



## BETTER APPLYING CRIMINAL LAW

Legal English for Court Staff

Webinar, 28-30 April 2021

**UP  
GRADE**  
YOUR LEGAL  
EXPERTISE  
**Criminal  
Law**



### Speakers

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Tribunal, Bucharest

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of the District Bar Council in Warsaw

### Key topics

- European Arrest Warrant
- European Investigation Order
- Freezing and Confiscation
- Mutual Legal Assistance
- Mutual recognition
- Legal English complementing above mentioned topics

Language  
English

Event number  
321DT21e

Organiser  
Ivana Jarošová, ERA



## Wednesday, 28 April 2021

8:45 Connecting to the videoconference platform and getting familiar with it

9:00 **Opening of the seminar**  
*Ivana Jarošová*

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### I. INTRODUCTION

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9:05 **Introduction to legal vocabulary**  
*Eva Samaniego*

10:35 Break

10:45 **Introduction to the field of criminal cooperation**  
*Daniel Motoi*

11:45 Lunch break

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### II. WORKING WITH MUTUAL LEGAL ASSISTANCE (MLA)

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12:45 **Group A: Legal English Training (Session 1)**  
*Eva Samaniego*  
**Group B: Lecture: An Overview on Mutual Legal Assistance in Criminal Matters in the EU**  
*Daniel Motoi*

14:15 Break

14:30 **Group A: Lecture: An Overview on Mutual Legal Assistance in Criminal Matters in the EU**  
*Daniel Motoi*  
**Group B: Legal English Training (Session 1)**  
*Eva Samaniego*

16:00 End of the first webinar day

## Thursday, 29 April 2021

08:45 Connecting to the videoconference platform

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### III. WORKING WITH THE EUROPEAN ARREST WARRANT (EAW)

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09:00 **Group A: Legal English Training (Session 2)**  
*Eva Samaniego*  
**Group B: Lecture: Applying the European Arrest Warrant**  
*Mikołaj Pietrzak*

10:30 Break

10:45 **Group A: Lecture: Applying the European Arrest Warrant**  
*Mikołaj Pietrzak*  
**Group B: Legal English Training (Session 2)**  
*Eva Samaniego*

12:15 Lunch break

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### IV. FREEZING AND CONFISCATION

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13:15 **Group A: Legal English Training (Session 3)**  
*Eva Samaniego*  
**Group B: Lecture: Freezing and Confiscation in the EU**  
*Mikołaj Pietrzak*

14:45 Break

## Objective

This event will comprise English language training on the one hand, and training on the European criminal justice on the other with parallel sessions during which one group will receive legal and the other one language training.

**For further information on the project, please visit the project webpage:**  
<https://era-comm.eu/court-staff-criminal-law/>

## Interactive Webinar

The meeting will be hosted on the BigBlueButton videoconferencing platform. The highest security settings will be applied to ensure that you can participate actively in the best-quality videoconferencing environment available. We will make the most of the technical tools available to deliver an intensive, interactive training experience.

## Taking part in the discussion

You can address questions directly per video and audio functions or in the chat box during the online meeting. You will also be able to interact immediately and directly with other participants.

**Times indicated are CET (Central European Time)**

## Your contact persons



Ivana Jarošová  
Course Administrator  
E-Mail: [IJarosova@era.int](mailto:IJarosova@era.int)

15:00 **Group A: Lecture: Freezing and Confiscation in the EU**  
*Mikołaj Pietrzak*  
**Group B: Legal English Training (Session 3)**  
*Eva Samaniego*

16:30 End of the second webinar day

## Friday, 30 April 2021

8:45 Connecting to the videoconference platform

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### V. WORKING WITH THE EUROPEAN INVESTIGATION ORDER (EIO)

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9:00 **Lecture: Mutual recognition of custodial sentences (2008/909/JHA)**  
*Katarzyna Dąbrowska*

10:30 Break

10:45 **Group A: Lecture: Applying the EIO**  
*Daniel Motoi*  
**Group B: Legal English training (Session 4)**  
*Eva Samaniego*

12:15 Lunch break

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### VI. TRANSFER OF EXECUTION OF JUDGMENTS

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13:15 **Group A: Legal English training (Session 4)**  
*Eva Samaniego*  
**Group B: Lecture: Applying the EIO**  
*Daniel Motoi*

14:45 Break

15:00 **Lecture: 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 (2008/947/JHA)
- to decisions on supervision measures as an alternative to provisional detention (2009/829/JHA)

*Daniel Motoi*

16:30 **Closing remarks**  
*Ivana Jarošová*

16:30 End of the webinar

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## Project description

The project addresses the need for training on EU criminal law for court staff by creating a standardized training package and by organizing a series of legal and linguistic training events focusing on issues of European criminal justice relevant for their work. Furthermore, it provides a platform for exchange of best practices, information and knowledge to create close contacts among court staff from different EU Member States.

Each language training has a duration of three full working days and is organized in cooperation with the partnering Member States. The number of participants is limited to 30, split into two working groups to develop both legal and linguistic skills of court staff members and strengthen their competences in order to facilitate cross-border communication and cooperation.

Programme may be subject to amendment. The content of this seminar represents the views of the author only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

# Better Applying European Law

Webinar, 28-30 April 2021 / Event Number: 321DT21e



## Project partnership

### Partner

European Judicial Training Network (EJTN)

### Supporting organizations

**Belgium** – Judicial Training Institute

#### **Bulgaria**

- National Institute of Justice

**Croatia** – Judicial Academy

**Czech Republic** – Judicial Academy

**Finland** – National Courts Administration

#### **Germany**

- Federal Ministry of Justice and Consumer Protection (BMJV)
- Ministry of Justice of Baden-Wuerttemberg
- Judicial Academy of North Rhine-Westphalia
- Ministry of Justice, Rhineland Palatinate

**Hungary** – National Office for the Judiciary

**Lithuania** – National Courts Administration

**The Netherlands** – Training and Study Centre for the Judiciary

**Poland** – National School of Judiciary and Public Prosecution

**Portugal** – Ministry of Justice (DGAJ)

**Romania** – National School of Clerks

**Slovenia** – Ministry of Justice, Judicial Training Centre

**Spain** – Centre for Legal Studies

## Terms and conditions of participation

### Participation

Participation is on selection. Participants should have a working knowledge of English. Interested court staff may register via their respective national training institutions.

### Registration fee

Participation is free of charge.

### Contact Person

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Course Administrator  
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# **European Criminal Law: Legal English for Court Staff**

*Eva Samaniego Fernández*



Co-funded by the Justice Programme 2014-2020 of the European Union



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## INTRODUCTION TO THE MANUAL

The idea of this manual was included in the proposal of the **project “Better applying European criminal law”** -to be co-funded by the Justice Programme 2018 of the European Union- that the Academy of European Law (ERA) submitted and finally succeeded in achieving, in partnership with the European Judicial Training Network (EJTN) and the support of 23 national judicial training institutions from all over Europe, with **the aim of training court staff in EU criminal law matters relevant for their work.**

The training materials in this manual have taken into consideration the main **EU legislation** as well as **some of the most relevant case law** on the topics included in this project on cooperation in criminal matters. Below is some of the EU legislation:

1. 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters and its 1978 Protocol;
2. 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;
3. Framework Decision 2002/584 on the European Arrest Warrant and the surrender procedures between Member States;
4. Directive 2014/41 regarding the European Investigation Order in criminal matters;
5. Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;
6. Framework Decision 2008/947 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;
7. Framework Decision 2009/299 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;
8. Framework Decision 2009/829 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;
9. Framework Decision 2008/675 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings;

10. Framework Decision 2003/577 on the execution in the European Union of orders freezing property or evidence;
11. Framework Decision 2006/783 on the application of the principle of mutual recognition to confiscation orders;
12. Directive 2014/42 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union;
13. Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders;
14. Directive 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA;

The **main objective of the project** is to meet a **training gap** which had already been identified by the **European Council in 2014** (*Training of legal practitioners: an essential tool to consolidate the EU acquis*, 2014/C443/04) when it invited the European Commission to “address the particular issue of court staff training” in terms of **(a) “improving training in EU law of the court staff whose duties comprise elements of EU law”** and **(b) “facilitating the cross-border cooperation of court staff training providers where relevant”** ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1211\(01\)&from=ET](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG1211(01)&from=ET)).

The 2011 study *Judicial Training in the European Union Member States* included as a recommendation to “make language training available to all judges, prosecutors and court staff” (p.7), and also identified the fact that “judges, prosecutors and court staff are more likely to receive continuous training in other subjects than in EU law” (p.9) in spite of the fact that “the number of cases involving EU law” has “increased over the years” (p.25). In fact, a project from 2012, *Study on the state of play of court staff training in EU law and promotion of cooperation between court staff training providers at EU level* ([https://e-justice.europa.eu/content\\_the\\_european\\_judicial\\_training\\_policy-121-en.do](https://e-justice.europa.eu/content_the_european_judicial_training_policy-121-en.do)), whose results were published around 2014, proved that training in EU law for court staff at the time was still considered largely unnecessary, as only a “pitiful 0.75%” of court staff’s training activities (48 out of 6,341) focused on EU law, which “reflects the still prevalent belief in the justice system that EU law has no relevance to court staff tasks and duties as well as the fact that it is often well hidden behind the very national procedures which court staff have to implement” (p. 25).

There is also a further constraint: budgetary issues. According to the 2012 project:

“Training in EU law appears also to be a bit of luxury in a time of budgetary constraints. (...) budgetary constraints or reductions are the main obstacles to further development of training in EU law for court staff.” (p. 25).

The aforementioned study came to the conclusion that one of the recommendations for future training events was:

“To enhance court staff’s competences and skills in the use of national rules and procedures flowing from transposed EU directives as well as from direct use of EU regulations, thus making them comfortable with applying EU law in order to ensure that cases are dealt adequately, speedily, transparently and cost efficiently.” (p. 33).

One of the issues that comes up when providing training for this profession is the fact that **Member States have different types of court staff**, which poses a problem when collecting the relevant information, as in some Member States certain types of court staff are trained by judicial schools or institutes, while others are trained by the Ministry of Justice, depending on their functions and responsibilities.

According to the study carried out in 2013, *Judicial Systems of the EU countries* (<https://rm.coe.int/judicial-systems-of-the-european-union-countries-analysis-of-data-by-t/1680788280>), “non-judge staff” working for courts can be divided into four categories:

“The first very specific one, inspired by the German system, is that of the ‘Rechtspfleger’, who have quasi-judicial powers and are found in 14 states. The other categories are staff whose task is to assist judges directly, staff responsible for various administrative matters and the technical staff employed by courts (caretakers, drivers, etc.). In most member states, most non-judge staff working at courts are responsible for assisting judges directly” (p.17).

**There is a wide array of possible functions/responsibilities for court staff, depending on the specific category/type to which they belong:** general management of the court (e.g., court listings, etc.); service of documents; enforcement of decisions; execution of orders, requests, warrants, etc.; assistance to judges/prosecutors (sometimes including drafting/preparing judgments); issuing preliminary judicial decisions; dealing with access to justice and legal aid; budgetary issues; human resources issues; technical procedural issues (setting up videoconferences, etc.); data protection issues; human rights issues; authentication of documents, etc. Depending on their role in cross-border proceedings and procedures, their need of English will obviously differ.

As an illustrative example of the wide diversity of categories, in the 2012 project cited above (which covered 27 Member States), 14 different types of court staff were identified for Scotland; 5 for France and Lithuania; 4 for Hungary, Latvia and Slovakia; 3 for Austria, Germany, Czech Republic, Estonia, Malta, Poland and Spain, and 2 for Greece and Sweden. The range of categories is so complex that the study came to the conclusion that trying to establish a comparison seemed futile, so it rather focused on a better understanding of the differences and similarities:

“(...) considering the variety of situations, it is unwise to try to establish averages and comparative statistics between Member States, so the objective of the analysis is to understand which are the similarities and differences” (p. 18).

In this project (and its subsequent report, which was published around 2014), the decision was made to keep the original names of each court staff category rather than to translate them into English, as “communication with and between national judicial authority regarding training of court staff will be easier if the precise national titles are used” (p. 6). This, however, is not helpful for language training, as the only language in common is English, and an appropriate translation of the specific type of court staff is necessary for the purposes of clearly identifying the types of court staff that will be in each group, and thereby to be able to adapt each training event to their concrete training needs.

In fact, when representatives from various Member States were informally asked to provide a translation into English of the different types of court staff in their country, the results clearly demonstrated how much their tasks may differ and how diverse categories in fact are:

*Court/judicial clerk, court/judicial secretary, registrar, court assistant, court'(s) counselor, judicial counsellor, court advisor (or adviser), court staff, bailiff, judicial trainee, trainee judge, judicial operator, assistant judge, assistant to a judge, judge's assistant, court/judicial assistant, legal assistant...*

The 2011 study *Judicial Training in the European Union Member States* chose the following definition of court staff (which is, however, very restrictive, as it was meant for a study limited to judicial training only):

“Persons working in courts who are not judges but who have legal training and who (a) help prepare judgments, (b) make judicial decisions at least at a preliminary phase or (c) play a role in cross-border judicial cooperation.”

As we have seen, the types and categories of court staff may vary so much from one legal system to another, that the following **functional definition** has been chosen **to apply to this project exclusively**:

**“Personnel of a court – regardless of their formal title or education – who have certain judicial or procedural functions and need to apply EU law procedures to fulfil those functions.”**

Relevant judicial or procedural functions include *inter alia*: enforcement of court decisions, assistance to judges, service of judicial and extra-judicial documents, cross-border cooperation in criminal matters (e.g. completing requests to courts in other countries), etc.

The project includes -in addition to a series of national legal seminars and one pan-European conference-, a total of 6 legal English training events, each with a duration of three days in total (two full days and two half days) and addressed to a maximum of 30 court staff. These training events include English language training as well as training on European criminal law. Trainees are divided into two groups; this arrangement allows for parallel sessions during which one group receives legal training while the other group is doing language training; joint sessions are also included. Training materials (both legal and linguistic) have been made *ad hoc* for the implementation of the training events.

This language manual is arranged according to four skills: productive/active (writing and speaking) and receptive/passive (reading and listening). It attempts to cover a wide range of needs by including in the exercises for each skill and topic a variation of levels from the Common European Framework of Reference for Languages, ranging from B1 to C2. Consequently, the manual is as practical as possible, including different levels of English so that trainers can choose exercises on the basis of the average level of each group in each training event.

## **PURPOSE**

In the first stages the manual was designed having in mind the specific requirements of the actual courses that were to be taught, as well as the activities to be covered in the courses. However, it was later rearranged to have a parallel use, as it can equally be used as a stand-alone tool by users who would like to improve their English in this particular field.

Consequently, the manual has a twofold purpose:

- (1) To serve as the main tool to be used by course attendants who wish to improve their English in this particular field;**

(2) **To be used as a stand-alone tool** by any user who wishes **to improve their level of English in this particular field.**

Consequently, the **main objectives** of the manual are **to introduce course trainees and/or other users to the main difficulties of dealing with the specific topics included in the manual in English while improving the four language skills (listening, speaking, reading and writing)** as well as the skill of mediation (narrating/summarising a text for someone else).

If the manual is used as a stand-alone tool, however, it would be advisable to do a few exercises in pairs or groups (as we will see below, the best option would be to work with a colleague or several colleagues) so as to obtain some feedback on performance. These exercises are not numerous and will be specified below.

## **METHODOLOGY AND TEACHING STRATEGIES**

### **Methodology**

The foundations of the manual can be found within **Content and Language Integrated Learning**, which is a content-driven approach in which “an additional language is used for the learning and teaching of both content and language” (Coyle, Hood & Marsh 2010: 1). Both content and language are interwoven (which is why it is called a “dual-focused” approach), even if the emphasis may be higher on one or the other at one given time, as the authors point out. Content is taught through the medium of a foreign language, thus allowing for a duality where both language and content are learned in an integrated and unified way. For some authors CLIL differs from **CB(L)I (Content-Based Language Instruction)**; for these researchers, CBI would be an approach to language teaching whereas CLIL would be an approach to education. Yet for other authors, the term ‘CLIL’ would be used from the point of view of the learner, whereas ‘CBLI/CBI’ would be a term used from the point of view of the trainer. According to Brinton, Snow & Wesche’s definition (cited in Cenoz 2015), CBI (content-based instruction) is “**the concurrent study of language and subject matter (...)**”. Richards & Rogers also emphasise the role of language “as a vehicle for learning content” (2001: 208). However, Stoller (2008: 59) extends this definition and considers that CBI would cover any approach that combines language and content teaching, even if there are differences in the emphasis placed on language and content (Cenoz 2015: 10). Many legal English handbooks and manuals have adopted this content-based approach: Boyle (2008), Walenn (2009), Krois-Lindner & Firth (2009), Frost (2009), Van den Eede (2010), Wyatt (2006), Riley & Sours (2014), Haigh

(2018, latest edition) or Davies (2019) to name but a few. In our view, this approach contributes to a closer and extremely fruitful cooperation between language experts and legal experts.

### **Teaching strategies**

The range of strategies used when teaching these language courses is one of the key elements of their success. In this section we will cover practical advice based on the experience of having taught a considerable number of similar courses that achieved extremely high results in the evaluation questionnaires.

For language lessons, smaller classrooms are without any doubt much more suitable than a traditional style auditorium or conference room, which are more adequate for lecture-type sessions. The physical arrangement of the classroom is essential: a U-shaped arrangement is ideal, since trainees can see one another as well as the trainer.

Another extremely useful element is name cards or tags (preferably first-name only) placed on the table and written in big print. By using them, trainees -who are usually unknown to one another-, can quickly and easily name their colleagues. Trainers should try to learn trainees' names and call them by their first name (as long as all of them agree to this). It is very important to ask trainees to try and sit in the same place throughout the training (trying to separate nationalities that share the same language to prevent them from using it), as this encourages visual memory skills; however, for group work it is good to mingle participants so that they get to know others a little better.

Additional factors such as good lighting and sound conditions (microphones and loudspeakers) must be thoroughly checked. Microphones are a delicate subject to be carefully considered depending on the characteristics of the room, since they tend to distort the sound and make it more difficult for trainees to understand and grasp pronunciation issues with precision.

**Interaction and flexibility are essential factors**, for the following reasons:

(a) trainees usually wish to improve their oral production skills and they should thus be encouraged to talk about their legal systems and procedures, do role play, discuss, exchange views, explain advantages and disadvantages, agree and disagree, give their opinion, etc.; thus, if an interesting debate comes up, the trainer should not be too concerned about not covering the materials planned for that particular session; instead,

he/she should let debate develop naturally (while moderating it) rather than be concerned about the time allocated to each exercise;

(b) these are intensive courses with many sessions per day (both legal and linguistic), so it is essential to be able to detect when trainees are tired and need a change in pace, rhythm or even type of activity (moving on to a different exercise which is lighter or more diverting).

Flexibility is of particular importance, since trainers need to adapt to the specific needs and interests of trainees, which will vary in each group, and the same applies to their language needs. The use of entertaining audiovisual material (short videos), especially as a short mental break in particularly intensive sessions, is of invaluable help.

Some recommendations for actual strategies to be used in class for the teaching of the materials are (but are not restricted to) the following:

- never assuming that just because trainees understand legal concepts, they have to be aware of the terminology in English associated with those concepts;
- employing definitions and asking trainees to define in their own words;
- using exemplification and requesting trainees to provide examples;
- providing synonyms or near-synonyms (making sure that the difference of use between those options is understood);
- using classification and sub-divisions;
- pronouncing clearly and explaining the difference between some of the most frequent accents (e.g., American English and British English);
- repetition both of terms and of their pronunciation (repetition is essential for long-term learning);
- having an adequate pace of speech (not speaking too fast);
- adapting to the group's learning rhythm;
- eliciting answers rather than providing them;
- double-checking if the concepts have been correctly understood by asking again in a different way;
- rephrasing or asking trainees to rephrase;
- recapping to check if trainees are following and to make sure nobody has got lost at some point;
- spelling (or asking trainees to spell out) difficult words on the whiteboard, screen or flipchart;
- using role play when necessary;



- employing unfinished sentences that trainees must finish;
- making intentional mistakes to see if trainees identify them;
- using open-ended questions rather than closed ones (which only require 'yes' or 'no' answers);
- making use of prompts (e.g. asking trainees to start a sentence after providing them with the first word/s);
- contradicting trainees' statements to gently push them to make a point or to defend their position using arguments;
- creating controversy to make trainees intervene;
- making sure all trainees have an active role in every session by addressing them directly if necessary;
- using praise as encouragement;
- exploiting the differences in legal systems to encourage debate on procedures;
- gently correcting errors (making sure the nature of the mistake is fully understood);
- using peer review (asking other trainees to give feedback);
- departing from the order of the items within exercises so that participants cannot prepare answers in advance;
- jumping the order of seating arrangements when asking trainees to provide the answers to exercises so as to keep them alert;
- asking questions on secondary issues related to the exercise that is being done;
- changing the exercise, task or activity if trainees seem to be tired, etc.

The list above is by no means a closed list, since given the heterogeneous nature of the group composition in each course, trainers might have to employ a wide range of techniques on each occasion.

## **DESCRIPTION**

The manual has been designed for a project which includes a total of **6 training events in English**, each with a duration of **three days in total** (two full days and two half days), addressed to a **maximum of 30 court staff** from EU Member States. The legal training is conducted by legal experts who have an excellent command of English and the language training is carried out by an English language expert. The general group is divided into two subgroups to reduce the number of trainees per subgroup and thus make sessions more interactive.

**Some sessions and workshops take place with the whole group** (joint sessions), whereas **for some other sessions the group is split into two subgroups**, which receive parallel training: one of the groups gets language training while the other one receives legal training.

The division of the main group tries **to separate trainees** who:

- (a) have the same mother tongue, so as to prevent them from resorting to translation or to communicating in a language other than English;
- (b) have the same (or similar) legal systems and backgrounds, so that they get diverse legal systems in their group and can thus compare procedures;
- (c) have similar responsibilities and roles in EU cooperation in criminal matters, so that they can contrast ways of carrying out different tasks in different Member States.

The irrefutable advantage of having different legal systems and backgrounds in one group is to allow for the exchange of experiences as well as of invaluable insight into how issues are dealt with in the different Member States.

These courses are indeed **an extremely engaging and unique training challenge** because they combine -as mentioned earlier- instruction both in English and in the subject matter of the course. Three main challenges may be highlighted:

1. Trainees usually have **different levels of English**, a fact that has been taken into account in the making of the manual. Levels generally go from B1 to C2, and these levels often differ for each of the four skills: some trainees may be outstanding in listening but not so good at speaking, or excellent at reading but perhaps worse at writing. Usually 'productive' (or 'active') skills (which focus on performance abilities) are at a lower level than 'receptive' (or 'passive') skills (which focus on competence). Far from being a disadvantage, this particular combination of levels of English within groups can be used as an advantage. With motivated trainees in class, those whose level is not so good feel positively challenged by the better ones, whereas the more advanced trainees are usually happy to encourage and assist those whose level is lower.
2. **Different levels of experience and expertise in the field.** Some trainees may have extensive and valuable experience in the course topics, whereas others may have little or simply no experience. Again, this can be used as an asset, since trainees from different Member States can share procedures, experiences, methods and strategies which supplement the more theoretical part of the course. A low common

denominator has been adopted in this regard, as an additional fact is that even if they have experience in the field and are knowledgeable in the topic *in their own language*, it does not follow that they will have the same knowledge in English.

3. **Intercultural issues.** Given the fact that there may be a considerable number of nationalities in a group, there are cultural factors at play, which trainers have to be aware of. Different cultures may have different expectations of a training event in terms of language, contents, approach, etc. In addition, conversational styles across cultures may be different (extent of tolerance towards interruptions, degree of straightforwardness, physical closeness when speaking, etc.). On the basis of this, trainers have to reach a compromise solution with a common ground approach that can satisfy trainees' needs and expectations as much as possible given the classroom diversity.

The manual has been divided into **eight sections**: (1) introduction to the manual; (2) introduction to legal vocabulary for court staff; (3) listening skills exercises; (4) speaking skills exercises; (5) reading skills exercises; (6) writing skills exercises; (7) annexes and (8) answer key. The guiding principles of the division of the manual are language skills and the different topics of the project.

The general introduction to legal vocabulary has been included because trainees (or users of the manual) should first become familiar with general legal terms in order to be able to have a reasonable command of them when the time comes -later in the manual- to deal more specific terminology.

**Sections 3 to 6, which deal with the four skills (listening, speaking, reading and writing),** include exercises for the topics included in the project. The listening skill exercises are at the beginning because they consist of a series of videos that offer a general overview of the topics covered. After the listening skills, speaking skills have been included, mainly for two reasons: (1) after an oral reception skill it was thought that it would be best to include an oral production skill; (2) having covered both oral skills, written skills are generally easier to cope with, and as attention and concentration are usually highest at the beginning rather than at the end of a course (where trainees tend to be more tired), the decision was made to place oral skills at the beginning of the manual.

There are **two Annexes**: one on making telephone calls in English and one on writing emails in English, as both are skills which trainees will very likely need at some point in EU cooperation in criminal matters and cross-border procedures.

At the end there is **an Answer Key** as assistance to trainees if there is not enough time in the course to do all the exercises or for potential users to check their answers to the exercises in the manual.

# **INTRODUCTION TO LEGAL VOCABULARY FOR COURT STAFF**



**1. Work in pairs. Ask your partner how they would translate into English the type of court staff that they are. Use the following options (or add more options if you need to):**

- court/judicial clerk
- court/judicial secretary
- court/judicial officer
- court manager
- (court) registrar
- court/judicial counsellor/counselor
- court/judicial advisor (or adviser)
- judicial trainee
- trainee judge
- assistant judge
- assistant to a judge
- judge's assistant
- court/judicial assistant
- legal assistant
- judicial operator
- bailiff/enforcement officer/enforcement agent
- referendary

**2. Use the following list to help you describe your responsibilities in your court:**

1. General management of the court (preparing the courtroom for cases; management of the court agenda; dealing with audiovisual equipment in court; bringing witnesses and experts into the courtroom, identifying them and swearing them in; filing cases and relevant documentation; daily running of the court, etc.).
2. Assistance to judges/prosecutors.
3. Management of case progress.
4. Taking minutes at hearings.
5. Dealing with costs or expenses.
6. Assisting judges with case documents and with the drafting of decisions.
7. Issuing certain preliminary decisions/orders.
8. Conducting certain court proceedings.

9. Decisions on applications for legal aid.
10. Requests for judicial assistance by a domestic court or a domestic authority (filling in forms, etc.).
11. Requests for judicial assistance by an EU court or a court of a third state (filling in forms, etc.).
12. Receiving and transmitting documents.
13. Service of judicial and extra-judicial documents.
14. Enforcement of court decisions.
15. Dealing with human resources issues.
16. Dealing with budget issues.
17. Data protection issues.
18. Public procurement procedures.
19. Dealing with complaints by the parties or other actors in the proceedings.
20. Dealing with access to justice and procedural rights issues (right to translation & interpretation, access to a lawyer, access to information, etc.).

**3. Using the tables below, work in pairs (with a partner from a different Member State) and discuss your opinion on the following:**

- (a) if you think that a legal background is necessary or not to have access to your profession and whether it is useful;
- (b) if you think that you should have more or less responsibilities in EU cooperation in criminal matters, and their corresponding procedures.

**EXPRESSING YOUR OPINION**

<b>Stating an opinion</b>	<b>Asking for an opinion</b>
I think/believe	What do you think about...?
As far as I am concerned...	Do you agree that/Don't you agree that...?
In my opinion/in my view/to my mind...	How do you feel about that?
If you want my honest opinion....	Do you have any views on this?
According to...	What's your idea?
The way I see it...	What are your thoughts on this?
If you ask me...	Wouldn't you say/agree with me that...?
As far as I am concerned...	How do you see this?



## EXPRESSING AGREEMENT AND DISAGREEMENT

Agreement	Negative agreement
I couldn't agree more.	I am afraid I cannot agree with you/that...
I (fully, totally, partially) agree.	I don't think so.
You are (absolutely) right.	I cannot (possibly) agree with you.
I simply must agree with that/you.	I don't agree with you/with that.
I am of the same opinion (as...).	Me neither ( <i>colloquial</i> ).
I completely/absolutely agree with...	Not quite right ( <i>colloquial</i> ).
My reasons for...	Nor am I.
There is no doubt that...	Neither do I.
So do I / So am I.	Nor does she.
I share your concerns/views/fears about...	So am I.
That's so true!	Not necessarily.
You have a point there.	No way ( <i>colloquial</i> )!
Exactly!	That's not always the case.

### 4. Basic legal vocabulary. Answer the following questions:

a. Can you provide words that you think could be synonyms for "case"? Do they all mean the same?

b. What do you call a "decision" by a judge? Provide all the names that you know and try to explain the difference between them.

c. What is the difference between "court" and "tribunal" in your Member State? Do the terms have a different meaning in the European Union and at the international level?

- d. What are the names for the two “sides” in criminal proceedings?
- e. What do you call the geographical area and the matters over which a judge/court/officer (if that be the case) has powers?
- f. What other verbs do you know for “to give” judgment?
- g. What is the difference between the following terms related to criminal proceedings: “suspect”, “defendant” and “offender” / “criminal”?
- h. What are the terms used in English for “grave” offences and for not so “grave” offences?

**5. Provide the appropriate term for the (non-academic) definitions below:**

- a) Law passed by Parliament:
- b) Place where a trial is held:
- c) The judges of a country, seen as a group:
- d) An illegal act which is punishable by the law:
- e) Court order requiring someone to appear in court:
- f) Each of the sections of a court:
- g) Document giving the police the power to arrest someone:
- h) Formal accusation or indictment:
- i) The outcome of criminal proceedings finding that a person charged with a crime is not guilty:
- j) The outcome of criminal proceedings finding that a person charged with a crime is guilty:
- k) Court session in which oral arguments are heard and evidence may be presented:
- l) Law originating from judicial decisions (in some legal systems it is binding whereas in some others it is persuasive) as distinguished from law created by legislation:
- m) In criminal proceedings, applying to a higher court, usually to have a conviction overturned or a sentence reduced:
- n) Information/items submitted to a court to establish a fact, a point in question or the truth:
- o) Adjective used for evidence that cannot be admitted:
- p) Arguments/allegations/statements made/pleaded in court:
- q) A person who commits a crime or offence more than once:
- r) Someone who helps another person commit a crime (and is usually present when it is committed):
- s) A change in the location of a trial, sometimes involving jurisdiction issues; it may be for reasons such as concerns over the fairness of the trial (e.g. publicity issues), or changes due to the interests of justice (e.g. availability of witnesses):
- t) The questioning of witnesses carried out by the other 'side' in the proceedings:
- u) This adjective is applied to a sentence when an offender / a criminal has to serve a certain period of time in prison (or a young offenders' institution):
- v) A sentence involving a term of imprisonment but not resulting in it unless another offence is committed within a specified period:

- w) Factors that make an offence more serious and are likely to increase the sentence:
- x) Factors that make an offence less serious and are likely to decrease the sentence:
- y) An order signed by a judge that instructs owners of a property to allow the police to enter and search for items:
- z) Obligatory, something that legally forces someone to do something:

**6. Fill in the blanks with the correct option. Some of them are used more than once.**

*an offence, the facts, the oath, the evidence, guilty, a verdict, a fine, an enquiry, a case, sentence, evidence, an action, a prison sentence, a crime*

- (a) To try \_\_\_\_\_
- (b) To hear \_\_\_\_\_
- (c) To reach \_\_\_\_\_
- (d) To pass \_\_\_\_\_
- (e) To impose \_\_\_\_\_
- (f) To conduct \_\_\_\_\_
- (g) To assess \_\_\_\_\_
- (h) To punish \_\_\_\_\_
- (i) To commit \_\_\_\_\_
- (j) To plead \_\_\_\_\_
- (k) To give \_\_\_\_\_
- (l) To return \_\_\_\_\_
- (m) To serve \_\_\_\_\_
- (n) To take \_\_\_\_\_

# **LISTENING SKILLS**



# 1. Mutual Legal Assistance

[Source: <https://www.youtube.com/watch?v=KBo3WZsZBH0>]

**This video has to do with Mutual Legal Assistance Treaties and Letters Rogatory (in particular in the US), and it is meant only for you to become familiar with the vocabulary used in the field on Mutual Legal Assistance. Fill in the gaps.**

1 *What is a letter rogatory?*

2 A letter rogatory is a **(1)** \_\_\_\_\_ for judicial assistance from a foreign country. In  
3 the absence of a treaty between two countries that covers such situations, these letters are  
4 necessary if a person in one country needs to **(2)** \_\_\_\_\_ court documents or **(3)**  
5 \_\_\_\_\_ from a foreigner. These acts could be deemed a  
6 violation of the sovereign **(4)** \_\_\_\_\_ of the foreigner's home country if performed  
7 without judicial supervision. A letter rogatory has to travel through proper diplomatic  
8 channels, which means that the process is usually a **(5)** \_\_\_\_\_ one.

9 This process is still common in cases involving North and South American countries,  
10 although **(6)** \_\_\_\_\_ have simplified the process between North America and most  
11 of Europe and Asia. Individuals usually require a letter rogatory if they are involved in legal  
12 **(7)** \_\_\_\_\_ that include a person from another country. This could mean that the  
13 foreigner is the subject of a **(8)** \_\_\_\_\_ or simply has information essential to the  
14 case. In such circumstances, a person can draft a letter rogatory that includes information  
15 on the case, the nature of the request in a statement of the local court that shows the reasons  
16 why the foreign court needs to **(9)** \_\_\_\_\_.

17 Preparing a letter rogatory usually is required to serve one of two possible purposes: the  
18 letter may be necessary to get the foreign court to perform **(10)** \_\_\_\_\_ of  
19 \_\_\_\_\_, which essentially refers to the serving of court documents. It might be  
20 necessary to **(11)** \_\_\_\_\_ evidence, unless the case is one in which a country  
21 claims universal **(12)** \_\_\_\_\_ then a court that tried to perform these acts in a  
22 foreign country without permission would be in **(13)** \_\_\_\_\_ of international law.  
23 When a letter rogatory is prepared, it has to pass through several diplomatic channels before  
24 it can produce the desired effect. In the United States, for example, this process includes  
25 the letter passing through the Department of State, the US Embassy, the Ministry of **(14)**  
26 \_\_\_\_\_ and the Ministry of Justice before finally reaching the  
27 foreign court. Although other countries may have a different diplomatic chain, anyone who  
28 requires a letter rogatory should expect a long wait before the request in the letter is **(15)**  
29 \_\_\_\_\_.

30 Letters rogatory are complicated somewhat by the fact that they are subject to the laws of  
31 the foreign country involved; for example, **(16)** \_\_\_\_\_ for collecting evidence in  
32 the United States may differ from a country in South America. Because of such  
33 complications in the length of the process, most countries in Europe, Asia and North America  
34 signed treaties and agreements in the 20th century which made the process much easier.  
35 These agreements allow for rapid serving of court documents between countries and contain  
36 **(17)** \_\_\_\_\_ rules for collecting evidence.



## 2. The European Arrest Warrant

a) The Assange case (I). Listen to this video and then answer the questions below.

[Source: <http://www.youtube.com/watch?v=1eg26o5cD3c>]

1. What country would Julian Assange be extradited to?
2. What was Mr. Assange's lawyers' claim before the District Judge?
3. What is the reaction of Mr. Assange's lawyers to the decision of the court?
4. What are the charges against Mr. Assange?
5. Where did the alleged offence(s) take place?
6. His lawyers argue that extraditing Mr. Assange to Sweden would \_\_\_\_\_ his human rights.
7. District Judge Howard Riddle \_\_\_\_\_ (that) extradition was legal and that there is no reason why Mr. Assange wouldn't get a \_\_\_\_\_.
8. What did the Judge say about the likelihood that things said about Mr. Assange would interfere with the course of justice in Sweden?
9. How is Mr. Assange's reaction to the court's decision described?
10. What will the next step be for Mr. Assange?
11. While Mr. Assange prepares to go to the High Court, he is on \_\_\_\_\_

**b) The Assange case (II). First read Art.6 of the Framework Decision below. Then listen to the video and fill in the gaps.**

*COUNCIL FRAMEWORK DECISION of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.*

### *Article 6*

## **Determination of the competent judicial authorities**

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

### **UK Supreme Court**

Assange (Appellant) v The Swedish Prosecution Authority (Respondent) [2011] UKSC 22. On appeal from [2012] EWHC Admin 2849. [7:44]

[Source: <https://www.youtube.com/watch?v=9JEYOwg4qUw>]

1 The Swedish public prosecutor has **(1)** \_\_\_\_\_ the extradition of Mr. Assange on  
2 **(2)** \_\_\_\_\_ of serious sexual offences. That request has **(3)** \_\_\_\_\_ a  
3 point of law of general public importance. It is *not* a point in respect of which the particular  
4 facts of Mr. Assange's case have any relevance. This summary is about that point of law.  
5 It used to be the case that this country would not **(4)** \_\_\_\_\_ a person to another  
6 European country until a court here had considered the **(5)** \_\_\_\_\_ against that  
7 person. The court would not approve extradition unless the evidence justified his being  
8 subjected to a criminal **(6)** \_\_\_\_\_.  
9 All that changed in 2001 when we gave effect to the 1957 European Convention on  
10 Extradition. The following year the **(7)** \_\_\_\_\_ of that Convention were  
11 superseded by an agreement reached between the members of the European Union. The  
12 terms of that agreement were set out in a European Union Framework Decision, which this  
13 country was under a duty to implement. The Framework Decision directed that if a **(8)**  
14 \_\_\_\_\_ \_\_\_\_\_ in one state requested the extradition of a person from  
15 another state, the latter state would give effect to the request without considering the  
16 evidence. It was for the requesting state to consider whether the evidence justified  
17 extradition. The United Kingdom gave effect to the **(9)** \_\_\_\_\_ \_\_\_\_\_ in  
18 the Extradition Act 2003. That Act provided that, subject to certain conditions, this country

19 will extradite a person if we receive a request from a judicial authority in another member  
20 state.

21 The point of law is simply: what do the words 'judicial authority' mean? Mr. Assange has  
22 argued that they mean a **(10)** \_\_\_\_\_ or judge. Sweden's request has been issued  
23 by a public **(11)** \_\_\_\_\_ who is not a court or judge, so Mr. Assange has argued  
24 that the request is invalid and he doesn't have to go back to Sweden.

25 The point of law is simple to state but it has not been simple to resolve; indeed, we have  
26 only **(12)** \_\_\_\_\_ our decision by a majority of five to two.

27 There was discussion in Parliament about the words 'judicial authority' when the Bill which  
28 became the Extradition Act was being debated. The Bill used the words 'judicial authority'  
29 because those words were in the Framework Decision, and the Act was designed to **(13)**  
30 \_\_\_\_\_ to the Framework Decision. It is clear that some Members  
31 of Parliament believed that the words 'judicial authority' in the Framework Decision meant a  
32 court or a judge; indeed, one Minister specifically stated to a parliamentary committee that  
33 this was the case. But he was mistaken.

34 'Judicial authority' is the English translation of the French words '*autorité judiciaire*'. The  
35 Framework Decision is in both English and French, so it's necessary to have **(14)**  
36 \_\_\_\_\_ also to what the French phrase means. The French phrase has a wider  
37 meaning than the English phrase. In French, the words 'judicial authority' can be used of a  
38 public prosecutor. When the Member States implemented the Framework Decision, many  
39 of them **(15)** \_\_\_\_\_ public prosecutors to perform the role of the judicial authority.  
40 There was no suggestion that this was contrary to the Framework Decision.

41 Having particular regard to this fact, the majority of the court **(16)** \_\_\_\_\_  
42 \_\_\_\_\_ that in the Framework Decision the words 'judicial authority' or '*autorité*  
43 *judiciaire*' **(17)** \_\_\_\_\_ a meaning that includes a public prosecutor. Two members  
44 of the court, Lady Hale and Lord Mance, consider that this does not determine the meaning  
45 of 'judicial authority' in the Extradition Act. In that Act, they mean a court or judge, as the  
46 minister had explained. The other members of the court do not agree.

47 Parliament's intention in **(18)** \_\_\_\_\_ the Extradition Act was to give effect to the  
48 Framework Decision. This was necessary in order to produce a uniform and **(19)**  
49 \_\_\_\_\_ system of extradition in Europe. It was also necessary in order to comply  
50 with the duty of the United Kingdom under international law. So there is a **(20)**  
51 \_\_\_\_\_ that the words 'judicial authority' should have the same meaning in the

52 Extradition Act that they have in the Framework Decision. The understanding of some  
53 Members of Parliament or the statement of the Minister as for the meaning of the Framework  
54 Decision does not displace this presumption.

55 For these reasons, the majority has concluded that the Swedish public prosecutor was a  
56 judicial authority within the meaning of both the Framework Decision and the Extradition Act.  
57 It follows that the request for Mr. Assange's extradition has been (21) \_\_\_\_\_  
58 made, and his appeal against extradition is accordingly (22) \_\_\_\_\_.

59 '[*inaudible*] (...) I wanted to raise. You will appreciate that we have had only a very limited  
60 opportunity to study this (23) \_\_\_\_\_ and learned decision and also that we've  
61 had no opportunity as yet to consult with our client. However, there is one matter which  
62 causes us considerable concern on our initial reading of the decision. And that is that it  
63 would appear that a majority of the members of this court have decided the point, either  
64 principally or (24) \_\_\_\_\_, on the basis of the interpretation of the Vienna  
65 Convention on the law of treaties, a point, with respect, which was not (25) \_\_\_\_\_  
66 during the appeal and which we were given no opportunity to address. Now obviously this  
67 Court will have in mind its recent decision in the case of *Lukaszewski*, (26) \_\_\_\_\_  
68 that Article 6 applies to extradition proceedings in the United Kingdom. We are therefore  
69 currently considering our position, and whether or not it will be necessary, with great regret,  
70 to make an application to this court that this matter should be reopened so that we have an  
71 opportunity to argue this point. I say this only to (27) \_\_\_\_\_ it up because  
72 obviously at the moment we need to study the (28) \_\_\_\_\_ and consult with our  
73 client and I appreciate the urgency of the situation and therefore thought I ought to make  
74 that known publicly as soon as possible.'

75 'Yes, thank you, Miss Montgomery, you must consider...'

76 'I am *not* chronically Miss Montgomery.'

77 'Sorry.'

78 'Although I am easily mistaken for her.'

79 'I think Miss Rose...'

80 'I beg your pardon. You must consider the judgment at a proper measure and if you wish to  
81 make an application, we will (29) \_\_\_\_\_ you the opportunity'

82 'Yes. I don't know how long your Lordships and your ladyship would be prepared to give us  
83 to make that application. We're obviously operating under some difficulty given the imminent  
84 bank holiday weekend.'

85 'We'll afford you two weeks.'

86 'My Lord, in those circumstances, as I understand it, the order that was agreed was that this  
87 order should be **(30)** \_\_\_\_\_ for seven days, but given the point I've just raised,  
88 can I ask your Lordships and your Ladyship to **(31)** \_\_\_\_\_ that order so that it is  
89 stayed for 14 days to permit us to make that **(32)** \_\_\_\_\_?'

90 'Um, that seems a reasonable **(33)** \_\_\_\_\_.'

91 'I'm **(34)** \_\_\_\_\_.'

### 3. The European Investigation Order

[Source: <http://www.parliamentlive.tv/Main/Player.aspx?meetingId=6498>; 27 July 2010]

#### Listen to Mrs. May's statement in Parliament about the EIO and fill in the blanks:

1 Thank you, Mr. Speaker. With permission, Mr Speaker, I would like to make a statement on  
2 the **(1)** \_\_\_\_\_ Directive for a European Investigation Order, and the  
3 Government's decision to **(2)** \_\_\_\_\_ that draft Directive.

4 As people have become more mobile, so too has crime, and that has serious consequences  
5 for our ability to bring criminals to **(3)** \_\_\_\_\_. To deal with **(4)** \_\_\_\_\_ -  
6 \_\_\_\_\_, countries enter into mutual legal assistance -or MLA-  
7 agreements. These agreements provide a **(5)** \_\_\_\_\_ through which states can  
8 obtain **(6)** \_\_\_\_\_ from overseas. MLA has therefore been an important tool in the  
9 fight against international crime and terrorism. It's been crucial in a high number of **(7)**  
10 \_\_\_\_\_ - \_\_\_\_\_ cases. For example, Hussein Osman, one of the failed  
11 terrorists from the 21/7 attacks five years ago, might not have been **(8)** \_\_\_\_\_  
12 had it not been for evidence **(9)** \_\_\_\_\_ through MLA.

13 But MLA has not been without its faults. The process is fragmented and confusing for the  
14 police and **(10)** \_\_\_\_\_, and it is too often too slow, taking in some cases many  
15 months to obtain vital evidence. Indeed, in one **(11)** \_\_\_\_\_ - \_\_\_\_\_ case  
16 the evidence arrived in the UK *after* the **(12)** \_\_\_\_\_ had been completed. The  
17 European investigation order therefore seeks to address these problems by simplifying the  
18 system with a **(13)** \_\_\_\_\_ request form and providing formal deadlines for the  
19 **(14)** \_\_\_\_\_ and execution of requests.

20 Mr. Speaker, the Government has decided to opt into the EIO because it offers practical  
21 help for the British police and prosecutors, and we are determined to do everything we can  
22 to help them cut crime and **(15)** \_\_\_\_\_ justice. And that is what the police say  
23 this will do. We wrote to every ACPO force about the EIO, and *not one* said we should not  
24 opt in. ACPO themselves replied, and I quote:

25 "the EIO is a simpler instrument than those already in existence and, provided that it is used  
26 sensibly and for appropriate **(16)** \_\_\_\_\_, we welcome attempts to simplify and  
27 **(17)** \_\_\_\_\_ mutual legal assistance."

28 But I know that some honourable members have concerns about the EIO, and I would like  
29 to address them in turn. First is the question of sovereignty. In justice and home **(18)**  
30 \_\_\_\_\_, there are many ideas coming out of Brussels, like a common **(19)**  
31 \_\_\_\_\_ policy, that would involve an unacceptable loss of sovereignty. And I want  
32 to be absolutely clear to the House - I will *not* sign up to these proposals, and I've *made* that  
33 clear to my European counterparts. But this Directive does not incur a shift in sovereignty.  
34 It is a practical **(20)** \_\_\_\_\_ that makes it easier to see justice -British justice- done  
35 in this country.

36 Now second is concern about burdens on the police. At a time when we're reducing domestic  
37 **(21)** \_\_\_\_\_ burdens on the police, I agree it would be unacceptable to have them  
38 re-imposed by foreign forces. And that's why we will seek to ensure that there is a  
39 proportionality test, so police forces are not obliged to do work in relation to **(22)**  
40 \_\_\_\_\_ offences. Forces will be able to extend deadlines when it is not possible  
41 to meet them. And I want to be clear that the EIO does not allow foreign authorities to **(23)**  
42 \_\_\_\_\_ UK police officers on what operations to conduct, and it does not allow  
43 foreign officers to operate in the UK with law **(24)** \_\_\_\_\_ powers.

## 4. The enforcement of judgments: transfer

[Source: Commission notice — Handbook on the transfer of sentenced persons and custodial sentences in the European Union 2019/C 403/02, [https://www.ejn-crimjust.europa.eu/ejnupload/News/HANDBOOK-909-EN\\_TXT.pdf](https://www.ejn-crimjust.europa.eu/ejnupload/News/HANDBOOK-909-EN_TXT.pdf)]

You are going to listen to a text read aloud by some of your colleagues in order to get used to hearing different accents in English. Finish off the missing parts of some sentences.

### 1 Enforcement of the sentence

#### 2 *Law governing enforcement*

3 The Framework Decision clearly stipulates that the enforcement of the sentence (1)  
4 \_\_\_\_\_ by the law of the executing State. The  
5 authorities of the executing State alone shall be competent to decide (2)  
6 \_\_\_\_\_ and to determine all the measures relating  
7 thereto, including the grounds for early and (3)  
8 \_\_\_\_\_ (Article 17).

#### 9 *Deduction*

10 The competent authority of the executing State shall deduct (4)  
11 \_\_\_\_\_ in connection with the sentence in respect  
12 of which the judgment was issued from the total duration of the deprivation of liberty to be  
13 served (Article 17(2)) (65).

#### 14 *Early and conditional release*

15 How much time the sentenced person will actually spend in prison depends largely on the  
16 provisions on early and conditional release (5)  
17 \_\_\_\_\_. The differences between Member States  
18 are considerable in this respect: e.g. in some Member States the sentenced person is released  
19 (6) \_\_\_\_\_, in others after one third of the  
20 sentence.

21 The competent authority of the executing State shall, upon request, inform the competent  
22 authority of the issuing State (7) \_\_\_\_\_ on  
23 possible early or conditional release. When this information is provided, the issuing State may  
24 agree to the application of such provisions or may choose (8)  
25 \_\_\_\_\_ and end the transfer process (Article  
26 17(3)).

27 Member States have the possibility to provide that any decision on early or conditional release  
28 may take account of those provisions of national law, indicated by the issuing State, under  
29 which the person is entitled to early or conditional release (9)  
30 \_\_\_\_\_ (Article 17(4)).

31 It is recommended that the executing State provide clear communication and an explanation  
32 of its applicable conditional release provisions (10)  
33 \_\_\_\_\_. Solely indicating the applicable legal  
34 provisions might not be sufficient.

35 *Amnesty, pardon*

36 Both the issuing State and the executing State (11)  
37 \_\_\_\_\_ amnesty or pardon to the sentenced  
38 person (Article 19 (1)).

39 *Review of the judgment*

40 When a review of the judgment (12) \_\_\_\_\_,  
41 however, only the issuing State may decide on the applications for review of the judgment  
42 (Article 19(2)).

43 *Right to enforce the judgment*

44 The issuing State shall not proceed with the enforcement of the sentence once its enforcement  
45 in the executing State has begun except in cases where the right to enforce the sentence shall  
46 be reverted to the issuing State upon its being informed by the executing State (13)  
47 \_\_\_\_\_ (Article 22).

48 *Communication and information duties*

49 The Framework Decision contains detailed information obligations for both the issuing State  
50 and the executing State, (14) \_\_\_\_\_.

51 The competent authority of the issuing State needs to inform the competent authority of the  
52 executing State of any decision or measure as a result of which (15)  
53 \_\_\_\_\_ immediately or within a certain period of  
54 time (Article 20). As a consequence, the competent authority of the executing State shall (16)  
55 \_\_\_\_\_ of the sentence as soon as it has received  
56 this information.

57 The competent authority of the executing State shall without delay inform the competent  
58 authority of the issuing State by any means which leaves (17)  
59 \_\_\_\_\_ (Article 21):

60 (a) of the forwarding of the judgment and the certificate to the competent authority of another  
61 Member State because the executing State had (18)  
62 \_\_\_\_\_;

63 (b) of the fact that it is in practice impossible to enforce the sentence because after  
64 transmission of the judgment and the certificate to the executing State, the sentenced  
65 person (19) \_\_\_\_\_ of the executing State, in  
66 which case there shall be no obligation on the executing State to enforce the sentence;

67 (c) of the final decision to recognise the judgment and enforce the sentence (20)  
68 \_\_\_\_\_;

69 (d) of any decision not to recognise the judgment and enforce the sentence on the basis of  
70 (21) \_\_\_\_\_ (Article 9), together with the  
71 reasons for the decision;



72 (e) of any decision to **(22)** \_\_\_\_\_ (Article 8(2)  
73 or (3)), together with the reasons for the decision;

74 (f) of any decision not to enforce the sentence **(23)**  
75 \_\_\_\_\_ was granted (Article 19(1)) together  
76 with the reasons for the decision;

77 (g) of the beginning and the end of the **(24)**  
78 \_\_\_\_\_, where so indicated in the certificate by  
79 the issuing State;

80 (h) of the sentenced person's **(25)** \_\_\_\_\_;

81 (i) of the enforcement of the sentence as soon as **(26)**  
82 \_\_\_\_\_.

## TEXT TO BE READ ALOUD

### 1 **Enforcement of the sentence**

#### 2 *Law governing enforcement*

3 The Framework Decision clearly stipulates that the enforcement of the sentence shall be  
4 governed by the law of the executing State. The authorities of the executing State alone shall  
5 be competent to decide on the procedures for enforcement and to determine all the measures  
6 relating thereto, including the grounds for early and conditional release (Article 17).

#### 7 *Deduction*

8 The competent authority of the executing State shall deduct the full period of deprivation of  
9 liberty already served in connection with the sentence in respect of which the judgment was  
10 issued from the total duration of the deprivation of liberty to be served (Article 17(2)) (65).

#### 11 *Early and conditional release*

12 How much time the sentenced person will actually spend in prison depends largely on the  
13 provisions on early and conditional release in the executing state. The differences between  
14 Member States are considerable in this respect: e.g. in some Member States the sentenced  
15 person is released after two thirds of the sentence, in others after one third of the sentence.

16 The competent authority of the executing State shall, upon request, inform the competent  
17 authority of the issuing State of the applicable provision on possible early or conditional  
18 release. When this information is provided, the issuing State may agree to the application of  
19 such provisions or may choose to withdraw the certificate and end the transfer process (Article  
20 17(3)).

21 Member States have the possibility to provide that any decision on early or conditional release  
22 may take account of those provisions of national law, indicated by the issuing State, under  
23 which the person is entitled to early or conditional release at a specified point in time (Article  
24 17(4)).

25 It is recommended that the executing State provide clear communication and an explanation  
26 of its applicable conditional release provisions to the issuing state and to the sentenced person.  
27 Solely indicating the applicable legal provisions might not be sufficient.

#### 28 *Amnesty, pardon*

29 Both the issuing State and the executing State may grant amnesty or pardon to the sentenced  
30 person (Article 19 (1)).

#### 31 *Review of the judgment*

32 When a review of the judgment is sought, however, only the issuing State may decide on the  
33 applications for review of the judgment (Article 19(2)).

#### 34 *Right to enforce the judgment*

35 The issuing State shall not proceed with the enforcement of the sentence once its enforcement  
36 in the executing State has begun except in cases where the right to enforce the sentence shall  
37 be reverted to the issuing State upon its being informed by the executing State of the partial  
38 non-enforcement of the sentence (Article 22).

39

40 *Communication and information duties*

41 The Framework Decision contains detailed information obligations for both the issuing State  
42 and the executing State, both before and after the transfer.

43 The competent authority of the issuing State needs to inform the competent authority of the  
44 executing State of any decision or measure as a result of which the sentence ceases to be  
45 enforceable immediately or within a certain period of time (Article 20). As a consequence, the  
46 competent authority of the executing State shall terminate enforcement of the sentence as  
47 soon as it has received this information.

48 The competent authority of the executing State shall without delay inform the competent  
49 authority of the issuing State by any means which leaves a written record (Article 21):

50 (a) of the forwarding of the judgment and the certificate to the competent authority of another  
51 Member State because the executing State had no competence to recognise it;

52 (b) of the fact that it is in practice impossible to enforce the sentence because after  
53 transmission of the judgment and the certificate to the executing State, the sentenced  
54 person cannot be found in the territory of the executing State, in which case there shall be  
55 no obligation on the executing State to enforce the sentence;

56 (c) of the final decision to recognise the judgment and enforce the sentence together with  
57 the date of the decision;

58 (d) of any decision not to recognise the judgment and enforce the sentence on the basis of  
59 grounds for refusal (Article 9), together with the reasons for the decision;

60 (e) of any decision to adapt the sentence (Article 8(2) or (3)), together with the reasons for  
61 the decision;

62 (f) of any decision not to enforce the sentence if amnesty or pardon was granted (Article  
63 19(1)) together with the reasons for the decision;

64 (g) of the beginning and the end of the period of conditional release, where so indicated in  
65 the certificate by the issuing State;

66 (h) of the sentenced person's escape from custody;

67 (i) of the enforcement of the sentence as soon as it has been completed.

## 5. Freezing and confiscation

[Source: <https://www.youtube.com/watch?v=JIERLmmKCgY>; up to 05:03]

**Listen to the video. Some intentional mistakes have been introduced in the transcript; try and spot them.**

1 Hello my name is Fiona Jackson and I am a self-employed barrister at 33 Chancery Lane in  
2 London, and today I'm going to talk to you briefly about the new European Directive on freezing  
3 and confiscating the instruments and procedures of crime in the European Union.

4 I'll split my presentation into four parts: firstly, the long history of the European Union in fighting  
5 this important area of work; secondly, the background into why this particular Directive came  
6 into force; thirdly, some key articles and divisions of the Directive and finally, its implementation  
7 this far across the European Union.

8 So let's turn firstly to look at the background, and for many years the European Union has been  
9 concerned that criminals were becoming increasingly clever at moving and converting and  
10 transferring the proceeds of crime across the Union and beyond. That of course was an attempt  
11 to seal them and prevent their recovery by Member States.

12 The European Union understood that international cooperation in this area is an important  
13 element of effective a set recovering so that investigating and prosecuting authorities can help  
14 each other tracing and recover criminal assets, prevent this inception or disposal and preserve  
15 them until such time as a confiscation order can be made and the assets recovered.

16 For example, in 1990 all EU Member States ratified a Council of Europe Convention requiring  
17 them to introduce laws to enable the confiscation of the proceeds of crime, including property  
18 used to commit crimes and permitting the widest possible international cooperation in the  
19 investigation and confiscation of criminal assets.

20 After the Treaty of Amsterdam, which introduced the power of the Council to legislate in this  
21 area, the Union has further and since developed illegal matrix to reduce these differences in  
22 Member States' approaches to the confiscating and recovery of criminal assets.

23 For example, a Council Framework Decision in 2001 that was adopted on money laundry, the  
24 identification, freezing, tracing, seising and confiscation of instrumentalities and the proceeds  
25 of crime requires Member States to ensure that property corresponding to the valued of  
26 proceeds of crime may be confiscated if the indirect proceeds of crime cannot be seized. That,  
27 for example, is generally known as value confiscation. It also requires each Member State to  
28 afford the same priority to a request from other Member States for assistance in identifying,  
29 tracing, freezing and seizing assets as it should apply for purely domestic proceedings.

30 In addition, under a 2005 Council Framework Decision, Member States must ensure that their  
31 own national laws make provision for the confiscation of proceeds of any crime punishable by  
32 terms of imprisonment of more than one year and also introduced extensive powers of  
33 confiscation in relation to tens of offences and particular categories of organised serious crime,  
34 for example money laundering, human traffic and the sexual exploitation of children. This  
35 extended powers enable national courts to infer, on the basis of specific facts, that assets  
36 belong to individuals convicted of terrorist or serious organised criminal activity and that such  
37 assets must have been obtained as a result of previous criminal activity even if they're not  
38 directly linked to the crime of which he or she has been sentenced and to order their  
39 confiscation.

40 Another Council Decision, a Framework Decision again, adopted in 2007, requires Member  
41 States to establish national asset recovery offices to help trace and identify the proceeds of  
42 crime and other crime-related property which may be object to a freezing, seizure or  
43 confiscation order. It provides a legal basis for exchange of information and best practice.

# **SPEAKING SKILLS**



# 1. Mutual Legal Assistance

Practise with the pronunciation of the following:

[Sources: 1959 European Convention on Mutual Assistance in Criminal Matters, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016800656ce>; Council Act establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2000:197:0001:0023:EN:PDF>]

## a. Terms:

1. to request	22. proceedings
2. judgment	23. instrument
3. decision	24. matter
4. offence	25. rightful
5. assistance	26. service
6. authority	27. provision
7. to comply	28. addressee
8. consent	29. law
9. convention	30. report
10. search	31. rights
11. seizure	32. notify
12. evidence	33. action
13. hearing	34. obligation
14. recognition	35. provision
15. order	36. appeal
16. interception	37. custody
17. extradition	38. authenticity
18. jurisdiction	39. restitution
19. territory	40. liability
20. infringement	41. investigation
21. execution	42. provisional

43. delay	52. protective
44. hearing	53. evidence
45. execution	54. testify
46. surrender	55. cost
47. witness	56. reciprocity
48. court	57. transmission
49. expert	58. venue
50. defendant	59. appearance
51. refusal	60. damage

**b. Word combinations**

1. competent authority	21. temporary transfer
2. criminal matters	22. constitutional requirement
3. on oath	23. to summon to appear
4. letter rogatory	24. proof of service
5. natural person	25. official language
6. mutual assistance	26. to issue a certificate
7. individual rights	27. to contest enforcement
8. fundamental freedoms	28. to dismiss the proceedings
9. time limit	29. third party
10. fair trial	30. accused person
11. judicial cooperation	31. to challenge a judgment
12. written notice	32. legally binding
13. procedural deadline	33. direct channel
14. procedural requirements	34. judgment capable of recognition
15. procedural documents	35. to serve a document
16. taking of evidence	36. to stay proceedings
17. incomplete request	37. at first instance
18. international convention	38. to lodge a document
19. in writing	39. controlled delivery
20. to return a request	40. to decline jurisdiction



41. to seek enforcement	71. extraditable offence
42. subject matter	72. enforcement of judgment
43. oral hearing	73. covert investigation
44. to execute a request	74. exclusive jurisdiction
45. standard form	75. to refuse mutual assistance
46. Joint Investigation Team	76. refusal of recognition
47. central authority	77. outcome of proceedings
48. organisational arrangements	78. interception of telecommunications
49. right of refusal	79. subsequent transmission
50. territorial application	80. to join proceedings
51. legal aid	81. service provider
52. exclusive grounds of jurisdiction	82. to deliver judgment
53. concurrent proceedings	83. criminal offence
54. grounds for refusal	84. legal person
55. unanimous agreement	85. protective measure
56. investigative measures	86. provisional measure
57. to set up a team	87. irreconcilable judgment
58. national law	88. duration of interception
59. enforcement order	89. bilateral agreements
60. false identity	90. finding of fact
61. to effect service	91. to lodge an appeal
62. separate proceedings	92. to contest an appeal
63. of its own motion	93. ordinary appeal
64. habitually resident	94. personal data protection
65. criminal liability	95. entry into force
66. alternative grounds of jurisdiction	96. notice of penalty
67. exercise jurisdiction	97. competent enforcement authority
68. data subject	98. certified copy
69. administrative authority	99. reasonable time
70. sufficient time	100. Ministry of Justice

## 2. The European Arrest Warrant

[Source: European Arrest Warrant, [https://e-justice.europa.eu/content\\_european\\_arrest\\_warrant-90-en.do](https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do)]

All participants have to read the following 2 excerpts:

### EXCERPT 1

#### How is the EAW different to traditional extradition?

##### 1. Strict time limits

The country where the person is arrested has to take a final decision on the execution of the European arrest warrant within 60 days after the arrest of the person.

If the person consents to the surrender, the surrender decision must be taken within 10 days.

The person requested must be surrendered as soon as possible on a date agreed between the authorities concerned, and no later than 10 days after the final decision on the execution of the European arrest warrant.

##### 2. Double criminality check – no longer required for 32 categories of offences

For 32 categories of offences, there is no verification on whether the act is a criminal offence in both countries. The only requirement is that it be punishable by a maximum period of at least 3 years of imprisonment in the issuing country.

For other offences, surrender may be subject to the condition that the act constitutes an offence in the executing country.

##### 3. No political involvement

Decisions are made by judicial authorities alone, with no political considerations involved.

##### 4. Surrender of nationals

EU countries can no longer refuse to surrender their own nationals, unless they take over the execution of the prison sentence against the wanted person.

##### 5. Guarantees

The country that executes the EAW may require guarantees that:

- a. after a certain period the person will have the right to ask for review, if the punishment imposed is a life sentence.
- b. the wanted person can do any resulting prison time in the executing country, if they are a national or habitual resident of that country.

## **EXCERPT 2**

### **Limited grounds for refusal**

A country can refuse to surrender the requested person only if one of the grounds for mandatory or optional refusal applies:

#### *Mandatory grounds*

- the person has already been judged for the same offence (*ne bis in idem*)
- minors (the person has not reached the age of criminal responsibility in the executing country)
- amnesty (the executing country could have prosecuted them, and the offence is covered by an amnesty in that country).

#### *Optional grounds – such as:*

- lack of double criminality for offences other than the 32 listed in Article 2(2) of the Framework Decision on EAW
- territorial jurisdiction
- pending criminal procedure in the executing country
- statute of limitations, etc

**1. The teacher will choose random trainees and ask each of them to explain, in their own words, the following terms/expressions from both excerpts:**

- Extradition
- Execution
- Consent
- Arrest
- Surrender
- Offence
- A national
- Sentence
- Review
- Grounds
- Mandatory
- Minor
- Amnesty

**2. The class will be divided into two groups. Each group will be given one excerpt. One random trainee from each group will have to summarise to the rest the excerpt given to his/her group.**

### 3. The European Investigation Order

[Sources:

[http://www.eurojust.europa.eu/doclibrary/corporate/Infographics/European%20Investigation%20Order/2020-02\\_European-Investigation-Order.pdf](http://www.eurojust.europa.eu/doclibrary/corporate/Infographics/European%20Investigation%20Order/2020-02_European-Investigation-Order.pdf); [https://e-justice.europa.eu/content\\_european\\_investigation\\_order\\_mutual\\_legal\\_assistance\\_and\\_joint\\_investigation\\_team-92-en.do](https://e-justice.europa.eu/content_european_investigation_order_mutual_legal_assistance_and_joint_investigation_team-92-en.do); [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Joint%20note%20of%20Eurojust%20and%20the%20EJN%20on%20the%20practical%20application%20of%20the%20European%20Investigation%20Order%20\(June%202019\)/2019-06-Joint\\_Note\\_EJ-EJN\\_practical\\_application\\_EIO.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Joint%20note%20of%20Eurojust%20and%20the%20EJN%20on%20the%20practical%20application%20of%20the%20European%20Investigation%20Order%20(June%202019)/2019-06-Joint_Note_EJ-EJN_practical_application_EIO.pdf)]

a. Have a look at the following image and then answer the questions on the European Investigation Order. Not all the answers to the questions are in the image, so you may need to search them up:

**EUROJUST** European Investigation Order

**KEY FEATURES**

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

**HOW IT WORKS**

Member State A requests evidence located in Member State B

Member State B collects evidence on behalf of Member State A

**Examples of investigative measures:**

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

**LIFE CYCLE OF AN EIO**

EUROJUST FACILITATES, ADVISES AND COORDINATES

- 1 - DRAFTING of EIO by judicial authority in Member State A
- 2 - TRANSMISSION of EIO to judicial authority in Member State B
- 3 - RECOGNITION of EIO in Member State B
- 4 - EXECUTION of EIO in Member State B

**EIO CASES**

EUROJUST IDENTIFIES CHALLENGES AND BEST PRACTICE IN EIO CASES

**ADVANTAGES OF THE EIO**

- ✔ Creates a single comprehensive instrument with a large scope
- ✔ Sets strict deadlines for gathering the evidence requested
- ✔ Limits the reasons for refusing such requests
- ✔ Reduces paperwork by introducing a single standard form
- ✔ Protects the fundamental rights of the defence

**EU MEMBER STATES TAKING PART IN THE EIO\***

■ EIO implemented ■ MS not taking part

\* For further information on EIO implementation, see [EJN website](#).

- (1) What is the European Investigation Order and what is it used for?
  
- (2) Do you happen to know the year when the Directive regarding the EIO was adopted and which countries are not bound by this instrument?
  
- (3) The EIO is based on the principle of mutual recognition. What does mutual recognition mean and what does it involve in terms of execution?
  
- (4) Can you provide examples of investigative measures that may be requested?
  
- (5) What are the preconditions of investigative measures in order for authorities to use a European Investigation Order?
  
- (6) How is a European Investigation Order issued and what are the language requirements?
  
- (7) Do investigative measures requested under an EIO have a lower priority in the executing country? Are the measures carried out at a slower pace than domestic measures?
  
- (8) Do you happen to know the grounds for refusal?
  
- (9) What are the deadlines applicable to EIOs?

**b. Try to guess the languages accepted for EIOs in the following Member States and then say whether you can find any kind of explanation for the non-national languages accepted.**

- Austria:

- Belgium:

- Croatia:

- Czech Republic:

- Finland:

- France:

- Greece:

- Hungary:

- Luxembourg:

- Portugal:

- Romania:

- Spain:

#### 4. The enforcement of judgments: transfer

[Sources: Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, <https://rm.coe.int/16806f3dfd>; Council Framework Decision 2008/947 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0947>; Council Framework Decision 2008/675 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0947>; Council Framework Decision 2009/829 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, <http://www.euromed-justice-iii.eu/document/eu-2009-council-framework-decision-2009829jha-23-october-2009-application-between-member>]

**The following terms/expressions have been taken from the EU legislation above. Remember that depending on the instrument, sometimes the definitions may vary. Look at the source of each of the following concepts and try to define them in your own words:**

*Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.*

(a) 'Judgment':

(b) 'Sentence':

*Council Framework Decision 2008/947 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.*

(c) 'Suspended sentence':

(d) 'Conditional sentence':

(e) 'Alternative sanction':

(f) 'Probation decision':

(g) 'Conditional release':

(h) 'Probation measures':

(i) 'Issuing State':

(j) 'Executing State':

*Council Framework Decision 2008/675 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.*

(k) 'Conviction':

*Council Framework Decision 2009/829 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.*

(l) 'Supervision measures':

(m) 'Decision on supervision measures':



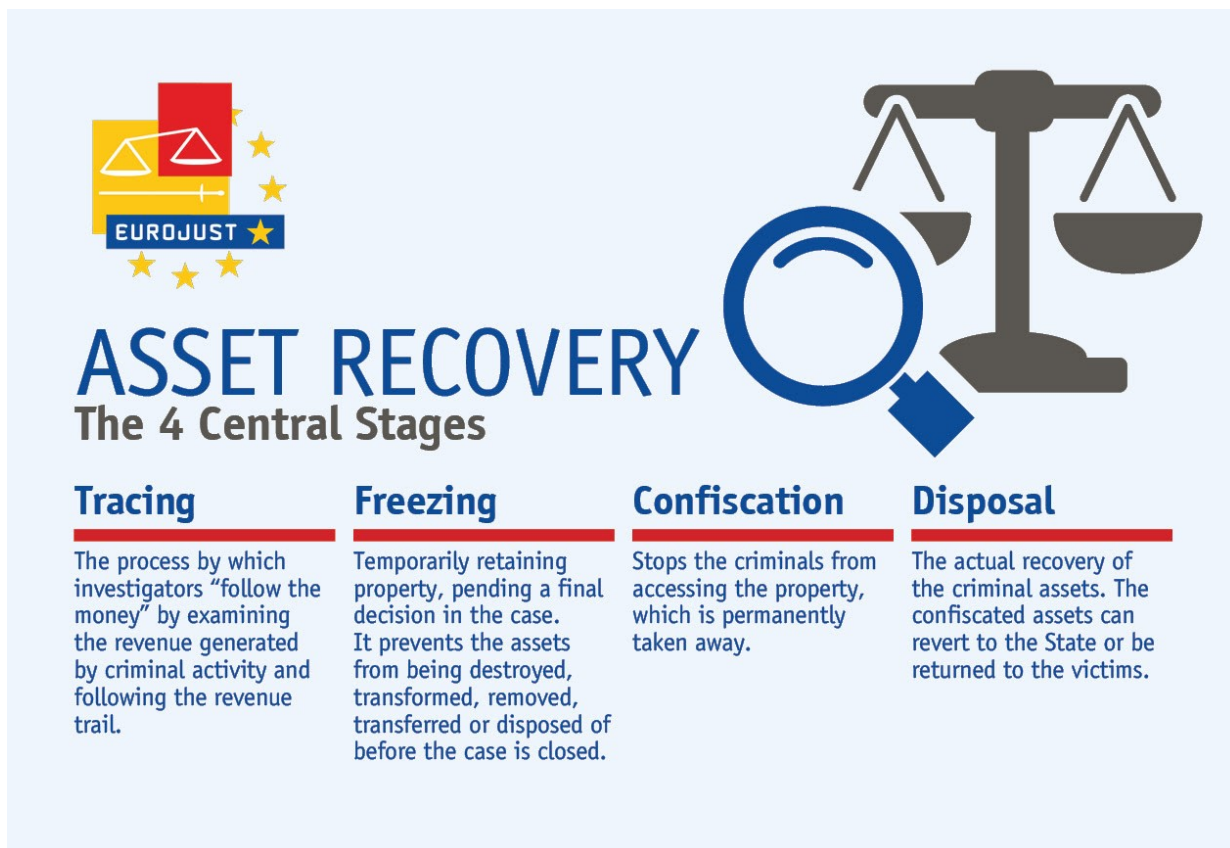
## 6. Freezing and confiscation

[Sources: *Judicial cooperation across borders crucial for successful confiscation of criminal assets*, <http://www.diplomatmagazine.eu/2019/02/14/judicial-cooperation-across-borders-crucial-for-successful-confiscation-of-criminal-assets/>; *Europol, Criminal Asset Recovery in the EU*, <https://www.europol.europa.eu/newsroom/news/does-crime-still-pay>]

### a. Read the following text, which explains the image below.

The **asset recovery process** includes several phases:

- identification and tracing of the illegally acquired assets;
- freezing and seizure of the assets with a view to their possible subsequent confiscation;
- management of frozen and seized assets to preserve their value;
- confiscation of the illegally acquired assets;
- disposal of the confiscated assets, which could include their reuse for public or social purposes.



**Split the class into three groups. Each group will have to choose a speaker who will present one of the following three sections included in Europol's 2016 report: (1) "What works?"; (2) "What does not work?" and (3) "What is promising?". Additionally, each group will have to add a section called "What has been improved since 2016?"**

#### *What works?*

- EU countries are currently aligning their national legislations with the EU Directive on the freezing and confiscation of proceeds of crime. In particular, all the countries that answered the questionnaire confirmed that they have a conviction based confiscation regime in place. The majority of EU Member States also stated that they are implementing an extended confiscation regime or a non-conviction based one.
- Some EU countries have already set up competent authorities to manage seized/frozen/ confiscated assets.
- The response rate and level of awareness around the need to collect statistics on recovered assets are high among EU AROs.
- The value of seized/frozen/confiscated assets is increasing over time.

#### *What does not work?*

- Many EU countries do not have a centralised data collection system or provisions to create one.
- Each EU Member State has its own criteria for the inclusion of data in the dataset.
- In some countries there is more than one ARO that collects different types of data, e.g. referring to different stages of the criminal or civil proceedings.
- Some EU AROs have limited access to other databases or information, such as court decisions and confiscation orders.
- Many EU law enforcement authorities seem to have very limited resources for carrying out effective financial investigations and tracing criminal assets.
- The amount of money recovered is only a small share of the criminal proceeds, thus crime still pays in the European Union, as 98.9% of the estimated criminal profits are not confiscated.

#### *What is promising?*

- The increasing awareness about the importance of collecting asset recovery statistics.
- The steady increase in the number of financial investigations related to recovering assets from criminals with the support of the Europol Criminal Assets Bureau, making full use of the Focal Point on Asset Recovery and the Camden Asset Recovery Inter-Agency Network (CARIN) network.
- The ARO platform meetings co-organised by the European Commission DG Home and Europol are successfully contributing to sharing information and best practices between practitioners and also policy makers.
- Decreasing barriers of communication and increasing exchange of information between institutions within the same countries and with other EU countries.
- The creation of a common and secure platform – Europol's SIENA system - to exchange information about assets to be seized/frozen/confiscated in other EU countries.
- The possibility to monitor the performance of asset recovery regimes and investigation techniques (ARO peer reviews) over time.

**In order for trainees to have some help with their delivery, here are some language clues they may use when giving presentations:**

<p>Overview (outline of presentation)</p>	<p>I'm going to divide my talk into (3, 4, 5...) parts.          I'm going to examine/cover...          Basically / Briefly, I am going to talk about...          I'd like to begin / start by ...          Let's begin / start by ...          First of all, I'll... .. and then I'll go on to ...          Firstly ... secondly ... thirdly...          Then / Next ...          I'd like to give you an overview of / a brief outline of...</p>
<p>Starting a new section</p>	<p>Moving on now to ...          Now let's / we'll move on to...          Now I'd like to move on to...          Next I'd like to look at...          Let's turn now to / look now at...          The next issue I'd like to focus on ...          I'd like now to discuss...</p>
<p>Analysing a point and giving recommendations</p>	<p>Let's consider this in more detail...          What does this mean for...?          Why is this important?          The significance of this is...</p>
<p>Finishing/closing a section</p>	<p>So that concludes...          So that's an overview of...          We've looked at...</p>
<p>Summarising and concluding</p>	<p>And this is the end of my presentation.          That concludes my talk / intervention.          That brings us / me to the end of my presentation.          I'll conclude very briefly by saying that ...          Finally, I'd like to finish by...          To conclude...          In conclusion / to sum up / to summarise ...</p>



# READING SKILLS



# 1. Mutual Legal Assistance

[Source: Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A42000A0712%2801%29>]

## (a) Try to fill in the gaps; in some cases, clues are provided for the missing word:

(a) The *request* \_\_\_\_\_ Member State shall execute the request for *ass* \_\_\_\_\_ *ce* as soon as possible, taking as full account as possible of the procedural *dead* \_\_\_\_\_ *s* indicated by the *request* \_\_\_\_\_ Member State.

(b) Procedural documents may be sent via the competent authorities of the requested Member State only if the relevant procedural law of the requesting Member State requires *pr* \_\_\_\_\_ of service of the document \_\_\_\_\_ [*preposition*] the addressee.

(c) Where there is reason to believe that the addressee does not *u* \_\_\_\_\_ *d* the language in which the document is drawn up, the document, or at least the important passages thereof, must be \_\_\_\_\_ into (one of) the language(s) of the Member State in the territory of which the addressee is staying.

(d) Requests for mutual assistance and spontaneous exchanges of information referred to in Article 7 shall be made in *wr* \_\_\_\_\_ *g*, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish *auth* \_\_\_\_\_ *y*.

(e) The following requests or communications shall be made through the central authorities of the Member States: (a) requests for temporary transfer or transit of *p* \_\_\_\_\_ *s* held in *c* \_\_\_\_\_ *y*.

(f) A Member \_\_\_\_\_ which has requested an investigation for which the presence of the person held in custody on its own territory is required may temporarily transfer that person to the territory of the Member State in which the investigation is to take place.

(g) Where *c* \_\_\_\_\_ *ent* to the transfer is required from the person concerned, a statement or a copy thereof shall be provided promptly to the requested Member State.

(h) If a person is in one Member State's territory and has to be *h* \_\_\_\_\_ as a witness or expert by the judicial authorities of another Member State, the latter may, where it is not desirable or possible for the person to appear in its territory in person, request that the hearing take place by *v* \_\_\_\_\_.

(i) The *c* \_\_\_\_\_ *t* of establishing the video link, the *remu* \_\_\_\_\_ of interpreters provided by it and *all* \_\_\_\_\_ *ances* to witnesses and experts and their travelling expenses in the requested Member State shall be *re* \_\_\_\_\_ *ed* by the requesting Member State.

(j) A hearing may be *cond* \_\_\_\_\_ by telephone conference only if the witness or expert agrees that the hearing take place by that method.

(k) The requesting and the requested Member State may agree to assist one another in the *c* \_\_\_\_\_ *ct* of investigations into crime by officers acting under \_\_\_\_\_ *vert* or false identity.

(l) The Member State whose officials have caused *d* \_\_\_\_\_ *ge* to any person in the territory of another Member State shall *re* \_\_\_\_\_ *rse* the latter in full any sums it has paid to the *vi* \_\_\_\_\_ *s* or persons entitled on their behalf.

(m) When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a *tr* \_\_\_\_\_ *tion* of the recording.

(n) The notified Member State may request a *summary* of the facts of the case and any further information necessary to enable it to decide whether interception would be authorised in a similar national case.

(o) Costs which are *incurred* by telecommunications operators or service providers in executing requests pursuant to Article 18 shall be *borne* by the requesting Member State.

**(b) The following are terms/expressions taken from the model request form for Mutual Legal Assistance. Choose the correct option.**

[Sources: <https://www.coe.int/en/web/transnational-criminal-justice-pcoc/model-request-form-for-mutual-assistance-in-criminal-matters>;  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a3e03>]

**Choose the correct option:**

- (a) Banked transactions / Bank transactions.
- (b) Body examination / Bodily examination.
- (c) Bodily search / Body search.
- (d) Confiscation order / Confiscating order.
- (e) Consent for a transfer / Consent to a transfer.
- (f) Covert surveillance / Covert surveillance.
- (g) Extraditable offences / Extraditing offences.
- (h) Freeze order / Freezing order.
- (i) Collection and transmission of evidence / Gathering and transmission of evidence.
- (j) Harmful body injury / Grievous bodily injury.
- (k) Grounds of refusal / Grounds for refusal.
- (l) Interception of telecommunications / Intercept of telecommunications.
- (m) Investigative measure / Investigating measure.
- (n) Hot pursuit / Hot pursuance.
- (o) Joined Investigation Teams / Joint Investigation Teams.
- (p) Non-compliance with requests / Non-compliance of requests.
- (q) Request for information / Request of information.
- (r) Transmission of requests / Transmitting of requests.
- (s) Travel expenses / Travelling expenses.
- (t) Search and seizing / Search and seizure.
- (u) Temporary transfer / Temporal transfer.
- (v) Invading body search / Invasive body search.
- (w) Summoning witnesses / Summoning witnesses.
- (x) Search at the site of an offence / Search on the site of an offence.
- (y) Temporary transfer of persons / Temporary transfer of people.
- (z) Procedure deadline / Procedural deadline.



## 2. The European Arrest Warrant

Match the name of the EAW offence with the definition.

<i>Arson</i>	<i>Rape</i>	<i>Fraud</i>	<i>Corruption</i>	<i>Kidnapping</i>
<i>Armed robbery</i>	<i>Sabotage</i>	<i>Murder</i>	<i>Swindling</i>	<i>Terrorism</i>
<i>Illegal restraint</i>	<i>Extortion</i>	<i>Hostage-taking</i>	<i>Racketeering</i>	
<i>Trafficking in human beings</i>			<i>Counterfeiting currency</i>	
<i>Grievous bodily harm</i>			<i>Laundering of the proceeds of crime</i>	
<i>Illicit trade in human organs and tissue</i>			<i>Unlawful seizure of aircraft/ships</i>	
<i>Illicit trafficking in narcotic drugs and psychotropic substances</i>				

1. The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
2. Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences.
3. A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed— that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury.
4. A term that includes many offences such as the production, cultivation, import, smuggling, promotion and/or trafficking in -contrary to legal provisions- substances banned.
5. The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
6. Imitation currency produced without the legal sanction of the state or government, usually in a deliberate attempt to imitate that money and so as to deceive its recipient; forging money.
7. The crime of intentionally starting a fire in order to damage or destroy something, especially a building.
8. The crime of obtaining money, property, consent, etc. by using threats of harm against the victim, or against his/her property or family; it might involve threats of damage to the victim's reputation, or to his/her financial well-being.
9. Really serious harm; wounding a person.
10. Obtaining or extorting money illegally or carrying on illegal business activities, usually organized crime.
11. Making financial gains with the human body or its parts.

12. The act of capturing somebody and holding them prisoner, usually threatening to injure or kill them if people do not meet certain demands.
13. Getting money dishonestly from someone by deceiving or cheating them.
14. Aggravated form of theft that involves the use of a lethal weapon to perpetrate violence or the threat of violence (intimidation) against a victim.
15. When someone, without legal authority, detains another; any action that prevents an individual from having freedom of movement.
16. The intentional and deliberate destruction of property or the obstruction of an activity.
17. Turning money obtained from criminal activities into apparently legitimate assets.
18. The crime of intentionally killing a person.
19. The crime of seizing and/or carrying away a person by force or fraud, often with a demand for ransom.
20. Unlawfully (by force or threat thereof, or by any other form of intimidation), seizing or exercising control of aircraft or ships.
21. The use of public office for private gain.

### 3. The European Investigation Order

[Source:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=219454&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4649872>]

Read the following text and choose the correct option (more than one option may be possible, although only one is correct according to the original text):

(1) \_\_\_\_\_ OF THE COURT (First (2) \_\_\_\_\_)

- (1) (a) judgment (b) ruling (c) resolution (d) judgement  
(2) (a) courtroom (b) section (c) division (d) chamber

24 October 2019

(Reference for a preliminary (3) \_\_\_\_\_ — Judicial cooperation in criminal matters — Directive 2014/41/EU — European Investigation Order (EIO) in criminal matters — Article 5(1) — Form set out in Annex A — Section J — Absence of legal remedies in the (4) \_\_\_\_\_ Member State)

- (3) (a) injunction (b) ruling (c) judgment (d) sentence  
(4) (a) referring (b) forwarding (c) issuing (d) requesting

In Case C-324/17,

(5) \_\_\_\_\_ for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 23 May 2017, received at the Court on 31 May 2017, in the criminal (6) \_\_\_\_\_ against

**Ivan Gavanozov,**

- (5) (a) APPEAL (b) REQUEST (c) DEMAND (d) APPLICATION  
(6) (a) proceedings (b) procedure (c) process (d) proceed

THE COURT (First Chamber),

(...)

After (7) \_\_\_\_\_ the Opinion of the (8) \_\_\_\_\_ at the (9) \_\_\_\_\_ on 11 April 2019,

- (7) (a) hearing (b) hearing to (c) listening (d) listening of  
(8) (a) General Attorney (b) Attorney General (c) Advocate General (d) General Advocate  
(9) (a) audience (b) procedure (c) trial (d) sitting

gives the following

#### Judgment

1 This request for a preliminary ruling (10) \_\_\_\_\_ the interpretation of Article 1(4), Article 6(1)(a) and 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 (OJ 2014 L 130, p. 1).

- (10) (a) regards (b) concerns (c) involves (d) relates

2 The request has been made in criminal proceedings (11) \_\_\_\_\_ against Mr Ivan Gavanozov, who is accused of leading a criminal gang and of committing tax offences.

- (11) (a) brought (b) initiated (c) commenced (d) instituted

(...)

### The dispute in the main proceedings and the questions referred for a preliminary ruling

10 Mr Gavanozov is being **(12)** \_\_\_\_\_ in Bulgaria for participating in a criminal organisation formed for the purpose of committing tax offences.

- (12)** (a) persecuted                      (b) charged                      (c) prosecuted                      (d) accused

11 In particular, he is **(13)** \_\_\_\_\_ having imported, via shell companies, sugar **(14)** \_\_\_\_\_ Bulgaria from other Member States, supplied in particular by a company **(15)** \_\_\_\_\_ in the Czech Republic and represented by Mr Y, and of subsequently having sold that sugar **(16)** \_\_\_\_\_ the Bulgarian market without assessing or paying value added tax (VAT), by **(17)** \_\_\_\_\_ incorrect documents according to which that sugar had been exported to Romania.

- (13)** (a) suspect to                      (b) suspected of                      (c) suspicious from                      (d) suspect of  
**(14)** (a) into                      (b) in                      (c) at                      (d) over  
**(15)** (a) addressed                      (b) set up                      (c) established                      (d) resident  
**(16)** (a) into                      (b) in                      (c) at                      (d) on  
**(17)** (a) submitting                      (b) handing in                      (c) surrendering                      (d) delivering

12 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) decided, on 11 May 2017, to issue an EIO requesting the Czech authorities to carry out searches and **(18)** \_\_\_\_\_ **(19)** \_\_\_\_\_ both the office of the company established in the Czech Republic and the home of Mr Y, and to **(20)** \_\_\_\_\_ Mr Y as a witness through video conferencing.

- (18)** (a) confiscations                      (b) appropriations                      (c) grabbing                      (d) seizures  
**(19)** (a) in                      (b) of                      (c) at                      (d) on  
**(20)** (a) interrogate                      (b) examine                      (c) question                      (d) ask

13 That court **(21)** \_\_\_\_\_ that, after that decision had been adopted, it encountered difficulties in completing Section J of the form set out in Annex A to Directive 2014/41, which deals with legal remedies.

- (21)** (a) states                      (b) holds                      (c) indicates                      (d) affirms

14 In that regard, that court points out that Bulgarian law does not **(22)** \_\_\_\_\_ any legal remedy against decisions ordering a search, a seizure or the hearing of witnesses. Nevertheless, the **(23)** \_\_\_\_\_ court considers that Article 14 of Directive 2014/41 requires Member States to provide for such a legal remedy.

- (22)** (a) deal with                      (b) cover for                      (c) provide for                      (d) include for  
**(23)** (a) applying                      (b) issuing                      (c) questioning                      (d) referring

15 The referring court also notes that, under Bulgarian law, judicial decisions ordering such measures are not among those where the State may be held **(24)** \_\_\_\_\_ in the event of **(25)** \_\_\_\_\_ caused, as they are not directed at the accused person.

- (24)** (a) responsible                      (b) liable                      (c) accountable                      (d) answerable  
**(25)** (a) damage                      (b) damages                      (c) harms                      (d) wrongs

16 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court) decided to **(26)** \_\_\_\_\_ the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (26)** (a) pause                      (b) stop                      (c) halt                      (d) stay

'(1) Are national legislation and **(27)** \_\_\_\_\_ consistent with Article 14 of Directive [2014/41] in so far as they preclude a challenge, either directly as an appeal **(28)** \_\_\_\_\_ a court decision or indirectly by means of a separate **(29)** \_\_\_\_\_ for damages, to the substantive **(30)** \_\_\_\_\_ of a court decision issuing a European investigation order for a search **(31)** \_\_\_\_\_ residential and business premises and the seizure of specific **(32)** \_\_\_\_\_, and allowing examination of a witness?

- (27)** (a) case-law                      (b) statutory law                      (c) jurisprudence                      (d) judge-made law

- (28)** (a) ∅                      (b) against                      (c) from                      (d) to

- (29)** (a) demand                      (b) procedure                      (c) claim                      (d) proceedings

- (30)** (a) motivations                      (b) grounds                      (c) arguments                      (d) bases

- (31)** (a) on                      (b) around                      (c) of                      (d) for

- (32)** (a) items                      (b) elements                      (c) things                      (d) bits

(2) Does Article 14(2) of Directive 2014/41 grant, in an immediate and direct manner, to a concerned party the right to **(33)** \_\_\_\_\_ a court decision issuing a European investigation order, even where such a procedural step is not provided for by national law?

- (33)** (a) review                      (b) appeal                      (c) challenge                      (d) oppose

(3) Is the person against whom a criminal charge was brought, in the light of Article 14(2), in conjunction with Article 6(1)(a) and Article 1(4), of Directive 2014/41, a concerned party, within the meaning of Article 14(4), if the measures for **(34)** \_\_\_\_\_ of evidence are directed at a third party?

- (34)** (a) assemble                      (b) gather                      (c) compilation                      (d) collection

(4) Is the person who occupies the property in which the search and seizure was **(35)** \_\_\_\_\_ or the person who is to be examined as a witness a concerned party within the meaning of Article 14(4), in conjunction with Article 14(2), of Directive 2014/41?

- (35)** (a) carried out                      (b) performed                      (c) effected                      (d) completed

## 4. The enforcement of judgments: transfer

[Sources: Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0909>; Council Framework Decision 2008/947 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; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008F0947>]

### Choose the correct preposition in the following excerpts.

(1) Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

#### Article 6

##### *Opinion and notification (1) of/to the sentenced person*

1. Without prejudice (2) **to/of** paragraph 2, a judgment together (3) **to/with** a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement (4) **to/of** the sentence only with the consent (5) **by/of** the sentenced person in accordance (6) **with/to** the law of the issuing State.

2. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:

(a) to the Member State of nationality (7) **at/in** which the sentenced person lives;

(b) to the Member State (8) **to/in** which the sentenced person will be deported once he or she is released (9) **from/of** the enforcement of the sentence (10) **by/on** the basis of an expulsion or deportation order included in the judgment or (11) **in/through** a judicial or administrative decision or any other measure consequential (12) **to/for** the judgment;

(c) to the Member State to which the sentenced person has fled or otherwise returned (13) **in/at** view of the criminal proceedings pending (14) **for/against** him or her in the issuing State or following the conviction in that issuing State.

3. In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to state his or her opinion orally or (15) **in/on** writing. Where the issuing State considers it necessary (16) **in/at** view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative. The opinion of the sentenced person shall be taken (17) **onto/into** account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him or herself (18) **of/from** the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, (19) **in/on** particular with a view to Article 4(4). If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State.

4. The competent authority (20) **from/of** the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate (21) **by/through** using the standard form of the notification set (22) **out/down** in Annex II. When the sentenced person is (23) **at/in** the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.

*(2) Council Framework Decision 2008/947 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.*

#### **Article 4**

##### *Types of probation measures and alternative sanctions*

1. This Framework Decision shall apply **(24) to/on** the following probation measures or alternative sanctions:

- (a) an obligation **(25) for/to** the sentenced person to inform a specific authority **(26) about/of** any change of residence or working place;
- (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- (c) an obligation containing limitations **(27) on/about** leaving the territory of the executing State;
- (d) instructions relating **(28) on/to** behaviour, residence, education and training, leisure activities, or containing limitations on or modalities **(29) of/to** carrying **(30) out/through** a professional activity;
- (e) an obligation to report **(31) at/on** specified times to a specific authority;
- (f) an obligation to avoid contact **(32) towards/with** specific persons;
- (g) an obligation to avoid contact with specific objects, which have been used or are likely to be used **(33) with/by** the sentenced person with a view to committing a criminal offence;
- (h) an obligation to compensate financially **(34) for/on** the prejudice caused by the offence and/or an obligation to provide proof of compliance **(35) to/with** such an obligation;
- (i) an obligation to carry **(36) away/out** community service;
- (j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- (k) an obligation to undergo therapeutic treatment or treatment **(37) for/on** addiction.

#### **Article 16**

##### *Obligations of the authorities involved where the executing State has jurisdiction for subsequent decisions*

1. The competent authority of the executing State shall without delay inform the competent authority of the issuing State, **(38) by/through** any means which leaves a written record, of all decisions on the:

- (a) modification of the probation measure or alternative sanction;
- (b) revocation **(39) to/of** the suspension of the execution of the judgment or revocation of the decision **(40) on/about** conditional release;
- (c) enforcement **(41) of/to** a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;
- (d) lapsing **(42) to/of** the probation measure or alternative sanction.

## 5. Freezing and confiscation

[Sources: Directive 2014/42 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A32014L0042&qid=1541682532524&from=EN>; Directive 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0843&from=EN>]

The following word combinations have been taken from the Directives above. Match Column 1 with the most logical option from Column 2.

Column 1	Column 2
1. To freeze...	a. organised crime
2. To launder...	b. cooperation
3. To fight...	c. money laundering
4. To commit...	d. terrorism
5. To adopt...	e. the proceeds of crime
6. To facilitate...	f. a criminal offence
7. To prevent...	g. an operation
8. To finance...	h. into force
9. To transfer...	i. common rules
10. To execute...	j. national systems
11. To provide...	k. a confiscation order
12. To conduct...	l. money
13. To approximate...	m. for safeguards
14. To waive...	n. the value
15. To collect...	o. of property
16. To participate...	p. a right
17. To deprive...	q. proceedings
18. To initiate...	r. in a criminal organisation
19. To estimate...	s. data
20. To enter...	t. property



# **WRITING SKILLS**



# 1. Mutual Legal Assistance


Provide the correct word form for each of the following:

[Sources: 1959 European Convention on Mutual Assistance in Criminal Matters, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016800656ce>; Council Act establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2000:197:0001:0023:EN:PDF>]

VERB	NOUN	ADJECTIVE
1. to acquit		
2.		administrative
3.	allegation	
4.		appearing
5.	assistance	
6. to authorise		
7.	charge	
8.		certified, certifying, certifiable
9.	conduct	
10.		convicted, convicting
11. to defend		
12.	detention, detainee	
13. to enforce		
14.		executable, executed, executing
15. to hear		
16.	identity, identification	
17.	indictment	
18. to infringe		
19.		issuing, issued
20.		intercepting, intercepted
21. to judge		

22.	notification	
23. to offend		
24.		operating
25. to provide		
26.		ratified, ratifying
27.		reciprocal
28. to refuse		
29.	request	
30. to seize		
31.	sentence	
32. to serve		
33. to summon		
34. to surrender		
35. to suspect		
36. to testify		
37.		transferred, transferring, transferable
38. to transmit		
39.	trial, trier	
40. to urge		
41. to withdraw		

## 2. The European Arrest Warrant

	<p style="text-align: right;">Court of Justice of the European Union  <b>PRESS RELEASE No 68/19</b>          Luxembourg, 27 May 2019</p>
<p>Press and Information</p>	<p>Judgments in Joined Cases C-508/18 OG (Public Prosecutor's office of Lübeck) and C-82/19 PPU PI (Public Prosecutor's office of Zwickau) and in Case C-509/18 PF (Prosecutor General of Lithuania)</p>

**Write the correct word form for each numbered gap.**

[Source: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-05/cp190068en.pdf>; video: <https://audiovisual.ec.europa.eu/en/video/I-173153>]

- 1 German public prosecutor's offices do not (1) \_\_\_\_\_ [provision] a (2)  
 2 \_\_\_\_\_ [suffice] guarantee of independence from the executive for the  
 3 purposes of (3) \_\_\_\_\_ [issue] a European arrest warrant
- 4 *The Prosecutor General of Lithuania does, however, provide such a guarantee of*  
 5 *independence*
- 6 Two Lithuanian nationals and one Romanian national are challenging before the Irish courts  
 7 the (4) \_\_\_\_\_ [execute] of European arrest warrants issued by German public  
 8 prosecutor's offices and the Prosecutor General of Lithuania for the purposes of criminal (5)  
 9 \_\_\_\_\_ [prosecuted]. They are accused of (6) \_\_\_\_\_ [criminal; plural  
 10 form] described as murder and grievous (7) \_\_\_\_\_ [body] injury (OG), armed  
 11 robbery (PF) and organised or armed robbery (PI).
- 12 The three people (8) \_\_\_\_\_ [concern] claim that the German public prosecutor's  
 13 offices and the Prosecutor General of Lithuania are not competent to issue a European arrest  
 14 warrant on the ground that none is a 'judicial (9) \_\_\_\_\_ [authorise]' within the  
 15 meaning of the framework decision on the European arrest warrant. OG and PI claim, *inter*  
 16 *alia*, that the German public prosecutor's offices are not independent of the (10)  
 17 \_\_\_\_\_ [execute] since they are part of an administrative hierarchy headed by the  
 18 Minister for Justice, so that there is a risk of political (11) \_\_\_\_\_ [involve].
- 19 The Supreme Court (Ireland) and the High Court (Ireland) ask, in that context, the Court of  
 20 Justice for an interpretation of that framework decision. In light of the fact that PI is, on the  
 21 basis of the European arrest warrant issued in respect of him, in custody in Ireland, the Court  
 22 of Justice acceded to the High Court's request that the case be dealt with under the (12)  
 23 \_\_\_\_\_ [urgency] preliminary (13) \_\_\_\_\_ [rule] procedure.
- 24 In today's (14) \_\_\_\_\_ [judge; plural form], the Court of Justice holds that the  
 25 concept of an 'issuing judicial authority', within the meaning of the framework decision, does  
 26 not include public prosecutor's offices of a Member State, such as those of Germany, which  
 27 are exposed to the risk of being subject, directly or indirectly, to (15) \_\_\_\_\_ [direct;  
 28 plural form] or instructions in a specific case from the executive, such as a Minister for  
 29 Justice, in (16) \_\_\_\_\_ [connect] with the adoption of a decision to issue a  
 30 European arrest warrant.
- 31 However, that concept includes the Prosecutor General of a Member State, such as that of  
 32 Lithuania, who, whilst (17) \_\_\_\_\_ [institution] independent of the (18)  
 33 \_\_\_\_\_ [judge], is responsible for the conduct of criminal prosecutions and whose  
 34 legal position affords him a guarantee of independence from the executive in connection with  
 35 the issuing of a European arrest warrant.

36 The Court notes, first of all, that the European arrest warrant is the first concrete measure in  
37 the field of criminal law implementing the principle of mutual (19) \_\_\_\_\_  
38 [*recognise*], which is itself based on the principle of mutual trust between the Member States.  
39 Both principles are of (20) \_\_\_\_\_ [*fundament*] importance given that they allow  
40 an area without internal borders to be created and maintained.

41 The principle of mutual recognition proceeds from the (21) \_\_\_\_\_ [*assume*] that  
42 only European arrest warrants which meet the requirements of the framework decision must  
43 be executed. Thus, since a European arrest warrant is a 'judicial decision', it must, in  
44 particular, be issued by a 'judicial authority'.

45 Although, in accordance with the principle of (22) \_\_\_\_\_ [*procedure*] autonomy,  
46 the Member States may designate, in their national law, the 'judicial authority' with the  
47 competence to issue a European arrest warrant, the meaning and scope of that term cannot  
48 be left to the (23) \_\_\_\_\_ [*assess*] of each Member State, but must be the same  
49 throughout the EU.

50 It is true that the concept of a 'judicial authority' is not limited to designating only the judges  
51 or courts of a Member State, but must be (24) \_\_\_\_\_ [*construction*] as  
52 designating, more broadly, the authorities participating in the administration of criminal  
53 justice in that Member State, as distinct from, *inter alia*, ministries or police services which  
54 are part of the executive.

55 According to the Court, both the German public prosecutor's offices and the Prosecutor  
56 General of Lithuania, which have an essential role in the conduct of criminal proceedings,  
57 are (25) \_\_\_\_\_ [*capability*] of being regarded as participating in the administration  
58 of criminal justice.

59 However, the authority responsible for issuing a European arrest warrant must act (26)  
60 \_\_\_\_\_ [*independence*] in the execution of its functions, even where that arrest  
61 warrant is based on a national arrest warrant issued by a judge or a court. It must, in that  
62 capacity, be capable of exercising its functions objectively, taking into account all (27)  
63 \_\_\_\_\_ [*incriminate*] and exculpatory evidence, without being exposed to the risk  
64 that its decision-making power be subject to external directions or instructions, in particular  
65 from the executive, so that it is beyond doubt that the decision to issue a European arrest  
66 warrant lies with that authority and not, (28) \_\_\_\_\_ [*ultimate*], with the executive.

67 As regards the public prosecutor's offices in Germany, the Court finds that legislation does  
68 not preclude their decisions to issue a European arrest warrant from being subject, in a given  
69 case, to an instruction from the Minister for Justice of the relevant *Land*. Accordingly, those  
70 public prosecutor's offices do not appear to meet one of the (29) \_\_\_\_\_ [*require;*  
71 *plural form*] of being regarded as an 'issuing judicial authority', within the meaning of the  
72 framework decision, (30) \_\_\_\_\_ [*name*] the requirement of providing the judicial  
73 authority responsible for execution of a European arrest warrant with the guarantee that they  
74 act independently in issuing it.

75 Nevertheless, it appears that the Prosecutor General of Lithuania may be considered to be  
76 an 'issuing judicial authority', within the meaning of the framework decision, in so far as his  
77 legal position in that Member State safeguards not only the (31) \_\_\_\_\_ [*objective*]  
78 of his role, but also affords him a guarantee of independence from the executive in  
79 connection with the issuing of a European arrest warrant. However, it cannot be ascertained  
80 from the information in the case file before the Court whether a decision of the Prosecutor  
81 General of Lithuania to issue a European arrest warrant may be the subject of court (32)  
82 \_\_\_\_\_ [*proceed; plural form*] which meet in full the requirements inherent in (33)  
83 \_\_\_\_\_ [*effect*] judicial protection, which it is for the Supreme Court to determine.

### 3. The European Investigation Order

[Source: adapted from <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3155>]

**(a) Please have the EIO form in front of you (Annex A, Directive 2014/41). Now read the following text and then answer in writing the questions after it using your own words:**

1 ***Guidelines on how to fill in the European Investigation Order form.***

2 The EIO should be chosen where the execution of an investigative measure seems  
3 proportionate, adequate and applicable to the case in hand. The issuing authority should  
4 therefore ascertain whether the investigative measure chosen is necessary and proportionate  
5 for the gathering of the evidence concerned.

6 Sometimes it may be more effective to go through police to police cooperation before the EIO is  
7 issued, for example, creating an alert in SIS to find or locate the objects sought as evidence in  
8 criminal proceedings (such as vehicles, identity papers, credit cards, or number plates, etc.) or  
9 to find out the place of residence or domicile of persons sought to assist with criminal judicial  
10 procedures (such as witnesses).

11 When drafting an EIO, it is recommended to use the editable PDF version of the EIO form  
12 available on the European Judicial Network (EJN) website or the Compendium tool of the EJN.  
13 Using these e-tools presents the advantage of filling in the form as easy as filling in a word  
14 format, but with several modern and user-friendly features, such as obtaining immediately the  
15 static text of the form in the language(s) accepted by the executing State, or choosing from a  
16 predefined list of 'traditional' investigative measures.

17 It is advisable to download the editable PDF version of the EIO form in the issuing authority's  
18 (your own) language, as well as in other languages, and keep it on your own computer, in case  
19 there is no access to the EJN website when needed in urgent cases.

20 Some of the main recommendations are:

- 21 - Fill in the form in your own language using a computer (not in handwriting).
- 22 - Use short and simple sentences, which are easy to translate.
- 23 - To enhance the readability of the form, make the filled in text and ticked boxes 'bold'.
- 24 - If a box is not relevant, leave it empty or write 'not applicable' ('N/A') or indicate clearly, for  
25 instance by a specific mark (e. g.: — ) that it is not applicable. You may never delete a box,  
26 add a box or somehow change the EIO form.

27 ***Investigative measures to be carried out.***

28 Always obligatory to fill in.

29 Always describe the assistance/investigative measure required in the free text field and, if  
30 applicable, tick the relevant box/boxes from the list of investigative measures.

31 A(n) (single) EIO may be issued for carrying out several investigative measures. Number  
32 separate measures in all relevant sections of the form. If execution of more than one  
33 investigative measure is sought and more than one executing authority is responsible for the  
34 execution thereof, issue either separate EIOs for each executing authority or a single EIO. If a  
35 single EIO is issued, differentiate the competences in the EIO and send a copy of the EIO to  
36 each executing authority concerned.

37 An EIO should cover any investigative measure to obtain evidence that could have been ordered  
38 under the same conditions in a similar domestic case.

39 However, an EIO does not apply to:

- 40 - Setting up of a joint investigation team and the gathering of evidence within such a team  
41 (Art. 3, recital 8);
- 42 - Cross-border surveillance as referred to in the Convention implementing the Schengen  
43 Agreement (recital 9);
- 44 - Provisional measures with a view to confiscation (Art. 32, recital 34);
- 45 - Transfer of a person to another Member State for the purposes of prosecution, including  
46 bringing that person before a court for standing trial for which a European Arrest Warrant  
47 (EAW) should be issued (recital 25).

48 Requests for information on previous convictions should be made through ECRIS (European  
49 Criminal Record Information System).

50 For certain types of investigative measures, section (H)(1-7) should also be completed to provide  
51 additional information required under this section.

52 As far as possible, information that will be provided under sections (E), (H) and (I) should not be  
53 included under section (C), in particular, details of any special procedure / formalities to be  
54 followed should be indicated in section (I), and full address or a precise description of any place  
55 or person to be searched should be specified under section (E).

56 Provide sufficient information to identify the evidence sought, for instance when requesting for  
57 an identification of person holding an IP address, give details on the type of data required,  
58 indicate IP address, date and time of the use, name and address of the service provider, name  
59 of the service; or when requesting a house search or search of premises, provide a description  
60 of the premises, indicate the owner of the premises, and the resident, if different from the owner,  
61 items to be looked for.

62 Where a temporary transfer of a person is requested, supplementary to section (H)(1), indicate:

- 63 - the purpose for the transfer (for instance, witness, confrontation);
- 64 - the dates by which that person must be transferred and returned;
- 65 - information on custody conditions;
- 66 - under section (K): contact details of the authority responsible for making practical  
67 arrangements for the transfer.

68 Where a hearing of a person is requested, provide:

- 69 - sufficient information on the purpose of the hearing, for example by providing a list of  
70 questions to be asked in a document in attachment (in particular where the list is extensive)  
71 or under this section;
- 72 - an explanation that other questions arising during the hearing should also be asked;
- 73 - under section (I)(1): where applicable, details of any special procedure/formalities to be  
74 followed, for example, (1) hearing under oath; (2) participation of other concerned persons,  
75 such as a holder of parental responsibility; (3) hearing to be conducted by a particular  
76 authority of the executing State; (4) information on the rights and obligations to be notified to  
77 the person to be heard such as a right to be assisted by a lawyer/interpreter (if such  
78 information needs to be handed over to a person, such as in case when a signature of a  
79 person on the list of rights is necessary to prove in the issuing State that he or she was  
80 properly notified, it is advisable to attach it to the EIO); (5) information whether the person to  
81 be heard requires protection;
- 82 - under section (I)(2): where applicable, whether the issuing authority requests for one of  
83 more officials of the issuing State to be present at the hearing.



- 84 Where a hearing by video conference is requested, supplementary to this section, provide:
- 85 - under section (H)(2): name of the authority that will conduct the hearing, including contact  
86 details and language, reasons for requesting this measure, and information whether consent  
87 of the suspected or accused person was obtained for carrying out this measure;
- 88 - under section (I)(1): where applicable, details of any special procedure/formalities to be  
89 followed, for example, (1) information on the rights and obligations to be notified to the person  
90 to be heard, such as a right to be assisted by a lawyer/interpreter; (2) information whether the  
91 person to be heard requires protection; (3) hearing under oath; (4) participation of other  
92 concerned parties, such as a holder of parental responsibility; (4) hearing to be conducted by  
93 a particular authority of the executing State.
- 94 If the interception of telecommunications is requested:
- 95 - indicate the status of the person whose communications should be intercepted, for  
96 example a suspect, witness, victim or a person likely in contact with the suspect, in case such  
97 information is not included under section (E). This information might be essential to determine  
98 if the investigative measure could be authorised in a similar domestic case;
- 99 - under section (H)(7): provide reasons, why the measure is relevant for the criminal  
100 proceedings; information for the purpose of identifying the subject of interception; the desired  
101 duration; technical data and preference regarding the method of execution.

## QUESTIONS:

1. When should an EIO be chosen?
2. In what cases could it be more practicable to resort to police cooperation?
3. Why is it recommendable to use e-tools when drafting an EIO and what are their advantages?
4. Why should you download an editable pdf version of the EIO in your language as well as in other languages?
5. What are the main general recommendations when filling in the form as regards handwriting, not relevant boxes and alteration of the form?
6. What do you have to do with the free text field for assistance/investigative measure required and with the relevant box/boxes?
7. Should separate EIOs be issued for each investigative measure? If the answer is 'no', explain what you have to do; if the answer is 'yes', explain as well.
8. What do EIOs cover?

9. In what cases does an EIO NOT apply?

10. What should you use to request information on previous convictions?

11. What is the purpose of filling in section H (1-7)?

12. Why is it that precise information should be included under sections (E), (H) and (I) rather than (C), and what type of information should be provided therein? Provide an example of information necessary to identify a person holding an IP address.

13. If a temporary transfer of a person is requested, what information should you include on top of that given under (H) (1)?

14. Indicate at least four basic items of information that should be provided if the hearing of a person is requested.

15. If a hearing by videoconference is requested, what additional information do you need to provide?

16. What should be specified if the order is issued for the interception of communications?

**(b) Writing emails. Go to Annex 2 and read the information on how to write an email in English. Once you have read it, draft the following emails.**

**Practice 1:** You are Mr. (Aleksis) Ozola, a court officer in Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale District), Latvia, and on 19 March you have received an email from the *Helsingin Käräjäoikeus*, Finland, informing you that an EIO form for the hearing of a witness by videoconference (pre-trial) has been sent. You would like to answer just to confirm acknowledgement of receipt of the email and informing Ms. Virtanen (your contact person) that you will send a further email once you have received the document itself. Draft an email.

**Practice 2:** You are Ms. (Hanna) Kowalski, a court officer at Sąd Okręgowy w Poznaniu (Regional Court, Poznań), Poland, and you have received from the Špecializovaný trestný súd (Special Criminal Court), Slovakia on 4 April an EIO (dated 27 March) for the hearing by telephone conference of what, reading the description on Section C of the Form, seems to be a witness. However, the box that has been ticked is “expert” and you would like them to clarify this point before proceeding any further. Draft an email. The contact person is Mr. (Jakub) Nagy.

**Practice 3:**

(a) You are Ms. (Daniela) Georgieva, a court officer at the Spetsializiran nakazatelen sad (Specialised Criminal Court), Bulgaria. Draft an email addressed to Mr. (Pedro) Fernández, who is a court officer at the *Audiencia Nacional*, Spain, letting him know that your court has sent an EIO for the interception of telecommunications. In your mail you also ask him to please confirm by email that the original form has been received.

(b) You are Mr. Fernández: confirm to Ms. Georgieva that you have received her email and that you need to have permission to send an informal (unofficial) acknowledgement of receipt by email once you get the EIO, so you need to consult with your supervisor first.

## 4. The enforcement of judgments: transfer

### Case C-2/19. Mutual recognition of judgments and probation decisions.

[Source:  
<http://curia.europa.eu/juris/document/document.jsf?jsessionid=C9BE2F16680A809E253C4384D6843F19?text=&docid=224731&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7576442>]

In the text below you are provided with near-synonyms in square brackets for the missing words. Please provide the missing words in the gaps.

- 1 (1) \_\_\_\_\_ [final decision] OF THE COURT (First Chamber)
- 2 26 March 2020 (\*)
- 3 (Reference for a (2) \_\_\_\_\_ [prior] ruling — Framework Decision  
4 2008/947/JHA — (3) \_\_\_\_\_ [reciprocal] recognition of judgments and  
5 probation decisions — (4) \_\_\_\_\_ [sphere, ambit] — Judgment imposing a  
6 suspended custodial (5) \_\_\_\_\_ [punishment, penalty]— Probation  
7 measure — Obligation not to commit a new (6) \_\_\_\_\_ [crime] offence —  
8 Obligation prescribed by (7) \_\_\_\_\_ [legislation])
- 9 In (8) \_\_\_\_\_ [proceedings, action] C-2/19,  
10 (9) \_\_\_\_\_ [application, petition] for a preliminary ruling under Article 267  
11 TFEU from the Riigikohus (Supreme Court, Estonia), made by decision of 11  
12 December 2018, received at the Court on 4 January 2019, in the criminal procedure  
13 against
- 14 **A.P.**
- 15 (...)
- 16 1 This request for a preliminary ruling (10) \_\_\_\_\_ [involves] the interpretation of  
17 Council Framework Decision 2008/947/JHA of 27 November 2008 on the application  
18 of the principle of mutual (11) \_\_\_\_\_ [assimilation, acceptance, admission]  
19 to judgments and probation decisions with a view to the (12) \_\_\_\_\_  
20 [overseeing] of probation measures and alternative sanctions (OJ 2008 L 337, p. 102).
- 21 2 The request has been made in proceedings relating to the recognition in Estonia of a  
22 judgment of the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale  
23 District, Latvia) by which A. P. was sentenced to a suspended term of three years' (13)  
24 \_\_\_\_\_ [incarceration, jailing].
- 25 (...)
- 26 **The (14) \_\_\_\_\_ [disagreement, issue] in the main proceedings and the  
27 question (15) \_\_\_\_\_ [directed, sent] for a preliminary ruling**
- 28 13 By judgment of 24 January 2017, the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga  
29 City Court, Latgale District) sentenced A. P. to a suspended term of three years'  
30 imprisonment.
- 31 14 On 22 May 2017, the Justiitsministeerium (Ministry of Justice, Estonia) (16)  
32 \_\_\_\_\_ [dispatched] to the Harju Maakohus (Court of First Instance, Harju,  
33 Estonia) a request from the (17) \_\_\_\_\_ [with jurisdiction] Latvian authorities  
34 for recognition and (18) \_\_\_\_\_ [execution] of that judgment in Estonia.

- 35 15 By order of 16 February 2018, the Harju Maakohus (Court of First Instance, Harju) (19)  
 36 \_\_\_\_\_ [accepted, said 'yes' to] that request.
- 37 16 Following an appeal (20) \_\_\_\_\_ [submitted] by A. P., the Tallinna  
 38 Ringkonnakohus (Court of Appeal, Tallinn, Estonia) (21) \_\_\_\_\_ [supported,  
 39 confirmed] that order, by order of 21 March 2018.
- 40 17 A. P. brought an appeal against the order of 21 March 2018 before the (22)  
 41 \_\_\_\_\_ [sending, dispatching] court.
- 42 18 The referring court finds, in the light of the judgment of 24 January 2017 of the Rīgas  
 43 pilsētas Latgales priekšpilsētas tiesa (Riga City Court, Latgale District), that (23)  
 44 \_\_\_\_\_ [annulment, postponement] of the execution of the sentence  
 45 imposed on A. P. is contingent only upon the obligation, resulting from Paragraph 73(1)  
 46 of the Estonian Criminal Code, not to commit a new (24) \_\_\_\_\_ [wilful,  
 47 calculated] offence.
- 48 19 The referring court considers, furthermore, that such an obligation does not correspond  
 49 to any of the probation measures or (25) \_\_\_\_\_ [optional; different within a  
 50 number of choices] sanctions referred to in Article 4(1) of Framework Decision  
 51 2008/947.
- 52 20 Since Estonian law authorises recognition of a judgment pursuant to Framework  
 53 Decision 2008/947 only in so far as it imposes at least one of those probation measures  
 54 or one of those alternative sanctions, the referring court is (26) \_\_\_\_\_  
 55 [unsure] whether the framework decision must be interpreted as providing for  
 56 recognition of a judgment such as that (27) \_\_\_\_\_ [rendered, pronounced,  
 57 issued] on 24 January 2017 by the Rīgas pilsētas Latgales priekšpilsētas tiesa (Riga  
 58 City Court, Latgale District).
- 59 21 In those circumstances, the Riigikohus (Supreme Court, Estonia) decided to (28)  
 60 \_\_\_\_\_ [half] the proceedings and to refer the following question to the Court  
 61 of Justice for a preliminary ruling:
- 62 'Is the recognition and supervision of execution of a judgment of a Member State (29)  
 63 \_\_\_\_\_ [consistent, in accordance with] with Framework Decision  
 64 [2008/947] even where the sentenced person has by that judgment been conditionally  
 65 (30) \_\_\_\_\_ [discharged, exempted] from the obligation to (31)  
 66 \_\_\_\_\_ [complete, carry out] a custodial sentence, without any additional  
 67 obligations being imposed, so that the person's only obligation is to (32)  
 68 \_\_\_\_\_ [abstain from, refrain from] committing a new intentional offence  
 69 during the probation period (this being a suspended sentence [within the meaning of  
 70 Paragraph 73 of the Estonian Criminal Code])?'  
 71 (...)
- 72 **Substance**
- 73 30 By its question, the referring court asks, in essence, whether Article 1(2) of Framework  
 74 Decision 2008/947 must be interpreted as meaning that recognition of a judgment that  
 75 has imposed a custodial sentence whose execution is suspended subject to the (33)  
 76 \_\_\_\_\_ [only, exclusive] condition that a legal obligation not to commit a new  
 77 criminal offence during a probation period be (34) \_\_\_\_\_ [satisfied,  
 78 observed, fulfilled] with falls within the scope of that framework decision.
- 79 31 Article 1(2) of Framework Decision 2008/947 provides that the framework decision is to  
 80 apply only to the recognition of judgments and, where applicable, probation decisions,  
 81 to the (35) \_\_\_\_\_ [assignment, change, passing on] of responsibility for the

82 supervision of probation measures and alternative sanctions and to all other decisions  
83 related to such recognition or supervision.

84 32 It follows from Article 2(1) of Framework Decision 2008/947 that, for the purposes of the  
85 framework decision, the term 'judgment' refers to a final decision or order of a (36)  
86 \_\_\_\_\_ [tribunal] of the issuing Member State, (37) \_\_\_\_\_  
87 [determining, confirming] that a natural person has committed a criminal offence and  
88 imposing one of the measures listed in Article 2(1)(a) to (d).

89 33 Since the question referred relates to recognition of a (38) \_\_\_\_\_ [coming  
90 from a judge or a court] decision that has imposed a custodial sentence whose  
91 execution is suspended, it must be determined whether such a judicial decision is to  
92 be (39) \_\_\_\_\_ [considered] as a judgment, within the meaning of Article  
93 2(1) of Framework Decision 2008/947, on the basis of Article 2(1)(b) thereof, which  
94 refers to judicial decisions imposing a suspended sentence.

95 34 The term 'suspended sentence' is defined in Article 2(2) of Framework Decision  
96 2008/947 as being a custodial sentence or measure involving (40) \_\_\_\_\_  
97 [removal, privation] of liberty, the execution of which is conditionally suspended, wholly  
98 or in part, when the sentence is (41) \_\_\_\_\_ [given] by imposing one or more  
99 probation measures.

100 35 (42) \_\_\_\_\_ [therefore], it must be determined whether the obligation not to  
101 commit a new criminal offence during a probation period is a probation measure within  
102 the meaning of Framework Decision 2008/947.

103 (...)

104 58 It follows that it is incumbent upon the competent authority of the issuing Member State  
105 to determine the conditions upon which suspension of the execution of the custodial  
106 sentence or measure involving deprivation of (43) \_\_\_\_\_ [freedom] that is  
107 imposed is contingent, in such a way as to (44) \_\_\_\_\_ [allow, permit] the  
108 authorities of the executing Member State to identify, on the basis of the judgment or  
109 probation decision, the probation measures imposed on the sentenced person. It is for  
110 the referring court to establish whether, in the light of the matters set out in the  
111 judgment forwarded, that is so in the (45) \_\_\_\_\_ [principal] proceedings.

112 59 In the light of all the foregoing considerations, the answer to the question referred is that  
113 Article 1(2) of Framework Decision 2008/947, read (46) \_\_\_\_\_ [together  
114 with] Article 4(1)(d) thereof, must be interpreted as meaning that recognition of a  
115 judgment that has imposed a custodial sentence whose execution is suspended  
116 subject to the sole condition that a (47) \_\_\_\_\_ [statutory, legitimate, lawful]  
117 obligation not to commit a new criminal offence during a probation period be complied  
118 with (48) \_\_\_\_\_ [is, is included] within the scope of that framework decision,  
119 provided that that legal obligation results from that judgment or from a probation  
120 decision taken on the basis of that judgment, a (49) \_\_\_\_\_ [issue, question]  
121 which is for the referring court to establish.

## 5. Freezing and confiscation

### Read the following information about premodification in English:

A premodifier is a word that precedes the head of a noun phrase. They are either adjectives (“a cloudy day”), *-ed* or *-ing* participles (“a broken toy”, “a growing problem”), adverbs (“extremely brilliant performance”) or other nouns (“road accident”). The head is always the last noun in the string.

There are three main types of premodification: noun compounds (or compound nouns), adjectival premodification (either adjectives or participles) and mixed (which combine many possibilities (nouns, adjectives, adverbs, etc.).

#### (a) Noun compounds (or compound nouns)

They are strings of nouns of the type “noun as adjective”, where the noun or nouns before the head behave grammatically as adjectives, so they do not have a plural form (with a few exceptions): *a sheep dog, a race horse, a flower garden, a chess board, a shoe shop, a war story, a mountain plant*. It is important to make a difference between “category” and “function”: all nouns coming before the head are nouns as category, but they function as adjectives and therefore take on the grammatical behaviour of adjectives (no plural form).

Some compounds are hyphenated (“water-bottle”), some are written separately (“meat pie”), some have lexicalised as a single unit (“headmaster”) and some can be written in these three ways (“paper-clip”, “paper clip”, “paperclip”).

#### (b) Adjectival premodification

There are only adjectives before the noun head: “a beautiful day”, “a tall young man”.

#### (c) Mixed premodification

Here we may find not only a mixture of nouns and adjectives, but also other elements such as adverbs, prepositions, etc.: “a truly intelligent man”, “extremely varied family topics”, “up-to-the-minute fancy place”, “compressed air blasting machine”, etc.

### Now put in the correct form of the following premodifiers:

[Sources: Council Framework Decision 2006/783 on the application of the principle of mutual recognition to confiscation orders, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006F0783&from=EN>; Council Framework Decision 2003/577 on the execution in the European Union of orders freezing property or evidence, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003F0577&from=EN>]

1. \_\_\_\_\_ (*freeze*) order.
2. \_\_\_\_\_ (*confiscate*) order.
3. \_\_\_\_\_ (*judge*) cooperation.
4. \_\_\_\_\_ (*pre-try*) orders.
5. \_\_\_\_\_ (*bona fide, interest, three*) parties.



6. \_\_\_\_\_ (*organisation*) crime.
7. \_\_\_\_\_ (*monetary*) laundering.
8. \_\_\_\_\_ (*detain*) order.
9. \_\_\_\_\_ (*finance*) gain.
10. \_\_\_\_\_ (*law*) measures.
11. \_\_\_\_\_ (*law*) person.
12. \_\_\_\_\_ (*nature*) person.
13. \_\_\_\_\_ (*availability, informed*) system.
14. \_\_\_\_\_ (*right*) owner.
15. \_\_\_\_\_ (*constitution*) rules.
16. \_\_\_\_\_ (*competence*) authority.
17. \_\_\_\_\_ (*issue*) state.
18. \_\_\_\_\_ (*execution*) state.
19. \_\_\_\_\_ (*move*) property.
20. \_\_\_\_\_ (*reason*) grounds.
21. \_\_\_\_\_ (*register*) seat.
22. \_\_\_\_\_ (*write*) record.
23. \_\_\_\_\_ (*fill*) amount.
24. \_\_\_\_\_ (*contacted*) points.
25. \_\_\_\_\_ (*children*) pornography.
26. \_\_\_\_\_ (*environment*) crime.
27. \_\_\_\_\_ (*authority, negative form*) entry.
28. \_\_\_\_\_ (*grieve, body*) injury.
29. \_\_\_\_\_ (*hostage*) taking.
30. \_\_\_\_\_ (*steal*) vehicles.
31. \_\_\_\_\_ (*law, negative form*) seizure of aircraft.

32. \_\_\_\_\_ (*nation*) law.
33. \_\_\_\_\_ (*coerce*) measures.
34. \_\_\_\_\_ (*procedure*) rules.
35. \_\_\_\_\_ (*effect, law*) remedy.
36. \_\_\_\_\_ (*crime*) liability.

# **ANNEXES**



# ANNEX 1: TELEPHONE CALLS IN ENGLISH

## SAMPLE CONVERSATION

Criminal Court no. 2 of Seville, good morning. How can I help you / be of help?
Good morning, this is Mr. Kowalski calling. I am a court officer in the Krakow circuit court. May I speak to Ms. Lopez, please?
I'm afraid she is out of the premises at the moment / at a meeting right now. Would you like to leave a message for her / would you like me to take a message?
As a matter of fact I would / Yes, please / That would be lovely / Indeed. Could you please ask her to call me back as soon as possible? It's on a rather / very urgent matter / issue. My number is 00 48 289864210, that's a direct number.
Let me check if I got that number right. Is it 0-0-4-8-2-8-9-8-6-4-2-1-0?
That's right.
Ok / alright, Mr. Kowalski, I will give her the message as soon as she returns / is back. Is there anything else I can do for you? Can I help you in any other way?
No, thank you very much / that will be all. Bye-bye.

## LANGUAGE

[Key: 'AmE' stands for "US English"; 'BrE' stands for "British English"]

WHAT YOU MIGHT SAY	WHAT YOU MIGHT HEAR
<p><b>Identifying yourself or your institution</b></p> <p>This is Stephanie Schmidt / Ms. Schmidt here (<i>AmE</i>)</p> <p>Rosa Fernandez speaking</p> <p>It's Mr. Headford of CPS here</p> <p>This is Mr. Marino, of / from Palermo's First Instance Court</p>	<p><b>Taking the call/asking your identity</b></p> <p>Good morning / good afternoon / good evening / hello</p> <p>Hello, this is Cluj criminal court</p> <p>How may I help you?</p> <p>May / can I help you?</p> <p>May I ask who's calling?</p> <p>Who is calling him/her?</p> <p>Who's calling please? / Who's speaking please?</p> <p>Can / could I have your name please?</p> <p>Can / could you give me your name and institution?</p>

WHAT YOU MIGHT SAY	WHAT YOU MIGHT HEAR
<p><b>Trying to get through</b></p> <p>Hello / Good morning, can / may / could I speak to (<i>BrE</i>)/with (<i>AmE</i>) Mr. Brown, please?</p> <p>I'd like to / could I / may I speak to (<i>BrE</i>) / with (<i>AmE</i>) Mr. Brown?</p> <p>Is Mr. Brown in (the court building / the office / the premises)? / Is Mr. Brown there, please?</p> <p>Would it be possible to speak to Mr. Brown?</p> <p>Is Mr. Brown available / at the premises?</p> <p>Could I have Mr. Brown, from the finance department?</p> <p>Could you give me Mr. Brown, please? (<i>colloquial</i>)</p> <p>Could you connect me with the Staff Department, please?</p> <p>Could you please put me through to Mr. Brown from the International Section?</p>	<p><b>Being put through/ not being put through</b></p> <p>One moment please</p> <p>Hold on, I'll connect you</p> <p>Just a moment</p> <p>Hold the line, please</p> <p>Hold on (a moment) please</p> <p>I'll put you through / Putting you through (<i>colloquial</i>)</p> <p>Sorry, the line is engaged, would you like to wait or would you rather try again later on?</p> <p>Please don't hang up</p>

WHAT YOU SAY	WHAT YOU HEAR
<p><b>Giving information about the purpose of your call</b></p> <p>I have a pressing / an important / urgent matter on cross-border cooperation in criminal matters to discuss with him, more specifically on a European Arrest Warrant</p> <p>I have something important / urgent to discuss with him</p>	<p><b>Giving information about the purpose of your call</b></p> <p>May I ask what you are calling him for?</p> <p>May I ask who's calling?</p> <p>What is this in connection with? (<i>colloquial</i>)</p> <p>Could you please tell me what the call is about?</p>

WHAT YOU SAY	WHAT YOU HEAR
<p><b>Leaving/Not leaving a message</b></p> <p>Could you tell him /say that I called?            Could you ask her to call me back?            Could you tell her that I'll call back / later?            Could you tell him that Mr. Smith called?            I'll call back later            I'll call him on his mobile (phone)            I'll be in my office all afternoon            Could you ask him to call me as soon as possible?            He can reach me on 0034619554378</p>	<p><b>Problems to get through / Being asked to leave a message</b></p> <p>I'm afraid the line's busy / engaged            I'm sorry, he's not in at the moment            I'm afraid she's out of the court building            I'm afraid Mr. Brown is not available (until...)            I'm afraid there is no reply from that extension            Would you like to / Do you want to leave a message?            Can I take a message?            Does Mr. Brown have your number?            Could you spell your name, please?            I'll get back to you on this (<i>colloquial</i>)</p>

WHAT YOU SAY	WHAT YOU HEAR
<p><b>Apologising</b></p> <p>I'm sorry, I think I've / I must have called the wrong number            I'm sorry, I wanted / I was calling 0034619554378            Oh, I apologise, I must have the wrong number</p>	<p><b>Asking what number the caller wanted</b></p> <p>What number were you calling?            What number did you want?            What number did you call?            I'm afraid you have the wrong number / extension</p>

<p><b>Checking on something</b></p> <p>Let me check (on) that for you            I'll see what I can find out            I'll look into that for you            If I can call you back at some point during the morning / tomorrow, I'll look into this</p>
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### **Agreeing/not agreeing to a request**

By all means

Go ahead

Please do

Yes, of course

I'm (terribly) sorry to say...

I'm afraid...

Unfortunately...

I don't think...

I cannot...

### **Asking for help**

Could you speak a little slower?

Could you speak a bit more slowly, please?

Excuse me? I didn't catch/get that

(I am) sorry, could you repeat that?

Could you say that again, please?

Can / could you speak up a bit?

There is a lot of interference on this line

I am afraid there is a lot of background noise and I cannot hear you clearly

I'm afraid I can't hear you very well

It's very noisy here, I can hardly hear you

I'm afraid you are speaking a bit too fast for me

I'm afraid I don't understand what you mean

I'm afraid I don't follow you

So what is it that you (would) need from Mr. Kowalski?



**Thank you/You are welcome**

Thank you very much for...

I really appreciate your help

I'm very /really / extremely grateful for...

It's really good of you to...

That's very /really kind of you

I'd be very grateful if...

I'd really appreciate it if...

That would be fine / great / /fantastic / lovely, thanks / thank you

That's all right / OK, thanks

It's a pleasure

Not at all

My pleasure

You're (very) welcome

## ANNEX 2: E-MAILS IN ENGLISH

### 1. BASIC NETIQUETTE

- Be specific, brief and clear in the subject box and don't assume the recipient is familiar with the background / topic of your mail.
- Do not address recipients by their first name: use titles or forms of address.
- Keep to the register used by the original sender of the email. If the mail was very polite and formal, stay in the same register; if it was more relaxed, keep it without being overfamiliar.
- Do not assume that the addressee knows who you are: include a brief introduction / reminder of who you are in relation to the matter you are writing about.
- Try to keep messages brief, concise and to the point.
- Use short sentences rather than long, subordinate sentences.
- Try not to use capital letters or oversized fonts, they may be offensive.
- Do not abuse bold fonts.
- Try not to use exclamation marks.
- Layout your message for readability: use headings, spaces and breaks between paragraphs. Your email should not be a burden to read.
- When an email has to explain many issues, include a bullet list in the body of your email.
- Try not to use abbreviations or acronyms unless that person is familiar with them.
- Avoid marking an email 'urgent' or 'high priority' if it is not.
- Give attachments an identifiable and logical name.
- Make sure your mail includes "signature": institution, position held, etc., so that the recipient knows who he/she is addressing.
- Always revise your mail before sending it: correct punctuation, grammar and spelling.

### 2. LANGUAGE STRATEGIES

- Present your request politely by introducing it as a question ('Do you think you could...?' 'Would you be so kind as to...?').
- If you are pressing a request, or the request you make is not part of the recipient's strict duties, try to use an introductory phrase to prepare the listener for your message ('Do you think you could possibly'; 'I was wondering...'; 'One possibility might be...').
- Use *could*, *would* or *might*, they sound more tentative and less assertive.
- Mitigate the impact of saying that you cannot help by 'toning down' or qualifying the negative reply using phrases like 'I am afraid'.
- Try to use a word with 'not' rather than a directly negative word ('This may not be possible' instead of 'This is impossible').
- Use comparatives to mitigate the message ('It might be better to...').
- Use a continuous form ('I was wondering...') instead of a simple form ('I wondered...') to make a suggestion more flexible.

### 3. USEFUL EXPRESSIONS

Informal e-mail	<p>Dear Mary / John,</p> <p>Thank you / thanks for your mail. Sorry it's taken me so long to write. I hope you're well.</p> <p>Love, Best wishes, All the best, Warm regards, (<i>not too informal but not too formal either</i>)</p>
Formal e-mail	<p>Dear Sir, (<i>a man whose name you don't know</i>) Dear Madam, (<i>a woman, single or married, whose name you don't know</i>) Dear Mr. / Mrs. / Miss / Ms. Smith, Dear Sir or Madam (<i>when you don't know name or sex</i>), Dear Sirs, (<i>to address a company / firm where at least one of the members is male</i>)</p> <p>[Initials or first names are <u>not</u> used with courtesy titles, e.g. “*Dear Mr. John Smith”]</p> <p>I am writing in reply to your mail of 10 June regarding ... Further to our previous mail, I am pleased to confirm our appointment for 11.00am on Tuesday, 7 March.</p> <p>I would be grateful if you could ... If you would like any further information, please don't hesitate to contact me. I look forward to hearing from you.</p> <p>Regards, Kind regards, With best regards, [<i>If you started the mail with Dear Mr. / Mrs., then use “Yours) sincerely”; if you started with Dear Sir / Madam, then use “Yours faithfully”</i>].</p>

## ACRONYMS

- AAMOF As a matter of fact
- AFAIAA As far as I am aware
- AFAIK As far as I know
- AFAIUI As far as I understand it
- AIH As it happens
- AKA Also known as
- ASAP As soon as possible/practicable
- ATB All the best
- ATVB All the very best
- AWYR Awaiting your reply
- BAC By any chance
- B4N/BFN Bye for now
- BR Best regards
- BTW By the way
- C.c. Carbon copy
- CID Consider it done
- CMIIW Correct me if I'm wrong
- C/o Care of
- CU(L) See you (later)
- DK Don't know
- DU Don't understand
- FAO For the attention of
- FWIW For what it's worth
- FYI For your information
- HIH Hope it helps
- IAW In accordance with
- ICBW I could be wrong
- ICYI In case you're interested
- ICYMI In case you missed it
- IIUC If I understand correctly
- IMO In my opinion
- IOW In other words
- KIT Keep in touch
- LMK Let me know
- N/A Not applicable/available
- NRN No reply necessary
- OIC Oh I see
- PP Per procuracionem (used when signing a letter on someone else's behalf)
- PS Postscript
- PTO Please turn over
- RFI Request for information
- SOW Speaking of which
- SYS See you soon
- TIA Thanks in advance
- TTYL Talk to you later
- WADR With all due respect
- WBR With best regards
- WBS Write back soon
- WGBTY Will get back to you
- WRT With regard to
- WRT With respect to

# **ANSWER KEY**



# INTRODUCTION TO LEGAL VOCABULARY FOR COURT STAFF

## 1. Terminology in English.

Court/judicial clerk; court/judicial secretary; court/judicial officer; court manager; (court) registrar; court/judicial counsellor/counselor; court/judicial advisor (or adviser); judicial trainee; trainee judge; assistant judge; assistant to a judge; judge's assistant; court/judicial assistant; legal assistant; judicial operator; bailiff/enforcement officer/enforcement agent; referendary (Poland, Finland, etc).

These terms are confusing because, as we have seen in the introduction to the manual, not only do Member States use diverse terminology, but the functions that each of those types of staff carries out may also differ.

In some jurisdictions, “**bailiffs**” (a now rather old-fashioned term) are enforcement agents and thus they can also be called “enforcement officers/agents”. They collect debts, but they may also serve court documents and/or give notices or summons as well. However, in some other systems this term is similar to “**court officers**” or “**(court) clerks**”, and apart from having some limited (semi)judicial powers, they might prepare the courtroom before cases, escort the judge to and from court, deal with audiovisual equipment and assist the clerk so that the court is conducted in an orderly and efficient manner. They might also identify and bring witnesses and experts into court, as well as be responsible for evidence. Sometimes they may additionally do some administrative work like filing, distributing internal papers, preparing mail, etc.

“**Secretary**” is now considered to be an outdated term. What tends to be used nowadays instead is “**court administrative assistants**” or “**court administrator**” (usually for the head of administrative staff). They usually help with the daily running of courts and their supporting offices. Again, it is confusing because some Member States use the term “**court/judicial clerk**” (although “clerk”, like “secretary”, is now outdated) for “**court officer**” or “**court manager**”.

The term “**court/judicial advisor**” is usually understood to mean experts or personnel (in-house or external) with a legal background who usually read the case file and assist with drafting the judgment (“**court/judicial counsellor**”, ‘counselor’ being the American spelling is much less frequently used). In some Member States they are considered to be a quasi-judicial category, as sometimes they can issue certain procedural or preliminary decisions, whereas in other Member States they may be external to the court (for example, reputed university professors).

“**(Court) Registrars**” are normally Chief Executive officers (chief administrators); in continental systems this term is frequently used for the Administrative Head of Civil Registries. Registrars may have limited judicial powers. In some other jurisdictions they may assist the judge calling out each case; identifying parties, lawyers, experts and witnesses; keeping court documents and preparing them for the judge as each case is called; keeping a record of court orders and also dealing with some administrative tasks.

“**Judicial trainees**” or “**trainee judges**” are judges who are still undergoing the training necessary to become full judges, but in some Member States they are allowed to carry out some judicial tasks like issuing preliminary decisions or some types of orders. Some Member States allow them to take part in training events both for young judges and for court staff. There is a difference, though: “trainee judges” have usually passed a competitive exam and are undergoing the necessary training to become full judges, whereas “judicial trainees”

(in countries like Hungary) are doing the training but not all of them will necessarily become judges

**“Assistant judge”**; **“assistant to a judge”** and **“judge’s assistant”** are terms that have to be used with caution, as there are Member States where “assistant judge” means the same as “judicial advisor”, so they are a quasi-judicial category and have certain procedural powers that other types of court staff lack. They also work with case files and often draft decisions. The same applies to “court/judicial assistant”, in this case depending very much on the legal system in question. However, **“assistant to a judge”** carries administrative connotations, like **“judge’s assistant”**, so in English that would be understood to be semantically closer to purely administrative staff. **“Judge assistant”** would not be correct to refer to such a position, as “assistant” functions as an adjective and should go before the noun.

**“Legal assistant”** is a term that is usually employed for lawyers (also legal advisors advise magistrates –who are lay- in the UK on legal matters if need be).

**“Judicial operator”** is not a term that is habitually used in English and it wouldn’t really be easily comprehensible. It is a term used within EuroEnglish to refer to positions or jobs that are directly related to the administration of justice; it may mean “judge”, but it could also refer to prosecutors, depending on the context; therefore, it is best not to use it until its meaning is more fixed and its standard usage has caught on.

**“Referendary”** is a term used in some Member States such as Poland or Finland, but it is not used in English.

## 2. Use the list to help you describe your responsibilities in your court.

Open answer.

## 3. Discuss your opinion on the need for a legal background and how useful it is for your job.

Open answer.

## 4. Answer the following questions (basic legal vocabulary).

a. *Can you provide words that you think could be synonyms for “case”? Do they all mean the same?*

**Case:** it is used to refer to the case number/reference in decisions, but from there on the term used is generally “proceedings” or “action”. It is also used in a less formal register.

**Action:** very common (civil, criminal, etc.).

**(Law)suit:** frequent in the UK and in the US but not so much in continental civil law systems.

**Proceedings:** always in the plural and used after the matter starts (civil, criminal, administrative, etc.). Incidentally, using “procedure” to refer to the case itself is wrong, as procedural law refers to what can or cannot be done (and how) at every point in the proceedings, so “procedure” is not a synonym for “proceedings”.

**Claim:** civil only; more used in the UK (it refers to where the proceedings start).

**Matter/issue:** “matter” may be a near-synonym for “case” in certain contexts, but it is more frequently used to refer to an “area of law” or the subject matter of a case; “issue” is more of a synonym for “dispute”. The expression “the matter at issue” means “what is



in dispute” between the parties in civil proceedings, although the CJEU refers to “the dispute in the main proceedings” also for criminal proceedings.

**File:** it refers to all the documents (printed or electronic) relevant to a case. In the UK it is called “bundle”, and in the US “docket” or record”.

*b. What do you call a “decision” by a judge? Give all the names that you know and try to explain the difference between them.*

**Judgment/judgement** (both spellings are correct): they may be civil, criminal, administrative, etc. They are final.

**Sentence:** it is a false friend, as in some European Union languages the name to refer to “judgment” has the root “*senten(c/z)-*”. In English it is criminal only and it does not refer to a final decision, it refers to the punishment/penalty imposed by a court on a person who is convicted of a criminal offence (*S/he was sentenced to five years’ imprisonment*).

**Ruling:** it is usually not final; it refers to decisions on matters that come up in the course of the proceedings. It is frequently (mis)used by the press to refer to ‘judgment’. “Preliminary ruling” is used for decisions coming from the Court of Justice of the European Union because they are not final, the court only answers the questions posed by the referring court and then the case returns to the national court, which is the one ruling on it. The CJEU itself, however, refers to “preliminary rulings” as “judgments” (see decided cases on Curia), as for them they are final decisions.

**Finding:** usually on facts; not frequently used in continental legal systems to refer to decisions.

**Verdict:** it does not mean “judgment”, as only juries ‘return’ verdicts. It is not for judges or courts to give verdicts; however, journalists use it relatively frequently to refer to the final decision of a court or a judge, especially where judges are sitting in bench (also called ‘in a panel’). The expression “judicial verdicts” is used (although it is a now outdated usage) in the 1959 Convention on Mutual Assistance in Criminal Matters.

**Order:** mostly civil with some exceptions, such as “investigation order” or “restraining order”; it is a type of decision, sometimes provisional/temporary and sometimes final. Sometimes all that comes out of court is an order, sometimes the order is found within the judgment, and sometimes they are two different documents; it depends on the national legal system. There are exceptions, though: “European Investigation Order” is criminal and it uses the term “order”; the same applied to “restraint/restraining orders”, which are criminal but are called “orders”.

**Injunction:** civil; a type of decision ordering somebody to stop doing something or preventing somebody from doing something. Usually they are provisional, but there are also permanent injunctions.

**Warrant:** mostly criminal (e.g. “European Arrest Warrant”, “search warrant”), but in some jurisdictions there seem to be civil warrants.

**Award:** this term is used for decisions in arbitration proceedings.

**Resolution:** for bodies, organisations, committees, etc. (e.g. the UN).

**Decree:** although this term is used in the UK in certain proceedings (for example, divorce or bankruptcy), in continental Europe this term is only for the Executive power (the government), so in the EU English neither judges nor courts issue decrees, even if this is the term used in some EU languages.

**Opinion:** this is a term that was used when the Judicial Committee of the House of Lords was the highest court in the UK (it was later replaced by the UK Supreme Court).

Nowadays this term is not used for court decisions, except when referring to cases where judges are sitting in bench and not all of them agree on the judgment: in those cases, judges not agreeing would give a “dissenting opinion”, and those in agreement would be “concurring”.

**Disposition:** this is a false friend, as it does not refer to any decision by a judge or a court; it refers to settlements, arrangements or transfers. If used to refer to the law, as in “the dispositions of the law” it is a misuse of the term, as the correct expression would be “the provisions of the law”.

*c. What is the difference between “court” and “tribunal” in your Member State? Do the terms have a different meaning in the European Union and at the international level?*

These two terms have different meanings across the Member States. In some cases, “court” is used for the first instance level, whereas the term “tribunal” is used from the first instance up, but in other Member States it works the other way round.

Usually “**court**” has the connotation of a single judge (or a judge sitting alone, also called a ‘sole’ judge), whereas “tribunal” connotes either more than one judge (sitting in a panel, or in bench), or a specialised court.

At the international level “**tribunals**” are normally *ad hoc* (created for a specific purpose and temporary, e.g. Tribunal for the Former Yugoslavia, Eastern Timor, Rwanda, Lebanon), but in a few exceptional cases they are permanent (e.g. International Tribunal for the Law of the Sea).

*d. What are the names for the two “sides” in criminal proceedings?*

“Prosecution” (or “prosecutor” if we refer to the person) and “defence” (or “defendant” if we refer to the person). In some legal systems, victims are considered to be a third party, and in some other Member States there is the possibility of a private prosecution (e.g. an organisation).

*e. What do you call the geographical area and the matters over which a judge/court/judicial authority (if that be the case) has powers?*

“Jurisdiction” is used in English for both concepts. In continental legal systems, however, “competent” is frequently used as an adjective: “competent judge/court”, “competent authority”. “Competence” as a noun is used in the European Union, but very rarely and with a more general meaning (for example, the Treaty on the Functioning of the European Union refers to the “competences” of the European Union (Articles 1, 2, etc.). The use of “competence” has been spreading in the EU lately, specially in databases and forms (e.g. on the EJM webpage or the webpage of the EPPO).

*f. What other verbs do you know for “to give” judgment?*

To deliver/issue/hand down/pronounce/render/pass judgment or to rule on something/to rule that...; (also “to adjudicate”).

*g. What is the difference between the following terms related to criminal proceedings: “suspect”, “defendant” and “offender” / “criminal”?*

“Suspect” simply refers to someone who is thought to have committed a crime/an offence; “defendant” is used once charges have been brought against someone (also called “the accused”), and “offender” or “criminal” are terms used once a person has been found guilty (i.e. there has been a conviction) or he/she has pleaded guilty.

However, given the diversity of legal systems and therefore of criminal proceedings across the EU, the issue is that in some Member States charges are brought in the early stages of the proceedings, whereas in some other Member States charges are brought

at a later stage in the proceedings; consequently, the EU has opted for more neutral – and simplified- criminal terminology: “suspect”, “accused person” (a person formally charged but not yet tried), “convicted person” (and “acquitted”, if that be the case) and “sentenced person”. Incidentally, “person” in legal English can carry a plural form, so one can refer to the “transfer of sentenced persons”. There are also the terms “person of interest” (someone who may have been involved in a crime and the police are interested in finding out more about but who has not arrested or charged) and “person under investigation”.

*h. What are the terms used in English for “grave” offences and for not so “grave” offences?*

“Serious offences” (“felonies” in the US and some other common law legal systems) and “minor offences” (“misdemeanors” or “petty offences” in the US and some other common law legal systems). The UK has a slightly different terminology: “indictable offences” for the serious ones and “summary offences” for the minor ones. There is a third type of offences in the UK that can be tried either as indictable offences or as summary offences: “offences triables either way” or “either way offences”. In the EU, we offences that are neither serious nor minor we can say “intermediate offences” or as a paraphrase one could say “not so serious offences”.

## **5. Provide the appropriate term for each definition.**

(a) legislation / statutory law; (b) court / courtroom; (c) The Judiciary / The Bench (UK) / The Magistracy (this only applies to some Member States, in which case this term generally includes prosecutors); (d) crime / offence; (e) a summons (‘subpoena’ in the US); (f) division / chamber (in the UK and in the Court of Justice of the European Union); (g) arrest warrant; (h) charge; (i) acquittal; (j) conviction; (k) hearing; (l) case law / jurisprudence; (m) appeal; (n) evidence; (o) inadmissible; (p) submissions; (q) repeat offender / reoffender / persistent offender; (r) accomplice (accessory is generally used if that person is not present); (s) change of venue; (t) cross-examination; (u) custodial; (v) suspended; (w) aggravating; (x) mitigating; (y) search warrant; (z) binding.

## **6. Fill in the blanks with the correct option.**

(a) to try a case / an offence / a crime; (b) to hear the facts / the evidence / a case; (c) to reach a verdict; (d) to pass sentence; (e) to impose a fine / a prison sentence; (f) to conduct an enquiry / a case; (g) to assess the facts / the evidence; (h) to punish a crime / an offence; (i) to commit an offence / a crime; (j) to plead guilty; (k) to give evidence; (l) to return a verdict; (m) to serve a prison sentence / sentence; (n) to take the oath / evidence.

## **LISTENING SKILLS**

### **1. Mutual Legal Assistance.**

#### **Fill in the gaps.**

(1) request; (2) serve; (3) collect evidence; (4) laws; (5) lengthy; (6) treaties; (7) proceedings; (8) lawsuit; (9) assist; (10) service of process; (11) acquire; (12) jurisdiction; (13) violation; (14) Foreign Affairs; (15) executed; (16) rules; (17) uniform.

## **TRANSCRIPT OF THE VIDEO**

### *What is a letter rogatory?*

A letter rogatory is a request for judicial assistance from a foreign country. In the absence of a treaty between two countries that covers such situations, these letters are necessary if a person in one country needs to serve court documents or collect evidence from a foreigner. These acts could be deemed a violation of the sovereign laws of the foreigner's home country if performed without judicial supervision. A letter rogatory has to travel through proper diplomatic channels, which means that the process is usually a lengthy one.

This process is still common in cases involving North and South American countries, although treaties have simplified the process between North America and most of Europe and Asia. Individuals usually require a letter rogatory if they are involved in legal proceedings that include a person from another country. This could mean that the foreigner is the subject of a lawsuit or simply has information essential to the case. In such circumstances, a person can draft a letter rogatory that includes information on the case, the nature of the request, in a statement of the local court that shows the reasons why the foreign court needs to assist.

Preparing a letter rogatory usually is required to serve one of two possible purposes: the letter may be necessary to get the foreign court to perform service of process, which essentially refers to the serving of court documents. It might be necessary to acquire evidence, unless the case is one in which a country claims universal jurisdiction; then a court that tried to perform these acts in a foreign country without permission would be in violation of international law. When a letter rogatory is prepared, it has to pass through several diplomatic channels before it can produce the desired effect. In the United States, for example, this process includes the letter passing through the Department of State, the US Embassy, the Ministry of Foreign Affairs and the Ministry of Justice before finally reaching the foreign court. Although other countries may have a different diplomatic chain, anyone who requires a letter rogatory should expect a long wait before the request in the letter is executed.

Letters rogatory are complicated somewhat by the fact that they are subject to the laws of the foreign country involved; for example, rules for collecting evidence in the United States may differ from a country in South America. Because of such complications in the length of the process, most countries in Europe, Asia and North America signed treaties and agreements in the 20th century which made the process much easier. These agreements allow for rapid serving of court documents between countries and contain uniform rules for collecting evidence.

## **2. The European Arrest Warrant.**

### **a) The Assange case (I). Answer the questions.**

1. *What country would Julian Assange be extradited to?*

Sweden.

2. *What was Mr. Assange's lawyers' claim before the District Judge?*

They alleged that he wouldn't get a fair trial.

3. *What is the reaction of Mr. Assange's lawyers to the decision of the court?*

They will appeal.

4. *What are the charges against Mr. Assange?*

Rape and sexual assault.

5. *Where did the alleged offence(s) take place?*

In Stockholm.

6. *His lawyers argue that extraditing Mr. Assange to Sweden would BREACH his human rights.*

7. *District Judge Howard Riddle RULED (that) extradition was legal and that there is no reason why Mr. Assange wouldn't get a FAIR TRIAL.*

8. *What did the Judge say about the likelihood that things said about Mr. Assange would interfere with the course of justice in Sweden?*

It would be highly unlikely.

9. *How is Mr. Assange's reaction to the court's decision described?*

Impassive.

10. *What will the next step be for Mr. Assange?*

He will go to the higher court (to appeal).

11. *While Mr. Assange prepares to go to the High Court, he is on BAIL.*

### **b) The Assange case (II). Fill in the gaps.**

(1) requested; (2) charges; (3) raised; (4) extradite; (5) evidence; (6) trial; (7) provisions; (8) judicial authority; (9) Framework Decision; (10) court; (11) prosecutor; (12) reached; (13) give effect; (14) regard; (15) appointed; (16) are agreed; (17) bear; (18) passing; (19) coherent; (20) presumption; (21) lawfully; (22) dismissed; (23) lengthy; (24) solely; (25) argued; (26) holding; (27) flag; (28) judgments; (29) afford; (30) stayed; (31) vary; (32) application; (33) request; (34) grateful.

## **TRANSCRIPT OF THE VIDEO**

The Swedish public prosecutor has requested the extradition of Mr. Assange on charges of serious sexual offences. That request has raised a point of law of general public importance. It is not a point in respect of which the particular facts of Mr. Assange's case have any relevance. This summary is about that point of law.

It used to be the case that this country would not extradite a person to another European country until a court here had considered the evidence against that person. The court would not approve extradition unless the evidence justified his being subjected to a criminal trial.

All that changed in 2001 when we gave effect to the 1957 European Convention on Extradition. The following year the provisions of that Convention were superseded by an agreement reached between the members of the European Union. The terms of that agreement were set out in a European Union Framework Decision, which this country was under a duty to implement. The Framework Decision directed that if a judicial authority in one state requested the extradition of a person from another state, the latter state would give effect to the request without considering the evidence. It was for the requesting state to consider whether the evidence justified extradition. The United Kingdom gave effect to the Framework Decision in the Extradition Act 2003. That Act provided that, subject to certain conditions, this country will extradite a person if we receive a request from a judicial authority in another member state.

The point of law is simply: what do the words 'judicial authority' mean? Mr. Assange has argued that they mean a court or judge. Sweden's request has been issued by a public prosecutor who is not a court or judge, so Mr. Assange has argued that the request is invalid and he doesn't have to go back to Sweden.

The point of law is simple to state but it has not been simple to resolve; indeed, we have only reached our decision by a majority of five to two.

There was discussion in Parliament about the words 'judicial authority' when the Bill which became the Extradition Act was being debated. The Bill used the words 'judicial authority' because those words were in the Framework Decision, and the Act was designed to give effect to the Framework Decision. It is clear that some Members of Parliament believed that the words 'judicial authority' in the Framework Decision meant a court or a judge; indeed, one Minister specifically stated to a parliamentary committee that this was the case. But he was mistaken.

'Judicial authority' is the English translation of the French words '*autorité judiciaire*'. The Framework Decision is in both English and French, so it's necessary to have regard also to what the French phrase means. The French phrase has a wider meaning than the English phrase. In French, the words 'judicial authority' can be used of a public prosecutor. When the Member States implemented the Framework Decision, many of them appointed public prosecutors to perform the role of the judicial authority. There was no suggestion that this was contrary to the Framework Decision.

Having particular regard to this fact, the majority of the court are agreed that in the Framework Decision the words 'judicial authority' or '*autorité judiciaire*' bear a meaning that includes a public prosecutor. Two members of the court, Lady Hale and Lord Mance, consider that this does not determine the meaning of 'judicial authority' in the Extradition Act. In that Act, they mean a court or judge, as the minister had explained. The other members of the court do not agree.

Parliament's intention in passing the Extradition Act was to give effect to the Framework Decision. This was necessary in order to produce a uniform and coherent system of extradition in Europe. It was also necessary in order to comply with the duty of the United Kingdom under international law. So there is a presumption that the words 'judicial authority' should have the same meaning in the Extradition Act that they have in the Framework Decision. The understanding of some Members of Parliament or the statement of the Minister as for the meaning of the Framework Decision does not displace this presumption.

For these reasons, the majority has concluded that the Swedish public prosecutor was a judicial authority within the meaning of both the Framework Decision and the Extradition Act.

It follows that the request for Mr. Assange's extradition has been lawfully made, and his appeal against extradition is accordingly dismissed.

'[inaudible] (...) I wanted to raise. You will appreciate that we have had only a very limited opportunity to study this lengthy and learned decision and also that we've had no opportunity as yet to consult with our client. However, there is one matter which causes us considerable concern on our initial reading of the decision. And that is that it would appear that a majority of the members of this court have decided the point, either principally or solely, on the basis of the interpretation of the Vienna Convention on the law of treaties, a point, with respect, which was not argued during the appeal and which we were given no opportunity to address. Now obviously this Court will have in mind its recent decision in the case of *Lukaszewski*, holding that Article 6 applies to extradition proceedings in the United Kingdom. We are therefore currently considering our position, and whether or not it will be necessary, with great regret, to make an application to this court that this matter should be reopened so that we have an opportunity to argue this point. I say this only to flag it up because obviously at the moment we need to study the judgments and consult with our client and I appreciate the urgency of the situation and therefore thought I ought to make that known publicly as soon as possible.'

'Yes, thank you, Miss Montgomery, you must consider...'

'I am *not* chronically Miss Montgomery.'

'Sorry.'

'Although I am easily mistaken for her.'

'I think Miss Rose...'

'I beg your pardon. You must consider the judgment at a proper measure and if you wish to make an application, we will afford you the opportunity'

'Yes. I don't know how long your Lordships and your ladyship would be prepared to give us to make that application. We're obviously operating under some difficulty given the imminent bank holiday weekend.'

'We'll afford you two weeks.'

'My Lord, in those circumstances, as I understand it, the order that was agreed was that this order should be stayed for seven days, but given the point I've just raised, can I ask your Lordships and your Ladyship to vary that order so that it is stayed for 14 days to permit us to make that application?'

'Um, that seems a reasonable request.'

'I'm grateful.'

### **3. The European Investigation Order.**

#### **Fill in the blanks.**

(1) draft; (2) opt into; (3) justice; (4) cross-border crime; (5) framework; (6) evidence; (7) high-profile; (8) convicted; (9) obtained; (10) prosecutors; (11) drug-trafficking; (12) trial; (13) standardised; (14) recognition; (15) deliver; (16) offences; (17) expedite; (18) affairs; (19) asylum; (20) measure; (21) regulatory; (22) trivial; (23) instruct; (24) enforcement.

## TRANSCRIPT OF THE VIDEO

Thank you, Mr. Speaker. With permission, Mr Speaker, I would like to make a statement on the draft Directive for a European Investigation Order, and the Government's decision to opt into that draft Directive.

As people have become more mobile, so too has crime, and that has serious consequences for our ability to bring criminals to justice. To deal with cross-border crime, countries enter into mutual legal assistance -or MLA- agreements. These agreements provide a framework through which states can obtain evidence from overseas. MLA has therefore been an important tool in the fight against international crime and terrorism. It's been crucial in a high number of high-profile cases. For example, Hussein Osman, one of the failed terrorists from the 21/7 attacks five years ago, might not have been convicted had it not been for evidence obtained through MLA.

But MLA has not been without its faults. The process is fragmented and confusing for the police and prosecutors, and it is too often too slow, taking in some cases many months to obtain vital evidence. Indeed, in one drug-trafficking case the evidence arrived in the UK *after* the trial had been completed. The European investigation order therefore seeks to address these problems by simplifying the system with a standardised request form and providing formal deadlines for the recognition and execution of requests.

Mr. Speaker, the Government has decided to opt into the EIO because it offers practical help for the British police and prosecutors, and we are determined to do everything we can to help them cut crime and deliver justice. And that is what the police say this will do. We wrote to every ACPO force about the EIO, and *not one* said we should not opt in. ACPO themselves replied, and I quote:

"the EIO is a simpler instrument than those already in existence and, provided that it is used sensibly and for appropriate offences, we welcome attempts to simplify and expedite mutual legal assistance."

But I know that some honourable members have concerns about the EIO, and I would like to address them in turn. First is the question of sovereignty. In justice and home affairs, there are many ideas coming out of Brussels, like a common asylum policy, that would involve an unacceptable loss of sovereignty. And I want to be absolutely clear to the House - I will *not* sign up to these proposals, and I've *made* that clear to my European counterparts. But this Directive does not incur a shift in sovereignty. It is a practical measure that makes it easier to see justice -British justice- done in this country.

Now second is concern about burdens on the police. At a time when we're reducing domestic regulatory burdens on the police, I agree it would be unacceptable to have them re-imposed by foreign forces. And that's why we will seek to ensure that there is a proportionality test, so police forces are not obliged to do work in relation to trivial offences. Forces will be able to extend deadlines when it is not possible to meet them. And I want to be clear that the EIO does not allow foreign authorities to instruct UK police officers on what operations to conduct, and it does not allow foreign officers to operate in the UK with law enforcement powers.



#### 4. The enforcement of judgments: transfer.

##### Finish off the missing parts of some sentences.

##### Enforcement of the sentence

###### *Law governing enforcement*

The Framework Decision clearly stipulates that the enforcement of the sentence **(1)** SHALL BE GOVERNED by the law of the executing State. The authorities of the executing State alone shall be competent to decide **(2)** ON THE PROCEDURES FOR ENFORCEMENT and to determine all the measures relating thereto, including the grounds for early and **(3)** CONDITIONAL RELEASE (Article 17).

###### *Deduction*

The competent authority of the executing State shall deduct **(4)** THE FULL PERIOD OF DEPRIVATION OF LIBERTY ALREADY SERVED in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served (Article 17(2)) (65).

###### *Early and conditional release*

How much time the sentenced person will actually spend in prison depends largely on the provisions on early and conditional release **(5)** IN THE EXECUTING STATE. The differences between Member States are considerable in this respect: e.g. in some Member States the sentenced person is released **(6)** AFTER TWO THIRDS OF THE SENTENCE, in others after one third of the sentence.

The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State **(7)** OF THE APPLICABLE PROVISION on possible early or conditional release. When this information is provided, the issuing State may agree to the application of such provisions or may choose **(8)** TO WITHDRAW THE CERTIFICATE and end the transfer process (Article 17(3)).

Member States have the possibility to provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release **(9)** AT A SPECIFIED POINT IN TIME (Article 17(4)).

It is recommended that the executing State provide clear communication and an explanation of its applicable conditional release provisions **(10)** TO THE ISSUING STATE AND TO THE SENTENCED PERSON. Solely indicating the applicable legal provisions might not be sufficient.

###### *Amnesty, pardon*

Both the issuing State and the executing State **(11)** MAY GRANT amnesty or pardon to the sentenced person (Article 19 (1)).

###### *Review of the judgment*

When a review of the judgment **(12)** IS SOUGHT, however, only the issuing State may decide on the applications for review of the judgment (Article 19(2)).

### *Right to enforce the judgment*

The issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun except in cases where the right to enforce the sentence shall be reverted to the issuing State upon its being informed by the executing State **(13) OF THE PARTIAL NON-ENFORCEMENT OF THE SENTENCE** (Article 22).

### *Communication and information duties*

The Framework Decision contains detailed information obligations for both the issuing State and the executing State, **(14) BOTH BEFORE AND AFTER THE TRANSFER**.

The competent authority of the issuing State needs to inform the competent authority of the executing State of any decision or measure as a result of which **(15) THE SENTENCE CEASES TO BE ENFORCEABLE** immediately or within a certain period of time (Article 20). As a consequence, the competent authority of the executing State shall **(16) TERMINATE ENFORCEMENT** of the sentence as soon as it has received this information.

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves **(17) A WRITTEN RECORD** (Article 21):

- (a) of the forwarding of the judgment and the certificate to the competent authority of another Member State because the executing State had **(18) NO COMPETENCE TO RECOGNISE IT**;
- (b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person **(19) CANNOT BE FOUND IN THE TERRITORY** of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;
- (c) of the final decision to recognise the judgment and enforce the sentence **(20) TOGETHER WITH THE DATE OF THE DECISION**;
- (d) of any decision not to recognise the judgment and enforce the sentence on the basis of **(21) GROUNDS FOR REFUSAL** (Article 9), together with the reasons for the decision;
- (e) of any decision to **(22) ADAPT THE SENTENCE** (Article 8(2) or (3)), together with the reasons for the decision;
- (f) of any decision not to enforce the sentence **(23) IF AMNESTY OR PARDON** was granted (Article 19(1)) together with the reasons for the decision;
- (g) of the beginning and the end of the **(24) PERIOD OF CONDITIONAL RELEASE**, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person's **(25) ESCAPE FROM CUSTODY**;
- (i) of the enforcement of the sentence as soon as **(26) IT HAS BEEN COMPLETED**.

## **5. Freezing and confiscation.**

### **Spot the intentional mistakes.**

Hello my name is Fiona Jackson and I am a self-employed barrister at 33 Chancery Lane in London, and today I'm going to talk to you briefly about the new European Directive on freezing and confiscating the **INSTRUMENTALITIES** and **PROCEEDS** of crime **WITHIN** the European Union.

I'll split my presentation into four parts: firstly, the long history of the European Union in TACKLING this important area of work; secondly, the background into why this particular Directive came into force; thirdly, some key articles and DIVISIONS of the Directive and finally, its implementation THUS far across the European Union.

So let's turn firstly to look at the background, and for many years the European Union has been concerned that criminals were becoming increasingly clever at moving and converting and transferring THEIR proceeds of crime across the Union and beyond. That of course was an attempt to CONCEAL them and prevent their recovery by Member States.

The European Union understood that international cooperation in this area is an important element of effective ASSET RECOVERY so that investigating and prosecuting authorities can help each other TRACE and recover criminal assets, prevent DISSIPATION or disposal and preserve them until such time as a confiscation order can be made and the assets recovered.

For example, in 1990 all EU Member States ratified a Council of Europe Convention requiring them to introduce LAWS to enable the confiscation of the proceeds of crime, including property used to commit A CRIME and permitting the widest possible international cooperation in the investigation and confiscation of criminal assets.

After the Treaty of Amsterdam, which introduced the power of the Council to legislate in this area, the Union has further and since developed A LEGAL matrix to reduce these differences in Member States' approaches to the confiscating and RECOVERING of criminal assets.

For example, a Council Framework Decision in 2001 that was adopted on money-LAUNDERING, the identification, freezing, tracing, SEIZING and confiscation of instrumentalities and the proceeds of crime requires Member States to ensure that property corresponding to the VALUE of proceeds of crime may be confiscated if the INDIRECT proceeds of crime cannot be seized. That, for example, is generally known as value confiscation. It also requires each Member State to ACCORD the same priority to REQUESTS from other Member States for assistance in identifying, tracing, freezing and seizing assets as it WOULD apply for purely domestic proceedings.

In addition, under a 2005 Council Framework Decision, Member States must ensure that their own national laws make provision for the confiscation of proceeds of any crime punishable by A TERM of imprisonment of more than one year and also introduced EXTENDED powers of confiscation in relation to TERRORIST offences and particular categories of organised serious crime, for example money laundering, human TRAFFICKING and the sexual exploitation of children. THESE extended powers enable national courts to infer, on the basis of specific facts, that assets belong to AN INDIVIDUAL convicted of terrorist or serious organised criminal activity and that such assets must have been obtained as a result of previous criminal activity even if they're not directly linked to the crime of which he or she has been CONVICTED and to order their confiscation.

Another council decision, a Framework Decision again, adopted in 2007 requires Member States to establish national asset recovery offices to help trace and identify the proceeds of crime and other crime-related property which may be SUBJECT to a freezing, seizure or confiscation order. It provides a legal BASE for exchange of information and best practice.

# SPEAKING SKILLS

## 1. Mutual Legal Assistance. Pronunciation.

### a. Terms.

1.	to request	[tʊ rɪ'kwɛst]
2.	judgment	['dʒʌdʒ.mənt]
3.	decision	[dɪ'sɪʒ.ən]
4.	offence	[ə'fɛns]
5.	assistance	[ə'sɪs.təns]
6.	authority	[ɔ:'θɔr.ə.ti]
7.	to comply	[tʊ kəm'plaɪ]
8.	consent	[kən'sent]
9.	convention	[kən'ven.ʃən]
10.	search	[sɜ:tʃ]
11.	seizure	['si:ʒər]
12.	evidence	['ev.ɪ.dəns]
13.	hearing	['hɪə.rɪŋ]
14.	recognition	[,rek.əg'niʃ.ən]
15.	order	['ɔ:.də]
16.	interception	[,ɪn.tə'sep.ʃən]
17.	extradition	[,ek.strə'dɪʃ.ən]
18.	jurisdiction	[,dʒʊə.rɪs'dɪk.ʃən]
19.	territory	['ter.ɪ.tər.i]
20.	infringement	[ɪn'frɪndʒ.mənt]
21.	execution	[,ek.sɪ'kju:ʃən]
22.	proceedings	[prə'si:dɪŋz]
23.	instrument	['ɪn.strə.mənt]
24.	matter	['mæt.ər]
25.	rightful	['raɪt.fəl]
26.	service	['sɜ:.vɪs]
27.	provision	[prə'vɪʒ.ən]
28.	addressee	[,æd.res'i:]
29.	law	[lɔ:]
30.	report	[rɪ'pɔ:t]
31.	rights	[raɪts]
32.	notify	['nəʊ.tɪ.fai]
33.	action	['æk.ʃən]
34.	obligation	[,ɒb.lɪ'geɪ.ʃən]
35.	provision	[prə'vɪʒ.ən]
36.	appeal	[ə'pi:l]

37. custody	['kʌs.tə.di]
38. authenticity	[ˌɔː.θen'tɪs.ə.ti]
39. restitution	[ˌres.tɪ'tʃuː.ʃən]
40. liability	[ˌlaɪ.ə'bɪl.ə.ti]
41. investigation	[ɪn'vest.ɪ'geɪ.ʃən]
42. provisional	[prə'vɪʒ.ən.əl]
43. delay	[dɪ'leɪ]
44. hearing	['hɪə.rɪŋ]
45. execution	[ˌek.sɪ'kjuː.ʃən]
46. surrender	[sə'r.en.dər]
47. witness	['wɪt.nəs]
48. court	[kɔ:t]
49. expert	['ek.spɜ:t]
50. defendant	[dɪ'fen.dənt]
51. refusal	[rɪ'fjuː.zəl]
52. protective	[prə'tek.tɪv]
53. evidence	['ev.ɪ.dəns]
54. testify	['tes.tɪ.faɪ]
55. cost	[kɒst]
56. reciprocity	[ˌres.ɪ'prɒs.ə.ti]
57. transmission	[trænz'mɪʃ.ən]
58. venue	['ven.ju:]
59. appearance	[ə'piərəns]
60. damage	['dæm.ɪdʒ]

#### **b. Word combinations.**

1. competent authority	['kɒm.pɪ.tənt ɔ:'θɒr.ə.ti]
2. criminal matters	['krɪm.ɪ.nəl 'mæt.ərs]
3. on oath	[ɒn əʊθ]
4. letter rogatory	['let.ər 'rægə'tɔrē]
5. natural person	['nætʃ.ər.əl 'pɜː.sən]
6. mutual assistance	['mjuː.tʃu.əl ə'sɪs.təns]
7. individual rights	[ˌɪn.dɪ'vɪdʒ.u.əl raɪts]
8. fundamental freedoms	[ˌfʌn.də'men.təl 'friː.dəms]
9. time limit	[taɪm 'lɪm.ɪt]
10. fair trial	[feər traɪəl]
11. judicial cooperation	[dʒuː'dɪʃ.əl kəʊ'ɒp.ər'eɪ.ʃən]
12. written notice	['rɪt.ən 'nəʊ.tɪs]
13. procedural deadline	[prə'siː.dʒər.əl 'ded.laɪn]

14. procedural requirements	[prə'si:dʒər.əl rɪ'kwairə.məntz]
15. procedural documents	[prə'si:dʒər.əl 'dɒk.jə.mənts]
16. taking of evidence	[teɪkɪŋ əv 'ev.ɪ.dəns]
17. incomplete request	[.ɪn.kəm'pli:t rɪ'kwest]
18. international convention	[.ɪn.tə'næʃ.ən.əl kən'ven.ʃən]
19. in writing	[ɪn 'raɪ.tɪŋ]
20. to return a request	[tʊ rɪ'tɜ:n ə rɪ'kwest]
21. temporary transfer	['tem.pər.ər.i træns'fɜ:r]
22. constitutional requirement	[.kɒn.stɪ'tju:ʃən.əl rɪ'kwairə.mənt]
23. to summon to appear	[tʊ 'sʌm.ən tʊ ə'piə]
24. proof of service	[pru:f əv 'sɜ:vɪs]
25. official language	[ə'fɪʃ.əl 'læŋ.gwɪdʒ]
26. to issue a certificate	[tʊ 'ɪʃ.u:/'ɪs.ju: ə sə'tɪf.ɪ.kət]
27. to contest enforcement	[tʊ kən'test ɪn'fɔ:smənt]
28. to dismiss the proceedings	[tʊ dɪ'smɪs ðə prə'si:.dɪŋz]
29. third party	[θɜ:d 'pɑ:ti]
30. accused person	[ə'kjuzd 'pɜ:.sən]
31. to challenge a judgment	[tʊ 'tʃæl.ɪndʒ ə 'dʒʌdʒ.mənt]
32. legally binding	['li:.gəl.i 'baɪn.dɪŋ]
33. direct channel	[dɪ'rekt 'tʃæn.əl] [also daɪ'rekt]
34. judgment capable of recognition	['dʒʌdʒ.mənt 'keɪ.pə.bəl əv ,rek.əg'nɪʃ.ən]
35. to serve a document	[tʊ sɜ:v ə 'dɒk.jə.mənt]
36. to stay proceedings	[tʊ steɪ prə'si:.dɪŋz]
37. at first instance	[ət 'fɜ:st 'ɪn.stəns]
38. to lodge a document	[tʊ lɒdʒ ə 'dɒk.jə.mənt]
39. controlled delivery	[kən'trəuld dɪ'lɪv.ər.i]
40. to decline jurisdiction	[tʊ dɪ'klaɪn ,dʒʊə.rɪs'dɪk.ʃən]
41. to seek enforcement	[tʊ si:k ɪn'fɔ:smənt]
42. subject matter	['sʌb.dʒekt 'mæt.ər]
43. oral hearing	['ɔ:..rəl 'hɪə.rɪŋ]
44. to execute a request	[tʊ 'ek.sɪ.kju:t ə rɪ'kwest]
45. standard form	['stænd.dəd fɔ:m]
46. Joint Investigation Team	[dʒɔɪnt ɪn'vestɪ'geɪ.ʃən ti:m]
47. central authority	['sen.trəl ɔ:'θɔr.ə.ti]
48. organisational arrangements	[.ɔ:.gən.aɪ'zeɪ.ʃən.əl ə'reɪndʒ.mənts]
49. right of refusal	[raɪt əv rɪ'fju:zəl]

50. territorial application	[,ter.ɪ'tɔ:ri.əl ,æp.li'keɪ.ʃən]
51. legal aid	['li:.gəl eɪd]
52. exclusive grounds of jurisdiction	[ɪk'sklu:si.v ɡraʊndz əv ,dʒʊə.rɪs'dɪk.ʃən]
53. concurrent proceedings	[kən'kʌr.ənt prə'si:.dɪŋz]
54. grounds for refusal	[ɡraʊndz fɔr rɪ'fju:zəl]
55. unanimous agreement	[ju:'næn.ɪ.məs ə'ɡri:mənt]
56. investigative measures	[ɪn'ves.tɪ.ɡə.tɪv 'meʒ.ərs]
57. to set up a team	[tʊ set ʌp ə ti:m]
58. national law	['næʃ.ən.əl lɔ:]
59. enforcement order	[ɪn'fɔ:smənt 'ɔ:.dɔ]
60. false identity	[fɔls aɪ'den.tə.ti]
61. to effect service	[tʊ ɪ'fekt 'sɜ:.vɪs]
62. separate proceedings	['sep.ər.ət prə'si:.dɪŋz]
63. of its own motion	[əv ɪts əʊn 'məʊ.ʃən]
64. habitually resident	[hə'bitʃ.ə.li 'rez.ɪ.dənt]
65. criminal liability	['krɪm.ɪ.nəl ,laɪ.ə'bɪl.ə.ti]
66. alternative grounds of jurisdiction	[ɒl'tɜ:.nə.tɪv ɡraʊndz əv ,dʒʊə.rɪs'dɪk.ʃən]
67. exercise jurisdiction	['ek.sə.saɪz ,dʒʊə.rɪs'dɪk.ʃən]
68. data subject	['deɪ.tə 'sʌb.dʒekt]
69. administrative authority	[əd'mɪn.ɪ.strə.tɪv ɔ:'θɔr.ə.ti]
70. sufficient time	[sə'fɪ.ʃənt taɪm]
71. extraditable offence	['ek.strə.dai.tə.bəl ə'fens]
72. enforcement of judgment	[ɪn'fɔ:smənt əv 'dʒʌdʒ.mənt]
73. covert investigation	['kəʊ.vɜ:t ɪn'ves.tɪ'geɪ.ʃən]
74. exclusive jurisdiction	[ɪk'sklu:si.v ,dʒʊə.rɪs'dɪk.ʃən]
75. to refuse mutual assistance	[tʊ rɪ'fju:z 'mju:tʃu.əl ə'sɪs.təns]
76. refusal of recognition	[rɪ'fju:zəl əv ,rek.əg'nɪʃ.ən]
77. outcome of proceedings	['aʊt.kʌm əv prə'si:.dɪŋz]
78. interception of telecommunications	[,ɪn.tə'sep.ʃən əv ,tel.ɪ.kə'mju:ni'keɪ.ʃənz]
79. subsequent transmissions	['sʌb.sɪ.kwənt trænz'mɪʃ.əns]
80. to join proceedings	[tʊ dʒɔɪn prə'si:.dɪŋz]
81. service provider	['sɜ:.vɪs prə'vaɪ.dər]
82. to deliver judgment	[tʊ dɪ'lɪv.ər 'dʒʌdʒ.mənt]
83. criminal offence	['krɪm.ɪ.nəl ə'fens]
84. legal person	['li:.gəl 'pɜ:.sən]
85. protective measure	[prə'tek.tɪv 'meʒ.ər]
86. provisional measure	[prə'vɪʒ.ən.əl 'meʒ.ər]

87. irreconcilable judgment	[,ɪr.ek.ən'saɪ.lə.bəl 'dʒʌdʒ.mənt]
88. duration of interception	[dʒʊə'reɪ.ʃən əv ,ɪn.tə'sep.ʃən]
89. bilateral agreements	[,baɪ'læt.ər.əl ə'gri:mənts]
90. finding of fact	[ˈfaɪn.dɪŋ əv fækt]
91. to lodge an appeal	[tʊ lɒdʒ ən ə'pi:l]
92. to contest an appeal	[tʊ kən'test ən ə'pi:l]
93. ordinary appeal	[ˈɔ:.dən.əri ə'pi:l]
94. personal data protection	[ˈpɜ:.sən.əl 'deɪ.tə prə'tek.ʃən]
95. entry into force	[ˈen.trɪ 'ɪn.tu: fɔ:s]
96. notice of penalty	[ˈnəʊ.tɪs əv 'pen.əl.tɪ]
97. competent enforcement authority	[ˈkɒm.pɪ.tənt ɪn'fɔ:smənt ɔ:'θɒr.ə.tɪ]
98. certified copy	[ˈsɜ:.tɪ.faɪd 'kɒp.i]
99. reasonable time	[ˈri:zən.ə.bəl taɪm]
100. Ministry of Justice	[ˈmɪn.ɪ.stri əv 'dʒʌs.tɪs]

## 2. The European Arrest Warrant.

Open answer (oral exercise).

## 3. The European Investigation Order.

(1) What is the European Investigation Order and what is it used for?

*The European Investigation Order is a judicial decision issued in or validated by the judicial authority in one EU country to have investigative measures to gather evidence in criminal matters carried out in another EU country.*

(2) Do you happen to know the year when the Directive regarding the EIO was adopted and which countries are not bound by this instrument?

*It was adopted on 3 April 2014 (it had to be transposed into national systems by 22 May 2017) and neither Denmark nor Ireland are bound by it.*

(3) The EIO is based on the principle of mutual recognition. What does mutual recognition mean and what does it involve in terms of execution?

*It means that the executing authority is obliged to recognise and ensure execution of the request of the other country. The execution is to be carried out in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing country.*

(4) Can you provide examples of investigative measures that may be requested?

*House searches, obtaining information in databases, hearing witnesses/experts/suspected or accused persons/victims, interception of communications, preservation of evidence, obtaining information on accounts and banking/financial operations, etc.*



(5) What are the preconditions of investigative measures in order for authorities to use a European Investigation Order?

*The investigative measures must be necessary, proportionate and allowed in similar domestic cases.*

(6) How is a European Investigation Order issued and what are the language requirements?

*An EIO is issued using a standard form. It must be translated into the official language of the executing EU country or any other language indicated by the executing EU country.*

(7) Do investigative measures requested under an EIO have a lower priority in the executing country? Are the measures carried out at a slower pace than domestic measures?

*In theory, investigative measures must be carried out by the executing EU country with the same promptness and priority as they would be in similar domestic cases.*

(8) Do you happen to know the grounds for refusal?

*Immunity or privilege or rules limiting criminal liability relating to freedom of the press; harm to essential national security interests; non-criminal procedures; ne bis in idem principle; extraterritoriality coupled with double criminality; incompatibility with fundamental rights obligations. There are two additional grounds for refusal of certain measures: lack of double criminality (except for a list of serious offences); impossibility to execute the measure (investigative measure does not exist or is not available in similar domestic cases, and there is no alternative).*

(9) What are the deadlines applicable to EIOs?

*A maximum of 30 days to decide to recognise and execute the request and 90 days to execute the request effectively after issue of the aforementioned decision.*

**b. Guess the languages accepted for EIOs in the following Member States and then say whether you can find any kind of explanation for the languages chosen.**

- Austria: *German; in relation to Member States that accept German also their official languages are accepted*

- Belgium: *French, Dutch, German or English.*

- Croatia: *Croatian. However, in urgent cases a translation into English will be accepted on condition of reciprocity.*

- Czech Republic: *Czech or Slovak.*

- Finland: *Finnish, Swedish or English.*

- France: *French.*

- Greece: *Greek and English.*

- Hungary: *Hungarian. In case of urgent cases or if the transmission of the EIO in Hungarian meets extreme difficulties, English, French or German are accepted.*

- Luxembourg: *French, German and English.*
- Portugal: *Portuguese; Spanish only for EIOs received from Spain.*
- Romania: *Romanian, English or French.*
- Spain: *Spanish; Portuguese if the EIO comes from Portugal.*

#### **4. The enforcement of judgments: transfer.**

**Look at the source of each of the following concepts and try to define them in your own words:**

*Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.*

(a) 'Judgment' shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person.

(b) 'Sentence' shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings.

*Council Framework Decision 2008/947 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.*

(c) 'Suspended sentence' shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority.

(d) 'Conditional sentence' shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority.

(e) 'Alternative sanction' shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction.

(f) 'Probation decision' shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment: (a) granting a conditional release; or (b) imposing probation measures.

(g) 'Conditional release' shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures.

(h) 'Probation measures' shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release.

(i) 'Issuing State' shall mean the Member State in which a judgment is delivered.

(j) 'Executing State' shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision.

*Council Framework Decision 2008/675 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.*

(k) 'Conviction' means any final decision of a criminal court establishing guilt of a criminal offence.

*Council Framework Decision 2009/829 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.*

(l) 'Supervision measures' means obligations and instructions imposed on a natural person, in accordance with the national law and procedures of the issuing State.

(m) 'Decision on supervision measures' means 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.

## **5. Freezing and confiscation.**

Open answer (oral exercise).

## **READING SKILLS**

### **1. Mutual Legal Assistance.**

#### **(a) Fill in the gaps.**

(a) requested, assistance, deadlines, requesting; (b) proof, on; (c) understand, translated; (d) writing, authenticity; (e) persons, custody; (f) state; (g) consent; (h) heard, videoconference; (i) cost, remuneration, allowances, refunded; (j) conducted; (k) conduct, covert; (l) damage, reimburse, victims; (m) transcription; (n) summary; (o) incurred, executing, borne.

#### **(b) Choose the correct option.**

(a) bank transactions; (b) bodily examination; (c) body search; (d) confiscation order; (e) consent to a transfer; (f) covert surveillance (g) extraditable offences; (h) freezing order; (i) gathering and transmission of evidence; (j) grievous bodily injury; (k) grounds for refusal; (l) interception of telecommunications (although 'intercept' is colloquially used); (m) investigative measure; (n) hot pursuit; (o) Joint Investigation Teams; (p) non-compliance with requests; (q) request for information; (r) transmission of requests; (s) travelling expenses; (t) search and seizure; (u) temporary transfer; (v) invasive body search; (w) summoning witnesses; (x) search on the site of an offence; (y) temporary transfer of persons; (z) procedural deadline.

## 2. The European Arrest Warrant.

Match the name of the EAW offence with the definition.

1. Trafficking in human beings; <https://www.astra.rs/en/trafficking-human-beings/#:~:text=%E2%80%9CTrafficking%20in%20persons%20shall%20mean,or%20receiving%20of%20payments%20or.>
2. Terrorism; <https://www.un.org/ruleoflaw/files/n0454282.pdf>.
3. Fraud; <https://legal-dictionary.thefreedictionary.com/fraud>.
4. Illicit trafficking in narcotic drugs and psychotropic substances; adapted from [https://www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf) and [http://www.menafatf.org/sites/default/files/Illicit\\_Trafficking\\_and\\_ML\\_Eng.pdf](http://www.menafatf.org/sites/default/files/Illicit_Trafficking_and_ML_Eng.pdf).
5. Rape; <https://www.justice.gov/archives/opa/blog/updated-definition-rape>.
6. Counterfeiting currency; adapted from [https://en.wikipedia.org/wiki/Counterfeit\\_money](https://en.wikipedia.org/wiki/Counterfeit_money).
7. Arson; <https://dictionary.cambridge.org/dictionary/english/arson>.
8. Extortion; <https://legaldictionary.net/extortion/>.
9. Grievous bodily harm; <https://www.cps.gov.uk/legal-guidance/offences-against-person-incorporating-charging-standard>.
10. Racketeering; <https://legal-dictionary.thefreedictionary.com/Racketeering>.
11. Illicit trafficking in human organs and tissue; [http://www.ont.es/publicaciones/Documents/OrganTrafficking\\_study.pdf](http://www.ont.es/publicaciones/Documents/OrganTrafficking_study.pdf).
12. Hostage-taking; <https://www.oxfordlearnersdictionaries.com/definition/english/hostage-taking>.
13. Swindling <https://dictionary.cambridge.org/dictionary/english/swindling>.
14. Armed robbery; <https://www.britannica.com/topic/armed-robbery>.
15. Illegal restraint; <https://www.chicagocriminallawyer.pro/unlawful-restraint.html#:~:text=Unlawful%20restraint%20is%20a%20felony,without%20legal%20authority%2C%20detains%20another.&text=Essentially%2C%20any%20action%20that%20prevents,form%20the%20basis%20for%20conviction.>
16. Sabotage <https://thelawdictionary.org/sabotage/>.
17. Laundering of the proceeds of crime; adapted from [https://www.watts-gregory.co.uk/free-advice-centre/Money\\_Laundering\\_and\\_the\\_Proceeds\\_of\\_Crime.html](https://www.watts-gregory.co.uk/free-advice-centre/Money_Laundering_and_the_Proceeds_of_Crime.html).
18. Murder; <https://dictionary.cambridge.org/dictionary/english/murder>.
19. Kidnapping; <https://www.merriam-webster.com/legal/kidnapping>.
20. Unlawful seizure of aircrafts/ships; adapted from <http://hrlibrary.umn.edu/instree/hague1970.html>.
21. Corruption; <http://www.duhaime.org/LegalDictionary/C/Corruption.aspx>.

### 3. The European Investigation Order.

Choose the correct option (more than one option may be possible, although only one is correct according to the original text):

(1) judgment; (2) chamber ('division' and 'section' are acceptable); (3) ruling; (4) issuing; (5) request; (6) proceedings; (7) hearing; (8) Advocate General; (9) sitting; (10) concerns; (11) brought ('initiated', 'commenced' and 'instituted' are acceptable); (12) prosecuted; (13) suspected of; (14) into; (15) established; (16) on; (17) submitting; (18) seizures; (19) at; (20) examine ('question' would be acceptable); (21) states; (22) provide for; (23) referring; (24) liable; (25) damage; (26) stay; (27) case-law ('jurisprudence' would be acceptable); (28) against; (29) claim; (30) grounds; (31) on; (32) items; (33) challenge; (34) collection; (35) carried out.

### 4. The enforcement of judgments: transfer.

Choose the correct preposition.

(1) *Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.*

(1) of; (2) to; (3) with; (4) of; (5) of; (6) with; (7) in; (8) to; (9) from; (10) on; (11) in; (12) to; (13) in; (14) against; (15) in; (16) in; (17) into; (18) of; (19) in; (20) of; (21) by; (22) out; (23) in.

(2) *Council Framework Decision 2008/947 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.*

(24) to; (25) for; (26) of; (27) on; (28) to; (29) of; (30) out; (31) at; (32) with; (33) by; (34) for; (35) with; (36) out; (37) for; (38) by; (39) of; (40) on; (41) of; (42) of.

### 5. Freezing and confiscation.

Word combinations.

(1) t; (2) e (l could also be possible); (3) a (d could also be possible); (4) f; (5) i; (6) b; (7) c (a and d could also be possible); (8) d (a could also be possible); (9) l (e could also be possible); (10) k; (11) m (b, i and s could also be possible); (12) g; (13) j; (14) p; (15) s (l and e could also be possible); (16) r; (17) o; (18) q (g could also be possible); (19) n (e could also be possible); (20) h.

## WRITING SKILLS

### 1. Mutual Legal Assistance.

Provide the correct word form.

(1) to acquit – acquittal – acquitting / acquitted; (2) to administer – administration – administrative / administered / administering; (3) to allege – allegation – alleged; (4) to appear – appearance – appearing; (5) to assist – assistance – assisting / assisted; (6) to authorise – authorisation / authority – authorised / authorising; (7) to charge – charge – charged / charging / chargeable; (8) to certify – certificate / certification – certifying / certifiable / certified; (9) to conduct – conduct – conducted / conducting; (10) to convict –

convict / conviction – convicted / convicting; (11) to defend – defendant / defence – defending / defended; (12) to detain – detention / detainee – detained / detaining; (13) to enforce – enforcement / enforceability – enforcing / enforced / enforceable; (14) to execute – execution / executioner – executable / executed / executing; (15) to hear – hearing – heard; (16) to identify – identity / identification – identifiable / identified / identifying; (17) to indict – indictment – indictable / indicted; (18) to infringe – infringement / infringer – infringed / infringing; (19) to issue – issue / issuance / issuer – issuing / issued; (20) to intercept – intercept / interception - (21) to judge – judge / judgment / judgement / judiciary – judged / judging / judicial; (22) to notify – notification – notified / notifiable / notifying; (23) to offend – offence ('offense' in US spelling) / offender - offending; (24) to operate – operation – operating; (25) to provide – provision / provider – provided / providing; (26) to ratify – ratification – ratified / ratifying; (27) to reciprocate – reciprocity reciprocation (but this has a different meaning) – reciprocal; (28) to refuse – refusal – refused / refusing; (29) to request – request - requesting/requested; (30) to seize – seizure - seizing / seized; (31) to sentence – sentence – sentencing / sentenced; (32) to serve – service / servant – serving / served / serviceable; (33) to summon – summons – summoning / summoned / summonsed; (34) to surrender – surrender – surrendering / surrendered; (35) to suspect – suspect – suspicious / suspecting / suspected; (36) to testify – testimony – testimonial / testified / testifying; (37) to transfer – transfer / transference / transferability – transferred / transferring / transferable; (38) to transmit – transmission ("transmitter" exists, but it has a different meaning) – transmittable ('transmissible' exists, but it is used for illnesses) / transmitted / transmitting; (39) to try – trial / trier – triable / tried / trying; (40) to urge – urgency – urgent / urging / urged; (41) to withdraw – withdrawal – withdrawn / withdrawing / withdrawable.

## **2. The European Arrest Warrant.**

**Write the correct word form.**

(1) provide; (2) sufficient; (3) issuing; (4) execution; (5) prosecution; (6) crimes; (7) bodily; (8) concerned; (9) authority; (10) executive; (11) involvement; (12) urgent; (13) ruling; (14) judgments; (15) directions; (16) connection;(17) institutionally; (18) judiciary; (19) recognition; (20) fundamental; (21) assumption; (22) procedural; (23) assessment; (24) construed; (25) capable; (26) independently; (27) incriminatory; (28) ultimately; (29) requirements; (30) namely; (31) serve; (32) proceedings; (33) effective.

## **3. The European Investigation Order.**

**(a) Answer the questions.**

1. When should an EIO be chosen?

*When the execution of an investigative measure is proportionate, adequate and applicable to the case in hand, and always for the gathering of the evidence concerned.*

2. In what cases could it be more practicable to resort to police cooperation?

*Before issuing an EIO by creating an alert in SIS to find or locate the objects sought as evidence in criminal proceedings (e.g. vehicles, identity papers, credit cards, etc.) or to find out the place of residence or domicile of persons sought to assist with criminal judicial procedures (such as witnesses).*

3. Why is it recommendable to use e-tools when drafting an EIO and what are their advantages?

*You can fill in the form online in a word format with additional features, such as obtaining immediately the text of the form in the language(s) accepted by the executing State, or choosing from a predefined list of 'traditional' investigative measures.*

4. Why should you download an editable pdf version of the EIO in your language as well as in other languages?

*In case there is no access to the EIJN website when needed in urgent cases.*

5. What are the main general recommendations when filling in the form as regards handwriting, irrelevant boxes or alteration of the form?

*Filling in the form in your own language using a computer (not in handwriting); using short and simple sentences (they are easy to translate); making the filled in text and ticked boxes 'bold'; for not relevant boxes: (a) leaving them empty; (b) writing N/A (not applicable) or (c) indicating clearly with a mark (e.g. ---) that it is not applicable. Boxes may not be deleted and the form may not be altered in any way.*

6. What do you have to do with the free text field for assistance/investigative measures required and with the relevant box/boxes?

*It is always obligatory to fill them in, describing the assistance/investigative measure required and, if applicable, ticking the relevant box/boxes from the list of investigative measures.*

7. Should separate EIOs be issued for each investigative measure? If the answer is 'no', explain what you have to do; if the answer is 'yes', explain as well.

*No, a single EIO may be issued for several investigative measures, which should be numbered in all the relevant sections of the form. However, if execution of more than one investigative measure is sought and more than one executing authority is responsible, there are two possibilities: issuing either separate EIOs for each executing authority or issuing a single EIO. If the latter option is chosen, the competences in the EIO should be differentiated and a copy of the EIO should be sent to each executing authority concerned.*

8. What do EIOs cover?

*Any investigative measure to obtain evidence that could have been ordered under the same conditions in a similar domestic case.*

9. In what cases does an EIO NOT apply?

*It does not apply to the following cases:*

*(a) Setting up of a joint investigation team and the gathering of evidence within such a team (Art. 3, recital 8);*

*(b) Cross-border surveillance as referred to in the Convention implementing the Schengen Agreement (recital 9);*

*(c) Provisional measures with a view to confiscation (Art. 32, recital 34);*

*(d) Transfer of a person to another Member State for the purposes of prosecution, including bringing that person before a court for standing trial for which a European Arrest Warrant (EAW) should be issued (recital 25).*

10. What should you use to request information on previous convictions?

*ECRIS, the European Criminal Record Information System.*

11. What is the purpose of filling in section H (1-7)?

*To provide additional information required for certain types of investigative measures.*

12. Why is it that precise information should be included under sections (E), (H) and (I) rather than (C), and what type of information should be provided therein? Provide an example of information necessary to identify a person holding an IP address.

*The correct place to include the relevant information is under sections (E) (identity of the person concerned), (H) (additional requirements for certain measures) and (I) (formalities and procedures requested for the execution). (C) is simply a description (and ticking of boxes) of the assistance/investigative measures required*

*When requesting for an identification of person holding an IP address, an example of necessary information would be: details on the type of data required, IP address, date and time of the use, name and address of the service provider, name of the service.*

13. If a temporary transfer of a person is requested, what information should you include on top of that given under (H) (1)?

*Indicate: (a) the purpose for the transfer (for instance, witness, confrontation); (b) the dates by which that person must be transferred and returned; (c) information on custody conditions; (d) under section (K), contact details of the authority responsible for making practical arrangements for the transfer.*

14. Indicate at least four basic items of information that should be provided if the hearing of a person is requested.

*Any four of the following may be mentioned:*

*(a) sufficient information on the purpose of the hearing, for example by providing a list of questions to be asked in a document in attachment; (b) an explanation that other questions arising during the hearing should also be asked; (c) under section (I)(1): where applicable, details of any special procedure/formalities to be followed, for example, (1) hearing under oath; (2) participation of other concerned persons, such as a holder of parental responsibility; (3) hearing to be conducted by a particular authority of the executing State; (4) information on the rights and obligations to be notified to the person to be heard such as a right to be assisted by a lawyer/interpreter (if such information needs to be handed over to a person, such as in case when a signature of a person on the list of rights is necessary to prove in the issuing State that he or she was properly notified, it is advisable to attach it to the EIO); (5) information whether the person to be heard requires protection; (d) under section (I)(2): where applicable, whether the issuing authority requests for one of more officials of the issuing State to be present at the hearing.*

15. If a hearing by videoconference is requested, what additional information do you need to provide?

*You need to include the following information: (a) under section (H)(2): name of the authority that will conduct the hearing, including contact details and language, reasons for requesting this measure, and information whether consent of the suspected or accused person was obtained for carrying out this measure; (b) under section (I)(1): where applicable, details of any special procedure/formalities to be followed, for example, (1) information on the rights and obligations to be notified to the person to be heard, such as a right to be assisted by a lawyer/interpreter; (2) information whether the person to be heard requires protection; (3) hearing under oath; (4) participation of other concerned parties, such as a holder of parental responsibility; (4) hearing to be conducted by a particular authority of the executing State.*

16. What should be specified if the order is issued for the interception of communications?

*You should (a) indicate the status of the person whose communications should be intercepted, for example a suspect, witness, victim or a person likely in contact with the suspect, in case such information is not included under section (E), as this information might be essential to determine if the investigative measure could be authorised in a similar domestic case; (b) under section (H)(7): provide reasons, why the measure is relevant for the criminal proceedings; information for the purpose of identifying the subject of interception; the desired duration; technical data and preference regarding the method of execution.*



## **b. Writing an email.**

### **Practice 1. Sample e-mail.**

*Dear Ms. Virtanen,*

*Thank you very much for your email of 19 March informing us that an EIO for the hearing of a witness by videoconference has been sent.*

*We will confirm by email once we get the form itself and will let you know if further information is necessary as to the arrangements.*

*Best wishes,*

*Aleksis Ozola*

*Court Officer*

*Rīgas pilsētas Latgales priekšpilsētas tiesa, Latvia*

### **Practice 2. Sample e-mail.**

*Dear Mr. Nagy,*

*We have successfully received today the EOI form dated 27 March. It has been processed and duly registered, but we have doubts about the investigative measure required in Section C. You have ticked “hearing an expert by telephone conference”; however, on reading the description above the box, it seems that the measure is intended to hear a witness rather than an expert. We would very much appreciate if you could urgently clarify this point before we proceed any further, as I am afraid we cannot process the form until we are absolutely clear on the measures to be carried out.*

*I hope this issue can be sorted out quickly for both our courts to be able to cooperate fully in this matter.*

*I look forward to hearing from you.*

*Yours sincerely,*

*Hanna Kowalski*

*Court Officer*

*Budai Központi Kerületi Bíróság Szűk Okręgowy w Poznaniu, Poland*

### Practice 3. Sample e-mails.

(a)

*Dear Mr. Fernández,*

*My name is Daniela Georgieva and I am Head Court Officer at the Spetsializiran nakazatelen sad (Specialised Criminal Court), Bulgaria.*

*I send you this email to let you know/advise you informally that today an EOI has been transmitted, requesting interception of telecommunications.*

*I wonder if you would be so kind as to confirm by email receipt of EIO itself, as this would be really helpful for practical purposes.*

*Thank you very much in advance.*

*Yours sincerely,*

*Daniela Georgieva  
Head Court Officer  
Spetsializiran nakazatelen sad, Bulgaria*

(b)

*Dear Ms. Georgieva,*

*Thank you very much for your email of (date) informing us of the dispatch of the EIO.*

*I would need to ask for permission by my supervisor in order to be able to unofficially acknowledge receipt by email.*

*I will speak to him as soon as practicable and will let you know.*

*Best wishes,*

*Pedro Fernández  
Court Officer  
Audiencia Nacional, Spain*

### 4. The enforcement of judgments: transfer.

#### Provide the missing words in the gaps.

(1) judgment; (2) preliminary; (3) mutual; (4) scope; (5) sentence; (6) offence; (7) law; (8) case; (9) request; (10) concerns; (11) recognition; (12) supervision; (13) imprisonment; (14) dispute; (15) referred; (16) forwarded; (17) competent; (18) enforcement; (19) granted; (20) lodged; (21) upheld; (22) referring; (23) suspension; (24) intentional; (25) alternative; (26) uncertain; (27) delivered; (28) stay; (29) compatible; (30) released; (31) serve; (32) avoid; (33) sole; (34) complied; (35) transfer; (36) court; (37) establishing; (38) judicial; (39) regarded; (40) deprivation; (41) passed; (42) consequently; (43) liberty; (44) enable; (45) main; (46) in conjunction with; (47) legal; (48) falls; (49) matter.

## 5. Freezing and confiscation.

### Put in the correct form of the premodifiers.

(1) freezing order; (2) confiscation order; (3) judicial cooperation; (4) pre-trial orders; (5) *bona fide* interested third parties; (6) organised crime; (7) money laundering; (8) detention order; (9) financial gain; (10) legal measures; (11) legal person; (12) natural person; (13) available information; (14) rightful owner; (15) constitutional rules; (16) competent authority; (17) issuing state; (18) executing state; (19) movable property; (20) reasonable grounds; (21) registered seat; (22) written record; (23) full amount; (24) contact points; (25) child pornography; (26) environmental crime; (27) unauthorised entry; (28) grievous bodily injury; (29) hostage-taking; (30) stolen vehicles; (31) unlawful seizure of aircraft; (32) national law; (33) coercive measure; (34) procedural rules; (35) effective legal remedy; (36) criminal liability.

# Partners



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# Introduction to the field of criminal cooperation



Co-funded by the Justice  
Programme of the European  
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1

## Criminal Cooperation

- Globalisation and people's increasing mobility across the EU created new opportunities for **cross - border crime**
- Judicial cooperation has over centuries been seen to be made within the context of **cooperation between sovereigns**
- Classical judicial cooperation has been developed through certain principles such as the **principle of reciprocity, the principle of double criminality** and **the principle of speciality**

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## The need for criminal cooperation

- **Collaboration between judicial authorities** was becoming important than ever
- **Mutual legal assistance and different agreements** were needed to create bounds and to stop cross -border crime
- National authorities needed to work together swiftly and effectively to protect their citizens and deliver justice

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## Mutual legal assistance – letters rogatory

- The traditional tool of mutual legal assistance has been **letters rogatory** - a formal request from the judicial authority of one State to a judicial authority of another State, in which the requested judicial authority **is asked to perform one or more specified actions**, usually collecting evidence and interviewing witnesses, **on behalf of the requesting judicial authority**
- These requests were conventionally transmitted through **diplomatic channels**

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## Mutual legal assistance - treaties

- The globalization of crime required States to have some method for international cooperation with parties from the same region (**regional instruments**) and from different regions of the world (**international instruments**)
- Formal **multilateral treaties** have created a basis for international cooperation between States
- **Bilateral treaties** (between two countries) can be negotiated between States with a higher degree of certitude regarding the obligations and expectations of both parties

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## MLA main legal instruments

- **European Convention on Mutual Assistance in Criminal Matters (1959 Convention)**
- **Additional Protocol** to the European Convention on Mutual Assistance in Criminal Matters (1978)
- **Second Additional Protocol** to the European Convention on Mutual Assistance in Criminal Matters (2001)
- **Schengen Implementation Convention** (1990)
- **Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union** (2000 Convention) and its protocol (2001)

6

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## Useful resources for MLA instruments

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



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	N	
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	

[https://www.ejn-crimjust.europa.eu/ejn/ejn\\_home/EN#](https://www.ejn-crimjust.europa.eu/ejn/ejn_home/EN#)



7

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## MLA main characteristics

- The legal instruments **need to be signed and ratified** at national level according to the national law of each State in order to enter into force
- A mechanism of cooperation between the **requesting** and **requested** State
- **Double criminality requested** (in principle)
- **Locus regit actum** - 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** (article 1 & 3 of the 1959 Convention)
- **Forum regit actum** - 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)

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## MLA shortcomings

- MLA process is **considered in general too long**
- It requires an administrative process in each country and **duplicate checking of paperwork**
- The requested State has a **wide discretion to comply with the request** of another State
- **Problems related to the admissibility of evidence gathered** by the requested State in the requesting State (2000 Convention introduced **forum regit actum** regarding taking of evidence)

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## Mutual recognition

- In 1999, “the Tampere European Council decided that judicial cooperation in criminal matters between the Member States should be based on **the principle of mutual recognition** of decisions in criminal matters”
- This principle of mutual recognition was posteriorly regulated in the Lisbon Treaty (2007)
- This **principle of mutual recognition** means that Member States must **recognize and enforce** a legal decision taken in another Member State **as if that decision had been taken by its own national authorities**
- Several legal instruments have further developed the principle of mutual recognition of decisions in criminal matters, establishing some procedures to be transposed into domestic law by the EU Member States

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## Mutual recognition mechanism

- Legal instruments need to be **implemented at national level** (especially FDs, Dir.)
- **Direct contact** between competent judicial authorities (in general)
- Swift from requesting and requested authorities to **issuing** and **executing** authorities
- **Mutual trust** (but, in general, not blind recognition)
- **Dual criminality** requirement basically abandoned (see the 32 list of offences from different legal instruments)

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## Main list of legal instruments given effect to the principle of mutual recognition

- **Council Framework Decision 2002/584/JHA** - European Arrest Warrant and the surrender procedures between Member States (EAW)
- **Council Framework Decision 2008/909/JHA** – detention and transfer of prisoners
- **Council Framework Decision 2008/947/JHA** – probation and alternative sanctions
- **Council Framework Decision 2009/829/JHA** – alternatives to pre-trial detention
- **Directive 2014/41/EU** – European Investigation Order (EIO)
- **Regulation (EU) 2018/1805** - mutual recognition of freezing orders and confiscation orders
- **Council Framework Decision 2005/214/JHA** - on the application of the principle of mutual recognition to financial penalties

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## 1. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States - EAW

- The mechanism is based on the **principle of mutual recognition** and therefore operates via direct contacts between judicial authorities.
- An EAW may be issued by a national judicial authority for:
  - prosecuting a person when the offence for which the person is being prosecuted has a maximum penalty of at least 1 year of prison;
  - execution of a custodial sentence or detention order when the sought person has been sentenced to a prison term of at least 4 months.

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## 2. Detention and transfer of prisoners

- The transfers are governed by **Council Framework Decision 2008/909/JHA**
- The CFD aims to facilitate **the social rehabilitation** of convicted persons by allowing them to serve their sentence in their home country
- To this end, convicted prisoners can be transferred back to their EU country of nationality, habitual residence or another EU country with which they have close ties
- The issuing EU country should assess the impact of the transfer on the prisoner's social rehabilitation
- Prisoners should not be transferred to countries where detention conditions do not meet minimum standards required by the Council of Europe's European prison rules

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### 3. Probation and alternative sanctions

- The application of **the principle of mutual recognition** to alternatives to custody and measures facilitating early release is governed by the Council Framework Decision 2008/947/JHA
- The probation decision or other alternative sanction can be executed in another EU country, as long as the person consents
- The CFD's objective is to facilitate the application of suitable probation measures and alternative sanctions in case of offenders who do not live in the State of conviction

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### 4. Alternatives to pre-trial detention (European Supervision Order)

- The Council Framework Decision 2009/829/JHA deals with the application of **the principle of mutual recognition** to decisions on supervision measures as an **alternative to pre-trial detention**.
- The instrument allows a suspected person to be subject to a supervision measure in their home EU country until the trial takes place in another country, instead of being placed in pre-trial detention in a foreign country.

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## 5. European Investigation Order - EIO

- The EIO (**Directive 2014/41/EU**) is based on **the principle of mutual recognition**, which means that the executing country is obliged to recognise and ensure execution of the request of the other country, **in the same way and under the same modalities** as if the investigative measure concerned had been ordered by an authority of the executing country
- A EIO may also be issued to obtain evidence that already exists
- The Directive creates **a single comprehensive framework for investigative measures** such as *hearing of witnesses, telephone interceptions, covert investigations, information on banking operations, etc.*

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## 6. 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 of 19.12.2020)

- The Regulation replaces the provisions of Framework Decision **2003/577/JHA** as regards the freezing of property between the Member States bound by this Regulation as from 19 December 2020
- The Regulation replaces Framework Decision **2006/783/JHA** between the Member States bound by this Regulation as from 19 December 2020
- The Regulation lays down the rules under which a Member State **recognises** without further formalities and **executes** in its territory **freezing orders** and **confiscation orders** issued by another Member State within the framework of proceedings in criminal matters

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

- A judicial or administrative authority can transmit a **financial penalty** directly to an authority in another EU country and to have that penalty **recognised** and **executed** without any further formality
- The procedure applies in situations where a fine is imposed on a **person who is not a resident of the EU country where the offence was committed**, fails to pay the fine and then leaves the territory of that country

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## Networks and bodies supporting judicial cooperation

- Eurojust
- European Judicial Network (EJN)
- European Public Prosecutor's Office (EPPO)

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## European Judicial Network - Council Decision 2008/976/JHA of 16 December 2008

- The European Judicial Network (EJN) is a network of national contact points for the facilitation of judicial cooperation in criminal matters
- The main role of the EJN Contact Points, defined by the EJN Decision as “active intermediaries”, is to **facilitate judicial cooperation in criminal matters** between the EU Member States, particularly in actions to combat forms of serious crime
- To this end, they assist with **establishing direct contacts** between competent authorities and by providing legal and practical information necessary to prepare an effective request for judicial cooperation or to improve judicial cooperation in general

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## Eurojust - Regulation (EU) 2018/1727 of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation

- Eurojust was created in 2002 as the EU Judicial Cooperation Unit operating on the basis of Council Decision 2002/187/JHA
- The European Union Agency for Criminal Justice Cooperation (Eurojust) now operates on the basis of Article 85 of the Treaty of Lisbon and the Eurojust Regulation, which became applicable on 12 December 2019 and replaced Council Decision 2002/187/JHA.
- The Regulation determines Eurojust’s mandate, governance structure, data protection regime and the framework for establishing agreements with non-EU countries
- The main role of Eurojust is **to coordinate** the work of national authorities from the EU Member States as well as third States **in investigating and prosecuting transnational crime**

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## European Public Prosecutor's Office - Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office

- The Regulation establishing the European Public Prosecutor's Office under enhanced cooperation was adopted on 12 October 2017 and entered into force on 20 November 2017
- At this stage, there are 22 participating EU countries
- The European Public Prosecutor's Office is an independent and decentralised prosecution office of the European Union, with the competence **to investigate, prosecute and bring to judgment crimes against the EU budget**, such as fraud, corruption or serious cross-border VAT fraud

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## Tools of judicial cooperation

- European e-Justice Portal
- European Criminal Records Information System (ECRIS)

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## European Criminal Records Information System (ECRIS)

- The European Criminal Records Information System (ECRIS) was established in April 2012 in order to improve **the exchange of information on criminal records throughout the EU.**
- All EU countries are currently connected to ECRIS
- *ECRIS:*
  - *ensures that information on convictions is exchanged between EU countries in a uniform, fast and compatible way*
  - *provides judges and prosecutors with easy access to comprehensive information on the criminal history of persons concerned, including in which EU countries that person has previously been convicted*
  - *removes the possibility for offenders to escape the consequences of their previous convictions in another EU Member State*

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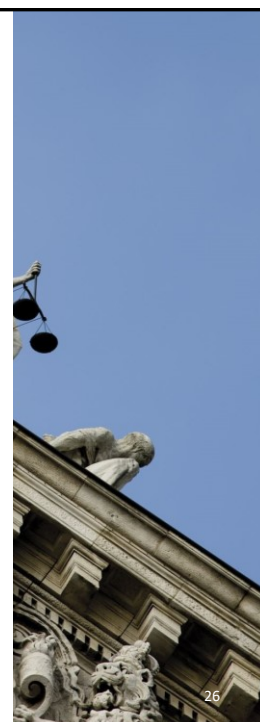
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# Thank you!

Motoi Constantin Daniel  
Judge, Court of First Instance  
4th District, Bucharest



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# An overview on Mutual Legal Assistance in Criminal Matters in the EU



Co-funded by the Justice  
Programme of the European Union 2014-2020



1

## 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 on Hearing by videoconference and telephone conference*
- *MLA => EU – UK and Northern Ireland as of 01.01.2021*
- *Exercises*

2

2

## 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** States

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## The concept of Mutual Legal Assistance (MLA) – cont.

- **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

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## Relationship between legal instruments for judicial cooperation in criminal matters

- **Identify the legal instrument applicable** to the two countries 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**). As of 01.01.2021 UK is a third country - the Dir. 2014/41/EU is also not applicable.
- **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

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## Relationship between legal instruments for judicial cooperation in criminal matters – cont.

- Verify **the table of the ratifications** for each legal instrument (**only** if signed, ratified and entered into force by the two States involved, the legal instrument is applicable). Of course, there might be declarations and reservations made....**verify them too** because they are important to know if and 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/#>

6

6

# Useful resources for judicial cooperation



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	U
222	Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons	22/11/2017		E	N	U
221	Council of Europe Convention on Offences relating to Cultural Property	19/05/2017		E	N	U
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	N	U
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	U



CoE's Treaty Office website can be accessed at the following link:

<https://www.coe.int/en/web/conventions/home>

Here is the frontpage of the website in English (fig. 1), which is also available in other 4 languages (fig. 1a as examples in our case – Italian).



We take for example the **European Convention on Mutual Assistance in Criminal Matters**. We see that the Convention was opened for signatures on **20.04.1959** and entered into force on **12.06.1962**. The Convention was opened for signature by the Member States and for accession by non-member States (**E**) and by non-European non-member States (**N**) (fig. 4).

035	European Social Charter	18/10/1961	26/02/1965			
034	European Agreement on the Protection of Television Broadcasts	22/06/1960	01/07/1961			
033	Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for use on free loan in Hospitals and other Medical Institutions for purposes of Diagnosis or Treatment	28/04/1960	29/07/1960	E.	N.	U.
032	European Convention on the Academic Recognition of University Qualifications	14/12/1959	27/11/1961	E.	N.	
031	European Agreement on the Abolition of Visas for Refugees	20/04/1959	04/09/1960	E.	N.	
030	<u>European Convention on Mutual Assistance in Criminal Matters</u>	<u>20/04/1959</u>	<u>12/06/1962</u>	<u>E.</u>	<u>N.</u>	
029	European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles	20/04/1959	22/09/1969	E.	N.	
028	Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe	06/03/1959	15/03/1963			

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### Chart of signatures and ratifications of Treaty 030

European Convention on Mutual Assistance in Criminal Matters

Status as of 05/10/2020

<b>Title</b>	European Convention on Mutual Assistance in Criminal Matters
<b>Reference</b>	ETS No.030
<b>Opening of the treaty</b>	Strasbourg, 20/04/1959 - Treaty open for signature by the member States and for accession by non-member States
<b>Entry into Force</b>	12/06/1962 - 3 Ratifications.

State who signed  State who ratified  State who neither signed nor ratified  State who suspended  State who denounced

	Signature	Ratification	Entry into Force	Notes	R.	D.	A.	T.	C.	O.
<b>Members of Council of Europe</b>										
Albania	19/05/1998	04/04/2000	03/07/2000		R.	D.				
Andorra	15/06/2004	26/04/2005	25/07/2005		R.	D.	A.			
Armenia	11/05/2001	25/01/2002	25/04/2002		R.	D.	A.			
<u>Austria</u>	<u>20/04/1959</u>	<u>02/10/1968</u>	<u>31/12/1968</u>		R.	D.	A.			O.
Azerbaijan	07/11/2001	04/07/2003	02/10/2003		R.	D.	A.			
Belgium	20/04/1959	13/08/1975	11/11/1975		R.	D.	A.			
Bosnia and Herzegovina	30/04/2004	25/04/2005	24/07/2005							

a: Accession s: Signature without reservation as to ratification su: Succession r: Signature "ad referendum".

R: Reservations D: Declarations Denunciations Derogations A: Authorities T: Territorial Application C: Communication O: Objection.

Source : Treaty Office on <http://conventions.coe.int> - \* Disclaimer.

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## Reservations and Declarations for Treaty No.030 - European Convention on Mutual Assistance in Criminal Matters

Nature of declaration : Reservations  
 Status as of 06/10/2020



### Reservation contained in the instrument of ratification deposited on 2 October 1968 - Or. Engl.

Austria will make the execution of letters rogatory for search or seizure of property subject to the condition laid down in sub-paragraph c.

**Period covered: 31/12/1968 -**

Articles concerned : 5

### Reservation contained in the instrument of ratification deposited on 2 October 1968 - Or. Engl - and withdrawn by letter from the Permanent Representative of Austria dated 13 August 1976 registered at the Secretariat General on 13 August 1976.

The presence of persons interested in the criminal procedure as parties to that procedure at the interrogation of witnesses, experts or accused persons will not be authorised.

**Period covered: 31/12/1968 - 13/08/1976**

Articles concerned : 4

### Reservation made by the Minister for Foreign Affairs and registered at the Secretariat General on 2 May 1983 - Or. Engl.

Austria will not lend assistance in the case of offences referred to under a).

**Period covered: 31/12/1968 - 02/05/1983**


The screenshot shows the European Judicial Network (EJN) website interface. On the left, there is a navigation menu with categories like 'About EJN', 'Introduction to the EJN Website', 'EJN Secretariat', 'EJN Meetings', 'Projects', 'Reports', 'EJN Awareness', 'Registry (EJN partially restricted area)', and 'EJN restricted access area'. The main content area displays a search result for the 'Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union'. The search results are organized into a table with columns for 'Categories', 'General Legal Framework', and 'Advanced Search'. The 'Advanced Search' column shows the full text of the legal instrument, including its title and a brief description of its content. The 'Categories' column lists various legal instruments and frameworks related to the search results.

## Exercises

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

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Hearing by videoconference of a witness is provided in different legal instruments. Which is the correct one?

---

- Directive 2014/41 on EIO?
- 2000 Convention – 2 MS involved?
- Second Additional Protocol to the 1959 Convention - 2 MS part of the Council of Europe?

**We need to check in a particular order and follow the sequences of the legal instruments!**

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**Dir. 2014/41/EU - EIO**

Article 34

**Relations to other legal instruments, agreements and arrangements**

1. Without prejudice to their application between Member States and third States and their temporary application by virtue of Article 35, this Directive replaces, as from 22 May 2017, the corresponding provisions of the following conventions applicable between the Member States bound by this Directive:

- (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.

**2000 Convention**

Article 1


**Relationship to other conventions on mutual assistance**







1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union, of:

- (a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the 'European Mutual Assistance Convention';
- (b) the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
- (c) the provisions on mutual assistance in criminal matters of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (hereinafter referred to as the 'Schengen Implementation Convention') which are not repealed pursuant to Article 2(2);

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 Denmark	✘ -	-	-	Denmark is not bound by the Directive 2014/41/EU. As it cannot opt-in to this directive, it will not transpose it.
---	-----	---	---	--

 Slovakia	1 Oct 2006	<a href="#">Declaration</a>	Adhésion/Accession
 Slovenia	26 Sep 2005	<a href="#">Declaration</a>	Adhésion/Accession
 Spain	23 Aug 2005	<a href="#">Declaration</a>	
 Czech Republic	12 Jun 2006	<a href="#">Declaration</a>	Adhésion/Accession
 Denmark	23 Aug 2005	<a href="#">Declaration</a>	
 Estonia	23 Aug 2005	<a href="#">Declaration</a>	Adhésion/Accession

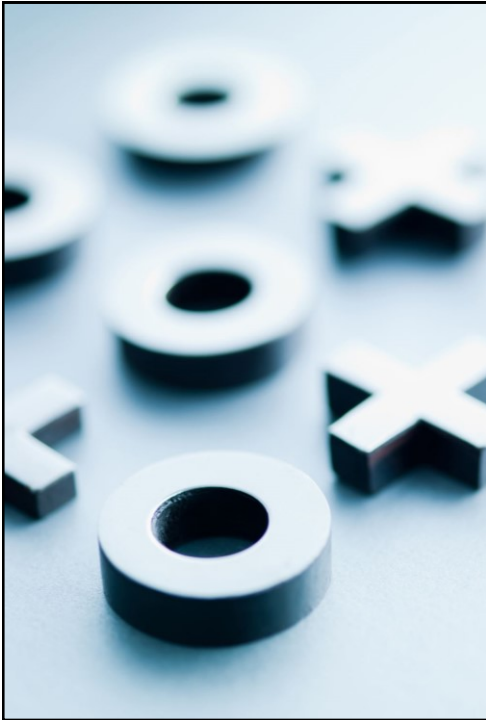
Spain has transposed the **Directive 2014/41** regarding EIO, but **Denmark is not taken part and is not bound by this legal instrument according to Recital (45) of the same Directive.**

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

Still, the Spanish judicial authority needs to verify the **Declaration** made by Denmark in relations 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 the 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).

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## Which is the order?

---

- Directive 2014/41 on EIO – first
- 2000 Convention – second
- Second Additional Protocol to the 1959 Convention - third
- Additional Protocol to the 1959 Convention - fourth
- 1959 Convention - fifth
- ....

17

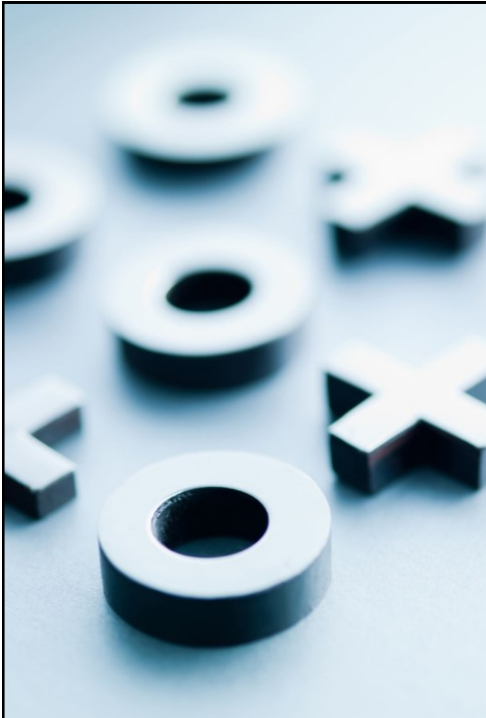
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## Exercises

- b. A Bulgarian judicial authority wants to hear by telephone conference a witness who is Ireland. Which legal instrument shall it use?

18

18




## Hearing by telephone conference of a witness is provided in different legal instruments. Which is the correct one?

- Directive 2014/41 on EIO?
- 2000 Convention – 2 MS involved?
- Second Additional Protocol to the 1959 Convention - 2 MS part of the Council of Europe?

**We need to check in a particular order and follow the sequences of the legal instruments!**

19

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 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.
---	-----	---	---	---

 Bulgaria	1 Dec 2007	<a href="#">Declaration</a>	Adhésion/Accession
 Croatia			
 Cyprus	1 Feb 2006	<a href="#">Declaration</a>	Adhésion/Accession
 Ireland	23 Aug 2020	<a href="#">Declaration</a>	
 Italy	22 Feb 2018	<a href="#">Declaration / Reservation</a>	
 Latvia	23 Aug 2005	<a href="#">Declaration</a>	Adhésion/Accession

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

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 10 of the 2000 Convention) because it has been signed, ratified and it is into force in both country. The 2000 Convention is in force in Ireland as of 23.08.2020.

Verifying the declarations made by Ireland we note that none of them concerns the application of article 10 of the 2000 Convention. So again, the 2000 Convention is applicable for let. b).

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## Exercises

- c. A German judicial authority wants to hear by videoconference an expert who is in Greece. Which legal instrument shall it use?

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

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

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## Administrative details: transmission channels

### 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 par. 1 of the 2000 Convention).
- Exceptions – e.g. article 6 par. 3 of the 2000 Convention for UK and Ireland (**via Central Authority**)
- Article 4 of the Second Additional protocol to the 1959 Convention (**MoJ to MoJ**) => exception par.2 which allow direct contact between judicial authorities
- Transmission should be done by any means capable of producing a **written record**

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## Administrative details: forms

### Forms

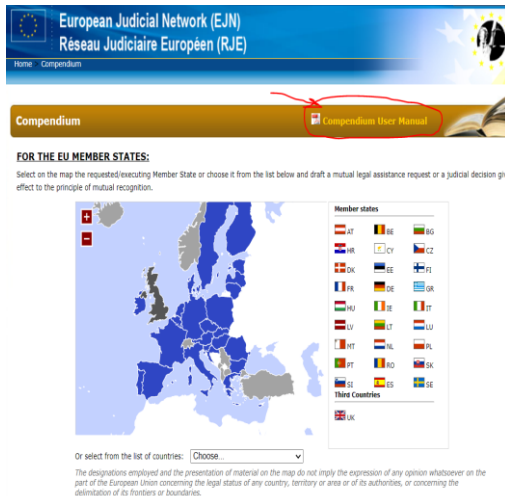
- **No mandatory form** to use for cooperation provided in the legal instruments for MLA
- **Minimum requirements** for the content of the request
- A **LoR** form is provided on the EJM website (Compendium) in all EU languages

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


24

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## LoR form + user manual



Create an MLA request

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

Measure: [Witnesses, victims, suspects - Summoning and hearing](#) (Select another measure)  
[Hearings addressed to videoconference \(723\)](#)

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](#) (Go to section details)

Actions: [Save as work file](#) [Save and Print](#) [Save and Send](#) [Upload Logo](#) [Change language](#)

Model request for mutual legal assistance

[Click to Show All Content](#)

[Requesting authority](#) [Click to Show Content](#)

[Requested authority](#) [Click to Show Content](#)

[Requested measure\(s\)](#) [Click to Show Content](#)

[Persons concerned](#) [Click to Show Content](#)

[Urgency / Confidentiality](#) [Click to Show Content](#)

[Legal basis of the request](#) [Click to Show Content](#)

[Facts and legal qualification](#) [Click to Show Content](#)

[Special formalities required under the law of the requesting state](#) [Click to Show Content](#)

[Other authorities involved](#) [Click to Show Content](#)

[Specific information needed in case of request for hearings by videoconference](#) [Click to Show Content](#)

[Annexes](#) [Click to Show Content](#)

[Signature / Official stamp](#) [Click to Show Content](#)

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## Execution of the MLA

- The requested Party shall execute in the manner provided 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 (article 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**

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## Time limits

- 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*

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## MLA => EU - United Kingdom and Northern Ireland

- **As of 1 January 2021**, the new rules for the judicial cooperation between the European Union and the United Kingdom will apply according to the **Trade and Cooperation Agreement** between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland (**TCA** hereinafter)
- **TCA** (Title VIII – as from page 300) **supplements** the provisions of the European Convention on Mutual Assistance in Criminal Matters of 1959, the Additional Protocol to the European Mutual Assistance Convention of 1978 and the Second Additional Protocol to the European Mutual Assistance Convention of 2001.
- In addition to the mentioned legal instruments, the TCA emphasizes the **principle of proportionality, direct contacts between authorities** and **the investigative measures that shall always be available under the law of requested state** – *similarly to the EIO Directive*.
- Besides, in principle, the requested State shall decide whether to execute the request for mutual assistance **as soon as possible** and in any event **no later than 45 days after the receipt of the request** and shall inform the requesting State of its decision, and **to execute the request in 90 days** after the decision to execute.

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## More exercises

- e. An Irish judicial authority wants to summon a witness in Greece. Which legal instrument shall it use?

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- **The Directive on EIO is not applicable – not an investigative measure!**
- We see that for **Ireland** the 2000 Convention is into force which is not the case for **Greece**.

 Germany	2 Feb 2006	<a href="#">Declaration</a>	
 Greece			
 Hungary	23 Nov 2005	<a href="#">Declaration</a>	Adhésion/Accession
 Ireland	23 Aug 2020	<a href="#">Declaration</a>	
 Italy	22 Feb 2018	<a href="#">Declaration / Reservation</a>	

We see below that the **summoning is provided in art. 7 of the 1959 Convention** is in force in both MS. 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																
Greece	20/04/1959	23/02/1962	12/06/1962																
Hungary	19/11/1991	13/07/1993	11/10/1993																
Iceland	27/09/1982	20/06/1984	18/09/1984																
Ireland	15/10/1996	28/11/1996	26/02/1997																
Italy	20/04/1959	23/08/1961	12/06/1962																

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## More exercises

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

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- Although an investigative measure the **Directive 2014/41 is not applicable**, because Georgia is not a member of the European Union. **Nor the 2000 Convention is applicable**. 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.				

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

- ✓ 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 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, a 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 the Directive 2014/41/EU regarding the EIO, **in order to gathering evidence** in a particular situation comprised by the Directive and by the 2000 Convention (for example - hearing a witness by videoconference).
- ✓ Denmark and Ireland are **not bound** by the Directive 2014/41/EU on EIO.
- ✓ The 2000 Convention is **not into force** in Greece and Croatia.

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## Special provisions on Hearing 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*

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## Special provisions on Hearing by videoconference and telephone conference – cont. 1

- ✓ 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 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**
- ✓ **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

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## Special provisions on Hearing by videoconference and telephone conference – cont. 2

- ✓ 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 **will 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

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## More exercises

- h. A German judicial authority wants to hear by videoconference a witness in Switzerland. Which legal instrument shall it use?

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- **Firstly, the Directive 2014/41 on EIO is not applicable – Switzerland not a MS.**
- **Secondly, the 2000 Convention is not also applicable - Switzerland not a MS.**
- 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 **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.							

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# Thank you!

Motoi Constantin Daniel  
Judge, Court of First Instance  
4th District, Bucharest



## EUROPEAN ARREST WARRANT

advocate Mikołaj Pietrzak



Co-funded by the Justice  
Programme of the European  
Union 2014-2020



[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

1

## EUROPEAN ARREST WARRANT - DEFINITION

- The European Arrest Warrant (EAW) is a simplified cross-border judicial surrender procedure – for the purpose of prosecution or executing a custodial sentence or detention order.
- The aim of the EAW is to ensure that open borders and free movement in the Union are not exploited by those seeking to evade justice.
- Legal basis - Framework Decision on EAW (Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States).
- The Framework Decision on EAW has been in force since 1 January 2004 in all Member States.

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## EUROPEAN ARREST WARRANT IN NUMBERS

- 17,471 EAWs were issued in 2018 in 27 Member States.
- 7,000 requested persons were surrendered across borders.
- The most commonly identified categories were theft offences and criminal damage (2893 EAWs), fraud and corruption offences (1739 EAWs) and drug offences (1610 EAWs).

source: <https://eucrim.eu/news/statistics-use-eaw-2018/>

On 2 July 2020, the European Commission published key statistics on the EAW for 2018

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## EAW VS TRADITIONAL EXTRADITION

1. Legal basis: Framework Decision vs bilateral agreements.
2. EAW form vs extradition motion.
3. Different authorities issuing a motion – lack of political influence in the case of EAW.
4. Recipient of a motion – all EU states/particular EU state vs a particular state.
5. Defence rights and fair trial.
6. Advantages of EAW:
  - A. simplicity;
  - B. dual criminality - 32 categories of offences, no verification on whether the act is a criminal offence in both countries;
  - C. mutual trust and recognition;
  - D. speediness.

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4



**Pietrzak Sidor & Wspólnicy**

**HOW DOES IT WORK?**

**EAW may be issued by a national judicial authority for:**



prosecuting a person when the offence for which the person is being prosecuted has a maximum penalty of at least 1 year of prison;

execution of a custodial sentence or detention order when the sought person has been sentenced to a prison term of at least 4 months.

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**Pietrzak Sidor & Wspólnicy**

**JUDICIAL AUTHORITY - DEFINITION**

**Judicial authority should:**

- exercise its responsibilities objectively;
- take into account all incriminatory and exculpatory evidence;
- not be exposed to the risk that its decision-making power is subject to external directions or instructions, in particular from the executive.

**The term „judicial authority” applies to** authorities participating in the administration of criminal justice such as judges, courts or public prosecutors in case they meet standards of independence and objectivity.

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**Central authority (art. 7 of the Framework Decision on EAW)**

- each Member State may designate a central authority to assist the competent judicial authorities;
- a central authority may be responsible for the administrative transmission and reception of EAW as well as for all other official correspondence.

**Schengen Information System (SIS)**

- the largest and the most widely used information sharing system for security and border management in Europe;
- preserves internal security in the absence of internal border checks through different areas of cooperation: border control cooperation, law enforcement cooperation and cooperation on vehicle registration;
- distribution of information on the issued EAW.

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**Proportionality check** is commonly accepted as a requirement for issuance of the EAW, however it was never directly expressed in the Framework Decision. It is a general rule of the European law.

**Factors, which should be taken into account:**

1. the seriousness of the offence (for example, the harm or danger it has caused);
2. the likely penalty imposed if the person is found guilty of the alleged offence (for example, whether it would be a custodial sentence);
3. the likelihood of detention of the person in the issuing Member State after surrender;
4. the interests of the victims of the offence.

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## 60 days

The Executing State has to make a final decision on the execution of the European arrest warrant within 60 days after the arrest of the person if the person does not consent to the surrender.

## 10 days

The Executing State where the person is arrested has to make a final decision on the execution of the European arrest warrant within 10 days after the arrest of the person if the person consents to the surrender.

## 10 days

The person requested must be surrendered as soon as possible on a date agreed between the authorities concerned, and no later than 10 days after the final decision on the execution of the European arrest warrant.

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**Mandatory grounds:**

- the person has already been judged for the same offence (ne bis in idem);
- the person is a minor (the person has not reached the age of criminal responsibility in the executing country);
- the offense is covered by amnesty (the executing country could have prosecuted and the offence is covered by an amnesty in that country).

**Optional grounds:**

- lack of double criminality for offences other than the 32 listed in the Framework Decision on EAW;
- there is a pending criminal procedure in the executing country for the same acts;
- statute of limitations apply;
- the person has been judged in absentia, without respect of certain conditions.

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**EAW was issued in the following cases:**

- a terrorist involved in the Paris attacks caught in Belgium;
- an attacker of the Brussels Jewish Museum arrested in France;
- a failed London bomber caught in Italy;
- an Ethiopian man was arrested in Rome a week after the attempted bombings;
- a gang of armed robbers sought by Italy whose members were arrested in 6 different EU countries;
- "Yoghurt Lady" case.

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**Thank you for your attention.**

Advocate Mikołaj Pietrzak - [pietrzak@pietrzaksidor.pl](mailto:pietrzak@pietrzaksidor.pl)

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

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

*20.01.2021*



Co-funded by the Justice  
Programme of the European  
Union 2014-2020

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## Content:

- *Fact sheet*
- *Relationship with other legal instruments*
- *Scope of application*
- *Definitions*
- *Channels of transmission*
- *Recognition and execution. Alternative measures*
- *Grounds for non-recognition or non-execution. Postponement*
- *Time limits for recognition and execution*
- *Obligation to inform*
- *Additional resources*
- *Exercises*

2

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# Fact sheet

- **22 May 2017** – deadline for transposition of the Directive 2014/41/EU
- **25 MS** have transposed it, **Denmark and Ireland** are **not bound** by the Dir.
- **UK** is now third country after Brexit (as of 1 January 2021 new rules for the judicial cooperation between the European Union and the United Kingdom are applicable – see the **Trade and Cooperation Agreement** between EU and the United Kingdom of Great Britain and Northern Ireland)
- **Deadlines** for recognition and execution of the EIO are provided
- **Limited grounds** for refusing to recognise or execute an EIO are provided
- **Standardized forms** to be used – **EIO form (Annex A)**, **Confirmation of the receipt of an EIO (Annex B)** and **Notification about interception of telecommunication without technical assistance (Annex C)**
- MS shall execute an EIO on the basis of the **principle of mutual recognition** and **in accordance with the provisions of the Dir.**

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- see EJN's website - [https://www.ejn-crimjust.europa.eu/ejn/ejn\\_home/EN](https://www.ejn-crimjust.europa.eu/ejn/ejn_home/EN)

The screenshot displays the European Judicial Network (EJN) website interface. The main navigation bar includes 'Home' and 'Judicial Library'. The 'Judicial Library' section is active, showing a search bar and a list of legal instruments. The instrument '2014/41/EU: Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters' is highlighted with a red circle. The website also features a 'Member states' section with a map of Europe and a list of countries.

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## Relationship with other legal instruments

- The Directive **replaces**, as of 22 May 2017, **the corresponding provisions** of the following conventions applicable between the Member States bound by this Directive:
  - (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 (25 MS)
- 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)
- For **UK** - the Trade and Cooperation Agreement provides a new legal basis, as well as makes references to the existing legal framework that covers wide range of judicial cooperation, including in our case MLA instruments.

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## Scope of application

- The EIO shall cover **any investigative measure to obtain evidence** in accordance with this Directive (art.1 par. 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 par. 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)*
  - *Regulation no. 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)*

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## 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.

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## Channels of transmission

- The EIO completed and signed shall be transmitted **directly** by any means capable of producing a written record – use **ATLAS** from the EJN’s website to identify an executing competent authority from the executing MS
- Each MS **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 (EJN)**
- If the identity of the executing authority is unknown, the issuing authority **shall make all necessary inquiries, including via the EJN contact points**, in order to obtain the information from the ES
- Where **the authority in the ES** 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 EA and so inform the issuing authority**

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# Finding the CA from the executing MS

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

## 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, CY, CZ, DE, DK, EE, FI, FR, GR, HU, IE, IT, LT, LU, NL, PL, PT, RO, SK, SI, ES, SE

**Candidate countries**

- AL, MK, HE, RS, IS, LI, NO, CH

**Associated Countries**

- IS, LI, NO, CH

**Third Countries**

- UK

**Germany - Tools**

- Atlas**: Find competent authority to receive your request for judicial cooperation
- Compendium**: Draft a request for judicial cooperation
- Fiches Belges**: Copease 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

## Steps to follow when finding a competent authority (Not mandatory for all MS and not in the same order!!!)

- ✓ Select **the country** where to send the request for gathering of evidence
- ✓ Choose **the investigative measures** you want from the exhaustive list provided
- ✓ Select **the legal instrument applicable** – whether is LoR or an EIO (remember that the Directive on EIO is not applicable to Ireland, Denmark and UK)
- ✓ Depending on the seriousness of crime and on the investigative measure requested some countries **ask you to select the matter of crime** (e.g. Netherlands, Spain). If not among the listed matter of crime (e.g. terrorism, corruption, organized crime), select any other matter as default
- ✓ Depending on the investigative measure requested, for some MS (e.g. Luxembourg) you need to provide **whether there is urgency** for your request (select it if applicable for your request)
- ✓ If the **territorial link is known** select it (e.g. the town or the region from the executing MS is known)

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

Search Competent Authorities:

Country: **Belgium (BE)** (Select another country)

Choose measure: ALL

- 400. Technical or scientific examinations or expert evaluations
- 401. Spontaneous exchange of information
- 402. Order to produce documents
- 403. Other possibilities of obtaining information concerning taxes or bank accounts
- 404. Access to public documents in judicial files
- 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

Search Competent Authorities:

2 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:  Not known  
 Not known

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

**3**

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 [\(Statification details\)](#)

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

\* The EIO Directive is replacing the above mentioned legal framework for all EU Member States except Denmark and Ireland as both issuing and executing State.

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

**4**

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** [\(Status of implementation\)](#)

Authority type: BE - Genral --- (Regional)

---

**Resultant Competent Authority:**

**Procureur du Roi de Bruxelles – Parquet de Police / Procureur des Konings te Brussel – Politie Parket**

General data | Videoconference | Areas | Properties | Associated CPs

Name: Procureur du Roi de Bruxelles – Parquet de Police / Procureur des Konings te Brussel – Politie Parket

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

Department: For "Transfer of Proceedings" please use email: casier.BCN.Bruxelles@just.fgov.be and fax: +32 (0)2 508 70 97

City: Bruxelles / Brussel

Postal code: 1000

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

Fax number: +32 (0)2 519 89 61 Email Address: secb.bxl@just.fgov.be

Judicial Cooperation Legal Instruments (adopted by the EU)

- Procedural Rights in Criminal Proceedings Legal Instruments (adopted by the EU)
- Specific Areas of Crime Legal Instruments (adopted by the EU)
- EU Legal instruments organised by type
  - Legal instruments adopted by the Council of Europe
  - Legal instruments adopted by the United Nations
  - Police Cooperation Legal Instruments adopted by the EU

2014/41/EU: Directive 2014/41/EU of 3 April 2014 regarding the **European Investigation Order** in criminal matters

Show all | Hide all

- Legal instrument and related acts [Show](#)
- National Legislations [Show](#)
- European Investigation Order - Forms [Show](#)
- European Investigation Order - Notifications [Show](#)
- Status of Implementation and overview of notifications [Show](#)
- EIO - Handbooks, guidelines and practical guidance [Hide](#)
  - Competent authorities, languages accepted, urgent matters and scope of the EIO Directive (04/05/2020)
  - Joint Note of Eurojust and the European Judicial Network on the practical application of the European Investigation Order
  - Guidelines on the European Investigation Order forms
- Court of Justice of the European Union (links to CURIA website) [Show](#)
- EJN Conclusions on the EIO [Show](#)
- EIO - Reports [Show](#)

Categories
Advanced Search

Reference number

Name: Competent authorities, languages accepted, urgent matters and scope of the EIO Directive (04/05/2020)

Origin: No

Publication Date: 23/10/2018

Categories:
 

- Handbooks, guidelines and practical guidance
- 2014/41/EU: Directive 2014/41/EU of 3 April 2014 regarding the **European Investigation Order** in criminal matters
- 2014/41/EU: Directive 2014/41/EU of 3 April 2014 regarding the **European Investigation Order** in criminal matters

Properties

Document Link: [EN](#) [COM](#)

**Updated 4 May 2020**

**Competent authorities, languages accepted, urgent matters and scope of the EIO Directive<sup>1</sup> of the instrument in the EU Member States**

- as notified by the Member States which have transposed the Directive 2014/41/EU or on the grounds of the information provided by the EJN Tool Correspondents or National Correspondents
- according to Notifications made by the Member States pursuant to Article 33 (1) and (2) and Article 34(4) of the Directive 2014/41/EU

**Please be advised that the contact information of any competent authority can be easily found in EJN Atlas!**

AUSTRIA	
<b>ISSUING AUTHORITIES</b>	Public Prosecution Services or Courts; in fiscal matters below the threshold for punishable acts before courts: financial criminal authority; in other administrative matters: district administrations and federal police authorities
<b>VALIDATING AUTHORITIES</b>	No validation in case of EIO issued by Public Prosecutors offices or Courts; in fiscal matters below the threshold for punishable acts before courts: Head of appraisal senate; in other administrative matters: Administrative Court
<b>RECEIVING AUTHORITIES</b>	Public Prosecution Services or Courts; in fiscal matters below the threshold for punishable acts before courts: financial criminal authority; in other administrative matters: district administrations and federal police authorities

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## Finding the CA from the executing MS

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

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

**Search Competent Authorities:**

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

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

**Search Competent Authorities:**

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

Measure: Witnesses, victims, suspects - Summoning and hearing [\(Select another measure\)](#)  
Hearing suspects/persons accused: by video conference (711)

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

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**Search Competent Authorities:**

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

Measure: Witnesses, victims, suspects - Summoning and hearing [\(Select another measure\)](#)  
Hearing suspects/persons accused: by video conference (711)

Did your country implement the  Yes, apply EIO as legal instrument  
European Investigation Order and do you therefore want to apply this 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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A French competent issuing authority wants to hear by videoconference a witness residing in Vigo, Spain.

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

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

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

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**Search Competent Authorities:**

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

Measure: Witnesses, victims, suspects - Summoning and hearing [\(Select another measure\)](#)  
Hearing suspects/persons accused: by video conference (711)

Did your country implement the  Yes, apply EIO as legal instrument  
European Investigation Order and do you therefore want to apply this 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

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## Recognition and execution

- The EA 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 par. 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 par. 2 Dir.)

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## Alternative measures

- **Recourse to a different type of investigative measure** (art. 10 par. 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.**
- 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**

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## 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.).

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## Time limits for recognition and execution

- The decision on the Rec. and Ex. 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.)
- **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 to meet the time limit it shall, without delay, inform the CA 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.

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## Obligation to inform

- The CA in the ES which receives the EIO **shall**, without delay, and in any case **within a week** of the reception of an EIO, **acknowledge reception of the EIO** by completing and sending the form set out in Annex B.
- The EA **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 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 establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority*
- The EA **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.

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## Additional resources on the EJM's website

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

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

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

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

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

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

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Judicial Library

Search the Library  Search

Categories
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Reference number

Name: Guidelines on the European Investigation Order forms

Origin: No

Publication Date: 30/01/2020

Categories:
 

- Handbooks, guidelines and practical guidance
- 2014/41/EU: Directive 2014/41/EU of 3 April 2014 regarding the **European Investigation Order** in criminal matters
- 2014/41/EU: Directive 2014/41/EU of 3 April 2014 regarding the **European Investigation Order** in criminal matters

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### GUIDELINES ON HOW TO FILL IN THE EUROPEAN INVESTIGATION ORDER (EIO) FORM

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

- *The EIO should be chosen where the execution of an investigative measure seems proportionate, adequate and applicable to the case in hand. The issuing authority should therefore ascertain whether the investigative measure chosen is necessary and proportionate for the gathering of the evidence concerned.*
- *Sometimes it may be more effective to go through police to police cooperation before the EIO is issued, for example, creating an alert in SIS to find or locate the objects sought as evidence in criminal proceedings (such as vehicles, identity papers, credit cards, or number plates, etc.) or to find out the place of residence or domicile of persons sought to assist with criminal judicial procedures (such as witnesses).*
- *Note that Denmark and Ireland do not participate in EIO.*
- *Consult the EJN website to find notifications made by Member States (in the Judicial Library), as well as the competent executing authority for your EIO (in the Judicial Atlas).*
- *For further information, it might be useful to contact your national EJN Contact Point(s).*

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ANNEX-A	
EUROPEAN INVESTIGATION ORDER (EIO)	
<p>This EIO has been issued by a competent authority. The issuing authority certifies that the issuing of this EIO is necessary and proportionate for the purpose of the proceedings specified within it taking into account the rights of the suspected or accused person and that the investigative measures requested could have been ordered under the same conditions in a similar domestic case. I request that the investigative measure or measures specified below be carried out taking due account of the confidentiality of the investigation and that the evidence obtained as a result of the execution of the EIO be transferred.</p>	
SECTION A	
Issuing State:	<div style="border: 1px solid black; padding: 2px;"> <ul style="list-style-type: none"> <li>Kingdom of Belgium</li> <li>Republic of Bulgaria</li> <li>Czech Republic</li> <li>Federal Republic of Germany</li> <li>Republic of Estonia</li> <li>Hellenic Republic</li> <li>Kingdom of Spain</li> <li>French Republic</li> <li>Republic of Croatia</li> </ul> </div>
Executing State:	
SECTION B: Urgency	
Please indicate if	
<input type="checkbox"/> Evidence being concealed or destroyed	
SECTION C: Investigative measure(s) to be carried out	
Describe the assistance/investigative measure(s) required AND indicate, if applicable, if it is one of the following investigative measures:	
Traditional investigative measure(s):	
<input checked="" type="checkbox"/> Search	
<input checked="" type="checkbox"/> Seizure (with a view to gathering evidence)	
<input type="checkbox"/> Surrender of documents	
<input checked="" type="checkbox"/> Surrender of business records	
Page 1 of 12	
<input type="checkbox"/> Obtaining information or evidence which is already in the possession of the executing authority <input checked="" type="checkbox"/> Obtaining information contained in databases held by police or judicial authorities <input type="checkbox"/> Hearing	

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## EIO Exercises – finding the CA from the executing MS

- III. A Spanish competent issuing authority wants to hear an expert living in Athens, Greece.
- IV. A Romanian competent issuing authority wants to intercept the telecommunication of a suspect located in France without the technical assistance.

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

**Search Competent Authorities:**

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

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

Choose measure: ALL

- 50a. Location
- 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
- 711. Hearing suspects/persons accused: by video conference
- 712. Hearing suspects/persons accused: by telephone

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

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

**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

\* The EIO Directive is replacing the above mentioned legal framework for all EU Member States except Denmark and Ireland as both issuing and executing State.

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

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**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 20 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (Notification details)  **Directive 2014/41/EU regarding the European Investigation Order in criminal matters** (Status of implementation)

\* The EIO Directive is replacing the above mentioned legal framework for all EU Member States except Denmark and Ireland as both issuing and executing State.

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**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** (Status of implementation) (Select another instrument)

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: 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 (Division):

City: Paris cedex 01

Postal code: 75042

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

**Search Competent Authorities:**

Country: France (FR) (Select another country)

Choose measure: ALL

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

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# Thank you!

Motoi Constantin Daniel  
Judge, Court of First Instance  
4th District, Bucharest



## FREEZING AND CONFISCATION IN THE EUROPEAN UNION



Co-funded by the Justice  
Programme of the European  
Union 2014-2020



[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

1

### CONFISCATION

a final deprivation of property  
ordered by a court in relation  
to a criminal offence.

### FREEZING

temporary prohibition of the  
transfer, destruction,  
conversion, disposal or  
movement of property or  
temporarily assuming custody  
or control of property.

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2

**Approach of the EU to confiscation and freezing.**

- Constitutes one of the most effective tools to fight organised crime.
- The confiscation targets the main reason of existence of criminal organisations, i.e. maximisation of profit by illicit means.
- Confiscation should be preceded by freezing to secure execution of confiscation.
- Special attention is paid to the restitution of frozen property to victims.

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3

**1. Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime**

*(in force)*

- Its purpose was to ensure a common minimum approach of Member States.
- The general rule adopted was that if an offence is punishable by imprisonment of a maximum of more than one year, it must be possible under national law to order confiscation of proceeds generated by that offence.
- The Member States are required to have in place a system allowing for confiscation not only proceeds of crime but also an equivalent.
- Requests coming from other Member States must be processed with the same priority as is given to such measures in purely domestic proceedings.

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**2. Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence** *(no longer in force, replaced by Regulation of 2018)*

- First regulation concerning freezing of assets.
- Allows competent judicial authorities to seize property on request of another Member State's judicial authorities.

**3. Council Framework Decision of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property** *(in force)*

- An act that was intended to ensure similarity of the appropriate regulations in the Member States.
- Articulates the most important standards for all Member States.

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5

**4. Council Framework Decision of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders** *(no longer in force, replaced by Regulation of 2018)*

- First European act concerning mutual recognition with regard to confiscation.
- Like in the EAW - 32 categories of offences, there is no verification on whether the act is a criminal offence in both countries.
- Establishes only limited grounds for refusal.

**5. The Directive of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceed of crime in the EU** *(in force)*

- Aims at simplifying the existing rules and at filling important gaps which are being exploited by organised crime groups.
- Enhances the ability of EU states to confiscate assets that have been transferred to third parties.
- Makes it easier to confiscate criminal assets even when the suspect has fled and will ensure that competent authorities can temporarily freeze assets that risk disappearing if no action is taken.

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**The 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**

**Past experience:**

*The Commission's implementation reports on Framework Decisions 2003/577/JHA and 2006/783/JHA show that the existing regime for the mutual recognition of freezing orders and confiscation orders is not fully effective. Those Framework Decisions have not been implemented and applied uniformly in the Member States, which has led to insufficient mutual recognition and sub-optimal cross-border cooperation.*

preamble, recital 6

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**Importance:**

*In its communication of 2 February 2016 on an Action Plan for strengthening the fight against terrorist financing, the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. The Commission stated that, in order to disrupt organised crime activities that finance terrorism, it is essential to deprive those criminals of the proceeds of crime. To that end, the Commission stated that it is necessary to ensure that all types of freezing orders and confiscation orders are enforced to the maximum extent possible throughout the Union by the application of the principle of mutual recognition.*

preamble, recital 10

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**Approach:**

*It is important to facilitate the mutual recognition and execution of freezing orders and confiscation orders by establishing rules that oblige a Member State to recognise, without further formalities, the freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters and to execute those orders within its territory.*

preamble, recital 12

**Broad scope:**

*This Regulation should cover freezing orders and confiscation orders related to criminal offences covered by Directive 2014/42/EU, as well as freezing orders and confiscation orders related to other criminal offences.*

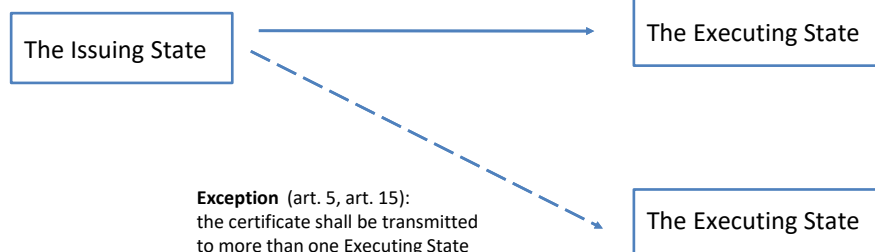
preamble, recital 14

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### Freezing/confiscation order shall be transmitted by means of a freezing certificate (Attachment 1 to the Regulation)

**The rule** (art. 5, art. 15):  
the certificate shall be transmitted only to one Executing State



**Exception** (art. 5, art. 15):  
the certificate shall be transmitted  
to more than one Executing State

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**The freezing/confiscation order may be transmitted to more than one executing State at the same time where:**

- the issuing authority has reasonable grounds to believe that different items of property are located in different Executing States;
- or*
- freezing/confiscation of a specific item of property would require action in more than one Executing State;
- or*
- a specific need, in particular where the estimated value of the property which may be frozen in the Issuing State and in any one Executing State is not likely to be sufficient for the full amount.

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**Who can issue a freezing order?**

- a judge, court, or public prosecutor competent in the case concerned;
- another competent authority which is designated as such by the issuing State and which is competent in criminal matters to order the freezing of property or to execute a freezing order in accordance with national law.

**Who can issue a confiscating order?**

- Authority which is designated as such by the issuing State and which is competent in criminal matters to execute a confiscation order issued by a court in accordance with national law.

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## TIME LIMITS OF RECOGNITION AND EXECUTION

**1. Freezing certificates – recognition without delay and with the same speed and priority as for a similar domestic case after the executing authority has received the certificate.**

**Special case** - where the issuing authority has stated in the freezing certificate that immediate freezing is necessary since:

a. there are legitimate grounds to believe that the property in question will imminently be removed or destroyed;

or

b. in view of any investigative or procedural needs in the Issuing State.

→ decision on the recognition of the freezing order - no later than 48 hours after it has been received by the executing authority;

→ concrete measures necessary to execute the order - no later than 48 hours after the decision on recognition has been made.

**2. Confiscation certificates: 45 days.**

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## GROUNDS FOR NON-RECOGNITION&amp;NON-EXECUTION

**Identical grounds for freezing and confiscation orders:**

- executing the freezing/confiscation order would be contrary to the principle of ne bis in idem;
- there is a privilege or immunity under the law of the executing State that would prevent the freezing/confiscation of the property concerned or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press or the freedom of expression in other media that prevent the execution of the freezing/confiscation order;
- the freezing/confiscation certificate is incomplete or manifestly incorrect and has not been completed following the consultation;
- lack of double criminality described in details in art. 8 p1 (d) and (e) and art. 19 (d) and (f) of the Regulation.

**Additionally in the case of confiscation orders:** special regulations in case of *in absentia* proceedings, the rights of affected persons would make it impossible under the law of Executing State to execute the confiscation order.

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**POSTPONEMENT** – it is possible to execute but there are legal grounds, which justifies postponement of execution in time.

The executing authority may postpone the execution of a freezing/confiscation order transmitted where:

- its execution might damage an ongoing criminal investigation, in which case the execution of the freezing/confiscation order may be postponed until such time as the executing authority considers reasonable;
- the property is already subject to an existing order issued in the course of other proceedings in the Executing State or another freezing order/subject of ongoing confiscation proceeding in the Executing State.

*Additionally:*

**Postponement of the execution of a confiscation order:**

- in the case of confiscation of an amount of money – if total amount obtained from the execution might considerably exceed an amount specified in the order because of the simultaneous execution in another Member State;
- a legal remedy against the recognition and execution of an order was invoked.

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**IMPOSSIBILITY** – lack of actual possibility to execute an order.

The non-execution of a freezing/confiscation order may only be justified where the property:

- has already been confiscated;
- has disappeared;
- has been destroyed;
- cannot be found in the location indicated on the freezing certificate;
- cannot be found because its location has not been indicated in a sufficiently precise manner,.

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**Camden Assets Recovery Inter-Agency Network (CARIN)**

1. An informal network of contacts and a cooperative group concerned with all aspects of confiscating the proceeds of crime.
2. A network of practitioners from 54 jurisdictions and 9 international organisations (linked to similar asset recovery networks in Southern Africa, Latin America, Asia Pacific, Eastern Africa and Western Africa).
3. Useful for execution of orders:
  - Asset tracing;
  - Asset freezing and seizing;
  - Asset management;
  - Asset confiscation;
  - Asset sharing.

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**EJN plays an important role as a collector and distributor of the practical information that Member States provide for in declarations and notifications.**

Informations collected by the EJN Secretariat include:

- competent issuing and executing authorities in Member States;
- validating authorities (for freezing orders);
- central authorities (if applicable);
- languages the certificates shall be translated into;
- shall the respective freezing or confiscation order/a certified copy thereof be transmitted together with the certificate.

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Pietrzak Sidor  
& Wspólnicy

**Thank you for your attention.**

Advocate Mikołaj Pietrzak - [pietrzak@pietrzaksidor.pl](mailto:pietrzak@pietrzaksidor.pl)

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## Council Framework Decision 2008/947/JHA of 27 November 2008

## Council Framework Decision 2009/829/JHA of 23 October 2009



Co-funded by the Justice Programme of the European Union 2014-2020



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- **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 (CFD 947).
- **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 (European Supervision Order, CFD 829).

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## Examples

- **Council Framework Decision 2009/829/JHA – criminal investigations**

*Against the offender V.V. legally residing in **Lithuania** a criminal investigation is under way in **Germany** and against V.V. a decision on supervision measures has been issued by the judicial authorities from **Germany**. V.V. wants now to return to his country and to be supervised in **Lithuania** whilst awaiting trial in **Germany**.*

- **Council Framework Decision 2008/947/JHA – final judgements**

*B.C. legally residing in **Portugal** has been finally sentenced in **Romania** to 2 years imprisonment and the penalty has been suspended for a period of 4 years during which B.C. will be to be monitored and also obligations have been imposed to him. Now, B.C. wants to be supervised in his home country **Portugal** and has asked for the transfer of the judgement rendered in **Romania**.*

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## Fact sheet

**Deadline for transposition of the CFD 2009/829**  
**1 December 2012**

**26 MS** have implemented it, **Ireland - process ongoing (at 13.01.2021)**

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**

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

**Deadline for transposition of the CFD 2008/947**  
**6 December 2011**

All **27 MS** have implemented it

FD **enables** a sentenced person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions

FD **lays down rules** according to which a 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 judgment**, unless otherwise provided for in this FD

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## Scope of application

CFD 2009/829	CFD 2008/947
<ul style="list-style-type: none"> <li>• <b>Promotes, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures</b> for persons who are not resident in the Member State where the proceedings are taking place;</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Applies only to:</b> <ol style="list-style-type: none"> <li>(a) <b>the recognition of judgments and, where applicable, probation decisions;</b></li> <li>(b) <b>the transfer of responsibility for the supervision of probation measures and alternative sanctions;</b></li> <li>(c) <b>all other decisions related to those under (a) and (b); as described and provided for in this FD</b></li> </ol> </li> </ul>
<ul style="list-style-type: none"> <li>• <b>CFD 2009/829 does not confer</b> any right on a person to the use, in the course of criminal proceedings, of a non-custodial measure as an alternative to custody.</li> <li>• This is a matter governed by the law and procedures of the Member State where the criminal proceedings are taking place.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>CFD 2008/947 shall not apply</b> to:           <ol style="list-style-type: none"> <li>(a) the execution of judgments which fall within the scope of FD <b>2008/909/JHA</b>;</li> <li>(b) recognition and execution of financial penalties and confiscation orders which fall within the scope of FD <b>2005/214/JHA</b></li> <li>(c) Regulation <b>2018/1805</b> on the mutual recognition of freezing orders and confiscation orders</li> </ol> </li> </ul>

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## Objectives

CFD 2009/829	CFD 2008/947
<ul style="list-style-type: none"> <li>• ensuring <b>the due course of justice</b> and, in particular, <b>that the person concerned will be available to stand trial</b>;</li> </ul>	<ul style="list-style-type: none"> <li>• <b>facilitating the social rehabilitation of sentenced persons</b> 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</li> </ul>
<ul style="list-style-type: none"> <li>• <b>improve the protection of victims and of the general public</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>improve the protection of victims and of the general public</b></li> </ul>
<ul style="list-style-type: none"> <li>• <b>monitoring of a defendants' movements</b> in the light of the overriding objective of protecting the general public and the risk posed to the public</li> </ul>	<ul style="list-style-type: none"> <li>• <b>improve monitoring of compliance with probation measures and alternative sanctions</b>, with a view to preventing recidivism</li> </ul>
<ul style="list-style-type: none"> <li>• enhancing <b>the right to liberty</b> and <b>the presumption of innocence</b> in the EU and <b>ensuring cooperation between MS</b> when a person is subject to obligations or supervision pending a court decision</li> </ul>	<ul style="list-style-type: none"> <li>• facilitating <b>the application of suitable probation measures and alternative sanctions</b>, in case of offenders who do not live in the State of conviction</li> </ul>

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# Main common characteristics

- The transfer proceedings can be launched **at the request of the individual concerned or one of the MS involved** - article 5 CFD 2008/947 & article 9 CFD 2009/829. Still, there is **no obligation** for the issuing State to forward a judgment to another MS
- **The consent of the concerned/sentenced person is always required** - article 5 CFD 2008/947 and article 9 CFD 2009/829 (exception - unless the person has returned to the executing State, when his consent is implied – CFD 2008/947)
- In principle, **there is an obligation to accept a transfer**, unless grounds for refusal apply – article 11 CFD 2008/947 & article 15 CFD 2009/829. This comes from the **principle of mutual recognition** upon which the FDs are based and is reflected in the provision common to the FDs that the executing State **shall** recognise a judgment which has been forwarded by the issuing State

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# Main common characteristics – cont. 1

- There is **no need to check the double criminality** for a list of 32 offences provided in the two CFDs
- Both FDs provide for **fixed time-limits for a transfer to take place** (but only in the executing State!!). Exceeding the time limit may only occur in exceptional circumstances.
- In principle, **no adaptation of the sentence/decision is allowed**. (article 9 CFD 2008/947 & article 13 CFD 2009/829).
- Adaptation of the sentence/probation measures will be **only possible** if the nature of the probation measures or alternative sanctions/supervision measures or the duration of the probation period, probation measure/alternative sanction is incompatible with national law.
- The adapted sentence/probation measures **must correspond as closely as possible to the original decision**. An adaptation **cannot aggravate** the decision passed in the issuing State in terms of its nature or duration.

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## Main common characteristics – cont. 2

- Both CFDs have **a system of designation of competent authorities** - article 3 CFD 2008/947 & article 6 CFD 2009/829 (even non-judicial authorities provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures)
- Exception – in cases of subsequent decisions provided by article 14(1)(b) or (c) of the CFD 2008/947 and article 18(1)(c) of the CFD 2009/829 **shall be taken by a competent judicial authority** or by a competent authority other than a court but MS shall ensure that, upon request of the person concerned, such decision may be **reviewed by a court or by another independent court-like body**
- A **similar procedural system of certificates and direct contact** among competent authorities involved is provided in the two CFDs

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## Criteria for forwarding a decision

CFD 2009/829	CFD 2008/947
<ul style="list-style-type: none"> <li>• The accused person <b>is lawfully and ordinarily residing in another MS</b> and consents to return to that MS (art. 9 par. 1 CFD)</li> </ul>	<ul style="list-style-type: none"> <li>• the sentenced person <b>is lawfully and ordinarily residing in another MS</b> and the sentenced person has returned or wants to return to that State (art. 5 par. 1 CFD)</li> </ul>
<ul style="list-style-type: none"> <li>✓ <i>Exc.</i> - upon request of the accused person, the issuing MS may forward the decision on supervision measures to the competent authority of a MS <b>other than the Member State in which the person is lawfully and ordinarily residing</b>, on condition that <b>the latter authority has consented to such forwarding</b> (art. 9 par. 2 CFD)</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Exc.</i> - upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a MS <b>other than the MS in which the sentenced person is lawfully and ordinarily residing</b>, <u>on condition that</u> <b>this latter authority has consented to such forwarding</b> (art. 5 par. 2 CFD)</li> </ul>

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## Governing law and subsequent decisions

CFD 2009/829	CFD 2008/947
<ul style="list-style-type: none"> <li>• After the decision on recognition, the monitoring of supervision measures <b>shall be governed by the law of the executing State</b> (art. 16 CFD)</li> </ul>	<ul style="list-style-type: none"> <li>• The supervision and application of probation measures and alternative sanctions <b>shall be governed by the law of the executing State</b> (art. 13 CFD)</li> </ul>
<ul style="list-style-type: none"> <li>• <b>The CA in the issuing State</b> shall have <u>jurisdiction</u> to take all subsequent decisions relating to a decision on supervision measures such as:               <ol style="list-style-type: none"> <li>(a) <i>renewal, review and withdrawal of the decision on supervision measures;</i></li> <li>(b) <i>modification of the supervision measures;</i></li> <li>(c) <i>issuing an arrest warrant or any other enforceable judicial decision having the same effect</i> (<b>article 18 CFD</b>)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>The CA of the executing State</b> shall have, <u>in principle, jurisdiction</u> 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 as:               <ol style="list-style-type: none"> <li>(a) <i>the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;</i></li> <li>(b) <i>the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;</i></li> <li>(c) <i>the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence</i> (<b>article 14 CFD</b>)</li> </ol> </li> </ul>

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## Consultations and languages

CFD 2009/829	CFD 2008/947
<ul style="list-style-type: none"> <li>• The competent authorities of the issuing State and of the executing State <b>shall consult each other</b>:               <ol style="list-style-type: none"> <li>(a) <i>during the preparation, or, at least, before forwarding a decision on supervision measures</i></li> <li>(b) <i>to facilitate the smooth and efficient monitoring of the supervision measures;</i></li> <li>(c) <i>where the person has committed a serious breach of the supervision measures imposed</i> (art. 22 CFD)</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State <b>may consult each other</b> with a view to facilitating the smooth and efficient application of this FD (art. 15 CFD)</li> </ul>
<ul style="list-style-type: none"> <li>• Certificates shall be <b>translated into the official language or one of the official languages of the executing State</b>. 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.</li> </ul>	<ul style="list-style-type: none"> <li>• The certificate referred to in Article 6(1) shall be <b>translated into the official language or one of the official languages of the executing State</b>. 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 (art. 21 CFD)</li> </ul>

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## Main obstacles and challenges

### CFD 2009/829

#### Issuing competent authority

- *Not aware of the legal instrument*
- *Not knowing the judicial system of the other MS*
- *Not trusting the other judicial system*
- *Difficult to establish the criteria provided in article 9 of the CFD*
- *Not knowing where to send the Certificate and the decision on supervision measures*
- *Time needed to take a decision on supervision measures*

#### 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.)*
- *Problems in observing the time limits*
- *Problems of adaptation of the supervision measures*
- *Impossible to monitor the suspected person*

### CFD 2008/947

#### Issuing competent authority

- *Not aware of the legal instrument*
- *Not knowing the judicial system from the executing MS*
- *Not trusting the other judicial system*
- *Difficult to establish the criteria provided in article 5 of the CFD*
- *Not knowing where to send the Certificate and the judgement*
- *The process is taking too much time*

#### 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.)*
- *Problems in observing the time limits*
- *Problems of adaptation of the probation measures or alternative sanctions*
- *Problems in understanding or applying the judgement rendered in the other MS*
- *Problems related to costs (especially related to the therapeutic treatment)*

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## Potential benefits of the transfer

### CFD 2009/829

- *Better monitoring of the defendant's movements and so ensure the due course of justice and, in particular, that the person concerned will be available to stand trial*
- *Improving the protection of victims and of general public*
- *Better chances of applying a non-custodial sentence, if found guilty at the end of the trial*
- *Strengthening mutual trust and cooperation between MS for future cases*

### CFD 2008/947

- *Much easier to supervise the convicted person in the executing MS*
- *Improving the protection of victims and of general public*
- *Better perspective for social rehabilitation in the executing MS*
- *Better chances not to re-offend for the convicted person*
- *Strengthening mutual trust and cooperation between MS for future cases*
- *Better ensuring that the convicted person will compensate financially for the prejudice caused by the offence*

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# Thank you!

Motoi Constantin Daniel  
Judge, Court of First Instance  
4th District, Bucharest



## MUTUAL RECOGNITION OF CUSTODIAL SENTENCES

advocate Katarzyna Dąbrowska



Co-funded by the Justice  
Programme of the European  
Union 2014-2020



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1

## MUTUAL RECOGNITION – THE ESSENCE

### MUTUAL RECOGNITION = LACK OF PRIOR AUTHORITY

- » facilitates and accelerates the cooperation between enforcement authorities in different Member States;
- » aims at tackling the challenge of cross-border crime while respecting the right of both criminals and victims;
- » based on mutual trust.

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**Article 82 Treaty on the Functioning of the EU**

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

**Instruments introduced only thanks to mutual recognition:**

- European Arrest Warrant,
- European Enforcement Order,
- European Investigation Order,
- European Protection Order,
- Mutual recognition of freezing orders and confiscation orders,
- Mutual recognition of financial penalties.

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- » network of contact points within the EU designed to facilitate judicial cooperation across borders;
- » created on 29 June 1998;
- » composed of Contact Points – intermediaries - in the Member States designated by each Member State;
- » Provides helpful tools such as Atlas (information about appropriate authorities with regard to particular legal acts of the EU law), Compendium (assistance in filling in appropriate forms), information on the implementation of act.

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**Council Framework Decision 2008/909/JHA of 27 November 2008**

on

the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

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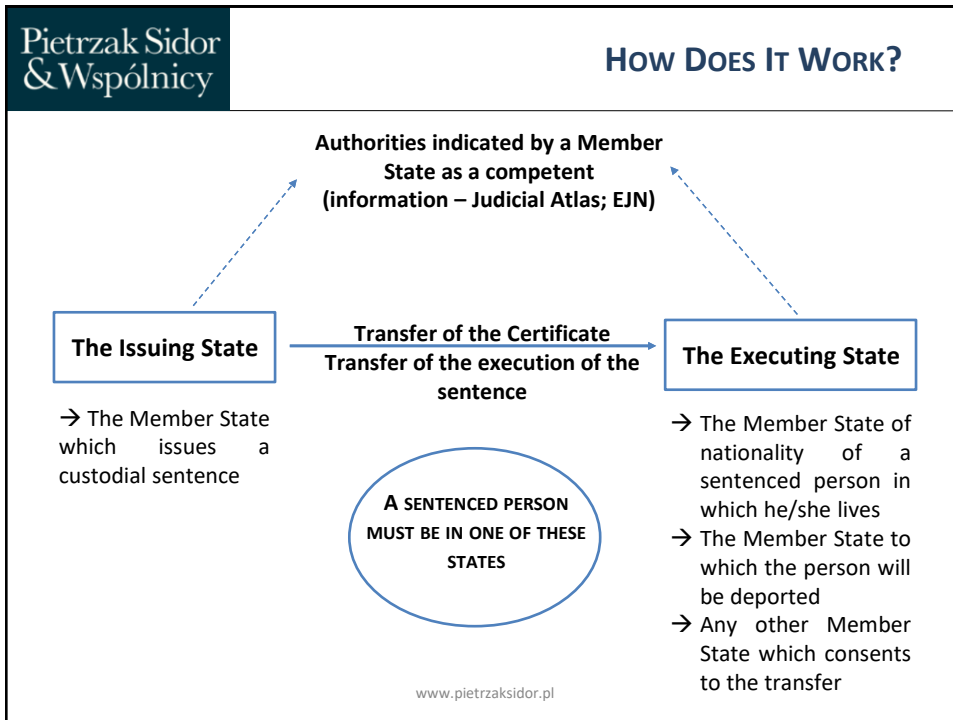
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**MAIN FEATURES****The Framework Decision:**

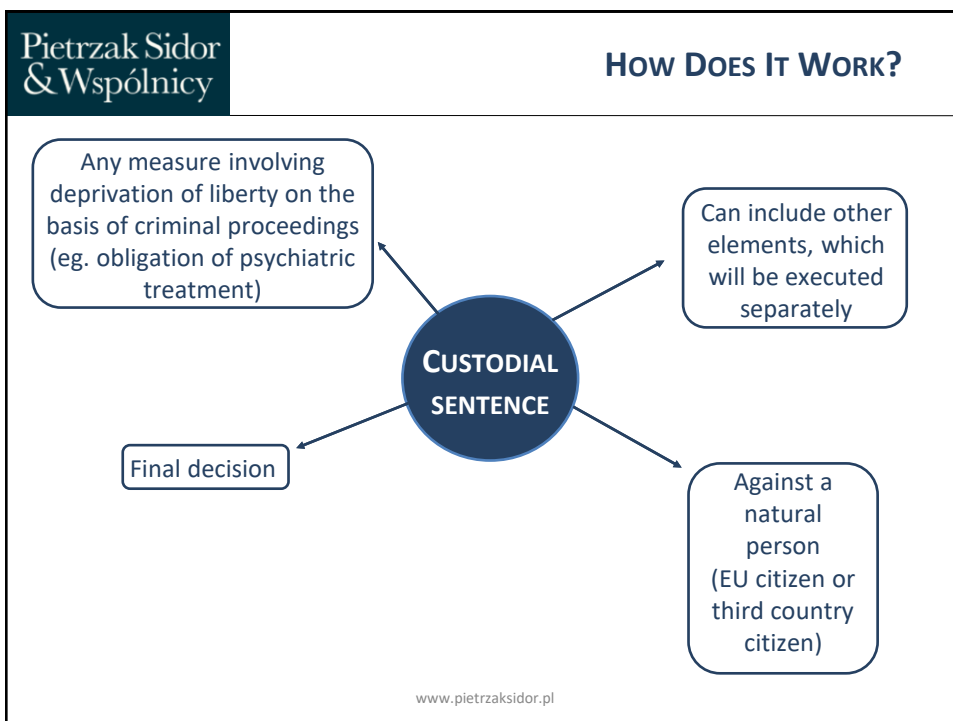
- » aims at recognising the custodial sentences and executing them;
- » aims at facilitating the social rehabilitation;
- » supports freedom of movement;
- » is the shift to a compulsory system of prisoners transfers („forced transfer”) → an impuls for broader transfer
- » is based more than any other similar instrument on consultation between the Issuing State and the Executing State
- » sometimes is used for forum shopping.

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## CONSENT OF A SENTENCED PERSON

**Required** – all other situations

**Lack of consent = no transfer**

**Not required:**

1. the person is a national of the Executing State AND lives there;
2. the person will be deported to the Executing State once he or she is released;
3. the person has fled or otherwise returned to the Executing State in view of pending criminal proceedings against him or her in the Issuing State or following the conviction in that Issuing State.

→ Give opportunity to state an opinion

→ Information on transfer of the sentence

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## CONSENT OF A SENTENCED PERSON

## ANNEX II

## NOTIFICATION OF THE SENTENCED PERSON

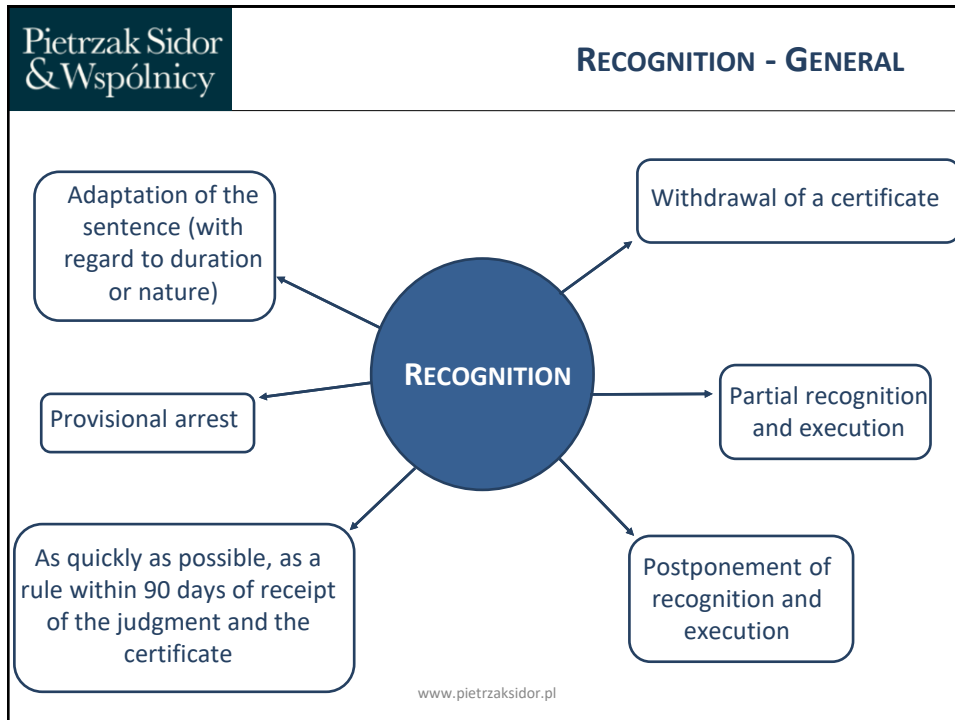
You are hereby notified of the decision of ..... (competent authority of the issuing State) to forward the judgment of ..... (competent court of the issuing State) dated ..... (date of judgment) ..... (reference number, if available) to ..... (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of ..... (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

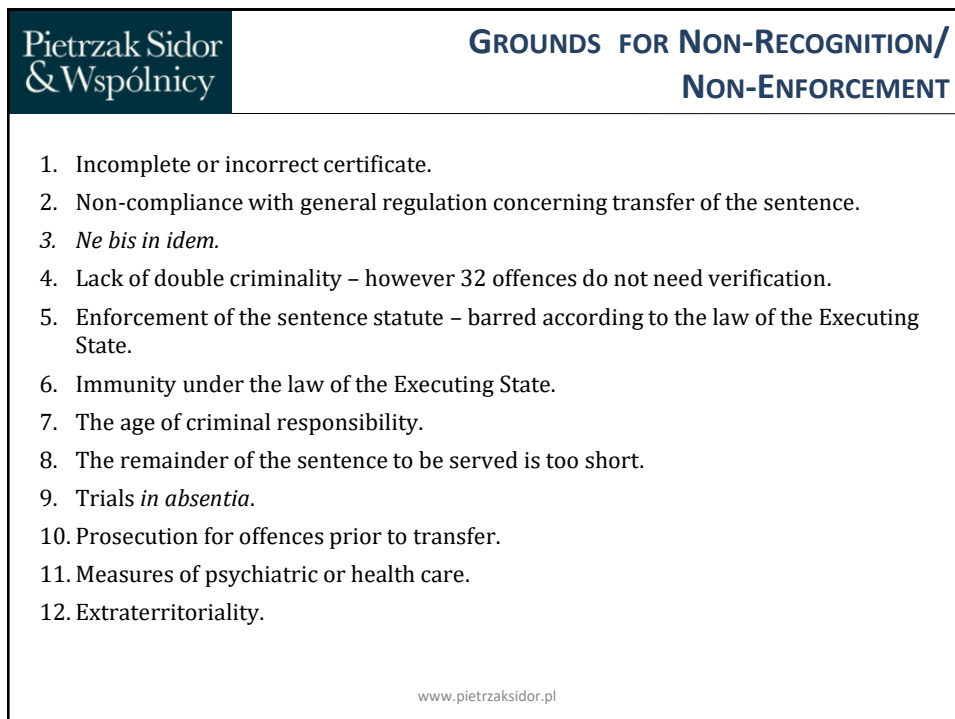
The competent authority of ..... (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of ..... (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in ..... (issuing State) by its nature or duration.

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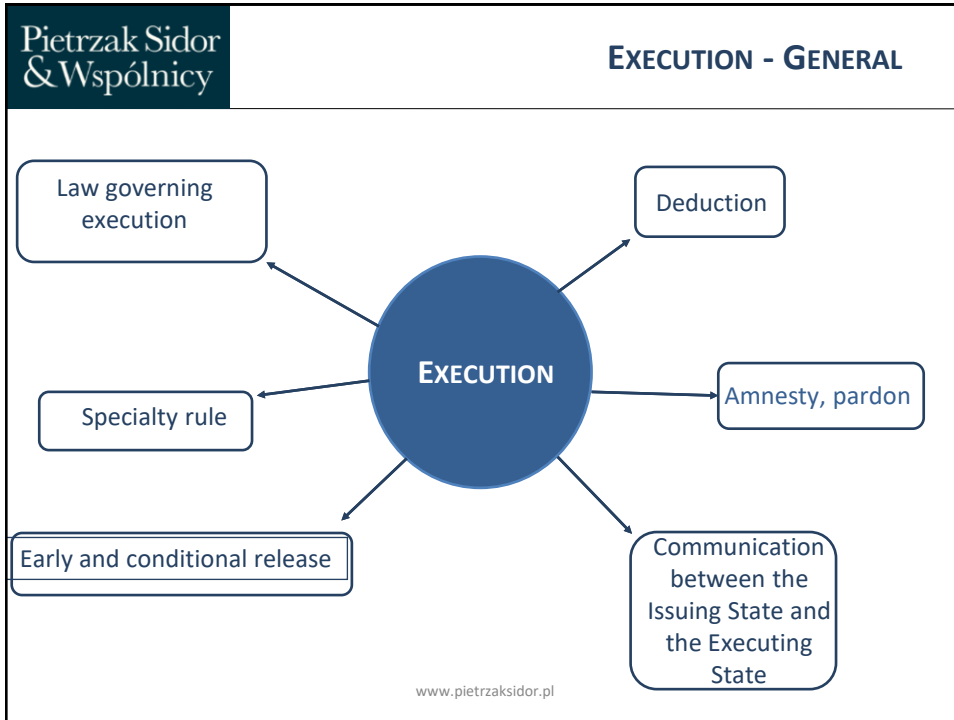
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**Pietrzak Sidor & Wspólnicy**

**Thank you for your attention.**

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