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the field of deprivation or restriction of liberty - REPORT ON GREECE

**EVALUATION REPORT ON THE
NINTH ROUND OF MUTUAL EVALUATIONS**

**9th round of Mutual Evaluations on mutual recognition legal instruments in the
field of deprivation or restriction of liberty**

REPORT ON GREECE

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1. EXECUTIVE SUMMARY

The visit was well prepared by the Greek authorities. Despite the fact that the questionnaire was not exhaustive, the experts learned about the Greek legislation and institutional system through presentations, visits to relevant public authorities and institutions, and meetings with the relevant actors with responsibilities in the field of European judicial cooperation as well as in the implementation and operation of European policies. Additional information about the questionnaire was provided after the evaluation visits.

Framework Decision 2002/584/JHA (EAW FD)

Greece has opted for a decentralised system, where authorities competent for either issuing or executing European arrest warrants (EAWs) are located in the 19 regional judicial areas, specifically 19 public prosecutors' offices of the court of appeal (PPCA) for issuing EAWs and 19 judges of appeal/judicial councils for executing EAWs; the Supreme Court is competent for appeals against EAW decisions, issued by judicial councils.

The Supreme Court operates as a unifying mechanism to avoid a lack of harmonisation in decisions, since it is competent for all appeals against EAW decisions.

The investigative judge of the court of first instance is the authority responsible for issuing a national detention order once the public prosecutor has given his or her opinion. Investigative judges may only issue a national detention order if there are serious indications that the defendant has planned to flee or to commit other serious crimes. He or she then forwards the national detention order to the regionally competent PPCA for a decision on whether or not to issue an EAW.

If a judicial judgment has been handed down against an individual, it is submitted by the Public Prosecutor of first instance to the PPCA for a decision on whether or not to issue an EAW (Article 4 of the EAW FD).

The PPCA has no discretion to decide whether or not to issue an EAW; it merely checks whether all the criteria to issue an EAW are met, on a case-by-case basis; no actual discrepancies between courts and the PPCAs were identified during the on-site visit.

As regards Greece as executing authority, the PPCA in whose district the requested person resides is competent for the reception of EAWs, while the competent executing authority is the president of the court of appeal if the requested person consents, or the judicial council of the court of appeal in whose district the requested person resides or is arrested if he or she does not consent.

The Ministry of Justice, Transparency and Human Rights (Ministry of Justice) is designated as the central authority to assist the competent authorities and for the transmission and reception of EAWs if need be; it may also keep statistical data.

At police level, all law enforcement units with competence in the field of judicial cooperation are brought together under the same umbrella (Sirene, Europol National Unit, Interpol National Bureau, the Support and Missions Section of the European and International Affairs Department and the Single Point of Contact - SPC).

As regards the implementation of the EAW FD, the experts consider that some flaws need to be addressed by the competent authorities and by the legislators.

Firstly, despite the fact that the Greek legislation has been improved after the amendments introduced by Law 4596/2019 -, there is still a lack of correspondence between the EAW FD and Greek law, for example, as regards mandatory vs. non-mandatory grounds for refusal.

In addition, the Greek executing authorities have made use of the principle of proportionality to refuse requests despite the fact that the only grounds for refusal are those listed in the EAW FD. However, some of the authorities interviewed consider that this situation does not reflect the overall approach of the Greek authorities to the execution of EAWs. The principle of proportionality is also not always implemented when Greece is acting as issuing MS; the Greek authorities do not on all occasions seem to exhaust the available possibilities before issuing an EAW.

A further problem relates to prison conditions. Despite the fact that the Greek authorities have made an outstanding effort to improve prison conditions in all penitentiaries across the country in order to meet the Council of Europe standards, they still have a very serious problem of overcrowding. This is the reason why the Greek authorities have dealt with a limited number of EAW proceedings in which arguments were raised in relation to detention conditions.

The Greek authorities reported that a significant increase in requests for additional information has taken place over the last 5 years. Some of these requests under Article 15 of the EAW FD are considered unnecessary and are regarded by the Greek authorities as a clear example of the lack of trust by other MSs, in particular in the case of Germany, the Netherlands and formerly the UK. In any case, these requests for additional information, whether or not they are considered necessary, are always responded to.

As issuing authorities, Greek courts reported that they have had to ask for additional information in a number of cases where the description of the facts was unclear.

When an EAW issued for the purpose of serving a sentence in the issuing MS is refused in Greece because there are grounds for refusal in cases concerning nationals or residents, the issuing authority needs to send an FD 909 certificate and a copy of the judgment, in line with the recommendations of the Handbook and Article 25 of the EAW FD.

Framework Decision 2008/909/JHA (FD 909)

The competent executing authority is the public prosecutor at the court of first instance of the region where the sentenced person has his or her usual residence. The competent issuing authority is the public prosecutor of the court that delivered the judgment. The Ministry of Justice is designated as the central authority to assist the competent judicial authorities in administering and receiving decisions. The experts consider that assistance to the competent prosecutor in identifying the competent executing authority in another MS should not be provided by the Ministry of Justice but by the European Judicial Network (EJN) contact points, the EJN Atlas or, possibly, Eurojust.

The Greek authorities reported that they have not so far had any experience as issuing authority with regard to FD 909. The experts point out that this surprising situation is due to a mistaken approach to the application of the FD, as Greek authorities only consider the transfer of sentenced persons when there is a request from the person serving the sentence in Greece, and have never considered initiating the proceeding *ex officio*, even though the legal framework does not rely on the initiative or consent of the sentenced person for most cases. On the other hand, the Greek system on early release is very flexible, which is one reason why inmates do not want to request being transferred to other MSs where the system is stricter. The experts recommend targeting the identification of EU citizens in Greek prisons in order to foster the application of FDs 909 and 947.

As executing State, the Greek authorities complained that some MSs do not really seek rehabilitation but rather to get rid of sentenced persons who are Greek nationals. The competent authorities interviewed also considered that the criteria that have to be assessed in order to analyse whether the transfer would serve the interest of rehabilitation are not easy to interpret. The experts underline that rehabilitation should be the only reason for transferring prisoners. They also observe that criteria used to assess whether the transfer of the sentenced person would serve the interest of rehabilitation, in particular the concept of habitual resident, vary significantly from one MS to another and a common approach could be attained using, for example, the criteria used in Directives 2004/38/EC or 2003/109/EC.

Framework Decision 2008/947/JHA (FD 947)

As executing State, the competent authority for the recognition of the decision and the supervision of the measures of suspension and alternative sanctions is the prosecutor of the court of first instance of the convicted person's place of habitual residence.

When Greece is the issuing State, the prosecutor of the court which issued the judgment is the competent authority for the transmission of the decision or its certified copy, together with the certificate referred to in Article 27 of FD 947, to the competent authority of the executing State.

The Ministry of Justice is designated as the central authority to assist the competent judicial authorities in the administrative steps for forwarding and receiving decisions, as well as in the keeping of statistical data.

Greece has no experience as issuing MS and very limited experience with one single case as executing MS. A reason for this could be stakeholders' lack of familiarity with the instrument. As for FD 909, the low number of EU citizens convicted in Greece was put forward as an additional reason for not issuing such requests. However, the experts observe that, at the time of the evaluation, there were 660 EU citizens in Greek prisons.

Framework Decision 2009/829/JHA (FD 829)

The competent authority for the recognition of the decision and the monitoring of the surveillance measures, when Greece is the executing State is the prosecutor of the court of first instance of the place of habitual residence of the person against whom the decision on surveillance measures was issued.

When Greece is the issuing State, the prosecutor of the court which issued the decision is, the competent authority for the transmission of the decision or its certified copy, together with the certificate referred to in Article 45(1) of Law 4307/2014, to the competent authority of the executing State, when Greece is the issuing State.

FD 829 has never been used, either as issuing or as executing MS. The same possible reason of stakeholders' unawareness of the existence of this instrument may apply. The Greek authorities should consider using this instrument as an alternative to provisional detention for EU citizens in Greek prisons, when that is possible and appropriate under the Code of Criminal Procedure.

Legal remedies against decisions adopted in execution of this instrument are not provided for in Greek legislation, but such a possibility should be granted for the sake of the right of defence.

Training

The overall perception is that training in mutual legal assistance is not conducted regularly for all stakeholders. The experts believe that it is particularly important, and in line with the European recommendations, to ensure adequate training of all judges and prosecutors, even if they don't deal with the matter on a daily basis.

The experts consider that Greece should strive for further specialisation of prosecutors and judges in judicial districts away from Athens where the number of cases is lower, since 20% of EAW cases are dealt with in these areas. They suggest that appointing a specialised prosecutor in each court of appeal who could serve as contact point for all prosecutors dealing with execution in all districts would be beneficial.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of legal instruments in the field of mutual recognition and their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW'),
- Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('custodial sentences'),
- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures'),
- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on those specific aspects of such instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the legal and operational links between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947 on probation and alternative measures and FD 2009/829 on the ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-site visits, to consider not only the legal issues but also - and in particular - relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

More generally, promoting the coherent and effective implementation of this package of legal instruments at its full potential could make a significant contribution to enhancing mutual trust among the Member States' judicial authorities and ensuring better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input to Member States which may not have implemented all aspects of the various instruments.

Greece was the tenth Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended on the proposal of certain Member States and in the absence of any objections (9278/19 REV 2).

In accordance with Article 3 of the Joint Action, the Presidency drew up a list of experts in the evaluations to be carried out. Member States nominated experts with substantial practical knowledge in the field, pursuant to a written request sent on Friday 17 May 2019 to delegations by the Secretariat of the Council of European Union.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJM should be invited as observers.

The experts entrusted with the task of evaluating Greece were Ms Giovanna Ichino (Italy), Ms Dena Theodorou (Cyprus), and Mr Pedro Perez Enciso (Spain). Mr Silvio Franz from Eurojust and Ms Carmen Giuffrida from the General Secretariat of the Council were also present as observers.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Greece between 14 and 18 June, and on Greece's detailed replies to the evaluation questionnaire together with its detailed answers to the ensuing follow-up questions.

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

3.1. Authorities competent for the EAW

Central authority.

Pursuant to Article 3 of the Greek Law 3251/2004 on the EAW, amended by Law 4596 of 2019, the central authority is the Ministry of Justice and it is competence to assist in the reception and transmission of EAWs “as well as for all other official correspondence relating thereto”. The PPCAs are not under any obligation to inform the Ministry of Justice about EAWs issued or received in Greece. However, on a yearly basis the Ministry of Justice asks all PPCAs to provide statistics and informs the Commission accordingly. The Ministry of Justice also has the duty to keep statistics on incoming and outgoing EAWs. The Law contains no further provisions on to the role of the Ministry of Justice as a central authority.

It seems that Greek competent authorities are confident enough in their relations with other EU competent authorities and liaise with them following the principle of direct contacts. In practice, the Ministry of Justice does not usually play a role in facilitating such contacts.

In order for the central authority to comply with its function of keeping statistics, it should be compulsory for courts or prosecution services to notify all incoming and outgoing EAWs. Greek authorities provided the evaluators with the relevant statistics after the onsite visit.

Competent authorities.

Greece has opted for a decentralised system, where authorities competent for either issuing or executing EAWs are located in the 19 jurisdictional regions into which the country is divided.

Issuing authorities.

According to the Greek Code of Criminal Procedure (Article 276), the investigative judge of the court of first instance is the authority responsible for issuing a national detention order once the public prosecutor has given his or her opinion. An investigative judge may only issue a national detention order if there are serious indications that the defendant has planned to flee or to commit other serious crimes. He or she then forwards the national detention order to the regionally competent PPCA for a decision on whether or not to issue an EAW (Article 4 of the EAW FD). In case of disagreement, the judicial council has the last word. The EAW is then sent to the SIRENE Bureau for entry in the Schengen Information System (SIS) (Form A) and to Interpol in order to issue a red notice.

The fact that different judicial authorities are involved in the process does not appear to hamper or delay the issuing process, because the system seems to be well geared. The PPCA has no discretion to decide whether to issue the EAW, but only checks whether all the criteria to issue a EAW are met, on a case-by-case basis; no actual discrepancies between the courts and the PPCAs were identified during the on-site visit. It was said that the reason behind this is that the validity of EAWs has been enhanced by assigning them to a more senior authority and because traditionally extradition was a matter that was dealt with by the courts of appeal.

The judicial district of Athens deals with almost 80% of cases; there are specialised units within the PPCA that deal with the issuing of EAWs. Specialisation in this field is vital to minimise the possibility of incomplete, inadequate or inappropriate EAWs being issued. However, in all other judicial districts, because of their smaller size, no specialised units within the PPCAs exist, but it was argued that specialised prosecutors from Athens were available around the clock for consultation. Recommendation 3 in the report on Greece of the fourth round of mutual evaluations suggested that Greece should establish “a pool of judges and prosecutors in each court of appeal to handle EAW cases”, a recommendation that has been implemented to a great extent in Athens.

A PPCA is an independent authority and can be considered as an “issuing judicial authority” within the meaning of Article 6(1) of the EAW FD, as ruled in joined cases OG (C-508/18) and PI (C-82/19 PPU). In addition, the prosecutor issues an EAW following the issuance of a domestic arrest warrant by the competent court. No EU competent authority has refused to surrender requested individuals to Greece on these grounds.

Executing authorities.

The Greek system for the execution of EAWs provides for two stages where two different authorities are involved (Law No. 3251/2004, Chapter 3, Article 9):

- The PPCA in whose district the requested person resides is competent for the reception of EAWs; where this location is unknown, the PPCA of Athens is competent for the reception of EAWs.
- If the requested person consents, the competent executing authority is the president of the court of appeal and if he or she does not consent, the competent executing authority is the judicial council of the court of appeal in whose district the requested person resides or is arrested.

As mentioned above with regard to outgoing EAWs, the fact that two different authorities are involved in the reception/execution process does not appear to hamper or delay the execution process, because the system seems to be well organised.

The competent judicial authority for appeals against EAW decisions taken by the court of appeal is the Supreme Court (Article 22), which is an indication that recommendation 20 of the report on Greece on the fourth round of mutual evaluations has been implemented. This is a positive feature of the Greek system, to avoid diverging and contradictory decisions on similar cases; the Supreme Court operates as a mechanism for the homogenisation of the decision-making process; with this aim, the Supreme Court has delivered in plenum decisions which can be considered as binding on all judicial authorities.

Executing courts consult Supreme Court decisions even when such decisions are not considered to be binding. This system is in line with recommendation 3 in the report on Greece on the fourth round of mutual evaluations: to “establish mechanisms to ensure the appropriate coordination among prosecution offices with a view to avoiding divergent practices”.

The evaluation team expresses some concerns regarding the validity of the current practice of extending the period of arrest at weekends and on public holidays beyond 24 hours. This situation is the consequence of the lack of a standby service within the PPCA; when a person is arrested in the course of the weekend, unless it is a serious offence such as terrorism, he or she will not be brought before the PPCA until the following Monday.

3.2. The principle of proportionality

According to the answers to the questionnaire and the discussions held during the evaluation, the Greek authorities construe the principle of proportionality in the light of Article 25(1) of the Constitution, according to which any restriction of the rights granted under the Constitution may be imposed only with due “respect to the principle of proportionality”. Specifically it states that “The rights of a human being as an individual and as a member of society (...) are guaranteed by the State (...) Restrictions of any kind that may be imposed on these rights under the Constitution must be provided for either directly by the Constitution or by the law, provided that there is a reservation in favour of such a restriction and provided that the principle of proportionality is respected”.

However, the experts consider that this rule is too vague for the purpose or the understanding of the principle of proportionality within the meaning of this evaluation.

Recommendation 8 in the fourth evaluation on Greece suggested that Greek authorities should ensure that an EAW “is only issued when the objective sought cannot be achieved by using other forms of (mutual legal) assistance less intrusive for the individuals”.

The Greek authorities, generally speaking, do not seem to be familiar with the Handbook on how to issue and execute a EAW and have not taken concrete steps to follow the abovementioned recommendation. Specifically, the EAW legislation has not changed with regard to this feature. It is not clear to the experts that the Greek authorities conduct an adequate assessment in this regard, in particular, whether the adoption of less intrusive measures such as the European Investigation Order (EIO) would serve the same interests for the ongoing investigation.

As issuing authorities, despite the fact that the authorities interviewed rejected the finding of the fourth round, and claimed that EAWs are only issued for serious offences, the representative of the Bar Association considered that Greek authorities routinely issue EAWs whenever the investigated person does not appear before the authorities when summoned in criminal proceedings; they claim that Greek authorities do not conduct an adequate assessment for the proportionality check, for instance, taking into account the severity of the conduct, the time that has elapsed since it was committed or the personal circumstances of the requested person. As an example, it was said that Greece is a destination chosen by tourists to commit crimes; when arrested, foreign tourists are requested to designate an address in Greece, but when summoned at that address they no longer reside there and consequently an EAW is automatically issued. In particular, there are EU citizens who have a secondary or summer residence in Greece where the link with the country is clear; the risk of absconding cannot be automatically inferred from the fact that the person concerned is not available in their Greek residence at the time of the summons. The Greek authorities counter that, according to Article 273 of the Code of Criminal Procedure, the investigator or the pre-investigation officer invites the suspect or accused to declare his or her address of permanent or temporary residence and informs him or her of his or her obligation to declare any change of residence or stay and about the consequences of such an omission. However the arrested person is not obliged to state their address of residence or stay in Greece if he/she does not reside in the country. According to Article 156(4) of the Code of Criminal Procedure, if the address stated by the suspect or the accused is abroad, then any document related to the criminal trial is served either on the appointed lawyer or on the power of attorney appointed by the suspect or the accused.

As executing State, there have been some cases in which the principle of proportionality has been applied, resulting to the refusal of the execution of an EAW. Nevertheless, the Greek authorities reported that these cases do not reflect the overall approach of the Greek judicial authorities towards the execution of the EAW. The experts underline that the assessment for the proportionality check is to be conducted by the issuing authority and that the execution of an EAW should only be refused if grounds for non-execution exist.

As mentioned in the evaluation visit, the PPCAs could operate as an EAW “filter”, instructing the colleagues in the first instance responsible for the national decision and for the request to issue a EAW, and proposing alternative measures from the perspective of the proportionality principle.

The experts stress that a court may refuse execution only in cases where grounds for refusal arise. Proportionality cannot be used to refuse execution since mutual recognition is based on mutual trust and it can therefore be assumed that judicial authorities issuing an EAW have already applied proportionality.

Exchange of information

The SIRENE Bureau of the International Police Cooperation Division/Hellenic Police Headquarters is responsible for the exchange of information concerning alerts in the SIS, including information required to locate and arrest wanted persons, based on EAWs which are issued by the local competent prosecution authorities.

By order of the above authorities, the SIRENE Bureau transmits and requests information concerning EAWs, acting as a channel of communication between the domestic and foreign judicial and prosecution authorities when direct communication is not possible.

When an EAW is issued by the Greek judicial authorities the PPCA transmits the EAW to the SIRENE Bureau and Interpol to enter an alert in the SIS and a red notice in Interpol for the arrest of the person sought.

If the SIRENE Bureau and Interpol are informed that the person sought has been arrested in another MS, they inform the PPCA.

The PPCA forwards all relevant documents through the SIRENE Bureau to the competent judicial authorities of the executing MS.

Greek issuing authorities comply with all requests by executing authorities, according to the provisions of the relevant Law 3251/2004.

If the EAW issued by the Greek authorities is executed by the foreign judicial authority, staff from the SIRENE Bureau (Transfers Division) and Interpol travel abroad to transfer the wanted person.

When they take over the wanted person, they transfer him or her to Greece in order to bring him or her before the PPCA.

The PPCA seconded to the SIRENE Bureau takes the decision to flag or not after consulting with the competent executing authority. He also liaises between the competent PPCA and the SIRENE Bureau.

The Greek authorities informed the evaluation team during the on-site visit that according to Article 21(4) of Law 2521/1997, the control of the legality of all registrations in the national section of the SIS is assigned to judges or prosecutors, who are seconded to the SIRENE Bureau for a specific period of time.

The Greek SIRENE Bureau has issued a Handbook with all relevant information.

Greek competent judicial authorities usually have direct contact with other Member States' competent judicial authorities when exchanging additional useful information regarding any procedural, substantive or factual issues. However, due to the fact that the courts are not allowed by national legislation to directly acquire evidence or information, courts' requests are always addressed through the public prosecutors, who are assisted by the appropriate interpreters' service at the Ministry of Foreign Affairs.

According to Article 15(3) of Law 3251/2004, the detention of the requested person can last 15 days. This time limit can be extended by the PPCA, but it can never exceed a 30-day maximum. If the additional information requested has not been received within legal time limits, the Greek judicial authorities take the final decision on the execution of the EAW.

Greek authorities, as executing authorities, are usually able to comply with the time limits¹ in cases where (repeated) requests for additional information are sent.

As executing authorities, when dealing with EAWs, Greek judicial authorities have encountered two major types of specific information deficits:

- (a) deficits in the description of the offence for which the EAW has been issued, resulting in uncertainty as to whether this act constitutes an offence under Greek law;
- (b) the conditions under which a requested person who has been sentenced *in absentia* is entitled to challenge the judgment on the basis of which the EAW has been issued.

The Greek judicial authorities also raised their concerns regarding the need to be assisted by the interpretation service of the Ministry of Foreign Affairs. The availability of an in-house interpreter would facilitate direct contacts with foreign judicial authorities.

The low quality of translation and interpretation was also reported.

The experts consider it important to improve the budget for interpretation and translation as well as to make use of specific criteria to assess the real competence of interpreters and translators.

As issuing authorities, the Greek institutions are often requested to supply information regarding prison conditions. In such a case the Directorate of Organisation and Function of Prison Establishments is requested to provide information on detention conditions in the country's prisons.

¹Art. 17 FD 2002/584/JHA

3.3. Grounds for refusal

3.3.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention

Prison conditions:

Articles 11 and 12 of Law 3251/2004 stipulate when non-execution of an EAW is mandatory and when it is optional. Grounds for non-execution include violation of fundamental rights.

Articles 15 and 16 of Law 3251/2004 (under the titles “Arrest and rights of the requested person” and “Detention of the requested person”, respectively), lay down the legal framework as regards detention conditions, respect of the fundamental rights of the requested person, the time limits and deadlines for the detention period, and the possibility to replace detention with other measures of procedural coercion in the criminal procedure until the final decision on the execution of the EAW is taken.

As executing authority, the Greek authorities have dealt with a limited number of EAW proceedings in which arguments were raised in relation to detention conditions.

In fact, although the Greek authorities have made an outstanding effort to improve prison conditions in all penitentiaries across the country in order to meet the Council of Europe standards (Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), they still have a very serious problem with regard to overcrowding; around 10 000/11 000 inmates are currently serving a sentence or in provisional custody in Greek prisons. Detailed information as regards the strategy to improve the conditions in the incoming years was provided in the document “Summary of the main parameters that shape the conditions of detention in the country’s detention establishments”.

This is why, following the judgments in *Aranyosi/Căldăraru* and the *Drimitru, Tudor* and *Dombatu* cases, some executing authorities in other MSs have asked for additional information.

When information on prison conditions is requested by the executing authority:

(a) If the detention facility in which the requested person is to be detained has been specified, the competent service forwards the foreign authority's request translated into Greek to the competent detention facility and subsequently forwards the detention facility's response to the competent authority abroad.

(b) If the detention facility in which the requested person is to be detained has not been specified by the prosecuting authorities and the foreign authority's request asks which detention facility the wanted person will be detained in or asks for a certificate of compliance with specific detention conditions (requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms) applicable in the detention facility where the requested person will be detained, the relevant service prepares a document stating that it has no relevant competence. It also provides general information on (a) the conditions of the country's detention facilities and their occupancy (b) the possibility of the Central Transfer Committee transferring the detainee to another detention facility and (c) the specific issues raised by the foreign authority's document in a general manner (since the detention facility of the requested person has not been determined).

(c) The general information requested in both of the above cases regarding the conditions of detention can be very detailed. Indicative examples:

- A certificate of compliance with specific conditions of detention (requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms) applicable in the detention facility where the requested person will be detained.

- Whether there is the possibility of transferring to another detention facility.

- The total number of detainees in the detention facility where the requested person will be detained as well as the total space in that detention facility.

- Information on the conditions of detention (space in square metres per detainee, lighting and ventilation of the areas, provision of medical care, information on feeding and fresh water supply, what is the state of the sanitary facilities - toilets, sinks, washing facilities, etc.). According to the information provided by the Greek authorities after the visit, on 9th November 2021 the relevant administrative procedures were completed and an assurance is given to the competent Foreign Authorities, if requested, for the provision of a minimum living space of 3 m² in the Detention Establishment where the requested person with a EAW will be detained or for his/her transfer in case of overcrowding to another Detention Establishment where this requirement will be met. - Measures to protect the prisoner from attacks by other prisoners.

- Number of staff in the detention facility where the detainee will be imprisoned with special reference to physicians and health professionals.

- Whether consular authorities can visit the detainee.

In some cases when additional information on prison conditions has been requested, it has resulted in a refusal to surrender the requested persons to Greece. This situation particularly affects Germany and the Netherlands which, according to the Greek authorities, do not seem to trust that these guarantees will be complied with.

The Greek authorities elaborated on two particular cases, one related to a very serious drug trafficking investigation involving the Netherlands and another related to an investigation into the rape of a 9-year-old minor, concerning Germany. In neither of these cases were the requested individuals surrendered to Greece, and the Greek authorities have no further information about these individuals being tried in those countries for these acts.

To address the problem of overcrowding in prisons, a new detention facility in Drama (for 600 places) is planned to be opened shortly.

Medium-to-long term interventions have also been planned to remedy overcrowding in the Korydallos prison, through the construction of a new facility in Crete and one in Megalopolis. However, the new buildings will take years, as construction has not yet started and the administrative procedure is only at the initial stage.

The time this is expected to take consequently appears too long to overcome the current very serious problems of overcrowding, so it is recommended that short-term solutions be found if Greece wants to avoid the risk of refusals due to the violation of the fundamental rights of prisoners.

As executing authority, the Greek judicial authorities did not report any problems relating to this issue.

3.3.2. Refusal in the event of a judgment *in absentia*

As issuing authority, according to Greek legislation, it is possible to try an accused person *in absentia* (Articles 155, 156, 157, 158, 159 in conjunction with Article 273 of the Code of Criminal Procedure). Under certain circumstances, it is possible to summon the accused person with a notification served at the designated address regardless of whether the person concerned personally receives the summons. For such cases Greek law provides for the possibility to request a retrial. Before the latest amendment to Article 473 of the Code of Criminal Procedure, the retrial could be refused by the competent court. Therefore the legislative framework was not in line with the interpretation of the expressions ‘summoned in person’ and ‘by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial’, according to the ECJ in the *Dworzecki* case. However it is now mandatory for the courts to retry such cases. Consequently, the experts consider that the Greek legislation is in line with the EAW FD as modified by FD 299.

The Greek authorities reported that in one case Germany did not surrender the requested individual due to an infringement of the *in absentia* rule in Article 4a of the EAW FD as amended by FD 299. However, the experts do not know whether that refusal was before or after the amendment to Article 473 of the Code of Criminal Procedure.

As executing authority, Law 4596/2019 amended the EAW legislation in order to adapt it to the abovementioned Article 4a of the EAW FD as amended by FD 299.

3.3.3. *Other grounds for refusal*

Despite the fact that the Greek legislation has improved after the amendments introduced by Law 596/2019, there is still a lack of correspondence between the EAW FD and Greek law as regards mandatory vs. non-mandatory grounds for refusal.

Additionally, prosecution on the ground of sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation has been included explicitly as grounds for mandatory refusal. These circumstances are more related to the general consideration of the need to respect fundamental rights as enshrined in Article 6 of the Charter (Article 1(3) of the FD), but not defined as grounds for refusal *per se*.

As an example of the abovementioned lack of correspondence, the fact that Article 4(7)(a) of FD 584/02 - partial execution of the facts in the territory of the executing MS - is a mandatory ground for refusal under Greek law may have a negative impact in those cross-border investigations where different echelons of an organised criminal group are operating across borders, because it might not be possible to obtain the bigger picture if the investigation is fragmented as a consequence of refusals based on this criterion.

As for the different treatment of nationals and residents, in the case of Article 4(6) of the FD, the grounds for refusal are mandatory in the case of nationals and optional for residents; in the case of Article 4(2) of the FD - prosecution for the same facts in the executing MS - the grounds for refusal are mandatory for nationals and optional for residents; the return condition provided for in Article 5(3) of the FD in cases of EAWs for prosecution is only stipulated for residents in Greek law, which has no provisions on this point for nationals.

In line with what the ECJ stated in the *Poplawski* judgment, competent national authorities should have the possibility to assess on a case-by-case basis whether or not to apply the grounds for refusal where such grounds have been considered as optional in the FD. In addition, conclusion 3.8 of the final report on the fourth round of mutual evaluations includes an assessment by the evaluators who were critical with regard to:

- the expansion of grounds for refusal beyond the situations provided for in the FD;
- the conversion of non-mandatory grounds for refusal into mandatory grounds for refusal;
- the difference in treatment between nationals and non-nationals beyond what is explicitly allowed in the FD.

All three of these situations are currently applicable to the Greek legal framework, which the experts suggest to be amended accordingly.

3.4. Further challenges

General remarks

The authorities interviewed in the course of the on-site visit acknowledged that the national system for issuing and executing EAWs works properly with regard to the time limits and that it has clearly improved over time. The overall assessment with regard to cooperation with other MSs is very positive for the authorities interviewed; a low number of MSs were singled out as the cause of dysfunctionalities in the EAW execution process, as will be further explained in this report, namely Germany, The Netherlands and formerly, the UK.

Time limits breach:

The overall perception of the Greek authorities is that the duration of EAW proceedings has improved over time; the decision-making and surrender process is currently more efficient and shorter than it was some years ago.

During the in the onsite visit the Greek authorities stated that the deadlines in Article 17 of the EAW FD for the adoption of the decision are always complied with.

Article 21(4) of the Greek Law 3251/2004 provides that the executing authority is obliged to inform Eurojust when time limits cannot be observed. Eurojust reported that it had received two notifications of delays from Greece as executing MS pursuant to Article 17(7) of the EAW FD and ten notifications from other MSs where Greece was the issuing State. Since the Greek authorities present in the evaluation were not aware of such notifications, no further information could be gathered.

Petruhhin judgment:

The authorities interviewed could not identify any cases like that described in the *Petruhhin* case. There is a general perception that such a situation is quite unrealistic: issuing an EAW where a person arrested in another MS is requested for extradition by a third State entails a number of issues stemming from the transfer of proceedings from the requesting third State.

Competing EAWs:

There had been cases of competing EAWs. The Council of Appeal decided which EAW should be executed and Eurojust's advice was not needed. Apart from these cases, competent national authorities should be made aware of the important assistance that Eurojust could provide in this particular context, due to the fact that it can easily gather all the relevant information needed to adopt the most convenient decision.

Eurojust has notified three cases of multiple requests where Greece was the requested MS. The Greek legislation (Article 20) provides for the possibility for the executing authority to seek the advice of Eurojust when making the choice referred to in Article 16(2) of the EAW FD in such cases

Role of Eurojust and the European Judicial Network (EJN):

Although the Greek authorities are familiar with the roles and functions of Eurojust and the EJN, little information was provided about assistance provided by Eurojust or the EJN in the context of the evaluation.

According to Eurojust statistics, Greece has registered 503 EAW cases as requesting MS (11.79% of all EAW cases) and 146 cases as requested MS (3.42% of all EAW cases) with Eurojust since 2009 for the purpose of facilitating the execution of the order; some cases were related to the interaction of the EAW and the transfer of the sentenced person pursuant to FD 909. The number of active Greek cases, almost 12% of all the EAW cases opened at Eurojust, is really outstanding taking into account the size of the country. The participants did not provide particular details about the guidelines followed by practitioners as regards requests for assistance from/to Eurojust.

Requests for additional information:

As issuing authority, Greece has received many requests for additional information, and a significant increase in such requests has taken place over the last 5 years. Some of these requests under Article 15 of the FD are considered unnecessary and are regarded by the Greek authorities as a clear example of the lack of trust, in particular in the case of Germany and formerly the UK. The Greek authorities showed great concern with regard to a limited number of MSs which recurrently ask for additional information, on some occasions related to proof of evidence gathered in the course of the investigation (e.g. the number of witnesses, the description of the documents gathered in the course of the investigation, why it took so long to issue the EAW), a request which is clearly contrary to the principle of mutual recognition and the provisions of the EAW FD. For the Greek authorities, this situation implies a clear lack of trust, which is considered unfair.

In any case, these requests for additional information, whether they are considered necessary or not, are always responded to. These requests clearly delay the adoption of the final decision on the surrender.

Greek courts, as executing authorities, have had to ask for additional information in a number of cases where the description of the facts was unclear. Information is provided within the time limit imposed by the executing authority. Whenever the executing court needs additional information, it asks the PPCA to request such information from the issuing authority. In such cases the PPCA does so immediately. This situation would appear not to be in line with the principle of direct communications, but it was further explained that according to the Greek system no information can be introduced into the file on the own initiative of the court. Despite the fact that the experts disagree with this approach, the intervention of the PPCA does not seem to delay contacts with the issuing authority because the PPCA has extensive experience of this task and carries it out in an expeditious way.

The Bar Association as well as the SIRENE Bureau considered that one of the most serious information deficits is the lack of sufficient information with regard to the identification of the requested subject, a situation which according to the Bar Association has led to the arrest of the wrong person.

Keeping the person in detention:

According to the SIRENE representatives, 90% of requested individuals are remanded in custody during the EAW execution process. The decision is taken by the PPCA and is subject to appeal before the judicial council within two days. Where detention is not decided on, the PPCA adopts the decision to release the requested person “with or without restrictions”. It is unclear what restrictive measures the PPCA can impose, since they are not clearly defined in law. The judge of the court of appeal interviewed said that these measures range from the obligation to report periodically to a certain place (court, police office) to the imposition of bail or a ban on leaving the country, but still the law does not make these limitations explicit.

According to the SIRENE representatives, situations where released individuals could not be found in order to execute an EAW are extremely rare.

As issuing authorities, the Greek authorities have identified cases where the executing authorities in other MSs released the requested persons who could ultimately not be surrendered to Greece because the measures imposed, if at all, were not sufficient to guarantee the effective surrender.

Duration of police custody:

When a requested person is arrested in Greece, he or she has to be brought before the PPCA “without delay” (Article 15(1) of Law 3251/2004), which normally means “as soon as possible”, within hours of the arrest or within a maximum period of 24 hours, according to the authorities interviewed. However, the duration of this police detention period is uncertain since the term used in the law is too vague.

The report on Greece in the fourth evaluation round included a recommendation “to reconsider, in the light of domestic legislation, the validity of the current practice of extending the period of arrest at weekends and on public holidays beyond 24 hours”. This situation is a consequence of the lack of a standby service within the PPCA; when a person is arrested in the course of the weekend, he or she will be brought before the PPCA on the following Monday.

This situation has been mitigated to a certain extent because of communications between the PPCA and the prosecutor of first instance, who is the authority on standby duty during the weekend, because there is always a PPCA available 24/7 to provide solutions on any issue that might arise on public holidays or during the weekends. But it remains unclear what concrete intervention is required of the prosecutor of first instance as regards EAWs when action is needed in the course of the weekend. It was said during the interviews that on some occasions, e.g. with EAWs related to terrorism, the PPCA deals with cases even during the weekend.

Time limits for the appeal:

Pursuant to Article 22 of the Greek Law 3251/2004, an appeal can be lodged within 24 hours after the decision has been taken and notified. This time limit is considered as too short even by some of the Greek authorities interviewed. In practice, there is a tendency to apply the general time limit for the appeal against judicial decisions, which is 5 days according to Article 451 of the Code of Criminal Procedure, but the general view among prosecutors and judges, even at Supreme Court level, is that this issue should be clarified by amending the law.

Translation:

Incoming EAWs should be translated into Greek, but English is also accepted, which is a helpful feature that should be followed by other MS.

As in other Member States, Greek courts normally make use of external services for translation; this option is clearly more expensive than having in-house translators. The Bar Association pointed out that translators are very poorly paid for their services - 15 euro per hearing - and that sometimes the quality of their services is also low because of the lack of certified trained professionals.

EAWs issued in Greece are always translated into English by the courts and then sent to the SIRENE Bureau to be entered in the SIS. This could be considered as a good practice, as a version generally understandable by all MSs is always available regardless of the need to translate it into the accepted language of the executing MS.

Legal aid:

The Greek legislation has been updated to implement the provision in Article 5 of the EAW FD on legal aid for suspects and accused persons in criminal proceedings and for requested persons in EAW proceedings related to the right to appoint a lawyer in the issuing MS to assist the lawyer in the executing MS and the right to legal aid for such purposes. One of the Bar Association representatives considered it to be a very useful tool in order to design the defence strategy and described concrete cases where he had been able to liaise with the lawyer in the issuing MS.

Legal aid is provided for in the Greek legislation and the assistance of a lawyer is always granted. If the arrested person does not have a trusted lawyer, the *ex officio* lawyer must be chosen from a list of defenders specialising in this subject. According to Article 3(3) of Law 3226/2004, only lawyers who have relevant experience in criminal procedures may be included in the list of defenders for criminal cases. However, in practice, according to the Bar Association, the system is very poorly organised since the lawyers appointed by the State are paid only after two or three years, which results in the assistance being of lower quality since only inexperienced lawyers with little practice in the field are willing to be included in the list of state-paid lawyers. Lawyers also complained that there is a single list of lawyers - for civil and criminal matters - to be appointed *ex officio*. The experts consider that an *ex officio* lawyer should be chosen from a register of defenders specialising in the relevant subject-matter.

Pursuant to Article 15(2) of Law 3251/2004, the arrested person receives copies of all the documents at his/her own expense. However, access to the case materials should be provided to the arrested person free of charge (Article 7(5) of the Directive 2012/13/EU on the right of information in criminal proceedings); this Directive states in its recital 34 that “Access to the materials of the case, as provided for by this Directive, should be provided free of charge, without prejudice to provisions of national law providing for fees to be paid for documents to be copied from the case file or for sending materials to the persons concerned or to their lawyer”. Taking into account this legal framework, the Greek authorities should consider amending this provision of the EAW law in order to provide that in specific cases, taking into account the personal circumstances of the arrested person, copies could be provided free of charge.

It seems clear according to the wording of Articles 15 and 17 of Law 3251/2004 that the legal counsel is made available to the requested person upon his or her detention when he or she is brought before the PPCA in particular at two moments: when giving consent and when renouncing, or not renouncing, the speciality rule. In order for this right to be effective, the arrested person should have the right to meet and communicate with the lawyer representing them (Article 10(2)(b) of Directive 2013/48) for the effective exercise of their rights, which means that a private interview should take place before the hearings. Assistance of the lawyer is not mandatory under the Greek legislation, but in practice, 99% of the arrested individuals request the assistance of a lawyer.

However, the experts have highlighted some problems with regard to the due assistance of a lawyer and an interpreter when the requested person is being identified and is asked for consent to transfer to the issuing country and about the possible renunciation of the specialty rule.

In fact, Article 15 of Law 3251/2004 states that the arrested person is to be immediately informed of his or her rights (in written form) and brought before the public prosecutor. The experts were told that this usually happens within a few hours.

The Law continues by specifying that the public prosecutor identifies the person, verifying that the data indicated by the police or in the SIRENE document are accurate, and informs him or her of the content of the arrest warrant and of the fact that he or she has the right to be assisted by a lawyer and an interpreter and has the possibility to express consent. A written report is drawn up of this, in accordance with the requirements of Articles 148-153 of the Greek Code of Criminal Procedure.

Pursuant to Article 15 of Law 3251/2004 - and not having been provided with the content of the Code of Criminal Procedure articles referred to - it may be deduced that the arrested person can express consent even without first consulting with the lawyer and in the latter's absence (according to what was said during the meeting, he or she can actually opt to defend himself).

The experts highlight that this is a particularly delicate phase, because once consent has been expressed, the requested person will no longer be able to revoke it. It is therefore recommended that the presence of the legal counsel and the interpreter are guaranteed from the beginning of the procedure and, in any case, in the phase in which the prisoner is asked to express his or her consent. An interpreter is always appointed from the beginning of the procedure if the requested person states that he or she does not understand the Greek language. Notwithstanding the wording of Article 15 of Law 3251/2004, the procedure cannot continue unless the appointed interpreter appears before the public prosecutor.

Police organisation:

At police level, all law enforcement units with competence in the field of judicial cooperation are unified under the same umbrella (SIRENE, Europol National Unit, Interpol National Bureau, the Support and Missions Section of the European and International Affairs Department and the Single Point of Contact - SPC). Incoming requests and notifications are received via a single-entry point, the SPC, and from this point they are redirected to the appropriate addressee, avoiding duplication and overlapping actions. The SPC deals with urgent situations and conducts all the necessary coordination among the units.

The SIRENE Bureau, established in 1997, has 24/7 availability. One of the most important features of the organisation of the Bureau is the fact that it incorporates within its structure one judge and one prosecutor who provide legal assistance in the course of the processing of incoming and outgoing EAWs. The assistance of these judicial authorities is particularly relevant with regard to the flagging in the SIS of alerts for arrest for surrender purposes. The final report on the fourth round of mutual evaluations states in its conclusion 3.12 that flagging “without the matter being put before the competent executing judicial authority for consideration” is a major issue, because such flagging “may de facto amount to non-execution of the underlying EAW”. In order to avoid such flagging without judicial control, the judicial authorities within the SIRENE Bureau provide guidance and liaise with the competent authority, which will then decide on the flagging. The judicial authorities seconded to SIRENE need to have seniority of at least 20 years and be prosecutors or judges of second instance; their tasks also comprise checking whether the EAWs issued comply the legal framework.

The SIRENE Bureau has drafted a Handbook addressing all the relevant issues that practitioners may come across in the process of execution, which should be regarded as a good practice to consider.

No outstanding issues related to the surrender procedure were highlighted according to the SIRENE authorities; only on one occasion involving Spain the operation could not be carried out because of the active opposition of the person concerned, and the Greek escorting squad had to return to Greece until a new date was set.

The SIRENE authorities pointed out that the workload has grown significantly over time, but resources have not increased accordingly; on the contrary, they have diminished following the economic crisis resulting from the COVID pandemic. They state that additional human and financial resources are being allocated to the Bureau.

SIRENE representatives indicated that the practical surrender arrangements vary to a great extent among the MSs, a situation which is confusing at times. They described how, in one case involving the UK, the British authorities requested that the escorting squad travel to the UK in order to meet the requested person at the airport where the person had been summoned to appear with no intervention by any British police unit.

Dual criminality:

The principle of dual criminality seems not to have had a negative impact either in the execution of Greek EAWs or for the Greek authorities in the execution of incoming EAWs.

Remedy against decision

Pursuant to Article 22 of Law 3251/2004, in cases where the requested person does not consent to his or her surrender, an appeal may be introduced before the Supreme Court by the requested person or the public prosecutor against the final decision of the judicial council of the court of appeal within 24 hours of the delivery of the decision, in accordance with Article 451 of the Code of Criminal Procedure.

The Supreme Court, sitting as a judicial council, rules within 8 days of the lodging of the appeal. Most appeals are rejected for specific reasons (i.e. lack of double jeopardy or lack of proportionality, or for procedural reasons), but before issuing a refusal, there is occasionally a consultation with the foreign authority, through a direct contact made by the public prosecutor, suggested by the court. There are never direct any contacts between the national court and other courts in the MSs.

The court decision on surrendering the person can be challenged within 24 hours. However the Supreme Court judges interviewed reported that some of them consider that the ordinary time limit of 5 days for challenging decisions should be applied also to EAW proceedings, taking into consideration the particular situation of the arrested person (foreign nationality, difficulty in linguistic understanding or in consulting the documents on which the EAW is based, difficulty in conferring with a lawyer, and so on).

The experts consider that the uncertainty about the deadline for challenging the court decision should be resolved. Clarification of Article 15 of Law 3251/2004 is therefore recommended.

Transit:

As regards transit through Greek territory, the authorities interviewed considered that there are no particular issues at stake. Greece is not a transit country for EAWs, other than to or from Cyprus or third States, and experience is very limited.

3.5. Training

The overall perception is that training in mutual legal assistance is not provided to all prosecutors but only to specialised prosecutors and judges .

Further training should be provided especially to the practitioners dealing with the application of the EAW, focusing on practical and not so much on theoretical issues.

However, the experts believe that it is particularly important, and in line with the European recommendations, to ensure adequate training of all judges and prosecutors even if they do not deal with the matter on a daily basis. It is also important for attendance at training events and the participants' professional development to be adequately taken into consideration for the sake of their careers.

In addition, and in order to facilitate homogeneous and consistent application of the EAW legislation, meetings of these specialised practitioners are convened with the aim of exchanging experiences and establishing good practices. It is suggested that the results of such meetings be included in a report and disseminated among practitioners.

Therefore, general training should be provided to all judges and prosecutors in initial traineeships and subsequently specific training, with continuous updating, should be provided for those who actually deal with European cooperation instruments in Greece.

The training can consist of traditional face-to-face courses, but also of webinars, e-learning and self e-learning courses, discussion forums on common practical issues, newsletters with legislative and jurisprudential updates, or participation in seminars together with other professionals (prosecutors, lawyers, SIRENE police officers).

Training events and exchanges of opinion are also important to harmonise jurisprudence in the event of differences of views and judgments between judicial councils sitting in different compositions.

To this end, it is also important to encourage the School for the Greek Judiciary to provide magistrates with ever greater opportunities for meetings and training.

Two legal journals are published periodically; information on mutual legal assistance and extradition is normally included in one of the sections of the journals. Practitioners showed great interest in internet collaborative platforms for the exchange of experiences and good practice. In addition, EJM plenaries are normally attended by the contact points and the information gathered is disseminated among specialised authorities.

Greece has participated in a number of EJM regional meetings which have been highly valued. Programmes of the European Judicial Training Network (EJTN) and the European Programme for Human Rights Education for Legal Professionals (HELP) could definitely assist in specialisation and networking with practitioners from other MSs.

It is also important that judges and prosecutors attend meetings organised by networks at European level, such as EJTN (www.ejtn.eu), or online courses organised by the Council of Europe's HELP Programme (<http://help.elearning.ext.coe.int/>), which, in addition to the acquisition of information and theoretical updating, also permit a fruitful exchange of visits and knowledge with other European colleagues (which can then facilitate direct contacts aimed at resolving difficult situations).

The Bar Association representatives said that there is no training for lawyers in the field of mutual legal assistance in general or on the EAW or any other of the relevant FDs in particular. They are not aware of any initiative from the Prosecution Service or the judiciary to invite lawyers to their seminars or courses on these subjects. They suggested creating a programme to bring lawyers, for practice purposes, into the Prosecution Service or courts.

3.6. Conclusions

- The Greek EAW system seems to be sound, well organised and efficient.
- The fact that the competent issuing authority for the EAW, who is of a higher rank (PPCA), is not the same as the one responsible for the national detention order (the court of first instance with agreement of the prosecutor of first instance) does not hamper or delay the procedure and provides additional guarantees that all the necessary steps have been adopted beforehand thanks to the specialisation of the EAW issuing authority. Likewise, two authorities are involved in the execution of EAWs, the PPCA and the court of appeal; the system is well organised.
- The system is decentralised, but the Supreme Court operates as a unifying mechanism to avoid lack of harmonisation in the decisions, since the Supreme Court is competent for the appeals against EAW decisions.
- However, some flaws need to be appropriately addressed by the competent authorities and by the legislators.
- The deficient application of the principle of proportionality is of great concern. As issuing MS, the Greek authorities do not seem to exhaust the available possibilities before issuing an EAW; as executing authority, the assessment of proportionality, in any case, should be the sole responsibility of the issuing authority and an EAW should not be refused on the grounds that it is considered disproportionate by the executing authority, but only on the grounds laid down in the EAW FD.
- Overcrowding is a major issue with regard to prison conditions in Greece, a situation that has resulted in a number of EAWs being refused. In such cases, executing authorities should take the necessary steps to try the requested individuals in order to avoid impunity.
- The Greek legislation is still not aligned with the EAW FD as regards mandatory and optional grounds for refusal; the Greek legislators should include the requisite amendments in the legal framework.

- Greek authorities have an overall perception that the principle of mutual recognition has been affected because of the lack of trust of a number of MSs in the Greek system; systematic requests for additional information, in particular with regard to pieces of evidence, undermine good relations among partners.
- The majority of the requested individuals are remanded in custody during the execution of the EAW, but the competent authority may impose alternative “restrictions”, a term which is too vague.
- Likewise, the expression “without delay” applied when an arrested person is brought before the PPCA should be clarified and a concrete time frame included.
- As issuing authorities, the Greek authorities report that they have encountered situations where the requested person was released in another MS and then could not be surrendered.
- A standby service for PPCAs as executing authority is not in place, which can have a negative impact on arrests made over the weekend. The time limit of 24 hours for appeal against the first-instance decision is too short. Nevertheless, it should be noted that there is always a PPCA available 24/7 to provide solutions on any issue that might arise on public holidays or during the weekends.
- Translation is always a question of paramount importance; in Greece all incoming EAWs are accepted in English and outgoing EAWs are all translated into English too. The quality of translation services should be improved by, inter alia, raising the fees of translators or providing training.
- The legal aid system seems to work in an adequate manner and the rights of the affected persons are preserved. However, when it comes to State-appointed lawyers, they are only paid after two or three years, which undermines the quality of the service because only younger professionals with little experience are willing to assist. Copies of documents should be provided free of charge when the circumstances of the case make this appropriate.
- The SIRENE Bureau is consistently and adequately organised within the International Police Cooperation Division. The SPC is an outstanding feature of the system. The fact that judicial authorities are seconded to the SIRENE Bureau should be considered as a good practice, in particular with regard the “flagging” of EAWs. The Bureau is understaffed and additional resources need to be allocated.

- Training is key for specialisation leading to a more efficient system. The Greek authorities should make use of all available instruments at EU level, also with the aim of networking with other MSs' practitioners. Mandatory training in the field of mutual cooperation should be provided to those involved in this area.

4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION (FD 909)

4.1. Authorities competent for the recognition of the judgment and execution of the sentence

Framework Decision 2008/909/JHA was transposed into Greek legislation by Law 4307/2014.

According to Article 3 of Law 4307/2014, the competent executing authority is the public prosecutor of the first-instance court of the region where the sentenced person has his or her usual residence. The competent issuing authority is the public prosecutor of the court that delivered the judgment.

The Ministry of Justice, and within it, the Directorate of Organisation and Function of Prison Establishments, is designated as the central authority to assist the competent judicial authorities in administering and receiving decisions, as well as in compiling statistical data. This role does not mean that the forwarding and receipt of judgments has to be carried out via the Ministry of Justice, because Greece has not made any declarations in this respect.

The experts consider that the role of the Ministry of Justice as provided for in Article 4(7) of Law 4307/2014 is contrary to the principle of direct contacts. According to this provision, if the competent executing authority is not known, the competent prosecutor should address the request to the Ministry of Justice. EJN contact points, the EJM Atlas, and, where appropriate, Eurojust, could assist in this process, but it should not be the role of the Ministry of Justice to provide this type of assistance.

Its role is subsidiary in the transmission of requests and records from and to the foreign authorities and the country's prosecution authorities and prisons.

The procedure is mostly judicial but also administrative, since the Ministry of Justice is the central authority that assists the judicial authorities in transmitting and receiving requests for the recognition of judgments and to keep the annual statistics as regards requests based on FD 909.

4.2. Documents required for recognising the judgment and executing the sentence

Greece as issuing authority

The relevant procedure entails the following steps: the decision with the certificate is forwarded to the competent authority of the State of enforcement for the purposes of recognising the judgment and enforcing the sentence, if the convicted person consents, in accordance with domestic law. The consent, when needed, is to be given before the prosecutor of the court that issued the judgment, either in person by the sentenced person or by a person authorised in writing by the latter.

If the sentenced person is still in Greece, he or she is given the opportunity to express his or her opinion, orally or in writing. The sentenced person's opinion is taken into account in cases where it has to be decided whether the judgment will be forwarded with the certificate.

When the person concerned has made use of this possibility, his or her opinion is taken into account when deciding the issue and forwarding the judgment together with the certificate to the executing State, in particular in cases where the provision in Article 4(1)(c) of Law 4307/2014 applies.

If the sentenced person has stated his or her opinion orally, the prosecutor of the court that delivered the judgment ensures that the written record of the statement is provided to the executing State. Where the prosecutor considers it necessary in view of the sentenced person's age or his or her physical or mental condition, the opportunity to state his or her opinion is given to his or her legal representative.

The prosecutor of the court that delivered the judgment informs the sentenced person, in a language which he or she understands, that he or she has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II of FD 909. If the sentenced person is in the executing State at the time of that decision, that form is transmitted to the executing State, which informs the sentenced person accordingly.

Greece as executing authority

The public prosecutor of the first-instance court of the sentenced person's place of habitual residence, within 90 days of receipt of the judgment and the certificate, is required to recognise the judgment and forthwith take all necessary measures for the enforcement of the sentence, unless he or she decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 10 of Law 4307/2014.

Where the public prosecutor considers that recognition of the judgment and enforcement of the sentence would not facilitate the social rehabilitation of the sentenced person, then he or she informs the competent authority of the issuing State in order for the latter to decide whether or not to withdraw the certificate.

A person's country of nationality and residence is, as a rule, the place with which he or she has economic, cultural and family ties. Accordingly, if the person has such ties with Greece/has Greece as their country of nationality and residence, the rehabilitation criterion is considered to have been met. Some persons will have already served a significant part of their sentence by the time they are to be transferred to Greece, and [some] may already have been released from prison by then.

Where the duration of the sentence exceeds the maximum period provided for under Greek criminal law for similar offences, the public prosecutor is required to submit a request to the competent three-member first-instance court, which may adapt the sentence to the punishment or measure provided for in Greek criminal law for similar offences.

That punishment or measure must correspond as closely as possible to the sentence imposed in the issuing State, so the sentence is not to be converted into a financial penalty.

If the certificate is revoked before the beginning of the enforcement of the sentence, the public prosecutor of the first-instance court of the sentenced person's place of habitual residence does not enforce the sentence.

The public prosecutor of the first-instance court of the sentenced person's place of habitual residence may refuse to recognise the judgment and enforce the sentence for the reasons provided for in Article 10 of Law 4307/2014, which is compatible with Article 9 of FD 909.

The most common reason for non-recognition or non-enforcement is that the certificate referred to in Article 4 of FD 909 (Article 4 of Law 4307/2014) is incomplete and has not been completed or corrected within a reasonable deadline set by the public prosecutor of the court of first instance, acting as the competent authority within the meaning of Article 2 of FD 909 (Article 3 of Law 4307/2014).

As noted by the Greek authorities, any decision to apply the grounds for refusal should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing States. The aim is to fulfil the request for recognition and execution of the foreign judgment.

The Greek authorities informed the evaluation team that refusal to recognise and execute a foreign judgment does not constitute *res judicata* (precedent) and a new certificate might be issued if the grounds for non-recognition have changed.

Greek legislation does not provide for any legal remedies against such a decision. The sentenced person is entitled to a lawyer.

4.3. Criteria for assessing the facilitation of social rehabilitation

4.3.1. *Exchange of information between the issuing State and executing State*

As a general remark, the Greek authorities have not so far had any experience as issuing authority with regard to FD 909. This surprising situation is due to a mistaken approach to the application of the FD: Greek authorities only consider the transfer of sentenced persons when there is a request from the person serving the sentence in Greece and have never considered it on the initiative of the Prosecution Service, taking into account the fact that the consent of the sentenced person is not needed in a number of situations according to Article 6(2) of the FD.

The director of the prison visited reported that, if sentenced persons ask to be transferred to another MS, it would be advisable for the competent issuing authority in Greece to ask the prison for information on the rehabilitation process. In such cases, the prison's social worker would draft a report which would be of utmost importance for the purpose of assessing whether the transfer would serve the purpose of rehabilitation but, to date, they have never received such a request from the Greek authorities.

The competent authorities interviewed considered that the criteria that need to be assessed in order to analyse whether the transfer would serve the interest of rehabilitation are not easy to interpret. Family bonds are particularly relevant - they need to be real and effective bonds - and also the likelihood that the person can find a job in Greece. Defining “habitual residence” for the purpose of rehabilitation is a difficult task for the Greek authorities: for those who claim to be residents, a minimum period of residence in Greece should be needed, but there is no common interpretation in the different MSs. Common guidelines could be found in Directive 2003/109/EC concerning the status of third-country nationals who are long term residents or Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the MSs.

In order to conduct an adequate assessment, attaching the relevant documents with the certificate would facilitate the process.

It was complained that some MSs, such as Germany, do not really seek the social rehabilitation of the sentenced persons, and that their only interest is to get rid of inmates.

As executing authorities, Greek prosecutors have asked for additional information on various occasions and on some they have received no answer from the issuing authority, which has led to the non-recognition of the certificate. This situation does not mean that, if the information is sent along with a new certificate, the decision could not be reconsidered.

Translation of the sentence is not always mandatory in all circumstances: according to Greek practice, the translation of the whole sentence is only needed on certain occasions, and only the parts of it that are relevant for the adoption of the decision on recognition or adaptation should be requested.

4.3.2. Opinion and notification of the sentenced person

The sentenced person is always informed of any decisions adopted and his or her opinion is fundamental. The procedure in the Greek system for notification or seeking the opinion of the sentenced person is in line with Article 6 of the FD and no particular issue has been identified in this regard.

4.4. Adaptation of the sentence

No particular problems related to the adaptation of sentences were highlighted in the evaluation visit. As executing member State, some problems have arisen because on some occasions the facts described in the certificate were unclear or insufficient to establish a mirror classification of the offences in Greece, and additional information or a copy of the judgment has been requested.

On one occasion, the sentence was adapted to Greek law because the duration of the period of deprivation of liberty was incompatible with Greek law. No further issues were described in this isolated case.

According to the Greek authorities, harmonising substantive criminal law, other than for so-called “Euro crimes”, would significantly improve mutual recognition, also in the field of the application of FD 909. EU legislative initiatives have been focused on mutual recognition instruments, but harmonisation should not be disregarded. Harmonised criminal typologies would minimise the difficulties and obstacles linked to adaptation of sentences.

Prior consultation between issuing and executing authorities should take place in order to avoid certificates being withdrawn because of adaptation requirements in the executing MS.

4.5. Grounds for non-recognition or non-enforcement

Incomplete certificates that have not been clarified within the deadline for providing the information needed have been the main ground for refusal given by the authorities interviewed. On other occasions, it was lack of proof that the person concerned had a residence in Greece. The non-existence of substantial links between the person concerned and Greece and a lack of validation of the signature of the person concerned were additional reasons.

4.6. Partial recognition

The participants interviewed could not remember any case of partial recognition.

The Greek authorities indicated that if they were to find themselves in such a situation, they would suggest, if such a course of action was possible, partial recognition and enforcement following consultation with the competent authority of the issuing State.

However, because such cases of partial recognition of a judgment/execution of sentence have never occurred so far, the Greek competent authorities have never had the need to develop criteria on how to decide whether to recognise the judgment and execute the sentence only in part.

4.7. Challenges relating to compliance with the deadline for recognition and enforcement

Normally, the Greek competent authorities comply with the deadline of 90 days provided for in Article 12(2) of FD 909 (as transposed into the Greek national law by Article 9(1) of Law 4307/2014).

In exceptional cases where the Greek competent authorities are not able to comply with the deadline of 90 days, they inform the issuing authority, usually by fax, stating the reasons for the delay, as well as the estimated time needed to adopt the final decision.

4.8. Law governing the enforcement of the sentence

No particular issues were described in relation to the law governing the enforcement of the sentence, which is the law of Greece as executing MS. The Greek authorities have never had a situation where a certificate was withdrawn because of applicable provisions on early or conditional release in the executing MS; the Greek system is very flexible in this regard. As a result, the Greek authorities have considered the possibility of agreeing to apply the provision of national law indicated by the issuing State as per Article 17(4) of FD 909.

4.9. Further challenges

It is of utmost importance that inmates are adequately informed about the possibility of asking to serve the sentence in the MS of their nationality or residence. In this regard, in the course of the visit paid to the women's penitentiary north of Athens, the experts team were provided with a copy of the bill of rights that inmates receive on arrival, which includes the right to ask for the transfer to the MS of their nationality or residence; this information is provided in Greek, English or any other language understood by the sentenced person (they even use online translators for this purpose). The director of the prison confirmed that they had not had requests of this kind until recently, when a Bulgarian citizen asked to be transferred to Bulgaria; the request was forwarded to the competent authority, and the decision is still pending.

Reasons for the lack of issuing requests

The Greek system for execution of judgments involving deprivation of liberty is considered by the authorities interviewed as very “flexible”, meaning that early release is granted at a very early stage in the serving of the sentence: inmates may find this feature of the system more beneficial than being sent to serve the sentence in the MS of their nationality. Some of the authorities interviewed acknowledged that this feature of the system is linked to the overcrowding of the prisons, which is indeed a para-legal criterion that should not be taken into account when adopting decisions on early release.

As mentioned above, the lack of initiative on the part of the prosecutor of first instance as regards the issuing of a decision to transfer sentenced persons, activating the procedure only upon request of the person concerned, is a major reason. However, the Greek authorities have informed the experts that, after the evaluation visit, a proposal had been submitted on behalf of the Directorate General for Anti-Crime and Penitentiary Policy for the assumption of relevant responsibilities in the new organisation of the General Secretariat for Anti-Crime Policy.

In addition, and despite the fact that 55% of inmates are non-Greek citizens, it was argued that the number of EU citizens or persons resident in another MS is extremely low. But, by the end of the visit, concrete data were provided according to which there are 10 949 persons in prisons (4 424 Greek citizens, 5 865 non-EU citizens and 660 EU citizens (we assume not all serving a sentence but also, a number of them, in provisional custody), which disproves the argument.

On the last day of the evaluation visit, we were informed that the prosecutor of first instance had already started working on the identification of potential cases for issuing a certificate pursuant to FD 909. For this purpose, it was also suggested that it would be useful for the General Secretariat of Anti-Crime Policy to regularly send the prosecution offices data on EU nationals serving a sentence in penitentiaries in their jurisdictions, along with information on the sentences imposed, in order to facilitate a proper assessment by the prosecutor of first instance as to whether to issue certificates based on FD 909.

Reasons for the low number of requests from other MSs

The reason given for the reduced number of requests for transfer of sentenced persons from other MSs to Greece, apart from the situation relating to prison conditions, is that some Greek nationals do not want to be transferred to Greece because they do not like to be stigmatised as a result of their relatives and acquaintances learning that they have been convicted in another MS. However, the prosecutor of first instance who was interviewed asserted that Greek nationals convicted abroad want to come to Greece to serve the sentence precisely for the same reason that there is a low number of requests to be transferred to other MSs: because of the early release possibilities in Greece.

In one particular case the issuing authority of another MS withdrew the certificate because the sentenced person would have been released in Greece upon his or her arrival because of the early release legislation.

Greek legislation does not provide for remedies against the decision adopted in the execution of decisions on the transfer of sentenced persons. The FD does not foresee the need for legal remedies, but still, in order to meet the need to grant the right of defence, such remedies should be provided for in law.

4.10. Training

Specialisation and training are fundamental for FDs 909, 947 and 829. Nevertheless, according to the authorities interviewed, practitioners dealing with these instruments have not received any training in this field. Their statement seems to be corroborated by the fact that even the questions relating to training remained unanswered.

Probation officers and lawyers should also be trained.

EJTN training events and Academy of European Law (ERA) courses should be made available for practitioners, and competent authorities should grant permission for staff to attend the courses.

See above, section 3.5.

4.11. Statistics

As executing MS, between 2016 and 2018 Greece received a low number of requests, only 31 according to the data provided in the questionnaire. As for more recent data, the prosecutor of first instance interviewed confirmed that no requests were received in 2020 and that 5 requests had been received in 2021.

The data provided by the first-instance prosecutor are as follows:

Judgments recognised and successfully executed:

2016: 3 transfers of prisoners

2017: 1 transfer of prisoner

2018: 1 transfer of prisoner

2019: 5 transfers of prisoners

2020: 0

2021: 7 transfers of prisoners

Requests rejected:

2016: 3 transfer requests

2017: 1 transfer request

2018: 6 transfer requests

2019: 7 transfer requests

2020: 0 transfer requests

2021: 5 transfer requests

The Directorate of Organisation and Function of Prison Establishments does not systematically keep statistics regarding requests based on FD /909.

4.12. Conclusions

- In the view of the experts, providing assistance to the competent prosecutor to identify the competent executing authority in another MS should not be task of the Ministry of Justice but of EJM contact points, the EJM Atlas or, where appropriate, Eurojust.
- The Greek authorities have never considered issuing a certificate based on FD 909 because the system relies on the request of the sentenced person, without having regard to the fact that for the vast majority of cases his or her consent is not needed and the initiative can always come from the competent authority. The Greek authorities have relatively little experience with FD 909 as executing authorities.
- The criteria used to assess whether the transfer of the sentenced person would serve the interest of rehabilitation, and in particular the concept of “habitual resident”, vary significantly from one MS to another, and a common approach should be attainable following, for example, the criteria used in Directives 2004/38/EC or 2003/109/EC.
- Providing additional documents to demonstrate this interest would assist in the process. According to the Greek authorities, some MSs do not really seek rehabilitation but rather to get rid of sentenced persons who are nationals of Greece.
- Translation of the whole sentence is not always mandatory, and might be too burdensome; only the relevant parts of the sentence should be translated in order to spare unnecessary efforts.
- Harmonising criminal law beyond “Euro crimes” would assist in the mutual recognition process and minimise the adaptation process. Prior consultation between issuing and executing authorities should take place in order to avoid certificates being withdrawn because of adaptation requirements in the executing MS.
- The Greek early release system is very flexible - a reason why inmates do not want to ask to be transferred to other MSs where the system is stricter. Overcrowding of prisons has been said to be one of the reasons for early release, which is a para-legal criterion.
- Legal remedies against a decision on transfer to another MS are not provided for in the Greek legislation, but this possibility should be granted for the sake of the right of defence.

5. LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES

5.1. Problems relating to the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences

According to Article 12 of Law 3251/2004, the requested person will be arrested or other measures will be adopted to enable him or her to remain in Greece until a decision is taken whether to execute the EAW or to use the grounds for refusal to serve the sentence in Greece. If surrender is refused, in order to execute the sentence, the Greek authorities ask for a separate certificate issued according to FD 909.

The detention period is 15 days, “within which the judgment and the certificate should be received”. The experts understand that this certificate is the one under FD 909.

5.2. Conclusions

When an EAW issued for the purpose of serving a sentence in the issuing MS is refused in Greece because of the existence of grounds for refusal in the case of nationals or residents, the issuing authority needs to send an FD 909 certificate and a copy of the judgment, in line with the recommendations of the Handbook and Article 25 of the FD.

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS (FD 947)

6.1. Authorities competent for Framework Decision 2008/947/JHA

According to Article 25 of Law 4307/2014:

“The competent authority for the recognition of the decision and the supervision of the measures of suspension and alternative sanctions, when Greece is the executing State, is the prosecutor of the court of first instance of the place of habitual residence of the sentenced person.

The competent authority for the forwarding of the decision or its certified copy together with the certificate referred to in Article 27 to the competent authority of the executing State, when Greece is the issuing State, shall be the prosecutor of the court which issued the decision.

The Ministry of Justice, Transparency and Human Rights is designated as the central authority to assist the competent judicial authorities in the administrative steps for forwarding and receiving decisions, as well as in the keeping of statistical data”.

As for the role of the Ministry of Justice as central authority, Article 27(7) lays down a similar provision as for FD 909, which in the view of the experts is incorrect. The same arguments apply here.

6.2. Problems relating to the failure to apply Framework Decision 2008/947/JHA

The Greek authorities have never issued a certificate based on FD 947; the reason for this situation may be a lack of knowledge of the possibilities provided for in this FD among judges, prosecutors, probation officers and lawyers. As for FD 909, the low number of EU citizens convicted in Greece was put forward as an additional reason, which, as we already stated above, is not completely correct because there were 660 EU citizens in Greek prisons at the time of the evaluation.

As executing authorities, only two certificates have been received, one from Bulgaria and another from Sweden, the only relevant factor in the latter case being that the sentenced person was not found in Greece.

As mentioned above, the lack of harmonised substantive criminal law also hampers mutual recognition in the field of FD 947: for example, divergent legislation on the treatment of people with mental handicaps or minors.

Taking into account the system for early release in Greece, the application of this instrument could be beneficial.

Greek legislation does not provide for remedies against the decision adopted in the execution of FD 947. The FD does not foresee the need for legal remedies, but still, in order to meet the need to grant the right of defence, such remedies should be provided for in law.

6.3. Training

See paragraph 3.5.

A Dutch training event for probation officers was highlighted as an example to follow in Greece.

6.4. Conclusions

- In the view of the experts, providing assistance to the competent prosecutor to identify the competent executing authority in another MS should not be task of the Ministry of Justice but of EJM contact points, the EJM Atlas or, possibly, Eurojust.
- Greece has no experience as issuing MS and very limited experience with one single case as executing MS. To date there has been no need to make use of this instrument; a reason for this could be practitioners' lack of familiarity with the instrument. No particular issue was highlighted with regard to the one case executed on Greek territory.

- Harmonisation of substantive criminal law would facilitate the application of FD 947.
- Legal remedies against a decision adopted in the execution of this instrument are not provided for in the Greek legislation, but this possibility should be granted for the sake of the right of defence.

7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO) (FD 829)

7.1. Authorities competent for Framework Decision 2009/829/JHA

According to Article 43 of Law 4307/2014:

“1. The competent authority for the recognition of the decision and the monitoring of the supervision measures, when Greece is the executing State, is the prosecutor of the court of first instance of the place of habitual residence of the person against whom the decision on supervision measures was issued.

2. The competent authority for the forwarding of the decision or its certified copy together with the certificate referred to in Article 45(3) to the competent authority of the executing State, when Greece is the issuing State, shall be the prosecutor of the court which issued the decision or to which the investigating authority that issued it belongs. To this end, the court or the investigator, after issuing a decision to impose supervision measures on a person who has his legal and habitual residence in another European Union State, shall promptly provide an official copy to the above prosecutor.

3. The Ministry of Justice, Transparency and Human Rights is designated as the central authority to assist the competent judicial authorities in the administrative steps for forwarding and receiving decisions, as well as in the keeping of statistical data”.

As for the role of the Ministry of Justice as central authority, Article 45(5) provides for a similar provision as for FD 909, which in the experts’ view is incorrect. The same arguments apply.

7.2. Problems relating to the failure to apply Framework Decision 2009/829/JHA

The Greek authorities have never issued a certificate based on this FD; the reason for this situation may be a lack of knowledge of the possibilities provided for in this FD among judges, prosecutors and lawyers. In addition, there is also no experience whatsoever as executing authority since no certificates under FD 829 have been received.

Since there are a number of EU citizens in Greek prisons (660 at the time of the evaluation), we assume that a number of them are not serving a sentence but in provisional custody. It is important that the Greek authorities take note of this situation and that provisional custody is not maintained beyond a reasonable time because of the fact that the arrested person is not Greek or does not reside in Greece, because the alternative measures can be adopted by using FD 829.

Keeping the issuing authority informed of the execution of supervision measures is fundamental for the efficiency of the application of FD 829; there should be constant direct contacts between the relevant authorities. As there has only been one case as executing authority, no particular issues have been identified such as possible consequences if the measures imposed are breached or in other situations.

Greek legislation does not provide for remedies against the decision adopted in the execution of this FD. The FD does not foresee the need for legal remedies, but still, in order to meet the need to grant the right of defence, such remedies should be included in the law.

7.3. Training

See paragraph 3.5.

7.4. Conclusions

- In the view of the experts, providing assistance to the competent prosecutor to identify the competent executing authority in another MS should not be task of the Ministry of Justice but of EJM contact points, the EJM Atlas or, possibly, Eurojust.
- FD 829 has never been used either as issuing or as executing MS. The same possible reason of lack of awareness of the existence of this instrument by practitioners may apply.
- Issuing and executing authorities should keep permanent contacts in the course of the execution of the supervision measure; the difficulties associated to the need to inform the issuing authorities about and possible breaches of supervision measures should be highlighted.
- The Greek authorities should consider using this instrument as an alternative to provisional detention for EU citizens in Greek prisons when that is possible and appropriate according to the Code of Criminal Procedure.
- Legal remedies against a decision adopted in the execution of this instrument are not provided for in the Greek legislation, but this possibility should be granted for the sake of the right of defence.

8. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

8.1. Suggestions by Greece

None

8.2. Recommendations

As regards the practical implementation and operation of the Directives and the Regulation, the team of experts involved in the evaluation of Greece was able to satisfactorily review the system in Greece.

Greece should conduct an 18-month follow-up to the recommendations referred to below after this report has been adopted by the Working Party concerned.

The evaluation team saw fit to make a number of suggestions for the attention of the Greek authorities. Furthermore, based on the various good practices, related recommendations are also being put forward to the EU, its institutions and agencies, and to Eurojust and the EJM in particular.

8.2.1. Recommendations to Greece

1. Greece should strive for further specialisation of prosecutors and judges in judicial districts away from Athens where the number of cases is lower, since 20% of EAW cases are dealt with in these areas. Appointing a specialised prosecutor in each court of appeal who could serve as contact point for all prosecutors dealing with the execution in all districts would be beneficial (3.1).
2. It is recommended set up a rota of designated prosecutors within the PPCA to be on standby (out of hours) to deal with urgent matters relating to EAWs (3.1).

3. Greek issuing authorities should exhaust alternative measures and consider issuing an EIO instead of an EAW where such a measure serves the interests of the investigation; as executing MS the assessment of proportionality should lie with the issuing MS and an EAW should not be refused on grounds other than those provided for by the EAW FD (3.2).
4. Greece should continue making efforts and executing the road map to improve prison conditions in order to avoid refusals to execute EAWs by other MSs (3.3.1).
5. Greece should amend its domestic legal framework in order to align the mandatory and optional grounds for refusal on the EAW FD (3.3.3).
6. The term “alternative restrictions” that can be imposed when the requested person is not remanded in custody should be clarified, since it is too vague (3.4).
7. The 24-hour time limit for lodging an appeal against the decision of first instance should be extended to grant an effective right of defence. The experts recommend that the law be amended to this effect as specific deadlines should not be subject to extensive interpretation so as to avoid creating potential uncertainty (3.4).
8. The quality of translation services should be improved by providing training for certified professionals and raising their fees (3.4.).
9. The Greek authorities should improve the legal aid system by providing adequate and timely payments to assisting lawyers in order to avoid the situation where only less experienced lawyers are willing to assist arrested persons (3.4).
10. Arrested persons should be provided with copies of the relevant documents given to them free of charge when the circumstances of the case so require (3.4).
11. Allocation of additional resources to the SIRENE Bureau is needed in order to ensure its efficient and effective functioning (3.4.).
12. Face-to-face training as well as e-learning should be promoted at national level. It is also recommended that judges and prosecutors increase their participation in the training organised at European level (EJTN, Council of Europe HELP programme for practitioners) (3.5, 4.10, 6.4 and 7.4).
13. The Bar Association should provide training for lawyers, who could also be involved in some training events organised for judges and prosecutors (3.5, 4.10, 6.4 and 7.4).

14. It is recommended that all channels established to enhance mutual cooperation (EJN, Eurojust) and the website that provides such information (EJN Atlas website) be made use of, instead of having recourse to the Ministry of Justice as foreseen in the Greek legislation implementing the FDs 909, 947 and 829 (4.1, 6.1 and 7.1).
15. It is recommended that identification of EU citizens in Greek prisons be targeted in order to foster the application of FDs 909 and 947. The Greek authorities should reconsider the lack of initiative with regard to the issuing of certificates based on FD 909 (4.3.1).
16. Competent authorities in all MSs should only issue certificates based on FD 909 if there is a real assessment that the transfer would serve the interest of rehabilitation, and no further reasons should be taken into account; the simple fact that the sentenced person is a national of another MS should not be the only reason (4.3.1).
17. Overcrowding of prisons should not be used as a reason for early release of persons serving a sentence in Greece (4.9).
18. Legal remedies against the decision adopted in the execution of decisions on the transfer of sentenced persons taken with regard to the transfer to another MS should be provided for in law in order to grant an effective right of defence (4.9).
19. It is recommended that knowledge and use of FDs 947 and 829 by prosecutors, judges and lawyers be promoted (6.2 and 7.2).

8.2.2. Recommendations to other Member States

1. Where the execution of EAWs is decentralised, a mechanism to avoid diverging practices is advisable, for example, establishing a central court or the Supreme Court as competent for the appeal procedure (3.1).
2. Taking into account the principle of proportionality, competent authorities in other MS should not issue an EAW where evidence exists that the individual will not be remanded in custody after being surrendered; alternative measures such as an EIO are always available (3.2).
3. When a decision is taken not to surrender an individual on the grounds of the ECH on prison conditions, MSs should take over the investigation to avoid impunity (3.3.2).

4. Executing authorities should refrain from requesting unnecessary additional information and, in particular, details of evidence, which is contrary to the EAW and undermines the principle of mutual recognition and hamper building trust among partners (3.4).
5. When a requested individual is not remanded in custody, the competent authority should adopt the necessary measures in order to prevent absconding (Article 12 of the FD 584/02) (3.4).
6. Providing additional documents, along with the sentence, proving that the transfer of the sentenced person serves the interest of rehabilitation helps to carry out the assessment (4.2).
7. When translation of the whole sentence is not mandatory, only the relevant parts of the sentence should be translated, in order to spare unnecessary efforts (4.3.1).
8. Prior consultation between issuing and executing authorities should take place in order to avoid certificates either being withdrawn because of adaptation requirements in the executing MS, or not being recognised (4.4).

8.2.3. Recommendations to the European Union and its institutions, and to other Member States

9. The MSs should consider use the concept of “habitual residence” as defined by the Court of Justice in order to avoid divergent interpretations in assessing resocialization issue (4.3.1).
10. Harmonising criminal law beyond the “Euro crimes” would assist in the mutual recognition process and in minimising the adaptation process or lack of equivalent measures (4.4).
11. The experts recommend amending FDs 909, 947 and 829 by providing for the possibility to appeal against a decision to recognise and execute a judgment (4.2, 4.9, 6.2 and 7.2) .
12. The proportionality principle should be defined and criteria established to be applied in the same way in all Member States (3.2).

8.2.4. *Recommendations to Eurojust/Europol/EJN/EJTN*

8.3. Best practices

This section will include a list of best practices to be adopted by other MSs.

1. Accepting EAWs in English for incoming EAWs or providing a translation into English for all outgoing EAWs facilitates the process of execution.
2. The appointment of a prosecutor and a judge to the SIRENE Bureau is useful to solve legal issues that may arise in the course of the execution of EAWs, in particular in relation to the “flagging” of requests.
3. The Handbook drafted by the SIRENE Bureau in Greece can be considered as an additional good practice to consider.
4. The fact that the Supreme Court is the sole court of appeal is useful to unify the courts' interpretations and offer guidelines to the relevant actors.

Draft Agenda - 9th round of Mutual Evaluations

Expert evaluation visit to Greece 14-18 June 2021

Monday 14 June 2021

Arrival of the evaluators in Athens

18.30 internal meeting of the evaluation team (at the hotel)

Tuesday 15 June 2021

09:00 Departure from the hotel to the Ministry of Justice

Accompanied by: To be confirmed

09:30-10:00 Welcome meeting in the Ministry of Justice

10:30 -11:30 Visit to the Supreme Court

12:00- 13:30 Visit to the SIRENE department of the Hellenic Police

14:00-15:00 Lunch at the Ministry of Justice

15:30-17:00 Visit to the Athens Bar Association

17:00 - 18:30 Internal meeting of the evaluation team (at the hotel)

Wednesday 16 June 2021

08:00 Departure from the hotel to the women's detention centre in Eleonas

Accompanied by: To be confirmed

12:30-13:30 Lunch at the Ministry of Justice

13:30 -14:30 Meeting with authorities from the Prosecutor's Office of First Instance

14:30 -15:00 Coffee break

15:00 -16:30 Meeting with authorities from the Prosecutor's Office of First Instance

16:30-17:00 Questions & answers

17:00 - 18:30 Internal meeting of the evaluation team (at the hotel)

Thursday 17 June 2021

09:00-9:30 Departure from the hotel to the Ministry of Justice

Accompanied by: To be confirmed

**9:30-11:00 Meeting with authorities from the Court of Appeal and
from the Prosecutor's Office at the Court of Appeal**

11:00-11:30 Coffee break

**11:30-12:30 Meeting with authorities from the Court of Appeal and
from the Prosecutor's Office at the Court of Appeal**

12:30-13:30 Coffee break

13:30-14:00 Questions & answers

14:00-15:30 Lunch at the Ministry of Justice

16:00 - 18:00 Internal meeting of the evaluation team (at the hotel)

Friday 18 June 2021

09:00 Departure from the hotel to the Ministry of Justice

Accompanied by: To be confirmed

09:30- 12:30 Ministry of Justice

Wrap-up meeting

Departure

A minibus provided by the Hellenic Ministry of Interior and Administrative Reconstruction (Hellenic Police) will transport the evaluators to all the meetings according to the programme set out above

ANNEX B: PERSONS INTERVIEWED/MET

Meeting 15/6/2021

Venue: **AREIOS PAGOS (SUPREME COURT)**

Person interviewed/met	Organisation represented
- Mr Miltiadis HATZIGEORGIOU	- Vice President Judge of the Supreme Court
- Ms Sophia SOTIROPOULOU	- Presiding Judge of the Court of Appeal of Athens

Venue: **OFFICE OF THE PUBLIC PROSECUTOR OF THE SUPREME COURT**

Person interviewed/met	Organisation represented
- Ms Maria MALLOUCHOU	Deputy Public Prosecutor at the Supreme Court
- Mr Konstantinos TZAVELAS	Prosecutor at the Court of Appeal

Venue: **HELLENIC POLICE, SIRENE Bureau**

Person interviewed/met	Organisation represented
- Mr Georgios MIKROUDIS	Presiding Judge of the Court of Appeal of Athens.
- Ms Eleni SISKOU	Deputy Public Prosecutor at the Court of Appeal of Athens.

Person interviewed/met	Organisation represented
- Mr Christos TSITSIMPIKOS	Police Colonel, Head of the Hellenic SIRENE Bureau, Member of the Management Board of EU-LISA.
- Mr Anastasios TRIANTAFYLLOU	Police Lieutenant, SIRENE officer.

Venue: **ATHENS BAR ASSOCIATION**

Person interviewed/met	Organisation represented
- Mr Dimitrios Vervessos	Lawyer, President of the Athens Bar Association.
- Mr Georgios PYROMALLIS	Lawyer, Representative of the Athens Bar Association to the Criminal Committee Council of Bars and Law Societies of Europe (CCBE).
- Mr Veniamin Batis	Lawyer, Member of the Board of Directors of the Athens Bar Association.

Meeting 16/6/2021*Venue:* **ELEONA of THIVA CLOSED PRISON for WOMEN**

Person interviewed/met	Organisation represented
- Mr Ioannis LAMBRAKIS	Head of the Directorate of Organisation and Function of Prison Establishments.
- Ms Kalliopi DIAVATI	Deputy Head of the Department of Function of Prison Establishments & Minor Males' Treatment Institute of Volos.
- Mr Georgios MAKRIS	Head of the Directorate of Eleona of Thiva Closed Prison for Women.
- Ms Maria TILGKES	Head of the Administration Department of Eleona of Thiva Closed Prison for Women.
- Mr Dimitris NOMIKOS	Public Prosecutor at the Court of 1st Instance of Athens. Member of the Execution of Penalties Department, Office of the Public Prosecutor of 1st Instance of Athens.
- Mr Konstantinos SKOUVARIS	Presiding Judge of the Court of 1st Instance of Athens.

Meetings on 17/6/2021*Venue:* **MINISTRY OF JUSTICE**

Person interviewed/met	Organisation represented
- Ms -Athanasia DIONYSOPOULOU	Assistant Professor, Law School of Athens.
- Mr Georgios AKTYPIS	Judge of the Court of Appeal of Athens.
- Ms Eleni KARKAMPOUNA	Public Prosecutor at the Court of


Person interviewed/met	Organisation represented
-	Appeal of Athens. Head of the Department of Extradition & Mutual Assistance.
- Mr Georgios VOULGARIS	Deputy Public Prosecutor at the Court of Appeal of Athens. Department of Extradition & Mutual Assistance.
- Ms Olympia KLITSAKI	Deputy Public Prosecutor at the Court of Appeal of Athens. Department of Extradition & Mutual Assistance.
- Ms Antonia GIANNAKOPOULOU	Judicial Secretary of the Public Prosecutor's Office, Court of Appeal of Athens. Department of Extradition & Mutual Assistance- EJM Contact point and Tools Correspondent.

ANNEX C

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
EAW			European Arrest Warrant
FD			Framework Decision
ESO			European Supervision Order
PPCA			Public Prosecutor of the Court of Appeal
EIO			European Investigation Order
MS			Member State
ECJ			European Court of Justice
UK			United Kingdom
SIS			Schengen Information System
SPC			Single Point of Contact
EJN			European Judicial Network
EJTN			European Judicial Training Network

ANNEX D: THE IMPACT OF COVID ON GREECE

12. Greece (EL)

GREECE 	
<p>EAW</p> <p>-issuing of EAWs <i>(suspension; impact on already issued EAWs; prioritization in issuing new EAWs + criteria)</i></p> <p>- execution and postponement of the actual surrender <i>(legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding)</i></p> <p>-expected resuming of surrenders</p> <p>-transit</p>	<p>Impact on the issuing of EAWs</p> <p>The pandemic does not have any impact on the issuing of new Greek EAW. Greece continues to process the issuing procedures of the EAW without prioritising the cases due to COVID-19 crisis.</p> <p>Impact on the execution of EAWs and postponement of the actual surrender</p> <p>The phase of executing a surrender is subject to the legislative framework mentioned below. For the time being there is no infected person in Greek jails. There was a suspension of criminal hearings in Greece till 22 June. Nevertheless hearings for extradition cases and EAW requests take place as usual during the whole pandemic period. There are two hearings a week for such cases in Athens.</p> <p>The Greek authorities are in close connection with the authorities of the countries which issued EAW and we will surrender the sentenced persons as soon as possible. The surrenders of offenders to EU member states have already begun. In the week of 22 June, the German authorities received two offenders from the Athens airport. Thus, two separate EAW were executed. We plan to surrender the rest of offenders to other European countries as soon as possible.</p> <p>All criminal procedures take place and the suitable precautionary measures have been adopted. These measures take place when the police arrests someone who is wanted by an EAW. The same measures are in force when the offender comes in the prosecutor's office.</p> <p>In spite of the increase of the COVID-19 cases in Greece, the EAWs are being executed without any problem. In the first week of September, for example, 2-3 offenders were surrendered to the national authorities of Germany and the United Kingdom. In November, COVID-19 incidents occurred in some prisons in Greece. Nevertheless, procedures for the execution of EAWs continue taking place without any postponement or suspension.</p> <p>Impact on the execution of surrenders by land and by air</p> <p>As all inbound from abroad flights and border crossings halted and quarantine measures for travellers were taken, surrenders, extraditions and transfers of convicts by land and air were postponed. In the week of 22 June, the German authorities already received two offenders from the Athens airport.</p> <p>Legal basis for postponing the actual surrender</p> <p>Under the current crisis, the Greek competent judicial authorities use Articles 23 (3) and (4) FD EAW in combination with the relevant judgement by the CJEU. This legislative basis covers the cases up to now in order not to</p>

	<p>have to use Article 23 (5) FD EAW, as far as the release of persons to be surrendered is concerned.</p> <p>Adequacy of these provisions They are considered as sufficient.</p> <p>Meaning of ‘circumstances beyond the control’ Greece fully applies "force majeure" in the meaning mentioned and duly explained by others. Our police officers are in constant contact with their counterparts trying to figure out the best way to proceed, in close cooperation with the Prosecutors. For the time being, no one has been released from prison and in some cases, when no flights are involved (i.e. Bulgaria), there have been a few surrenders.</p> <p>Releases of requested persons following the postponement of the surrender No, there has not occurred any release up to now. As we replied in the above, the existing legislation and the CJEU judgements provide with the sufficient legislative framework in order, as far as it is possible, not to apply Article 23 (5) FD EAW, especially regarding serious crimes.</p> <p>Transit From 15/6/2020 flights from 30 countries are allowed into Greece, so transits can be executed.</p>
<p>Precautionary measures for surrender, extradition and transfer</p> <ul style="list-style-type: none"> - COVID19 test - health certificate - quarantine - facial masks 	<p>Precautionary measures The Greek prison authorities examine every prisoner who has symptoms of any disease. This is a safety measure not only for the offender but also for the policemen who will surrender the offender in the airport to the foreign police authorities.</p> <p>Before the surrender, the police and the prison authorities with the assistance of doctors, define whether or not the offender has been infected by the virus. All criminal procedures take place and the suitable precautionary measures have been adopted.</p> <p>Specific measures for escorting police officers Overnights are not prohibited, but same day surrenders should be suggested, unless there is no alternative (flight schedules etc). In general, precaution measures which have been set by the competent authorities in all MSs should be taken into consideration from all colleagues who are appointed to carry out the surrender procedures.</p>
<p>Extradition</p> <ul style="list-style-type: none"> -suspension -legal basis -third countries involved -expected duration of suspension 	<p>Impact on extradition procedures Hearings for extradition cases take place as usual during the whole pandemic period. The extradition procedures continue normally without suspension. The execution of an extradition is examined within the principle of force majeure and with the cooperation and communication with the requesting third country.</p>

<p>Transfer of sentenced persons -prioritization in issuing/execution</p>	<p>The Greek authorities follow the usual process in respect of transfer of sentenced persons. There are no symptoms of the pandemic in Greek prisons. The main obstacle to surrender the sentenced persons is the lack of air flights. The beginning of air flights will solve the problem.</p>
<p>SIRENE Bureaux -working of SIS bureau -exchange of information with other SIS Bureaux</p>	<p>Impact on the working of the SIRENE Bureau Hellenic SIRENE Bureau works in full capacity. Future challenges expected due to workload, but for time being, no serious issues have been encountered.</p> <p>Impact on the exchange of information with other SIRENE Bureaux Working in full capacity through all the period of quarantine (early March - end of May) allowed us to handle cases with no problems from our side. Issues had been raised though with the contact with other national organisations and ministries, due to the restrictive measures, which affected their usual workload handling routine (e.g. the Judicial Authorities).</p>
<p>EIO and MLA -prioritization in issuing/execution -electronic transmission -whom to contact</p>	<p>Regarding the judicial cooperation on EIOs, each EIO request is examined separately and in case of emergency due to COVID-19 crisis. The EIO is examined with the cooperation and communication with the issuing Member State.</p> <p>MLAs and EIOs requests are executed normally.</p>
<p>Freezing and confiscation orders -prioritization in issuing/execution</p>	<p>The pandemic hasn't created any problem with regard to the outgoing or incoming requests for freezing and confiscation orders because Greece managed to face the pandemic successfully.</p>
<p>JITs -prioritization and alternative telecommunication solutions</p>	<p>No difficulties occurred in the communication and cooperation between the judicial authorities of Greece and other Member States. Close cooperation is also ongoing on the level of the embassies of the Member States in Greece.</p> <p>As an example of good cooperation, we can mention some recent joint investigations: in September 2020, a joint investigation took place in Athens and the results were impressive. Many items (including laptops, etc.) were confiscated and surrendered to the German authorities. Another joint investigation (Greece, Spain) took place in Athens at the beginning of October. This joint investigation was initiated on the request from the Spanish authorities, which issued 14 EAWs. Fourteen persons were arrested and the procedure for their surrender to Spain has already started.</p>
<p>Recommended channels for transmission of -urgent requests -information exchange</p>	<p>The most effective channels in emergency situations are close cooperation with the issuing authority, Eurojust, Sirene and Europol.</p>
<p>Any other relevant information</p>	<p>N/A</p>