



## BETTER APPLYING EUROPEAN CRIMINAL LAW

PAN-EUROPEAN LEGAL CONFERENCE  
FOR COURT STAFF

Zagreb, 23 - 24 May 2022

**UP  
GRADE**  
YOUR LEGAL  
EXPERTISE

Criminal Law

### Speakers

**Katarzyna Dąbrowska**

Partner at the Pietrzak Sidor&Partners Law Firm  
Chairwoman of the Criminal Law and Procedure Section  
of the District Bar Council in Warsaw

**Jorge Espina**

Prosecutor, Deputy National Member for Spain at Eurojust

**Daniel Motoi,**

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

**Mikołaj Pietrzak**

Partner at the Pietrzak Sidor&Partners Law Firm,  
Dean of the District Bar Council in Warsaw

**Paul Notenboom**

Senior A Public prosecutor, National Public Prosecutor's  
Office for serious fraud, environmental crime and asset  
confiscation, Rotterdam

### Key topics

- European Arrest Warrant
- European Investigation Order
- Freezing and Confiscation
- Mutual Legal Assistance
- Mutual recognition

Language  
English

Event number  
322DT18f

Organisers  
ERA (Cornelia Riehle) in  
cooperation with Judicial Academy  
Pravosudna Akademija in Zagreb

Location  
Hotel International  
Miramarska Cesta 24  
10000, Zagreb  
Croatia



# Better Applying European Criminal Law

## Monday, 23 May 2022

08:45 Arrival and registration of participants

09:00 **Welcome and introduction**  
*Ivana Jarošová*

### I. MUTUAL RECOGNITION INSTRUMENTS IN EUROPEAN CRIMINAL LAW

09:10 **EU different instruments in mutual recognition and the way they interact (in theory and practice) with each other**

- different situations in which interactions between the various instruments are possible
- the scope of each instrument from the perspective of the interaction between them, building from the idea of a coherent system in the EU under the umbrella of the principle of mutual recognition
- European Arrest Warrant/Framework Decision 909
- European Investigation Order/European Arrest Warrant

*Jorge Espina*

10:10 **Discussion on mutual recognition instruments: case studies and issues of current legislation**

*Jorge Espina*

11:10 Coffee break

### II. JUDICIAL COOPERATION TODAY

11:30 **The impact of COVID-19 on judicial cooperation in criminal matters**

- the situations in which Covid – 19 influenced the judicial cooperation in criminal matters, especially regarding European Arrest Warrant and transfer of prisoners, European Investigation Order, Mutual Legal Assistance
- different situations from practice, difficulties, challenges and best practices

*Daniel Motoi*

12:30 Lunch

13:30 **Discussion on judicial cooperation: case studies and issues of current legislation**

- *National case studies*
- *European case studies*

*Daniel Motoi*

14:30 Coffee break

### III. FREEZING AND CONFISCATION IN THE EU

15:00 **Practical issues of freezing and confiscation in the EU today**

*Paul Notenboom*

- *Asset recovery: a main goal of fighting crime*
- *The blind eye of the investigator, prosecutor, judge*
- *Asset management : Questions & Decisions*
- *International instruments*

16:00 **Discussion on freezing and confiscation case studies and issues of current legislation**

*Paul Notenboom*

17:00 End of the first seminar day

19:00 Dinner

## Objective

The pan-European conference offers a platform for exchange among court staff members from all EU Member States. Participants have the possibility to exchange experiences, look at current and forthcoming issues in judicial cooperation in criminal matters in the EU, and make personal contacts.

## Methodology

This training event is conceived as pan-European conference based on lectures and case studies looking at current issues arising from applying European criminal law instruments. The discussions ensure the active involvement of participants and a continuous exchange of knowledge and best practice. The training materials have been developed by renowned EU experts and aim to aid court staff in actively applying the EU criminal law.

## You will learn about...

- the state of play of the instruments of mutual recognition in the EU
- current issues regarding the European Arrest Warrant, European Investigation Order, and Freezing and Confiscation Order
- the impact of Covid-19 on judicial cooperation in criminal matters.

## Who should attend?

Court staff from all EU member states who need to apply EU criminal law matters for their judicial work. Court staff nominated by partners of the project will be able to register using the online registration form available on the event page.

## Your contact person



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

**Tuesday, 24 May 2022**

---

**IV. THE EUROPEAN ARREST WARRANT TODAY**

---

- 09:00 **European Arrest Warrant and mutual recognition in the light of the recent ECHR and ECJ rulings**
- main problems connected to execution of EAW and mutual recognition, which arise from current jurisprudence of ECHR and ECJ rulings
  - problematics mainly connected to the fair trial rights
- Mikołaj Pietrzak*
- 10:00 **Discussion on EAW case studies and issues of current legislation**
- Mikołaj Pietrzak*
- 11:00 Coffee break

---

**V. WORKING WITH THE EUROPEAN INVESTIGATION ORDER**

---

- 11:15 **Practical issues of mutual legal assistance including issues concerning the European Investigative Order**
- General information about the EIO as a main example of mutual legal assistance – main assumptions, idea of EIO, meaning of EIO in mutual recognition system.
  - Determining main areas of possible problems in execution of EIO – identification of the possible problems related to differences in criminal procedure in EU member states.
- Katarzyna Dąbrowska*
- 12:15 **Discussion on EIO case studies and issues of current legislation**
- Presentation of examples of particular problems based on practice – I assume that I will be able to describe particular situation, cases, not even on the basis of the jurisprudence but just experience.
  - Summary in the light of possible solutions of the described situation.
- Katarzyna Dąbrowska*
- 13:15 **Closing remarks**
- Ivana Jarošová*
- 13:30 End of the seminar

### Project webpage

If you are interested in more information about the seminar project or would like to have free access to the specially developed training materials, please visit our project webpage under the following link:

<https://era-comm.eu/court-staff-criminal-law/>

---

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 CRIMINAL LAW PAN-EUROPEAN CONFERENCE

Zagreb, 23-24 May 2022 / Event no.: 322DT18f



## Terms and conditions of participation

### Selection

1. Participation is only open to court staff nominated by the partners of the project Better Applying European Criminal Law.
2. The number of places available is limited (8 places). Participation will be subject to a selection procedure.
3. Applications should be submitted before **29 April 2022**.
4. A response will be sent to every applicant after this deadline.  
**We advise you not to book any travel or hotel before you receive our confirmation.**

### Registration Fee

5. €200 including documentation, lunches and dinner.

### Travel expenses

6. Travel costs up to €300 can be reimbursed by ERA upon receipt of the original receipts, tickets, boarding passes, invoices after the seminar. Participants are asked to book their own travel and accommodation. These rules do not apply to representatives of EU Institutions and Agencies who are supposed to cover their own travel and accommodation. Participants are advised of the obligation to use the most cost-efficient mode of transport available. In light of the Covid-19 pandemic and the possible re-introduction of travel restrictions, participants are asked not to make travel arrangements until three weeks before the start of the seminar and/or to take out travel cancellation insurance.

### Accommodation

7. Maximum 2 hotel nights single use up to €114.00 per night can be reimbursed by ERA, only upon receipt of the original hotel invoice. This is only for participants from more than 100km away from the venue.

### Other services

8. Two lunches, beverages consumed during the event and the seminar documents are offered by ERA. One joint conference dinner is also included.

### Participation

9. Participation at the whole conference is required and your presence will be recorded.
10. A list of participants including each participant's address will be made available to all participants unless the ERA receives written objection from the participant no later than one week prior to the beginning of the event.
11. The participant's address and other relevant information will be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest unless the participant indicates that he or she does not wish ERA to do so. A certificate of attendance will be distributed at the end of the conference.

### Venue

Hotel International  
Miramarska Cesta 24  
10000, Zagreb  
Croatia

### Language

English

### Contact Person

Ivana Jarošová  
Course Administrator  
E-Mail: IJarosova@era.int  
+49 (0)651 937 37 311

# Interactions and Complementarity between Mutual Recognition Instruments



ERA Seminar, 23-24 May 2022  
Zagreb

Jorge Espina

Deputy National Member for Spain at Eurojust

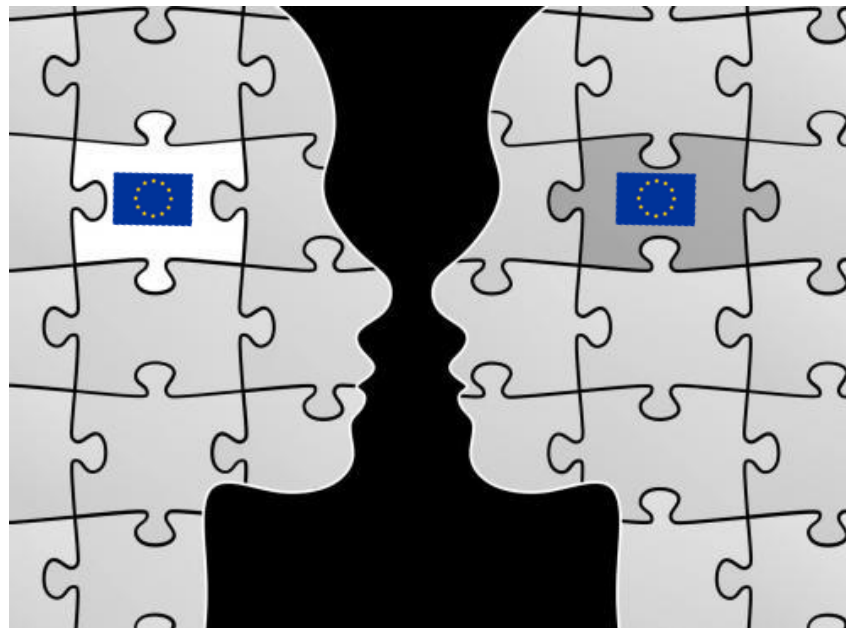


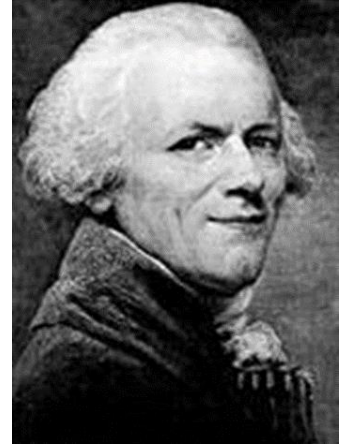
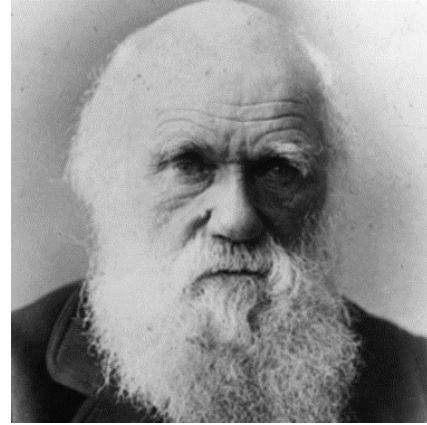
Co-funded by the Justice  
Programme of the European Union  
2014-2020

## EU as Context



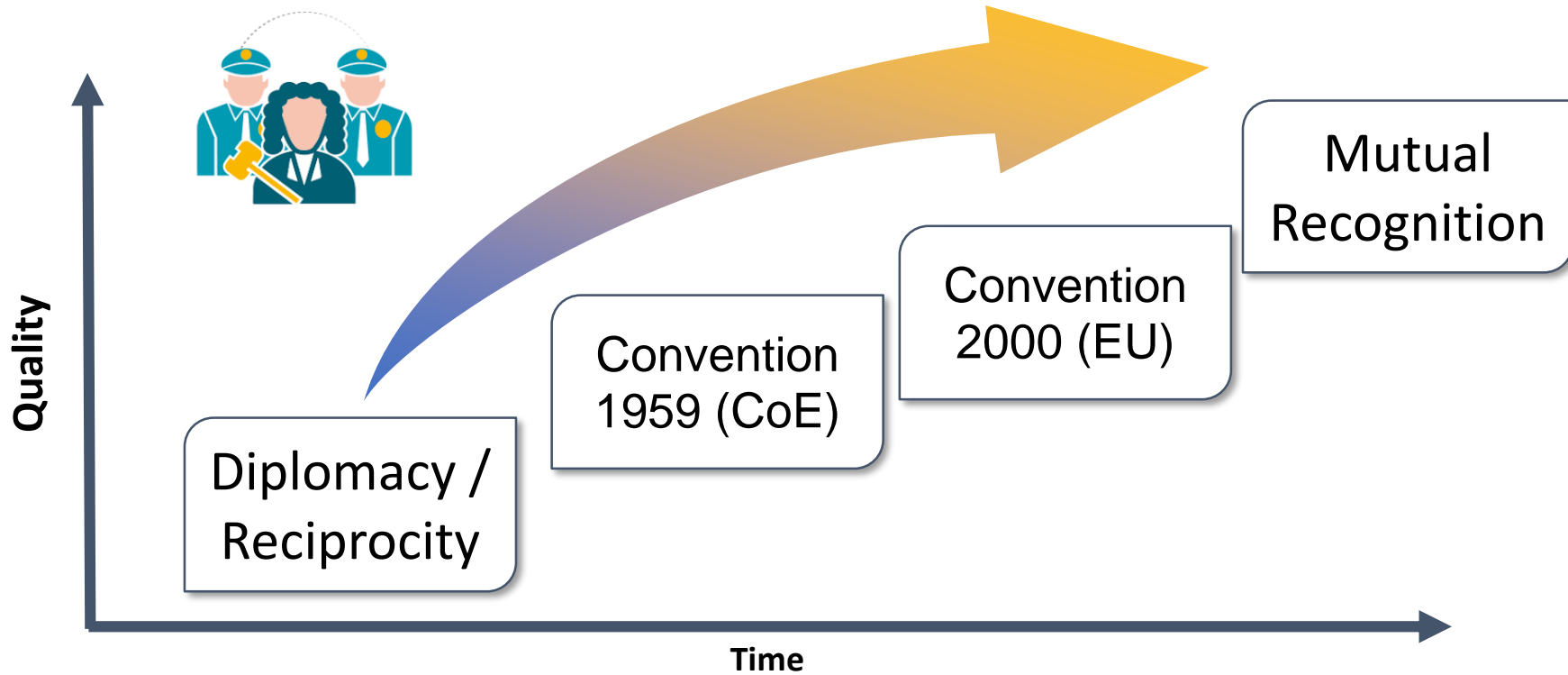
## Mutual recognition as Method





Working together for a  
safer Europe

# Evolution in judicial cooperation





# Principle of Mutual Recognition

- **Mandatory** since Treaty of Lisbon: Art. 82.1 TFEU: “*Judicial Cooperation in criminal matters shall be based on the PMR of judgments and judicial decisions (...)*”
- Born as an alternative to full harmonisation. Includes rules to:
  - ensure **recognition of decisions**;
  - prevent and solve **conflicts of jurisdiction**;
  - Minimum rules on **procedural rights**.
- Based on
  - **Mutual trust**
  - **Direct judicial communication**
  - **Orders** or **Certificates** instead of requests
  - **Limited grounds for non execution**
  - **Safeguards and guarantees**

# Mutual Recognition Instruments

- 1) FD European Arrest Warrant 2002
- 2) FD freezing evidence and goods 2003
- 3) FD financial penalties 2005
- 4) FD confiscation 2006
- 5) FD taking account of convictions 2008
- 6) FD custodial sentences 2008
- 7) FD supervision probation measures and alternative sanctions 2008
- 8) FD European Evidence Warrant 2008
- 9) FD supervision measures for provisional detention 2009
- 10) Directive European Protection Order 2011
- 11) Directive European Investigation Order 2014
- 12) Regulation freezing and confiscation 2018

**EAW**  
**(Arrest and Surrender)**

BILATERAL OR MULTILATERAL  
CONVENTIONS

CONV. 59  
+ PROTOC

SCHENGEN  
CISA

CONV. 2000  
+ PROTOC.

**EIO**  
**(gathering Evidence)**

**Regulation 2018/1805**  
**(freezing and confiscation)**

# EU Judicial Cooperation

**Extradition  
(EAW)**

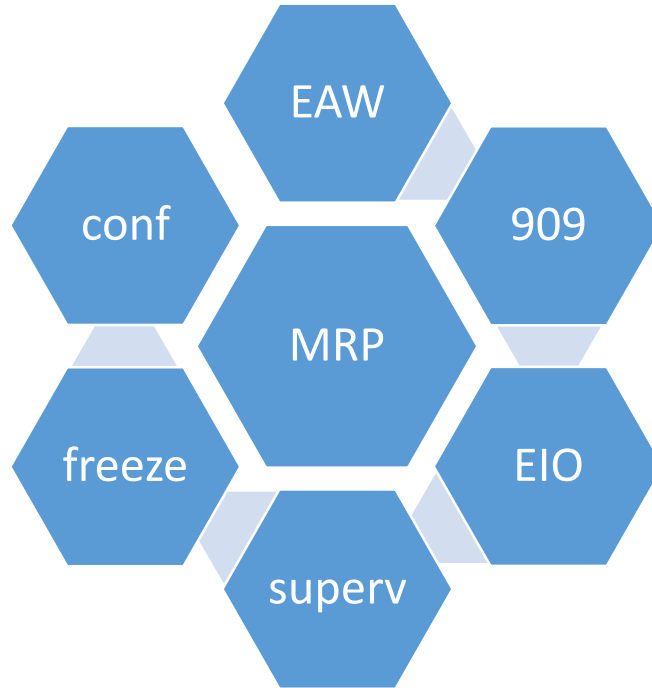
**Evidence  
(EIO)**

**Freezing and  
Confiscation**



**PILLARS MUTUAL RECOGNITION PRINCIPLE**

# What? When? How?



# Practical needs change in every case

- Person investigated for serious crime
- Needs for the file:
- Hear the suspect
- Decide on personal situation
  - Supervision measures?
- Hear witnesses
- Gather documentary Evidence
- Precautionary measures (freezing)

# What to do? How to do it?

- Design a sound strategy



- Do not use a sledgehammer to crack a nut

# Practical questions

- Do I need a EAW? If so, will it be succesful?
- Do I need EIOs? (for suspects, witnesses and documents)
  - EIO for hearing the suspect? How to do it?
    - Traditional
    - VC
- Can I anticipate a conflict? Transfer of Proceedings?
- Territorial scope of the instruments
- Needs for Coordination?
  - Eurojust
  - EJN
  - liaison magistrates
  - Direct communication



# Practical Interactions

- EIO vs Rogatory Letters (Three Rules)
- EAW vs 909
- EAW vs EIO
- Freezing vs EIO
- FD freezing and confiscation vs Regulation 1805/2018



CONVENTIONS ON EXTRADITION  
INTRA EU

BILATERAL OR MULTILATERAL  
CONVENTIONS

CONV. 59  
+ PROTOC

SCHENGEN  
CISA


CONV. 2000  
+ PROTOC.

EUROPEAN EVIDENCE WARRANT  
FD 2008/978

FD 2003/577 FREEZING EVIDENCE  
FREEZING PROPERTY FD 2003/577

FD 2006/783 CONFISCATION

# EIO vs Rogatory letters

- EIO as prevalent instrument to gather evidence
- Prevalent  Only instrument, because
  - EIO does not apply to all MS (Not DK IE)
  - Other evidence gathering mechanisms persist (JITs)
  - Other instruments can still be used (Compatibility Rule)
- To other purposes different than evidence-gathering, previous mechanisms and tools remain valid:
  - EAW, LoR, etc

# EIO vs Rogatory Letters

As regards its relationship with other instruments the EIO Directive contains **THREE RULES**:

- **Basic Rule** (art. 1.1 & 3): Defines when an EIO is necessary and when it is not possible.
- **Replacement Rule** (art 34.1 & 34.2): Substitution of evidence-gathering provision from traditional Conventions and certain MRI.
- **Compatibility Rule** (art 34.3): With any other instrument, under certain conditions.

# Basic Rule

## A. The EIO is

- 1) a decision issued (or validated) by a judicial authority,
- 2) within criminal proceedings (in the sense defined in article 4 of the Directive),
- 3) consisting in investigative measures of trans-border nature,
- 4) aimed at gathering evidence,
- 5) among the Member States bound by the EIO Directive.

B. When conditions set out in numbers 2 to 5 concur, the judicial authority must issue an EIO (*unless other instruments are better placed to produce the desired results provided the conditions in the Compatibility Rule under article 34.3 of the Directive are met*).

C. Conversely, if any of the five conditions above is missing, an EIO cannot be issued.

# Replacement Rule

- Provided the Basic Rule (points A and B) applies, it is not possible to use anymore
  - Evidence-gathering provisions from:
    - CoE 1959 Convention and its Protocols,
    - Schengen Agreement (CISA),
    - Convention 2000 and its Protocols,
  - provisions concerning freezing of evidence under FD 577/2003/JHA.
  
- The EEW (European Evidence Warrant, FD 2008/978/JHA) cannot be used at all anymore as it has been repealed by Regulation 2016/95.

# Compatibility Rule

- Even in cases where the Basic Rule would apply, existing or future bilateral or multilateral agreements or arrangements could be used instead of the EIO, if the alternative instrument
  - Is not one of the Conventions and Protocols replaced under article 34.1, AND
  - Complies with **all three of the following conditions**:
    - further strengthens the aims of the EIO Directive,
    - simplifies or further facilitates the procedures for gathering evidence, and
    - respects the level of safeguards set out in the Directive.
- The Compatibility Rule does not apply to other EU mutual recognition instruments, existing or future, which could be applicable instead of the EIO, but as *lex specialis* (or *lex posterior*) and not due to the provisions of article 34.3.

# Practical Interactions

- ~~EIO vs Rogatory Letters (Three Rules)~~
- EAW vs 909
- EAW vs EIO
- Freezing vs EIO
- FD freezing and confiscation vs Regulation 1805/2018



CONVENTIONS ON EXTRADITION  
INTRA EU

BILATERAL OR MULTILATERAL  
CONVENTIONS

CONV. 59  
+ PROTOC

SCHENGEN  
CISA

CONV. 2000  
+ PROTOC.

EUROPEAN EVIDENCE WARRANT  
FD 2008/978

FD 2003/577 FREEZING EVIDENCE  
FREEZING PROPERTY FD 2003/577

FD 2006/783 CONFISCATION

# EAW vs FD 909

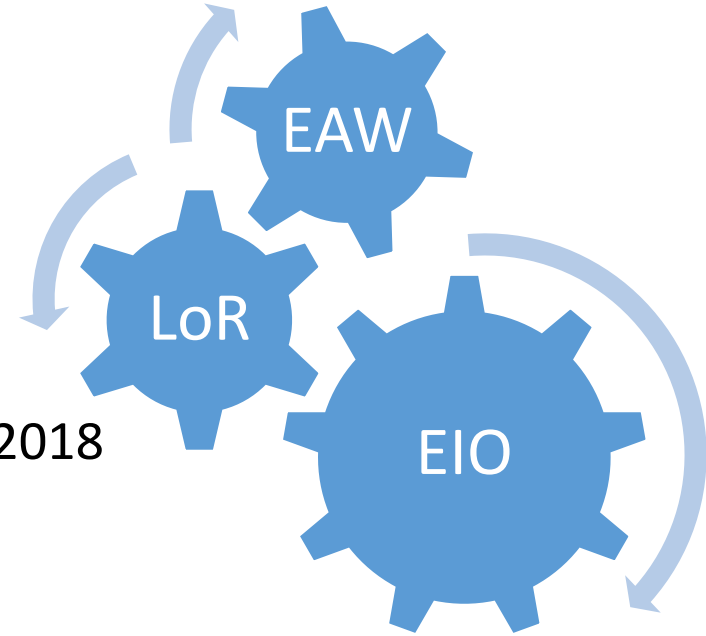
- EAW
  - Arrest and surrender
    - For prosecution
      - possibility to condition to return
    - For execution
      - Possibility to take over execution
- FD 909 (transfer of sentence)
  - For execution
  - Based on social rehabilitation





# Practical Interactions

- ~~EIO vs Rogatory Letters (Three Rules)~~
- ~~EAW vs 909~~
- EAW vs EIO
- Freezing vs EIO
- FD freezing and confiscation vs Regulation 1805/2018



CONVENTIONS ON EXTRADITION  
INTRA EU

BILATERAL OR MULTILATERAL  
CONVENTIONS

CONV. 59  
+ PROTOC

SCHENGEN  
CISA

CONV. 2000  
+ PROTOC.

EUROPEAN EVIDENCE WARRANT  
FD 2008/978

FD 2003/577 FREEZING EVIDENCE  
FREEZING PROPERTY FD 2003/577

FD 2006/783 CONFISCATION

# EAW vs EIO

- EAW (for prosecution)
  - For attending trial (recital 25 DEIO)
    - An EIO may be issued for the temporary transfer of that person to the issuing State (...) However, where that person is to be transferred for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a EAW should be issued.
  - Before a decision is taken, upon request from the issuing authority, it must be granted either
    - A Temporary transfer (art 18 FDEAW) (This is NOT a temporary surrender (art 24 FDEAW))
    - A Hearing (art 19 FDEAW)
  - Handing over property (art 29 FDEAW)
    - As Evidence
    - If result of the offence
    - For seizure & confiscation



# EAW vs EIO

- EIO
  - Temporary transfer of persons for evidentiary purposes
    - To the issuing MS (art 22 DEIO)
    - To the executing MS (art 23 DEIO)
  - Transfer of goods as Evidence (art 13 and 32 DEIO)



# Practical Interactions

- ~~EIO vs Rogatory Letters (Three Rules)~~
- ~~EAW vs 909~~
- ~~EAW vs EIO~~
- Freezing vs EIO
- FD freezing and confiscation vs Regulation 1805/2018



CONVENTIONS ON EXTRADITION  
INTRA EU

BILATERAL OR MULTILATERAL  
CONVENTIONS

CONV. 59  
+ PROTOC

SCHENGEN  
CISA

CONV. 2000  
+ PROTOC.

EUROPEAN EVIDENCE WARRANT  
FD 2008/978

FD 2003/577 FREEZING EVIDENCE  
FREEZING PROPERTY FD 2003/577

FD 2006/783 CONFISCATION

# Freezing vs EIO

- Freezing
  - For subsequent confiscation
  - For restitution to the victims (art 29 RFC)
  - For compensation to the victims (art 30 RFC)
  - Division between MS (art 30 RFC)
- EIO
  - Transfer of goods as Evidence (arts 13 and 32 DEIO)
  - No division between MS
- Civil Law channels
  - For civil compensation based on goods not related to the crime

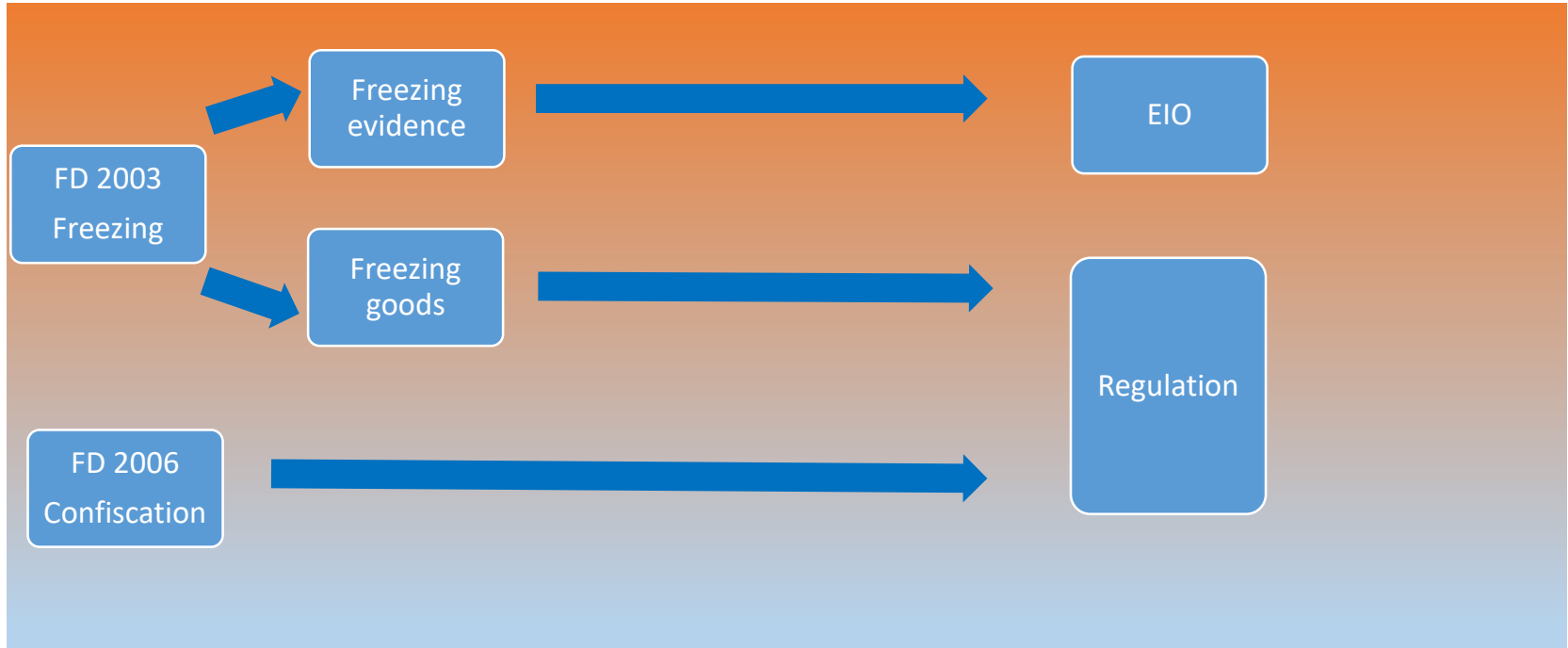


# Framework Decisions vs Regulation

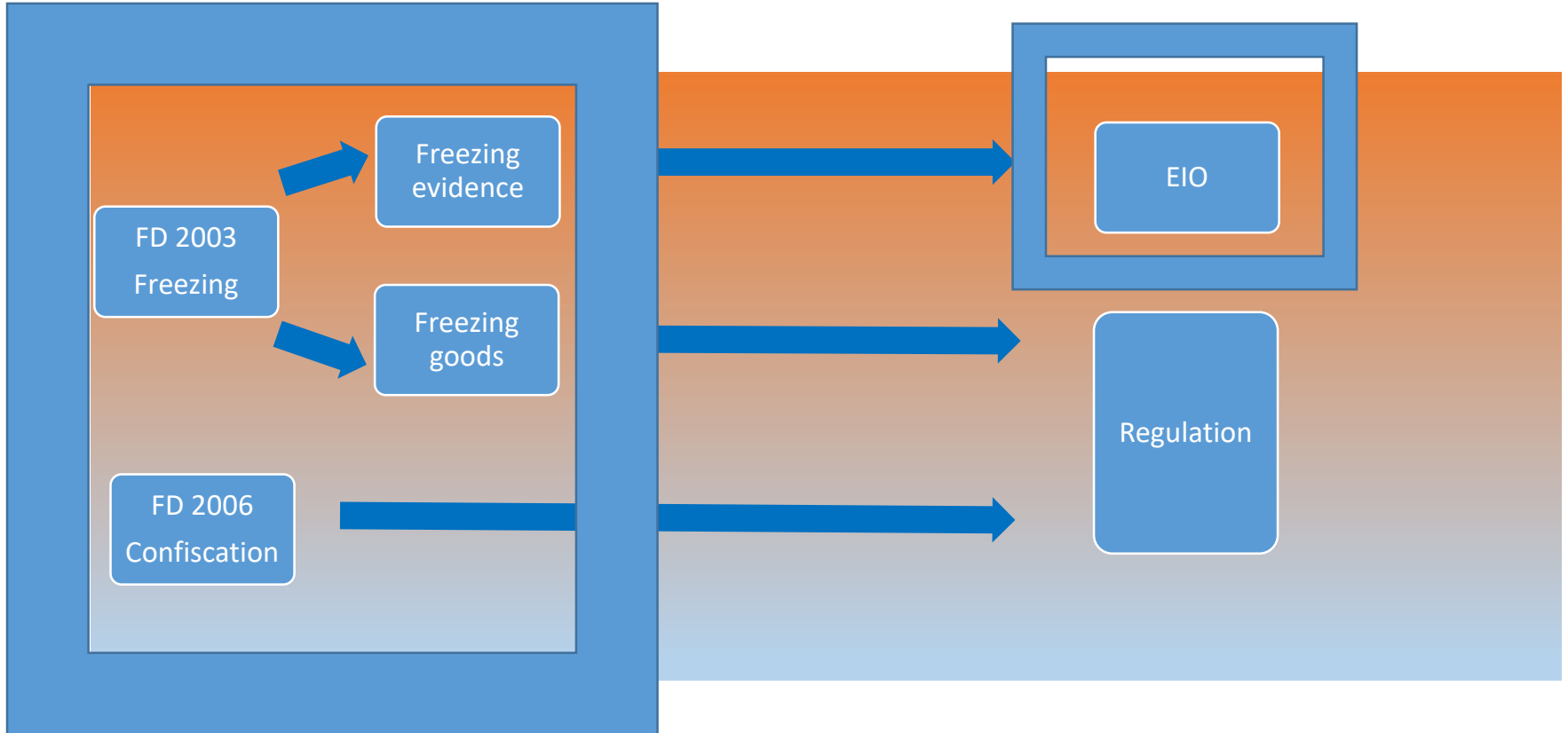
- Why replaced by a Regulation?
  - FD have not been implemented and applied uniformly leading to insufficient mutual recognition and sub-optimal cross-border cooperation (recital 6 RFC).
  - Rules should be established by a legally binding and directly applicable act of the Union (recital 11 RFC).
  - However, not a precedent for future legal acts (recital 53 RFC)
- Novelties
  - Extended autonomous concept of *Proceedings in criminal ma Criminal Proceedings*)
  - Focus on victims (restitution and/or Compensation)



# From the FDs to the Regulation

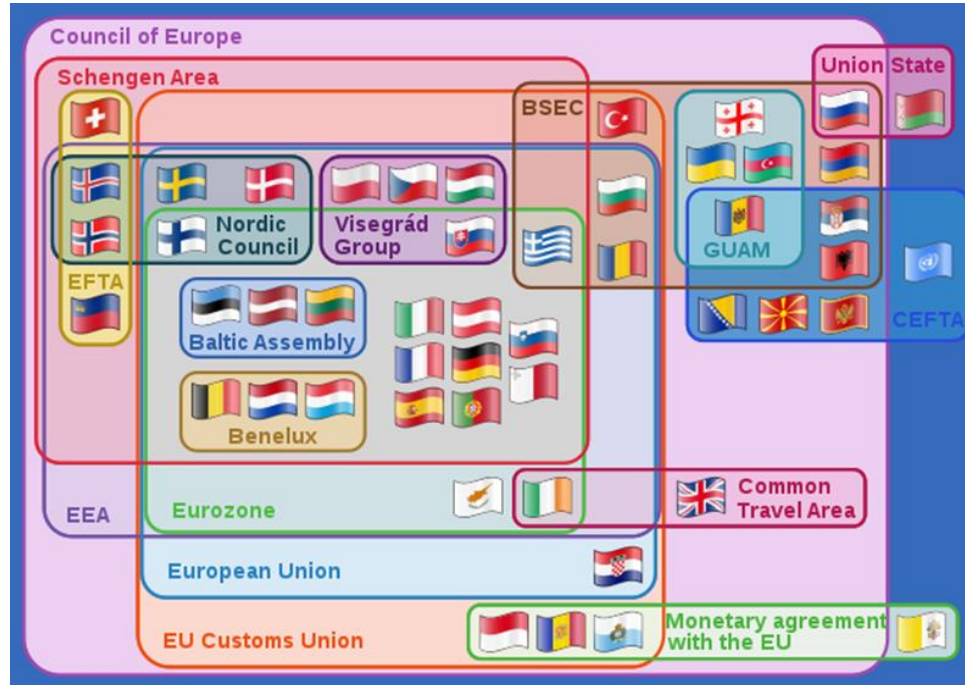


# From the FD to the Regulation





# The European Complexity...



# ... and the need for Coordination: Eurojust



## Eurojust is home to 'judicial embassies'

- 27 National Members, 1 per EU Member State
- Operational: experienced prosecutors, judges
- 24/7 on call
- Additional staff to handle cases

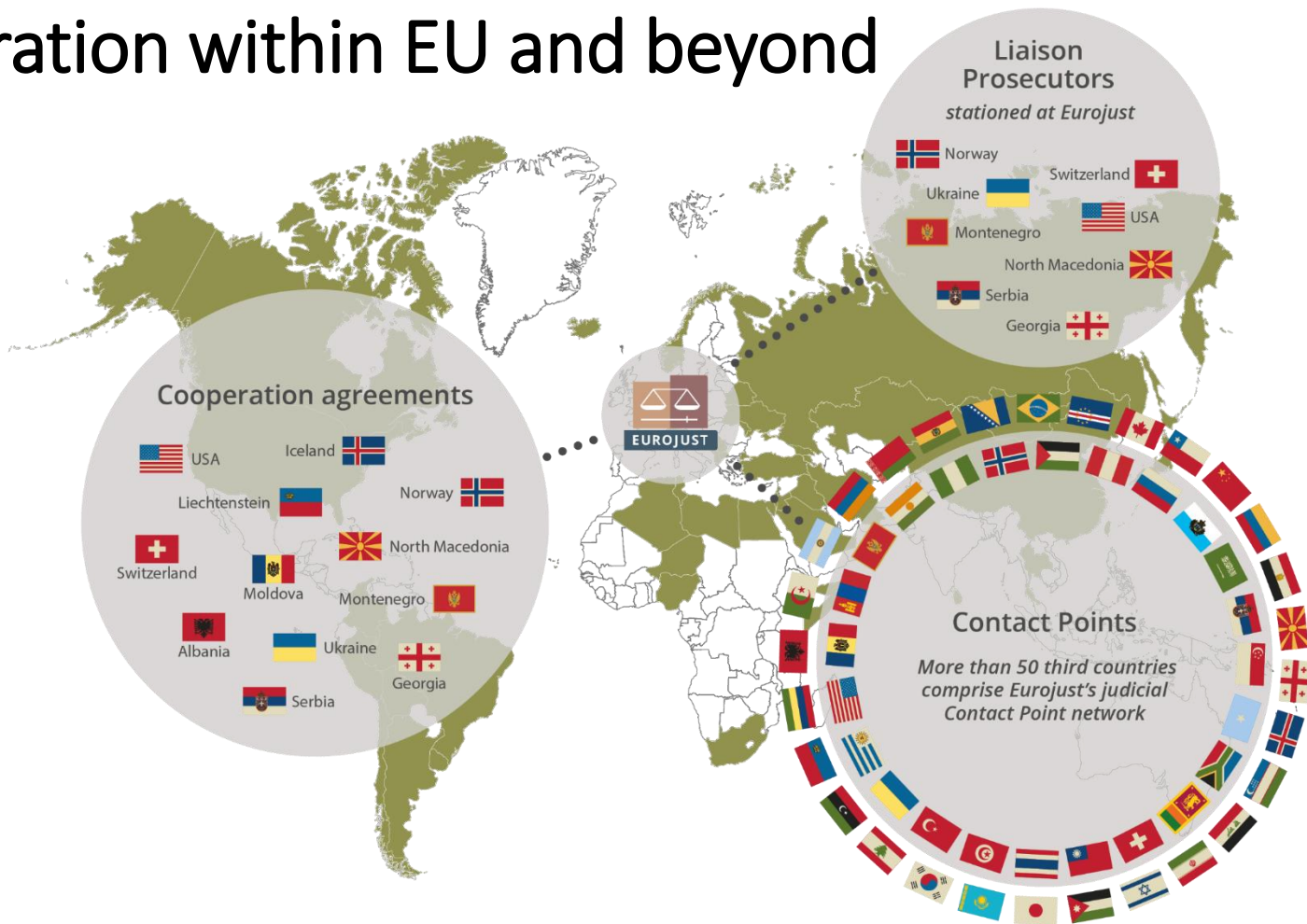
## Eurojust offers access to expertise and support

- +220 EU staff: legal expertise and analysis, secure IT systems, meeting facilitation

## Cost effective and demand driven

- Budget: EUR 38,1 million (2019)
- Practical support to
  - 8,000 criminal investigations
  - 371 Coordination Meetings
- Fully demand driven

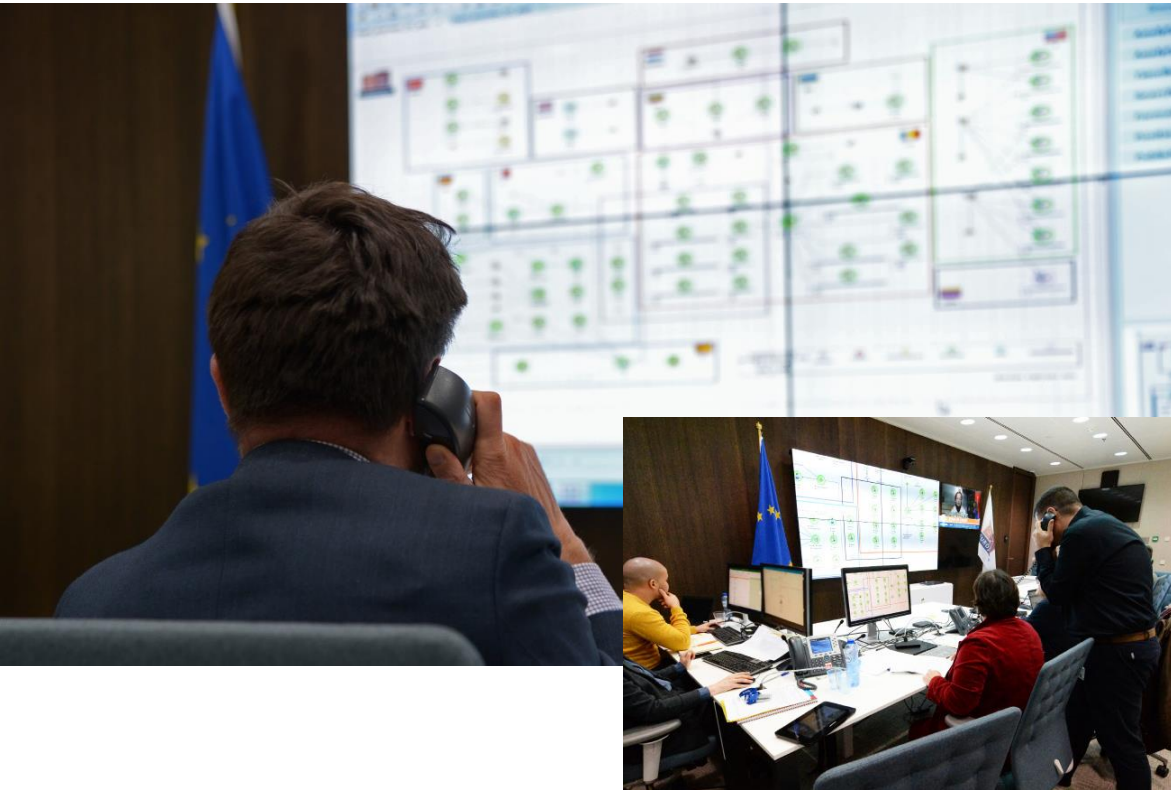
# Cooperation within EU and beyond



# Coordination Meetings



# Coordination Centers



# Eurojust support to JITs

FINANCING



OPERATIONAL  
SUPPORT

JIT NETWORK EXPERTISE



**Total: 254 JITs**

- ▶ 72 New
- ▶ 182 Ongoing

# Eurojust Support in Conflicts of Jurisdiction

- Detecting



- Assessing



- “Solving”





**EUROJUST**

*#JusticeDone*

**Operational outcomes\* in 2021**

**SCALE OF THE CHALLENGE**



Prosecutors from across the EU turned to Eurojust for support in cross-border criminal investigations involving:

**85 714** suspects

**1 773** cases involving organised crime groups

**€15.3 bn** in damages

**96 981** victims of crime

**PRACTICAL SUPPORT**

**EUROJUST**



**10 105** cases

**1 928**

rapid responses to judicial cooperation requests



**1 419** large-scale operations

**EFFECTIVE USE OF JUDICIAL COOPERATION TOOLS**



**517** European Arrest Warrant cases



**4 319** cases with European Investigation Orders



**254** joint investigation teams



**3 312** Mutual Legal Assistance cases



**3 329** suspects arrested and/or surrendered



**1 401** agreements on where to prosecute a suspect



**2 270** witnesses  
292 witness hearings by videoconference



**€2.8 billion** in criminal assets seized/frozen

**€7 billion** worth of drugs seized



54 159 kg cocaine



798 535 kg synthetic drugs



305 473 kg cannabis



7 762 kg heroin

\* The figures reflected in this diagram are based on cases that were both newly registered in 2021 and ongoing from previous years.



*Operational and policy priorities*

Counter-Terrorism Team

Economic Crime Team

Anti-Trafficking Team

Cybercrime Team

Judicial Cooperation Instruments Team

# Horizontal Tasks



Consultative Forum



JITs Network



Genocide Network



European Judicial Network



EJCEN

Thank You!!  
Questions???



ERA Seminar, 23-24 May 2022  
Zagreb

Jorge Espina

Deputy National Member for Spain at Eurojust



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

# The impact of Covid 19 on judicial cooperation in criminal matters – II



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

Zagreb  
23.05.2022

1

2

National  
example -  
Romanian  
law –  
investigative  
phase

---

cases involving provisional arrest,

---

cases where the protection of victims and witnesses were ordered or proposed,

---

cases regarding the provisional application of medical safety measures,

---

cases involving minors,

---

cases whose postponement would jeopardize the taking of evidence or the capture of the suspect or defendant;

---

cases involving serious crimes (e.g. crimes against national security, terrorism, money laundering)

---

other urgent cases assessed as such by the prosecutor supervising or conducting the criminal investigation

2

3

## National example - Romanian law – trial phase

---

cases involving provisional arrest,

---

cases regarding the provisional application of medical safety measures,

---

cases involving minors,

---

cases involving serious crimes (against national security, terrorism, money laundering)

---

other urgent cases assessed as such by the court

---

**NO** special reference to cases involving judicial cooperation in criminal matters

3

## Discussions

4

- In the context of Covid 19 what kind of measures (legislative, administrative, ...) have been put in place in your country during lockdowns with regard to criminal proceedings? They remained even after the end of lockdowns?

4

## Discussions – cont. (I)

- In your country, measures to reduce the prison population have been put in place?

5

5

## Discussions – cont. (II)

- What do you think about the victims of crimes during Covid 19 time? Where their's rights affected in any way, especially with reference to victims of trafficking or victims of domestic violence?
- Do you think that the delay in deliver justice during this period has eroded victims' confidence in the ability of the system to deliver a fair verdict?

6

6

## Discussions – cont. (III)

- When it comes to videoconferencing and remote hearings does the physical absence constitute a violation of the right to a fair trial?

7

7

## Discussions – cont. (IV)

- What do you think about the digitalisation of justice? What are the possible legality, data protection and privacy issues?
- What about digitalisation of justice and judicial cooperation in criminal matters at EU level?

8

8

9

## The digitalisation of justice at EU level

- Proposal for a **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of the European Parliament and of the Council, **as regards digitalisation of judicial cooperation**
- The general objective of the initiative is **to improve access to justice and the efficiency of cross-border judicial cooperation** by ensuring the establishment and seamless use of digital tools

9

10

## The digitalisation of justice at EU level (II)

### *Specific objectives*

- ensure the availability and use of electronic means of communication in cross-border cases between Member States' courts/competent authorities and relevant JHA agencies and EU bodies;
- facilitate the participation of parties to criminal proceedings in oral hearings through videoconference
- ensure that documents are not refused or denied legal effect solely on the grounds of their electronic form (without interfering with the courts' powers to decide on their validity, admissibility and probative value as evidence under national law);
- ensure the validity and acceptance of electronic signatures and seals for electronic cross-border judicial cooperation and access to justice.

10



**Thank you!**

Daniel Constantin Motoi

Court of first instance 4th District, Bucharest





# THE IMPACT OF COVID 19 ON JUDICIAL COOPERATION IN CRIMINAL MATTERS

Zagreb  
23.05.2022



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

1

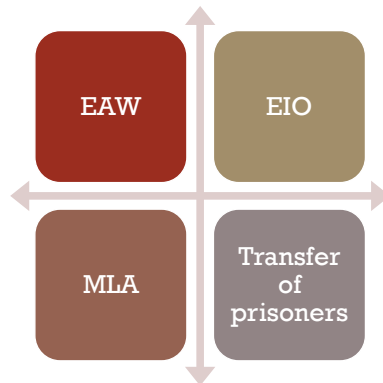
## IMPACT OF COVID-19 ON JCCM

- As a result of Covid outburst all MS have imposed strict restrictions to prevent the spread of the coronavirus, and this had impact also the judicial cooperation in criminal matters and the application of EU instruments
- Covid 19 didn't stop crime => cybercrimes exploded, fake and counterfeited medical products, fake Covid certificates,....



2

## IMPACT AT INTERNATIONAL LEVEL



3

3

## COVID 19 AND EAW

### Major challenges:

- flight cancelations/limitations,
- closures of borders, lockdowns, measures of social distancing,
- shortage of police staff necessary for transfer
- medical screening requirements, unavailability of detention and medical facilities where to quarantine the transferred person

This had an impact on both **the issuing** (in some MS limited only to urgent and /or serious crimes) and **the execution** of EAWs (in most of the MS was practically stopped)

In the end, what was seriously impacted was the final stage of the EAW procedure - **the physical transfer** of the requested person to the country of the authority that issued the EAW

4

4

## COVID 19 AND EAW – CONT.

- Ad hoc flights were organized and for the neighbor countries – transfer via borders.
- Time limits specified in Article 17 of the EAW FWD were difficult to observe => **extend the detention orders according to national law**
- The **postponement of surrender** with reference to the application of article 23 of the EAW FWD - force majeure or humanitarian reasons

**Alternative solutions** to the transfer:

- *issuing an EIO to hear the requested person via videoconference during the trial phase, with their consent,*
- *transfer of criminal proceedings*
- *taking over the enforcement of a custodial sentence*



5

## COVID 19 AND EIO

- Not knowing what national competent authority to contact due to lockdowns, curfews
- Not knowing whether it was possible for the executing authority to conduct witness hearings, including hearings by videoconference (due lockdowns, compulsory quarantine, work from home)
- Issues in transmitting by the issuing authorities and later for the executing competent authority the transfer of evidence (e.g. unavailability of postal services)
- Videoconference, telephone conferences and electronic transmission of evidence was used when possible
- In general, the issuing and executing of EIOs continued as normal, although in the lockdown phase the executing were restricted only to urgent cases



6

## COVID 19 AND MLA

- Issues in transmitting by the issuing authorities and later for the executing competent authority of the MLA(e.g. unavailability of postal services)
- Hearing of persons, including hearing by videoconference were put in place
- In general, the requests for MLA continued as normal, although in the lockdown phase the executing was restricted only to urgent cases, the rest being postponed



7

## COVID 19 AND THE TRANSFER OF PRISONERS

- Same challenges as for the EAW
- Most Member States have suspended/postponed all physical transfers of prisoners under Council Framework Decision 2008/909/JHA of 27 November 2008 during lockdown especially
- Impact on the possibility of the sentenced person to serve the sentence in his country of origin
- The exchange of information and best practices between MS has been put in place
- The possibility for the transfer of prisoners is nowadays again available



8

## IMPACT AT NATIONAL LEVEL

- **Court closures in lockdowns , investigations were suspended, and hearings were postponed** => disruption of courts' work, delays in proceedings, and have impacted on procedural time limits and on the provision of legal aid services
- **Remote hearings and services in almost all the files** (exception – provisional arrest) => challenges in using electronic devices for communication, to access files through databases, and to conduct
- **Protocols and procedures** put in place in courts (testing, masks, ...)
- Passing laws extending the use remote proceedings in a wider variety of pretrial and post-conviction criminal matters

9

9

## IMPACT AT NATIONAL LEVEL – SOLUTIONS

- In general, all MS have tried to **reduce involvement with the justice system and limit person-to-person interactions**, whether with law enforcement, in courts, in jails and prisons, or with community supervision officers
- Some states have taken steps to **reduce the number of people who were incarcerated** via preexisting release levers, particularly those who are at risk, such as elderly and medically vulnerable people
- **Promoting the use of non-custodial measures as alternatives to detention**, such as suspending or deferring sentences, bringing forward conditional release, temporary release, commuting imprisonment into house arrest or extended use of electronic monitoring

10

10

## ISSUES ON FUNDAMENTAL RIGHTS

- Restrictive measures affected the work of courts, and this had an impact on people's **access to justice**, which is important for ensuring the right to an effective remedy and a fair trial
- The COVID-19 outbreak also had an impact on the **exercise of procedural rights of suspects and accused persons**. Direct communication with lawyers, interpreters or with third persons (while the suspects or accused persons are deprived of liberty) was more difficult

11

11

## ISSUES ON FUNDAMENTAL RIGHTS VICTIMS OF CRIMES

- Member States are obliged to ensure that all **victims of crime** have access to general and specialised support services that are confidential, free of charge and respond to victims' individual needs
- The access to support and protection that corresponds to victims' specific needs should be available in all circumstances and this also included the specific situation during the COVID-19 pandemic
- The situation of **victims of domestic violence** was particularly aggravated by social distancing and isolation during periods of confinement

12

12

## ISSUES ON FUNDAMENTAL RIGHTS – CONT.

- Workload has increased considerably due to the suspension of procedures during the Covid crisis which has led to **longer time proceedings**
- Judges had to make sure that, in the course of their work, the public health emergency is not used as a pretext for human rights infringements but aims at protecting people, and that new legal measures are applied with strict respect for human rights obligations
- **A balance** must be struck between public safety, on the one hand, and the enjoyment of fundamental rights and freedoms, on the other
- The pandemic accelerated **the digitalisation of justice** but effective participation in criminal proceedings, including the right to be present, and the principle of publicity provided in the Charter need to be observed as minimum standards

13

13

**Thank you!**

Daniel Constantin Motoi

Court of first instance 4th District, Bucharest

---

14

14







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

ERA  
**BETTER APPLYING EUROPEAN CRIMINAL LAW**  
**Pan-European Legal Conference for Court Staff**  
23-24 May 2022

**Session III**  
**Freezing and confiscation in the EU**

# **A pain in the ass..ets**

*Practical issues of freezing and confiscation in the EU today  
in 4 questions*

Paul NOTENBOOM  
European Delegated Prosecutor  
European Public Prosecutor's Office – The Netherlands  
E-mail: paulus.notenboom@ext.ec.europa.eu

EU legal framework about  
tracing, freezing and confiscation  
of proceeds of crime.

1

# ***WHO dunnit?***

2

You are only human

*'Intentional blindness'*

**FOCUS**

3

Asset recovery

**WHY**

**WHO**

**HOW**

**WHAT**

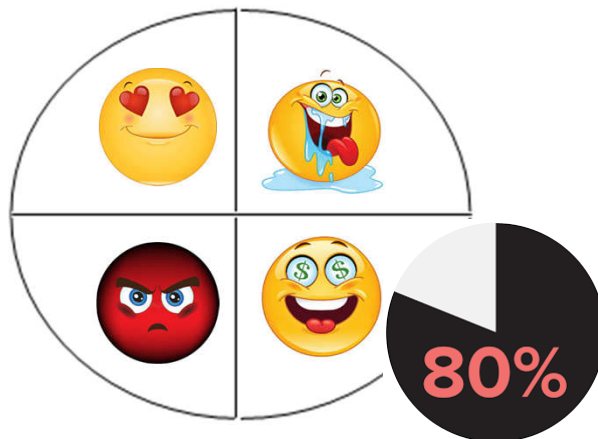
4

## Asset recovery

# WHY

5

## Motive



6

## Motive

Love  
Lust  
Lunatic  
**Loot**



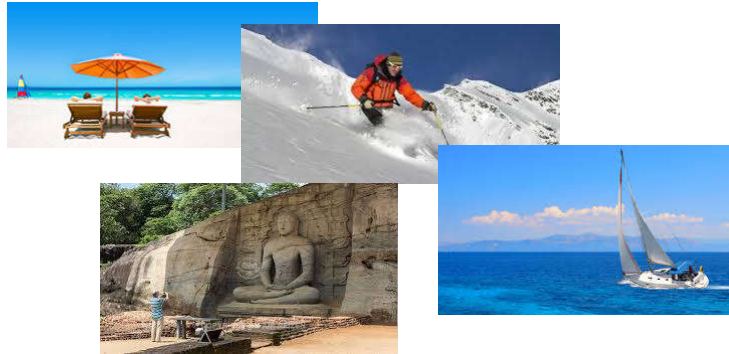
7

## Motive #1: MONEY



8

# Goal



9

# Asset recovery

# WHO

10

## Goal

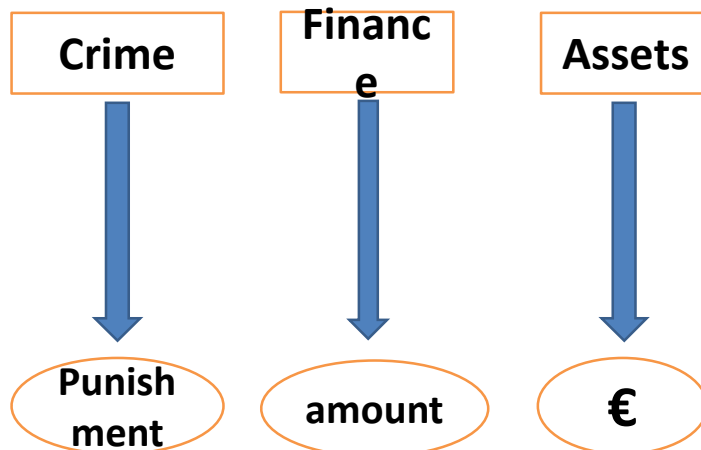
- Investigator
- Prosecutor
- Judge

# E.C.I.

?

11

## Effective **C**riminal **I**nterrogation



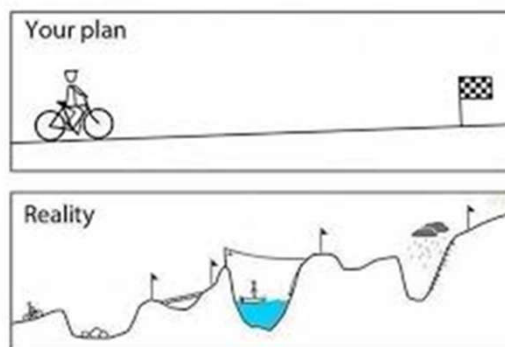
12

## In Time

1. Find it - Tracing
2. Hold it - Freezing
3. Keep it - Confiscation
4. Use it - Allocation

13

## International Cooperation



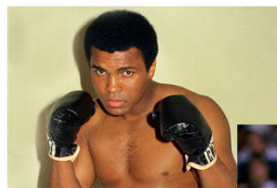
14

Asset recovery

HOW

15

Who's the best ?



16



Who's the best?



17



18

## 4 C's

- **Cooperation**
- **Communication**
- **Consistency**
- **Compliance**

19

## EU instruments

- Directive 2014/41/EU:  
*European Investigation Order (EIO)*
- Directive 2014/42/EU  
*Freezing and confiscation*
- Regulation 2018/1805  
*Mutual recognition FO & CO*

20

## Directive 2014 / 41

- Purpose:

Investigate to obtain: **information / evidence**

- Search
- Interception of telecommunication
- Hearing
- Request for data
- Covert operation

21

## Directive 2014/42/EU

- Object confiscation (art. 4)
- Value confiscation (art. 4)
- Extended confiscation (art.5)
- Third-party-confiscation (art.6)

22

Problem

What if ...

23

Solution

**Regulation 2018/1805/EU**  
on the mutual recognition of freezing  
orders and confiscation orders

24

## Article 1

### Subject matter

1. This Regulation lays down the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State **within the framework of proceedings in criminal matters**.
2. This Regulation shall not have the effect of modifying the obligation to respect the **fundamental rights and legal principles** enshrined in **Article 6 TEU**.
3. When **issuing** freezing orders or confiscation orders, **issuing authorities** shall ensure that the **principles of necessity and proportionality** are respected.
4. This Regulation does **not apply** to freezing orders and confiscation orders issued within the framework of proceedings **in civil or administrative matters**.

25

## Asset recovery

# WHAT

26

## Cost - risk - revenue



27

## Costs

- Storage
- Valuation
- Administration
- Liability for
  - damages as result of inadequate preservation
  - damages as result of seizure
  - damages because of devaluation



28

# Risks

Asset management = Risk management



29

## Management / Risk (EU)

### **Directive 2014/42/EU**

- Pre-trial seizure (art.7)
- Pre-trial selling/ surety (art.10)

### **Regulation 2018/1805**

- Management (art 28 art 29)
- Liability (art 31/ art 34)
- Legal remedies (art 33)

30

## Revenues

- Selling
- Allocation
- Victims
- Asset sharing



31

## Advise



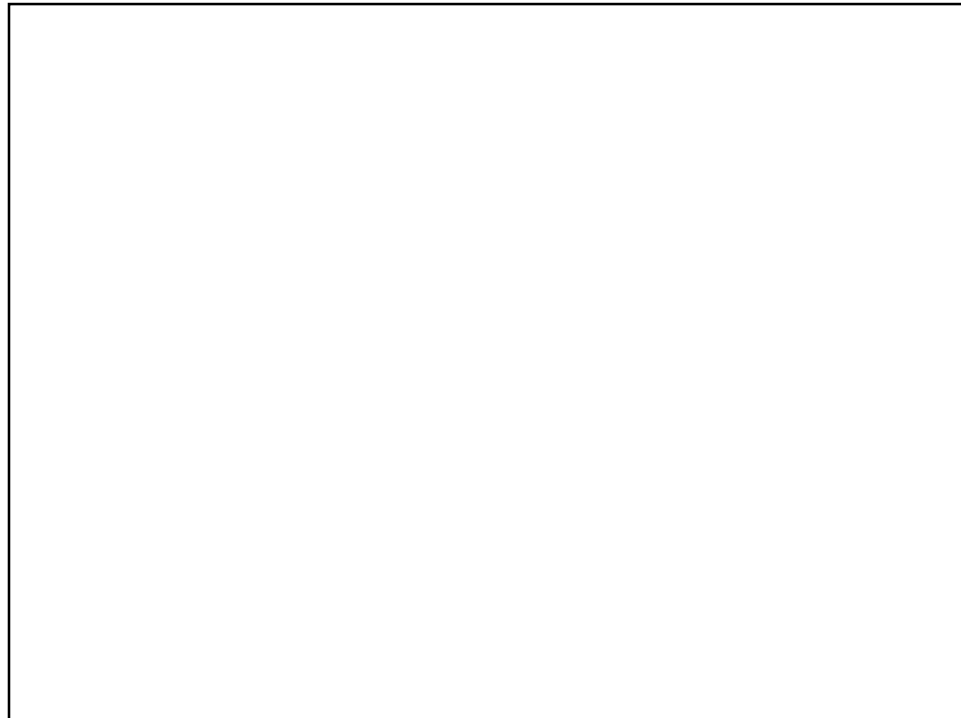
32



Thank you for your attention.



33



34

## ECHR-cases

- Aboufadda vs France (2014)
- Gogitidze vs Georgia (2015)
- Boljevic vs Croatia (2017)
- Sofia vs San Marino (2017)
- Balsamo vs San Marino (2018)
- Telbis/Viziteu vs Romania (2019)

35

## ECHR- framework

- Lawfulness
- Legitimacy
- Proportionality

36

## Art. 28 Regulation 2018/1805/EU

- Law executing state (art 28.1)
- Prevent depreciation (art 28.2)
- Remain in executing state (art 28.3)
- Cultural objects (art 28.4)

37

## Regulation 2018/1805/EU

Costs: art 31

- MS bear own costs (art 31.1)
- Large or exceptional costs (art 31.2)

38

## Liability – reimbursement

Art. 34 Regulation 2018/1805:

- Executing state is liable to an affected person
- Issuing state shall reimburse
- BUT: if damage (or part of) is exclusively due to Executing state ....  
states agree on amount reimbursed

39

## Art 30 Regulation 2018/1805/EU

Priority to the victims

<EUR 10.000 --ExS 100%

>EUR 10.000 – 50/50

40

## European Arrest Warrant and mutual recognition in the light of recent ECHR and ECJ ruling

advocate Mikołaj Pietrzak



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

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

1

### What is the European Arrest Warrant?

The European arrest warrant ("EAW") is a simplified cross-border judicial surrender procedure – for the purpose of prosecuting or executing a custodial sentence or detention order. A warrant issued by one of the EU country's judicial authority is valid in the entire territory of the EU. The EAW has been operational since 1 January 2004. It has replaced the lengthy extradition procedures that used to exist between EU countries.

Legal basis: 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

2

### How does it work?

The EAW is a request of a judicial authority of the one EU state to arrest a person in another state and surrender him/her for prosecution, or to execute a custodial sentence or detention order issued in the first state. The mechanism is based on the principle of mutual recognition of judicial decisions. It is operational in all EU countries.

It operates *via* direct contacts between judicial authorities.

In applying the EAW, authorities have to respect the procedural rights of suspects or accused persons – such as the right to information, to have a lawyer, and an interpreter, and to legal aid as stipulated by law in the country where they are arrested.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

3

### How is it different from traditional extradition?

#### Double criminality check – not required for 32 categories of offences

The double criminality test is a standard premise of extradition. In the case of the EAW, for 32 categories of offences, there is no verification whether the act is a criminal offence in both countries. The only requirement is that it should 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.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

4

**How is it different from traditional extradition?**» **No political involvement**

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

» **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.

» **Guarantees**

The executing state may require guarantees that:

a. after a certain period of time the person will have the right to ask for review or clemency, if the punishment imposed is a life sentence.

b. the requested ed person can serve any resulting prison time in the executing state, if they are a national or habitual resident of that state.

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

5

**How is it different from traditional extradition?**» **Strict time limits**

The country where the person is arrested has to issue 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.

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

6

### 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:

#### Examples of mandatory grounds (art. 3 Framework Decision):

- » 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)

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

7

### Limited grounds for refusal.

#### Examples of optional grounds (art. 4 of Framework Decision):

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

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

8



**Statistics on EAW use**source: [https://e-justice.europa.eu/90/PL/european\\_arrest\\_warrant?clang=en](https://e-justice.europa.eu/90/PL/european_arrest_warrant?clang=en)

EAWs	2014	2015	2016	2017	2018	2019
<b>Issued</b>	14.948	16.144	16.636	17.491	17.471	20.226
<b>Executed</b>	5.535	5.304	5.812	6.317	6.976	5.665

www.pietrzaksidor.pl

9

**Limitations in the application of the EAW.**

In Judgments C-404/15 and 659/15 Aranyosi and Căldăraru, the Court of Justice of the EU ruled that a national court executing an EAW, where it has data that demonstrate a real danger of inhuman and degrading treatment of persons deprived of their liberty in the state requesting the surrender of an individual by way of an EAW (as a result of overcrowding of cells), should assess that danger before carrying out the surrender.

Subsequently, the execution of the European Arrest Warrant was reviewed in relation to states that might violate European Union values, i.e. the rule of law. Legislative changes concerning the Polish judiciary began to raise doubts.

www.pietrzaksidor.pl

10

**The case of Aranyosi and Căldăraru (C-404/15 and C-659/15)**

The CJEU was faced with a preliminary question from the Higher Regional Court of Bremen on whether the transfer of two requested persons to Romania and Hungary would not result in both being subject to inhuman or degrading treatment.

The Court of Justice of the European Union, in its judgment of 5 April 2016, stated that where there is a danger of inhuman and degrading treatment in the requesting State, it must assess that danger by applying a two-step test consisting of (i) establishing on the basis of available sources, e.g. documents of international organisations and judgments of international bodies such as the ECtHR, an objective danger to the fundamental rights of the individual (ii) then the court of the issuing State must determine whether such a danger exists in the case of the individual subject to the EAW.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

11

**The case of Celmer (C-216/18 PPU)**

The CJEU decision in the Celmer case is one of the first judgments of an international court on the consequences of the constitutional crisis in Poland. The case was referred to the CJEU by the Irish High Court - it concerned a request by a Polish court to surrender a Polish citizen suspected of drug offences on the basis of an EAW.

In its judgment of 25 July 2018 the CJEU held that where a party to an EAW proceeding raises an argument about systemic irregularities that may affect the independence of the court in the issuing state, the court executing the EAW is required to assess whether there is a real risk that the person concerned will be exposed to a breach of that fundamental right.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

12

### The case of Celmer (C-216/18 PPU) Cont.

The CJEU indicated that in order to establish a real risk of a violation of the right to a fair trial, a court must conduct a two-step test. First, it must identify systemic or general deficiencies in the operation of the judicial system in the State (e.g. in its independence/independence). In this assessment it should rely on objective data. The CJEU has indicated that an example of this type of data could be the information contained in the European Commission's reasoned request under the Article 7(1) TEU procedure.

Secondly, the court must examine whether, in the case at hand, there is indeed a risk of a violation of the right to a fair trial of a particular individual. In doing so, it should take into account the information provided to it by the State. This two-step test is in fact an extension of the test created by the CJEU in the Aranyosi judgment to the issue of the right to a fair trial.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

13

### CJEU's clarification of when Poland may be refused execution of an EAW (C-562/21 PPU and C-563/21 PPU)

- » The CJEU, in a judgment of **22 February 2022**, clarified the criteria for refusing to execute an EAW on the grounds of a risk of a violation of the principles of a fair trial. The judgment is a response to two preliminary questions posed by a district court in Amsterdam, which was requested to hand over two Poles under an EAW. One to serve a two-year prison sentence for extortion and threats and the other to initiate criminal proceedings.
- » The Court explained in the judgment that a person subject to an EAW for the purpose of executing a custodial sentence must show that irregularities in the appointment of judges affected the specific criminal proceedings in which he was convicted. And the court hearing the application should check whether the convicted person has availed himself of legal remedies, requested the exclusion of one or more members of the bench on grounds of violation of his fundamental right to a fair trial and how such requests have been dealt with.
- » As for the transfer of a person for the purpose of conducting criminal proceedings, although it is unclear at this stage which judges will hear the case (those appointed by the new or old NCJ), this uncertainty cannot in itself justify a refusal. As the CJEU emphasised, a court executing an EAW cannot exclude in advance the risk of a violation of the right to a fair trial.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

14

**The jurisprudence of the CJEU and the ECtHR concerning the rule of law in Poland has a significant impact on the processing of EAW requests concerning Poland.**

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

15

**Examples of ECtHR case law concerning the rule of law in Poland**

The case of Reczkowicz v Poland (Application No 43447/19)

- » The case was initiated by an individual complaint filed in 2019 by a lawyer whose case was heard by the Disciplinary Chamber of the Supreme Court.
- » 22 July 2021. The Strasbourg Court unanimously found a violation of Article 6 of the Convention on Human Rights and Fundamental Freedoms - as a result of the failure to ensure the applicant's right to a fair trial before a legally constituted court.
- » In the present case, the Court shared the applicant's allegations that the Disciplinary Chamber was selected by the politicised National Council of the Judiciary and that the composition of the Chamber therefore did not guarantee a fair trial.

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

16

- » **Example of ECtHR case law concerning the rule of law in Poland**
- » Case of Dolińska - Ficek and Ozimek v Poland (application nos 49868/19 and 57511/19)
- » The verdict came from a complaint by two judges - Monika Dolinska-Ficek and Artur Ozimek. Both had applied for promotion, but the new National Council of the Judiciary assessed their applications negatively. The judges appealed to the new Supreme Court's Extraordinary Control Chamber, which rejected their complaints. The judges then lodged complaints with the European Court of Human Rights, arguing that they had been deprived of their right to a fair trial.
- » The Court found that the Chamber of Extraordinary Control and Public Affairs of the Supreme Court is not an "independent and impartial court established by law". The Court also found a lack of independence of the National Council of the Judiciary from the legislature and the executive.
- » As in the previous case, in the opinion of the Court, the Chamber for Extraordinary Control and Public Affairs of the Supreme Court is not a court due to the fact that its composition is drawn from judges recommended by the politicised National Council of the Judiciary. Thus, the decisions of the chamber violate the right to a court.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

17

**Example of ECtHR case law concerning the rule of law in Poland**

Case Advance Pharma sp. z o.o. v Poland, Application No 1469/20

Advance Pharma applied to the European Court of Human Rights claiming that its right to have its case heard by an independent, impartial and established by law court has been violated. The Civil Chamber of the Supreme Court, which examined the company's case, included judges appointed at the request of the current National Council of the Judiciary.

The Court pointed to the undue influence of the legislative and executive powers on the procedure for the appointment of judges to the Civil Chamber of the Supreme Court. The Civil Chamber was therefore not an "independent and impartial court established by law" within the meaning of the European Convention on Human Rights. The explanatory memorandum warned that the continued existence of the National Council of the Judiciary in its current form would exacerbate a systemic problem regarding the status of judges appointed on its proposal.

The Court's judgment has once again indicated that the right to a court has been violated as a result of judicial reform in Poland. This ruling confirms that applications for the execution of a European Arrest Warrant in Poland may be successfully challenged.

legislative and executive powers

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

18

**Examples of CJEU case law concerning the rule of law in Poland**

The status of the newly established Disciplinary Chamber of the Supreme Court became the basis of the judgement of the CJEU of 19 November 2019 (joined cases C-585/18, C-624/18 and C-625/18). According to the CJEU judgment of 19 November 2019, to determine whether a judicial authority is independent and impartial within the meaning of Article 47 of the Charter, it is necessary to take into account the objective circumstances in which it was created, its characteristics, and the manner in which its members were appointed. If the assessment of the above criteria leads to the conclusion that, in the minds of individual citizens, reasonable doubts could arise as to the authority's independence from external factors and its neutrality, the national court should assume that a given judicial authority is not independent and impartial. These criteria constitute universal guidelines regarding the interpretation of the EU law and apply to all judicial authorities. They should be taken into account when assessing any judicial authority – whether a common court or the Supreme Court.

The case was initiated by preliminary questions of the Polish Supreme Court of 20 September 2018 and 3 October 2018 in cases brought by judges of the Supreme Court and a judge of the Supreme Administrative Court.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

19

**Examples of CJEU case law concerning the rule of law in Poland**

On 8 April 2020 the CJEU issued the ruling in case C-791/19 European Commission vs Poland ordering the Republic of Poland to suspend the application of the provisions constituting the basis of jurisdiction of the Disciplinary Chamber in disciplinary cases against judges and until the CJEU issues a judgment resolving the matter refrain from referring cases pending before the Disciplinary Chamber for examination by a panel that does not meet the requirements of independence. Moreover, the Republic of Poland was obliged to notify the Commission within a month of all measures that it has adopted in order to fully comply with this command. Following the ruling, on 20 April 2020, the First President of the Supreme Court, Prof. Małgorzata Gersdorf, issued an ordinance suspending the Disciplinary Chamber in order to comply with this interim measure of the CJEU. The Ordinance aimed at ensuring proper registration, admission or consideration of cases falling within the jurisdiction of the Disciplinary Chamber of the Supreme Court and of certain matters falling within the power of the President of the Disciplinary Chamber of the Supreme Court. The new First President of the Supreme Court, appointed by President Andrzej Duda, on 16 July 2021 revoked the order suspending the work of the Disciplinary Chamber of the Supreme Court.

The proceedings in this case were initiated by the European Commission

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

20

**Examples of CJEU case law concerning the rule of law in Poland**

In its judgment of 16 October 2021 in joined cases C-748/19-C-754/19, the CJEU stated that European Union law precludes the system in force in Poland allowing the Minister of Justice to delegate judges to higher instance criminal courts from which the Minister of Justice, who is also Prosecutor General, may remove a judge at any time and without justification. Indeed, the requirement of judicial independence requires that the rules on such secondment provide for the necessary guarantees to avoid the risk of such secondment being used for political control of the content of judicial decisions, particularly in the field of criminal law.

The ruling was made in relation to a prejudicial question posed by the District Court in Warsaw.

€

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

21

**Examples of CJEU case law concerning the rule of law in Poland**

In its judgment of 6 October 2021 (Case C-487/19), the CJEU stated that transferring a judge without his or her consent to another court or between two divisions of the same court may violate the principles of irremovability and independence of judges. Such transfer of judges is one of the instruments commonly used against judges who oppose the changes introduced to the Polish judicial system.

The judgment came in relation to a prejudicial question referred to the Court by the Civil Chamber of the Supreme Court.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

22

**As a result of ECtHR and CJEU rulings, the politicised Polish Constitutional Tribunal has attempted to defend the justice reforms introduced by the governing party**

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

23

**In its judgment of 14 July 2021 (reference P 7/20), the Constitutional Court ruled that the second sentence of Article 4(3) of the Treaty on European Union, in conjunction with Article 279 of the Treaty on the Functioning of the European Union, to the extent to which it results in the obligation of a Member State of the European Union to implement provisional measures relating to the shape of the system and functioning of the constitutional organs of judicial power of that State, is incompatible with the Polish Constitution.**

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

24



**In its judgment of 7 October 2021 (ref. K 3/21), the Constitutional Tribunal found that a provision of EU law empowering national courts to disregard the provisions of the Constitution is inconsistent with the Basic Law. Tribunal also found EU provisions to be unconstitutional to the extent that EU bodies act beyond the limits of competences delegated by Poland - which applies to the shaping of the judicial system in Poland.**

**The judgment was handed down in connection with a motion which had been submitted to the Tribunal by the Polish Prime Minister.**

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

25

In contrast to the Constitutional Court, the Supreme Court stood up in defence of the independence of the judiciary.

In a resolution of the joint chambers of 23 January 2020 (ref.: BSA I-4110-1/20), the Supreme Court stated that the judicial formations in which judges appointed with the participation of the new National Council of the Judiciary sit should be regarded as improperly staffed or contrary to the provisions of law. This applies both to judges of common courts and the Supreme Court.

The Constitutional Tribunal in its verdict dated 20 April 2020 (ref. U 2/20) declared the resolution of the Supreme Court to be unconstitutional. The verdict aroused much controversy in the legal community, which points out that the subject of the Constitutional Tribunal's control may only be legal norms resulting from legal regulations, and not an act constituting an interpretation of legal norms.

The application in this case was submitted to the Court by the Polish Prime Minister.

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)

26

**As a consequence of the dispute over the rule of law, a number of states have refused to execute the European Arrest Warrant for Poland on the basis of the 'Celmer test'. - The countries in question include the Netherlands, the United Kingdom, Denmark and Germany.**

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

27

**Practice of Pietrzak Sidor & Partners in connection with the European Arrest Warrant**

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

28

Pietrzak Sidor  
& Wspólnicy

**Thank you for your attention.**

Advocate Mikołaj Pietrzak - [pietrzak@pietrzaksidor.pl](mailto:pietrzak@pietrzaksidor.pl)

[www.pietrzaksidor.pl](http://www.pietrzaksidor.pl)



## WORKING WITH THE EUROPEAN INVESTIGATION ORDER

advocate Katarzyna Dąbrowska



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

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

1

### MUTUAL LEGAL ASSISTANCE

- » a form of cooperation between different countries for the purpose of collecting and exchanging information
- » authorities from one country may also ask for and provide evidence located in one country to assist in criminal investigations or proceedings in another
- » mutual legal assistance mechanisms are progressively being replaced by mutual recognition instruments

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

2

<b>Pietrzak Sidor &amp; Wspólnicy</b>	<b>MUTUAL RECOGNITION</b>
<b>MUTUAL RECOGNITION = LACK OF PRIOR AUTHORITY</b>	
<ul style="list-style-type: none"><li>» facilitates and accelerates the cooperation between enforcement authorities in different Member States</li><li>» aims at tackling the challenge of cross-border crime while respecting the right of both criminals and victims</li><li>» based on mutual trust - mutual trust regarding basic rights, guarantees. It is possible only due to numerous directives, regulations and framework decision. A consequence of it. It shows that whole European law system is like connecting vessels</li></ul>	

3

<b>Pietrzak Sidor &amp; Wspólnicy</b>	<b>MUTUAL RECOGNITION – A CORNERSTONE</b>
<b>Instruments introduced only thanks to mutual recognition:</b>	
<ul style="list-style-type: none"><li>• European Arrest Warrant,</li><li>• European Enforcement Order,</li><li>• European Investigation Order,</li><li>• European Protection Order,</li><li>• Mutual recognition of freezing orders and confiscation orders,<ul style="list-style-type: none"><li>• Mutual recognition of financial penalties.</li></ul></li></ul>	
<small><a href="http://www.pietrzaksidor.pl">www.pietrzaksidor.pl</a></small>	

4

<b>Pietrzak Sidor &amp; Wspólnicy</b>	<b>EUROPEAN JUDICIAL NETWORK (EJN)</b>
<ul style="list-style-type: none"><li>» network of contact points within the EU designed to facilitate judicial cooperation across borders;</li><li>» created on 29 June 1998;</li><li>» composed of Contact Points – intermediaries - in the Member States designated by each Member State;</li><li>» 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.</li></ul> <p style="text-align: center;"><a href="http://www.pietrzaksidor.pl">www.pietrzaksidor.pl</a></p>	

5

<b>Pietrzak Sidor &amp; Wspólnicy</b>	<b>EUROJUST</b>
<ul style="list-style-type: none"><li>» the European Union Agency for Criminal Justice Cooperation</li><li>» created on 28 January 2002</li><li>» The role of Eurojust is to help make Europe a safer place by coordinating the work of national authorities – from the EU Member States as well as third States – in investigating and prosecuting transnational crime.</li><li>» cohesive international network that grants prosecutors around the European Union access to more than 50 jurisdictions worldwide</li></ul> <p style="text-align: center;"><a href="http://www.pietrzaksidor.pl">www.pietrzaksidor.pl</a></p>	

6

**Pietrzak Sidor  
& Wspólnicy**

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

- » The story behind
  - Council Framework Decision 2008/978/JHA concerning the European evidence warrant
  - Green Paper
- » Main goal: gather evidence and obtain evidence that is already in the possession of the executing state at all stages of the criminal proceedings

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

7

**Pietrzak Sidor  
& Wspólnicy**

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

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

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

8

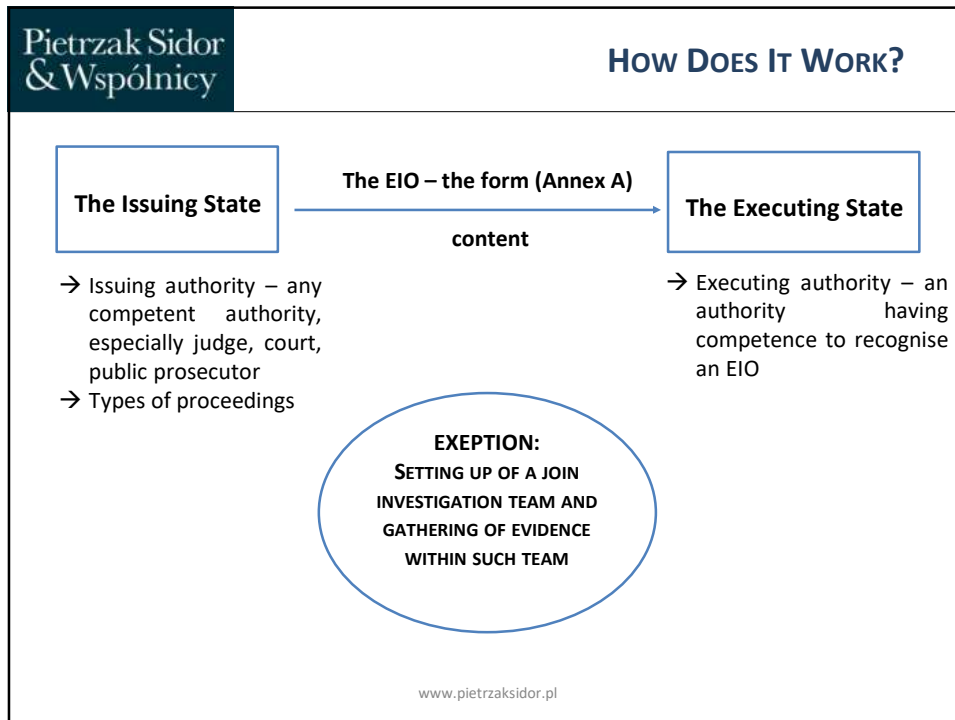


Pietrzak Sidor & Wspólnicy	<b>THE DIRECTIVE – MAIN ASSUMPTIONS</b>
<ul style="list-style-type: none"> <li>» Proportionality rule – applied by the issuing state           <ul style="list-style-type: none"> <li>→ investigative measure proportionate, adequate and applicable in the case at hand</li> <li>→ evidence sought is necessary and proportionate for the purpose of the proceedings</li> <li>→ chosen investigative measure is necessary and proportionate for the gathering of the evidence concerned</li> </ul> </li>   <li>» Respect to:           <ul style="list-style-type: none"> <li>→ fundamental rights such as presumption of innocence, rights to defence</li> <li>→ Directives concerning procedural rights in criminal proceedings</li> <li>→ <i>ne bis in idem</i> rule</li> <li>→ protection of personal data</li> </ul> </li> </ul>	
<small>www.pietzaksidor.pl</small>	

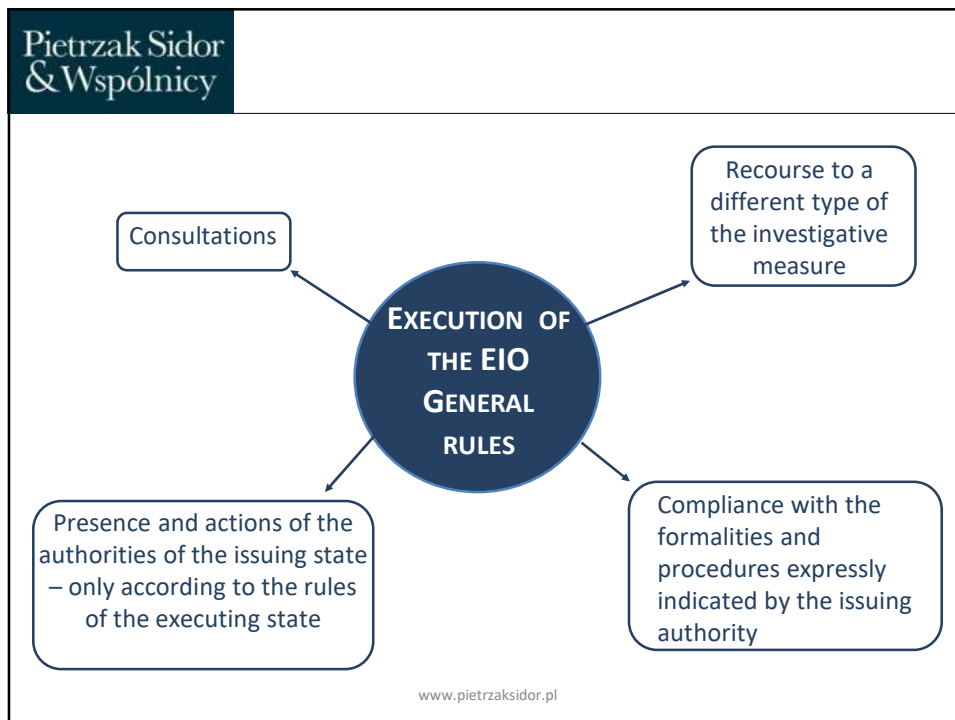
9

Pietrzak Sidor & Wspólnicy	<b>THE DIRECTIVE – MAIN ASSUMPTIONS</b>
<ul style="list-style-type: none"> <li>» Availability of legal remedies</li>   <li>» Effectiveness – possibility of executing state to use another type of investigative measure than the one chosen by the issuing state</li>   <li>» Precedence over conventions concluded within the Council of Europe concerning mutual assistance</li>   <li>» Costs on the side of the executing state</li> </ul>	
<small>www.pietzaksidor.pl</small>	

10



11



12

Pietrzak Sidor & Wspólnicy	<b>GROUNDS FOR NON-RECOGNITION/ NON-EXECUTION</b>
<ol style="list-style-type: none"> <li>1. Fundamental rights, especially with regard to the Charter.</li> <li>2. Immunity, privilege.</li> <li>3. Limitation of criminal liability relating to freedom of press or expression in other media.</li> <li>4. National interests of the executing state.</li> <li>5. <i>Ne bis in idem</i></li> <li>6. Lack of authorisation of the investigative measure in particular type of the proceedings.</li> <li>7. An action is not punishable in the executing state and was committed wholly or partially on its territory and outside the issuing state.</li> <li>8. Lack of double criminality – however 32 offences do not need verification.</li> <li>9. Lack of authorisation of the investigative measure with regard to particular offence in the executing state.</li> </ol>	
<a href="http://www.pietzaksidor.pl">www.pietzaksidor.pl</a>	

13

Pietrzak Sidor & Wspólnicy	<b>TIME LIMITS</b>
<ul style="list-style-type: none"> <li>» General rule – decision on recognition and execution not later than 30 days and the execution not later than 90 days since the decision on recognition is taken</li> <li>» Obligation to immediately inform about any issues related to effective execution of the EIO</li> <li>» Postponement of recognition or execution</li> <li>» Provisional measures</li> </ul>	
<a href="http://www.pietzaksidor.pl">www.pietzaksidor.pl</a>	

14

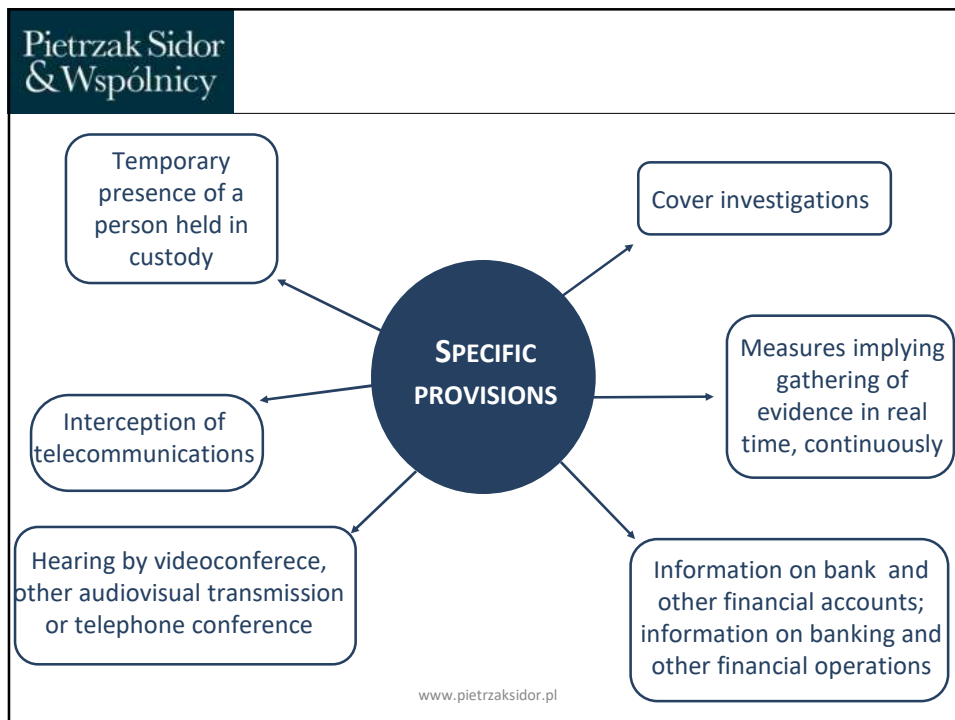
**Pietrzak Sidor & Wspólnicy**

**LEGAL REMEDIES**

- » General rule – legal remedies equivalent to those available in a similar domestic case
- » Time limit for seeking a legal remedy – the same as those that are provided for in similar domestic cases
- » Legal challenge does not postpone execution of the EIO unless it is provided in similar domestic case
- » Costs on the side of the executing state

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

15



16

**PRACTICAL PROBLEMS WITH  
APPLICATION**

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

Jeremy Bentham

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

17

**First CJEU Judgment on European  
Investigation Order**

CASE C-324/17 – Ivan Gazanov

*and subsequent CASE C – 852/19 – Gazanov II*

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

18

Pietrzak Sidor & Wspólnicy	<b>REPORT ON EUROJUST'S CASEWORK</b>
<ul style="list-style-type: none"> <li>» Defining the scope of the EIO</li> <li>» Claryfing the content of the EIO</li> <li>» Bridging differences between national legal systems</li> <li>» Ensuring correct and restrictive interpretation of the grounds for non-executon</li> <li>» Speeding up the Execution of EIO</li> <li>» Facilitating direct contact and exchange of infromation between issuing and executing authorities</li> <li>» Addressing language issues</li> <li>» Encouraging the use of Annex B (confirmation of the receipt of an EIO) and Annex C (notification concerning intercepion of telecommunications) of the Directive</li> <li>» Transmitting EIO to the competent authorit</li> <li>» Coordinating the execution of EIOs with other instruments.</li> </ul>	
<a href="http://www.pietzaksidor.pl">www.pietzaksidor.pl</a>	

19

Pietrzak Sidor & Wspólnicy	<b>MOST IMPORTANT PROBLEMS - PERSONAL VIEW</b>
<ol style="list-style-type: none"> <li>1. Interrogation. <ul style="list-style-type: none"> <li>→ preserving proper procedure in the light of the procedural standing (witness/suspect)</li> <li>→ appropriate authority conducting interrogation – court/investigative authorities</li> <li>→ form of interrogation – interrogation in person, by means of electronic communications, in written form</li> <li>→ service of correspondence</li> </ul> </li> <li>1. Legally protected secrecy.</li> <li>2. „Surveillance”.</li> </ol>	
<a href="http://www.pietzaksidor.pl">www.pietzaksidor.pl</a>	

20

Pietrzak Sidor  
& Wspólnicy

**Thank you for your attention.**

advocate Katarzyna Dąbrowska - [dabrowska@pietrzaksidor.pl](mailto:dabrowska@pietrzaksidor.pl)

[www.pietzaksidor.pl](http://www.pietzaksidor.pl)

