



## **JUDICIAL COOPERATION IN CRIMINAL MATTERS**

### **RIGHTS OF SUSPECTED AND ACCUSED PERSON**

#### **TEXT 4**

### **RIGHTS OF SUSPECTED AND ACCUSED PERSON**

**Author: Monika Skinder-Pik (legal expert)**

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## JUDICIAL COOPERATION IN CRIMINAL MATTERS

### RIGHTS OF SUSPECTED AND ACCUSED PERSON

**Before you start** studying the lesson it is recommended:

- to have intermediate knowledge of general English;
- to have knowledge of key terms.

**AIM: After studying** the text you will be able in English:

- to understand key terms used in judicial cooperation in criminal matters;
- to use key terms used in the area of fundamental rights with a special focus on the rights of suspected and accused persons in the proceedings concerning:
  - execution of the European arrest warrant;
  - exchange of personal data through the Schengen Information System and the European Criminal Records Information System;
  - use of non-custodial measures as an alternative to provisional detention;
  - execution of the European Investigation Order.
- to identify and use English terminology related to different rights of suspected and accused person as regards the above mentioned topics

#### GLOSSARY

the definitions provided rely on Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention and Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

**Breach of a supervision measure** - violation of the rules according to which a supervision measure is applied in the executing Member State by a person concerned; as provided for in Council Framework Decision 2009/829/JHA, the competent authority in the executing Member State shall immediately notify the competent authority in the issuing Member State of any breach of a supervision measure.



**Confidentiality** - secrecy; as indicated in the Directive 2014/41/EU, each Member State shall take the necessary measures to ensure that in the execution of an European Investigation Order both the issuing authority and the executing authority take due account of the confidentiality of the investigation.

**Covert investigations** - investigations into crime by officers acting under covert or false identity.

**Decision on supervision measures** - an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing Member State in accordance with its national law and procedures which imposes on a natural person, as an alternative to provisional detention, one or more supervision measures.

**European Investigation Order** - is a 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 in order to obtain evidence.

**Grounds for postponement of recognition or execution** - reasons why the recognition or execution may be postponed; pursuant to Article 15 of the Directive 2014/41/EU, the recognition or execution of the European Investigation Order may be postponed in the executing Member State where:

- its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;
- the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.

**Investigative measure** - a measure applied in order to obtain evidence in criminal proceedings, e.g. hearing of a witness, expert, victim, suspected or accused person, interception of telecommunications, obtaining of information related to bank accounts or banking transactions.

**Issuing authority** - an authority entitled to issue a European Investigation Order - as defined in Directive 2014/41/EU, these are the following:

- a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
- any other competent authority as indicated by the issuing Member State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law.

**Legal remedies**-means of appeal; as indicated in the Directive 2014/41/EU, Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the European Investigation Order; however the substantive reasons for issuing the European Investigation Order may be challenged only in an action brought in the issuing Member State, without prejudice to the guarantees of fundamental rights in the executing Member State.

**Supervision measures** - obligations and instructions imposed on a natural person in the course of criminal proceedings, in accordance with the national law and procedures of the issuing Member State (e.g.an obligation for the person to inform the competent authority of



any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings, an obligation not to enter certain localities, places or defined areas).

## Session I

### European Arrest Warrant (EAW) and surrender procedures between EU Member States

#### I. Legal sources:

- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States;
- Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

#### II. Basic characteristics of the EAW:

- the first legal instrument based upon mutual recognition of decisions in criminal matters (the principle of mutual recognition – judicial decision issued in one Member State is recognized and executed in other Member State);
- based on a high level of confidence between Member States (the principle of mutual trust)
- designed to have a uniform effect throughout the European Union;
- objectives: simplification and better efficiency of surrender procedures;
- an exclusively judicial mechanism in which the role of central authorities is limited to practical and administrative assistance;
- direct communication between judicial authorities;
- still all the rules concerning the respect of fundamental rights of the requested person and fundamental legal principles are applicable and should be observed.

#### III. Case studies

##### Case study (1)

##### Facts of the case

On 23 March 2015 the District Court in Budapest issued a European Arrest Warrant against A.A., a Romanian national, in connection with criminal proceedings commenced against him in



respect of offences committed in Hungary on 27 November 2013, which may be classified as "serious bodily harm". Those offences related to a road traffic accident on the public highway for which A.A. was responsible due to the excessive speed at which the lorry he was driving was travelling and which caused multiple fractures and injuries to B.B., a Hungarian national, who was riding a moped when the accident occurred.

On 2 April 2015 A.A. was arrested in Romania and, after being placed in detention, appeared before the Appeal Court in Bucharest so that the court could decide whether he was to be remanded in custody and surrendered to the Hungarian judicial authorities.

The court ordered his immediate release and refused to execute the EAW because a national arrest warrant had not been issued in Hungary.

Under Hungarian law in a situation where there is evidence to suggest that the person requested was already outside the territory of Hungary when the EAW was issued, a "simplified" procedure might be applied. Under that procedure, it is possible for a EAW to be issued directly, without the need for any prior national arrest warrant.

### **Matters to be resolved**

1. Can a requested person be arrested and surrendered in the absence of a national arrest warrant on which a EAW is based?
2. Can the executing authority refuse to execute such a EAW even though none of the grounds for mandatory or optional non-execution exist?
3. If the Romanian executing authority concludes that surrender cannot be granted, what can Hungarian authorities do in order to ensure that A.B. is finally tried for the offence he has been charged with?

### **Case study (2)**

#### **Facts of the case**

On 25 May 2009 the Court of Appeal in Constanta, Romania, as the executing authority, received a European arrest warrant issued by the Public Prosecutor's Office in Verden, Germany, concerning C.C., a Romanian national, for the purposes of conducting criminal prosecution in respect of an act corresponding to the offence of robbery within the terms of Article 211 of the Romanian Penal Code.

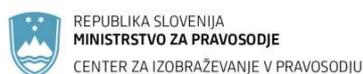
C.C. did not consent to his surrender to Germany. He opposed the execution of the European arrest warrant arguing that the warrant had been issued without his having been heard beforehand by the German authorities.

### **Matters to be resolved**

1. Should the Romanian court refuse to execute the European arrest warrant against C.C. on the ground that he had not been heard by the German authorities before that European arrest warrant was issued? If so, which provisions of the Framework Decision 2002/584/JHA should the court refer to?
2. Is the fact that C.C. is a Romanian national of any importance here?

### **Case study (3)**

#### **Facts of the case**





By judgment of 28 May 2010 of the District Court in Krakow, Poland, a Polish national E.F. was sentenced to five months' imprisonment for destruction of another person's property. The sentence has become final, but has not yet been executed. Since March 2014, E.F. has been imprisoned in Munich, Germany, where he is serving a custodial sentence of three years and six months, to which he was sentenced by two judgments of the District Court in Munich in respect of 55 fraud offences. Prior to that, he had lived in Germany for 14 months. He had worked occasionally on building sites but earned his living essentially by committing crimes. He has little or even no command of the German language. He is single and childless.

The Polish court requested the District Court in Munich, by a European arrest warrant, issued on 18 April 2013, to surrender E.F. for the purposes of execution of the sentence imposed on him in Poland.

E.F. did not consent to his surrender.

### **Matters to be resolved**

1. Should the executing authority refuse to effectuate E.F.'s surrender to the Polish judicial authorities on the grounds that he is staying in or is a resident of Germany (Article 4 (6) of the Framework Decision 2002/584/JHA)?
2. How should it be determined that the requested person is covered by the term "staying" or the term "resident" within the meaning of Article 4(6) of the Framework Decision 2002/584/JHA ?

### **Case study (4)**

#### **Facts of the case**

On 17 December 2012, the Magistrates' Court in Dungannon issued a European arrest warrant against G.H. in connection with criminal proceedings brought against him for the alleged offences, committed in the UK on 31 May 1998, of murder and possession of a firearm with intent to endanger life. On 7 January 2013 G.H. was arrested in Ireland on the basis of that EAW and brought before the High Court. G.H. informed the court that he did not consent to his surrender to the UK judicial authorities and was placed in custody awaiting a decision on his surrender.

The High Court began its examination of G.H.'s situation on 30 June 2014, following a series of adjournments. At the hearing on 15 December 2014 G.H. argued that the request for his surrender should be rejected, since the time-limits stipulated in the Framework Decision had not been complied with.

### **Matters to be resolved**

1. What are the time - limits for the decision to execute the European arrest warrant?
2. Is the executing judicial authority obligated to adopt the decision on the execution of the EAW after expiry of those time-limits? Is holding of the requested person in custody justifiable?

### **Case study (5)**

#### **Facts of the case**



On 25 November 2015 the Public Prosecutor's Office in Chemnitz, Germany, issued a European arrest warrant against the Polish national K.W. for the purposes of conducting criminal proceedings in respect of a burglary committed on 10 October 2014 in Germany. On 18 January 2016 K.W. was arrested in Poland. He did not consent to his surrender to the German authorities. In order to oppose his surrender K.W. argued that he had not committed the crime in question and had never traveled to Germany. Furthermore, K.W. gave the name of another person who allegedly had been using a fake ID on his name and had previously served the prison sentence in Austria on his name.

### **Matters to be resolved**

1. Is the Polish executing authority entitled/obligated to investigate the circumstances mentioned by K.W. before taking a decision on surrender?
2. Can the Polish executing authority request supplementary information from the requesting authority?
3. Can the Polish executing authority refuse to execute the European arrest warrant against K.W. on the ground that it is likely that K.W. had not committed the crime he was charged with in Germany? If so, which provisions of the Framework Decision 2002/584/JHA should be referred to?

### **Case study (6)**

#### **Facts of the case**

On 13 May 2013 the Public Prosecutor's Office in Brussels, Belgium, issued a European arrest warrant against the Polish national P.R. in connection with criminal proceedings instituted against her in Belgium in respect of an offence, classified as parental child abduction. P.R. is a mother of two children at the age of five and seven. She left Belgium for Poland in March 2013 taking the children with her without a consent of the children's father. P.R. was arrested on 22 December 2014 in Krakow. The Polish authorities did not manage to establish the children's whereabouts.

Removal and keeping of a child without permission of the other parent (or a person with parental responsibility) is also a criminal offense in Poland. (Article 211 of the Polish Criminal Code: '*Whoever, contrary to the will of the person appointed to take care of or supervise, abducts or detains a minor person under 15 years of age or a person who is helpless by reason of his mental or physical condition, shall be subject to the penalty of deprivation of liberty for up to 3 years.*'). P.R. did not consent to her surrender to Belgium arguing that she had fled with her children to avoid further domestic violence and abuse from her husband. She stated that her husband had notified the Polish authorities before which resulted in separate criminal proceedings against her being instituted in Poland.

The proceedings in Poland are ongoing. The Regional Court in Krakow decided to refuse to surrender P.R. to Belgium.

### **Matters to be resolved**

1. What could be the reasons for such a decision?
2. Where was the crime in question committed?
2. Is the fact that P.R. is a Polish national of any importance here?



## IV. Exercise

**Read the following sentences and decide whether they are true or false:**

1. A European arrest warrant may be issued for acts punishable by law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 1 year or where a sentence has been passed or a detention order has been made, for sentences of at least six months.
  2. *Ne bis in idem* situation is not one of the grounds for mandatory non-execution of the European arrest warrant.
  3. If a person arrested for the purpose of the execution of the European arrest warrant does not consent to his or her surrender, he or she is entitled to be heard by the executing judicial authority.
  4. A person arrested for the purpose of the execution of the European arrest warrant has a right to be assisted by a legal counsel and by an interpreter (where necessary) in accordance with the national law of the requesting Member State.
  5. A surrendered person, as a rule, may not be prosecuted, sentenced or otherwise deprived of his or her liberty for any offence committed after his or her surrender, other than that for which he or she was surrendered.
  6. In the event of multiple European arrest warrants for the same person from two or more Member States, the earliest of them will take precedence.
  7. Double criminality is not the same as double jeopardy.
  8. If the location of the requested person has been tracked, the authority issuing a European arrest warrant may send the warrant directly to the competent executing authority in another Member State.
  9. The executing judicial authority is obliged to notify the issuing judicial authority of the decision on the action to be taken on the European arrest within a period of 10 days.
  10. The European arrest warrant replaced all the previous instruments concerning extradition in the Schengen area.
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## Session II

### Schengen Information System (SIS)

#### I. Legal sources:

- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- Regulation (EC) 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

#### II. Basic information about the SIS:





- The SIS is a large-scale electronic database containing information on persons and objects of strictly determined categories, which ensures exchange of information between services and authorities responsible for border security, visa issuance, public security and justice.
- Pursuant to Article 1 of Council Decision 2007/533/JHA *'The purpose of SIS II shall be, in accordance with this Decision, to ensure a high level of security within the area of freedom, security and justice of the European Union including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States, and to apply the provisions of Title IV of Part Three of the EC Treaty relating to the movement of persons in their territories, using information communicated via this system.'*
- The second generation SIS - SIS II has been operational since April 2013.
- The SIS II is made up of a central system (Central SIS II) which is located in Strasbourg (with its backup in Sankt Johann im Pongau, Austria) and national databases (N-SIS II) in each of the participating states.
- The 'human interface' of the SIS II is a network of 'SIRENE' Bureaux (Supplementary Information Request at the National Entries). Their responsibility is the exchange of information supplementary to alerts entered in the SIS II by competent authorities e.g. notification of a „hit“.
- Categories of data included in the SIS II alerts:
  - \* persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant or persons wanted for arrest for extradition purposes;
  - \* missing persons who need to be placed under protection and/or whose whereabouts need to be ascertained;
  - \* persons sought to assist with a judicial procedure for the purposes of communicating their place of residence or domicile (witnesses, suspects, the accused, the convicted);
  - \* persons and objects (defined categories) for the purposes of discreet checks or specific checks;
  - \* objects for seizure or use as evidence in criminal proceedings (defined categories);
  - \* third-country nationals for the purpose of refusing entry and stay.

### III. Case study

The Regional Court in Krakow issued a European arrest warrant against N.M., a national of the Czech Republic, for the purposes of conducting criminal prosecution in respect of a fraud committed in Poland on 25 January 2012. As N.M.'s whereabouts were unknown, the court decided to issue an alert for him in the Schengen Information System.

On 5 July 2014 N.M. got engaged in a dispute over the bill with a restaurant owner in Prague. The Police arrived and arrested N.M. as his personal data was included the SIS Database for surrender purposes on the basis of the European arrest warrant. During the proceedings regarding the execution of the EAW in the Czech Republic N.M. claimed that he had never been to Poland and that it might be the case of an identity misuse. The Polish authorities eventually excluded N.M. as a perpetrator, as it turned out that the crime was committed by use of a stolen identity document. However, the Polish authorities declared that the criminal proceedings had not been concluded. They refused to delete the alert from the SIS arguing that the perpetrator might still be using N.M.'s stolen identity and one day he might be traced.

### **Matters to be resolved**





1. Who can delete an alert from the SIS?
2. What can be done in order to protect N.M. from being arrested again?
3. What could happen if N.M. decided to go abroad?
4. Considering the circumstances given, would you decide to go on with the criminal proceedings or to discontinue them?
5. What is the retention period of alerts in the SIS for persons wanted for arrest for surrender purposes on the basis of an EAW?

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### Session III

## European Criminal Records Information System (ECRIS) and 'Ne bis in idem' principle

### I. Legal sources:

- Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States;
- Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA;
- Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings;
- Convention of 19 June 1990 implementing the Schengen agreement (CISA).

### II. Basic information about the ECRIS:

- It is a computerized system of exchange of information on convictions/disqualifications between the Member States of the European Union.
- It was established in the year of 2012 with a view to providing an efficient exchange of information on criminal convictions/disqualifications throughout the European Union as the policies provided for in other instruments of mutual legal assistance aiming at the exchange of information from criminal records had proven ineffective.
- It has a decentralized IT architecture; the ECRIS does not establish a global system of criminal records - it just organizes an interaction between the criminal records of the Member States. Criminal records data is stored solely in national databases and is exchanged electronically between the central authorities of the Member States upon request. Information is transmitted in the standardized format, in an easily machine - translatable way. When transmitting information in its own language, a Member State indicates appropriate codes for categories of offences and penalties or other sanctions, which are automatically translated into the language of the recipient Member State.
- The Member State of nationality of a person in question is the central repository of all convictions regarding this person. The authorities of this Member State are obliged to store and update all the information received and to retransmit it upon request. As a consequence each Member State is ready to provide upon request from another Member State exhaustive and up-



to-date information on its nationals' criminal records, regardless of where the convictions took place.

- At the same time, the Member State where a non-national is convicted is obliged to immediately pass information on this conviction to the Member State of the convict's nationality.

- However, the exchange of information on convictions is of little benefit if a Member State is not able to take transmitted information into account – thus: Framework Decision 2008/675/JHA (Article 4.1 *'Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.'*)

### III. 'Ne bis in idem' principle

Article 54 of the Convention Implementing the Schengen Agreement (CISA) states that: *'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.'*

### IV. Case studies

#### Case study (1)

##### **Facts of the case**

A.C., a Czech national, was sentenced, by judgment of 20 October 2012 of the Court in Bratislava (Slovakia), to five years' imprisonment for illegally importing, on 7 June 2011, narcotic drugs into Slovakia. After having served part of his sentence, A.C. was released conditionally on 10 February 2014 and escorted back to the Czech Republic. The information on A.C.'s conviction in Slovakia was passed and made available through the ECRIS in the criminal records of the Czech Republic.

On 17 November 2014, a prosecution was brought against A.C. in the Czech Republic, as a result of which he was sentenced, by judgment of 21 March 2015 of the Court in Prague, to one year's imprisonment for illegally exporting the above mentioned narcotic drugs from the Czech Republic on 6 June 2011. A.C. lodged an appeal against that judgment and pleaded infringement of the *ne bis in idem* principle, enshrined in Article 54 of the CISA.

##### **Matters to be resolved**

1. Does the *ne bis in idem* principle apply in this case?
2. What should be understood by 'the same acts'?
3. Should the criminal acts consisting of exporting and importing of the same narcotic drugs, which are prosecuted in different Contracting States to the CISA, be regarded as 'the same acts' for the purposes of Article 54 of the Convention?



## Case study (2)

### Facts of the case

K.S., a Polish national, is being prosecuted by the Public Prosecutor's Office in Regensburg (Germany) for an organised fraud committed on 20 March 2009 in Milan (Italy). The victim is P.M., a German national. On 5 March 2010 a European arrest warrant was issued against K.S. by the Public Prosecutor's Office in Regensburg. However, the Milan District Court, by a decision of 18 June 2012, which became final on 7 July 2012, sentenced K.S., in absentia, to a custodial sentence and a fine of EUR 800 euros, for the fraudulent offences committed on 20 March 2009 in Milan.

K.S. was arrested in Austria and surrendered to the German authorities. In Germany K.S. was remanded in custody. K.S. brought an action before the District Court in Regensburg challenging the decision ordering his continued detention, claiming that in accordance with the *ne bis in idem* principle, he could not be prosecuted in Germany for the acts committed in Milan on 20 March 2009, since he had already received a final and binding sentence from the Milan District Court in respect of those acts. In the meantime K.S. paid, by bank transfer, the fine of EUR 800 imposed by the Milan District Court and produced proof of that payment before the District Court in Regensburg. He claimed then, that since he has paid the fine of EUR 800, he should be released.

### Matters to be resolved

1. Does the *ne bis in idem* principle apply in this case?
2. Is the mere payment of a fine by a person sentenced by the same decision of a court of another Member State to a custodial sentence that has not been served, sufficient to consider that the penalty 'has been enforced' or is 'actually in the process of being enforced'?

## V. Exercise

*(based on the text of Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings)*

### Fill in the gaps with the appropriate word.

national x 3, handed down, conviction, extracted, previous, guilt, legal effects, final

For the purposes of this Framework Decision ..... means any .....decision of a criminal court establishing ..... of a criminal offence.

Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions .....against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information ..... from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent ..... are attached to them as to previous ..... convictions, in accordance with ..... law.



Where, in the course of criminal proceedings in a Member State, information is available on a ..... conviction in another Member State, it should as far as possible be avoided that the person concerned is treated less favourably than if the previous conviction had been a ..... conviction.

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## Session IV

### The principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

#### I. Legal source:

-Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

#### II. Basic characteristics:

- main objective of the Framework Decision: to prevent discrimination between those who are residents in the trial Member State and those who are not (it was proven that generally non-residents were remanded in pre-trial custody more often than residents because of greater perceived risk of their flight; as a consequence measures alternative to detention were an option available to residents, which might be considered a form of discrimination in the European Union);
- mechanism: a decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures in question, agrees to return to that Member State; the competent authority in the issuing Member State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding;
- basic types of supervision measures which the Framework Decision applies to:
  - \* an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
  - \* an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
  - \* an obligation to remain at a specified place, where applicable during specified times;



- \* an obligation containing limitations on leaving the territory of the executing State;
- \* an obligation to report at specified times to a specific authority;
- \* an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;
- direct contact between judicial authorities;
- the competent authority of the issuing Member State forwards a decision on supervision measures to another Member State, together with a certificate, the standard form of which is set out in Annex I to the Framework Decision;
- the competent authority in the executing Member State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in Article 15 of the Framework Decision;
- if a legal remedy has been introduced against the decision, the time limit for recognition of the decision on supervision measures may be extended by another 20 working days;
- the monitoring of supervision measures is governed by the law of the executing Member State;
- if the nature of the supervision measures is incompatible with the law of the executing Member State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing Member State, to equivalent offences; the adapted supervision measure shall correspond as far as possible to that imposed in the issuing Member State; however the adapted supervision measure shall not be more severe than the supervision measure which was originally imposed;
- the competent authority in the executing Member State shall immediately notify the competent authority in the issuing Member State of any breach of a supervision measure, and any other finding which could result in taking any subsequent decision referred to in Article 18(1) of the Decision (renewal, review and withdrawal of the decision on supervision measures, modification of the supervision measures; issuing an arrest warrant or any other enforceable judicial decision having the same effect); notice shall be given using the standard form set out in Annex II to the Framework Decision.

### III. Exercise

**Split into four groups. Agree on a case as a group. Write a brief description of the case below:**

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(a) Issuing State:

Executing State:

(b) Authority which issued the decision on supervision measures:

Official name:

Please indicate whether any additional information concerning the decision on supervision measures is to be obtained from:

the authority specified above

the central authority; if you ticked this box, please provide the official name of this central authority:

another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the issuing authority/central authority/other competent authority

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(c) Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of monitoring the supervision measures:

the authority referred to in point (b)

another authority; if you ticked this box, please provide the official name of this authority:



Contact details of the authority, if this information has not yet been provided under point (b)

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(d) Information regarding the natural person in respect of whom the decision on supervision measures has been issued:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

- in the issuing State:



- in the executing State:

- elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

— Type and number of the residence permit of the person in the executing State:

(e) Information regarding the Member State to which the decision on supervision measures, together with the certificate are being forwarded

The decision on supervision measures, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

the person concerned has his/her lawful and ordinary residence in the executing State and, having been informed about the measures concerned, consents to return to that State

the person concerned has requested to forward the decision on supervision measures to the Member State other than that in which the person is lawfully and ordinarily residing, for the following reason(s):

(f) Indications regarding the decision on supervision measures:

The decision was issued on (date: DD-MM-YYYY):

The decision became enforceable on (date: DD-MM-YYYY):

If, at the time of transmission of this certificate, a legal remedy has been introduced against the decision on supervision measures, please tick this box .....

File reference of the decision (if available):

The person concerned was in provisional detention during the following period (where applicable):

1. The decision covers in total: ..... alleged offences.

Summary of the facts and description of the circumstances in which the alleged offence(s) was (were) committed, including the time and place, and the nature of the involvement of the person concerned:



Nature and legal classification of the alleged offence(s) and applicable statutory provisions on the basis of which the decision was issued:

2. If the alleged offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es):

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting of currency, including the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

3. To the extent that the alleged offence(s) identified under point 1 is (are) not covered by point 2 or if the decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 14(4) of the Framework



Decision), please give a full description of the alleged offence(s) concerned:

(g) Indications regarding the duration and nature of the supervision measure(s)

1. Length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible (where applicable):

2. Provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded (indicative information)

3. Nature of the supervision measure(s) (it is possible to tick multiple boxes):

an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;

an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

an obligation to remain at a specified place, where applicable during specified times;

an obligation containing limitations on leaving the territory of the executing State;

an obligation to report at specified times to a specific authority;

an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;

other measures that the executing State is prepared to supervise in accordance with a notification under Article 8(2) of the Framework Decision:

If you ticked the box regarding 'other measures', please specify which measure is concerned by ticking the appropriate box(es):

an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;

an obligation not to drive a vehicle;

an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;  an obligation to undergo therapeutic treatment or treatment for addiction;

an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed;

other measure (please specify):

4. Please provide a detailed description of the supervision measure(s) indicated under 3:

(h) Other circumstances relevant to the case, including specific reasons for the imposition of the supervision measure(s) (optional information):



The text of the decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

\* Form adapted from Council Framework Decision 2009/829/JHA



## Session V

### European Investigation Order (EIO)

#### I. Legal source:

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

#### II. Basic characteristics:

- deadline for transposition of the Directive: 22 May 2017;
- EIO is considered to be a milestone for judicial cooperation in criminal matters in the European Union;
- it is supposed to be a comprehensive single instrument which is to replace most of the existing laws in the area of judicial cooperation as regards the transfer of evidence between the Member States of the EU in criminal cases (applicable legal provisions in the following acts: Convention on mutual assistance in criminal matters of 20 April 1959 (and its two additional protocols), the Schengen Convention, the 2000 EU Convention on mutual assistance in criminal matters (and its Protocol) the Framework Decision on the European evidence warrant and the Framework Decision on the execution in the European Union of orders freezing property or evidence);
- it is to be issued for the purpose of having one or several investigative measures carried out in the executing state with a view to gathering evidence (including evidence which is already in possession of the executing authority);
- it has a horizontal scope, thus it should apply to all investigative measures aimed at gathering evidence (however, JIT-s are excluded);
- it should be applied where the execution of investigative measure is necessary and proportionate in a given case, taking into account the rights of the suspected or accused person;
- the issuing of EIO may be requested by a suspected or accused person, or by a lawyer on their behalf, within the framework of applicable defence rights;
- time limits for a decision on the recognition or execution of the EIO: as soon as possible - no later than 30 days after the receipt of the EIO, and for carrying out the investigative measure: no later than 90 days following the decision.

#### III. Exercise

**Listen to Mr Aled Williams (former President of Eurojust) speaking about the proposed action in the development of the European Investigation Order (EIO) at the Institute of International and European Affairs (IIEA) on 7 March 2011.**

Source: <https://www.youtube.com/watch?v=2hb3najHzrk>

**Now answer the following questions:**



- What are the main advantages of the EIO and in what ways is it different from the traditional MLA instruments, according to Mr Williams?
- What are the main points of concern, on the other hand?

## KEY TO EXERCISES

### **I. European Arrest Warrant (EAW) and surrender procedures between EU Member States**

**Case study (1)** - for answers please consult the text of the judgment of the CJEU of 1 June 2016 ref. no. C-241/15;

**Case study (2)** - for answers please consult the text of the judgment of the CJEU of 29 January 2013 ref. no. C-396/11;

**Case study (3)** - for answers please consult the text of the judgment of the CJEU of 17 July 2008 ref. no. C-66/08;

**Case study (4)** – for answers please consult the text of the judgment of the CJEU of 16 July 2015 ref. no. C-237/15;

**Case study (5)**

Question 1. Yes

Question 2. Yes

Question 3. Yes. Preamble to the FD and Art. 1 (3) thereof.

**Case study (6)**

1. The crime was committed by the Polish national partly on the territory of Poland.

2. Both in Belgium and Poland.

3. Yes.

### **Exercise (IV)**

1. False

2. False

3. True

4. False

5. False

6. False

7. True

8. True

9. False

10. False.

### **II. Schengen Information System (SIS)**

#### **Case study**

1. The country which issued the alert.

2. Flagging of the alert /Using the misused identity procedure.

3. He could be arrested.

4. Answer up to the participants depending on the point of view.

5. 3 years of the entry with the possibility of further prolongation.



### III. European Criminal Records Information System (ECRIS) and 'Ne bis in idem' principle

[Case study \(1\)](#) - for answers please consult the text of the judgment of the CJEU of 9 March 2006 ref. no. C-436/04;

[Case study \(2\)](#) - for answers please consult the text of the judgment of the CJEU of 27 May 2014 ref. no. C-129/14;

#### [Exercise \(V\)](#)

conviction, final, guilt, handed down, extracted, legal effects, national, national, previous, national.



## KEY TERMS

(English key term – English definition – translation of a key term to Polish)

GLOSSARY - the definitions provided rely on Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention and Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

**Breach of a supervision measure (naruszenie środka nadzoru)** - violation of the rules according to which a supervision measure is applied in the executing Member State by a person concerned; as provided for in Council Framework Decision 2009/829/JHA, the competent authority in the executing Member State shall immediately notify the competent authority in the issuing Member State of any breach of a supervision measure.

**Confidentiality (Poufność)** - secrecy; as indicated in the Directive 2014/41/EU, each Member State shall take the necessary measures to ensure that in the execution of an European Investigation Order both the issuing authority and the executing authority take due account of the confidentiality of the investigation.

**Covert investigations (dochodzenia niejawne)** - investigations into crime by officers acting under covert or false identity.

**Decision on supervision measures (decyzja w sprawie środków nadzoru)** - an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing Member State in accordance with its national law and procedures which imposes on a natural person, as an alternative to provisional detention, one or more supervision measures.

**European Investigation Order (Europejski Nakaz Dochodzeniowy)** - is a 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 in order to obtain evidence.

**Grounds for postponement of recognition or execution (Podstawy odroczenia uznania lub odroczenia wykonania)** - reasons why the recognition or execution may be postponed; pursuant to Article 15 of the Directive 2014/41/EU, the recognition or execution of the European Investigation Order may be postponed in the executing Member State where:

- its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;
- the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.

**Investigative measure (czynność dochodzeniowa)** - a measure applied in order to obtain evidence in criminal proceedings, e.g. hearing of a witness, expert, victim, suspected or



accused person, interception of telecommunications, obtaining of information related to bank accounts or banking transactions.

**Issuing authority (organ wydający)** - an authority entitled to issue a European Investigation Order - as defined in Directive 2014/41/EU, these are the following:

- a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
- any other competent authority as indicated by the issuing Member State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law.

**Legal remedies (środki odwoławcze)** - means of appeal; as indicated in the Directive 2014/41/EU, Member States shall ensure that legal remedies equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the European Investigation Order; however the substantive reasons for issuing the European Investigation Order may be challenged only in an action brought in the issuing Member State, without prejudice to the guarantees of fundamental rights in the executing Member State.

**Supervision measures (środki nadzoru)** - obligations and instructions imposed on a natural person in the course of criminal proceedings, in accordance with the national law and procedures of the issuing Member State (e.g. an obligation for the person to inform the competent authority of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings, an obligation not to enter certain localities, places or defined areas).