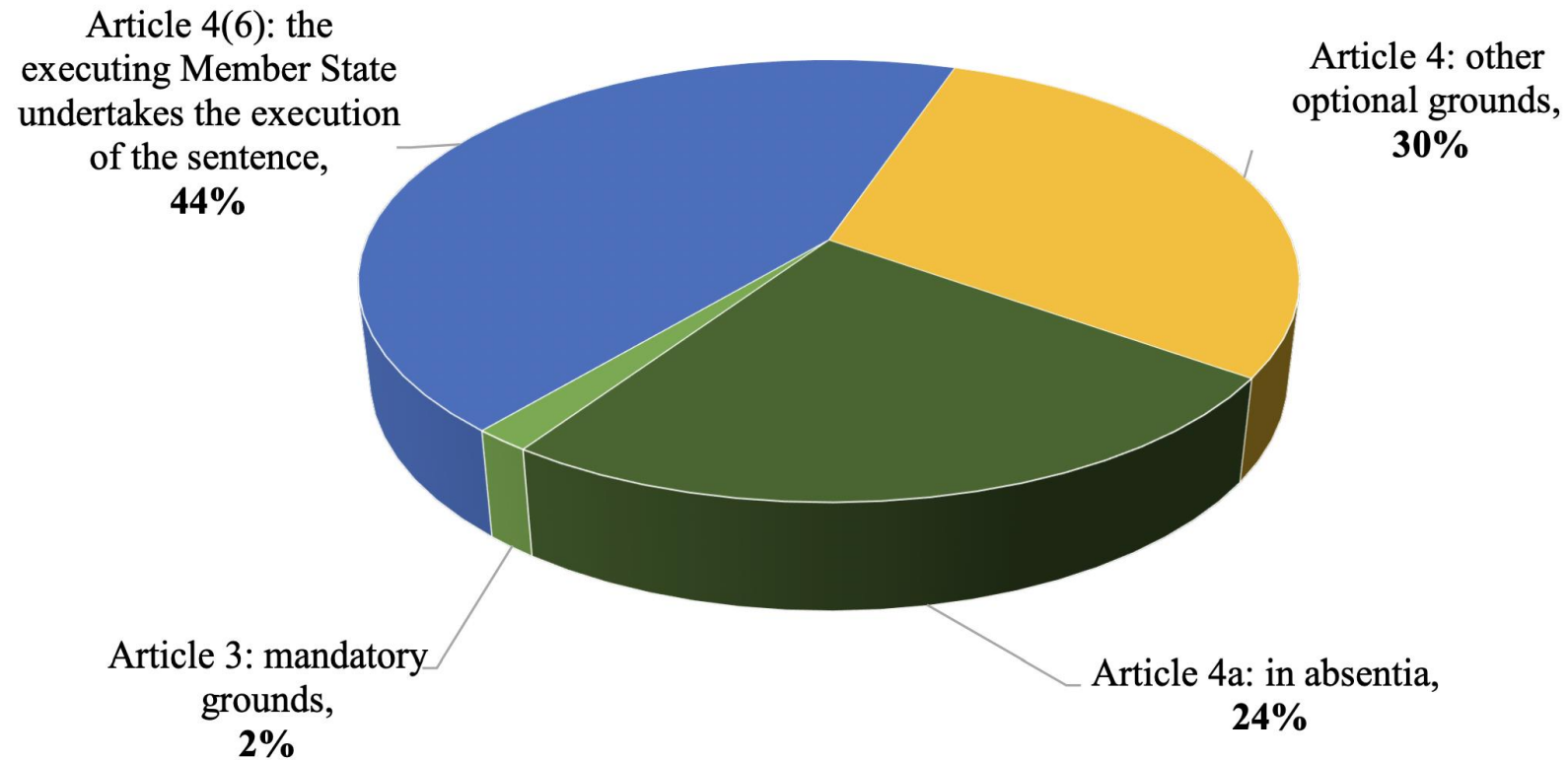
## Article 3: ***Mandatory*** grounds for refusal amnesty

- 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

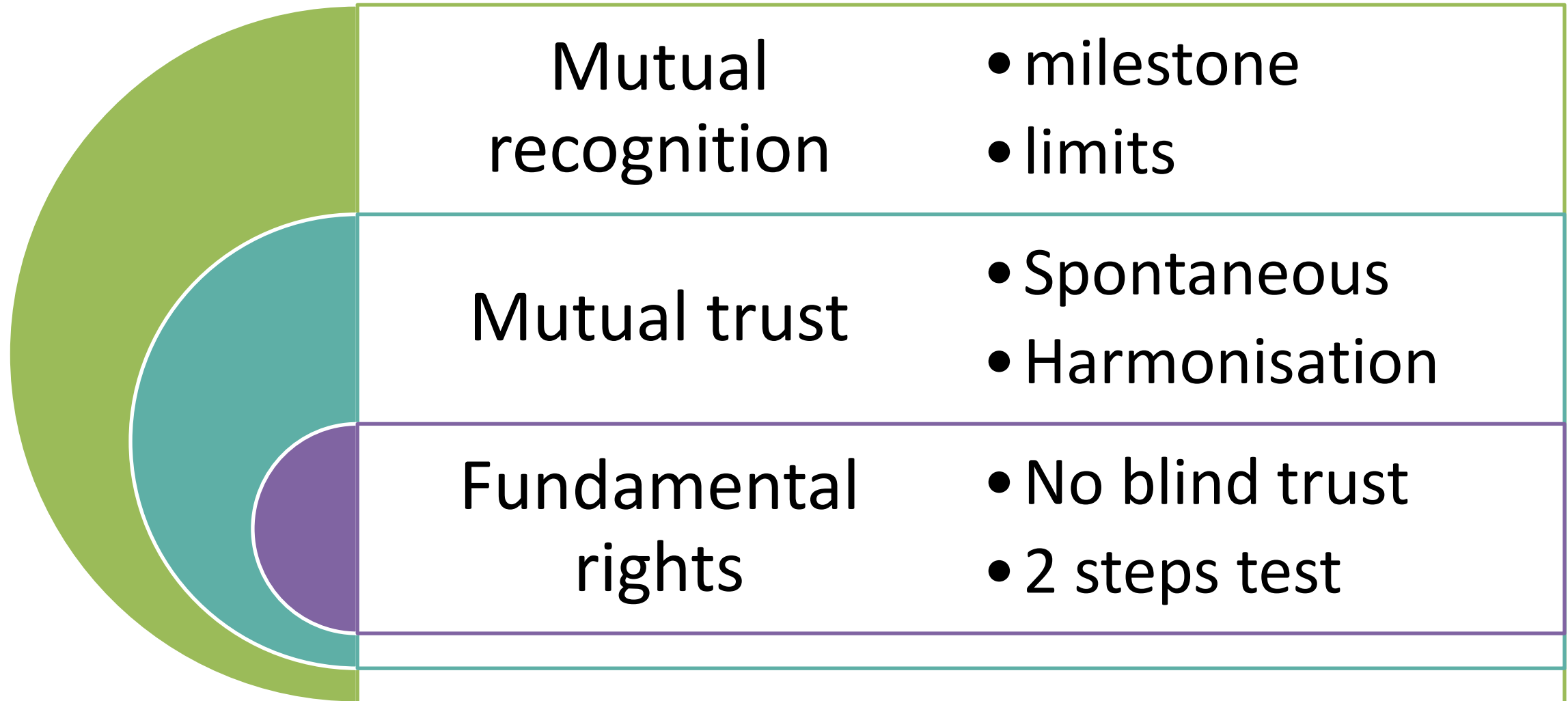
- absence of dual criminality for crimes outside list, etc.
- Territoriality: ongoing prosecution for the same act in the executing MS
- other forms of *ne bis in idem* (i.e., final judgement in third state)
- Territoriality: statute-barred prosecution or punishment (if the executing MS has jurisdiction)
- 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):**



# Fundamental rights as a ground for refusal

- **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



## ➤ Mutual Trust: definition

➤ Pedro Caeiro: *“trust is a disposition—a qualified belief—that allows for individuals and social entities to take a risky course of action in situations open to uncertainty, when they must ‘leap into the unknown’ because they cannot anticipate all the factors that might be relevant for taking such a decision, or otherwise lack the power to ensure that the risk of an adverse outcome does not materialise. In other words, trust is a surrogate for knowledge and control”.*

- *presumption of compliance with fundamental rights: Such a presumption suppresses risk assessment, which inheres to the dialogical nature of transnational judicial cooperation.*
- *In fact, it approximates an international procedure to a domestic one, consistently with the project of a single judicial area*
- *Laenerts: Mutual trust cannot be blind trust*

# Fundamental rights as a ground for refusal

- **First set of decisions on human rights**: the EAW execution cannot be refused on HR grounds
  - Right to be heard (*Radu*)
  - Right to be present at trial – in absentia (*Melloni*)
  
- **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 Caldaru, ML, Dorobantu*)
  - Serious, chronic or irreversible illness of the requested person (*E.D.L. Motifs de refus fondé sur la maladie*)
  
- **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*)
  - Independency of the issuing authority (*Openbaar Ministerie*)
  - The right to a tribunal previously established by law (*Openbaar Ministerie; Minister for Justice and equality; Puig Gordi and others*)



# Judgment *in absentia*

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- (No) Right to be present at trial (*Melloni*)
- 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 C-271/17 PPU](#), [Case C-108/16 PPU](#)), or
  - Effective legal representation: or
  - right to retrial (Case [C-416/20 PPU](#))

# Poor detention conditions

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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
- Case [C-220/18](#) PPU ML (detention conditions in Hungary)
- Case [C-128/18](#) Dorobantu

- 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) 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

# Fundamental Rights/Two-step test

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“[...] 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.

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)

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

He was found in Ireland

Polish authorities issue EAW sent to Ireland

LM did not consent to the surrender to Polish authorities: risk of denial of justice

Poland: 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

QUESTION: 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

# Fair trial rights (independence of the judiciary)

- **presumption that all EU Member States comply with the fundamental rights recognised by EU law:** As a rule, no fundamental rights check in a specific case by other Member States;
- Refusal only on the grounds for non-execution expressly and exhaustively listed in Arts. 3, 4, 4a, and 5 of the FD EAW.
- in “exceptional circumstances,” the CJEU admits
  - First that 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, particularly including the independence and impartiality of these courts.



- Second, 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: 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: 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 other words, the executing authority must examine whether there is a probability that the danger will be realised *in concreto*.

- 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

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

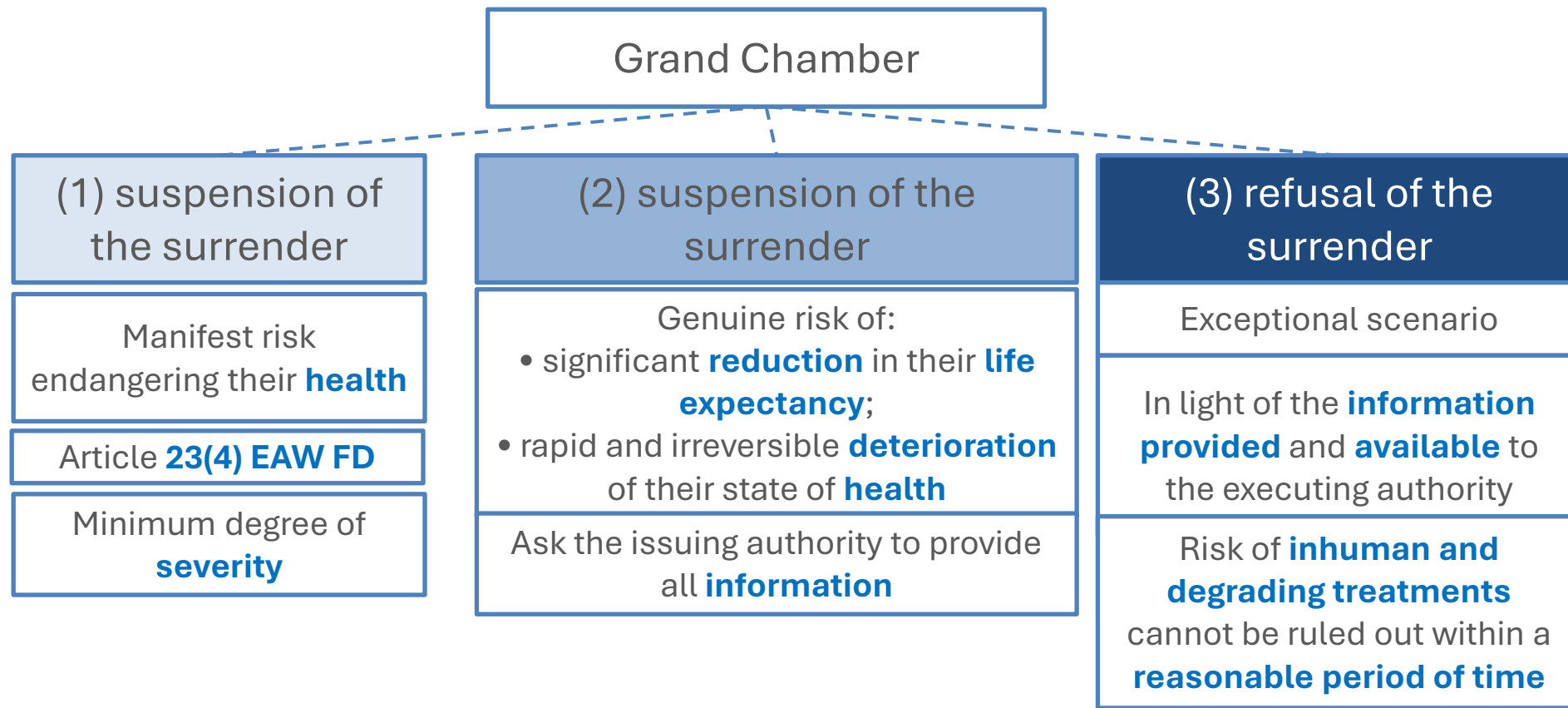
- Article **3** of the Charter – right to **personal and mental integrity**;
- Article **4** of the Charter – prohibition of **inhuman** and **degrading treatments**;
- Article **35** of the Charter – right to **healthcare**.

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.



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 must 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 ECtHR recapitulated its doctrine as to when the fundamental guarantees of the ECHR apply in relation to Union acts:

When entering into international obligations, Contracting States remain bound by their obligations as set out in the ECHR;

If the international organisation in question (here: the European Union) conferred on fundamental rights an equivalent or comparable level of fundamental rights protection to that guaranteed by the ECHR, measures for fulfilling these international obligations are deemed justified;

The applicability of this presumption of equivalent protection has two prerequisites:

- (1) the national authorities have no margin of manoeuvre in relation to the international obligation;
- (2) the case at issue satisfies “the deployment of the full potential of the supervisory mechanism provided for by the legal order of the organisation”;

The principle of mutual recognition of judicial decisions in the EU may not be applied in an automatic and mechanical manner to the detriment of fundamental rights;

If the presumption of equivalent protection applies, the ECtHR will ascertain whether the application of the mutual recognition instrument renders the protection of Convention rights manifestly deficient or not;

The principles not only apply to the European Arrest Warrant but also to all EU mechanisms of mutual recognition.

- both complaints concerned the surrender of Romanian nationals from France to Romania.
- the French courts executing the respective Romanian EAWs had not taken account of their **individual risks** of being exposed to inhuman and degrading treatment in Romania, as a result of which Art. 3 ECHR was breached.
- In the case of **Mr. Moldovan**, in which poor prison conditions in Romania were at issue, the ECtHR stated that the French judicial authorities had to assess the **facts and circumstances** within the framework strictly delineated by the CJEU's case law in *Aranyosi and Căldăraru* on Art. 4 of the Charter of Fundamental Rights
- According to the ECtHR, this jurisprudence provides protection equivalent to that provided by Art. 3 ECHR. **The executing judicial authority had no autonomous margin of manoeuvre, so that the presumption of equivalent protection applied. However, this presumption was rebutted in the present case.**
- **The ECtHR found that there had been a sufficient factual basis for the French authorities to find that Mr. Moldovan would be exposed to a real risk of inhuman and degrading treatment in the Romanian prison cells after his surrender.** In particular, information given to the French authorities on the personal space to be allocated to Mr. Moldovan in the Romanian prison centre should have given rise to a strong presumption of a breach of Art. 3 ECHR. The assurances provided by the Romanian authorities were stereotypical descriptions of the detention conditions. Therefore, the ECtHR determined a breach of Art. 3 ECHR and ordered France to pay him €5000 just satisfaction in compensation.



- The ECtHR clarified that the EU Member States must comply with the guarantees of the ECHR when applying EU mutual recognition instruments.
- It equally confirmed that the ECtHR will assess this conformity.
- For the first time, the ECtHR acknowledged a rebuttal of the presumption of equivalent protection because of a manifest deficiency in applying the EAW as mutual recognition instrument.
- Read between the lines, the ECtHR clarified that it applies a different methodology than the CJEU: the ECtHR does not follow a two-step approach requiring **(1)** evidence of systemic and generalised deficiencies in the issuing State before **(2)** any individual risk is identified (cf. the CJEU in *Aranyosi and Căldăraru*,).

- “There are still major gaps in law and in practice concerning implementation of the procedural rights and safeguards guaranteed by EU law in EAW proceedings”
- Assessing and respecting fundamental rights when executing a european arrest warrant
- Ensuring that legal representation in the executing state is real and effective
- Ensuring access to legal representation in the issuing state

- The need for alternatives to the EAW
- Preventing the misuse of the EAW for questioning
- Preventing the unjustified use of pre-trial detention
- Exposing people to inhuman and degrading treatment due to prison conditions
- Discriminatory impact

*Thank you for your attention!*

[silvia.allegrezza@uni.lu](mailto:silvia.allegrezza@uni.lu)



**IRC Amsterdam**

Kasper van der Schaft 24/04/24

# **ERA webinar: Cross-Border Procedures and the EAW, 24 April 2024**

## **Applying the EAW in practice Execution of EAW's in NL**

### **The balance between the need for effectiveness and the preservation of fundamental rights**



**Co-funded by  
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IRC



IRK



KABELWEG/EIO

## TOPICS

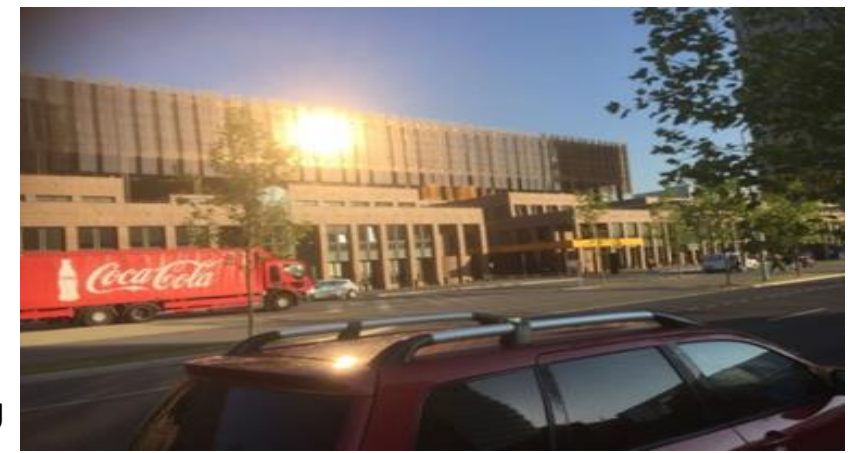
- 1.** Introduction and statistics  
Issuing and executing EAW's, double criminality
- 2.** The balance between the need for effectiveness and the preservation of fundamental rights  
History and future EAW
- 3.** Most debated refusal grounds in NL
- 4.** Language

COURT THE HAGUE/injunction



CJEU

Autonomous concepts of Union law



CJEU

# 1. NL STATISTICS 2023

- EAW allowed: 92 % (incl. 17 % execution sentence in NL)
- EAW refused: 8%
- Refused: 65 % in absentia, 14 % no crime, 13 % limitation, 6 % return guarantee

# IRC Amsterdam

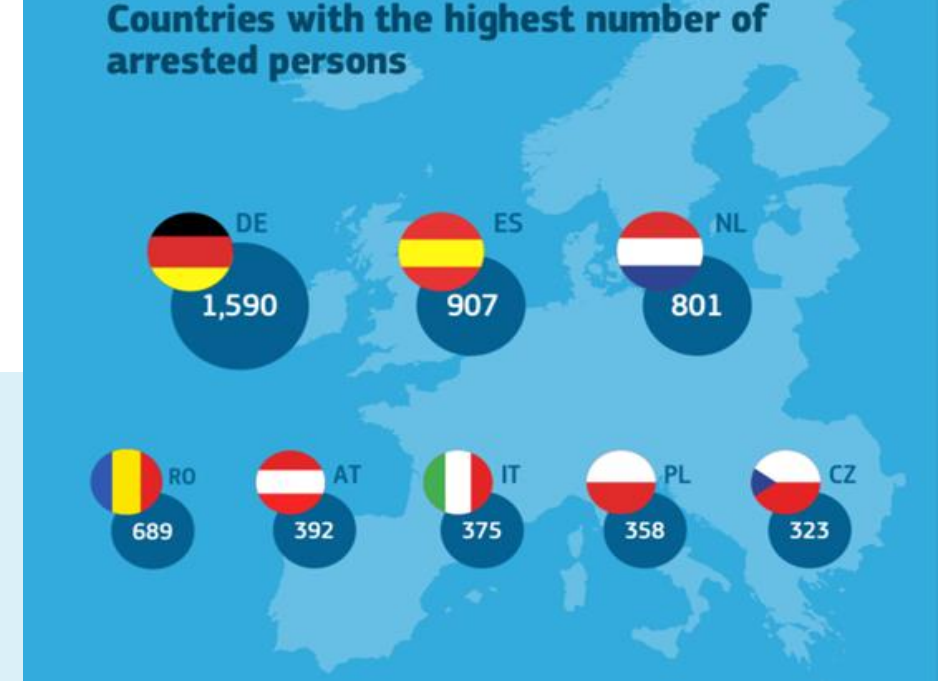
## Internationaal Rechtshulp Centrum

- Legal assistance in criminal matters :
- **Transfer of persons**
- Transfer of objects, documents, (digital) data
- Transfer of sentences
- Transfer of prosecution



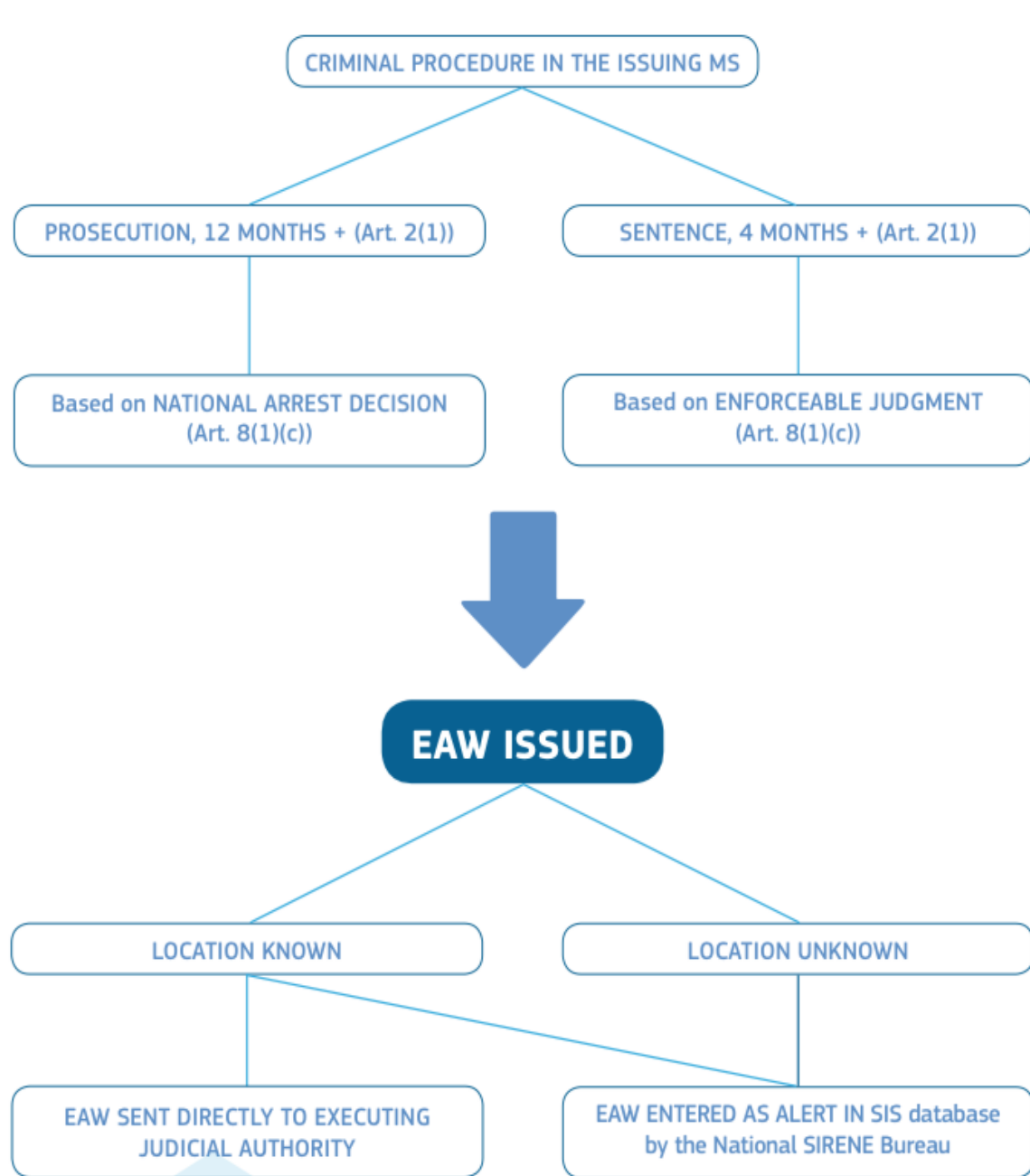
# How arrested for an EAW in NL?

- During a border crossing
  - Arrested for national case
  - Coincidence
  - Aimed search
- 
- After the arrest, within 3 days a judicial decision is made whether the detention is prolonged or suspended till the surrender trial (only ground is risk of absconding)



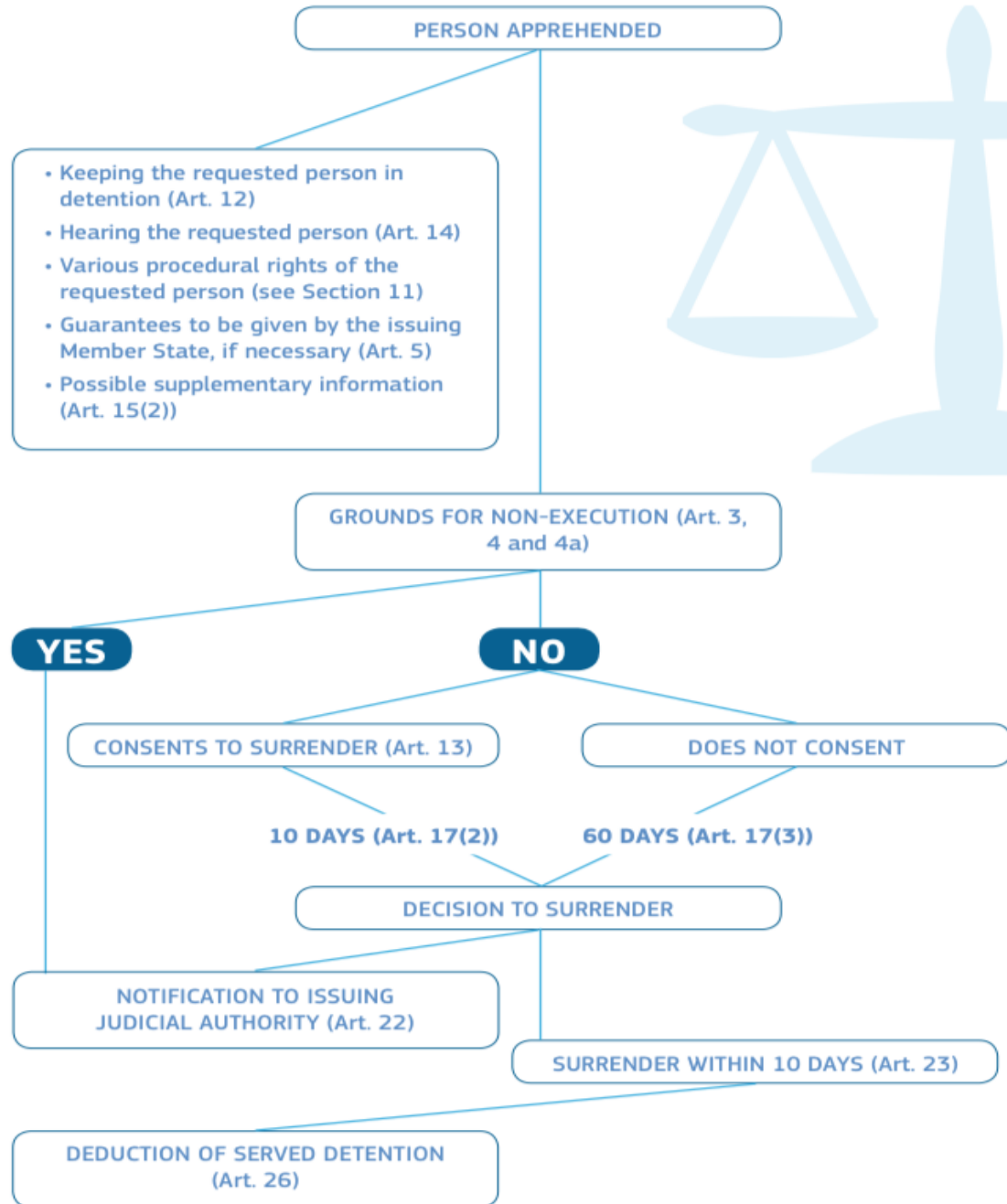
## ISSUING A EUROPEAN ARREST WARRANT

### Main steps



## EXECUTING A EUROPEAN ARREST WARRANT

### Main steps



# Differences EAW and traditional extradition

- Directly between judicial authorities
- Relatively quick (60-90 days is prescribed, vs 18 mth), *> 90 free !* (2 exc, 11 + cjeu)
- “Less” grounds for refusal ec2x12, sol / FR
- 32 listed offences (no check double criminality)
- Standardized form
- MoJ does not decide and does not communicate

# DOUBLE CRIMINALITY and LISTED OFFENCES

Two ways to approach double criminality in the FD (art. 2)

1) List of offences (art. 2 sub 2 FD) ticked:

- No verification double criminality
- At least punishable by 3 years of imprisonment

2) No offence from the list (art. 2 sub 1 and 4 FD):

- Verification double criminality
- Punishable with imprisonment of at least 12 months

3. Is the offence for which the EIO is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)
- ☐ 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 Union 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

# Listed offences

- First aim was a short negative list (offences we don't cooperate) abort/euth/marih It became a positive list of offences > 3 years max
- If it assessed that the listed offence is reasonably ticked by the issuing authority, no check is made whether the offence is a criminal act in NL
- Dutch court: not reasonably = a clear contradiction between the described facts and the ticked listed offence. Did they make a mistake?
- Good question? Do you have a list with which drugs fall under the listed offence and which do not? Syndru



# CJEU Gives Guidance on Double Criminality Test

31 July 2022 (updated 1 year, 4 months ago)

Thomas Wahl

**eucrim**

**C168/21, KL**

In its [judgment of 14 July 2022](#) in Case [C-168/21](#) (KL / *Procureur général près la cour d'appel d'Angers*), the CJEU determined the scope of the condition of double criminality in European arrest warrant cases.

## Background of the case

The case concerns the execution of an Italian EAW for the purpose of enforcing a sentence against KL who was convicted for the offence of “devasting and looting”, committed in the context of the G8 summit in Genoa (Italy) in 2001. If he is surrendered, KL will face an imprisonment of over 12 years in Italy.

The referring *Cour de Cassation* (Court of Cassation, France) asked whether the Court of Appeal of Angers (France) was right in refusing the Italian EAW because the “breach of peace” is a constituent element for the offence of “devasting and looting” under Italian law, but not under French law. Should the requirement of double criminality not preclude the surrender of KL, the referring court further asked whether the execution of the EAW should be refused in the light of the principle of proportionality in relation to criminal offences and penalties enshrined in Art. 49(3) CFR.

## The CJEU’s decision

In the first place, the CJEU determined the parameters for the double criminality test pursuant to Art. 2(4) and Art. 4 No. 1 of the Framework Decision on the European Arrest Warrant as follows:

- It is sufficient if the acts giving rise to the sentence imposed in the issuing Member States also constitute an offence in the executing Member State;
- The offences do not need to be identical in the two Member States concerned;
- The condition of double criminality is met if the factual elements underlying the offence would also be subject to a criminal sanction in the territory of the executing Member States if they were present in that State;
- If an exact match between the protected legal interests were required, the *effet utile* of the EU’s surrender system would be affected and it would also counter the rule that refusal grounds in the FD EAW must be interpreted strictly in order to limit the cases of non-recognition and non-enforcement.

As a result, the condition of double criminality in Art. 2(4) and Art. 4 No. 1 FD EAW is met if the acts in question impair a legal interest protected in the issuing Member State, and if such acts are also covered by a criminal offence under the law of the executing Member State but the impairment of that legal interest is not an element constituting that criminal offence there.

In the second place, the CJEU held that Art. 2(4) and Art. 4 No. 1 FD EAW, read in the light of Art. 49(3) CFR, must be interpreted as meaning that the executing judicial authority may not refuse to execute an EAW issued for the enforcement of a custodial sentence where that sentence was imposed in the issuing Member State for the commission by the requested person of a single offence consisting of several acts and only some of those acts constitute a criminal offence in the executing Member State.

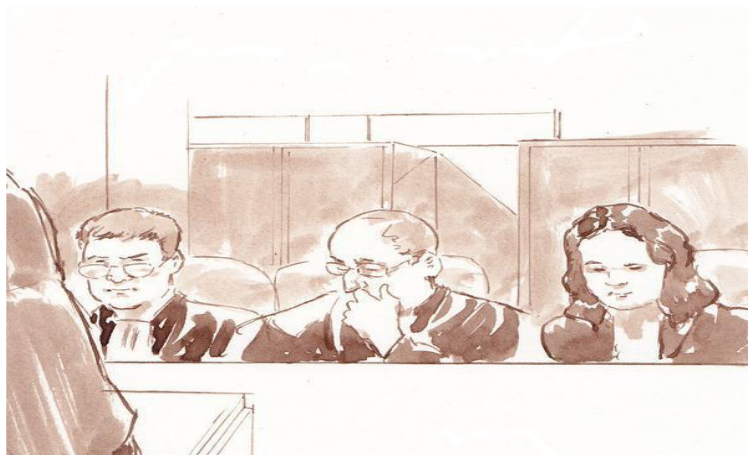


## 2.



- The IRC and IRK Amsterdam
- 20 years EAW: Balance between need for effectiveness and the preservation of fundamental rights:
  - A. Short history
  - B. Is it effective ?
  - C. Is there a balance?
  - D. Is there a way forward ?





# IRK, the first and the last instance

Court of Amsterdam

25 casenumbers for a request for preliminary ruling by the CJEU since 2015:

Atmani, Van Vemde, **Poplawski I** (2015),

**Poltorak, Kovalkovas, Ozcelik, Dworzecki** (2016),

**Tupikas, Zdziaszek, Ardic, Poplawski II** (2017),

TC, SF (2018),

**ZB + XD + YC (JR)** (2019),

**C-354/20 PPU (L) + C-412/20 (P)**, C-665/20 PPU (X),

C-428/21 PPU (HM) + C-429/21 PPU (TZ), C-562/21 PPU (JT) + C-563/21 PPU

C-492/22 PPU C-641/23

**A+C**

**LM**

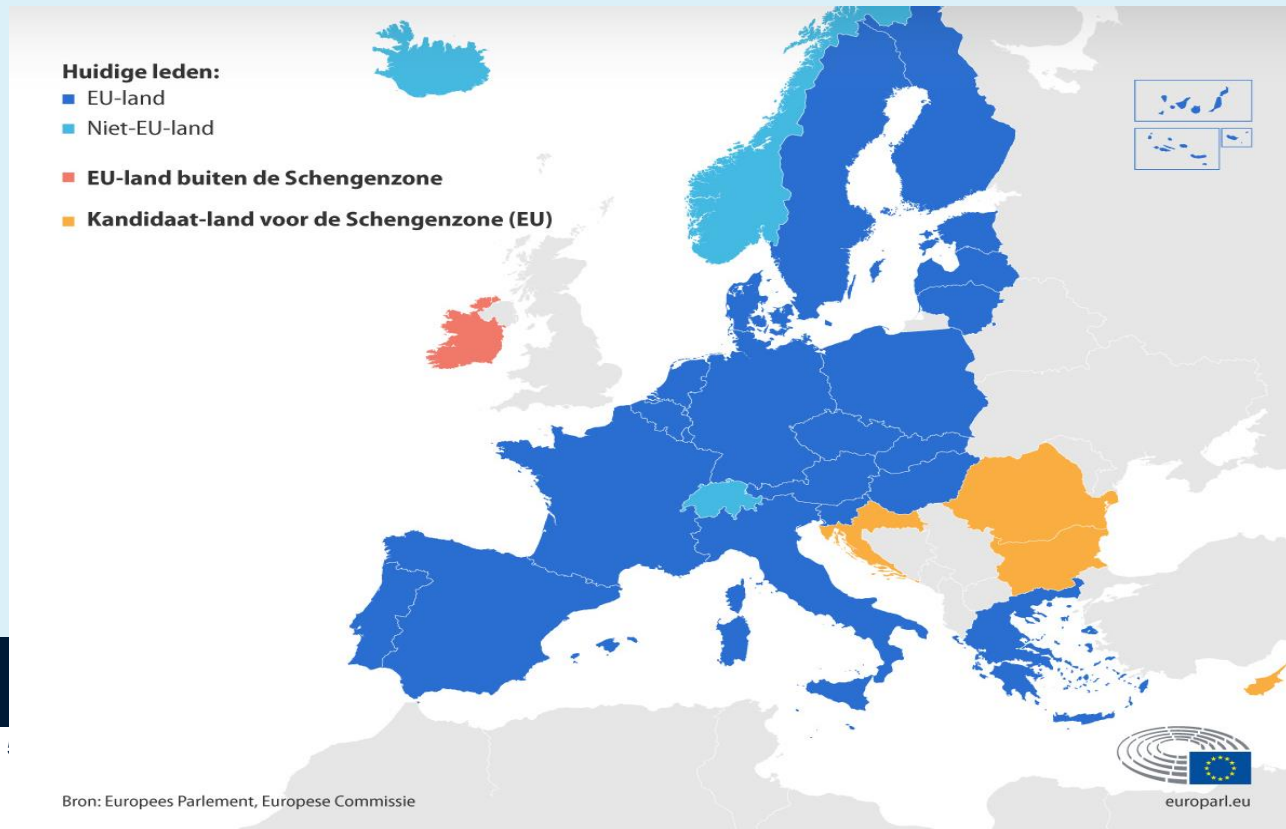
**OG/PI**

**AZ**

# EU/SCHENGEN

## Why the EAW?

- No border controls
- Free movement (stolen) goods and (criminal) people
- Free movement of judicials decisions in criminal matters



# MUTUAL RECOGNITION + MUTUAL TRUST

## Preamble FD EAW

### *Mutual recognition*

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of **a new simplified system** of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible **to remove the complexity and potential for delay inherent in the present extradition procedures.** Traditional cooperation relations which have prevailed up till now between Member States **should be replaced by a system of free movement of judicial decisions in criminal matters,** covering both pre-sentence and final decisions, within an area of freedom, security and justice.

### *High level of confidence / human rights*

(10) The mechanism of the European arrest warrant is **based on a high level of confidence between Member States.** Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union (...).

MR is designed not only to strengthen cooperation between Member States, but also to enhance judicial protection of individual's rights and freedoms<sup>7</sup>. Its implementation presupposes that MSs have trust in each other's' criminal justice systems and that this trust is grounded in particular on their shared commitment to the principles of freedom, democracy, respect for human rights, fundamental freedoms and the rule of law.

Among the philosophical elements underlying MR, the definition provided for by the European Commission in its Communication of 26 July 2000 on MR of final decisions in criminal matters are made particularly clear:

« MR is a principle that is widely understood as being based on the thought that while another state may not deal with a certain matter in the same or even a similar way as one's own state, the results will be such that they are accepted as equivalent to decisions by one's own state. Mutual trust is an important element, not only trust in the adequacy of one's partners rules, but also trust that these rules are correctly applied. Based on this idea of equivalence and the trust it is based on, the results the other state has reached are allowed to take effect in one's own sphere of legal influence. On this basis, a decision taken by an authority in one state could be accepted as such in another state, even though a comparable authority may not even exist in that state, or could not take such decisions, or would have taken an entirely different decision in a comparable case. Recognising a foreign decision in criminal matters could be understood as giving it effect outside of the state in which it has been rendered, be it by according it the legal effects foreseen for it by the foreign criminal law, or be it by taking it into account in order to make it have the effects foreseen by the criminal law of the recognising state. »<sup>8</sup>.


**Respecting the differences, not uniforming them.  
Autonomous concepts of EU law?**

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<sup>1</sup> Cardiff European Summit - Presidency Conclusions, 15 and 16 June 1998, SN 150/98, para. 39.

<sup>2</sup> Tampere European Summit - Presidency Conclusions, 15 and 16 Oct. 1999, SN 200/99, para. 33 and f. **MR, jit, ej**

<sup>3</sup> Programme of measures to implement the principle of MR of decisions in criminal matters, OJ C 12, 15 Jan. 2001, p. 10.




## ■ Hearing CJEU: XD, YC, ZB en JR: C-625-627 + 566/19 PPU

An esteemed Professor in European law of the University of Maastricht recently said it during a presentation on the EAW. That currently an extradition to countries as Albania and Turkey is less complicated and takes place more efficiently than an EAW-surrender procedure within the EU. Also my foreign colleagues express themselves accordingly. This worries me a lot. And I assume that the court of justice also cares. This hinders the cooperation within the EU, while the Framework decision on the EAW was meant to simplify and speed up this cooperation within the EU.

1.3 It also worries the PPO in Amsterdam that with consideration 75 (of rulings OG/PI) a new procedure is introduced by a court (this is: a possible remedy against the issuing of an EAW by a prosecutor), which is not prescribed or regulated by any rule from the Framework decision on the EAW.

Should this not be a task of the (European) legislator?



## ■ Hearing CJEU: XD, YC, ZB en JR: C-625-627 + 566/19 PPU

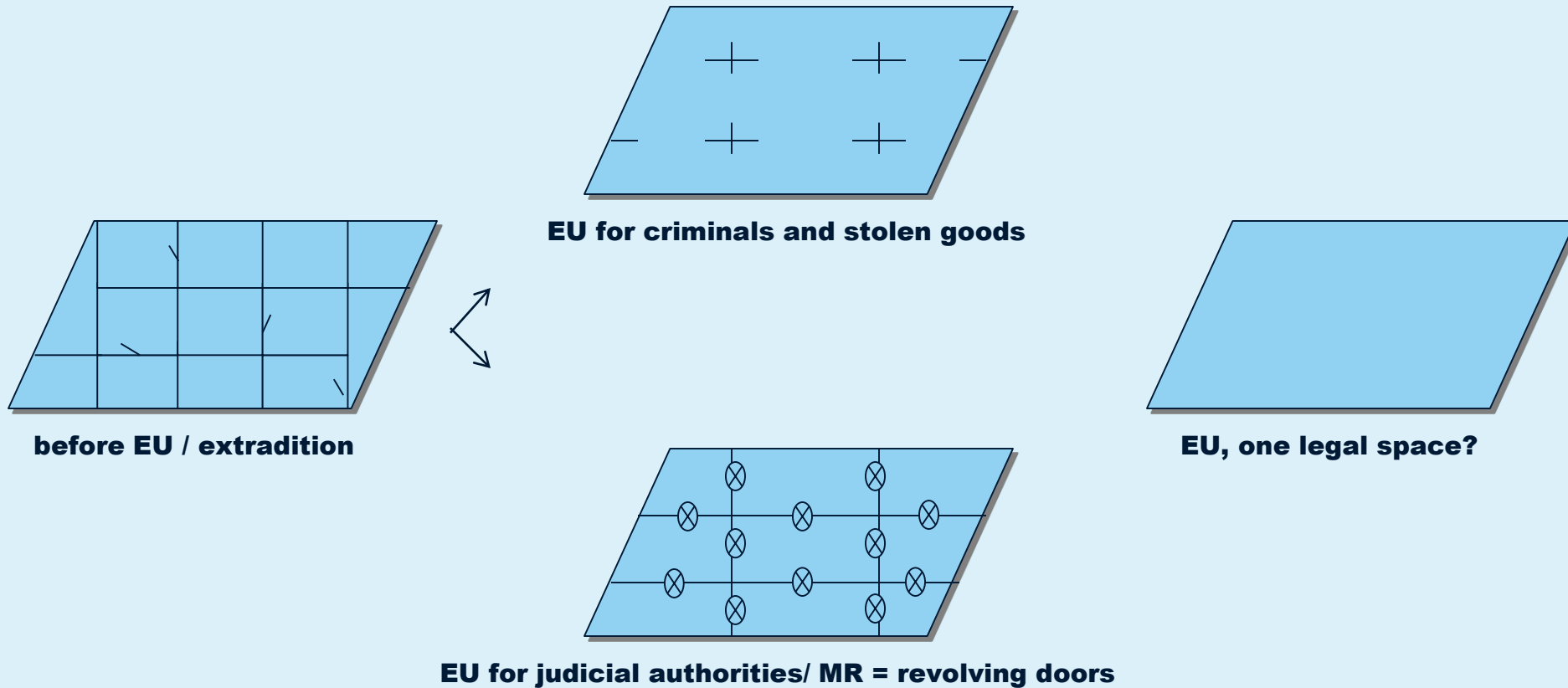
1.7 I will conclude. The PPO notices a trend that member states and their authorities are questioning each other with the use requests for preliminary rulings by the CJEU.

The PPO got used to questions to the CJEU for the interpretation of the EU law, such as how to explain article 4 bis of the FD EAW (about in absentia verdicts). Or how to interpret article 4 paragraph 6 of the FD EAW (such as the rulings in Wolzenburg and Poplawski a.o.).

But in the last couple of years a new kind of questions are being forwarded by the judicial authorities of the Member States. In those cases at the CJEU it regards questions whether their prisons suffice, whether their justice is fair, whether their judicial authorities should be able to issue and execute orders and requests.

# What balance is there?

Rights for the w.p.: a right to 2 lawyers, a right to be heard on a request for additional consent, a right for a translation in your chosen language, a right to a remedy against certain EAW's, a right to a fair trial, a right to a certain amount of square meters in prison, a right to be possibly released after a life sentence and a right to reintegrate instead of being surrendered.





# 3.

## GROUNDS FOR REFUSAL

Based on articles 2, 3 and 4 of FD and CJEU

- **A. In absentia verdicts** (art. 12 OLW)
  - **B. Surrender of nationals and residents** (art. 6a OLW)
  - **C. Violation of fundamental rights** (art. 11 OLW)
- 
- Statute of limitation (art. 9 OLW)
  - Double criminality (art. 2 en 7 OLW))
- 
- Ne bis in idem (art. 9 OLW)
  - Insufficient data (art 2 OLW)
  - Territoriality (art. 13 OLW)



# 3A.

## IN ABSENTIA ART 4 BIS FDEAW

The PPO asks about EU law, answered is with national law.

2009→ addition article 4bis. Purpose:

- uniform refusal grounds on decisions in absentia
- uniform interpretation en strengthening procedural rights wanted persons
- adaptation EAW-form

Refuse unless:

- appeared in person at the trial (resulting in the decision)
  - summoned in person or otherwise officialy informed for the trail
  - defended by a mandated lawyer
  - verdict served personally, with instruction how to appeal
- 
- none of the above → unconditional right to a retrail needed

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

1. ☐ Yes, the person appeared in person at the trial resulting in the decision.

2. ☐ No, the person did not appear in person at the trial resulting in the decision.

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

☐ 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

☐ 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

- ☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

- ☐ 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

- ☐ the person expressly stated that he or she does not contest this decision;

OR

- ☐ the person did not request a retrial or appeal within the applicable timeframe;

OR

- ☐ 3.4. the person was not personally served with the decision, but
- the person will be personally served with this decision without delay after the surrender; and
  - when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and
  - the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be ..... days.

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

.....

# Case article 4 bis / In absentia

## What is “in person”

### Case

State A sends a request to execute an in absentia verdict of three years in prison; you ask additional information how the summons (to appear in court for the hearing) was served to this person.

The answer is:

1. In person, by nailing the paper on the door of the house of his parents
2. In person, by serving the paper to an adult member of the household

# **CJEU ruling DWORZECKI 24<sup>th</sup> May 2016 (C-108/16 PPU)**

**On those grounds, the Court (Fourth Chamber) hereby rules:**

- 1. Article 4a(1)(a)(i) (...) must be interpreted as meaning that the expressions ‘summoned in person’ and ‘by other means actually received official information ..... of the scheduled date and place of that trial (...) that it was unequivocally established that he or she was aware of the scheduled trial’ constitute autonomous concepts of EU law and must be interpreted uniformly throughout the European Union.**
- 2. Article 4a(1)(a)(i) (...) must be interpreted as meaning that a summons, (...), which was not served directly on the person concerned but was handed over, at the latter’s address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the EAW whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions of that provision.**

# **Requests for CJEU ruling ZDZIAZSEK (C-271/17 PPU), TUPIKAS (C-270/17 PPU).**

**What is the “Trial resulting in the decision”**

**Q 1. Can a procedure, where (only) penalties were merged, be considered: “the trial resulting in the decision”?**

**Q 3. Can an appeal procedure, where the the question of guilt was reconsidered and new evidence was allowed, be considered: “the trail resulting in the decision”**

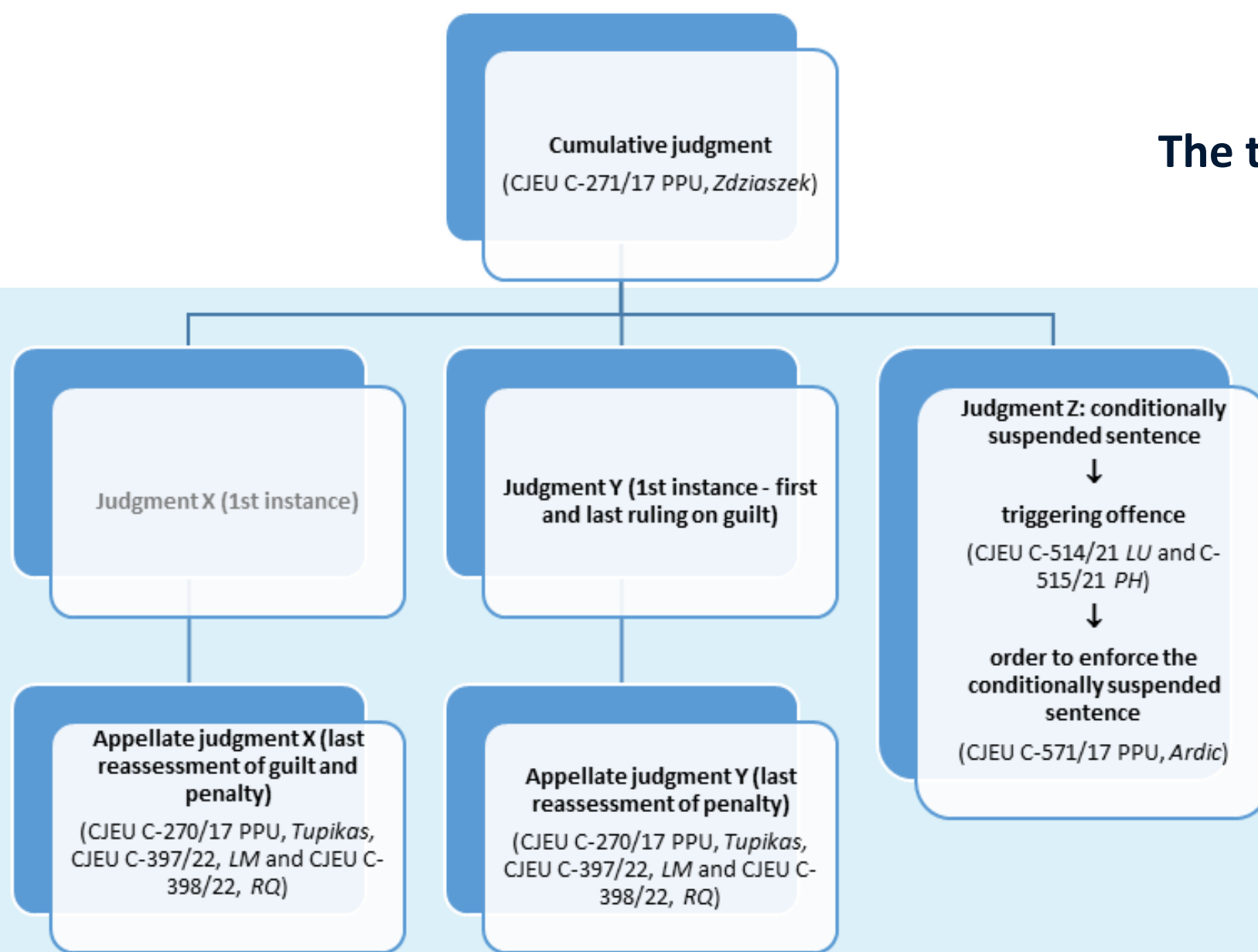
# **CJEU ruling 10-8-2017 ZDZIAZSEK (C-271/17 PPU), TUPIKAS (C-270/17 PPU).**

**TUPIKAS:** When there has been a first instance and a second instance trial, where the question guilt and the height of the penalty has been decided, then “the trial resulting in the decision” is the second instance trial.

**ZDZIASZEK** When the question of guilt was decided separately from (the height of) the penalty, both procedures/trials are “the trial resulting in the decision”.

Now one must seek and check the conditions of article 4 bis regarding the last instance about guilt **AND** the last instance about the (height) of the penalty (e.g. merger of penalties).

## The trail resulting in the decision





# CASE article 4 bis / In absentia

## Cases

State A sends a request to execute an in absentia verdict of three years in prison; the box is ticked that the person did not appear at the trial resulting in the decision. You ask additional information.

The answer is that the wanted person did not appear at the day the verdict was given. But in 3 previous hearings in court the w.p. appeared. The lawyer appeared when the verdict was given. The lawyer appealed.

What will your decisions be as executing State?

Which of the 4 (or 5) sessions is the trial resulting in the decision?

You ask, was the lawyer mandated and, if yes, did he/she defend during the trial?

-no, the lawyer was appointed ex officio by the court

-no/y, a lawyer was present in court to defend him; the lawyer was provided by the family of the w.p..

-or, yes, the w.p. had a chosen lawyer

# 3B.

## SURRENDER of NATIONALS and RESIDENTS

POPLAWSKI cases C-579/15 and C-573/17

**Starts in 2013, POPLAWSKI, CJEU case C-579/15 and C-573/17**

**Judgements CJEU on 29/6/17 and 24/6/19. Law change 1/4/2021.**

Mr Poplawski was convicted to one year imprisonment in PL.

He proved he was a resident for 5 years in NL. This means that during an uninterrupted period of 5 years he lived in NL and earned enough income in NL.

Therefore, according to the Dutch Surrender Act, the court should refuse the surrender.

However taking over the sentence turned out to be a problem, because the MoJ in NL refused the transfer of the sentence. This because the PL authorities did not send a (909) request to transfer the sentence.

Instead PL said that NL should take over the sentence without request, on the basis of article 4.6 FDEAW itself. Or allow the surrender.

# Article 6 -> 6a of the Dutch Surrender Act

Question to CJEU C-305/22 RO disagrees with execution by IT

- **OLD**
- 2. Surrender of a Dutch person (and 5 years residents) is not allowed if the person is requested for execution of a custodial sentence imposed upon him by final judgment.
- 3. If surrender is refused on the grounds of paragraph 2, the public prosecutor shall notify the issuing judicial authority of the willingness to take over execution of the judgment.

Art 4.6 FDEAW: a MS may refuse the EAW for a national or resident and that MS undertakes to execute the sentence

- **NEW**
- Surrender of a Dutch citizen (and 5 years resident) for the purpose of executing a custodial sentence imposed on him by final judgment may be refused if the court is of the opinion that the execution of that sentence can be taken over. In the event of a refusal of surrender, the court orders, at the same time as the refusal, the execution of the imposed custodial sentence (thus without a request).

## 3C. Fundamental rights: art 11 Dutch Surrender Act

Not a refusal ground in the FD EAW. High level of confidence.

Art 11 Dutch Surrender Act (old):

Surrender will be refused if there is a suspicion, based on facts and circumstances, that granting the request will lead to a flagrant denial of the rights in the European Convention on Human Rights”.

(new text: a real risk for fundamental rights in EU Charter must lead to postponement/ending of procedure)

Just two times succesfull in 2005. undue delay/lost file. After that, regularly argued by lawyers, but refusal ground not applied by IRK, because it was not in conformity with the frameworkdecision EAW. Till 2016.

Then things changed after Aronyosi + Caldaru and LM

no

# IRK Court of Amsterdam – Detention

\*After Aronyosi+Caldararu (2 steps, general and individual deficiencies):

Questions of IRK for additional information on detention-circumstances and some preferential treatment in 12 MS

(can you in or exclude pi ..., or which pi, m2, other circumstances?)

CPT Norm:  $< 3 \text{ m2} = -$  ,  $3 - 4 \text{ m2} = +/-$  ,  $> 4 \text{ m2} = +$

# LOST IN TRANSLATION

**Importance of speaking the same “legal language”. (suspect-accused)**

**Translation can make the difference between a surrender or refusal, Yes can be No and No can be Yes (Latitante gia contumace, Verfahren eingestellt, beaten/raped)**

**Google translation? (referee=judge)**

**CJEU: speaking to the Court through interpreters**

## Clear?

IRC	EUV	ETM	IRK
IVS	SIS	AIRS	552p
EHRM	(KB)EAB	WETS	EVRM
WOTS	VTBS	VOGP	ECJ
KMAR	SUO	UNTOC	EBB
JIT	EOB	EJN	MLA
EVIG	EGTUL	CPT	ETC



Thank you for your attention  
Questions?





## A LAWYER`S ROLE IN EAW PROCEEDINGS

**advocate Katarzyna Dąbrowska**

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



- Legal basis: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.
- The procedural rights of persons detained under an EAW have been strengthened in six directives - the Directive on the right to translation, the right to information, the right of access to a lawyer, legal aid, procedural guarantees for children and the strengthening of certain aspects of the presumption of innocence and the right to be present at trial.

- the right to information, which applies since 2 June 2014

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

- the right to interpretation and translation, which applies since 27 October 2015

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

- the right to have a lawyer, which applies since 27 November 2016

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty,

- the right to be presumed innocent and to be present at trial, which applies since 1 April 2018

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

- special safeguards for children suspected and accused in criminal proceedings, which applies since 11 June 2019

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

- the right to legal aid, which applies since 25 May 2019

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

- Despite the simplification of procedures compared to traditional extradition proceedings, problems arise.
- Discrepancies in implementation affect the different degree of fulfillment of the assumptions behind the EAW depending on the country, which creates the possibility of *forum shopping*.
- Systemic problems that are severe due to the practice of legal defense:
  - proportionality;
  - safeguarding fundamental rights and freedoms while simplifying procedures.

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

GOT A CALL!



Art. 10 right to access a lawyer in EAW proceedings

- **p. 1 and 2 – access to a lawyer in issuing 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 identified in national law giving effect to Article 7(1) of the Directive. Issues have been found in 11 member states 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 themselves to ensure the quality of legal aid services.*



### **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.

FINALLY APPOINTED AS A  
DEFENCE LAWYER!



- 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;
- Taking into account the time of pre-trial detention in connection with issuing an EAW after surrender - the issue of the application of measures constituting a restriction of liberty.

# FINALLY TO MEET MY CLIENT!



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

- Preamble 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.
- Preamble 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. 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.*

# LET`S WORK ON THE MERITS!



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

### **p. 1 essential documents enabling 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.*



- 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.

# .....WHAT`S LAWYER`S ROLE IN EAW PROCEEDINGS



**Thank you for your attention.**

Advocate Katarzyna Dąbrowska

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# Webinar on Cross-Border Procedures and the European Arrest Warrant

## Training for Defence Lawyers

Online, 24 April 2024 (324DT110)

## Background Documentation

Table of contents with hyperlinks



Co-funded by  
the European Union

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

## A) EU Institutional Framework

### A1) Main Treaties and Conventions

A1.1	Consolidated version of the Treaty on the functioning of the European Union, art. 82-86 (OJ C 326/47; 26.10.2012)
A1.2	Consolidated Version of the Treaty on the European Union, art. 9-20 (OJ C326/13; 26.10.2012)
A1.3	Explanations relating to the Charter of Fundamental Rights (2007/C 303/02)
A1.4	Charter of fundamental rights of the European Union (OJ. C 364/1; 18.12.2000)

A1.5	Convention implementing the Schengen Agreement of 14 June 1985 ( <i>OJ L 239; 22.9.2000, P. 19</i> )
A1.6	Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols (ETS No. 005; 3.5.1953)

## A2) Main Legislative Framework

A2.1	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)), ( <i>OJ C 456, 10.11.2021</i> )
A2.2	Report on the implementation of Council Framework Decision on the European arrest warrant and the surrender procedures between Member States, 2 July 2020
A2.3	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, last reviewed 12 December 2019
A2.4	Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
A2.5	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
A2.6	Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention
A2.7	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 ( <i>OJ L 81/24; 27.3.2009</i> )
A2.8	Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to

	judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
A2.9	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
A2.10	Consolidated text: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)
A2.11	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

### **A3) Main Instruments on other Mutual Legal Assistance and Mutual Recognition**

A3.1	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130/1; 1.5.2014)
A3.2	Third Additional Protocol to the European Convention on Extradition ( <i>Strasbourg, 10.XI.2010</i> )
A3.3	Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings ( <i>OJ L 328/42; 15.12.2009, P.42</i> )
A3.4	Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ( <i>OJ L 294/20; 11.11.2009</i> )
A3.5	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 ( <i>OJ L, 350/72, 30.12.2008</i> )
A3.6	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ( <i>OJ L 327/27; 5.12.2008</i> )
A3.7	Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European

	Union in the course of new criminal proceedings ( <i>OJ L 220/32; 15.08.2008</i> )
A3.8	Council Framework Decision of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ( <i>OJ L 328/59, 24.11.2006, P.59</i> )
A3.9	Council Framework Decision of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ( <i>OJ L 76/16, 22.3.2005, P.16</i> )
A3.10	Council Framework Decision of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property ( <i>OJ L 68/49, 1.3.2005, P. 49</i> )
A3.11	Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence ( <i>OJ L 196/45; 2.8.2003</i> )
A3.12	Council Framework Decision 2002/465/JHA on joint investigation teams ( <i>OJ L 162/1; 20.6.2002</i> )
A3.13	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 ( <i>2001/C 326/01</i> ), ( <i>OJ C 326/01; 21.11.2001,P. 1</i> )
A3.14	Convention implementing the Schengen Agreement of 14 June 1985 ( <i>OJ L 239; 22.9.2000, P. 19</i> )
A3.15	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 ( <i>OJ C 197/1; 12.7.2000, P. 1</i> )
A3.16	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters ( <i>Strasbourg, 8.XI.2001</i> )
A3.17	Tampere European Council, Presidency Conclusions 15-16 October 1999
A3.18	Convention on extradition between Member States, 27 September 1996
A3.19	Simplified extradition procedure between Member States, 10.03.1995
A3.20	Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences

	(Deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, Brussels 13.11.1991)
A3.21	Agreement between the Member States (of the European Communities) on the Transfer of Proceedings in Criminal Matters (Deposited with the Ministry of Foreign Affairs of the Italian Republic, 06.11.1990)
A3.22	Agreement between the Member States of the European Communities on the simplification and modernization of methods of transmitting extradition requests (Deposited with the Ministry of Foreign Affairs of the Kingdom of Spain, San Sebastian 26.05.1989)
A3.23	Convention between the Member States of the European Communities on Double Jeopardy (Brussels 25.05.1987)
A3.24	Agreement on the application between the Member States of the European Communities of the Council of Europe Convention on the transfer of sentenced persons (Deposited with the Ministry of Foreign Affairs of the Kingdom of Belgium, Brussels 25.05.1987)
A3.25	Convention on the Transfer of Sentenced Persons ( <i>Strasbourg</i> , 21.III.1983)
A3.26	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters ( <i>Strasbourg</i> , 17.III.1978)
A3.27	European Convention on Mutual Assistance in Criminal Matters ( <i>Strasbourg</i> , 20.IV.1959)
A3.28	Second Additional Protocol to the European Convention on Extradition ( <i>Strasbourg</i> , 17.III.1978)
A3.29	Additional Protocol to the European Convention on Extradition ( <i>Strasbourg</i> , 15.X.1975)
A3.30	European Convention on Extradition ( <i>Strasbourg</i> , 13.XII.1957)

#### **A4) Main Instruments on Procedural Guarantees in the EU**

A4.1	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, 4.11.2016, p. 1-8.
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A4.2	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, 21.5.2016, p. 1–20.
A4.3	Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, p. 1–11.
A4.4	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)
A4.5	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)
A4.6	Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention (COM(2011) 327 final; 14.6.2011)
A4.7	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)
A4.8	Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (OJ C 295/1; 4.12.2009)

## B) Court of Justice of the European Union (CJEU)

### B1) Legislative Background of the CJEU

B1.1	Court of Justice of the European Union: Presentation of the Court
B1.2	European Parliament Fact Sheets on the European Union: Competences of the Court of Justice of the European Union, April 2023
B1.3	Regulation (EU, Euratom) 2019/629 of the European Parliament and of the Council of 17 April 2019 amending Protocol No 3 on the Statute of the Court of Justice of the European Union, OJ L 111, 17 April 2019

B1.4	Consolidated Version of the Statute of the Court of Justice of the European Union (01 August 2016)
B1.5	Consolidated version of the Rules of Procedure of the Court of Justice (25 September 2012)

## **B2) CJEU Case Law on the EAW**

B2.1	Case-law by the Court of Justice of the European Union on the European Arrest Warrant 16 October 2023
B2.2	Case law by the Court of Justice of the European Union on the European Arrest Warrant – Overview, Eurojust, 15 March 2020
B2.3	Case C-398/22, Judgment of the Court (Seventh Chamber), 21 December 2023
B2.4	Case C-397/22, GER, Judgement of the Court (Seventh Chamber) of 21 December 2023
B2.5	Case C-396/22, GER, Judgment of the Court (Seventh Chamber) of 21 December 2023
B2.6	Case C-261/22 Judgment of the Court (Grand Chamber) of 21 December 2023
B2.7	Case C-71/21, Judgment of the Court (Sixth Chamber) of 14 September 2023
B2.8	Case C-164/22, Judgment of the Court (First Chamber), 21 September 2023
B2.9	Case C-142/22, OE, Judgment of the Court (Second Chamber), 6 July 2023
B2.10	Case C-700/21, O.G, Judgment of the Court (Grand Chamber), 6 June 2023
B2.11	Joined Cases C-529/21 to C-536/21 and C-732/21 to C-738/21, Judgment of the Court (Sixth Chamber) of 4 May 2023.
B2.12	Case C-699/21, E.D.L, Judgment of the Court (Grand Chamber), 18 April 2023
B2.13	Joined Cases C-514/21 and C-515/21, LU and PH, Judgment of the Court (Fourth Chamber), 23 March 2023
B2.14	Case C-365/21, Judgment of the Court (Fifth Chamber), 23 March 2023

B2.15	Case C-237/21, Judgment of the Court (Grand Chamber, 22 December 2022
B2.16	Case C-583/22 PPU, Judgment of the Court (Second Chamber), 12 January 2023
B2.17	Joined Cases C-430/22 and C-468/22, Judgment of the Court (Sixth Chamber), 8 June 2023
B2.18	Case C-158/21, Puig Gordi and Others, Judgment of the Court (Grand Chamber), 31 January 2023
B2.19	Case C-492/22 PPU, Judgment of the Court (First Chamber), of 8 December 2022
B2.20	Case C-480/21, Order of the Court (Eighth Chamber) of 12 July 2022
B2.21	Case C-168/21, Procureur général près la cour d'appel d'Angers, Judgment of the Court (Third Chamber), 14 July 2022
B2.22	Case C-105/21, Judgment of the Court (Fourth Chamber) of 30 June 2022
B2.23	Case C-804/21 PPU, Judgment of the Court (Second Chamber) of 28 April 2022
B2.24	Joined Cases C-562/21 PPU and C-563/21 PPU, Openbaar Ministerie (Tribunal établi par la loi dans l'État membre d'émission), Judgment of the Court (Grand Chamber), 22 February 2022
B2.25	Case C-203/20, Judgment of the Court (Third Chamber), 16 December 2021
B2.26	Case C-479/21, Judgment of the Court (Grand Chamber) of 16 November 2021
B2.27	Case C-852/19, Judgment of the Court (First Chamber), 11 November 2021
B2.28	Joined Cases C-428/21 and C-429/21, Judgment of the Court (First Chamber), 26 October 2021
B2.29	Case C-556/19, Judgment of the Court (First Chamber) of 21 October 2020.
B2.30	Case C-206/20, Order of the Court (Sixth Chamber) of 22 June 2021
B2.31	Case C-665/20 PPU, Judgment of the Court (Fifth Chamber), 29 April 2021

B2.32	Case C-488/19, Judgment of the Court (First Chamber) of 17 March 2021
B2.33	Case C-648/20 PPU, Judgment of the Court (First Chamber) of 10 March 2021
B2.34	Case C-649/19, Spetsializirana prokuratura (Déclaration des droits), Judgement of the Court (Fifth Chamber), 28 January 2021
B2.35	Case C-414/20 PPU, MM, Judgment of the Court (Third Chamber), 13 January 2021
B2.36	Case C-398/19, Judgment of the Court (Grand Chamber), 17 December 2020
B2.37	Joined Cases C-354/20 PPU and C-412/20 PPU, Openbaar Ministerie (Indépendance de l'autorité judiciaire d'émission), Judgement of the Court (Grand Chamber), 17 December 2020
B2.38	Case C-584/19, A and Others, Judgement of the Court (Grand Chamber), 8 December 2020
B2.39	Case C-416/20 PPU, Generalstaatsanwaltschaft Hamburg, Judgement of the Court (Fourth Chamber), 17 December 2020
B2.40	Case C-510/19, AZ, Judgement of the Court (Grand Chamber), 24 November 2020
B2.41	Case C-195/20 PPU, Judgment of the Court (Fourth Chamber), 24 September 2020
B2.42	Case C-897/19 PPU, Judgment of the Court (Grand Chamber), 2 April 2020
B2.43	Case C-717/18, X (European arrest warrant – Double criminality) Judgement of the Court of 3 March 2020
B2.44	Case C-314/18, SF Judgement of the Court of 1 March 2020
B2.45	Case C-813/19 PPU, Order of the Court (Third Chamber) of 21 January 2020
B2.46	Case C-627/19 PPU, Judgment of the Court (First Chamber), 12 December 2019
B2.47	Case C-625/19 PPU, Judgment of the Court (First Chamber) 12 December 2019
B2.48	Joined Cases C-566/19 PPU (JR) and C-626/19 PPU (YC), Opinion of AG Campos Sánchez-Bordona, 26 November 2019

B2.49	Joined cases C-585/18, C-624/18 and C-625/18 (Grand Chamber) 19 November 2019
B2.50	Case C-128/18, Judgment of the Court (Grand Chamber) of 15 October 2019
B2.51	Case C-489/19 PPU (NJ), Judgment of the Court (Second Chamber) of 09 October 2019
B2.52	CJEU Press Release No 135/18, Judgement in Case C-327/18 PPU RO, 19 September 2019
B2.53	Case C-573/17, Judgment of the Court (Grand Chamber) of 24 June 2019
B2.54	Case 509/18 (PF), Judgement of the Court (Grand Chamber), 27 May 2019
B2.55	Joined Cases C-508/18 (OG) and C-82/19 PPU (PI), Judgement of the Court (Grand Chamber), 24 May 2019
B2.56	Case C-492/18, Judgment of the Court (First Chamber) of 12 February 2019
B2.57	Case C-551/18, IK, Judgement of the Court of 06 December 2018 (First Chamber)
B2.58	Case C-247/17, Judgment of the Court (Grand Chamber) of 13 November 2018
B2.59	CJEU Press Release No 141/18, Judgement in Case C-207/16, Ministerio Fiscal, 2 October 2018
B2.60	Case C-268/17, AY, Judgement of the Court of 25 July 2018 (Fifth Chamber)
B2.61	Case C-220/18 PPU, ML, Judgement of the Court of 25 July 2018 (First Chamber)
B2.62	Case C-216/18 PPU, LM, Judgement of the Court of 25 July 2018 (Grand Chamber)
B2.63	Case C-191/16, Judgment of the Court (Grand Chamber) of 10 April 2018
B2.64	Case C-367/16, Judgment of the Court (Grand Chamber) of 23 January 2018
B2.65	Case C-571/17 PPU, Samet Ardic, Judgment of the court of 22 December 2017

B2.66	C-270/17 PPU, Tupikas, Judgment of the Court of 10 August 2017 (Fifth Chamber)
B2.67	Case C-271/17 PPU, Zdziasek, Judgment of the Court of 10 August 2017 (Fifth Chamber)
B2.68	Case C-579/15, Popławski, Judgement of the Court (Fifth Chamber), 29 June 2017
B2.69	Case C-640/15, Vilkas, Judgement of the Court (Third Chamber), 25 January 2017
B2.70	Case C-582/15, Judgment of the Court (Fifth Chamber) of 25 January 2017
B2.71	Case C-289/15, Judgment of the Court (Fifth Chamber) of 11 January 2017
B2.72	Case C-477/16 PPU, Kovalkovas, Judgement of the Court (Fourth Chamber), 10 November 2016
B2.73	Case C-452/16 PPU, Poltorak, Judgement of the Court (Fourth chamber), 10 November 2016
B2.74	Case C-453/16 PPU, Özçelik, Judgement of the Court (Fourth Chamber), 10 November 2016
B2.75	Case C-182/15, Judgment of the Court (Grand Chamber) 6 September 2016
B2.76	Case C-294/16 PPU, JZ v Śródmieście, Judgement of the Court (Fourth Chamber), 28 July 2016
B2.77	Case C-241/15 Bob-Dogi, Judgment of the Court (Second Chamber) of 1 June 2016
B2.78	C-108/16 PPU Paweł Dworzecki, Judgment of the Court (Fourth Chamber) of 24 May 2016
B2.79	Cases C-404/15 Pál Aranyosi and C-659/15 PPU Robert Căldăraru, Judgment of 5 April 2016
B2.80	Case C-237/15 PPU Lanigan, Judgment of 16 July 2015 (Grand Chamber)
B2.81	Case C-463/15, Order of the Court (Fourth Chamber) 25 September 2015
B2.82	Case C-168/13 PPU <i>Jeremy F / Premier ministre</i> , Judgement of the court (Second Chamber), 30 May 2013

B2.83	Case C-399/11 <i>Stefano Melloni v Ministerio Fiscal</i> , Judgment of 26 February 2013
B2.84	Case C-396/11 Ciprian Vasile Radu, Judgment of 29 January 2013
B2.85	Case C-42/11, Judgment of the Court (Grand Chamber), 5 September 2012
B2.86	Case C-192/12, Judgment of the Court (Second Chamber), 28 June 2012
B2.87	C-261/09 Mantello, Judgement of 16 November 2010
B2.88	Case C-306/09, Judgment of the Court (Fourth Chamber) of 21 October 2010
B2.89	C-123/08 Wolzenburg, Judgement of 6 October 2009
B2.90	C-388/08 Leymann and Pustovarov, Judgement of 1 December 2008
B2.91	C-296/08 Goicoechea, Judgement of 12 August 2008
B2.92	C-66/08 Szymon Kozlowski, Judgement of 17 July 2008
B2.93	C-303/05, Judgment of the Court (Grand Chamber) 3 May 2007
B2.94	Case 120/78, Judgment of the Court of 20 February 1979

### C) Publications and other Relevant Websites

C.1	European Arrest Warrant proceedings - Room for improvement to guarantee rights in practice, 26 March 2024
C.2	European Union Agency for Fundamental Rights, Title IV Justice
C.3	European arrest warrant, E-Justice, last updated 8 January 2024
C.4	Directive (EU) 2023/2843 of the European Parliament and of the Council of 13 December 2023 amending Directives 2011/99/EU and 2014/41/EU of the European Parliament and of the Council, Council Directive 2003/8/EC and Council Framework Decisions 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, as regards digitalisation of judicial cooperation, OJ L, 2023/2843, 27.12.2023.
C.5	IATE (Interactive Terminology for Europe), EU's terminology management system, last build date 4 December 2023

C.6	2023 Handbook on how to issue and execute a European arrest warrant 17 November 2023
C.7	5.4 European Arrest Warrant, Annual report 2022, Eurojust 24 May 2023
C.8	CRIMINAL DETENTION IN THE EU CONDITIONS AND MONITORING, 2015-2022
C.9	Recommendation on the procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, 8 December 2022
C.10	Case-law by the Court of Justice of the European Union on the European Arrest Warrant, 7 December 2022
C.11	Commission Notice - Guidelines on Extradition to Third States, OJ C 223, 8.6.2022, p. 1–35
C.12	Guidelines on Extradition to Third States, 7 June 2022
C.13	Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Years 2014-2021
C.14	Questionnaire and Compilation on the Requirements for Issuing and Executing Judicial Authorities in EAW Proceedings pursuant to the CJEU's Case-Law, revised 24 November 2021
C.15	European Parliament Report of 20 January 2021 on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI))
C.16	Protecting fundamental rights in cross-border proceedings: Are alternatives to the European Arrest Warrant a solution? Fair Trial, 2021
C.17	EAW-ALT: Addressing the overuse of pre-trial detention and the disproportionate use of EAW with alternative cross-border mechanisms, 03/2020-02/2021
C.18	InAbsentiaEAW: Research project on European Arrest Warrants issued for the enforcement of sentences after in absentia trials, 2014-2020
C.19	TROP – Transfer of criminal proceedings in the European Union, 2014-2020
C.20	Project Stream: Strengthening Trust in the European Criminal Justice Area through Mutual Recognition and the Streamlined Application of the European Arrest Warrant, 2014-2020



C.21	Council conclusions 'The European arrest warrant and extradition procedures - current challenges and the way forward', 13684/20, Brussels, 4 December 2020
C.22	Joint report of Eurojust and the European Judicial Network on the extradition of EU citizens to third countries, November 2020
C.23	Polish deputy minister questions independence of Dutch judges, 21 September 2020
C.24	4th Implementation Report on the EAW, 2 July 2020
C.25	Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, Brussels, 2.7.2020, COM(2020) 270 final
C.26	Commission Staff Working Document: Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2018, 2 July 2020, Brussels, 2 July 2020, SWD(2020) 127 final
C.27	European Parliamentary Research Service: European Arrest Warrant – European Implementation Assessment, June 2020
C.28	Eurojust Annual Report 2019, 16 April 2020
C.29	European Parliamentary Research Service: European Arrest Warrant – Framework for Analysis and Preliminary Findings on its Implementation, February 2020
C.30	Criminal detention conditions in the European Union: rules and reality, 19 December 2019
C.31	Guidelines for deciding on competing requests for surrender and extradition 1 October 2019
C.32	CJEU Press Release 156/19: The Court finds that the French, Swedish and Belgian public prosecutor's offices satisfy the requirements for issuing a European arrest warrant, and clarifies the scope of the judicial protection afforded to persons referred to in such warrants
C.33	Implementation report on the directive on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, 26 September 2019
C.34	Eurojust Annual Report 2018, 27 March 2019

C.35	Council conclusions on mutual recognition in criminal matters: 'Promoting mutual recognition by enhancing mutual trust', (2018/C 449/02), 13 December 2018
C.36	A comparative analysis of the implementation of Article 4 (6) Framework Decision 2002/584 Resocialization above surrender? October 2017
C.37	Guidelines for deciding 'Which jurisdiction should prosecute?' 13 December 2016
C.38	Word consolidated version of the European Arrest Warrant form, 4 August 2011

## **D) European Judicial Network (EJN)**

D.1	Compendium on European arrest Warrant
D.2	60th Plenary EJN - Current developments on the application of the EAW, 16 June 2023
D.3	EJN Conclusions on EAW, 30 March 2022
D.4	53rd Plenary EJN - Conclusions on current developments on the application of the EAW, 3 December 2019
D.5	52nd Plenary EJN - Conclusions on current developments on the application of the EAW, 20 November 2019
D.6	Extracts from Conclusions of 49th Plenary meetings of the EJN concerning case-law on the EAW, 27 November 2017
D.7	Extracts from Conclusions of 48th Plenary meetings of the EJN concerning case-law on the EAW, 22 November 2017

## **E) Useful Websites**

E.1	European Commission: DG Justice and Consumers
E.2	European Commission: European Arrest Warrant
E.3	European Commission: Judicial cooperation: Commission proposes rules on the transfer of criminal proceedings between Member States
E.4	European Court of Human Rights <ul style="list-style-type: none"> <li>Judgments and decisions</li> </ul>

E.5	Court of Justice of the European Union <ul style="list-style-type: none"> <li>• Case-law</li> </ul>
E.6	Council of Europe: Prisons and Community Sanctions and Measures
E.7	European Judicial Network (EJN): EAW
E.8	EJN: Practical information on the European Arrest Warrant
E.9	EUROJUST: EAW
E.10	EUROJUST: Case-law by the Court of Justice of the European Union on the European Arrest Warrant
E.11	European Union Agency for Fundamental Rights (FRA)
E.12	EUR-Lex
E.13	European E-justice Portal
E.14	InAbsentiaEAW - Research project on European Arrest Warrants issued for the enforcement of sentences after in absentia trials
E.15	Stream - Strengthening Trust in the European Criminal Justice Area through Mutual Recognition and the Streamlined Application of the European Arrest Warrant

## Factsheet on the European Arrest Warrant

### What is a European Arrest Warrant (EAW)?

The European Arrest Warrant (EAW) is an instrument that simplifies the cross-border judicial process of surrender – for the purpose of prosecuting or executing a custodial sentence or detention order. An EAW issued by one EU Member State's judicial authority is valid across the entire territory of the EU, based on [Council Framework Decision of 13 June 2002](#).

### How does it work?

A request is made by a judicial authority in one EU Member State to arrest a person in another and surrender them for prosecution, or to execute a custodial sentence or detention order issued in the requesting Member State. The system is based on the principle of mutual recognition of judicial decisions and functions via direct contact between judicial authorities.

### Four key elements

1. A judicial decision is taken which is executable throughout the EU.
2. There are standardised forms to facilitate communication and execution.
3. Postponement and refusal grounds are limited.
4. Double criminality is not required for listed offences (Article 32 of the EAW Council Framework Decision).

### The scope of the EAW

The Court of Justice of the European Union (CJEU) clarified that within the context of Article 2 of the EAW Framework Decision the law of the issuing Member State is the frame of reference, in the version applicable to the facts giving rise to the case in which the EAW was issued (X). This applies both for assessing whether an act is punishable by a custodial sentence of a maximum of at least 12 months (A) and for assessing whether an act is to be considered a listed offence [[Advocaten voor de Wereld \(C-303/05\)](#)].

### Is it proportionate to issue an EAW?

The issuing judicial authorities should consider the following factors to see whether issuing an EAW is justified:

1. the seriousness of the offence;
2. the likely penalty imposed if the person is found guilty of the alleged offence;
3. the likelihood of detention of the person in the issuing Member State;
4. the interests of the victims of the offence;
5. any other judicial cooperation measures that could be used instead of an EAW.

### 3 key mutual recognition instruments

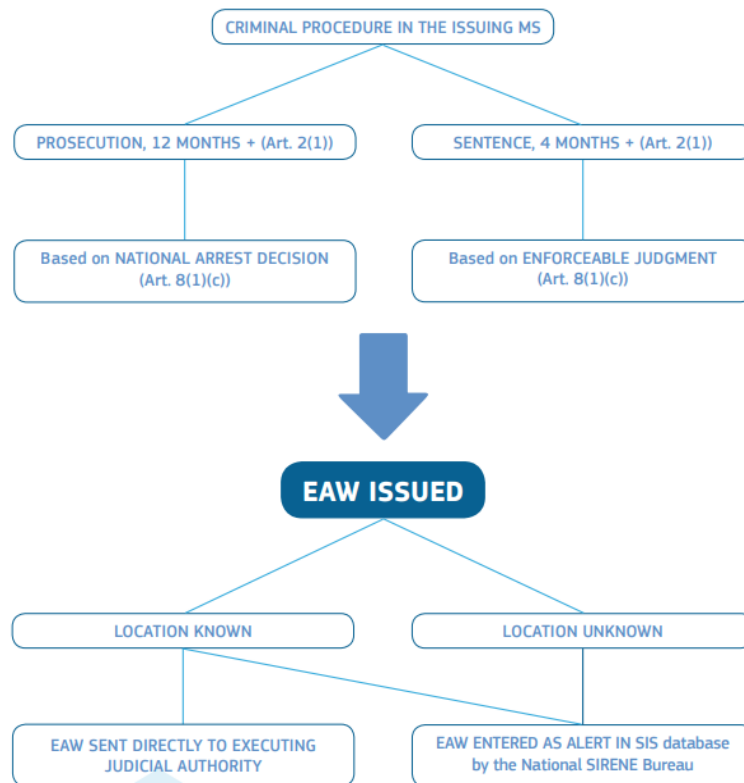


**European arrest warrant**  
To arrest and transfer people in the context of prosecution or sentence execution.

**European freezing order**  
To take measures by a judicial authority in a Member State to prevent the destruction, transformation, displacement, etc., of property

**European investigation order**  
To execute investigative measures to gather or use evidence in criminal matters in another Member State

## ISSUING A EUROPEAN ARREST WARRANT



### Who is a judicial authority and what is a judicial decision?

A request is made by a judicial authority in one EU Member State to arrest a person in another and surrender them for prosecution, or to execute a custodial sentence or detention order issued in the requesting Member State. The system is based on the principle of mutual recognition of judicial decisions. It functions via direct contacts between judicial authorities.

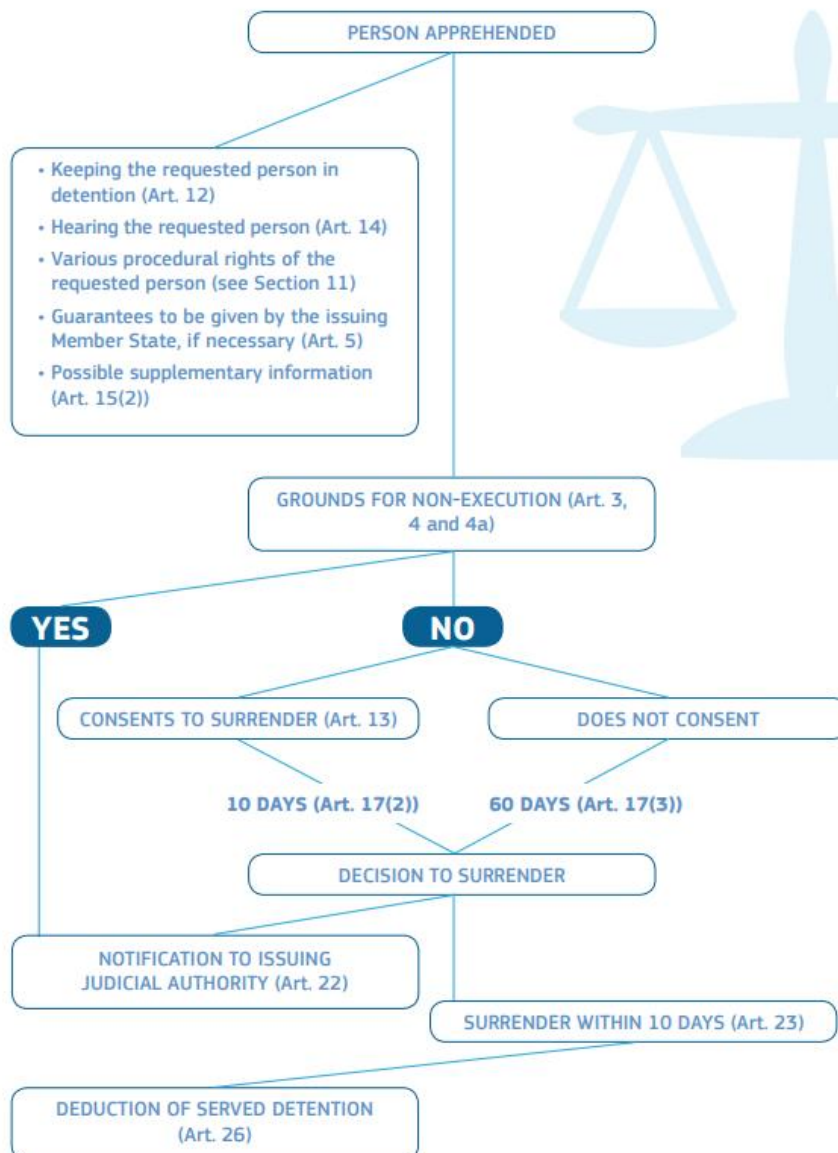
In [Poltorak \(C-452/16\)](#), the CJEU found that the term judicial authority is not limited to judges or courts but must be interpreted more broadly as referring to the Member State authorities that administer criminal justice. The CJEU, however, concluded that the term excludes police services.

In [Kovalkovas \(C-477/16\)](#), the CJEU found that a judicial authority cannot be interpreted as covering an organ of the executive of a Member State, such as a ministry.

In [Özçelik \(C-453/16 PPU\)](#), the Court concluded that a confirmation by the public prosecutor's office of a national arrest warrant that was issued by the police, and on which the EAW is based, is covered by the term 'judicial decision'.

More definitions of the terms related to the European Arrest Warrant can be found in the document on EAW legal vocabulary.

## EXECUTING A EUROPEAN ARREST WARRANT



### **The fundamental rights of the requested person**

The CJEU stressed that the fundamental rights of the requested person must always be respected. In [Aranyosi and Căldăraru \(Joined Cases C-404/15 and C-659/15 PPU\)](#), the CJEU stated that if the judicial authority of the executing State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing State, it must assess the existence of that risk. If the existence of that risk cannot be discounted within a reasonable period, the executing State must decide whether the surrender procedure should be ended.

This must be done in accordance with a specific procedure outlined in the judgment. The EAW Handbook guides through the stages of this procedure.

### **The right to legal representation**

With regard specifically to EAW proceedings, according to Article 11 of the EAW Framework Decision, a requested person has the right to be assisted by a legal counsel in EAW proceedings in accordance with the national law of the executing Member State. [Directive 2013/48/EU](#) on the right of access to a lawyer, which

applies to both criminal and EAW proceedings, includes more detailed standards on the right of access to a lawyer. Requested persons have the right of access to a lawyer in the executing Member State, at such a time and in such a manner as to allow them to exercise their rights under the EAW Framework Decision.

The requested person also has the right of access to a lawyer in the issuing Member State (so-called dual legal representation). The role of the lawyer in the issuing Member State is to assist the lawyer in the executing Member State by providing them with information and advice with a view to the effective exercise of the rights of requested persons under the EAW Framework Decision.

Where the requested person wishes to exercise this right and does not already have a lawyer in the issuing Member State, the executing Member State should promptly inform the competent authority in the issuing Member State, which in turn, without undue delay, should provide the requested person with information to help them in appointing a lawyer there.

The executing Member State must ensure that the requested person has the right to legal aid during the entirety of the EAW proceedings. The issuing State in turn must provide legal aid to a requested person who is subject to an EAW for the purpose of criminal prosecution, where it is necessary to ensure effective access to justice. Both states may, however, subject legal aid to a means test to determine whether the person has sufficient resources to pay for legal assistance themselves. The particular needs of vulnerable persons must be taken into account both in guaranteeing the right of access to a lawyer and in the provision of legal aid.

### Two-step assessment of the EAW

In its case law, the CJEU developed the two-step examination that the executing judicial authority is required to perform before taking a decision on the execution of an EAW. The CJEU has held that both steps of the examination must be assessed and that a refusal to execute an EAW requires that both steps be met [[Puig Gordi and Others \(C-158/21\)](#)]:

1. Systemic or generalised deficiencies or deficiencies affecting an objectively identifiable group of persons to which the requested person belongs;
2. Specific and precise analysis of the individual situation of the requested person.

### Refusal grounds

The CJEU has repeatedly held that the executing judicial authority may only refuse to execute an EAW in the exhaustively listed cases of mandatory non-execution, as laid down in Article 3 of the EAW Framework Decision, or of optional non-execution, as laid down in Articles 4 and 4a of the EAW Framework Decision. Despite the exhaustive nature of the list of refusal grounds, the CJEU's case-law has revealed that there are other exceptional circumstances where the executing authorities should refrain from executing EAWs, for instance in the context of the validity of the EAW [[Bob-Dogi \(C-241/15\)](#)] or in case of human rights issues [[Aranyosi and Căldăraru \(Joined Cases C-404/15 and C-659/15 PPU\)](#)].

### Double criminality (*ne bis in idem* principle)

In relation to the principle of *ne bis in idem*, the CJEU has clarified that the term 'same acts' is an autonomous concept of EU law and that this term has the same meaning in the context of Article 54 of the [Convention Implementing the Schengen Agreement \(CISA\)](#) and in Article 3(2) and Article 4(5) of the EAW Framework Decision [[Mantello, X \(Mandat d'arrêt européen – Ne bis in idem\)](#), [Juan \(C-261/09\)](#)]. The principle of *ne bis in idem* applies only where the facts at issue are identical.

There must be a set of concrete circumstances stemming from events which are, in essence, the same, in that they involve the same perpetrator and are inextricably linked together in time and space, irrespective of the legal classification given to them or the legal interest protected ([X \(European arrest warrant – Ne bis in idem\)](#), [Juan](#)). To establish the existence of the 'same acts', it is not necessary to take account of a classification of the offences in question under the law of the executing Member State, such as a 'continuing criminal offence' ([Juan](#)).

### **Link to the EAW Handbook**

[2023 Handbook on how to issue and execute a European arrest warrant | European Commission \(europa.eu\)](#)  
(Published on 17 September 2023).



## **Legal Vocabulary: European Arrest Warrant**

amnesty	A fixed period of time during which people are not punished for committing a particular crime; a decision by a government that allows political prisoners to go free.
arrest	The apprehension of/To apprehend a person suspected of criminal activities.
arrest for extradition purposes	Arrest of a criminal suspect or sentenced person following the issuing of an extradition request under the European Arrest Warrant (EAW) system for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order, whereby the requested person is arrested by a Member State and handed over to a third country, or vice versa.
arrest warrant	An official document signed by a judicial authority giving law enforcement permission to arrest a person with a view to his or her appearance before a court for the purpose of conducting criminal proceedings.
armed robbery	Aggravated form of theft that involves the use of a lethal weapon to perpetrate violence or the threat of violence (intimidation) against a victim.
arson	The crime of intentionally starting a fire to damage or destroy something.
community service	Unpaid work, intended to be of social use, that an offender is required to do instead of going to prison.
community sentence	A sentence that consists of or includes a community order or a youth rehabilitation order. The sentence will benefit the community and is usually for less serious crimes.
consent	Agreement by choice, by one who has the freedom and capacity to make that choice.
consent order	Voluntary agreement of the subject of a European Arrest Warrant to his or her

	being surrendered to the issuing state of the European Arrest Warrant.
corruption	The improper influencing of public servants and other persons in a position of trust.
counterfeiting currency	Making a copy of a currency note or of a protected coin without lawful authority or excuse.
detention order	Order involving deprivation of liberty which has been made by a criminal court in addition to or instead of a prison sentence.
European Arrest Warrant	Judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
European Supervision Order	Judicial decision issued by a competent authority of a Member State in respect of a non-resident suspect of the purpose of the return of that person to his Member State of residence under the condition that he complies with supervision measures, in order to ensure the due course of justice and, in particular, to ensure that the person will be available to stand trial in the issuing Member State
executing authority	The judicial authority of the executing Member State which is competent to execute the European Arrest Warrant by virtue of the law of that State (Article 6(2) EAW Framework Decision).
execution	The completion of the formalities necessary for a written document to become legally valid.
extortion	The act of obtaining something of value by using threats, force, or abuse of authority.
extradition	The surrender by one state to another of a person accused or convicted of committing an offence in the territorial jurisdiction of the latter, which being competent to try and punish them demands their surrender.

fraud	A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed—that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury.
grievous bodily harm	When a person intentionally or recklessly assaults another, thereby causing actual bodily harm. In deciding whether injuries are grievous, an assessment must be made of, amongst other things, the effect of the harm on the particular individual. The words ‘grievous bodily harm’ relate to their ordinary meaning of ‘really serious’ harm.
hostage-taking	The act of capturing somebody and holding them prisoner, usually threatening to injure or kill them if people do not meet certain demands.
hijacking	Someone on board an aircraft in flight unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act
illegal restraint	A felony offence that occurs when someone, without legal authority, detains another person. Any action that prevents an individual from having freedom of movement can form the basis for conviction.
illicit trade in human organs and tissue	The term ‘trafficking in organs’ groups together a whole range of illegal activities that aim to commercialise human organs and tissues for the purpose of transplantation. It encompasses the trafficking of persons with the intent to remove their organs (THBOR); transplant tourism where patients travel abroad seeking an (illegal) transplant with a paid donor; and trafficking in organs, tissues and cells (OTC), which refers to commercial transactions with human body parts that have been removed from living or deceased persons.
illicit trafficking in narcotic drugs and psychotropic substances	An international term that includes many offences involving narcotic drugs and

	psychotropic substances such as their production, cultivation, import, smuggling and promotion.
issuing authority	The state authority that is competent to issue a European Arrest Warrant.
judicial authority	<p>The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European Arrest Warrant by virtue of the law of that State (Article 6(1) EAW Framework Decision).</p> <p>The CJEU has ruled that the term ‘judicial authority’, contained in Article 6(1) EAW Framework Decision, is not limited to designating only the judges or courts of a Member State. It may also extend, more broadly, to the authorities participating in the administration of criminal justice in the legal system concerned, as distinct from ministries or police services that are part of the executive.</p>
judicial decision	Decisions of the Member State authorities that administer criminal justice.
kidnapping	Taking a person away, without their consent, by means of force, threats, or fraud.
laundering of the proceeds of crime	Legitimising money from organised or other crime by paying it through normal business channels.
minor	A child under the age of 18.
murder	The crime of intentionally killing a person.
nationality	The state of being a citizen or subject of a particular country.
offence	A crime.
racketeering	Obtaining or extorting money illegally or carrying on illegal business activities, usually by organised crime.
rape	The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
requested person	Person subject to a European Arrest Warrant

sabotage	The intentional and deliberate destruction of property or the obstruction of an activity.
sentence	Any order made by a court when dealing with an offender in respect of their offence, including imprisonment (which may take the form of a concurrent sentence or suspended sentence), a fine, a community order, or an absolute or conditional discharge.
statute-barred	No longer legally enforceable owing to a prescribed period of limitation having lapsed.
subsequent extradition	Five different possibilities of when this can occur: <ol style="list-style-type: none"> <li>1. Two or more EAWs against the same person for prosecution of the same offence(s).</li> <li>2. Two or more EAWs against the same person for prosecution of different offences</li> <li>3. Two or more EAWs against the same person of which one (or more) EAW(s) for prosecution and one (or more) EAW(s) for the execution of a custodial sentence or a detention order in relation to different offences.</li> <li>4. Two or more EAWs against the same person for the execution of two (or more) custodial sentences or detention orders in relation to different offences.</li> <li>5. One or more EAW(s) and one (or more) request(s) for extradition.</li> </ol>
surrender to custody	To give oneself into the custody of the court or police at an appointed time and place.
surrender decision	The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.
swindling	To get money dishonestly from someone by deceiving or cheating them.

third country	A country that is not a member of the European Union as well as a country or territory whose citizens do not enjoy the European Union right to free movement, as defined in Article 2(5) of Regulation (EU) 2016/399 (Schengen Borders Code).
trafficking in human beings	An offence to arrange or facilitate the travel of another person with a view to exploitation, whether or not the person consents to this travel.
terrorism	The use or threat of violence for political, religious or ideological ends.
unlawful seizure of aircraft/ships	Any person who on board an aircraft/ship in flight: (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or (b) is an accomplice of a person who performs or attempts to perform any such act.