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

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

REPORT ON SLOVAKIA

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1. EXECUTIVE SUMMARY

The on-site evaluation visit in the Slovak Republic (Slovakia) was organised very well and professionally. The meetings were held in a friendly and collegial atmosphere thanks to the excellent organisation by the Slovak judicial authorities with the daily support of the Slovak Ministry of the Justice.

During the visit, the evaluation team and the observers met with representatives of the competent authorities involved in the implementation of the evaluated framework decisions, namely: the Ministry of Justice, General Prosecutor's Office, regional and district courts, Prison and Court Guard Service, Probation Unit, Supplementary Information Request at the National Entries (SIRENE) and Bar Association. However, in terms of court participants, only one judge was present alongside senior judicial officials. Moreover, the senior judicial officials were much more active in the discussions than the judge was.

The evaluation team learned more about the role of the competent authorities under Slovak legislation and in the Slovak institutional system through presentations and discussions with representatives of the courts, prosecutor's offices, the Ministry of Justice and other authorities involved in the framework decisions (FDs) under evaluation.

During the visit, the evaluation team was provided with information and clarifications of legal aspects of the EAW and practical problems the Slovak practitioners have encountered. The selected representatives of the Slovak authorities present during the on-site meetings were well prepared, open and sincere in their responses to the evaluation team.

The provisions of the FDs under evaluation have been incorporated into four separate Slovak acts.

FRAMEWORK DECISION 2002/584/JHA

Framework Decision 2002/584/JHA on the European arrest warrant (EAW) and the surrender procedures between Member States was implemented in the Slovak legal system by Act No 154/2010.

When Slovakia acts as the issuing state, all regional and district courts are competent to issue EAWs. However, in pre-trial proceedings, the authorities competent to issue EAWs are judges, at the competent regional or district prosecutor's request only.

Regional courts also decide on the execution of the EAW where the requested person does not consent to surrender or in cases where more than one EAW has been issued.

The prosecutor is responsible for performing the preliminary investigation to establish whether the conditions for the execution of the EAW are fulfilled. When it is informed that the person has been arrested, it immediately informs the judicial authority of the issuing country. If the EAW is insufficient, the prosecutor asks for additional information from the issuing authority. The prosecutor may also return the EAW without a decision on its execution if the conditions for execution under Slovak law are not met. After the preliminary investigation, the prosecutor decides that the EAW is to be executed if the person consents to his or her surrender to the Member State concerned and the prosecutor does not find a reason to refuse the execution; otherwise the prosecutor sends the case to court for decision on the execution. The prosecutor also informs the Ministry of Justice and SIRENE or INTERPOL about the initiation of the proceedings.

The execution of the EAW and the rights of requested persons under Slovak legislation are in line with FD 2002/584/JHA.

Slovak authorities, in practice, always consider the principle of proportionality when deciding whether to issue an EAW. Consequently, an EAW is not issued when its purpose can be achieved by a less stringent measure (serving a summons abroad, requesting international legal assistance/a European Investigation Order (EIO), or transferring jurisdiction for criminal prosecution).

The competent national authorities follow the guidelines provided in the Commission's 'Handbook on how to issue and execute an EAW'.

As a rule, Slovak judicial authorities contact competent authorities of the other Member States directly, i.e. by phone, email or fax. In complex cases or if direct contact fails, they seek the assistance of European Judicial Network (EJN), Eurojust or national EJN contact points.

The requested person must be represented by a defence counsel within the EAW proceedings. The person also has the right to choose a defence lawyer in the issuing state and the right to interpretation and translation.

When executing the EAW, the nationality of the person subject to surrender is not a criterion used to decide on the surrender.

If the requested person is subject to criminal prosecution in Slovakia or is serving a custodial sentence, the judicial authority which issued the decision to execute the EAW may issue a resolution on the postponement of its implementation. Furthermore, upon request of the issuing authority, the court may also permit the temporary surrender of a person to the issuing state.

In cases of the potential risk of violation of fundamental rights in relation to detention conditions, Slovak authorities act in accordance with Court of Justice of the European Union (CJEU) case law, the obligations deriving from the European Convention on Human Rights and relevant national laws. When deciding on detention conditions, the competent judicial authorities carry out a preliminary assessment of the basic conditions for the execution of the EAW.

The grounds for non-recognition and non-enforcement stipulated in Act No 154/2011 are in line with the FD. However, it is worth noting that Act No 154/2010 has been amended based on a recommendation from the fourth round of evaluations. As a result, the ground for refusal based on territoriality is no longer mandatory but optional.

Slovak judicial authorities have faced some problems regarding the conditions for double criminality. These were related to crimes such as petty theft and evading alimony or maintenance obligations that were not criminal offences under the law of an executing state. As the executing state, Slovakia has encountered such problems only occasionally.

As executing authorities, the Slovak judicial authorities have encountered incomplete information provided in the EAW form, e.g. incomplete description of the criminal act, which is essential for assessing double criminality; incomplete citation of the relevant legal provisions; no indication of the maximum length of the custodial sentence; missing or insufficient information in part (b) of the EAW form; and non-submission of the original of EAWs.

Framework Decision 2008/909/JHA

FD 2008/909/JHA on applying the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for their enforcement within the EU was implemented in the Slovak legal system by Act No 549/2011.

When Slovakia acts as the executing state, competence for recognising and enforcing the judgment lies with the regional court of the place where the sentenced person has his or her permanent residence or last permanent residence or where the custodial sentence is being served; otherwise, Bratislava Regional Court. The competent court is obliged to notify the Ministry of Justice of the beginning of the proceedings on recognition and enforcement of the judgment. If Slovak courts do not have jurisdiction to recognise and enforce the judgment, they will forward the judgment and the certificate to the court under whose jurisdiction the case belongs.

Competent authorities are in direct contact with authorities in other Member States. If direct contact fails, courts contact Eurojust, the EJN or the specialised division of the Ministry of Justice for assistance or look up the relevant information on the Ministry of Justice website.

In practice, after receipt of the request, the court collects additional information from the registers and sends the documents to the competent prosecutor, who submits his or her opinion within a period stated by the court. Finally, the prosecutor checks the submitted material and provides his or her view – consent or not – on the recognition and enforcement of the judgment.

The Prison and Court Guard Service sentenced persons with a written information sheet on rights, which they must sign. It also includes information about the possibility of transferring a sentence to be served in a sentenced person's home country. Courts ask for the convicted person's consent or opinion on transferring the sentence and record it in the minutes of the hearing.

After receiving a written opinion from a prosecutor, the court issues its decision in the form of a judgment within 90 working days and serves the decision on the sentenced person, his or her lawyer and the prosecutor; the sentenced person and the public prosecutor may appeal that has a suspensive effect.

However, unlike in the case of the EAW, in proceedings on recognition and enforcement of a foreign judgment, the sentenced person is not entitled to a court-appointed lawyer, except where the sentenced person requests a lawyer due to insufficient financial means.

Slovak judicial authorities adjust the sentence level relatively often, but not because the sentence imposed by the issuing state is disproportionate or incompatible with Slovak law. Instead, the adaptation of the sentence occurs due to partial non-recognition of a judgment (non-recognition of one of several concurrent offences) or determination of how the custodial sentence is to be enforced, i.e. placing the sentenced person in a facility with a specific level of monitoring. Partial recognition of a judgment takes place with the prior agreement of the judicial authority of the issuing state.

The consent of the person in question is not required if the sentenced person is a national of and has his or her ordinary residence in that Member State, or if he or she is a national of the Member State and does not have ordinary residence there but will be deported there after serving the sentence in Slovakia. After the fourth round of evaluations, to facilitate the recognition procedure, Slovakia analysed Section 4(1) of Act No 549/2011 concerning the conditions for recognising foreign judgments and changed the definition by replacing the words ‘permanent residence’ with ‘ordinary residence’ (in force from January 2010).

Before issuing a certificate, the competent authorities assess whether the transfer of the enforcement decision will facilitate the rehabilitation of the sentenced person. The main criterion is the family or social ties of the person in the executing state. The authorities look into whether the sentenced person would successfully integrate into society and whether he or she has family, linguistic, cultural, social and economic ties in the executing state.

When acting as executing authorities, the courts interpret the term ‘similar offence’ as an offence with the same name or characteristics as an offence under the Slovak Criminal Code. The competent courts have not yet encountered cases where the certificate has been withdrawn due to a too lenient sentence after adaptation.

Slovakia has also not yet encountered a situation where the transferring state in recognition proceedings has called prison conditions into question and used this argument as a ground for withdrawing the request.

Cases of the partial recognition of judgments have occurred, notably when the person was sentenced for multiple concurrent offences, where each act is decided upon separately, and double criminality does not apply to all the acts. Therefore, non-recognition of the judgment for one or more concurrent offences results in the sentence being adapted. Partial recognition of the judgment can only be applied with regard to the EU Member States where it is legally possible to reduce the sentence if double criminality is only applicable in part. In other cases, the certificate has to be withdrawn.

Unlike in Article 9 of FD 2008/909, where all the grounds for refusal are considered optional, under Slovak legislation, grounds for refusal are stipulated as mandatory (Section 16(1) of Act No 549/2011). The only optional ground for refusal concerns an offence committed in whole or in part in the territory of the Slovak Republic, while taking into account, in particular, the circumstances of such conduct.

Slovak authorities have faced some problems concerning the deduction of a period of deprivation of liberty served in the issuing state due to inconsistency of the information in part (i), point 2 of the certificate or non-existence of a legal basis for the deduction. They have also encountered cases where a definitive judgment that changed the sentence into a definitive verdict in cumulative sentences was not submitted.

Slovak authorities encountered a situation where the issuing state did not consent to further prosecution by reasoning that the speciality rule applies only after the convicted person is transferred to Slovakia, which is contrary to Article 9(1) of FD 2008/909/JHA.

Framework Decision 2008/947/JHA

FD 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions was implemented in the Slovak legal system by Act No 533/2011.

When Slovakia is the executing state, the competent authority is the district court where the sentenced person has a permanent residence or last known permanent residence. If the sentenced person does not have permanent residence in Slovakia or his or her last residence in the territory of Slovakia, the competent court is District Court Bratislava I. The competent prosecutor based at the court with jurisdiction writes the statement concerning an application for recognition and enforcement of a judgment. An appeal against a court decision on recognition and enforcement of a judgment may be lodged by the convicted person or the public prosecutor.

Slovakia has not designated a central authority for the purposes of this FD. However, the Ministry of Justice assists with requests from the Slovak court or to a competent authority of the other Member State, in particular concerning the information required to determine competent authorities or verifying the requirements laid down by the law of the other Member State for the recognition and enforcement of the judgment. The Ministry of Justice has to be informed about received or issued requests.

The grounds for refusal are as follows: *ne bis in idem* principle; offence is not a criminal offence under Slovak law; offence not listed in the list of 32 offences and not a tax, customs or currency offence; the person subject to the decision is exempt from the jurisdiction of the law enforcement authorities and the court; the person is not criminally liable due to age, etc. The courts' role is deciding on the recognition or non-recognition of a probationary measure issued by another Member State and the role of the probation units is to enforce the decisions of the courts.

Providing the information about the possibility of transferring a probation measure or alternative sanction to the Member State where the sentenced person has their ordinary residence is the task of the probation officer who has first contact with the sentenced person.

However, probation officers' role in implementing FD 2008/947/JHA is not specified within national Act 533/2011. According to probation officers, their initiative is affected by the workload of each official, which impedes individual work with sentenced persons. On the other hand, the Ministry of Justice is preparing a two-year project whose objective is to identify the obstacles faced by the present probation and mediation service and to determine the specialisation of probation officers and workload distribution by dividing the activities of probation, supervision and mediation between different authorities.

The courts can replace or adapt the probation measure or the time frame of the decision if it is incompatible with Slovak law. According to national law, the court is obligated to inform a convicted person about the decision on the probation measure; the decision proceedings are held in camera.

The judge or senior judicial official fills in the certificate. The court which made an initial decision on the sentence sends the original copy along with a duly completed certificate to the executing judicial authority of the other Member State. Upon request of the sentenced person, the enforcement of the judgment may also be transferred to a Member State other than the one referred to above, provided that the executing judicial authority of that Member State grants its consent. As there is no hearing, there is also no appeal against the certificate.

Slovak practitioners had not recorded any significant problems in implementing this Framework Decision.

The practical use of this instrument is quite rare. However, there are double the number of outgoing cases compared to incoming cases.

As the issuing state, Slovakia had recorded only one case where the Czech Republic refused to recognise the judgment and certificate since the act was not considered a criminal offence according to Czech law.

Framework Decision 2009/829/JHA

FD 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention was implemented in the Slovak legal system by Act No 161/2013.

Slovak authorities have not issued any certificates in connection with this FD. However, it should be noted that the Slovak judicial authorities have also not received any applications for the recognition of supervision measures. Thus, they do not have any experience in that regard.

When Slovakia acts as the executing state, the competent authority is the district court in whose jurisdiction the sentenced person's permanent residence or last permanent residence. . If the sentenced person ordinarily resides in the Slovak Republic and has both a permanent place of residence and a temporary place of residence there, the competent authority is the district court in whose area of jurisdiction the sentenced person permanently resides. If the person concerned has no permanent residence or no last known permanent residence in the territory of Slovakia, the competent court is District Court Bratislava I.

As issuing state, the competent authority is also the pre-trial judge who decides about provisional detention under a general regulation on criminal proceedings. The prosecutor only issues a written opinion. If an appeal is made against the decision of the court, it does not have dilatory effect.

When Slovakia is executing state, the court decides whether the decision on supervision measures will be recognised and executed at an in-camera session after obtaining a prosecutor's written opinion. The court's decision takes the form of a resolution.

Slovakia has no cases under FD 2009/829/JHA, either incoming or outgoing; thus it has no experience with applying this legal instrument in practice. According to the Slovak judicial authorities, the reason for not applying this framework decision is the lack of suitable cases, which also follows from the fact that detention can be imposed only in the case of legally enumerated conditions (for severe crimes). As practitioners added, if the crime is not severe there is no reason to use pre-trial detention measures. Another reason is a lack of trust that the convicted person will comply with the obligations arising from the supervision measure, with the result that he or she could frustrate the investigation or slow it down considerably. However, Slovak practitioners would welcome good practice and recommendations for improving the FD's application from Member States with practical experience.

Bar Association

The Bar Association organises training sessions on different parts of the law based on surveys of the needs and preferences of lawyers.

The trainers are from the judiciary institutions or the Ministry of Justice. The Ministry has drafted manuals on procedural rights of accused persons and suspects. The EAW Framework Decision and case law are part of this material, made available to all parties to the proceedings. As for the other evaluated FDs, training in these matters had not been carried out for some time. Participation in training is not mandatory.

Ex officio lawyers are appointed randomly by the court via electronic means. However, the list of ex officio lawyers is composed of all lawyers without distinguishing the specialisation even in terms of the field (criminal law, commercial law etc.) The evaluation team believes that not having lists of ex officio lawyers by specific areas of law impedes effective defence.

Training

In Slovakia there is a central training institution called the Judicial Academy that provides lifelong learning for judges, prosecutors, court officials, trainee judges, assistants to Supreme Court judges and prosecutors' assistants. There are about 130-150 training activities per year, focusing on the full spectrum of legal instruments, including on international cooperation. In the COVID-19 pandemic training took place online, which was well received.

The Judicial Academy evaluates training based on end-of-training evaluation sheets. On this basis, it assesses the quality of training and the target group's needs for further training in this area.

2. INTRODUCTION

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

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

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

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

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

Referring to FD 2008/947 on probation and alternative measures and FD 2009/829/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 EU.

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.

Slovakia was the 21st Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended on the proposal of certain Member States and in the absence of any objections (9278/19 REV 2).

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

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

The experts entrusted with the task of evaluating the Slovak Republic were Ms Julijana Stipišić (Croatia), Ms Katre Poljakova (Estonia) and Ms Doris Fiala (Austria). The following observers were also present: Ms Martina Hlušítková (Eurojust) and Ms Mária Bačová (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 preparatory video conference that took place on 25 March 2021, the evaluation visit that took place in the Slovak Republic between 22 and 25 November 2021, and on the Slovak Republic's detailed replies to the evaluation questionnaire, together with its detailed answers to the ensuing follow-up questions.

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

The Slovak Republic (Slovakia) transposed FD 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between the Member States of the European Union (EAW) into the separate Act No 403/2004 on the EAW, which was later replaced by amended Act No 154/2010, which entered into force on 1 September 2010.

3.1. Authorities competent for the EAW

When Slovakia acts as the executing authority, the competent authorities for recognition and enforcement of the EAW are regional courts in trial proceedings and regional prosecution offices in pre-trial proceedings (i.e. authorities competent in the territory where the requested person has been detained or otherwise deprived of personal liberty).

The competent regional court decides on the execution of the EAW in cases where the requested person does not consent to surrender or where more than one EAW and/or international arrest warrant have been issued. Similarly, a judge of the relevant regional court decides whether to take the person concerned into provisional detention or preliminary custody based on the prosecutor's motion.

The purpose of preliminary custody is to secure the presence of the detained person in the territory of Slovakia in order to prevent the obstruction of EAW proceedings until the authority of the issuing state seeking the person's extradition has delivered the original of the EAW and its translation into the state language if such translation is required.

The prosecutor is responsible for the preliminary investigation – the aim is to determine if the conditions for the execution of the EAW are fulfilled.

Courts (usually at the district level) are the main authorities competent to handle cases under FD 2002/584/JHA. Prosecution services are also very much involved in EAW proceedings: In pre-trial proceedings the competent judge acts on the prosecutor's motion.

When Slovakia acts as the issuing state, the authorities competent to issue an EAW are all courts of the general judiciary in the Slovak Republic (except the Supreme Administration Court). However, in practice, EAWs are mainly issued by district courts and the Specialised Criminal Court.

In the pre-trial stage of proceedings, the EAW is to be issued by the judge for pre-trial proceedings at the prosecutor's request only (competent regional or district prosecutor).

Following the principle of direct contact of the judicial authorities of the EU Member States there is direct contact between the Slovak authorities and the competent judicial authority in the other Member State dealing within the EAW or request for surrender.

Role of the central authority

In the Ministry of Justice of the Slovak Republic there is a specialised section called International Law Department – Judicial Cooperation in Criminal Matters Division.

The central authority plays a methodological and statistical role, evaluating the application of the FD in practice and providing methodological guidance.

When requested by a Slovak court or by the competent authority of a Member State, the Ministry of Justice provides assistance, in particular with obtaining the necessary information concerning the determination of competence or verifying the conditions laid down in the legislation of the Member State or of Slovakia for the recognition and execution of the EAW. The central authority provides the necessary assistance to the judicial authority of the issuing state and the executing judicial authority, especially in the most complex cases, for instance by facilitating communication with the judicial authorities of the Member States concerned. In the event that an EAW coincides with an extradition request, the Ministry of Justice decides which should take precedence (under the authority of the Minister for Justice).

Concerning the organisation of the surrender of a requested person, the Ministry of Justice is the competent authority for granting permission to transfer the requested person through the territory of the Slovak Republic. It is also competent to forward a request for transit permission to the Member State of transit when it is necessary to transit a person being surrendered from another Member State based on an EAW issued by a Slovak authority through the territory of a third Member State.

The Ministry of Justice has to be informed by the issuing court in cases in which the executing judicial authority failed to make a decision on the execution of the EAW within 60 days of the requested person's detention or, if the time limit was prolonged, within 90 days.

Role of the Prosecutor-General's Office

The Slovak Public Prosecution Service is an independent state authority headed by the Prosecutor-General. Its role is to protect individuals' legal rights and interests, legal entities, and the State.

The role of the Prosecutor-General's Office under FD 2002/548/JHA is to provide methodological guidance and to coordinate the activities of the subordinate regional and district prosecutor's offices. It also carries out a preliminary examination of the alert entered by the Member States' competent authorities in the Schengen Information System (SIS). However, if it finds that the alert does not comply with the legislation, international obligations or essential interests of Slovakia, or if the conditions laid down in specific provisions are not fulfilled, it instructs the SIRENE Bureau to flag the alert.

3.1.1. Procedure when Slovakia acts as the executing state

The regional prosecution office under whose territorial jurisdiction the requested person was detained or otherwise deprived of personal liberty has the competence to initiate EAW proceedings. However, a change in the location of the person's remand in custody or imprisonment in the course of EAW proceedings has no impact on this competence.

The prosecutor of the competent regional prosecutor's office is informed by the police that they have arrested a person who is wanted under an EAW, and immediately informs the judicial authority of the issuing state of the person's arrest on Slovak territory.

The police inform the detained person of the grounds for detention, instruct the person about his or her rights, and immediately inform the competent prosecutor about the detention.

Within 48 hours (in cases of terrorism: 96 hours) the prosecutor has to decide to release the detained person or to request the court to put the person in preliminary or extradition custody. The prosecutor has to send the EAW or the entry in the SIS to the court along with the request.

If the prosecutor releases the person from detention within the first 48 hours, it has to inform SIRENE or INTERPOL immediately.

The prosecution service also informs the Ministry of Justice (attaching a copy of the EAW or of the entry input into the SIS) and the SIRENE or INTERPOL unit about the initiation of the proceedings.

According to Section 4(2) of Act No 154/2010 an EAW may be executed:

- a) if it has been issued for the purpose of criminal prosecution for an act classified as a criminal offence under Slovak law and the law of the issuing state and if the offence is punishable by the law of the issuing state by a custodial sentence with an upper limit for the term of imprisonment of at least 12 months and there are no grounds to refuse its execution;
- b) if it has been issued to execute a custodial sentence already imposed for an act which is classified as a criminal offence both in the issuing and the executing state, and the imposed custodial sentence or its unserved remainder is at least four months and there are no grounds to refuse its execution; multiple custodial sentences or their unserved remainders are to be added together.

However, the nationality of the person subject to surrender is not a criterion used to decide on the surrender. Practitioners present at the meetings confirmed having situations where they surrendered Slovak nationals to other Member States.

Rights of the requested person:

Within the EAW proceedings the requested person:

- a) must be represented by a defence lawyer;
- b) has the right to interpretation and translation;
- c) has the right to choose a defence counsel in the issuing state to facilitate the interaction with the defence counsel acting in Slovakia during the EAW proceedings. (The prosecutor must inform the judicial authority of the issuing state immediately about the requested person's decision to exercise this right.)

EAW proceedings may be carried out when the requested person is in preliminary or extradition custody, which should both last no more than 40 days from the person's detention.

Preliminary investigation

The competent prosecutor of the regional prosecution service has to establish if the conditions for the execution of the EAW have been met. He or she has to hear/question the requested person, inform the person about the contents of the EAW, provide a copy of the EAW in a language the person understands, and inform the person of the possibility to consent to surrender and the consequences of such consent and that the consent cannot be withdrawn. The prosecutor also has to inform the requested person of the possibility to renounce the principle of speciality and the consequences of such a renouncement. All this information must also be provided in writing and must be adequately explained by the prosecutor.

In cases of an EAW for the purpose of execution of a sentence, the prosecutor must also ask the requested person if he or she consents to serve the custodial sentence in the issuing state and inform him or her about the option of enforcement of the judgment being transferred to Slovakia.

The prosecutor applies to the regional court judge for the requested person to be taken into detention pending surrender and may also lodge an appeal against a decision of the court to release the person from provisional detention or detention pending surrender.

Prior to the decision on the execution of the EAW, the judicial authority of the issuing state may also request that the person be heard; this hearing is to be conducted by the prosecutor conducting a preliminary investigation.

If the EAW is incomplete or does not contain the necessary information, the prosecutor has to request additional information from the issuing authority immediately, and may also set a time limit for delivering the required information. This applies for example in cases of double criminality issues (e.g. if the EAW does not contain the amount of damage) or if other necessary information in the EAW form is missing. If that is the case, the prosecutor also informs the Slovak Ministry of Justice and SIRENE bureau (which forwards it to the INTERPOL National Bureau if not competent) of this request.

The prosecutor may also request the regional court judge to decide to release the person from provisional detention (for instance if the prosecutor has not received the EAW from the issuing authority within 18 days of the person concerned being detained).

The prosecutor may also return the EAW to the issuing state without a decision on its execution if the conditions for execution under Slovak law are not met.

After the preliminary investigation has been concluded, the prosecutor decides in the form of a resolution that the EAW is to be executed if the person consents to surrender to the Member State and the prosecutor does not find a reason to refuse the execution of the EAW. Otherwise the prosecutor sends the case to court for a decision on the execution of the EAW.

The prosecutor may also lodge an appeal against a court decision on the execution of the EAW.

Possibility of postponement of extradition and temporary surrender of the requested person

If there are criminal proceedings against a person in Slovakia or the person is serving or is due to serve a custodial sentence in Slovakia (for another offence than the one referred to in the EAW) the prosecutor may decide to execute an EAW, but postpone its implementation. The court or prosecutor who issued a decision to execute the EAW may issue a resolution on the postponement of its implementation if the person concerned is subject to criminal prosecution in Slovakia or is serving or is to serve a custodial sentence for a criminal offence other than that specified in the EAW. No complaint against the decision of the court or prosecutor on the postponement of extradition is admissible.

Upon request of the issuing judicial authority, the court may permit the temporary surrender of a person to the issuing state if a decision to postpone the execution of the EAW has been taken. For example, if the prosecutor had decided on the execution of the EAW, the court is competent to decide on the temporary surrender upon the prosecutor's motion.

As noted during the on-site visit, the EAW legislation does not stipulate a period for temporary handover; it is the subject of negotiation between the competent judicial authorities of the executing and issuing state. However, the issuing Member State must state for how long it requires the person to be temporarily handed over to its territory, for what purposes, and what kind of procedural acts are to be implemented.

If the court allows a person to be surrendered temporarily, it specifies the condition that the person must be held in custody during the surrender.

The prosecutor may also request that the court seek additional consent for criminal prosecution or execution of a custodial sentence if a person extradited to the Slovak Republic from a Member State under the EAW is to be prosecuted for a criminal offence committed prior to the extradition but not covered in the original EAW.

In cases where the prosecutor has taken the decision (surrender with the consent of the requested person), all the relevant information (consent, speciality rule, date and hour of arrest) is contained in the decision, which is transmitted to the executing judicial authority as soon as it has been issued. The order for the execution of the EAW indicates the period for which the requested person has been detained during preliminary proceedings relating to the EAW and records the personal statement concerning the possible application of the speciality rule. An accompanying report also contains all relevant information. If the issuing authority of the MS requests further information, it is provided immediately. All this information is immediately sent with the decision to the issuing authority.

Surrender procedure

There are two methods of surrender: the simplified and the standard surrender procedure:

The simplified surrender procedure can be applied when the required person consents to the surrender and there are no grounds for the non-execution of the EAW. The EAW must be executed within 10 days after the consent has been given. This time limit may be extended by a further 30 days, but normally the person must be surrendered to the issuing state no later than 10 days after the decision to execute the EAW has become final.

The standard surrender procedure applies in cases when the person concerned does not consent to the surrender. In such a case, after the preliminary investigation is concluded, the prosecutor files a motion to the regional court to make a decision on the execution of the EAW. The court decides on the execution of the EAW by a resolution adopted in a session held in camera. The requested person and his or her defence counsel may present their opinion in written form to the court before the judge makes a decision.

If there is any obligatory reason for non-execution, the court will decide that the EAW will not be executed. If there is a facultative reason for refusing the surrender, the court may decide that the EAW will not be executed.

The decision on the execution of the EAW must be issued within 60 days from the detention of the requested person.

Normally the person should be surrendered to the issuing state no later than 10 days after the decision to execute the EAW has become final, both in the simplified and the standard surrender procedure.

3.1.2. Procedure when Slovakia acts as the issuing state

According to Section 4(1) of Act No 154/2010, an EAW may be issued:

- for an act punishable under Slovak law by a custodial sentence with an upper limit for the term of imprisonment of at least 12 months;
- if extradition is requested to execute an already imposed custodial sentence and the imposed custodial sentence or its unserved remainder is at least four months; multiple custodial sentences or their unserved remainders are to be added together.

An EAW may only be issued if with regard to the accused person, a national arrest warrant, an international arrest warrant or a final and enforceable judgment imposing a custodial sentence for the same offence has been issued in Slovakia and if there are grounds to assume that the accused could be or is staying in another Member State.

EAWs are issued in the pre-trial stage of proceedings only in cases where the participation of the accused person cannot be guaranteed any other way, so when an EAW is the only choice. Preference is always given to summoning the accused person from abroad or conducting activities abroad using an EIO.

If there are grounds to assume that the accused could be or is staying in another Member State and should be requested for surrender, the chair of the panel of judges or the judge of the competent court issues the EAW in respect of the accused. In the pre-trial stage of proceedings, the EAW is issued by the judge at the prosecutor's request. In sentence execution proceedings, the EAW may also be issued by the chair of the panel of judges of the higher court if the sentenced needs to be requested from another Member State after the delivery of a final and enforceable judgment imposing a custodial sentence and before the case is remanded to the court of the first instance.

Thus, in pre-trial proceedings, the competent prosecutor:

- a) requests the pre-trial judge to issue or withdraw an EAW;
- b) requests the court, before deciding on the execution of an EAW in the executing state, to ask the executing judicial authority to hear the requested person;
- c) requests the court to ask the executing judicial authority to provisionally detain the requested person (if a decision is taken in the executing state, after deciding on the execution of the EAW, to postpone surrender);
- d) requests the pre-trial judge to decide that the person concerned be imprisoned on Slovak territory while provisionally detained.

If supplementary information is needed, the relevant prosecutor requests it from the issuing state, setting a reasonable deadline for providing the requested additional information (to comply with the time limits for deciding on the EAW), pointing out that under Slovak law the EAW may be returned to the issuing state without a decision being taken to execute it if the issuing state does not provide sufficient supplementary information. When there were problems getting the supplementary information from the issuing state, prosecutors have used cooperation with Eurojust and/or EJN contact points.

The relevant court sends a copy of the EAW to the Ministry of Justice and SIRENE or INTERPOL national units (in Slovakia). Before entering an EAW into SIS, the SIRENE unit checks the EAW form, i.e. verifies the personal data of the requested person on the EAW, the conditions of issuance/the formalities, and the availability of other relevant data (fingerprints or data from the national databases). If it is available, it is added to the SIS alert. In cases where the EAW form lacks relevant information, the SIRENE unit contacts the issuing Slovak court.

In the pre-trial stage the court also sends the EAW to the public prosecutor on whose motion the court has issued the EAW. When the issuing court is aware of an address for the wanted person in another Member State, it additionally sends the translated EAW (language of executing state) directly to the competent judicial authority of the executing state.

If the wanted person is arrested in the other Member State and wants to choose a defence counsel in Slovakia for the surrender proceedings, the Slovak court is obliged to provide the requested person with a list of defence lawyers maintained by the Slovak Bar Association.

3.2. The principle of proportionality

General remarks

Proportionality in the system of rights in the EU has two meanings. It can be encountered first as a regulatory rule that determines the admissibility of the adoption of secondary legislation by the EU institutions in relation to the competencies of the Member States, and second as a general principle that serves the protection of subjective rights and objective order in general. In this second sense, its application assesses the validity of individual and general measures and acts, i.e. it serves the interpretation of legal rules.

The primary purpose of the principle of proportionality is to limit the action of the authority and proportionality of the measure of that authority to the private interest in which the measure of encroachment is determined in three steps. First of all, it is necessary to determine whether or not the measure is proportionate to the aim pursued; second, whether it is possible to achieve that goal by a less restrictive measure and third, whether the measure imposes on the obligor an excessive burden in relation to the goal it seeks to achieve. These are the tests of applicability, necessity and proportionality *stricto sensu*.

In relation to general normative acts, understanding the purpose of the general act makes it easier to assess the proportionality of a specific measure, and it is possible to conduct a proportionality test. The principle of proportionality requires not only verification of the proportionality between a more serious crime and the costs and consequences of surrender, but also verification of possible violations of human rights and fundamental freedoms, as this principle is one of the EU's fundamental principles and must also be applied in the process of executing the EAW. The FD does not prescribe a proportionality test, nor does it require the state to issue an order to conduct such a test.

The proportionality test as a reason for refusing surrender means that the state interprets national norms in the light of general principles of EU law and the FD as well as the purpose it seeks to achieve, which is to combat serious crime and organised crime.

In practice, judicial authorities should take into account the justification for issuing an EAW, since it is considered the strictest measure in relation to a particular person and his or her life circumstances. It could violate Article 8 of the Convention for the protection of Human Rights and Fundamental Freedoms, which is the right to respect for private and family life. Even when the application of the EAW satisfies the conditions for a prescribed prison sentence, the circumstances of the specific case must be assessed when issuing the EAW, and the issuance of warrants for less severe offences, such as minor thefts, must be avoided. The proportionality can be assessed only in relation to a specific case and not in general concerning the type of criminal offence.

An example of retrospective disproportion is the case of *Sandra vs Romania*, in which surrender was granted for the execution of a prison sentence for killing ten chickens, and *Zak vs Poland* for theft of a mobile device.

Retrospective disproportionality is the lack of proportion between the severity of the offence and the prescribed penalty in the Member State, and prospective disproportionality applies to criminal offences whose severity and consequences do not justify the consequences of issuing an EAW.

The first is a consequence of different legal systems and penal policies of states, so for example, an act that is insignificant for one state might not be for another.

Therefore, judicial authorities should keep in mind that the EAW is a coercive instrument for securing the presence of the requested person, which involves deprivation of liberty and surrender to another state whose legal system and language may be unknown to him or her.

Concerning prospective proportionality, in practice the solution can only be to find an effective alternative legal solution with milder consequences than the surrender of the requested person (for example, interrogation via video link or an EIO).

The principle of proportionality exercised under Slovak Law

The principle of proportionality is expressly provided for in Section 5(3) of Slovak Act No 154/2010, which states that a court may not issue an EAW if it is evident before its issuance that extradition of the person in question would result in harm to that person disproportionate to the gravity and the consequences of the criminal offence. In cases where the court issues an EAW for the execution of a custodial sentence or where a judgment is rendered against an absconder or *in absentia*, it must also contain information on how the accused person's right of defence is to be ensured in the proceedings.

The EAW may be issued for an offence punishable by a custodial sentence with an upper limit for the term of imprisonment executed:

- if it has been issued for the purposes of criminal prosecution for an offence classified as a criminal offence by the law of the Slovak Republic and the law of the issuing state and if the offence is punishable by the law of the issuing state by a custodial sentence with an upper limit for the term of imprisonment of at least 12 months and there are no grounds to refuse its execution;
- if it has been issued for the purposes of the execution of a custodial sentence already imposed for an offence classified as a criminal offence by the law of the Slovak Republic and the law of the issuing state, if the imposed custodial sentence or its unserved remainder is at least four months and there are no grounds to refuse its execution; multiple custodial sentences or their unserved remainders are to be added together.

If extradition is requested for a criminal offence punishable in the issuing state by a custodial sentence with an upper limit for the term of imprisonment of at least three years and which is labelled by the competent authority of the issuing state in the EAW as belonging to one or more categories of criminal offences which do not require a double criminality check, the executing judicial authority will not verify whether the act is a criminal offence according to the law of the executing state.

Slovak judicial authorities in practice always examine proportionality when issuing an EAW. Thus, they consider whether, instead of issuing the EAW, it is possible to use other instruments of judicial cooperation in criminal matters which are also effective but less coercive, e.g. a European Investigation Order (EIO) or a European Supervision Order (ESO). Therefore, if possible, they use less invasive instruments to achieve the same aim. When deciding which instrument could be used, they take into account the type of crime, its gravity, the consequences of the crime, the likelihood that a prison sentence would be imposed, and the length of time since the crime was committed, in each case.

The evaluation team would like to note that Slovakia has implemented a special provision on the principle of proportionality in Section 5(3) of Act No 154/2010 based on the recommendation from the fourth round of the evaluation.

EAWs are only issued in the pre-trial stage of proceedings in cases where the participation of the accused person cannot be guaranteed any other way, making the EAW the only choice. Therefore, preference is always given to summoning the accused person from abroad or conducting activities abroad using an EIO.

Slovak practitioners noted that in certain states, in particular Austria, the judicial authorities do not consider whether it might be possible to use other forms of international judicial cooperation, such as questioning the person using an EIO or transferring criminal proceedings.

A regional prosecutor issued an instruction on 15 December 2017 that any competent district prosecutor's office intending to ask the competent court to issue an EAW should apply to the regional prosecutor's office for prior authorisation to do so. The regional prosecutor's office takes the question of proportionality into account when assessing the proposed request. In cases where contact details (email, telephone) for an accused person located abroad were provided in the investigative file, the investigator or other police authority tried to contact the accused person to ensure his or her presence at the criminal proceedings or requested an EIO in order to interrogate the person. Therefore, EAWs were issued as a last resort where no less invasive option was available to ensure that an accused person located abroad would participate in criminal proceedings in Slovakia.

Both courts and prosecutor's offices take into account the guidelines provided in the Commission's 'Handbook on how to issue and execute a European Arrest Warrant' and noted their appreciation for its reflection of the experience gained on the application of the EAW.

Rights of the requested person

The court is obliged to provide the requested person with a list of defence lawyers maintained for this purpose by the Slovak Bar Association if the requested person has not chosen or has not been appointed a defence counsel in criminal proceedings conducted in the Slovak territory. The judicial authority of the issuing state notifies the court which issued the EAW of the exercise by the requested person of his or her right to choose a defence counsel in the territory of the Slovak Republic for the purpose of interacting with the defence counsel in the EAW proceedings conducted in the executing state.

Within the EAW proceedings, the requested person must be represented by a defence counsel, has the right to interpretation and translation, and has the right to choose a defence counsel in the issuing state in accordance with the law of that state to interact with the defence counsel representing the requested person in the EAW proceedings. The exercise by the requested person of his or her rights in the issuing state must not affect the time limits to decide on the EAW – the prosecutor must immediately inform the judicial authority of the issuing state about the requested person's decision to exercise this right.

Proportionality is also taken into account with regard to preliminary custody. The purpose of pre-trial custody is to secure the presence of the detained person in Slovakia to prevent the obstruction of the due course of EAW proceedings until the authority of the issuing state seeking the person's extradition has delivered the original of the EAW and its translation into the state's language if such translation is required. However, after the prosecutor's motion for remand in preliminary custody and the court hearing of the person, the court must decide to remand or release the person and not be bound by the grounds for remand in custody laid down in the general law on criminal proceedings. If the requested person has been remanded in preliminary custody or in extradition custody, the law governing the execution of remand in custody applies, *mutatis mutandis*, to the person's contacts with his or her defence counsel, as well as to correspondence and visits.

In EAW proceedings, the requested person has the right to interpretation and translation.

Speciality rule

The speciality rule also has an impact on the principle of proportionality. A person who has been extradited from another Member State under an EAW may not be prosecuted, sentenced or otherwise deprived of personal liberty in the issuing state for the criminal offences committed prior to his or her extradition not covered by the EAW.

If the requested person does not renounce the speciality principle, the court which issued the EAW hears and instructs the person in the presence of his or her defence counsel about the renunciation of this rule and the consequences thereof. If the requested person expressly declares that he or she renounces the application of the speciality principle, the court must draw up a protocol with the person and list therein the criminal offences to which renunciation applies. This declaration cannot be withdrawn. The Slovak court informs the executing judicial authority and the Ministry of Justice about the content of the declaration by which the person renounces the application of the speciality principle.

3.3. Exchange of information

The court sends the EAW to the executing state in line with the procedure laid down in Section 36, and copies of the EAW to the Ministry of Justice and to the SIRENE National Unit (SIRENE Unit). If the matter does not fall under the unit's competences, it transmits it to the INTERPOL National Unit (INTERPOL Unit). In the pre-trial stage of proceedings, the court also sends the EAW to the prosecutor on whose motion the court decided to issue it.

In relation to those Member States that use the Schengen Information System, communication may also take place via the SIRENE Unit. In relation to those Member States which do not use the Schengen Information System, communication may also take place via the INTERPOL Unit.

As the executing state in the recognition procedure, Slovakia quite regularly asks for supplementary information necessary for deciding whether or not to execute an EAW. Furthermore, Slovak judicial authorities prefer to use direct contacts with the other judicial authorities to speed up the proceedings. If Slovak practitioners have a problem identifying competent executing authorities, they may contact the EJNI, the national EJNI judicial network, or the Ministry of Justice. The EAW and other documents may be sent to a Member State or received from a Member State by post or other secure means enabling conversion to a written form, provided that the executing authority is able to verify their authenticity.

Regarding the national EJNI in Slovakia, only prosecutors (one in each regional prosecution office and three in the National Prosecution Office) and representatives of the Ministry of Justice (two in the Department of International Cooperation and Human Rights) are EJNI contact points. Within courts, there is no designated national EJNI contact point. Practitioners present during the on-site visit noted that anyone can approach the designated nationwide contact points regardless of their professional position and that judges also do so. They added that a Slovak internal regulation dealing with establishing the network regulates the obligations of the contact points, whose task is to disseminate information and raise awareness. However, the evaluation team believes it is advisable to designate a few national contact points also within the courts (at least regional courts). The reason is that it is always a judge (pre-trial judge) who decides whether to issue an EAW, even for pre-trial proceedings, at the prosecutor's request.

A translation of the EAW is sent to the executing judicial authority in (one of) the official language(s) of the executing state and if the executing state has stated in its declaration that it accepts, also in another language. The EAW addressed to the Slovak authorities must be drawn up in the Slovak language. The translation of other documents is not required.

From the point of view of the Slovak legislation, a frequent shortcoming of EAWs received is that the prosecutor responsible is not sent the original of the EAW, which is an essential condition for conducting proceedings in the case. However, proceedings concerning EAWs received have been facilitated by the case law of the Supreme Court, according to which an EAW sent by email in the form of a scan of the original is sufficient for conducting proceedings.

In practice, Slovakia emphasises that deficits are encountered most frequently in the description of the act itself, where doubts arise as to whether the condition of double criminality is fulfilled and there is a possibility of the execution of the EAW being refused. This occurs, for instance, in cases of parental abductions of children, when the executing authorities assessing the case require fuller information about the circumstances of the act and the legal context.

Information concerning the factual circumstances of the persons prosecuted or convicted is regularly required for the purpose of assessing double criminality based on establishing the amount of the damage caused, the motive or the statute-barring of the offence. Slovakia as the issuing authority has also sent requests for supplementary information for the possible reconsideration of using a different legal instrument, owing to disproportionality or the requested person's state of health, concerning the disability of a minor dependent on the requested person for maintenance and education, or the likelihood of surrender being significantly delayed owing to criminal proceedings being conducted with a probability of a lengthy custodial sentence being imposed or enforced.

EAWs received often show deficits in describing the acts and identifying the place where and time when individual acts were committed to the extent required to distinguish the acts concerned from other acts (*ne bis in idem*). Some judicial authorities tend to describe the acts in general terms, limit the commission of the offence to a specific period and indicate only the total damage.

In 2019, as a response to CJEU case law, the supplementary information most commonly requested was confirmation that a court had approved the issuing of the EAW in cases where another judicial authority issued it. In Slovakia, the above primarily concerned German and Austrian EAWs.

In some cases, prosecutors requested supplementary information to clarify the justification of suspicion concerning the requested person which gave rise to the issuing of the EAW, e.g. the declared loss of the requested person's ID card which was misused for committing an offence. In this case, based on the additional information provided, it turned out that at the time when the acts were committed, the person was present on Slovak territory. Therefore, the EAW was withdrawn.

Less frequent deficits were: incomplete citation of the relevant legal provisions, no indication of the maximum length of the custodial sentence, missing information in part (b) of the EAW form, no indication of the purpose for which the EAW was issued, e.g. criminal proceedings or enforcement of a sentence, or no confirmation of the court that it approved EAWs issued by prosecution services, following current CJEU case law.

Generally, the deadlines set were adhered to by the issuing judicial authorities, and they sent the information requested within the deadline. However, when this was not the case, prosecutors used the assistance of Eurojust or EJM contact points, who were very helpful in resolving such problems.

Slovak judicial authorities acting as issuing authorities have not recorded any cases in which the executing authorities requested information which they would consider unnecessary or redundant. Moreover, no cases were recorded in which the executing authority regularly requested judgments or other supporting documentation. When executing authorities asked for supplementary information, prosecutors complied with set time limits, so it was unnecessary to inform the issuing authorities.

Courts also generally complied with the time limits set; in the few cases where they were extended by 30 days, the issuing authority was always informed.

As for the follow-up information, after a decision on the EAW is taken, Slovak judicial authorities provide the relevant supplementary information to the issuing state in the report accompanying the decision, e.g. consent, application of speciality rule, date and hour of arrest or information on postponement of surrender, if there is a decision on that point. Likewise, if the judicial authority of the issuing state requests further information in this connection, it is provided immediately.

3.3. Grounds for refusal

The mandatory grounds for refusal are stipulated in Section 23(1) of Act No 154/2020, as follows:

- the criminal offence on which the EAW is based is covered by an amnesty granted in the Slovak Republic, where Slovak law established the jurisdiction of Slovak authorities to prosecute that criminal offence under its own criminal law;
- the executing judicial authority is informed that the proceedings conducted in a Member State against the requested person in respect of the same act have led to the delivery of a final and conclusive judgment, and the sentence thus imposed has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;
- the requested person is not, due to his or her age, criminally liable under Slovak law for the offence on which the EAW is based;
- the offence on which the EAW is based is not a criminal offence under Slovak law and is not an offence exempt from verification of double criminality;
- the executing judicial authority ascertains that the criminal prosecution or the execution of the custodial sentence of the requested person is statute-barred under Slovak law and the offence falls within the jurisdiction of the Slovak authorities under Slovak criminal law.

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

In cases of a potential risk of violation of fundamental rights concerning detention conditions, Slovak authorities act following CJEU case law, the obligations deriving from the European Convention on Human Rights and relevant national laws. When deciding on detention, the court carries out a preliminary assessment of the basic conditions for the execution of the EAW and whether it may be postponed or refused so that the person concerned is not needlessly detained. It also aims to comply with the time limits for taking a decision, which is transmitted immediately, and if necessary, in the relevant translation for the person concerned. In general, the judicial authorities ensure that all applicable human rights and freedoms are respected, and restricted only insofar as is essential in the specific case, where necessary to protect society and achieve the objective of the EAW proceedings.

Even if the requested person consents to surrender, these aspects need to be examined. Slovak practitioners said that the requested person's consent or non-consent to surrender should not play any role when assessing the possible risk of violation of fundamental rights concerning detention conditions in the issuing state. In case of doubt, or where there is definite knowledge of risks that fundamental rights will be violated if the person is placed in a detention facility, this should be taken into account regardless of any objection by the requested person.

At the same time, the competent courts generally stated that in cases where Slovakia acted as the executing state, they did not record any problem on the part of the requesting state concerning the potential risk of violation of fundamental rights in relation to detention conditions (most EAWs are implemented for the Czech Republic, Germany, Austria and the United Kingdom).

From Slovakia's perspective as issuing state, administration in this regard belongs to the competencies of the courts. However, the prosecutor's office monitors compliance with statutory and other generally binding legal provisions in the facilities in which detention is carried out.

Slovak judicial authorities also stated they had not encountered practical or legal difficulties concerning the Aranyosi/Căldăraru case law.

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

When deciding about the execution of the EAW issued for the purposes of executing a custodial sentence, according to Slovak law, the court may decide to refuse the execution of the EAW if the requested person did not attend in person the proceedings that led to the decision. This does not apply if the EAW form states that the requested person was, in accordance with the requirements of the law of the issuing state:

- a) summoned in time and thus informed of the date and place of the trial which led to the decision; or was otherwise informed about the date and place of the trial in a way that clearly proves that he or she was aware of the scheduled trial and was informed that the judicial authority of the issuing state might render a decision in absentia;
- b) aware of the scheduled trial and gave his or her power of attorney to the defence counsel chosen by him or her or appointed by the state to defend the requested person in the trial, and the defence counsel indeed defended the requested person in the trial;
- c) after having been served with the decision and explicitly informed about the right to apply for a retrial or to file an appeal in proceedings in which the requested person has the right to participate and which will enable a repeated review of the case, including new evidence, and which may lead to the annulment of the original decision and the issuing of a new one, the person has expressly stated that he or she does not wish to apply for a retrial or file an appeal, or that he or she did not apply for a retrial or file an appeal within the relevant time limit;
- d) the person was not yet served with the decision, but the decision will be served on the person without delay after his or her surrender to the issuing state and, at the same time, the person will be expressly instructed on the right to apply for a retrial of the case or file an appeal in proceedings in which the requested person has the right to participate and which will enable a repeated review of the case, including new evidence, and which may lead to the annulment of the original decision and the issuing of a new one, and the person will also be informed about the time limit for applying for a retrial or filing an appeal as stated in the EAW.

If the EAW has been issued for the purpose of serving a custodial sentence imposed in proceedings conducted in absentia of the requested person, and neither the sentencing decision nor any official information on the criminal proceedings conducted in the issuing state has been served on the requested person, the prosecutor instructs the person, after having read the EAW, on the possibility to request a copy of the sentencing decision. The prosecutor also informs the requested person that the delivery of a copy of the sentencing decision does not carry the procedural consequences of the service of documents in the issuing state. Unless such a decision has already been delivered to Slovak authorities in the course of the proceedings, the prosecutor informs the judicial authority of the issuing state about the requested person's request and, once a copy of the decision is delivered, they prosecutor submits it to the requested person.

In the EAW form, the judicial authority of the issuing state indicates what possibilities the requested person has after the EAW is issued, if the decision was handed down in his or her absence. If that information is missing, the prosecutor requests additional information. Where a judgment is delivered in absentia against a person who is the subject of an EAW, the prosecutor actively contacts the issuing authority to seek a reasonable (appropriate) solution, which on several occasions has led to the EAW being withdrawn, for instance because the requested person has paid a maintenance debt.

Prosecutors indicate that proceedings concerning EAWs issued for the purpose of enforcing a custodial sentence are rare; proceedings primarily relate to surrender for criminal prosecution. If proceedings are conducted in cases such as those decided by the judgments cited in the questionnaire, a request for additional information would be necessary. If insufficient information is given in part (d) of the EAW form concerning judgments delivered in absentia, the prosecutor always requests the judicial authority of the issuing state to provide additional information, and possibly to transmit the judgment itself, not least because the requested person has the right to be served with that decision for information.

In some cases, requesting additional information, including further additional information, results in exceeding the time limit laid down in Article 17 of the EAW FD; however, the priority in such proceedings is to obtain all the information required in order to take a lawful and correct decision on the surrender of the person concerned. As the authority responsible for carrying out the preliminary investigation, prosecutors have insisted on providing all additional information necessary for a decision following the criminal proceedings of the Slovak Republic. However, this could be considered redundant from the point of view of the issuing state.

To date, the competent courts have not recorded any case in which the relevant CJEU case law has had an impact. In Slovakia, no amendments have been made as a result of the judgments cited.

However, in light of the current CJEU case law, particularly the judgments in Cases C-270/17 PPU and C-271/17, the information provided on the EAW form can be seen as insufficient. Therefore, when judgments are handed down in absentia, it would be appropriate for all states to provide more extensive information under point 4(d) of the EAW form.

Based on experience to date, most competent courts consider that in cases where Article 4a of the EAW FD applies, it should be mandatory to provide more extensive information. Establishing such an obligation would avoid protracted proceedings due to follow-up requests for additional information.

Slovak authorities, either as issuing or executing state, have not registered any case in which the execution of the EAW was refused due to proceedings in absentia or the ne bis in idem principle under the law on the EAW.

3.3.3. Other grounds for refusal

The optional grounds for refusal are listed in Section 23(2) of Act No 154/2010, as follows:

- the requested person is being prosecuted for the same offence as that based on which the EAW has been issued;

- the Slovak authorities have decided either not to initiate criminal prosecution for the offence on which the EAW is based or not to proceed with it, or a final judgment has been passed upon the requested person in another Member State in respect of the same offence, which prevents further proceedings;
- the executing judicial authority is informed that the proceedings conducted in a third state against the requested person in respect of the same offence have led to the delivery of a final and conclusive judgment, and the sentence thus imposed has been served or is currently being served or may no longer be executed under the law of the sentencing third state.

Based on the recommendation (no. 13) from the fourth round of evaluations, the Slovak Republic has amended Act No 154/2010. The ground for refusal based on territoriality is no longer mandatory but optional.

Thus according to Section 23(2)(d) of the act, the Slovak executing authorities may refuse to execute the EAW if the EAW relates to offences regarded by the law of the Slovak Republic as having been committed in whole or in part in the territory of the Slovak Republic, on board a ship sailing under the flag of the Slovak Republic, or on board an airplane listed in the registry of aircraft of the Slovak Republic. The execution of the EAW may be refused in this case also if the offence committed does not constitute a criminal offence under Slovak law; or the EAW concerns offences committed outside the territory of the issuing state and the law of the Slovak Republic does not allow criminal prosecution for the same offences when committed outside its territory.

The fact that the requested person is a Slovak citizen does not constitute grounds for the refusal of the execution of an EAW. The same procedure applies with regard to a requested person who is subject to the same treatment under international law as a citizen of the Slovak Republic.

When Slovakia acted as issuing state, the other reasons for non-recognition and non-execution of EAWs were as follows:

- non-fulfilment of conditions of double criminality;
- application of the *ne bis in idem* principle (related to a drug offence);
- the length of the custodial sentence was less than six months.

When Slovakia acted as executing state, the reasons for refusing recognition and enforcement of EAWs were as follows:

- the prosecution or execution of a custodial sentence was time-barred under Section 23(2)(d) of Act No 154/2010;
- the act was not a criminal offence under the Slovak Criminal Code;
- the act was committed in part or in full in the territory of Slovakia;
- based on the UN Convention on the Rights of the Child, which takes precedence over the national implementation of FD 2002/584/JHA;
- concerning judgments in absentia.

However, as executing state, Slovakia has not registered any case where the execution of the EAW was refused based on the *ne bis in idem* principle.

3.4. Statistics

Slovakia keeps regular statistics on the number of EAWs issued and received. It provided the evaluation team with such statistical data from 2018 to 2020 (see table below).

	Prosecutors' Offices				Courts	
	Submitted by POs*	Received			Issued	Received
		Total	for CP**	for CuS***		
2020	59	133	86	45	244	123
2019	45	161	124	37	230	144
2018	52	167	134	33	275	82

* Prosecutors' offices

** Criminal prosecution

*** Custodial sentence

According to the data provided, in 2018 the prosecutors' offices submitted to the court 52 proposals for issuance of EAWs; in 2019, there was a slight decrease in submissions with in total 45 proposals. In 2020, the number increased to 59 suggestions for the issuance of EAWs. However, the numbers of EAWs issued by courts were much higher: 275 instances in 2018, 230 instances in 2019 and 244 instances in 2020.

In terms of the nationality of persons for which courts issued the EAWs in pre-trial proceedings based on the proposal of the prosecutors' offices, Slovak citizens predominated (38), followed by nationals of Ukraine (8), Romania (4), Hungary (2), the Netherlands (2), the Republic of Serbia (1), Poland (1), Bulgaria (1), Turkey (1) and Austria (1).

The most common type of crime for which Slovak courts issued EAWs was property crime (fraud, theft, credit fraud), followed by tax offences (tax fraud, tax and insurance evasion), crimes against freedom and human dignity (trafficking in human beings, robbery, extortion), crimes against life and health (drug crimes), and crimes against the family and young people (neglect of compulsory maintenance, torture of the trustee). The proportions of different types of crimes for which EAWs were issued did not change significantly from year to year; property crimes predominated.

In 2018 the prosecution offices received 167 requests for execution of EAWs, of which 134 related to prosecution and 33 to execution of a custodial sentence. In 2019, they received 161 requests, of which 124 related to prosecution and 37 to execution of a custodial sentence, and in 2020 there were 133 requests, of which 86 related to prosecution and 45 to the execution of a custodial sentence. Courts received 82 requests in 2018, 144 requests in 2019 and 123 requests in 2020.

The Republic of Austria and the Czech Republic submitted the most EAW requests, followed by significantly lower numbers from e.g. Hungary, the Federal Republic of Germany, Italy, Romania and Poland.

In the period 2018-2020, Slovakia refused to execute the EAW in six cases. The grounds for refusal concerned:

- Article 4(1) of the FD – a lack of double criminality and
- unspecified reason for the EAWs (whether the purpose is criminal proceedings or the execution of a custodial sentence).

3.5. Further challenges

In the comprehensive replies to the questionnaire and the information provided during the on-site evaluation visit, Slovak practitioners mentioned the following problems related to the practical application of the EAW.

In some cases, when a SIRENE Bureau requested the authority of a foreign state to consent to transit, it was not granted sufficiently in advance, especially in cases where the state concerned consented to the exact date and time of transit (and not general consent to transit). These were situations where the executing state gave Slovakia less than 10 days to take over the person concerned. In some cases, the consent to transit was not granted. Also, during the first wave of the pandemic in the spring of 2020, the SIRENE Bureau faced significant problems with cross-border transport of persons due to significant restrictions on international air and other methods of transportation.

Some EU Member States (e.g. Hungary, Austria and Sweden) have the option under their law to replace an EAW that has already been issued by issuing a new EAW. Thus, in practice, the original EAW was replaced by a new one, by the same judicial authority, under the same reference, containing the same act/acts. However, the new EAW was only issued after Slovak authorities had detained the requested person based on the original EAW. Therefore, Slovak judicial authorities had no alternative but to release the person and re-arrest him or her based on the next EAW. This procedure proves to be impractical and ineffective, undermines legal certainty and may raise doubts as to compliance with the requested person's human rights given their re-arrest.

The Slovak judicial authorities as issuing state have encountered some problems relating to fulfilling the condition of double criminality. This primarily concerned cases of parental abduction of children, where the description of the act in the EAW was not sufficient for an adequate assessment of whether the condition of double criminality was fulfilled. It was usually necessary to clarify the exact circumstances, what preceded the 'abduction', whether the perpetrator (requested person) misled the injured party, whether one of the parents had custody of the child and similar points. Another problem that occurred, but to a lesser extent, was related to evading an alimony or maintenance obligation (which is not a criminal offence in some Member States).

The need to resolve the question of double criminality (whether the act concerned is a criminal offence in Slovakia) when Slovakia acts as the executing state occurs occasionally. In such cases, Slovak judicial authorities request additional information and assess whether the act concerned is a criminal offence under their law.

Cases were also encountered in which the execution of an EAW was refused for a criminal prosecution for the offence of petty theft, where the perpetrator's criminal liability resulted from having previously committed an offence against property. In that case, the ground for refusal was precisely the petty nature of the loss caused and the disproportionality of conducting criminal proceedings against the perpetrator from the perspective of the relevant foreign legislation. Another ground for refusal to execute an EAW on the part of some Member States was that it would be uneconomic, given the costs necessarily entailed by the surrender of the requested person, when a low sentence was imposed on him or her (e.g. a definitive custodial sentence of fewer than six months). Courts, as executing authorities, also reported occasional problems concerning double criminality; for instance, in the United Kingdom some breaches of road traffic obligations were regarded as criminal offences, whereas in Slovakia, they are administrative offences.

Slovak prosecutors' offices reported that incomplete description of the act is a relatively frequent problem. In such cases the description of the acts was insufficient to assess which of the offences set out in the specific section of the Slovak Criminal Code they correspond to, primarily in cases where the same offences defined in the Slovak and the foreign legislation do not correspond entirely as regards their constituent elements. A typical example is theft, where Slovak law requires not only the characteristics of appropriation but also a certain amount of loss caused or another specific characteristic – burglary, etc. Assessment of double criminality is sometimes linked to assessing the question of statute-barring, which depends on the sentence. For that purpose it is necessary to indicate the characteristics of the act which are decisive for assessing whether it constitutes an offence that attracts a higher sentence (e.g., the difference between homicide and murder, which is the same offence in the law of some Member States). Where the issue of double criminality had to be resolved, this was done using additional information and was linked to the description of the act. Under Slovak law, it is possible to decide to partially refuse execution of an EAW if only some of the acts are not covered by double criminality.

Where the ground for refusal is the lack of double criminality, the competent court, as the issuing authority, enters a complete description of the act in the EAW. As executing authorities, the competent courts reported that they had not encountered problems with regard to the description of criminal offences committed, or with grounds for refusal.

3.6. Conclusions

The practical implementation of the EAW in Slovakia, whether it acts as issuing or executing state, seems to work appropriately. The FD on the EAW is one of the most often used instruments of mutual judicial cooperation.

Regarding the exchange of information, Slovak authorities use direct communication where possible. If this fails, they use the assistance of Eurojust, EJM or national EJM contact points to help resolve problems successfully. The national EJM within Slovakia works well; however, it is advisable to designate a few nationwide contact points within the courts (at least regional courts). The reason is that it is always a judge (pre-trial judge) who decides whether to issue an EAW, even for pre-trial proceedings, at the prosecutor's request.

When deciding whether or not to issue an EAW, the Slovak judicial authorities always keep in mind the principle of proportionality and always consider whether it is possible to use another instrument of mutual judicial cooperation that would be equally effective but less coercive. In this respect, based on the recommendations from the fourth round of evaluations, a special provision on the principle of proportionality has been implemented in Section 5(3) of Act No 154/2010.

When Slovakia acts as the executing state, it regularly asks for supplementary information due to inadequate description of the criminal act essential for assessing double criminality, incomplete citation of the relevant legal provisions, no indication of the maximum length of the custodial sentence or missing information in part (b) of the EAW form, or not submitting the original of EAWs, etc. However, proceedings concerning EAWs received have been facilitated by the case law of the Supreme Court, according to which an EAW sent by email in the form of a scan of the original is sufficient for conducting proceedings.

The grounds for refusal stipulated in the national act align with FD 2002/548/JHA. In cases of the potential risk of violation of fundamental rights concerning detention conditions, Slovak judicial authorities act following CJEU case law, the obligations deriving from the European Convention on Human Rights and relevant national laws. Therefore, Slovak judicial authorities have not faced any problem regarding the violation of human rights concerning detention conditions.

In the event of a judgment in absentia, Slovak judicial authorities, either as issuing or executing state, have not registered any major problem concerning the execution of the EAW being refused due to proceedings in absentia or the ne bis in idem principle. The issues they have encountered related to insufficient information in part (d) of the EAW form and therefore Slovak judicial authorities had to ask for supplementary information. As they noted, it should be mandatory to provide more extensive information under point 4(d) of the EAW form to avoid protracted proceedings due to follow-up requests for supplementary information.

As for the other grounds for refusal, based on the recommendation from the fourth round of evaluations, Slovakia amended Act No 154/2010 in such a way that the ground for refusal based on territoriality is no longer mandatory but optional. Most often, the grounds for refusal when Slovakia acted as the issuing state were the non-fulfilment of conditions of double criminality, the application of the ne bis in idem principle, and the length of a custodial sentence being less than six months. On the other hand, the grounds for refusal when Slovakia acted as the executing state were situations where the prosecution or execution of a custodial sentence was statute-barred, the act was not a criminal offence under Slovak law, concerning judgments in absentia, or the act was committed in part or in full in the territory of Slovakia.

In addition, based on a recommendation from the fourth round of evaluations, Slovakia incorporated a provision on temporary surrender into its national act (Section 30). Thus, a court may allow the temporary transfer of a person only if this does not affect his or her participation in the hearing related to the extradition proceedings. However, the act does not stipulate any strict binding period for the temporary surrender, which allows Slovak judicial authorities to react flexibly on the request of the requesting state.

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

Framework Decision 2008/909/JHA was implemented into Slovak legislation by a separate Act No. 549/2011 on the recognition and enforcement of decisions imposing criminal sanctions linked to imprisonment in the European Union that amended Act No. 221/2006 on the execution of detention, as amended (i.e. No. 344/2012, 396/2019.)

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

When Slovakia acts as the executing state, competence for recognising and enforcing the judgment lies with the regional court with jurisdiction over the place where the sentenced person has a permanent residence or last known permanent residence or where the custodial sentence is being served; otherwise, Bratislava Regional Court is competent.

When Slovakia is the issuing state, the authority competent for issuing the certificate is whichever Slovak court issued the judgment imposing the custodial sentence. Every Slovak court (except the Supreme Administration Court) that has issued a judgment imposing a criminal sanction involving a custodial sentence is competent to issue a certificate. In practice, this is mainly district courts and the Specialised Criminal Court.

The other authorities involved in the recognition procedure are the prosecutors of the respective regional prosecutor offices who are responsible for performing the preliminary investigation to determine whether the conditions for the recognition and enforcement of the judgment are met.

Role of the central authority

The Ministry of Justice of Slovakia provides assistance as necessary with requests from the court or the competent authority of the Member State, in particular in identifying the information required to determine competence or in verifying the requirements laid down by the law of the Member State or of Slovakia for the recognition and enforcement of the judgment. That role, as well as the competence of the courts, is also set out in Act No 549/2011 implementing FD 2008/909/JHA in Slovak legislation.

In addition, if judges or officers of the court have questions relating to the Framework Decision, they can contact officials from the Judicial Cooperation in Criminal Matters Division of the Ministry of Justice directly. That department also receives information on direct contacts, holds statistical data and evaluates practical application in terms of the requirements laid out in the methodological guidance.

Judges or court officials may also turn to the Ministry of Justice website for expert answers to their questions on the Framework Decision.

As a rule, the competent authorities are in direct contact with other Member States' competent authorities. Some courts stated that they turned to Eurojust or the EJC for assistance if direct contact fails. The Ministry of Justice can also assist them. In the case of the United Kingdom, correspondence with the Prison and Probation Service was also conducted via email. Use of these channels of communication was successful.

4.1.1. When Slovakia acts as the executing state

The court competent for the proceedings on recognising and enforcing the judgment is the regional court in whose territorial jurisdiction the sentenced person has a permanent residence or last known permanent residence. Within the regional courts, there is no specialisation. All judges are involved in the recognition procedure, unlike the EAW. The request for recognition may be sent directly to the relevant regional court. Once the proceedings have commenced, no account is taken of any change in circumstances decisive for determining court competence.

When the proceedings on recognition and enforcement of the decision begin based on proceedings on an EAW, the competent court is the regional court acting in the EAW proceedings. The court must notify the Ministry of Justice about the beginning of the recognition proceedings. The procedure is judicial.

However, a written judgment from the issuing state is required.

A judgment may be recognised and enforced in the Slovak Republic if the act is a criminal offence in the Slovak Republic and if:

1. the sentenced person is a national of the Slovak Republic and his or her ordinary residence is in the territory of the Slovak Republic;
2. the sentenced person is a national of the Slovak Republic and does not have his or her ordinary residence in the territory of the Slovak Republic but is to be deported to Slovakia after the enforcement of the criminal sanction; or
3. the sentenced person has been residing in the territory of the Slovak Republic or of the Member State which issued the judgment and the court consents to recognise and enforce the judgment in the Slovak Republic based on a request from a competent authority of the Member State.

If the recognition and enforcement of a judgment is requested for a criminal offence that is punishable in the issuing state by a custodial sentence involving imprisonment for a maximum period of at least three years and in the certificate the issuing state has classified the offence as belonging to one or more of the categories of 32 offences, the court will not examine double criminality.

If the issuing authority has sent the judgment and certificate to a court without competence, the court must forward the request to the competent court and notify the issuing authority. If Slovak courts do not have jurisdiction to recognise and enforce the judgment, the court must return the judgment and the certificate to the issuing authority.

If the sentenced person is not a national of the Slovak Republic and has been residing in the Slovak Republic or the other Member State, the competent court must decide whether recognising the decision of enforcement is appropriate and serves the purpose of successful reintegration. However, the court is obliged to request the Ministry of Justice to provide an opinion prior to making the decision.

Provisional detention is not mandatory, but possible for a time limit of 18 days, where necessary to ensure the enforcement of the judgment (between the delivery of the judgment with the certificate and the ordering of the enforcement) when the person concerned is on the territory of the Slovak Republic.

Decision of the court/role of the public prosecutor

The court decides whether the judgment will be recognised and enforced after obtaining a written opinion from a prosecutor. In practice, after receipt of the request, the court collects additional information from the registers (e.g. register of Slovak citizens). Afterwards, it sends the documents to the competent prosecutor to submit his or her opinion within a period stated by the court. The prosecutor checks the submitted material in detail and provides his or her opinion on the fulfilment of all the requirements stipulated by the law and states whether he or she consents to the recognition and enforcement of the judgment or – if he or she does not consent – why not (e.g. additional information needs to be obtained).

The prosecutor may also ask for certain additional information from the issuing authority on any relevant topic that is necessary for proper consideration of the request (e.g., if the certificate is incomplete or not clear; there are discrepancies between the information in the certificate and the accompanying documents; the opinion of the sentenced person is missing; or the custodial sentence is not clear enough to check double criminality).

The court decides whether the decision will be recognised and enforced at an in-camera session after obtaining a written opinion from a prosecutor. The court issues its decision in the form of a judgment within 90 working days from receipt of the judgment and certificate. This period does not include the time during which the court has been obtaining additional information from the judicial authority of the issuing state.

If the court cannot comply with the time limit, it immediately notifies the judicial authority of the issuing state, along with the reasons for not complying. At the same time, the court provides a new time limit within which it will issue the decision.

Once the court decides to transfer the enforcement of the judgment, it serves the sentenced person who is in its territory with a notice of the transfer of the enforcement of the judgment, drawn up in a language that the sentenced person understands. If the sentenced person is in the territory of the executing state, the court sends the notice to the executing state, along with the judgment and certificate.

The sentenced person or the public prosecutor is entitled to file an appeal against the ruling on whether the judgment will be recognised and enforced (Section 15(5) of Act No 549/2011), which has a suspensive effect. However, it is impossible to challenge the grounds on which the judgment was issued in another Member State by appealing. There is a significant body of Slovak case law concerning decisions on appeals against judgments on recognition and enforcement of custodial sentences.

If there is no reason to refuse recognition and enforcement of the judgment, the court decides to recognise the judgment and enforce it in the Slovak Republic.

If the judgment has imposed a criminal sanction which is incompatible with the law of the Slovak Republic, the court replaces the criminal sanction with one which it could impose itself for the criminal offence committed. This decision should not aggravate the position of the sentenced person and should correspond as much as possible to the originally imposed sanction. A criminal sanction involving deprivation of liberty must not be converted into a pecuniary punishment.

If the judgment has imposed a criminal sanction that is incompatible with the law of the Slovak Republic in terms of duration, the court adapts the duration of the sanction according to Slovak criminal law. The court may not impose a more severe criminal sanction in terms of its nature or duration than imposed in the judgment.

After the transfer of the sentenced person to the Slovak Republic, the court deducts the time the person spent already serving part of the sentence in the other Member State, the duration of transfer and the time spent in provisional detention. The court must not enforce the judgment if the sentenced person has been pardoned or granted amnesty in the Slovak Republic or if a judicial authority of the issuing state has informed it that a pardon or amnesty has been granted, or another judgment or measure has been issued or another fact has occurred in the issuing state due to which the transferred judgment has become unenforceable.

4.1.2. When Slovakia acts as the issuing state

The court may transfer the enforcement of a judgment imposing a criminal sanction involving a custodial sentence to another Member State if the sentenced person is on the territory of the Slovak Republic or of that MS, and

- a) the sentenced person is a national of and has ordinary residence in that Member State;
- b) the sentenced person is a national of that Member State, does not have ordinary residence there but is to be deported there after service of the judgment;
- c) the competent authority of that Member State consents to take charge of the enforcement.

The competent court issues a certificate and transmits it to the executing judicial authority and to the Slovak Ministry of Justice if such a procedure is appropriate and serves the purpose of ensuring successful reintegration of the sentenced person, or upon the proposal of the sentenced person or of the competent authority of the executing state.

The court may only transfer the enforcement of the judgment with the consent of the sentenced person, where consent is required. If the transfer of the enforcement of the judgment does not require¹ the consent of the sentenced person and the person is in the territory of the Slovak Republic, the court solicits the sentenced person's opinion regarding this procedure. Where the sentenced person is a minor, the court asks for the opinion of the sentenced person's legal representative.

If the consent of the sentenced person is required to transfer the enforcement of the judgment and the sentenced person is located in Slovakia, the sentenced person is heard by the court. After being heard and informed of the consequences of proceeding in this way, the sentenced person gives a statement of consent on the record. The statement of consent cannot be withdrawn.

The consent or opinion of the sentenced person is taken into account when examining the ties of the sentenced person to the executing state.

If the person to be transferred is not a citizen of the Member State that is to be asked to execute the sentence, the court asks the executing judicial authority whether it consents to take charge of the enforcement. The court may also request the executing judicial authority's opinion in other cases if the transfer is appropriate and serves the purpose of facilitating rehabilitation. However, if the executing judicial authority informs the court that it does not consider it appropriate to transfer enforcement and that this does not serve the purpose of facilitating rehabilitation, the court does not transfer the enforcement of the judgment to the executing state.

The court sends an original copy of the judgment with the certificate to the judicial authority and the Ministry of Justice. If the sentenced person is in the Slovak Republic, the court attaches the statement of consent of the sentenced person or – if it is a case where the consent of the sentenced person is not required – the sentenced person's opinion on the transfer of enforcement.

¹ Section 6(1) and (3)(b) of Act No 549/2011.

Consent of the transferred person is not required

- 1 a) if the sentenced person is a national of or has his or her residence in the Member State to which he or she should be transferred, or
- 1 b) he or she is a national of the MS, and does not have ordinary residence there, but will be deported there after serving the sentence in Slovakia.
- 3 b) where the enforcement of the decision is transferred to the Member State to which the sentenced person has absconded or returned due to being prosecuted or sentenced in the Slovak Republic.

If the court has decided to transfer the enforcement of the judgment, and the sentenced person is on Slovak territory, it issues him or her with a notification that the enforcement of the judgment will be transferred, in a language understood by the sentenced person. If the sentenced person is located in the territory of the executing state, the court forwards that notification to the executing state along with the judgment and the certificate.

Until the beginning of the enforcement in the executing state, the court may decide to withdraw the certificate if the executing authority has notified it that:

- a) it will recognise and enforce the judgment only in part and there is no mutual agreement on such partial recognition and enforcement;
- b) the conditions for adapting the type and length of the penalty imposed or the conditions for conditional release are not considered sufficient by the court in terms of meeting the objective of the penalty or measure;
- c) after delivery of the judgment and the certificate, the executing authority does not consider taking over the enforcement as appropriate or serving the purpose of successful reintegration or success of the therapeutic treatment.

The ministry has to arrange the transport to the relevant Member State for the purposes of enforcement of a judgment issued by a Slovak court. The sentenced person should be transferred to the executing state no longer than 30 days after that state takes a decision on the recognition and enforcement of the judgment.

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

As issuing state, in accordance with Section 8, Act No 549/2011, the original copy of the judgment along with a duly completed certificate must be sent to the executing state and to the Ministry of Justice. If the sentenced person is in the territory of the Slovak Republic, and the consent of the person is required, the court must attach the statement of consent to the judgment and certificate; if the consent of the sentenced person is not required, the court must attach the sentenced person's opinion. Certificates to be forwarded to the executing state must be translated into the official language of the executing Member State.

As an executing state, a court decision and duly completed certificate are needed.

Concerning linguistic arrangements, Slovakia has made the following declarations related to the application of FD 2008/909/JHA:

Regarding Article 23(1):

'A certificate submitted to the Slovak judicial authorities must be drafted in Slovak or accompanied by a translation into Slovak. The Slovak Republic will accept certificates pursuant to this legal act from the Czech Republic in Czech.'

Regarding Article 23(3):

'The Slovak Republic reserves the right to ask the issuing state for a translation into Slovak of the judgment or the relevant part thereof if the information in the certificate is insufficient to decide on recognition and enforcement of the sentence.'

Translation of the decision or part of it is provided on request; no translation of other written documents is required (see Section 23 para (4)).

However, in practice, this differs. Not every court requires translation of the judgment or the relevant part thereof into the Slovak language. Bratislava Regional Court stated that sentencing judgments of the judicial authorities of the issuing state are regularly attached to the certificate, never with a translation into Slovak. However, the courts and the court officials generally do not require a translation, which is in line with Act 549/2011, and proceed without one if necessary. In the case of more complicated decisions they obtain their own translation from a court translator or translate it informally themselves if they know the language in which the judgment of the judicial authority of the issuing state is written (generally English, German or Hungarian).

Žilina Regional Court stated that proceedings would be significantly shorter if a translation of the judgment were required alongside the certificate. Trnava Regional Court, meanwhile, has not recorded any cases to date where the judgment was not translated (with the exception of the Czech Republic, where the translation is unnecessary).

Slovak issuing judicial authorities had not encountered situations where additional documents were requested regularly.

4.3. Criteria for assessing the facilitation of social rehabilitation

By law, the competent court issues a certificate and transmits it to the executing judicial authority and the Slovak Ministry of Justice if such a procedure is appropriate and serves the purpose of ensuring successful reintegration of the sentenced person into society or ensuring the success of therapeutic treatment, or upon the proposal of the sentenced person or the competent authority of the executing state.

When Slovak judicial authorities consider that transferring enforcement would not serve the abovementioned purpose, they inform the relevant issuing court about their decision.

Before issuing a certificate, the judicial authorities always assess whether the enforcement of the sentence in the executing state will enhance the possibility of social rehabilitation of the sentenced person. The main criteria considered are family, linguistic, cultural, social and economic ties to the executing state that would enable the convicted person to rehabilitate into society or successfully undergo treatment.

Under national law, and based on Article 4(3) FD, the competent Slovak issuing authorities can consult with the executing authorities to establish whether the sentence would serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society.

The following case is an example of information exchange concerning enhancing social rehabilitation and reintegration into society. Zvolen Regional Court took steps to transfer enforcement of a judgment to foreign authorities based on a request by the sentenced person: following the submission of the Slovak authority's request for consent to transfer enforcement of the judgment pursuant to Article 4(3) of Framework Decision 2008/909/JHA, the competent foreign authority (Austria) notified the issuing court that, in the case in question, the sentenced person did not have any ties to Austria, since prior to his conviction he had not officially resided in Austria and had not been formally employed there.

The mere fact that his sister and brother-in-law lived in Austria and that his son planned to work in Austria did not prove sufficient ties of the sentenced person to Austria to support the hypothesis that enforcement of the judgment in Austria would facilitate his social rehabilitation and reintegration into society. Therefore, the Austrian authorities did not consent to the transfer of enforcement of the judgment. As a result, Zvolen Regional Court did not forward the certificate to Austria in that case.

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

The basic principle of direct contacts between competent judicial authorities is stipulated in Section 22 of Act No. 549/2011. If direct contact fails, judges can contact the Ministry of Justice or turn to one of the EJN's contact points or Eurojust for assistance. For example, in one case concerning the United Kingdom, the competent Slovak authority conducted email correspondence with the Prison and Probation Service. The use of different channels of direct communication has been successful.

Based on requests from a court or the competent authority of a Member State, the Slovak Ministry of Justice as a central authority assists as necessary, in particular in identifying the information required to determine competence or in verifying the requirements laid down by the law of the Member State or of Slovakia for the recognition and enforcement of the judgment.

During the on-site visit, it was mentioned that the international cooperation department of the Ministry of Justice also provides assistance on direct contact, holds statistical data and evaluates practical application in terms of the requirements laid out in the methodological guidance.

Judges or court officials may also turn to the Ministry of Justice website for experts' answers to their questions on the Framework Decision.

No specific difficulties have been encountered in using direct contacts with the other Member States.

The Ministry of Justice of Slovakia considers the information provided in the certificate by the authority of the issuing state to be sufficient in most cases. However, in some cases, the courts had to request supplementary information, e.g. where it was not clear whether a crime stated in the certificate is also a crime under Slovak law (amount of damage missing) or whether enforcement of the judgment is statute-barred, or where there was insufficient information to identify the sentenced person's place of residence or supplementary information was needed in connection with the grounds for refusal.

Prosecution offices also had to ask for supplementary information due to incomplete or unclear certificates, e.g. discrepancies between information in the certificate and the accompanying documents; failure to include the opinion of the sentenced person; lack of clarity relating to the level of the custodial sentence imposed, regarding quantification of the damage caused, or regarding the factual circumstances for assessing the double criminality of the act; inconsistency of the imposed sentence with the duration of the sentence mentioned in the certificate; need to ascertain which of the documents accompanying the certificate contained the judgment to be recognised; missing information for determining if the person had undergone institutional psychiatric treatment; need to establish the legitimacy of the authority to issue the certificate, and formal mistakes in the certificate (stamp missing).

Most of the supplementary information related to circumstances necessary when assessing double criminality, due to divergence on what constitutes an act of property crime or on the damage threshold. The courts had to request such information from the issuing authorities of Austria, Hungary and the Czech Republic. The second-largest share of supplementary information was information needed to assess the conditions of the statute-barring of enforcement of the judgment.

For instance, supplementary information had to be requested from the competent judicial authority of Great Britain and Northern Ireland, the issuing state, relating to the duration of the custodial sentence imposed. The sentence imposed by the competent judicial authority was not compatible with Slovak law. In the end, based on the supplementary information, the Slovak court decided to recognise and enforce the judgment in such a way that the imposed sentence was replaced by a sentence compatible with Slovak law.

In some cases, part (b) of the certificate was incorrectly filled in, where requesting authorities had only named a judgment imposing a suspended custodial sentence, even though they were requesting recognition of a judgment making the sentence definitive because the sentenced person had violated probation. In another case relating to a conditional release, part (b) of the certificate failed to identify a lawful decision stating that the remainder of the sentence must be carried out (CZ).

The supplementary information requested cannot be categorised by Member State. More deficiencies were resolved throughout 2016 and 2017 in connection with, for example, certificates missing administrative stamps, missing translations, and translations containing typos relating to essential facts (dates). In addition, in most cases, the information provided on facilitation and assessment of social rehabilitation was incomplete and minimal/basic, consisting exclusively of the information provided by the sentenced person with no objective remarks by the issuing state. However, gaps in this information did not result in requests for supplementary information in the reporting period, since they did not affect decisions in light of the provisions of subparagraph (a) of Section 4(1) of Act No 549/2011 (see the answer to question 60).

Regarding consultation with the executing authorities based on Article 4(3) of FD, the competent courts have generally not experienced such cases and therefore such consultations. However, such consultations do occur in connection with family, social and work ties, which are supposed to improve a sentenced person's social rehabilitation.

The Slovak authorities claimed that the executing state generally provided information without delay and with due reasoning, and in their view, the FD provides a sufficient basis for effective cooperation.

4.3.2. Opinion and notification of the sentenced person

Usually, the court may only transfer the enforcement of the judgment with the consent of the sentenced person. Under Section 7(1) of Act No 549/2011, where the consent of the sentenced person is required to transfer the enforcement of the judgment and the sentenced person is located in Slovakia, the court hears the sentenced person. After being heard and informed of the consequences of proceeding in this way, the sentenced person chooses whether or not to give a statement of consent that is recorded in the minutes of the hearing. The statement of consent cannot be withdrawn.

Consent of the transferred person is not required:

- if the sentenced person is a national of and has his or her ordinary residence in the Member State he or she is to be transferred to, or is a national of that Member State, and does not have ordinary residence there, but will be deported there after serving the sentence in Slovakia;
- where the enforcement of the decision is transferred to the Member State to which the sentenced person has absconded or returned to whilst being prosecuted or sentenced in the Slovak Republic.

In cases where the consent of the sentenced person is not required to transfer the enforcement of the judgment and the sentenced person is located in Slovakia, the court ascertains the sentenced person's consent or opinion on such a procedure. The consent is recorded in the minutes of the hearing. Moreover, the Prison and Court Guard Service provides sentenced persons with the information sheet about their rights in writing, which must be signed. It also includes information about the possibility of transferring a sentence being served to a sentenced person's home country.

The consent or opinion of the sentenced person is taken into account when examining the attachment of the sentenced person to the executing state.

If the person to be transferred is not a citizen of the Member State that is to be asked to execute the sentence, the court must ask the executing judicial authority whether it consents to take charge of the enforcement. The court must attach the sentenced person's opinion. The court may also request the executing judicial authorities' opinion in other cases if the transfer is appropriate and serves the purpose of facilitating rehabilitation.

The relevant courts do not have experience with consular assistance since almost all recognition cases have involved citizens of Slovakia.

4.4. Adaptation of the sentence

Under Section 17(2) and (3) of Act No 549/2011, adapting a sentence is possible if its duration or the sentence itself is compatible with Slovak law.

If the decision has imposed a criminal sanction that is incompatible with Slovak legislation, the court replaces that criminal sanction with a criminal sanction that it could have imposed itself if it had been the one to rule on the criminal offence in question. This decision may not aggravate the position of the sentenced person and should correspond as far as possible to the sanction originally imposed. A criminal sanction involving deprivation of liberty must not be converted into a fine.

If the decision imposing a criminal sanction is incompatible with Slovak legislation in terms of duration, the court must adapt the duration of the sanction to bring it into line with Slovak criminal law. The court may not impose a more severe criminal sanction in terms of nature or duration than that imposed in the original decision.

After the transfer of the sentenced person to the Slovak Republic, the court deducts from the sentence imposed the time spent serving a sentence in the other MS, the duration of transfer and the time spent in pre-trial detention.

The competent courts that encountered cases where the sentence was adapted did not note any problems or difficulties.

As stated in the answers to the questionnaire, the Slovak prosecution service adjusts sentences relatively often, but not because the sentence imposed by the issuing State is disproportionate or incompatible with Slovak law. Sentences are adapted owing to partial non-recognition of a judgment (non-recognition of one of several concurrent offences) or on the basis of how the custodial sentence is to be enforced, i.e. placing the sentenced person in a facility with a specific level of monitoring. For example, in the recognition procedure for judgments issued by foreign courts (e.g. UK, AT), the custodial sentence initially imposed was replaced with a shorter custodial sentence on the grounds that some of the facts did not meet the double criminality requirement. Furthermore, given that some countries use slightly or very different systems to determine how sentences are enforced, cases have also arisen in practice where the sentenced person was placed in a facility with a lower monitoring level than would have been the case if he or she had been convicted in Slovakia in line with the rule that the position of the sentenced person cannot be aggravated.

4.5. Grounds for non-recognition or non-enforcement

The grounds for non-recognition and non-enforcement are set out in Section 16(1) and (2) of Act No 549/2011.

In Article 9 of FD 2008/909/JHA, all the grounds for refusal are considered optional but under Slovak law they are mandatory (Section 16(1) of Act No 549/2011).

The only optional ground of refusal is set out in Section 16(2) of Act No 549/2011, which states that the Slovak court may decide to refuse the recognition and enforcement of a decision even if it concerns an offence which, under Slovak law, is deemed to have been committed in whole or in part in the territory of the Slovak Republic, while taking into account, in particular, the circumstances of the offence.

According to Section 4(1)(a) of Act No 549/2011, before 1 January 2020 a decision could be recognised and enforced in the Slovak Republic if the sentenced person was a national of the Slovak Republic and had his or her permanent residence in the territory of the Slovak Republic. However, after analysing the Slovak legislation, the Slovak authorities changed the legislation as regards the use of the term permanent residence in line the overall aim of this Framework Decision for prisoners, i.e. they replaced ‘permanent residence’ with ‘ordinary residence’. That means that if the person concerned does not have a permanent address in A, he or she may serve a sentence in B where he or she has social ties (e.g. family members) since this would be better for his or her social rehabilitation.

The most frequent grounds for the non-recognition of foreign judgments were the lack of double criminality and refusal due to time-barring. Less frequent grounds were that a sentence duration of less than six months or the failure of the issuing State to provide the additional information needed to make a decision or to consent to prosecution for other offences committed prior to transfer.

When Slovakia acted as the issuing State, judgments were most frequently not enforced because the certificates were incomplete or manifestly did not correspond to the judgment and had not been completed or corrected within a reasonable deadline set by the competent authority of the executing State (Article 9(a) of FD 2008/909/JHA). There were also cases involving a lack of double criminality (Article 9(d) of FD 2008/909/JHA), sentences of less than six months (Article 9(h) of FD 2008/909/JHA), the issuing State not consenting to prosecution for offences committed prior to transfer (Article 9(j) of FD 2008/909/JHA), and cases where a judgment was rendered in absentia without the conditions set out in Article 9(i) of FD 2008/909/JHA being met.

When enforcing judgments delivered in absentia, the Slovak judicial authorities encountered some problems, however only occasionally, e.g. there was insufficient proof that the competent authority had notified the sentenced persons of the judgment, the right of the accused person to be represented by a defence lawyer was violated, or the sentenced person was notified of a ruling by using fictitious methods of service (Romania). For example, the Slovak judicial authorities encountered two cases involving the conversion of a suspended sentence to a definitive custodial sentence.

These cases concerned separate judgments for which the issuing State (Germany) had issued the certificate more than once in the same case and in respect of the same sentenced person. However, based on the content of the file, it was not clear from the certificate, nor was it evident from the ruling of the German court, that the sentenced person was physically present at the proceedings, which resulted in the decision to convert the suspended sentence. Moreover, there were also persisting doubts about the notification of the decision to convert the sentence, since the sentenced person did not confirm the transfer of the judgment, nor did the judicial authority of the issuing State indicate that the sentenced person had filed a complaint. Thus, grounds for non-recognition and non-enforcement were established under Section 16(1)(j) of Act No 549/2011 (in absentia). Slovakia has not registered any cases where the transfer of a person was not finalised owing to the prison conditions in the executing State (i.e. Slovakia) being unsatisfactory or being considered as such, or any cases where the transferring State in recognition proceedings questioned the prison conditions and used this argument as grounds for withdrawing the request.

The same situation arose when the Romanian judicial authority requested the recognition and enforcement of a judgment convicting a Slovak citizen of an offence relating to failure to comply with the conditions of a suspended sentence. It was concluded from the certificate and the associated documents that the Slovak citizen did not attend the court proceedings at which the judgment was delivered. The Romanian judicial authority stated that the person was not summoned personally but was instead informed through other official communication channels (a notification posted on the door of the local council office and on the door of the courtroom) of the date and place of the proceedings at which the judgment was delivered. The court's final judgment was made official by way of the same fictitious method of service. Moreover, the certificate and the associated documents did not suggest that the person had had a legal representative or a lawyer for the Romanian criminal proceedings to defend them and their fundamental rights on their behalf during the court proceedings.

From the information provided by the Romanian authorities, it was ascertained that the person was not heard, either as a suspect or, subsequently, as the defendant. The reason given for this was that it was not possible to bring the person in during the proceedings because he could not be reached at the place he had declared as his residence in Romania. There was no information about whether and, if so, how the competent Romanian authorities had inquired into and verified the residence of the person in Slovakia, because they used the address of his most recent residence in Romania for all correspondence, even though he was a Slovak citizen who was duly registered as a permanent resident at a specific address in Slovakia.

The Slovak authorities also faced problems concerning the identification of monitoring levels of inmates due to different legislation in the issuing State that does not correspond to the Slovak system (Austria). For this reason the convicted person was placed under a minimum level of monitoring. However, if this person were sentenced in Slovakia, he or she would be placed under a stricter level of monitoring. In some cases, this problem was remedied by sending a request to the issuing authority for information concerning the specific conditions for the execution of the person's sentence.

The Slovak judicial authorities encountered decisions concerning the imposition of psychiatric care cases only rarely. However, in one case the court refused to recognise the judgment of a Czech court imposing treatment because it was delivered on the basis of a police decision and not as a result of criminal proceedings.

4.6. Partial recognition

Partial recognition is possible, and according to the Slovak Prosecutor-General's Office, partial recognition of judgments often occurs, notably when the person has been sentenced for multiple concurrent offences, where each act is decided upon separately, and double criminality does not apply to all the acts. Non-recognition of the judgment for one or more concurrent offences results in the sentence being adapted.

Partial recognition can occur when the authority of the issuing State fails to provide supplementary information allowing the foreign judgment to be recognised in full. However, the Slovak authorities try to solve the problem of a lack of information by contacting the issuing State through direct contacts.

Partial recognition of the judgment takes place with the prior agreement of the judicial authority of the issuing State. Therefore, it can only be applied in relation to EU Member States where it is legally possible to reduce the sentence if double criminality is only applicable in part. In other cases, the certificate has to be withdrawn.

The Slovak judicial authorities encountered cases where the certificate requested the recognition of several judgments and the enforcement of criminal penalties but the background documentation was incomplete, judgments or the translation into Slovak were missing, or the condition of double criminality was not met, and these issues were not resolved even after supplementary information had been requested. In such cases, the prosecution service recommended partial recognition, i.e. that the court recognises the judgments that meet the legal requirements. Otherwise, non-recognition is recommended. Before such decisions, however, the regional court is required to re-contact the issuing State.

In some cases, judgments by the issuing States were recognised in part because some of the acts committed by the sentenced person did not fulfil the double criminality condition (e.g. an act which constituted the offence of concealing evidence under the Austrian Criminal Code was not a criminal act under Slovak law).

When deciding whether to recognise a judgment and enforce the sentence only partially, the judicial authorities examine the legal conditions for its recognition and consider the proportionality of that approach with regard to exempting certain acts and adapting the duration of the sentence.

According the Slovak Prosecutor-General's Office, the criteria for the recognition and enforcement of a foreign judgment are laid down in law and are strictly observed. The courts may not add criteria or ignore existing criteria.

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

In the opinion of the Slovak courts, the deadline of 90 days from receipt of the judgment and the certificate is sufficient for a decision to be taken on the recognition of the judgment. As issuing State, Slovakia is not aware of any cases of non-compliance with the deadline set out in Article 12(2) of FD 2008/909/JHA. However, the time for obtaining supplementary information does not count towards the deadline.

As executing State, Slovakia has also always met the deadline set out in Article 12(2) of FD 2008/909/JHA.

According to Act No 549/2011, if the competent court realises that it will not be able to make a decision on the (non-) recognition of the judgment within the 90-day deadline, it notifies the judicial authority of the issuing State immediately.

4.8. Law governing the enforcement of the sentence

When Slovakia acts as executing State, the procedure for the recognition and enforcement of sentences is governed by Slovak law. The Slovak judicial authorities have encountered one case where, after responding to a request from the issuing State concerning the applicable provisions on possible early or conditional release, the issuing State revoked the notification. However, in another case, the certificates were not withdrawn.

The Slovak authorities as the issuing State have not encountered any cases where they have withdrawn the certificate because of the applicable provisions on early or conditional release in the executing State.

Time spent serving a custodial sentence imposed in the recognised foreign judgment is deducted from the term of the sentence imposed.

Regarding the deduction of a period of deprivation of liberty already served in the issuing State, the majority of competent courts have not encountered problems. However, a few courts indicated the following issues:

- the lack of a legal basis for the deduction of time already spent in custody;
- inconsistencies in the information in section (i)(2) of the certificate regarding the length of time already served (although this was resolved through further consultation with the issuing State);
- failure to indicate precisely when the deprivation of liberty began.

4.9. Further challenges

According to Section 24(1) of Act No 549/2011, if the sentenced person is on Slovak territory, he or she must be surrendered to the executing State no later than 30 days after the executing State decided to recognise and enforce the judgment. However, as noted by the Slovak INTERPOL office, this deadline is often not met in practice. The information that the convicted person can be transferred is not sent to the Slovak INTERPOL office until after the deadline has passed or is sent by the executing authorities in error to another department, such as SIRENE, which is not competent to conduct proceedings in such cases.

The Slovak judicial authorities stated that they have only faced legal problems in situations where the judgment related to an act that is not 60935781a criminal offence under Slovak law and is not assigned to one or more categories of offence that are not subject to double criminality. However, the Slovak judicial authorities usually communicate directly with the issuing State's judicial authorities to seek an agreement on the partial recognition of the judgment, if possible and practical.

Among current problems, the Prosecutor-General's Office mentioned cases in which Czech courts, repeatedly reported only judgments that imposed a suspended sentence in the recognition procedure, i.e. section (b) of the certificate rather than identifying the judgment that changed the suspended sentence into a definitive sentence to be served. Moreover, this subsequent judgment was neither attached nor referred to in the other sections of the certificate so was impossible to follow up. In practice, the Slovak judicial authority requested formal confirmation and identification of the judgment to which the recognition procedure was related, at least in the form of additional information. The problem was taken up with the EJM contact point at the Czech Ministry of Justice, who promised that the situation would be remedied, which it was not. In the opinion of the Slovak judicial authorities, this failure to identify the final judgment imposing the remainder of a custodial sentence in section (b) of the certificate is incorrect practice on the part of the Czech courts. The same applies to cumulative sentences where section (b) of the certificate only indicated (as the subject of recognition and enforcement) the judgment that imposed the cumulative sentence. In the Slovak authorities' view, the original annulled judgment should be the subject of recognition and enforcement or at least examination.

The Slovak judicial authorities have encountered two cases as the executing authority where the Czech judicial authorities were requested to give consent to further criminal prosecution as part of the recognition procedure. However, the Czech authorities did not give their consent on the basis that the specialty rule only applies after the sentenced person has been surrendered to serve his or her sentence in Slovakia.

However, Article 9(1)(j) of FD 2008/909 JHA clearly states that the competent authority of the executing State may refuse to recognise the judgment and enforce the sentence if the executing State, before a decision is taken following Article 12(1), makes a request, under Article 18(3) and the issuing State does not consent, in accordance with Article 18(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred. *Under Section 16(1)(k) of Act No 549/2011, the court decides to refuse the recognition and enforcement of the judgment if the issuing State has not consented to prosecution for another offence committed prior to his or her transfer or to enforcement of the sentence for such an offence.* In these cases, the recognition of the judgment was refused by the procedure referred to above based on a written statement by the prosecutor. According to the Slovak judicial authorities, this divergence is not a positive example of cooperation in practice.

The Bratislava Regional Court suggested that the Ministry of Justice draw up and adopt a standard set of instructions/methodology, according to which sentenced persons would be classified into different groups, depending on the sentence enforced to date in the issuing State. To this end, it would be appropriate to adopt a methodology that systematically established a clear, precise and understandable categorization of the means of enforcing sentences under the conditions obtained in Slovakia, taking account of the sentence imposed in the issuing State.

The court also suggested establishing a differentiating clause in the decision, reflecting the degree to which enforcement of the sentence would interfere with the rights and freedoms of the sentenced person, which would enable the executing State to decide which of the different groups the sentenced person should be assigned to, if no provision was made in the issuing State for the differentiated enforcement of the sentence.

During the on-site meetings, practitioners stated that requests for additional information were common when executing a certificate under FD 2008/909/JHA. These requests were usually related to deficient or missing information in some sections of the certificate or missing information on the notification/opinion of the sentenced person. Also, missing translations into Slovak seems to cause unnecessary delays. Training for the issuing authorities in all MS would help to resolve this problem.

4.10. Statistics

The Slovak authorities do not keep regular statistics on transferred or recognised judgments imposing custodial sentences in the case of EAWs. As a result, they only provided the evaluation team with statistical data for 2018 and 2019 (see table below).

	Issued	Refused	Received	Refused	Withdrawn
2019	28	1	65	not provided	not provided
2018	25	1	67		
Total	55	2	132		

The table shows that Slovakia received many more requests than it forwarded. In 2018 and 2019, they received 132 requests for recognition and only sent 55.

In 2018 and 2019, when acting as issuing State, Slovakia recorded two cases where the recognition of certificates was refused. In both cases, the refusal was by the Czech Republic. The reason was the lack of connections of the convicted persons to the Czech Republic. In 2020, Slovakia encountered one refusal of recognition by the Czech Republic. This time, it was due to the fact that the sentence to be served was less than six months long.

4.11. Conclusions

The amended law transposing FD 2008/909/JHA into Slovak law has been in force since 2012 and practitioners did not mention any legal problems that need to be addressed. However, all grounds for refusal are mandatory under Slovak law, which is not in line with FD 2008/909/JHA where they are all optional.

The principle of direct contact between different member states seems to work very well, in some cases help from the Ministry of Justice or EJN or Eurojust is needed. The Slovak authorities are able to consult the executing authorities to assess the rehabilitation requirement.

Sentencing judgments by the judicial authorities of the issuing State are regularly attached to the certificates, but never with a translation into Slovak. However, the courts and court officials generally do not require a translation, which is in line with Act No 549/2011.

In each case, the statement of consent is recorded in the minutes of the hearing. Moreover, the Prison and Court Guard Service provides sentenced persons with information about his or her rights in writing, including information about the possibility of transferring the sentence to the sentenced person's home country, which the evaluation team considers best practice.

Adaptation of the sentence or partial recognition is quite common, for example owing to the partial non-recognition of a judgment (non-recognition of one of several concurrent offences) or when determining how the custodial sentence is to be enforced, i.e. placing the sentenced person in a facility with a specific level of monitoring.

The most frequent grounds for the non-recognition of foreign judgments were the lack of double criminality or the time-barring of the offence. The Slovak Act No 549/2011 sets out only one optional ground of refusal. All the other grounds of refusal set out in FD 2008/2009/JHA are mandatory according to the Slovak Act.

The Slovak authorities as the issuing State have not encountered any cases where they have withdrawn the certificate owing to applicable provisions on early or conditional release in the executing State.

However, they encountered some problems concerning the deduction of a period of deprivation of liberty served in the issuing State, e.g., the non-existence of a legal basis for the deduction or inconsistencies in the information in section (i)(2) of the certificate regarding the length of time already served.

Some other problems the Slovak authorities encountered were in cases of cumulative sentences where the issuing authorities did not identify the judgment that changed the sentence into a definitive verdict, did not attach the subsequent judgment, or referenced in section b) of the certificate only the judgment imposing the cumulative sentence which was impossible to follow up.

Furthermore, Slovakia, as the executing State, encountered a few cases where the issuing State did not give its consent to further prosecution on the basis that the specialty rule applies only after the convicted person has been transferred to Slovakia, which is contrary to Article 9(1) of FD 2008/909/JHA.

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

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

The possibility to proceed with recognition proceedings instead of surrender is envisaged in Section 21a of Act No 154/2010 on the European Arrest Warrant. If the person arrested does not agree to serve the custodial sentence in the issuing State, the prosecutor refers the matter to the court, which informs the judicial authority of the issuing State accordingly. Furthermore, the issuing State must provide its position regarding the transfer to the Slovak Republic of the execution of the decision based on which the European arrest warrant was issued and deliver a certificate and a certified copy of the enforceable decision within 30 days.

During the evaluation visit, no such cases were presented to the evaluation team, but the prosecutors' offices stated in the questionnaire that, in cases where issuing proceedings turn into recognition proceedings, the information in the EAW never constitutes a sufficient basis for the recognition. It was also mentioned, that the foreign judicial authority did not comply with the 30-day time limit for presenting a certificate in either of the two cases encountered in the period under review. In one of the cases, a certificate was presented following the intervention of Eurojust. This case involved Romania. The Ministry of Justice also confirmed that in these cases, a certificate is requested under Article 4(6) of FD 2002/584/JHA on the EAW in accordance with FD 2008/909/JHA.

5.2. Conclusions

Slovak law in this matter is applicable and clear, but cases are rare and no legal problems in this area were mentioned by practitioners.

To date, Slovak courts have not encountered the problems referred to in the Poplawski case, either as executing State or as issuing State.

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

FD 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions has been transposed into national legislation by Act No 533/2011 on the recognition and enforcement of decisions imposing non-custodial sentences or probation measures for the purposes of supervision in the European Union’.

Following the transposition of FD 2008/947/JHA, the Ministry of Justice issued an internal directive - Notice 40/2017 of the Ministry of Justice of the Slovak Republic concerning the Slovak Republic’s declaration according to Council 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.

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

In cases where Slovakia is the executing State, the competent authority is the district court in whose jurisdiction the sentenced person has a permanent residence or had their last permanent residence. If the sentenced person does not have a permanent residence in Slovakia or his or her last place of permanent residence was not in Slovakia, the competent court is Bratislava I District Court. Once the proceedings have commenced, no account is taken of any change in the circumstances decisive for determining a competent court.

Pursuant to Article 3(1) of FD 2008/947/JHA, the authority designated as competent for issuing a certificate where Slovakia is the issuing State is the Slovak court that issued the decision imposing a non-custodial sentence or preventive measure.

Slovakia has not designated a central authority for the purposes of this FD.

The role of the Ministry of Justice is to assist with requests from the court or to a competent authority of the Member State, in particular concerning the information required to determine competent authorities or verifying the requirements laid down by the law of the Member State or of Slovakia for the recognition and enforcement of the judgment. The Ministry of Justice plays a methodological and statistical role, with the aim of evaluating the application in practice and assessing any need for methodological guidance.

Specialisation is not part of the judicial system in Slovakia and judges are not specialised. However, there is specialisation in the public prosecutor's offices, and there is a specialised department for International Affairs at the Prosecutor-General's Office.

Council Framework Decision 2008/947/JHA only applies to Member States that have transposed it into their national law.

The competent authorities maintain direct contact with other MSs' competent authorities, which simplifies the whole procedure. Also, Section 17(1) of Act No 533/2011 lays down the obligation to communicate with the other Member States' judicial authorities directly. However, the Ministry of Justice has to be informed about requests received from another Member State and requests issued by the Slovak court by means of a copy of the request (for statistical reasons). Direct contact between the authorities involved is considered a cornerstone of international cooperation.

If the Slovak competent authorities have difficulty identifying other Member States' competent authorities, the Ministry of Justice assists them.

6.1.1. Procedure where Slovakia is the executing State

The Slovak authorities accept requests for the recognition of non-custodial sentences or probation measures in the Slovak and Czech languages.

The requests may be sent by post, email or fax and must be signed.

In accordance with Section 4(1) of Act No 533/2011, the decision may be recognised and enforced in the Slovak Republic if:

- a) the act for which the decision was issued is also a criminal offence under Slovak law unless paragraphs 2 to 4 provide otherwise²,
- b) the convicted person has his or her ordinary residence in the territory of the Slovak Republic or intends to return to the territory of the Slovak Republic,
- c) it imposes a criminal sanction involving a non-custodial sentence or probation measure, the nature of which entails:
 - 1. an obligation for the sentenced person to inform a specific authority of any change of residence or workplace;
 - 2. a ban on entering certain localities, places or defined areas in the issuing or executing State;
 - 3. an obligation containing restrictions on leaving the territory of the executing State;
 - 4. instructions relating to conduct, residence, education and training, leisure activities, or containing restrictions on or conditions for carrying out a professional activity;
 - 5. an obligation to report at specified times to a specific authority;
 - 6. an obligation to avoid contact with specific persons;

² Section 4 of Act No 533/2011

(2) If the recognition and enforcement of a decision are sought for an offence punishable by a maximum term of imprisonment of at least three years in the State of origin and indicated in the certificate under one or more categories of criminal offences referred to in

paragraph 3 (double criminality), the court shall not examine whether it is a criminal offence under Slovak law.

(4) For the assignment of a criminal offence to one of the categories of criminal offences referred to in paragraph 3, it is not required that the names or features of the criminal offence under the law of the State of origin and the Slovak Republic coincide.

7. an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;
8. an obligation to compensate for the damage caused by the criminal offence;
9. an obligation to carry out community service;
10. an obligation to cooperate with a probation unit; or
11. an obligation to undergo therapeutic treatment or treatment for addiction.

The grounds for refusal are set out in Section 12(1) of Act No 533/2011 in accordance with Article 11 of FD 2008/947/JHA:

- (a) infringement of the *ne bis in idem* principle;
- (b) the act is not a criminal offence under Slovak law and does not involve the offences referred to in Article 10 of FD 2008/947/JHA; with respect to taxes, duties, custom or currency, the execution of the decision may not be refused solely on the grounds that the law of the Slovak Republic does not govern the same type of taxes or customs or does not contain the same provisions on taxes, duties, customs or currency as the law of the issuing State;
- (c) the person subject to the decision is exempt from the jurisdiction of the law enforcement authorities and the court;
- (d) infringement of the age of criminal responsibility;
- (e) the enforcement of the decision is statute-barred under Slovak law and the prosecution of the criminal offence falls within the jurisdiction of Slovak authorities under Slovak law;
- (f) the person subject to the decision does not have his or her ordinary residence in the territory of the Slovak Republic or, depending on the circumstances, does not intend to return to the territory of the Slovak Republic, or if the Member State of ordinary residence of the sentenced person does not consent to the transfer of the enforcement of the decision to the Slovak Republic;
- (g) the duration of the criminal sanction or probation measure is less than six months;
- (h) the decision does not correspond to the certificate issued or if the certificate issued is incomplete or the translation has not been attached, or if it does not contain all the data required for issuing the decision on recognition and enforcement and was not duly completed at the request of the court within the set time limit;

- (i) cases concerning decisions made in absentia;
- (j) the imposed criminal sanction or probation measure includes a healthcare or social measure which cannot be executed because of incompatibility with Slovak law or the Slovak health care or social system;
- (k) it does not involve a criminal sanction or probation measure pursuant to Section 4(1)(c).

In accordance with Section 13(1) to (3) of Act No 533/2011, the courts can replace or adapt the supervision measures or the timeframe of the decision if it is incompatible with Slovak law.

The certificates are addressed directly to the competent courts. By law, the court is obliged to inform the convicted person about a decision to recognise a probation decision, the decision itself is made in-camera (Section 11(1) and (4) of Act No 533/2011). During the direct interview, it was mentioned that the court usually informs a convicted person about the start of proceedings, but as there was only one judge to answer the questions it remained unclear whether this was his personal practice or common practice. The law does not require the convicted person to be informed prior to the recognition decision, it only requires a written opinion from the prosecutor (Section 11(1) of Act No 533/2011).

The certificate, decision and other written documents may be forwarded to or received from another Member State by mail or any other secure means enabling conversion to a hard copy, provided that their authenticity can be verified. If the court deems it necessary to verify the authenticity of the certificate, decision and other written documents, it requests the judicial authority of the Member State to send the originals.

The time limit within which the court must issue the decision is 60 days of receipt of the decision and certificate. During the interview it was mentioned that this period is sufficient to make a decision. Prosecutors explained that the courts usually give them a deadline of three working days to issue a written opinion, without which the judge cannot make a decision.

It was also mentioned by the practitioners that this period of 60 days does not include the period of time during which the court collects additional information from the issuing State. The deadline is respected in most cases.

Usually contact is made with the issuing competent authorities following problems with the certificate, e.g. an incomplete certificate. Additional information is requested directly by the courts, not via the Ministry of Justice. However, the practitioners interviewed did not give any examples of what kind of information was missing on the certificates.

Under Act No 533/2011, an appeal against the decision is admissible with a suspensive effect (Section 11(6)) and either the sentenced person or the prosecutor may appeal.

The probation unit does not have a legal personality. Probation units are established at the courts as to support the judiciary. The court makes the decision, but the probation officers execute the decision, they stay in contact with the convicted persons and the court and they supervise and report to the court in cases of:

- replacement of custody/pre-trial detention with supervision;
- conditional suspension of the criminal prosecution;
- conditional waiver of punishment with educational measures (juvenile offenders);
- conditional deferral of enforcement of a prison sentence;
- house arrest;
- community service;
- prohibition of residence;
- prohibition of attendance at public events;
- conditional release (parole);
- protective supervision;
- protective/preliminary measure in civil proceedings.

The court must immediately notify non-compliance with the time limit to the issuing State's judicial authority, along with the reasons for the non-compliance. It must also provide a new time limit within which it will issue the decision. Slovak practitioners said they had not encountered any problems with complying with the time limit for issuing the recognition decision.

The recognition decision is delivered to the sentenced person, the prosecutor and the defence lawyer if applicable. A defence lawyer is not obligatory when applying this Framework Decision. An appeal against the decision of the court is admissible (optional) and may be lodged by the prosecutor or the sentenced person.

6.1.1. Procedure where Slovakia is the issuing State

According to Slovak legislation, the court may transfer to the executing State the enforcement of the decision, on:

- (a) conditional release from the enforcement of a custodial sentence while simultaneously ordering probation supervision or imposing proportionate restrictions or obligations;
- (b) probation supervision or proportionate restrictions or obligations for a conditionally sentenced person;
- (c) a conditional remission of punishment while simultaneously ordering probation supervision or imposing proportionate restrictions or obligations;
- (d) a house arrest sentence;
- (e) a sentence of compulsory labour;
- (f) professional disqualification;
- (g) prohibition of residence;
- (h) preventive supervision; or
- (i) outpatient therapeutic treatment;
- (j) other probation measures notified by a Member State that may be supervised or otherwise supervised in its territory.

As for providing information on the possibility to transfer probation measures or alternative sanctions to other MS, Slovak practitioners said that it was up to the probation officer to ask the sentenced person in their first contact with him or her about where he or she resides and to inform him or her about the possibility of transferring the probation measure or alternative sanction to the MS where he or she has a habitual residence. Otherwise, if applicable, a judge can inform a person that it is possible to transfer the probation measure to his or her country of residence. The convicted person must agree to the transfer (written agreement).

Practitioners were asked to provide additional information on informing the person concerned about the possibility of serving their sentence in another MS. They said that if the convicted person resides abroad or works there, he or she is informed about the possibility of serving their sentence abroad by the judge at a court hearing. The consent is recorded in the court file so no separate written consent is required from the convicted person.

If the circumstances of the sentenced person change (residence, employment abroad) during the execution of the sentence, the probation officer informs the convicted person, either in writing or orally, about the possibility of transferring the execution of the sentence to another MS. If the information is given orally, the probation officer prepares an official record, which is placed in the file.

The certificate is filled in by a judge or a senior judicial official. The question of the hearing was not covered during the interview, but under Slovak law (Act No 533/2011), it seems that there is no hearing on that matter. The law requires the court that made the initial decision on the punishment to send the original copy of that decision, along with a duly completed certificate, to the executing judicial authority of the other MS. As there is no hearing, there is also no appeal against the certificate.

The request is sent to the MS where the sentenced person has his or her ordinary residence or, depending on the circumstances, to the MS to which the sentenced person intends to return. Also, at the request of the sentenced person, the enforcement of the decision may be transferred to a Member State other than the MS referred to above, provided that the executing judicial authority of that MS gives its consent.

The competent court is obliged to inform the Ministry of Justice of the transfer of the enforcement of the decision as well as of any substantial changes in proceedings, such as the withdrawal of the request to transfer the enforcement of the decision, the request to transfer the enforcement of decision back to Slovakia or that sentenced person has been pardoned or granted amnesty.

The court may decide to withdraw the transfer of the enforcement of the decision within ten days of the receipt of the information if it does not consider the highest possible imposition of an unconditional sentence of imprisonment to be sufficient in terms of fulfilling the purpose of the imposed criminal sanction or probation measure. The court may proceed in the same way if, according to the law of the executing State, it does not consider a modified criminal sanction or probation measure to be sufficient to fulfil its purpose. However, the Slovak authorities have not encountered a case in which they had to withdraw a certificate.

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

Slovak practitioners said that they had not recorded any significant problems implementing this Framework Decision. The domestic law is clear, the awareness among officials is there, but there is room for improvement.

If necessary, the Judicial Cooperation in Criminal Matters Division regularly provides courts with advice. To help practitioners implement FD 2008/947/JHA, the Ministry of Justice has also created an internal website to which all courts have access. It provides courts with practical information and individual details for each Member State, including a link to the EJM Judicial Atlas listing the relevant foreign authority and the Member States' relevant certificates and declarations. The Ministry of Justice updates this information as necessary.

As there is no specialisation in the field of international criminal cooperation among judges, it is quite good practice that there is a domestic judicial network in criminal matters (one contact point per court in Slovakia), which has annual meetings, a mailing list etc.

The Slovak Ministry of Justice provided the evaluation team with statistical data on recognised and transferred cases for the last three years.

Year	Incoming	Out coming	Total
2018	12	22	34
2019	7	29	36
2020 up to 30.11.2020	2	4	6
Total	21	55	76

It cannot be said that this FD is not used at all by Slovak officials. Nevertheless, this is a broader issue. Slovakia is not the only MS with a low number of cases, other MS also have the same problem.

The majority of transferred or executed cases related to the Czech Republic (80%). The other countries involved were Poland, Hungary and the Netherlands. Most of the requests were approved, one request from the Czech Republic was denied under Article 11(1)(d) of FD 2008/947/JHA (the judgment relates to acts that do not constitute an offence under the executing State's law). When Slovakia was the issuing State, there was one case where the Czech Republic did not recognise the judgment and certificate since it was not considered a criminal offence under Czech law.

The types of probation measures most often applied were:

- an obligation to undergo therapeutic treatment or treatment for addiction;
- an obligation to cooperate with a probation officer;
- an obligation to carry out community service.

As the court practitioner said, the responsibility for transferring the probation measure or alternative sanction lies with the judge/court. However, he added that the transfer also depends on an initiative from the probation and mediation officer and whether he or she is able to find out the reason for the transfer. However, their role in implementing FD 2008/947/JHA is not specified in the Slovak Act No 533/2011 on recognising and enforcing decisions.

Probation officers fall within the jurisdiction of the relevant regional court, but the place of enforcement is the responsibility of the relevant district courts. According to probation practitioners, the workload also may affect the number of cases due to limited possibilities for individual work with sentenced persons.

However, the Ministry of Justice is working on a 2-year project with the objective of:

- identifying the obstacles currently faced by the probation and mediation service,
- defining the needs of a modern probation service within the public administration and civil service and designing its structure,
- determining the specialisation of probation officers and distributing the workload by dividing the activities of probation supervision and mediation among the staff,
- defining the mandatory risk/needs assessment and management tools and procedures, which are still not implemented in probation work,
- and preparing draft legislation on the basis of these objectives.

6.3. Conclusions

As noted from the statistics, it is clear that this legal instrument is not often used in practice. However, the number of outgoing cases is double that of incoming cases.

As the issuing State, Slovakia recorded only one case where the Czech Republic did not recognise the judgment and certificate since the act was not considered a criminal offence under their law.

The Slovak practitioners had not recorded any significant problems in implementing this Framework Decision.

There is no specialisation in the field of international criminal cooperation among judges.

The responsibility for transferring the probation measure or alternative sanction lies with the judge/court. However, the number of cases transmitted also depends on initiatives by the probation and mediation officers, which means identifying cases where it would be appropriate to transfer the measure. However, their role in implementing FD 2008/947/JHA is not specified in the Slovak Act No 533/2011 on recognising and enforcing decisions.

According to the probation practitioners, the workload also may affect the number of cases due to the limited possibilities for individual work with the sentenced persons.

However, the Ministry of Justice is preparing a 2-year project with the objective of setting the specialisation of probation officers, reconsidering the workload distribution, defining the risk assessment, management tools and procedures and preparing amendments to the legislation.

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

FD 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention has been transposed into national legislation by Act No 161/2013 on the transfer, recognition and enforcement of decisions on supervision measures as an alternative to provisional detention in the European Union ('Act on the transfer of supervision measures').

Following the transposition of FD 2009/829/JHA, the Ministry of Justice issued an internal directive - Notification 30/2017 of the Ministry of Justice of the Slovak Republic, stating that on 13 July 2017, it had issued a declaration under Article 6(1), Article 8(2) and Article 24 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between the Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

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

Where the Slovak Republic is the executing State, the competent authority is the district court in whose jurisdiction the sentenced person permanently resides or has last permanent residence.. If the sentenced person ordinarily resides in the Slovak Republic and has both a permanent place of residence and a temporary place of residence, the competent authority is the district court in whose area of jurisdiction the sentenced person permanently resides. If the person concerned has no permanent residence or no last known permanent residence in the territory of Slovakia, the competent court is Bratislava I District Court. Specialisation is not part of the judiciary system in Slovakia, judges are not specialised. Changes to decisive facts for determining jurisdiction are not taken into account after the proceedings have commenced.

When Slovakia is the issuing State, the competent authority is also the pre-trial judge who decides about provisional detention under a general regulation on criminal proceedings.

The prosecutor only provides a written opinion. If an appeal is made against the decision of the court, it does not have a suspensive effect.

A declaration has not been issued, nor have non-judicial authorities been designated as competent authorities for taking decisions under Article 6(2) FD 2009/829/JHA.

There is no central Authority for dealing with requests in accordance with FD 2009/829/JHA, contact is directly between the competent courts in Slovakia and the Member States, although the Ministry of Justice has to be informed about these cases for statistical reasons (requests received from another Member State as well as requests issued by the Slovak court).

The Ministry of Justice provides assistance as necessary with requests from the court or the competent authority of the Member State. The Ministry of Justice gives useful information on competent authorities, the language requirements and legal questions.

There is direct contact between the court in Slovakia and the other Member States.

7.1.1. When Slovakia is the executing State

The court shall decide whether the decision on supervision measures will be recognised and executed at an in-camera session after obtaining a prosecutor's written opinion. The court decides in the form of a resolution.

The competent court decides on all matters related to the recognition and execution of the decision on supervision measures and informs the Ministry of Justice about the receipt of the decision on supervision measures and of the certificate forwarded by the judicial authority of the issuing State and sends copies of the documents.

The court must issue the decision within 20 days of receipt of the decision and certificate. This period does not include the time during which the court has been gathering additional information from the judicial authority of the issuing State that is necessary in order make a decision about the recognition and enforcement, including the completion of the certificate where the certificate is incomplete or manifestly does not correspond to the decision.

Non-compliance with the time limit must be notified immediately by the court to the judicial authority of the issuing State, along with the reasons for the non-compliance. At the same time, it must notify a new time limit within which it will issue the decision.

The decision must be delivered to the sentenced person and the prosecutor. An appeal against the decision is admissible without a suspensive effect and the court must decide on the complaint within 20 working days of its submission.

If there is no reason to refuse the recognition and enforcement of the decision pursuant to Section 14 of Act No 161/2013, the court decides on the recognition of that decision and simultaneously decides that the decision will be enforced. The grounds for refusal set out in Act No 161/2013 are identical to those set out in FD 2009/829/JHA.

If the decision on supervision measures has imposed supervision measures that are incompatible with Slovak law, the court replaces them with supervision measures that it could impose if it was issuing a decision in proceedings concerning a similar act. However, the court ensures that they correspond as far as possible to the originally imposed supervision measures. They may not be more severe than the measures originally imposed by the judicial authority of the issuing State.

In view of the period specified in the certificate during which the monitoring of compliance with the supervision measures in the Slovak Republic is needed, the court may ask the judicial authority of the issuing State what additional period is still needed for the purposes of monitoring compliance with those supervision measures.

The court is obliged to notify the judicial authority of the issuing State (Section 17 of Act No 161/2013).

The prosecutor of the district prosecutor's office whose competent court has asked for an opinion examines the documents submitted by the court. If the documents are not complete, he or she returns them to the court with a request for additional information from the judicial authority of the issuing State that is necessary in order to decide about the recognition and execution, including the completion of the certificate where the certificate is incomplete or manifestly does not correspond to the decision on supervision measures. If the documents are submitted by the court and all the conditions are met, the prosecutor submits a written opinion to the court containing the evaluation of the fulfilment of the conditions for recognition and enforcement of a foreign decision and a proposal for a court decision.

7.1.2 When Slovakia is the issuing State

The court may transfer the execution of the decision on supervision measures to another MS if the person concerned has been informed about the supervision measures imposed, is ordinarily resident in that MS, and consents to his or her return to that MS.

The execution of the decision on supervision measures may also be transferred to an MS other than the MS in which the person concerned is ordinarily resident, provided that the judicial authority of the MS to which the execution of the decision on supervision measures is to be transferred consents to that transfer.

The court advises the person concerned of his or her obligation to be available to stand trial when summoned and to comply with the supervision measures imposed in the executing State, as well as of the possibility to request his or her surrender on the basis of a EAW if these obligations are not met.

The court that issued the decision on supervision measures sends an original copy of that decision, accompanied by a duly completed and signed certificate, to the judicial authority of the executing State and the Slovak Ministry of Justice (in copy). That court has jurisdiction for the monitoring of compliance with the measures if the judicial authority of the executing State has not recognised that decision and has not informed the court of such recognition.

The supervision measures, the monitoring of which may be transferred between the Slovak Republic and another Member State, are:

- a) an obligation for the person concerned to inform the competent authority in the executing State of any change of the place of residence, in particular for the purposes of receiving a summons to attend a hearing or a trial in the course of criminal proceedings in the issuing State;
- b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- c) an obligation to remain at a specified place, where applicable during specified times;
- d) an obligation containing limitations on leaving the territory of the executing State;
- e) an obligation to report at specified times to a specific authority;
- f) an obligation to avoid contact with specific persons in relation to the offence(s) allegedly committed.

The transfer of the monitoring of compliance with the supervision measures between the Slovak Republic and another Member State may also involve supervision measures other than those mentioned above providing the Member State has confirmed it will monitor the compliance with such measures within its territory. These supervision measures include in particular:

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

- c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
- d) an obligation to undergo therapeutic treatment or treatment for addiction;
- e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.

The court takes all subsequent decisions relating to the decision on supervision measures, the monitoring of which has been transferred to the executing State, notably: the review and revocation of the decision on supervision measures, the modification of the supervision measures imposed on the person concerned, and issuing a EAW.

The court immediately notifies the judicial authority of the executing State of any subsequent decisions and the fact that a legal remedy has been introduced against a decision on supervision measures.

At the request of the judicial authority of the executing State, the court immediately confirms whether, in view of the circumstances of the case at hand, the monitoring of compliance with the supervision measures is still needed in the executing State and, if appropriate, also takes the subsequent decision.

Before the expiry of the deadline specified in the certificate, during which the monitoring of compliance with the supervision measures in the executing State is needed, the court will provide information about the additional period for which the monitoring of compliance with such measures is still needed (this is at the initiative of the court or at the request of the judicial authority of the executing State).

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

The Slovak authorities stated that they have not had any cases, either incoming or outgoing, under FD 2009/829/JHA so far thus they have no experience with the application of this legal instrument in practise. For this reason, they cannot make concrete suggestions for improving the practical application in the scope of the FD in question.

However, they would welcome it if the Member States with practical experience shared their good practices and recommendations for improving its application.

As practitioners remarked, the discussion on the alternative to detention has been a subject of discussion for several years, also at European level. It is a broader issue and many MSs face a lack of practical experience.

According to practitioners, the reasons for not applying the FD as issuing State might be as follows:

- The practitioners noted that the background of the criminal policy in Slovakia must be taken into consideration. The provisions of the CC and the CPC, according to which detention can be imposed only in the case of the existence of legally enumerated conditions (in cases of severe crimes), must be followed strictly. This measure is used only as the last resort. It is a considerable risk for judges to replace pre-trial detention with ESO in such cases. And in cases of crimes that are not severe, there is no reason to use a pre-trial detention order.
- Another reason might be no trusting the convicted person to comply with the obligations arising from the supervision measure, which could frustrate the investigation or slow it down considerably.

Not all of the relevant cases are known to practitioners. The Slovak authorities said that they had done their best to raise awareness and it is the responsibility of the independent judges to consider all the circumstances of the case, including what will happen if he or she replaces detention with an ESO measure.

- Some practitioners find the regulation of the mutual recognition of judicial decisions in the EU to be complicated and abstract.
- Poor translation into Slovak or no translation at all into Slovak on the EJM website related to the mutual instruments. It was said that only a limited number of practitioners have sufficient knowledge of foreign languages, therefore, they need to work with the Slovak translation on the EJM website. Due to the poor translation into Slovak, or complete lack of Slovak translation, it may be demotivating or complicated for them when they need to use instruments of judicial cooperation. So, improved Slovak translations of the documents on EJM Atlas would be desirable.

Slovak practitioners presented some ideas that could help to improve the application of the FD:

- Set up a database of cases under the FD. Since they do not have any experience with this FD, the database could cover cases from the other MSs that would help practitioners to understand how it works in the other MSs and which supervision measures they use to replace provisional detention in practice and in which cases.
- Improve the Slovak translations on the EJM website.

7.3. Conclusions

Slovak national legislation is comprehensive, clear and sufficient for the supervision measures (ESO) provided in Section 3 of Act No 161/2013.

The Slovak authorities have not issued any certificates in connection with this FD. And it should be noted that the Slovak judicial authorities have not received any applications for the recognition of the supervision measure either. Thus, the Slovak judicial authorities have no experience with this FD.

According to the Slovak judicial authorities, they do not have suitable cases for this instrument for the reasons given under heading 7.2., Article 4, item 1 of this report. However, the evaluation team believes that the Slovak judicial authorities might have had some suitable cases for this FD. It seems they are afraid to use it since they do not know how it works in practice. Another reason might be that practitioners do not know about this possibility or think that this alternative to detention is inefficient in criminal proceedings. So they have to be encouraged to use it by other MS sharing their best practices as well as through more international webinars, seminars, training sessions etc.

The provisions of Act No 161/2013 apply to all persons in the same way, regardless of where they live. It therefore applies in the same way for all perpetrators and all cases.

The evaluation team encourage the Slovak judicial authorities to apply this FD in future, so they can enjoy its benefits. It is necessary to bear in mind that the right to liberty and the presumption of innocence could be a reason for replacing pre-trial detention with one of the supervision measures in cases where a court decision is pending.

The Slovak authorities added that in the event of the detention of a person, he or she would be treated equally regardless of whether they were a Slovak national or a foreigner, i.e. irrespective of his or her nationality or place of residence.

In order to avoid unnecessary costs and difficulties in relation to the transfer of a person subject to criminal proceedings for the purposes of a hearing or a trial, Member States should be allowed to use telephone and video conferences. According to Slovak law, if a person is in detention, it is possible to question him or her via videoconference.

While this Framework Decision covers all crimes and is not restricted to particular types or levels of crime, supervision measures should generally be applied in case of less serious offences.

However, it should be noted that the Slovak judicial authorities have not received any applications for the recognition of the supervision measure.

7.4. Bar Association

The evaluation team also met with representatives of the Bar Association. The discussion touched on issues such as education/training and the selection of lawyers.

They pointed out that the Bar Association organises training sessions covering different areas of the law, including the FDs which were the subject of the evaluation, however, participation is not mandatory. Trainers come from the judicial institutions or the Ministry of Justice. The training plans are based on surveys of needs and preferences conducted through the regional representatives of the Bar Association. The Bar Association has also drafted manuals on procedural rights of accused and suspected persons. The EAW Framework Decision and case law are part of this material and are made available to all parties to the proceedings.

Likewise, it was also pointed out that in practice, lawyers do not have a lot of experience with cases concerning the instruments of mutual recognition due to the low number of cases. For example, one of the Bar Association representatives specialising in criminal law stressed that throughout his career, i.e. seven years, he had had only one case concerning the EAW.

There are two ways of selecting a lawyer. The first one comes from the right of a sentenced or prosecuted person to choose a lawyer, which is the best way to select the lawyer with experience in the relevant area. However, if the person cannot afford to pay a lawyer, a lawyer is appointed randomly by the court via electronic means from the ex officio lawyers list. In that case, there is a considerable risk that the selected lawyer is not experienced since the list of ex officio lawyers includes lawyers who do not have experience of criminal law or with the mutual recognition instruments.

The level of awareness of the FDs among lawyers is questionable since not many lawyers focus on this specific area.

It seems the low level of awareness mentioned above is also linked to the system for selecting lawyers. The selection system was changed three years ago because it was considered unacceptable. In criminal cases, they were chosen by a judge or court clerk, repeatedly the same lawyers. Nowadays, all members on the list of the Bar Association are generalists so there is no division between criminal lawyers and commercial lawyers. Each lawyer chooses his or her specialisation, and if he or she does not want to be selected for specific criminal cases by the court, he or she can ask to be deleted from the ex officio list. However, most of them do not do this so they are able to get more cases. The aim of the new selection system means that lawyers on this list should have approximately the same amount of cases over the year.

It is indispensable to appoint a lawyer in criminal law and the lawyer's mission is to protect the rights and legitimate interests of the accused. Therefore, in connection with the selection of lawyers ex officio, the question arises as to how a lawyer who is not specialised in a given area can protect a convicted or suspected persons' rights and legitimate interests.

8. TRAINING

8.1. Training related to FD 2002/584/JHA

In the Slovak Republic, training is provided by the Judicial Academy as the training institution with a national remit which ensures, organises and implements lifelong learning for judges, prosecutors, court officials, assistants to Supreme Court judges and prosecutors' assistants.

The Judicial Academy of the Slovak Republic provides training on the EAW at regular intervals. Training is provided primarily for judges and prosecutors but is also open to other target groups (senior court officials, trainee judges, assistants at the Supreme Court, trainee public prosecutors). There are about 130-150 training activities per year, with about 5400 participants per year. In addition, online training is broadly available.

Training for trainee judges is mandatory. Lifelong training is provided by the Judicial Academy but is not mandatory for judges and prosecutors.

On average, about 100 representatives of the target group for the Judicial Academy take part in events focusing on issues concerning the practical application of mutual recognition instruments. During the COVID-19 pandemic, training took place online. For example, an EAW training was held online on 19 October 2020 and attended by 77 people. In 2022 there will be three training activities focusing on EAW. Training on EAW forms is part of the Judicial Academy's training for judges and prosecutors.

The Judicial Academy evaluates training based on end-of-training evaluation sheets. On this basis, the Judicial Academy assesses the quality of training and the target group's needs for further training in this area.

Issues relating to EAWs and problems with their implementation regularly feature in working meetings organised for regional prosecutor's offices - specifically for specialists responsible for legal relations with foreign countries - within the scope of their competencies. Various guidelines on EAWs have been adopted within the regional prosecutor's offices. A manual has also been produced to provide guidelines for the procedure when applying for an EAW to be issued, which also covers the prosecutor's obligations in that procedure deriving from Order No 14/2016 of the Prosecutor-General of 13 December 2016 concerning the prosecutors' procedure in the field of international judicial cooperation in criminal matters. Working meetings also focused on the appropriateness and proportionality of applying for an EAW to be issued. Prosecutors in the regional prosecutors' offices also took part in training activities on this subject organised by the Judicial Academy.

Each prosecutor receives a weekly update on ECHR case law and an overview of CJEU case law is regularly given at meetings of specialists responsible for international judicial cooperation in criminal matters held at the national level.

In 2019, the Judicial Academy organised an event entitled 'EU criminal law - practical application', at which CJEU case law in this field was also covered. Issues in CJEU case law which affect the EAW are also addressed in the national judicial network for criminal matters.

Prosecutors reported that apart from the activities of the Judicial Academy, working meetings held by the Director of the International Department of Prosecutor-General's Office could also be considered as training, since these issues are also covered at these meetings from the point of view of problems with application and as regards the case law of the Slovak Supreme Court and the CJEU.

These meetings also covered information received from the national member of Eurojust and the main EJN contact point. Apart from these working meetings, the higher-level prosecutor's office ensured that the lower-level prosecutor's offices were kept informed by disseminating materials on these issues. These developments are also summarised annually at working meetings of specialists responsible for legal relations with other countries in international judicial cooperation in criminal matters within regional prosecutor's offices.

International training

There is also close cooperation between the Judicial Academy and the EJTN. For example, the Judicial Academy sends practitioners to training events organised by the EJTN according to predetermined allocations of places, however, in the last two years no representatives attended any training of this kind.

National Judicial Network

The national judicial network between the courts in Slovakia (one contact point is appointed for each district or regional court) is an important source of information. Courts disseminated relevant materials via the national judicial network using emails and meetings. Furthermore, members of the network are briefed by experts from the Ministry of Justice on current developments (e.g. a Brexit handbook), practical problems and news in the area of judicial cooperation in criminal matters at meetings of the network, which are held regularly throughout the year. In addition, these contact points at the courts share helpful information or experiences from colleagues. Practitioners frequently use an internal national judicial network because it is uncomplicated and quickly provides information and practical advice.

Handbooks

Prosecutors in district and regional prosecutor's offices are familiarised with the existence of the Commission Handbook on how to issue and execute a European arrest warrant and our practice when using it. Prosecutors also familiarise themselves with all materials provided by Eurojust. Prosecutors are kept informed of the outcomes of plenary meetings of the EJM via the EJM contact points.

EJN website:

The courts are informed about the practical instruments made available on the EJN website through the national judicial network (one contact point for each district or regional court).

In addition, practical information on the EAW, based on FD 2002/584/JHA, is published on the Ministry of Justice intranet site, to which all courts have access, with individual details for each Member State including a link to the EJN Judicial Atlas listing the relevant foreign authority and the Member States' relevant certificates and declarations. The Ministry of Justice updates this information as necessary.

Prosecutors are kept informed of the practical instruments available on the EJN website via the EJN contact points and use them in practice. The Atlas is most frequently used to identify the competent judicial authority, and the judicial library is used for information on the state of implementation of individual legal instruments and the Member States' declarations concerning individual legal instruments. This section also includes the forms in all language versions (EAW, EIO).

8.2. Training related to FD 2008/909/JHA

The Judicial Academy provides training at regular intervals 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.

Training is provided primarily for judges and prosecutors but is also open to other target groups (senior court officials, trainee judges, assistants at the Supreme Court, trainee public prosecutors).

On average, about 100 representatives of the total statutorily-defined target group for the Judicial Academy take part in events focusing on issues in the practical application of mutual recognition instruments.

Where possible, specialists in legal relations with foreign countries take part in training events carried out by the Judicial Academy and the Prosecutor-General's Office. Prosecutors support other professional training activities organised with the participation of practitioners dealing with the issues concerned, not just in Slovakia.

The Ministry of Justice provides the courts with information in this area via the national judicial network, either by email (including sending the relevant documents) or in the form of meetings of the contact points in this national network, held regularly once a year.

In addition, the Ministry of Justice publishes practical information on its intranet site, to which all courts have access, on the surrender of sentenced persons for the purpose of enforcement of their sentence, on the basis of FD 2008/909/JHA, with individual details for each Member State, including a link to the EJM Judicial Atlas listing the relevant foreign authority and the Member States' relevant certificates and declarations. The Ministry of Justice updates this information as necessary.

Prosecutors are also familiarised on an ongoing basis with all relevant materials provided by Eurojust. They are also kept informed of the outcomes of plenary meetings of the EJM and of the practical instruments available on the EJM website via the EJM contact points in the prosecutor's office and use them in practice.

8.3. Training related to 2008/947/JHA and 2009/829/JHA

The Ministry of Justice has an intranet site, to which all courts have access where all practical information is published related to the transfer of supervision measures and alternative sanctions based on FD 2008/947/JHA with details for each Member State, including a link to the EJM Judicial Atlas listing the relevant foreign authority and the Member States' relevant certificates and declarations. The Ministry of Justice updates it as necessary. The Ministry of Justice is also planning something similar in the future concerning the practical application of FD 2009/829/JHA.

Training is normally provided by the Judicial Academy, but also by the Ministry of Justice for some projects. Feedback on the quality of the training is always obtained after the event in the form of a questionnaire in which respondents indicate the degree to which they are satisfied with the professional level and the content of the training.

The Judicial Academy trains probation and mediation staff only to a limited extent (mainly to support their soft skills). Responsibility for training probation and mediation staff in this area lies primarily with the Ministry of Justice. Since 2019, Ministry of Justice in cooperation with Judicial Academy has increased the number of probation/mediation training activities with focus on social work skills, psychology, and other soft skills. To date, no one from the Probation, Mediation and Crime Prevention Department of the Ministry of Justice has taken part in training on this FD at EU level.

There are no special handbooks on using the measures of Framework Decision 2008/947/JHA and Framework decision 2009/829/JHA but the information on the Ministry of Justice's intranet site is sufficient.

An internal network between the courts in Slovakia, using emails and meetings and a contact person at each court is very useful for obtaining useful information or experience from colleagues. This is used frequently because it is uncomplicated and provides information quickly.

8.4. Conclusions

The Judicial Academy is the training institution with a national remit that ensures and organises lifelong learning for judges, prosecutors, court officials, assistants to Supreme Court judges and prosecutors' assistants.

It provides about 130-150 training activities per year on different topics, with about 5400 participants per year, including training on the FDs that were the subject of the evaluation.

Issues relating to EAWs and problems with their implementation are featured regularly in working meetings organised for regional prosecutors' offices. Moreover, various guidelines on EAWs have been adopted and a manual has been developed to provide guidelines on the EAW procedure in international judicial cooperation in criminal matters for prosecutors. Working meetings were held focusing on the appropriateness and proportionality of applying for an EAW to be issued. Each prosecutor receives a weekly update on ECHR case law. In addition, an overview of CJEU case law is regularly given to specialists responsible for international judicial cooperation at national level.

There is also close cooperation between Judicial Academy and the EJTN. However, no representatives attended any training over the last two years. The national judicial network is quite well developed.

On average, about 100 representatives of the whole statutorily-defined target group for the Judicial Academy participate in events focusing on the practical application of FD 2008/909/JHA. In addition, prosecutors participate in training activities, not just in Slovakia.

However, as regards FD 2008/947/JHA and 2009/829/JHA, the Judicial Academy trains probation and mediation staff only to a limited extent. Responsibility for training probation and mediation staff in this area lies primarily with the Ministry of Justice. To date, no one from the Probation, Mediation and Crime Prevention department of the Ministry of Justice has taken part in training on these FDs at EU level.

The Ministry of Justice has a well-developed intranet website to which all members of the judiciary have access. It contains all the practical information concerning the transfer of probation measures, supervision measures and alternative sanctions with details for each Member State, including a link to the EJN Judicial Atlas listing the relevant foreign authority and the Member States' relevant certificates and declarations. The Ministry of Justice updates it as necessary. The Ministry of Justice is also planning to do something similar in the future for the practical application of FD 2009/829/JHA.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions by Slovakia

It would be useful to add by EJM the measure related to transit of a person to the EJM Atlas and Fiches Belges in order to enable rapid identification of the competent authority and requirements regarding the necessary documents, timeframe and accepted languages.

9.2. Recommendations

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

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

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

9.2.1. Recommendations to the Slovak Republic

Recommendation 1: (FDs 2002/548/JHA and 2008/909/JHA) It is advisable to extend the EJM contact points within the courts (regional courts) since a judge always decides on issuing an EAW, even for pre-trial proceedings, at the prosecutor's request.

Recommendation 2: (FDs 2002/548/JHA and 2008/909/JHA) The evaluation team encourages Slovakia to consider accepting certificates and related documents in English since it may be challenging for some Member States to find a translator able to translate the documents into Slovak.

Recommendation 3: (FD 2008/909/JHA) It is advisable to designate specialised judges within the regional courts for issuing decisions in the cases of mutual recognition and execution of custodial sentences (as for the EAW).

Recommendation 4: (FDs, 2008/909/JHA, 2008/947/JHA and 2009/829/JHA) It is recommended to provide training for practitioners on the FDs, especially FDs 2008/947/JHA, 2008/909/JHA and 2009/829/JHA (based on the Judicial Academy's information, it has not provided training in this area since 2018).

Recommendation 5: (2009/829/JHA) The evaluation team encourages the Slovak judicial authorities to try using this instrument in practice if any applicable cases arise in the future.

Recommendation 6: The evaluation team encourages Slovakia to set up a specialised area on the intranet dedicated to FD 2009/829/JHA with all relevant documents and case law.

9.2.2. Recommendations to the Bar Association

Recommendation 1:

To establish several lists of ex officio lawyers by specific areas of law to provide an effective defence.

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

Recommendation 1: To fill the EAW form in correctly and enter all the relevant facts, especially in cases of trials in absentia.

Recommendation 2: When issuing an EAW, MSs should carefully consider the principle of proportionality and always try to use the other legal instruments before issuing the EAW.

Recommendation 3: If the Member State issues another EAW based on the same crime against the same person for any reason, it should immediately withdraw the previous one.

Recommendation 4: The Member State shall provide precise/exhaustive information on the date when the person was deprived of liberty to be fully and correctly deducted from the sentence to be served.

9.2.4. Recommendations to Eurojust/Europol/Commission

Recommendation to the EJM: Ensure the translation of the content on the EJM website into Slovak is improved thereby making the EJM website accessible to practitioners who do not speak English so that they can make full use of the information published there.

Recommendation to the Commission: The evaluation team encourages the Commission to elaborate handbooks on FDs 2008/947/JHA and 2009/829/JHA with practical examples to facilitate its use among practitioners.

9.3. Best practices

1. Prison and Court Guard Service provide sentenced persons with information about their rights in writing, signed by convicted person confirming that he or she has been provided with that information.
2. Act No 154/2011 on the EAW does not set a strict and binding period for temporary surrender, which allows the Slovak judicial authority to react flexibly to the request of the requesting State.
3. Very useful and well-developed national judicial network for disseminating information about international cooperation in criminal matters.
4. The nationality of the person to be surrendered is not a decisive criterion for the surrender and the Slovak judicial authorities also surrender Slovak nationals to other Member States.
5. A specialised department for International Affairs was established within the Prosecutor-General's Office to deal with EAW cases and also issued the internal instruction on how to handle EAW cases in practice.
6. Before issuing the EAW, a double-check of the proportionality principle is performed, i.e. by prosecutors as well as within the court by the senior judicial official and the judge.

ANNEX A: THE IMPACT OF COVID-19 ON JUDICIAL COOPERATION IN CRIMINAL MATTERS

SLOVAK REPUBLIC	
<p>EAW</p> <p><i>-issuing of EAWs (suspension; impact on EAWs already issued; priority given to issuing new EAWs + criteria)</i></p> <p><i>- execution and postponement of the actual surrender (legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding)</i></p> <p><i>-expected resuming of surrenders</i></p>	<p>Impact on the issuing of EAWs</p> <p>The SK authorities are not prioritising the issuing of EAWs. Such a measure would not be in accordance with the relevant provisions of the Slovak legislation.</p> <p>Impact on the execution of EAWs and postponement of the actual surrender</p> <p>Surrenders are still possible with the neighbouring countries. According to the decision of the Supreme Court of the Slovak Republic, a colour scan of the original EAW is sufficient for the SK authorities, an additional hard copy is not required. This makes the procedure faster.</p> <p>Impact on surrender, extradition, transfer by land</p> <p>In the majority of cases, surrenders are performed with neighbouring countries, while the protection rules were set up.</p> <p>Impact on surrender, extradition, transfer by air</p> <p>Yes, we have stopped all surrenders performed with non-neighbouring countries. All our airports were closed for commercial flights. We regularly ask for an extension to the deadline for surrenders from abroad and in cases when a country insists on performing the surrender, we had to manage it via our state air carrier as an exception from the rule.</p> <p>On the other hand, our judicial authorities are in favour of extending these deadlines as EAW executing authority in all cases. The Ministry of Justice has issued an order explaining the best practice due to the impact of COVID-19.</p> <p>Legal basis for postponing the actual surrender</p> <p>The courts in Slovakia use Article 23 of FD 2002/584/JHA (both relevant paragraphs) as the legal basis for the temporary suspension of surrenders.</p>

<p><i>-transit</i></p>	<p>Adequacy of these provisions</p> <p>The SK authorities consider these provisions sufficient to deal with the current situation.</p> <p>Releases of requested persons following the postponement of the surrender</p> <p>Currently we are not aware of any cases in which the non-compliance with relevant deadlines has led to the release of persons in custody.</p> <p>Transit</p> <p>Transit is still possible, usually it is allowed, while individual cases are considered by the Ministry of Justice. The protection rules are requested.</p>
<p>Precautionary measures for surrender, extradition and transfer</p> <ul style="list-style-type: none"> - COVID-19 test - health certificate - quarantine - face masks 	<p>Precautionary measures</p> <p>A negative COVID-19 test not older than 3 days is needed but if the executing Member State does not provide it, the person is tested in Slovakia. We would appreciate reciprocity.</p> <p>There is still an obligation to wear a mask on public transport. Overnight stays are assessed on a case by case basis as different rules apply to citizens of different countries and the conditions are still under review.</p> <p>Please also note following:</p> <ul style="list-style-type: none"> - Extraditions are considered on a case by case basis and where conditions allow, the extradition is executed. - Transfers of convicted persons are considered on a case by case basis and where conditions allow the transfer is executed. <p>Specific measures for the person to be transferred</p> <p>A person who is surrendered from abroad for the purpose of executing a custodial sentence is placed in a 14-day quarantine within the prison facilities and undergoes a medical examination.</p> <p>Slovakia asks for the escorted person to be tested for COVID-19. If the country that has surrendered the person to Slovakia is not able to provide the testing, the person is tested in Slovakia. A general medical certificate</p>

	<p>giving the health status of the escorted person is requested.</p> <p>Specific measures for escorting police officers</p> <p>We require the escorting teams/officers carrying out the surrender from both countries to be protected during the escort (mask, gloves) and to respect general personal protection rules during the surrender. All the police officers who are abroad for the purpose of transport and surrender wear protective equipment. Subsequently, these police officers undergo a 14-day quarantine. However, it has to be pointed out that these measures are not long-term solutions as the number of police officers available to arrange transport is more and more limited due to the quarantine requirement. These precautions have been taken in relation to all Member States and in relation to cases where Slovakia is the issuing State.</p> <p>Need (or not) for further guidance on precautionary measures</p> <p>Not considered necessary at this stage.</p>
<p>Extradition</p> <p><i>-suspension</i></p> <p><i>-legal basis</i></p> <p><i>-third countries involved</i></p> <p><i>-expected duration of suspension</i></p>	<p>Impact on extradition procedures</p> <p>We are temporarily suspending decisions on granting extradition to third countries under Slovak legislation, which does not set specific time limits for these decision. This measure is applied in relation to all third countries generally due to the restrictions on cross-border traffic and health protection measures. The Slovak authorities did not encounter any suspension of extradition from third countries to Slovakia.</p> <p>Need (or not) for further exchange of information</p> <p>We would welcome information from other Member States</p>
<p>Transfer of sentenced persons</p> <p><i>-prioritisation in issuing/execution</i></p>	<p>Impact on the transfer of sentenced persons</p> <p>We are not currently applying prioritisation to other instruments of judicial cooperation.</p> <p>As regards the transfer of prisoners (FD 2008/909/JHA), all transfers were temporary suspended.</p>
<p>SIRENE Bureaus</p> <p><i>-working of SIS bureau</i></p> <p><i>-exchange of</i></p>	<p>Impact on the working of the SIRENE Bureau</p> <p>The SIRENE Bureau Slovakia is already working at full capacity.</p>

<i>information with other SIS Bureaus</i>	<p>Impact on the exchange of information with other SIRENE Bureaus</p> <p>We did not experience significant difficulties in the information exchange as regards the time limits or any other problems.</p>
<p>EIO and MLA</p> <p><i>-prioritisation in issuing/execution -electronic transmission -whom to contact</i></p>	<p>Impact on the issuing of EIOs and MLA requests</p> <p>We are not currently applying prioritisation to instruments of judicial cooperation.</p> <p>Impact on the execution of EIOs and MLA requests</p> <p>EIO and other requests delivered to the Slovak Republic are not only executed in emergency cases but almost as usual, bearing in mind the current situation regarding the COVID-19 pandemic and special measures applied, however delays may occur due to the Slovak state of emergency related to COVID-19 which is causing delays, as it is across the world. Some measures, in particular interrogations carried out in the presence of representatives of foreign authorities, have to be postponed.</p> <p>We do still execute all the MLA requests, urgent matters are executed with priority and of course all the procedures are executed under very strict hygiene rules (at least 2 m between persons, protective equipment, use of disinfectants, etc.) We use videoconferences for interrogations where possible.</p> <p>(Electronic) transmission and contact details</p> <p>EIOs should be sent to the ordinary addresses as indicated in the EJNI Atlas. Requests delivered to the Central Authority (to the address as indicated in the EJNI Atlas) will be forwarded in accordance with the applicable legislation to the appropriate judicial authority (district or regional prosecutors' offices) for execution, however, this may cause delays and for this reason it is strongly recommended to send all requests to the appropriate authorities as indicated in the EJNI Atlas.</p> <p>Under the applicable Slovak legislation, the EIO and other requests should be delivered to Slovak Republic by ordinary mail and <u>in emergency cases by email</u> indicating that original request has been or will</p>

	be sent by ordinary mail.
Freezing and confiscation orders <i>-prioritisation in issuing/execution</i>	Impact on freezing and confiscation orders We are not currently applying prioritisation to instruments of judicial cooperation.
JITs <i>-prioritisation and alternative telecommunication solutions</i>	Impact on JITs We are not currently applying prioritisation to instruments of judicial cooperation.
Recommended channels for transmission of <i>-urgent requests -information exchange</i>	We suggest using the EJN (national correspondents) for the exchange of information, particularly if general and/or legal issues arise. For operational issues we consider the SIS SIRENE to be the best channel.
Any other relevant information	N/A

**Programme of the VTC preparatory meeting with representatives
of the Slovak Republic**

Thursday, 25 March 2021

[Venue: VTC meeting]

[Participants: representatives of the Banská Bystrica District Court, the Prosecutor-General's Office, the Žilina Regional Prosecutor's Office, the Probation, Mediation and Crime Prevention Department of Ministry of Justice and the Ministry of Justice.]

- | | |
|---------------|---|
| 09:00 - 09:15 | Opening speeches, introduction of the host team and the evaluation team; |
| 09:15 - 11:30 | Presentation by the Prosecutor-General's Office and the Court, followed by a Q&A; discussion |
| 11:30 - 12:00 | Break |
| 12:00 - 14:30 | Presentation by the Probation, Mediation and Crime Prevention Department of the Ministry of Justice followed by a Q&A; discussion |

**Programme of the on-site evaluation visit with representatives of the Slovak Republic,
Bratislava**

Monday, 22 November 2021

Arrival of the evaluation team in the Slovak Republic

18:00 - Internal meeting of the evaluation team

Tuesday, 23 November 2021

[Venue: Ministry of Justice, Račianska 71, Bratislava]

[Participants: representatives of the regional courts, the district courts and the Ministry of Justice]

- 09:00 – 09:15 Welcome speeches, introduction of the host team and the evaluation team
- 09:15 - 12:00 Presentations by the regional courts on FD 2002/584/JHA, followed by a Q&A; discussion
- 12:00 – 13:15 Lunch break
- 13:15 – 16:00 Presentations by the regional courts on FD 2008/909/JHA, followed by a Q&A; discussion
- 17:00 – 18:30 Internal meeting of the evaluation team
- 19:00 Official dinner

Wednesday, 24 November 2021

[Venue: Ministry of Justice, Račianska 71, Bratislava]

[Participants: representatives of the Prosecutor-General's Office, the Regional Prosecutor's Office, the Judicial Academy, the Bar Association and the Ministry of Justice]

- 09:00 – 10:50 Presentations by the prosecutors' offices on FD 2002/584/JHA, followed by a Q&A; discussion
- 10:50 – 11:00 Coffee break
- 11:00 – 13:00 Presentations by the prosecutors' offices on FD 2008/909/JHA, followed by a Q&A; discussion
- 13:00 – 14:00 Lunch break

- 14:00 – 15:00 Presentation by the Judicial Academy on training and the Ministry of Justice on its role, followed by a Q&A; discussion
- 15:00 – 16:00 Presentation of the Slovak Bar Association, followed by Q&A; discussion
- 18:00 - 19:30 Internal meeting of the evaluation team

Thursday, 25 November 2021

[Venue: Ministry of Justice, Račianska 71, Bratislava]

[Participants: representatives of the SIRENE Bureau, the Prison and Court Guard Service, the Prosecutor-General's Office, the district courts and the Ministry of Justice]

- 09:00 – 10:15 Presentations by the SIRENE National Bureau, followed by followed by a Q&A; discussion
- 10:15 – 10:25 Coffee break
- 10:30 – 12:00 Presentation by the Prison and Court Guard Service, followed by a Q&A; discussion
- 12:00 – 13:00 Lunch break
- 13:00 – 14:30 Presentation of the conclusions and recommendations of the evaluation team
- 15:30 - 17:00 Internal meeting of the evaluation team

ANNEX C: PERSONS INTERVIEWED/MET

On Thursday, 25 March 2021, from 9:00 to 14:00, VTC preparatory meeting with representatives of the Banská Bystrica District Court, the Prosecutor-General's Office, the Žilina Regional Prosecutor's Office, Probation, Mediation and Crime Prevention Department of the Ministry of Justice.

Venue: via the VTC platform

Person interviewed/met	Organisation represented
Rastislav Mihalovič	Ministry of Justice, Judicial Cooperation in Criminal Matters Division, senior state adviser
Alexander Kunošik	Ministry of Justice, Judicial Cooperation in Criminal Matters Division, director
Zuzana Gálusová	Ministry of Justice, Judicial Cooperation in Criminal Matters Division, senior state adviser
Nina Chlapečková	Ministry of Justice, Judicial Cooperation in Criminal Matters Division, senior state adviser
Anna Ondrejová	Prosecutor-General's Office, International Department, prosecutor
Stanislav Jakubčík	Žilina Regional Prosecutor's Office, prosecutor
Martin Mihók	Banská Bystrica District Court, higher court officer
Samuel Burský	Ministry of Justice, Probation, Mediation and Crime Prevention Department, director

**Programme of the on-site evaluation visit with representatives of the Republic
Slovakia, Bratislava**

On Tuesday 23rd November 2021, from 9:00 to 12:00, meeting with representatives of the regional courts, the Banská Bystrica district court, the Ministry of Justice.

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Martin Mihók	Banská Bystrica District Court
Roman Reištetter	Banská Bystrica District Court
Jitka Halušková	Banská Bystrica Regional Court
Martin Ľupták	Banská Bystrica Regional Court
Barbora Kollárová	Trnava Regional Court

On Tuesday 23rd November 2021, from 13:15 to 16:00, meeting with representatives of the regional courts, the Banská Bystrica District Court, the Ministry of Justice.

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Martin Mihók	Banská Bystrica District Court
Roman Reištetter	Banská Bystrica District Court
Jitka Halušková	Banská Bystrica Regional Court
Martin Ľupták	Banská Bystrica Regional Court
Barbora Kollárová	Tnava Regional Court

On Wednesday, 24.11.2021, from 9:00 to 10:50, meeting with representatives of the Prosecutor-General's Office, the Žilina Regional Prosecutor's Office, the Ministry of Justice

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Anna Ondrejová	Prosecutor-General's Office
Viera Muriňová	Prosecutor-General's Office
Stanislav Jakubčík	Žilina Regional Prosecutor's Office

On Wednesday, 24.11.2021, from 11:00 to 12:50, meeting with representatives of the Prosecutor-General's Office, the Žilina Regional Prosecutor's Office, the Ministry of Justice

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Anna Ondrejová	Prosecutor-General's Office
Viera Muríňová	Prosecutor-General's Office
Stanislav Jakubčík	Žilina Regional Prosecutor's Office

On Wednesday, 24.11.2021, from 14:00 to 15:00, meeting with representatives of the Judicial Academy and the Ministry of Justice

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Jozef Szabó	Judicial Academy
Dagmar Hupková	Judicial Academy

On Wednesday, 24.11.2021, from 15:00 to 16:00, meeting with representatives of the Bar Association and the Ministry of Justice

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Michaela Chládeková	Slovak Bar Association
Andrej Popovec	Slovak Bar Association
Lukáš Michal'ov	Slovak Bar Association

On Thursday, 25.11.2021, from 9:00 - 10:30, meeting with the representatives of the SIRENE Bureau and the Ministry of Justice

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Veronika Turáková	SIRENE National Bureau

On Thursday, 25.11.2021, from 10:30 - 12:00, meeting with the representatives of the Prison and Court Guard Service and the Ministry of Justice

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Michal Sedliak	General Directorate of Prison and Court Guard Service
Peter Neuhybel	General Directorate of Prison and Court Guard Service

On Thursday, 25.11.2021, from 13:00 - 14:00, Wrap-up meeting

Venue: the Ministry of Justice (Račianska 71, Bratislava)

Person interviewed/met	Organisation represented
Alexander Kunošík	Ministry of Justice
Zuzana Gálusová	Ministry of Justice
Nina Chlapečková	Ministry of Justice
Rastislav Mihalovič	Ministry of Justice
Martin Mihók	Banská Bystrica District Court
Anna Ondrejová	Prosecutor-General's Office

ANNEX D: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF SLOVAKIA OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
EAW		European Arrest Warrant
FD		Framework Decision
JHA		Justice and Home Affairs
EJN		European Judicial Network
CJEU		Court of Justice of the European Union
CATS		Coordination Committee in the field of Police and Judicial Cooperation in Criminal Matters
EHCR		European Court of Human Rights
ESO		European Supervision Order
SIS		Schengen Information System
EIO		European Investigation Order
ID		Identification card
e.g.		For example