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

**Mutual Evaluation on Mutual recognition legal instruments in the field of deprivation or
restriction of liberty**

REPORT POLAND

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1. EXECUTIVE SUMMARY

The visit was well prepared by the Polish authorities, and included meetings with the relevant actors with responsibilities in the field of European judicial cooperation as well as in the implementation and operation of European policies.

The practical implementation of the European arrest warrant (EAW) in Poland, both as issuing Member State and as executing Member State, seems to work appropriately.

The Polish criminal judicial system is based on the territorial division of the country, with courts and prosecution services at different levels according to their different competences: 318 district courts (sądy rejonowe); 45 circuit courts (sądy okręgowe), presided by judges, which function as courts of both first and second instance; 11 appeal courts (sądy apelacyjne); and the Supreme Court (Sąd Najwyższy). Within the Prosecution Service there are 359 units at district level, 45 units at circuit level and 11 units at regional level, as well as the National Prosecutor's Office with its 11 local divisions of the Department for Organised Crimes and Corruption Matters.

A central authority has been established only for incoming EAWs; there is no central authority for Framework Decision (FD) 2008/909/JHA, FD 2008/947/JHA and FD 2009/829/JHA. The National Prosecutor's Office (Bureau of International Cooperation) is the central authority in Poland for incoming EAWs.

The Ministry of Justice has a limited role; it does not take part in the decision-making process in individual cases. It is, however, informed of all EAWs issued by the courts and is competent to issue non-binding guidelines to the courts related to strictly technical aspects of the EAW procedure. Since the Minister for Justice also acts as Prosecutor-General, he or she may issue orders, instructions and guidelines addressed to all prosecutors nationwide.

As regards FD 2002/584/JHA, FD 2008/909/JHA, the issuing and executing authorities are the circuit courts. As regards FD 2009/947/JHA, the competent authorities for issuing probation decisions are the courts that rendered the national probation decisions (Article 611u of the Code of Criminal Procedure), while the competent authorities for execution of probation decisions are the district courts in whose judicial circuit the offender has their lawful residence. As regards FD 2009/829/JHA, the competent issuing authorities are courts and prosecutors conducting investigations (Article 607zd of the Code of Criminal Procedure), while the competent executing authorities are the prosecutors at circuit level – or, under the supervision of the latter, the prosecutors at district level (Article 607zh of the Code of Criminal Procedure and § 299 of the Prosecution Service’s internal rules of procedure of 7 April 2016).

FRAMEWORK DECISION 584/2002/JHA

According to the distribution of competence described above, if a district court decides to issue an EAW or a certificate under FD 2008/909/JHA, it cannot do so on its own authority; it needs to send a ‘request’ to the circuit court, which is the issuing authority. The circuit court then analyses all the merits of the case and eventually takes the decision whether or not to issue the EAW.

On the one hand, the fact that a specialised court (the circuit court) ‘supervises’ or checks the EAW before it is issued may minimise the risk of an incomplete form, as well as allowing the competent authority to focus primarily on assisting the authority concerned. On the other hand, the fact that the authority which is actually dealing with the case and is competent for the adoption of measures at national level (a national detention order, for example) is not competent for the adoption of the EAW may be highly detrimental to the criminal proceedings if a disparity in the criteria is identified. Cases of refusals to issue an EAW have been described. It may also have a negative impact on the principle of direct communications.

There have been considerable improvements in checks on proportionality when issuing EAWs since the proportionality clause for EAWs was introduced in Polish legislation in 2015 under Article 607b of the Code of Criminal Procedure, according to which ‘it is not permissible to issue a warrant if it is not in the interest of the administration of justice’.

Polish authorities competent for the execution or the issuing of EAWs seem to be very proactive in making direct contact with competent authorities in other Member States.

As executing authorities, the Polish courts identified some deficiencies relating to the information provided by issuing States, as well as situations when incomplete or distorted information had been provided.

As issuing authorities, they stated that some delays in providing supplementary information can be due to the fact that the authority issuing the EAW (circuit court) is sometimes not the same as the one conducting the proceedings. Experts are therefore concerned that the involvement of judges and prosecutors other than those dealing with the cases can cause delays in the exchange of information with foreign States.

Although the Polish legislation foresees (Paragraphs 372 and 375 of the Regulation of the Minister of Justice - Rules of procedure of common courts of 18 June 2019) a general possibility for competent authorities to request the assistance of Eurojust, the concrete obligation foreseen in article 17(7) of the Framework Decision is not included in the national law.

The Polish authorities reported that sometimes the executing authorities would ask for information that had already been provided in the EAW form, or would fix too short a time limit for responding.

As a result of the judgments relating to prison conditions, the Polish authorities have received requests for additional information. Nevertheless, none of these cases resulted in a refusal to surrender the requested person.

Despite the fact that Article 607k § 3 CCP provides that Polish is the only language accepted by law, some practitioners interviewed during the on-site visit tend to be very flexible with regard to EAWs sent in English. Under special circumstances and for the sake of efficiency, such EAWs can be accepted and translated by domestic services into Polish.

As regards grounds for refusal, as a preliminary remark the experts would note that under Article 607p and 607r of the Polish Code of Criminal Procedure, the list of mandatory grounds for refusal is not in line with Article 4 of FD 2002/585/JHA. That provision limits the scope of the Framework

Decision since it consistently reduces the number of EAWs executed. It also limits application of the mutual recognition principle.

The ECJ judgments relating to *in absentia* cases had a significant role in increasing the number of requests for additional information. In fact, following these judgements, there have been many requests for information and these have resulted in non-observance of the time limits set out in Article 17 of the Framework Decision.

The experts note that the Polish legal provisions on notifications and summons create some difficulties in the execution of EAWs. Some amendments to the law should therefore be considered with regard to the presumption of due notification (Article 136 of the Code of Criminal Procedure), especially in relation to Article 4a of the Framework Decision. A provision should be introduced according to which it must be unequivocally established that the person was aware of the scheduled trial (Article 4a(1) of the Framework Decision).

The Polish Code of Criminal Procedure has not been updated to implement the provisions of Article 5 of the Directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in EAW proceedings as far as, firstly, the right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State and secondly, the right to legal aid for such purposes are concerned.

At National Police level, the International Cooperation Bureau is well organised, with all competent units under the same umbrella, thus avoiding overlaps.

Experts noted that several recommendations from the 4th evaluation round had not been fully implemented.

FRAMEWORK DECISION 2008/909/JHA

The decision of the court to transfer the sentence for enforcement can be taken *ex officio*, or at the request of the sentenced person or the Ministry of Justice.

Before the certificate is issued, steps are taken to establish whether transmission of the sentence to be enforced will contribute to the aim of social rehabilitation and reintegration and will make it possible to come closer to achieving the educational and preventive objectives of the punishment.

Pursuant to Article 611tb(2) of the Code of Criminal Procedure, and in line with Article 6 of FD 2008/909/JHA, the court gives the sentenced person residing in the territory of the Republic of Poland an opportunity to state his or her opinion orally or in writing. The opinion of the sentenced person is taken into account when deciding whether or not to issue the certificate.

If the consent of the sentenced person is required for transmission, the court receives a relevant statement to that effect from the sentenced person residing in the Republic of Poland.

A couple of concrete cases were reported regarding adaptation of sentences. The information regarding adaptation is provided to the sentenced person at a hearing or by serving a copy of an appealable decision.

Polish law requires a judgment to be made in writing. Where the legislation of the issuing State does not require a written form of the judgment, a written summary of the proceedings (with a translation) or a written report version of an oral judgment from the court hearing is sent. This does not constitute an obstacle to proceedings for obtaining the judgment for enforcement in the Republic of Poland and making a substantive decision.

If necessary, the judgment is translated by the Polish authority on its own initiative.

The two most frequent grounds for refusal are situations in which there were less than 6 months left to serve at the time the judgment was received, and the *in absentia* situation that was described under the section devoted to the EAW.

No major problems have been reported by the Polish competent authorities with regard to partial recognition as well as with regard to crediting the period of deprivation of liberty already served in the issuing State.

The time limits under Article 12(2) are normally observed by both issuing and executing States.

Three different statistics databases coexist: the register of the Ministry of Justice, the register of the National Police and the register of the Prosecution Service.

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

Polish general practice for the purposes of the enforcement of a sentence is that an EAW will be issued if the whereabouts of the requested person are unknown; if the whereabouts are known, the court will assess whether to issue an EAW or a certificate under FD 2008/909/JHA, taking into account all the merits of the case. Decisions are taken on a case-by-case basis.

As regards Poland as an issuing State, Polish authorities reported having repeatedly faced situations where the executing authority had refused to execute an EAW because the person concerned was a national of or was resident in the executing Member State, and had asked for the EAW to be replaced by the certificate under FD 2008/909/JHA for the purpose of ordering the enforcement of the sentence in question in connection with the refusal to execute the EAW. However, in many of these cases, the Polish procedure did not allow for the solutions proposed in this respect to be implemented since no certificate could be issued because the date of the judgment was before the date of implementation of FD 2008/909/JHA.

As regards Poland as an executing State, Polish authorities reported that when they refused an EAW because the requested person was a Polish citizen, or had been granted the right of asylum, or was a resident, the Polish court enforced the sentence without asking the Member State concerned to issue the certificate under FD 2008/909/JHA. In such cases, there is a general reference to the national legislation implementing FD 2008/909/JHA, which is applicable *mutadis mutandis* (Article 607s of the Code of Criminal Procedure).

The expert team regards this solution as satisfactory. However, to ensure legal certainty, enforcement of sentences based on the certificate would be preferred.

The experts consider that amending Article 25 of the Framework Decision on custodial sentences would avoid diverging interpretations among Member States on whether or not an FD 2008/909/JHA certificate should be issued in such cases.

FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS

FD 2008/947/JHA is scarcely used in Poland for various reasons, one of them being a lack of awareness among judges and prosecutors as well as defendants, lawyers and probation officers.

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

FD 2009/829/JHA has been used very rarely. There are no recorded statistics, but roughly no more than 10 or 20 cases have been identified.

Practitioners are, in general, not aware of the existence and possibilities of this Framework Decision. In addition, difficulties stem from the practical application of the supervision measure.

Practitioners showed concern about the fact that executing authorities do not provide regular information about some of these measures being implemented.

Keeping the issuing authority informed of the execution of supervision measures is fundamental for the efficiency of FD 2009/829/JHA; there should be permanent direct contact between the authorities concerned.

TRAINING

The National School, according to the web page, 'is in charge of judicial and prosecutorial training'.

During the initial training period, two cycles for judges (II and XII) and one cycle for prosecutors (XIX) are devoted to judicial cooperation.

The National School ensures the participation of Polish judges and prosecutors in continuous training, as well as the participation of other judicial staff in international seminars and conferences, and in foreign internships and exchange programmes.

Taking into account the fact that the National School has limited premises, the expert team is of opinion that e-learning modules should be organised, which will also enable participation from remote areas.

Training is not provided to lawyers and probation officers.

The statistics provided by the Polish authorities do not make specific reference to training relating to each of the four Framework Decisions, which is the subject of the questionnaire, and no specific information has been provided relating to the number of training events specifically relating to each of the four Framework Decisions. However, the impression is that very few activities are organised with regard to FD 2008/947/JHA and FD 2009/829/JHA.

2. INTRODUCTION

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

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, 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 link between 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.

Poland was the third 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 (ST 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 on Friday 17 May 2019 to delegations by the Secretariat of the Council of European Union.

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

The experts entrusted with the task of evaluating Poland were Ms Melnace Inga (Ministry of Justice, Latvia) Mr Berczeli Sandor (Judge, Hungary), Mr Perez Enciso Pedro (Prosecutor, Spain). Observers were also present: Ms Janssens Christine (Eurojust), Ms. Bambic Jana (Commission) and Ms Giuffrida Carmen (General Secretariat of the Council).

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Poland from 2 to 6 December, and on Polish representatives' detailed replies to the evaluation questionnaire together with their detailed answers to the ensuing follow-up questions.

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

3.1. Authorities competent for the European Arrest Warrant (EAW)

The Polish criminal judicial system is based on the territorial division of the country, with courts and prosecution services at different levels according to their different competences: 318 district courts (*sądy rejonowe*); 45 circuit courts (*sądy okręgowe*), presided by judges, which function as courts of both first and second instance; 11 appeal courts (*sądy apelacyjne*); and the Supreme Court (*Sąd Najwyższy*). Within the Prosecution Service, there are 359 units at district level, 45 units at circuit level and 11 units at regional level, as well as the National Prosecutor's Office.

The National Prosecutor's Office (Bureau of International Cooperation) is the central authority in Poland for incoming EAWs.

The central authority can act as an intermediary for the transfer of EAWs. However, in principle this option should not be used by competent authorities in other Member States since the information on the EJM Atlas about the competent executing authorities in Poland is clear and the Sirene national bureau always assists.

The Ministry of Justice has a limited role in EAW procedures. Regarding the general organisation of the procedures, and as the Minister for Justice performs the duties of the Prosecutor-General, he or she may issue orders, guidelines and instructions for prosecutors. The Minister for Justice may also issue guidelines to the courts, but they may only deal with practical aspects and they are non-binding. The Ministry of Justice does not take part in the decision-making process in individual cases. It is, however, informed of all EAWs issued by the courts at pre-trial, trial and post-trial stages. The Ministry of Justice keeps a register of EAWs.

Article 607(1)(4) of the Code of Criminal Procedure states: ‘The Minister for Justice shall define, by way of a regulation, the model instructions for a person requested by a European warrant, informing him of his rights, in case of arrest, to obtain information on the contents of the warrant, to consent to the surrender, to make statements concerning the surrender, to be assisted by a defence counsel, to provide explanations and to refuse to provide explanations, to review the part of the files concerning the reasons for the arrest, to obtain access to medical first aid, as well as of the rights specified in paragraph 3, in Article 72(1), Article 78(1), Article 261(1), (2) and (2a) and Article 612, and of the contents of Article 607k(3) and (3a), also bearing in mind the necessity of making the instructions comprehensible to persons not assisted by an attorney’.

According to the Polish system, the **issuing authorities** are the circuit courts.

In the most populated regions such as Warsaw, Kraków, Szczecin, Gdańsk and others, it is special chambers which have this power; for smaller regions, specialised judges are tasked with this competence. Article 607a of the Code of Criminal Procedure provides that the proceedings are initiated ‘on a motion of the public prosecutor, or *ex officio*, or on a motion of a competent district court in court and enforcement proceedings.’

If the location of the person is known, the EAW is transmitted directly by the circuit court to the authority competent in the executing State to receive the EAW. That competent authority may be identified via a database available on the intranet of the Ministry of Justice, the EAJ Atlas, the contact points of the EAJ or, in some cases, liaison officers. If the location of the person is not known, the EAW is sent to the Sirene Bureau with the accompanying documents, and the information about the EAW is entered in SIS. Interpol may be involved where there is suspicion that the sought person may be found in a MS that is not a member of the Schengen Area.

At the pre-trial stage, a request for a Red Notice or Interpol diffusion will be sent by a circuit prosecutor, regional prosecutor or the National Prosecutor’s Office to the National Police Headquarters – International Police Cooperation Bureau. At the trial and post-trial stage, the request for a Red Notice or Interpol diffusion will be sent by the circuit court to the National Police Headquarters – International Police Cooperation Bureau. The Interpol channel may be used by the executing State for further contact, but the competent judicial authorities in Poland prefer to be directly in touch with their counterparts in the executing State.

Under the above mentioned scheme, if a district court decides to issue an EAW it cannot do so on its own authority, it needs to send a ‘request’ to the circuit court, which is the issuing authority. The circuit court then analyses all the merits of the case and eventually takes the decision whether or not to issue the EAW. Usually the circuit court issues the EAW in accordance with the request and only in some cases does not.

This system has its pros and cons: a positive feature is the fact that a specialised court ‘supervises’ or checks the EAW before it is issued, which may minimise the risk of an incomplete form, plus the role of the issuing authority is mainly focused on assisting the interested authority; however, the fact that the authority which is actually dealing with the case and is competent for the adoption of measures at national level (a national detention order, for example) is not competent for the adoption of the EAW may be highly detrimental to the criminal proceedings in cases where a disparity of criteria is identified – cases of refusals to issue an EAW have been described. It may also have a negative impact on the principle of direct communications because if the executing authority needs additional information or to establish contact with the competent issuing authority, it would do so with the circuit court as issuing authority. The circuit court may then have to contact the district court in order to answer the additional questions, unless the circuit court has notified the executing authority that any further communications are to be established with the district court, a practice which is not clear according to the information provided.

As regards the Prosecution Service, a similar rule applies: if the prosecutor at district level intends to request the circuit court to issue an EAW, he or she needs to send the request to the prosecutor at circuit level, who is specialised in international legal cooperation, who will be responsible for deciding whether or not the prerequisites are met and who will eventually forward the request to the circuit court for it to adopt the decision. The same considerations as above also apply here.

The competent **executing authorities** are the circuit court judges, who decide at the request of the Circuit Prosecutor’s Office, which is a competent authority for receiving EAWs. The prosecutor dealing with the case conducts the preliminary activities, including an initial interview with the arrested person, and then forwards the EAW to the competent court.

The authority responsible for receiving transit requests is the Minister for Justice/Prosecutor-General, as per the notification made by Poland on 18.20.2007.

No particular issues have been identified with regard to possible different and contrasting interpretations of the case-law on the application of the EAW legislation by the circuit courts in the different regions.

There is a clear policy, both for prosecutors (in pre-trial cases) and circuit courts (in trial and post-trial cases), to ensure direct contacts with the executing authorities as far as possible. Sirene assist the judicial authorities in liaising with competent authorities in other Member States. The Interpol channel may be used by the executing State only for further contact with Member States not participating in SIS or with third States; the competent judicial authorities in Poland prefer to be directly in touch with their counterparts in the executing State.

The experts observed that there is good knowledge of the EAJ website and the contact points of the EAJ.

At police level, the structure of the International Cooperation Bureau of the National Police has recently been reorganised. All units with competence in the field of international cooperation have been unified under the same umbrella (Sirene, Europol National Unit, Interpol National Bureau and liaison officers team). Incoming requests and notifications are received via a single entry port, from which they are redirected to the appropriate addressee, avoiding duplication and overlapping actions.

Once an outgoing request has been received for entry in the SIS system, the competent officers enter all the information from the EAW into the 'A' form. The facts are directly entered into the form in the English language, and are not summarised as in other countries. This procedure may be considered a good practice since the form - which is the first communication received by the executing authority - contains all the information contained in the EAW.

There seem to be no particular problems related to the logistics and effective surrender of the requested person. There were very few cases in which the operation could not be carried out due to active opposition by the affected person. In such cases a new date had to be arranged, and no further issues were described.

3.2. The principle of proportionality

In the past Poland has been criticised for the overwhelming number of EAWs issued, which it was claimed was due to the legality principle.

The experts have noted considerable improvements in proportionality checks when issuing EAWs.

The proportionality clause for EAWs was introduced in Polish legislation in 2015. The principle is reflected in Article 607b of the Code of Criminal Procedure according to which ‘it is not permissible to issue a warrant if it is not in the interest of the administration of justice’. This Article further includes the thresholds set out in Article 2(1) of the Framework Decision on the EAW.

Deciding whether something is ‘interest of the administration of justice’ is the responsibility of judges alone, and they do so on a case-by-case basis. However, the evaluation team consider the concept to be too vague. The questionnaire states that an EAW is a last resort for ‘offences the prosecution of which is a priority of the criminal policy of the State due to their dangerous nature and high degree of social harmfulness’. However, it is not clear how the assessment is conducted.

The interpretation given by the practitioners interviewed in the course of the evaluation visit hinges on the concept of minor offences. In fact, the Polish authorities reported that the length of the sentence as laid down in Article 607b of the Code of Criminal Procedure and the fact that the sentenced person had left the territory of the State before that sentence could be executed are not the sole grounds on which the courts might decide to apply an EAW to a person who has been sentenced to custody. Similarly, the fact that the offence of which a person is suspected carries a custodial sentence of a term exceeding one year and the fact that the suspect has left the territory of the State are not in themselves considered sufficient grounds for the courts to apply an EAW to that person.

The Polish authorities also reported that the courts should consider whether there is an alternative approach that could be less burdensome for both the fugitive and the issuing authority (e.g. where the foreign address is known, the sentenced person should be summoned to serve the sentence).

In cases of ongoing proceedings, the competent authorities should consider the possibility of using alternative measures such as the European investigation order, which they do.

Despite the fact that Poland is one of the Member States with a high number of EAWs as issuing Member State, it was reported that the number of EAWs had decreased since this reform.

3.3 Exchange of information

The experts appreciated the proactive role of the Polish authorities and their ability to keep informal contacts with foreign authorities.

ISSUING AUTHORITIES

As regards Poland as an issuing authority, the majority of courts have not dealt with cases where the executing authorities requested information that should not have been considered ‘necessary’. The courts emphasise that any additional queries from the executing authorities are always responded to, or requested supporting documents are forwarded to them.

Queries from foreign States are forwarded to the courts or prosecution offices seeking the issuance of an EAW, which provide a response on the basis of the case files in their possession. Indeed, it is the authorities conducting the proceedings that have the broadest knowledge of the issues to which the queries relate and, with their knowledge of the given case, they provide responses in a more expeditious and efficient manner.

Responses are provided as soon as practicable. However, due to the heavy workload faced by sworn translators in the judicial circuit, the time limit may be extended if the queries and responses have to be translated. The greatest difficulties arise where the time limit fixed for responding is determined by the date of a hearing in a foreign State and the query is actually received by the court just a few days beforehand. Where a delay is to be expected, before the time limit expires the foreign State is informed that the time limit could not be observed and the reasons for the delay are provided.

The Polish authorities stated that delays in providing supplementary information could be due to the fact that the authority issuing the EAW (circuit court) is usually not the same as that conducting the proceedings. Therefore, where the information requested is very detailed, the circuit court has to obtain the response from the ‘authority conducting the proceedings’ in the course of which the EAW was issued. Sometimes the requested information has been sent out to another court in connection with other proceedings which are underway, which also contributes to a delay in providing the information. The experts are therefore concerned that the involvement of judges and prosecutors other than those dealing with the case can cause delays in exchanging information with foreign States.

One of the main reasons for delays is also the time during which the procedural materials, which are often lengthy, are translated from Polish into the requesting authority’s language.

According to § 14 paragraph 2 of the regulation of the Ministry of Justice of 10 October 2016 on the manner in which the prosecutor’s office is to carry out its tasks related to cooperation with international or supranational organisations operating under international agreements (O.J. 2016.1732), Eurojust is informed about any cases in which there are recurring cooperation difficulties (MLA, EAW, etc.). However, there is no specific obligation under Polish law to notify Eurojust when time limits are exceeded, in line with Article 17(7) of the Framework Decision on the EAW. In line with recommendation 22 of the previous evaluation report, the expert team would like to recall that any breach of time limit, irrespective of the reasons and duration, should be notified to Eurojust.

Polish authorities also reported that sometimes the executing authorities ask for information that was already provided in the EAW form, or fix too short a time limit for a response. It sometimes happens, particularly on the part of the UK authorities, and recently also on the part of the Netherlands authorities, that a response must be provided within a few days. If physically possible, the courts make every effort to observe the time limit. However, if the circumstances are extremely unfavourable (e.g. a request is made during the holiday season or on a Friday with a response period of up to three days), the courts ask the foreign authority to extend the time limit and, in the vast majority of cases, such consent is granted and the time limit is extended.

Recent queries have also concerned the issue of preserving the rule of law and independence of the courts. There have also been queries concerning the issuing of a guarantee that the surrendered person would be able to serve their sentence in the country of the executing authority.

Occasionally, other problematic situations arise.

For instance, in cases pending before the Circuit Court in Białystok, evidence of guilt or return receipts for summonses were requested. In the experience of that court, for example, the UK authorities consistently request additional clarifications regarding the post-judgment course of the case; an indication of what actions were taken to apprehend the requested person; what measures were applied against them; since when they had been unlawfully at large; why the EAW was not issued at an earlier date; what suggests that they are a fugitive from justice.

The Circuit Court in Katowice has indicated that at times the authority of the executing State requested information that was not necessary in order to proceed with the execution of an EAW, or requested information that was directly apparent from the EAW form. Occasionally, the executing authority had asked to be provided with copies of judgments or the bill of indictment which, after being translated, were forwarded as requested.

As the Circuit Court in Kraków makes clear, the practice of foreign authorities requesting additional information is becoming a standard in relation to some Member States such as the UK authorities (regularly) and the Irish authorities (occasionally), and the German, Dutch and Italian authorities. Indeed, the Italian authorities ask to be provided with a copy of the judgments underlying the EAW and certain additional information whenever they execute a warrant. In such cases the court normally forwards copies of the decisions together with their translation, giving notice that the remainder of the information requested is available in the provided EAW form. As regards details, the UK authorities generally send a standard set of questions for each warrant, asking whether the requested person pleaded guilty, appealed against the sentence, whether the sentence is a suspended sentence, or whether and why the execution of the sentence was ordered, whether the requested person was required to stay in the court's jurisdiction and whether the requested person was required to inform the court of any change of address. Partially, the Circuit Court in Kraków, based on its experience, makes efforts to somehow anticipate these questions and cites, in Section D of the warrant, the relevant provisions of the Code of Criminal Procedure (in particular Article 75(1) and (2) and Articles 138 and 139), which eliminate some additional questions.

The Circuit Court in Warsaw also considers that the courts of some Member States have recently abused the right to request 'additional information' which does not actually relate to the proceedings concerned.

The Circuit Court in Warszawa - Praga reported that the EAW executing authorities in Ireland, the United Kingdom, the Netherlands and Belgium frequently request information that can be considered 'unnecessary', such as details of the circumstances of the act, the course of the proceedings or clarification of the reasons for the excessive, in their view, time interval between the date of the act or the date of the sentence and the date of the EAW. However, whenever the EAW executing State has requested additional information, it has always been provided with a comprehensive response. Requests for access to sentences and additional supporting documents are rare.

The Circuit Court in Łomża reported that the executing authority (mainly the German side) generally requests additional information whenever the EAW is based on an effective sentence. In each case, the issuing authority provided additional information, which mainly involved explanations regarding the ‘institution of an effective sentence’, the grounds for issuing such a sentence and the circumstances of notifying the sentenced person and their attendance at the court hearing.

The Circuit Court in Bielsko - Biała reported having faced two situations where the executing States requested a range of information regarding ‘the state of the rule of law in Poland’. Information regarding personnel changes in the offices of the presidents of courts, the retirement of judges and much other comparable information was sought. Without these questions being answered, the EAW executing States refused to grant the issuing State’s request and to execute the EAW in one of the two cases.

According to the Circuit Court in Częstochowa, if a Dutch national is sought for surrender, the Netherlands requests an assurance that following final conclusion of the proceedings they will be sent back to the Netherlands. It is insufficient to give assurances that this condition will be met by the Polish court in the event of the Dutch national being surrendered with a proviso that they should return to the Netherlands following the conclusion of the proceedings.

As regards decisions taken by the foreign executing authorities, the Polish representatives reported that they usually contain the necessary information, such as period of detention, although in a number of cases Polish courts have to request additional information, e.g. information on the period of detention in the executing State, as that period is required to be credited towards the sentence.

As an example, the Circuit Court in Katowice reported having dealt with cases where the requested information was not provided at all, at times despite repeated requests from the Polish side.

As indicated by the Circuit Court in Szczecin, additional queries are also triggered by the failure to specify the length of detention, which is not a practice in the Member States, yet is required by Polish correction facilities and detention centres in accordance with applicable laws. On several occasions this court had difficulties even in establishing a specific date of detention, although this is necessary to properly credit the custody time in the case towards the sentence. There have also been difficulties in interpreting so-called house arrest. Information on this did not result from the court decision but from the letters and their enclosures. In most cases, the EAW executing authorities gave information about the period of detention in the executing State by providing dates and times; where such information was not initially provided, it was eventually provided at the request of the EAW issuing authority.

As results from the experience of the Circuit Court in Kraków, as a rule, the German, French and Swedish authorities always provide a copy of the decision taken by the court, which often sets out the period of pre-trial detention. In the case of other Member States, this information is provided occasionally only.

In the experience of the Polish courts, the UK authorities provide information on the application of extradition detention periods on average in every tenth case, and normally it is necessary to request such information before it is provided. The same is true of decisions to refuse to execute a warrant. Similarly, the Dutch authorities only occasionally provide this type of information, and obtaining it often requires an additional intervention not only by the court, but also by European authorities, e.g. Eurojust or the EJN.

EXECUTING AUTHORITIES

The Polish authorities explained that usually the decision of the Polish court on an EAW contains the necessary information on actions taken in relation to the execution of an EAW issued in another Member State, including information on the period of detention.

The most frequent information deficiencies identified by Polish courts acting as executing authorities relate to: insufficiently detailed description of the act; no limitation date regarding the act; no indication of periods credited towards the sentence; ambiguities as to the length of the sentence remaining to be executed; absence of data regarding the period during which the requested person was detained in the EAW executing State and the exact time of detention; impossibility of obtaining a photograph of the person sought under a warrant; absence of fingerprints of the person sought and impossibility of precisely identifying the country of residence; absence of information on preventive measures applied and information on the date when the decisions covered by the EAW became final.

The authorities also reported situations when incomplete or distorted information is provided, e.g. a missing letter in the surname that changes its spelling in conjunction with e.g. the manner in which numbers in the date of birth are written, which makes it impossible to identify the person against whom the decision has to be enforced. Such deficiencies also include the absence of a translated version of the EAW.

In the event of deficiencies being found, the courts request additional information from the issuing State, as provided for in Article 15(2) of the Framework Decision on the EAW. Requests for additional information are sent by mail, fax or via email. Deadlines are then set, which are normally met by the issuing authorities, albeit with occasional delays (serious delays at times) in responses that normally concern the same Member States (United Kingdom, Ireland). In general in such cases deadlines for providing the information concerned are then set, and are normally met.

Information is also obtained through the Central Police Headquarters of the International Search Coordination Department at the International Police Cooperation Office, Polish Sirene Bureau, Eurojust, Interpol and liaison officers team.

As a rule, the court keeps the foreign authority informed of each step taken in relation to the execution of the warrant, from the moment the requested person is apprehended until their surrender. Having applied pre-trial detention for 7 days, the court forwards a letter to the foreign authority, informing the latter accordingly. Following the execution of the EAW, the court forwards a letter specifying whether or not it consents to the surrender and the time limit for lodging an appeal, and also whether the requested person has consented to the surrender. Once the decision becomes final, the court forwards a letter specifying that the decision has become final, that transport under escort must be arranged and indicating the period of pre-trial detention in relation to the execution of the warrant. It also forwards a copy of the decision appended with an enforceability clause.

3.3. Grounds for refusal

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

ISSUING AUTHORITIES

As issuing authorities, Polish authorities have received requests for additional information as a result of being issued the judgments in the Aranyosi/ Caldaru and the Drimitru, Tudor, Dombatu cases. Nevertheless, none of these cases, apart from one from the UK, resulted in a refusal to surrender the requested subject. In addition, recently, the Polish authorities have made a great effort to improve prison conditions in line with the Council of Europe standards (Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).

EXECUTING AUTHORITIES

As executing authorities, circuit courts take into account, on their own initiative, the risk of fundamental rights being violated. The courts refer to the principle of mutual trust in relations with other judicial authorities of the Member States.

If there is a risk of violation of fundamental rights, the court requests a foreign authority to give a guarantee in this respect, but these normally concern non-EU countries, e.g. Ukraine or Belarus, and have concerned the US in a single case (this remark concerns 'standard' extradition procedures that are not based on an EAW).

However, according to reports by Polish authorities, when it comes to EU countries (that are covered by the EAW procedure), there are no grounds for presuming such violations occur in any of the Member States. As such, there is no need to request such guarantees.

If it is necessary to obtain additional guarantees from a foreign authority, the court fixes relevant time limits, the length of which would largely depend on the stage of the warrant execution procedure and the progress in such proceedings. If the time limits are not observed, reminders are used. In the absence of a response, the court proceeds on the basis of available information (in accordance with Article 607z(2) of the Code of Criminal Procedure).

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

The refusal to surrender a requested person in the event of a judgment *in absentia* under the Polish Code of Criminal Procedure is one of the most significant issues raised during the evaluation visit.

In the past, the presence of the defendants in court was compulsory for a trial to take place, while under the new regime it is not mandatory. The provisions on the serving of documents are included in Chapter 5 (Articles 128 to 142) of the Code of Criminal Procedure.

According to those Articles, once the investigated person has been arrested and/or charged, they have to notify their address, and all notifications or summons from the court will be delivered to that address. Once notification has been delivered to that address, the trial can take place *in absentia*. Only in very few cases, depending on the court's decision on a case-by-case basis, the trial is interrupted if the defendant is not present. The trial takes place even if there is no certainty that the defendant has been personally notified; there is no need to investigate the whereabouts of the defendant any further (e.g. request the police to conduct an investigation).

Polish authorities reported that since FD 2009/299/JHA entered into force and the Court of Justice of the European Union (CJEU) issued its judgments, in particular in the case of *Zdziaszek*, the Circuit Court in Kraków has been encountering many difficulties. The courts pointed out that in cases where the judgment was rendered *in absentia*, there is a problem with completing point D of the EAW if both the notice of the trial and a copy of the effective sentence were served on the sentenced person using the substitute method of service under Article 136(1) of the Code of Criminal Procedure, as point D of the EAW does not provide for such service. This triggers a number of additional queries from the executing State with regard to the method of service and the sentenced person's awareness of the sentence.

The Polish authorities claimed that when executing States notice that a warrant is based on a decision *in absentia*, they submit queries relating to: the circumstances in which the judgment was issued; service of the judgment; persons who received the decisions (an adult member of the household); and the appellate procedure (without acknowledging the fact that the Polish procedural code does not require the defendant to participate in the appellate procedure). Currently, executing States ask for the information in question to be forwarded in every case and, after carefully reviewing the responses, they also frequently ask for details, especially when the detainee objects to being transferred. Based on experience to date, the court considered that the number of such queries had increased by at least 50% in recent months.

According to some courts, there has been an increase in the number of requests for additional information regarding issues such as:

- whether the person concerned was personally notified of the date of the trial during which the judgment was issued,
- whether the person concerned was served with a judgment containing instructions,

- whether, in the absence of a personal notification of the trial date and in the absence of personal service of a copy of the judgment, the person, once surrendered, will be unconditionally entitled to seek a retrial,
- whether the requested person was aware of the prohibition to leave the country; whether they were informed of said prohibition,
- the substance of procedures relating to the service of summons, notifications and sentences,
- detailed conditions for suspending the sentence and whether these conditions were met,
- whether the sentence was appealed and what was the outcome of the appeal.

The judgments in the Tupikas, Zdiazsek and Ardic cases had therefore a significant role in increasing the number of requests for additional information, and were also the reason for non-observance of the time limits set out in Article 17 of the Framework Decision, since obtaining supplementary information in this respect caused the court to communicate with other courts and prosecution offices which had custody of case files, thus triggering the need to wait for their response.

Polish authorities reported that in many cases the person had been properly summoned in accordance with Polish legislation. However, the experts note that the abovementioned legislation creates some difficulties in the execution of EAWs. Some amendments to the law should therefore be considered with regard to the presumption of due notification (Article 136 of the Code of Criminal Procedure), especially in relation to Article 4a of the Framework Decision. A provision should be introduced according to which it must be unequivocally established that the person was aware of the scheduled trial (Article 5(1) of the Framework Decision).

Moreover, Polish authorities reported that the CJEU's case-law has led to an increase in the popularity of partial surrenders, i.e. situations where the executing authority surrenders the requested person in respect of only part of the judgments covered by the EAW, usually making exemptions as regards judgments *in absentia*, and sometimes extending the scope of the exemption to sentences that were not issued in the aforesaid procedures, but where the requested person e.g. did not take part in the appellate procedure, often despite the fact that their defence counsel participated in it or personally filed an appeal in the case.

3.3.3. *Other grounds for refusal*

Although the aim of this evaluation round is not focused on the analysis of the correct transposition of the Framework Decision on the EAW, some reflection on such alignment is nevertheless called for because deficient transposition has a negative impact on its practical application.

Article 4 of Framework Decision 585/2002/JHA lays down seven grounds for optional non-execution of the EAW. That means that in those cases the competent judicial authority should have the possibility to assess on a case-by-case basis whether or not to apply the grounds for refusal where such grounds have been considered optional in the Framework Decision (in line with what the ECJ stated in the Poplawski judgment). Nevertheless, Article 607p of the Polish Code of Criminal Procedure provides for a list of mandatory grounds for refusal which are not in line with the Framework Decision. That provision limits the scope of the Framework Decision since it consistently limits the number of EAWs executed. It also limits application of the mutual recognition principle.

If an EAW is issued for the purpose of the execution of a penalty of deprivation of liberty against a Polish citizen, a person who was granted right of asylum or a person who is a resident, it is mandatory that it be refused if the affected person does not agree only in the first two cases. It is not clear why there is a different regime for nationals and for residents.

The experts noted that recommendation 6 to amend the Constitution and legislation in order to abolish the exception for political offences had not been implemented.

Art 607 § 1 paragraph 3 provides for a ground for refusal in cases where a person has been finally surrendered to another Member State. This ground for refusal should be abolished, as it is not in line with the Framework Decision.

Following a ruling by the Constitutional Court, in 2005 the Polish Constitution was amended to abolish the ban on the extradition of nationals, which is now only prohibited with regard to third States (except for the USA and Australia). However, Article 607(2) of the Code of Criminal Procedure establishes that *‘If a European warrant was issued against a requested person who is a Polish citizen, the warrant may be executed on condition that the act on which it is based was not committed on the territory of the Republic of Poland or on a Polish aircraft or vessel and that it constitutes an offence under the law of the Republic of Poland or that it would constitute an offence under the law of the Republic of Poland had it been committed on the territory of the Republic of Poland, both at the time of its perpetration and at the time when the European warrant was submitted.’* This ground for refusal is not provided for in the Framework Decision on the EAW, and should be abolished as per recommendation number 5 of the 4th round. In addition, this ground for refusal can be seriously detrimental (for example in cases of cross-border investigations related to organised criminal groups where the participants in the group operate at different levels in different areas of the EU) and it also constitutes a privilege for Polish citizens that is not acceptable within the EU.

The principle of dual criminality does not seem to have had a negative impact on the execution of Polish EAWs and of incoming EAWs, apart from in a few cases such as abduction of minors by a parent not deprived of his or her parental rights or the illegal crossing of borders, which are not crimes under the Polish legislation.

As regards Poland as an issuing State, cases concerning the use of drugs and the failure to pay maintenance have been refused because such actions are not a crime in some EU Member States.

The Circuit Court in Kraków and the Circuit Court in Słupsk reported that in their judicial practice they have experienced problems with the scope of the assessment of acts or double criminality where the court was the authority issuing the warrant. The problems concern situations in which warrants are issued in respect of offences that constitute an offence under Polish law, but do not constitute an offence in the executing State. Most often, the assessment is made in respect of offences against public order. As pointed out by the Circuit Court in Kraków, as a rule it does not issue warrants in respect of offences such as failure to pay maintenance (even where the sentence imposed is severe), driving under the influence of alcohol or drugs or directing threats against or assaulting a public officer (in particular in relation to a municipal police officer). Since in some EU countries failure to pay maintenance does not constitute an offence, warrants that the Court had previously issued in respect of this type of offence only were usually refused. Currently, this offence is only covered by a warrant if there are other requests or sentences which result in surrender also being effected with regard to the failure to pay maintenance (if the arrest takes place in the country in which this offence also constitutes an offence). At worst, the authority surrenders the person concerned to Poland, while excluding the acts which constitute those offences. The situation is similar in the case of DUI offences. The issue of different permissible alcohol levels in different EU countries often leads to a partial or total refusal to execute the warrant on the ground that this offence does not meet the double criminality requirement. The third offence which gives rise to difficulties in executing the warrant is verbal or physical assault against a municipal police officer since in many EU Member States there is no equivalent institution. This therefore raises the issue of properly setting this type of offence in context.

In its practice, the Circuit Court in Toruń has faced problems with refusals to execute an EAW due to the lack of double criminality. In these cases, there is an indelible obstacle (in the light of law as it currently stands) not only to enforcing that part of the effective sentence which relates to the offence concerned by the refusal to execute the EAW, but also to enforcing other parts of the sentence which relate to other offences in respect of which the court in the executing State has in fact consented to the surrender. In one such case the Court set aside the warrant, and in the other case, in the situation referred to in Article 607e(3)(8) of the Code of Criminal Procedure, the sentence covered by the EAW was not rendered operative by the competent court.

The Circuit Court in Kraków reported that in one case it refused to execute a warrant because the person was sought by another Member State in respect of offences for which that person had been brought before the Polish court.

3.4. Further challenges

Keeping the person in detention:

As regards Article 12 of the Framework Decision on the EAW, as requested authorities, Polish courts remand requested persons in custody in the vast majority of cases (95 % of cases, it was said). In some minor cases release on bail, an obligation to report to the police station, or a ban on leaving the country are possible. However, house arrest, for instance, is not provided for under national legislation.

It is of the utmost importance for executing authorities to be able to adopt measures which are alternative to provisional detention and, in cases where detention is not adopted, for such alternative measures to prevent the person from absconding.

As requesting authorities, a few cases were described where a requested person had been released after detention and the surrender decision could not be executed due to the fact that the requested person had fled and could not be found.

Rule of law

Following the ECJ judgment on the LM case, the Polish authorities have received a number of requests for additional information as issuing authorities, but none of the relevant cases has been refused and the persons concerned have been surrendered. It was highlighted that the Irish court which had referred the question to the ECJ had also finally decided to execute the EAW.

All participants in the interview (representatives of the Ministry of Justice, Prosecution Service and courts) explained that there has been a lot of misinformation with regard to the Polish judicial reform and the role of the Ministry of Justice: it only supervises the administrative matters of the court; it does not play any role whatsoever in the execution of an EAW, as explained in paragraph 3.1.

Petruhhin judgment

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

Competing EAWs

No cases of competing EAWs could be identified by the interviewed authorities. The experts note that Polish national law does not provide for the executing authority to seek the advice of Eurojust when making the decision as to which EAW should be executed, as referred to in Article 16(2) of the Framework Decision on the EAW.

Breach of time limits

The interviewed authorities did not indicate any problems with time limits (Article 17 of the Framework Decision on the EAW), apart from one case where a pregnant woman could not be transferred until she had given birth. Such time limits are established in Article 607m of the Code of Criminal Procedure.

The fact that Polish legislation does not provide for Eurojust to be notified when a time limit cannot be met should be highlighted. It is important for Eurojust to be informed about breaches of time limits as provided for by Article 17(7) of the Framework Decision on the EAW and provided with the relevant information on the reasons why the EAW cannot be executed in due time in order to analyse them. That analysis may eventually be taken into account for further legislative reforms.

Translation

Incoming EAWs should be translated into Polish by the issuing authorities, but in exceptional cases English is also accepted by the Polish authorities. Some of the participants in the evaluation meetings even said that they prefer to receive EAWs in English rather than in Polish because the translations into Polish are sometimes of poor quality. Nonetheless, the EAW must always be translated into Polish before the case can be brought before a Circuit Court.

Like in other Member States, Polish courts normally make use of external services for translation; this option is clearly more expensive than having in-house translators.

EAWs issued in Poland are always translated into English by the courts and then sent to the National Police to be entered into SIS. This could be considered a good practice as a version generally understandable by all Member States is always available regardless of the need to translate it into the accepted language of the executing authority.

Requirement for the requested person to be in Europe

According to the Polish legislation, an EAW can be issued only if there is a possibility that the requested person may be residing somewhere in the EU. Following the conclusions of the 4th round on the EAW (recommendation No 7), the Polish legislation was amended but still some information related to the presence of the requested person in Europe is needed. This requirement is detrimental to the efficiency of the system. The most common situation is that the person sought may be in the EU, but that fact is not certain. A number of individuals may currently remain at large because of this requirement.

Appointment of a lawyer in the issuing Member State

The Polish Code of Criminal Procedure has not been updated to implement the provision laid down in Article 5 of the Directive 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in EAW proceedings as concerns, firstly, the right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State and secondly, the right to legal aid for such purposes.

Transit

The vast majority of courts have found no significant problems in the transit of requested persons, from either a practical or a legal perspective. In most cases, transit countries consent to and assist in coordinating surrender operations, even where transit notifications are delivered several days in advance due to the need to secure appropriate airway connections.

In individual cases, however, it has been noted that the problems identified with regard to the organisation of transit are associated with short time limits for obtaining consent. The need to extend the specified time limit resulted only from force majeure or fortuitous events which were difficult to predict and incidental.

As an example, the Circuit Court in Świdnica pointed to cooperation with the German side in the processing of requests for the transit through Germany of persons surrendered to Poland under an EAW, noting that the time limit within which the German side ought to receive requests for transit was difficult to comply with. Given the fact that German courts have as many as 7 days to examine them, the requests should be forwarded by the Polish side more than 7 days before the scheduled transit. However, this is impossible if the need to transport the person concerned through Germany arises at the very last moment and the transit date has already been scheduled and falls earlier.

The Circuit Court in Kraków noted that time is the only difficulty because usually the 24-hour period for obtaining consent for transit is extremely short. Consequently, to facilitate the process of obtaining such consent, most requests for transit are made in English and forwarded directly to the receiving authorities. In practice, there has been one refusal of consent for transit of the requested person through the territory of another Member State, because its judicial authority requested a translation of the EAW form into its own language, which was impracticable within the specified time limits.

Role of Eurojust and the EJN

According to Eurojust statistics, Poland is one of the countries that forwards the most requests to Eurojust. Recourse to Eurojust has been increasing over time (47 cases as requested country and 50 cases as requesting country in 2019 as at 31 October). EAW cases involving the Polish desk as requesting country account for 10.45% of the total, and those involving the Polish desk as requested country account for 8.94% of the total, according to the records provided by the representative of Eurojust in the evaluation visit.

Assistance from Eurojust or the EJN should be considered depending on the merits of the case, particularly taking into account the complexity of the case and the urgency.

As regards EJM contact points in Poland, only prosecutors (one in each Regional Prosecution Office's area and three in the National Prosecutor's Office) and representatives of the Ministry of Justice (two in the Department of International Cooperation and Human Rights) perform this role. Some participants considered that contact points within the judiciary should be designated to allow judges to request their assistance. Others highlighted that contact points, regardless of their professional position, can be approached by any practitioners, be they judges or otherwise, for any request within their competences. It is important that this latter consideration is understood by all practitioners. In fact, the regulation of the Ministry of Justice of 18 June 2019 on courts' internal rules of procedure (O.J. 2019.1141) defines in more detail the scope of such cooperation in chapter 6, 'Cooperation of courts with the national contact points of the European Judicial Network and the National Member at Eurojust'. Those provisions provide for the possibility for courts to request assistance from the EJM contact points, but also for the EJM contact points to ask courts for information, including upon request from judicial authorities from other States. The abovementioned regulation replaced the regulation of 23 December 2015 (O.J. 2015.2316), which covered the same provisions.

Additionally, on the basis of an act of 27 July 2001 (Law on the judicial system of common courts, subsequent amended in 2016), allowed each circuit court to designate a judge-coordinator for matters of international cooperation and human rights. One of the tasks of this judge-coordinator is to inform other judges about the rules and methods of cooperation with the EJM. The first joint meeting of the Polish EJM contact points and the judges-coordinator took place in October 2019, within the framework of the EJM national meeting. In 2019, according to information generated by the EJM statistics tool, the Polish EJM contact points assisted in 76 extradition cases, including the EAW procedures.

3.5. Conclusions

- The practical implementation of the EAW in Poland, both as issuing Member State and as executing Member State, seems to work appropriately.
- There is, however, still room for improvement in relation to some features of the Code of Criminal Procedure which are not aligned with the Framework Decision on the EAW such as those related to grounds for refusal. For instance, Articles 607p of the Polish Code of Criminal Procedure provides for a list of mandatory grounds for refusal which are not in line with the Framework Decision. That provision limits the scope of the Framework Decision since it consistently limits the number of EAWs executed. It also limits application of the mutual recognition principle.
- Some amendments to the law are suggested with regards to the presumption of due notification (Article 136 of the Code of Criminal Procedure), especially in relation to the Article 4a of the Framework Decision in order to avoid refusals to execute EAWs in cases of judgments *in absentia* issued by Polish authorities.
- The appointment of specialised prosecutors and judges at circuit level is a positive feature but the fact that the competent authority for the case is not the issuing authority may raise some issues relating to delays in exchanging information.
- Considerable improvements have been made in checks on proportionality when issuing EAWs.
- Polish authorities competent for the execution or the issuing of EAWs seem to be very proactive in making direct contacts with competent authorities in other Member States. Such contacts are made for a variety of purposes: providing additional information, coordinating the execution of simultaneous EAWs, coordinating the execution of EAWs with European Investigation Orders (EIOs), etc.. A number of very successful cases involving permanent contacts with other authorities were described in the course of the evaluation meetings.
- It is of the utmost importance for executing authorities to be able to adopt measures which are alternative to provisional detention and, in cases where detention is not adopted, for such alternative measures to prevent the person from absconding.

- There are no significant problems as regards the transit of requested persons.
- According to Eurojust statistics, Poland is one of the countries that forwards the most requests to Eurojust. Assistance from Eurojust or the EJM should be considered depending on the merits of the case, particularly taking into account the complexity of the case and the urgency.
- Time limits are usually complied with.
- As regards having recourse to requests for additional information pursuant to Article 15 of the Framework Decision on the EAW, executing authorities should only avail themselves of this possibility in exceptional cases where a decision cannot be taken without the additional information so as to avoid requests for unnecessary information.
- Despite the fact that Polish is the only language accepted by law, in urgent cases Polish authorities tend to be very flexible with regard to EAWs sent in English, and they will normally be accepted and translated by domestic services into Polish.
- According to the Polish legislation, an EAW can be issued only if there is suspicion that the requested person may be residing somewhere in the EU. This requirement is detrimental to the efficiency of the system. The recommendations of the 4th round should be followed up.
- The Polish Code of Criminal Procedure has not been updated to implement the provision laid down in Article 5 of the Directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in EAW proceedings as concerns, firstly, the right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State and secondly, the right to legal aid for such purposes.
- At National Police level, the International Cooperation Bureau is well organised, with all competent units under the same umbrella, thus avoiding overlapping; a sound and comprehensive system for entering information into the SIS and for alerts is in place.

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

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

In the Polish system, only circuit courts hold the competence to recognise a judgment and to execute it. In more populated regions such as Warsaw, Kraków, Szczecin, Gdańsk and others, special chambers are assigned this competence; in smaller regions, specialised judges are assigned it. Specialised chambers dealing with all mutual legal assistance requests should be considered a positive feature of the Polish system.

As mentioned in relation to the EAW, the appointment of specialised prosecutors and judges at circuit level is a positive feature, but the fact that the competent authority for such cases is not the issuing authority can raise some issues relating to delays in exchange of information.

A circuit court may send a request for the enforcement of a decision directly to the competent authority of a Member State (executing State) if forwarding the decision for the purpose of enforcement will allow the educational and preventive objectives of the sentence to be achieved to a greater extent. Such a request may also be submitted at the request of the Minister of Justice, a competent court or another authority of the executing State, or the sentenced person.

The court's decision of the court to transfer the sentence for enforcement can be taken *ex officio* or at the request of the sentenced person or the Ministry of Justice. It is unclear under which circumstances the Ministry of Justice has the competence to request the transfer of the enforcement of a custodial sentence. Moreover, the Prosecution Service does not have the right to intervene with regard to the recognition and enforcement of judgments (Article 611tg of the Code of Criminal Procedure).

The procedure applied is a judicial procedure.

No central authority has been designated; the courts cooperate directly with one another in this area. Courts may also contact Eurojust and EJM on a case-by-case basis.

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

Polish law requires a judgment to be made in writing. Where the legislation of the executing State does not require a written form of the judgment, a written summary of the proceedings (with a translation) or a written report version of an oral judgment from the court hearing is sent. This does not constitute an obstacle to the process of acquiring the judgment for enforcement in the Republic of Poland and making a substantive decision. Practice in this area has already been developed.

In this regard, the Circuit Court in Olsztyn reported having encountered a problem in taking over a sentence imposed by a British court for the purpose of its being enforced in Poland. The British side did not send the decision (judgment) to the Polish side and the judgment was not drawn up. As a result of this, the Circuit Court in Olsztyn, in the absence of any other information, had to render inadmissible the take-over of the sentence for the purpose of enforcement in Poland.

If necessary, the judgment is translated by the Polish authority.

The competent authorities reported that the information required under Article 21 of the Framework Decision generally includes detailed reasons for the decision taken or supplements the decision with a statement of reasons.

There have been cases where such information was provided at the request of the issuing State; the following are examples of the information or documents requested:

- the law of the issuing State based on which the person was sentenced;

- whether the sentenced person was personally notified of the date and place of the trial resulting in the decision;
- the period to be credited towards the sentence and calculation of the period remaining until the end of the sentence;
- the record of interrogation of the sentenced person, the content of the instructions received by them and a copy of the document confirming service of the summons to a trial or of a copy of the decision;
- missing translations of some documents, e.g. a judgment;
- information necessary to make a correct legal classification, including to establish whether, under Polish law, the act concerned was a criminal offence (without additional information it is sometimes impossible e.g. to establish whether the act defined in the certificate as burglary constitutes an offence under Article 279 of the Criminal Code or is rather the act defined in Article 278 of the Criminal Code, or whether it qualifies as a minor offence because of the value of the stolen property; in such cases, additional information regarding e.g. the circumstances in which individual acts were committed, the offender's modus operandi and the value of the stolen items is required.)

The Polish authorities reported that, in certain situations, it was not clear whether the decision to surrender the sentenced person was final or not, and no information was provided as regards the length of the sentence remaining to be served, taking into account reductions for good behaviour.

4.3. Criteria for assessing the facilitation of social rehabilitation

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

Before issuing the certificate, steps are taken to establish whether forwarding the judgment for enforcement would serve the purpose of facilitating the sentenced person's social rehabilitation and reintegration and would allow the educational and preventive objectives of the punishment to be achieved to a greater extent.

The Polish court examines, among others, the following circumstances:

- personal and family circumstances of the sentenced person (nationality; family, social and cultural links; place of work; language skills; length of stay; professional and economic considerations; location of the centre of vital interests; health considerations);

- whether the person concerned legalised their stay and work abroad and where they intend to stay after serving the sentence;

data regarding the sentence (length of sentence remaining to be served, possibility of early release, etc.).

- If the decision to be forwarded for the purposes of enforcement concerns a Polish national, the court also makes a detailed assessment of the sentenced person's conduct to date while serving the sentence.

It should be noted that, when deciding whether the above criteria are met, Polish courts do not always make prior contact with other Member States' authorities, except where the consent of the executing Member State is needed. The information included in the national file (outgoing requests) or in the certificate (incoming requests) is normally sufficient and no additional information is usually requested. On one occasion, however, the executing Member State presented a reasoned opinion under Article 4(4) of FD 2008/909/JHA, stating that the enforcement of the sentence in that State would not serve the purpose of facilitating rehabilitation, while the Polish authorities, based on the information they had gathered, considered that rehabilitation would be facilitated. The certificate was eventually withdrawn. With this example in mind, the experts believe that prior consultation with the executing Member State could be useful in order to obtain all the relevant information needed to decide whether to issue a certificate under FD 2008/909/JHA.

Pursuant to Article 611ta(1) of the Code of Criminal Procedure, before submitting an official request for the custodial sentence to be enforced in the territory of a Member State of which the sentenced person is not a national, the court contacts the competent authority asking for consent to the forwarding of the decision for the purpose of its enforcement. The court refrains from such contact only if proceedings regarding the execution of an EAW issued by the Polish side have already been conducted with regard to the same person, and during those proceedings the executing State refused to surrender that person to the territory of Poland because it considered them a national of the executing State based on their living circumstances. Based on the correspondence exchanged during these proceedings, it can then be presumed that, as a preliminary matter, there are no obstacles to the decision concerned being enforced on the territory of the State that refused to surrender the person concerned (usually Germany), and indeed that State expects the Polish side to forward the certificate referred to in Article 4 of FD 2008/909/JHA, thereby complying with the solution set out in Article 4(6) of the Council Framework Decision of 13 June 2002 on the EAW and the surrender procedures between Member States (2002/584/JHA), which provides for an obligation to enforce a custodial sentence in accordance with the domestic law of the executing Member State in the event that the execution of the warrant is refused for the reasons specified therein.

Occasionally, courts have received opinions from the executing State.

The Circuit Court in Świdnica reported that the sentenced person had filed a request for enforcement of a decision in the territory of Germany, specifying that since 2003, prior to his arrest in Poland, he had lived with his family and worked in Germany, that he spoke German and that his closest relatives, namely his wife and daughter (the wife worked and the daughter went to school) still remained in Germany. As part of the initial consultation, the Court requested consent to the forwarding of the judgment for the purpose of enforcement in Germany. The German authorities did not consent to this as neither the conditions set out in Article 4(1) of FD 2008/909/JHA nor those set out in Section 84a(1) point 3(a) of Germany's Law on International Legal Assistance in Criminal Matters had been met. Given this position taken by the German authorities, the proceedings regarding the request for enforcement of the custodial sentence imposed by the Polish court in the territory of Germany had to be discontinued.

4.3.2. Opinion and notification of the sentenced person

Pursuant to Article 611b(2) of the Code of Criminal Procedure, and in line with Article 6 of FD 2008/909/JHA, the court gives any sentenced person residing in the territory of the Republic of Poland an opportunity to state orally or in writing his or her opinion on the request for enforcement of the custodial sentence in the executing Member State .

If the consent of the sentenced person to the forwarding of the judgment is required, the court receives a statement to that effect from the sentenced person residing in the Republic of Poland.

The competent authorities reported that the opinion of the sentenced person, the truthfulness of which is always verified, is very much taken into account when deciding whether or not to issue the certificate, in particular as regards the enforcement of the sentence outside Poland. This opinion is of primary importance where the request itself originates from the sentenced person.

The sentenced person is notified of the decision to forward the judgment and has the possibility to submit an appeal against this decision.

4.4. Adaptation of the sentence

A couple of concrete cases of the sentence being adapted were reported. In this situation, the provisions set out in Article 114(4) of the Criminal Code and Article 611c of the Code of Criminal Procedure were followed.

ISSUING AUTHORITY

As issuing authorities, the Polish authorities also reported some cases in which the sentence was enforced by adapting it.

The Circuit Court in Szczecin reported one case where the authorities of the executing State, the Netherlands, had recalculated the sentence under FD 2008/909/JHA (Article 25). A national of the Netherlands was accused of having committed an act under Article 177(2), in conjunction with Article 178, of the Polish Criminal Code. He was arrested on the basis of an EAW and transferred from the Netherlands to Poland after the Polish side had given a guarantee to the Dutch side that, once the judgment was forwarded for the purpose of enforcement, the sentence imposed on him would be converted within the meaning of Article 11 of the Convention on the Transfer of Sentenced Persons, and also that any final immediate custodial sentence would be transferred to the executing State to be served there. Subsequently, the circuit court was requested to ask the Dutch side to take over the enforcement of an 18-month custodial sentence, reduced by the period of pre-trial detention. The Dutch side agreed to take over the enforcement of the sentence pursuant to Article 25 of FD 2008/909/JHA. However, the Dutch side then assessed whether the custodial sentence corresponded to the one that would have been imposed in the Netherlands according to their national legislation. They came to the conclusion that the length of the custodial sentence should be three months, reasoning in their decision that, in the Netherlands, no immediate custodial sentence would be imposed in a similar case.

Information regarding the adaptation of a sentence is provided to the sentenced person at a hearing or by serving them with a copy of an appealable decision.

EXECUTING AUTHORITY

As executing authority, the court takes into account all of the subjective and objective circumstances of the act in which the offence was committed and the offender's modus operandi. Similarity of offences is assessed as per the definition set out in Article 115(3) of the Criminal Code.

Some problems stem from the fact that, on some occasions, the facts described in the certificate are unclear or insufficient to establish an equivalent qualification of facts in Poland, and additional information or a copy of the judgment are requested.

On other occasions, the sentence is adapted; the length of custodial sentences varies significantly between the different Member States for the same criminal activities, with the exception of those for which harmonised framework decisions or directives have been published.

The Circuit Court in Szczecin noted three cases where the Republic of Poland, as the executing authority, had informed the foreign State that the sentence imposed for an individual type of offence exceeded the maximum sentence that this type of offence carried in Poland, and that the sentence therefore could not be taken over for the purpose of its enforcement unless it was modified. In each such case, the request for Poland to take over the sentence for the purpose of enforcement was withdrawn by the issuing State.

4.5. Grounds for non-recognition or non-enforcement

The expert team noted that, contrary to Article 9 of the FD 2008/909/JHA, Article 611 of the Polish Code of Criminal Procedure provides for mandatory grounds for refusal.

ISSUING STATE

As issuing State, the Polish authorities reported that if the sentenced person is not a national of the executing State and has no permanent links (such as family links, work performed, etc.) with the executing State, these are grounds for non-recognition. The issue of prison conditions is hardly ever raised.

In the Szczecin Circuit Court, a situation was reported where the EAW procedure had been initiated with regard to a sentenced person in Germany for the purpose of having them serve part of their custodial sentence, totalling 10 months. The sentenced person had been granted conditional release, but this was subsequently revoked. Germany did not surrender the sentenced person to Poland (EAW), concluding that he was linked to Germany as he had a wife and a child there, and suggested that Poland send a certificate on the basis of FD 2008/909/JHA so that the sentenced person would serve the remainder of his sentence in Germany. Therefore, by decision of 8 January 2019, the Circuit Court in Szczecin asked Germany for its consent to the transfer of the enforcement pursuant to Article 611ta(1) of the Code of Criminal Procedure. The German authorities refused the enforcement of the abovementioned sentence based on the reasoning that, having served part of the sentence in Poland, the sentenced person had only 133 days left to be served. As a consequence, by decision of 16 April 2019, the Circuit Court in Szczecin discontinued the proceedings under Article 611t(2) of the Code of Criminal Procedure and Article 15(1) of the Code of Criminal Enforcement.

On two occasions, Germany refused to recognise a judgment or enforce a sentence based on Article 4(1) of FD 2008/909/JHA, i.e. that the sentenced person had not given their consent and that they were German national.

In one case, the Netherlands refused the enforcement of a judgment rendered against a Dutch national for drug offences, among others, and as the ground for refusal, the Dutch side invoked the absence of links between the sentenced person and his home country because he had lived and conducted business in Poland for several years.

There have also been cases where the executing State refused to recognise a judgment or enforce a sentence as the latter had become time-barred under the law of the executing State, or because the act did not constitute an offence, or because the sentence had been rendered in the absence of the accused.

EXECUTING STATE

As executing State, the Polish authorities reported some cases of refusal.

The two most relevant grounds for refusal are:

- situations where, when the judgment was received, less than six months of the sentence remained to be served, either because the full length of the sentence was below that threshold or, where it was above, because by the time the certificate was received, some time had already elapsed and the remaining period was already less than six months;
- the *in absentia* situation that was described under the section devoted to the EAW.

The Polish authorities also reported that lack of consent from a sentenced person other than a Polish national is a common ground for non-enforcement when the sentenced person demonstrates that he or she has no links with the requested State.

The Circuit Court in Bydgoszcz stated that it refused to enforce one decision because the act in respect of which the decision had been issued did not constitute an offence under Polish law.

In one case, the enforcement of the sentence on the territory of the Republic of Poland was refused on the grounds that when the competent judicial authority received the judgment, the custodial sentence remaining to be served by the sentenced person was shorter than six months.

The Circuit Court in Częstochowa stated that it had most frequently (as many as four times) issued a refusal, reasoning that the enforcement of a judgment in another country would not facilitate the social rehabilitation or reintegration of the sentenced person.

The Circuit Court in Nowy Sącz refused to forward the decision and the certificate in cases where the sentenced person had objected to the transfer.

In one case, the enforcement of a precautionary measure with regard to a Polish national, in the form of placement in a psychiatric institution in Germany, was refused.

4.6. Partial recognition

No major problems have been identified by the Polish competent authorities with regard to partial recognition.

The team was informed of a case involving the partial recognition of a UK judgment for the purpose of enforcement in Poland. The judgment concerned two crimes committed by a Polish national – murder, and tampering with evidence of the crime – and it provided for concurrent sentences for the two acts. In accordance with Article 239 of the Criminal Code, the latter act cannot be committed by an offender who tampers with evidence they themselves have left; the Polish authorities therefore only partially recognised the judgment, as they refused to enforce the sentence imposed for tampering with evidence.

Some difficulties have been reported relating to the consultation process established under Article 10(1) as in some cases response times were long.

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

The time limits under Article 12(2) are normally observed by both issuing and executing States. However, where the final decision is occasionally not issued before the deadline, this is due to an excessive number of questions being sent to the issuing State.

4.8. Law governing the enforcement of the sentence

In accordance with Article 17 of FD 2008/909/JHA, the enforcement of a sentence is governed by the law of the executing State, whose authorities are competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

With regard to taking account of the period of deprivation of liberty already served in the issuing State, the competent authorities of Poland reported that initially there were cases where additional arrangements were required to ensure effective detention in the State issuing the judgment. Later, such situations occurred only occasionally, although the amendments to the provisions of the Polish Code of Criminal Procedure, pursuant to which the period of effective detention should be credited and the detention start date should be indicated, triggered the need for additional arrangements, as this information is missing from the certificates. The courts also reported cases where the period of detention in the issuing State was imprecisely recorded.

The competent authorities of Poland reported no cases where the certificate was withdrawn due to the applicable provisions on early or conditional release.

4.9. Further challenges

Poland has a large number of citizens living in other EU countries, in particular the UK, where around 2 million Polish citizens reside. For this reason, Poland opted out of the Framework Decision for five years: they needed time to adapt their institutions for the purpose of applying the Framework Decision. This period expired in 2016 and now the application of the Framework Decision is going smoothly. In fact, it has not had as many transfers of sentenced persons as it had initially anticipated.

Problems have been experienced regarding sending correspondence to and receiving confirmations of receipt of correspondence from sentenced persons, which delays the process of declaring decisions final and taking steps to enforce them.

There have been no practical or legal problems in relation to the transit of sentenced persons. These operations are carried out by the Guarded Transport Division of the Police Headquarters. It was reported by the competent authorities that travel arrangements are made effectively.

Practitioners are not very aware of the work of EuroPris and its website. The experts consider that it would be very useful to promote both these things.

4.10. Statistics

The statistics show that in the last three and a half years, Polish courts have issued a total of 670 certificates (150 in 2016, 193 in 2017, 205 in 2018 and 122 in the first half of 2019), and executed a total of 572 certificates (92 in 2016, 180 in 2017, 180 in 2018 and 105 in the first half of 2019).

4.11. Conclusions

- Under the Polish system, only circuit courts hold the competence to recognise a judgment and to execute it. As mentioned in relation to the EAW, the appointment of specialised prosecutors and judges at circuit level is a positive feature, but the fact that the competent authority for such cases is not the issuing authority can cause some issues relating to delays in exchange of information.
- A written judgment is requested to be sent. However, if the legislation of the issuing State does not require a written form of the judgment, a written summary of the proceedings (with a translation) or a written report version of an oral judgment are accepted.
- Steps are taken to establish whether forwarding the judgment for enforcement will serve the purpose of facilitating the social rehabilitation and reintegration of the sentenced person. However, it is suggested that the exchange of information between issuing and executing Member States should be improved in order to help with this assessment process.

- The opinion of the sentenced person is taken into account when deciding whether or not to issue the certificate. They are notified of the decision and can submit an appeal.
- Adaptation of sentences is common due to the fact that different Member States' national legislation for non-harmonised crimes provide for very differing penalties.
- Special attention should be paid with regard to *in absentia* judgments as the Polish system hampers the recognition of Polish judgments in other Member States; thus the same recommendation applies as with regard to the European arrest warrant.
- Contrary to Article 9 of the Framework Decision, Article 611 of the Polish Criminal Procedure Code provides for mandatory grounds for refusal.
- No major problems have been reported with regard to partial recognition.
- No cases have been reported where the certificate was withdrawn due to the applicable provisions on early or conditional release.
- The statistics show sufficient application of the Framework Decision. However, some improvements could be made – for example, precise information should be provided in the certificates with regard to detention time.
- The work of EuroPris should be promoted.

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

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

ISSUING AUTHORITY

As issuing authority, the general practice in Poland with regard to the enforcement of a sentence is that an EAW will be issued if the whereabouts of the requested person are unknown; if the whereabouts are known, the court will assess whether to issue an EAW or a certificate under FD 2008/909/JHA, taking into account all the merits of the case, in particular all the information contained in the file regarding the personal situation of the convicted person. In cases where the sentenced person's whereabouts were known, the competent authorities reported that no specific criteria were used when deciding whether to issue an EAW or a certificate of recognition of a judgment and enforcement of a sentence under FD 2008/909/JHA; the decision is taken on the case-by-case basis.

The Polish authorities reported that they have repeatedly faced situations where the executing authority has refused to execute an EAW because the person concerned was a national of or resident in the executing Member State and requested that the EAW be replaced by the certificate under FD 2008/909/JHA, for the purpose of ordering the enforcement of the sentence in question in connection with their refusal to execute the EAW. However, in many of these cases, the Polish system did not allow for the solutions proposed in this respect to be implemented. On several occasions, due to the judgment's being issued prior to 5 December 2011, the certificate referred to in Article 4 of FD 2008/909/JHA could not be issued (Article 4(1) of the Law of 16 September 2011 amending the Code of Criminal Procedure, the Act on the Public Prosecution Service and the National Criminal Register Act (Journal of Laws of 2011, No. 240, item 1430)). The provisions of the Convention on the Transfer of Sentenced Persons, pursuant to which only the State of which the sentenced person is a national may be the executing State, could not be applied in respect of some sentenced persons.

EXECUTING STATE

When an EAW is refused on the grounds that the person requested is a Polish national or resident in Poland, the Polish court executes the sentence without asking the concerned Member State to issue the certificate under FD 2008/909/JHA. In such cases, reference is generally made to the national legislation implementing FD 2008/909/JHA, which is applicable *mutatis mutandis* (Article 607s of the Code of Criminal Procedure).

The expert team regards this solution as satisfactory. However, to ensure legal certainty, the execution of a sentence based on the certificate would be welcomed.

Conclusions

- The decision as to whether to issue an EAW or a certificate under FD 2008/909/JHA is taken on a case-by-case basis.
- The Polish system does not stipulate that a certificate be issued when an EAW is refused or made conditional on the basis of the nationality or residence of the requested person.

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

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

The competent authorities for issuing probation decisions under Framework Decision 2008/947/JHA are the same courts that render those probation decisions at national level (Article 611u of the Code of Criminal Procedure).

The competent authorities for executing probation decisions are the district courts in whose judicial circuit the offender has a lawful residence. It is unclear why the district courts are competent for these decisions whereas the circuits courts are competent for the recognition of custodial sentences.

No central authority has been designated.

Contact with the authorities of other EU countries is made directly. The assistance of the EJN, in criminal matters, or Eurojust is sought only where there is doubt as to which authority is competent in another Member State.

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

This Framework Decision is rarely applied. Available statistics show that Polish courts issued 6 certificates in 2016, 14 in 2017, 11 in 2018 and 11 in the first half of 2019, and executed 10 certificates in 2016, 5 in 2017, 11 in 2018 and 11 in the first half of 2019.

ISSUING AUTHORITIES

Poland's minimal use of this Framework Decision as issuing authority is partly due to a lack of knowledge of the possibilities provided for in it among judges, prosecutors, probation officers and lawyers. It is essential that lawyers are aware of the existence of this Framework Decision in order for them to be able to assist the convicted persons and inform them of the possibilities the Framework Decision offers.

The Polish authorities also noted the complexity of the Framework Decision and underlined the following problems: the possibility of serving a probation measure remotely, i.e. without being present in Poland; short time limits; and the fact that not all the Member States have implemented the Framework Decision (strong cooperation links between Poland and the UK).

It was also pointed out that Polish probation officers were not aware of the Framework Decision. The authorities also noted that a short form should be included that would allow the executing authorities to provide feedback with regard to the completion of the probation measure.

An additional reason for the Framework Decision not being considered a useful instrument is that it makes the duration of the probation measure in question being less than six months a ground for refusal. The duration of such measures is often below this threshold, or when the issuing authority takes the necessary steps towards the adoption of the measure, time has elapsed and the remaining period is already less than six months.

Practitioners showed concern about the fact that executing authorities do not give regular updates on some of the measures being implemented – for example, in the cases provided for in Article 14(3).

Keeping the issuing authority informed of the execution of probation measures is fundamental to the effectiveness of FD 2008/947/JHA; there should be direct contact between issuing and executing authorities at all times. The issuing authority should be immediately notified of any non-compliance with probation measures (Article 14(4)) in order for the issuing authority to be able to take any subsequent decisions, and this mechanism seems not to work properly in practice.

The Polish authorities reported that transmission of a probation measure is often not practical when it affects persons that do not have a permanent residence in another Member State, but rather travel from one country to another; in other cases, the period covered by the probation measure is too short to consider transmitting the decision and the sentenced person is just allowed to leave the country for that period.

The experts consider that a further reason for FD 2008/947/JHA not being used may be the nature of the criminal cases investigated in Poland, as not many of them have a cross-border profile.

EXECUTING AUTHORITIES

As executing authorities, the Polish authorities stated that they have received very few requests under FD 2008/947/JHA.

The problems that arise as a result of refusals in the event of a judgment *in absentia*, as mentioned in the section on the EAW, are, *mutatis mutandis*, applicable in this section.

The experts notice that Article 611ug of the Code of Criminal Procedure seems to consider as mandatory all grounds for non-enforcement, where the Framework Decision considers them optional. The Code of Criminal Procedure should be amended in accordance with FD 2008/947/JHA.

Problems also arise regarding the frequent non-exact equivalence between the measures imposed by the issuing authority as alternative sanctions and the adapted measures imposed by the executing authority. For this reason, the executing authority should consult with the issuing authority in order to adapt the measure (Article 9) in the most adequate way.

6.3. Conclusions

- The competent authorities for issuing probation decisions under FD 2008/947/JHA are the same courts that render those decisions at national level.
- The competent authorities for executing probation decisions are the district courts in whose judicial circuit the offender has a lawful residence.
- FD 2008/947/JHA is rarely used in Poland for different reasons, one of them being the lack of knowledge among judges, prosecutors, defendants, lawyers and probation officers.
- Other reasons for such limited use of the instrument are: the six-month threshold as grounds for refusal; the lack of information on the residence of the affected person in cases where they travel across Europe; and difficulties receiving information on non-compliance with probation measures where there is an obligation to notify the issuing Member State.
- The *in absentia* regime in Poland hampers the recognition of Polish judgments in other Member States.

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

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

The following prosecutors are the competent issuing authorities during the pre-trial phase: district prosecutors; prosecutors from the circuit and regional prosecutors' offices; prosecutors from the 11 local divisions of the Department for Organised Crime and Corruption of the National Prosecutor's Office and the Internal Affairs Unit of the National Prosecutor's Office. The court conducting the case (district, circuit, appellate) is the competent issuing authority during the trial phase.

The prosecutors at circuit level – or, under the supervision of the latter, the prosecutors at district level – where the person concerned resides are the competent executing authorities.

No central authority has been appointed by Poland.

Contact with the authorities of other EU countries is made directly. The assistance of the EJN, in criminal matters, or Eurojust is sought only where there is doubt as to which authority is competent in another EU country.

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

FD 2009/829/JHA has been used very rarely. Practitioners have, in general, little awareness of the existence of and possibilities offered by this Framework Decision.

Yearly statistics are generated by the Prosecution Service and these show a low number of such requests, e.g. in 2018, Poland as the issuing Member State – 2 requests, and as executing State – 1; in 2019, Poland as the issuing State – 1 request, and as executing State – none.

A measure involving the obligation to report at specified times to a specific authority has been used on two occasions: once with the Czech Republic and once with the Slovak Republic. On both occasions, the measure obliged the subject to report to the police within a certain time frame. On one of the occasions, the executing authority could not recognise the measure because such a measure was not provided for in its national legislation; only reporting before a court was provided for, and after consultation with the issuing authority, the measure was modified by the executing authority and the reporting was carried out before a court. The other case was similar, but on this occasion the executing authority decided, without prior consultation, not to enforce the measure. The latter situation should not have occurred and the executing authority should have consulted with the issuing authority and adapted the measure in accordance with Article 13 of the Framework Decision.

Additional difficulties stem from the practical application of the supervision measures: identifying the competent authority in another EU country as the executing State; how often the sentenced person is supervised; how to notify the issuing authority in a speedy fashion of compliance or any non-compliance with the reporting obligation; the costs of translating correspondence regarding the effectiveness of supervision measures applied, etc.

Practitioners showed concern about the fact that executing authorities do not give regular updates on some of the measures being implemented .

Keeping the issuing authority informed of the execution of supervision measures is fundamental to the effectiveness of 2009/829/JHA; there should be direct contact between issuing and executing authorities at all times. The issuing authority should be immediately notified of any non-compliance with supervision measures (Article 19(3)) in order for the issuing authority to be able to take any subsequent decisions (Article 23(1)), and this mechanism seems not to work properly in practice. Specialised prosecutors have developed internal guidance according to which, before using FD 2009/829/JHA, the executing Member State should be consulted in order to ascertain whether such a measure is possible and to what extent. This could be considered good practice.

The fact that, in the Polish criminal system, the physical presence of the defendant is not needed for proceedings to be concluded can be considered an additional reason why FD 2009/829/JHA is hardly used in Poland. The obligation to report before an authority is, in general, one of the most commonly used measures, but Polish authorities probably do not use the instrument provided for by FD 2009/829/JHA very often because once the affected person is allowed to travel to another Member State, there is no need to supervise them because the trial can take place without their being present, and because of the way the summons can be served according to Polish legislation as already mentioned.

According to the prosecutors interviewed, the pre-trial phase is rather short, and if the person under investigation is not in detention and no other supervision measures have been applied (e.g. a ban on their leaving the country or an obligation to report to the police station regularly), they are allowed to leave the country; once they have indicated a place of residence, they are no longer needed for the case. There are few exceptions to this rule. These prosecutors also explained that an additional reason for FD 2009/829/JHA not being used may be the fact that many criminal cases investigated in Poland do not have a cross-border profile.

Problems also arise regarding the frequent non-exact equivalence between the measures imposed by the issuing authority as supervision measures and the adapted measures imposed by the executing authority. For this reason, the executing authority should consult with the issuing authority in order to adapt the measure (Article 13) in the most adequate way.

7.3. Conclusions

The following prosecutors are the competent issuing authorities during the pre-trial phase: district prosecutors; prosecutors from the circuit and regional prosecutors' offices; prosecutors from the 11 local divisions of the Department for Organised Crime and Corruption of the National Prosecutor's Office and the Internal Affairs Unit of the National Prosecutor's Office. The court conducting the case (district, circuit, appellate) is the competent issuing authority during the trial phase.

- No central authority has been appointed by Poland.
- There are no registered nationwide statistics, but only around 10 or 20 cases have been identified.
- The FD 2009/829/JHA is rarely used in Poland for different reasons, including an insufficient level of knowledge among prosecutors and judges, and difficulties receiving information on the follow-up of supervision measures.
- Although supervision measures are often used in Poland, the Polish authorities probably do not use the instrument provided for by FD 2009/829/JHA very often because once the affected person is allowed to travel to another Member State, there is no need to supervise them because the trial can take place without their being present.

8. TRAINING

8.1. Training relating to FDs 2002/584/JHA, 2008/909/JHA 2008/947/JHA, 2009/829/JHA

The National School of Judiciary and Public Prosecution (the National School) has been active for 10 years providing training for judges and prosecutors at two levels: initial training and continuous training. The central premises are in Kraków and there are decentralised facilities in Lublin and Dębe. The School is largely financed from the portion of the state budget allocated to the Ministry of Justice.

The National School, according to its website, is in charge of:

1. judicial and prosecutorial training to provide trainees with the indispensable knowledge and practical skills necessary for their future work as judges, judge's assessors, prosecutors and prosecutor's assessors;
2. training and professional development of judges, judge's assessors, prosecutors and prosecutor's assessors in order to improve their specialist knowledge and professional skills;
3. training and professional development of court referendaries, judge's assistants, prosecutor's assistants and probation officers, as well as other court and prosecution clerks in order to improve their professional knowledge;
4. managing analyses and research in order to determine competences and qualifications attributed to positions in courts and prosecution offices which would be used in training activities;
5. managing analyses and research in order to determine the training needs of judges, judge's assessors, prosecutors, prosecutor's assessors, court referendaries, judge's assistants, prosecution assistant, probation officers as well as court and prosecution clerks.'

The initial training period is 36 months; during this period, two cycles for judges (II and XII) and one cycle for prosecutors (XIX) are devoted to judicial cooperation. These cycles involve theory and practical modules. Students' performance is evaluated.

As regards continuous training, the Deputy Director of the Centre for Continuous Training and International Cooperation conducts an analysis of the needs of the practitioners on a yearly basis, and the different courses for different target groups are drawn up by September each year for the following year. The courses offered are listed on the website and candidates can apply online; the website provides detailed information about the target group, number of sessions and methodology. Practitioners can also propose concrete topics for the courses and these proposals are considered in the annual planning phase.

Prosecutors and judges specialising in international matters seem to be given priority for places on courses related to mutual legal assistance matters. In addition, and in order to facilitate a homogeneous and consistent application of the EAW legislation, meetings of these specialised practitioners are convened with the aim of allowing them to exchange experiences and create good practices. It is suggested that the results of these meetings be included in a report to be disseminated among practitioners.

The practitioners appointed as coordinators for international cooperation matters take part in an annual training course, which is considered a good opportunity to exchange practical experience and to discuss problematic issues relating to international cooperation. The experts consider that the results of this training course should be included in a report to be disseminated among practitioners.

Representatives of legal professions (including mainly judges, prosecutors and assistant prosecutors) take part in training organised at EU level or in projects co-financed by the EU. Cooperation is carried out on the basis of agreements with institutions that educate judicial staff from EU Member States and international institutions and organisations that train representatives of various legal professions, such as: the Academy of European Law (ERA), the European Institute of Public Administration (EIPA) and the International Organization for Judicial Training (IOJT). Cooperation is also carried out as part of Poland's membership in the European Judicial Training Network (EJTN).

In the area of multilateral international cooperation of a regional nature, the National School cooperates with Eastern Partnership countries and Visegrad Group countries.

The expert team have noted the successful work of the National School of Judiciary and Public Prosecution. The National School ensures the participation of Polish judges, prosecutors and other judicial staff in international seminars and conferences and in foreign internships and exchange programmes. It is also responsible for the coordination and implementation of numerous international meetings and the training of judges and prosecutors in Poland. Through all of this, the National School seeks to improve participants' knowledge of European legal instruments, develop their foreign language skills and build mutual trust between judges and prosecutors in Europe.

Evaluation of training at the National School is carried out through questionnaires completed by the participants. The questionnaires include questions about the programme and training methods, training organisation and the participants' personal motivation to participate in the training, as well as questions relating to the individual lecturers in terms of their knowledge of the subject and substantive preparation, their ability to convey content and create a favourable climate for joint work, and the extent to which they implement the programme.

According to the information reported by the Polish authorities, the National School organised training in 2017-2018 devoted to recent case-law of the CJEU that had had an impact on the EAW. In 2018, 87 judges, 4 judge's assessors, 193 prosecutors and prosecutor's assessors and 54 court clerks were trained. In 2017, 35 judges and 20 prosecutors and prosecutor's assessors were trained.

Between 2009 and 2019, the following practitioners were trained in judicial cooperation:

- in 2009, 2 judges;
- in 2011, 20 judges, 11 prosecutors and prosecutor's assessors;
- in 2012, 19 judges, 20 prosecutors and prosecutor's assessors;
- in 2013, 18 judges, 1 judge's assistant, 16 prosecutors and prosecutor's assessors, 1 prosecutor's assistant;
- in 2014, 24 judges, 40 prosecutors and prosecutor's assessors;
- in 2015, 23 judges, 2 judge's assistants, 1 court referendary, 25 prosecutors and prosecutor's assessors;
- in 2016, 21 judges, 1 judge's assistant, 1 court referendary, 21 prosecutors and prosecutor's assessors, 1 prosecutor's assistant;
- in 2017, 22 judges, 2 judge's assistants, 1 court referendary, 25 prosecutors and prosecutor's assessors, 1 prosecutor's assistant;
- in 2018, 7 judges, 10 prosecutors and prosecutor's assessors, 3 prosecutor's assistants;
- in 2019, 6 judges and 1 judge's assistant.

The statistics provided by the Polish authorities do not make specific reference to training relating to the four Framework Decisions that are the subject of this report.

As the EAW is one of the most relevant topics in the field of judicial cooperation within the EU, it is always part of the initial training programme and included in continuous training courses and seminars.

Although the expert team is pleased to note the extensive work of the National School, it should be noted that training is not provided to probation officers. Thus, the scope of the training offered should be extended.

Based on what has been reported by the Polish authorities, lawyers should be provided with training by their respective professional associations (Councils). However, the evaluation teams received no information to indicate that training with specific reference to the FDs is being provided.

According to information provided after the visit, there are plans to develop various forms of e-learning in connection with the introduction of a new electronic tool, e-KSSiP, in the National School.

All Polish courts know about and use the practical online tools available on the website of the EJM, and their assessment of those tools is unquestionably positive.

EJTN, ERA, EIPA, HELP and IOJT courses and activities are announced and published on the National School's website.

The website of the EJM is primarily used for the purpose of accessing EU legal acts, obtaining information on the legal systems of individual Member States, and searching for and obtaining the contact details of competent authorities in other countries.

The Polish authorities reported minimal knowledge of the work of EuroPris and minimal use of the tools they offer. It is suggested that their tools be publicised to a broader extent and that training on how to use them be provided.

The National School develops and disseminates among the competent judicial authorities documents, training information and updates on legal amendments and new judgements in the field of international cooperation. In 2013, the National School issued a study on ‘Methodology of work in criminal matters resulting from international relations’, which was a substantive continuation of the handbook on ‘Principles of legal dealings with foreign countries in criminal matters at an investigation stage’, which was published in 2009 by the National Public Prosecutor’s Office. Both studies set out comprehensive information regarding legal instruments for international cooperation in criminal matters and are designed to assist the authorities in making effective use of the available instruments. The studies discuss the legal regulations introduced through framework decisions, which are subsequently implemented through the national legal system. In addition, coordinators for international cooperation and human rights in criminal matters are appointed within judicial districts by the president of each regional court, on the basis of their knowledge of international cooperation, European law and human rights, and foreign languages.

8.2 Conclusions

- The National School of Judiciary and Public Prosecution is responsible for the initial and continuous training of judges and prosecutors.
- The National School also has a very comprehensive and well-structured system for training in the field of judicial cooperation, for which the Centre for Continuous Training and International Cooperation is responsible.
- During the initial training period, two cycles for judges (II and XII) and one cycle for prosecutors (XIX) are devoted to judicial cooperation.
- The Polish authorities provided some statistics on trainings. However these statistics do not make specific reference to training relating to the four Framework Decisions that are the subject of this report. However, it seems that very few activities are organised with regard to FDs 2008/947/JHA and 2009/829/JHA.
- The National School ensures the participation of Polish judges, prosecutors and other judicial staff in international seminars and conferences and in foreign internships and exchange programmes.
- Training is not provided to probation officers.
- No information has been acquired about training provided to lawyers by their professional associations.
- Taking into account the fact that the National School has a limited number of locations, the expert team is of the opinion that e-learning modules should be offered, which would enable participation from remote areas.
- As the EAW is one of the most relevant topics in the field of judicial cooperation within the EU, it is always part of the initial training programme and included in continuous training courses and seminars.
- The fact that information relating to ECJ judgments and other relevant issues is disseminated is an example of good practice.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions by Poland

None

9.2. Recommendations

The team of experts involved in this evaluation was able to review the practical implementation and operation of the Framework Decisions and Directives in Poland.

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

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

9.2.1. Recommendations to Poland

1. To reflect on streamlining the procedure for dealing with EAWs and recognising judgments by making the authority dealing with the case the issuing authority (see 3.1 and 4.1).
2. To amend national legislation by introducing the possibility of consulting Eurojust to seek a non-binding opinion in cases of competing EAWs (see 3.4) and by making it compulsory that Eurojust is notified of any non-compliance with a time limit, to allow it to perform its tasks in accordance with Article 17(7) of the Framework Decision on the EAW (see 3.3).
3. To consider designating members of the judiciary as EJM contact points (see 3.4).
4. Some amendments to the law are suggested with regard to the presumption of due notification (Article 136 of the Code of Criminal Procedure), especially in relation to Article 4a of the Framework Decision, in order to avoid the execution of EAWs being refused when a judgment has been handed down *in absentia* by the Polish authorities (see 3.3.2 and 4.5).
- 5.

6. To consider establishing in-house translation services within the courts and prosecution services in order to minimise the financial impact of translation (see 3.4 and 4.10).
7. To continue implementing the recommendations of the 4th round of mutual evaluations (see 3.3.3 and 3.4).
8. To amend Polish law so that the grounds for refusal that are currently provided for as mandatory are aligned with the EU framework, so as to avoid impunity with regard to the FD 2002/584/JHA and FD 2008/909/JHA (see 3.3 and 4.5).
9. To transpose Article 5 of the Directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in EAW proceedings (see 3.4).
10. To foster direct contacts with the executing authorities so that they can be consulted when deciding whether the custodial sentence (FD 2008/909/JHA) should be transferred to another Member State, rather than relying only on the documentation included in the national file (see 4.3).
11. To consider promoting e-learning training courses on the four Framework Decisions (see 3.5, 4.10, 6.3 and 7.3).
12. To train practitioners, including probation officials, and enhance their awareness as regards FD 2008/947/JHA and FD 2009/829/JHA – e.g. the Ministry of Justice could instruct all the competent authorities to inform persons under supervision or on probation of the possibilities available to them as regards applying the abovementioned instruments. (see 6.3 and 7.3).

1. Recommendations to the European Union and its institutions

1. Article 4 of FD 2008/947/JHA should be modified to introduce driving disqualification as an alternative sanction.
2. The experts consider that amending Article 25 of FD 2008/909/JHA would avoid diverging interpretations among MSs on whether or not there is a need to issue a certificate under that Framework Decision.
3. The fact that a probation measure or alternative sanction being of less than six months' duration can be used, under FD 2008/947/JHA, as grounds for refusal should be reconsidered, as this is considered an obstacle for practitioners because the duration of these measures or sanctions is often below this threshold
4. In order to facilitate a homogeneous and consistent application of the EAW legislation, meetings of specialised practitioners should be convened with the aim of allowing them to exchange experiences and create good practices.

9.2.2. Recommendations to other Member States

1. All the Member States could conduct an annual analysis of the situation in their country as regards EAWs (as Poland does) in order to provide a useful picture of the overall state of affairs and assist in identifying obstacles and shortcomings related to this issue.
2. It is of utmost importance that executing authorities can adopt alternative measures to provisional detention where such detention is not considered adequate (on the basis of a case-by-case analysis), and in cases where such alternative measures are adopted, that they are enforced in order to prevent the person from absconding. The widest range of alternative measures should be available.

3. Executing authorities should limit their requests for additional information pursuant to Article 15 of the Framework Decision on the EAW to exceptional cases where a decision cannot be taken without the additional information, thereby avoiding unnecessary requests.
4. Member States should apply clear criteria when deciding whether to issue an EAW or use alternative, less intrusive measures such as the EIO.
5. It is suggested that all EAWs issued by the Member States be translated into English, and that all Member States should, when acting as executing State, accept the English version.
6. Establishing informal direct contacts between competent authorities is recommended.
7. The assistance of Eurojust or the EJM should always be considered when the merits of the case indicate that this could be of use.
8. Online courses and webinars should be promoted for those practitioners who are not able to travel to the places where courses are held.
9. Experience shows that it is difficult to achieve exact equivalence between the measures imposed by the issuing authority, either as alternative sanctions or supervision measures, and the adapted measures imposed by the executing authority. For this reason, in order to foster the application of FDs 2008/947/JHA and 2009/829/JHA, the executing authority should consult with the issuing authority in order to adapt such measures (Articles 9 and 13, respectively) in the most adequate way.
10. When a supervision measure provided for in FD 2009/829/JHA is being executed, direct contact should be established between the competent authorities of the issuing and executing Member States, and the executing authority should comply with the obligation to notify the issuing authority of any breach of the measure so that the latter can apply any measure derived from such a breach.
11. The executing authorities should be provided with all relevant information relating to pre-trial detention at the time of surrender.

9.2.3. Recommendations to Eurojust/ EJN/ EJTJN

None.

9.3. Best practices

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

1. When filling in the forms within the SIS system after an EAW is received from the competent court, introducing all the information included in the EAW (not just a summary of the facts) in English should be considered good practice.
2. EAWs issued in Poland are always translated into English by the courts and then sent to the National Police to be introduced in the SIS. This could be considered good practice as it means that a version that is generally understandable by all Member States is always available, regardless of the need to translate it into the accepted language of the executing authority.
3. It is good practice to unify SIS, Sirene, I-24/7, the liaison officers team and the border guard within the same police bureau.
4. Issuing States should consult with executing States to ascertain whether a concrete measure or sanction is possible under FD 2009/829/JHA or 2008/947/JHA and the extent to which a such measure or sanction can be considered constructive, in order to make an initial assessment of the suitability of using these instruments.
5. It is good practice to keep the foreign authorities informed of each step taken in relation to the execution of an EAW.
6. Appointing specialised prosecutors and judges in every judicial district would help to facilitate the sharing of their specialist knowledge with all practitioners.

7. Annual or regular meetings of these specialised practitioners are important so that they can share their experiences; the results of such meetings should be included in a report and disseminated among practitioners.
8. It is good practice for central authorities to disseminate information relating to ECJ judgments and other relevant issues.

Ninth round of mutual evaluations - Mutual recognition legal instruments in the field of deprivation or restriction of liberty

Warsaw, Poland, 2-6 December 2019

AGENDA

MONDAY 2 DECEMBER 2019

Arrival of the evaluation team

18.00 Internal meeting

TUESDAY 3 DECEMBER 2019

[Venue: Ministry of Justice of Poland, Al. Ujazdowskie 11, Warsaw]

[Participants: representatives of the MoJ and the National Prosecutor's Office, prosecutors and judges]

| | |
|-------------|--|
| 9.30-11.00 | Presentation by the MoJ |
| 11.00-11.20 | Coffee break |
| 11.20-12.20 | Presentation by the NPO |
| 12.30-13.30 | Lunch [venue: Ministry of Justice of Poland, Al. Ujazdowskie 11, Warsaw] |
| 13.30-15.00 | Discussion with judges and prosecutors |
| 15.00-15.15 | Coffee break |
| 15.15-17.00 | Discussion with judges and prosecutors |
| 17.30-18.30 | Internal meeting |

WEDNESDAY 4 DECEMBER 2019

[Venue: National Police Headquarters, ul. Puławska 148/150, Warsaw]

[Participants: representatives of the MoJ and the National Police Headquarters]

10.00-12.00 Visit – National Police Headquarters
12.00-13.00 Lunch
after lunch Departure to Lublin
18.30 - 19.30 Internal meeting

THURSDAY 5 DECEMBER 2019

[Venue: National School of Judiciary and Public Prosecution, Lublin]

[Participants: representatives of the MoJ and the National School of Judiciary and Public Prosecution, and judges]

9.30-11.00 Presentation by the National School for Judiciary and Prosecution
11.00-11.30 Coffee break
11.30-13.00 Discussion with judges
13.00 Lunch
after lunch Departure to Warsaw
18.00 - 21.00 Internal training

FRIDAY 6 DECEMBER 2019

[Venue: Ministry of Justice of Poland, Al. Ujazdowskie 11, Warsaw]

10.00 Final meeting

ANNEX B: PERSONS INTERVIEWED/MET

3 December (Ministry of Justice)

| Person interviewed/met | Organisation represented |
|-------------------------------|---|
| Ms Beata Adamczyk-Łabuda | Judge, District Court in Warsaw |
| Ms Barbara Augustyniak, | Judge, Appellate Court in Łódź |
| Mr Adam Chmielnicki | Judge, District Court in Katowice |
| Mr Wojciech Głowacki | Judge, Circuit Court in Gliwice |
| Ms Magdalena Goldschneider | Judge, District Court Warszawa Praga-Północ in Warszawa |
| Ms Małgorzata Janicz | Judge, Appellate Court in Warszawa |
| Ms Agnieszka Knade-Plaskacz | Judge, District Court in Chełm |
| Ms Jolanta Olszewska-Dubowicz | Judge, District Court Gdańsk-Południe in Gdańsk |
| Ms Monika Stefaniak-Dąbrowska | Judge, District Court in Łódź |

| | |
|---------------------------------|---|
| Ms Dorota Chechelska | Prosecutor, Regional's Prosecutors Office in Kraków |
| Ms Agnieszka Kępa | Prosecutor, Circuit Prosecutor's Office in Lublin |
| Ms Anna Zalewska | Prosecutor, Circuit Prosecutor's Office in Warszawa |
| Mr Piotr Nowak | Prosecutor, Circuit Prosecutor's Office in Szczecin |
| Ms Agnieszka Władzińska | Prosecutor, National Prosecutor's Office |
| Ms Łucja Łukuć | Prosecutor, Bureau of International Cooperation of the National Prosecutor's Office |
| Ms Magdalena Beroud-Korowajczyk | Prosecutor, Bureau of International Cooperation of the National Prosecutor's Office |

4 December (National Police Headquarters)

| Person interviewed/met | Organisation represented |
|-------------------------------|--|
| -Sławomir Surowiec | Senior police ensign, National Police Headquarters |
| Magdalena Hassa-Redlińska | Police sergeant, National Police Headquarters |

| Person interviewed/met | Organisation represented |
|------------------------|---|
| Mr Karol Troć | Judge, District Court in Siedlce |
| Ms Renata Król | Judge, District Court in Radom |
| Ms Katarzyna Siczek | Judge, District Court in Radom |
| Ms Iwona Gałek | Judge, District Court in Radom |
| Mr Jarosław Kowalski | Judge, District Court in Lublin |
| Mr Łukasz Obłozą | Judge, District Court in Lublin |
| Ms Agnieszka Kęпка | Prosecutor, Circuit Prosecutor's Office in Lublin |
| Mr Mariusz Jaroszyński | Judge, District Court in Lublin |

6 December (Ministry of Justice)

| Person interviewed/met | Organisation represented |
|-------------------------------|--|
| Katarzyna Naszczyńska | Judge of the Warszawa Praga-Południe District Court in Warszawa, seconded to the Ministry of Justice |
| Rafał Kierzyńka | Judge of the Circuit Court in Gorzów Wielkopolski, seconded to the Ministry of Justice |
| Jan Wiśniewski | Prosecutor of Circuit Prosecutor's Office in Suwałki, seconded to the Ministry of Justice |
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ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

| LIST OF ACRONYMS, ABBREVIATIONS AND TERMS | LANGUAGE OF X-LAND OR ACRONYM IN ORIGINAL LANGUAGE | LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE | ENGLISH |
|--|---|--|--|
| FD | | | Framework Decision |
| EAW | | | European arrest warrant |
| ECJ | | | European Court of Justice |
| JHA | | | |
| CATS | | | |
| ESO | | | European supervision order |
| EJN | | | European Judicial Network |
| <i>CPC</i> | | | Criminal Procedural Code |
| CJEU | | | Court of Justice of European Union |
| IOJT | | | International Organization for Judicial Training |
| ERA | | | Academy of European Law |
| EJTN | | | European Judicial Training Network |
| EIPA | | | European Institute of Public Administration |
| | | | |
| | | | |

ANNEX D: THE IMPACT OF COVID-19 VIRUS

21. Poland (PL)

| POLAND | |
|--|--|
| <p>EAW</p> <p>-issuing of EAWs (<i>suspension; impact on already issued EAWs; prioritization in issuing new EAWs + criteria</i>)</p> <p>- execution and postponement of the actual surrender (<i>legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding</i>)</p> <p>-expected resuming of surrenders</p> <p>-transit</p> | <p>Impact on the issuing of EAWs</p> <p>The EAW system in Poland is completely decentralised and all the decisions regarding the EAW mechanism are taken by the circuit courts. There are no guidelines or provisions related to the prioritisation of issuing of EAWs; judges decide independently in a concrete case. The courts are not obliged to inform the central authority (the Ministry of Justice) of any issues related to the EAW, including any decisions on the suspension of issuing of EAWs; it is a voluntary act.</p> <p>Impact on the execution of EAWs and postponement of the actual surrender</p> <p>Surrenders are possible. However, there are serious impediments to hand over/take over individuals arrested in the framework of EAW proceedings. This problem is connected with flight restrictions, for example. Therefore there are actions taken to postpone the process to hand over arrested individuals.</p> <p>In Poland there is no possibility to suspend the execution of EAWs <i>ex officio</i>, in particular by any decision of the Minister of Justice. The EAW system in Poland is decentralized and only courts have an exclusive competence in relation to the EAWs execution. The decisions regarding the EAW mechanism are taken by the circuit courts. Therefore only the courts decide – on a <i>case by case</i> basis – whether there are grounds to suspend the procedure related to the EAWs or to take any other decision in this regard / which provision of the FD EAW should be applied for the temporary suspension of surrenders. The courts are not obliged to inform the central authority (the Ministry of Justice) of any issues related to the EAW, including any decisions on the suspension of execution of EAWs; it is a voluntary act.</p> <p>Impact on surrender, extradition, transfer by land</p> <p>The COVID-19 pandemic has not had an influence on the execution of surrenders by land in Poland.</p> <p>Impact on surrender, extradition, transfer by air</p> <p>The COVID-19 pandemic has had a significant influence on the execution of surrenders, extraditions and transfers of convicts by air in Poland. It was caused by the introduction of restrictions on air traffic on the territory of the Republic of Poland.</p> <p>Legal basis for postponing the actual surrender</p> <p>So far, the Ministry of Justice has been informed only about 1 case where Art. 23(3) of the FD EAW was applied.</p> <p>According to Art. 607n of the CCP: § 1. A requested person, against whom a final and binding decision on surrender was issued, is surrendered to a competent judicial authority of the issuing State</p> |

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| | <p>no later than within seven days of the day on which the decision on surrender becomes final and binding.</p> <p>§ 2. If the surrender of the requested person within the time limit referred to in § 1 is not practicable due to an event of force majeure or a danger to the life or health of this person, the requested person is surrendered to a competent judicial authority of the issuing State no later than within 10 days of the newly fixed time limit.</p> <p>§ 3. If the issuing State fails to take a person liable to surrender into custody within the time limits laid down in § 1 or 2, the immediate release of such person is ordered, unless he is deprived of liberty in another case.</p> <p>Adequacy of these provisions Currently these provisions seem to be applicable and sufficient.</p> <p>Releases of requested persons following the postponement of the surrender No data available in relation to this type of cases.</p> <p>Transit Due to flight restrictions the handing over of individuals like air transit through third country territory was not done/not realized. More recently, transit of the persons via the territory of Poland is carried out, however, in each case the final decision is taken by the Ministry of Justice.</p> |
| <p>Precautionary measures for surrender, extradition and transfer</p> <ul style="list-style-type: none"> - COVID19 test - health certificate - quarantine - facial masks | <p>Specific measures for the person to be transferred There are special conditions for surrenders. They are equipped with medical protective gear. No COVID-19 tests are currently required for surrenders. They are taken from custody, where they undergo general examinations before being delivered to the convoy.</p> <p>Specific measures for the escorting police officer There are special conditions for escort police officers. They are equipped with medical protective gear such as protective masks, protective suits, protective gloves, disinfectants. Since the beginning of the COVID-19 pandemic, we have not carried out convoys in which escort police officers would use accommodation or public transport on the territory of foreign countries.</p> |
| <p>Extradition</p> <ul style="list-style-type: none"> -suspension -legal basis -third countries involved -expected duration of suspension | <p>Impact on extradition and legal basis for postponing the actual surrender</p> <p><u>Extradition to third countries:</u> There was one case that, after a decision to extradite a fugitive to a third country was taken, the requesting state asked to postpone the period for actual surrender of the fugitive due to the COVID-19 and transportation problems. The request of the requesting state to postpone a surrender and at the same time to prolong a detention period was submitted to the court which issued a decision on admissibility of extradition and was competent to decide on the detention of the fugitive. The court accepted the request and prolonged the detention. The possibility to prolong the period for actual surrender was provided in the <u>bilateral agreement</u> for extradition which was the basis for extradition request.</p> <p><u>Extradition from third countries:</u> There have been two cases when Poland asked the states where the extradition requests were sent, to prolong detention and</p> |

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| | <p>postpone the date for taking over of the persons to be extradited. In one case cooperation with the requested state is based on the convention which allows for postponing of taking over of persons to be extradited and in the second on reciprocity principle only. In one case cooperation with the requested state is based on the <u>convention</u> which allows for postponing of taking over of persons to be extradited and in the second on <u>reciprocity principle</u> only.</p> <p>In the first case requested state agreed to postpone the taking over of the fugitive, in the other the proceeding is still pending.</p> |
| <p>Transfer of sentenced persons -prioritization in issuing/execution</p> | <p>Impact on the transfer of sentenced persons Transfers of prisoners are dealt like in EAW cases.</p> |
| <p>SIRENE Bureaux -working of SIS bureau -exchange of information with other SIS Bureaux</p> | <p>Impact on the working of the SIRENE Bureau Please be informed that SIRENE Poland is operational 24/7 and COVID-19 situation has not had significant impact on daily work of the bureau. There were some changes in organization of daily work, e.g. some people work remotely or were on special sick leave for a child, however the work continuity has been maintained.</p> <p>Impact on the exchange of information with other SIRENE bureaux The COVID-19 situation has not had any impact on exchange of information with foreign SIRENE Bureaux.</p> |
| <p>EIO and MLA -prioritization in issuing/execution -electronic transmission -whom to contact</p> | <p>Impact on the issuing of EIOs and MLA requests EIOs and MLA requests are not dealt only in emergency cases. Prioritisation is not applied.</p> <p>Impact on the execution of EIOs and MLA requests EIOs and MLA requests are not dealt only in emergency cases. However, in regard to non-emergency orders delays in execution may occur.</p> <p>Electronic transmission and contact details We strongly recommend to send EIO/MLA requests by email only, to the ordinary addresses indicated in the EJN-Atlas. In case of emergency (e.g. pre-trial arrest) or difficulties in establishing the competent authority (e.g. actions to be taken in different parts of the State), please send EIO/MLA requests to:</p> <p><u>In pre-trial proceedings</u>: National Prosecutor's Office Bureau of International Cooperation, 3 Postępu Str., 02-676 Warszawa; e-mail: sekretariat.bwm@pk.gov.pl</p> <p><u>In trial and post-trial proceedings</u>: Ministry of Justice, Department of International Cooperation and Human Rights, Al. Ujazdowskie 11, 00-950 Warszawa; e-mail: dwmipc@ms.gov.pl</p> |

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| <p>Freezing and confiscation orders -prioritization in issuing/execution</p> | <p>Impact on freezing and confiscation orders Prioritisation is not applied.</p> |
| <p>JITs -prioritization and alternative telecommunication solutions</p> | <p>Impact on JITs Prioritisation is not applied.</p> |
| <p>Recommended channels for transmission of -urgent requests -information exchange</p> | <p>All the channels should be used on a case by case basis in order to facilitate the procedure. For the transmission of EIOs and MLA requests, <i>see</i> above 'EIO and MLA'.</p> |
| <p>Any other relevant information</p> | <p>N/A</p> |