

Mutual recognition I.

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgement in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

Set of Case Studies – a Guide for trainers

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Mutual recognition I.

A. I. Introductory questions:

1. *What kind of unconditional custodial sentences does your national system have?*
2. *What is the principle of social rehabilitation? Does it apply in your system?*
3. *What kind of assistance does Framework Decision 2008/909 want to offer? To what extent is it different from Framework Decision 2008/947?*
4. *What are the rules applicable to conditional or early release concerning custodial sentences in your country?*

A. II. Case scenario 1:

The German national Hans Schulz was convicted by Warsaw criminal court on 27 August 2010 to an unconditional sentence of 12 years' imprisonment for rape of victim A on 3 June 2009 in Warsaw, rape of victim B of Polish nationality in Berlin, Germany on 7 August 1998, using public transport in Gdansk without a valid ticket on 7 June 2010 and serious bodily harm on a prison ward, when he escaped from a Gdansk prison on 8 July 2010. In addition to the imprisonment sentence which relates to the three serious crimes, a fine of 500 Złoty has been imposed for the transport offence.

In late 2016, the competent Polish authorities obtained information that Schulz had returned to his mother, who lives in Göttingen, Germany. On 17 July 2017, the Polish authority issued a certificate to transfer the sentence for execution to Germany.

Questions:

1. Which authorities will be the issuing and executing authority?
2. Does the case fall within the conditions of FD 2008/909?
3. Fill out the form/ certificate and after everyone has done this, discuss in plenary on which points you hesitated.
4. Would there be any reason for the executing authority to consider the grounds for refusal?
5. Is the opinion of Hans Schulz himself relevant?
6. Do the German authorities have to arrest him pending the recognition procedure?

A. II. Exercises:

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

1. The Slovenian national Janez Zupančič was convicted for armed robbery in Brugge, Belgium on 4 July 2019, to a sentence of 7 years. He was arrested on 31 December 2017 and has been in prison ever since. The competent Belgian authority wishes to transfer him and the execution of the sentence to his home state Slovenia.

Competent authority:

Languge:

2. Josip Knežević is a Croatian national convicted by the criminal court of Miskolc, Hungary to 12 months imprisonment for theft. He was born in Zagreb.

Competent authority:

Languge:

3. The Romanian national Florin Radu was convicted on 1 June 2015 by the District Court of Kaunas, criminal chamber to a sentence 15 years for two murders committed in 2013. On 7 July 2020 the competent Lithuanian authority wishes to transfer the judgement to Romania.

Competent authority:

Languge:

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

At the procedure of recognition in Germany it appears that Schulz was not present at his trial in Poland. When found without a ticket on 7 June 2010 he was arrested and stayed in detention on remand until he escaped from prison on 8 July 2010 through the violent act of beating up the prison guard. After his escape a summons to the trial in August 2010 was sent to the address in Warsaw where he was formally registered. The officer responsible did not find him there. He went twice and left a notice that a document was to be picked up by him at the police station. It is without dispute that the summons was served in compliance with the provisions of the Polish Code Code of Criminal Procedure applicable at the time. Since 2010 the Polish authorities had been looking for Schulz unsuccessfully.

At the proceedings in Germany, Schulz states that;

- he was completely unaware of the fact that a trial was conducted against him;
- that he has stayed at his mother's place since July 2010;
- that he acknowledges having used public transport without a ticket;
- that he denies having been involved in any of the serious offences.

Questions:

1. *Can the Polish judgement be recognised and executed in Germany?*
2. *What are the issues on which the executing authority may need additional information?*
3. *On the basis of which criteria will it make a decision?*
4. *What are the alternatives if Germany does not recognise the Polish judgement?*
5. *Imagine that the Polish judgement can be recognised completely. What are the rules applicable to its execution in Germany?*
6. *When will Schulz be released?*

Part B. Additional notes for the trainer regarding the cases

It will be interesting to see and check whether the text participants have available is not only the text in their own national language, but also the text that includes the amendments and rectifications made to the original text. It still often happens that the text published in 2008 is used in practice without the major amendments of FD 2009/299. NB: concerning rectifications: this differs from language to language and can come years after 2009: e.g. the Finnish version OJ 2014 L 36/22. If time permits, this is a moment to train them to use eurlex and [the consolidated version of legal texts](#).

It is essential to stimulate using online tools!

Part C. Methodological approach

I. General idea and core topics

The focus of the first case is to address the meaning of the concept of mutual recognition in recognising each other's judgements. These places a lot of trust in each other's criminal justice systems and requires that cooperation may take place, even in situations in which the solution found would be entirely different in one's own Member State. In principle, judgements must be taken as they are and executed. In most situations, the issuing Member State determines the conditions. However, there are a few exceptions, such as with the application of the statute of limitations.

In preparing for their authorities, court staff must develop sensitivity to recognise these situations as they may cause delay or even an impediment to the cooperation or lead to consequences that apply after the transfer.

The second case zooms in on an issue that has led to many problems in the area of the EAW and now has become a problem in the transfer of judgements as well. Following the case law of the Court on *in absentia* judgements and the amendments of all mutual recognition instruments by new rules on *in absentia* through Framework Decision 2009/299 further issues come up in practice.

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

1. The structure and basic presumptions of mutual recognition in general and in the specific context of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union and Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial;
2. Finding which authorities are involved on both sides;
3. How the tasks between the issuing authority and the executing authority have been divided;
4. How contact between the authorities can be established and what kind of guarantees must be given;
5. What the effects of a transfer are in the execution of the sentence in the executing Member State;
6. The role the convicted person may play in trying to block transfer or obtain better conditions;
7. The role the convicted person may play in trying to be transferred where there is no initiative from the Member States concerned.

II. Working groups and structure of the seminar

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

The trainer will provide the participants with a brief presentation (Power point) highlighting the important features of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union – scope, definitions, competent authorities, distinction between surrender for prosecution and execution, role of the nationality or domicile of the requested person, grounds for refusing, time limits, governing law, subsequent decisions, obligations for the MS (**approx. 15-20 min**).

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

A 10-minute break is recommended at this point.

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

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

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

III. Additional material

All participants will **bring** a copy of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union comprising the Forms in the Annex. Also, the participants will also bring or have access to their national provisions implementing the Framework Decision.

IV. Recent developments

Please check whether there are any new cases pending or preliminary reference made to the Court of Justice over the last three months. (NB: Trainers, if there is no recent case, you may discuss the facts and implications of the [Ognyanov case \[C-554/14\]](#)).

Part D. Solutions

A. I. Introductory questions

1. What kind of unconditional custodial sentences does your national system have?

This is a question that informs the participants about the panoply of different sanctions that exist in the European Union. It works best in a multi-national setting, but also has its function when the seminar is composed of one nationality only. In that case, participants with more experience in the transfer of judgements may be asked whether they have come across sentences that were entirely different than known under their own system.

2. What is the principle of social rehabilitation? Does it apply in your system?

Most Member States will either have formally made the principle as leading in their treatment of convicted persons or have implemented that in practice. What it really means will differ from Member State to Member State. The general idea is that the chances of reintegrating into society are much better if that can be realised in the country of origin and in the mother tongue. Article 3 of Framework Decision 2008/909 upgrades the principle to the reason to transfer judgement and prisoner. Both the authorities of the issuing state and the executing state must be satisfied that this purpose is served (Article 4, paragraph 2). From paragraph 3 of Article 4, it appears that the Member State of nationality is presumed to serve the interests of social rehabilitation, which thus offers little opportunity for the Member State of nationality to refuse.

3. What kind of assistance does Framework Decision 2008/909 want to offer? To what extent is it different from Framework Decision 2008/947?

Article 3, paragraph 1 Framework Decision 2008/909 on Custodial Sentences states that transfer of sentences should take place with a view to facilitating the social rehabilitation of the sentenced person. This must be regarded as the paramount principle applicable in co-operation. Whereas convicted transferred on the basis of FD 2008/909 are imprisoned, those transferred on 2008/947 are at liberty, but subject to conditions, supervised by the executing Member State.

4. What are the rules applicable to conditional or early release concerning custodial sentences in your country?

This is a question that informs the participants about the panoply of different rules on conditional and early release that exist in the European Union. Release may be possible after ¼ of the sentence completed in some Member States and in others the sentence must be fully served. Some apply systems in which the court stipulates the release date, other in the law and other by a separate decision of a parole board or execution authority. The exercise works best in a multi-national setting, but also has its function when the seminar is composed of one nationality only. In that case, participants with more experience in the transfer of judgements may be asked whether they have come across early or conditional release rules that were entirely different than known under their own system.

Understanding the difference is the beginning of building trust in the system of the other.

A. II. Case scenario 1.

Questions:

Q1. Which authorities will be the issuing and executing authority?


This time, the answer on the competent issuing authority cannot be found via Atlas. In the so-called Fiches Belges we find:

The District Court (Sad Okregowy) in whose jurisdiction the sentenced person has a permanent or temporary place of residence.

If jurisdiction cannot be determined pursuant to the principles described above, the District Court in Warsaw (Sad Okregowy w Warszawie) shall be competent in the case. However, this relates to the competence of the court as an executing authority. Given the central role of Warsaw District Court and also as the court that rendered the decision, we may assume it may issue the request.

Also on Germany, Atlas does not give the answer, but [in the Notification on the implementation of the FD](#), we read that the prosecutors at the District Courts are competent. There is a Landgericht/ District Court in Göttingen.

When I was looking for the answer, on 29 May 2020, the EJM website stated:

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

Last reviewed on 6 April 2017 by EJM Secretariat

This demonstrates two important messages. The Atlas system is not as complete for FD 2008/909 as it is for the EAW. In addition, the information contained was, when I consulted it, last checked by EJN three years before. In other words, be aware that even on the EJN website information may be outdated.

The search was continued on the Fiches Belges, the relevant part reads: *The competent authorities for receiving requests are the local prosecution offices. You will find the addresses of the authorities in the EJN ATLAS. You can contact the same prosecution office that is competent in EAW cases.*

We already found that Atlas could not help, but the reference to the EAW competence is helpful. The authority to send the request to is:

Name:	Generalstaatsanwaltschaft Braunschweig
Address:	Fritz-Bauer-Platz 1
Department (Division):	
City:	Braunschweig
Postal code:	38100
Phone number:	(0049) 531 488-1401
Mobile phone:	
Fax number:	(0049) 531 488-1414
Email Address:	gstbs-poststelle@justiz.niedersachsen.de

NB: Note for trainers. The matter may come up whether the FD 2008/909 is applicable. In that case you may deal with it. It is not advisable to deal with the issue with beginners in the practice of mutual recognition. The judgement dates from 27 August 2010. The Directive should have been implemented by 5 December 2011. Poland did so on 1 January 2012. Germany did so on 25 July 2015 (although the EJN website erroneously refers to 2105). The request thus relates to a judgement rendered before the implementation date. Article 28(1) FD stipulates that the moment of sending the request is the decisive moment. In other words, once the request comes in after 5 December 2011, it is governed by the Framework Decision, even if the judgement is older. In our case the request is sent on 17 July 2017.

However, Article 28(2) FD allows Member States to declare that they will continue to apply the 1983 Council of Europe Convention on Transfer of Prisoners, where the final judgement has been issued before 5 December 2011. Some Member States, such as the Netherlands and Poland have made such a declaration. The Netherlands did so on 9 October 2009 and Poland on 1 June 2011. Article 28(2) states that such a declaration must be made on the adoption of the

Framework Decision, which was on 27 November 2008. What is the value of these declarations? In [the Popławski case](#), the Court held of the Dutch declaration that for being late, it is not capable of producing any legal effects. It may therefore be assumed that the identical Polish declaration is also null and void.

Q2. Does the case fall within the conditions of FD 2008/909?

There are various aspects to check and deal with. The first is whether the criteria of Article 4 FD are fulfilled. We note that Schulz is in Germany, the dedicated executing Member State as stipulated in Article 4(1). However, has consent been given, or is it not necessary to obtain the consent of the convicted Schulz? Schulz, as a German living in Germany obviously falls under category a of Article 4(1). Article 6(2)(a) puts an end to discussions about consent. The consent shall not be required where the judgement together with the certificate is forwarded to the Member State of nationality in which the sentenced person lives. The consent of Schulz is therefore not required.

The next step is to check whether the offences fall within the sphere of application of the legal instrument. Article 7 FD contains the same list of offences as the FD EAW. It lists rape, as a result of which no double criminality check is needed. Serious bodily harm and using public transport without a ticket are not listed. Article 7(4) FD then requires that it must be checked whether these are criminal offences under German law as well. Article 7(1) requires that at least three years must possibly be imposed for each of the offences. I have not been able to check the situation under German law, but regard it as very unlikely that German law will provide such a high penalty for using public transport without a ticket. In other words, Germany will not accept the execution for that offence. This might thus lead to a partial recognition, for which Article 10 provides a consultation procedure.

Q3. Fill out the form/certificate and after everyone has done this, discuss in plenary on which points you hesitated.

This exercise will certainly lead to questions from the participants. Which may very much depend on their national backgrounds or experience in working with these certificates.

Do we know whether the judgement is final? Article 1 FD stipulates that this is an existential requirement for application of the FD. The answer to this question will be given by Polish law. That determines whether the circumstances of the case make the judgement final. From the request itself, it may be interpreted that

the Polish authority is of the opinion that the judgement is final. (NB: we may return to this issue when zooming in on the absence from the trial.).

Note to trainers: Any answer or doubt raised is a correct answer and should be stimulated. The most important is to trigger discussion. In practice many problems occur because people are insecure about whether to fill things in in a certain way, but do not state it.

It may be that the absence from the trial and how to qualify it, comes up here already. As a trainer you must decide whether you will deal with it now, or postpone that discussion to Case 2.

It may also come up that Member States have entirely different rules about calculating years, months in days. This is a very interesting phenomenon. In the end what counts, is that the issuing authority mentions days on the form, even if the judgement was in years or months.

Q4. Would there be any reason for the executing authority to consider the grounds for refusal?

This question leads us to Article 9 in which the grounds for non-recognition and non-enforcement are listed. It is good to allow discussion on any of the grounds that a participant might consider applicable or worth discussing.

Article 9(1)(e) mentions that it may be refused when statute-barred in the executing Member State. Participants will have noticed that one offence already dates from 1998 and that the judgement itself dates from 2010. Such a long period triggers that the statute of limitations is analysed. It will thus depend on German law whether the execution may take place for all three remaining offences.

NB note for trainers: It is an important exercise in internationally composed groups to compare national rules on timebars. Member States apply entirely opposed systems to assess time-bars for execution. Some Member States calculate from the moment the offence was committed; some calculate from the moment the sentencing judgement was rendered. It is obvious that a Member State belonging to the first group, such as Germany, may see much earlier than another Member State that execution is time-barred. Also, here the understanding that another Member State has an entirely different starting point for the calculation of time-bars is a great contribution to mutual trust.

Further potential grounds for refusal are:

Article 9(1)(g) Concerning age, we need to know the age of the sentenced persons at the time of the offences;

Article 9(1)(h) with 12 years imposed and an escape after a month in detention on remand, there must be quite a portion to serve.

Article 9(1)(i) relating to the absence of the accused is definitely worth looking at. However, this should be done in a more systematic way in Case scenario 2, when also additional information is given.

Article 9(1)(l) relates to offences committed on the territory of the executing Member State. The oldest rape in 1998 took place in Berlin, Germany. In such a case, that Member State may refuse. This provision was introduced as a fall back option that a state would not be forced to execute a sentence for a violation of conducting that would be appreciated entirely different. With the offence of rape, that cannot be expected. It is therefore likely that Germany will not make use of this grounds.

Q5. Is the opinion of Hans Schulz himself relevant?

Article 6 FD deals with the situations in which the opinion of the sentenced person plays a role. This is only the case when he is still in the issuing Member State. Schulz, however, is already in the executing Member State. The reason is that persons like Schulz, who absconded and thus prevented the enforcement of justice, are considered to have waived their interest in determining the state of execution. Article 6(4) FD merely stipulates that Schulz will be informed.

Q6. Do the German authorities have to arrest him pending the recognition procedure?

Article 14 FD governs the issue. It is a decision to be made in German law. The German authorities may, but are not obliged to, arrest Schulz before the decision to recognise is taken.

A. II. Exercises:

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

In order to find the competent authorities, we will use the [Atlas](#) available on the EJM's website – www.ejm-crimjust.europa.eu, select the executing MS as the executing countries and 903. *Enforcement of a Custodial Sentence.*

Regarding the languages for the Certificate, we will use the [section– Notifications for each of the MS](#). If not notified of anything according to Article 23(1) of the FD, then the official language(s) of the MS will be used.

The results should be as follows:

1. The Slovenian national Janez Zupančič was convicted for armed robbery in Brugge, Belgium on 4 July 2019, to a sentence of 7 years. He was arrested on 31 December 2017 and has been in prison ever since. The competent Belgian authority wishes to transfer him and the execution of the sentence to his home state Slovenia.

The competent Belgian authority is in Brussels, competent for the country as a whole, see the EJM website.

Name:	Parquet du procureur du Roi de Bruxelles (Bureau CIS) – Parket van de procureur des Konings te Brussel (Bureau CIS)
Address:	Portalis, Rue des Quatre bras, 4
Department (Division):	
City:	Bruxelles
Postal code:	1000
Phone number:	+ 32 2 508 73 24
Mobile phone:	
Fax number:	+ 32 2 519 82 96
Email Address:	mut.rec.bxl@just.fgov.be

The competent Slovenian authority is in Ljubljana, see the EJM website.

Name:	District Court in Ljubljana (As central Court when the territorial jurisdiction cannot be stated)
Address:	Tavcarjeva 9
Department (Division):	
City:	Ljubljana
Postal code:	1000
Phone number:	+386 (0)1 366 44 44
Mobile phone:	
Fax number:	+386 (0)1 366 45 18
Email Address:	
Slovenia accepts, Slovenian and English , according to its notification found at the EJM website .	

2. *Josip Knežević is a Croatian national convicted by the criminal court of Miskolc, Hungary to 12 months imprisonment for theft. He was born in Zagreb.*

The competent Hungarian authority is in Budapest, competent for the country as a whole, see the EJM website.

Name:	Ministry of Justice
Address:	Kossuth tér 4
Department (Division):	
City:	Budapest
Postal code:	1055
Phone number:	+36 1 795 5823
Mobile phone:	
Fax number:	+36 1 795 0554, or, +36 1 795 0552
Email Address:	nemzb@im.gov.hu

The competent Croatian authority is in Zagreb, see the EJM website.

Name:	County court in Zagreb
Address:	Trg Nikole Šubića Zrinskog 5
Department (Division):	
City:	Zagreb
Postal code:	
Phone number:	(+385 1) 4801-069
Mobile phone:	
Fax number:	(+3851)4920-260
Email Address:	ured.predsjednika@zszg.pravosudje.hr

Croatia accepts, **Croatian and English**, according to [its notification found at the EJM website](#).

3. *The Romanian national Florin Radu was convicted on 1 June 2015 by the District Court of Kaunas, criminal chamber to a sentence 15 years for two murders committed in 2013. On 7 July 2020 the competent Lithuanian authority wishes to transfer the judgement to Romania.*

The competent Lithuanian authority is in Kaunas, competent for Kaunas-Kauans DC, see the EJN website.

Name:	District Court of Kaunas, Chamber of Kaunas
Address:	Laisvės al. 103
Department (Division):	
City:	Kaunas
Postal code:	44291
Phone number:	+370 (37) 244 522
Mobile phone:	
Fax number:	+370 37 424 743
Email Address:	kauno.apylinkes@teismas.lt

The competent Romanian authority is the Curtea de Apel (Regional), see the EJN website. We do not know where exactly in Romania Radu comes from. This means that further information is necessary. According to [its notification found at the EJN website](#), Romania requires: The certificate and the judgement must be accompanied by a translation into **Romanian**.

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

At the procedure of recognition in Germany it appears that Schulz was not present at his trial in Poland. When travelling without a ticket on 7 June 2010 he was arrested and stayed in detention on remand until he escaped from prison on 8 July 2010 through the violent act of beating up the prison guard. After his escape a summons to the trial in August 2010 was sent to the address in Warsaw where he was formally registered. The officer responsible did not find him there. He went twice and left a notice that a document was to be picked up by him at the police station. It is without dispute that the summons was served in compliance with the provisions of the Polish Code Code of Criminal Procedure applicable at the time. Since 2010 the Polish authorities had been looking for Schulz unsuccessfully.

At the proceedings in Germany, Schulz states that;

- he was completely unaware of the fact that a trial was conducted against him;
- that he has stayed at his mother's place since July 2010;
- that he acknowledges having used public transport without a ticket;
- that he denies having been involved in any of the serious offences.

Questions:

Q1. Can the Polish judgement be recognised and executed in Germany?

The facts as proven by the Polish Court in its judgement must be accepted and cannot be reviewed as a condition for recognition. It is irrelevant whether a German criminal court might not have convicted him on the available evidence, would have taken his denial into account or would have taken a far more severe decision. There will thus not be a further investigation as a result of Schulz claiming innocence. Mutual recognition presumes that he has had the chance to give his views on the accusation earlier already at the trial.

With that we are the nucleus of this second question: He was not at the trial. Is his absence a fact that impacts the recognition or raises new conditions?

Q2. What are the issues on which the executing authority may need additional information?

The German authorities will be very much interested in how the summons of Schulz took place exactly. This relates to Article 9(1)(i) in which the grounds for refusal is provided. Depending on the circumstances the request may (it is not obligatory) be refused. The German authorities may ask for further clarification from the Polish authorities on what exactly took place. NB: when filling in the information on the summons, it is very important that issuing authorities give factual information, not legal qualifications. Looking at the FD and the facts as described, it becomes clear that Schulz was not summoned in person. (**NB: note for trainers:** some legal systems may legally qualify a summons as performed as a summons in person. It would be great if this emerges during the debate.)

However, it might be possible that he was informed by other means. The FD does not define these other means in formal terms but as an obligation as to the result: **it was unequivocally established that he is aware of the scheduled trial.** In the grounds-breaking [case of Dworzecki \(C-108/16 PPU\)](#) the Court focused on whether the accused could possibly know that a case was pending against him. Dworzecki had been summoned at his address. His grandfather accepted the summons and promised to forward it to his absent grandson. According to the relevant Polish legislation applicable at the time, it was thus complied with the rules on summoning an accused. His subsequent absence did not impede the proceedings and led to a judgement. The Court considers such a procedure a legal fiction.

In the concrete circumstances of the case, there is no positive evidence that the summons reached Schulz. However, this is not the end of the case, as Article 9(1)(i) provides three situations in which the absence at the trial may not lead to a refusal. The second is that if Schulz had given a mandate to counsel, who was present at the trial. We do not know this, but this is something that can be clarified by the issuing authorities. The third and last possibility is that Schulz was served with the decision and then informed of a right to retrial. If he then clearly states he does not want a retrial or does not request it within the applicable time frame, the judgement is final and executable. We do not know whether this right exists and what the response of Schulz was. However, if either one of these situations applies, there is no right to refuse.

Q3. On the basis of which criteria will it make a decision?

The leading principle will be whether the execution of the Polish sentence in Germany serves the purpose of his social rehabilitation. Additionally, accepting the execution also prevents impunity for serious offences and thus contributes to offering an Area of freedom, security and justice to the citizens of Europe.

Q4. What are the alternatives if Germany does not recognise the Polish judgement?

This will depend on the grounds for refusal. However, what is clear from the start is that when there is the grounds for refusal applicable to the execution of the judgement, it will most likely also be applicable to a Polish EAW to Germany for purposes of surrendering him. Article 4(6) FD EAW allows for refusal of the surrender of nationals for execution, on condition that the Member State is willing to do the execution itself. The latter is exactly the problem.

Can Germany start new criminal proceedings against Schulz? It no doubt has jurisdiction over the three serious crimes on basis of territoriality and nationality. The oldest offence might be time-barred. Are the other offences barred by ne bis in idem, because there is a Polish decision already? Article 54 CISA only protects against a second prosecution when the penalty has been enforced. That is certainly not the case.

When considering what it means to start all over again, it is obvious that it would be much better to enforce the Polish sentence right away.

Q5. Imagine that the Polish judgement can be recognised completely. What are the rules applicable to its execution in Germany?

This question invites us to apply Article 17 FD 2008/909. This provision clearly stipulates that the enforcement is governed by the law of the executing Member State, including all rules on early and conditional release (Art. 17(1)). Schulz spent one month and one day in the Polish prison, which must be deducted (Art. 17(2)).

NB: The most interesting [Ognyanov case \(C-554/14\)](#) teaches us how the Court views the responsibilities of the Member States involved and which law of which state governs which part of the execution of the sentence. The Bulgarian national Ognyanov had been convicted in Denmark for murder and aggravated robbery in 2012, to a penalty of 15 years' imprisonment. Before his transfer to Bulgaria in 2013 he had worked in the prison in Denmark. During the execution of the remainder of his sentence in Bulgaria the question came up whether Ognyanov would be entitled to a reduction of his sentence because he had worked in Denmark. If that were the case, he would be entitled to a reduction of 2 years, 6 months and 24 days. Without taking the Danish work into consideration he would only be entitled to a reduction of 1 year, 8 months and 20 days: a difference of around 10 months in prison. Danish law does not allow for any reduction on this grounds, but Bulgarian law does. In other words: does Article 17 Framework Decision 2008/909 on Custodial Sentences preclude the use of the work in the Danish prison to reduce the sentence served in Bulgaria?

The answer is that only Danish law governs the question of whether there is any reduction for work, the executing State cannot, retroactively, substitute its law on the enforcement of sentences and, in particular, its rules on reductions in sentence, for the law of the issuing State with respect to that part of the sentence which has already been served by the person concerned on the territory of the issuing State.

Q6. When will Schulz be released?

The logical consequence of the answer just given under 5 is that it is based on German law.

(NB for trainers: it would be an interesting exercise in a multinational group to ask all participants to say when Schulz would be released if the execution took place in their respective states. You will be surprised to see the huge differences!)