



Training Package

Court staff and bailiffs' legal training
in European civil and criminal law



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Guide to the training package on “Court staff and bailiffs’ legal training in European civil and criminal law”

The training package was

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I. How to use the training package

The following guide aims to provide a manual for partner institutions on how to use the training package and how to customise their national legal seminars according to their own needs.

The training package is composed of 7 modules:

- I. Mutual Legal Assistance (MLA)
- II. The European Arrest Warrant (EAW)
- III. The European Investigation Order (EIO)
- IV. Mutual recognition I (CFD 2008/909/JHA)
- V. Mutual recognition II (CFD 2009/829/JHA)
- VI. Mutual recognition III (CFD 2008/947/JHA)
- VII. Freezing and confiscation

Trainers are free to customise the order of the module for the national seminar as well as to decide what to emphasise in specific modules relevant to the audience and the arrangement of modules overall. All material has been formatted in the same way and is composed of the following parts:

- Cover page
- Handout (**Part A**)
- Notes regarding the handout (**Part B**)
- Methodology of the training (**Part C**)
- Solutions to the cases and exercises (**Part D**)
- Detailed step-by step solutions (**Annex**) – for 3 of the materials

Part A Only cases and exercises, easy to hand out before/at the beginning of the seminar

Part B Information regarding the cases and exercises in Part A, mostly about customising the cases to the legal system of the host country

Part C Detailed methodology of the particular module; the main goals, and the detailed, suggested training schedule (compiled below for easier transparency)

Part D contains the detailed solutions for the cases and exercises in Part A

Important to note! – Changes in the cases will have consequences for the solutions, the methodology stays the same

Additionally, three of the material packages have an **Annex**, which contains detailed, step-by-step, screen-capped solutions to the problems, which might be shown to participants, if needs be.

II. How to use the slides?

There are slides prepared by the two experts that can be used to explain a specific topic. They have been formatted to fit a uniform template so trainers can expand on the slides provided. Background pictures can be found in the package. We recommend duplicating existing slides and overwriting the text on the duplicate to preserve the positioning of the text.

III. How to create the programme for the national seminar?

The length of the seminar is 1.5 days. Each module's length is around half a day (approximately 3.5 - 4 hours).

The package contains a programme template which already has the backgrounds inserted and contains the word boxes fitted to it. The template also contains a filled in sample training schedule.

IMPORTANT:

The filled in schedule is just an example of what the final programme should look like! The actual programme is to be determined by the trainer, regarding the selection or order of the modules, the length of breaks or the order of specific segments inside a given module.

The order of modules below follows the order in which the training package was presented to the national experts by Mr Motoi and Mr Klip (andre.klip@maastrichtuniversity.nl).

The Modules

Hereunder are all of the modules broken down into steps and given a recommended timeframe.

Module I: Mutual Legal Assistance (MLA)

1. Presentation by the speaker (**approximately 15-20 minutes**)
 - The presentation is part of the training package, but can be customised
2. Solving the introductory scenarios (**approximately 30 minutes**):
 - **Main Goal:** the trainer should guide participants to see the relationship between the following legal instruments:
 - Directive 2014/41/EU (European Investigation Order); Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union; 1959 European Convention on Mutual Assistance in Criminal Matters + its protocols
 - Participants should be divided into 4-6 groups of 5-8 people; Each group should have at least one computer/laptop with internet access
3. Solving the Case scenario (**approximately 2 hours and 20 minutes**)
 - **Main Goal:** providing a deeper analysis of MLA and the 1959 Convention and practicing filling out Letters of Requests (LoRs)
4. Discussion, answering the questions of the participants (**approximately 5-20 minutes**)

Module II: The European Arrest Warrant (EAW)

1. Presentation by the speaker (**approximately 15-20 minutes**)
 - Presentation is part of the package – Sending out a questionnaire for the participants in advance is recommended, focusing on their knowledge on Council Framework Decision 2002/584/JHA. Results should be implemented into the presentation.
2. Solving Case scenario 1 (**approximately 1 hour and 40 minutes**)
 - **Main Goal:** participants should learn to use the websites of EJN, Eurlax and the Court of Justice of the EU
 - Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access
3. Solving the exercises (**approximately 10 minutes**)
 - Can be skipped or given as homework in order to focus on the case studies more
4. Solving case scenario 2 (**approximately 40-45 minutes**)
 - Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access
5. Discussion, answering the questions of the participants (**approximately 5-20 minutes**)

Module III: The European Investigation Order (EIO)

1. Presentation by the speaker (**approximately 20 minutes**)
 - The presentation is part of the training package, but can be customised
 - It is important to introduce participants to the following documents:
 - Competent authorities, languages accepted, urgent matters and scope of the EIO Directive (Updated 07 August 2019) and Guidelines on the European Investigation Order forms
2. Solving Case scenario 1 (**approximately 20 minutes**)
 - **Main Goal:** introducing Directive 2014/41/EU and practicing the use of the EIJN website
 - Participants should be divided into groups of 5-8 people; Each group should have at least one computer/laptop with internet access
3. Solving exercises (**approximately 15 minutes**)
4. Solving case scenario 2 (**approximately 2 hours**)
 - Participants should be divided into 4-6 groups of 5-8 people; Each group should have at least one computer/laptop with internet access
 - Groups should previously download the editable EIO form from the EIJN website
 - After questions 1-3, half of the groups should fill the EIO regarding the house search, and the other half regarding the hearing by videoconference
 - After that, groups should exchange forms, so that they have a different kind of form, to the one they filled, and then they should discuss, if the form they received meets the requirements (**approximately 10 minutes**)
5. Discussion, answering the questions of the participants (**approximately 5-20 minutes**)

Module IV: Mutual recognition I.: Transfer of Execution of Judgements

1. Answering the introductory questions (**approximately 10-15 minutes**):
2. Presentation by the speaker (**approximately 15-20 minutes**)
 - Presentation is part of the package – Sending out a questionnaire for the participants in advance is recommended, focusing on their knowledge on Council Framework Decision 2008/909/JHA. Results should be implemented into the presentation.
3. Solving Case scenario 1 (**approximately 1 hour 40 minutes**)
 - **Main Goal:** providing a deeper analysis of MLA and the 1959 Convention and practicing filling out Letters of Requests (LoRs)
 - Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access
4. Solving the exercises (**approximately 10 minutes**)
5. Solving case scenario 2 (**approximately 40-45 minutes**)

- Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access
6. Discussion, answering the questions of the participants (**approximately 5-20 minutes**)

Module V: Mutual recognition II.: The principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

1. Solving the Introductory scenario (**approximately 15-20 minutes**)
 - **Main Goal:** introducing Council Framework Decision 2009/829/JHA to the participants, and practicing the use of the EJM website
2. Presentation by the speaker (**approximately 15-20 minutes**)
 - The presentation is part of the training package, but can be customised
3. Solving exercises (**approximately 15 minutes**)
4. Solving the case scenario (**approximately 2 hours**)
 - The case scenario is the opportunity to better understand the application of the Council Framework Decision 2009/829/JHA
 - Participants should be divided into groups of 5-6 people; Each group should have at least one computer/laptop with internet access
5. Discussion, answering the questions of the participants (**approximately 5-20 minutes**)

Module VI: The principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

1. Presentation by the speaker (**approximately 15-20 minutes**)
 - **Main Goal:** Introducing Council Framework Decision 2008/947/JHA to the participants. The presentation is part of the training package, but can be customised, should the trainer see fit to do so.
2. Solving Case scenario 1 (**approximately 1 hour and 40 minutes**)
 - **Main Goal:** Participants will practice the use of the Council Framework Decision and get an inside of the regulation and of its principles. Participants should learn to use the resources available on the EJM website. Also, they will be able to identify some of the challenges the issuing or executing competent authority may face when requesting or executing the transfer of supervision and how to overcome them.
 - Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access.
3. Solving the exercises (**approximately 10 minutes**)
 - Can be skipped or given as homework in order to focus on the case studies more
4. Solving case scenario 2 (**approximately 40-45 minutes**)

- This case scenario will allow the participants to go deeper into understanding of the application of some of the provisions from the Council Framework Decision.
 - Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access.
5. Discussion, answering the questions of the participants (**approximately 5-20 minutes**)

Module VII: Freezing and confiscation

1. Presentation by the speaker (**approximately 15-20 minutes**)
- Presentation is part of the package – Sending out a questionnaire for the participants in advance is recommended, focusing on their knowledge on Council Framework Decision 2003/577/JHA, 2006/783/JHA and Regulation (EU) 2018/1805. Results should be implemented into the presentation.
2. Solving Case scenario 1 (**approximately 1 hour and 40 minutes**)
- **Main Goal:** learn to use the websites of EJN, Eurlex and the CJEU
 - Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access
3. Solving the exercises (**approximately 10 minutes**)
- Can be skipped or given as homework in order to focus on the case studies more
4. Solving case scenario 2 (**approximately 40-45 minutes**)
- Participants should be divided into groups of 4-5 people; Each group should have at least one computer/laptop with internet access
5. Discussion, answering the questions of the participants (**approximately 5-20 minutes**)

Court staff and bailiffs' legal training in European civil and criminal law

Mutual Legal Assistance in Criminal Matters



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Content:

- The concept of Mutual Legal Assistance (MLA)
- Relationship between legal instruments for judicial cooperation in criminal matters
- Administrative details: transmission channels, forms
- Execution of the MLA - Time limits
- Special provisions for hearings by videoconference and telephone conference

The concept of Mutual Legal Assistance (MLA)

- The main instruments based on the **principle of mutual legal assistance** include the **1959 Convention** and its protocols, supplemented by the **Schengen Agreement** and the **2000 Convention** and its protocol
- The mutual assistance instruments and their protocols cover **mutual assistance in general** but also contain **rules on specific forms of mutual assistance** *such as the interception of telecommunications or the use of videoconferencing*
- Mechanism based on **mutual assistance** between the requesting and the requested competent authorities
- **Grounds for refusal** (article 2 of the 1959 Convention) - the request concerns an offence which the requested party considers a political offence, an offence connected with a political offence, or a fiscal offence **or** if the requested party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country
- **Double criminality** normally requested when executing the LoR
- Different provisions on **locus regit actum** (*1959 Convention*) and **forum regit actum** (*2000 Convention*) regarding the execution of the LoR

Relationship between legal instruments for judicial cooperation in criminal matters

- **Identify the legal instrument applicable** to the two MS involved in the judicial cooperation process
- Pay particular attention to **the sequence of the legal instruments** and **their scope of application**, as they replace or supplement other legal instruments in relation to MS – *e.g. Directive 2014/41/EU regarding EIO is applicable as of 22.05.2017 for all MS with the exception of Denmark and Ireland (related only to taking on evidence)*
- The relationship with other legal instruments is usually mentioned at the beginning or in the final provisions of the legal instrument in question – *e.g. article 34 of the Directive 2014/41/EU regarding the EIO, article 1 of the 2000 Convention*
- Verify **the table of the ratifications** for each legal instruments (the legal instrument is **only** applicable if ratified by the two states involved). Of course, there are declarations and reservations made....verify them too because they are important to know how the MLA will be executed by the Requested State!!!
- The full list of the Conventions (signatures, ratifications, declarations and more) is available on the **Treaty office of the CoE's website** -> <https://www.coe.int/en/web/conventions/full-list>
- For the 2000 Convention and its protocol check the **EJN website** -> <https://www.ejn-crimjust.europa.eu/ejn/#>

Relationship with other legal instruments for judicial cooperation in criminal matters – cont.

WWW.COE.INT HUMAN RIGHTS DEMOCRACY RULE OF LAW EXPLORE English Connect Q

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Treaty Office

Home About **Full list** Signatures and Ratifications Searches Partial Agreements Translations Templates Notifications Contact

Complete list of the Council of Europe's treaties

Status as of 09/09/2020

No.	Title	Opening of the treaty	Entry into Force	E.	N.	U.
223	Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data	10/10/2018		E.	N.	
222	Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons	22/11/2017		E.	N.	
221	Council of Europe Convention on Offences relating to Cultural Property	19/05/2017		E.	N.	
220	Council of Europe Convention on Cinematographic Co-Production (revised)	30/01/2017	01/10/2017	E.	N.	U.
219	Protocol amending the European Landscape Convention	01/08/2016		E.		
218	Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events	03/07/2016	01/11/2017	E.	N.	

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European Judicial Network (EJN)
Réseau Judiciaire Européen (RJE)

Home

Info about national systems **EU Legal Instruments for Judicial Cooperation** Status of implementation in the Member States of EU legal instruments Cooperation with non-EU countries and judicial networks

Convention of 29 May 2000 on **Mutual Assistance in Criminal Matters** between the Member States of the European Union

Council Framework Decision 2002/465/JHA on 13 June 2002 on **joint investigation teams (JIT)**

Council Framework Decision 2002/584/JHA of 13 June 2002 on the **European Arrest Warrant** and the surrender procedures between Member States

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

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of **orders freezing property or evidence**

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to **financial penalties**

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to **confiscation orders**

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**

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**

Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of **exchange of information extracted from the criminal record**

12/05/2020 - EJN
The EJN holds a **videoconference meeting ...**

On May 7th 2020, under the Croatian Pres...

Member states

AT	BE	BG
HR	CY	CZ
DK	EE	FI
FR	DE	GR
HU	IE	IT
LV	LT	LU
MT	NL	PL
PT	RO	SK
SI	ES	SE

Candidate countries

Administrative details: transmission channels, forms

Transmission channels

- Requests for mutual legal assistance shall, as a general rule, be transmitted **directly** between the competent judicial authorities of the Requesting and Requested State (article 6 para. 1 of the 2000 Convention).
- Exceptions – e.g. article 6 para. 3 of the 2000 Convention for UK and Ireland (Central Authority)
- Article 4 of the Second Additional protocol to the 1959 Convention (**MoJ to MoJ**) => exception para.2 which allows direct contact between judicial authorities
- By any means capable of producing a **written record**

Forms

- **No mandatory form to use for cooperation provided in the legal instruments for MLA**
- Minimum requirements for the content of the request
- An LoR form is provided on the EJN website (Compendium) in all EU languages

<https://www.ejn-crimjust.europa.eu/ejn/CompendiumChooseCountry/EN>

LoR form



European Judicial Network (EJN)
Réseau Judiciaire Européen (RJE)

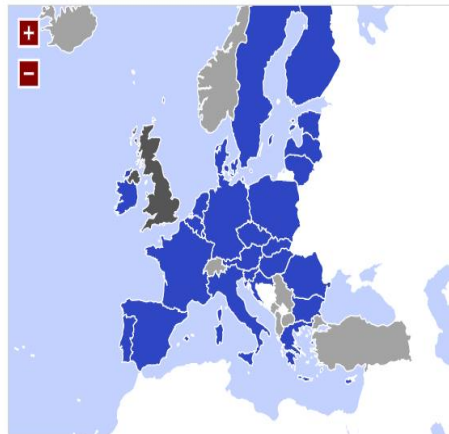
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Compendium

 Compendium User Manual

FOR THE EU MEMBER STATES:

Select on the map the requested/executing Member State or choose it from the list below and draft a mutual legal assistance request or a judicial decision giving effect to the principle of mutual recognition.



Member states

AT	BE	BG
HR	CY	CZ
DK	EE	FI
FR	DE	GR
HU	IE	IT
LV	LT	LU
MT	NL	PL
PT	RO	SK
SI	ES	SE

Third Countries

UK

Or select from the list of countries:

The designations employed and the presentation of material on the map do not imply the expression of any opinion whatsoever on the part of the European Union concerning the legal status of any country, territory or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Create an MLA request

Country: Denmark (DK) (Select another country).

Measure: Witnesses, victims, suspects - Summoning and hearing
Hearing witnesses: by video conference (703) (Select another measure).

Select the matter of crime: All other matters (Select another option).

Legal instrument: Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (Ratification details).

Actions:

Model request for mutual legal assistance

Requesting authority	<input type="button" value="Click to Show Content"/>
Requested authority <input type="button" value="Get Requested authority"/>	<input type="button" value="Click to Show Content"/>
Requested measure(s)	<input type="button" value="Click to Show Content"/>
Persons concerned	<input type="button" value="Click to Show Content"/>
Urgency / Confidentiality	<input type="button" value="Click to Show Content"/>
Legal basis of the request	<input type="button" value="Click to Show Content"/>
Facts and legal qualification	<input type="button" value="Click to Show Content"/>
Special formalities required under the law of the requesting state	<input type="button" value="Click to Show Content"/>
Other authorities involved	<input type="button" value="Click to Show Content"/>
Specific information needed in case of request for hearings by videoconference	<input type="button" value="Click to Show Content"/>
Annexes	<input type="button" value="Click to Show Content"/>
Signature / Official stamp	<input type="button" value="Click to Show Content"/>

Execution of the MLA – Time limits

- The requested party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting party and to afford each other the widest measure of mutual assistance (articles 1 & 3 of the 1959 Convention) – **locus regit actum**
- The 2000 Convention shifted the balance, and so the authorities of the requested state shall comply with the formalities and procedures indicated by the authorities of the requesting state provided that they **are not contrary to fundamental principles of law in the requested state** or where **the Convention itself expressly states that the execution of requests is governed by the law of the requested Member State** (article 4 of the 2000 Convention) – **forum regit actum**
- As a general rule, the requests shall be executed **as soon as possible** and if possible, **within the deadlines indicated** by the requesting authority
- If it is foreseeable that the deadline set by the requesting state for executing its request cannot be met the authorities of the requested state *shall promptly indicate the estimated time needed for execution of the request*

Special provisions for hearings by videoconference and telephone conference

- *Hearing by videoconference => article 9 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (08.11.2001)*
- *Hearing by telephone conference => article 10 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*
- *Hearing by videoconference => article 10 of the 2000 Convention*
- *Hearing by telephone conference => article 11 of the 2000 Convention*

Special provisions for hearing by videoconference and telephone conference – cont.

- ✓ The person is in one Member State's territory and has to be heard by the judicial authorities of another Member State. It is not desirable or possible for the person to be heard or to appear in the territory of the requesting MS in person
- ✓ The requested Member State **shall agree** to the hearing by videoconference provided that the use of the videoconference **is not contrary to the fundamental principles of its law**
- ✓ **Measures for the protection of the person** to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States
- ✓ The hearing shall be conducted directly by, or under the direction of, the judicial authority of **the requesting party in accordance with its own laws**
- ✓ The judicial authority of the requested Member State **shall draw up minutes** indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place, and the document **shall be forwarded** by the competent authority of the requested Member State to the competent authority of the requesting Member State

Mutual Legal Assistance in Criminal Matters

Set of Case Studies – Guide for Trainers

Written by:

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Mutual Legal Assistance in Criminal Matters

A. I. Introductory scenarios:

1. A Spanish judicial authority wants to hear a witness who is Denmark, via videoconference. *Which legal instrument should it use?*
2. A Bulgarian judicial authority wants to hear a witness who is Ireland, via telephone conference. *Which legal instruments should it use?*
3. A German judicial authority wants to hear an expert who is in Greece, via videoconference. *Which legal instruments should it use?*
4. A French judicial authority wants to hear an expert who is Romania, via telephone conference. *Which legal instruments should it use?*
5. A Croatian judicial authority wants to summon an accused person in Denmark. *Which legal instrument should it use?*
6. An Irish judicial authority wants to summon a witness in Greece. *Which legal instrument should it use?*
7. A Romanian judicial authority wants to hear by videoconference a witness in Georgia. *Which legal instrument should it use?*
8. A Bulgarian judicial authority wants to summon a witness in Norway. *Which legal instrument should it use?*
9. A German judicial authority wants to hear a witness in Switzerland via videoconference. *Which legal instrument should it use?*
10. A Romanian judicial authority wants to hear a witness in UK via videoconference. *Which legal instrument should it use?*
11. A Spanish judicial authority wants to summon a witness in UK. *Which legal instrument should it use?*

A. II. Case scenario:

The Prosecutor's Office attached to the Court of First Instance Arad is investigating 3 thefts committed between 20.12.2019 and 24.02.2020 in the Western part of the country (case file no. 5440/P/2019). The thefts were committed in different parking stops on the highway A3 and merchandise was stolen from trucks during the night by 2 suspects. During the investigation, the Romanian prosecutor identified a truck driver from Denmark who was witness to one theft. Also, based on the recordings taken from two parking stops, the Romanian authorities have managed to identify the two suspects. One of the suspects is an Irish citizen and based on the information received by the police authorities he is living in Ireland. The other suspect is C.C., a Romanian citizen (born on 23.12.1978), living at 9 May Street, Arad, Arad county.

Now the Romanian prosecutor needs to hear, via videoconference, the witness A.B. (born on 14.01.1960) who is currently living in Langelandsgade Street, Aarhus, Denmark and doesn't want to come to Romania to be heard. After this, the Romanian prosecutor will hear, via videoconference, the Irish suspect, J.H. (born on 15.10.1966) living on Henry Street, Dublin, Ireland who refuses to appear in its territory in person to be heard.

Questions:

- 1. Which is the legal instrument applicable in order to hear the witness A.B. by videoconference? If is not possible to hear the witness by videoconference, can the witness be heard by telephone conference?*
- 2. Is it possible to hear the suspect J.H. by videoconference?*
- 3. Identify the requested competent authorities in Denmark and Ireland and the channels of transmission that need to be used.*
- 4. Which form for the LoR is to be used by the requesting judicial authority when asking for the hearing by videoconference or by telephone conference?*
- 5. Fill in the LoRs necessary for hearing the witness and the suspect.*
- 6. Are there any time limits for the execution of the MLAs by the requested competent authorities?*
- 7. Which rules and requirements will apply to the hearing of the witness or suspect?*

Part B. Additional notes for the trainers regarding the cases

A. II. Case scenario:

- The requesting competent authority will be changed and replaced by a competent authority from the MS where the seminar is taking place, except for Greece, Denmark and Ireland.
- A city from the country where the seminar is taking place will be chosen after changing. Also, the suspect C.C. will be a citizen of the same country where the seminar is taken place (an address from this country will be chosen).

Part C. Methodology

I. General idea and core topics

The idea of this training material is to make the court staff from the Member States familiar with the legal instruments for judicial cooperation available at European level with a view to gathering evidence from abroad.

Very often, court staff find themselves in difficulty trying to identify and use the appropriate legal instrument for judicial cooperation in criminal matters.

After identifying the legal instrument applicable, court staff are involved in administrative tasks ranging from filling in the form requested by the legal instrument, identifying the competent authority to send it to, translation of the form, requesting or sending additional information regarding judicial cooperation.

For these reasons, the following main aspects will be covered within the seminars:

- ✓ The key features of the MLA process with focus on the hearing by videoconference and telephone conference of witnesses and suspects.
- ✓ The relationship between the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol, the 1959 European Convention on Mutual Assistance in Criminal Matters and its protocols and Directive/41/EU regarding the gathering of evidence from abroad.
- ✓ Familiarisation with the content of an LoR and learning how to complete one.

- ✓ Familiarisation with the rules and requirements applicable to the hearing of witnesses and suspects by videoconference and telephone conference as provided for in the different relevant legal instruments.
- ✓ Different administrative details such as how should an issuing authority proceed in a particular situation, where an issuing authority can find an electronic LoR, where the issuing authority can find the competent authority from the executing Member State where the request needs to be addressed to fulfil everything demanded to be properly addressed.

II. Working groups and structure of the seminar

The seminar will start with a **presentation .ppt (15 – 20 minutes)** in which the trainer will explain some key features of the mutual legal assistance process (relationship between MLA and mutual recognition legal instruments, how to identify the legal instruments, transmission channels, forms, execution, time limits) briefly pointing out the provisions regarding hearings by videoconference and telephone conference from the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters¹.

The seminar will continue with the introductory scenarios, which are the opportunity for the participants to identify different instruments for judicial cooperation in order to gather evidence with the cooperation of another Member State.

The participants will be divided into 4-6 groups of 5-8 people and each group will have a laptop/computer with an Internet connection.

The **introductory scenarios** will help participants better understand the relationship between the legal instruments for judicial cooperation in criminal matters, as sometimes this may look complicated.

The trainer will guide the participants to recognise the relationship between Directive/41² of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union³ and the 1959 European Convention on Mutual Assistance in Criminal Matters and its protocols⁴.

Solving the introductory scenarios should take around **30 minutes**. A **10-minute break** will be taken at this point.

¹ Strasbourg, 8.XI.2001

² OJ L 130, 1.5.2014, p. 1–36

³ 2000/C 197/01

⁴ Strasbourg, 20.IV.1959

The **case scenario** is the opportunity to go deeper into understanding the MLA system and the difference to mutual recognition legal instruments, applying provisions from the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 1959 European Convention on Mutual Assistance in Criminal Matters and its protocols.

By answering the questions, the participants will be able to identify the competent authorities involved in the MLA process, understand the channels for transmission of the LoR, applicability of time limits, and the rules and requirements applicable for the hearing of witnesses and suspects by videoconference.

The participants will also fill in LoRs for hearing a witness and/or a suspect by MLA. For this, 2-3 groups will fill in the LoR for hearing the suspect and the other 2-3 groups will fill in the LoR for hearing the witness.

The participants will access the EJN's website [in the section Compendium](#). Here the participants will be able to fill in an LoR online and then save and print them. The completed LoRs will later be checked with the trainer.

Solving the case scenario should take around **2 hours and 20 minutes**.

Any remaining questions should be discussed in plenary (**approx. 5-10 minutes**).

The organisers should try to form groups of participants with a similar level of experience in working with the MLA legal instruments.

III. Additional requirements

Participants will have access to the European Convention of 20 April 1959 on mutual assistance in criminal matters and its protocols ([The Treaty Office from the CoE's website](#)), the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union and Directive/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters ([EJN's website](#)).

Part D. Solutions

A. I. Introductory scenarios:

In order to identify the legal instrument applicable in a particular case it is important to establish whether it is a request for an investigative measure in order to obtain evidence in criminal matters.

Obtaining evidence in criminal matters in the ambit of the EU can be done in two ways: using *the legal instruments based on the principle of mutual assistance* or *the legal instruments based on the principle of mutual recognition*.

In this, the most important task for the judicial authority is identifying the legal instrument applicable to the two MS involved in the future judicial cooperation process. Doing this, it will allow the requesting judicial authority to observe the requirements provided in it to achieve a good outcome for its request.

Identifying the legal instrument applicable by the issuing judicial authority is not a question of choosing one particular legal instrument. The applicable legal instrument will be the one in force at the moment when the judicial authority asks for the judicial assistance from an authority within another MS.

For this, the issuing authority will have to pay particular attention to the sequence of the legal instruments, **as they replace or supplement other legal instruments in relation to MS** (the relation with other legal instruments is usually mentioned at the beginning or in the final provisions of the legal instrument in question – e.g. Article 34 of Directive/41/EU regarding the EIO, Article 1 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union).

- ✓ For example, **if the Directive on the European Investigation Order is applicable**, the issuing judicial authority will have to fill in an EIO and follow the procedure mentioned in Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.
- ✓ **If Directive 2014/41/EU is not applicable to a MS**, then the issuing judicial authority will have to recourse to the conventional mutual legal assistance contained in legal instruments such as: the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959, as well as its two additional protocols, and the bilateral agreements concluded pursuant to Article 26 thereof, the Convention implementing the Schengen Agreement and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol.

Before identifying the solutions to our scenarios, it must be recalled that Directive/41/EU regarding the European Investigation Order in criminal matters is the legal instrument in force after 22 May 2017 within the European Union with some exceptions (some MS are not taking part and are not bound by this legal instrument).

As provided in the Recitals (44) and (45) of Directive 2014/41/EU regarding the European Investigation Order, in accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TFEU and the TFEU, and without prejudice to Article 4 of that Protocol, **Ireland** *is not taking part in the adoption of this Directive and is not bound by it or subject to its application*. Also, in accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the TEU and the TFEU, **Denmark** *is not taking part in the adoption of this Directive and is not bound by it or subject to its application*.

As mentioned in Article 34 para 1 of Directive 2014/41/EU, the European Investigation Order in criminal matters replaced conventional mutual legal assistance with a cooperation mechanism based on mutual recognition as regards, in particular, obtaining evidence. In this way the MS shall apply the Directive regarding EIO to the detriment of the other legal instruments available regarding the gathering of evidence, and this is not a question of option for the issuing judicial authority.

Although, according to Article 34 para 3 of the Directive regarding EIO, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after 22 May 2017, this can be done only insofar as these make it possible to further strengthen the aims of the Directive and contribute to simplifying or further facilitating the procedures for gathering evidence and provided that the level of safeguards set out in this Directive is respected.

Hearings by videoconference or other audiovisual transmission and hearings by telephone conference are provided for in different legal instruments such as:

- Article 24 and 25 of Directive 2014/41/EU regarding the European Investigation Order in criminal matters,
- Article 10 and 11 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters among the Member States of the European Union,
- Article 9 and 10 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1959 Convention).

Provisions on **summonings** we encounter in the 2000 Convention (Article 5) but also in the 1959 Convention (Article 7) and in the Second Additional Protocol to the 1959 Convention.



Identifying the legal instrument applicable for points 1-11) will determine the rules, forms and requirements to be followed by both MS involved in the judicial cooperation.

1.A Spanish judicial authority wants to hear, by videoconference, a witness who is Denmark. Which legal instrument should it use?

Type – investigative measure



Spain has transposed Directive 2014/41 regarding EIO, but **Denmark** is not taking part and is not bound by this legal instrument according to Recital (45) of the same Directive.

The status of implementation of Directive 2014/41/EU regarding EIO can be found on the EJN’s website – www.ejn-crimjust.europa.eu in the section EU Legal Instruments for Judicial Cooperation. Further in the table, there is the section [Status of implementation of the Directive](#) where we could verify if a country had transposed the Directive regarding EIO.

 Denmark	✘ -	-	-	Denmark is not bound by the Directive 2014/41/EU. As it cannot opt-in to this directive, it will not transpose it.
 Spain	✔ 2 Jul 2018	Notification from Spain related to EPPD	Law 3/2018 of 11 of June, transposing the Directive on the European Investigation Order	Useful tools and information for the practical application of the European Investigation Order (EIO) directive

This means that we need to identify an instrument on mutual legal assistance applicable to both MS. In our case for Denmark and Spain the **Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union** is applicable (the hearing of videoconference of a witness is provided in Article 10 of the 2000 Convention) because it has been signed, ratified and is in force in both countries.

The table of the ratification details of **Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union** is [available on the EJN’s website](#).

 Denmark	23 Aug 2005	Declaration	
 Spain	23 Aug 2005	Declaration	

Article 10 of the 2000 Convention is designed to serve as a basis for and facilitate the use of this procedure to overcome difficulties that can arise in criminal cases when a person is in one MS and attendance at a hearing in a second MS is not desirable or possible. This article applies generally to hearings of experts and witnesses, but may, under the certain conditions contained in paragraph 9, also be applied to hearings of accused persons.

Still, the Spanish judicial authority needs to verify the **Declaration** made by Denmark in relation to the application of some of the provisions from the 2000 Convention. As seen below, the declaration made by Denmark only concerns the non-application of Article 10 to the hearing by videoconference of the accused person, which is not our case. So, the 2000 Convention is applicable for let. a).


Croatia			
 Cyprus	1 Feb 2006	Declaration	Adhésion/Accession
 Czech Republic	12 Jun 2006	Declaration	Adhésion/Accession
 Denmark	23 Aug 2005	Declaration	
 Estonia	23 Aug 2005	Declaration	Adhésion/Accession
 Finland	23 Aug 2005	Declaration	
 France	23 Aug 2005	Declaration	
 Germany	2 Feb 2006	Declaration	

administrative authorities on the other side, see Article 9(7). 5. In relation to Article 9(6), Denmark declares that it will require the consent referred to in Article 9(3) before agreement is reached on the temporary transfer of a person held in custody under Article 9(1). 4. In relation to Article 10(9), Denmark declares that it will not agree to requests for the hearing of an accused person by videoconferencing. 5. In relation to Article 14(4), Denmark declares that it is not bound by Article 14 on covert investigations.

2. A Bulgarian judicial authority wants to hear by telephone conference a witness who is in Ireland. Which legal instrument should it use?

Type – investigative measure

Checking again the status of implementation we see that **Bulgaria** has transposed Directive 2014/41 regarding EIO but **Ireland** is not taking part and is not bound by this legal instrument according to Recital (44) of the same Directive.

 Ireland	✘	-	-	-	Ireland is not bound by the Directive 2014/41/EU, as it did not take part in the adoption of this Directive; however, the issue of opting in remains under consideration.
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 Bulgaria	✓ 23 Feb 2018	Notification of the transposition of Directive 2014/41/EU on European Investigation Order in criminal matters by Bulgaria Notification from the Republic of Bulgaria in accordance with Article 105 (3) of Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ("the EPPO")	European Investigation Order Law – Official publication: State Gazette /Държавен вестник/; Number: 16; Publication date: 2018-02-20	Useful tools and information for the practical application of the European Investigation Order (EIO) directive
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This means that we need to identify an instrument on mutual legal assistance applicable to both MS. In our case for Bulgaria and Ireland, the [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) is applicable (the hearing of videoconference of a witness is provided in Article 11 of the 2000 Convention) because it has been signed, ratified and it is in force in both countries. The 2000 Convention is in force in Ireland as of 23 August 2020.

Article 11 of the 2000 Convention sets out the arrangements to apply between the Member States in respect of requests relating to hearings by telephone conference. Different from the hearing by videoconference provided in art. 10 of the 2000 Convention, according to Article 11(2), a hearing by telephone conference may be conducted only if the witness or expert agrees thereto. The requested MS shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law. At last, this provision is not applicable to hearing of an accused person, unlike art. 10 para 9 of the 2000 Convention.

 Bulgaria	1 Dec 2007	Declaration	Adhésion/Accession
 Ireland	23 Aug 2020	Declaration	

Still, the Bulgarian judicial authority needs to verify the **Declaration** made by Ireland in relation to the application of some of the provisions from the 2000 Convention. Verifying the declarations made by Ireland we note that none of them concerns the application of Article 11 of the 2000 Convention. So again, the 2000 Convention is applicable for let. b).

Germany	2 Feb 2000	Declaration	
Greece			
Hungary	23 Nov 2005	Declaration	Adhésion/Accession
Ireland	23 Aug 2020	Declaration	
Italy	22 Feb 2018	Declaration / Reservation	
Latvia	23 Aug 2005	Declaration	Adhésion/Accession
Lithuania	23 Aug 2005	Declaration	Adhésion/Accession
Luxembourg	6 Mar 2011	Declaration	
Malta	3 Jul 2008	Declaration	Adhésion/Accession
Netherlands	23 Aug 2005	Declaration	
Poland	26 Oct 2005	Declaration/Reservation	Adhésion/Accession

3. A German judicial authority wants to hear, by videoconference, an expert who is in Greece. Which legal instrument should it use?

Type – investigative measure

Checking the status of the implementation of Directive 2014/41 on EIO indicated above we note that both **Germany** and **Greece** have transposed the Directive which means that this legal instrument is applicable between the two MS and in particular the provisions from Article 24 of the Directive.

Germany	✓ 22 May 2017	Notification of the transposition of Directive 2014/41/EU by Germany Amendment to the Notification of the transposition of Directive 2014/41/EU by Germany	German Law transposing the Directive on the European Investigation Order. Act of 05/01/2017, Federal Gazette – Bundesgesetzblatt 2017 I, 31 - Viertes Gesetz zur Änderung des Gesetzes über die internationale Rechtshilfe in Strafsachen	Useful tools and information for the practical application of the European Investigation Order (EIO) directive
Greece	✓ 21 Sep 2017	Notification of the transposition of Directive 2014/41/EU on European Investigation Order in criminal matters by Greece	Law 4489/2017	Useful tools and information for the practical application of the European Investigation Order (EIO) directive

In this case an EIO will be issued and sent by the German competent judicial authority to the executing competent judicial authority from Greece.

4. A French judicial authority wants to hear, by telephone conference, an expert who is Romania. Which legal instrument should it use?

Type – investigative measure

Checking again the status of implementation of Directive 2014/41 on EIO indicated above we note that both **France** and **Romania** have transposed the Directive which means that this legal instrument is applicable between the two MS and in particular the provisions from Article 24 of the Directive.

Romania	✓ 17 Dec 2017	Notification from Romania concerning the Directive 2014/41/EU regarding the European Investigation Order in criminal matters	Law no. 236/2017 on amending and supplementing Law no. 302/2004 on international judicial cooperation in criminal matters, published in the Official Journal of Romania (Monitorul Oficial al României) no. 993/14 December 2017.	Useful tools and information for the practical application of the European Investigation Order (EIO) directive
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 France	 22 May 2017	Notification from the French authorities concerning Directive 2014/41/EU regarding the European Investigation Order Notification from the French authorities concerning Directive 2014/41/EU regarding the European Investigation Order, Art. 34, 3 and 4	II de l'article 118 de la Loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale Official publication: Journal Officiel de la République Française (JORF); Publication date: 2016-06-04 Ordonnance n° 2016-1636 du 1er décembre 2016 relative à la décision d'enquête européenne en matière pénale Official publication: Journal Officiel de la République Française (JORF); Publication date: 2016-12-02 Décret n° 2017-511 du 7 avril 2017 relatif à la décision d'enquête européenne en matière pénale Official publication: Journal Officiel de la République Française (JORF); Publication date: 2017-04-09	Useful tools and information for the practical application of the European Investigation Order (EIO) directive
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In this case an EIO will be issued and sent by the French competent judicial authority to the executing competent judicial authority from Romania.

5. A Croatian judicial authority wants to summon an accused person in Denmark. Which legal instrument should it use?

Type – not an investigative measure

The first thing to notice here is that this not an investigative measure requested by the Croatian judicial authority, which means that it is outside the scope of application of Directive 2014/41 on EIO. So, we do not need to check the status of implementation of the Directive.

We need to identify an instrument on mutual legal assistance applicable to both MS. As members of the European Union, we check first if the 2000 Convention (*Article 5 provides the sending and service of procedural documents*) is in force in both MS. For this we check the table of ratifications indicated above for the 2000 Convention. We see that for **Denmark** the 2000 Convention is in force but that this is not the case for **Croatia**.

 Croatia			
 Cyprus	1 Feb 2006	Declaration	Adhésion/Accession
 Czech Republic	12 Jun 2006	Declaration	Adhésion/Accession
 Denmark	23 Aug 2005	Declaration	
 Estonia	23 Aug 2005	Declaration	Adhésion/Accession

We need to identify other instrument on mutual legal assistance that could apply to both MS. Article 7 of the European Convention on Mutual Assistance in Criminal Matters (1959 Convention) provides for the service of writs and records

This means that we need to identify an instrument on mutual legal assistance applicable to both MS. As members of the European Union, we check first if the 2000 Convention (*Article 5 provides the sending and service of procedural documents*) is in force in both MS. For this we check the table of ratifications indicated above. We see that for **Ireland** the 2000 Convention is in force which is not the case for **Greece**.

 Germany	2 Feb 2006	Declaration	
 Greece			
 Hungary	23 Nov 2005	Declaration	Adhésion/Accession
 Ireland	23 Aug 2020	Declaration	
 Italy	22 Feb 2018	Declaration / Reservation	

This means that we need to identify another instrument on mutual legal assistance that could apply to both MS. Article 7 of the European Convention on Mutual Assistance in Criminal Matters (1959 Convention) provides for the service of writs and records of judicial verdicts – Appearance of witnesses, experts and prosecuted persons. We need to verify whether this legal instrument is in force in both MS.

As mentioned at let. e) we go to the Treaty Office of the Council of Europe’s website and check for the signatures and ratifications of the 1959 Convention.

We see below that the 1959 Convention is in force in both MS. Still, the Irish judicial authority needs to verify the Reservations (R) made by Greece in relation to the application of some of the provisions of the 1959 Convention. Checking the Reservations made by Greece we note that none of them concerns the application of Article 7 of the 1959 Convention.

Germany	20/04/1959	02/10/1976	01/01/1977		D.	A.	I.		
Greece	20/04/1959	23/02/1962	<u>12/06/1962</u>	R.					
Hungary	19/11/1991	13/07/1993	11/10/1993		R.	D.	A.		
Iceland	27/09/1982	20/06/1984	<u>18/09/1984</u>		R.	D.	A.		
Ireland	15/10/1996	28/11/1996	26/02/1997		R.	D.	A.		O.
Italy	20/04/1959	23/08/1961	12/06/1962		D.	A.			

7. A Romanian judicial authority wants to hear by videoconference a witness in Georgia. Which legal instrument shall it use?

Type –investigative measure

Although an investigative measure, the Directive 2014/41 on EIO is not applicable, because Georgia is not a member of the European Union. So, we need to draw our attention again to the Treaty Office – Council of Europe’s website.

Hearing by videoconference of a witness is provided in Article 9 of [the Second Additional Protocol to the 1959 Convention \(Treaty no. 182 - Strasbourg, 08/11/2001\)](#). We see that this Second Additional Protocol is in force both in **Romania** and **Georgia**, so this protocol is the legal instrument for the MLA between the two countries.

France	08/11/2001	06/02/2012	01/06/2012		R.	D.	A.	I.		
Georgia	25/03/2013	10/01/2014	01/05/2014		R.	D.	A.			
Germany	08/11/2001	20/02/2015	01/06/2015		R.	D.	A.			
Republic of Moldova	13/03/2012	08/08/2013	01/12/2013		R.	D.	A.			
Romania	08/11/2001	29/11/2004	01/03/2005			D.	A.			
Russian Federation	01/12/2017	16/09/2019	01/01/2020		R.	D.	A.			

Now, the Romanian judicial authority needs to verify the Reservations (R) and Declarations (D) made by Georgia in relation to the application of some of the provisions from the Second Additional Protocol to the 1959 Convention. Checking them we note that none concerns the application of Article 9 of the Second Additional Protocol to the 1959 Convention.

8. A Bulgarian judicial authority wants to summon a witness in Norway. Which legal instrument should it use?

Type – not an investigative measure

The first thing to see is that Directive 2014/41 on EIO is not applicable for this particular case.

Next, although Norway is not a member of the European Union, some provisions from the 2000 Convention are still applicable in relation to Norway and Iceland with the EU according to the [Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto](#).

1. Subject to the provisions of this Agreement, the content of the following provisions of the Convention of 29 May 2000, established by the Council of the European Union in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, hereinafter referred to as 'the EU Mutual Assistance Convention', shall be applicable in the relations between the Republic of Iceland and the Kingdom of Norway and in the mutual relations between each of these States and the Member States of the European Union:

Articles 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25 and 26, as well as Articles 1 and 24 to the extent that they are relevant for any of those other Articles.

We note that Article 5 concerning the sending of procedural documents is not mentioned in Article 1 para 2 of the Agreement abovementioned, which means that the 2000 Convention will not be the legal instrument for MLA between the two countries.

We recall that Article 7 of the 1959 Convention concerns the sending of procedural documents so we will turn our attention to it. We see that the 1959 Convention is in force in both countries. Now, the Bulgarian judicial authority needs to verify the Reservations (R) and Declarations (D) made by Norway in relation to the application of some of the provisions of the 1959 Convention.

Bosnia and Herzegovina	30/04/2004	25/04/2005	24/07/2005							
Bulgaria	30/09/1993	17/06/1994	<u>15/09/1994</u>	R.	D.	A.				
Croatia	07/05/1999	07/05/1999	05/08/1999		D.	A.				
North Macedonia	28/07/1999	28/07/1999	26/10/1999							
Norway	21/04/1961	14/03/1962	<u>12/06/1962</u>	R.	D.	A.				
Poland	09/05/1994	19/03/1996	17/06/1996		D.	A.				

Below are the Reservations and Declarations made by Norway to the 1959 Convention concerning the application of Article 7 (in which manner, deadline for sending the summon for an accused person).



Reservation made at the time of signature of Convention on 21 April 1961 and confirmed at the time of deposit of the instrument of ratification on 14 March 1962 - Or. Engl.

A request for service of writs etc., otherwise than by the informal handing over of the document to the person in question, can always be refused.

Period covered: 12/06/1962 -

Articles concerned : 7



Norway

Amendment of a declaration contained in a letter from the Minister of Foreign Affairs of Norway, dated 4 September 2002, registered at the Secretariat General on 30 September 2002 - Or. Engl

The Government of Norway replaces the declaration made in respect of Article 26, paragraph 4, of the Convention, with the following wording : "The Agreement of 26 April 1974 between Norway, Denmark, Iceland, Finland and Sweden on mutual assistance shall apply."

Note by the Secretariat :

The initial declaration, made at the time of signature of Convention on 21 April 1961 and confirmed at the time of deposit of the instrument of ratification on 14 March 1962, read as follows : "The Protocol of 26 June 1957 between Norway, Denmark and Sweden on reciprocal assistance in legal matters shall remain in force. "

Period covered: 30/09/2002 -

Articles concerned : 26

Declaration made at the time of signature of Convention on 21 April 1961 and confirmed at the time of deposit of the instrument of ratification on 14 March 1962 - Or. Engl.

A summons which is to be served on an accused person who is staying in Norway must be transmitted to the competent Norwegian authority at least 30 days prior to the date set for his appearance in court.

Period covered: 12/06/1962 -

Articles concerned : 7

9. A German judicial authority wants to hear, by videoconference, a witness in Switzerland. Which legal instrument should it use?

Type – investigative measure

Again, the first thing to see is that Directive 2014/41 on EIO is not applicable for this case.

Secondly the 2000 Convention is not also applicable.

Hearing a witness by videoconference is provided for in Article 9 of the Second Additional Protocol to the 1959 Convention (Treaty no. 182 - Strasbourg, 08/11/2001). The link is provided below:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/182>

We see that this Protocol is in force both in **Germany** and **Switzerland**, so this protocol is the legal instrument for the MLA between the two countries.

Georgia	25/03/2013	10/01/2014	01/05/2014		R.	D.	A.					
<u>Germany</u>	08/11/2001	20/02/2015	<u>01/06/2015</u>		R.	D.	A.					
Greece	08/11/2001											O.
Sweden	08/11/2001	20/01/2014	01/05/2014		R.	D.	A.					
<u>Switzerland</u>	15/02/2002	04/10/2004	<u>01/02/2005</u>			D.	A.					
Turkey	22/03/2016	11/07/2016	01/11/2016		R.	D.						

Now, the German judicial authority needs to verify the Declarations (D) made by Switzerland in relation to the application of some of the provisions from the

Second Additional Protocol to the 1959 Convention. Checking them we note that none of them concerns the application of Article 9 of the Second Additional Protocol to the 1959 Convention.



Declaration contained in the instrument of ratification deposited on 4 October 2004 - Or. Fr.

Switzerland declares that the Federal Office of Justice of the Federal Department of Justice and Police in Bern is the central competent authority, under Article 4 (and 15 of the Convention), to address and to receive:

- requests for mutual assistance, except if the request is directly submitted to the competent authority of the requested State according to Article 4, paragraphs 1, 3 and 4;
- requests for temporary transfer of persons detained according to Article 4, paragraph 2;
- requests for extracts from judicial records according to Article 4, paragraph 5.

Whenever, in case of urgency, a request for mutual assistance is directly submitted to the competent authority of the requested State, a copy of the request and of the reply must be communicated to the Federal Office of Justice.

To contact the Federal Office of Justice and to determine the territorially competent Swiss judicial authority to which requests for mutual assistance can be addressed directly, the databank of Swiss Localities and Courts can be consulted on line at the following address: <http://www.elorge.admin.ch>

Period covered: 01/02/2005 -

Articles concerned : 4

Declaration contained in the instrument of ratification deposited on 4 October 2004 - Or. Fr.

Switzerland requires that the personal data transferred by it to another Party for the purposes indicated in Article 26, paragraph 1, letters a and b, cannot be used without the consent of the person concerned except with the agreement of the Federal Office of Justice for the purposes of procedures for which Switzerland could have, according to the terms of the Convention or the Protocol, refused or limited the transmission or the use of personal data.

Period covered: 01/02/2005 -

Articles concerned : 26

10. A Romanian judicial authority wants to hear a witness in UK via videoconference. Which legal instrument should it use?

Type –investigative measure

As we know, since the United Kingdom’s withdrawal from the EU on 31 January 2020, it can no longer accept EIOs in order to obtain evidence located in the UK but also it is impossible for UK competent authorities to obtain evidence located in EU member states for use in UK criminal investigations or proceedings.

The 2000 Convention and related Protocol on Mutual Assistance in Criminal Matters also will no longer apply to the UK.

We see that Second Additional Protocol to the 1959 Convention is in force both for **Romania** and **UK**, so this protocol is the legal instrument for the MLA between the two countries.

Therefore, in our case article 9 of the Second Additional Protocol to the 1959 Convention is applicable.

Republic of Moldova	13/03/2012	08/08/2013	01/12/2013		R.	D.	A.						
Romania	08/11/2001	29/11/2004	01/03/2005			D.	A.						
San Marino													

Türkiye	22/03/2016	11/07/2016	01/11/2016		R.	D.			
Ukraine	08/11/2001	14/09/2011	01/01/2012		R.	D.	A.		
United Kingdom	08/11/2001	30/06/2010	01/10/2010		R.	D.	A.		

According to the reservations made by UK to the Second Additional Protocol to the 1959 Convention, using the hearing by videoconference is not allowed to the accused person, which is not the case here.

Declaration contained in a letter from the Secretary of State for Foreign and Commonwealth Office of the United Kingdom, dated 10 April 2019, registered at the Secretariat General on 10 May 2019 - Or. Engl.

In accordance with Article 9, paragraph 9, of the Second Additional Protocol, the Government of the United Kingdom declares that it will not allow video conferencing to be used where the witness in question is the accused person or the suspect and the hearing is, or forms part of, the trial of that person.

Period covered: 10/05/2019

Articles concerned: 9

11. A Spanish judicial authority wants to summon a witness in UK. Which legal instrument should it use?

Type – not an investigative measure

As mentioned, the 2000 Convention and related Protocol on Mutual Assistance in Criminal Matters also will no longer apply to the UK.

According to the article 16 para 1 of the Second Additional Protocol to the 1959 Convention the competent judicial authorities of any Party may **directly** address, by post, procedural documents and judicial decisions, to persons who are in the territory of any other Party.

We see that this Second Additional Protocol is in force both for **Spain** and **UK**, so this protocol is the legal instrument for the MLA between the two countries.

Spain	09/10/2015	26/03/2018	01/07/2018			D.	A.	J.	
Sweden	08/11/2001	20/01/2014	01/05/2014		R.	D.	A.		
Switzerland	15/02/2002	04/10/2004	01/02/2005			D.	A.		
Türkiye	22/03/2016	11/07/2016	01/11/2016		R.	D.			
Ukraine	08/11/2001	14/09/2011	01/01/2012		R.	D.	A.		
United Kingdom	08/11/2001	30/06/2010	01/10/2010		R.	D.	A.		

According to the - **Guidelines for Authorities outside of the United Kingdom** (March 2022) - a request may be made also to the UK Central Authority or the Crown Office for the service of procedural documents (e.g. a summons or judgment) issued by a court or authority in the requesting state in relation to criminal proceedings. The central authority will serve the documents by post, or

personally by hand if requested. The UKCA will advise the requesting authority whether the document has been delivered or whether it was not possible to serve the document.

Key points to remember when identifying the legal instrument applicable in the judicial cooperation process:

- ✓ Establish for each case whether **it is an investigative measure involved or not** (see the relation between the MLA instruments and the EIO Directive).
- ✓ Always look for a legal instrument for judicial cooperation in criminal matters **in force** in the two countries involved in the MLA process.
- ✓ Always **check the countries that signed and ratified a Convention (or the Protocols)** and also **check the possible reservations and declarations made** by that requested State.
- ✓ **Check the status of implementation** for Council Framework Decisions or Directives for the MS of the European Union (see EJN's website).
- ✓ An issuing authority **will not use a legal instrument replaced by another one** just because it thinks that the old one was working faster or the process of cooperation was smoother. For example, an issuing authority can't use the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union instead of Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order, **in order to gather evidence** in a particular situation included by the Directive and by the 2000 Convention (for example - hearing a witness by videoconference).
- ✓ In this case, according to Article 34 para 1 of the Directive, the Directive is the legal instrument applicable as it **replaces, as from 22 May 2017, the corresponding provisions of 2000 Convention** in order to gather evidence (so, in our example abovementioned, Article 10 of the 2000 Convention has been replaced by the Article 24 of Directive 2014/41 on EIO). The 2000 Convention can't be seen as a multilateral agreement or arrangement, mentioned in Article 34 para 3 of the Directive, since the objective of the Directive was to replace it by a simpler and more effective system (**see case C-296/08 - Goicoechea – para 54 and 55 applicable *mutatis mutandis***).
- ✓ Denmark and Ireland are **not bound** by Directive 2014/41 on EIO.
- ✓ The 2000 Convention **is not in force** in Greece and Croatia.

A. II. Case scenario:

Solutions:

Q1. Which legal instrument is applicable in order to hear the witness A.B. by videoconference? If it is not possible to hear the witness by videoconference, can the witness be heard by telephone conference?

As explained in the Introductory scenarios, we see that **Romania** has transposed the Directive regarding EIO and that **Denmark** is not taking part and is not bound by this legal instrument according to Recital (45) of the same Directive. This means that the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union is applicable as it is in force in both MS.

The requirements for **hearing a witness by videoconference** are provided in Article 10 para 1-8 of the 2000 Convention unfortunately Denmark **hasn't made any declarations regarding the hearing by videoconference of the witnesses yet (see the declarations made by each state in the link provided below)**.

The declarations made by each MS regarding some of the provisions of the 2000 Convention [can be accessed on the EJN's website](#).

The declarations made by Denmark regarding provisions of the 2000 Convention [can be accessed here](#).

If, for different reasons, it is not possible to hear the witness by videoconference, the **hearing** can be done **by telephone conference** according to the requirements in Article 11 of the 2000 Convention. Different from the hearing by videoconference provided in art. 10 of the 2000 Convention, according to Article 11(2), a hearing by telephone conference may be conducted only if the witness or expert agrees thereto. The requested MS shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.

- ❖ *If the requesting competent authority is from Croatia, then Article 9 para 1-7 of the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 08/11/2001) will be applicable for the hearing of witness by video conference or by telephone conference, as Croatia has not signed the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and Denmark is not bound by Directive 2014/41 on EIO.*
- ❖ *If the requesting competent authority is from Greece, Article 9 para 1-7 and 10 of the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 08/11/2001) **will not be applicable** for the hearing of witness by*

videoconference or by telephone conference, as Greece has neither signed the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union nor the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters. In this situation only if a bilateral agreement between Greece and Denmark exists, providing possibility of hearing of a witness by videoconference or by telephone conference, then it will be possible such an investigative measure.

Q2. Is it possible to hear the suspect J.H. by videoconference?

As explained in the introductory case, **Romania** has transposed Directive 2014/41/EU regarding EIO, but **Ireland** is not taking part and is not bound by this legal instrument according to Recital (44) of the same Directive.

Both Romania and Ireland have signed and ratified the 2000 Convention, and the Convention is in force as of 23.08.2020 for Ireland. This means that the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union is applicable as both MS have signed and ratified it.

The requirements for **hearing of a suspect by videoconference** are provided in Article 10 para 9 of the 2000 Convention.

Since the position of an accused person differs substantially from that of a witness or expert, provision has also been made for the adoption by the Council of any rules that may be necessary for the purpose of ensuring that the rights of accused persons are adequately protected. The adoption of such rules is not, however, a pre-condition for the operation of paragraph 9.

Ireland hasn't made any declarations regarding the hearing of an accused person by videoconference (see the declarations made by each state in the link provided below) which means that it is possible such a hearing by videoconference.

In this case, according to article 10 para 9 of the 2000 Convention, the decision to hold the videoconference, and the manner in which the videoconference shall be carried out, shall be subject to agreement between the MS concerned, in accordance with their national law and relevant international instruments, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

The declarations made by each MS regarding some of the provisions of the 2000 Convention [can be accessed on the EJN's website](#).

The declarations made by Ireland regarding provisions of the 2000 Convention [can be accessed here](#).

- ❖ *If the requesting competent authority is from Croatia, then Article 9 para 8 of the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 08/11/2001) will be applicable for the hearing of a suspect by video conference, as Croatia has not signed the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and Ireland is not bound by Directive 2014/41 on EIO, and both countries signed and ratified the Second Additional Protocol to the 1959 Convention.*
- ❖ *If the requesting competent authority is from Greece, then Article 9 para 8 of the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 08/11/2001) will not be applicable for the hearing of a suspect by videoconference, as Greece has neither signed the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union nor the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters. In this situation only if a bilateral agreement between Greece and Denmark exists, providing the hearing of a suspect by videoconference, then it will be possible such an investigative measure.*

Q3. Identify the requested competent authorities in Denmark and Ireland and the channels of transmission that need to be used.

LoR => Romania (or other MS with the exception of Croatia and Greece) – Denmark

According to Article 6 para 1 of the 2000 Convention, requests for mutual assistance shall be made in writing, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity, and normally sent **directly** between judicial authorities with territorial competence for initiating and executing them, and shall be returned through the same channels unless otherwise specified.


The requested competent authority can be identify using the **Atlas** from the [EJN's website](#). We select the country – Denmark, the investigative measure needed – 703. Hearing witnesses: by video conference, then select *all other matters (it is not the case for serious economic infractions, money laundering)*, the legal instrument applicable – the 2000 Convention, and adding the city – Aarhus –

should give us the competent authority where the LoR should be send directly (see the steps below).

Info about national systems | EU Legal Instruments for Judicial Cooperation | Status of implementation in the Member States of EU legal instruments | Cooperation with non-EU countries and judicial networks


Denmark - Tools

- About EJN
- Introduction to the EJN Website
- EJN Secretariat
- EJN Meetings
- Projects
- Reports
- EJN Awareness
- Registry (EJN partially restricted area)
- COVID-19 and judicial cooperation in criminal matters
- European Arrest Warrant



Atlas

Find competent authority to receive your request for judicial cooperation



Compendium

Draft a request for judicial cooperation

Search Competent Authorities:

Country: Denmark (DK)  [\(Select another country\)](#)


Choose measure:

- 504. Interim measures in view of confiscation
- 505. Confiscation
- 601. Visit to and search of homes
- 602. Visit and search on the site of an offence
- 701. Summoning witnesses
- 702. Hearing witnesses: standard procedure
- 703. Hearing witnesses: by video conference
- 704. Hearing witnesses: by telephone
- 705. Hearing children
- 706. Hearing persons collaborating with the inquiry
- 707. Hearing victims/plaintiffs
- 708. Hearing experts
- 709. Summoning suspects/persons accused
- 710. Hearing suspects/persons accused: standard procedure

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[F\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on **15 March 2019** by Tools Correspondent

Search Competent Authorities:

Country: Denmark (DK) 

[\(Select another country\)](#)

Measure: **Witnesses, victims, suspects – Summoning and hearing**
Hearing witnesses: by video conference (703)

[\(Select another measure\)](#)

- Select the matter of crime Serious economic infractions, money laundering
(if the request concerns measures in criminal cases with regard to the following provisions in the danish criminal code:
- embezzlement
 - fraudulent conversion
 - fraud
 - fraudulent abuse of a persons position
 - extortion
 - fraudulent preference and conveyance
 - tax evasion of particular serious nature
 - other offences against property
 - violation of the danish tax legislation
 - eu-fraud

- and if there is a reason to believe that the violation is:
- of considerable proportions
 - committed in connection with organised crime
 - or otherwise of particular serious nature)

All other matters

Back

Next >

Search Authorities:

Search by locality involved in the measure

City/PC:

Aarhus

Search by competent authority

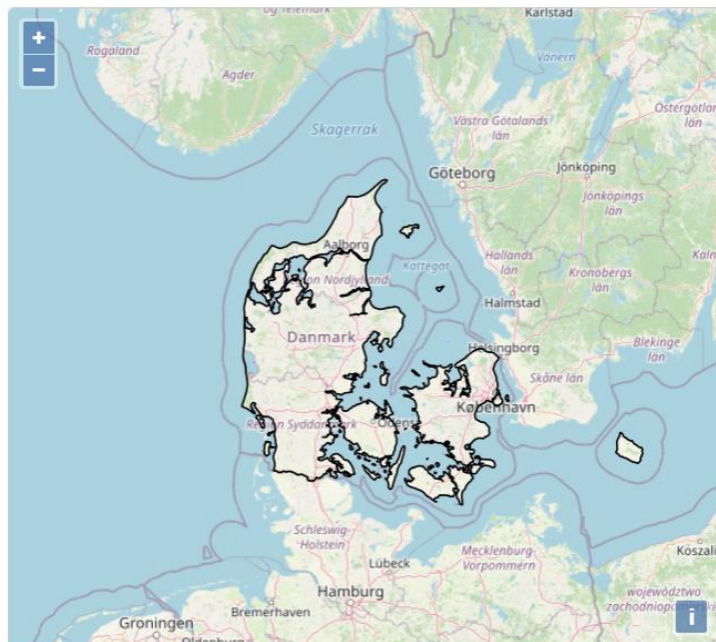
Name:

Address:

P. Code:

City:

Area: Choose...



If you want to access the Contact Point details, please login [here](#)

Back

Clear

Search Authorities

Search Competent Authorities:

Country: Denmark (DK)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Select the matter of crime: All other matters [\(Select another option\)](#)

Legal instrument: [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) [\(Ratification details\)](#)

Authority Type: Police District (Regional)

Resultant Competent Authority: Østjyllands Politi

General data | Videoconference | Areas | Properties | Associated CPs

Name: Østjyllands Politi

Address: Ridderstræde 1

Department (Division):

City: Aarhus C

Postal code: 8000

Phone number: 0045 87 31 14 48 Mobile phone:

Fax number: Email Address: ojyl@politi.dk

After sending the LoR to this competent authority, the requesting and requested authority will enter into contact in order to arrange all the technical details for this hearing.

In the case of Croatia Article 4 of the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters will be applicable, of course, if a more favorable bilateral agreement between the two countries doesn't exist (MoJ to MoJ channel).

LoR => Romania (or other MS with the exception of Greece and Croatia) – Ireland

According to Article 6 para 1 of the 2000 Convention, requests for mutual assistance shall be made in writing, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity and normally sent directly between judicial authorities with territorial competence for initiating and executing them, and shall be returned through the same channels unless otherwise specified.

Notwithstanding paragraph 1, the United Kingdom and **Ireland**, respectively, may, **when giving the notification provided for in Article 27(2), declare that**

requests and communications to it, as specified in the declaration, must be sent via its central authority. These Member States and the UK and Ireland may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them (Article 6 para 3 of the 2000 Convention).


Ireland made a declaration to this Article and so, **all incoming requests shall be sent to the Minister for Justice and Equality as the Central Authority (see below).**

In accordance with Article 6(3) of the Convention Ireland declares that requests for mutual assistance must be sent via the central authority designated by virtue of its declaration under Article 24(1)(b), namely the Minister for Justice and Equality.
















For this reason, the request for mutual assistance shall be addressed in writing by the Ministry of Justice of Romania (requesting authority) to the Ministry of Justice and Equality Ireland (as requested Central authority) and shall be returned through the same channels.


The screenshot shows the EJUSTICE website interface. At the top, there are four main navigation categories: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. Below these, the 'Ireland - Tools' section is highlighted with a red circle. To the right of the header is the Irish flag. A sidebar on the left contains a list of navigation items: 'About EJN', 'Introduction to the EJN Website', 'EJN Secretariat', 'EJN Meetings', 'Projects', 'Reports', 'EJN Awareness', 'Registry (EJN partially restricted area)', 'COVID-19 and judicial cooperation in criminal matters', and 'European Arrest Warrant'. The main content area features two tool cards. The first card, 'Atlas', includes an image of Earth and the text 'Find competent authority to receive your request for judicial cooperation'. The second card, 'Compendium', includes an image of hands writing on a document and the text 'Draft a request for judicial cooperation'. Both tool names, 'Atlas' and 'Compendium', are circled in red.

Search Competent Authorities:

Country: Ireland (IE)  [\(Select another country\)](#)

Choose measure:

- 707. Hearing victims/plaintiffs 
- 708. Hearing experts 
- 709. Summoning suspects/persons accused 
- 710. Hearing suspects/persons accused: standard procedure 
- 711. Hearing suspects/persons accused: by video conference 
- 712. Hearing suspects/persons accused: by telephone 
- 713. Confrontation 
- 801. Cross-border observation 
- 802. Cross-border hot pursuit 
- 803. Cross-border tracking (by placing a beeper on a vehicle or a person) 
- 804. Controlled deliveries 
- 805. Joint investigation teams 
- 901. European Arrest Warrant 
- 902. Enforcement of a Financial Penalty 
- 903. Enforcement of a Custodial Sentence 

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link  to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on **6 July 2016** by EJN Secretariat

Search Competent Authorities:

Country: Ireland (IE)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Legal instrument: [European Convention on mutual assistance in criminal matters, Strasbourg, 20 April 1959](#)

Authority Type: MLA Department of Justice, Equality and Law Reform The Central Authority for Mutual Assistance (Central)

Resultant Competent Authority:

Department of Justice and Law Reform, The Central Authority for Mutual Assistance and EAW

General data | Videoconference | Areas | Properties | Associated CPs

Name: Department of Justice and Law Reform, The Central Authority for Mutual Assistance and EAW

Address: 51 St Stephens Green Dublin 2

Department (Division):

City: Dublin 2

Postal code:

Phone number: (+353) 1- 408 6108 / 408 6107 Mobile phone:

Fax number: (+353) 1- 408 6117 Email Address: mutual@justice.ie

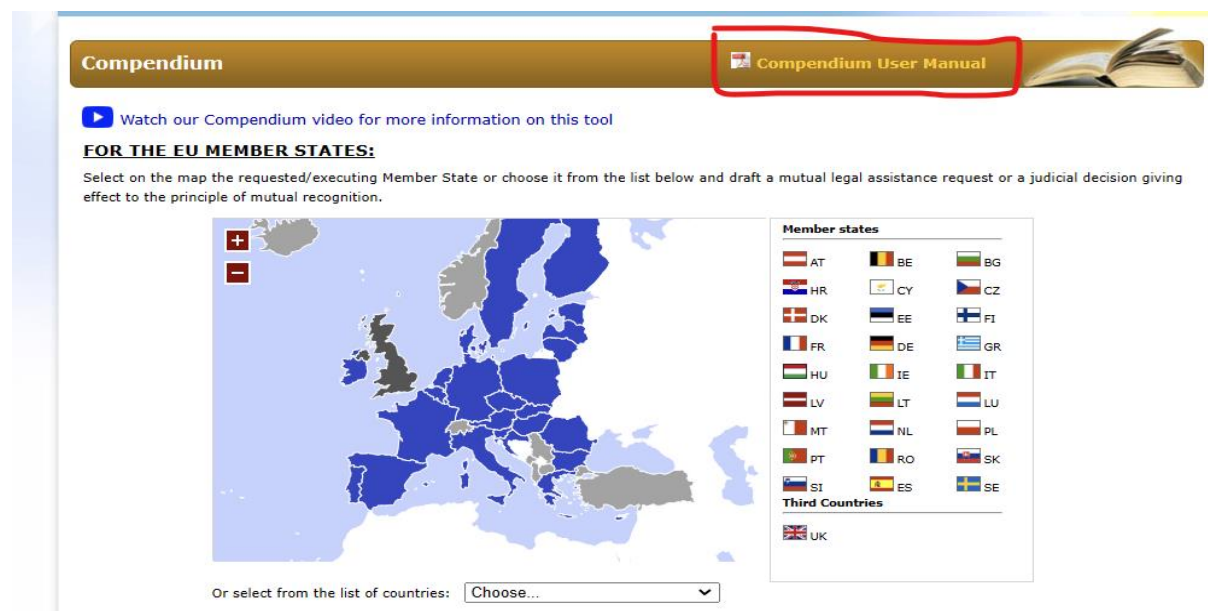
Q4. Which form for the LoR is to be used by the requesting judicial authority when asking for the hearing by videoconference or by telephone conference?

There is no specific form for the *LoR* which is to be sent by the requesting authority to the requested authority **neither in the 2000 Convention nor in the 1959 Convention and its additional protocols.**

Requesting authority have struggled to draft different forms of an LoR to be sent to the requested authority. And this is not an easy task!

For this reason, on the EJN website in the Section – **Compendium** –there is the possibility to draft an LoR depending on whether the requested authority is located in an EU Member State, Norway or a non-EU Member State.

A **Compendium User Manual** is [available on the same webpage](#).



Best practices:

- **If not using the form provided in the Compendium – DO NOT use short forms in which, for example, information regarding legal basis of the request, facts and qualification, special formalities is not provided!!**
- **DO NOT use closed envelopes attached to the LoR that are supposed to be communicated by the requested competent authority!! The requested competent authority needs to know (and sometimes even to translate) the content of the documents sent that need to be communicated.**
- **Send the LoR only in the language/languages accepted by the requested MS.**

Q5. Fill in the LoRs necessary for hearing the witness and the suspect.

The participants will have to fill in an LoR in order to hear a witness and/or a suspect by MLA.

Notes when filling in the LoRs for the hearing of witness and suspect:

- When filling in the request for mutual legal assistance in the section – **Requesting authority** - introduce all the details of a national judicial authority competent to investigate the offences provided in the case scenario **from the country where the seminar is taken place (!!! the requesting authority will only remain the same as in the case scenario if the seminar is taken place in Romania).**
- Section – **Requested authority** – will be filled in with the information from question c).
- Section – **Requested measure** – 703. Hearing witnesses: by video conference or 711. Hearing suspects/persons accused: by video conference depending on the LoR.
- Section – **Persons concerned** – please insert the details of the two suspects and witness (person 1, 2 and 3). Please add random details when missing from the ones provided in the case scenario.
- Section - **Urgency / Confidentiality** – fill in Yes or No depending on your national provision. In case you put Yes for either of the two boxes – the participants will indicate if there is a procedural deadline and the reasons for the urgency or confidentiality.
- Section – **Legal basis of the request** – depending on the LoR:
 - for the LoR - hearing the witness by video conference is the 2000 Convention (with the exception of Croatia where the legal basis is the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 08 November 2001),
 - for the LoR – hearing the suspect by videoconference is the 2000 Convention.

If there is a bilateral/multilateral treaty between your country and the requested country from the case scenario, the participants will indicate the treaty/convention/agreement or any other international instrument existing between the two countries.

- When filling the section - **Facts and qualification** – the participants will introduce the national provisions applicable for the facts described in the case scenario.
- When filling the section - **Special formalities required under the law of the requesting state** – the participants will introduce the formalities provided by the national law in relation to hearing the witnesses or the suspects (if applicable).
- In the section - **Other authorities involved** – the participants will fill in the authority/authorities provided by the national law (if applicable). The participants will specify the role of these authorities or if they request to assist to the execution of the request.
- In the section - **Specific information needed in case of request for hearings by videoconference** – the participants will fill in any information regarding their judicial authority or any fictional information (if not known) for the requesting authority and random information for the requested authority and pre-meeting information not known from the case provided.
- In the section **Annexes** – if filled in please mention the name of the annex.
- For the section - **Signature / Official stamp** – the participants will fill in a random name and position.

Q6. Are there any time limits for the execution of the MLAs by the requested competent authorities?

Different from Directive 2014/41/EU regarding the European Investigation Order in criminal matters where express time limits for recognition or execution (see Article 12) have been introduced, neither the 2000 Convention nor the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters provide such time limits for execution of an LoR.

As a general rule, the requests shall be executed as soon as possible and if possible, within the deadlines indicated by the issuing authority.

- **Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 Convention)**

Article 4 para 2 provides that the requested Member State shall execute the request for assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the requesting Member State.

If it is foreseeable that the deadline set by the requesting Member State for executing its request cannot be met the authorities of the requested Member State shall promptly indicate the estimated time needed for execution of the request. The authorities of the requesting Member State shall promptly indicate whether the request is to be upheld, nonetheless. The authorities of the requesting and requested Member States may subsequently agree on further action to be taken concerning the request (Article 4 para 4).

- **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

There are no time limits provided for the execution of an LoR in the Convention, which means that the requests are to be executed as soon as possible and, if possible, within the deadlines indicated by the issuing authority.

Q7. Which rules and requirements will apply to the hearing of the witness or suspect?

In order to ensure the admissibility of the evidence obtained, the authorities of the requested State shall comply with the formalities and procedures indicated by the authorities of the requesting State provided that they are not contrary to fundamental principles of law in the requested State.

- ***Hearing by videoconference of the witness => Article 10 of the 2000 Convention***

Conditions, rules and requirements applicable:

- ✓ The witness is in one Member State's territory and has to be heard by the judicial authorities of another Member State.
- ✓ It is not desirable or possible for the person to be heard to appear in the territory of the requesting MS in person.
- ✓ The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law.
- ✓ The judicial authority of the requested Member State shall summon the person concerned to appear in accordance with the forms laid down by its law.

- ✓ A judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State.
- ✓ If the judicial authority of the requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles.
- ✓ Measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States.
- ✓ The hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws.
- ✓ At the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary.
- ✓ The person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State.
- ✓ The judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place.
- ✓ The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.
- ✓ The cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State shall be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.

- *Hearing by videoconference of the witness => Article 9 para 1-7 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*

Conditions, rules and requirements applicable:

- ✓ The witness is in one Member State's territory and has to be heard by the judicial authorities of another Member State.
- ✓ It is not desirable or possible for the person to be heard to appear in the territory of the requesting MS in person.
- ✓ The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law.
- ✓ Requests for a hearing by video conference shall contain the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
- ✓ The judicial authority of the requested Party shall summon the person concerned to appear in accordance with the forms laid down by its law.
- ✓ A judicial authority of the requested Party shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Party.
- ✓ If the judicial authority of the requested Party is of the view that during the hearing the fundamental principles of the law of the requested Party are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
- ✓ Measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Parties
- ✓ The hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Party in accordance with its own laws.
- ✓ The judicial authority of the requested Party shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Party participating in the hearing, any oaths taken and the technical conditions under which the hearing took place.

- ✓ The document shall be forwarded by the competent authority of the requested Party to the competent authority of the requesting Party.
- *Hearing by videoconference of the suspect => Article 10 para 9 of the 2000 Convention*

Member States may at their discretion also apply the provisions of Article 10 of the 2000 Convention, where appropriate and with the agreement of their competent judicial authorities, **to hearings by videoconference involving an accused person**. In this case, the decision to hold the videoconference, and the manner in which the videoconference shall be carried out, **shall be subject to agreement** between the Member States concerned, in accordance with their national law and relevant international instruments, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

Any Member State may, when giving its notification pursuant to Article 27(2), declare that it will not apply the first subparagraph. Such a declaration may be withdrawn at any time. Hearings shall only be carried out **with the consent of the accused person**. Such rules as may prove to be necessary, with a view to the protection of the rights of accused persons, shall be adopted by the Council in a legally binding instrument.

Conditions, rules and requirements:

- ✓ The suspect is in one Member State's territory and has to be heard by the judicial authorities of another Member State.
- ✓ It is not desirable or possible for the person to be heard to appear in the territory of the requesting MS in person.
- ✓ The requested MS considers the hearing appropriate and has the agreement of its competent judicial authorities for the hearing.
- ✓ It must exist an agreement between the competent judicial authorities involved with regard to holding the videoconference.
- ✓ An agreement on the manner in which the videoconference shall be carried out should be reached by the Parties concerned.
- ✓ The consent of the suspect.

Court staff and bailiffs' legal training in European civil and criminal law

The European Arrest Warrant



Council Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States - Case 1 scenario

- The Head of Police of Heraklion, on behalf of the Public Prosecutor's Office at the Court of Appeal of Eastern Crete, issues an EAW to the Netherlands concerning a medical doctor of Dutch nationality (Dr Drion), living in Maastricht, who allegedly committed murder and sabotage. The facts of the murder relate to his assistance in putting an end to the life of the Greek national Karalis in Heraklion. On the specific request of Karalis, Drion injected him with a lethal substance, which caused his death a few minutes later. The facts of the sabotage relate to the destruction of the property of Aegean Airlines in Athens airport, resulting from the frustration of Dr Drion when he found out that he had missed his flight back to Maastricht.

Council Framework Decision 2002/584 on the European arrest warrant and the surrender procedures between Member States - Case 1 scenario – The questions

- 1. Is there an obligation for the Netherlands to surrender Dr Drion, and if so, under which conditions?
- 2. Would it make a difference if the offences had not occurred in Greece, but in the Netherlands?
- 3. Can the Netherlands make an assessment of the offences and qualify them according to Dutch criminal law?
- 4. Does the nationality of the requested person play a role?
- 5. Will the requested person be detained pending the procedure?
- 6. Which authorities will be involved on both sides concerning this EAW?
- 7. What is the procedure provided in the Netherlands and how long will it take?
- 8. What role do the Greek authorities play during the surrender procedure?
- 9. When and how will the surrender take place?
- 10. Imagine the surrender succeeds. Under which conditions can the Greek prosecutor also charge Drion with the further offence of shoplifting?

Mutual Trust and the European Arrest Warrant

- In principle: comply with EAW
- Except for applicable grounds for refusal (Meloni)
- However: human right concerns (Aranyosi/ Calderaru/ LM)
- MS must ask assurances concerning absolute rights, fair trial and impartiality

Mutual trust at the moment of surrender only?

- Second Aranyosi-case: guarantees for the first detention unit only? This could lead to MS monitoring each other (ML, C-220/18 PPU)
- Mutual trust in MS in which the rule of law is endangered? The case of Poland and Hungary. COM-Recommendation 2018/103 + C-354/20 PPU (DC of Amsterdam ref. on Poland)
- Mutual trust in a former Member State - UK
- Mutual trust in non-Member States – Norway/ Iceland

The European Arrest Warrant
Council Framework Decision 2002/584/JHA of 13 June 2002 on the
European arrest warrant and the surrender procedures between Member
States
Set of Case Studies – Guide for Trainers

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Honorary Judge – s’-Hertogenbosch Court of Appeal

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The European Arrest Warrant

A. I. Case 1 scenario:

The Head of Police of Heraklion, on behalf of the Public Prosecutor's Office at the Court of Appeal of Eastern Crete, issues an EAW to the Netherlands concerning a medical doctor of Dutch nationality (Dr. Drion), living in Maastricht, who allegedly committed murder and sabotage. The facts of the murder relate to his assistance in putting an end to the life of the Greek national Karalis in Thessaloniki. On the specific request of Karalis, Drion injected him with a lethal substance, which caused his death a few minutes later. The facts of the sabotage relate to the destruction of the property of Aegean Airlines in Athens airport, resulting from the frustration of Dr. Drion when he found out that he had missed his flight back to Maastricht.

Questions:

1. *Is there an obligation for the Netherlands to surrender Dr. Drion, and if so, under which conditions?*
2. *Would it make a difference if the facts had not occurred in Greece, but in the Netherlands?*
3. *Can the Netherlands make an assessment of the offences and qualify them according to Dutch criminal law?*
4. *Does the nationality of the requested person play a role?*
5. *Will the requested person be detained pending the procedure?*
6. *Which authorities will be involved on both sides concerning this EAW?*
7. *What is the procedure provided in the Netherlands and how long will it take?*
8. *What role do the Greek authorities play during the surrender procedure?*
9. *When and how will the surrender take place?*
10. *Imagine the surrender succeeds. Under which conditions can the Greek prosecutor also charge Drion with the further offence of shoplifting?*

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

1. A Portuguese prosecutor in Braga wants the surrender of the German national Dieter Müller who is currently in Turku Finland for purposes of criminal proceedings.

Competent authority:

Language:

2. The Irish prosecutorial service receives an EAW concerning a judgement of a French national Leon Laselle convicted in absentia by Tribunal de Grande Instance de Bordeaux, France.

Competent authority:

Language:

3. A Spanish competent authority in Málaga seeks the presence of a Russian national Michail Lebedenski, resident in Nicosia, Cyprus.

Competent authority:

Language:

A. III. Case scenario 2, the continuation of Case 1:

At the hearing at the competent Dutch District Court defence counsel for Dr. Drion states that the detention circumstances in Greece are below the standards applied by the European Court of Human Rights and by the Court of Justice in the case of Aranyosi. The defence fears that Drion will face inhumane and degrading treatment in prisons in Greece. This, according to the defence, would violate his rights under Article 3 ECHR and 4 Charter. The defence urges the Court to refuse the surrender.

Questions:

1. *Is the execution authority obliged to deal with this matter?*
2. *If so, how will it deal with it?*
3. *Is there a role to play for the issuing authority?*
4. *Does the executing authority have the possibility to postpone or refuse the execution of the EAW?*

A. IV. Extra task: EAW to Norway?

Take case Scenario 1 and replace the Netherlands by Norway and Dutch by Norwegian and Maastricht by Bergen. All other facts remain the same. How and on which basis should the Arrest Warrant now be issued and the question of Case scenario1 be answered?

Part B. Additional notes for the trainers regarding the cases

A. I. Case 1:

Depending on the Member State where the seminar takes place the countries from the case scenarios 1 and 2 will change. Make sure that you take a Member State that is strongly opposed to euthanasia and a Member State that allows it under certain circumstances.

A. IV. Extra task: EAW to Norway?

This task may be used if time permits and should be given to more experienced practitioners.

Part C. Methodological approach

I. General idea and core topics

The focus of the first case is to address the meaning of the concept of mutual recognition. This places a lot of trust in each other's criminal justice systems and requires that cooperation may take place, even in situations in which the solution found would be entirely different in one's own Member State. It is important to see that national legal qualifications often do not apply. In principle, arrest warrants must be taken as they are and executed. In most situations, the issuing Member State determines the conditions. However, there are a few exceptions. In the case law of the Court some exceptions have been developed that are not referred to in the Framework Decision with which practice must work. In preparing for their authorities, court staff must develop sensitivity to recognise these situations as they may cause delay or even an impediment to the cooperation or lead to consequences that apply after the surrender.

The Cases and its questions have been designed to allow the trainer and participants to deal with:

1. The structure and basic presumptions of mutual recognition in general and in the specific context of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States in particular; NB: The EAW is, as the oldest and exclusive tool of extradition/ surrender, the laboratory for all other instruments on mutual recognition. Case law developments on the EAW therefore have an immediate impact on any other form of cooperation!
2. Finding which authorities are involved on both sides;
3. How the tasks between the issuing authority and the executing authority have been divided;
4. How contact between the authorities can be established and what kind of guarantees must be given;
5. What the consequences of a surrender are for prosecuting in the issuing Member State;
6. What the consequences of a surrender are for the detention in the issuing Member State;
7. The role the defence may play in trying to block surrender or obtain better conditions.

II. Working groups and structure of the seminar

In advance of the seminar the trainer will send a one-page questionnaire to get to know the experience of the participants on the Framework Decision (FD) and its practice. S/he will also ask what expectations and questions there are. The information thus obtained will be used in the presentation as well as influence the choices that must be made in varying on the level of tasks to be discussed and potential additional questions. It is important to have this information available as it may be expected that among the participants the level of experience, their linguistic capabilities and daily tasks in practice may vary.

The trainer will provide the participants with a brief presentation (Power point) highlighting the important features of **Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States** – scope, definitions, competent authorities, distinction between surrender for prosecution and execution, role of the nationality or domicile of the requested person, grounds for refusing, time limits, governing law, subsequent decisions, obligations for the MS (**approx. 15-20 min**).

Case scenario 1 is designed to deal both with very basic issues, as well as a more in-depth analysis of several problems that may occur. The participants will work in groups of 4-5 and will have a laptop connected to the internet in order to solve the questions. Especially the websites of EJN, Eurlex and the Court of Justice are recommended. It is intended that participants learn to use these websites to obtain the information they need and to use it in solving the problems at stake. Solving Case 1 and answering the questions should take **approx. 1 hour and 40 minutes**. Groups may be formed by bringing participants of the same experience level together.

A 10-minute break is recommended at this point.

Solving the **exercises** from point A.II should take around **10 minutes** as they are meant to help the participants in understanding the mechanism for finding a competent authority and the language to be used in the Certificate. After having already consulted the EJN website, this exercise can also be used as a control exercise. In case solving Case 1 took much more time than anticipated, this exercise could be skipped and given as homework.

Case scenario 2 will force the participants to deal with issues that cannot be found in the text of the Framework Decision, however, they do apply to the practice of it and require a prompt answer. The participants will work in groups of 4-5 and will have a laptop connected to internet in order to solve the questions. Solving Case scenario 2 should take **approx. 40-45 minutes**.

Any remaining questions should be discussed at the end of the seminar (for **approx. 5-10 minutes**).

III. Additional material

All participants must **bring** a copy of **Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States** comprising the Forms in the Annex. Also, the participants must bring or have access to their national provisions implementing the Framework Decision.

(note for the trainers: It will be interesting to see and check whether the text participants have available is not only the text in their own national language, but also the text that includes the amendments (such as FD 2009/299) and rectifications made to the original text. It still often happens that the text published in 2002 is used in practice without the subsequent amendments. NB: concerning rectifications: this differs from language to language and can

come years after 2002: e.g. the Dutch version OJ 2020 L 118/39. If time permits, this is a moment to train them to use eurlex and [the consolidated version of legal texts](#))

It is essential to stimulate using online tools!

IV. Recent developments

Please check whether there is any new case pending or preliminary reference made to the Court of Justice over the last three months.

Part D. Solutions

A. I. Case 1 scenario:

Questions:

Q1. Is there an obligation for the Netherlands to surrender Dr. Drion, and if so, under which conditions?

Preliminary matters

The nature of the issuing authority should trigger a preliminary question and that is whether the issuing authority is a *judicial authority* as meant in Article 6 of the Framework Decision.¹ A police authority cannot be such an authority, so the Court held in the [Poltorak case \(C-452/16 PPU\)](#). More recently, the Court also added additional requirements for public prosecutors (see [C-489/19 PPU - NJ \[Parquet de Vienne\]](#)). In essence, this means that it must be clear that there has been an individual assessment of the proportionality of the EAW and that there is judicial oversight by a judge or a court. In addition, it must be clear that the European Arrest Warrant is based on a national arrest warrant, see [the Bob-Dogi case \(C-241/15\)](#). Some Member States apply a system in which only one arrest warrant covers both. The Court wishes to see two.

These requirements developed in case law may lead to questions by the executing authority to the issuing authority. Unfortunately, it may also lead to delay and frustration.

Once the character of the issuing authority as a *judicial authority* is established or repaired (NB: as a rule of thumb most formalities can be repaired. There is no ne

¹ See for more background André Klip, *European Criminal Law. An Integrative Approach*, Intersentia Cambridge 4th ed. 2021, especially chapter 8.

bis in idem on issuing EAWs) the EAW can be processed. See further the answer to Question 3.

Q2. Would it make a difference if the offences had not occurred in Greece, but in the Netherlands?

When the conduct took place in the Netherlands, not in Greece, the ground for refusal of Article 4(7) does apply. The offences took place in the Netherlands and that entitles the country to refuse. Please that the heading of Article 4 speaks of “may refuse”. There is no obligation to do so.

NB: if there is time, it may be interesting to see how the various Member States have implemented this optional ground for refusal. Some kept it optional, others converted it into a mandatory ground for refusal.

Q3. Can the Netherlands make an assessment of the offences and qualify them according to Dutch criminal law?

In principle there is an obligation to surrender. The assessment to be made is that each individual count is checked. The first relates to murder. This a so-called list offence and listed in Article 2 (2), to be sure that the offence fulfils the minimum requirement of Article 2 (1) concerning the custodial sentence to be imposed. As a result of the fact that the Greek authorities ticked the box of murder, the executing authority may not make its own assessment of the offence, but must simply accept this. This is also the case in a situation in which there might be a clear differing view as to the criminality of the offence or the application of grounds of excuse. In the concrete circumstances of the case, the Netherlands’ authorities cannot put the views applicable under Dutch law in the place of Greek law.

The second offence is *sabotage*. This is also a list offence and the same applies as stated concerning murder. The minimum threshold of Article 2 (2) is 3 years. Would it matter that the Netherlands does not know a criminal offence called sabotage? [**note for the trainers:** this may result in a rather interesting discussion. Fact is that the Dutch Penal Code does not have such a crime and this may be so for more Member States. However, that is not decisive. What counts is that the issuing Member State ticked the box of sabotage, as a consequence of which the national law of the executing Member State is not relevant anymore.]

Q4. Does the nationality of the requested person play a role?

Yes, it does. The requested person has the nationality of the executing Member State. On the basis of Article 5(3) Framework Decision, the executing authority may make surrender subject to the condition that the person, after being heard, is returned to the Netherlands in order to serve the custodial sentence or detention order passed against him in the issuing Member State (*return to sender obligation*).

Participants ought to be able to find out whether the Netherlands will require this condition to be fulfilled. This information cannot be found in the notification of the Netherlands (see [the Bob-Dogi case](#)), but in Article 6(1) of the national implementing law. See [this judicial library on the EJN website](#).

NB: warning. Translations of national legislation are hardly ever up to date. **This question also requires staff to think ahead and check whether the offences at stake give reason to both surrender and transfer on Framework Decisions 2008/909. There must be at least six months to serve (Art. 9 (1) h)).**

Q5. Will the requested person be detained pending the procedure?

The answer is given by Article 12 FD: it is the executing authority that makes the decision whether that is necessary on the basis of national law. See [the Lanigan case \(C-237/15 PPU\)](#).

The trainer may stimulate to check what the practice in the Member State concerned and the Member State of origin of the participant is. Often Member States see in the fact that the requested person would lose the protection of Article 5 (3) if he were to abscond a reason not to detain their own nationals pending the surrender procedure.

Q6. Which authorities will be involved on both sides concerning this EAW?

The issuing authority is Public Prosecutor's Office at the Court of Appeal of Eastern Crete, of which you will find the contact details in the Judicial Atlas.

Name:	Public Prosecutor's Office at the Court of Appeal of Eastern Crete (Eisaggelia Efeton Anatolikis Kritis)
Address:	Plateia Daskalogianni
Department (Division):	
City:	Irakleio
Postal code:	71201
Phone number:	+30 2810 247813
Mobile phone:	
Fax number:	+30 2810 247813
Email Address:	eisefankr@yahoo.gr

Depending on the question whether this prosecutor may issue an EAW individually or needs the decision of a court or Judge, that authority may have to be involved as well. The executing authority is one for the whole country:

Name:	Officier van Justitie te Amsterdam (Central Authority EAW) IRC Amsterdam
Address:	Postbus 115
Department (Division):	
	Central Authority for EAWs
City:	Amsterdam
Postal code:	1000AC
Phone number:	+31 88 6991270
Mobile phone:	+316 53332848
Fax number:	
Email Address:	eab.amsterdam@om.nl

NB for trainers: you may vary with the executing Member State and take another state that has not centralised EAW tasks. You must then localise the place of residence of Dr. Drion in that Member State.

Q7. What is the procedure provided in the Netherlands and how long will it take?

The procedure will take place at the Amsterdam District Court, following the rules of the Framework Decision and the national implementing act. It is good to look at the time limits set in Article 17 FD. As a result of that a decision should be taken within 10 days in cases of consent of the person. (NB; if time permits, it would be a good learning exercise to raise the question what the consent procedure entails and what its consequences are.) In other cases the decision must be taken within 60 days and is subject to stating reasons, may be extended to 90 days. In general, Member States often do face difficulties to maintain the time limits. See p. 9 and 10 of [this report for statistics applicable to the Netherlands](#). The Framework Decision does not provide a sanction when the time limits are not respected. However, these cases must be reported to Eurojust, see Article 17(7).

Q8. What role do the Greek authorities play during the surrender procedure?

They must be available to answer any questions for clarifications that may arise. For the rest they have no role.

Q9. When and how will the surrender take place?

The surrender must take place as soon as possible on a date agreed between the authorities concerned (Article 23(1)). According to Article 10(2) it may not be later than 10 days after the decision to surrender. Please note that it can be extended and that Article 23(4) provides temporarily postponement in case humanitarian reasons, such as illness, apply. The Framework Decision does not state how the surrender factually takes place. This is also determined by the authorities in practice. The most common way is a regular flight between the two Member States by which the requested person is accompanied by police. Neighbouring countries may surrender at a border post.

Q10. Imagine the surrender succeeds. Under which conditions can the Greek prosecutor also charge Drion with the further offence of shoplifting?

This question triggers the analysis of the rule of speciality that protects the requested person against a prosecution for an offence for which the surrender has not been requested **or**, for which it has been requested but refused.

After surrender, additional consent for further offences may be requested. Article 27(4) provides the procedure. In practice, the assessment will then be as follows:

Shoplifting is not a list offence. This means that Article 2(4) applies and double criminality must be checked. The issuing authority must provide the applicable legal provisions, check whether the minimum threshold of 12 months

imprisonment is fulfilled and give an accurate description of the facts. The executing authority will verify whether it is an offence under Dutch law. It is most likely that the offence of shoplifting will meet all these requirements and that additional consent will be given.

Court or prosecution staff in the issuing Member State should, before issuing the EAW, raise awareness on the question whether there are more offences for which the requested person is wanted in their Member State. If so, an assessment must be made whether it is appropriate to add that offence(s) to the EAW. This would have the advantage that all offences can be dealt with in one procedure and prevent further additional requests.

Court staff in the issuing Member State for which subsequent to the surrender criminal proceedings are pending must be aware of the limitations imposed by the rule of speciality as stated in Article 27(2). No prosecution may take place. NB: Article 27(1) allows for dropping this limitation, but only between Member States that have made such a notification. Participants can perform the exercise of finding whether this is the case between the two states involved. (Participants must know this for their own state) The answer is that neither Greece nor the Netherlands have made such a notification. In practice, very few Member States have given such a notification. NB: in the case that the Framework Decision refers to a notification please note that a notification may be revised. In other words: always double check the EJM website on this. See for instance the revised [notification of Romania of 13 March 2020](#).

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

In order to find the competent authorities we will use the [Atlas](#) available on the EJM website – www.ejm-crimjust.europa.eu select the executing MS as the executing countries and 901. *European Arrest Warrant*.

Regarding the languages for the Certificate, we will use the section –Notifications for each of the MS [available here](#).

If not notified of anything following to Article 8 (2) of the FD, then the official language(s) of the MS will be used.

The results should be as follows:

1. A Portuguese prosecutor in Braga wants the surrender of the German national Dieter Müller who currently is in Turku, Finland for purposes of criminal proceedings.

The competent Portuguese authority is in Guimarães, see the EJN website.

Name:	Tribunal da Relação de Guimarães
Address:	Largo João Franco 248
Department (Division):	
City:	Guimarães.
Postal code:	4810-269
Phone number:	
Mobile phone:	
Fax number:	
Email Address:	

There is one central authority for the country as a whole. According to the notification, Finland accepts EAWs in Finnish, Swedish and English. NB: I noted (in May 2020 and again in January 2023) that the document uploaded at the EJN website supposedly to give the translation of the notification in English is not in that language, but in Finnish.

(NB: Trainer: it may be very useful to do this searching exercise together with the plenary group on the screen. Search together on the EJN website. There are several ways of finding the answer. What is important is that the participants find their way on the site.)

Name:	Prosecution District of Southern Finland (Etelä-Suomen syyttäjäalue)
Address:	Porkkalankatu 13
Department (Division):	
City:	Helsinki
Postal code:	00180
Phone number:	+358 29 562 2100
Mobile phone:	
Fax number:	+358 29 562 2203
Email Address:	etela-suomi.syyttaja@oikeus.fi

(If time permits, the question may be put to the participants whether it is necessary to provide a translation of the EAW into German as the requested person is a national of that state. This links in the application of Directive 2010/64 on

Translation and Interpretation. In reality, the question may come up once the requested person is involved in the procedure. It will then depend on whether the requested person is able to understand the language of the EAW.)

2. *The Irish prosecutorial service receives an EAW concerning a judgement of a French national Leon Laselle convicted in absentia by Tribunal de Grande Instance de Bordeaux, France.*

Name:	Cour d'Appel de Bordeaux
Address:	Place de la République
Department (Division):	
City:	BORDEAUX CEDEX
Postal code:	33077
Phone number:	(+33) 556013400
Mobile phone:	
Fax number:	(+33) 556442830
Email Address:	
Name:	Central Authority for EAW
Address:	Department of Justice and Law Reform 51 St Stephens Green
Department (Division):	Dublin 2
City:	
Postal code:	
Phone number:	00 353 1 408 6100
Mobile phone:	
Fax number:	00 353 1 408 6117
Email Address:	warrantsmail@justice.ie

There is one central authority for the country as a whole. According to the notification, Ireland accepts EAWs in Irish and English.

3. *A Spanish competent authority in Málaga seeks the presence of a Russian national Michail Lebedenski, resident in Nicosia, Cyprus.*

The Spanish competent authority is competent for the whole country:

Name:	Servicio Común de Registro, (Para el reparto entre los Juzgados Centrales de Instrucción)
Address:	Goya 14
Department (Division):	
City:	Madrid
Postal code:	28071
Phone number:	(+34) 91.400.62.13/26/25
Mobile phone:	

Fax number: (+34) 91.400.72.34/35
Email Address: audiencianacional.sccrda@justicia.es

The authority competent in Cyprus is:

Name: Ministry of Justice and Public Order
Address: 125 Athalassas Avenue
Department (Division):
City: Nicosia
Postal code: 1461
Phone number: +357 22805928; +357 22805950/951
Mobile phone:
Fax number: +357 22518328; +357 22518356;
Email Address: akyriakides@papd.gov.cy

There is one central authority for the country as a whole. According to the notification, to be [found on the EJN-website](#).

Cyprus accepts EAWs in its official languages and English. NB: this notification requires that the issuing authority, if it does not send the EAW in English, knows what the official languages of Cyprus are.

(If time permits, the question may be put to the participants how the translation of the EAW into another language is made. The basic question here is whether the translator performing this task will be given the full original document and subsequently make a translation thereof, or whether s/he will be referred to the fact that the EAW and its form is available in all authentic languages of the European Union. If no further instructions are given, there is a serious chance that the translator will translate everything from scratch, including the form. The result of that could be that terms of the form are given another meaning than in the original text. This may lead to misunderstandings, need for clarifications and delay. Translators only need to translate what has been filled in the form, not the

form itself. [All authentic texts can be found and downloaded here](#). This remark is equally relevant for those translating the set of cases and instructions.)

A. III. Case scenario 2, the continuation of Case 1:

This question adds a more modern problem to the execution of an EAW that has come up as a result of the case law of the Court of Justice (See 5 April 2016, Joined Cases [C-404/15 and C-659/15 PPU](#), *Pál Aranyosi (C-404/15) and Robert Căldăraru (C-659/15 PPU)*). It very much shows that mutual recognition is not absolute and that certain limitations may exist on the general obligation to comply with an EAW. The demands imposed by the Court impact both the executing authority and the issuing authority. The former will be obliged to ask for information concerning the prison conditions that the requested person will face after surrender. The latter will have to answer these questions and may have to give a guarantee that the requested person will be brought to and detained in a specifically mentioned prison.

Q1. Is the execution authority obliged to deal with this matter?

Yes, it is. The defence claim relates to the potential violation of absolute rights in the issuing Member State. The Court has indicated that a requested person must always be protected against such a risk.

Q2. If so, how will it deal with it?

The consequence of the Court's case law is now that the issuing Member State will have to indicate a prison in which the requested person will be received, in which the circumstances are undisputed. This information should relate to the place of which it is actually intended to detain the requested person. It thus emphasises foreseeable effects in the short term. In the concrete circumstances of our case it means that if it is the assessment of the Amsterdam District Court that the conditions of the prison to which Drion will be brought are not in compliance with Article 4 Charter, the Greek authorities must provide another prison that can sustain the test. NB: the Court has indicated that, in principle, this whole issue may lead to postponement, but not to a final refusal.

Q3. Is there a role to play for the issuing authority?

Yes, there is. It will have to provide very concrete information on the prison conditions that will be experienced by the requested person. That even comes down to the number of square metres available per person, as well as availability of hours outside the cell, and any other facilities. E.g. in [the Dorobantu case \(C-128/18\)](#), the issuing authority provided the executing authority with the information “that Mr. Dorobantu would, while being held on remand during his trial, be detained in a 4-person cell measuring 12.30 m², 12.67 m² or 13.50 m², or in a 10-person cell measuring 36.25 m². Should Mr. Dorobantu be given a custodial sentence, he would be detained, initially, in a penal institution in which each prisoner has an area of 3 m², and subsequently in the same conditions if serving a custodial sentence in a closed prison, or, if he were to be held in an open or semi-open prison, in a cell with 2 m² of space per person.”

Q4. Does the executing authority have the possibility to postpone or refuse the execution?

Yes, it does. As mentioned before, in principle the outcome must be the execution of the EAW. However, the Court has now envisaged that in some exceptional circumstances this may not be the case.

A. IV. The Norwegian case

The 2006 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 entered into force on 1 November 2019. The similarities with the EAW are immediately visible. However, *Arrest warrants* are issued, not EAWs to and from Norway and Iceland. Article 3 of the Agreement requires the same conditions as to facts that qualify for a surrender as Article 2 EAW FD. Please note that the 1957 Council of Europe European Convention on Extradition is no longer applicable with Norway and Iceland (Art. 34 Agreement). It is likely that Norway will also allow the surrender for all three offences.

If time permits a further variety is to raise the same question with the United Kingdom. In that case the Trade and Cooperation Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland is applicable, which carries provisions on an arrest warrant for surrender almost identical to the EAW.

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Fact sheet

- **22 May 2017** – deadline for transposition of the Directive 2014/41/EU
- **26 MS** have transposed it, **Denmark** and **Ireland** are **not bound** by the Dir.
- **Deadlines** for gathering the evidence requested are provided
- **Limited reasons** for refusing to recognise or execute an EIO
- **A single standard form** to be used – Certificate
- MS shall execute an EIO on the basis of the **principle of mutual recognition** and in accordance with the Dir.

Relationship with other legal instruments

- The Directive **replaces**, as from 22 May 2017, **the corresponding provisions** of the following conventions applicable between the Member States bound by this Directive (so not in relation to Denmark and Ireland):
 - (a) The 1959 Convention and its two protocols
 - (b) Convention implementing the Schengen Agreement
 - (c) The 2000 Convention and its protocol
- Gathering of evidence will be done according to the provisions of this Directive between the MS bound by the Directive
- In relation to **Denmark** and **Ireland** provisions from the MLA legal instruments will be applicable (an MLA instrument that **it is in force** in the MS involved in the judicial cooperation)

Scope of application

- The EIO **shall cover any investigative measure** to obtain evidence in accordance with this Directive (art.1 para. 1 Dir.)
- The EIO may also be issued for **obtaining evidence that is already in the possession** of the competent authorities of the executing State (art. 1 para. 2 Dir.)

- The Directive on EIO is **not applicable** to:
 - *Setting up of a JIT and gathering of evidence within such a team (article 3 of the Dir.)*
 - *Spontaneous exchange of information (article 7 of the 2000 Convention)*
 - *Freezing property for the purpose of subsequent confiscation (Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence; and, as of 19.12.2020, Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders)*
 - *Restitution: return of an object to victim (article 8 of the 2000 Convention)*
 - *Obtaining of extracts of the criminal records register/ECRIS*
 - *Summoning of witnesses, defendants, etc. for trials (art. 5 of the 2000 Convention or art. 7 of the 1959 Convention)*

Definitions

- **Issuing State** - MS in which the EIO is issued
- **Executing State** – MS executing the EIO, in which the investigative measure is to be carried out
- **Issuing authority**
 - (i) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned;*
 - (ii) any other competent authority as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law*
- **Executing authority** - an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case

Channels of transmission

- The EIO completed and signed shall be transmitted **directly** from the issuing authority to the executing authority by any means capable of producing a written record – use [ATLAS](#) from the EJM’s website to identify an executing CA from the executing MS
- Each Member State may **designate a central authority** or, where its legal system so provides, **more than one central authority**, **to assist** the competent authorities
- The issuing authority may transmit an EIO via the telecommunications system of the **European Judicial Network (EJM)**
- If the identity of the executing authority is unknown, the issuing authority **shall make all necessary inquiries, including via the EJM contact points**, in order to obtain the information from the executing State
- Where **the authority in the executing State** which receives the EIO **has no competence** to recognise the EIO or to take the necessary measures for its execution, it shall, *ex officio*, **transmit the EIO to the executing authority and so inform the issuing authority**

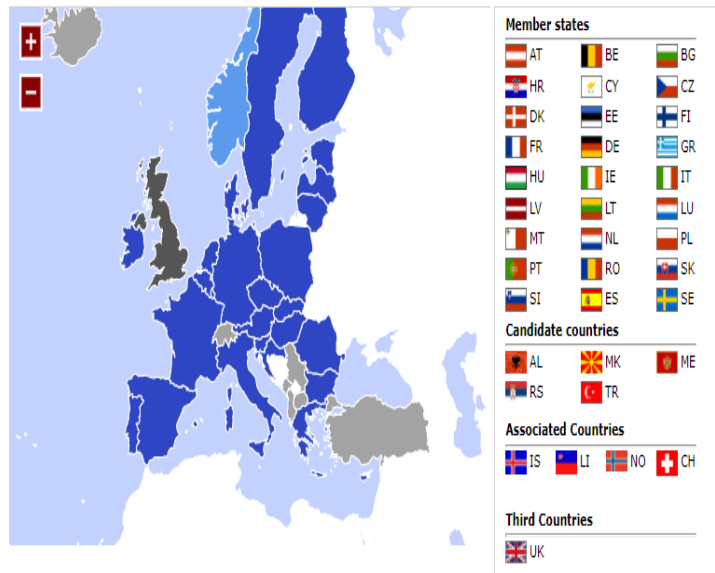
Atlas – EJN’s website

Judicial Atlas



The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Select country to where your request is to be sent to, clicking on the map:



Member states

AT	BE	BG
HR	CY	CZ
DK	EE	FI
FR	DE	GR
HU	IE	IT
LV	LT	LU
MT	NL	PL
PT	RO	SK
SI	ES	SE

Candidate countries

AL	MK	ME
RS	TR	

Associated Countries

IS	LI	NO	CH
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Third Countries

UK

- Info about national systems
- EU Legal Instruments for Judicial Cooperation
- Status of implementation in the Member States of EU legal instruments
- Cooperation with non-EU countries and judicial networks

Germany - Tools



- About EJN
- Introduction to the EJN Website
- EJN Secretariat
- EJN Meetings
- Projects
- Reports
- EJN Awareness
- Registry (EJN partially restricted area)
- COVID-19 and judicial cooperation in criminal matters
- European Arrest Warrant
- e-Evidence
- European Investigation Order
- EJN restricted access area



Atlas

Find competent authority to receive your request for judicial cooperation



Compendium

Draft a request for judicial cooperation



Fiches Belges

Concise legal and practical information on judicial cooperation measures available in the Member States



Status of implementation

Status of implementation in the Member States of EU legal instruments



EU Presidency



Recognition and execution. Alternative measures

- The executing authority shall **recognise** an EIO **without any further formality being required** and **ensure its execution in the same way and under the same modalities** as if the investigative measure concerned had been ordered by an authority of the executing State (art. 9 para. 1 Dir.)
- The executing authority **shall comply with the formalities and procedures expressly indicated by the issuing authority** unless otherwise provided in this Directive and *provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State* (art. 9 para. 2 Dir.)
- **Recourse to a different type of investigative measure** (art. 10 para. 1 Dir.) - the executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where the investigative measure indicated in the EIO **does not exist under the law of the executing State** or **would not be available in a similar domestic case**. **Exceptions** to the abovementioned option are provided in art. 10 para. 2 let. a) - d) Dir.
- The executing authority **may also have recourse to an investigative measure** other than that indicated in the EIO where **the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO**

Grounds for non-recognition or non-execution. Postponement

- Grounds for non-recognition or non-execution of an EIO **limited and expressly provided** (art. 11 let. a)-h) Dir.)
- The recognition or execution of the EIO **may be postponed** in the executing State where:
 - (a) *its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable*
 - (b) *the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose*
- As soon as the ground for postponement **has ceased to exist**, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record (Art. 15 Dir.)

Time limits for recognition and execution

- The decision on the recognition or execution shall be taken and the investigative measure shall be carried out **with the same celerity and priority as for a similar domestic case** (art. 12 par. 1 Dir.)
- The executing authority shall take the decision on the recognition or execution of the EIO **as soon as possible**, no later **than 30 days** after the receipt of the EIO by the competent executing authority
- **In urgent circumstances**, if a shorter deadline is necessary or if the issuing authority has indicated in the EIO that the investigative measure must be carried out on a specific date, the executing authority shall take as full account as possible of this requirement
- The executing authority shall carry out the investigative measure **without delay** and **not later than 90 days** following the taking of the decision of recognition. If it is not practicable in a specific case for the competent executing authority to meet the time limit it shall, without delay, inform the competent authority of the issuing State by any means, giving the reasons for the delay and it shall consult with the issuing authority on the appropriate timing to carry out the investigative measure.

Legal remedies

- Member States shall ensure that legal remedies **equivalent to those available in a similar domestic case** are applicable to the investigative measures indicated in the EIO
- **The substantive reasons for issuing the EIO** may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State
- The issuing authority and the executing authority **shall inform each other** about the legal remedies sought against the issuing, the recognition or the execution of an EIO
- A legal challenge **shall not suspend the execution of the investigative measure**, unless it is provided in similar domestic cases

Obligation to inform

- The CA in the executing State which receives the EIO **shall**, without delay, and in any case **within a week** of the receipt of an EIO, **acknowledge receipt of the EIO** by completing and sending the form set out in Annex B.
- The executing authority **shall inform** the issuing authority immediately by any means:
 - (a) the fact that the form provided for in Annex A is incomplete or manifestly incorrect
 - (b) if it considers, without further enquiries, that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the EIO was issued
 - (c) if it establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority
- The executing authority **shall inform** the issuing authority without delay by any means capable of producing a written record:
 - (a) of any decision taken pursuant to articles 10 or 11;
 - (b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Additional resources on the EJN website

- *Competent authorities, languages accepted, urgent matters and scope of the EIO Directive (Updated 07 August 2019)*

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/2120>

- *Guidelines on how to fill in the European Investigation Order (EIO) form*

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3155>

- *Editable .pdf form of the European Investigation Order – EIO (Annex A)*

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3152>

The European Investigation Order

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

Set of Case Studies – Guide for Trainers

Written by:

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Judge,

Court of First Instance, 4th District, Bucharest Tribunal, Bucharest

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The European Investigation Order

A. I. Case scenario 1:

In order to gather evidence in a criminal investigation, a Romanian prosecutor needs to:

- *hear, by videoconference, a witness who is currently living in Bulgaria,*
- *order a house search of a suspect living in Austria,*
- *obtain information on a Polish bank account of the same suspect and,*
- *intercept telecommunications of another suspect in France without the technical assistance.*

Questions:

1. *Which is the legal instrument for judicial cooperation available for the Romanian prosecutor in order to gather evidence from abroad? Is it possible for the Romanian prosecutor to issue the EIOs in these situations? What about the interception of telecommunications, in which conditions?*
2. *What if the witness lives in Denmark or in Ireland? Does it make any difference for the legal instrument applicable in the case?*
3. *What if the prosecutor wants to summon the witness in Bulgaria in order to be heard in Romania? Will Directive 2014/41/EU still be applicable?*
4. *How many EIOs should the Romanian prosecutor issue for this case? Indicate the reasons for your answer. What about the situation in which all the investigative measures are to be taken in one of the four countries bound by the Directive 2014/41/EU (Bulgaria, Austria, Poland or France)?*

A. II. Exercises:

Find the following executing competent authorities for an EIO (general criminal cases) and the languages accepted in each of the situations:

1. A German competent issuing authority wants a house search of a suspect, located in Brussels, Belgium.

Competent authority:

Language:

2. A French competent issuing authority wants to hear by videoconference a witness residing in Vigo, Spain.

Competent authority:

Language:

3. A Spanish competent issuing authority wants to hear an expert living in Athens, Greece.

Competent authority:

Language:

4. A Romanian competent issuing authority wants to intercept the telecommunication of a suspect located in France without technical assistance.

Competent authority:

Language:

A. III. Case scenario 2:

In March 2020, an investigation was opened in Romania against the offenders A.W. (a German citizen), J.P. and J.L. (Romanian citizens) for allegedly committing two thefts from ATMs located in Constanta, Romania (file no. 1200/P/2020). The Romanian judicial authorities have established that on the night of 27.02.2020, at around 02.00 a.m. and on the night of 09.03.2020, at around 03.20 a.m., A. W. (German citizen, born in Stuttgart, Germany, on 06.06.1955), J.P. (Romanian citizen, born on 25.03.1977) and J.L. (Romanian citizen, born on the 24.06.1978), using proper tools and wearing masks on their faces, committed two thefts from ATMs located in Bulevardul Republicii, Constanta, Romania, managing to steal around 478 000 lei RON (around 100 000 euros).

J.P. and J.L. have been identified and caught by the police but A.W. managed to flee to Germany on 10.03.2020 by personal car with destination Stuttgart, Germany. The stolen money has not yet been found by the police and the investigators assume that it could have been taken by A.W.

J.P. and J.L. were accused of committing the two abovementioned thefts and placed under provisional arrest for 30 days by a decision of the Court of First Instance Constanta on 11.03.2020. They also recognised committing the offences and want to reach an agreement with the prosecutor.

The Prosecutor's Office attached to the Court of First Instance Constanta who has the jurisdiction in investigating these crimes has established that A. W. is a German citizen and lives in Stuttgart, Siemensstrasse, postal code 70469, Germany.

Also, the Prosecutor's Office attached to the Court of First Instance Constanta managed to identify the witness T. J., an Austrian citizen who presently lives in Vienna, Gerhard-Bronner Strasse, postal code 1100, Austria (the witness was on vacation in Romania in that period and saw all three offenders on the night of 27.02.2020 near the ATM in Bulevardul Republicii, Constanta, just minutes before committing the theft without masks on near a car with German number plates).

After gathering all the evidence in Romania, on 15.03.2020 the Prosecutor's Office attached to the Court of First Instance Constanta requested from the Court of First Instance Constanta the authorisation for the A.W.'s house search in Stuttgart. The request that was granted on the same day by the competent judge through decision 111/UP/P/15.03.2020.

Also, the prosecutor in charge of the case wants to hear, by videoconference, T.J. as a witness in the case.

Questions:

1. Find the German competent authority the Romanian judicial authority needs to address for A.W.'s house search.
2. Find the Austrian competent authority that will help the Romanian judicial authority to hear the witness by videoconference.
3. In which languages will the EIOs be sent by the issuing authority to the two competent executing authorities?
4. Fill in the EIO regarding the house search in Germany and the EIO regarding the hearing by videoconference in Austria.
5. What will the competent executing authority do after receiving an EIO from the issuing authority? What are its obligations?

Part B. Additional notes for the trainers regarding the cases

A. I. Case scenario 1:

The issuing competent authority will be changed and replaced by a competent judicial authority from the MS where the seminar is taking place with the exception Denmark and Ireland. If one of the executing MS is the country where the seminar is taking place, it will be replaced by Romania as the executing MS accordingly.

A. III. Case scenario 2:

- The issuing competent judicial authority will be changed and replaced by a competent judicial authority from the MS where the seminar is taking place with the exception of Denmark and Ireland.
- As a consequence, the case details will be adapted accordingly, with details given from the country where the seminar is taking place (the places where the offences were committed, a number case file, a national competent judicial authority to take the provisional arrest of the suspects J.P. and J.L. and to grant a house search according to the national law).
- If changed for other MS with the exception of Germany and Austria, A.W. will remain a German citizen and T.J. an Austrian citizen, while J.P. and J.L. will be national citizens of the country where the seminar is taking place.
- In the case of Germany, as issuing judicial authority, A.W. will be a Romanian citizen, living in Bucharest, Regina Elisabeta Boulevard, postal code 050013, Romania and J.P. and J.L. will be German citizens).

- In the case of Austria, as issuing authority, A.W. will remain as in the case scenario (a German citizen) and J.P. and J.L. will be Austrian citizens. The witness T.J. will be a Romanian citizen living in Bucharest, Unirii Boulevard, postal code 040090, Romania.
- As a consequence, the authorities mentioned at questions 1, 2 and 4 will be replaced accordingly.

Part C. Methodological approach

I. General idea and core topics

The idea of this training material is to make the court staff from the Member States familiar with the legal instruments for judicial cooperation available at the European level with a view to gather evidence from abroad.

Very often, court staff find themselves in difficulty when trying to identify and then use the appropriate legal instrument for judicial cooperation.

After identifying the legal instrument applicable, court staff are involved in administrative tasks ranging from filling in the form requested by the legal instrument, identifying the competent authority to send it to, translation of the form, requesting or sending additional information regarding judicial cooperation. For these reasons, the following main aspects will be covered within the seminars:

1. Scope of application of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.
2. Familiarisation with the general structure of Directive 2014/41/EU.
3. Relationship between Directive 2014/41/EU and other legal instruments for judicial cooperation available at European level with a view to gathering evidence from abroad.
4. Familiarisation with the content of the EIO and learning how to fill in an EIO.
5. Making the participants aware of further developments at European level with regard to Directive 2014/41/EU (availability of guidelines, joint notes, reports especially on the EJM's website).
6. Administrative details: How should an issuing authority proceed in a particular situation? Where can an issuing authority find the electronic version of the forms provided by the Directive? Which language is to be used? Where can the issuing authority find the competent authority from the executing Member State where the request needs to be addressed to?

II. Working groups and structure of the seminar

The seminar will start with a brief *presentation* (Power point) highlighting the important features of Directive 2014/41/EU regarding EIO – relationship with other legal instruments (especially MLA instruments on gathering of evidence), definitions, scope, transmission of the EIO, recognition and execution, grounds for refusing, alternative measures, time limits, legal remedies, postponement, obligation to inform, relation with other legal instruments (**approx. 20 min**).

During the presentation, the trainer will make the participants aware of the documents: [Competent authorities, languages accepted, urgent matters and scope of the EIO Directive \(Updated 07 August 2019\)](#) - and [Guidelines on the European Investigation Order forms](#) - **both available on the EJN's website**.

Case scenario 1 is the opportunity to apply Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters as an instrument for gathering of evidence from abroad and its relationship with other legal instruments for judicial cooperation available at the European level.

In order to solve the practical cases 4-6, laptops with Internet connection will be needed.

The participants will be divided into small groups of 5-8 people and will solve the questions using the EJN's website and Council of Europe's Treaty Office website.

The trainer will guide the participants in finding each of the legal instruments applicable in each case, using the EJN's website and Council of Europe's Treaty Office website.

Solving the case scenario 1 should take **approx. 20 minutes**.

Solving the exercises from point II should take **around 15 minutes** as they are meant to help the participants in understanding the mechanism for finding a competent executing authority from another MS which will execute the EIO.

In order to solve the *Case scenario 2* the participants will remain divided into 4-6 groups of max. 5-8 participants each, and each group needs to have access to a laptop connected to Internet and [to the .doc form of EIO](#), available on the EJN website (as much as possible the groups should have the same level of expertise).

After solving questions 1-3, some of the groups (2-3 groups) will fill in the EIO as required in question 4 (will fill in the EIO regarding the house search) and the other groups (2-3 groups) will fill in the EIO as required in the question 4 (will fill in the EIO regarding the hearing by videoconference).

The participants will fill in a .doc of the EIO, save it on the computer, print it and send it to a group that filled in a different EIO (a group filling in the EIO regarding the house search will send it to the group that filled in the EIO regarding the videoconference and vice versa).

After exchanging the forms, each group will designate a representative which will present the group's finding whether the EIO received complies with the requirements (**approx. 10 min for the discussions**).

Solving case scenario 2 (including the filling in of the EIOs) should take **approx. 2 hours**.

Any remaining questions should finally be discussed in plenary (for **approx. 5-10 minutes**).

III. Additional material

All participants will be provided with a copy of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters and of an EIO form. The participants will bring or have access to the national provisions implementing Directive 2014/41/EU. Also, each of the groups will have a .doc of the EIO printed out.

Part. D. Solutions

A. I. Case scenario 1

Q1: Which is the legal instrument for judicial cooperation available for the Romanian prosecutor in order to gather evidence from abroad? Is it possible for the Romanian prosecutor to issue the EIOs in these situations? What about the interception of telecommunications, in which conditions?

In our case the legal instrument applicable is Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters¹ (Directive regarding EIO hereinafter), which had the deadline for transposition 22 May 2017.

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

In order to be sure that this judicial cooperation instrument is fully applicable with regard to the three other countries involved in the judicial cooperation, the Romanian prosecutor will verify the *status of implementation* of the Directive regarding EIO by the Member States, available on the European Judicial Network (EJN hereinafter).

The status of implementation of the Directive regarding EIO can be found on the EJN website – www.ejn-crimjust.europa.eu in the section [EU Legal Instruments for Judicial Cooperation](#). Further in the table, there is the section [Status of implementation of the Directive](#) where we can verify if a country we are interested to see if it has transposed the Directive regarding EIO.

Romania, Austria, Poland, France and Bulgaria have all transposed the Directive regarding EIO which means that this judicial legal instrument will be used in our case by the judicial authority in order to obtain evidence.

The question of why are we not applying another judicial legal instrument in this case may arise (e.g. [the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#)²).

In this respect, it should be noted that according to Article 34 para 1 of the Directive regarding EIO it is provided that *the Directive replaces, as from 22 May 2017, the corresponding provisions of the following conventions applicable between the Member States bound by this Directive:*

¹ OJ L 130, 1.5.2014, p. 1–36

² OJ C 197, 12.7.2000, p. 3–23

(a) *European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959, as well as its two additional protocols, and the bilateral agreements concluded pursuant to Article 26 thereof,*

(b) *Convention implementing the Schengen Agreement,*

(c) *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol.*

So, as Member States involved in the judicial cooperation, they shall apply the Directive regarding EIO to the detriment of the other legal instruments available with regarding the gathering of evidence.

The wording of the Directive regarding EIO is *replace* in order to highlight the obligation as Member State of the European Union to apply the legislation of the European Union in this particular area and not leaving space for interpretation and alternative for the Member States involved.

Moreover, Article 34 para 3 of the Directive regarding EIO provides that, *in addition to this Directive, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after 22 May 2017 only insofar as these make it possible to further strengthen the aims of this Directive and contribute to simplifying or further facilitating the procedures for gathering evidence and provided that the level of safeguards set out in this Directive is respected.*

Of course, the conclusion or continuation to apply bilateral or multilateral agreements or arrangements with other Member States after 22 May 2017 needs to be seen only in strict connection with the corresponding provisions of the Directive regarding EIO, which can be *further developed* by Member States in different agreements or arrangements, and not in connection with the conventions mentioned in the Article 34 para 1 of the Directive regarding EIO, which are put aside and cannot be applied in the area of the Directive, e.g. if the Member States consider that the provisions from the Conventions are better, faster, or just as a tradition between the Member States involved.

Regarding the competence of the Romanian prosecutor to issue EIOs in these situations and specifically in the case of intercepting of the telecommunications it worth mentioning here the latest jurisprudence of the Court of Justice of the European Union in this respect.

In the Case **C 584/19**, A and Others, in its judgement from 08.12.2020, CJEU interpreting the concepts of ‘judicial authority’ and ‘issuing authority’ with regard to the EIO issued by the public prosecutor’s office of a MS decided that article 1(1) and article 2(c) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters must be interpreted as meaning that *the concepts of ‘judicial*

authority’ and ‘issuing authority’, within the meaning of those provisions, include the public prosecutor of a Member State or, more generally, the public prosecutor’s office of a Member State, regardless of any relationship of legal subordination that might exist between that public prosecutor or public prosecutor’s office and the executive of that Member State and of the exposure of that public prosecutor or public prosecutor’s office to the risk of being directly or indirectly subject to orders or individual instructions from the executive when adopting a European investigation order.

In the Case C 724/19, HP, in its judgement from 16.12.2021, CJEU, being called to interpret the situation of an EIO seeking to obtain traffic and location data associated with telecommunications, issued by a public prosecutor designated as ‘issuing authority’ by the national measure transposing Directive 2014/41, established that article 2(c)(i) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters must be interpreted *as precluding a public prosecutor from having competence to issue, during the pre-trial stage of criminal proceedings, an European Investigation Order, within the meaning of that directive, seeking to obtain traffic and location data associated with telecommunications, where, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking access to such data.*

Also, article 6 and Article 9(1) and (3) of Directive 2014/41 must be interpreted as meaning that *recognition, on the part of the executing authority, of an European Investigation Order issued with a view to obtaining traffic and location data associated with telecommunications may not replace the requirements applicable in the issuing State, where that European Investigation Order was improperly issued by a public prosecutor, whereas, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking to obtain such data.*

According to the interpretations given by the CJEU in the judgements abovementioned, in our case scenario, the Romanian prosecutor has the competence to issue EIOs for the first three situations, whereas in the case of interception of telecommunications he will need, according to the national law, a prior decision from the competent judge granting the interception of telecommunications for the case.

Q2: What if the witness lives in Denmark or in Ireland? Does it make any difference for the legal instrument applicable in the case?

Regarding Denmark, in the *Recital (45)* of the Directive on EIO it is provided that *in accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the TEU and the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.*

Also, with regard to **Ireland**, in the *Recital (44)* of the Directive on EIO it is provided that *in accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the TEU and the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.*

This means that Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters is not applicable for Denmark and Ireland, and that the competent authority of the requesting Member States needs to look for other *legal instruments for cooperation in criminal matters* in order to gather the evidence requested for.

In our particular case, **Denmark** and **Romania** are parties to the [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) and have ratified it, which means the Convention is fully applicable (hearing by videoconference is provided for in Article 10 of the 2000 Convention).

It should be kept in mind that all the dispositions from the 2000 Convention will be applicable between the two states involved (*e.g. no official form to be used, no time limits for the execution of LoR are provided for in the Convention*).

The full table of the ratification details of Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union is available [on the EJN's website](#):

Ireland and **Romania** are also part to the [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) and have ratified it, which means the Convention is fully applicable (the hearing of videoconference is provided in Article 10 of the 2000 Convention). The 2000 Convention enter into force for Ireland as of 23.08.2020.

We point out here that according to the *Report on Eurojust's casework in the field of the European Investigation Order, November 2020*, Denmark informed Eurojust that the EIOs that are received in Denmark can nevertheless, as a starting point, be treated as LoRs and executed without the need for a new request. Danish

authorities will thus, as far as possible, try to treat EIOs as LoRs and, when executing them, apply Danish law (criminal procedural code) by analogy rather than mutual recognition. The EIOs are normally executed by the local competent authority. In the event of any problems, the Prosecutor General Office intervenes to sort them out.

Also, since Ireland has not opted into the EIO DIR, Irish authorities have no legal jurisdiction to execute any EIO issued by a Member State. However, Ireland will recognise any LoRs seeking the same evidence and issued on the basis of the 1959 Council of Europe MLA Convention or the 2000 MLA Convention, or both, and will do its best to execute it in line with domestic legislation (see the *Report on Eurojust's casework in the field of the European Investigation Order, November 2020, p.21*).

Q3: What if the prosecutor wants to summon the witness in Bulgaria in order to be heard in Romania? Will Directive 2014/41/EU still be applicable?

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

Article 3 provides that *the EIO shall cover any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (1) ('the Convention') and in Council Framework Decision 2002/465/JHA (2), other than for the purposes of applying, respectively, Article 13(8) of the Convention and Article 1(8) of the Framework Decision*

As can be seen, in order to be applicable, the Directive regarding EIO, a judicial authority needs to request an investigative measure to be taken **in order to gather evidence** in the other Member State involved.

Of course, according to **Article 1 para 2 of the Directive regarding EIO** *the EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.*

In the case of sending or service of procedural documents from the requesting Member State to the requested Member State the Directive regarding EIO *will not be applicable* because it falls outside of the EIO as mentioned in Article 3 from the Directive.

One particular mention should be made with regard to the sending of procedural documents **as part of the investigative measure requested**, when these can be included in the EIO according to Article 9 (2) of Directive 2014/41/EU (*e.g. before doing a house search, the person concerned by the investigative measure needs to sign a document where there are provided its rights*).

In our case, Bulgaria and Romania are part of the [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) and have ratified it which means the Convention is fully applicable (the sending and service of procedural documents is provided in Article 5 of the 2000 Convention).

At this point it is important to recall that the Directive regarding EIO is also not applicable in the following situations (some are expressly mentioned in Directive 2014/41/EU and others result from the interpretation of the scope mentioned in Article 3 of the same Directive):

- *Setting up of a joint investigation team and gathering of evidence within such a team (Article 3 of Directive 2014/41/EU), in which case in which case provisions from Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and from Council Framework Decision 2002/465/JHA³ will be applicable,*
- *Spontaneous exchange of information (Article 7 of the 2000 Convention),*
- *Freezing property for the purpose of subsequent confiscation (Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence⁴; and, as of 19.12.2020, Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders⁵),*
- *Restitution: return of an object to victim (Article 8 of the 2000 Convention),*
- *Gathering of extracts of the criminal records register/ECRIS,*

Q4: How many EIOs should the Romanian prosecutor issue for this case? Indicate the reasons for your answer. What about the situation in which all the investigative measures are to be taken in one of the four countries bound by the Directive 2014/41/EU (Bulgaria, Austria, Poland or France)?

The Directive regarding EIO provides no clear indications on how the issuing authority should proceed in this kind of situation, where assistance in gathering evidence from different executing authorities is required. This is especially when executing authorities from different Member States are involved.

Article 8 para 1 of the Directive only makes a reference to an earlier EIO and provides that *where an issuing authority issues an EIO which supplements an earlier EIO, it shall indicate this fact in the EIO in Section D of the form set out in Annex A*.

Still, in **Section D** of the form set out in **Annex A** we find the mention, *if relevant please indicate if an EIO has already been addressed to another Member States in the same case*.

The issuing authority **can issue one single EIO** and will indicate in it all the investigative measures to be taken that will be sent to the executing authority/authorities involved. Depending on the national provisions and on what the executing authorities ask, the issuing judicial authority can issue the EIO both in original or one original and one copy. This possibility is not ruled out because the wording of the EIO is *indicate if an EIO has already been addressed to another Member States in the same case*.... which is not the situation when as

³ OJ L 162, 20.6.2002, p. 1–3

⁴ OJ L 196, 2.8.2003, p. 45–55

⁵ OJ L 303, 28.11.2018, p. 1–38

issuing authority issues two EIOs at the same time and transmits them in the same time.

✓ In the [Joint Note of Eurojust and the European Judicial Network on the practical application of the European Investigation Order](#) as best practice it is mentioned that the issuing several EIOs might be recommended, depending on the nature and scope of a case and if different authorities in charge of the execution of the EIO (see pages 4 and 7-8 of the Joint Note).

In our case, because two different executing authorities from two different countries will be involved, the issuing authority **will have to fill in two EIOs**, one for each investigative measure requested (house search, hearing by videoconference and obtain information about the bank account), and in the section D of the Annex A of the EIO it will fill in the comment, *if relevant please indicate if an EIO has already been addressed to another Member States in the same* and indicate to which authority from the executing Member State the other EIO has been sent.

One reason more for issuing three EIOs is that in Section A of the EIO the executing authority must be indicated, or in our case we have three different executing authorities from two different Member States. It is not a simple administrative matter, for example when one EIO with two investigative measures must be executed by two different executing authorities from the same Member State.

In this situation each of the EIO will be filled in only with the investigative measure requested and with the detail of the executing authority that will execute the respective EIO and mentioned the other two EIOs issued in the same case.

In order to answer to the second part of the question, we point out that according to the same Joint Note of Eurojust and the European Judicial Network on the practical application of the European Investigation Order when multiple measures are requested, they should, in principle, be included in one EIO.

The same Joint Note indicates that, depending on the nature and scope of a case, a different approach might be advisable, which means multiples EIOs for the same executing MS when there are, for example, confidentiality issues and risk of disclosure, different authorities in charge of the execution of the EIO or even the complexity of the case imposes it.


As a novelty, **the EJM Atlas** has now a section for each of the MS bound by the Directive where in such a situation it is indicated how the issuing MS should proceed when requiring multiples investigative measures in the executing MS.

For example, for Bulgaria, we see that in the case of more than one measure in the EIO, it is indicated how the issuing competent authority should proceed. (see points 1-4 below). And so on for Austria and France. For Poland the information

was in an updating process, so it was impossible to see the steps to be taken for this kind of situation.

As you see, **the same conditions will apply in the case of more than one measure in the MLA request.**


Search Competent Authorities:

Country: Bulgaria (BG)  [\(Select another country\)](#)

More than one measure in the EIO/ MLA request? [Click here](#) to find which authority to choose!

MULTIPLE MEASURES – INFORMATION FOR EVERY MEMBER STATE

More than one measure in the EIO/MLA request?
Click here to find which authority to choose!


 **BULGARIA**

If the EIO/MLA request concerns more than one measure - all the measures may be included in **one** EIO/MLA request.

1. Check first in the Atlas for each measure which authority is the competent receiving authority.
2. Please send the EIO/MLA request to the authority that is competent to execute **the most urgent** of the requested measures.
3. If there is no matter of urgency, please send the EIO/MLA request to the authority that is competent to execute **the majority** of the requested measures.
4. The EIO/MLA will be distributed accordingly in the executing state/ alternatively be taken care of by the authority that received the EIO/MLA request.

MULTIPLE MEASURES – INFORMATION FOR EVERY MEMBER STATE

More than one measure in the EIO/MLA request?
Click here to find which authority to choose!

 **AUSTRIA**

The executing authorities in Austria strictly follows the local competence.

If the EIO/MLA request concerns more than one measure:

1. Check first in the Atlas for each measure which authority is the competent receiving authority.
2. If the measures should be executed in different places (e.g., witness hearings in different cities and taking bank information from banks located in different cities) – please send **separate EIO/MLA request** to each authority **locally** competent for carrying out the wanted measure.
3. If the measures should be executed in the same city/territory – all the measures can be included into the **one EIO/MLA request**.

More than one measure in the EIO/MLA request?
Click here to find which authority to choose!



If the EIO/MLA request concerns more than one measure - all the measures may be included in **one** EIO/MLA request.

1. Check first in the Atlas for each measure which authority is the competent receiving authority.
2. Please send the EIO/MLA request to the authority that is competent to execute the **majority** of the requested measures.
3. The EIO/MLA will be distributed accordingly in the executing state/ alternatively be taken care of by the authority that received the EIO/MLA request.

A. II. Exercises:

Find the following executing competent authorities for the execution of an EIO (general criminal cases) and the languages accepted:

Using the [Atlas](#) available on the EJM's website, and introducing the executing MS and the measures indicated in each of the exercises, we will get the following results (**see all the explanations in the Annex below**):

1. A German competent issuing authority wants a house search of a suspect, located in Brussels, Belgium.

Name:	Parquet van de procureur des Konings te Brussel (Bureau CIS)- Parquet du procureur du Roi de Bruxelles (Bureau CIS)
Address:	Portalis, Rue des Quatre bras, 4
Department (Division):	
City:	Bruxelles
Postal code:	1000
Phone number:	+32 (0)2 508 70 80
Mobile phone:	
Fax number:	+32 (0)2 519 82 96
Email Address:	cis.bxl@just.fgov.be

As for the language/languages accepted, in the document **Competent authorities, languages accepted, urgent matters and scope of the EIO Directive of the instrument in EU Member States** we see that the Belgium competent authorities accepted EIOs in French, Dutch, German or English.




ACCEPTED LANGUAGES	French, Dutch, German or English. Important remark: before the execution, the EIO will be internally translated if the language is not the language of the judicial area where the EIO has to be executed. In case of urgency, it is recommended - where possible - to translate the EIO in the language of the region.
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2. A French competent issuing authority wants to hear by videoconference a witness residing in Vigo, Spain.

Name:	Fiscalía Provincial de Pontevedra (Prosecutor's Office)
Address:	Edificio Juzgados. Plaza Tomás y Valiente, s/n
Department (Division):	
City:	PONTEVEDRA
Postal code:	36071
Phone number:	+34 986 80 57 32
Mobile phone:	
Fax number:	+34 986 80 53 58
Email address:	internacional.pontevedra@fiscal.es


As for the language/languages accepted, in the document **Competent authorities, languages accepted, urgent matters and scope of the EIO Directive of the instrument in EU Member States** we that the Spanish competent authorities accept EIOs in Spanish. There is an exception if the EIOs are coming from Portugal, in this case, EIOs can be sent also in Portuguese.

 SPAIN	
ACCEPTED LANGUAGES	Spanish; Portuguese - if the EIO comes from Portugal.

3. A Spanish competent issuing authority wants to hear an expert living in Athens, Greece.

Name:	Public prosecutor's Office at the Court of Appeal of Athens
Address:	Kirilou Loukareos 14
Department (Division):	Department of extradition and judicial assistance
City:	Athens
Postal code:	11475
Phone number:	+30 210 64 04 612
Mobile phone:	
Fax number:	+30 210 64 04 667
Email Address:	cpejn1@otenet.gr

As for the language/languages accepted, in the document **Competent authorities, languages accepted, urgent matters and scope of the EIO Directive of the instrument in EU Member States** we that the Greek competent authorities accept EIOs in Greek and English.

 GREECE	
ACCEPTED LANGUAGES	Greek and English.

4. A Romanian competent issuing authority wants to intercept the telecommunication of a suspect located in France without the technical assistance.

Name:	Office for international mutual legal assistance in criminal matters, division of criminal affairs and pardons, Ministry of justice.
Address:	13, Place Vendôme
Department (Division):	Communications for this measure shall be done via the ministry of justice, office for international mutual legal assistance.
City:	Paris cedex 01
Postal code:	75042
Phone number:	
Mobile phone:	
Fax number:	
Email Address:	liste.entraide.dacg-bepi@justice.gouv.fr

As for the language/languages accepted, in the document **Competent authorities, languages accepted, urgent matters and scope of the EIO Directive of the instrument in EU Member States** we that the French competent authorities only accept EIOs in French.

 FRANCE	
ACCEPTED LANGUAGES	French.

A. III. Case scenario 2

Q1: Find the German competent authority where the Romanian judicial authority needs to address for the A.W.'s house search.

(see the explanations in the Annex below)

In order to find the competent executing authority, the participants will be guided on how to use the [Atlas from the European Judicial Network's website](#) following the steps there provided.

First, we select the country where we want to address the EIO, which is our case is Germany, then we select the investigative measure we are looking for, in our case, *601. Visit to and search of homes*.

Once we have selected the investigative measure, we select that the place is *known* (in our case Stuttgart), then we select *Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters* as the legal instrument applicable (because we have seen previously that all the Member States have transposed the Directive with the exception of Denmark and Ireland which are part to it), and lastly, we introduce Stuttgart as the locality involved in the measure.

The result of our search should like this:

Name of the executing authority:	Staatsanwaltschaft Stuttgart
Address:	Neckarstr. 145
Department (Division):	
City:	Stuttgart
Postal code:	70190
Phone number:	(+49) 711 9210
Mobile phone:	
Fax number:	(+49) 711 9214009
Email Address:	

As you can see, the executing authority in our case is a prosecutor's office in Stuttgart, and some of the contact details are provided in order for the issuing authority to know who sent the EIO in order to be recognised and executed by the abovementioned executing authority.

The contact details are also very important for the two judicial authorities in order to enter into direct contact as the Directive regarding EIO expressly provides for.

Q2: Find the Austrian competent authority that will help the Romanian judicial authority to hear by videoconference the witness.

(see further explanations in the Annex below)

In order to find the competent executing authority, the participants will again use the [Atlas from the European Judicial Network's website](#) following the steps provided there.

First, we select the country where we want to address the EIO, which in our case is Austria, then we select the investigative measure we are looking for, in our case, *703. Hearing witnesses: by video conference*.

We will then be asked if the case is regarding corruption offences (in our case we select *No*).

Once we have selected the investigative measure, we select that the place is *known* (in our case Vienna), then we select Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters as the legal instrument applicable (because we have seen previously that all the Member States have transposed the Directive with the exception of Denmark and Ireland which are party to it), and lastly, we introduce Stuttgart as the locality involved in the measure.

The result of our search should like this:

Name of the executing authority:	Staatsanwaltschaft Vienna
Address:	Landesgerichtsstraße 11
Department (Division):	
City:	Vienna
Postal code:	1082
Phone number:	(+43) 1/40127
Mobile phone:	
Fax number:	+43 1 40127-306950
Email Address:	

As we can see, the executing authority in our case is again a prosecutor's office in Vienna, and some of the contact details are provided in order for the issuing authority to know who sent the EIO in order to be recognised and executed by the abovementioned executing authority.

The contact details are also very important in order for the two judicial authorities to enter into direct contact as the Directive regarding EIO expressly provides for.

The transmission of EIOs for the first two questions and any further official communication shall, in principle, be made **directly** between the issuing authority and the executing authority. However, when further advice or support is needed and/or a consultation procedure is triggered, the judicial authorities can contact Eurojust, which can play a bridge-building role, facilitating the dialogue between

the issuing and executing authorities (see the *Report on Eurojust's casework in the field of the European Investigation Order, November 2020, p.7*).

According to the same report, issuing judicial authorities can contact Eurojust when they did not receive any reply or reaction to EIOs that they had issued, or to related (repeated) emails and/or phone calls to the competent authority in the executing Member State.

Q3: In which languages will the EIOs be send by the issuing authority to the two competent executing authorities?

In order to answer this question, the participants will be guided to learn how to use the document available on the EJM website - [Competent authorities, languages accepted, urgent matters and scope of the EIO Directive \(Updated 07 August 2019\)](#).

This document contains valuable information about the competent authorities (issuing, validating, receiving, executing authorities and also, if applicable central authorities) designed by each country according to the provisions of the Directive regarding EIO. Also, there is information regarding urgent cases (where should the issuing authority address in such cases), scope, languages accepted and the date for entry into force of the national provisions transposing the Directive.

In what concerns our case, in the document we find that:

Austria will accept the EIO translated into German and a special provision that, in relation to Member States that accept German, also their official languages are accepted.

Germany will accept the EIO translated into German.

The 2001/41/EU Directive requires that the EIO be translated into one of the languages that are recognised by the executing Member State and as a consequence, the executing judicial authority can, in principle, refuse to give effect to the EIO until it has received the translated version of the EIO.

Q4: Fill in the EIO regarding the house search in Germany and the EIO regarding the hearing by videoconference in Austria.

The participants will be provided with [a .doc form of EIO to be filled](#) in the language where the seminar is taking place.

The participants will fill in the EIOs in small groups and then the EIOs will be exchanged between groups in order for one group to receive the other EIO (*the group filling the EIO regarding house search will receive as executing authority the EIO regarding the hearing by videoconference and vice versa*).

The trainer will guide the participants on how to fill in the EIO highlighting the *Guidelines on the European Investigation Order forms* available on the

European Judicial Network's website published on 30.01.2020, which is a very useful tool for legal practitioners when it comes to filling in an EIO.

The link to the [Guidelines on the EIO can be found here](#).

In order to fill in the EIOs the participants will use the [editable .pdf form of the European Investigation Order – EIO \(Annex A\)](#) found on the EJM website.

The editable .pdf form is only in English at the moment. It is a very user-friendly form, which can be easily filled in, saved on a computer and then printed out.

The group that will receive the EIO from another group will analyse it and will designate a person who will point out if the EIO received was correctly filled in or if they consider information to be missing from it.

Notes for filling in the EIOs:

- ✓ *Depending on where the seminar is taking place, the issuing State will be changed with that country, and accordingly mentioned at point a) of the EIO.*
- ✓ *If the issuing MS is changed with Germany or Austria, then another MS (with the exception of Denmark or Ireland) will be used as executing MS for one of the investigative measures mentioned in the case scenario.*
- ✓ *At point b) urgency will be filled in only if applicable according to the national provisions. If applicable under one of the 3 reasons mentioned, that should be ticked. Also, a shorter time limit for execution should be indicated.*
- ✓ *Point c) will be ticked according to the group filling the EIO.*
- ✓ *At point d) reference to the other EIO filled in by the other groups will be given.*
- ✓ *At point e) of the EIO information about the suspect A.W. and the witness T.J. should be given. Also, information about the other two suspects J.P. and J.L. should be introduced (by the adding natural persons). Fictitious information will be used for any missing from the case scenario.*
- ✓ *At point f) the applicable letter should be indicated as existing in the national provisions.*
- ✓ *At point g) information regarding the nature and legal classification will be used to fill in this section. When given the summary of the facts please use town, streets, etc, from the country where the seminar is taking place. If applicable according to the national law, the offence(s) from point 3 will be ticked accordingly.*

- ✓ At point h.2) information will be provided for the EIO regarding hearing by video conference. The details of authority can be completed with fictitious information if not provided in the case scenario.
- ✓ At point i), formalities and procedures requested for the execution, if applicable according to the national law, point 1 and/or 2 will be filled in with the information needed for the executing judicial authority. For example, in which conditions the house search needs to be made or the witness be heard (if the witness needs to be summoned in advance according to the law of the issuing MS proper information should be given).
- ✓ Point j) will be filled in according to the existing national provisions. As held by the Court of Justice in its judgment in Case C-324/17 Gavanozov (judgment of 24 October 2019), a description of the legal remedy must be included only if a legal remedy has been sought against an EIO.

According to the decision Article 5(1) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, read in conjunction with Section J of the form set out in Annex A to that directive, must be interpreted as meaning that the judicial authority of a Member State does not, when issuing a European Investigation Order, have to include in that section a description of the legal remedies, if any, which are provided for in its Member State against the issuing of such an order.

In the decision Case C 852/19 regarding the same case Gavanozov, CJEU added some limitations to the abovementioned interpretation and indicated that when issuing an EIO for searches and seizure or for hearing of a witness by videoconference, article 14 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, read in conjunction with Article 24(7) of that directive and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as **precluding legislation of a Member State which has issued a European investigation order that does not provide for any legal remedy against the issuing of a European investigation order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference.**

Also, article 6 of Directive 2014/41, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 4(3) of the Treaty on European Union, must be interpreted as **precluding the issuing, by the competent authority of a Member State, of a European investigation order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference,**

where the legislation of that Member State does not provide any legal remedy against the issuing of such a European investigation order.

Within Section J (Legal remedies), it should be specified not only whether an appeal against the issuing of the EIO has been lodged, but also whether such an appeal is admissible according to the lex fori.

- ✓ *At point k) of the EIO all the details of a competent authority in charge of issuing the EIO in the home country will be filled in. If some of the details from the case scenario are not known, fictitious data can be used to fill in section k) of the EIO.*
- ✓ *Point l) will be filled in only if applicable to the national provisions. If a non-judicial authority has issued this EIO, then official contact details of the validating authority will be mentioned here.*

Q5: What will the competent executing authority do after receiving an EIO from the issuing authority? What are its obligations?

Obligation to inform the issuing authority about receiving the EIO

According to Article 16 para 1 of the Directive regarding EIO the competent authority in the executing State which receives the EIO shall, **without delay**, and **in any case within a week of the reception of an EIO**, acknowledge receipt of the EIO by completing and sending the form set out in **Annex B**.

Where a central authority has been designated in accordance with Article 7(3), this obligation is applicable **both** to the **central authority** and to the **executing authority which receives the EIO from the central authority**.

Where the authority in the executing State which receives the EIO has no competence to recognise the EIO or to take the necessary measures for its execution, it shall, ex officio, transmit the EIO to the executing authority and so **inform the issuing authority**. This obligation applies also to **the executing authority to which the EIO is finally transmitted**.

Obligation to inform the issuing authority about the content of the EIO or about the impossibility to executed it as requested

The executing authority shall inform the issuing authority immediately by any means:

- (a) if it is impossible for the executing authority to take a decision on the recognition or execution due to the fact that the form provided for in Annex A is incomplete or manifestly incorrect,
- (b) if the executing authority, in the course of the execution of the EIO, considers without further enquiries that it may be appropriate to carry out investigative

measures not initially foreseen, or which could not be specified when the EIO was issued, in order to enable the issuing authority to take further action in the specific case; or

(c) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority

Obligation to inform the issuing authority about decisions taken regarding the EIO received

The executing authority shall inform the issuing authority without delay by any means capable of producing a written record:

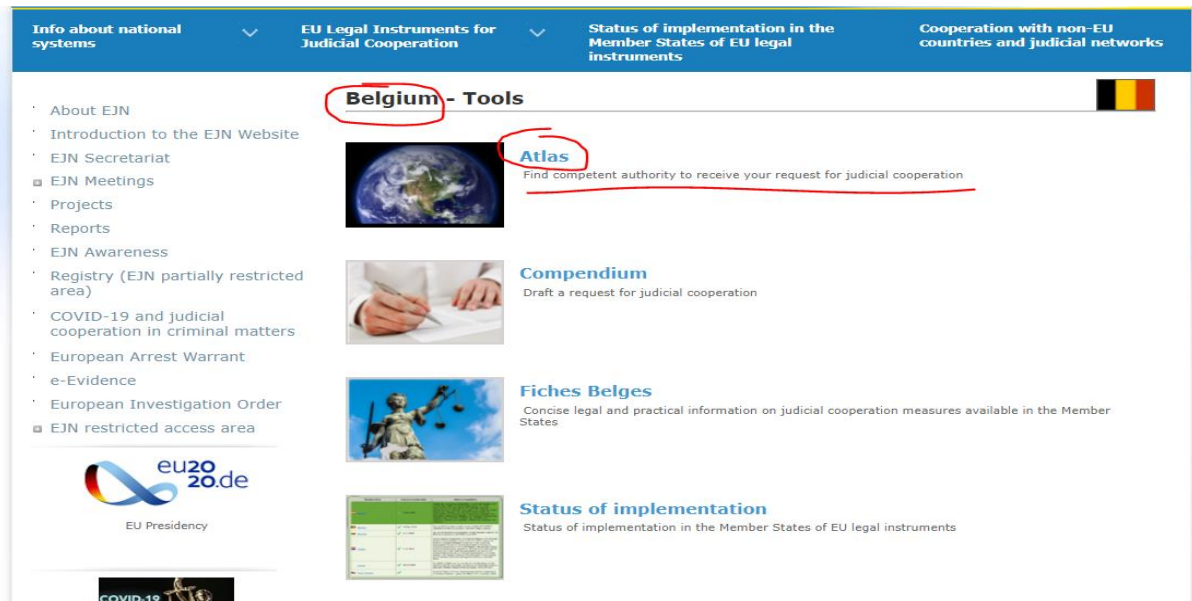
(a) of any decision taken pursuant to Articles 10 or 11 (the decision to recourse to a different type of investigative measure or a decision of non-recognition or non-execution of the EIO).

(b) of any decision to postpone the execution or recognition of the EIO, the reasons for the postponement and, if possible, the expected duration of the postponement.

Annex. Step-by-step solutions

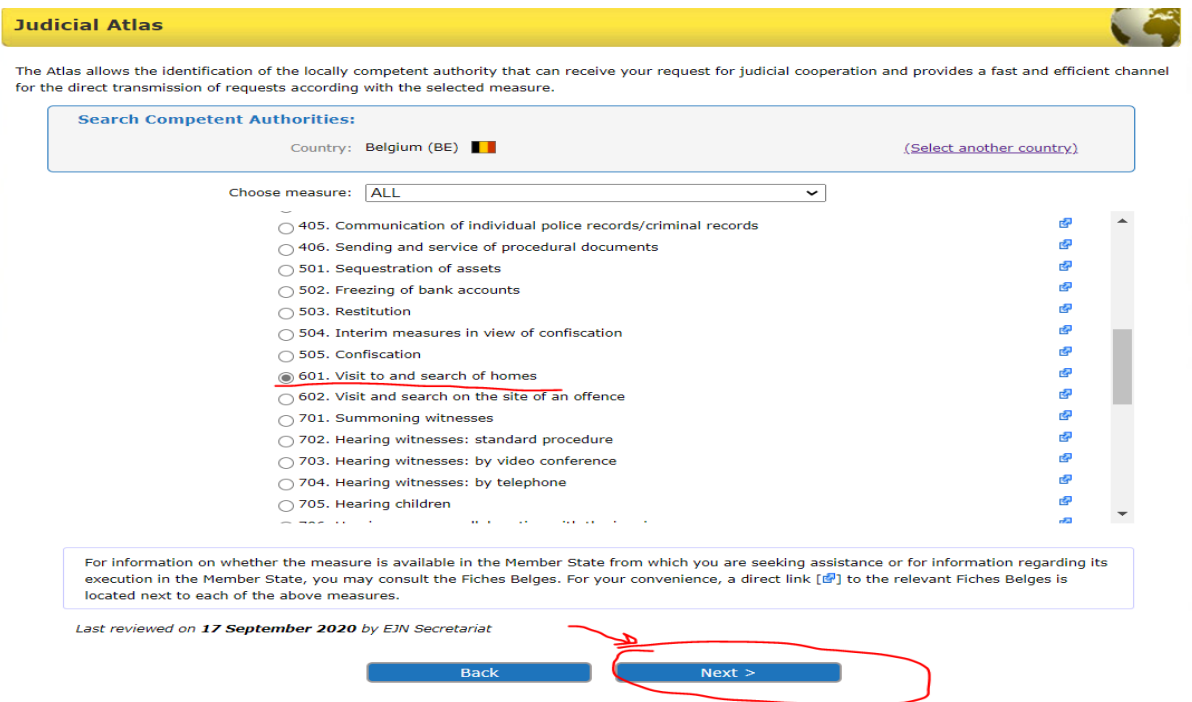
- **A German competent issuing authority wants a house search of a suspect, located in Brussels, Belgium.**

1. In order to identify the competent authority, we select **Belgium** as the country selected (BE). Then we select the section **Atlas** as shown below.



The screenshot shows the EUNet portal interface. At the top, there are four main navigation tabs: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. Below these, the 'Belgium - Tools' section is displayed. The 'Atlas' tool is highlighted with a red circle and underlined. The 'Atlas' tool description is 'Find competent authority to receive your request for judicial cooperation'. Other tools shown include 'Compendium', 'Fiches Belges', and 'Status of implementation'.


2. We select measure **601. Visit to and search homes**. Then we select the section **Next** as shown below.



The screenshot shows the 'Judicial Atlas' search interface. The 'Country' is set to 'Belgium (BE)'. The 'Choose measure' dropdown is set to 'ALL'. The list of measures is shown, with '601. Visit to and search of homes' selected. The 'Next >' button is highlighted with a red circle.

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Belgium (BE)  [\(Select another country\)](#)

Choose measure: ALL

- 405. Communication of individual police records/criminal records
- 406. Sending and service of procedural documents
- 501. Sequestration of assets
- 502. Freezing of bank accounts
- 503. Restitution
- 504. Interim measures in view of confiscation
- 505. Confiscation
- 601. Visit to and search of homes
- 602. Visit and search on the site of an offence
- 701. Summoning witnesses
- 702. Hearing witnesses: standard procedure
- 703. Hearing witnesses: by video conference
- 704. Hearing witnesses: by telephone
- 705. Hearing children

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[🔗\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on **17 September 2020** by EJN Secretariat

[Back](#) [Next >](#)

3. Here we have to select from 2 options. We will select that we know the location in Brussels (if we had not known the location we would have chosen not known and we would rely on the help provided by the competent authorities within the executing MS). Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Belgium (BE) [\(Select another country\)](#)

Measure: **Places - Visit and search** [\(Select another measure\)](#)
Visit to and search of homes (601)

Unknown place or many places? Known Not known

[Back](#) [Next >](#)

4. Here we have to select from 2 options – the 2000 Convention or Directive 2014/41 on EIO. In order for the Directive to be applicable we verify the **status of implementation** (on the EJN’s website) of the legal instrument. We know that only Denmark and Ireland are not bound by the Directive and the other MS have implemented the Directive. We will select Directive 2014/41 on EIO. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Belgium (BE) [\(Select another country\)](#)

Measure: **Places - Visit and search** [\(Select another measure\)](#)
Visit to and search of homes (601)

Unknown place or many places?: Known [\(Select another option\)](#)

Select legal instrument [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union \(Ratification details\)](#)

[Directive 2014/41/EU regarding the European Investigation Order in criminal matters \(Status of Implementation\)](#)

[Back](#) [Next >](#)

5. We introduce **Brussels**. Then we select the section **Next** as shown below.

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority

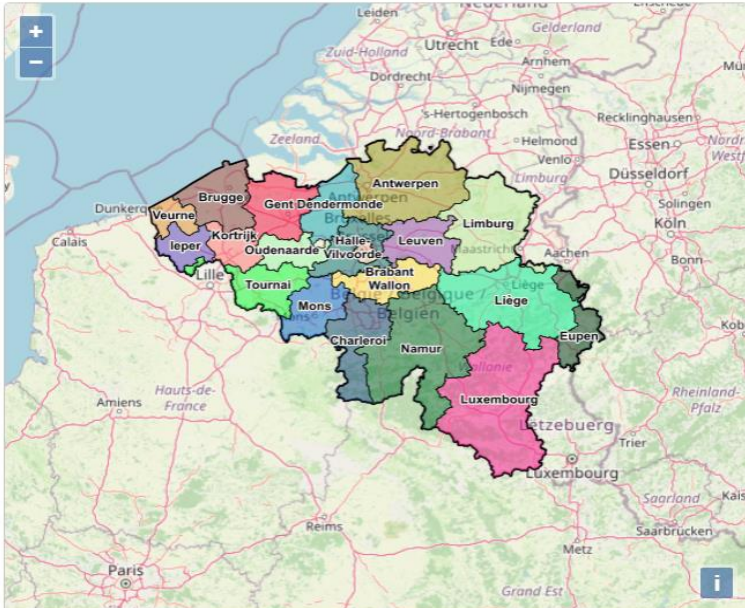
Name:

Address:

P. Code:

City:

Area:



If you want to access the Contact Point details, please login [here](#)

6. At the end we are provided with the results of our search as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Belgium (BE)  [\(Select another country\)](#)

Measure: **Places - Visit and search** [\(Select another measure\)](#)
Visit to and search of homes (601)

Unknown place or many places?: Known [\(Select another option\)](#)

Legal instrument: [Directive 2014/41/EU regarding the European Investigation Order in criminal matters](#) [\(Status of Implementation\)](#) [\(Select another instrument\)](#)

Authority Type: BE - Geraal --- (Regional)

Resultant Competent Authority:

Procureur du Roi de Bruxelles – Bureau CIS / Procureur des Konings te Brussel – Bureau CIS

Name: Procureur du Roi de Bruxelles – Bureau CIS / Procureur des Konings te Brussel – Bureau CIS

Address: Portalis, Rue des Quatre bras 4 / Portalis, Vierarmenstraat 4

Department (Division): For "Transfer of Proceedings" please use email: casier.BCN.Bruxelles@just.fgov.be

City: Bruxelles / Brussel

Postal code: 1000

Phone number: +32 (0)2 508 71 11 Mobile phone:

Fax number: Email Address: cis.bxl@just.fgov.be

➤ **A French competent issuing authority wants to hear, by videoconference, a witness residing in Vigo, Spain.**

1. In order to identify the competent authority, we select **Spain** as the country selected (ES). Then we select the section **Atlas** as shown below.

The screenshot shows the 'Spain - Tools' page. The 'Spain' tab is circled in red. The 'Atlas' tool is highlighted with a red circle and a red underline. The 'Atlas' description reads: 'Find competent authority to receive your request for judicial cooperation'. Other tools shown include 'Compendium', 'Fiches Belges', and 'Status of implementation'.

2. We select measure **703. Hearing witnesses: by video conference**. Then we select the section **Next** as shown below.

The screenshot shows the 'Judicial Atlas' search interface. The 'Country' is set to 'Spain (ES)'. The 'Choose measure' dropdown is set to 'ALL'. The list of measures includes '703. Hearing witnesses: by video conference', which is selected and underlined in red. The 'Next >' button is circled in red.

3. Here we have to select from 2 options –Directive 2014/41 on EIO or another legal instrument. In order for the Directive to be applicable we verify the **status of implementation** (on the EJN’s website) of the legal instrument. We know that only Denmark and Ireland are not bound by the Directive and the other MS have implemented the Directive. We will select Directive 2014/41 on EIO. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Spain (ES) [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Did your country implement the European Investigation Order and do you therefore want to apply this instrument?
 Yes, apply EIO as legal instrument
 No, I cannot apply EIO as legal instrument

[Back](#) [Next >](#)

4. Here we have to select from 3 options concerning the offence involved. We select any other crime. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Spain (ES) [\(Select another country\)](#)


Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Did your country implement the European Investigation Order and do you therefore want to apply this instrument?:
Yes, apply EIO as legal instrument [\(Select another option\)](#)

Offence involved
 - terrorism
 - offences against the high institutions and the forms of government
 - counterfeit of legal tender and currency committed by OCGs
 - serious fraud that may cause serious repercussions at national level or may cause detriment to a high number of persons
 Drug trafficking committed by OCGs
 Most serious forms of corruption and misuse of public funds
 Any other matter


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5. The next step is to select from 2 options. We will select that we know the location in Vigo, where the witness is residing. Then we select the section **Next** as shown below.

Judicial Atlas 

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Spain (ES)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Did your country implement the European Investigation Order and do you therefore want to apply this instrument?: Yes, apply EIO as legal instrument [\(Select another option\)](#)

Offence involved: Any other matter [\(Select another option\)](#)

Is the territorial link known? Known territorial link Unknown territorial link

[Back](#) [Next >](#)

6. We introduce **Vigo, Spain**. Then we select the section **Next** as shown below.

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority

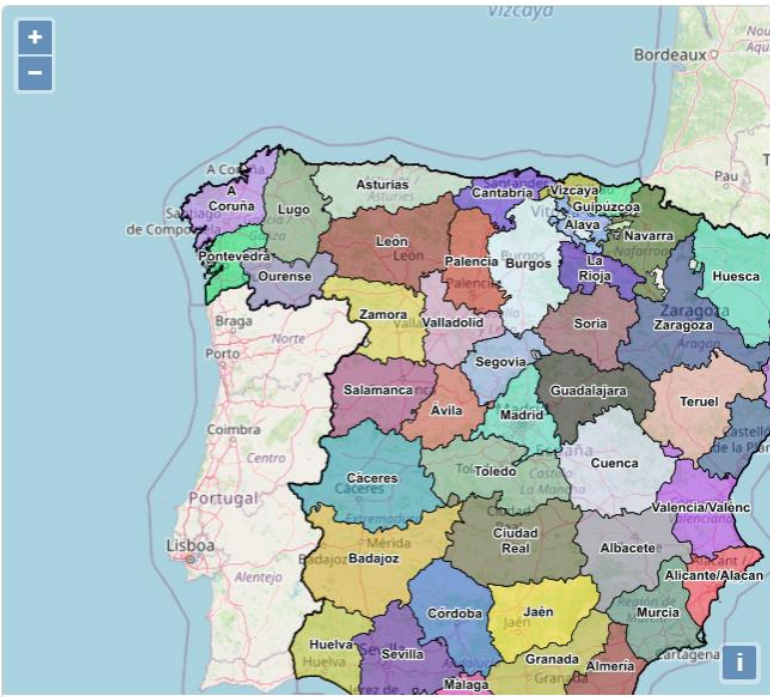
Name:

Address:

P. Code:

City:

Area:



If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

7. At the end we are provided with the results of our search as shown below.

Did your country implement the European Investigation Order and do you therefore want to apply this instrument?: Yes, apply EIO as legal instrument [\(Select another option\)](#)

Offence involved: Any other matter [\(Select another option\)](#)

Is the territorial link known?: Known territorial link [\(Select another option\)](#)

Legal instrument: [Directive 2014/41/EU regarding the European Investigation Order in criminal matters](#) [\(Status of Implementation\)](#)

Authority Type: R-Fiscalia Provincial (Regional)

Resultant Competent Authority: ~~Fiscalía Provincial de Pontevedra (Prosecutor's Office)~~


General data | Videoconference | Areas | Properties | Associated CPs

Name: Fiscalía Provincial de Pontevedra (Prosecutor's Office)
 Address: Edificio Juzgados. Plaza Tomás y Valiente, s/n
 Department (Division):
 City: PONTEVEDRA
 Postal code: 36071
 Phone number: +34 986 80 57 32 Mobile phone:
 Fax number: +34 986 80 53 58 Email Address: internacional.pontevedra@fiscal.es


[Click to view the map](#) [Import authority details into Compendium](#)


➤ **A Spanish competent issuing authority wants to hear an expert living in Athens, Greece.**


1. In order to identify the competent authority, we select **Greece** as the country selected (GR). Then we select the section **Atlas** as shown below.


Greece Tools 


- About EJN
- Introduction to the EJN Website
- EJN Secretariat
- EJN Meetings
- Projects
- Reports
- EJN Awareness
- Registry (EJN partially restricted area)
- COVID-19 and judicial cooperation in criminal matters
- European Arrest Warrant
- e-Evidence
- European Investigation Order
- EJN restricted access area


 **Atlas**
Find competent authority to receive your request for judicial cooperation

 **Compendium**
Draft a request for judicial cooperation

 **Fiches Belges**
Concise legal and practical information on judicial cooperation measures available in the Member States

 **Status of implementation**
Status of implementation in the Member States of EU legal instruments


EU Presidency



2. We select measure **708. Hearing experts**. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Greece (GR) [\(Select another country\)](#)

Choose measure: ALL

- 703. Hearing witnesses: by video conference
- 704. Hearing witnesses: by telephone
- 705. Hearing children
- 706. Hearing persons collaborating with the inquiry
- 707. Hearing victims/plaintiffs
- 708. Hearing experts
- 709. Summoning suspects/persons accused
- 710. Hearing suspects/persons accused: standard procedure
- 711. Hearing suspects/persons accused: by video conference
- 712. Hearing suspects/persons accused: by telephone
- 713. Confrontation
- 801. Cross-border observation
- 802. Cross-border hot pursuit
- 803. Cross-border tracking (by placing a beeper on a vehicle or a person)

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[B\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on 6 April 2017 by EJM Secretariat

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3. The next step is to select from 2 options. We will select that we know the location - Athens, where the expert is residing. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Greece (GR) [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing experts (708)

Is the locality unknown or do you want to send multiple requests? Unknown locality, or multiple requests
 Locality of request is known


[Back](#) [Next >](#)

4. Here we have to select from 2 options –Directive 2014/41 on EIO or the 1959 Convention (because in Greece the 2000 Convention is not in force, so not applicable). In order for the Directive to be applicable we verify the **status of implementation** (on the EJM’s website) of the legal instrument. We know that only Denmark and Ireland are not bound by the Directive and the other MS have implemented the Directive. We will select Directive 2014/41 on EIO. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Greece (GR)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing experts (708)

Is the locality unknown or do you want to send multiple requests? : Locality of request is known [\(Select another option\)](#)

Select legal instrument [European Convention on mutual assistance in criminal matters, Strasbourg, 20 April 1959](#) [Directive 2014/41/EU regarding the European Investigation Order in criminal matters \(Status of Implementation\)](#)

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5. We introduce **Athens**. Then we select the section **Next** as shown below.

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority


Name:

Address:

P. Code:

City:

Area:




If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

6. At the end we are provided with the result of our search as shown below.

Search Competent Authorities:

Country: Greece (GR)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing experts (708)

Is the locality unknown or do you want to send multiple requests? : Locality of request is known [\(Select another option\)](#)

Legal instrument: [Directive 2014/41/EU regarding the European Investigation Order in criminal matters](#) [\(Status of Implementation\)](#) [\(Select another instrument\)](#)

Authority Type: Public prosecutor's office - Court of Appeal (Regional)

Resultant Competent Authority: ~~Public prosecutor's Office at the Court of Appeal of Athens.~~

General data | Videoconference | Areas | Properties | Associated CPs

Name: Public prosecutor's Office at the Court of Appeal of Athens.

Address: Kirilou Loukareos 14

Department (Division): Department of extradition and judicial assistance

City: Athens

Postal code: 11475

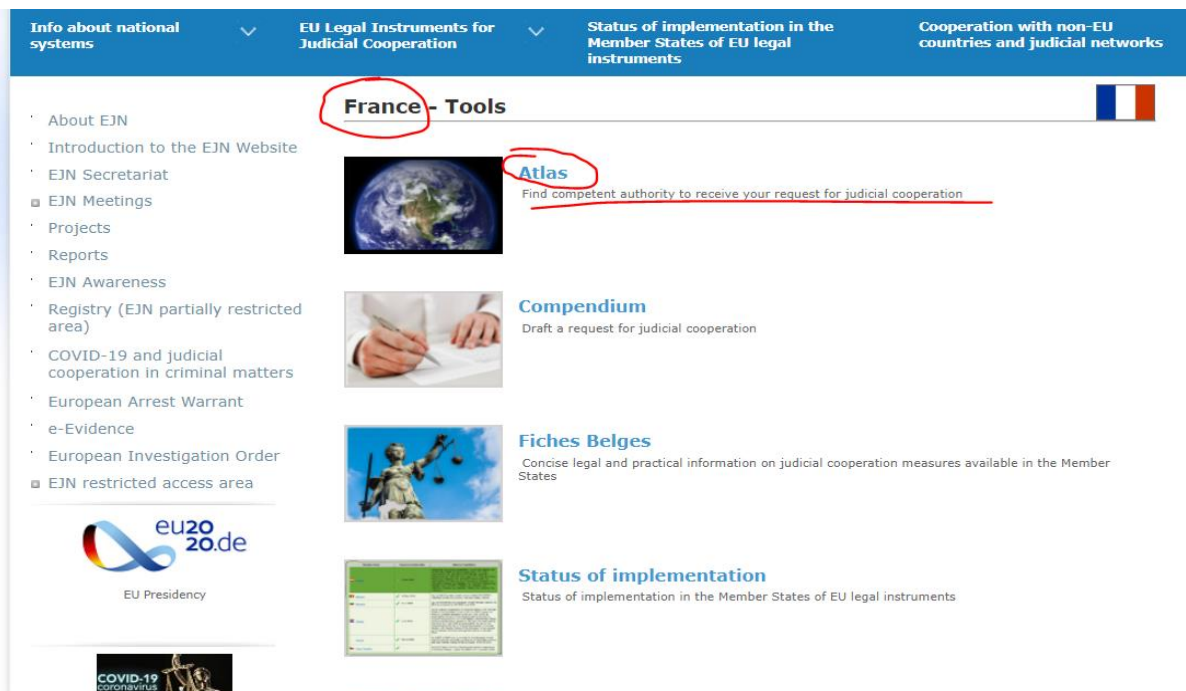
Phone number: +30 210 64 04 612 Mobile phone:

Fax number: +30 210 64 04 667 Email Address: cpejn1@otenet.gr


[Click to view the map](#) [Import authority details into Compendium](#)

➤ **A Romanian competent issuing authority wants to intercept the telecommunication of a suspect located in France without technical assistance.**

1. In order to identify the competent authority, we select **France** as the country selected (FR). Then we select the section **Atlas** as shown below.



Info about national systems | EU Legal Instruments for Judicial Cooperation | Status of implementation in the Member States of EU legal instruments | Cooperation with non-EU countries and judicial networks

France - Tools 


- About EJN
- Introduction to the EJN Website
- EJN Secretariat
- EJN Meetings
- Projects
- Reports
- EJN Awareness
- Registry (EJN partially restricted area)
- COVID-19 and judicial cooperation in criminal matters
- European Arrest Warrant
- e-Evidence
- European Investigation Order
- EJN restricted access area


Atlas
Find competent authority to receive your request for judicial cooperation

Compendium
Draft a request for judicial cooperation

Fiches Belges
Concise legal and practical information on judicial cooperation measures available in the Member States

Status of implementation
Status of implementation in the Member States of EU legal instruments

 EU Presidency




2. We select measure **107. Interception of telecommunication without the technical assistance of another Member State**. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: France (FR)  [\(Select another country\)](#)

Choose measure:

- 101. Interception, recording and transcription of telecommunications [\[i\]](#)
- 102. Tracing of telecommunications [\[i\]](#)
- 103. Interception and recording of other forms of communication [\[i\]](#)
- 104. Interception of mail [\[i\]](#)
- 105. Observation [\[i\]](#)
- 106. Interception of telecommunication - Art. 18 (2) (b) of the MLA Convention [\[i\]](#)
- 107. Interception of telecommunication without the technical assistance of another Member State [\[i\]](#)
- 201. Infiltration by undercover agents of the requested State [\[i\]](#)
- 202. Infiltration by agents of the requesting State in the territory of the requested State [\[i\]](#)
- 203. Infiltration by an informer of the requested State [\[i\]](#)
- 204. Handling of informers [\[i\]](#)
- 301. Superficial body search [\[i\]](#)
- 302. Invasive body search [\[i\]](#)
- 303. Psychiatric medical examination [\[i\]](#)
- 304. Control of identity, measures for judicial identification [\[i\]](#)

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[i\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on 27 July 2020 by EJN Secretariat

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3. Here we have to select from 2 options –Directive 2014/41 on EIO or the 1959 Convention. In order for the Directive to be applicable we verify the **status of implementation** (on the EJN’s website) of the legal instrument. We know that only Denmark and Ireland are not bound by the Directive and the other MS have implemented the Directive. We will select Directive 2014/41 on EIO. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: France (FR)  [\(Select another country\)](#)

Measure: **Tracing and interception of (tele) communications** [\(Select another measure\)](#)
Interception of telecommunication without the technical assistance of another Member State (107)


Select legal instrument [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) *(Ratification details)*

[Directive 2014/41/EU regarding the European Investigation Order in criminal matters](#) *(Status of Implementation)*

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4. At the end we are provided with the results of our search as shown below.

Search Competent Authorities:

Country: France (FR)  [\(Select another country\)](#)

Measure: **Tracing and interception of (tele) communications** [\(Select another measure\)](#)
 Interception of telecommunication without the technical assistance of another Member State (107)

Legal instrument: [Directive 2014/41/EU regarding the European Investigation Order in criminal matters](#) [\(Select another instrument\)](#)
(Status of Implementation)

Authority Type: Office for international mutual legal assistance in criminal matters, division of criminal affairs and pardons, Ministry of justice / (Central)

Resultant Competent Authority:

Office for international mutual legal assistance in criminal matters, division of criminal affairs and pardons, Ministry of justice .

General data | Videoconference | Areas | Properties | Associated CPs

Name: Office for international mutual legal assistance in criminal matters, division of criminal affairs and pardons, Ministry of justice .

Address: 13, Place Vendôme

Department (Division): Communications for this measure shall be done via the ministry of justice, office for international mutual legal assistance. Please send EIO (annex C) by email to address email : liste.entraide.dacg-bepi@justice.gouv.fr

City: Paris cedex 01

Postal code: 75042

Phone number: Mobile phone:

Fax number: Email Address: liste.entraide.dacg-bepi@justice.gouv.fr


[Click to view the map](#) [Import authority details into Compendium](#)

Solutions for points 1 and 2 from Case scenario 2:


➤ **Find the German competent authority the Romanian judicial authority needs to address for the A.W.'s house search.**


1. In order to identify the competent authority, we select **Germany** as the country selected (DE). Then we select the section **Atlas** as shown below.


Info about national systems | EU Legal Instruments for Judicial Cooperation | Status of implementation in the Member States of EU legal instruments | Cooperation with non-EU countries and judicial networks


Germany - Tools 


- About EJN
- Introduction to the EJN Website
- EJN Secretariat
 - EJN Meetings
 - Projects
 - Reports
 - EJN Awareness
- Registry (EJN partially restricted area)
- COVID-19 and judicial cooperation in criminal matters
- European Arrest Warrant
- e-Evidence
- European Investigation Order
- EJN restricted access area

 **Atlas**
Find competent authority to receive your request for judicial cooperation


 **Compendium**
Draft a request for judicial cooperation

 **Fiches Belges**
Concise legal and practical information on judicial cooperation measures available in the Member States

 **Status of implementation**
Status of implementation in the Member States of EU legal instruments



EU Presidency

2. We select measure **601. Visit to and search homes**. Then we select the section **Next** as shown below.

Judicial Atlas 

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Germany (DE)  [\(Select another country\)](#)

Choose measure:

- 501. Sequestration of assets
- 502. Freezing of bank accounts
- 503. Restitution
- 504. Interim measures in view of confiscation
- 505. Confiscation
- 601. Visit to and search of homes
- 602. Visit and search on the site of an offence
- 701. Summoning witnesses
- 702. Hearing witnesses: standard procedure
- 703. Hearing witnesses: by video conference
- 704. Hearing witnesses: by telephone
- 705. Hearing children
- 706. Hearing persons collaborating with the inquiry
- 707. Hearing victims/plaintiffs
- 708. Hearing experts

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[F\]](#) to the relevant Fiches Belges is located next to each of the above measures.


Last reviewed on **6 April 2017** by EJN Secretariat

3. Here we have to select from 2 options. We will select that we know the location in Germany which is Stuttgart. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Germany (DE)  [\(Select another country.\)](#)

Measure: **Places - Visit and search** [\(Select another measure\)](#)
 Visit to and search of homes (601)

Unknown place? Known
 Not known


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4. Here we have to select from 2 options – the 2000 Convention or Directive 2014/41 on EIO. In order for the Directive to be applicable we verify the **status of implementation** (on the EJN’s website) of the legal instrument. We know that only Denmark and Ireland are not bound by the Directive and the other MS have implemented the Directive. We will select Directive 2014/41 on EIO. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Germany (DE)  [\(Select another country.\)](#)

Measure: **Places - Visit and search** [\(Select another measure\)](#)
 Visit to and search of homes (601)

Unknown place?: Known [\(Select another option\)](#)

Select legal instrument [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union \(Ratification details\)](#)
 [Directive 2014/41/EU regarding the European Investigation Order in criminal matters \(Status of Implementation\)](#)

[Back](#) [Next >](#)

5. We introduce **Stuttgart** here. Then we select the section **Next** as shown below.

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority


Name:

Address:

P. Code:

City:

Area:




If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

6. At the end we are provided with the results of our search as shown below.

Search Competent Authorities:

Country: Germany (DE)  [\(Select another country\)](#)

Measure: **Places - Visit and search** [\(Select another measure\)](#)
Visit to and search of homes (601)

Unknown place?: Known [\(Select another option\)](#)

Legal instrument: [Directive 2014/41/EU regarding the European Investigation Order in criminal matters](#) [\(Status of Implementation\)](#) [\(Select another instrument\)](#)

Authority Type: DE - General Division (Regional)

Resultant Competent Authority: STAATSANWALTSCHAFT STUTTGART

[General data](#) [Videoconference](#) [Areas](#) [Properties](#) [Associated CPs](#)

Name: STAATSANWALTSCHAFT STUTTGART

Address: Neckarstr. 145

Department (Division):

City: Stuttgart

Postal code: 70190

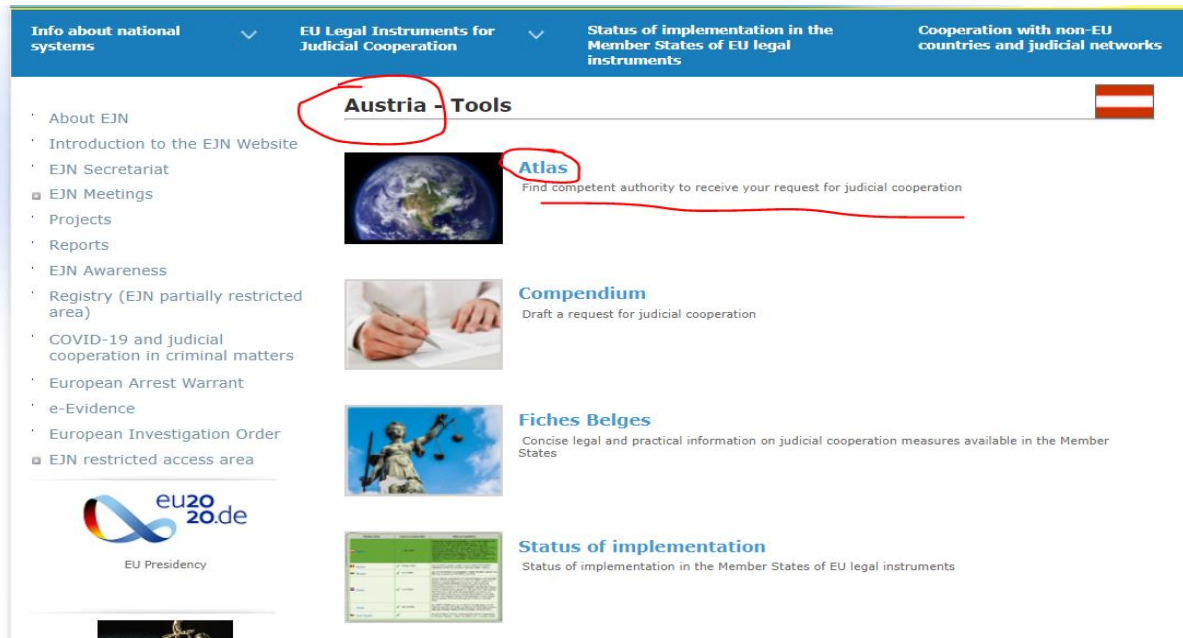
Phone number: (+49) 711 9210 Mobile phone:

Fax number: (+49) 711 9214009 Email Address: poststelle@stuttgart.justiz.bwl.de

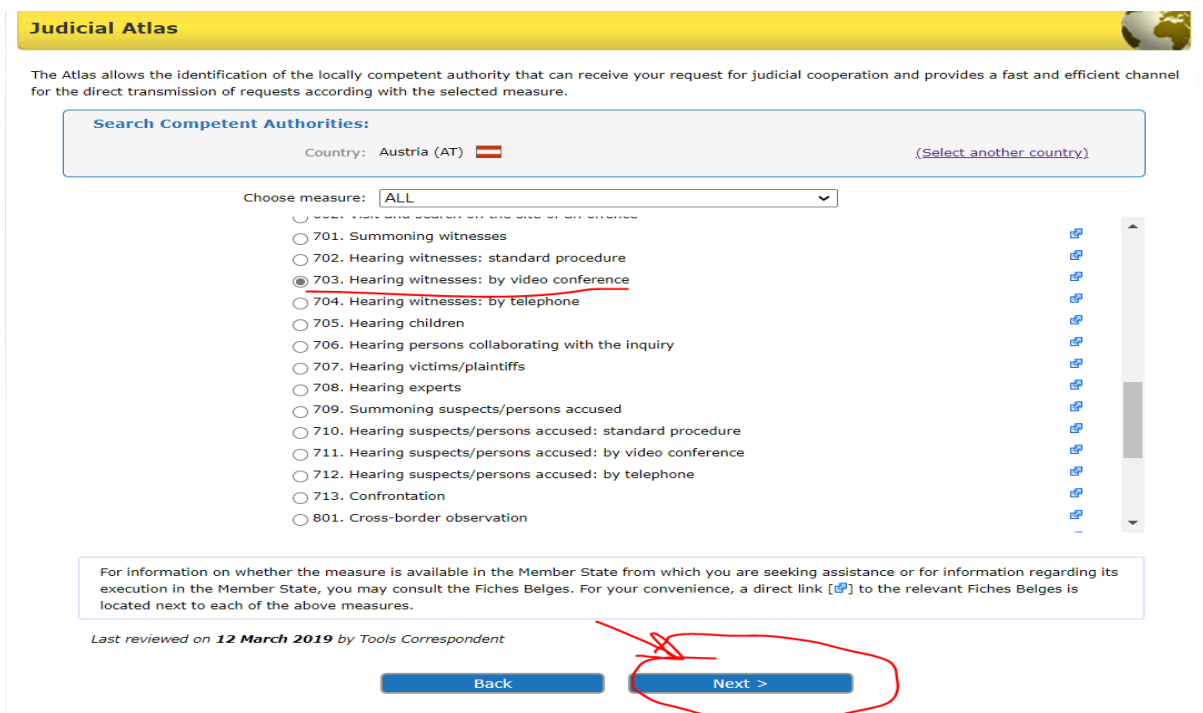
[Click to view the map](#) [Import authority details into Compendium](#)

➤ **Find the Austrian competent authority that will help the Romanian judicial authority to hear the witness by videoconference.**

1. In order to identify the competent authority, we select **Austria** as the country selected (AT). Then we select the section **Atlas** as shown below.



2. We select measure **703. Hearing witnesses: by video conference**. Then we select the section **Next** as shown below.




3. Here we have to choose whether the offence from our case is concerning corruption matters. In our case is **not**, so we select this option and then click on **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Austria (AT)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Does your request concern mla in corruption matters (including abuse of public authority)? No Yes


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4. Here we select that we **know** where the witness is residing in Austria and then click on **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Austria (AT)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Does your request concern mla in corruption matters (including abuse of public authority)? No [\(Select another option\)](#)

Unknown place or many places? Known Not known


[Back](#) [Next >](#)

5. Here we have to select from multiple options for legal instruments. We know that Directive 2014/41 on EIO **has replaced** all the corresponding provisions from the 1959 Convention, 2000 Convention and the Schengen Agreement. In order for the Directive to be applicable we verify the **status of implementation** (on the EJM's website) of the legal instrument. We know that only Denmark and Ireland are not bound by the Directive and the other MS have implemented the Directive. We will select Directive 2014/41 on EIO. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Austria (AT)  [\(Select another country\)](#)

Measure: **Witnesses, victims, suspects - Summoning and hearing** [\(Select another measure\)](#)
Hearing witnesses: by video conference (703)

Does your request concern ml in corruption matters (including abuse of public authority)?: No [\(Select another option\)](#)

Unknown place or many places?: Known [\(Select another option\)](#)

Select legal instrument

- [Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) *(Ratification details)*
- [Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985](#)
- [European Convention on mutual assistance in criminal matters, Strasbourg, 20 April 1959](#)
- [Directive 2014/41/EU regarding the European Investigation Order in criminal matters](#) *(Status of Implementation)*

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6. We introduce **Vienna**. Then we select the section **Next** as shown below.

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority

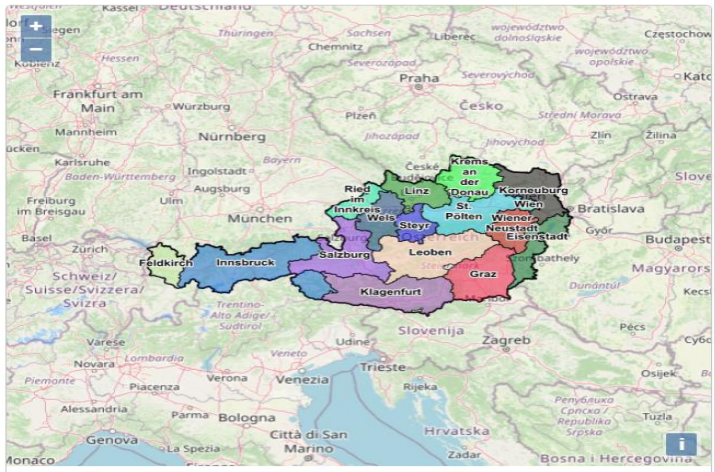
Name:

Address:

P. Code:

City:


Area:



If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

7. At the end we are provided with the results of our search as shown below.

Country:	Austria (AT) 	(Select another country)
Measure:	Witnesses, victims, suspects - Summoning and hearing Hearing witnesses: by video conference (703)	(Select another measure)
Does your request concern mla in corruption matters (including abuse of public authority)?:	No	(Select another option)
Unknown place or many places?:	Known	(Select another option)
Legal instrument:	Directive 2014/41/EU regarding the European Investigation Order in criminal matters (Status of Implementation)	(Select another instrument)
Authority Type:	Aut Type STA - Austria (Regional)	

Resultant Competent Authority: Staatsanwaltschaft Wien

General data | Videoconference | Areas | Properties | Associated CPs

Name: Staatsanwaltschaft Wien
Address: Landesgerichtsstraße 11
Department (Division):
City: Wien
Postal code: 1082
Phone number: (+43) 1/40127 Mobile phone:
Fax number: +43 1 40127-306950 Email Address:

[Click to view the map](#) [Import authority details into Compendium](#)

Court staff and bailiffs' legal training in European civil and criminal law

Mutual recognition I
FD 2008/909



Co-funded by
the European Union



Transfer of judgements

- FD 2008/909 replaces Council of Europe Convention 1983
- Goal: facilitating social rehabilitation of the sentenced person (art.3)
- No consent necessary, unless ... (art.6)
- Recognition, unless application of grounds for refusal (art.8), NB: no conversion anymore!
- Introduction of grounds for refusal
- Legislation MS execution governs enforcement, including early release, amnesty and pardon (art. 17) (C-554/14, cpa Ognyanov)

Aspects of Enforcement of Foreign Judgements

- Continued enforcement
- Adapted sentence (art. 8 FD):
 - incompatibility with maximum penalty (para. 2)
 - modality is incompatible (para. 2)
 - threshold: the adapted sentence shall not aggravate the sentence passed in terms of its nature or duration (para. 3)
- Nominal sentence
 - early release
 - penitentiary regime

Anticipating Transfer of Judgements

- EU-nationals standing trial in another MS
- Chance to be transferred is high
- Wide variety of detention facilities
- Wide variety of rules on early/ conditional release
- Consequences differ per MS and for sentenced persons depending on the combination of cooperating MSs => effectively both longer and shorter penalties are possible

Again: anticipation required

- Even more: non-nationals more often receive unconditional sentences than nationals
- In sentencing hearings: the possibility of transferring the supervision must be discussed

Uncertainties

- Will the sentencing MS offer the decision for transfer?
- If so, when will it do so?
- Which rules on enforcement and early release apply?

Mutual recognition I.

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgement in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

Set of Case Studies – a Guide for trainers

Written by:

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Maastricht University, (andre.klip@maastrichtuniversity.nl)

Honorary Judge – s’-Hertogenbosch Court of Appeal

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Mutual recognition I.

A. I. Introductory questions:

1. *What kind of unconditional custodial sentences does your national system have?*
2. *What is the principle of social rehabilitation? Does it apply in your system?*
3. *What kind of assistance does Framework Decision 2008/909 want to offer? To what extent is it different from Framework Decision 2008/947?*
4. *What are the rules applicable to conditional or early release concerning custodial sentences in your country?*

A. II. Case scenario 1:

The German national Hans Schulz was convicted by Warsaw criminal court on 27 August 2010 to an unconditional sentence of 12 years' imprisonment for rape of victim A on 3 June 2009 in Warsaw, rape of victim B of Polish nationality in Berlin, Germany on 7 August 1998, using public transport in Gdansk without a valid ticket on 7 June 2010 and serious bodily harm on a prison ward, when he escaped from a Gdansk prison on 8 July 2010. In addition to the imprisonment sentence which relates to the three serious crimes, a fine of 500 Złoty has been imposed for the transport offence.

In late 2016, the competent Polish authorities obtained information that Schulz had returned to his mother, who lives in Göttingen, Germany. On 17 July 2017, the Polish authority issued a 909-certificate to transfer the sentence for execution to Germany.

Questions:

1. Which authorities will be the issuing and executing authority?
2. Does the case fall within the conditions of FD 2008/909?
3. Fill out the form/ certificate and after everyone has done this, discuss in plenary on which points you hesitated.
4. Would there be any reason for the executing authority to consider the grounds for refusal?
5. Is the opinion of Hans Schulz himself relevant?
6. Do the German authorities have to arrest him pending the recognition procedure?

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

1. The Slovenian national Janez Zupančič was convicted for armed robbery in Brugge, Belgium on 4 July 2022, to a sentence of 7 years. He was arrested on 31 December 2020 and has been in prison ever since. The competent Belgian authority wishes to transfer him and the execution of the sentence to his home state Slovenia.

Competent authority:

Language:

2. Josip Knežević is a Croatian national convicted by the criminal court of Miskolc, Hungary to 12 months imprisonment for theft. He was born in Zagreb.

Competent authority:

Language:

3. The Romanian national Florin Radu was convicted on 1 June 2017 by the District Court of Kaunas, criminal chamber to a sentence 15 years for two murders committed in 2015. On 7 July 2022 the competent Lithuanian authority wishes to transfer the judgement to Romania.

Competent authority:

Language:

A. III. Case scenario 2, the continuation of Case 1:

At the procedure of recognition in Germany it appears that Schulz was not present at his trial in Poland. When found without a ticket on 7 June 2010 he was arrested and stayed in detention on remand until he escaped from prison on 8 July 2010 through the violent act of beating up the prison guard. After his escape a summons to the trial in August 2010 was sent to the address in Warsaw where he was formally registered. The officer responsible did not find him there. He went twice and left a notice that a document was to be picked up by him at the police station. It is without dispute that the summons was served in compliance with the provisions of the Polish Code Code of Criminal Procedure applicable at the time. Since 2010 the Polish authorities had been looking for Schulz unsuccessfully.

At the proceedings in Germany, Schulz states that;

- he was completely unaware of the fact that a trial was conducted against him;
- that he has stayed at his mother's place since July 2010;
- that he acknowledges having used public transport without a ticket;
- that he denies having been involved in any of the serious offences.

Questions:

1. *Can the Polish judgement be recognised and executed in Germany?*
2. *What are the issues on which the executing authority may need additional information?*
3. *On the basis of which criteria will it make a decision?*
4. *What are the alternatives if Germany does not recognise the Polish judgement?*
5. *Imagine that the Polish judgement can be recognised completely. What are the rules applicable to its execution in Germany?*
6. *When will Schulz be released?*

Part B. Additional notes for the trainer regarding the cases

It will be interesting to see and check whether the text participants have available is not only the text in their own national language, but also the text that includes the amendments and rectifications made to the original text. It still often happens that the text published in 2008 is used in practice without the major amendments of FD 2009/299. NB: concerning rectifications: this differs from language to language and can come years after 2009: e.g. the Finnish version OJ 2014 L 36/22. If time permits, this is a moment to train them to use eurlex and [the consolidated version of legal texts](#).

It is essential to stimulate using online tools!

Part C. Methodological approach

I. General idea and core topics

The focus of the first case is to address the meaning of the concept of mutual recognition in recognising each other's judgements. This places a lot of trust in each other's criminal justice systems and requires that cooperation may take place, even in situations in which the solution found would be entirely different in one's own Member State. In principle, judgements must be taken as they are and executed. In most situations, the issuing Member State determines the conditions. However, there are a few exceptions, such as with the application of the statute of limitations. See for more background André Klip, *European Criminal Law. An Integrative Approach*, Intersentia Cambridge 4th ed. 2021, especially chapter 8.

In preparing for their authorities, court staff must develop sensitivity to recognise these situations as they may cause delay or even an impediment to the cooperation or lead to consequences that apply after the transfer.

The second case zooms in on an issue that has led to many problems in the area of the EAW and now has become a problem in the transfer of judgements as well. Following the case law of the Court on *in absentia* judgements and the amendments of all mutual recognition instruments by new rules on *in absentia* through Framework Decision 2009/299 further issues come up in practice.

The Cases and its questions have been designed to allow the trainer and participants to deal with:

1. The structure and basic presumptions of mutual recognition in general and in the specific context of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union and 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;
2. Finding which authorities are involved on both sides;
3. How the tasks between the issuing authority and the executing authority have been divided;
4. How contact between the authorities can be established and what kind of guarantees must be given;
5. What the effects of a transfer are in the execution of the sentence in the executing Member State;
6. The role the convicted person may play in trying to block transfer or obtain better conditions;
7. The role the convicted person may play in trying to be transferred where there is no initiative from the Member States concerned.

II. Working groups and structure of the seminar

In advance of the seminar the trainer will send a one-page questionnaire to get to know the experience of the participants on the FD and its practice. S/he will also ask what expectations they have and which questions they would like to see answered. The information thus obtained will be used in the presentation as well as influence the choices that must be made in varying the level of tasks to be discussed and potential additional questions. It is important to have this information available as it may be expected that among the participants the level of experience, their linguistic capabilities and daily tasks in practice may vary.

The trainer will provide the participants with a brief presentation (Power point) highlighting the important features of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union – scope, definitions, competent authorities, distinction between surrender for prosecution and execution, role of the nationality or domicile of the requested person, grounds for refusing, time limits, governing law, subsequent decisions, obligations for the MS (**approx. 15-20 min**).

Case scenario 1 is designed to deal both with very basic issues, as well as a more in-depth analysis of several problems that may occur. The participants will work in groups of 4-5 and will have a laptop connected to internet in order to solve the questions. Especially the websites of EJN, Eurlex and the Court of Justice are recommended. It is intended that participants learn to use these websites to obtain the information they need and to use it in solving the problems at stake. Solving Case scenario 1 and answering the questions should take **approx. 1 hour and 40 minutes**. Groups may be formed by bringing participants of the same experience level together.

A 10-minute break is recommended at this point.

Solving the **exercises** from point A.II should take around **10 minutes** as they are meant to help the participants in understanding the mechanism for finding a competent authority and the language to be used in the Certificate. After having already consulted the EJN website, this exercise can also be used as a control exercise. In case solving Case scenario 1 took much more time than anticipated, this exercise could be skipped and given as homework.

Case scenario 2 will force the participants to deal with issues that cannot be found in the text of the Framework Decision, however, they do apply to the practice of it and require a prompt answer. The participants will work in groups of 4-5 and will have a laptop connected to internet in order to solve the questions. Solving Case scenario 2 should take **approx. 40-45 minutes**.

Any remaining questions should be discussed at the end of the seminar (for **approx. 5-10 minutes**).

III. Additional material

All participants will **bring** a copy of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union comprising the Forms in the Annex. Also, the participants will also bring or have access to their national provisions implementing the Framework Decision.

IV. Recent developments

Please check whether there are any new cases pending or preliminary reference made to the Court of Justice over the last three months. (NB: Trainers, if there is no more recent case, you may discuss the facts and implications of the AV-case C-221/19,

<https://curia.europa.eu/juris/document/document.jsf?mode=req&pageIndex=4&docid=239892&part=1&doclang=EN&text=2008%252F909&dir=&occ=first&cid=2782#ctx1>).

Part D. Solutions

A. I. Introductory questions

1. What kind of unconditional custodial sentences does your national system have?

This is a question that informs the participants about the panoply of different sanctions that exist in the European Union. It works best in a multi-national setting, but also has its function when the seminar is composed of one nationality only. In that case, participants with more experience in the transfer of judgements may be asked whether they have come across sentences that were entirely different than known under their own system.

2. What is the principle of social rehabilitation? Does it apply in your system?

Most Member States will either have formally made the principle as leading in their treatment of convicted persons or have implemented that in practice. What it really means will differ from Member State to Member State. The general idea is that the chances of reintegrating into society are much better if that can be realised in the country of origin and in the mother tongue. Article 3 of Framework Decision 2008/909 upgrades the principle to the reason to transfer judgement and prisoner. Both the authorities of the issuing state and the executing state must be satisfied that this purpose is served (Article 4, paragraph 2). From paragraph 3 of Article 4, it appears that the Member State of nationality is presumed to serve the interests of social rehabilitation, which thus offers little opportunity for the Member State of nationality to refuse.

3. What kind of assistance does Framework Decision 2008/909 want to offer? To what extent is it different from Framework Decision 2008/947?

Article 3, paragraph 1 Framework Decision 2008/909 on Custodial Sentences states that transfer of sentences should take place with a view to facilitating the social rehabilitation of the sentenced person. This must be regarded as the paramount principle applicable in co-operation. Whereas convicted transferred on the basis of FD 2008/909 are imprisoned, those transferred on 2008/947 are at liberty, but subject to conditions, supervised by the executing Member State.

4. What are the rules applicable to conditional or early release concerning custodial sentences in your country?

This is a question that informs the participants about the panoply of different rules on conditional and early release that exist in the European Union. Release may be possible after ¼ of the sentence completed in some Member States and in others the sentence must be fully served. Some apply systems in which the court stipulates the release date, other in the law and other by a separate decision of a parole board or execution authority. The exercise works best in a multi-national setting, but also has its function when the seminar is composed of one nationality only. In that case, participants with more experience in the transfer of judgements may be asked whether they have come across early or conditional release rules that were entirely different than known under their own system.

Understanding the difference is the beginning of building trust in the system of the other.

A. II. Case scenario 1.

Questions:

Q1. Which authorities will be the issuing and executing authority?


This time, the answer on the competent issuing authority cannot be found via Atlas. In the so-called Fiches Belges we find:

The District Court (Sad Okregowy) in whose jurisdiction the sentenced person has a permanent or temporary place of residence.

If jurisdiction cannot be determined pursuant to the principles described above, the District Court in Warsaw (Sad Okregowy w Warszawie) shall be competent in the case. However, this relates to the competence of the court as an executing authority. Given the central role of Warsaw District Court and also as the court that rendered the decision, we may assume it may issue the request.

Also on Germany, in 2023 Atlas leads us to the Staatsanwaltschaft Göttingen, which may also be found [in the Notification on the implementation of the FD](#), in which we read that the prosecutors at the District Courts are competent. There is a Landgericht/ District Court in Göttingen.

When I was looking for the answer, a few years ago on 29 May 2020, the EJM website stated:

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [] to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on 6 April 2017 by EJM Secretariat

This demonstrates two important messages. The Atlas system is not as complete for FD 2008/909 as it is for the EAW. In addition, the information contained was, when I consulted it, last checked by EJN three years before. In other words, be aware that even on the EJN website information may be outdated.

NB: Note for trainers. The matter may come up whether the FD 2008/909 is applicable. In that case you may deal with it. It is not advisable to deal with the issue with beginners in the practice of mutual recognition. The judgement dates from 27 August 2010. The Directive should have been implemented by 5 December 2011. Poland did so on 1 January 2012. Germany did so on 25 July 2015 (although the EJN website for some years erroneously referred to 2105). The request thus relates to a judgement rendered before the implementation date. Article 28(1) FD stipulates that the moment of sending the request is the decisive moment. In other words, once the request comes in after 5 December 2011, it is governed by the Framework Decision, even if the judgement is older. In our case the request is sent on 17 July 2017.

However, Article 28(2) FD allows Member States to declare that they will continue to apply the 1983 Council of Europe Convention on Transfer of Prisoners, where the final judgement has been issued before 5 December 2011. Some Member States, such as the Netherlands and Poland have made such a declaration. The Netherlands did so on 9 October 2009 and Poland on 1 June 2011. Article 28(2) states that such a declaration must be made on the adoption of the Framework Decision, which was on 27 November 2008. What is the value of these declarations? In [the Popławski case](#), the Court held of the Dutch declaration that for being late, it is not capable of producing any legal effects. It may therefore be assumed that the identical Polish declaration is also null and void.

Q2. Does the case fall within the conditions of FD 2008/909?

There are various aspects to check and deal with. The first is whether the criteria of Article 4 FD are fulfilled. We note that Schulz is in Germany, the dedicated executing Member State as stipulated in Article 4(1). However, has consent of his to the transfer been given, or is it not necessary to obtain the consent of the convicted Schulz? Schulz, as a German living in Germany, obviously falls under category a of Article 4(1). Article 6(2)(a) puts an end to discussions about consent. The consent shall not be required where the judgement together with the

certificate is forwarded to the Member State of nationality in which the sentenced person lives. The consent of Schulz is therefore not required.

The next step is to check whether the offences fall within the sphere of application of the legal instrument. Article 7 FD contains the same list of offences as the FD EAW. It lists rape, as a result of which no double criminality check is needed. Serious bodily harm and using public transport without a ticket are not listed. Article 7(4) FD then requires that it must be checked whether these are criminal offences under German law as well. Article 7(1) requires that at least three years must possibly be imposed for each of the offences. I have not been able to check the situation under German law, but regard it as very unlikely that German law will provide such a high penalty for using public transport without a ticket. In other words, Germany will not accept the execution for that offence. This might thus lead to a partial recognition, for which Article 10 provides a consultation procedure.

Q3. Fill out the form/certificate and after everyone has done this, discuss in plenary on which points you hesitated.

This exercise will certainly lead to questions from the participants. Which may very much depend on their national backgrounds or experience in working with these certificates.

Do we know whether the judgement is final? Article 1 FD stipulates that this is an existential requirement for application of the FD. The answer to this question will be given by Polish law. That determines whether the circumstances of the case make the judgement final. From the request itself, it may be interpreted that the Polish authority is of the opinion that the judgement is final. (NB: we may return to this issue when zooming in on the absence from the trial.).

Note to trainers: Any answer or doubt raised is a correct answer and should be stimulated. The most important is to trigger discussion. In practice many problems occur because people are insecure about whether to fill things in in a certain way, but do not state it.

It may be that the absence from the trial and how to qualify it, comes up here already. As a trainer you must decide whether you will deal with it now, or postpone that discussion to Case 2.

It may also come up that Member States have entirely different rules about calculating years, months in days. This is a very interesting phenomenon. In the

end what counts is that the issuing authority mentions days on the form, even if the judgement was in years or months.

Q4. Would there be any reason for the executing authority to consider the grounds for refusal?

This question leads us to Article 9 in which the grounds for non-recognition and non-enforcement are listed. It is good to allow discussion on any of the grounds that a participant might consider applicable or worth discussing.

Article 9(1)(e) mentions that it may be refused when statute-barred in the executing Member State. Participants will have noticed that one offence already dates from 1998 and that the judgement itself dates from 2010. Such a long period triggers that the statute of limitations is analysed. It will thus depend on German law whether the execution may take place for all three remaining offences.

NB note for trainers: It is an important exercise in internationally composed groups to compare national rules on timebars. Member States apply entirely opposed systems to assess time-bars for execution. Some Member States calculate from the moment the offence was committed; some calculate from the moment the sentencing judgement was rendered. It is obvious that a Member State belonging to the first group, such as Germany, may see much earlier than another Member State that execution is time-barred. Also, here the understanding that another Member State has an entirely different starting point for the calculation of time-bars is a great contribution to mutual trust.

Further potential grounds for refusal are:

Article 9(1)(g) Concerning age, we need to know the age of the sentenced persons at the time of the offences;

Article 9(1)(h) with 12 years imposed and an escape after a month in detention on remand, there must be quite a portion to serve.

Article 9(1)(i) relating to the absence of the accused is definitely worth looking at. However, this should be done in a more systematic way in Case scenario 2, when also additional information is given.

Article 9(1)(l) relates to offences committed on the territory of the executing Member State. The oldest rape in 1998 took place in Berlin, Germany. In such a

case, that Member State may refuse. This provision was introduced as a fall back option that a state would not be forced to execute a sentence for a violation of conducting that would be appreciated entirely different. With the offence of rape, that cannot be expected. It is therefore likely that Germany will not make use of this grounds.

Q5. Is the opinion of Hans Schulz himself relevant?

Article 6 FD deals with the situations in which the opinion of the sentenced person plays a role. This is only the case when he is still in the issuing Member State. Schulz, however, is already in the executing Member State. The reason is that persons like Schulz, who absconded and thus prevented the enforcement of justice, are considered to have waived their interest in determining the state of execution. Article 6(4) FD merely stipulates that Schulz will be informed.

Q6. Do the German authorities have to arrest him pending the recognition procedure?

Article 14 FD governs the issue. It is a decision to be made in German law. The German authorities may, but are not obliged to, arrest Schulz before the decision to recognise is taken.

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

In order to find the competent authorities, we will use the [Atlas](#) available on the EJN's website – www.ejn-crimjust.europa.eu, select the executing MS as the executing countries and 903. *Enforcement of a Custodial Sentence*.

Regarding the languages for the Certificate, we will use the [section– Notifications for each of the MS](#). If not notified of anything according to Article 23(1) of the FD, then the official language(s) of the MS will be used.

The results should be as follows:

1. The Slovenian national Janez Zupančič was convicted for armed robbery in Brugge, Belgium on 4 July 2022, to a sentence of 7 years. He was arrested on 31 December 2020 and has been in prison ever since. The competent Belgian authority wishes to transfer him and the execution of the sentence to his home state Slovenia.

The competent Belgian authority is in Brussels, competent for the country as a whole, see the EJM website.

Name:	Parquet du procureur du Roi de Bruxelles (Bureau CIS) – Parket van de procureur des Konings te Brussel (Bureau CIS)
Address:	Portalis, Rue des Quatre bras, 4
Department (Division):	
City:	Bruxelles
Postal code:	1000
Phone number:	+ 32 2 508 73 24
Mobile phone:	
Fax number:	+ 32 2 519 82 96
Email Address:	mut.rec.bxl@just.fgov.be

The competent Slovenian authority is in Ljubljana, see the EJM website.

Name:	District Court in Ljubljana (As central Court when the territorial jurisdiction cannot be stated)
Address:	Tavcarjeva 9
Department (Division):	
City:	Ljubljana
Postal code:	1000
Phone number:	+386 (0)1 366 44 44
Mobile phone:	
Fax number:	+386 (0)1 366 45 18
Email Address:	
Slovenia accepts, Slovenian and English , according to its notification found at the EJM website .	

2. *Josip Knežević is a Croatian national convicted by the criminal court of Miskolc, Hungary to 12 months imprisonment for theft. He was born in Zagreb.*

The competent Hungarian authority is in Budapest, competent for the country as a whole, see the EJM website.

Name:	Ministry of Justice
Address:	Kossuth tér 4
Department (Division):	
City:	Budapest
Postal code:	1055
Phone number:	+36 1 795 5823
Mobile phone:	
Fax number:	+36 1 795 0554, or, +36 1 795 0552
Email Address:	nemzb@im.gov.hu

The competent Croatian authority is in Zagreb, see the EJM website.

Name:	County court in Zagreb
Address:	Trg Nikole Šubića Zrinskog 5
Department (Division):	
City:	Zagreb
Postal code:	
Phone number:	(+385 1) 4801-069
Mobile phone:	
Fax number:	(+3851)4920-260
Email Address:	ured.predsjednika@zszg.pravosudje.hr

Croatia accepts, **Croatian and English**, according to [its notification found at the EJM website](#).

3. The Romanian national Florin Radu was convicted on 1 June 2017 by the District Court of Kaunas, criminal chamber to a sentence 15 years for two murders committed in 2015. On 7 July 2022 the competent Lithuanian authority wishes to transfer the judgement to Romania.

The competent Lithuanian authority is in Kaunas, competent for Kaunas-Kauans DC, see the EJM website.

Name:	District Court of Kaunas, Chamber of Kaunas
Address:	Laisvės al. 103
Department (Division):	
City:	Kaunas

Postal code: 44291
Phone number: +370 (37) 244 522
Mobile phone:
Fax number: +370 37 424 743
Email Address: kauno.apylinkes@teismas.lt

The competent Romanian authority is the Curtea de Apel (Regional), see the EJN website. We do not know where exactly in Romania Radu comes from. This means that further information is necessary. According to [its notification found at the EJN website](#), Romania requires: The certificate and the judgement must be accompanied by a translation into **Romanian**.

A. III. Case scenario 2, the continuation of Case 1:

At the procedure of recognition in Germany it appears that Schulz was not present at his trial in Poland. When travelling without a ticket on 7 June 2010 he was arrested and stayed in detention on remand until he escaped from prison on 8 July 2010 through the violent act of beating up the prison guard. After his escape a summons to the trial in August 2010 was sent to the address in Warsaw where he was formally registered. The officer responsible did not find him there. He went twice and left a notice that a document was to be picked up by him at the police station. It is without dispute that the summons was served in compliance with the provisions of the Polish Code Code of Criminal Procedure applicable at the time. Since 2010 the Polish authorities had been looking for Schulz unsuccessfully.

At the proceedings in Germany, Schulz states that;

- he was completely unaware of the fact that a trial was conducted against him;
- that he has stayed at his mother's place since July 2010;
- that he acknowledges having used public transport without a ticket;
- that he denies having been involved in any of the serious offences.

Questions:

Q1. Can the Polish judgement be recognised and executed in Germany?

The facts as proven by the Polish Court in its judgement must be accepted and cannot be reviewed as a condition for recognition. It is irrelevant whether a German criminal court might not have convicted him on the available evidence,

would have taken his denial into account or would have taken a far more severe decision. There will thus not be a further investigation as a result of Schulz claiming innocence. Mutual recognition presumes that he has had the chance to give his views on the accusation earlier already at the trial.

With that we are the nucleus of this second question: He was not at the trial. Is his absence a fact that impacts the recognition or raises new conditions?

Q2. What are the issues on which the executing authority may need additional information?

The German authorities will be very much interested in how the summons of Schulz took place exactly. This relates to Article 9(1)(i) in which the grounds for refusal is provided. Depending on the circumstances the request may (it is not obligatory) be refused. The German authorities may ask for further clarification from the Polish authorities on what exactly took place. NB: when filling in the information on the summons, it is very important that issuing authorities give factual information, not legal qualifications. Looking at the FD and the facts as described, it becomes clear that Schulz was not summoned in person. (**NB: note for trainers:** some legal systems may legally qualify a summons as performed as a summons in person. It would be great if this emerges during the debate.)

However, it might be possible that he was informed by other means. The FD does not define these other means in formal terms but as an obligation as to the result: **it was unequivocally established that he is aware of the scheduled trial.** In the grounds-breaking [case of Dworzecki \(C-108/16 PPU\)](#) the Court focused on whether the accused could possibly know that a case was pending against him. Dworzecki had been summoned at his address. His grandfather accepted the summons and promised to forward it to his absent grandson. According to the relevant Polish legislation applicable at the time, it was thus complied with the rules on summoning an accused. His subsequent absence did not impede the proceedings and led to a judgement. The Court considers such a procedure a legal fiction.

In the concrete circumstances of the case, there is no positive evidence that the summons reached Schulz. However, this is not the end of the case, as Article 9(1)(i) provides three situations in which the absence at the trial may not lead to a refusal. The second is that if Schulz had given a mandate to counsel, who was present at the trial. We do not know this, but this is something that can be clarified by the issuing authorities. The third and last possibility is that Schulz was served

with the decision and then informed of a right to retrial. If he then clearly states he does not want a retrial or does not request it within the applicable time frame, the judgement is final and executable. We do not know whether this right exists and what the response of Schulz was. However, if either one of these situations applies, there is no right to refuse.

Q3. On the basis of which criteria will it make a decision?

The leading principle will be whether the execution of the Polish sentence in Germany serves the purpose of his social rehabilitation. Additionally, accepting the execution also prevents impunity for serious offences and thus contributes to offering an Area of freedom, security and justice to the citizens of Europe.

Q4. What are the alternatives if Germany does not recognise the Polish judgement?

This will depend on the grounds for refusal. However, what is clear from the start is that when there is the grounds for refusal applicable to the execution of the judgement, it will most likely also be applicable to a Polish EAW to Germany for purposes of surrendering him. Article 4(6) FD EAW allows for refusal of the surrender of nationals for execution, on condition that the Member State is willing to do the execution itself. The latter is exactly the problem.

Can Germany start new criminal proceedings against Schulz? It no doubt has jurisdiction over the three serious crimes on basis of territoriality and nationality. The oldest offence might be time-barred. Are the other offences barred by ne bis in idem, because there is a Polish decision already? Article 54 CISA only protects against a second prosecution when the penalty has been enforced. That is certainly not the case.

When considering what it means to start all over again, it is obvious that it would be much better to enforce the Polish sentence right away.

Q5. Imagine that the Polish judgement can be recognised completely. What are the rules applicable to its execution in Germany?

This question invites us to apply Article 17 FD 2008/909. This provision clearly stipulates that the enforcement is governed by the law of the executing Member State, including all rules on early and conditional release (Art. 17(1)). Schulz spent one month and one day in the Polish prison, which must be deducted (Art. 17(2)).

NB: The most interesting [Ognyanov case \(C-554/14\)](#) teaches us how the Court views the responsibilities of the Member States involved and which law of which state governs which part of the execution of the sentence. The Bulgarian national Ognyanov had been convicted in Denmark for murder and aggravated robbery in 2012, to a penalty of 15 years' imprisonment. Before his transfer to Bulgaria in 2013 he had worked in the prison in Denmark. During the execution of the remainder of his sentence in Bulgaria the question came up whether Ognyanov would be entitled to a reduction of his sentence because he had worked in Denmark. If that were the case, he would be entitled to a reduction of 2 years, 6 months and 24 days. Without taking the Danish work into consideration he would only be entitled to a reduction of 1 year, 8 months and 20 days: a difference of around 10 months in prison. Danish law does not allow for any reduction on this grounds, but Bulgarian law does. In other words: does Article 17 Framework Decision 2008/909 on Custodial Sentences preclude the use of the work in the Danish prison to reduce the sentence served in Bulgaria?

The answer is that only Danish law governs the question of whether there is any reduction for work, the executing State cannot, retroactively, substitute its law on the enforcement of sentences and, in particular, its rules on reductions in sentence, for the law of the issuing State with respect to that part of the sentence which has already been served by the person concerned on the territory of the issuing State.

Q6. When will Schulz be released?

The logical consequence of the answer just given under Q5 is that it is based on German law.

(NB for trainers: it would be an interesting exercise in a multinational group to ask all participants to say when Schulz would be released if the execution took place in their respective states. You will be surprised to see the huge differences!)

Court staff and bailiffs' legal training in European civil and criminal law

Mutual recognition II
Council Framework Decision
2009/829/JHA



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Content:

- *Fact sheet – FD 2009/829*
- *Objectives*
- *Definitions*
- *Competent authorities*
- *Criteria for forwarding a decision on supervision measures*
- *Procedure for recognition of a decision on supervision measures*
- *Grounds for non-recognition. Adaptation of the decision*
- *Governing law and subsequent decisions*
- *Obligations for the authorities involved*
- *Consultations and languages*

Fact sheet

- Deadline for transposition of the FD - **1 December 2012**
- **All MS bound by the CFD** have implemented it
- FD **enables** a person resident in one MS, but subject to criminal proceedings in a second MS, to be supervised by the authorities in the State in which he or she is resident whilst awaiting trial
- There is **a risk of different treatment** between those who are resident in the trial state and those who are not, a non-resident risks being remanded in custody pending trial even where, in similar circumstances, a resident would not
- FD **lays down rules** according to which one MS **recognises** a decision on supervision measures issued in another MS as an alternative to provisional detention, **monitors** the supervision measures imposed on a natural person and **surrenders** the person concerned to the issuing state in case of breach of these measures

Objectives

- to **ensure the due course of justice** and, in particular, that **the person concerned will be available to stand trial**;
- to **promote**, where appropriate, the **use**, in the course of criminal proceedings, **of non-custodial measures as an alternative to provisional detention** for persons who are not resident in the Member State where the proceedings are taking place;
- to **improve the protection of victims and of the general public**
- **monitoring of a defendants' movements** in the light of the overriding objective of protecting the general public and the risk posed to the public
- enhancing **the right to liberty** and **the presumption of innocence** in the EU and **ensuring cooperation between MS** when a person is subject to obligations or supervision pending a court decision

Definitions – article 4 FD

- **Decision on supervision measures** - an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing state in accordance with its national law and procedures and **imposing on a natural person, as an alternative to provisional detention, one or more supervision measures**
- **Supervision measures** - obligations and instructions imposed on a natural person, in accordance with the national law and procedures of the issuing state
- **Issuing State** - the MS in which a decision on supervision measures has been issued
- **Executing State** - the MS in which the supervision measures are monitored

Competent authorities

- Each MS shall inform the General Secretariat of the Council which **judicial authority or authorities** under its national law are competent to act according to this Framework Decision in the situation where that Member State is the issuing state or the executing state (art. 6 para. 1)
- Member States may designate **non-judicial authorities** as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures (art. 6 para. 2). **However**, the decisions referred to under Article 18(1)(c) shall be taken by **a competent judicial authority**
- Each Member State may designate **a central authority** or, where its legal system so provides, **more than one central authority to assist** its competent authorities (art. 7 para. 1)

Criteria for forwarding a decision on supervision measures

- ✓ The accused person is **lawfully and ordinarily residing in another MS** and **consents to return to that MS** (art. 9 para. 1)
- ✓ *Exc.* - Upon request of the accused person, the issuing MS may forward the decision on supervision measures to the competent authority of a MS **other than the Member State in which the person is lawfully and ordinarily residing**, on condition that **the latter authority has consented to such forwarding** (art. 9 para. 2)
- ✓ **Consent of the accused person is mandatory in all cases**
- ✓ For para. 2 the consent of the executing MS shall be obtained **in advance**
- ✓ MS shall determine **under which conditions** their competent authorities may consent to the forwarding of a decision on supervision measures in cases pursuant **to para. 2.**
- ✓ The General Secretariat shall make the information received available to all MS and to the Commission – see the link below with the information regarding article 9 para. 2-4 FD:

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3189>

Procedure for recognition of a decision on supervision measures and time limits

- ✓ Issuing competent authority from an MS **forwards** a decision on supervision measures to the competent authority from the executing MS, accompanied by the **Certificate** set out in Annex I and **remains competent** in relation to the monitoring of the supervision measures imposed until informed about a decision from the executing competent authority
- ✓ The executing CA shall take a decision **as soon as possible** and in any case **within 20 working days** of receipt of the decision on supervision measures and certificate
- ✓ If it is not possible, **in exceptional circumstances**, for the competent authority in the executing State to comply with the time limits it shall **immediately inform** the competent authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision
- ✓ The competent authority **may postpone the decision** on recognition of the decision on supervision measures where the **certificate** provided for in Article 10 is **incomplete** or **obviously does not correspond to the decision on supervision measures**, until such reasonable time limit set for the certificate to be completed or corrected.

Grounds for non-recognition. Adaptation of the decision

- ✓ Grounds for non-recognition **expressly** and **limited** provided in the **article 15 let. a)-h) of the FD**
- ✓ If the **nature of the supervision measures** is incompatible with the law of the executing State, the competent authority in that Member State **may adapt** them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure **shall correspond as far as possible** to that imposed in the **issuing State**
- ✓ The adapted supervision measure **shall not be more severe** than the supervision measure which was originally imposed

Governing law and subsequent decisions

- ✓ After the decision on recognition, the monitoring of supervision measures **shall be governed by the law of the executing State** (art. 16 FD)

- ✓ Still, **the CA in the issuing State** shall have jurisdiction to take all subsequent decisions relating to a decision on supervision measures. Such subsequent decisions include notably:
 - (a) renewal, review and withdrawal of the decision on supervision measures
 - (b) modification of the supervision measures
 - (c) issuing an arrest warrant or any other enforceable judicial decision having the same effect

Obligations for the authorities involved

- ✓ The CA in the executing State may invite the competent authority in the issuing State to provide information as to whether the monitoring of the measures **is still needed in the circumstances of the particular case at hand**
- ✓ **Before the expiry of the period** referred to in Article 10(5), the CA in the issuing State shall specify, ex officio or at the request of the CA in the executing State, for which additional period, if any, it expects that the monitoring of the measures is still needed
- ✓ The competent authority in the executing State **shall immediately notify** the competent authority in the issuing State of **any breach of a supervision measure**, and **any other finding** which could result in taking any subsequent decision referred to in Article 18(1). Notice shall be given using the standard form set out in Annex II
- ✓ The competent authority in the executing State shall, without delay, inform the competent authority in the issuing State by any means which leaves a written record of the **situations provided in art. 20 para. 2 FD**

Consultations (art. 22) and languages (art. 24)

- ✓ The competent authorities of the issuing State and of the executing State **shall consult each other**:
 - (a) during the preparation, or, at least, before forwarding a decision on supervision measures together with the certificate referred to in Article 10*
 - (b) to facilitate the smooth and efficient monitoring of the supervision measures;*
 - (c) where the person has committed a serious breach of the supervision measures imposed*

- ✓ Certificates **shall be translated** into the official language or one of the official languages of the executing State. Any MS may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Union.

Mutual recognition II

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

Set of Case studies – a Guide for trainers

Written by:

Daniel Constantin Motoi

Judge,

Court of First Instance, 4th District, Bucharest Tribunal, Bucharest

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Mutual recognition II.

A. I. Introductory scenario

Supposing an offender has committed an offence in your country and the competent authority dealing with the case (depending on the provisions of the national law – prosecutor, investigating judge, judge, etc.) wants to take/to request a decision on supervision measures as an alternative to the provisional detention during the investigative phase (even though, for example, the conditions for taking the provisional detention are also met).

Questions:

1. *Are there any alternative measures to provisional detention provided in your legal system for such cases? Please indicate and briefly describe them.*
2. *If such alternative measures exist in your legal system, **do they apply under the same conditions to an offender who is lawfully resident in another MS** and has committed an offence and your judicial authorities have competence to investigate it? Are there any special provisions regarding an offender who is lawfully resident in another MS? Please indicate and briefly describe them.*
3. *If the competent authority in your country imposes supervision measures to the offender, is it possible, according to your national law, to ask the transfer of the supervision so the offender lawfully resident in another MS **to be supervised in his country** by the competent authority whilst waiting for his trial in your country? What is the legal instrument applicable in this case?*

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate (for general criminal cases):

1. A German competent authority wants to transfer the supervision of the accused person A.N. who is lawfully and ordinarily residing in Brussels, Belgium.

Competent authority:

Language:

2. A French competent authority wants to transfer the supervision of the accused person B.C. who is lawfully and ordinarily residing in Vigo, Spain.

Competent authority:

Language:

3. A Spanish competent authority wants to transfer the supervision of the accused person M.M. who is lawfully and ordinarily residing in Vienna, Austria.

Competent authority:

Language:

A. III. Case scenario:

A.W., an Austrian citizen, resident in Vienna, Austria was on a two-week vacation in Brasov, Romania to visit some Romanian friends. On 6 January 2020 A.W. and his friends went to a bar in Brasov. At one point, A.W. had a discussion with a person from another group and the two started to threaten each other. A.W. got nervous and went to the victim A.B. and hit them on the head with a bottle. A.B. fell down unconscious and in that moment A.W. ran from the bar. A.B. was taken to a local hospital where he remained for two weeks for medical care.

The forensic document issued stated that A.B. suffered injuries that will necessitate 100 days of medical care.

According to the Romanian criminal law the facts constitutes the offence of bodily injury provided for in article 194 of the Romanian Criminal Code (the maximum penalty is 7 years of imprisonment).

On 10 January charges were pressed against A.W. by the Prosecutor's Office attached to the Brasov Court of First Instance.

A.W. admitted committing the offence but he considered that he was provoked by the victim A.B. and his friends and that it was an uncontrolled reaction.

Taking into consideration the severity of the offence and the fact that A.W. appears to be lawfully residing in Austria, the Romanian prosecutor dealing with the case *wants to impose a provisional measure*, respectively a 60-day judicial control against offender A.W. in which he must observe the following obligations:

- a) to report to the Prosecutor's Office attached to the Brasov Court of First Instance or to the judge whenever he is called.
- b) to inform the designated authority in charge of the supervision whenever he changes the place where he is staying.
- c) to report to the designated police station according to the plan of supervision agreed or whenever he is called.
- d) to not get closer than 200 metres to the victim A.B.

Questions:

1. *Can the supervision of the obligations imposed on A.W. be transferred and executed in Austria?*
2. *What are the criteria for forwarding a decision on supervision measures to another MS? Is it necessary to have the prior consent of A.W. in our case?*
3. *Is it mandatory for the competent authority to forward a decision on supervision measures to the competent authorities in another MS?*
4. *Find the competent authorities from the two countries involved in the possible transfer of the supervision of the obligations imposed to the offender A.W.*
5. *How will the issuing competent authority and the executing competent authority proceed in this case?*
6. *What challenges may face the issuing and the executing competent authorities and how can they be overcome?*
7. *What are the benefits in this case if such transfer of supervision is successful?*

Part B. Additional notes for the trainer regarding the cases

A. III. Case scenario:

- The case scenario will be discussed according to the national provisions of the country where the seminar is taking place.
- If the seminar is taking place in Austria, the issuing and executing MS will be switched, with the accused person lawfully residing in Bucharest, Romania and visiting Austria).

Part C. Methodological approach

I. General idea and core topics

The idea of this training material is to make the court staff from the Member States familiar with the legal instrument for judicial cooperation available at European level with a view to monitoring the supervision measures.

Court staff are often involved in administrative tasks ranging from filling in the form requested by the legal instrument, identifying the competent authority to send it to, translation of the form, to requesting or sending additional information regarding judicial cooperation.

For these reasons, **the following main aspects** will be covered within the seminars:

1. Scope of application of the Council Framework Decision 2009/829/JHA 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.
2. Familiarisation with the general structure of the Council Framework Decision 2009/829/JHA.
3. Identification of some of the challenges the issuing and executing competent authorities may be facing when requesting the transfer of the supervision measures.
4. Highlighting the benefits of the transfer of the decision on supervision measures.
5. Understanding some practical issues that may arise before and after the transfer of supervision.
6. Administrative details: How should an issuing authority proceed in a certain situation? Which language is to be used? Where can the issuing authority find the

competent authority from the executing Member State which the request needs to be addressed to?

II. Working groups and structure of the seminar

The seminar will start with the *Introductory case* which is designed to make participants aware of Council Framework Decision 2009/829/JHA 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. Solving the introductory case and answering the questions should take **approx. 15-20 minutes**.

After the Introductory case, the trainer will provide the participants with a **brief presentation** (Power point) highlighting the important features of the Council Framework Decision 2009/829 – objectives, definitions, criteria, grounds for recognition, time limits, adaptation, governing law, subsequent decisions, obligations and information (**approx. 15-20 min**).

A 10-minute break is recommended at this point.

Solving the exercises from point A.II should take around **15 minutes** as they are meant to help the participants in understanding the mechanism for finding a competent authority and the language to be used in the Certificate.

The *Case scenario* is the opportunity to understand Council Framework Decision 2009/829/JHA. The participants will work in groups of 5-6 and will have a laptop connected to internet in order to solve the questions. Solving the Case scenario and answering the questions should take **approx. 2 hours**.

Any remaining questions should be discussed at the end of the seminar (for **approx. 5-10 minutes**).

The organisers should try to create groups of participants with an approximate same level of experience in working with the CFD 2009/829 when solving the case scenarios.

III. Additional material

All participants will be provided with a copy of the Council Framework Decision including the Forms in the Annexes I and II. Also, the participants must bring or have access to their national provisions implementing the CFD.

Part D. Solutions

A. I. Introductory scenario:

Q1: Are there any alternative measures to provisional detention provided in your legal system for such cases that can be taken? Please indicate and briefly describe them.

In order to answer this question, the participants will indicate and briefly describe the alternative measures to provisional detention regulated in their legal system.

Q2: If such alternative measures exist in your legal system, do they apply with the same conditions to an offender who is lawfully resident in another MS and has committed an offence and your judicial authorities have competence to investigate it? Are there any special provisions regarding an offender who is lawfully resident in another MS? Please indicate and briefly describe them.

After indicating the alternative measures, now the participants will have to indicate if these measures can apply under the same conditions to an offender who is lawfully resident in another MS. Here the participants will provide their national provisions in this respect (indicating if special provisions are put in place regarding an offender who is lawfully resident in another MS).

Q3: If the competent authority in your country imposes supervision measures to the offender, is it possible according to your national law request ask the transfer of the supervision so the offender lawfully resident in another MS to be supervised in his country by the competent authority whilst waiting for his trial in your country? What is the legal instrument applicable in this case?

In this situation **Council Framework Decision 2009/829/JHA¹ of 23 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention** (European Supervision Order) which had to be implemented by 1 December 2012 is applicable.

The abovementioned decision has been implemented by almost all European Union Member States except for Ireland, who is currently implementing the Council Framework Decision although the implementation period has elapsed.

The *status of the implementation* of the Council Framework Decision 2009/829/JHA of 23 October 2009 is available on the EJN website – www.ejn-crimjust.europa.eu (in the section [dedicated to the CFD 2009/829/JHA](#))

¹ O.J. L 294, 11.11.2009

Taking into account that **the principle of mutual recognition** should also apply to pre-trial orders, this legal instrument is enabling a person resident in one Member State, but subject to criminal proceedings in a second Member State, **to be supervised by the authorities in the State in which he/she is resident whilst awaiting trial and ensures that he/she is not treated any differently** from a person subject to criminal proceedings who is so resident.

The Framework Decision has as its main **objectives** *the promotion, where appropriate, of the use of non-custodial measures as an alternative to provisional detention*, even where, according to the law of the Member State concerned, a provisional detention could not be imposed ab initio and *to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial*.

The measures provided for in the CFD should also aim at *enhancing the right to liberty and the presumption of innocence in the European Union* and at *ensuring cooperation between Member States when a person is subject to obligations or supervision pending a court decision*.

Still, the CFD does not confer any right on a person to the use, in the course of criminal proceedings, of a non-custodial measure as an alternative to custody. This is a matter **governed by the law and procedures of the Member State** where the criminal proceedings are taking place (article 2 para 2 of the CFD).

At this point the participants should be able **to identify the national provisions implementing the CFD 2009/829/JHA**, as communicated in its notification to the General Secretariat of the Council of the European Union.

The information regarding the implementation of the CFD **for each MS** is available on the EJN website as above indicated.

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate (for general criminal cases):

In order to find the competent authorities, we will use the [Atlas](#) available on the EJN website – www.ejn-crimjust.europa.eu, select the executing MS as the executing countries and 905. *Execution of a Supervision Measure.*

Regarding the languages for the Certificate, we will use the section – Supervision Measures – Notifications for each of the MS [available on EJN's website.](#)

If not notified anything in relation to article 24 of the CFD, then the official language(s) of the MS will be used.

The results should be as follows:

1. A German competent authority wants to transfer the supervision of the accused person A.N. who is lawfully and ordinarily residing in Brussels, Belgium.

Name:	Parket van de procureur des Konings te Brussel (Bureau CIS)- Parquet du procureur du Roi de Bruxelles (Bureau CIS)
Address:	Portalis, Rue des Quatre bras, 4
Department (Division):	
City:	Bruxelles
Postal code:	1000
Phone number:	+32 (0)2 508 70 80
Mobile phone:	
Fax number:	+32 (0)2 519 82 96
Email Address:	cis.bxl@just.fgov.be

According to article 24 of the CFD the languages accepted by the Belgian authorities are: **Dutch, French, German and English.**

2. A French competent authority wants to transfer the supervision of the accused person B.C. who is lawfully and ordinarily residing in Vigo, Spain.

Name: Oficina Decanato of Vigo (para su reparto a los Juzgados de Instruccion)
Address: Lalín, 4
Department (Division):
City: Vigo
Postal code: 36209
Phone number: +34986817168
Mobile phone:

According to article 24 of the CFD the language accepted by the Spanish authorities is **Spanish**.

3. A Spanish competent authority wants to transfer the supervision of the accused person M.M. who is lawfully and ordinarily residing in Vienna, Austria.

Name: Staatsanwaltschaft Vienna
Address: Landesgerichtsstraße 11
Department (Division):
City: Vienna
Postal code: 1082
Phone number: +43 1 40127 0
Mobile phone:
Fax number: +43 1 40127 306950
Email:

A translation into German is to be attached to the certificate. Certificates in other languages are accepted on the basis of reciprocity, that is to say on condition that the issuing State also accepts certificates in **German** as an executing State.

A. III. Case scenario:

Q1: Can the supervision of the obligations imposed to A.W. be executed in Austria?

In our case, the Romanian competent authorities may request to transfer the supervision of the obligations which are to be imposed on A.W. to the Austrian competent authorities and the legal instrument applicable is the **Council Framework Decision 2009/829/JHA of 23 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention** (European Supervision Order) which had to be implemented by 1 December 2012.

The abovementioned CFD has been implemented by two MS (the Austrian national law implementing the CFD entered into force on 1 August 2013 and the Romanian national law implementing the CFD entered into force on 26 December 2013).

The Romanian competent authorities will apply **the provisions from the national law implementing the CFD** in order to forward the decision on supervision measure to the competent authorities of the other MS.

Q2: Which are the criteria for forwarding a decision on supervision measures to another MS? Is it necessary the prior consent of A.W. in our case?

- Article 9 para 1 of the CFD provides that a decision on supervision measures may be forwarded to the competent authority of the Member State **in which the person is lawfully and ordinarily residing**, in cases where the person, **having been informed about the measures concerned, consents to return to that State.**

From this paragraph we can see **two conditions** that have to be met before forwarding a decision to another MS: the suspected person is lawfully and ordinarily residing in another MS and, after being informed about the measures concerned, consents to return to the executing MS.

The CFD cannot be used against the will of the person concerned. The suspect must cooperate with the competent authorities where he is residing during the supervision period.

- As an exception, article 9 para 2 of the CFD provides that the competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State **other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.**

It is possible to forward the decision on supervision measures to another MS in which the person is lawfully and ordinarily residing only if there is the request of the suspected person and the other MS consent to such a forwarding if the conditions for such consent are met.

When implementing the Framework Decision, Member States shall determine **under which conditions** their competent authorities **may consent to the forwarding of a decision on supervision measures in cases pursuant to paragraph 2.**

For example, regarding article 9 para 2, Romania, as executing state, notified the General Secretariat of the Council of the European Union at the moment of implementing the CFD that it may recognise the supervision order not only when the person is a legal and ordinary resident in Romania, but also in case when one of his/her family members is a Romanian national or resident, or is going to engage in a professional activity, study or training in Romania.

For example, regarding article 9 para 2, Austria, as executing state, notified the General Secretariat of the Council of the European Union at the moment of implementing the CFD that it may recognise the supervision **irrespective of whether the person concerned has their domicile or permanent residence in Austria if, because of specific circumstances, ties exist between the person concerned and Austria of such intensity that it can be assumed that monitoring in Austria will help facilitate the social rehabilitation and reintegration of the person concerned.**

Q3: Is it mandatory for the competent authority to forward a decision on supervision measures to the competent authorities in another MS?

Article 9 para 1 of the CFD provides that a decision on supervision measures **may be forwarded** to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State.

The wording used by the CFD “*may*” be forwarded could induce the idea that it could be an arbitrary decision of the issuing competent authority whether to forward such a decision on supervision measures to another MS in which the person is lawfully and ordinarily residing. It should be like this in practice.

This paragraph must be read in conjunction with article 22 of the CFD in which it is provided that the competent authorities of the issuing State and of the executing State shall consult each other **during the preparation, or, at least, before forwarding a decision on supervision measures** together with the certificate.

So, the decision whether to forward a decision on supervision measures must be **an informed decision**, taken **on the information received** from the competent authorities of the executing State.

For example, *the competent authority of the executing State can communicate:*

- *information on the risk that the person concerned might pose to victims and to the general public in the executing MS,*
- *information allowing verification of the identity and place of residence of the person concerned,*
- *other information needed to facilitate the smooth and efficient monitoring of the supervision measures*

Q4: Find the competent authorities from the two countries involved in the possible transfer of the supervision of the obligations imposed to the offender A.W.

According to articles 6 and 7 of the CFD each MS can, according to national law, designate the competent authorities as requested by the legal instrument.

The competent authorities can be **judicial** or **non-judicial** (with the exception of the provisions where it is mandatory to designate a judicial competent authority – e.g. article 18 para 1 c) of the CFD).

Each Member State may designate a **central authority** or, where its legal system so provides, **more than one central authority** to assist its competent authorities.

A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its **central authority(ies)** responsible for the administrative transmission and receipt of decisions on supervision measures, together with the certificates referred to in Article 10, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the central authority(ies) of the Member State concerned (article 7 para 4 of the CFD).

The competent authorities [can be found here](#) (notifications from each of the MS when implementing the CFD).

- ✓ The *Romanian competent authority* to forward the decision on supervision measures, this is according to the national legislation implementing the CFD 2009/829/JHA **the judicial authority that took the decision on supervision measure** (in our case, the prosecutor from the Prosecutor's Office attached to the Brasov Court of First Instance).
- ✓ The *Austrian competent authorities* for incoming requests to monitor supervision measures are **the Regional Courts**. The certificate must be submitted together with the necessary documents from the Regional Court within whose jurisdiction **the person concerned has their domicile or permanent residence** or, in cases pursuant to Article 9(2), the Regional Court within whose jurisdiction specific ties exist with the person concerned.

The information regarding the competent authorities as issuing or executing competent authorities can be consulted on the EJM's website – www.ejm-crimjust.europa.eu (information provided for each MS):

Romania – [information is found here](#).

Austria – [information is found here](#).

In order to see the Austrian competent authority we will use the *Atlas* available on the EJM's website – www.ejm-crimjust.europa.eu, select Austria as the executing country and 905. *Execution of a Supervision Measure* (**see Annex 3**).

The result should be as follows:

Name:	Staatsanwaltschaft Vienna
Address:	Landesgerichtsstraße 11
Department (Division):	
City:	Vienna
Postal code:	1082
Phone number:	+43 1 40127 0
Mobile phone:	
Fax number:	+43 1 40127 306950
Email Address:	

And the link to [the result is found here](#).

Q5: How will the issuing competent authority and the executing competent authority proceed in this case?

- **Issuing competent authority:**

- ✓ *If possible, enter into prior consultation with the competent authority of the executing MS according to article 22 of the CFD before deciding to forward the decision on supervision measure and gather valuable information from the executing authority regarding the possibility of supervision of the suspected person.*
- ✓ *Take the consent of the suspect according to article 9 of the CFD in case of forwarding the decision on supervision measures to the MS in which he/she is lawfully residing.*
- ✓ *Verify the lawful and ordinary residence of the suspected person in accordance with article 9 para 1 or the cases in which the executing MS, other than the one in which the suspected person lawfully and ordinarily resides, consents to such a forward (article 9 para 2-4 of the CFD).*
- ✓ *Identify the competent authority from the executing MS to send the Certificate and the decision on supervision measures (article 10 para 6 CFD) to.*
- ✓ *Fill in the Certificate provided in Annex I of the CFD and send it directly to the competent authority from the executing MS along with the decision on supervision measure (which must be enforceable according to the national law of the issuing MS – see article 4 a) of the CFD).*
- ✓ *Keep monitoring the supervision measures until informed by the authorities from the executing MS on the decision to recognize the decision on supervision measures (article 11 para 1 of the CFD)*

- **Executing competent authority:**

- ✓ *After receiving a decision on supervision measures, from an executing authority which it has no competence to recognize, forwards the decision together with the certificate to the competent authority and informs the competent authority in the issuing State to which authority it has forwarded this decision.*
- ✓ *Take a decision within 20 working days of receipt of decision on supervision measures (the limit can be extended by another 20 working days if a legal remedy has been introduced against the decision regarding the recognition).*
- ✓ *If it is not possible, in exceptional circumstances, to comply with the time limits it shall immediately inform the competent authority in the issuing State, by any means, giving reasons for the delay and indicating how long it expects to take to issue a final decision.*
- ✓ *Postpone the decision on recognition of the decision on supervision measures where the certificate received is incomplete or obviously does not correspond to the decision on supervision measures, until such reasonable time limit set for the certificate to be completed or corrected.*
- ✓ *Inform the competent authority in the issuing State of the final decision to recognize the decision on supervision measures and take all necessary measures for the monitoring of the supervision measures.*

Q6: Which challenges may be facing the issuing and the executing competent authorities and how can they be overcome?

A. Issuing competent authority

- ***Not aware of the Council Framework Decision 2009/829***

Although the CFD 2009/829 has been in force as of 1.12.2012, the legal instrument is still not very often used at European level (most of the time it is used only on regional level or between MS with a tradition for cooperation with supervision procedures). One of the reasons for this is the *lack of awareness* among competent authorities, legal practitioners and suspected persons.

- ✓ Raising awareness among the competent authorities both as issuing and executing authorities about the legal instrument.
- ✓ Make information available for suspected person and lawyers (e.g. websites, training).

- ***Not knowing the other judicial system***

The competent judicial authorities from the issuing MS are usually reluctant when it comes to requesting the transfer of the decision on supervision measures. Not

knowing the other judicial system is one of the challenges for the issuing authority of the MS.

If having doubts about the other judicial system involved, the issuing competent authority has a lot of sources to inform from.

- ✓ In the [section dedicated to the CFD 2009/829](#), EJN's website provides valuable information on the judicial system of all MS (e.g. national legislation, notifications, declarations, reports, etc.).

Also, it must be kept in mind that **all MS** have implemented the CFD, which means that the probation measures provided in article 8 para 1 of the CFD are available and can be monitored in all MS (except when a MS has notified or declared it will not apply when transferring the supervisions of sentence).

Article 8 para 2 of the CFD states that each Member State shall notify the General Secretariat of the Council when implementing this Framework Decision, which supervision measures, *apart from those referred to in paragraph 1, it is prepared to monitor.*

- ***Not trusting the other judicial system***

Often issuing competent authorities have other doubts, such as they do not trust the other judicial system, and do not initiate a request for transfer of a decision on supervision measures, especially since there is no obligation explicitly provided in the CFD.

- ✓ Gather information from the executing authority regarding the possibility of supervision of the suspected person in the other MS by consulting the competent executing authority during the preparation, or, at least, before forwarding a decision on supervision measures together with the certificate (article 22 of the CFD)

- ***Difficult to establish the criteria provided in article 9 of the CFD***

Normally, information about the lawful and ordinary residence of the suspected person is available to the competent authority of the issuing MS in the case file, in order to ascertain where to address according to article 10 of the CFD.

For the other criteria and conditions provided in article 9 para 2 of the CFD, the issuing competent authority must gather information.

- ✓ Article 22 of the CFD provides that the competent authorities of the issuing State and of the executing State shall consult each other during

the preparation, or, at least, before forwarding a decision on supervision measures together with the certificate information allowing verification of the identity and place of residence of the person concerned or other information that is needed to assess the conditions provided in article 9 para 2-4.

- *Not knowing where to send the Certificate and the decision on supervision measures*

Finding the competent authority in the executing MS is not a difficult task especially as the *Atlas* from the EJN's website helps legal practitioners identify the competent executing authority for the other MS (as seen at point 4 above).

- ✓ If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, *including via the contact points of the European Judicial Network created by Council Joint Action 98/428/JHA*, in order to obtain the information from the executing State (article 10 para 7 of the CFD).
- ✓ When an authority of the executing State which receives a decision on supervision measures, together with the certificate, has no competence to recognize it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, *it shall, ex officio, forward it to the competent authority and shall without delay inform the competent authority of the issuing State* accordingly by any means which leaves a written record (article 10 para 8 of the CFD).

- *Time needed to take a decision on supervision measures*

The issuing competent authorities finds itself in a situation in which has to decide to take a decision on supervision measures as an alternative to the provisional decision in a matter of hours after an offence has been committed. This will not give enough time to enter into consultation with the competent authorities from the other MS.

- ✓ If a decision on supervision measures needs to be taken quickly according to the national law, nothing impedes the issuing competent authority to take such a decision as in all similar domestic cases. After the decision has been taken, this decision on supervision measures can be later transferred to another MS and the supervision measures adapted according to article 13 of the CFD by consensus between the two MS involved.

B. Executing competent authority

- *Problems regarding the certificate received (incomplete, confusing information provided, boxes not ticked correctly or not ticked at all when they were mandatory, etc.)*

These situations are provided as a ground for refusing recognition and supervision according to article 15 para 1 let. a) of the CFD by the competent authority of the executing MS.

- ✓ The competent authority from the executing MS may postpone the decision on recognition of the decision on supervision measures where the certificate is incomplete or obviously does not correspond to the decision on supervision measures, until such reasonable time limit set for the certificate to be completed or corrected.

- *Problems in observing the time limits*

If it not possible to observe the time limits provided in article 12 of the CFD, the competent authority of the executing State shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken

- ✓ The reasons for not complying with the time limits provided in article 12 of the CFD must be exceptional circumstances and should be limited only to objective situations (e.g. *additional information is needed from the issuing MS or from other competent authorities involved in the recognition process*).

- ***Problems of adaptation of the supervision measures***

If the **nature of the supervision measures** is incompatible with the law of the executing State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure shall correspond as far as possible to that imposed in the issuing State (article 13 para 1 of the CFD).

- ✓ *For example*, the issuing authority has imposed an obligation on the suspected person not to enter **certain defined areas**, which in the legislation of the executing MS have a slightly different meaning. The adaptation should be made according to the national law of the executing MS, after informing the issuing MS according to article 20 f) of the CFD.

If the **maximum length of time during which the supervision measures can be monitored in the executing State is below the one imposed in the decision on supervision measures**, in case the law of the executing State provides such a maximum, the supervision period will be made by the executing MS in the time limits provided by national law. Then, the supervision will revert back to the issuing MS according to article 11 para 2 d) of the CFD.

- ***Impossible to monitor the suspected person***

- ✓ The executing authority must inform the issuing State that it is impossible to monitor the supervision measures for the reason that, after transmission of the decision on supervision measures and the certificate to the executing State, the person cannot be found in the territory of the executing State, in which case there shall be no obligation of the executing State to monitor the supervision measures.

Q7: What are the benefits in this case if such transfer of supervision is successful?

- ***Better monitoring of the defendant's movements and so ensuring the due course of justice and, in particular, that the person concerned will be available to stand trial***

The suspected person will be monitored by the authorities from the executing MS in which he/she lawfully resides and so ensure the due course of justice and that the suspected person will be available to stand trial in the issuing MS.

- ***Improving the protection of victims and of general public***

One of the objectives of the CFD is improving the protection of victims and of the general public. In most cases, the transfer of supervision measures to another MS means that the convicted person will be far away from the victim, who remains in the issuing MS.

Problems may arise when the victim lives in the executing MS, but even in these cases, in serious crimes or related gender-based crime obligations not to get closer to the victims are provided in the initial judgement and can be much more easily verified by the competent authorities in the executing MS.

Also, the protection of the general public is improved because the convicted person will have sufficient ties with the executing MS that will help him better rehabilitate and reintegrate into society.

- ***Better chances of applying a non-custodial sentence, if found guilty at the end of the trial***

If the supervision of the suspected person goes well in the executing MS, the chances of applying a non-custodial penalty will increase for the suspected person (e.g. applying a suspended sentence and transfer of the supervision according to the CFD 2008/947/JHA).

- ***Strengthening mutual trust and cooperation between MS for future cases***

The cooperation between MS in cases covered by the CFD will strengthen mutual trust for future cases. Successful cases will encourage even more MS to cooperate in order to better attain the objectives provided in article 2 of the CFD.

Annex. Step-by-step solutions

- **A German competent authority wants to transfer the supervision of the accused person A.N. who is lawfully and ordinarily residing in Brussels, Belgium.**

1. In order to identify the competent authority, we select **Belgium** as the country selected (BE). Then we select the section **Atlas** as shown below.


The screenshot displays the European Judicial Network (EJN) website interface. At the top, there is a navigation bar with the EJN logo and the text 'European Judicial Network (EJN) Réseau Judiciaire Européen (RJE)'. Below this, there are four main menu items: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. The 'EU Legal Instruments for Judicial Cooperation' menu is expanded, showing a list of tools. The 'Belgium - Tools' section is highlighted with a red circle. Under this section, the 'Atlas' tool is also highlighted with a red circle. The 'Atlas' tool is described as 'Find competent authority to receive your request for judicial cooperation'. Other tools visible include 'Compendium', 'Fiches Belges', 'Status of implementation', and 'Contact Points'. The website also features logos for 'eu2020.de' and 'European ARREST'.

2. We select measure **905. Execution of a Supervision Measure**. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Belgium (BE)  [\(Select another country\)](#)

Choose measure: ALL

- 711. Hearing suspects/persons accused: by video conference
- 712. Hearing suspects/persons accused: by telephone
- 713. Confrontation
- 801. Cross-border observation
- 802. Cross-border hot pursuit
- 803. Cross-border tracking (by placing a beeper on a vehicle or a person)
- 804. Controlled deliveries
- 805. Joint investigation teams
- 901. European Arrest Warrant
- 902. Enforcement of a Financial Penalty
- 903. Enforcement of a Custodial Sentence
- 904. Probation measures
- 905. Execution of a Supervision Measure**
- 906. European Protection Order
- 1001. Transfer of proceedings

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[F\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on 17 September 2020 by EJM Secretariat

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3. We introduce **Brussels**. Then we select the section **Next** as shown below.

Legal instrument: [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. \(Status of Implementation\)](#)

Authority Type: BE - Geraal ----- (Regional)

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority


Name:

Address:

P. Code:

City:

Area: Choose...



If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

4. At the end we are provided with the result of our search as shown below.

Search Competent Authorities:

Country: Belgium (BE)  [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Execution of a Supervision Measure (905)

Legal instrument: [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. \(Status of Implementation\)](#)

Authority Type: BE - Gera1 ----- (Regional)

Resultant Competent Authority:

Procureur du Roi de Bruxelles – Bureau CIS / Procureur des Konings te Brussel – Bureau CIS _

[General data](#) | [Videoconference](#) | [Areas](#) | [Properties](#) | [Associated CPs](#)

Name: Procureur du Roi de Bruxelles – Bureau CIS / Procureur des Konings te Brussel – Bureau CIS _

Address: Portalis, Rue des Quatre bras 4 / Portalis, Vierarmenstraat 4

Department (Division): For "Transfer of Proceedings" please use email: casier.BCN.Bruxelles@just.fgov.be

City: Bruxelles / Brussel

Postal code: 1000

Phone number: +32 (0)2 508 71 11 Mobile phone:

Fax number: Email Address: mut.rec.bxl@just.fgov.be

[Click to view the map](#) [Import authority details into Compendium](#)

[Back](#)

- A French competent authority wants to transfer the supervision of the accused person B.C. who is lawfully and ordinarily residing in Vigo, Spain.

1. In order to identify the competent authority, we select **Spain** as the country selected (ES). Then we select the section **Atlas** as shown below.

The screenshot shows the European Judicial Network (EJN) website. The main navigation bar includes 'Home', 'EJN Tools', and 'Tools per Country'. Below this, there are four main sections: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. The 'Spain - Tools' section is highlighted with a red circle. Under this section, the 'Atlas' link is also highlighted with a red circle. Other links in the 'Spain - Tools' section include 'Compendium', 'Fiches Belges', 'Status of implementation', and 'Contact Points'. The left sidebar contains various links such as 'About EJN', 'Introduction to the EJN Website', 'EJN Secretariat', 'EJN Meetings', 'Projects', 'Reports', 'EJN Awareness', 'Registry (EJN partially restricted area)', 'COVID-19 and judicial cooperation in criminal matters', 'European Arrest Warrant', 'e-Evidence', 'European Investigation Order', and 'EJN restricted access area'. There are also logos for 'EU2020.de' and 'EU Presidency'.

2. We select measure **905. Execution of a Supervision Measure**. Then we select the section **Next** as shown below.

The screenshot shows the 'Judicial Atlas' search interface. The title 'Judicial Atlas' is displayed in a yellow header. Below the header, there is a description: 'The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.' The search area is titled 'Search Competent Authorities:' and includes a 'Country:' dropdown menu set to 'Spain (ES)'. Below this, there is a 'Choose measure:' dropdown menu set to 'ALL'. A list of measures is displayed, with '905. Execution of a Supervision Measure' selected and highlighted with a red circle. Other measures include '711. Hearing suspects/persons accused: by video conference', '712. Hearing suspects/persons accused: by telephone', '713. Confrontation', '801. Cross-border observation', '802. Cross-border hot pursuit', '803. Cross-border tracking (by placing a beeper on a vehicle or a person)', '804. Controlled deliveries', '805. Joint investigation teams', '901. European Arrest Warrant', '902. Enforcement of a Financial Penalty', '903. Enforcement of a Custodial Sentence', '904. Probation measures', '906. European Protection Order', and '1001. Transfer of proceedings'. A red arrow points to the 'Next >' button at the bottom of the page. There is also a 'Back' button. A note at the bottom states: 'For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [PDF] to the relevant Fiches Belges is located next to each of the above measures.' The footer indicates 'Last reviewed on 6 April 2017 by EJN Secretariat'.

3. Here we have to select from 3 options. We will select the **General regime** as mentioned in the requirements of the exercise. Then we select the section **Next** as shown below.

Useful Links | Sitemap | FAQ | Search | Contact EJN Secretariat | Legal Notice | English(en)

European Judicial Network (EJN)
Réseau Judiciaire Européen (RJE)

Home Atlas

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Spain (ES) [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Execution of a Supervision Measure (905)

Competence

Violence against women

For people under 18

General regime: Juzgados de Instrucción where the person is living

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4. We introduce **Vigo (Spain)**. Then we select the section **Next** as shown below.

Legal instrument: 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. (Status of Implementation)

Authority Type: R-Oficina Decanato / Servicio Común para su registro y reparto a los Juzgados de Instrucción (Regional)

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority

Name:

Address:

P. Code:

City:


Area:

If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

5. At the end we are provided with the result of our search like shown below.

Search Competent Authorities:

Country: Spain (ES)  [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Execution of a Supervision Measure (905)

Competence: General regime: Juzgados de Instrucción where the person is living [\(Select another option\)](#)

Legal instrument: [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. \(Status of Implementation\)](#)

Authority Type: R-Oficina Decanato / Servicio Común para su registro y reparto a los Juzgados de Instrucción (Regional)

Resultant Competent Authority: Oficina Decanato of Vigo (para su reparto a los Juzgados de Instruccion)

[General data](#) | [Videoconference](#) | [Areas](#) | [Properties](#) | [Associated CPs](#)

Name: Oficina Decanato of Vigo (para su reparto a los Juzgados de Instruccion)

Address: Lalín, 4

Department (Division):

City: Vigo

Postal code: 36209

Phone number: +34986817168 Mobile phone:

Fax number: +34 986817707 Email Address:

[Click to view the map](#) [Import authority details into Compendium](#)


[Back](#)

- **A Spanish competent authority wants to transfer the supervision of the accused person M.M. who is lawfully and ordinarily residing in Vienna, Austria.**

1. In order to identify the competent authority, we select **Austria** as the country selected (AT). Then we select the section **Atlas** as shown below.


The screenshot displays the European Judicial Network (EJN) website interface. At the top, there is a navigation bar with the EJN logo and the text 'European Judicial Network (EJN) Réseau Judiciaire Européen (RJE)'. Below this, there are four main menu categories: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. The 'EU Legal Instruments for Judicial Cooperation' menu is expanded, showing a list of tools. The 'Austria - Tools' section is highlighted with a red circle. Under this section, the 'Atlas' tool is also highlighted with a red circle. The 'Atlas' tool is described as 'Find competent authority to receive your request for judicial cooperation'. Other tools visible include 'Compendium', 'Fiches Belges', 'Status of implementation', and 'Contact Points'. The website also features a sidebar with various links and a footer with logos for 'eu2020.de' and 'EU Presidency'.

2. We select measure **905. Execution of a Supervision Measure**. Then we select the section **Next** as shown below.

Judicial Atlas 

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: **Austria (AT)**  [\(Select another country\)](#)

Choose measure: **ALL**

- 711. Hearing suspects/persons accused: by video conference
- 712. Hearing suspects/persons accused: by telephone
- 713. Confrontation
- 801. Cross-border observation
- 802. Cross-border hot pursuit
- 803. Cross-border tracking (by placing a beeper on a vehicle or a person)
- 804. Controlled deliveries
- 805. Joint investigation teams
- 901. European Arrest Warrant
- 902. Enforcement of a Financial Penalty
- 903. Enforcement of a Custodial Sentence
- 904. Probation measures
- 905. Execution of a Supervision Measure**
- 906. European Protection Order
- 1001. Transfer of proceedings

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[🔗\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on 12 March 2019 by Tools Correspondent

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3. We introduce **Vienna (Austria)**. Then we select the section **Next** as shown below.

Legal instrument: [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. \(Status of Implementation\)](#)

Authority Type: **Aut Type LG - Austria (Regional)**

Search Authorities:

Search by locality involved in the measure

City/PC: **Wien**

Search by competent authority


Name:

Address:

P. Code:

City:

Area: **Choose...**




If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

4. At the end we are provided with the result of our search like shown below.

Search Competent Authorities:

Country: Austria (AT)  [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Execution of a Supervision Measure (905)

Legal instrument: [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. \(Status of Implementation\)](#)

Authority Type: Aut Type LG - Austria (Regional)

Resultant Competent Authority: Staatsanwaltschaft Wien

[General data](#) [Videoconference](#) [Areas](#) [Properties](#) [Associated CPs](#)

Name: Staatsanwaltschaft Wien
Address: Landesgerichtsstraße 11
Department (Division):
City: Wien
Postal code: 1082
Phone number: +43 1 40127 0 Mobile phone:
Fax number: +43 1 40127 306950 Email Address:

[Click to view the map](#) [Import authority details into Compendium](#)

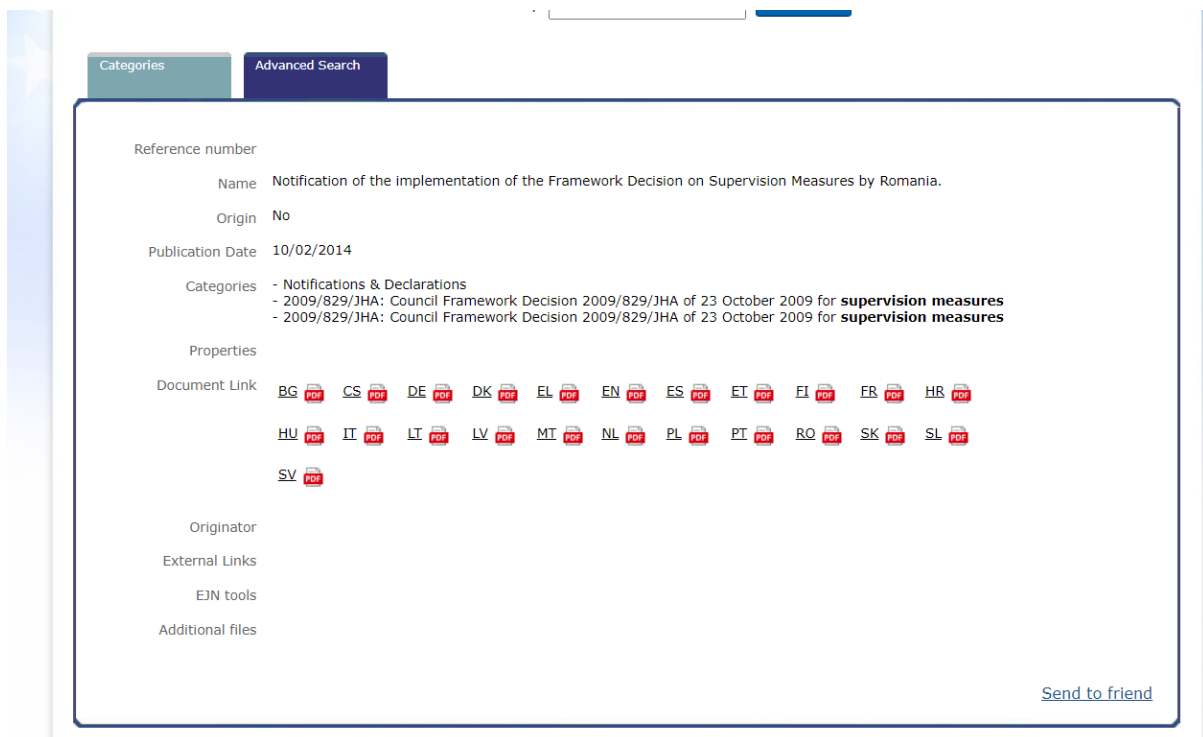
[Back](#)

Solution to question 4 of the Case scenario.

The information regarding the competent authorities as issuing or executing competent authorities can be consulted on the EJN's website – www.ejn-crimjust.europa.eu (information provided for each MS):

Romania – information provided below:

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1229>



The screenshot displays the 'Advanced Search' section of the EJN website. The document details are as follows:

- Reference number:** Not explicitly shown.
- Name:** Notification of the implementation of the Framework Decision on Supervision Measures by Romania.
- Origin:** No
- Publication Date:** 10/02/2014
- Categories:**
 - Notifications & Declarations
 - 2009/829/JHA: Council Framework Decision 2009/829/JHA of 23 October 2009 for **supervision measures**
 - 2009/829/JHA: Council Framework Decision 2009/829/JHA of 23 October 2009 for **supervision measures**
- Properties:** Not explicitly shown.
- Document Link:** A grid of PDF icons for various countries: BG, CS, DE, DK, EL, EN, ES, ET, FI, FR, HR, HU, IT, LT, LV, MT, NL, PL, PT, RO, SK, SL, and SV.
- Originator:** Not explicitly shown.
- External Links:** Not explicitly shown.
- EJN tools:** Not explicitly shown.
- Additional files:** Not explicitly shown.

A 'Send to friend' link is located in the bottom right corner of the document details area.

Notification under Article 6

The competent authorities in Romania, when Romania is the issuing State, are the prosecution offices and the courts. When Romania is the executing state the competent authorities to receive the certificates delivered by other European Union Member states are:

Prosecution stage: Prosecution Office of the High Court of Cassation and Justice

Parchetul de pe lângă Înalta Curte de Casație și Justiție
Serviciul de cooperare judiciară, relații internaționale și programe
B-dul Libertății nr.12, Sector 5 – București, Cod postal: 050706
Tel.: +40.21319.38.33 /+40.21/319.38.56
Fax: +40.21.319.39.33/ E-mail: coop@mpublic.ro

Trial stage: Ministry of Justice

Strada Apolodor 17, Sector 5 București, Cod 050741
Directorate for International Law and Judicial Cooperation
Division for international judicial cooperation in criminal matters
Phone: +40.37.204.1077 / +40.37.204.1085
Outside office hours: + 040.733.737.769
Fax: +40.37.204.1079/84 /E-mail: centralauthority_copen@just.ro

Austria – information provided below:

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1176>

II. Article 6(1) (Designation of competent authorities):

1. Competent authorities for incoming requests:

The competent authorities for incoming requests to monitor supervision measures are the Regional Courts.

The certificate must be submitted together with the necessary documents from the Regional Court within whose jurisdiction the person concerned has their domicile or permanent residence or, in cases pursuant to Article 9(2), the Regional Court within whose jurisdiction specific ties exist with the person concerned.

Register and address of competent Regional Courts

To find out which of the Regional Courts from the following list has territorial jurisdiction we would recommend consulting the atlas of European courts on the European Judicial Network website (<http://www.ejn-crimjust.europa.eu>).

Court staff and bailiffs' legal training in European civil and criminal law

*Mutual recognition III –
Council Framework Decision
2008/947/JHA*



Co-funded by
the European Union



Content:

- *Fact sheet – FD 2008/947*
- *Objectives*
- *Scope of application*
- *Competent authorities*
- *Criteria for forwarding a decision on supervision measures*
- *Procedure for recognition of a decision on supervision measures*
- *Grounds for refusing recognition and supervision & adaptation of the decision*
- *Governing law and subsequent decisions*
- *Consultations and languages*

Fact sheet

- Deadline for transposition of the FD - **6 December 2011**
- **All MS bound by the FD** have implemented it
- FD **lays down rules** according to which an MS, *other than the MS in which the person concerned has been sentenced*, **recognises** judgments and, where applicable, probation decisions, **supervises** probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and **takes all other decisions relating to that judgement**, *unless otherwise provided for in this FD*

Objectives

- Facilitating **the social rehabilitation of sentenced persons** and **enhancing the prospects of the sentenced person's being reintegrated into society**, by enabling that person to preserve family, linguistic, cultural and other ties
- **Improve monitoring of compliance with probation measures and alternative sanctions**, with a view to preventing recidivism
- **Improving the protection of victims and of the general public**
- Facilitating **the application of suitable probation measures and alternative sanctions**, in case of offenders who do not live in the state of conviction

Scope of application

- FD **shall apply** only to:
 - (a) the recognition of judgements and, where applicable, probation decisions
 - (b) the transfer of responsibility for the supervision of probation measures and alternative sanctions
 - (c) all other decisions related to those under (a) and (b); as described and provided for in this FD

- FD **shall not apply** to:
 - (a) the execution of judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of FD **2008/909/JHA**
 - (b) recognition and execution of financial penalties and confiscation orders which fall within the scope of FD **2005/214/JHA** of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
 - (c) FD **2006/783/JHA** of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

Competent authorities

- Each MS shall inform the General Secretariat of the Council which **authority or authorities**, under its national law, are competent to act according to this FD in the situation where that MS is the issuing state or the executing state.
- MS may designate **non-judicial authorities** as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures
- If a decision under Article 14(1)(b) or (c) is taken by a competent authority other than a court, the Member States shall ensure that, **upon request of the person concerned**, such decision may be **reviewed** by a court or by another independent court-like body
- The General Secretariat of the Council **shall make the information received available** to all Member States and to the Commission

Criteria for forwarding a decision on supervision measures

- ✓ The competent authority of the issuing state may forward a judgement and, where applicable, a probation decision to the competent authority of the Member State in which **the sentenced person is lawfully and ordinarily residing**, in cases where the sentenced person **has returned or wants to return to that state** (art. 5 para. 1)
- ✓ *Exc.* - **upon request of the sentenced person**, forward the judgement and, where applicable, the probation decision to a competent authority of a MS **other than the MS in which the sentenced person is lawfully and ordinarily residing**, on condition that **this latter authority has consented to such forwarding** (art. 5 para. 2)
- ✓ **Consent of the convicted person is mandatory in all cases**
- ✓ For para. 2 the consent of the executing MS shall be obtained **in advance**
- ✓ Member States shall determine **under which conditions** their competent authorities may consent to the forwarding of a judgement and, where applicable, a probation decision under paragraph 2 (art. 5 para. 3)
- ✓ The General Secretariat shall make the information received available to all MS and to the Commission – see the link below with the information regarding article 5 para. 3 FD:

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3187>

Procedure for recognition of a decision on supervision measures and time limits

- ✓ The CA of the issuing state **directly forwards** a judgement and, where applicable, a probation decision to the competent authority of the other MS, accompanied by the certificate set out in Annex I and **continues** to have competence in relation to the supervision of the probation measures or alternative sanctions imposed
- ✓ The competent authority of the executing state shall decide, according to the national law applicable, **whether to recognise** the judgement **or not** and, where applicable, the probation decision and **assume responsibility** for supervising the probation measures or alternative sanctions **as soon as possible**, and **within 60 days** of receipt of the judgement and, where applicable, the probation decision
- ✓ When in **exceptional circumstances** it is not possible for the competent authority of the executing state to comply with the time limit provided for in paragraph 1, it shall immediately **inform** the competent authority of the issuing state by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken

Grounds for refusing recognition and supervision & adaptation of the decision

- ✓ Grounds for refusing recognition and supervision **expressly** and **limited** provided in the **article 11 let. a)-k) of the FD**
- ✓ If the **nature of the probation measure or alternative sanction** is incompatible with the law of the executing state => may adapt it in line with the nature of the probation measures and alternative sanctions, which apply, under the law of the executing state, to equivalent offences. (see e.g. obligation to carry out community service).
- ✓ In case of **duration of the probation measure or alternative sanction** is incompatible with the law of the executing state => may adapt it in line with the duration of the probation measures and alternative sanctions, which apply, under the law of the executing state, to equivalent offences
- ✓ If the **duration of the probation period** is incompatible with the law of the executing state => may adapt it in line with the duration of the probation period, which apply, under the law of the executing State, to equivalent offences
- ✓ The duration of the adapted probation measure, alternative sanction or probation period **shall not be below the maximum duration provided for equivalent offences under the law of the executing state**
- ✓ The adapted probation measure, alternative sanction or probation period **shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed**

Governing law and subsequent decisions

- ✓ The supervision and application of probation measures and alternative sanctions **shall be governed by the law of the executing state**
- ✓ The competent authority of the executing state **shall have jurisdiction** to take all subsequent decisions, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions include notably:
 - (a) *the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period*
 - (b) *the revocation of the suspension of the execution of the judgement or the revocation of the decision on conditional release*
 - (c) *the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence*
- ✓ Each MS may declare that as an executing state **it will refuse to assume the responsibility to take subsequent decisions for the cases provided for in article 14 para. 3 of the FD**. In this situation the executing state **shall transfer jurisdiction back** to the competent authority of the issuing state in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing state

Consultations (art. 15) and languages (art. 21)

- ✓ Where and whenever it is felt appropriate, competent authorities of the issuing state and of the executing state **may consult** each other with a view to facilitating the smooth and efficient application of this Framework Decision
- ✓ The certificate referred to in Article 6(1) **shall be translated** into the official language or one of the official languages of the executing state. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Union.

Mutual recognition III

Council Framework Decision 2008/947/JHA of 27 November 2008

on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions

Set of Case studies – a Guide for trainers

Written by:

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Court of First Instance, 4th District, Bucharest Tribunal, Bucharest

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Mutual recognition III.

A. I. Case scenario 1:

A German citizen M.H. (born on 23.05.1970) has been convicted by Bucharest Tribunal, Romania to 2 years of imprisonment for committing a computer-related crime. The penalty imposed has been suspended for a period of 4 years. During the probation period the German citizen has to observe the following obligations: the obligation for the sentenced person to inform a specific authority of any change of residence or working place, the obligation for the sentenced person to inform a specific authority of any change of residence or working place, the obligation to carry out community service and the obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons.

After the decision became final, the German citizen wants to return to his country, where he is lawfully and ordinarily residing (Hamburg, Germany). He requested at the Bucharest Probation Service to be supervised in Germany where his family is and where he is currently employed.

Questions:

- 1. Can the Romanian authorities ask for the transfer of supervision of the obligations imposed on the convicted person to the competent German authorities? Which legal instrument is applicable in this case?*
- 2. What are the necessary criteria for forwarding the judgement to another Member State? Is the German citizen entitled to request such a transfer of supervision? Is his consent required in this phase?*
- 3. Find the competent authorities involved in the possible transfer of the convicted person (the competent Romanian and German authorities).*
- 4. How will the issuing competent authority and the executing competent authority proceed in this case?*
- 5. Which challenges might the issuing competent authority face when requesting the transfer of the supervision and how can they be overcome?*
- 6. Which challenges might the executing competent authority face during the recognition process and how can they be overcome?*
- 7. What are the benefits in this case if the transfer of the supervision is granted by the competent German authorities?*

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate (general criminal cases):

1. A competent German authority wants to transfer the supervision of the sentenced person A.N. who is lawfully and ordinarily residing in Brussels, Belgium.

Competent authority:

Language:

2. A French competent authority wants to transfer the supervision of the sentenced person B.C. who is lawfully and ordinarily residing in Vigo, Spain.

Competent authority:

Language:

3. A Spanish competent authority wants to transfer the supervision of the sentenced person M.M. who is lawfully and ordinarily residing in Vienna, Austria.

Competent authority:

Language:

A. III. Case scenario 2 (continuation of case scenario 1):

Supposing that the competent German authorities have granted the transfer of supervision of the suspended sentence (from case scenario 1) and the supervision began on 01.01.2020. During the supervision period, the German citizen has breached one of the obligations imposed. Now, the German authorities must decide how to proceed.

Questions:

1. *Which law is applicable during the supervision period?*
2. *How will the German authorities proceed regarding the breaching of one of the obligations imposed to the convicted person?*
3. *What will happen if the convicted person is facing new criminal proceedings in the issuing MS?*
4. *What will happen if he absconds or no longer has a lawful and ordinary residence in the executing State?*

Part B. Additional notes for the trainers regarding the cases

A. I. Case scenario 1:

- The country of conviction will be changed with the country where the seminar is taking place.
- In the seminar is taking place in Germany, the countries from case scenarios 1 and 2 will be swapped and the convicted person will this time be a Romanian citizen, lawfully and ordinarily residing in Bucharest, Romania).

Part C. Methodological approach

I. General idea and core topics

The idea of this training material is to make the court staff from the Member States familiar with the legal instrument for judicial cooperation available at European level with a view to the supervision of probation measures and alternative sanctions.

Court staff are often involved in administrative tasks ranging from filling in the form requested by the legal instrument, identifying the competent authority where to send it, translation of the form, to requesting or sending additional information regarding judicial cooperation.

For these reasons, **the following main aspects** will be covered within the seminars:

1. Scope of application of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions.
2. Familiarisation with the general structure of the Council Framework Decision 2008/947/JHA.
3. Identifying some challenges the issuing competent authority may face when requesting the transfer of supervision and how to overcome them.
4. Identifying some of the challenges the executing competent authority may face during the recognition process and how to overcome them.
4. Highlighting the benefits of the transfer of supervision.
5. Understanding some practical issues that may arise before and after the transfer of supervision.

6. Administrative details: How should an issuing authority proceed in a situation? Which language is to be used? Where can the issuing authority find the competent authority from the executing Member State which the request needs to be addressed to?

II. Working groups and structure of the seminar

The trainer will provide the participants with a brief presentation (Power point) highlighting the important features of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions – scope, definitions, competent authorities, types of probation measures, criteria for forwarding a judgement, grounds for refusing, time limits, adaptation, governing law, subsequent decisions, obligations for the MS (**approx. 15-20 min**).

Case scenario 1 is the opportunity to understand Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions as an instrument for transfer of the supervision of sentenced persons between different MS that have implemented the CFD. The participants will work in groups of 4-5 and will have a laptop connected to the internet/group in order to solve the questions. Solving Case scenario 1 and answering the questions should take **approx. 1 hour and 40 minutes**.

A 10-minute break is recommended at this point.

Solving the **exercises** from point A.II should take around **10 minutes** as they are meant to help the participants in understanding the mechanism for finding a competent authority and the language to be used in the Certificate.

Case scenario 2 will allow the participants to go deeper into understanding the application of some of the provisions of the CFD. The participants will work in groups of 4-5 and will have a laptop connected to internet/group in order to solve the questions. Solving Case scenario 2 should take **approx. 40-45 minutes**.

Any remaining questions should finally be discussed at the end of the seminar (for **approx. 5-10 minutes**).

The organisers should try to form groups of participants with an approximately similar level of experience in working with CFD 2008/947 when solving the case scenarios.

III. Additional material

All participants will be provided with a copy of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions comprising the Forms in the Annex I and II. Also, the participants must bring with them or have access to their national provisions for implementing the CFD.

Part D. Solutions

A. I. Case scenario 1:

QI: Can the Romanian authorities ask for the transfer of supervision of the obligations imposed on the convicted person to the competent German authorities? Which legal instrument is applicable in this case?

In our case the Romanian authorities may request the transfer the supervision of the obligations imposed to the sentenced person to the competent German authorities and the legal instrument applicable is **Council Framework Decision 2008/947/JHA¹ of 27 November 2008** on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions.

The abovementioned decision has been implemented by almost all the European Union Member States except for the United Kingdom. Ireland is currently implementing the Council Framework Decision although the implementation period has elapsed (the CFD had to be implemented by 6 December 2011).

The [status of the implementation of the Council Framework Decision 2008/947/JHA](http://www.ejn-crimjust.europa.eu) of 27 November 2008 is available on the EJM website – www.ejn-crimjust.europa.eu (in the section dedicated to CFD 2008/947/JHA):

The Framework Decision applies to **the recognition of judgements and, where applicable, probation decisions** and to the **transfer of responsibility for the supervision of probation measures and alternative sanctions** (article 1 para 2 CFD).

The Framework Decision **does not apply to:**

(a) the execution of judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of **Framework Decision 2008/909/JHA²**,

(b) recognition and execution of financial penalties and confiscation orders which fall within the scope of **Council Framework Decision 2005/214/JHA³** of 24 February 2005 on the application of the principle of mutual recognition to financial penalties and **Council Framework Decision 2006/783/JHA⁴** of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (article 1 para 3).

¹ O.J. L 337, 16.12.2008

² O.J. L 327, 05.12.2008

³ O.J. L 76, 22.03.2005

⁴ O.J. L 328, 24.11.2006

Q2: What are the necessary criteria for forwarding the judgement to another Member State? Is the German citizen entitled to request such a transfer of supervision? Is his consent required in this phase?

The criteria for forwarding a judgement and, where applicable, a probation decision, are provided in article 5 of the Council Framework Decision.

Article 5 para 1 states that the competent authority of the issuing State may forward a judgement and, where applicable, a probation decision to the competent authority *of the Member State in which the sentenced person is lawfully and ordinarily residing*, in cases *where the sentenced person has returned or wants to return to that State*.

Article 1 para 1 also states that the Framework Decision aims at *facilitating the social rehabilitation of sentenced persons*, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, *in case of offenders who do not live in the State of conviction*.

As can be seen in our case, the German citizen is entitled to request the transfer of the supervision of the suspended sentence because he is lawfully and ordinarily residing in Germany and he wants to return to his home country where he has his family and where he has a job.

In our case, the perspective of facilitating the social rehabilitation of the convicted person is clear and the Romanian competent authorities need to ask the competent German executing authorities for the recognition and supervision of the obligations imposed.

According to article 5 of the CFD, **the consent of the sentenced person is always required**, unless the person has returned to the executing State, when his consent is implied.

Para 2 of the same article states that the competent authority of the issuing State may, **upon request of the sentenced person**, forward the judgement and, where applicable, the probation decision *to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding*. Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgement and, where applicable, a probation decision under this paragraph.

Q3: Find the competent authorities involved in the possible transfer of the convicted person (the competent Romanian and German authorities).

Regarding the competent Romanian authorities to ask for the transfer of the supervision, these are according to the national legislation implementing the CFD 2008/947/JHA the district courts (in our case, Bucharest Tribunal as the court that rendered the suspended sentence).

The information regarding the competent authorities as issuing authorities can be consulted on the EJN website – www.ejn-crimjust.europa.eu in the Complementary information provided by the Council Secretariat available at the following link (information provided for each MS).

In order to see the competent German authorities we will use the Atlas available on the EJN website – www.ejn-crimjust.europa.eu, select Germany as the executing country and *904. Probation Measures*.

The result should be as follows:

Name:	STAATSANWALTSCHAFT HAMBURG
Address:	Gorch-fock-wall 15
Department (Division):	
City:	Hamburg
Postal code:	20355
Phone number:	(+49) 40 428280
Mobile phone:	
Fax number:	(+49) 40 428433968
Email Address:	Poststelle-Staatsanwaltschaft@sta.justiz.hamburg.de

And the [result of the search can be found here](#):

Q4: How will the issuing competent authority and the executing competent authority proceed in this case?

- **Issuing competent authority**

With a view to facilitating the social rehabilitation of the sentenced person and having the consent of the sentenced person, the competent Romanian authority will check the criteria set out in article 5 para 1 of the CFD.

The competent Romanian authority **will fill in the Certificate** set out in Annex I to CFD 2008/947 and will send it along with the judgement directly to the competent executing authority identified in point 3 above.

According to article 21 of the CFD, the judgement and the Certificate must be **translated into German**.

- **Executing competent authority**

After receiving the judgement and the Certificate from the Romanian authorities, **the competent German authority** will have to take a decision whether to recognize and supervise the obligations imposed according to **article 6 of the CFD**.

Remember that the **grounds for refusing recognition and supervision** are limited and expressly mentioned in article 11 of the CFD.

The time limits for taking such a decision are mentioned in article 12 of the CFD.

The executing authorities will have **to inform** the issuing authority as provided in article 18 of the CFD regarding:

- *the transmission of the judgement and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation measures or alternative sanctions in accordance with Article 6(7), where it has no competence according to the national law,*
- *the final decision to recognise the judgement and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions,*
- *any decision not to recognise the judgement and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions in accordance with Article 11, together with the reasons for the decision,*
- *any decision to adapt the probation measures or alternative sanctions in accordance with Article 9, together with the reasons for the decision.*

As mentioned in article 15 of the CFD, where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State **may consult each other** with a view to facilitating the smooth and efficient application of the Framework Decision.

Q5: Which challenges might the issuing competent authority face when requesting the transfer of the supervision and how can they be overcome?

- ***Not aware of the legal instrument***

Although CFD 2008/947 has been in force since 6.12.2011, the legal instrument is still not very often used at European level (most of the time it is used only on regional level or between MS with a tradition for cooperation with supervision procedures).

One of the reasons for this is the *lack of awareness* among legal practitioners and sentenced persons (especially as they do not have a lawyer in this phase of the trial – the execution of the judgement).

Because in some countries the probation offices are separate from the competent courts, most of the time the courts competent for requesting the transfer of supervision are not aware of the situation after a sentence is being enforced, because the probation offices only come back to the courts when there are problems regarding the interpretation of the sentence or if the convicted person does not comply with the supervision measures or with the obligations imposed on him.

- ✓ These situations can be overcome if *for example*, after the sentence has become final and enforceable, the court that rendered the judgement and the probation offices **let the sentenced person** (especially those lawfully and ordinarily residing in another Member State) **know about the possibility to request the transfer of supervision** and the conditions that have to be met in order to ask for and to be granted such a transfer. Also, relevant **information available on the courts' and probation offices' websites** could be of use for the sentenced person.

- ***Not knowing the other judicial system in the executing MS***

The competent judicial authorities from the issuing MS are usually reluctant when it comes to asking for the transfer of supervision of the judgement. Not knowing the other judicial system is one of the challenges for the issuing authority.

If there are doubts about the other judicial system involved, the issuing competent authority has a lot of sources to locate the information.

- ✓ For example, in [the section dedicated to CFD 2008/947](#), EJN website provides valuable information on the judicial system of all MS (e.g. national legislation, notifications, declarations, reports, etc.).

Also, it must be kept in mind that all MS (except Ireland – with the process of implementation ongoing) have implemented the CFD, which means that the probation measures and alternative sanctions provided in article 4 para 1 of the CFD are available and can be supervised in all MS (except when an MS has notified or declared it will not apply when transferring the supervisions of sentence). Article 4 para 2 of the CFD states that each Member State shall notify the General Secretariat of the Council when implementing this Framework Decision, which probation measures and alternative sanctions, *apart from those referred to in paragraph 1, it is prepared to supervise*.

- ***Not trusting the other judicial system***

Often issuing competent authorities have other doubts, such as they do not trust the other judicial system, and do not initiate a request for transfer, especially because there is no such obligation explicitly provided in the CFD.

- ✓ The competent judicial authorities always have to think of the objectives of the CFD which sometimes go beyond a subjective decision and which *facilitate the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions*, in case of offenders who do not live in the State of conviction.
- ✓ Preamble 8 of the CFD states that *the aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.*

Also, the issuing competent authorities must remember that, in order to reach these objectives, some of the MS, *other than the Member State in which the sentenced person is lawfully and ordinarily residing*, have declared that they consent to a forwarding of the supervision (article 5 para 2 of the CFD).

- ***Difficult to establish the criteria provided in article 5 of the CFD***

Normally, information about the lawful and ordinary residence of the sentenced person is available to the competent authority of the issuing MS in the case file, in order to ascertain where to address according to article 6 of the CFD.

Still, sometimes, when the sentenced person is not of the nationality of the MS where the transfer will be asked for, it is difficult to establish if the convicted person has the right of residence or residence under the law of the other MS.

It is sometimes difficult to assess, for example, when the convicted person is not of the nationality of the executing MS, that he has the right of residence or residence in the executing MS under the law of the other MS, or is one of the family members of a national citizen or a person who has the right of residence or right of residence in the executing MS.

Most of the time the convicted person provides additional information in this regard, and should always prove for example that they are to carry out a lucrative activity, studies, or vocational training on the territory of the executing MS.

- ✓ Article 15 of the CFD can perfectly apply in this phase, as competent authorities of the issuing State and of the executing State *may consult each other* where and whenever it is felt appropriate, with a view to facilitating the smooth and efficient application of the Framework Decision (in this case gathering information before asking the transfer of the supervision of the suspended sentence).

- ***Not knowing where to send the Certificate and the judgement***

Finding the competent authority in the executing MS is not a difficult task, especially as the *Atlas* from the EJN website helps legal practitioners identify the competent executing authority for the other MS (as seen at point 3 above).

Also, if the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, *including via the contact points of the European Judicial Network created by Council Joint Action 98/428/JHA*, in order to obtain the information from the executing State (article 6 para 6 of the CFD).

Not to forget that, when an authority of the executing State which receives a judgement and, where applicable, a probation decision, together with the certificate, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, *it shall, ex officio, forward it to the competent authority and shall without delay inform the competent authority of the issuing State* accordingly by any means which leaves a written record (article 6 para 7 of the CFD).

- ***The process is taking too much time***

When confronted with a situation of a possible transfer of supervision to another Member State, those in charge of supervision or the national competent authorities often think that the procedure will take too much time and be too complicated. If they think the national issuing competent authority will not agree with the request for transfer or that the executing competent authority will refuse the transfer of procedure, then the picture is complete.

Papers must be filled in by the probation officers who then must address the competent authority in the issuing MS. That is why we now have situations in which persons residing or working in another MS are supervised for example every 6 months in the MS in which the person was convicted. This kind of supervision is outside of the objectives mentioned in the CFD.

- ✓ People in charge of the supervision must be aware of the objectives of the CFD and always bear in mind the benefits, especially for the sentenced person, if supervision is transferred to another MS. They should also think that it is much easier to supervise a sentenced person in the country where they are lawfully and ordinarily residing or studying, etc. The grounds for refusing the transfer of supervision are limited and expressly provided in the CFD, which narrows the possibility of a discretionary decision in this regard by the executing competent authorities.

Q6: Which challenges might the executing competent authority face during the recognition process and how can they be overcome?

- *Problems regarding the certificate received (incomplete, confusing information provided, boxes not ticked correctly or not ticked at all when they were mandatory, etc.)*

Sometimes, the Certificate is not filled in correctly by the issuing authority, information is missing, is confusing, or manifestly does not correspond to the judgement or to the probation decision.

These situations are provided as a ground for refusing recognition and supervision according to article 11 para 1 let. a) of the CFD by the competent authority of the executing MS.

- ✓ Before deciding to refuse the recognition and supervision, the executing competent authority **must enter into contact** with the issuing authority according to article 15 of the CFD and ask the Certificate to be completed or corrected or additional information to be provided in a reasonable period by the issuing authority.
- ✓ Only if in this reasonable period the Certificate is not completed or corrected or additional information is not provided, then the executing MS can refuse recognition and supervision (the ground mentioned in article 11 para 1 a) of the CFD).

- *Problems in understanding or applying the judgement rendered in the other MS*

Sometimes, the executing competent authority may find it difficult to understand or apply the judgement rendered in the other MS.

- ✓ For this it is important to enter into contact and consult with the issuing competent authority according to article 15 of the CFD

- ***Problems in observing the time limits***

According to article 12 of the CFD, the competent authority of the executing State shall decide as soon as possible, and **within 60 days** of receipt of the judgement and, where applicable, the probation decision, together with the certificate referred to in Article 6(1), whether or not to recognise the judgement and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions.

If it is not possible to observe this time limit the competent authority of the executing State shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken

- ✓ The reasons for not complying with the time limits provided in article 12 of the CFD must be exceptional circumstances and should be limited only to objective situations (e.g. *additional information is needed from the issuing MS or from other competent authorities involved in the recognition process*).

- ***Problems of adaptation of the probation measures or alternative sanctions***

Maybe the biggest challenge for the competent authority of the executing State is adaptation of the probation measures or alternative sanctions because the two judicial systems involved are not always the same.

Problems can arise relating to the nature, to the duration of the probation measures or alternative sanctions or to the probation period.

- Where **the duration of the probation measure, the alternative sanction or the probation exceeds the maximum duration provided for under the law of the executing State**, the duration may be adapted and the duration of the adapted probation measure, alternative sanction or probation period *shall not be below the maximum duration provided for equivalent offences under the law of the executing State*. Also, the adapted probation measure, alternative sanction or probation period *shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed*.

- ✓ *For example*, in our case the penalty imposed has been suspended for 4 years and if under the German legal the maximum is 3 years of suspension, then the period of suspension will be reduced to 3 years, according to the law of the executing State. If in Germany, *for example*, the maximum in the same case is 5 years, the executing authority will leave 4 years as imposed in Romania and not increase the duration to 5 years because in this case it will be longer than the initial period and will aggravate the situation of the convicted person.
- ✓ *Also, for example*, if an obligation to carry out community service has been imposed on the convicted person for a period of 1 year, the executing competent authority can reduce this period if national law provides for a period of maximum 6 months but cannot impose the obligation for a period of 2 years according to the national law, because in this case it will be longer than the initial period and will aggravate the situation of the convicted person.

- If the **nature of the relevant probation measure or alternative sanction are incompatible with the law of the executing State, the competent authority of that State** may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State (article 8 para 1 of the CFD).

- ✓ *For example*, in the executing State *the obligation to carry out community service* is not provided as an obligation in a suspended sentence and it is a penalty itself under the national law. In this case, the executing State will also assume supervision of this obligation, although not provided in national law, as in the law of the issuing State. Of course, the duration may be adapted to the maximum provided under the national law as mentioned in the example above.

Before making any adaptation, **the executing competent authority shall communicate this to the issuing competent authority** which may decide to withdraw the certificate referred to in Article 6(1) provided that supervision in the executing State has not yet begun. In such cases, the decision shall be taken and communicated as soon as possible and within ten days of the receipt of the information.

Problems related to costs (especially related to the therapeutic treatment)

Article 22 of the CFD provides that costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

In this situation, when *an obligation to undergo therapeutic treatment or treatment for addiction* has been imposed, the problem of potential costs can arise for the executing competent authority, especially in treatments with rather high costs.

- ✓ This can be a sensitive issue for the executing State, but taking into account the implementation of the CFD and the objectives provided in it as already mentioned above, the transfer of supervision should not be put in direct relation with the potential costs that can arise and the decision to recognise and execute should not be taken thinking about this issue.

Q7: Which are the benefits in this case if the transfer of supervision is granted by the competent German authorities?

- ***Better perspective for social rehabilitation in the executing MS***

The CFD provides that the aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is *to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties*, but also to improve monitoring of compliance with probation measures and alternative sanctions.

- ***Better chances not to re-offend for the convicted person***

By preserving family, linguistic, cultural, and other ties with his country of origin the convicted person has better chances not to re-offend during the probation period.

It is proven that by preserving such ties the convicted person has better chances to not re-offend and reintegrate into society.

- ***Much easier to supervise the convicted person in the executing MS***

By transferring the supervision to the executing MS, the monitoring of compliance with probation measures and alternative sanctions is improved. The convicted person has lawful and ordinary residence there, so he will be willing to cooperate in order to finish the supervision period.

- ***Improving the protection of victims and of general public***

One of the objectives of the CFD is improving the protection of victims and of the general public. In most of the cases, the transfer of supervision to another MS means that the convicted person will be far away from his victim, who remains in the issuing MS.

Problems may arise when the victim lives in the executing MS, but even in these cases, in serious crimes or related gender base crime obligations not to get closer

to the victims are provided in the initial judgement and can be much easier verified by the competent authorities in the executing MS.

Also, the protection of the general public is improved because the convicted person will have sufficient ties with the executing MS that will help him better rehabilitate and reintegrate in the society.

- ***Better ensuring that the convicted person will compensate financially for the prejudice caused by the offence***

If the convicted person has a job or is likely to have one in the executing MS, then he will have the means to compensate financially for the prejudice caused by the offence as obliged in the judgement (for example compensate the victim or pay a sum to charity or to other entities mentioned in the judgement).

Also, the competent authorities from the executing MS have access and can verify the means of the convicted person and can ensure that the convicted person compensates financially for the prejudice caused by the offence as provided in the judgement (e.g. *seize the amount needed to compensate for the prejudice cause by the offence or retain a monthly fee to cover for the damages caused*).

- ***Strengthening mutual trust and cooperation between MS for future cases***

The cooperation between MS in cases covered by the CFD will strengthen mutual trust for future cases. Successful cases will encourage even more MS to cooperate in order to better attain the objectives provided in article 1 of the CFD which are *facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions*, in case of offenders who do not live in the State of conviction

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate (general criminal cases) - see also Annex 2:

In order to find the competent authorities we will use the *Atlas* available on the EJN website – www.ejn-crimjust.europa.eu, select the executing MS as the executing countries and 904. *Probation Measures*.

Regarding the languages for the Certificate, we will use the section – [Supervision Measures – Notifications for each of the MS](#). If not notified of anything in relation to article 21 of the CFD, then the official language(s) of the MS will be used.

The results should be as follows:

1. A competent German authority wants to transfer the supervision of the sentenced person A.N. who is lawfully and ordinarily residing in Brussels, Belgium.

Name:	Parket van de procureur des Konings te Brussel (Bureau CIS)- Parquet du procureur du Roi de Bruxelles (Bureau CIS)
Address:	Portalis, Rue des Quatre bras, 4
Department (Division):	
City:	Bruxelles
Postal code:	1000
Phone number:	+32 (0)2 508 70 80
Mobile phone:	
Fax number:	+32 (0)2 519 82 96
Email Address:	cis.bxl@just.fgov.be

According to article 21 of the CFD the languages accepted by the Belgian authorities are: **Dutch, French, German and English.**

2. A French competent authority wants to transfer the supervision of the sentenced person B.C. who is lawfully and ordinarily residing in Vigo, Spain.

Name: Servicio Común de Registro, (para el reparto entre los Juzgados Centrales de lo Penal)
Address: Goya 14
Department (Division):
City: Madrid
Postal code: 28071
Phone number: (+34) 91.400.62.13/26/25
Mobile phone:
Fax number: (+34) 91.400.72.34/35
Email Address: audiencianacional.scrda@justicia.es

According to article 21 of the CFD the language accepted by the Spanish authorities is **Spanish**.

3. A Spanish competent authority wants to transfer the supervision of the sentenced person M.M. who is lawfully and ordinarily residing in Vienna, Austria.

Name: Staatsanwaltschaft Vienna
Address: Landesgerichtsstraße 11
Department (Division):
City: Vienna
Postal code: 1082
Phone number: +43 1 40127 0
Mobile phone:
Fax number: +43 1 40127 306950
Email:

According to article 21 of the CFD a translation into German is to be attached to the certificate. Certificates in **other languages are accepted** on the basis of reciprocity, that is to say on condition that the issuing State also accepts certificates in **German** as an executing State.

A. III. Case scenario 2:

Q1: Which is the law applicable during the supervision period?

Once the competent authority of the executing State has recognised the judgement and, where applicable, the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition, *the issuing State shall no longer have competence in relation to the supervision of the probation measures or alternative sanctions imposed, nor to take subsequent measures referred to in Article 14(1).*

According to article 13 of the CFD the supervision and application of probation measures and alternative sanctions **shall be governed by the law of the executing State** (German law in our case).

Q2: How will the German authorities proceed regarding the breaching of one of the obligations imposed to the convicted person?

The CFD provides in article 14 which jurisdiction is to take all subsequent decisions and governing law in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Article 14 para 3 corroborated with para 1 provides that each Member State may, at the time of adoption of this Framework Decision or at a later stage, declare that as **an executing State it will refuse to assume the responsibility for revocation of the suspension of the execution of the judgement or the revocation of the decision on conditional release** or imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence in cases or categories of cases to be specified by that Member State (especially in cases relating to an alternative sanction, where the judgement does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned; in cases relating to a conditional sentence or in cases where the judgement relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described).

Because in our case the convicted person has breached one of his obligations, the revocation of the suspension of the execution of the judgement is at stake.

The German authorities **have to verify how Germany implemented article 14 para 3 of the CFD**, respectively whether the German authorities have assumed the responsibility for the subsequent revocation like in our case.

- ✓ On the EJN website we find [all the information concerning the notifications made by each of the MS](#) with regard to some of the provisions from the CFD, including article 14 para 3 in our case.

With regard to Article 14(3) we see that:

The Federal Republic of Germany refuses to assume responsibility for subsequent decisions provided for in Article 14(1)(b) and (c) of the Framework Decision in the cases mentioned in Article 14(3)(a), (b) and (c) of the Framework Decision.

In our case, being a suspended sentence, the cases from article 14 para 3 a) and b) are not applicable, so the only thing that needs to be checked is the case from 14 para 3 c), respectively if the suspended judgement relates to acts which do not constitute an offence under German law, whatever its constituent elements or however it is described.

- *If it is an offence under German law*, then the competent German authorities can, according to the national provisions applicable in these kinds of situations, revoke the suspension of the execution of the judgement and impose a penalty (normally a custodial sentence).

In cases where it has the competence to take subsequent decisions the competent authority of the executing State shall without delay inform the competent authority of the issuing State, by any means which leaves a written record, of the decision on the revocation of the suspension of the execution of the judgement (Article 16 para 1 of the CFD).

- *If it is not an offence under German law*, then the competent German authorities will proceed according to **article 14 para 4 of the CFD** which states that when a Member State makes use of any of the possibilities referred to in paragraph 3, the competent authority of the executing State shall transfer jurisdiction back to the competent authority of the issuing State in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing State is of the view that a subsequent decision as referred to in paragraph 1(b) or (c) needs to be taken.

By using the wording - if the competent authority of the executing State is of the view - the abovementioned provision leaves the decision whether to request transfer back to the jurisdiction to the issuing MS in the hands of the competent authority of the executing State. This means that the executing competent authority will have to appreciate the breach according to national law (the same as in a domestic case).

If the competent authority of the issuing State has jurisdiction for the subsequent decisions mentioned in Article 14(1) pursuant to the application of Article 14(3), the competent authority of the executing State shall immediately notify it of any finding which is likely to result in revocation of the suspension of the execution of the judgement using the form provided in Annex II of the CFD (article 17 para 1 of the CFD).

- ✓ If, under the national law of the issuing State, the sentenced person **must be given a judicial hearing before a decision is taken on the imposition of a sentence**, this requirement may be met by following *mutatis mutandis* the procedure contained in instruments of international or European Union law that provide the possibility of using video links for hearing persons (article 17 para 4 of the CFD).
- ✓ In our case, the Romanian authorities can hear the convicted person by videoconference, using a European Investigation Order (EIO) as both MS have transposed Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

Q3: What will happen if the convicted person is facing new criminal proceedings in the issuing MS?

Article 20 para 2 of the CFD provides that **if new criminal proceedings against the person concerned are taking place in the issuing State**, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgement back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.

As can be seen, the transfer back of the supervision *is not mandatory* (neither the request from the issuing MS nor the acceptance to transfer back the jurisdiction from the executing MS in such a case).

- ✓ *For example, we can imagine a criminal case in which the judicial competent authorities from the issuing MS can go on with the criminal proceeding in the issuing MS (observing all the rights of the convicted person during the criminal investigation and during the trial, if it the case) and in the end impose a criminal fine or a conditional sentence, which doesn't entail the revocation of the previous suspended sentence and doesn't affect the supervision in the executing MS of the previous transferred sentence.*
- ✓ *Of course, the issuing MS can't revoke the suspended transferred sentence in the MS as long as they haven't asked the transfer, or the transfer was not granted by the competent authorities from the executing MS.*
- ✓ *If it imposes a custodial sentence without taking a decision regarding the transferred suspended sentence, then there is a problem of incompatibility between the custodial sentence and the suspended sentence in terms of executing both at the same time.*

Q4: What will happen if he absconds or no longer has a lawful and ordinary residence in the executing State?

Article 20 para 1 of the CFD provides that **if the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State**, the competent authority of the executing State *may transfer* the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgement back to the competent authority of the issuing State.

For example, *if the supervised person absconds*, there it can be a situation of not observing one of the obligations imposed in the supervised sentence. This situation can entail the revocation of the suspended sentence in accordance with article 14 para 1 b) of the CFD and with the national provisions.

The possibility to revoke the suspended sentence is granted to the competent authority of the executing MS only in cases in which the German authorities have assumed the responsibility for the revocation of the suspended sentence as provided in article 14 para 3 of the CFD.

If, for example, the German national authorities haven't assumed the responsibility for the revocation of the suspended sentence, then, they *may transfer* to the competent authorities of the issuing MS the transfer back of the supervision.

The CFD stops here and doesn't provide any further procedure to be followed by the two competent authorities involved. It remains to be regulated at national level and even the refusal of transfer back the supervision from the issuing MS can't be ruled out in this situation.

Article 20 para 3 only provided that when, in application of article 20, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State in accordance with Article 16(1).

If the sentenced person *no longer has a lawful and ordinary residence in the executing State*, for the executing MS the situation becomes the same with the one that was applicable to the issuing MS.

The CFD provides in article 20 the possibility to transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgement *back* to the competent authority of the issuing State. Again, CFD doesn't provide any further procedure to be followed by the two competent authorities involved.

If the transfer back to the issuing MS is granted and the sentenced person will have a lawful and ordinary residence in another MS, then, article 5 para 1 of the CFD will be again applicable.

Annex. Step-by-step solutions

- **A competent German authority wants to transfer the supervision of the sentenced person A.N. who is lawfully and ordinarily residing in Brussels, Belgium.**

1. In order to identify the competent authority, we select **Belgium** as the country selected (BE). Then we select the section **Atlas** as shown below.

The screenshot displays the European Judicial Network (EJN) website interface. At the top, the header includes the EJN logo and the text 'European Judicial Network (EJN) Réseau Judiciaire Européen (RJE)'. Below the header, there are navigation tabs: 'Home', 'EJN Tools', and 'Tools per Country'. The main content area is divided into four columns: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. The 'EU Legal Instruments for Judicial Cooperation' column is active, showing a list of tools for Belgium. The 'Belgium - Tools' section is highlighted with a red circle. Under this section, the 'Atlas' tool is highlighted with a red circle. The 'Atlas' tool description reads: 'Find competent authority to receive your request for judicial cooperation'. Other tools visible include 'Compendium', 'Fiches Belges', 'Status of implementation', and 'Contact Points'. The left sidebar contains a menu with items such as 'About EJN', 'Introduction to the EJN Website', 'EJN Secretariat', 'EJN Meetings', 'Projects', 'Reports', 'EJN Awareness', 'Registry (EJN partially restricted area)', 'COVID-19 and judicial cooperation in criminal matters', 'European Arrest Warrant', 'e-Evidence', 'European Investigation Order', and 'EJN restricted access area'. At the bottom of the sidebar, there are logos for 'eu2020.de EU Presidency', 'COVID-19 coronavirus', and 'European ARREST'.

2. We select measure **904. Probation measures**. Then we select the section **Next** as shown below.

The screenshot shows the 'Judicial Atlas' interface. At the top, it says 'Judicial Atlas' and 'The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.'

Search Competent Authorities:
Country: Belgium (BE) [\(Select another country\)](#)

Choose measure: **ALL**

- 711. Hearing suspects/persons accused: by video conference
- 712. Hearing suspects/persons accused: by telephone
- 713. Confrontation
- 801. Cross-border observation
- 802. Cross-border hot pursuit
- 803. Cross-border tracking (by placing a beeper on a vehicle or a person)
- 804. Controlled deliveries
- 805. Joint investigation teams
- 901. European Arrest Warrant
- 902. Enforcement of a Financial Penalty
- 903. Enforcement of a Custodial Sentence
- 904. Probation measures**
- 905. Execution of a Supervision Measure
- 906. European Protection Order
- 1001. Transfer of proceedings

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[F\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on **17 September 2020** by EJN Secretariat

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3. At this stage we have to select whether it is about giving consent according to article 5 para 2 of the CFD (forward the judgement and, where applicable, the probation decision to a competent authority of a Member State **other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding**) or it is a request to recognise and supervise measures according article 5 para 1 of the CFD (**the sentenced person is lawfully and ordinarily residing in that MS**). It is the second option for our case. Then we select the section **Next** as shown below.

The screenshot shows the 'Judicial Atlas' interface. At the top, it says 'Home - Atlas' and 'Judicial Atlas' and 'The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.'

Search Competent Authorities:
Country: Belgium (BE) [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Probation measures (904) [\[F\]](#)

The competent authority

- a) to give consent, where applicable, to the forwarding of judgments and certificates
- b) to recognize judgements and, where applicable, probation decisions and to supervise its measures**

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4. We introduce **Brussels**. Then we select the section **Next** as shown below.

Legal instrument: [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](#) (Status of Implementation)

Authority Type: Koninklijk Parket Limburg split Hasselt and Tongeren (Regional)

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority

Name:

Address:

P. Code:

City:

Area:

If you want to access the Contact Point details, please login [here](#)

5. At the end we are provided with the result of our search as shown below.

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Belgium (BE) [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
 Probation measures (904)

The competent authority: b) to recognize judgements and, where applicable, probation decisions and to supervise its measures [\(Select another option\)](#)

Legal instrument: [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](#) (Status of Implementation)

Authority Type: Koninklijk Parket Limburg split Hasselt and Tongeren (Regional)

Resultant Competent Authority:

Procureur du Roi de Bruxelles – Bureau CIS / Procureur des Konings te Brussel – Bureau CIS _

Name: Procureur du Roi de Bruxelles – Bureau CIS / Procureur des Konings te Brussel – Bureau CIS _

Address: Portalis, Rue des Quatre bras 4 / Portalis, Vierarmenstraat 4

Department (Division): For "Transfer of Proceedings" please use email: casier.BCN.Bruxelles@just.fgov.be

City: Bruxelles / Brussel

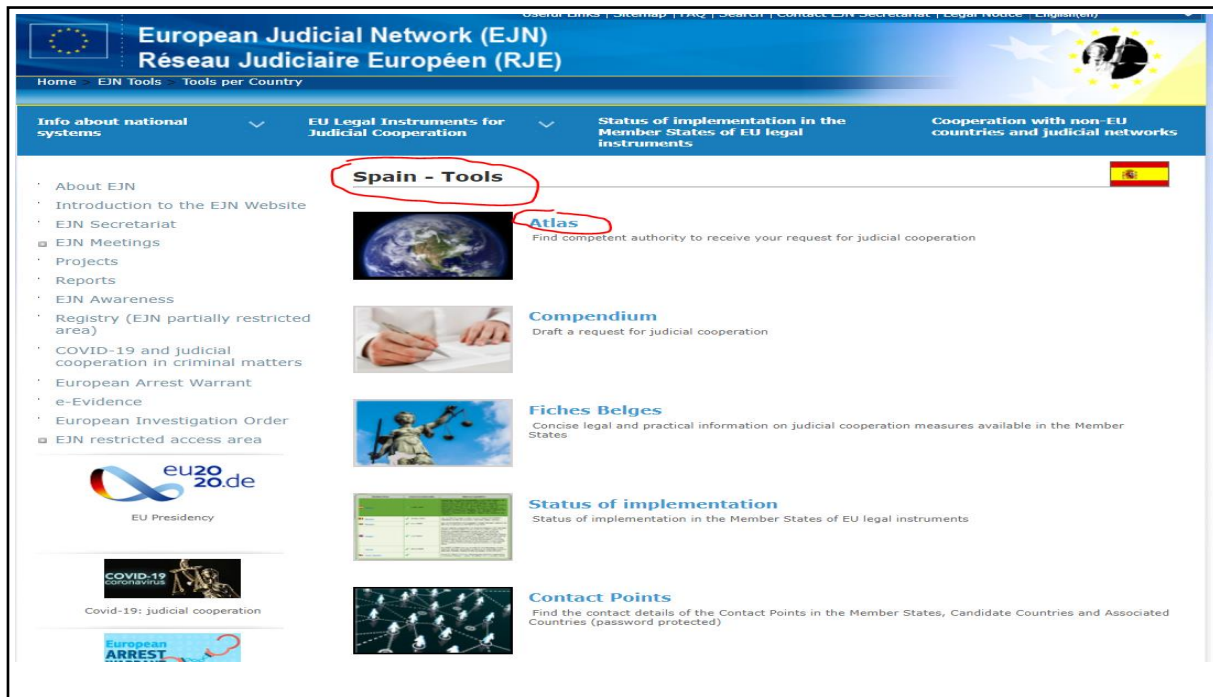
Postal code: 1000

Phone number: +32 (0)2 508 71 11 Mobile phone:

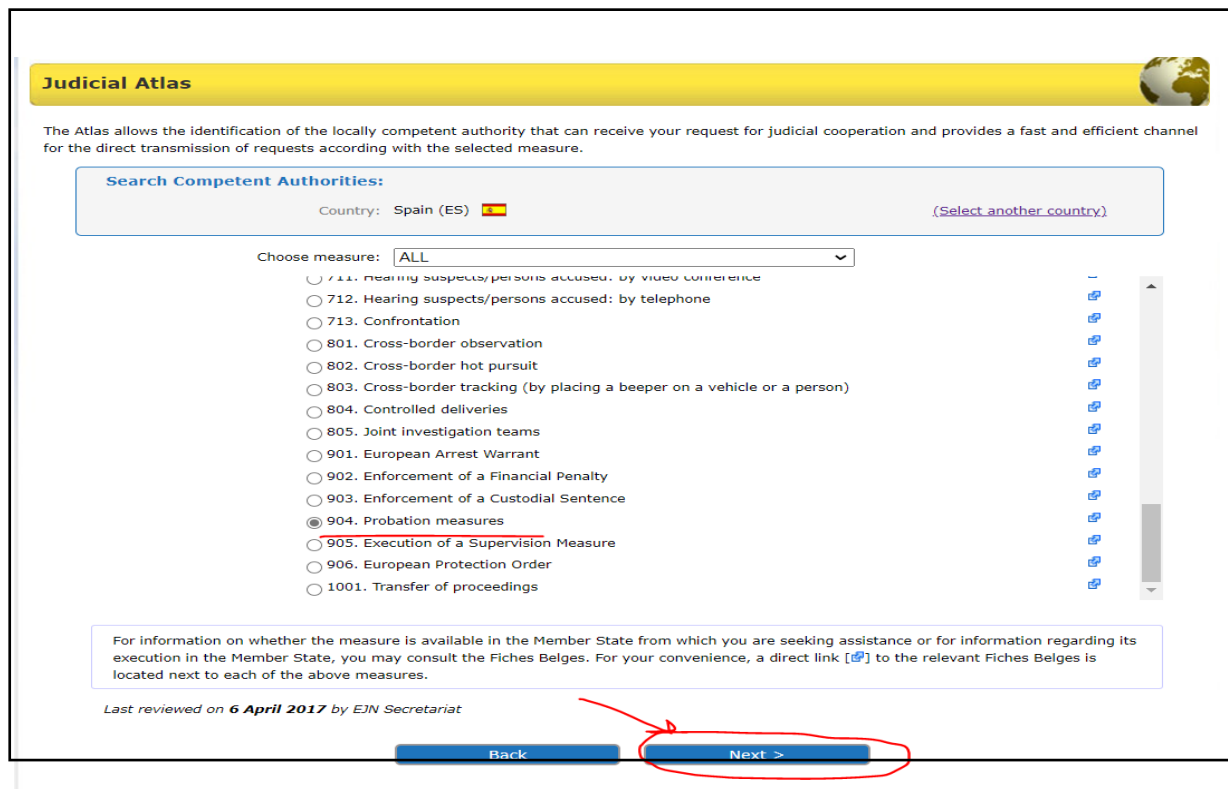
Fax number: Email Address: mut.rec.bxl@just.fgov.be

➤ **A French competent authority wants to transfer the supervision of the sentenced person B.C. who is lawfully and ordinarily residing in Vigo, Spain.**

1. In order to identify the competent authority, we select **Spain** as the country selected (ES). Then we select the section **Atlas** as shown below.



2. We select measure **904. Probation measures**. Then we select the section **Next** as shown below.



3. Here we have to select from 2 options. We will select the **General regime** as mentioned in the requirements of the exercise. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Spain (ES) [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Probation measures (904)

Competence **General regime** For people under 18

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4. At the end we are provided with the result of our search as shown below.

Search Competent Authorities:

Country: Spain (ES) [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Probation measures (904)

Competence: General regime [\(Select another option\)](#)

Legal instrument: [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 \(Status of Implementation\)](#)

Authority Type: Servicio Común de Registro, (para el reparto entre los Juzgados Centrales de lo Penal) (Central)

Resultant Competent Authority:
Servicio Común de Registro, (para el reparto entre los Juzgados Centrales de lo Penal)

[General data](#) [Videoconference](#) [Areas](#) [Properties](#) [Associated CPs](#)

Name: Servicio Común de Registro, (para el reparto entre los Juzgados Centrales de lo Penal)

Address: Goya 14

Department (Division):

City: Madrid

Postal code: 28071

Phone number: (+34) 91.400.62.13/26/25 Mobile phone:

Fax number: Fax: (+34) 91.400.72.34/35 Email Address: audiencianacional.scrnda@justicia.es

[Click to view the map](#) [Import authority details into Compendium](#)

- **A Spanish competent authority wants to transfer the supervision of the sentenced person M.M. who is lawfully and ordinarily residing in Vienna, Austria.**

1. In order to identify the competent authority, we select **Austria** as the country selected (AT). Then we select the section **Atlas** as shown below.

The screenshot displays the European Judicial Network (EJN) website interface. At the top, the header includes the EJN logo and navigation links such as 'Home', 'EJN Tools', and 'Tools per Country'. The main navigation bar features four categories: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. The 'Austria - Tools' section is highlighted with a red circle, and the 'Atlas' link is also circled in red. Below 'Atlas', the text reads: 'Find competent authority to receive your request for judicial cooperation'. Other visible links include 'Compendium', 'Fiches Belges', 'Status of implementation', and 'Contact Points'. The footer area contains logos for 'eu2020.de' and 'EU Presidency', along with a 'COVID-19: judicial cooperation' banner.

2. We select measure **904. Probation measure**. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Austria (AT) [\(Select another country\)](#)

Choose measure: ALL

- 711. Hearing suspects/persons accused: by video conference
- 712. Hearing suspects/persons accused: by telephone
- 713. Confrontation
- 801. Cross-border observation
- 802. Cross-border hot pursuit
- 803. Cross-border tracking (by placing a beeper on a vehicle or a person)
- 804. Controlled deliveries
- 805. Joint Investigation teams
- 901. European Arrest Warrant
- 902. Enforcement of a Financial Penalty
- 903. Enforcement of a Custodial Sentence
- 904. Probation measures
- 905. Execution of a Supervision Measure
- 906. European Protection Order
- 1001. Transfer of proceedings

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[F\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on **12 March 2019** by Tools Correspondent

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3. We introduce **Vienna**. Then we select the section **Next** as shown below.

Legal instrument: [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](#) *(Status of Implementation)*

Authority Type: Aut Type LG - Austria (Regional)

Search Authorities:

Search by locality involved in the measure

City/PC: Wien

Search by competent authority

Name:

Address:

P. Code:

City:


Area: Choose...

Back
Clear
Search Authorities

If you want to access the Contact Point details, please login [here](#)

4. At the end we are provided with the result of our search as shown below.

Search Competent Authorities:

Country: Austria (AT)  [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Probation measures (904)

Legal instrument: [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](#) *(Status of Implementation)*

Authority Type: Aut Type LG - Austria (Regional)

Resultant Competent Authority: Staatsanwaltschaft Wien

[General data](#) | [Videoconference](#) | [Areas](#) | [Properties](#) | [Associated CPs](#)

Name: Staatsanwaltschaft Wien
Address: Landesgerichtsstraße 11
Department (Division):
City: Wien
Postal code: 1082
Phone number: +43 1 40127 0 Mobile phone:
Fax number: +43 1 40127 306950 Email Address:

[Click to view the map](#) [Import authority details into Compendium](#)

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Solution to question 3 of Case scenario 1.

➤ Find the competent German authority with M.H. lawfully and ordinarily residing in Hamburg, Germany.

1. In order to identify the competent authority, we select **Germany** as the country selected (DE). Then we select the section **Atlas** as shown below.


The screenshot displays the European Judicial Network (EJN) website interface. At the top, there is a navigation bar with the EJN logo and the text 'European Judicial Network (EJN) Réseau Judiciaire Européen (RJE)'. Below this, there are four main menu items: 'Info about national systems', 'EU Legal Instruments for Judicial Cooperation', 'Status of implementation in the Member States of EU legal instruments', and 'Cooperation with non-EU countries and judicial networks'. The 'EU Legal Instruments for Judicial Cooperation' menu is expanded, showing a list of tools for Germany. The 'Germany - Tools' section is highlighted with a red circle. Under this section, the 'Atlas' tool is highlighted with a red circle. The 'Atlas' tool is described as 'Find competent authority to receive your request for judicial cooperation'. Other tools listed include 'Compendium' (Draft a request for judicial cooperation), 'Fiches Belges' (Concise legal and practical information on judicial cooperation measures available in the Member States), 'Status of implementation' (Status of implementation in the Member States of EU legal instruments), and 'Contact Points' (Find the contact details of the Contact Points in the Member States, Candidate Countries and Associated Countries (password protected)).

2. We select measure **904. Probation measures**. Then we select the section **Next** as shown below.

Judicial Atlas

The Atlas allows the identification of the locally competent authority that can receive your request for judicial cooperation and provides a fast and efficient channel for the direct transmission of requests according with the selected measure.

Search Competent Authorities:

Country: Germany (DE)  (Select another country)

Choose measure: ALL

- 711. Hearing suspects/persons accused, by video conference
- 712. Hearing suspects/persons accused: by telephone
- 713. Confrontation
- 801. Cross-border observation
- 802. Cross-border hot pursuit
- 803. Cross-border tracking (by placing a beeper on a vehicle or a person)
- 804. Controlled deliveries
- 805. Joint investigation teams
- 901. European Arrest Warrant
- 902. Enforcement of a Financial Penalty
- 903. Enforcement of a Custodial Sentence
- 904. Probation measures**
- 905. Execution of a Supervision Measure
- 906. European Protection Order
- 1001. Transfer of proceedings

For information on whether the measure is available in the Member State from which you are seeking assistance or for information regarding its execution in the Member State, you may consult the Fiches Belges. For your convenience, a direct link [\[PDF\]](#) to the relevant Fiches Belges is located next to each of the above measures.

Last reviewed on 6 April 2017 by EJN Secretariat

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3. We introduce **Hamburg**. Then we select the section **Next** as shown below.

Legal instrument: [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](#) (Status of Implementation)

Authority Type: DE - General Division (Regional)

Search Authorities:

Search by locality involved in the measure

City/PC:

Search by competent authority


Name:

Address:

P. Code:

City:

Area: Choose...




If you want to access the Contact Point details, please login [here](#)

[Back](#) [Clear](#) [Search Authorities](#)

4. At the end we are provided with the result of our search as shown below.

Search Competent Authorities:

Country: Germany (DE)  [\(Select another country\)](#)

Measure: **Measures specific to Mutual Recognition Instruments** [\(Select another measure\)](#)
Probation measures (904)

Legal instrument: [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](#) *(Status of Implementation)*

Authority Type: DE - General Division (Regional)

Resultant Competent Authority: STAATSANWALTSCHAFT HAMBURG

General data | Videoconference | Areas | Properties | Associated CPs

Name: STAATSANWALTSCHAFT HAMBURG

Address: Gorch-fock-wall 15

Department (Division):

City: Hamburg

Postal code: 20355

Phone number: (+49) 40 428280 Mobile phone:

Fax number: (+49) 40 428433968 Email Address: Poststelle-Staatsanwaltschaft@sta.justiz.hamburg.de

[Click to view the map](#) [Import authority details into Compendium](#)

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Court staff and bailiffs' legal training in European civil and criminal law

*Freezing and Confiscation
Regulation 2018/1805,
FD 2003/577 and FD 2006/783*



Mutual recognition in criminal matters

- Does not coincide with partial harmonisation
- Does not allocate jurisdiction
- Deals with human beings having their own rights (NB: EU lawyers!)

Article 82, para. 1 – a closer look

- Judicial cooperation based on mutual recognition
- Approximation
- Measures to:
 - A. ensure recognition
 - B. prevent/settle conflicts of jurisdiction
 - C. support training judiciary
 - D. facilitate cooperation

Article 82, para. 2 TFEU

- Minimum rules to facilitate mutual recognition:
 - A. mutual admissibility of evidence
 - B. rights of individuals in criminal procedure
 - C. rights of victims of crime
 - D. any other aspect

Distinctions

- Regulation 2018/1805 and FDs 2003/577 + 2006/783
- Freezing (provisional)
- Confiscation (final)
- Issuing v executing authority

Freezing and Confiscation- Exercises

- Find the following executing competent authorities and the languages to be used in the Certificate:

I. The prosecutor in Bologna, Italy, would like to freeze a couple of Ferraris owned by a mafia organisation also active in Liège, Belgium.

II. The Irish authorities receive a request for confiscation from Luxembourg concerning proceeds from money laundering that were invested in Cork.

III. A Spanish prosecutor who successfully prosecuted a group of counterfeiters recently obtained information that millions of euros are kept in a Copenhagen bank.

In absentia trials - > EAW, see <https://www.inabsentieaw.eu/>

- FD 2009/299 amends FD 2002/584
- Common notion of *in absentia*
- Reduction of refusals subject to conditions:
 - Summoned in person + decided not to come
 - Mandated a lawyer
 - Served with decision + right to retrial
 - Will be informed + right to retrial

Practical difficulties

- Autonomous meaning Union law concepts: which concepts?
Which meaning? Possible divergence with national law concepts?
- Difficulties with:
 - *In absentia* trial
 - Trial resulting in the decision (4(1)) (C-571/17 PPU)
 - Summons (4(1)(a)) (Dworzecki, C-108/16 PPU)
 - Defence by a mandated legal counsel (art. 4(1)(b))
 - Service of the judgment (art. 4(1)(c))
 - Right to a re-trial (art. 4(1)(d))

The Issuing Judicial Authority

- Autonomous notion
- 10 November 2016, Case C-452/16 PPU, Poltorak
- 9 October 2019, Case C-489/19 PPU, NJ
- 12 December 2019, Case C-627/19 PPU, Openbaar Ministerie v ZB

Freezing and Confiscation

Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders

In relation to Denmark and Ireland:

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

Set of Case Studies – Guide for Trainers

Written by:

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Honorary Judge – s’-Hertogenbosch Court of Appeal

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Freezing and Confiscation

A. I. Case 1 scenario:

The prosecutor in Prague has started an investigation into an organised crime group that has specialised in trafficking in women and minor girls. The women and girls mainly come from the Czech Republic and Slovakia and are transported to exclusive brothels in Cyprus. The prosecution finds out that this has been going on rather successfully and unnoticed by the official channels for a decade already. Hundreds of women have already become victims and were forced into sexual slavery. The criminal group, consisting of the Czech national A, the Cypriot B and the Russian C must have earned millions of Euro's with this criminal activity. Through the information exchange with the colleagues in Cyprus, the Czech authorities learn that A owns several houses in Paphos, B runs a casino in Larnaca and C has a yacht in Limassol. In addition, it is presumed that each of the three may hide lots of cash on their property.

Questions:

1. *How does your legal system provide for freezing and confiscation?*
2. *Before the Czech prosecution starts to make arrests and warn the perpetrators that they know their whereabouts, they also wish to freeze the proceeds with a view to confiscation after conviction. What can the Czech prosecution do?*
3. *Which legal instrument is applicable?*
4. *How and to whom will a request be sent?*
5. *How will the Cypriot authorities freeze the objects?*
6. *What must happen if the Russian national C claims that the yacht seized is not his, but his brother's?*
7. *Imagine two years after freezing the property and goods, A and B are convicted to 15 years' imprisonment each for trafficking women and girls as an organised crime. The Prague court also ordered the proceeds in Cyprus from their crimes confiscated. C is acquitted. What will the Czech authorities request?*
8. *How will the Cypriot authorities respond?*

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

1. The prosecutor in Bologna, Italy, would like to freeze a couple of ferrari's owned by a mafia organization also active in Liège, Belgium.

Competent authority:

Language:

2. The Irish authorities receive a request for confiscation from Luxembourg concerning proceeds from money laundering that were invested in Cork.

Competent authority:

Language:

3. A Spanish prosecutor who successfully prosecuted a group of counterfeiters recently obtained information that millions of euro's are kept in a Kopenhagen bank.

Competent authority:

Language:

A. III. Case scenario 2:

The competent Maltese authority in Valetta receives a request from Sweden concerning the Swedish national Halvarson to confiscate his assets in Malta. Halvarson has recently been convicted by a Swedish court to seven years imprisonment for production of and trafficking in chemical drugs. Also, the estimate proceeds from crime to a value of 10 million Swedish Kroner are confiscated. The Swedes find out that Halvarson is co-owner of luxurious holiday resort in Birżebbuġa with a value of approx 38 million euro.

Questions:

1. *What is the basis for the request?*
2. *Which authorities are involved on both sides?*
3. *What will the Maltese authorities confiscate?*
4. *Halvarson wishes to object to the confiscation. Where and how can he do that?*
5. *The other co-owner of the holiday resort, Mark Innocent, is a man with an undisputable reputation. He has never been in contact with anything illegal, always paid taxes on time and is without a criminal record. Innocent is not happy with attempts to seize his property and wishes to undertake action against it. What can he do?*

Part B. Additional notes for the material

Directive 2014/42, that partly replaced its predecessor Framework Decision 2005/212, CANNOT BE USED as a tool for the training. The training must be based on Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders that replaced Framework Decision 2003/577 on Freezing Orders and Framework Decision 2006/783 on Confiscation Orders, as of 19 December 2020. NB: for Ireland and Denmark the situation is different. For those two the Framework Decisions continue to apply in their relations with all other Member States.

Part C. Methodological approach

I. General idea and core topics

The focus of these exercises is first to raise awareness that this modality of cooperation is still in a process of transition and that although with the entering into force of Regulation 2018/1805 things have improved, applicable legislation is still scattered. This finds its origin in the different systems the Member States have when it comes to freezing and confiscation. The result is that the practitioner is confronted with a panoply of different national forms of freezing and confiscation. It means on the one hand, that in many situations more than one legal instrument could give a legal basis. For instance, lots of property that could be frozen or confiscated, might have been seized already as evidence under the 2000 EU Convention or the EIO. The Regulation does not only replace the Framework Decisions for most Member States, but also harmonises the applicable legislation, as a Regulation applies directly in the national legal order and does not require national implementation.

In preparing for their authorities, court staff must spend definitively more time in preparing the requests as situations may be rather complex and we also need to face the period of transition. This may cause delay or even lead to an impediment for cooperation. Especially on freezing, quick and urgent action is often absolutely necessary.

The Cases and its questions have been designed to allow the trainer and participants to deal with:

1. The structure and basic presumptions of mutual recognition in general and in the specific context of freezing and confiscation of

instrumentalities and proceeds of crime in the European Union on the basis of Regulation 2018/1805;

2. To still be able to work with the old Framework Decisions for all requests to and from Ireland and Denmark;
3. Finding which authorities are involved on both sides;
4. Learning how to complete the exercises;
5. How the tasks between the issuing authority and the executing authority have been divided;
6. How contact between the authorities can be established and what kind of information must be exchanged;
7. What the consequences of a freezing order subsequently are for confiscation in the executing Member State;
8. The role the defence may play in trying to lift freezing and/ or confiscation;
9. The role a third party may play in trying to lift freezing and/ or confiscation.

II. Working groups and structure of the seminar

In advance of the seminar the trainer will send a one-page questionnaire to get to know the experience of the participants on the FDs and its practice. S/he will also ask what expectations they have and which questions they would like to see answered. The information thus obtained will be used in the presentation as well as influence the choices that must be made in varying the level of tasks to be discussed and potential additional questions. It is important to have this information available as it may be expected that among the participants the level of experience, their linguistic capabilities and daily tasks in practice may vary. It may be expected that not many participants have experience with this form of cooperation. More complicated issues can then be left out.

The trainer will provide the participants with a brief presentation (Power point) highlighting the important features of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, as well as (but more briefly) on Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the

principle of mutual recognition to confiscation orders. Issues to be addressed concerning these instruments are scope, definitions, freezing and confiscation, object v. value confiscation, competent authorities, grounds for refusing, time limits, governing law, subsequent decisions, obligations for the Member States (**approx. 15-20 min**).

Case scenario 1 is designed to deal both with very basic issues, as well as a more in-depth analysis of several problems that may occur. The participants will work in groups of 4-5 and will have a laptop connected to the internet in order to answer the questions. Especially the websites of EJN, Eurlex and the Court of Justice are recommended. It is intended that participants learn to use these websites to obtain the information they need and to use it in solving the problems at stake. Solving Case scenario 1 and answering the questions should take **approx. 1 hour and 40 minutes**. Groups may be formed by bringing participants of the same experience level together.

A 10-minute break is recommended at this point.

Solving the **exercises** from point A.II should take around **10 minutes** as they are meant to help the participants in understanding the mechanism for finding a competent authority and the language to be used in the Certificate. After having already consulted the EJN website, this exercise can also be used as a control exercise. In case solving Case scenario 1 took much more time than anticipated, this exercise could be skipped and given as homework.

Case scenario 2 will force the participants to deal with issues that cannot be found in the text of the Regulation, however, they do apply to the practice of it and require a prompt answer. The participants will work in groups of 4-5 and will have a laptop connected to the internet in order to solve the questions. Solving Case scenario 2 should take **approx. 40-45 minutes**.

Any remaining questions should be discussed at the end of the seminar (for **approx. 5-10 minutes**).

III. Additional material

All participants will **bring** a copy of:

- Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders;

- Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;
- Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

All three comprising the Forms in the Annex. Also, the participants will also bring or have access to their national provisions implementing the Regulation, as well as the Framework Decisions.

(note for the trainers: It will be interesting to see and check whether participants have been able to obtain all three relevant texts. If time permits, this is a moment to train them to use eurlex and [the consolidated version of legal texts](#))

It is essential to stimulate using online tools!

IV. Recent developments

Please check whether there are any new cases pending or preliminary reference made to the Court of Justice over the last three months. If not, the question can be put to the participants why there is no recent case.

The answer is that these procedures hardly lead to cases in which references are being made. Concerning the Regulation, the explanation is very simple. The instrument is too recent to have led to matters of interpretation.

Part D. Solutions

A. I. Case 1 scenario

Questions:

Q1. How does your legal system provide for freezing and confiscation?

This is in essence a question of national criminal procedure. It aims at creating awareness among the participants of their national procedural rules concerning freezing and confiscation. In addition, the question aims at demonstrating that Member States still have quite diverse proceedings on this.

Q2. Before the Czech prosecution starts to make arrests and warn the perpetrators that they know their whereabouts, they also wish to freeze the proceeds with a view to confiscation after conviction. What can the Czech prosecution do?

Before an authority may be able to send a freezing order, it must know where the assets are. One cannot randomly send freezing orders throughout the European Union. The Czech authorities first need to know whether there are assets in Cyprus. They can do so in a derivative way via a request for information or evidence based on the 2000 EU Mutual assistance convention or the EIO. Unfortunately, there is no legal instrument that gives the legal basis directly to obtain information about whereabouts of assets.

Q3. Which legal instrument is applicable?

Regulation 2018/1805 is the first instrument to look at. Only in relation to Ireland and Denmark Framework Decision 2003/577 is applicable.

One of the purposes of Regulation 2018/1805 is to freeze property for subsequent confiscation and that is exactly what the Prague prosecutor wants (Art. 2). The offences at stake qualify as trafficking in human beings, sexual exploitation of children and participation in a criminal organisation. All three are listed in the list of Article 3(1) for which no double criminality must be checked.

Articles 2 and 3 of the FD 2003/577 stipulate the same, albeit with different wording.

Q4. How and to whom will a request be sent?

Article 4 Regulation states that the freezing order (using the freezing certificate) must directly be sent from the issuing authority to the competent executing authority. Depending on whether there was judicial oversight by a judge (see Bob Dogi case referred to in the set on the EAW), the Prague prosecutor can send the order to Cyprus.

To whom must it be sent? EJN's [Judicial Atlas](#) has three categories that could be applicable:

- 501. Sequestration of assets
- 502. Freezing of bank accounts
- 504. Interim measures in view of confiscation

All three are relevant, so they can all be checked and then we will see whether it results in the same authority. That is the case:

Name:	Unit for Combating Money Laundering (MOKAS)
Address:	Law Office of the Republic, P.O. Box 23768
Department (Division):	
City:	Nicosia
Postal code:	1686
Phone number:	+357 22446018
Mobile phone:	
Fax number:	+357 22317063
Email Address:	mokas@mokas.law.gov.cy

Article 4 of Regulation 2018/1805 states that the certificate must be directly sent to the executing authority. On 23 November 2020 Cyprus has issued a declaration as meant in Article 24(2) Regulation 2018/1805, which is published on the EJN website. This provision allows Member States to declare a central authority competent.

Q5. How will the Cypriot authorities freeze the objects?

Articles 7 and 23 Regulation state that Cyprus will recognize the freezing order without any further formality on the basis of its national law, unless a ground for non-recognition applies. The case description does not indicate the application of refusal grounds. A similar rule concerning the freezing order is found in Article 5 FD.

Q6. What must happen if the Russian national C claims that the yacht seized is not his, but his brother's?

Article 33 Regulation states that the legal remedy against the freezing order is in the executing Member State. The substantive reasons cannot be challenged in the executing Member State (Art. 33(2)). Article 33(4) Regulation clarifies that the legal remedies that may exist in the issuing Member State as a result of implementing Article 8 of Directive 2014/42 on Freezing Proceeds of Crime must be respected.

Article 11 FD 2003/577 stipulates that the Member States' freezing must provide legal remedies for bona fide third parties. The third party can choose between the issuing or the executing Member State. However, the substantive reason for the order can only be challenged before a court in the Czech Republic and will be decided on the law of the Czech Republic (Art. 11(2)). The brother of C may also bring an action before the court in Cyprus. In such a case the issuing authority will be informed thereof (Art. 11(3)).

Q7. Imagine two years after freezing the property and goods, A and B are convicted to 15 years imprisonment each for trafficking in women and girls as an organised crime. The Prague court also ordered the proceeds in Cyprus from their crimes confiscated. C is acquitted. What will the Czech authorities request?

We now enter a different stage. The criminal proceedings are no longer pending, but have resulted in a final decision. A and B are found guilty and C is acquitted. This means that concerning A and B the temporary measure of freezing can be replaced by the permanent measure of confiscation. Concerning C, the issuing Czech authorities will have to inform the Cypriot authorities that the freezing order has been lifted. As a result of that Cyprus will also lift the measures as soon as possible.

Article 14 of Regulation 2018/1805 states that the certificate must be directly sent to the executing authority. On 23 November 2020 Cyprus has issued a declaration as meant in Article 24(2) Regulation 2018/1805, which is published on the EJN website. This provision allows Member States to declare a central authority competent.

On the basis of FD 2006/783 confiscation concerning A and B will be requested. Following the assistance of Atlas at the EJN website we see that it is the same authority to which also the confiscation order must be sent to. The Czech authorities will use the certificate provided in the FD.

Q8. How will the Cypriot authorities respond?

They will execute the order as soon as possible, following Article 18 Regulation. However, it is their choice whether they confiscate a specific item of property, or whether they confiscate other assets of a similar value. Article 7 FD 2006/783 provides similar these rules.

NB for trainers: It would be quite informative to ask participants what their country of origin would do here. The basic question is whether it applies object or value confiscation.

A. II. Exercises:

Find the following executing competent authorities and the languages to be used in the Certificate:

1. The prosecutor in Bologna, Italy, would like to freeze a couple of Ferrari's owned by a mafia organization also active in Liège, Belgium.

The Italian issuing authority is:

Name:	Office of the Public Prosecutor attached to the Court of first instance of BOLOGNA
Address:	Via Garibaldi 6
Department (Division):	
City:	BOLOGNA
Postal code:	
Phone number:	051201111
Mobile phone:	
Fax number:	
Email Address:	procura.bologna@giustizia.it

It will send the order to:

Name:	Parquet du procureur du Roi de Liège division LIEGE
Address:	Palais de Justice - Annexe Nord Rue de Bruxelles 2/0004
Department (Division):	
City:	Liège
Postal code:	4000
Phone number:	+ 32.(0)4.222.78.22
Mobile phone:	
Fax number:	+ 32.(0)4.222.72.47
Email Address:	commissions.rogatoires.liege@just.fgov.be

We know the location of the Ferrari's in Liège and on the EJN website the relevant box can then be ticked. Also on the website we find that the Belgian authorities require: "[The certificate should be should be drawn up in or translated into Dutch, French, German or English.](#)"

You will note that Atlas has not yet (January 2023) fully been adjusted to using the Regulation.

2. *The Irish authorities receive a request for confiscation from Luxembourg concerning proceeds from money laundering that were invested in Cork.*

We do not know which authority in Luxembourg sends the request. So, it will be either the Court in Diekirch or the Court in Luxembourg city.

It is unclear to which Irish authorities the confiscation order must be sent, as the EJN website reports a rather vague statement on the Irish implementation.¹ See the [status of implementation of the Framework Decision](#).

When I checked this on 26 January 2023, the site mentioned that it was last reviewed on 29 July 2022. That is quite good!

The language to be used is [Irish or English](#).

3. *A Spanish prosecutor who successfully prosecuted a group of counterfeiters recently obtained information that millions of Euros are kept in a Copenhagen bank.*

It is most likely that the Spanish prosecutor wishes to obtain confiscation. The description states that he successfully prosecuted, so we may presume a conviction. Spain has decentralised the possibility to request. Without knowing where the prosecutor is based, we cannot answer the question.

The EJN website forces you to tick boxes that are multi-interpretable. When ticking FD 2006/783 instead of the 2000 EU Convention the request goes to:

Name:	Ministry of Justice
Address:	Slotsholmsgade 10
Department (Division):	
City:	Copenhagen K
Postal code:	1216
Phone number:	0045 72 26 84 00
Mobile phone:	
Fax number:	0045 33 93 35 10
Email Address:	jm@jm.dk

On the EJN website we find that the Danish authorities require that the request is [formulated in Danish](#)

¹ "95% implemented in Criminal Justice (Mutual Legal Assistance) Act 2008. Some amendments required to provide for dual criminality provisions will be included in Mutual Assistance (Amendment). Bill which is expected to be enacted later this year."

A. III. Case scenario 2, the continuation of Case 1:

Questions:

Q1. What is the basis for the request?

Article 14 of Regulation 2018/1805 states that the certificate must be directly sent to the executing authority. We do neither know yet (as of 26 January 2023) whether Malta has issued a declaration as meant in Article 24(2) Regulation 2018/1805. This provision allows Member States to declare a central authority competent. Sweden issued a notification on 8 December 2022 informing “of the following in accordance with Article 24 of the Regulation.

- Public prosecutors are the competent authority as defined in Article 2(8) and (9) of the Regulation in respect of freezing orders.
- The Enforcement Authority is the competent authority as defined in Article 2(8) and (9) of the Regulation in respect of confiscation orders. “

Q2. Which authorities are involved on both sides?

We have no information in the description about the location of the Swedish prosecution. Concerning Malta, we learn that the competent authority is in Valletta. That must then be:

Name:Asset Recovery Bureau Address:72, Triq is-Suq Department (Division): City:Floriana Postal code: FRN1080 Phone number:+ 356 22261200 Mobile phone: Fax number:Email Address:arbmalta@assetrecovery.mt

Q3. What will the Maltese authorities confiscate?

They will execute the order as soon as possible, following Article 18 Regulation. However, it is their choice whether they confiscate a specific item of property, or whether they confiscate other assets of a similar value.

NB for trainers: It would be quite informative to ask participants what their country of origin would do here. The basic question is whether it applies object or value confiscation.

Q4. Halvarson objects to the confiscation. Where and how can he do that?

Article 33 Regulation states that the legal remedy against the freezing order is in the executing Member State. The substantive reasons cannot be challenged in the executing Member State (Art. 33(2)). Article 33(4) Regulation clarifies that the legal remedies that may exist in the issuing Member State as a result of implementing Article 8 of Directive 2014/42 on Freezing Proceeds of Crime must be respected.

Article 9 FD 2006/783 stipulates that the Member States' freezing must provide legal remedies for any interested party and bona fide third parties. The objecting party can choose between the issuing or the executing Member State. However, the substantive reason for the order can only be challenged before a court in Sweden and will be decided on Swedish law (Art. 9(2)).

Q5. The other co-owner of the holiday resort, Mark Innocent, is a man with an undisputable reputation. He has never been into contact with anything illegal, always paid taxes on time and is without a criminal record. Innocent is not happy with attempts to seize his property and wishes to undertake action against it. What can he do?

Mr Innocent has the same tools as stated under answer 4 concerning the sentenced person.