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From: General Secretariat of the Council  
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Subject: **EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL  
EVALUATIONS**  
**Ninth round of mutual evaluations on mutual recognition legal  
instruments in the field of deprivation or restriction of liberty –  
REPORT ON ROMANIA**

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The draft report on Romania, as set out in document ST 7608/22, has been revised with the changes set out in WK 6991/22 and, following the breaking of the silence procedure from Austria on the evaluation report on Romania, with the additional following changes , agreed by the evaluation team in the following pages of the current version:

Page 24 - point 3.2., article 1, line 6;

*the condition of ~~opportunity~~ **proportionality** is met.*

Page 120 - added new recommendation No. 6 for Romania;

***Recommendation 6: According to Article 23 (2) of FD 2008/909/JHA, as a principle, no judgment translation shall be required. Therefore, Romanian authorities should limit requests for the translation of whole judgments to exceptional cases and, if necessary, after consultation between the competent authorities of the issuing and the executing States to indicate the essential parts of the judgments to be translated according to Article 23 (3) of FD 2008/909/JHA.***

Page 121 - article 1 , recommendation No. 7, line 2, to all Member States,

*the issuing state **or at very least** ~~and~~ consultation*

Page 121 - added footnote - the position of Austria to the recommendation No. 7 to all Member States.

*The position of Austria to the recommendation is as follows:*

*According to Article 23 (2) of FD 2008/909/JHA, as a principle, In the light of the case C-179/22 currently pending at the ECJ the wording of the recommendation and the need for legislative clarification of the relationship between Art. 25 FD 2008/909/JHA and FD 2002/584 will have to be reconsidered once the judgement of the ECJ is delivered.”*



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

**Ninth round of mutual evaluations on mutual recognition legal instruments in  
the field of deprivation or restriction of liberty**

**REPORT ON ROMANIA**

Table of contents

**Table of contents** ..... 4

**1. EXECUTIVE SUMMARY** ..... 7

**2. INTRODUCTION** ..... 10

**3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT**  
13

**3.1. Authorities competent for the European arrest warrant (EAW)** ..... 13

    3.1.1. Procedure when Romania acts as the executing state ..... 15

    3.1.2. Procedure when Romania acts as the issuing state ..... 20

**3.2. The principle of proportionality** ..... 24

**3.3. Exchange of information** ..... 27

    3.3.1. When Romania acts as the executing state ..... 27

    3.3.2. When Romania acts as the issuing state ..... 29

**3.4. Grounds for refusal** ..... 32

    3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention ..... 32

    3.4.2. Refusal in the event of a judgment in absentia ..... 35

    3.4.3. Other grounds for refusal ..... 36

**3.5. Statistics** ..... 36

**3.6. Further challenges** ..... 40

**3.7. Conclusions** ..... 44

**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** ..... 46

**4.1. Authorities competent for the recognition of the judgment and enforcement of the sentence** ..... 47

    4.1.1. Competent authorities when Romania acts as the executing state ..... 47

4.1.2.	Procedure when Romania acts as the executing state .....	50
4.1.3.	Competent authorities when Romania acts as the issuing state .....	52
4.1.4.	Procedure when Romania acts as the issuing state .....	55
<b>4.2.</b>	<b>Documents required for recognising the judgment and enforcing the sentence .....</b>	<b>58</b>
<b>4.3.</b>	<b>Criteria for assessing the facilitation of social rehabilitation.....</b>	<b>59</b>
4.3.1.	Exchange of information between the issuing state and executing state .....	59
4.3.2.	Opinion and notification of the sentenced person.....	62
<b>4.4.</b>	<b>Adaptation of the sentence.....</b>	<b>64</b>
<b>4.5.</b>	<b>Grounds for non-recognition or non-enforcement.....</b>	<b>67</b>
<b>4.6.</b>	<b>Partial recognition .....</b>	<b>71</b>
<b>4.7.</b>	<b>Challenges relating to compliance with the deadline for recognition and enforcement</b>	<b>72</b>
<b>4.8.</b>	<b>Law governing the enforcement of the sentence.....</b>	<b>73</b>
<b>4.9.</b>	<b>Further challenges.....</b>	<b>74</b>
<b>4.10</b>	<b>. Statistics.....</b>	<b>76</b>
<b>4.10.</b>	<b>Conclusions .....</b>	<b>79</b>
<b>5.</b>	<b>LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES .....</b>	<b>80</b>
5.1.	Problems relating to the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.....	81
5.2.	Conclusions .....	84
<b>6.</b>	<b>FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS .....</b>	<b>85</b>
6.1.	Authorities competent for Framework Decision 2008/947/JHA.....	85
6.1.1.	Procedure when Romania is acting as the executing state.....	87
6.1.2.	Procedure when Romania is acting as the issuing state.....	91
6.2.	Problems relating to the failure to apply Framework Decision 2008/947/JHA.....	94
6.3.	Conclusions .....	98
<b>7.</b>	<b>FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO).....</b>	<b>99</b>
7.1.	Authorities competent for Framework Decision 2009/829/JHA.....	99
7.1.1.	When Romania is acting as executing state .....	100

7.1.2.	When Romania is acting as issuing state .....	103
<b>7.2.</b>	<b>Problems relating to the failure to apply Framework Decision 2009/829/JHA.....</b>	<b>107</b>
7.2.1.	Romanian authorities as issuing authorities.....	108
7.2.2.	Romanian authorities as executing authorities.....	108
<b>7.3.</b>	<b>Conclusions .....</b>	<b>111</b>
<b>8.</b>	<b>Training .....</b>	<b>112</b>
<b>8.1.</b>	<b>Training relating to FDs 2002/584/JHA and 2008/909/JH .....</b>	<b>112</b>
<b>8.2.</b>	<b>Training relating FDs 2008/947/JHA and 2009/829/JHA.....</b>	<b>116</b>
<b>9.</b>	<b>FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES.....</b>	<b>118</b>
<b>9.1.</b>	<b>Suggestions by Romania .....</b>	<b>118</b>
<b>9.2.</b>	<b>Recommendations .....</b>	<b>119</b>
9.2.1.	Recommendations to Romania .....	119
9.2.2.	Recommendations to other Member States .....	120
9.2.3.	Recommendations to the EU institutions.....	121
<b>9.3.</b>	<b>Best practices .....</b>	<b>122</b>

## **1. EXECUTIVE SUMMARY**

The on-site visit was organised by the Romanian authorities in a professional and exemplary way. The visit included meetings with all the relevant actors with responsibilities in the field of European judicial cooperation as well as in the implementation and operation of European policies.

Representatives of the judicial authorities and bar association selected to attend the meeting were highly professional and were open and sincere in their responses to the experts. Their sharing of experiences and additional thoughts with the evaluation team helped establish a comprehensive picture of the state of implementation and practice regarding the four relevant Framework Decisions.

### **Framework Decision 2002/584/JHA**

Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States ('FD on the EAW') was implemented in the Romanian legal system by Title III of Law No 302/2004 on international judicial cooperation in criminal matters, which has subsequently been amended, supplemented and republished. Since that time, use of the European arrest warrant (EAW) has steadily increased and is now a matter of routine that rarely poses any serious problems. The extensive case-law of the Court of Justice of the European Union (CJEU) on the FD on the EAW has not led to any changes in Romanian national law transposing the FD on the EAW.

In Romania, an EAW may be issued at all stages of criminal proceedings, including during a criminal prosecution, during the preliminary hearing, during the trial stage and during the enforcement phase. In the prosecution phase, the judge of rights and freedoms is competent to issue EAWs. In preliminary hearings it is the preliminary chamber judge, and during the trial competence lies with the judge appointed by the president of the court of first instance. During the execution phase, the judge appointed by the president of the executing court is competent.

In the case of incoming EAWs, the 15 courts of appeal are competent to execute an EAW received either by the prosecutor's offices attached to the court of appeals where the wanted person has been located or by the prosecutor's office attached to the Bucharest Court of Appeal when the person's whereabouts are unknown. The role of the Ministry of Justice as a central authority is mainly one of assistance to Romanian and foreign judicial authorities.

Practical issues identified have mainly been delays in the exchange of information requested and the application of the case-law of the CJEU by executing states.

### **Framework Decision 2008/909/JHA**

Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('FD on custodial sentences') was implemented by Romania in 2013. As introduced in domestic law, the procedure seems to involve a combination of judicial and administrative components. In addition to the courts and the prosecution service, the Ministry of Justice, the Centre for International Police Cooperation and the National Administration of Penitentiaries are involved in both issuing and executing the certificate.

If Romania acts as issuing authority, the competent authority for completing the certificate and forwarding it to the executing State is the court that issued the judgment. This will be based on documents received from the judge delegated for the supervision of the enforcement of custodial sentences, who is responsible for verifying whether the conditions for the handover are met. The authorities competent to render the judgment and recognise and enforce foreign sentences or other measures involving deprivation of liberty are the courts of appeal within whose jurisdiction the sentenced person lives or is permanently resident.

In the context of this instrument, Romania is very open in its approach to language, accepting documents translated into Romanian and English or French. Romania accepts certificates and judgments translated into Romanian. However, the subsequent consultations can be conducted in other languages (mainly in EN).



Romania seems to have a well-developed legal framework concerning the FD on custodial sentences, with some solutions, such as the abovementioned language policy, which can definitely be considered best practice. The judicial and administrative staff working on cooperation in this field have a high level of professional knowledge, performance, and dedication.

The most visible shortcoming of the Romanian system is apparently prison conditions, which may be deemed a breach of fundamental rights and – much more technical, but still visible – the shortage of statistics. Nevertheless, the general assessment of Romania in the context of the implementation and application of the FD on custodial sentences is very largely positive.

### **Framework Decision 2008/947 JHA and Framework Decision 2009/829 JHA**

Framework Decisions 2008/947/JHA and 2009/829/JHA have been implemented in Romanian legislation by Law No 302/2004, which has been amended and supplemented and was republished on 27 May 2019. Judges, prosecutors, lawyers and clerks are familiar with the content of the two legal instruments, but they are used relatively rarely in practice. Considering the number of people who live in Romania (more than 19 million), the total number of cases concerning Framework Decisions 2008/947/JHA and 2009/2008/JHA is negligible.

The Romanian practitioners think that awareness and knowledge of these legal instruments need to be improved through training and by issuing specific publications. Interestingly, representatives of the Romanian Bar Association showed an interest in this type of education for lawyers, who, according to the statement, should upgrade their skills in this field. Romanian penitentiary staff would also need to be included in such an education and training process. Taking the above into consideration, it would appear that there is still room for improvement in the field of education and training.

## 2. INTRODUCTION

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

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, the 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 on 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/JHA on probation and alternative measures and FD 2009/829/JHA 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-the-spot 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 a 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 towards enhancing mutual trust among the Member States' judicial authorities and ensuring a 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.

The Romania was the 15th 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 has drawn up a list of experts in the evaluations to be carried out. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request sent to delegations by the General Secretariat of the Council of the European Union on Friday 17 May 2019.

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 the EJM should be invited as observers.

The experts entrusted with the task of evaluating the Romania were Mr Harald Freyer (Germany), Mr Rafał Kierzyńska (Poland), and Mr Marijan Bitanga (Croatia). Observers were also present: Mr José de la Mata (Eurojust) and Ms Jana Bambič (Commission), together with Ms Maria Bacova from the General Secretariat of the Council.

This report was prepared by the evaluation team with the assistance of the General Secretariat of the Council, based on findings arising from the preparatory video conference meeting (VTC) that took place on 4 March 2021, the evaluation visit that took place in Romania between 4 and 7 October 2021, and on Romania'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**

Romania transposed Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States of the European Union ('FD on the EAW') into Title III of Law No 302/2004 on international judicial cooperation in criminal matters, which has subsequently been amended, supplemented and republished (Official Gazette No 411 of 27 May 2019). Therefore, in 2020 Romania renewed its statement regarding the implementation of the FD on the EAW and the competent authorities (Council document 6659/20 of 12 March 2020), replacing the previous statements (contained in documents 16907/06 and 16285/08).

#### **3.1. Authorities competent for the European arrest warrant (EAW)**

##### Competent authorities when Romania acts as the executing state

Romania designates the Ministry of Justice and prosecutor's offices attached to the courts of appeal as the authorities competent to receive an EAW. If the requested person's whereabouts are unknown, the EAW is forwarded to the prosecutor's office attached to the Bucharest Court of Appeal.

Romania designates its 15 courts of appeal as the judicial authorities competent to execute an EAW (enforcing judicial authorities) issued by a judicial authority of another Member State of the EU.

In the field of the EAW, the central authority is the Ministry of Justice, through the Directorate for International Law and Judicial Cooperation. However, the role of the central authority is limited, and it generally assists the judicial authorities (Romanian and foreign), mainly by facilitating communication where direct contact between the issuing and the executing authority is not possible.

The functions of the Ministry of Justice, as provided for in Article 86(4) of Law No 302/2004, are to:

- receive an EAW issued by a judicial authority of another Member State of the European Union and forward it to the public prosecutor's office attached to the court of appeal in the district in which the requested person has been located, or to the public prosecutor's office of the Bucharest Court of Appeal if the requested person has not been located, whenever the issuing judicial authority fails to send the EAW directly to the receiving Romanian judicial authority;
- transmit an EAW issued by a Romanian judicial authority, if that authority is unable to communicate it directly to the receiving foreign judicial authority or when the executing Member State has designated the Ministry of Justice as the receiving authority;
- keep records of the EAWs issued or received by the Romanian judicial authorities for statistical purposes;
- perform any other duty established by law intended to assist and support the Romanian judicial authorities in issuing and executing EAWs. The Ministry of Justice conducts a very active dialogue with judges, prosecutors and clerks from the Romanian courts and prosecutor's offices. It provides assistance, upon request, either by helping to identify the most appropriate form of cooperation and facilitating contact with foreign authorities, or by providing general information. Specific assistance is also provided by the contact points of the European Judicial Network (EJN) within the central authority.

The Ministry of Justice acts as the secretariat of the Romanian Judicial Network in Criminal Matters (similar to the EJN), the contact points for which are judges, prosecutors and representatives of the Ministry of Justice. Both in the framework of the regular meetings of the Romanian Judicial Network and in the course of daily activities, there is a constant exchange of information and expertise.

The role of the central authority in facilitating direct contact has diminished, given that the Romanian judicial authorities now make more frequent use of direct communication and are more aware of the legal and practical instruments at their disposal.

With regard to the application of the case-law of the CJEU, the Ministry of Justice has been actively involved in harmonising the case-law of the Romanian courts (as the issuing and executing authority); in this respect, therefore, the role of the central authority has increased, in particular in relation to the application of the Aranyosi & Căldăraru, Petruhhin and Pisciotti cases.

The Romanian judicial authorities have direct contact with their counterparts from other Member States, both as issuing authorities and as executing authorities. In order to facilitate this dialogue, in cases where direct communication is not possible or there are significant difficulties or delays, the competent authorities sometimes ask for assistance either from the central authority (the Ministry of Justice) or from other entities such as the SIRENE Bureau, the national Interpol Bureau, Eurojust, or the EJM.

Contacts with the foreign counterparts are frequent, occurring mainly at expert level (e.g., in specific cases) and through the EJM and Eurojust. In addition to their daily work and contacts with judicial or central authorities from the other Member States, representatives of the central authority have taken and continue to take part in regular bilateral consultations with staff from other Member States (recently Italy, Germany and the United Kingdom) and in coordination meetings (including with Italy, the Netherlands and the United Kingdom).

According to the Romanian authorities, cooperation with foreign authorities is generally good. However, difficulties sometimes arise with regard to the time it takes for an answer to be received (as the issuing or executing state) or to the application of the case-law of the CJEU (e.g. case C-241/15 – Bob-Dogi, case C-404/15 – Aranyosi & Căldăraru, case C-220/18 PPU – ML, case C-509/18 – PF, and case C-182/15 – Petruhhin).

### *3.1.1. Procedure when Romania acts as the executing state*

EAWs transmitted to the Romanian authorities for execution must be translated into Romanian, English or French. This open attitude to language is an excellent practice in the Romanian system.

The execution procedure is set out in Chapter III ‘Execution of EAWs’ of Law No 302/2004 on international judicial cooperation in criminal matters, with amendments.

When a Romanian judicial authority receives an EAW but is not competent to execute it, it sends the warrant to the judicial authority that is competent to execute it and informs the issuing judicial authority. Then the authority checks the language and may notify the issuing judicial authority that a translation is required, in which case the procedure will be suspended until the translation is received.

Finally, the executing judicial authorities inform the Ministry of Justice of the receipt of the EAW. In general, Romanian citizens are surrendered based on an EAW issued for the purpose of criminal prosecution or a trial on the condition that a penalty depriving the person of freedom is to be handed down; the person surrendered is transferred to Romania to serve the sentence.

As soon as the court of appeal receives an EAW or an alert within the Schengen Information System (SIS), the president of the criminal section forwards the case to a panel of two judges to check whether the EAW contains all the required elements. If it does not, the court requests that the necessary additional information be furnished as a matter of urgency by the issuing judicial authority and sets a time limit for the receipt thereof, observing the maximum time limits provided for in Article 17 of the FD on the EAW.

If the EAW includes the requisite information and translation, the general prosecutor attached to the court of appeal takes the necessary measures to identify the requested person, arrest them and bring them before the court. The person in question should be brought before the competent court within 24 hours of arrest. The court then informs the requested person that they are the subject of an EAW, of its contents, that they may consent to being surrendered to the issuing Member State, of the specialty rule and its legal consequences, especially its irrevocable nature, and of their procedural rights. The issuing judicial authority must be notified of the requested person's arrest. The court must also hear the requested person within 48 hours their arrest and ask whether they consent to the surrender.

The requested person has the right to legal counsel.

The requested person may object to the surrender based only on an error regarding their identity or on the existence of grounds for non-execution of the EAW.



Every 30 days during this procedure, the court determines, after hearing the prosecutor, whether the detention measure is to be upheld or the requested person is to be released. If the person is to be released, the court must take all the necessary measures to prevent the requested person from absconding, including the preventive measures provided for in law.

The court must render a decision on the execution of an EAW within five days of hearing the requested person. Where the information communicated by the issuing Member State is insufficient to enable the court to decide on surrender, the court will request that the necessary supplementary information be furnished as a matter of urgency and may set a time limit for the receipt thereof, taking into account the need to observe the maximum time limits as provided for in the FD on the EAW.

The decision on the arrest may be appealed against on points of law within 24 hours of its pronouncement. The decision on the execution of an EAW may be appealed against on points of law within five days of its pronouncement. Appeals may be lodged in writing or orally. Appeals that are submitted in written form must be reasoned. Appeals submitted orally must be reasoned within 24 hours of submission in the case of arrest, and within five days in the case of execution. If an appeal is lodged, the case is sent to the Criminal Section of the High Court of Cassation and Justice as soon as the appeal has been reasoned or upon expiry of the time limit for reasoning it.

Appeals regarding the execution of EAWs are resolved as a priority, within three days of the case record being sent to the High Court.

EAWs are dealt with and executed as a matter of urgency. If the requested person consents to the surrender, a decision must be handed down within 10 days of the court session at which the requested person gave their consent to the surrender. The decision is final and enforceable. If the requested person does not consent to the surrender, a decision must be handed down within 60 days of the arrest.

When, for justified reasons, a decision cannot be handed down within the given time limits, the court may postpone the decision for 30 days; it must notify the issuing judicial authority of the postponement and the grounds for it, and maintain the measures necessary for surrender. When, for exceptional reasons, the time limits cannot be observed, the executing Romanian judicial authority must inform Eurojust, specifying the reasons for the delay.

As the executing state, Romania has requested for supplementary information at the stage of enforcement of the penalty, as well as in relation to the facts of the case (to assess double criminality or a breach of the *ne bis in idem* principle), the application of Article 4(2) of the FD on the EAW, the presence of the requested person at the trial, the possibility of recognising foreign criminal judgments, the application of Article 4(5) of the FD on the EAW, and the rights enshrined in Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in EAW proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Executing courts have contacted the foreign authorities directly to obtain the additional information deemed necessary, indicating clear deadlines by which an answer is needed. Electronic means of communication are widely used. Generally, the deadlines have been met. In the cases where an answer was not received before the deadlines expired, the support of the central authority, the European Judicial Network and Eurojust was requested. That support then led to the answers being received within a reasonable time frame.

As regards the time limits provided for in Article 17 of the FD on the EAW, the execution of EAWs is dealt with as a matter of urgency. On average, cases are resolved within 12 days of the date of the arrest if the requested person consents to the surrender, and within 22 days in cases where the requested person opposes the surrender. The deadlines set out in the FD are observed, and in cases where this is not possible, the issuing authorities and Eurojust are informed accordingly.

This swift procedure is an example of best practice.

Information is transmitted using electronic means of communication., The support of the central authorities, the SIRENE Bureau, the EJM contact point and Eurojust are requested when difficulties are encountered. The courts' sessions are set for as soon as possible, and short deadlines are established. In addition, a judge of the court for the supervision of the enforcement of custodial sentences within the penitentiary is delegated to the SIRENE office.

The role of the delegated judge in the EAW proceedings when Romania is the executing State is to check whether alerts in the SIS system are compatible with Romanian law and if they are not, he or she is the one who decides on flagging an alert in the SIS system. In such a case, the person will be only checked, but not detained, and the Romanian authorities will continuously inform the relevant Member State about his or her stay.

When delays have occurred, it is mainly because the additional information was not obtained within the established deadline. There have been cases when it was necessary to schedule further court dates in order to rule on requests or exceptions raised by the requested person.

Follow-up information, such as the amount of time the person has spent in detention for the purpose of deduction, is generally obtained by the Romanian issuing authorities upon request. A few states provide the information as a matter of routine. There is no uniform practice among states.

Many Romanian executing authorities use the form recommended in the handbook on how to issue and execute an EAW, which also includes information on the arrest. Further details are provided at the request of the executing authorities (e.g. the behaviour of the person during detention, for the purpose of conditional release).

Generally, Romanian executing courts indicate in their decision the amount of time the requested person has spent in detention.

As regards the transit procedure provided for in Article 25(2) of the FD on the EAW, Romania has designated the Ministry of Justice as the authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests.

### *3.1.2. Procedure when Romania acts as the issuing state*

In accordance with EU recommendations, Romanian law provides that an EAW will be issued for the purpose of investigation or trial when the penalty provided for in law for the offence is life imprisonment or imprisonment of two years or more, and for the purpose of the enforcement of a penalty when the sentence left to serve is life imprisonment or imprisonment of one year or more.

Thus, in accordance with the provisions of Article 89(3) of Law No 302/2004 on international judicial cooperation in criminal matters, as republished, EAWs are to be issued:

- (a) during the criminal prosecution stage, by the judge of rights and freedoms designated by the president of the court that would be competent to hear the substance of the case, either ex officio or upon referral by the prosecutor conducting or supervising the criminal prosecution of the requested person;
- (b) during preliminary chamber proceedings, by the preliminary chamber judge;
- (c) during the trial stage, by the judge designated by the president of the court of first instance either ex officio or upon referral by the prosecutor or the body in charge of executing the provisional arrest warrant or the decision imposing the detention order;
- (d) during the execution stage, by the judge designated by the president of the executing court either ex officio or upon referral by the prosecutor or the body in charge of executing the warrant in relation to a sentence of life imprisonment or imprisonment or the decision imposing the detention order.

Article 89 of Law No 302/2004 sets out the procedure for issuing an EAW. The general conditions under that article include a specific proportionality clause based on the discretionary power of the competent body. Thus, the competent authority at a given stage of the procedure is empowered but also obliged (the law uses the word 'shall') to issue an EAW, but only when the authority considers it appropriate to do so in the light of the nature of the offence, the age and criminal record of the requested person, and other circumstances of the case. The last part of the sentence appears to refer to the court's discretion. Other conditions that must be met in order to issue an EAW are as follows:

- The requested person must be on the territory of another Member State of the European Union.

- The preventive detention warrant or the warrant for imprisonment or life imprisonment must be valid (this is clearly in line with EU law and CJEU case-law; see the judgment in case C-241/15, Bob-Dogi, delivered following a request for a preliminary ruling from the Cluj Court of Appeal).
- The statute of limitations under Romanian law for criminal liability or for enforcement of the penalty or pardon or amnesty must not have expired.
- The arrest and surrender must have been requested:
  - (i) with a view to conducting a criminal prosecution or trial where the penalty for the offence under Romanian law is life imprisonment or a prison sentence of two years or more;
  - (ii) with a view to enforcing a penalty where the penalty applied or the penalty remaining to be executed is life imprisonment or a prison sentence of one year or more;
  - (iii) with a view to enforcing a measure involving deprivation of liberty where the duration of the measure is six months or more.

It may not be necessary to meet the conditions pertaining to the length of the preventive detention measure (Article 89(1), point (d)) if the EAW is issued pursuant to Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (see Article 15(3) thereof). This is the case if the preventive detention was imposed by the competent Romanian judicial body to replace a measure or an obligation the observance of which was previously under the supervision of the executing state, unless it notifies the strict application of the provisions of Article 2(1) of the FD on the EAW, as transposed into its domestic law.

As mentioned above, EAWs may be issued in Romania at all stages of criminal proceedings, i.e. during criminal prosecution, during the preliminary hearing, during the trial stage and during the enforcement phase. Furthermore, the central authority gives a guarantee of return in the case of EU nationals who are subject to EAWs for the purpose of investigation or trial.

EAWs are issued either ex officio or at the prosecutor's request by the court that issued the warrant for preventive detention during criminal prosecution or trial or by the executing court. The issuing court may also request that the executing judicial authorities hand over property that is to be used as evidence. If the requested person is sought internationally with a view to extradition, the court must inform without delay the Centre for International Police Cooperation within the Ministry of Administration and the Interior that an EAW has been issued.

If the location of the requested person is known, the Romanian issuing court may transmit the EAW directly to the executing judicial authority. It may also decide to issue an alert for the requested person in the Schengen Information System (SIS), through the National Alert Information System. An alert in the SIS is equivalent to an EAW accompanied by the information set out in the annex.

The Romanian court may send the EAW by any secure means of transmission that produces a written record, on the condition that it enables the executing judicial authority to establish its authenticity.

If the location of the requested person is unknown, the EAW may be sent through the SIS, through the secure telecommunications system of the EJM when it becomes available, through the Ministry of Justice, through the International Criminal Police Organisation (Interpol), or by any other means that produces a written record, on the condition that it enables the executing judicial authority to establish its authenticity.

If the issuing judicial authority does not know which is the executing judicial authority, it will make enquiries, including through the contact points of the EJM or through the specialised directorate within the Ministry of Justice, in order to obtain the information from the executing Member State.

Any difficulties with transmitting or checking the authenticity of an EAW are dealt with by means of direct contacts between the issuing judicial authority and the executing judicial authority or with the support of the Ministry of Justice.

After sending an EAW, the Romanian issuing judicial authority may send any additional information needed to execute the warrant.

The Romanian court sends a copy of the EAW to the Ministry of Justice.

According to the Romanian authorities, the Ministry of Justice has taken steps to disseminate the European manual to practitioners, with the recommendation that it be used when issuing EAWs. The manual is also posted on the Ministry of Justice's internet portal, which can be accessed by the courts. These recommendations are reflected in the practice of the courts.

Regarding the exchange of additional information when Romania acts as a issuing state, there have been cases when Romanian courts were required to provide additional information concerning the evidence included in the national file in which the judicial decision behind the EAW was issued. Some Member States even ask for the EAW to be reissued, depending on the additional information received.

The requested information is transmitted in the spirit of good collaboration. In a few cases more general information has been requested that is not connected to the EAW, such as information concerning certain aspects of the judicial system in Romania.

The cost of translating the necessary documents is an aspect that cannot be overlooked. Also, in some cases it has been necessary to consult with several authorities and institutions in order to provide answers to a series of questions or enquiries.

As regards the transit procedure provided for in Article 25 of the FD on the EAW, the Romanian authorities have not encountered any legal problems when acting as the issuing state. In some isolated cases, the information requested from Romania was not connected to the transit request but to the procedure for executing the EAW (namely, granting the transit was made conditional on assurances regarding detention conditions), thus exceeding the scope of Article 25 of the FD.

The following practical issues have been encountered: very tight deadlines, problems contacting the competent authorities, and changes in flight schedules (e.g. due to weather), resulting in escorts having to be rescheduled or redirected.

In some cases, transit has been delayed or denied for logistical reasons relating to the transport of the person, the escort, and so on.

Problems have been identified by Romanian police escorts when the executing Member State orders the surrender of the requested person, while that person is still at liberty pending surrender, without taking any precautionary measures and without checking to make sure that the surrendered person will be present to be taken over by the Romanian escort. The requested person is only notified of the date for the taking over (the person must present themselves willingly) but no other measures are taken in order to ensure the actual surrender (enforcing the surrender decision of the national authorities and fully applying the provisions of Article 23 of the FD).

In the majority of such cases the surrender fails and the person in question is not found again. This practice has substantial financial implications for the issuing state, as the escort travels to the executing state but does not complete the mission (taking over the requested person).

When Romania receives a request for transit, the authority competent to rule is the Bucharest Court of Appeal. The number of requests is low, and no problems have been identified.

### **3.2. The principle of proportionality**

The Romanian authorities stated that changes to Romanian legislation in 2013 mean that further requirements transposing the principle of proportionality into practice must now be considered when issuing an EAW. Thus, in addition to the requirements relating to a national arrest warrant and the duration of the measure involving deprivation of liberty, an EAW can be issued when, in the light of the offence, the age of the requested person, and other circumstances of the case, the court considers the condition of proportionality is met. As mentioned before, the wording seems to contain a specific proportionality clause, based on the discretionary power of the competent body.



The competent authority at a given stage of the procedure is therefore empowered but also obliged (the law uses the word 'shall') to issue an EAW, but only when the authority considers it appropriate to do so in the light of the nature of the offence, the age and the criminal record of the requested person, and other circumstances of the case. This appears to involve the court's discretion.

When deciding whether to issue an EAW, the Romanian authorities also take into consideration that the financial costs associated with implementing an EAW are not negligible and should be proportionate to the seriousness of the offence.

Furthermore, with regard to the limits on the penalties that are or may be imposed, the Romanian authorities note that, in accordance with EU recommendations, Romanian law provides that an EAW will be issued for the purpose of investigation or trial when the penalty provided for in law for the offence is life imprisonment or imprisonment of two years or more, and for the purpose of the enforcement of a penalty when the sentence left to serve is life imprisonment or imprisonment of one year or more.

The relevant legal provisions are as follows:

Article 89 of Law No 302/2004 on international judicial cooperation in criminal matters sets out the procedure for issuing an EAW:

- (1) The authority provided for in paragraph 3 shall issue an EAW when, in the light of the nature of the offence, the age and the criminal record of the requested person, and other circumstances of the case, that authority considers it appropriate to issue an EAW and the following conditions are met:
  - (a) the requested person is on the territory of another Member State of the European Union;
  - (b) the preventive detention warrant or the warrant for imprisonment or life imprisonment is valid;
  - (c) the statute of limitations under Romanian law for criminal liability or for enforcement of the penalty or pardon or amnesty has not yet expired;

- (d) the arrest and surrender is requested:
- (i) with a view to conducting a criminal prosecution or trial where the penalty for the offence under Romanian law is life imprisonment or a prison sentence of two years or more;
  - (ii) with a view to enforcing a penalty where the penalty applied or the penalty remaining to be executed is life imprisonment or a prison sentence of one year or more;
  - (iii) with a view to enforcing a measure involving deprivation of liberty where the duration of the measure is six months or more.
- (2) When a preventive detention measure is ordered by the competent Romanian judicial body to replace a measure or an obligation the observance of which was previously under the supervision of the executing state, an EAW may be issued even if the condition provided for in paragraph 1, point (d), is not met. The condition set out in paragraph 1, point (d), shall apply whenever the executing state notifies the application of the provisions of Article 2(1) of Council Framework Decision 2002/584/JHA, as transposed into the domestic law of that state.
- (3) An EAW shall be issued:
- (a) during the stage of criminal prosecution, by the judge of rights and freedoms appointed by the president of the court which would have competence to hear the case on its merits, either ex officio or upon referral by the prosecutor conducting or supervising the criminal prosecution of the requested person;
  - (b) by the preliminary chamber judge, during the preliminary hearing;
  - (c) during the trial stage, by the judge appointed by the president of the court of first instance, either ex officio or upon referral by the prosecutor or the body responsible for executing the preventive detention warrant or the judgment ordering the measure of deprivation of liberty;
  - (d) during the execution stage, by the judge appointed by the president of the executing court, ex officio or upon referral by the prosecutor or by the body that has to execute the warrant for the execution of a life imprisonment sentence or a prison sentence or the judgment by which the measure of deprivation of liberty has been taken.

The Ministry of Justice has taken steps to disseminate the handbook on how to issue and execute an EAW to practitioners, with the recommendation that it be used when issuing EAWs. The manual is also posted on the Ministry of Justice's internet portal, which can be accessed by the courts.

These recommendations are reflected in the practice of the courts.

The general lack of statistics makes it impossible to check the number of cases in which the courts decided not to issue an EAW, even when all the formal requirements were met.

The interviews with prosecutors and judges revealed that they had not encountered any situations relating to the application of the principle of proportionality.

### **3.3. Exchange of information**

#### *3.3.1. When Romania acts as the executing state*

According to the information obtained in the interview with the prosecutor conducted on 5 October 2021, in the case of an incoming EAW the Romanian authorities exchange the necessary information with the competent body in the issuing Member State by means of direct communication via email, fax or other secure means of communication which leaves a written record, or by using the national SIRENE Bureau.

This communication is made easier by the legal provision relating to the language to be used (Article 87(4) of Law No 302/2004<sup>1</sup> on international cooperation in criminal matters, which allows for Romanian, English and French).

Nevertheless, the Romanian authorities have faced problems when asking for additional information from a Member State that does not frequently use international languages such as English or French (e.g. Bulgaria).

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<sup>1</sup> Article 87(4):

(4) European arrest warrants sent to the Romanian authorities for execution shall be translated into Romanian or either in English or in French.

In cases where the Romanian authorities do not receive an answer before several deadlines have passed, they contact either the Romanian Eurojust representatives or the EJM contact point to help them get the required information.

The Romanian Judicial Network in Criminal Matters was established in 2001, mirroring the EJM. The contact points are judges from the courts of appeal, prosecutors from the prosecutor's offices attached to the courts of appeal, the Ministry of Justice (which also acts as the network's secretariat), the Romanian liaison magistrates, and the national member at Eurojust, her deputy and the assistant.

In practice, the Romanian authorities have encountered gaps in the information and the need for additional information concerning the following:

*1. Conditions of detention awaiting the requested person after surrender*

Some Member States have asked the Romanian authorities to provide a guarantee that the requested person will be detained in a detention facility that conforms to minimum standards under international law (Article 3 of the European Convention on Human Rights and Article 15(2) of the FD on the EAW). For instance, the German authorities have asked for such information and the United Kingdom of Great Britain and Northern Ireland has asked Romania to ensure the same prison conditions as in the United Kingdom.

*2. Deficit of information or missing documents*

Where Romania is the executing state, the Romanian authorities have in some cases had to ask for supplementary information that concerned e.g.:

- conviction in absentia (the presence of the requested person at the trial);
- the stage of the enforcement of the sentence;
- the description of the facts (to assess double criminality or the incidence of ne bis in idem principle);
- the rights enshrined in the Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and EAW proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

*3.3.2. When Romania acts as the issuing state*

The procedure when Romania acts as the issuing state is laid down in Article 90 of Law No 302/2004. Pursuant to Article 90(6) of the law, when the foreign authority competent to receive and to execute the EAW establishes that the EAW does not meet the formal requirements or is inaccurate, the issuing court will take measures to make the necessary changes or additions.

Once the EAW for execution has been transmitted, the issuing court communicates, either ex officio or at the request of the foreign authority, the additional information needed to execute the warrant. The transmission and translation of additional information is carried out according to the procedure laid down in Article 90 of Law No 302/2004.

If a requested person remanded in the executing state exercises their right to appoint a lawyer in Romania, the competent court in Romania that issued the arrest warrant must, on request and without unjustified delay, provide the executing state with information on the register of lawyers authorised to practise in one of the member bars of the National Union of Romanian Bars. The information may be sent in electronic format. The role of the lawyer in Romania is to assist and advise the lawyer from the executing state, for example by providing information that will enable the requested person to raise defences in the proceedings for execution of the EAW. The communication between the lawyers is direct and confidential.

In the case of outgoing EAWs, the Romanian authorities report the following problems:

- the length of the proceedings when cooperating with some Member States (for example, the Italian competent authorities sometimes act quickly and sometimes slowly);
- very rarely, problems with translation (e.g. in the case of Hungarian).

No further problems have been detected; moreover, the Romanian authorities claim that they solve every problem by means of direct communication with the competent body in the executing state.

Romania provides the judicial decision underlying the EAW and a translation. However, this has sometimes resulted in the executing state indicating that the information received was too extensive and making another request to provide a summary. Some Member States (e.g. the UK, formerly) have even requested that the EAW be reissued with the additional information included. This creates additional problems as every reissuing of the EAW will suspend the statute of limitations under Romanian procedural law.

The requested information is transmitted in the spirit of good collaboration. In a few cases more general information has been requested that is not connected to the EAW, such as information concerning certain aspects of the judicial system in Romania.

The cost of translating the necessary documents is an aspect that cannot be overlooked. Also, in some cases it has been necessary to consult with several authorities and institutions in order to provide answers to a series of questions or enquiries.

Many of the Romanian executing authorities use the form recommended in the handbook on how to issue and execute an EAW, which also includes information on the arrest. Further details are provided at the request of the executing authorities (e.g. the behaviour of the person during detention, for the purpose of conditional release).

Generally, Romanian executing courts indicate in their decision the amount of time the requested person has spent in detention.

### 3.4. Grounds for refusal

#### 3.4.1. *Refusal in the event of a potential risk of violation of fundamental rights in relation to detention*

As the executing authority, the Romanian courts have not asked for any information regarding detention conditions from other Member States.

As the issuing authority, the Romanian courts have frequently received enquiries about detention conditions from several Member States (including Ireland, the United Kingdom, Denmark, Sweden, Germany, the Netherlands, Italy and Austria). These requests can be detailed and frequently concern the size of prison cells and the activities offered to the inmates. In one case a judge from the UK even requested witness hearings of detainees on penitentiary conditions.

All such requests for information are passed on to the National Administration of Penitentiaries as it has sole competence to enforce sentences. In a few cases the Romanian responses resulted in refusals to surrender and some countries (e.g. Italy) have executed Romanian sentences themselves instead.

An assessment of current practice reveals delays in the executing procedure, for example because of the time it takes to process requests from national competent authorities, to translate and transmit requests, and for the executing authorities to analyse the information and render a decision.

In some specific (isolated) cases, additional inquiries have involved lengthy reports and detailed documents, further increasing the time needed to deal with the requests.

The Romanian executing authorities have not requested any information regarding detention conditions from other EU Member States, applying the principle of mutual trust. They have therefore not established a set of criteria for assessing the potential risk of a violation of fundamental rights in relation to detention conditions.



The Romanian authorities are of the opinion that if the requested person consents to the surrender it should, in principle, remove the need for the executing authority to request information on detention conditions from the issuing state. At the time when consent to the surrender is given, the requested person accepts the legal conditions entailed in the surrender. In any case, verifications can be carried out in respect of the requested person if they give informed consent.

In fact, under Romanian law surrendered persons may also be compensated for prison conditions by way of a reduced incarceration period. The Romanian authorities informed the experts that sometimes the individual concerned will make use of this provision, waiving transfer to a compliant penitentiary in exchange for a reduction in their sentence.

The Romanian authorities underlined that, in their experience as the issuing state, executing states have different practices: some Member States have a similar approach to Romania's, while others consider the right enshrined in Article 6 of the ECHR to be absolute, and consequently do not regard a simple waiver of rights by the requested person as having legal value.

As the issuing state, when Romania is asked for additional information on detention conditions and guarantees, they are provided by the National Administration of Penitentiaries (NAP), which by law is responsible for coordinating and overseeing penitentiary facilities.

When an EAW is issued during the investigation or trial stage, based on a preventive arrest warrant, the relevant assurances and guarantees are provided by the Service for the Coordination of the Centres for Remand and Preventive Arrest in the subdirectorate of the General Inspectorate of the Romanian Police (Ministry of Internal Affairs). They are provided in writing, at the request of either the issuing court or the central authority. The issuing authority or the central authority, depending on the case, is responsible for translation and transmission to the executing authority. The assurances provided by the NAP concern the designation of the facility in which the requested person is likely to be detained, based on the type of facility, the location of the person's domicile, their gender, their age, and the duration of the sentence.

Detailed information has been provided on the following aspects: the individual space, the possibility of spending time outside the cell, the programme of activities (educational, professional and other activities intended to facilitate social reintegration and rehabilitation), other privileges (phone calls, visits from family members or other persons), and medical information (if medical treatment for certain conditions is necessary).

No assurances have been provided via diplomatic channels.

In cases where the surrender procedures are suspended or even completely halted in application of the Aranyosi & Căldăraru two-step test on detention conditions, efforts are of course made to identify alternative solutions. In principle, the Romanian authorities choose to conduct consultations with the authorities from the executing state, with a view to possible recognition by the executing state and enforcement on its territory of the sentences imposed in Romania. In some Member States, it is the executing authorities that make the proposal for the initiation of the procedures provided for in Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. This has been the case with Spain, Germany, Belgium, Portugal, and Hungary, involving persons who have acquired resident (or equivalent) status (in a significant majority of cases, the transfer of the enforcement of the sentence had already been accepted). In other cases, it is the issuing Romanian authorities that take the initiative, the first step being to identify the connections the requested person has to the executing state and obtain an agreement in principle from the executing state. This solution sometimes presents impediments, for example if the requested person has no connections to the executing state, or the executing state invokes certain grounds for refusal pursuant to the FD on custodial sentences (e.g. in the case of judgments rendered in absentia), such that the executing state is not able to apply its provisions.

Furthermore, this solution is not applicable to EAWs issued for the purposes of investigation or trial. In such cases the Romanian authorities have encountered a practical impossibility of enforcement; however, they can consider continuing the procedures by means of another type of judicial cooperation (e.g., European investigation orders, MLAs).

### 3.4.2. *Refusal in the event of a judgment in absentia*

The Romanian criminal procedure allows for the investigation and trial to be conducted in absentia. Problems have been identified when filling in the updated forms, as well as when the necessity has arisen for additional clarification, especially considering the differences between various national judicial systems.

The Romanian executing authorities require information concerning the presence at the trial of the requested person in the event that the data already contained in the EAW are deemed insufficient. According to Romanian law, the execution of an EAW issued in absentia can be subordinated to obtaining an assurance from the issuing state that the requested person will be able to obtain and be present at a retrial of the case in the issuing state (Article 98(1), point (b), of Law No 302/2004). Generally, the deadlines in the FD are respected. No changes in the national legislation have been necessary, according to the Romanian authorities.

In application of the CJEU decision in the Ardic case, the Romanian courts have asked for clarification from the issuing authorities, either directly or with the assistance of the central authorities. The resources made available by the EJN and Eurojust have been used (e.g. the joint document).

From a Romanian point of view it is desirable that the information provided be as detailed as possible, in order to allow for a correct assessment of any grounds for refusal.

Generally, the information provided most frequently concerns the manner in which a subpoena or notification of judgment were accomplished, the presence of an attorney (appointed ex officio or chosen by the person concerned), and possible appeals. Considering the (sometimes rather substantial) differences between the legal systems in the various Member States, as well as the differences in terminology, it is generally deemed sufficient to receive explanations regarding the practical manner in which the requested person was made aware of the trial, so that the executing authority can gain a better understanding.

### 3.4.3. Other grounds for refusal

*Ne bis in idem* as a ground for refusal is rarely encountered in the practice of the Romanian executing authority and has not resulted in any practical difficulties. Nevertheless, in practice there have been cases concerning both *ne bis in idem* and double criminality issues, which have been resolved by exchanging information with the foreign authorities that issued the EAW. This has concerned mainly the evaluation of the common elements of the facts.

Generally, EAWs issued by the Romanian courts include a description of the acts as mentioned in either the sentencing judgment or the indictment. This description includes the following main elements: the conduct of the offender, their accountability, any mitigating or aggravating circumstances, and the offender's role in the crime (perpetrator, accomplice, instigator).

As the executing authorities, the Romanian judicial authorities request detailed information if the description provided in the EAW is deemed insufficient. In some cases a copy of the conviction judgments has even been requested, for a better understanding of the facts, the circumstances in which the acts were committed and the conduct of the perpetrator.

## 3.5. Statistics

Although Romania does not regularly collect statistical data, it managed to provide the team with information regarding the number of EAWs issued, the number of EAWs refused, and the number of surrenders carried out, when acting as the issuing state. Based on the statistics, Romania has not had a single case in which an EAW has been withdrawn. However, as the table shows, the number of EAWs issued is decreasing.

*Table 1 – When Romania acts as the issuing state*

2018			2019			2020		
Issued	Surrendered	Refused	Issued	Surrendered	Refused	Issued	Surrendered	Refused
1 067	639	127	1 373	655	110	755	689	91

In terms of EAWs refused by the executing state, in 2018 there were 127 cases, in 2019 there were 110 cases and in 2020 there were 91 cases. Table 2 below shows the reasons for refusal and the number of cases. As can be seen from the table, prison conditions are the most common ground for refusal to execute EAWs. However, in 2020, half the number of cases were refused for this reason than in 2018, which is a positive trend partly due to the fact that prison conditions in Romania have improved following the construction of a new prison. According to the action plan for the period 2020-2025 approved by Romanian government, the main objective is to improve detention conditions in prisons through investment in infrastructure, modernising 946 places and creating 7 849 new places to accommodate prisoners (210 places by the end of 2021, 445 places by the end of 2022, 1 275 places by the end of 2023, 4 019 places by the end of 2024, and 1 900 places by building two new prisons).

*Table 2 – Grounds for refusal given by the executing state*

	2018	2019	2020
Prison conditions	82	81	40
Undertaking to enforce the sentence Article 4(6) of FD	37	23	35
Lack of double criminality	3	2	9
Lack of retrial guarantee	2	-	4
Lapse of time	1	-	-
In absentia	-	4	-
Citizenship	-	-	3
Humanitarian reason	2	-	-

Table 3 below shows statistical data on EAWs issued by other Member States, including the number of requests, the number of surrenders based on EAWs, and the number of EAWs refused. The Romanian authorities also provided data concerning withdrawn cases, though they did not indicate the grounds for withdrawal since they do not consistently keep those statistics:

- 7 withdrawals in 2018;
- 18 withdrawals in 2019;
- 24 withdrawals in 2020.

*Table 3 – When Romania acts as the executing state*

2018			2019			2020		
Requests received	Surrendered	Refused	Requests received	Surrendered	Refused	Requests received	Surrendered	Refused
722	677	42	747	630	97	751	509	120

In addition to the number of refused cases, the Romanian authorities also provided the evaluation team with the reasons for refusal (see Table 4 below). The most common ground for refusal to execute an EAW is that the executing state has undertaken to enforce the sentence. Other reasons for refusal occur in minimal numbers, except for in 2019 when a lack of additional information was the ground for the refusal in 22 cases.

*Table 4 - Grounds for refusal*

	2018	2019	2020
Undertaking to enforce the sentence Article 4(6) of FD	23	40	86
EAW not issued in accordance with Article 8 of FD	3	-	2
Article 4(7) of FD	2	3	-
Lack of supplementary information	2	22	2
Lapse of time	2	1	-
Maximum penalty less than 12 months	1	-	-
In absentia	1	4	1
Humanitarian reasons	1	-	2
ECJ	-	4	-
Conflict of requests	-	2	2
Penalty less than 4 months	-	1	-
Article 4(2) of FD	-	-	1

### 3.6. Further challenges

The consequences of the CJEU's ruling in Aranyosi & Căldăraru seems to be the most important challenge for the Romanian authorities. They declared that as the executing authority, the Romanian courts have not asked for any information regarding detention conditions from other Member States.

As the issuing authority, however, the Romanian courts have frequently received enquiries about detention conditions from several Member States (including Ireland, the United Kingdom, Denmark, Sweden, Germany, the Netherlands and Italy). According to open-source information<sup>2</sup>, in 2019 Romania granted 205 guarantees regarding its prison conditions to the United Kingdom under EAW proceedings.. In the same year, Germany requested 163 guarantees from the Romanian authorities, Sweden requested 35, Denmark and Italy each requested 29, Austria requested 27, the Netherlands requested 12, and Belgium requested 4, whilst a further 31 guarantees were requested by other states.

Assurances and guarantees are provided by the National Administration of Penitentiaries, which by law is responsible for coordinating and overseeing penitentiary facilities. If the EAW is issued during the investigation or trial, on the basis of a preventive arrest warrant, the relevant assurances and guarantees are provided by the Service for the Coordination of the Centres for Remand and Preventive Arrest, which answers to the General Inspectorate of the Romanian Police (Ministry of Internal Affairs).

The assurances and guarantees are provided in writing, at the request of either the issuing court or the central authority. The issuing authority or the central authority, depending on the case, is responsible for translation and transmission to the executing authority. The assurances provided by the NAP concern the designation of the facility in which the requested person is likely to be detained, based on the type of facility, the location of the person's domicile, their gender, their age, and the duration of the sentence.

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<sup>2</sup> <https://www.statista.com/statistics/1126574/romania-guarantees-granted-during-eaw-proceedings-by-country/#statisticContainer>, accessed 31.10.2021.



Detailed information has been provided on the following aspects: the individual space, the possibility of spending time outside the cell, the programme of activities (educational, professional and other activities intended to facilitate social reintegration and rehabilitation), other privileges (phone calls, visits from family members or other persons), and medical information (if medical treatment for certain conditions is necessary).

No diplomatic assurances have been provided.

The aforementioned issues clearly prove that the question of prison conditions is of central interest to EU judges, an attitude that is surely encouraged by the defence lawyers and the defendants themselves. The Romanian authorities will therefore have to take steps to tackle this challenge.

The Romanian authorities declared, after assessing current practice, that there are **delays in the executing** procedure, for example because of the time that it takes to receive answers from issuing competent authorities, to **translate and transmit** requests, and for the executing authorities to **analyse the information and render a decision**. In some specific (isolated) cases, **additional enquiries have involved** lengthy reports and detailed documents, further increasing the time needed to answer. This suggests that there is a real need to resolve this problem, which hampers mutual trust and the application of mutual recognition instruments.

As regards carrying out checks on the possible risk of violation of fundamental rights in relation to detention conditions in the issuing state, the **Romanian authorities stated that if the requested person consents to the surrender it should, in principle, remove the need for the executing authority to request information** on detention conditions from the issuing state. At the time consent to the surrender is given, the requested person accepts the legal conditions entailed in the surrender. In any case, verifications can be carried out in respect of the requested person if they give informed consent. Due to the poor detention conditions, it is regular (and regulated) practice in Romania to shorten the length of the imprisonment. However, this practice seems to be of very limited or marginal importance, as the total reduction of the prison sentence that can be obtained in this way can be calculated in days rather than in months or years.

It is worth mentioning that, in Romania's experience as the issuing state, executing states have different practices: some Member States have a similar approach, while others consider that the right enshrined in Article 6 of the ECHR is absolute, and consequently a mere reduction in the requested person's penalty has no legal value.

In cases where **the surrender procedures are suspended or even completely halted**, efforts are of course made to identify alternative solutions. In principle, the Romanian authorities choose to conduct **consultations with the authorities from the executing state, with a view to possible recognition by the executing state and enforcement** on its territory of the sentences imposed in Romania. In some states, **it is the executing authorities that make the proposal for the initiation of the procedures** provided for in Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. This has been the case with Spain, Germany, Belgium, Portugal and Hungary in cases **involving persons who had acquired resident** (or equivalent) status (in a significant majority of cases, the transfer of the enforcement of the sentence had already been accepted). In other cases, it is the issuing Romanian authorities that take the initiative, the first step being to identify the connections the requested person has to the executing state and obtain an agreement in principle from the executing state. This solution sometimes presents **impediments**: for example, if the requested person has **no connections** to the executing state, or there are grounds for refusal under the FD on custodial sentences (e.g. in the case of judgments rendered in absentia), such that the executing state is not able to apply its provisions.

Furthermore, this solution is not applicable to EAWs issued for the purposes of investigation or trial. In such cases the Romanian authorities have encountered a practical impossibility of enforcement; however, they can consider the continuing the procedures by means of another type of judicial cooperation (e.g. European investigation orders, MLAs).

The other challenge **seems to be data aggregation and statistics at central level**, where there are many deficiencies and shortcomings. However, it should be much easier and less costly to streamline this practice than to resolve the first – and main – challenge.

In terms of practical and legal problems related to transit (Article 25 of the FD on the EAW), the Romanian authorities have not encountered any legal problems when acting as the issuing state. In some isolated cases, the information requested from Romania was not connected to the transit request but to the procedure for executing an EAW (namely, granting the transit was made conditional on assurances regarding detention conditions), thus exceeding the scope of Article 25 of the FD.

Practical issues that have been identified are very tight deadlines, problems contacting the competent authorities, and changes in flight schedules (e.g. due to weather conditions), resulting in escorts having to be rescheduled or redirected.

In some cases, granting of transit has been delayed or denied for logistical reasons relating to the transport of the person, the escort, etc.

Problems have been identified by Romanian police escorts in non-detention cases when the executing Member State orders the surrender of the requested person without taking any precautionary measures to ensure their availability, merely notifying the person of the date for surrender (to present themselves willingly). Furthermore, no measures are taken in order to verify that the surrendered person will be present to be taken over by the Romanian escort. Hence the surrender decision is not enforced at all and the provisions of Article 23 of the FD are not fully applied. In the majority of these cases the surrender procedure fails and the person in question is not found again. This practice has substantial financial implications for the issuing state as the escort travels to the executing state in vain.

When Romania receives a request for transit, the competent authority to rule is the Bucharest Court of Appeal. The number of requests is low and no problems have been identified.

The extensive case-law of the CJEU on the FD on the EAW has not led to any changes in Romanian national law transposing the FD on the EAW.

In some cases requesting states have provided assurances of surrender to the Romanian authorities but have not returned the persons concerned after the sentencing due to fundamental rights concerns related to prison conditions.

Identity issues have been a problem due to insufficient information on the identity of requested persons. Here biometric data and precise descriptions would help (see below for related problems in the application of the FD on custodial sentences).

For further issues, see also the section on the link between the FD on the EAW and the FD on custodial sentences.

### **3.7. Conclusions**

The EAW is a much-used instrument which has been well accepted by practitioners. Consequently it is handled as a matter of routine and does not pose significant problems. The execution of EAWs is treated as an emergency procedure under Romanian procedural law and therefore usually swiftly effected unless additional information is needed and not provided in time by the requesting state. Neither *ne bis in idem* nor the consequences of the Aranyosi & Căldăraru decision of the ECJ have been issues for the Romanian authorities as the executing authority.

When Romania is the issuing country, detention conditions have frequently been a reason for additional information requests from prospective executing countries, although the penitentiary system has been improved so that EU standards can be guaranteed for persons handed over to the Romanian authorities. This has resulted in delays in some cases due to the extent of the information requested from Romania.

From the Romanian point of view the consent of a surrendered person should waive any need for the executing authorities to request further information on detention conditions, the more so since Romanian law and practice provide for the reduction of prison terms if detention conditions are poor. However, it is questionable whether this understanding of Article 6 of the ECHR is reconcilable with the jurisdiction of the ECJ and ECHR. Prison conditions have also sometimes been cited as a ground for refusal to make good on the assurance given of surrender after a sentence in the issuing state.

Communication between the issuing and executing states can be a challenge when the foreign authorities do not make use of English or French as an alternative to the Romanian language.

Finally, a lack of sufficient criteria for establishing the identity of wanted persons named in incoming EAWs has been identified as a source of occasional problems.

That said, Romania has developed a practice of bilateral consultations with some of the Member States it has most often cooperated with on EAW issues in general, as well as on specific aspects of an impending EAW request. Another option to facilitate EAW procedures bilaterally is a memorandum of understanding, comparable to the one established with Italy regarding the transfer of sentenced persons.

#### **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**

Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('FD on custodial sentences') was transposed by Romania by means of Law No 300 of 15 November 2013 amending and supplementing Law No 302/2004 on international judicial cooperation in criminal matters, published in the Official Gazette of Romania on 11 December 2013.

Romanian law was changed in May 2021 to speed up national procedures, in light of the fact that central authorities did not have the actual case files and first had to request them, which prolonged the underlying processes.

The legal provisions concerning the transposition of the FD on custodial sentences entered into force 15 days from the publication date in the Official Gazette of the transposing law, i.e., on 26 December 2013.

The appropriate notification was submitted by Romania and appears in Council document 5762/14 of 6 February 2014.

#### **4.1. Authorities competent for the recognition of the judgment and enforcement of the sentence**

##### *4.1.1. Competent authorities when Romania acts as the executing state*

Romania has notified that its competent authority to receive the judgments and certificates issued by other European Union Member States is the Ministry of Justice. The Ministry of Justice, through a specialised directorate:

- receives the judgment and the certificate sent by the issuing state and translated into Romanian;
- receives requests from sentenced persons located in other Member States of the European Union to initiate the procedure to have the sentence enforced in Romania;
- requests from the issuing state, ex officio or at the request of the sentenced person, the judgment and the certificate;
- consults, ex officio or at the request of the competent court, with the competent authority of the issuing state;
- carries out regular checks and may request, when appropriate:
  - (i) completion or correction of the certificate;
  - (ii) the statement of the sentenced person;
  - (iii) the notification of the sentenced person;
  - (iv) when the punishment applied is a measure involving deprivation of liberty, a copy of any report or of any forensic findings or of any other medical documents attesting to the physical and mental condition of the person, the treatment undergone by that person on the territory of the issuing state and any recommendations for further treatment in Romania;
- suspends the transmission to the competent Romanian court of the judgment and of the certificate, when the certificate is incomplete or does not correspond to the judgment or when one of the documents referred to in points (iii) and (iv) above is missing;
- returns the judgment and the certificate in the event that the issuing state has not transmitted the documents referred to in the previous point within a 60-day period;

- checks the domicile of the sentenced person, in order to determine the competent executing authority;
- has an authorised translator translate the certificate and, where appropriate, the Romanian judgment, as well as any other information;
- requests from the executing state, prior to or no later than the date of transmission of the certificate, the legal provisions on early or conditional release, as well as information on their application in the case of the penalty to which the person has been sentenced;
- requests, ex officio or at the request of the competent Romanian judicial authority, the withdrawal of the certificate transmitted to the executing state;
- may refuse to initiate the procedure for the recognition of the foreign judgment, when, on the date of receipt thereof, there are less than six months remaining to be executed of the penalty applied to the sentenced person, unless the sentenced person is on the territory of Romania;
- informs the competent authority of the issuing state of the actions taken;
- communicates, at the express request of the issuing state, information on the conditional release of the sentenced person;
- communicates to the sentenced person the decision concerning the transmission of the judgment and of the certificate;
- communicates to the sentenced person the decision of the executing state concerning the enforcement of the judgment;
- informs the executing state of the amnesty or pardon granted after the transfer of the sentenced person.

The authorities competent to recognise and enforce sentences or other measures involving deprivation of liberty are the courts of appeal within whose jurisdiction the sentenced person lives or is permanently resident, which is fully in line with the FD on custodial sentences. There are 15 courts of appeal in Romania.

The authority competent to receive requests for provisional arrest (Article 14 of the FD on custodial sentences) is the prosecutor's office of the Bucharest Court of Appeal.

The authority competent to decide on requests for transit (Article 59(4) of Law No 302/2004) is the Ministry of Justice.



### Other authorities involved in the proceedings

The International Police Cooperation Centre within the General Inspectorate of the Romanian Police is responsible for:

- (a) carrying out the transfer of the sentenced person, under escort, from Romania to the executing state;
- (b) informing the specialised directorate within the Ministry of Justice, the competent court of appeal and the executing court of the transfer of the sentenced person from Romania to the executing state;
- (c) at the request of the court responsible for settling an extraordinary appeal, ensuring that the transferred person is brought, under escort, from the executing state to Romania, unless the duty to bring the sentenced person to the country falls to the executing state.

The National Administration of Penitentiaries is responsible for:

- (a) informing sentenced persons in Romanian penitentiaries of their right to request enforcement of the penalty in the executing state;
- (b) ensuring the taking over, once transferred by the police escort, of the sentenced person;
- (c) after the transferred sentenced person arrives at the penitentiary, informing the competent court of appeal and the specialised directorate within the Ministry of Justice:
  - (i) of the place of detention, enforcement regime established and steps taken, if any;
  - (ii) if the sentenced person has escaped and it has been impossible to apprehend them;
- (d) on the date of completion of the prison sentence, on the date on which the time limit decided by the court for conditional release expires, or on any other date decided by the competent judicial bodies in situations especially provided for in law, immediately notifying the Ministry of Justice and the General Inspectorate of the Border Police of the release of sentenced persons transferred to Romania. The General Inspectorate of the Border Police informs the specialised directorate within the Ministry of Justice whether, within the 45-day time limit, the released person has left the territory of Romania;

- (a) in the event of conditional release or of pardon of the remainder of the penalty to be executed, informing the specialised directorate within the Ministry of Justice of the number of days remaining to be executed.

#### 4.1.2. Procedure when Romania acts as the executing state

The Romanian authorities stated that both issuing and executing a certificate involve a mixed procedure. Responsibility for the administrative aspect of the procedure lies mainly with the Ministry of Justice as the central authority and, in certain respects, with the Centre for International Police Cooperation and the National Administration of Penitentiaries. When it has established that the issuing state has sent the judgment and the certificate, as well as, where appropriate, the additional information, the Ministry of Justice forwards them to the public prosecutor's office attached to the court of appeal in the district in which the sentenced person resides, with a view to referral to the court of appeal. The referral to the court is made no later than 20 days from the date of registration of the case with the public prosecutor's office.

The prosecutor, after receiving the file, checks whether:

- enforcement of the judgment transmitted by the issuing state on the territory of Romania would be contrary to the principle of *ne bis in idem*;
- the sentenced person is being prosecuted under criminal law in Romania for the same offence for which the judgment transmitted by the issuing state has been rendered;
- the sentenced person is being prosecuted under criminal law in Romania for offences other than those for which the judgment transmitted by the issuing state has been rendered and, where necessary, informs the prosecutor conducting or supervising the criminal prosecution or the court before which the case is pending of the effects of the specialty rule;
- any of the grounds for non-recognition or for non-execution are applicable.

The president of the court or the delegated judge sets a trial date, which must be no later than 10 days from the date of registration of the case with the court. The trial is presided over by a single judge. The sentenced person is not subpoenaed, but attendance by the prosecutor is mandatory.

The aim of the procedure is to verify the conditions for recognition and enforcement and, if they are met, to enforce the judgment transmitted by the issuing state. Civil provisions, provisions relating to pecuniary penalties, precautionary measures or legal expenses, and any provisions of the judgment transmitted by the issuing state other than those relating to the enforcement of the prison sentence or of the measure involving deprivation of liberty, are not subject to this procedure. The court examines the foreign judgment, checks the file and, based on its findings, either approves the request, and consequently the enforcement of the judgment (either as it was imposed or adapted), or refuses recognition.

The sentence may be challenged by appeal, within 10 days, by the prosecutor or by the sentenced person. For the prosecutor, the 10-day period starts from the date of the ruling. For the sentenced person, it starts from the date on which the copy of the enacting terms is communicated. The file is submitted to the High Court of Cassation and Justice within three days, and the appeal is heard within 10 days, in the Council Chamber. The sentenced person is not summoned, but the presence of the prosecutor is mandatory.

The total length of the procedure is no more than 30 days following registration of the case on the dockets of the court. When it is necessary to request the consent of the issuing state regarding the specialty principle, this timeframe is 60 days.

Romania has declared that it will not apply Article 7(1) of the FD on custodial sentences. This means that Romania does not apply the exceptions from the double criminality check, as provided for in that article. The double criminality check must therefore be carried out in all cases, irrespective of the type of offence in question.

The certificate and the judgment must be accompanied by a translation into Romanian, unlike in the EAW procedure, where the Romanian authorities also accept English or French.

The Romanian court will recognise and execute the court decision delivered by the issuing state, provided that the following conditions are met:

- the decision is final and enforceable;
- the offence for which the sentence was imposed would have amounted, if committed on Romanian territory, to an offence and its perpetrator would have been held accountable. If the sentence was imposed for more than one offence, the conditions will be examined for each and every offence;
- the sentenced person is a Romanian national;
- the sentenced person agrees to serve the sentence in Romania. Agreement is not necessary when the sentenced person is a Romanian national and they reside on Romanian territory or, although not residing on Romanian territory, they will be removed to Romania. If necessary, in the light of the age or the physical or mental health of the sentenced person, agreement may be expressed by their representative;
- none of the reasons for non-recognition and non-execution applies.

The court decision delivered by the issuing state may also be recognised and executed when the sentenced person is not a Romanian national, but lives in Romania and has had continuous and legal residence on Romanian territory for a period of at least five years and cannot lose the right of permanent residence in Romania. The consent of the sentenced person is mandatory.

#### *4.1.3. Competent authorities when Romania acts as the issuing state*

The Romanian authority competent to forward the certificate and the judgment to another Member State of the European Union used to be the Ministry of Justice, provided that the judgment was definitely rendered by the competent court.

After the amendment of Act 302/2004, which came into force on March 26, 2021, most of the competence of the Ministry of Justice was transferred to the courts. Thus, when Romania is the issuing state, in matters relating to the transfer of sentenced persons to another Member State, the Ministry of Justice, through the specialised directorate, is competent to:

- receive the executing state's request to initiate the procedure for transmitting the judgment and the certificate;
- provide assistance to the Romanian issuing authority in identifying the authority competent to receive the certificate
- support the Romanian issuing judicial authorities in the transmission of the certificate and of any additional information and clarifications, in case direct contact is not possible;

The International Police Cooperation Centre within the General Inspectorate of the Romanian Police is responsible for:

- carrying out the transfer of the sentenced person, under escort, from Romania to the executing state;
- informing the specialised directorate within the Ministry of Justice, the competent court of appeal and the executing court of the transfer of the sentenced person from Romania to the executing state;
- at the request of the court responsible for settling an extraordinary appeal, ensuring that the transferred person is brought, under escort, from the executing state to Romania, unless the duty to bring the sentenced person to the country falls to the executing state.

The National Administration of Penitentiaries is responsible for:

- informing sentenced persons in Romanian penitentiaries of their right to request enforcement of the penalty in the executing state;
- ensuring the taking over, once transferred by the police escort, of the sentenced person;
- after the transferred sentenced person arrives at the penitentiary, informing the competent court of appeal and the specialised directorate within the Ministry of Justice:
  - (i) of the place of detention, enforcement regime established and steps taken, if any;
  - (ii) if the sentenced person has escaped and it has been impossible to apprehend them;

- on the date of completion of the prison sentence, on the date on which the time limit decided by the court for conditional release expires, or on any other date decided by the competent judicial bodies in situations especially provided for in law, immediately notifying the Ministry of Justice and the General Inspectorate of the Border Police of the release of sentenced persons transferred to Romania. The General Inspectorate of the Border Police informs the specialised directorate within the Ministry of Justice whether, within the 45-day time limit, the released person has left the territory of Romania;
- in the event of conditional release or of pardon of the remainder of the penalty to be executed, informing the specialised directorate within the Ministry of Justice of the number of days remaining to be executed.

Direct contact takes place between the central authority and the issuing authority in the issuing state at the administrative stage, and between the issuing and executing (judicial) authorities for the purposes of carrying out consultations, providing additional information or clarification, notifying the sentenced person of the decision on recognition and enforcement, and providing the issuing authority with information on the execution of the request.

Sometimes, the support of the central authority is required. In some cases, the assistance of Eurojust and the EJM is requested. This is useful as a means both of facilitating and streamlining communication, and of obtaining the information necessary to render a decision.

At the outset of the Ministry of Justice was the only ‘contact point’ for issuing and forwarding the certificate and judgment under the FD on custodial sentences, which would seem to be a good practice in such a large jurisdiction as Romania, and bearing in mind the complex nature of the Romanian justice system. Whereas, the jurisdiction and frequency of application of the FD on custodial sentences is not so great that the obligatory participation of the Ministry of Justice in the proceedings should slow them down, the legislation was changed in 2021 to speed up the procedure and the competence was shifted to the court.

#### *4.1.4. Procedure when Romania acts as the issuing state*

Again, issuing and executing a certificate both involve a mixed procedure. Responsibility for the administrative aspect of the procedure lies mainly with the Ministry of Justice as the central authority and, in certain respects, with the Centre for International Police Cooperation and the National Administration of Penitentiaries.

The procedure for transferring a sentenced person and the sentence itself abroad is uniform in Romania, in the sense that the same rules apply to transfer on the basis of the 1983 Council of Europe Convention or other instrument, or on the basis of reciprocity, as to transfer on the basis of the FD on custodial sentences, unless the FD provides for different solutions. The differences concern, for example, the consent of the sentenced person and the transfer of a sentence when the sentenced person is not in Romania, which are clearly provided for in the FD.

The transfer procedure under the FD on custodial sentences may be initiated either at the request of the person concerned, by the prosecutor or ex officio.

According to Law No 302/2004, whenever Romania is the issuing state and the sentenced person is on the territory of another Member State, competence to request that this state adopt a preventive measure and recognise and enforce the Romanian decision lies with the executing court. The same rule applies when the sentenced person is on Romanian territory. The decision is not subject to judicial review. The enforcement of a custodial sentence or measure involving deprivation of liberty imposed by a decision recognised by the competent authority of the executing state is governed by the law of that state. Amnesty or pardon may be granted either by Romania or by the executing state.

Physical transfer of the sentenced person from Romania to the executing state, when the person is serving a sentence in a prison in Romania, takes place on a date mutually agreed upon between the Centre for International Police Cooperation within the General Inspectorate of the Romanian Police and the competent authority of the executing state, no more than 30 days after the decision of the competent authority of the executing state became final.

Even when a transfer procedure has been initiated as provided for in the FD on custodial sentences, when Romania acts as the issuing state, enforcement of the sentence or measure involving deprivation of liberty, or the outstanding period thereof still to be served, once again falls under the competence of the Romanian court whenever:

- the certificate and the decision are withdrawn before the executing state enforces the sentence or the measure involving deprivation of liberty;
- the executing state refuses to recognise and to enforce the custodial sentence or the measure involving deprivation of liberty imposed by the Romanian court;
- the executing state expressly waives its right of enforcement;
- the executing state indicates that it can no longer enforce the custodial sentence or the measure involving deprivation of liberty because the sentenced person has escaped and cannot be found on its territory;
- the executing state indicates that it can no longer enforce the custodial sentence or measure because the sentenced person cannot be found on its territory.

In the case of a transfer of a foreign national, the judge responsible for the supervision of the enforcement of custodial sentences assigned to the penitentiary where the sentenced person is detained decides by a reasoned interlocutory judgment whether the procedure for the transfer of the sentenced person can be initiated. The interlocutory judgment must be communicated within two days of the ruling. The sentenced person may file an objection to the interlocutory judgment with the court of first instance in the district in which the penitentiary is located, within three days of the communication of the interlocutory judgment. The case must be submitted to the competent court within three days, and the objection must be heard within 10 days, in the Council Chamber. The sentenced person is summoned, and the presence of the prosecutor is mandatory. The judgment of the court of first instance is final.



The sentenced person has the right to an attorney and to consular assistance. When Romania is the executing state, the competent court of appeal appoints a lawyer ex officio to represent the sentenced person. If the sentenced person has chosen a lawyer, that lawyer will ensure representation before the court. When Romania is the issuing state, the sentenced person will be heard in the presence of a lawyer.

#### 4.1.5 Exchange of information

As a positive example of effective cooperation, the Romanian authorities emphasised the cooperation with the Kingdom of Spain and the Kingdom of Sweden. Information is exchanged with these countries during prior consultations in order to avoid later difficulties (in relation to double criminality, soft penalties, conditional release, etc.).

Romania has a bilateral treaty with Norway and a bilateral convention with the Bulgarian prosecutors in Varna. In 2017 the Romanian authorities held a three-day meeting with the Bulgarian authorities at which they discussed ways of improving mutual cooperation in criminal matters. The practitioners noted that cooperation between the Romanian and Bulgarian authorities has improved significantly. Several meetings have also been held with Austrian and French counterparts.

#### **4.2. Documents required for recognising the judgment and enforcing the sentence**

The original or a certified duplicate of the written judgment, together with a certificate that has been filled out completely, are preconditions for recognising the judgment and enforcing the sentence. According to the amended Article 14(1) of Law No 302/2004 on international cooperation in criminal matters, the documents enclosed with the request must be accompanied by a translation into Romanian or into English or French. If the documents are not translated into a language other than Romanian, the competent body takes measures to have them translated. However, certificates should be translated into Romanian.

The representatives of Romanian authorities reported that no difficulties have arisen in this context.

As the executing state, Romania reports that competent bodies receive complete translations of the judgment, despite the provisions of Article 23(2) and (3) of the FD. From their point of view, this practice is desirable for many reasons.

At the same time, in the role of issuing state, Romania complies with its obligations under the FD regarding the form, content and translation of the judgment, and additional documents are not needed on a regular basis.

### 4.3. Criteria for assessing the facilitation of social rehabilitation

Bearing in mind that there is a Romanian diaspora of some three million citizens living abroad, with especially large communities in Italy and Spain, this is a very important issue. In addition, many Romanian nationals now have dual citizenship (possible since 1996). All of this results in a large number of requests addressed to Romania in application of the FD on custodial sentences.

Usually the prospects for social rehabilitation will be judged based on an assessment of the person's connections to the executing state, i.e. their social, professional and family ties. This information can be obtained from the issuing state as well as from the sentenced person.

Similarly, if Romania is the executing state and the issuing state is not in possession of such information, it can either request additional information from the issuing authority or instigate a social inquiry by the Romanian authorities. Due to citizenship rules, the situation of Moldovan nationals in possession of dual citizenship with a purely formal link to Romania can be problematic.

#### *4.3.1. Exchange of information between the issuing state and executing state*

Currently, in most cases the information in the certificate is sufficient in order for a decision to be taken. There are certain differences between Member States in respect of the level of detail provided in the certificate. Some states prefer to hold prior consultations when they have not managed to establish that the sentenced person has social or family connections. In practice, the Ministry of Justice contacts the local police authorities, who gather information to help evaluate the possibilities of social reintegration. On the basis of this answer, the issuing state decides whether it will forward the certificate or not. Some Romanian courts have asked for the assistance of the Romanian diplomatic missions in providing information about a certain Romanian national located on the territory of another Member State (very few cases).

The Romanian authority (court of appeal) is obliged to inform the issuing state:

- of the practical impossibility of enforcing the custodial sentence or the measure involving deprivation of liberty;
- when the requested person cannot be found;
- when the sentenced person has escaped from the penitentiary where the penalty was being enforced;
- when an amnesty or pardon has been applied in accordance with Romanian law;
- of the details of the conditional release and the date on which the term of the penalty expires.

The court of enforcement also has a duty regarding consultation and exchange of information with the competent authorities of the other Member States whenever necessary. Consultation may occur regardless of whether initiation of the procedure to transmit the court decision and the certificate has been requested by the sentenced person or by the state of enforcement.

The Romanian authorities (=the Ministry of Justice and court) consults with the authorities from the executing state before the transmission of the certificate when Article 4(3) of the FD on custodial sentences is applicable and in cases where the person is not a national of the executing state but, for example, a Romanian national or a national of another Member State and there is little or no information on their residence in and connection to the executing state.

In the case of partial recognition and adaptation of the sentence in the executing state, the information is promptly transmitted to the court of enforcement. In such circumstances the court of enforcement may approve the transfer of the sentenced person, or refuse the transfer.

As the issuing authority, the Romanian authorities have in isolated cases been presented with an opinion by the executing state based on Article 4(4) and (5) of the FD. However, in the majority of cases, these consultations do take place prior to the transmission of the decision and certificate.

Before deciding on a possible withdrawal of the certificate, the Ministry of Justice used to consult with the Romanian court that imposed the sentence (where the sentenced person is located in the executing state).

The number of transfers from Romania is low, and no subsequent information after the transfer is received.

There are some Member States that require detailed information on a regular basis, and the information referred to in Article 21 is promptly provided by the Ministry of Justice, usually after consultations with the National Administration of Penitentiaries.

When Romania acted as the executing State, requests for the supplementary information concerned, e.g.:

- the legal classification and designation of the offence (since the legal classification differs among the Member States, and what is a criminal offence in one Member State may be only a misdemeanour, e.g. petty theft, in another Member State);
- conditional release conditions (parole);
- cases of cumulative sentences, since the information provided concerning prior sentences was insufficient to verify double criminality concerning the offence for which the sentences were handed down or the statute of limitations for each offence. In such situations, the Romanian authorities need to have all details of the judgment, not just those listed in the certificate. In this respect, Italy was mentioned as the Member State with which Romania has the most frequent communication regarding the EAW.
- cases of life imprisonment (in some Member States, such as Germany, conditional release is more lenient than in Romania in the case of a life sentence).

As regards practical arrangements on a bilateral basis with the other Member States, ways of facilitating the application of the FD on custodial sentences have been discussed bilaterally, and have resulted in the establishment of good practices set out in the form of guidelines. Romania and Italy also have come to an informal understanding on ways to facilitate mutual cooperation.

#### *4.3.2. Opinion and notification of the sentenced person*

Romania strictly implements the provisions of the FD on custodial sentences as regards the opinion/consent of the sentenced person. According to Romania's legal framework and in Romanian practice, the purpose of this FD, which is the social reintegration and rehabilitation of the prisoner, is treated with the utmost seriousness. This factor is considered a prerequisite and a key element of the transfer procedure. Logically, its absence should be deemed a general ground for refusal. This approach was confirmed by the Romanian magistrates during the on-site visit. This attitude is fully in line with the purpose of 'facilitating the social rehabilitation of the sentenced person' as set out in Article 3(1) of the FD on custodial sentences. It should be noted as a best practice.

As provided for in Law No 302/2004, sentenced persons must be informed by the administration of the detention facility that they have the right to request transfer to the state of which they are a national or resident.

If a sentenced person chooses to exercise their right to file for a transfer, the judge responsible for supervising the enforcement of the measures involving deprivation of liberty who is assigned to the penitentiary where the sentenced person is located will conduct a hearing of the sentenced person, in the presence of an attorney (chosen or appointed ex officio). A representative of the diplomatic mission of the state of which the sentenced person is a national has the right to attend, and the services of an interpreter will also be provided if needed.

The opinion is given by the sentenced person verbally before the judge, and the result of the hearing is produced in written form as minutes. In practice, in some cases, sentenced persons also present written opinions, including in petitions from their attorney. The opinion of the sentenced person is always registered. It is taken into consideration along with the other factual elements of the case, and with reference to the legal requirements, in order to decide whether the conditions for forwarding the certificate and the decision are met.

Since in many cases sentenced persons submit the request for transfer to serve a sentence in Romania to the Romanian diplomatic representations, the Romanian authorities have compiled a short information sheet about aspects of Romanian law that might affect the person after being transferred (e.g. different legal regulations concerning conditional release). This information sheet has been made available to the Romanian diplomatic representations mainly to assist them in providing the requesting person with helpful information.

Regardless of whether Romania is the issuing or the executing state, the sentenced person is notified of the decision and informed of their right to appeal within the legal deadline. The Ministry of Justice has drafted a general information sheet which has been distributed, via the Ministry of Foreign Affairs, to the diplomatic missions of Romania. In the event that the diplomatic personnel receive a request for transfer to Romania from a Romanian national sentenced in another Member State, they will hand over the information sheet so that the sentenced person can be fully informed of the procedure and legal consequences of the transfer.

Some executing Member States request that sentenced persons be provided with certain information sheets and sometimes copies of the decisions on the transfer request. They are sent to the administration of the detention facility and the sentenced person is notified by means of a written proof of delivery.

A legal remedy against such a decision exists, both when Romania is the issuing state and when it is the executing state.

In the case of a transfer of a foreign national, when Romania is the issuing state the judge responsible for supervision of the enforcement of custodial sentences who is assigned to the penitentiary where the sentenced person is detained decides by a reasoned interlocutory judgment whether the procedure for the transfer of the sentenced person can be initiated. The interlocutory judgment must be communicated within two days of the ruling.

The sentenced person may file an objection to the interlocutory judgment with the court of first instance in the district in which the penitentiary is located, within three days of the communication of the interlocutory judgment. The case must be submitted to the competent court within three days, and the objection must be heard within 10 days, in the Council Chamber. The sentenced person is summoned, and the presence of the prosecutor is mandatory. The judgment of the court of first instance is final.

The sentenced person has the right to an attorney and to consular assistance. When Romania is the executing state, the competent court of appeal appoints a lawyer *ex officio* to represent the sentenced person. If the sentenced person has chosen a lawyer, that lawyer will ensure representation before the court. When Romania is the issuing state, the sentenced person will be heard in the presence of a lawyer.

#### **4.4. Adaptation of the sentence**

In general, the Romanian court acting as the executing body will examine the foreign court decision, check the documents and proceedings in the file and, based on its findings, issue a judgment ordering the enforcement in Romania of the sentence imposed by the court of the issuing state. However, if the nature or length of the sentence imposed by the foreign court does not comply with the nature or length of the sentence provided for in Romanian criminal law for similar offences, the Romanian court will adapt, in its judgment, the sentence imposed by the court of the issuing state. In such cases the court will adjust the sentence imposed by the decision delivered by the issuing state whenever:

- the nature of the sentence does not comply, in name or status, with the sentences provided for in Romanian criminal law;



- the length of the sentence exceeds the specific maximum sentence provided for in Romanian criminal law for the same offence or the general maximum term of imprisonment as provided for in Romanian criminal law, or the length of the penalty imposed in the case of concurrent offences exceeds the total length of the sentences applicable for concurrent offences or the general maximum term of imprisonment permitted under Romanian criminal law. The court of law adjusting the sentence imposed by the court of the issuing state will reduce the sentence to the maximum limit permitted under Romanian criminal law for similar offences.

The adapted sentence must correspond, insofar as is practicably possible, in nature and length to the sentence applied by the issuing state and must not worsen the situation of the sentenced person. The sentence imposed in the issuing state may not be converted into a financial penalty.

The aforementioned judgment must be drawn up within 10 days of the ruling and communicated to the sentenced person directly or by means of the authority appointed by the issuing state. An appeal may be submitted against the judgment within 10 days, either by the prosecutor or by the sentenced person. For the prosecutor, the 10-day period starts from the date of the ruling. For the sentenced person, it starts from the service of a copy of the operative part. The case must be forwarded to the appeal court within three days, and the appeal must be tried within 10 days, in the Council Chamber. The sentenced person is not subpoenaed, but attendance by the prosecutor is mandatory.

Romania has dealt with some adaptation cases, although not a great many. Usually, when Romania is the executing state, the court consults with the authorities from the issuing state, as a preliminary step, before adapting the sentence, asking the issuing state whether it agrees to the adaptation or it will withdraw the certificate. Preliminary consultations are the rule when Romania is the issuing state as well.

The main consequence when adaptation does not prove satisfactory is refusal of the transfer.

According to recent changes in Law No 302/2004, in cases concerning transfers of sentenced persons from Romania, and especially in cases when prior consultations did not take place and the adapted sentence is disproportionate compared to the sentence imposed in Romania, the judge delegated to supervise the deprivation of liberty may determine that the adapted sentence will not serve the purpose for which it was imposed, and therefore the transfer will not take place. The adaptation can also be deemed disproportionate when the resulting sentence is too lenient. No cases of this kind have been encountered since the new legal provision entered into force.

There have been cases where the certificate has been withdrawn, on the basis that the sentence would be too lenient following adaptation (very few cases, however, none of which have been recent). Most of the time consultations regarding adaptation are held prior to rendering a decision based on the certificate, which prevents such situations from arising.

When evaluating the notion of a similar offence, the Romanian courts consider the description of the act, as set out in the certificate and the judgment, and consequently categorise the act under Romanian law.

When Romania is the executing state, after the adaptation decision is rendered the sentenced person is notified, so that they have the opportunity to be informed of the possible adaptation of the sentence and to express their position (they are entitled to file an appeal). In the event of the transfer of a sentenced person from Romania, the sentenced person is notified of the decision of the executing state by the delegated judge or the penitentiary administration.

There is a legal obligation for the Romanian authorities to inform the sentenced person of the measures taken as part of the procedure.

#### 4.5. Grounds for non-recognition or non-enforcement

The grounds for refusal when Romania is the executing state are provided for in Article 163 of Law No 302/2004. It stipulates as follows:

A judgment rendered in another Member State of the European Union shall not be recognised and enforced in Romania, when:

- (a) the person has received a final conviction in Romania for the same criminal acts. If the foreign judgment has been rendered for another criminal act as well, the court may order partial recognition thereof, if the other conditions are met;
- (b) the person has been convicted in another state for the same criminal acts, and the foreign judgment rendered in that state has been previously recognised on the territory of Romania;
- (c) the sentenced person enjoys immunity from criminal jurisdiction on the territory of Romania;
- (d) the penalty has been applied to a person who is not liable under Romanian criminal law;
- (e) the penalty consists of a measure of psychiatric or medical care that cannot be executed in Romania or, where appropriate, provides for a medical or therapeutic treatment which cannot be overseen in Romania, according to the national legal or healthcare system;
- (f) where, according to Romanian criminal law, the enforcement of the penalty is time-barred;
- (g) when the sentenced person was not present at the trial in person, unless the issuing state reports that, in compliance with its legislation:
  - (i) the sentenced person was notified in due time by a written summons, delivered personally or by telephone, fax, email or any other means, setting out the day, month, year and place of the hearing and the legal consequences if the person fails to appear in court; or
  - (ii) the person, being aware of the day, month, year and place of the hearing, mandated a lawyer of their choice or appointed ex officio to provide representation, and the legal representation before the court was actually carried out by that lawyer; or

- (iii) after being personally served with the judgment of conviction and after being informed that the judgment is subject to an appeal, upon which the competent court may review the challenged judgment, including on the basis of new evidence, and that the judgment of conviction may be annulled following the appeal, the proceedings for which the sentenced person may participate in person, the sentenced person has either expressly waived the right of appeal or has not lodged an appeal within the period prescribed by law.

Also, a judgment rendered in another Member State of the European Union will not be recognised or, if recognised, will not be enforced, when, under Romanian law, an amnesty or pardon has been granted or the offence has been decriminalised, or in any other cases provided for in law.

On a case-by-case basis, taking into account the specific circumstances of the case and after consultation with the competent authority of the issuing state, the court may refuse recognition and enforcement of the foreign judgment transmitted by the issuing state, if:

- (a) the person is being investigated on the territory of Romania for the same criminal act for which they have been convicted abroad. Where the judgment has also been rendered for other criminal acts, the court may order partial recognition of the judgment, if the other conditions are met;
- (b) the specialty principle applies, when the issuing state has rejected the request for consent.

The grounds for refusal most frequently encountered are connected to judgments rendered in absentia. There have been isolated cases when the person was not found on the territory of Romania, or no connections (family, social, etc.) between the sentenced person and Romania were identified, or the identity of the person could not be established with certainty. In this respect proper identification by the issuing authorities and the inclusion of proper descriptions or even biometric data are of paramount importance, as shown by one case of mistaken identities involving twins. Aliases and inaccurate transliterations of Romanian names have also been a problem in this regard.

In some cases requests have been refused by the Romanian side when there were irregularities in the certificate and additional clarifications were not given despite having been requested. These cases, although not expressly mentioned as grounds for refusal, stem from the necessity that the conditions for issuing and sending the certificate be met.

When a national of another Member State serving a sentence in Romania requests to be transferred, the procedure will not be initiated if the postponement or interruption of the enforcement of the prison sentence or the removal or alteration of the penalty have been ordered. Furthermore, the procedure will not be initiated if the sentenced person has evaded enforcement of the penalty by leaving the country, and an extradition procedure or the EAW has been used for the enforcement of the judgment.

When Romania is the issuing state, a request by the sentenced person to initiate the abovementioned procedure does not bring about an obligation to send to the executing state the judgment and the certificate of the executing state, when:

- (a) following consultations, it is deemed, either by the executing state or by the competent Romanian authorities, that enforcement of the penalty in the executing state would not serve the purpose of facilitating the social rehabilitation and social reintegration of the sentenced person; or
- (b) by the date of initiation of the procedure, the sentenced person has not paid the criminal fine, the judicial fine, the legal expenses advanced by the state, those due to the parties and the civil compensation; or
- (c) the sentenced person has less than six months to serve in prison or could be released on parole before the enforcement of the full penalty within the next six months; or
- (d) the judgment is not final or the sentenced person has exercised an extraordinary appeal against the judgment; or
- (e) the sentenced person is being investigated in another criminal case; or
- (f) the person has been sentenced for serious offences which had a deeply negative effect on public opinion on the territory of Romania; or
- (g) the maximum penalty provided for in the law of the issuing state is less than the maximum penalty provided for in Romanian criminal law.

By way of exception to the cases indicated above in points (a), (b), (c), (f) and (g), and also in cases when the sentenced person has been extradited from/surrendered by another state, a request for initiation of the procedure made by the sentenced person entails an obligation on the Romanian authorities to send to the executing state the judgment and the certificate, when the sentenced person was previously surrendered based on an EAW issued by a Romanian court, and subject to the return of the person to the executing state in the event of conviction.

If the executing state informs the Romanian authorities that it shall recognize or that it recognized in part the court decision given in Romania or that it shall adapt or adapted the penalty, this information shall be promptly transmitted to the court of enforcement.

The judge responsible for supervision of the enforcement of custodial sentences rules by reasoned interlocutory judgment within five days of receiving the notification from the Ministry of Justice and may order one of the following:

- (a) approval of the transfer, where the judge deems that the partial recognition or adaptation of the sentence in the executing state is of such nature as to serve the purpose for which the sentence was imposed;
- (b) refusal of the transfer, where the judge deems that the partial recognition or adaptation of the sentence in the executing state is not of such nature as to serve the purpose for which the sentence was imposed or if the sentence to be served would be manifestly inferior to that determined in Romania.

Regarding ‘in absentia’ sentences, in many cases the Romanian authorities have noticed that the form has not been filled in its updated version so as to include the amendments made by FD 2009/299/JHA. These issues have been solved by subsequent communication.

Similarly, as in the case of the EAW, difficulties arise owing to differences between the various legal systems. In most cases, in the event that the judgment has been rendered in the absence of the sentenced person, the aspects most frequently evaluated are: the manner of notification (both of the subpoena and of the decision), the assistance of an attorney, and/or the availability of an appeal.

Difficulties have been encountered in respect of foreign decisions imposing psychiatric care, as Romanian law does not provide for such measures and thus, they cannot be recognised. Following consultations, if the alternatives are not found to be satisfactory, the solution is either to withdraw the certificate, or, if the consultations took place prior to the initiation of procedure, not to send the certificate.

Procedurally, when measures of psychiatric care are imposed by authorities from another Member State, Romania is asked if specific treatments can be provided (medication, counselling, different types of therapies). The Ministry of Justice consults with the competent institutions (the Ministry of Health) about the facility where the person will be treated and if the specific treatment is available. Sometimes, alternatives to the care measures are available. Hence consultations are very important in these cases.

The Romanian authorities have not encountered any difficulties as the issuing state.

#### **4.6. Partial recognition**

Romania had some cases where they decided to partially recognise judgments. In most cases, decisions on partial recognition were preceded by consultations with the authorities of an issuing state. Only occasionally was a decision taken without prior consultation.

Where Romania was the executing state, the most frequent situation Romanian authorities encountered was lack of double criminality for one or several offences in the certificate. If a person has been sentenced for several offences, the verification of the conditions is carried out for each offence separately. If the conditions are met only for a part of the offences, the court may order partial recognition of the foreign judgment. To this end, prior to taking a decision, the court may consult the issuing state through the specialised directorate within the Ministry of Justice. Such consultations also take place directly.

The difficulties stem from the difference between legal systems, and they referred to various aspects, mainly: the need for detailed information concerning the determination of the resulting penalty (for multiple offences), and incompatibility of some measures with Romanian law.

When adapting the sentence, the court pays particular attention to ensuring that the sentence that might be imposed in Romania corresponds, as far as possible, in terms of nature and duration, to the one used by the issuing state and will not aggravate the situation of the sentenced person.

When the court that imposed a measure involving a deprivation of liberty has identified the transmission of a certificate under FD 2008/909/JHA as the best option for the enforcement of the measure and the executing state informs the Ministry of Justice that the underlying sentence might be adapted, it is up to the court to decide whether to continue the procedure or to withdraw the certificate. The actual withdrawal of the certificate will be communicated by the Ministry of Justice.

No significant difficulties were encountered in the consultation process established under Article 10(1), although in some cases the answers took longer to be received. Considering that the different legal systems vary and that these calculations may differ, this is a case where Romanian courts submit requests for additional information. These requests are sent either directly or, when communication is difficult, with the assistance of the central authority and, in some cases, Eurojust.

As issuing state, the assessment as to whether partial recognition in the executing state is acceptable belongs to the judicial authority and primarily concerns the duration of the sentence.

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

The Romanian authorities noted that the 90 days for deciding on the recognition of the judgment and the execution of the sentence after receiving the final judgment and certificate (Article 12(2) of Framework Decision 2008/909/JHA), generally speaking, should be ‘more realistic’.

As the executing authorities, practitioners remarked that the deadline is respected if the documentation is complete. However, when information was missing from the certificate or certain aspects needed to be clarified, mainly referring to the sentence imposed, translation of documents, complete identification data of the sentenced person or in cases where identification of a convicted person was incorrect, this resulted in subsequent requests for additional information or clarifications and inevitable delays.

Last but not least, compliance with the time limits also contributes to the time-consuming nature of procedural acts (since it is necessary to respect all the rights of the convicted person).



#### 4.8. Law governing the enforcement of the sentence

According to Article 156 of Law No 302 of 28 June 2004 on international judicial cooperation in criminal matters (amended and supplemented on 26 March 2021, published in the Romanian Official Gazette no. 310) there are two situations:

##### 1. Where Romania acts as the executing state

The serving of a sentence or remand order handed down by a court judgment recognised by the Romanian court is governed by Romanian law. Time served in the issuing state as a result of the effect of an amnesty or pardon granted previously, as well as the number of days deducted from the full sentence as a result of any other measures ordered pursuant to the laws of the issuing state is deducted from the custodial sentence to be served in Romania. Amnesty or pardon may be granted by either the Romanian authorities or the issuing state.

Authorities in Romania had encountered a few cases when Member States initiated transfer procedures for sentenced persons who were not entitled to conditional release in the issuing Member State and inquired if Romania could apply the same measure. Since this was not an option under Romanian law, the Romanian authorities informed the issuing state about the possibilities under Romanian law. As a result, in most cases, the certificate was not withdrawn.

There have been practical problems with the recognition of early release measures ordered in the issuing state, when the information was sent after the transfer. In order to overcome this issue, a change was made to the law (Law No 302/2004), and such measures must be recognised. If, after the transfer of the sentenced person, the issuing state submits a court judgment or a judicial document whereby the convicted person was granted a reduction of sentence prior to being transferred to Romania, such documents are to be recognised by the court of appeal that issued the decision on the transfer.

Romania has not had any cases where the application of Article 17(4) was necessary.

2. When Romania is the issuing state, the execution of a custodial sentence or a measure involving deprivation of liberty, applied by a judgment recognised by the competent authority of the executing State, is governed by the law of the executing state. Amnesty or pardon can be applied both by Romania and by the executing state.

#### **4.9. Further challenges**

Analysis of the Romanian answers to the questionnaire, as well as the on-site visit, have given no reason to identify major challenges or obstacles in this area. However, it must be stressed, the same doubts as concerning the EAW procedure, in the light of the Aranyosi & Căldăraru test, apply to the procedure for the transfer of sentenced persons. Both mechanisms relate to deprivation of liberty and therefore the prison conditions issue is the key factor for smooth operation and enhancing mutual trust in both fields.

An issue that sometimes raised difficulties is the obligation for the Romanian court to fully deduct from the sentence the time served by the sentenced person in the issuing state, the number of days to be deducted from the full prison term based on previously granted amnesty or pardon, and, if applicable, the number of days deducted from the full prison term based on any other measures ordered pursuant to the laws of the issuing state. For example, the decision on recognition had been issued, but then, before the person concerned was notified of the decision, in the issuing state the person had been granted benefits that might be deducted from the full sentence by the executing authority. Therefore, the Romanian authorities suggest that the issuing state should provide the executing state with information about possible further allowances at the time of the request for recognition, so that the executing authorities apply the entire deduction of the sentence in the initial decision, thus shortening the recognition proceedings.

The certificates do not always contain detailed information, so that subsequent requests for additional information must be sent. This stage is essential, in order to avoid any aggravation of the situation of the sentenced person. Considering that various legal systems differ and that those calculations might differ, this is a case when Romanian courts submit requests for additional information. These requests are sent either directly or, when communication is difficult, with the assistance of the central authority, and in some cases Eurojust.

There have been practical problems with the recognition of early release measures ordered in the issuing state, when the information was sent after the transfer. In order to overcome this issue, a change was made to the law (Law No 302/2004), and such allowances must be recognised. If, after the transfer of the sentenced person, the issuing state submits a court judgment or a judicial document whereby the convicted person was granted a reduction of sentence prior to being transferred to Romania, such documents are to be recognised by the court of appeal that issued the decision on the transfer.

Aggregation of sentences, and their presentation in a single certificate, have proven to be problematic in the case of Italy. This is because several convictions were combined in one sentence, and this even included 'in absentia' convictions, without providing any details on the separate underlying convictions. Here the decisive factor is whether the aggregation of sentences is merely an arithmetical exercise or whether it involves a separate decision with real judicial discretion. In the former case, partial recognition is possible under Romanian law; otherwise, separate certificates are necessary to enable a decision.

A lack of written reasoning for a sentence is also problematic, albeit this could usually be remedied by direct contacts with the issuing authorities and the ensuing provision of additional documents from the national case file of the requesting state (e.g., police reports, prosecutorial explanations of how the court arrived at its sentence, the indictment etc.). This is, however, a problem which mainly concerns common law jurisdictions.

As already pointed out under FD 584, Romania would welcome a clarification regarding the complementarity between Article 4(6) of FD 2002/584/JHA and FD 2008/909/JHA.

In the past, the Romanian authorities had encountered many problems in establishing the place of residence, especially concerning the mobile ethnic minorities (Romany ethnicity) who constantly travel and cross borders without having an actual or stable place of residence. Moreover, it was complicated for the police to locate a person from the abovementioned ethnic group due to their speaking only their own language.

As it was also challenging to find a person from that ethnic group to provide translation assistance to the police, the Romanian authorities set up a project under which it was established that at least one person from the inspectorate should be fluent in the Romani language. For this purpose, funds were set aside for providing Romani language training for police officers.

At present, at least one police officer within each inspectorate speaks the Romani language and can translate in real time. Moreover, some of them have become official translators. The project was also extended to recruit people from Romani minority groups, who became police officers. In addition, Romania has assisted some Member States with translations from the Romani language when so requested.

Romania's declaration provides that besides the translation of the certificate, they must receive a Romanian translation of the judgment, in each case. In relation to some Member States, considering, among others, the significant number of cases and high translation costs, good practices have been established, for example sending a translation that summarises the case, especially in cases with many co-defendants or very lengthy decisions. In relation to other states, when translation costs were high, case-by-case consultation took place, in order for the best solution to be identified.

Cooperation would be significantly improved by awareness-raising concerning the tools available to facilitate the application of the FD, such as the tools on the EJM website (Judicial Atlas, Judicial Library, Compendium) and also dissemination of the Handbook on the transfer of sentenced persons and custodial sentences in the European Union.

#### **4.10. Statistics**

The Romanian authorities do not keep regular statistics. However, they made a huge effort to collect some statistical data from 2018 – 2020, e.g., on the number of incoming and outgoing cases (see Tables 1 and 2). It is clear from the statistics that Romania has received many more requests to recognise judgments in criminal matters than have been issued.

As for statistics on withdrawn certificates, they could not submit this data since they do not have statistics on that subject.

**As the executing state**, in 2018, the most requests for recognition were received from the following Member States: Italy (174), Austria (65), Germany (41), Belgium (34) and Spain (33). They also had applications from the Czech Republic, Denmark, Hungary, Sweden and the United Kingdom.

In 2019, the Member States most concerned were the following: Italy (107), Austria (76), Germany (41), Belgium (38), the United Kingdom (31) and Spain (29). In addition, requests, but in smaller numbers, were also received from the Czech Republic, Cyprus, Denmark, Hungary, Croatia, the Netherlands, Poland, Portugal, Sweden, and Slovakia.

In 2020 the situation changed. Most requests for recognition of judgments came from Member States which in the previous two years had sent only a few requests for recognition, such as Bulgaria (86), Italy (27) and Hungary (24). On the other hand, a minimal number of applications for recognition this year were sent by Member States which in previous years had submitted many applications, namely: Italy, Austria, Belgium and Germany.

The table also shows the number of completed cases reported by the police authorities to the Ministry of Justice.

*Table 1 – When Romania acted as the executing state*

2018		2019		2020	
Incoming cases	Completed transfers	Incoming cases	Completed transfers	Incoming cases	Completed transfers
454	Data not available	499	375	435	212

The following table shows the number of incoming requests from and transfers completed by the Member States. Some of the completed transfers refer to the previous year's cases (2018 or 2019). However, the table shows only the Member States with the highest number of requests. As the table shows, the biggest problem in recognising 909 judgments concerns Italy. The reason might be, as mentioned in the evaluation, that the Romanian authorities receive requests to recognise judgments with aggregated sentences indicated in a single certificate and in some cases even including 'in absentia' convictions without providing any details on the separate underlying convictions.

*Table 2 – Incoming and completed transfers*

	2019		2020	
	Incoming requests	Completed transfers	Incoming requests	Completed transfers
Italy	222	107	214	68
Austria	64	76	61	34
United Kingdom	44	31	21	24
Germany	44	41	20	19
Belgium	29	38	19	2
Spain	28	29	25	17
Sweden	11	7	18	20

**As the issuing state** in 2018 and 2020, Romania issued a tiny number of certificates to recognise judgments (see Table 3) – slightly more in 2019. There is a surprisingly low number of completed transfers.

*Table 3 – When Romania acted as the issuing state*

2018		2019		2020	
Outgoing cases	Completed transfers	Outgoing cases	Completed transfers	Outgoing cases	Completed transfers
26	Data not available	85	4	22	3

As the table shows (Table 4), even if there were not many requests for transfers sent to the other Member States, the number of completed transfers is still too low.

As for 2018, the data on completed transfers are not available. In 2019, completed transfers concerned Spain (1), Italy (1) Cyprus (1), the Netherlands (1), and in 2020 Germany (2) and Finland (1). As the table shows, even though not many requests for transfers were sent to the other Member States, the number of completed transfers is still too low.

*Table 4 – Incoming requests and completed transfers*

	2019		2020	
	Incoming requests	Completed transfers	Incoming requests	Completed transfers
Italy	7	0	0	0
Austria	4	0	2	0
United Kingdom	8	0	4	0
Germany	27	0	6	2
Belgium	8	0	2	0
Spain	3	1	5	1
Sweden	6	0	1	0
Hungary	8	0	2	0

#### **4.10. Conclusions**

With a large expatriate community, the Romanian authorities have acquired extensive experience with FD 909. Albeit the changes in national law streamlined procedures, this also resulted in some loss of experience, as judges have to adapt to their new role in filling out the certificates.

The Romanian legal framework concerning FD 2008/909 seems to be well-developed and generally in line with the Framework Decision itself. Direct contacts with the practitioners during the on-site visit showed a good level of knowledge of this matter and a pragmatic, reasonable attitude to a degree of ambiguity, as recognised in the EU legal texts, especially in relation to FD 2002/584.

With a large expatriate community, the Romanian authorities often use the procedure for transferring sentenced persons. Consequently, the authorities, courts and judges have gained extensive experience in the area of FD 2008/909.

The amendments introduced recently into the Romanian domestic law, to the end of streamlining the procedures, were assessed positively. Despite this, it must be noted that such recasting of the legal framework usually also causes collateral damage, namely, some transitional loss of legal certainty and professional routine. The judges and clerks will have to become experienced with the new provisions and procedures, which will normally take some time.

All in all, the general evaluation of the legal framework, and the quality and dedication of judicial staff involved in the application of FD 2008/909, is high. The most substantial shortcoming, of the highest importance for the effectiveness of the whole system, remains the prison conditions. Understood as a possible breach of the fundamental rights of the person sentenced and to be transferred, this factor may apparently undermine the aforementioned positive elements, and negate the efforts, commitments and dedication of the judicial practitioners and national authorities in this field.

## **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**

The aforementioned problem stems from the ambiguity of EU law on this point. Article 25 of FD 2008/909, stipulates that without prejudice to FD 2002/584, the provisions of the first FD apply, mutatis mutandis, to the extent they are compatible with the provisions of the latter, to enforcement of sentences when the executing state applies the *aut iudicare aut dedere* principle (Article 4(6) of FD 2002/584), or where it conditions surrender on the person's subsequent return and serving the sentence in the executing state (Article 5(3) of FD 2002/584). The formulation 'without prejudice to FD 2002/584' and then 'to the extent [the provisions] are compatible with provisions of [FD 2002/584]', used by the EU's lawmaker, shows clearly that in the mutual relationship between these instruments FD 2002/584 prevails. Thus, all legal interpretations of this relationship must, first of all, be in line with the provisions of the latter.

In the same legal text, namely in recital 12, the rule is formulated exactly the other way round. This recital states that 'the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of [FD 2008/909]', which is absolutely contrary to the principle provided for in Article 25 – if the executing state imposes the condition of returning and serving the sentence in its territory, how it can subsequently refuse to recognise and enforce this sentence? One way or another, this unclear construction creates legal uncertainty and is – surely – reflected in various ways in the domestic laws of the Member States. As this ambiguity derives from Union law, no recommendation or assessment regarding domestic law can be issued in this regard. It can however be underlined that Romanian magistrates use the FD 2008/909 certificate in the context of Articles 4(6) and 5(3) of FD 2002/584, but do not apply the grounds for refusal provided for in the first FD.

The clarification of this issue could be a recommendation for the Council Legal Service.

A distinction has to be made depending on whether RO is the issuing or executing state.

Most of the time, as long as the person sought is not a national of a state which does not surrender its nationals on the basis of FD 2008/584/JHA, the Romanian judicial authority will first choose to issue an EAW. If the executing judicial authority refuses the execution of the EAW and does not take over the enforcement of the sentence, the Romanian authorities will transmit a certificate issued on the basis of FD 2008/909. The executing state often requests the certificate itself.

It is worth mentioning that, in many cases, when the EAW is issued for the purpose of surrender of Romanian nationals, the issuing authority is not aware of the fact that the person is a resident of the executing state, and it is the executing state which performs these verifications and requests the certificate. In those cases, the court used to ask the Ministry of Justice to draft and transmit the certificate and from 2021, it is up to the court.

In some cases, consultations are initiated with the executing state referring to a possible request for recognition, when an EAW cannot be issued (the conditions set out are not met, although the person was sentenced and deprivation of liberty was ordered). Consultations generally take place through the Ministry of Justice, and in many cases the connections with the executing state are not clear.

In cases under Article 4(6) of Council Framework Decision 2002/584/JHA, where Romania is the executing Member State Romanian legislation allows for incidental recognition (see Article 99(2)(c) of Law No 302/2004). Specifically, the executing Romanian judicial authority may refuse to execute an EAW that has been issued for the execution of a prison sentence or of a measure involving deprivation of liberty, if the requested person is a Romanian citizen or a person living in Romania who has had a continuous legal residence in Romania for at least five years, and the person concerned declares that he or she refuses to have the punishment executed in the issuing Member State.

Therefore, in this case the certificate need not be transmitted.

The Romanian authorities did not generally encounter any problems receiving a certificate, where Romania was the executing Member State, or sending a certificate where Romania was the issuing state, similar to those referred to in the Popławski case. It is however worth mentioning that there have been cases when the EAW was not executed, the judgment was not recognised incidentally and, even after the transmission of the certificate, execution was refused, albeit the person concerned was not a resident of the executing state.

As issuing Member State Romania is prepared, at the request of the executing authority, to send the certificate for the purpose of applying Article 4(6) of Council Framework Decision 2002/584/JHA.

Depending on the approach taken by the executing state, it will mention whether a certificate is necessary. If the certificate is required, the court used to request the Ministry of Justice to draft the certificate. Under the new legislation, the courts will do it themselves.

If the surrender is granted on the basis of Article 5(3) of FD 2002/584/JHA, the execution is taken over on the basis of the procedure laid down in FD 2008/909/JHA.

As for suggestions on the improvement of EAW procedures and cooperation among competent judicial authorities/central authorities, the Romanian authorities consider that a clarification as regards the functional relationship and complementarity between Article 4(6) of FD 2002/584/JHA and FD 2008/909/JHA would be useful. In this regard the Romanian authorities as executing authorities have encountered a practice of submitting both the EAW and the certificate for the recognition of the sentence, without withdrawing the EAW. This was true even though in the majority of cases the Romanian authorities had already completed the procedure for the execution of the EAW or even ordered the surrender. In the latter event the issuing state simply refused to take over the person and asked instead for a transfer of proceedings. This was a pertinent problem with Italy which seemed to use the EAW systematically to locate Romanian citizens only to then ask for simple recognition of an Italian sentence.

On the other hand, there have been cases where a Romanian request was refused by the Italian authorities based on Article 4(6) because of the Italian residence of the persons concerned. The Italian authorities merely asked for some factual information in the process of deciding on the request and then suddenly declared the recognition of the underlying Romanian sentence without a certificate under FD 909 and the consent of Romanian authorities. In addition, they then adapted the Romanian sentence, granted a grace period of three years and parole and interfered with the Romanian EAW when the person concerned was apprehended in Greece on the grounds of ‘execution of the sentence’ in Italy.

## **5.2. Conclusions**

Both FDs are well-used by practitioners and the link between the complementing FDs is especially relevant for Romania due to its large expatriate community, with a special focus on Italy and Spain.

The Italian interpretation of the linkage between the two Framework Decisions has resulted in some problems albeit the situation has improved based on regular consultations between national authorities and a memorandum of understanding on improved cooperation regarding FD 2008/2009/JHA as well as the posting of a liaison magistrate.

## **6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS**

FD 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 has been transposed into Romanian legislation by the separate act Law No 302 of 28 June 2004 on international judicial cooperation in criminal matters, specifically Chapter II.

It is worth mentioning that in 2014 Romania made amendments to the Criminal Code with a view to having a greater variety of alternative sanctions for defendants, to be in line with the European Union standard, and increased the number of alternative sanctions as follows:

- four educative measures (for juveniles);
- supervision of the release of juveniles from a detention centre;
- postponement of the sanction (for a period of two years);
- suspended sentence and community service;
- conditional release.

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

Only judicial authorities are competent for the enforcement of decisions in accordance with FD 2008/947/JHA.

When Romania is the executing state, the recognition of foreign judgments and of probation decisions ordering compliance with probation measures or an alternative sanction falls within the competence of the district court in the territory of which the sentenced person lives. By way of exception, competence pertains to the court examining another offence committed by the person already sentenced by the foreign judgment, an offence that could bring about the revocation or cancellation of the sentence applied by the foreign court.

The supervision of compliance with the probation measures or with the alternative sanction applied by the judgment or by the probation decision which is subject to recognition falls within the competence of the probation service attached to the district court at the place of residence of the person concerned.

When Romania is the issuing state, the settlement of the request for enforcement in another Member State of the European Union of the judgment rendered by a Romanian court, when the sentenced person is going to serve or is currently serving the sentence, falls within the competence of the court which at first instance rendered the judgment whose recognition is requested. When judgment has been rendered by the High Court of Cassation and Justice, the Bucharest District Court is competent.

No central authority has been designated in the application of FD 2008/947/JHA.

#### Direct contacts

In the application of FD 2008/947/JHA, for the duration of the procedure for recognition of the foreign judgment and, after its recognition, for the duration of the execution of the probation measures, the court communicates directly with the competent authority of the issuing state by sending or requesting information to ensure the swiftness and effectiveness of the procedure for recognition of the judgment and to support the process of supervision and reintegration of the sentenced person.

Sometimes, the support of the central authorities is required, mainly when identification of foreign authorities is necessary. In the application of FD 2008/947/JHA, there have been cases when either Romanian or foreign authorities have preferred that communication takes place through the Ministry of Justice, although it is not expressly mentioned as central authority in this field.

## Language and translation (interpretation)

This matter is regulated in Article 14 of the law, which provides that requests addressed to Romania (and the enclosed documents) must be accompanied by a translation into **Romanian or English or French**. If the documents are translated into a language other than Romanian, the competent central or judicial authority is required to take measures for their translation as a matter of emergency.

Translation (interpretation) for the Romanian authorities is carried out by authorised translators (interpreters) from the lists of the court of appeal in the district where the criminal prosecution body or the court is located.

Those who do not speak or understand Romanian have the right to translation or/and interpretation carried out by these authorised translators (interpreters).

It should be noted that the law does not restrict translation only to ‘essential documents’, and in that sense, goes beyond the requirements of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

### *6.1.1. Procedure when Romania is acting as the executing state*

Recognition criteria are prescribed in Law No 302 of 28 June 2004 on international judicial cooperation in criminal matters, which entered into force 60 days after its publication in the Official Gazette, i.e. on 30 August 2004. Recognition of judgments and of probation measures which establish probation measures or alternative sanctions rendered by the courts or by the authorities of another Member States of the European Union are prescribed in Article 202 and Article 203 of the law. Article 202 contains six general conditions for recognition (Article 202(2)(a)(ii). Additionally, Article 203 contains criteria for recognition of probation measures and alternative sanctions.

**The certificate from the issuing authority is received by the competent district court** (territorial competence established according to the place where the person lives).

**The court examines the certificate and documents in principle** – within five days of registration

- a) (optional step) if the certificate is missing, incomplete or not consistent with the judgment or with the probation decision transmitted, the court requests the issuing state to transmit, complete or correct the certificate, within 15 days at the latest. Other necessary documents may be required.
- b) If no additional information/documents are necessary or if they were received within the indicated deadline, the court sets the trial date for the examination of the merits of the case.
- c) If information under point a) has not been received, the request for recognition and enforcement is denied.

**Examination on the merits** – a decision must be rendered within 10 days of the date when the examination in principle was completed. The decision must be drafted within five days.

The court decides whether to approve, wholly or partially, and enforce the measures (as they were indicated in the certificate) or to adapt the measures or refuse the probation decision's recognition and enforcement.

Romanian practitioners stated that they have no problem complying with the time limit for the recognition of judgments prescribed in FD 2008/947/JHA. According to the national Law No 302/2004, the time limit for recognition is shorter and if they exceed the time limit prescribed by their national law, it happens only due to reasons beyond their control.

The case is heard in camera, with the participation of the prosecutor. The competent probation service is also notified.

Appeal against the decision of the court (optional) – may be lodged by the prosecutor (ex officio or at the request of the probation service) or the sentenced person. The appeal must be decided upon within five days.

The final decision is notified to the probation service and to the issuing state.



To maintain a record of the activity of the court, a register of probation measures and alternative sanctions ordered on the territory of the other Member States of the European Union and executed in Romania is to be drawn up and kept.

**Execution of the probation measures or alternative sanction, assuming responsibility for subsequent decisions**

If, after the recognition of a foreign judgment, the sentenced person, in bad faith, fails to comply with the supervision measures or with the alternative sanction or commits a new offence during the probation period, the Romanian court is competent to revoke the sanction, according to Romanian criminal law and in compliance with the foreign judgment, where the latter refers to:

- a) suspension of the execution of punishment under supervision;
- b) conditional release;
- c) an alternative sanction;
- d) deferment of sentence.

In the cases provided for in points b), c) and d), the court may order a revocation only where the recognised foreign court probation judgment or decision explicitly refers to the custodial sentence to be imposed in such a situation.

## **Execution of the probation measures or alternative sanction without assuming responsibility for subsequent decisions**

Competence to impose sanctions in the event of non-compliance, in bad faith, or if other offences are committed, belongs to the issuing state, where the decision that was recognised refers to:

- a) postponement of enforcement;
- b) conditional release;
- c) an alternative sanction;
- d) one of the assumptions provided for in Article 210(3)<sup>3</sup>;
- e) a sentenced person who has subsequently established residence in another state and is no longer in Romania.

The judge responsible for execution is required to inform the competent authority of the issuing state whenever the judge finds that there are grounds for revocation or there are facts about which the judge has requested to be informed.

If, according to the law of the issuing state, the hearing of the sentenced person is mandatory, his or her statement can be taken by the authorities of the issuing state by videoconference. The hearing by videoconference must take place in the presence of a representative of the probation department.

At the same time as informing the competent authority of the issuing state, the judge responsible for the execution requests that the issuing state inform him or her of the subsequent measure taken.

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<sup>3</sup> If, after the verification, the court finds any grounds for refusal, the court may order, in exceptional cases, the recognition of the judgment and the execution of the probation measures or the alternative sanctions in Romania only if they are confident that this would significantly contribute to the reintegration of the sentenced person and no rights or benefits of the victims of the offence committed by the sentenced person are violated or harmed, if they live in Romania.

### *6.1.2. Procedure when Romania is acting as the issuing state*

Initiation of the procedure – when the person intends to return or returns to the territory of another Member State –depends on the moment when the concerned person makes the relevant statement.

Before the court sends the judgment to the probation service, the judge assigned to the case at the court that issued the decision initiates the procedure and informs the probation service accordingly

After the judgment is sent to the probation service, the probation officer in charge of the case records the statement of the sentenced person and forwards it to the court, along with the proposal for the procedure to be initiated.

#### **Transmission of the certificate and the judgment:**

The certificate is drafted by the judge assigned to the case at the court that issued the judgment in the first instance. When the decision was rendered by the High Court of Cassation and Justice, the competence to issue the certificate belongs to the District Court of Bucharest.

The certificate, judgment and, if possible, the report drafted by the probation officer are translated (in accordance with the declarations made by the executing state) and sent to the competent authority in the executing state.

The Romanian issuing authority requests the following information from the executing state:

- a) the maximum duration of deprivation of liberty provided for by the legislation of the executing state for the offence for which the judgment has been rendered and that could be imposed on the sentenced person if the latter fails to comply with the probation measures or commits a new offence;
- b) the statement of the executing state on assuming or not assuming responsibility for decisions subsequent to the recognition of the judgment.

### **Types of judgments comprised in the scope of FD 947 which can be transmitted abroad:**

- Suspension of the enforcement of the sentence, under supervision;
- Postponement of enforcement;
- Parole, if the remainder of the sentence left to serve is two years or more;
- When the court chooses to enforce alternative sanctions, any other non-custodial sanction (other than a financial one) which consists of an obligation or measure of restraint and has an independent existence.

### **Periods**

- For the postponement of enforcement – two years;
- Suspension of enforcement under supervision – between two and four years. In any case, it may not be shorter than the term of the sentence enforced.

Suspension of the sentence's enforcement under supervision is an alternative to execution of a custodial sentence. The person is convicted with a sentence of imprisonment, but the execution of the sentence is suspended by imposing four probation measures and, if necessary, one or more obligations to be complied with under the supervision of a probation service. The court considers that the purpose of the punishment could be achieved in the community.

The duration of the probationary period is decided by the judge and can be from two to five years added to the duration of the sentence pronounced.

Within this period, if the sentenced person commits new offences or violates the probation conditions, the sentence may still be executed. At the end of a successful probationary period, the sentence can no longer be enforced.

**The legal conditions for issuing such judgment are provided for by the Penal Code:**

- a) the sentence pronounced is a prison sentence which does not exceed four years;
- b) the person concerned has not been previously been given a prison sentence of more than 1 year;
- c) taking into account the characteristics of the convicted person, and his or her conduct after the existing offence(s), the judge considers that the convicted person is unlikely to commit another offence.

**The types of RO probation measures and alternative sanctions reflecting those provided for in Article 4.1. of the FD are as follows:**

- Obligation for the sentenced person to inform a specific authority of any change of residence or place of work.
- Obligation not to enter certain localities, places or defined areas in the issuing or executing state.
- Obligation containing restrictions on leaving the territory of the executing state.
- Instructions relating to behaviour, residence, education and training, leisure activities, or containing restrictions on or modalities of carrying out a professional activity.
- Obligation to report at specified times to a specific authority.
- Obligation to avoid contact with specific objects which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence.
- Obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation.
- Obligation to carry out community service.
- Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons.
- Obligation to undergo therapeutic treatment or treatment for addiction.

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

The Romanian Ministry of Justice provided experts with the overall statistics on cases in which requests were received and issued from 2018 to 2020 (see the table below).

### *Overview of cases by countries*

State	Number of requests received	Number of requests issued	Notes
Poland	1		
France	1		
Bulgaria	1		
Non-specified	1		District Court of Olt mentions one pending case, without specifying the issuing state
Spain		2	
Sweden		6	
Italy		7	
Belgium		2	
Germany		10	of which 1 subsequently withdrawn, at the request of the sentenced person
France		3	
Hungary		7	
Bulgaria		5	
Netherlands		4	
Austria		3	
Czech Republic		1	
TOTAL	4	50	

## **Adaptation of probation measures**

Among the 50 cases, Romania had one regarding the adaptation of measures due to the duration of the measure. Namely, according Article 211 of the law, ‘The court shall adapt one or more probation measures or the alternative sanctions or the probation period, aiming, as far as possible, to a closer correlation to the content of the probation measures or of the alternative sanction applied by the judgment of the issuing authority, whenever the duration of the probation measure or of the alternative sanction or of the probation period set by the foreign court for the offence committed does not match in terms of amount or exceeds the overall maximum limit of the probation measure or of the probation period that is applied, according to the Romanian law’.

Romania also adapted the measure ‘withdrawal of the driving licence’ imposed by the Spanish judge on a Romanian citizen who caused a traffic accident while under the influence of alcohol. However, this measure does not exist as such in Romanian legislation. Therefore, the Romanian competent authority modified the measure to judicial control by issuing the obligation ‘not to drive a vehicle’.

## **Difficulties in identifying the competent authority**

No problems in identifying the competent authorities have been detected. In this connection, judges use internet tools, primarily the website of the European Judicial Network (EJN) and practical tools for judicial cooperation in criminal matters. The tools used most often are the Atlas and the contact points in other Member States.

### **Right to have a lawyer**

The sentenced person has the right to defend him/herself in person (one of the fundamental rights derived from the right to fair trial) or through legal assistance of his/her own choosing. This legal solution is in line with the provisions of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in EAW proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

### **Provision of information to the sentenced person about his/her rights**

Although the procedure for recognising and enforcing court judgments of another EU Member State is not a criminal procedure in the legal sense of the term, it provides the sentenced person with information relevant to his or her status and defence. Information is provided to the sentenced person in the court summons and before the court in written form (as a notice of rights). However, the participation of the sentenced person is not mandatory. Moreover, in a case where the probation measure is imposed on a Romanian citizen in another Member State, the probation service sends the sentenced person information on the possibility of transferring the probation measure and advises him to contact a lawyer in Romania to represent him before the court. This solution exceeds the standards of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

### **Hearing (information about the hearing, the way in which it is conducted, and who is attend)**

The hearing is regulated by Article 208 of the law. The sentenced person, the probation service and the prosecutor will be summoned to the hearing, but only the participation of the prosecutor is mandatory.

The purpose of the hearing and verification of the conditions are prescribed in Article 202 (conditions for recognition and enforcement of the final judgment rendered by the courts of the other Member States of the European Union). The court is required to draft the decision within five days. After that, the decision is communicated to the sentenced person and the probation service.



All participants in the proceedings (prosecutor, sentenced person and probation service) are authorised to challenge the decision by appeal within five days. The appeal court is required to examine the matter by a single judge within five days and the decision will be drawn up within the next five days.

In the current pandemic situation, courts conduct hearings via VTC as a remote trial. One of the essential preconditions for this form of trial is to verify the identity of sentenced persons. The sentenced person must agree to this form of hearing. Finally, if the sentenced person has a defence counsel, he or she must be present, too. Appellate courts appear to tolerate this practice as lawful. However, the number of such proceedings in VTC form is relatively small because not all judges are familiar with working in this mode.

### **Providing information about the recognition or refusal of recognition of a decision or its modification (as executing and issuing Member State)**

The final decision of the Romanian court is communicated to the participants in the proceedings (the sentenced person and the probation service - the prosecutor's participation in the court hearing is mandatory).

Simultaneously, the final judgment of the Romanian court is communicated to the competent authority in the issuing state.

### **Problems they have encountered during implementation**

There were no specific problems or issues encountered in the process of implementation.

One of the reasons why FD 947 is not used so often might be cases of pending trials. To ensure the proper conduct of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or prosecution or to prevent the commission of another offence, a prosecutor, during the criminal investigation, may order a judicial control measure (to appear before the criminal investigation body, which is a compulsory measure) against a person concerned.

If the measure is transferred to the other Member State, under Romanian Law No 302/2004 it is possible to carry out a hearing via video conferencing. Romanian practitioners use this possibility in practice. For example, a person could not come to Romania, so the Romanian authorities also used the video conference format in the appeal case.

However, as practitioners said, from their experience, some Member States do not allow the person concerned to attend a video conference with the reasoning that it is against the fundamental principles of their national legislation, even if a lawyer would be present.

### **6.3. Conclusions**

It should be noted, first of all, that the Romanian authorities have handled only a comparatively small number of cases under FD 2008/947/JHA. The 2004 legislative framework gives practitioners a wider range of alternative sanctions for juveniles and adult offenders (4 types of educative measures, supervised release of juveniles from a detention centre, postponement of the sanction, suspended sentence, community service, conditional release, etc.). This is an obvious improvement over the previous period. Taking into account the population (19 760 214 inhabitants in 2016) and the intensity of migration, the number of proceedings based on FD 2008/947/JHA could be expected to be higher.

The insufficient application of FD 2008/947/JHA may mainly be attributed to two causes:

- a) lack of sufficient awareness among judges of the possibilities provided for by the FD (or ‘fear of the unknown’),
- b) the current COVID-19 pandemic and the reduction in cross-border movement of persons (in the period since the beginning of 2020).

In order to improve the existing situation, the following measures can be suggested:

- a) intensifying the training of judges at national and EU level (working in pairs with a judge from another EU Member State), even in the form of audio/video conferencing, which is already practised;
- b) intensifying the training of judges in the use of information technology regarding remote trials.

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

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

When Romania is the executing state, competence for receiving the certificates and the documents which ordered the supervision measures issued by other Member States of the European Union lies with the central authorities: either the public prosecutor's office attached to the High Court of Cassation and Justice (at the prosecution stage) or the Ministry of Justice (at the trial stage). Their role is to receive the certificates and to assist the judicial authorities during the procedure, mainly by facilitating communication (Article 185(1) of Law No 302/2004).

Competence for recognition and enforcement of the act ordering the supervision measure pertains, where appropriate, to the public prosecutor's office attached the court or to the district court in the territory of which the supervised person has his or her habitual legal residence. In the case of a person who does not have residence in the territory of Romania, competence pertains to the public prosecutor's office attached to Bucharest District Court or to Bucharest District Court, respectively, depending on the stage the procedure has reached - prosecution or trial.

When Romania is the executing state, the supervision of compliance with the obligations applied by the issuing state returns to the competent Romanian authorities and is governed by Romanian law.

The issuing authorities in Romania may be the prosecutor, judge for rights and liberties, the judge of the preliminary chamber or the court (Article 189(1) of Law No 302/2004).

In the application of FD 2009/829/JHA, the central authority, at the prosecution stage, is the public prosecutor's office attached to the High Court of Cassation and Justice, and, at the trial stage, the Ministry of Justice. Their role is to receive the certificates and to assist the judicial authorities during the procedure, mainly by facilitating communication.

However, there are no central authorities involved in issuing and forwarding decisions and certificates pursuant to FD 2009/829/JHA as a rule. Issuing authorities may nevertheless avail themselves of the assistance of the Ministry of Justice in determining the competent authorities in the executing state.

Once the competent authority has been established, the Romanian issuing authority will consult with the prospective executing authority during the preparation and/or before forwarding a decision on supervision measures.

In the application of FD 2009/829/JHA the communications, consultations, exchange of information, requests and notifications occasioned by the adoption, modification, replacement or termination of a supervision measure or by the supervision of compliance with the obligations applied by the Romanian judicial bodies or, when Romania is the executing state, by those of the issuing state, is performed directly or, when direct contact is not possible, through the central authorities.

EJN resources are used to gather information on possible measures abroad and to establish contact points for additional information as well as for requests if responses are not received from the executing authority.

#### *7.1.1. When Romania is acting as executing state*

1. The certificate from the issuing state is received by the central authority:
  - a) by the prosecutor's office at the High Court of Cassation and Justice, during the investigation and prosecution stage
  - b) by the Ministry of Justice, during the trial stage.
2. The certificate and documents are checked – in this stage, additional information can be requested.
3. The certificate and documents are sent to the competent authority for execution:
  - a) General considerations
    - Prosecution offices attached to district courts, during investigation and prosecution
    - District courts, during trial

Territorial competence is determined according to the person's place of legal ordinary residence. When the person's place of residence is unknown, competence belongs to the Prosecution Office at Bucharest District Court Bucharest or to Bucharest District Court.

The file is referred back to the central authority if the judicial authority is unable to locate the person in Romania.

Should additional information be necessary at this stage, it is requested/transmitted directly within 10 days.

Aspects that are checked by the prosecutor/court:

- whether the supervised person is investigated in Romania for the same or other offences;
- whether the nature or duration of the measure imposed in the issuing state corresponds to Romanian law;
- whether the supervised person is located in Romania;
- whether the measure can be supervised in Romania.

The measure can either be recognised and executed as it stands, or it can be adapted. Consultations are carried out with the issuing state.

The duration of the supervision measure is that established in the issuing state, unless it is longer than the maximum period prescribed by Romanian law.

b) Specific aspects during the investigation stage:

- The prosecutor notifies the supervised person.
- The decision is taken in the form of an order. Any person whose legitimate interests might be prejudiced can lodge an appeal, within five days of the date of the notification.
- The complaint is decided on by the court within 10 days. The decision is final. If the appeal against an order refusing recognition is granted, the court will itself recognise the measure and establish the obligations for the supervised person.

c) Specific aspects during the trial stage:

- The case is tried in camera.
- The court notifies the supervised person.
- The decision may be appealed against within five days of notification, by the supervised person or by any interested person whose legitimate interests may be affected by the decision.
- If case the appeal against a decision refusing recognition is granted, the appellate court will itself recognise the measure and establish the obligations for the supervised person.
- The appeal is decided upon within 10 days. The decision is final, and will be notified to the court of first instance and the issuing state.

2. The supervision is enforced according to Romanian law.

- Supervision is carried out by the competent institution assigned by the decision of the prosecutor/court.
- In case of non-compliance or other aspects that could lead to the revocation/modification of the supervision measure, the prosecutor/court informs the issuing state.
- If the issuing state does not respond within 40 days of receipt of the first notification, the supervision will cease.
- If the issuing state revokes the measure, orders the person's arrest and forwards an EAW, the procedure will be carried out in accordance with FD 2002/584/JHA.
- The issuing state is informed 30 days prior to the date when the measure expires.
- The issuing state is informed of the impossibility of carrying out supervision, if the person is not found in Romania.

3. Other cases when supervision will cease:

- when the issuing state sends notification that it should cease;
- when, following an appeal, the court reverses the decision ordering recognition and enforcement of the measure.

### 7.1.2. *When Romania is acting as issuing state*

The Romanian issuing authorities send the certificate in Romanian, together with a translation. Prior consultation with the prospective executing state facilitates the transfer of supervision measures and ensures efficient monitoring of these measures.

There is no involvement of the victims of the crime in the process of issuing a certificate (e.g. through a hearing); however, the decision of the issuing authority can be appealed by anyone with a legitimate interest, and this is understood to encompass victims of the criminal offence as well.

Romanian Law No 302/2004 provides for optional and mandatory consultations by Romanian authorities with the executing state before issuing a certificate.

#### 1. Optional consultations:

- a) where, for the proper conduct of a criminal trial or in order to prevent avoidance of the criminal prosecution or of the trial of a person who does not have their habitual legal residence on the territory of Romania, it is deemed necessary to take a preventive non-custodial measure;
- b) when, by a statement given during trial, the supervised person indicates that he or she has their habitual legal residence in the territory of another Member State of the European Union;
- c) during supervision by the Romanian competent authorities of compliance with the obligations previously established by the competent Romanian judicial body, the supervised person is required to notify their change of residence to the territory of another Member State of the European Union and return to the executing state.

#### 2. Mandatory consultations:

when the executing state is different from that in which the supervised person indicates that he or she has their habitual legal residence.

#### Transmission of the certificate

- The certificate is issued and translated by the authority that ordered the supervision measure.
- It is sent directly to the competent authority in the executing state.

- The duration of the measure is established by the Romanian issuing authority, which also has competence to prolong, maintain, replace or discontinue the measure (with the corresponding notification to the executing state).

The certificate may be withdrawn in certain cases, namely when

- a) the supervision measure provided for by the law of the executing state has a different nature, or the same nature but a different content from the supervision measure ordered by the Romanian judicial body; or
- b) the duration of the supervision measure provided for by the law of the executing state does not comply with the duration to which the competent Romanian judicial authority may extend or maintain such a measure; or
- c) the executing state is required to notify that in the event that the Romanian authorities issue an EAW as a consequence of the replacement of the measure or obligation whose supervision is requested by the preventive detention measure, the surrender of the supervised person would be refused.

In the cases referred to under a) and b), the certificate cannot be withdrawn if the executing state has started supervision, unless the executing state agrees.

### **Alternatives to provisional detention under Romanian Law**

There are currently three alternatives to provisional detention: a) judicial control, b) judicial control on bail and c) house arrest.

#### *a) Judicial control*

During the criminal investigation and/or the trial this measure can be used to ensure the proper conduct of criminal proceedings, to prevent the suspect or the defendant from evading justice or to prevent the commission of another offence.

Judicial control is ordered for 60 days at a time and can be prolonged if the reasons persist or if new reasons justify this measure. There are certain limits to the maximum duration depending on the stage the proceedings have reached:



During investigations and prosecution the maximum length is one year if the offence concerned carries a fine or imprisonment not exceeding five years. For offences which carry a custodial sentence exceeding five years or life imprisonment, the maximum is two years.

During the trial the maximum length must be ordered for a reasonable period and not exceed five years.

Judicial control will always entail:

- the obligation to appear before the criminal investigation body or the court or judge;
- the duty to inform the judicial body (prosecutor, judge, court) which instituted the measure of any change of residence;
- the obligation to appear before the law enforcement body appointed by a judicial body to supervise the suspect/defendant and keep to the schedule for the appearances.

In addition, judicial control can entail further duties and obligations, such as the obligation:

- not to go beyond a specific territorial boundary, set by the judicial bodies, without their prior approval;
- not to travel to places specified by the judicial bodies or to travel only to places specified by them;
- to permanently wear an electronic surveillance device;
- not to return to their family's dwelling, not to approach the victim or the members of their family, other participants in the offence committed, witnesses or experts or other persons specified by the judicial bodies and not to communicate with these in any way, directly or indirectly;
- not to practice a profession, craft or activity during the practice or performance of which they committed the act;
- to periodically provide information on their source of livelihood;
- to subject themselves to medical examination, care or treatment, in particular for the purpose of detoxification;
- not to take part in sports or cultural events or other public gatherings;
- not to drive certain vehicles specified by the judicial bodies;
- not to hold, use or carry weapons;
- not to issue bank cheques.

The actual content of the measure can be changed by the originating prosecutor or judge, ex officio or at the request of the suspect/defendant. This may entail additional new obligations or the replacement or termination of existing obligations.

In case of non-compliance or commission of a new offence the prosecutor may request, or the judge for rights and liberties, the preliminary chamber or the court may ex officio order, the replacement of judicial control by house arrest or pre-trial detention.

*b) Judicial control on bail*

All of the aforementioned obligations under judicial control can also be imposed by the same judicial bodies on bail. The bail will be at least 1,000 Romanian Lei and has to be set according to defined criteria (see below).

*c) House arrest*

Under this measure the suspect/defendant is not allowed to leave the premises of his domicile except for appearances before the judicial body. Exceptionally the suspect/defendant may be allowed to temporarily leave his domicile for work, educational purposes or similar activities.

If the person concerned has no residential address in Romania, there is little likelihood of this measure being ordered, though. The order can encompass a period of 30 days only, but this can be prolonged for additional periods of 30 days until the end of the trial without a maximum time limit. Age, family status and other personal circumstances have to be taken into account when ordering this measure.

House arrest may also entail the obligation to appear before criminal investigation or judicial bodies as well as the duty to refrain from communication with victims or their family members, participants in the original crime, witnesses or experts or any other persons named by the body ordering the measure.

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

Whereas incoming ESOs are channelled through the aforementioned central authorities and then distributed to the competent authorities for execution of the order, outgoing ESOs do not usually come to the attention of any central authorities and numbers are therefore hard to establish.

The Romanian Ministry of Justice has thus far received less than 10 certificates and the Prosecution Office at the High Court of Cassation has received 25 certificates, 19 of which originated with the same Member State (France) whereas the remainder concerned four different Member States.

### *Overview of cases by countries*

State	Number of requests received		Number of requests issued
	during the criminal investigation phase	during the trial stage	
France	18	1	
Spain	1		
Portugal	1		
Netherlands	1		
Cyprus		3	
<b>Total</b>	<b>25</b>		<b>0</b>

Exact outgoing numbers are unknown, but based on practitioner feedback very low in any event.

### *7.2.1. Romanian authorities as issuing authorities*

The implementation of FD 2009/829/JHA did not require any changes in the institutional set-up. On the other hand, the potential of this instrument is apparently not fully realised.

Because Romanian Law No 302/2004 promotes direct contact, it is difficult to provide statistical data (see above). In any event, incoming and outgoing numbers are low.

Hence there is not a lot of experience with this instrument.

Practitioners were consulted on this matter, and, according to their response, the issue in terms of the low number of certificates issued by Romanian authorities is not a legislative gap. On the other hand, considering the limited application of the FD, more time is probably needed for a comprehensive evaluation of the national legal framework. Awareness-raising with practitioners is probably necessary, including through training.

At the time of the implementation of the FD, practitioners were informed about the changes, including through the Romanian Judicial Network. Practitioners are also advised to follow the news on the EJN website and, in every case, to check the updates.

### *7.2.2. Romanian authorities as executing authorities*

As for Romania as executing state, problems with incoming requests were identified as follows:

#### **Essential information missing**

In some cases essential information (e.g. maximum duration for a measure, maximum punishment, date of release from detention, period spent in custody, date of the order) or even the original decision/a certified copy of the decision or the signature were missing. In addition there have also been cases with an apparent lack of prior consultation between the relevant authorities, resulting in various problems.

### **Prolonged period between a decision by the issuing authority and transmission of the certificate**

Whereas the suspect or defendant sometimes presented him- or herself to the Romanian authorities before the certificate was even transmitted by the issuing authority and was fretting, because supervision was not possible based solely on his/her request, in other cases the person concerned did not present him- or herself to local authorities after his/her release from pre-trial detention abroad and arrival in Romania and the certificate and the underlying decision were only passed on to the Romanian authorities several months (approximately six months) after the release of the person. Hence Romanian authorities were not aware that this person was subject to alternative measures to pre-trial detention abroad. In addition, in one case the certificate not only arrived months after it was issued but was also incomplete, so that the result was an additional period without the necessary supervision by Romanian authorities.

### **Premature transmission of certificate**

One authority even sent a certificate to the Romanian authorities before the underlying order on supervision measures was issued. This was done in order to achieve recognition of the supervision order by Romanian authorities even before the actual release of the suspect from custody.

However, this meant that the supervision order was actually not enforceable.

### **Person does not return to Romania or is not aware of a continuing obligation**

At the other extreme there was also a case where the person concerned never came back to Romania despite promising the issuing authorities that they would do so. In another case a person subject to alternative measures issued abroad was not aware of his obligations in Romania as the maximum period for supervision admissible under foreign legislation had been exceeded.

## **Generic references to the duration of alternative measures**

Generic references to the duration of alternative measures ('until the trial is finished' or 'at least until 2025') were also a problem as indeterminate periods are not in line with Romanian law and the jurisprudence of the Constitutional Court.

Under the Romanian Code of Criminal Procedure, alternative measures can only be ordered for renewable periods of 60 days at a time with maximum extension limits of one or two years during the investigation stage, depending on the maximum penalty applicable. During the trial stage the maximum would be five years (see above, 7.1.4.1).

In addition, the period has to be set for a reasonable term, in view of the circumstances.

## **Communication**

Last but not least, there were some cases involving communication problems.

For instance English was sometimes not accepted for direct communication purposes. Occasionally replies to requests for supplementary information were not forthcoming. In other cases counterparts could not be reached for some time and there was no apparent provision for substitute points of contact (e.g. out-of-office notice specifying a deputy, central mailbox)

### 7.3. Conclusions

Application of FD 2009/829/JHA by practitioners is evidently still rare. This is in line with the findings of the EJM (cf. report in Council document 14754/18).

In the case of Romania as an issuing authority this might be related to the fact that alternative measures under the national Code of Criminal Procedure are subject to limits on the period they may be issued for, hence would require subsequent decisions every 60 days. Also practitioners apparently find the procedure time-consuming and difficult to implement and therefore tend to see only a very limited scope for application, albeit the instrument as such is welcomed as a useful tool for reducing pre-trial detention. However, a real assessment is hampered by the fact that there is no overview of outgoing requests, as supervision orders may be sent directly between competent authorities and there are as yet no statistics at national level, nor is there a collection of national cases which would provide a complete overview.

There also seems to be a notable difference between the number of incoming and outgoing decisions, which might be explained in turn by the size of the Romanian expatriate community as compared to the number of citizens of other EU Member States residing in Romania.

In terms of incoming requests (Romania as executing state) problems identified include language issues, communication problems and delays between the issuance of underlying judicial decisions and their actual transmission to the executing state. Quality issues (missing information, lack of essential elements such as signatures or a copy of the actual decision) indicate a lack of familiarity and practice on the part of those practitioners availing themselves of this important instrument.

The Romanian authorities suggested a harmonisation of national legislation concerning alternative measures, as the mere application of the principle of mutual recognition does not suffice in view of differences in the applicability of measures such as limits to the applicable period for any relevant measure. In terms of the instrument itself, the introduction of a time limit for the transmission of certificates and some possibilities for reaction by the executing state to failure to comply with the measures imposed by the person concerned were proposed.

The Romanian authorities also suggested investing in language training for judges and prosecutors as well as clerks in their offices, to facilitate direct communication and speed up procedures. In this context the issue of sufficient budget resources for translation costs was also mentioned.

Finally, awareness-raising measures and training opportunities were identified as a persistent need and dedicated statistics, as a measure of the degree of usage by practitioners (if there is no national central authority involved), were suggested.

## **8. TRAINING**

### **8.1. Training relating to FDs 2002/584/JHA and 2008/909/JH**

#### Training of judges and prosecutors

As the institution responsible for the training of judges, the National Institute of Magistracy organises it on three levels:

- initial training;
- continuous training and
- training of trainers.

Initial and continuous training includes (among other topics) both the Council Framework Decision of 13 June 2002 on the EAW and the surrender procedure between Member States and Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgment in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. The annual programme of initial training consists of one course on cooperation in criminal matters and four seminars. The course deals with the EAW (general rules for its issuance). The continuous training also covers the same topics (EAW and recognition of judgments in criminal matters) in way that encourages a participatory approach, which primarily means interactive lectures and debates.



National Institute of Magistracy trainers are mainly selected from among judges and prosecutors based on the criteria of their knowledge in the respective field and their training skills. The National Institute of Magistracy also uses foreign specialists for certain areas of training. The recruiting of training staff consists of three steps:

- assessment of the admissibility of all applications submitted
- an interview by a selection committee and
- a mock training session.

Continuous training is carried out on two levels:

- centralised continuous training (organised under the National Institute of Magistracy, based on the needs of the judicial system, approved by the Superior Council of Magistracy), and
- decentralised continuous training (organised by courts of appeal and prosecutor's offices attached to courts of appeal, under NIM supervision)

The intensity of training dropped in 2020 due to the pandemic situation (only one training activity), but has increased in 2021 to five training activities, with 15-20 training sessions planned for 2022-2023.

#### Training at international level

This form of training encompasses cooperation with the Academy of European Law (ERA) and the European Judicial Training Network (EJTN) on topics regarding judicial cooperation in criminal matters and includes 100 participants from the Romanian judicial system.

The training of judges and prosecutors also takes place under the Norwegian Financial Mechanism (10 training sessions on judicial cooperation in criminal matters in 2021). The goals of these training sessions are:

- familiarisation with online tools for judicial cooperation in criminal matters;
- development of good practices in the same fields;
- Framework Decisions and Directives.

## Use of the European Judicial Network (EJN) website

Judges and prosecutors are familiar with the EJN's online tools. The most frequently used instrument is the EJN Atlas, which facilitates direct contact with the competent authority in the European Union Member States. After the Atlas, the most useful tool is the Compendium, although judges and prosecutors observed that its data are sometimes no longer accurate (not updated following changes in certain legislation).

## Training of clerks

According to the statistics obtained from National School of Clerks, in the period from 2017 to 2021 a total of 1158 clerks were trained on the EAW (408 trainees in initial training and 750 clerks in continuous training). The whole training process is divided into two phases:

- recruitment and initial training and
- continuous training

62-hour EAW seminars are mandatory for all trainees. The seminars are followed by an exam which counts towards the graduation average. Initial training includes:

- identification and corroboration of relevant legislative acts;
- identifying the competent authorities in the executing state;
- completing and submitting the EAW form;
- the grounds for non-execution;
- drafting procedural documents.

It is important to emphasise that initial training consists of theoretical but also practical training ('learning by doing'). EAW training in the National School of Clerks is associated with international projects (European Judicial Training for Court Staff and Bailiffs, JCI, 2018-19, European cross-border cooperation; Better applying criminal law: legal and language training for court staff across Europe, ERA, 2020-21; Exchange Programme for clerks, EJTN, 2021).

EAW continuous training includes dedicated modules ('International judicial cooperation in criminal matters') and dedicated sections ('File management in criminal proceedings' and 'Enforcement of criminal judgments').

Taking into account the specific nature of the clerk's activities, issues related to FD 2008/909/JHA are covered in training events as secondary topics since this complements FD 2002/584/JHA.

Thanks to internet technology, during the pandemic the National School of Clerks maintained its activity via e-Learning and webinar platforms.

As a relevant aspect of training, the Ministry of Justice intranet should be mentioned as a tool with many valuable files for practitioners (and for judges, prosecutors and clerks).

Besides training, on the Ministry of Justice intranet site practitioners can find a lot of helpful information and regulations concerning judicial cooperation, such as:

- guidelines and practical knowledge;
- the UK Brexit agreement;
- ECJ decisions;
- works and studies in the field of judicial cooperation;
- the European Handbook on the EAW;
- the online EAW form;
- language training concerning the vocabulary of judicial cooperation in criminal matters;
- online access to the EJM website and
- a legislation file where practitioners can find translations of the Criminal Procedure Codes of all EU Member States etc.

## 8.2. Training relating FDs 2008/947/JHA and 2009/829/JHA

In RO there is a central body responsible for training the judiciary: the National Institute of Magistracy. Established in 1992 to meet the need to form a professional body of highly qualified magistrates – judges and prosecutors, the National Institute of Magistracy (NIM) is an independent public institution providing initial training for future judges and prosecutors, continuous training for serving judges and prosecutors, and training sessions for trainers. It is coordinated by the Superior Council of Magistracy (SCM), the independent body governing the judicial system and constitutionally guaranteeing the independence of the judiciary. The training system also includes the National School for Clerks (SNC) - a public body with legal personality under the coordination of the Superior Council of Magistracy, responsible for providing initial and further professional training for court clerks.

Probation staff have participated in training sessions on the application of FD 947, but these training sessions do not take place on a regular basis. 20 persons have received training to date. Currently, the National Institute of Magistracy and the National School for Clerks do not provide regular training on the application of FDs 947 and 829. On the other hand, the NIM will host sessions, in July 2021, in Bucharest, on the theme ‘Detention: Framework Decisions 829 and 947 and their Impact on Alternatives in EU’. The session will take place within the framework coordinated by the Trier Law Academy, entitled ‘Enhancing Cross-border Mutual Legal Assistance and Recognition of Decisions within the Context of Detention’.

In 2020 the pandemic situation seriously impaired training activities, resulting in some postponement of planned activities.

In 2021 a series of 10 training sessions in judicial cooperation in criminal matters financed by the Norwegian Financial Mechanism will take place. This will include familiarisation with online tools, the development of good practices and both generic and specific training on tools available under EU instruments. The Romanian authorities indicated that more training and awareness-raising should be promoted at EU level.

In February 2021, 17 judges from Romania took part in the final online conference of the PONT (Probation Observatory Network and Training) project to support the effective use of FDs 947 and 829. This project was co-financed by the European Commission and coordinated by the University of Bucharest in partnership with Loyola University, Andalusia, the Ministry of Justice, Bremen, Germany, the University of Latvia and the European Probation Confederation. The main activities of this project were to conduct a thorough literature review, run a training gap analysis, draw up an e-manual and deliver training to competent authorities from 10 European jurisdictions. The e-manual also has four annexes that can support effective practice – a decision-making flowchart, a certificate checklist, a list with the relevant case-law to date and some vignettes that could be used in training.

A number of practitioners (4 persons within the National Probation Directorate) also participated in training on FDs 2008/947/JHA and 2009/829/JHA organised at EU level. The RO authorities are of the opinion that more training and awareness-raising events should be promoted at EU level.

Existing materials and information with updates and developments as regards FDs 2008/947/JHA and 2009/829/JHA (e.g. national handbooks, guidelines or similar training materials from Eurojust, EJTJN online materials, etc.) are being disseminated.

At European level, Romania avails itself of the possibilities offered through the EJTJN as well as the European Legal Academy in Trier, Germany.

The judicial authorities are advised by the Ministry of Justice to use the practical tools provided by the EJTJN. Existing materials or links at which they can be accessed are disseminated by the national authorities.

## 9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

### 9.1. Suggestions by Romania



## 9.2. Recommendations

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

Romania 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 Romania's authorities. In addition, based on the various good practices, related recommendations are also put forward to the EU, its institutions and agencies, and to Eurojust and the EJM in particular.

### 9.2.1. Recommendations to Romania

**Recommendation 1:** (947) While the evaluation team would not want to aggravate the task of practitioners in applying the alternative measures, in order to have an overview of the evolving practice in issuing supervision orders, both a collection of national (court) decisions and some central statistics would seem to be helpful. This might also help to address recurring problems and identify patterns that need to be addressed to make the instrument more effective.

**Recommendation 2:** (829) National training for magistrates on the relevant Framework Decisions should be stepped up and address the specific instruments in a detailed and not merely generic way. In this context, the detailed material prepared by the EU-financed PONT Probation Observatory Training Network, which focused explicitly, inter alia, on the Romanian experience and their online training resources might be useful. In addition, some training for lawyers would also be useful.

**Recommendation 3:** The establishment of a national set of guidelines and/or a handbook might also help to overcome knowledge gaps and insecurity in applying the instrument in full. In particular, this might help with the issue of time limits for alternative measures insofar as differences between applicable periods can be addressed through adaptation.

**Recommendation 4:** The evaluation team noted that part of the penitentiary system has been improved and thus complies with EU standards; however, when Romania acts as executing state, it should also verify the detention conditions in the other Member States (e.g., by making use of the FRA database or by relevant enquiries).

**Recommendation 5:** (all FDs) It would seem to be useful to collect statistics on all four instruments in order to identify patterns and address recurrent problems.

**Recommendation 6:** According to Article 23 (2) of FD 2008/909/JHA, as a principle, no judgment translation shall be required. Therefore, Romanian authorities should limit requests for the translation of whole judgments to exceptional cases and, if necessary, after consultation between the competent authorities of the issuing and the executing States to indicate the essential parts of the judgments to be translated according to Article 23 (3) of FD 2008/909/JHA.

#### *9.2.2. Recommendations to other Member States*

**Recommendation 2:** The establishment of an official manual to address interpretation problems and insecurity when filling out the necessary forms would greatly help practitioners. Some of this might also be addressed by generic instructions on how to fill out the form.

**Recommendation 3:** In order to facilitate the hearing of and obtain the consent of persons concerned, national legislation in the Member States could generally be amended to allow hearings via video conference, as practised provisionally in some jurisdictions due to the COVID-19 pandemic.

**Recommendation 4:** Acceptance by practitioners of the instrument on alternative measures to detention might also be increased by feedback from the issuing state on the outcome of the proceedings, as its usefulness would be underlined.

**Recommendation 6:** Member States should not misuse the possibilities offered by EAW proceedings in order merely to locate a wanted person with the nationality of the executing state and subsequently switch to a request under FD 909, in order to deflect detention costs onto the executing state.



**Recommendation 7:** An incoming EAW request should not be converted unilaterally into a request under FD 909 without a proper certificate from the issuing state or at very least consultation of the issuing state, as this will rob the latter of the possibility otherwise available to it under FD 909 to withdraw the certificate in case of impending adaptation<sup>4</sup>.

**Recommendation 8:** Issuing Member States should clearly ascertain the identity of wanted persons in respect of whom an EAW is being issued and provide as much information as possible on identity criteria in the EAW in order to facilitate identification and avoid cases of mistaken identity.

### 9.2.3. Recommendations to the EU institutions

**Recommendation 1:** To increase the usefulness of FD 2009/829, its amendment by the introduction of a time limit for the transmission of certificates after the actual decision should be considered.

**Recommendation 2:** In line with what has been suggested to Romania, it might be useful to collect national decisions at European level, possibly through Eurojust or the EJN, to establish the exact nature of any recurrent difficulties in filling out the certificate and adapting measures to the requirements of the relevant national system.

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<sup>4</sup> The position of Austria to the recommendation is as follows:

*According to Article 23 (2) of FD 2008/909/JHA, as a principle, In the light of the case C-179/22 currently pending at the ECJ the wording of the recommendation and the need for legislative clarification of the relationship between Art. 25 FD 2008/909/JHA and FD 2002/584 will have to be reconsidered once the judgement of the ECJ is delivered.”*

### 9.3. Best practices

The evaluation team identified the following best practices:

#### **FD 2009/829**

- The Romanian authorities have adapted a very flexible language regime for the transfer of certificates, as they will accept English, French and Romanian versions.
- Romanian law contains a possibility for appeal against the order by anyone with a legitimate interest, thereby opening a venue for victims of the underlying offence.
- The use of EU funding for research (Bucharest University through PONT financed by DG JUST) and training (NIM through EJTN) is exemplary.

#### **FD 2002/584**

- The Romanian authorities have changed both the law and the practical handling of EAWs in order to live up to the principle of proportionality requirements and are now in full compliance. Judicial authorities in Romania refrain from issuing multiple EAWs for multiple penalties in different sentences and instead first cumulate the penalties in one sentence before issuing a single EAW.
- NIM provides legal courses in English for practitioners to enhance their English skills for direct communication.

**Programme of the VTC preparatory meeting with representatives  
of Romania**

**Thursday, 3 May 2021**

[Venue: VTC meeting]

[Participants: representatives of the court of appeal, the prosecutor's office attached to the High Court of Cassation and Justice, the National Directorate for Probation, the National Institute of Magistracy, Professor Durnescu from the University of Bucharest and the Ministry of Justice]

- 9:30 - 9:45      Opening speeches, introduction of the host team and evaluation team;
- 9:45 - 11:30    Presentation by the prosecutor's office and the court, followed by Q&A;  
discussion
- 11:30 - 12:00   Break
- 12:00 - 14:30   Presentations by the National Directorate for Probation, the prosecutor's office  
and Professor Durnescu from the University of Bucharest followed by Q&A;  
discussion
- 15:00 - 16:30   Internal meeting of the evaluation team and observers.

**Programme of the on-site evaluation visit with representatives of Romania**

**Monday, 4 October 2021**

Arrival of the evaluation team to Romania

18:00 - Internal meeting of the evaluation team and an observer.

## **Tuesday, 5 October 2021**

[Venue: Ministry of Justice, Bucharest, 17 Apolodor Street]

[Participants: representatives of the High Court of Cassation and Justice, the courts of appeal, the district court, the prosecutor's office, the Centre for International Police Cooperation and the Ministry of Justice]

- 9:00 - 9:15 Welcoming speeches, introduction of the host team and evaluation team
- 9:15 - 11:15 Presentations by the Prosecution Office followed by Q&A: discussion
- 11:15 - 12:15 Presentations by the Centre for International Police Cooperation followed by Q&A; discussion
- 12:15 - 13:15 Lunch break
- 13:15 - 16:15 Presentation by courts followed by Q&A: discussion
- 18:00 - 19:30 Internal meeting of the evaluation team and observers.

## **Wednesday, 6 October 2021**

[Venue: Ministry of Justice, Bucharest, 17 Apolodor Street]

[Participants: representatives of the court of appeal, the judge assigned to the penitentiary, the prosecutor's office and the Ministry of Justice]

- 9:00 - 10:15 Presentation by the prosecutor's office followed by Q&A: discussion
- 10:15 - 10:30 Coffee break
- 10:30 - 12:00 Continuation of the discussion
- 12:00 - 13:00 Lunch break

- 13:00 - 14:30 Presentation by representatives of the court followed by Q&A: discussion
- 14:30 - 14:45 Coffee break
- 14:45 - 16:15 Continuation of the discussion
- 18:00 - 19:30 Internal meeting of the evaluation team and an observer.

### **Thursday, 7 October 2021**

[Wrap-up meeting]

[Venue: Ministry of Justice, Bucharest, 17 Apolodor Street]

[Participants: representatives of the National Administration of Penitentiaries, Penitentiary Commissioner at the Ministry of Justice, the National Institute of Magistracy, the Bar Association and the Ministry of Justice]

- 9:00 - 10:45 Presentation by the National Administration of Penitentiaries followed by Q&A; discussion
- 10:45 - 11:00 Coffee break
- 11:00 - 12:00 Presentation by the National Institute of Magistracy followed by Q&A; discussion
- 12:00 - 13:00 Lunch break
- 14:00 - 15:15 Assessment and final speeches
- 16:00 - 17:15 Internal meeting of the evaluation team and an observer.

ANNEX B: PERSONS INTERVIEWED/MET

**Thursday, 3 March 2021, from 9:30 to 14:00:** VTC preparatory meeting with representatives of the court of appeal, the Prosecution Office attached to the High Court of Cassation and Justice, the National Directorate for Probation, the National Institute of Magistracy, Professor Durnescu from the University of Bucharest and the Ministry of Justice

*Venue: via the VTC platform*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Viviana ONACA	Ministry of Justice Directorate for International Law and Judicial Cooperation Director
Simona FRANGULOIU	Ministry of Justice Directorate for International Law and Judicial Cooperation Deputy Director
Dana ROMAN	Ministry of Justice Head of Division for International Judicial Cooperation in Criminal Matters
Delia MOTÎNGĂ	Ministry of Justice Legal advisor
Raluca SIMION	Ministry of Justice Legal advisor
Magdalena BOZIERU	Ministry of Justice Counsellor for European Affairs

Ștefania STAN	Prosecution Office attached to the High Court of Cassation and Justice
Gheorghe BOCȘAN	Prosecution Office attached to the High Court of Cassation and Justice
Iuliana CĂRBUNARU	National Directorate for Probation Probation Inspector
Gabriel OANCEA	Head of Office Bucharest Probation Office
Claudia JDERU	Judge, Bucharest Court of Appeal
Amelia ONIȘOR	National Institute of Magistracy
Ion DURNESCU	Professor, University of Bucharest

**Tuesday, 5 October**, from 9:00 to 11:15: meeting with representatives of the Prosecution Office and the Ministry of Justice

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Viviana ONACA, Director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Simona FRANGULOIU, Deputy Director	Ministry of Justice Directorate for International Law and Judicial Cooperation

Dana ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters
Magdalena BOZIERU, Counsellor for European Affairs	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters
Marioara IGNAT, Penitentiary Commissioner	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters
Vasile DRĂGHICI, prosecutor	Prosecution Office at Constanța Court of Appeal
Mihaela CHICEA, prosecutor	Prosecution Office at Alba Iulia Court of Appeal
Florian HĂRĂBOIU, prosecutor	Prosecution Office at Ploiești Court of Appeal



**Tuesday, 5 October**, from 11:15 to 12:15: meeting with representatives of the Centre for International Police Cooperation and the Ministry of Justice

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Gabriela LULCIUC, judge	Judge assigned to the SIRENE Bureau
Silviu SECOTĂ, police officer	INTERPOL Bucharest
Corina CHIȚESCU	SIRENE Bureau, Romania
Viviana ONACA, Director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Magdalena BOZIERU, Counsellor for European Affairs	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters
Dana Maria ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters

**Tuesday, 5 October**, from 13:15 to 16:15: meeting with representatives from the High Court of Cassation and Justice, the Court of Appeal, the District Court and the Ministry of Justice.

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Ana Hermina IANCU, judge	High Court of Cassation and Justice
Isabelle TOCAN, judge	Bucharest Court of Appeal
Claudia JDERU, judge	Bucharest Court of Appeal
Vlad ANDRIESCU, judge	Bucharest District Court
Viviana ONACA, Director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Simona FRANGULOIU, judge	Ministry of Justice Directorate for International Law and Judicial Cooperation
Dana Maria ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters

**Wednesday, 6 October**, from 9:00 to 12:00: meeting with representatives from the Prosecution Offices and the Ministry of Justice.

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Vasile DRĂGHICI, prosecutor	Prosecution Office at Constanța Court of Appeal
Gabriel ANDRIEȘ, prosecutor	Prosecution Office at Suceava Court of Appeal
Mihaela CHICEA, prosecutor	Prosecution Office at Alba Iulia Court of Appeal Alba
Florian HĂRĂBOIU, prosecutor	Prosecution Office at Ploiești Court of Appeal
Viviana ONACA, Director	Ministry of Justice  Directorate for International Law and Judicial Cooperation
Dana Maria ROMAN, Head of Division	Ministry of Justice  Directorate for International Law and Judicial Cooperation  Division for International Judicial Cooperation in Criminal Matters

**Wednesday, 6 October**, from 13:00 to 16:00: meeting with representatives from the Court of Appeal, the Judge assigned to the Penitentiary and the Ministry of Justice.

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Claudia JDERU, judge	Bucharest Court of Appeal
Isabelle TOCAN, judge	Bucharest Court of Appeal
Simona FRANGULOIU, judge, Deputy Director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Luiza OLSEN, judge	Judge assigned to Jilava Penitentiary
Dana Maria ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters

**Thursday 7 October**, from 9:00 to 10:45: meeting with representatives of the National Administration of Penitentiaries, the Penitentiary commissioner of the Ministry of Justice and the Ministry of Justice.

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Dan HALCHIN, General Director	National Administration of Penitentiaries
Marian ILIE, Deputy General Director	National Administration of Penitentiaries
Marioara IGNAT	Penitentiary Commissioner Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters
Viviana ONACA, director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Dana Maria ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters

**Thursday 7 October**, from 11:00 to 12:00: meeting with representatives of the National Institute of Magistracy and the Ministry of Justice.

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Ioana BOGDAN, judge	National Institute of Magistracy
Ruxandra ANA	National Institute of Magistracy
Andrei BĂNCILĂ, judge	National School for Clerks
Alina ARAMĂ, judge	National School for Clerks
Viviana ONACA, director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Simona FRANGULOIU, Deputy Director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Dana Maria ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters

**Thursday, 7 October**, from 13:00 to 14:00: meeting with representative of the Bar Association and the Ministry of Justice.

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Mihnea STOICA, lawyer	Bucharest Bar Association
Viviana ONACA, director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Simona FRANGULOIU, Deputy Director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Dana Maria ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters

**Thursday, 7 October**, 14:00 to 14:45: wrap-up meeting with representatives of the Ministry of Justice.

*Venue: Ministry of Justice (Bucharest, 17 Apolodor Street)*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Viviana ONACA, Director	Ministry of Justice Directorate for International Law and Judicial Cooperation
Simona FRANGULOIU, Deputy Director	Ministry of Justice Directorate for International Law and Judicial Cooperation

Dana Maria ROMAN, Head of Division	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters
Magdalena BOZIERU, Counsellor for European Affairs	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters
Marioara IGNAT, Penitentiary Commissioner	Ministry of Justice Directorate for International Law and Judicial Cooperation Division for International Judicial Cooperation in Criminal Matters





authorities did not extend the arrest measure and released the subject. The issuing judicial authorities of the Member State were informed in each case; it is possible for these persons to be rearrested after a new EAW is issued.

#### [Legal basis for postponing the actual surrender \(Articles 23\(3\) and/or 23\(4\) of the FD on the EAW\)](#)

So far, the provisions of Article 23(3) and (4) are intensively used. Generally, the Romanian courts used the provisions of Article 23(3) of FD 2002/584/JHA. In some cases, humanitarian reasons were also invoked.

#### [Adequacy of these provisions](#)

In our opinion, the COVID-19 pandemic falls under the categories envisaged by Article 23(3) and (4). We deem those provisions sufficient.

#### [Meaning of ‘circumstances beyond the control’](#)

The concept ‘prevented by circumstances beyond the control of any of the Member States’ in Article 23(3) of the FD on the EAW should be interpreted from a broader perspective, reflecting the purpose for which that provision exists.

Thus, in the current context of the COVID-19 pandemic, the circumstances covered by Article 23(3) are not limited to particular measures such as temporary closer of borders or cancellation of flights, restriction of the freedom of movement within the territory of some Member States or establishing a state of national emergency (as is the case also in Romania, as of 16 March).

The circumstance ‘beyond the control of any of the Member States’ is this pandemic itself, which could not be foreseen by any of the Member States, by any of us. Closure of borders or cancellation of flights are just two of the effects of this situation, but not the only ones and not necessarily those which represent the biggest obstacle to effective surrender. The main argument for applying Article 23(3) is the protection of public health, taking also into account the quarantine /



	<p><b>Transit</b></p> <p>In the context of cancellation of flights and travel restrictions, transits are very difficult, but, in theory still possible, on a case-by-case basis. Transit via our territory is possible if it is approved by the Ministry of Justice, as the competent national authority.</p> <p><b>Electronic transmission and contact details</b></p> <p>Requests should be sent by email. Central authorities can assist, but direct contact is preferred.</p> <p>For EAWs, custodial sentences, and also for EIOs and MLA requests during the trial stage and regarding enforcement of sentences: <a href="mailto:dreptinternational@just.ro">dreptinternational@just.ro</a></p>
<p><b>Precautionary measures for surrender, extradition and transfer</b></p> <ul style="list-style-type: none"> <li>- <i>COVID-19 test</i></li> <li>- <i>health certificate</i></li> <li>- <i>quarantine</i></li> <li>- <i>facial masks</i></li> </ul>	<p><b>Precautionary measures</b></p> <p>The general precautionary measures have been established. However, the detention centres subordinated to the Ministry of Interior face a practical impossibility of handling arrested persons who might become infected.</p> <p>The National Administration of Penitentiaries drafted a specific plan to prevent and limit the spread of the coronavirus, limiting contacts as much as possible and putting in place measures to use remote communication.</p> <p>A negative COVID-19 test may be needed for the surrendered person on a case-by-case basis. For the moment, the police authorities find themselves facing the practical impossibility of organising escorts.</p> <p><b>Specific measures for the person to be transferred</b></p> <p>Yes, there are special conditions for a sentenced person who is in a procedure of surrender, extradition or transfer. A medical report, negative for COVID-19, is necessary. Otherwise, the person will have to stay isolated/quarantined for 14 days.</p> <p><b>Specific measures for the escorting police officer</b></p> <p>Such details have not been established yet, as no surrenders have taken place so far during the pandemic. Still, public transport can be used</p>

	<p>without any restrictions but the escorting police officers must cover their face with a protective mask and maintain social distancing from other people.</p> <p><a href="#">Need (or not) for further guidance on precautionary measures</a></p> <p>Guidelines would be welcome in order to ensure the continuity of the surrender/transfer missions, without delays or quarantine for the members of the escorts on the territories of other states.</p>
<p><a href="#">Extradition</a></p> <p><i>-suspension</i></p> <p><i>-legal basis</i></p> <p><i>-third countries involved</i></p> <p><i>-expected duration of suspension</i></p>	<p><a href="#">Impact on extradition procedures</a></p> <p>Extradition procedures from Romania have not been suspended and neither has extradition from other states. The problems arise where surrender is concerned, the reasons being the same as in the case of EAWs.</p> <p><a href="#">Need (or not) for further exchange of information</a></p> <p>Exchange of information on extradition in relation with third states would be welcome.</p>
<p><a href="#">Transfer of sentenced persons</a></p> <p><i>-prioritisation in issuing/execution</i></p> <p><i>- transit</i></p>	<p><a href="#">Impact on the transfer of sentenced persons</a></p> <p>Transfers of sentenced persons are directly affected by the outbreak. A significant number of the states with which we cooperate have informed Romanian authorities that these activities have been suspended. Some countries still present a high health risk, including for the police escort, and flights are still cancelled.</p> <p>Requests for recognition and enforcement under FD 2008/909/JHA have not been suspended, but it is generally accepted that the actual transfers will take place as soon as the epidemic context allows.</p>
<p><a href="#">SIRENE Bureaux</a></p> <p><i>-working of SIS bureau</i></p> <p><i>-exchange of information with other SIS Bureaux</i></p>	<p><a href="#">Impact on the working of the SIRENE Bureau</a></p> <p>SIRENE Romania is working at full capacity. Half of the personnel work AM, the other PM, with 30 minutes between shifts, to avoid interaction between people. We have front desk officers working 24/7, as usual.</p> <p><a href="#">Impact on the exchange of information with other SIRENE Bureaux</a></p> <p>We have not had any issues with the exchange of information, nor as</p>

	<p>far as time response is concerned, nor any other type of problem with any Member State. A large number of forms have been exchanged in order to obtain the prolongation of the person's arrest when the period of 30 days expired, and a new date of surrender was requested by judicial authorities taking into consideration the provisions of Article 23(3) and (4) of Framework Decision 2002/584/JHA.</p>
<p><b>EIO and MLA</b>  <i>-prioritisation in issuing/execution</i>  <i>-electronic transmission</i>  <i>-whom to contact</i></p>	<p><b>Impact on the issuing of EIOs and MLA requests</b></p> <p>No significant impact on issued EIOs and MLAs.</p> <p>The issue of prioritisation is closely connected to the issue of the diminished activity of courts and prosecution services, during the state of emergency. Generally, the assessment is made on a case-by-case basis, because the judicial authorities are given the possibility to indicate what cases they deem urgent and are therefore excepted from suspension.</p> <p>According to the information available to the Romanian Ministry of Justice, the COVID-19 pandemic did not have any specific impact on the application of the EIO. However, the number of EIOs has decreased.</p> <p><b>Impact on the execution of EIOs and MLA requests</b></p> <p>Prioritisation is applied on a case-by-case basis, depending on the urgency of the measure and the seriousness of the case. There are no general rules/guidelines in place. The execution of the MLA requests and EIOs are priorities according to the seriousness of the case and urgency, keeping in mind the need to protect public health.</p> <p><b>Electronic transmission and contact details</b></p> <p>EIOs and mutual legal assistance requests should be sent by email. The central authorities can assist, but direct contact is preferred.</p> <p>For EIOs and MLA requests during the trial stage:  dreptinternational@just.ro</p> <p>For EIOs and MLA requests issued during investigation/prosecution:  coop@mpublic.ro</p> <p>For EIOs and MLA requests issued during prosecution, for organised</p>

	<p>crime and terrorism offences: <a href="mailto:diicot_cooperation@mpublic.ro">diicot_cooperation@mpublic.ro</a></p> <p>For EIOs and MLA requests issued during prosecution, for corruption offences: <a href="mailto:anticoruptie@pna.ro">anticoruptie@pna.ro</a></p>
<p><b>Freezing and confiscation orders</b></p> <p><i>-prioritisation in issuing/execution</i></p>	<p><b>Impact on freezing and confiscation orders</b></p> <p>Not affected.</p>
<p><b>JITs</b></p> <p><i>-prioritisation and alternative telecommunication solutions</i></p>	<p><b>Impact on JITs</b></p> <p>The activities during JITs that imply direct contact between participants are affected, but we are not aware of significant changes in this matter.</p>
<p><b>Recommended channels for transmission of</b></p> <p><i>-urgent requests</i></p> <p><i>-information exchange</i></p> <p><b>Contact details</b></p>	<p>The advice is to communicate requests by email only, either directly to courts or prosecutor's offices – where direct contact is possible – or to the competent central authorities.</p> <p>As far as the Ministry of Justice is concerned, as Romanian Central Authority for extradition, EAW, FD 2008/909, EIO Directive and MLA during the trial phase etc., please contact it via email at the functional inbox of the Directorate for International Law and Judicial Cooperation: <a href="mailto:dreptinternational@just.ro">dreptinternational@just.ro</a></p> <p>In urgent situations, Eurojust and SIS/SIRENE should be the preferred channels to use. Of course, central authorities have not suspended their activity, even though measures for remote working are in place.</p>
<p><b>Any other relevant information</b></p>	<p>The state of emergency in Romania has ceased, being replaced by a state of alert, until 15 June 2020. Courts and prosecutor's offices have resumed their activities.</p> <p>In criminal cases, if the judicial authority deems that this does not affect the conduct of the trial or the rights and interests of the parties, persons deprived of their liberty are heard by video conference at the place of detention, without the need for their consent.</p>

ANNEX D: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
FD		Framework Decision
EJN		European Judicial Network
EAW		European arrest warrant
CJEU		Court of Justice of the European Union
SIS		Schengen Information System
NIM		National Institute of Magistracy
SCM		Superior Council of Magistracy
SNC		National School for Clerks
PONT		Probation Observatory Network and Training