Questionnaire *Improving Mutual Recognition of European Arrest Warrants through Common Practical Guidelines (ImprovEAW)*

Introduction

This questionnaire is meant as a tool to:

- identify any practical problems issuing judicial authorities and executing judicial authorities may experience when dealing with EAW's which are related – either directly or indirectly – to the EAW-form and
- identify the roots of these problems.

The questionnaire consists of 5 parts.

Part 1 concerns preliminary matters.

Part 2 concerns the transposition of FD 2002/584/JHA.

Part 3 concerns problems regarding the individual sections of the EAW-form.

Part 4 concerns problems concerning providing information which are not directly related to the EAW-form.

Part 5 invites the partners to draw conclusions and offer opinions based on their experiences (or on those of their Member State's authorities). Furthermore, the partners are encouraged to make any comments, put forward any information, pose any questions and make any recommendation they feel are relevant to the project, but which are not directly related to Parts 2-4.

From Part 2 on, each set of questions is preceded by an explanation. The explanation describes the context and the background of the questions, with reference to the relevant legal provisions and the relevant judgments of the Court of Justice. It also mentions (possible) issues in order to give some guidance in answering the questions. In answering the questions, besides flagging your 'own' issues, please indicate whether the issues mentioned in the explanation-part exist in your Member State.

Besides answering the questions in the questionnaire, please submit documents you deem relevant in answering the questions and please refer to relevant (European or national) case-law and legal literature, where available and applicable, otherwise provide your own expert opinion.

Some of the questions are (partly) identical to questions from the *InAbsentiEAW* questionnaire (see, *e.g.*, Part 1 and some questions in Part 2).[1] In respect of those questions, you may want to duplicate your answers to that questionnaire, unless there is a change of circumstances.

Part 1: preliminary matters

1. Please indicate who completed the questionnaire in which capacity and how much years of experience you have had in dealing with EAW cases, in particular whether you have experience as issuing and/or executing judicial authority.

The questionnaire was completed by Mr. László Angyal-Szűrös. He is a judge adjudicating in criminal matters at the Central District Court of Pest, which is an issuing judicial authority. He has two years of practical experience in EAW cases.

Part 2: transposition of Framework Decision 2002/584/JHA

Explanation

Part 2 concerns the national transposition of FD 2002/584/JHA. The questions aim to establish how the Member States have transposed the relevant provisions and whether they have transposed them correctly.

[When referring to (provisions of) FD 2002/584/JHA or the EAW-form, please use the consolidated English language version, available at: https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/787.]

A. General questions

Explanation

Part 2A is dedicated to the transposition of provisions regarding the EAW-form and regarding grounds for refusal and guarantees.

Art. 8(1) of FD 2002/584/JHA concerns the content and form of the EAW. In the Annex to FD 2002/584/JHA, the EAW-form is set out. Member States must implement Art. 8(1) and the Annex.

Grounds for refusal/guarantees exhaustively listed

[1] https://www.inabsentieaw.eu/wp-content/uploads/2018/10/InAbsentiEAW_QUESTIONNAIRE.pdf.

Art. 3-5 of FD 2002/584/JHA contain grounds for refusal and guarantees. Executing judicial authorities may, *in principle*:

- refuse to execute an EAW *only* on the grounds for non-execution *exhaustively* listed by Art. 3-4a of Framework Decision 2002/584/JHA, and

- make the execution of an EAW subject *only* to one of the conditions *exhaustively* laid down in Art. 5 of FD 2002/584/JHA (see, *e.g.*, ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, C-314/18, ECLI:EU:C:2020:191, paragraphs 39-40).

The words 'in principle' obviously refer to 'exceptional circumstances' in which the principles of mutual trust and mutual recognition can be limited, such as those identified in *Aranyosi en Căldăraru* (ECJ, judgment of 5 April 2016, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198) and in *Minister for Justice and Equality (Deficiencies in the system of justice)* (ECJ, judgment of 25 July 2018, C-216/18 PPU, ECLI:EU:C:2018:586).

Transposition of grounds for refusal/guarantees

Regarding the transposition of Art. 3-5 of FD 2002/584/JHA, Member States are free whether or not to transpose:

- the grounds for mandatory refusal of Art. 3 (ECJ, judgment of 28 June 2012, *West*, C-192/12 PPU, ECLI:EU:C:2012:404, paragraph 64);

- the grounds for optional refusal of Art. 4 (ECJ, judgment of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616, paragraph 58), and

- the guarantees of Art. 5 (ECJ, judgment of 28 June 2012, *West*, C-192/12 PPU, ECLI:EU:C:2012:404, paragraph 64).

Margin of discretion

When a Member States chooses to implement the ground for optional refusal of Art. 4(6) of FD 2002/584/JHA, it must provide the executing judicial authority with 'a margin of discretion as to whether or not it is appropriate to refuse to execute the EAW' (ECJ, judgment of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 21). It could be argued that the interpretation of this particular provision applies equally to *all* grounds for optional refusal mentioned in Art. 4 (cf. opinion of A-G M. Szpunar of 16 May 2018, *AY (Arrest warrant – Witness)*, C-268/17, ECLI:EU:C:2018:317, paragraph 60, with regard to Art. 4(3)).

2. Did your Member State transpose Art. 8(1) of FD 2002/584/JHA and the Annex to FD 2002/584/JHA (containing the EAW-form) correctly? If not, please describe in which way your national legislation deviates from FD 2002/584JHA. Was there any debate about the correctness of the transposition in your national law, *e.g.* in academic literature or in court proceedings? If so, please specify.

Art. 8(1) of FD 2002/584/JHA and the Annex to FD 2002/584/JHA was transposed by the Act CXXX of 2003 on the judicial cooperation in criminal matters with the Member States of the European Union. The Act entered in force on 1st May 2004 (the day of the accession to the EU). Concerning the Article and the Annex, there is no information available on debates about correctness of the transposition.

(Act CXXX of 2003 on the judicial cooperation in criminal matters with the Member States of the European Union was later repealed. The law in effect is Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States of the European Union, which entered in force on 1st of January 2012.)

2BIS
Have infringement procedures been initiated against your Member State by the European Commission for incorrect transposition of the EAW Framework Decision? If so, on which points?

There has been no infringement procedure initiated on this ground. (methodology: https://ec.europa.eu/info/law/infringements_en)

3. Did your Member State transpose *all* the grounds for refusal (Art. 3-4a of FD 2002/584/JHA) and *all* the guarantees (Art. 5 of FD 2002/584/JHA)?

Art. 3. of FD 2002/584/JHA is fully transposed.
Art. 4. of FD 2002/584/JHA is transposed with the following remarks:

- **Art. 4. (7)b of FD 2002/584/JHA does not exist explicitly as a ground for refusal. In Hungarian national law (in the act the transposed 2002/584/JHA) this example does not exist among the listed grounds of refusal.**
- **Art. 4. (6) of FD 2002/584/JHA is a ground for refusal only if it concerns a Hungarian national who is also a resident of Hungary. It means that it is only a ground for refusal if the concerned national is also a resident.**

Art 4a of FD 2002/584/JHA was transposed as a mandatory ground for refusal.
Art. 5. (1) and Art. 5. (3) of FD 2002/584/JHA was transposed as a mandatory ground for refusal.
Art. 5. (2) of FD 2002/584/JHA was not transposed as a guarantee.

4. Were those grounds for refusal and guarantees transposed as grounds for mandatory or optional refusal/guarantees? Do the *travaux préparatoires* of the transposing legislation and/or the parliamentary debates on that legislation shed any light on the choices made and, if so, what were the reasons for those choices?

Art. 3. of FD 2002/584/JHA was transposed as a mandatory ground for refusal.
Art. 4a of FD 2002/584/JHA was transposed as a mandatory ground for refusal.
Art. 4. (1) and (3) of FD 2002/584/JHA was transposed as a mandatory ground for refusal.
Art. 4. (2), (4), (5), (6) and (7)a of FD 2002/584/JHA was transposed as an optional ground for refusal.

Art. 5(1) of FD 2002/584/JHA was transposed as the follow according to Act CLXXX of **2012 on the judicial cooperation in criminal matters with the Member States of the European Union**

Art. 5. §
(5) The court shall have the right to refuse the execution of the European Arrest Warrant if it has been issued for the implementation of a decision made without the presence of the defendant.
(6) The ground for refusal laid down in paragraph (5) shall not be applicable if, in conformity with the law of the Member State,
a) the defendant was summoned to appear at the trial directly and in due time, specifying the date and place thereof, or he officially obtained knowledge of the trial from another source, and he was informed of the fact that the trial can also be conducted without his presence, and the proceeding against him can be concluded by means of a decision,
b) being aware of the scheduled trial, the defendant
ba) mandated a legal counsel to represent him at the trial, or
bb) a legal counsel was appointed to him, and being aware of such appointment he did not object to the person of the legal counsel, and the mandated legal counsel or the appointed legal counsel acted in favour of the defendant at the trial,
c) the decision has been served, the defendant has been informed about the ordinary or extraordinary remedies available to him, but failed to submit a motion on remedy by the prescribed time limit, or stated that he does not challenge the decision adopted without his presence,
d) the decision has not been served, but it will be served without delay after the surrender, the defendant will be informed about the possible remedies, and the deadlines to request the remedies.

Art. 5(3) of FD 2002/584/JHA was transposed as a mandatory ground for refusal. However, it can be a ground for refusal if it concerns a Hungarian national who is also a resident.

There is no information available on debates concerning the travaux préparatoires of this issue.

5. Does the national law of your Member State, as interpreted by the courts of your Member State, contain a provision for applying the two-step test for assessing a real risk of a violation of Art. 4 and of Art. 47 of the Charter (see Part 4D)?

According to Art. 5(1)f) of the Act CLXXX of 2012, it is a mandatory ground for refusal, if the execution of the EAW would mean a serious violation of a fundamental right as they were enshrined in an international treaty or in a law of the EU. The way of the assessment is not mentioned in the transposing act. There has not been any case occurred during the examination where this specific ground was applied.

5BIS
How does your Member State implement the "dual level of protection" to which the requested person is entitled as required in the case law of the Court?

The court is responsible for issuing EAW's. It means also that the public prosecutor does not fulfill the autonomous requirements for being designated as an issuing judicial

authority. Therefore, public prosecutor has no right to issue an EAW. If it is required to issue an EAW during the time of investigation, it van only be issued by the investigative judge.

Hungarian courts, as executing judicial authority assessing the EAW must examine whether the issuing authority fulfils the autonomous requirements for being designated an issuing judicial authority.

6.

a) Did your Member State transpose the grounds for refusal and guarantees of Art. 3-5 of FD 2002/584/JHA correctly, taking into account the case-law of the Court of Justice? If not, please describe in which way the national legislation deviates from FD 2002/584/JHA. Was there any debate about the correctness of the transposition in your national law, *e.g.* in academic literature or in court proceedings? If so, please specify.

The transposition followed the text of FD 2002/584/JHA with the above-mentioned remarks correctly. There is no information that about the correctness of the transposition itself any debate was going on.

b) If your Member State transposed Art. 4(6) of FD 2002/584/JHA, does your national legislation:

- (i) differentiate in any way between nationals of your Member State and residents, and, if so, in what way? According to which criteria is 'residency in the executing Member State' established?

  According to the transposition of Art. 4(6) of FD 2002/584/JHA, it is a ground for refusal only if it concerns a Hungarian national who is also a resident of Hungary. Residency is established by national law indicating an official declaration on the matter by the concerned authority.

  The transformation from EAW to 909 require a new request. It requires a new request, not automatic. Issuing MS can however withdraw.

- (ii) guarantee that, when the surrender of a national or a resident for the purposes of executing a sentence is refused, the foreign sentence is actually executed in your Member State and, if so, how?

  Act CLXXX of 2012 does not contain specific guarantee for the matter.

7. Did your Member State include in the national transposing legislation grounds for refusal or guarantees not explicitly provided for in Art. 3-5 of FD 2002/584/JHA (apart from the two-step test referred to in question 5)? If so, which grounds for refusal or guarantees?

No.

B. Your Member State as issuing Member State

Explanation

Part 2B concerns the designation of issuing judicial authorities and Central Authorities by the Member States and the competence of those authorities.

Issuing judicial authority
According to Art. 6(1) of FD 2002/584/JHA, the issuing judicial authority 'shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State'. Pursuant to Art. 6(3), each Member State must 'inform the General Secretariat of the Council of the competent judicial authority under its law'.

The term 'issuing judicial authority' is an *autonomous* concept of Union law, the meaning and scope of which 'cannot be left to the assessment of each Member State'. In accordance with the principle of procedural autonomy, the only role of the Member States is to designate national authorities which meet the conditions for being issuing judicial authorities (ECJ, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861, paragraphs 31-33).

The term 'issuing judicial authority' is 'not limited to designating only the judges or courts of a Member State, but must be construed as designating, more broadly, the authorities participating in the administration of criminal justice in that Member State, as distinct from, inter alia, ministries or police services which are part of the executive' (ECJ, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraph 50). Therefore, that term is 'is capable of including authorities of a Member State which, although not necessarily judges or courts, participate in the administration of criminal justice in that Member State' (ECJ, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraph 51), such as a Public Prosecution Office which participates in the administration of criminal justice in the issuing Member State.

When deciding whether to issue an EAW, the issuing judicial authority 'must review, in particular, observance of the conditions necessary for the issuing of the European arrest warrant and examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that warrant' (ECJ, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraph 71, regarding a prosecution-EAW; ECJ, judgment of 12 December 2019, *Openbaar Ministerie (Procureur du Roi de Bruxelles)*, C-627/19 PPU, ECLI:EU:C:2019:1079, paragraph 31, in a case concerning an execution-EAW).

The issuing judicial authority must be capable of exercising its responsibilities objectively and independently. This independence 'requires that there are statutory rules and an institutional framework capable of guaranteeing that the issuing judicial authority is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive' (ECJ, judgment of 27 May 2019, *OG and*

PI (Public Prosecutor's Office in Lübeck and Zwickau), C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraphs 73-74).

Effective judicial protection

When a Member State conferred the competence to issue an EAW on an authority which participates in the administration of justice, *but is not itself a court* – such as a Public Prosecutor's Office –, that authority's decision to issue a *prosecution*-EAW and, *inter alia*, the proportionality of such a decision 'must be capable of being the subject, in the Member State, of court proceedings which meet in full the requirements inherent in effective judicial protection' (ECJ, judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and Zwickau)*, C-508/18 and C-82/19 PPU, ECLI:EU:C:2019:456, paragraph 75). This requirement is not one of the conditions for being designated as an issuing judicial authority, but concerns the procedure for issuing a prosecution-EAW (ECJ, judgment of 12 December 2019, *JR and YC (Public Prosecutor's Office in Lyon and Tours)*, C-566/19 PPU and C-626/19 PPU, ECLI:EU:C:1077, paragraph 48). Failure to meet this requirement, means that the issuing judicial authority is not competent to issue a prosecution-EAW (according to A-G M. Campos Sánchez-Bordona, opinion of 25 June 2020, *Openbaar Ministerie (Faux en écritures)*, C-510/19, ECLI:EU:C:2020:494, paragraph 59).

Member States are given a lot of leeway as regards the requirement of effective judicial protection. Even if there is no specific remedy against the decision to issue an EAW, that requirement is met if the conditions for issuing an EAW, and its proportionality, are reviewed by a court before or at the same time as the adoption of a national arrest warrant, but also afterwards (ECJ, judgment of 12 December 2019, *Openbaar Ministerie (Parquet Suède)*, C-625/19 PPU, ECLI:EU:C:2019:1078, paragraphs 52-53) and even after surrender (ECJ, order of 21 January 2020, *MN*, C-813/19, ECLI:EU:C:2020:31, paragraph 52).

The requirement of effective judicial protection does not concern *execution*-EAWs, as the judicial review which meets the requirement of effective judicial protection referred to in paragraph 75 of *OG and PI* is incorporated in the proceedings which resulted in the enforceable judgment (ECJ, judgment of 12 December 2019, *Openbaar Ministerie (Procureur du Roi en Bruxelles)*, C-627/19 PPU, ECLI:EU:C:2019:1079, paragraphs 35-36).

Central authority

According to Art. 7(1) of FD 2002/584/JHA, each MS may under certain conditions designate one or more central authorities 'to assist the competent judicial authorities'.

Central authorities are non-judicial authorities, such as a Ministry for Justice (ECJ, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861, paragraph 38).

The role of central authorities in the execution of EAWs is limited to 'practical and administrative assistance' (recital (9) of the preamble to FD 2002/584/JHA) as regards the transmission and reception of EAWs and 'all other official correspondence relating thereto'. Therefore, Member States are not allowed to 'substitute the central authority for the competent judicial authorities in relation to the decision to issue the [EAW]' (ECJ, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861, paragraph 39).

Member States must communicate information relating to the designated central authorities to the General Secretariat of the Council. Such 'indications shall be binding upon all the authorities of the issuing Member State" (Art. 7(3) of FD 2002/584/JHA).

Issues concerning designation/competence issuing judicial authority

Assessing effective judicial protection
If a prosecution-EAW was issued by a public prosecutor (who meets the requirements for being an issuing judicial authority), it is not clear whether the executing judicial authority should examine whether the decision to issue that EAW and its proportionality can be subject to court proceedings in the issuing Member State which fully meet the requirements of effective judicial protection. Neither is it clear what the effect should be of a finding that the national law of the issuing Member State does not provide for such court proceedings.

8.
a) Which authorities did your Member State designate as issuing judicial authorities? Did your Member State centralise the competence to issue EAWs?

The court is responsible for issuing EAW's. Hungary does not centralise the competence to issue EAWs. Prior to the filing of the indictment, EAW is issued by the investigating judge. After to the filling in the indictment, EAW is issued by the trial judge. After the final judgement, it is issued by the the judge responsible for penitentiary affairs. It means also that the public prosecutor does not fulfill the autonomous requirements for being designated as an issuing judicial authority. Therefore, public prosecutor has no right to issue an EAW.

b) If your Member State conferred the competence to issue EAWs on public prosecutors,

- (i) does the principle of mandatory prosecution apply, according to which a public prosecutor must prosecute each offence of which he has knowledge, and, if so, does that principle extend to the decision whether or not to issue an EAW;

- (ii) do those public prosecutors meet the autonomous requirements for being issuing judicial authorities, and, if so, describe how they meet those requirements and if not, please specify why not;

- (iii) if those public prosecutors meet the autonomous requirements for being issuing judicial authorities, can the decision to issue a prosecution-EAW taken by a public prosecutor, and, *inter alia*, the proportionality of such a decision, be the subject of court proceedings in your Member State – before or at the same time as the adoption of the national arrest warrant or afterwards – which meet in full the requirements inherent in effective judicial protection, and, if so, describe that recourse;

- (iv) is the fact that the public prosecutor meets the autonomous requirements for being designated as an issuing judicial authority and is the availability of a recourse against

the decision to issue a prosecution-EAW before a court in the issuing Member State mentioned in the EAW-form?

See question 8. a)

9.
a) Who prepares the decision to issue an EAW (*e.g.* who fills in the EAW-form), the representative of the issuing judicial authority, an employee of that authority or someone else?

The EAW-form is filled in by the judge.

b) What are the formalities for issuing an EAW? Does your Member State have a (digital) template of the EAW-form?[2] If so, please attach a hardcopy of the template to the questionnaire.

Judges use a template following the form of the Annex to FD 2002/584/JHA. The judge needs to fill it in, sign it and verify it with the seal of the court. (The template is attached.)

c) When deciding on issuing:

- a *national* arrest warrant,[3] do the judicial authorities in your Member State examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that national arrest warrant? If so,

    - (i) please describe in which way this examination takes place and which factors are taken into consideration. Please give some examples;

    - (ii) does the fact that a requested person is a Union citizen who exercised his right to free movement play any role in that examination;

    - (iii) is the possibility of issuing a European Supervision Order (ESO) pursuant to Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (*OJ*, L 294/20)[4], instead of issuing a national arrest warrant, expressly addressed in that examination, both in law[5] and in practice?

    Proportionality plays an important role in the examination prior to issuing a national arrest warrant.

[2] Compare the consolidated EAW-form in word format at: https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/5/-1/0.
[3] *I.e.* a national judicial decision ordering the arrest and/or detention of a person.
[4] According to the information provided on the website of the European Judicial Network, only Ireland has not transposed FD 2008/829/JHA yet.
[5] *I.e.*: does your national law expressly oblige the competent authority to take into account such a possibility and to expressly mention in its decision that it has done so?

National arrest warrant can be issued by the investigative authority, the public prosecutor or the judicial authority in cases where:

- **it concerns a crime punishable by imprisonment and**
- **there is a well-founded suspicion against the person concerned by the warrant.**

In these cases, however, the issuing authority also needs to determine one of the legal aims enlisted exhaustively in the Criminal Procedural Code. Those aims are:

- **the whereabouts of the person is unknown, or**
  - **and the issuing authority tried to search for any other legal possible way (for instance: checking of the previously known residence, etc.)**
- **the whereabouts of the person is known, however the assurance of his/her presence in the proceedings requires such measure (for instance: the person does not attend at the hearing), or**
- **the issue of an EAW is necessary**

The fact that a requested person is a Union citizen who exercised his right to free movement does not play any role in that examination.

The proportionality assessment distinguishes between national arrest and the more severe According to the proportionality principle, the assessment for an EAW the threshold is higher.

The rules of the European Supervision Order as they are mentioned in the Framework Decision were transposed. However, concerning the issue of a national arrest warrant, national law does not expressly oblige the issuing judicial authority to take into account such a possibility or to expressly mention in its decision that it has done so

- an EAW, do the issuing judicial authorities in your Member State examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that EAW? If so,

  - (i) please describe in which way this examination takes place and which factors are taken into consideration. Please give some examples;

  - (ii) does the fact that a requested person is a Union citizen who exercised his right to free movement play any role in that examination;

  - (iii) is the possibility of issuing a European Investigation Order (EIO) pursuant to Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (*OJ*, L 130/1)[6], in particular the possibility of issuing an EIO for the hearing of a suspected or accused person, by temporary transfer of a person in custody in the executing Member State to the issuing Member

[6] This directive does not apply to Ireland.

State,[7] by videoconference or other audiovisual transmission,[8] or otherwise,[9] instead of issuing a prosecution-EAW, or the possibility of applying Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (*OJ*, L 327/27), instead of issuing an execution-EAW, expressly addressed in that examination, both in law[10] and in practice?

The EAW can be issued by the judicial authority only, if:

- **a national arrest warrant had been issued before (by the judicial authority or the public prosecutor) and**
- **the maximum punishment of the crime concerned is at least one year of a custodial sentence or detention, or**
  - **After to the filling in the indictment, EAW can be issued in this case only, if the prosecutor has made a motion for serving a sentence or a custodial educational measure.**
- **the sentence concerned is at least four months.**

The national law, however, emphasises that issuing an EAW in a case that fulfil the abovementioned requirements are solely optional. The judicial authority ought to consider whether the gravity of the crime itself support such measure. If the person concerned for instance is in custody or serving a sentence in another Member State, the judicial authority ought to examine the possibilities to ensure this person's presence through any other possible way. For this reason, where it is applicable, EIO is not only a legal possibility but a well-used practice as well. Judicial authorities on the ground of proportionality ought to apply the rules of the Framework Decision 2008/909/JHA as well.

It also means, that if it concerns a prosecution-EAW, the presiding judge has the right to decide, whether she/he issues it, or finds/requires other measures. (If it is an execution-EAW, there is not possibility to refrain.)

For issuing an EIO, trial readiness is not a specific criterion. EIO is often used before the indictment as well to get information, declaration from the suspected person.

[7] See Art. 22(1) of Directive 2014/41/EU and recital (25) of the preamble to that directive. In this regard, it is of note that the execution of such an EIO may be refused when the person concerned does not consent (Art. 22(2)(a) of Directive 2014/41/EU).
[8] See Art. 24(1) of Directive 2014/41/EU and recitals (25) and (26) of the preamble to that directive. In this regard, it is of note that the execution of such an EIO may be refused when the person concerned does not consent (Art. 24(2)(a) of Directive 2014/41/EU).
[9] An EIO can also be issued for hearing an accused or suspected person on the territory of the executing Member State other than by videoconference or other audiovisual transmission (see Art. 10(2)(c) of Directive 2014/41/EU).
[10] *I.e.*: does your national law expressly oblige the issuing judicial authority to take into account such a possibility and to expressly mention in its decision that it has done so?

SIS alert can also be an alternative; however, it depends on the case and the reason of the issue of the EAW.

The fact that a requested person is a Union citizen who exercised his right to free movement does not play any role in that examination. It means that during the assessment of proportionality, EU citizenship does not play a role, general rules apply.

d) Did your Member State designate a central authority responsible for transmission of the EAW and all other official correspondence thereto? If so, which authority? Is that authority competent to answer requests for supplementary information (Art. 15(2) of FD 2002/584/JHA) or to forward additional information (Art. 15(3) of FD 2002/584/JHA) without supervision by the issuing judicial authority?

EAW is sent to the Ministry of Justice and the International Law Enforcement Cooperation Centre by the court. Those authorities are competent to answer to request for supplementary information. However, they only have the EAW sent prior by the court, not the case file itself. Therefore, any information requested falling under the competence of the court must be practically discussed with the court before. The court is also competent to answer to request for supplementary information.
(Example: a statement concerns a guarantee requested is made by the Ministry of Justice; clarifying the statement of facts, the crime, the details laid down in the EAW falls under the competence of the court.)

C. Your Member State as executing Member State

Explanation

Part 2C concerns the designation of executing judicial authorities by the Member States and the competence of those authorities.

According to Art. 6(2) of FD 2002/584/JHA, the executing judicial authority 'shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State'. Pursuant to Art. 6(3), each Member State must 'inform the General Secretariat of the Council of the competent judicial authority under its law'.

The term 'executing judicial authority' is an *autonomous* concept of Union law, the meaning and scope of which 'cannot be left to the assessment of each Member State' (compare part 2B; the Court of Justice has not addressed this issue yet).

10.
a) Which authorities did your Member State designate as executing judicial authorities? Did your Member State centralise the competence to execute EAWs?

The executing judicial authority in any case is the Budapest-Capital Regional Court.

b) As regards the competent executing judicial authority, does your national legislation differentiate between:

- cases in which the requested person consents to his surrender and cases in which he does not;
-

No. Budapest-Capital Regional Court is the executing judicial authority in any case.

- the decision on the execution of an EAW, the decision on consent as referred to in Art. 27(3)(g) and (4) and in Art. 28(2)-(3) of FD 2002/584/JHA and decisions regarding the (postponed or conditional) surrender of the requested person (Art. 23(3)-(4) and Art. 24 of FD 2002/584/JHA)?

No. Budapest-Capital Regional Court is the executing judicial authority in any case.

c) When deciding on the execution of an EAW, can the executing judicial authorities in your Member State examine whether, in the light of the particular circumstances of each case, it is proportionate to execute that EAW? If so:

- (i) please describe in which way this examination takes place and which factors are taken into consideration. Please give some examples;

- (ii) does the fact that a requested person is a Union citizen who exercised his right to free movement play any role in that examination;

- (iii) is the possibility of issuing a EIO pursuant to Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (*OJ*, L 130/1)[11], in particular the possibility of issuing an EIO for the hearing of a suspected or accused person, by temporary transfer of a person in custody in the executing Member State to the issuing Member State,[12] by videoconference or other audiovisual transmission,[13] or otherwise,[14] or the possibility of applying Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European

[11] This directive does not apply to Ireland.
[12] See Art. 22(1) of Directive 2014/41/EU and recital (25) of the preamble to that directive. In this regard, it is of note that the execution of such an EIO may be refused when the person concerned does not consent (Art. 22(2)(a) of Directive 2014/41/EU).
[13] See Art. 24(1) of Directive 2014/41/EU and recitals (25) and (26) of the preamble to that directive. In this regard, it is of note that the execution of such an EIO may be refused when the person concerned does not consent (Art. 24(2)(a) of Directive 2014/41/EU).
[14] An EIO can also be issued for hearing an accused or suspected person on the territory of the *executing* Member State other than by videoconference or other audiovisual transmission (see Art. 10(2)(c) of Directive 2014/41/EU).

Union (*OJ*, L 327/27), instead of issuing an EAW, expressly addressed in that examination, both in law[15] and in practice?

The EAW can be executed if it concerns a crime whose maximum punishment is at least 1-year imprisonment or dentation according to the law of the issuing Member State or the sentence imposed is at least 4 months imprisonment or dentation. If the EAW concerns a crime whose maximum punishment is less than 3-years imprisonment or dentation according to the law of the issuing Member State, double criminality check is applicable (even in listed crimes).

Apart from those conditions, proportionality itself does not play any other role. If there is no ground for refusal or guarantee, Budapest-Capital Regional Court executes the EAW.

The court makes no counter-offer for an EIO or for other measures.

d) If your Member State designated public prosecutors as executing judicial authorities,

- (i) do those public prosecutors meet the autonomous requirements for being executing judicial authorities, and, if so, describe how they meet those requirements;

- (ii) if those public prosecutors meet the autonomous requirements for being executing judicial authorities, can a decision taken by a public prosecutor as executing judicial authority, and, *inter alia*, the proportionality of such a decision, be the subject of court proceedings, in your Member State, which meet in full the requirements inherent in effective judicial protection? If so, please describe that recourse.

e) Did your Member State designate a central authority responsible for reception of the EAW and all other official correspondence thereto? If so, which authority? Is that authority competent to request supplementary information (Art. 15(2) of FD 2002/584/JHA) without supervision by the executing judicial authority?

Ministry of Justice and the International Law Enforcement Cooperation Centre is responsible for reception, however, supplementary information can be requested by the Budapest-Capital Regional Court.

10BIS
How does your country organise a temporary surrender (as meant in art. 24 (2) of FD 2002/584/JHA), what regime, what conditions? What is the legal basis for detention?

It based on a mutual agreement between the executing and the issuing judicial authority.

The agreement is conducted by the Budapest-Capital Regional Court.

The Budapest-Capital Regional Court's agreement needs to include at least these following statements:

[15] *I.e.*: does your national law expressly oblige the issuing judicial authority to take into account such a possibility and to expressly mention in its decision that it has done so?

a) stating for what type of procedural activity it is needed to temporary surrender the defendant
b) the estimated/planned deadline for the execution of the temporary surrender and the deadline for the temporary surrender
c) an undertaking to return the temporary surrendered defendant to Hungary within the requested or permitted time limit after the specified procedural step
d) an undertaking that the temporary surrendered person will remain in restraint/detention in the Member State during his or her stay until his or her return to Hungary;
e) a declaration that the requesting Member State will bear all the costs incurred in connection with the temporary surrender and return of the person charged
f) the determination of whether the time spent by the defendant in restraint/ detention in the issuing Member State during the temporary transfer will be counted in the issuing Member State or in Hungary in the sentence imposed on the defendant

D. EAW-form

Explanation
All Member States implemented FD 2002/584/JHA and FD 2009/299/JHA. Art. 2 FD 2009/299/JHA inserts Art. 4a in FD 2002/584/JHA and amends section (d) of the EAW-form. All issuing judicial authorities are obliged to use the EAW-form as amended by FD 2009/299/JHA (Art. 8(1) FD 2002/584/JHA). [The official EAW-forms in all official languages of the Member States (with the exception of Irish) are available at: https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=5.]

11. Does the national law of your Member State, as interpreted by the courts of your Member State, oblige the issuing judicial authorities of your Member State to use the amended EAW-form? If not, please attach the document which is used for issuing an EAW.

Yes, it does. The EAW form is part of the Act CLXXX of 2012 on the judicial cooperation in criminal matters with the Member States of the European Union, the annex contains this form.

E. Language regime

Explanation
According to Art. 8(2) FD 2002/584/JHA the EAW 'must be translated into the official language or one of the official languages of the executing Member State'. However, a

Member State may 'state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities'.

The Netherlands have made the following declaration: 'In addition to [EAW's] drawn up in Dutch or English, [EAW's] in another official language of the European Union are accepted provided that an English translation is submitted at the same time'.

Issues concerning the language regime

Using the official form
The issuing judicial authorities do not always use the official English EAW-form as a basis for the English translation of the original EAW, but rather provide for an *integral* English translation of the original EAW. In such cases the text of the English translation sometimes deviates from the official English EAW-form;

[The official EAW-forms in all official languages of the Member States (with the exception of Irish) are available at: https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=5.]

Quality of translations
The quality of some English translations is (very) poor.

12. Has your Member State made a declaration as provided for in Art. 8(2) FD 2002/584/JHA? If so,

- what does this declaration entail?

- where was it published? Please provide a copy in English.

Yes, it has.
The official text states that 'The Republic of Hungary accepts the European arrest warrant in Hungarian or a translation of it into Hungarian. 8929/04 ary/PT/kr 3 DG H III EN In relation to Member States which do not exclusively accept the European arrest warrant in their own official language or in one of their official languages or accompanied by a translation in one of those languages, the Republic of Hungary accepts the European arrest warrant in English, French and German or accompanied by a translation in one of those languages.'

It is been published on EC official site: https://data.consilium.europa.eu/doc/document/ST-8929-2004-INIT/en/pdf. This text is also stated in the transposing act.

13.
a) Have the issuing judicial authorities of your Member State had any difficulties in complying with the language requirements of the executing Member State? If so, please describe those difficulties and how they were resolved.

This issue has not occurred in the examined cases.

b) If the translation of the EAW deviates from the official EAW-form in the language of the executing Member State – or from the official EAW-form in the designated language –, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

Using a different language is not a reason for refusal. In such a case, the court may either request the Hungarian version or make the document translated.

Part 3: problems regarding the individual sections of the EAW-form

Explanation

Art. 8(1) of FD 2002/584/JHA lists the information which an EAW must contain. The purpose of that information is 'to provide the minimum official information required to enable the executing judicial authorities to give effect to the European arrest warrant swiftly by adopting their decision on the surrender as a matter of urgency'(ECJ, judgment of 23 January 2018, *Piotrowski*, C-367/17, ECLI:EU:C:2018:27, paragraph 59).

Each section of the EAW-form covers one or more of the requirements set out in Art. 8(1).

The issuing judicial authorities 'are required to complete [the EAW-form contained in the Annex to FD 2002/584/JHA], furnishing the specific information requested' (ECJ, judgment of 23 January 2018, *Piotrowski*, C-367/17, ECLI:EU:C:2018:27, paragraph 57).

Art. 8(1) lays down requirements as to lawfulness 'which must be obeyed if the [EAW] is to be valid' (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 64; ECJ, judgment of 6 December 2018, *Piotrowski*, C-551/18 PPU, ECLI:EU:C:2018:991, paragraph 43).

Although the grounds for refusal and guarantees are *exhaustively* listed in Art. 3-5 of FD 2002/584/JHA, a failure to comply with one of those requirements 'must, in principle, result in the executing judicial authority refusing to give effect to that [EAW]' (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 64). This is so, because Art. 3-5 are based on the premiss that 'that the [EAW] concerned will satisfy the requirements as to the lawfulness of that warrant laid down in Article 8(1) of the Framework Decision' (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 63).

However, before refusing to give effect to the EAW, the executing judicial authority must first apply Art. 15(2) of FD 2002/584/JHA and 'request the judicial authority of the issuing Member State to furnish all necessary supplementary information as a matter of urgency' (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 65).

A. Information regarding the identity of the requested person

Explanation

Section (a) of the EAW-form is dedicated to information regarding the identity of the requested person. This sections covers the requirements of Art. 8(1)(a) of FD 2002/584/JHA ("the identity and the nationality of the requested person").

This information enables the executing judicial authority to establish whether the person who is brought before it is actually the person who is sought by the issuing judicial authority.

Information regarding the nationality of the requested person is relevant for applying the ground for refusal of Art. 4(6) of FD 2002/584/JHA and for requesting the guarantee of Art. 5(3) of FD 2002/584/JHA.

Issues regarding section (a)

Relationship between SIS-II-Sirene and the EAW
Issuing judicial authorities do not always enter all relevant data into SIS. Often there is no photo or fingerprints. This causes problems in identifying people with common names without proper documentation (*e.g.* refugees/immigrants) and can lead to repeated arrests of people with the same common name. Other Member States do not always respond to requests for complete information in SIRENE.

14. Have the issuing judicial authorities of your Member State experienced any difficulties with regard to section (a)? If so, please describe those difficulties and how they were resolved.

This specific issue as a problem has not occurred in the examined cases. However, it is worth to mention, that the judicial authority entering data into SIS does not have all the time the person's photo or fingerprints. The existence of these data depends on the record and the previous part of the proceeding. (For example: non-Hungarian citizens who have never entered into the record before may not have photo in the system.)

I would like to also mention that in Hungarian law and practice to identify people, authorities also use the "mother's name" detail.

15. Have the executing judicial authorities of your Member State experienced any difficulties with regard to section (a)? If so, please describe those difficulties and how they were resolved.

This specific issue as a problem has not occurred in the examined cases.

B. Decision on which the EAW is based

Explanation

Section (b) of the EAW-form covers the requirements of Art. 8(1)(c) of FD 2002/584/JHA ('evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2').

Mentioning the existence of an arrest warrant or a judgment signifies that the requested person already had the benefit of judicial protection of procedural safeguards and fundamental rights at the level of the adoption of the *national* judicial decision (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraphs 55-56).

The term 'arrest warrant', as used in Art. 8(1)(c), refers 'to a national arrest warrant that is distinct from the [EAW]' (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 58).

The adoption of the EAW 'may occur, depending on the circumstances, shortly after the adoption of the national judicial decision' (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 56). Presumably, this means that it is not contrary to FD 2002/584/JHA if the authority competent to issue the EAW is the authority which also rendered the national judicial decision.

The national decision referred to in Art. 8(1)(c) and section (b) must be a 'judicial decision'. That term 'covers decisions of the Member State authorities that administer criminal justice, but not the police services' (ECJ, judgment of 10 November 2016, *Özçelik*, C-453/16 PPU, ECLI:EU:C:2016:860, paragraph 33). Because the Public Prosecutor's Office 'constitutes a Member State authority responsible for administering criminal justice' (ECJ, judgment of 29 June 2016, *Kossowski*, C-486/14, EU:C:2016:483, paragraph 39), a decision rendered by that authority 'must be regarded as a judicial decision, within the meaning of Article 8(1)(c) of the Framework Decision' (ECJ, judgment of 10 November 2016, *Özçelik*, C-453/16 PPU, ECLI:EU:C:2016:860, paragraph 34).

The enforceability of a national judicial decision is 'decisive in determining the time from which [an EAW] warrant may be issued' (ECJ, judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, ECLI:EU:C:2017:628, paragraph 71).

The information provided in section (b), in combination with the information in section (c), enables the executing judicial authority to determine whether the EAW is issued for the purposes of conducting a criminal prosecution (section (b)(i) in combination with section (c)(i)) or for the purposes of executing a custodial sentence or detention order (section (b)(ii) in combination section (c)(ii)).

If a judgment is not yet enforceable, 'the surrender would serve the specific purpose of enabling a criminal prosecution to be conducted' (ECJ, judgment of 21 October 2010, *B.*, C-306/09, ECLI:EU:C:2010:626, paragraph 56, regarding an *in absentia* judgment).

If a judgment was rendered *in absentia* and the requested person can still apply for a retrial, his position is 'comparable to that of a person who is the subject of [an EAW] for the purposes of prosecution' (ECJ, judgment of 21 October 2010, *B.*, C-306/09, ECLI:EU:C:2010:626, paragraph 57).

According to Advocate-General J. Kokott:

- FD 2002/584/JHA is applicable 'in a situation where the requested person was convicted and sentenced in [a third State, *i.e.* not a Member State of the EU], but by virtue of an international agreement with [that third State] the judgment is recognised in the issuing Member State and executed according to the laws of the issuing State'; but

- the executing judicial authority must end the EAW-proceedings 'if it has substantial grounds to assume that execution of the [foreign] custodial sentence, which the [issuing Member State] has recognised, would lead to a serious breach of fundamental rights' (opinion of 17 September 2020, *Minister for Justice and Equality v JR (Conviction by an EEA third State)*, C-488/19, ECLI:EU:C:2020:738, paragraphs 62-63).

Issues regarding section (b)

Date of issue and issuing authority
The date of issue of the national judicial decision and/or the authority which issued that decision are not always mentioned in section (b).

Distinguishing between prosecution and serving a sentence
An EAW can be issued for the purposes of conducting a criminal prosecution or executing a custodial sentence or for both of those purposes.
If an EAW is issued which does not belong to the latter category (EAWs issued both for conducting an prosecution and for serving a sentence), issuing judicial authorities sometimes complete *both* subsections of section (b) instead of completing only the applicable subsection.
If an EAW is issued for both purposes, issuing judicial authorities do not always clearly distinguish between information pertaining to the prosecution and information pertaining to the sentence, in particular with regard to the offences mentioned in section (e) of the EAW.

Decision to execute a suspended sentence
When the requested person was originally given a suspended sentence and the execution of that sentence was ordered by a subsequent decision, some executing judicial authorities request information about the reasons for deciding to execute the suspended sentence.

16. Have the issuing judicial authorities of your Member State experienced any difficulties with regard to section (b)? If so, please describe those difficulties and how they were resolved.

This specific issue as a problem has not occurred in the examined cases. To this question I would like to repeat that different part of the judiciary using the two above-mentioned categories of the EAW. Prior to the filing of the indictment EAW is issued by the investigating judge. After to the filling in the indictment EAW is issued by the trial judge. After the final judgement it is issued by the judge responsible for penitentiary affairs. These practical distinctions may make it possible to use the differentiation without any problem.

I have noticed only one case during the examination where the executing judicial authority requested additional information about the execution of the suspended sentence. The court provided the sentence ordering the execution of the previous suspended sentence.

17. Have the executing judicial authorities of your Member State experienced any difficulties with regard to section (b)? If so, please describe those difficulties and how they were resolved.

In the examined cases, this issue has not come forward as a problem.

17BIS
What is the position of your country on the conformity of the EAW and the national arrest warrant: should there be full conformity between the two documents or can they diverge from each other (can you add in the EAW offences that are not included in the national arrest warrant?) ? Do you as executing authority check on the national arrest warrant or do you ask for a (translated?) copy of the national arrest warrant (in case of doubt of conformity?). (possible issues: Bob-Dogi ruling, rule of speciality, deprivation of liberty, …)

There should be full conformity between the two documents. Issuing a national arrest warent is a condition of the EAW.
During execution of the EAW, in a case of doubt of conformity, the court ask for a translated copy of the national arrest warrant.

C. Indications on the length of the sentence

Explanation

Section (c) of the EAW-form refers to the 'sentence which, depending on the case, is liable to be imposed or has actually been imposed in the conviction decision' (ECJ, judgment of 3 March 2020, *X (European arrest warrant – Double criminality)*, C-717/18, ECLI:EU:C:2020:142, paragraph 31). Section (c) covers the requirements of Art. 8(1)(f) of FD 2002/584/JHA ('the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State').

Regarding amendments of the national law of the issuing Member State between the commission of the offence and the date of issue, or execution, of the EAW, only the version of that law of the issuing Member State 'which is applicable to the facts in question' is determinative (ECJ, judgment of 3 March 2020, *X (European arrest warrant – Double criminality)*, C-717/18, ECLI:EU:C:2020:142, paragraph 31).

The information provided in section (c) enables the executing judicial authority to verify compliance with the penalty thresholds of Art. 2(1) and (2) of FD 2002/584/JHA (ECJ, judgment of 6 December 2018, *IK*, C-551/18 PPU, ECLI:EU:C:2018:991, paragraph 51; ECJ, judgment of 3 March 2020, *X (European arrest warrant – Double criminality)*, C-717/18, ECLI:EU:C:2020:142, paragraph 33).

If the EAW is issued for the purposes of executing a sentence, *i.e.* if there is a final judgment, section (c), read in conjunction with Art. 8(1)(f), 'requires the issuing judicial authority to provide only information on the penalty imposed' (opinion of A-G M. Bobek of 26 November 2019, *X (European arrest warrant – Double criminality)*), C-717/18, ECLI:EU:C:2019:1011,

paragraph 64). This suggests that in case of an execution-EAW concerning one or more of the offences of Art. 2(2) the standard statement contained in section (e) of the EAW-form ('If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State') suffices.

Issues concerning section (c)

Accessory surrender
FD 2002/584/JHA does not explicitly provide for *accessory surrender* (*i.e.* surrender for an offence or a sentence which does not meet the threshold of Art. 2(1) of FD 2002/584/JHA together with the surrender for one or more offences or sentences which do meet that threshold). However, some Member State allow for issuing and/or executing an EAW for accessory offences/sentences,[16] whereas others do not.

Penalty threshold and multiple offences/sentences
If a *prosecution*-EAW is issued for multiple offences, the issuing judicial authorities of some Member States mention the maximum sentence for each offence separately, whereas the issuing judicial authorities of other Member States mention only one maximum sentence for all offences together. The latter course of action may be the result of national rules concerning concurrence of offences and sentences. According to the legal systems of some Member States, in case of conviction for multiple offences the court must impose a single sentence, the maximum of which is usually 'capped': the maximum sentence is not determined by simply adding up the *maximum* sentences which apply to the offences separately. (In the Netherlands, *e.g.*, the maximum sentence is equal to the heaviest maximum sentence applicable to the offences plus one third of that maximum sentence.)
If an *execution*-EAW is issued for multiple sentences, must *each* of those sentences meet the four months requirement *separately*? Or is it allowed to surrender for the execution of those sentences if they *add up* to at least four months?

Partial refusal of execution-EAWs: 'aggregate sentences'
Situations in which a single sentence was imposed for two or more offences (a so-called 'aggregate sentence'),[17] but in which surrender for one of those offences cannot be allowed (*e.g.*, when that offence is not offence under the law of the executing Member State (Art. 2(4) jo. Art. 4(1) of FD 2002/584/JHA) or when that offence is time-barred according to the law of the executing Member State (Art. 4(4) of FD 2002/584/JHA), are problematic. Should surrender:

- be allowed for the execution of the sentence without any restriction;

[16] For the purposes of this project:
- an 'accessory offence' is an offence which does not meet the threshold of Art. 2(1) of FD 2002/584/JHA and for which surrender is sought together with one or more sentence and/or one or more offences which do meet that threshold; and
- an 'accessory sentence' is a sentence which does not meet the threshold of Art. 2(1) of FD 2002/584/JHA and for which surrender is sought together with one or more sentences and/or one or more offences which do meet that threshold.

[17] An 'aggregate sentence', therefore, is the antonym of an 'individual sentence'. An 'individual sentence' is a sentence imposed for each offence separately.

- be allowed only for those offences which do meet the necessary requirements and, if so, is it necessary to know which part of the sentence relates to those offences (*i.e.* whether that part of the sentence is for four months);
- be refused surrender altogether?

Partial refusal of execution-EAWs: 'cumulative sentences'
In some Member States, two or more individual final sentences imposed on the same person may be replaced with a cumulative sentence in separate proceedings. In cumulative sentence proceedings, the court is bound by the individual judgments. The cumulative sentence cannot exceed and is usually less than the sum total of the individual sentences.
If an offence for which an individual sentence was imposed which is later replaced by a cumulative sentence does not meet the conditions for surrender, problems similar to those concerning aggregate sentences arise.

Penalty threshold for execution-EAWs: 'gross' or 'net'?
Does the four months requirement refer to the sentence as it was imposed or to that part of the imposed sentence which still remains to be executed (*e.g.* after deduction of time already served or of periods of remand)? In other words, does the requirement refer to the 'gross' sentence or the 'net' sentence?

Remaining sentence to be served
The remaining sentence to be served is not always mentioned.

18. Does the national law of your Member State allow for issuing and/or executing an EAW with regard to accessory offences/sentences?

Yes.

1.) **Issuing an EAW based on the requirements already mentioned in question 9.c**
   - **accessory offences are allowed**

2.) **Executing an EAW concerning an accessory offence is possible**
   - **double criminality check must be fulfilled**

19. Does the national law of your Member State, as interpreted by the courts of your Member State, allow or require mentioning a single maximum sentence when a *prosecution*-EAW is issued for two or more offences?

In a case of two or more offences, the maximum sentence of each offence is marked.

20. Concerning an *execution*-EAW for separate imposed sentences, does the national law of your Member State, as interpreted by the courts of your Member State, allow or require 'adding up' those sentences in order to cross the threshold of Art. 2(1) of FD 2002/584/JHA when deciding on issuing or executing that EAW?

No. In a case of an execution-EAW, taking this example, the threshold must be examined separately.

21. Regarding the requirement of a sentence of at least four months, does the national law of your Member State, as interpreted by the courts of your Member State, refer to the duration of the sentence as it was imposed or to the duration of that part of the sentence which remains to be enforced?

The national law refers to the duration of the sentence as it was imposed when issuing/executing an EAW.

Annex (2) of the Act CLXXX of 2012, however, in part c) of the EAW form requires also to list the sentence which remains to be enforced.

22. If an 'aggregate sentence' or a 'cumulative sentence' was imposed for multiple offences and one of those offences does not meet the requirements for surrender, does the law of your Member State allow or require the executing judicial authority to surrender without any restriction, to surrender for only those offences which meet the necessary requirements and, if so, is it necessary to know which part of the sentence relates to those offences (*i.e.* whether that part of the sentence is for four months) or to refuse surrender altogether?

If there are multiple offences, and one of them meet requirements for surrender, the judicial authority shall execute the whole EAW. In these cases, there is one additional condition: the other offences must be also punishable by law as an offence in the Hungarian law.

If the other offence(s) isn't/aren't meet the above-mentioned requirement, the executing judicial authority grant surrender only those offences which meet the necessary requirements. The idea is to execute preferably the EAW in every part where it is possible.

23. Have the issuing judicial authorities of your Member State experienced any difficulties with regard to section (c)? If so, please describe those difficulties and how they were resolved.

None of the examined case indicated any difficulties.

24. Have the executing judicial authorities of your Member State experienced any difficulties with regard to section (c)? If so, please describe those difficulties and how they were resolved.

No such a case was found during the examination.

D. Appearance in person at the trial resulting in the decision

Section (d) of the EAW-form was exhaustively dealt with in the *InAbsentiEAW* project. As far as we are aware, there are no new developments which would justify further questions concerning *in absentia* convictions.

E. Offences

Explanation

Section (e) is intended 'to provide details of the offence for the purposes of applying Article 2' (opinion of A-G M. Bobek of 26 November 2019, *X (European arrest warrant – Double criminality)*, C-717/18, ECLI:EU:C:2019:1011, paragraph 59).

Section (e) covers the information referred to in Art. 8(1)(d)-(e) of FD 2002/584/JHA ('the nature and legal classification of the offence, particularly in respect of Article 2' and 'a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person').

Besides providing a basis for checking whether the conditions of Art. 2 are met, the information required by section (e) also serves the purposes of:

- informing the requested person of the offence(s) for which surrender is sought (see Art. 6 of the Charter in conjunction with Art. 5(2) of the ECHR);

- enabling the executing judicial authority to check whether there are grounds for refusal (*e.g. ne bis in idem* (Art. 3(2)), double criminality (Art. 4(1)), prescription (Art. 4(4));

- (together with the decision to execute the EAW) enabling the authorities of the issuing Member State to comply with the speciality rule (Art. 27 and 28 of FD 2002/584/JHA) and enabling the surrendered person to monitor compliance with that rule.

The structure of section (e) leaves something to be desired. Section (e) requires a description of the offences at two different places: at the top of section (e) and under point II. As point II clearly refers to non-listed offences, the implication seems to be that listed offences should be described at the top of section (e) and non-listed offences under point II.

The EAW-form seems to differentiate its requirements as to the description of the offence(s): regarding a non-listed offence a 'full' description is required (point II of section (e)).

With regard to the listed offences of Art. 2(2) of FD 2002/584/JHA, in conjunction with section (e)(I), it should be remembered that 'the actual definition of those offences and the penalties applicable are those which follow from the law of 'the issuing Member State'', as is apparent from the wording of Art. 2(2). After all, FD 2002/584/JHA 'does not seek to harmonise the criminal offences in question in respect of their constituent elements or of the penalties which they attract'. Consequently, the vagueness of some of the listed offences does not support the conclusion that Art. 2(2) infringes the principle of legality of criminal offences and penalties (ECJ, judgment of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, ECLI:EU:C:2007:261, paragraphs 51-54). Concerning the role of the executing judicial authority in checking compliance with Art. 2(2), if any, according to A-G M. Bobek the FD

‘relies on a system of self-declaration, where only a minimum and prima facie review by the executing judicial authority is provided for’ (opinion of 26 November 2019, *X (European arrest warrant – Double criminality)*, C-717/18, ECLI:EU:C:2019:1011, paragraph 70).[18]

Some grounds for refusal refer to the ‘act’ or the ‘acts’ on which the EAW is based. See, *e.g.*, Art. 3(2) (‘the same acts’), Art. 4(1) (‘the act’), Art. 4(2) (‘the same act’) and Art. 4(4) (‘the acts’). Section (e) identifies the ‘act(s)’ on which the EAW is based.

Conceivably, the way in which the executing judicial authorities assess whether:

- there was a final judgment for ‘the same acts’ (Art. 3(2));

- ‘the act’ constitutes an offence under the law of the executing Member State (Art. 4(1));

- the requested person is being prosecuted in the executed Member State for ‘the same act’ (Art. 4(2)); and

- whether the prosecution of the punishment for ‘the acts’ is statute-barred under the law of the executing Member State (Art. 4(4)),

influences the decision whether the information about ‘the act(s)’, provided in section (e), is sufficient to decide on the execution of the EAW.

The Court of Justice has held that the concept of ‘the same acts’ both in Art. 54 CISA and in Art. 3(2) of FD 2002/584/JHA refers ‘only to the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected’ (ECJ, judgment of 16 November 2010, *Mantello*, C-261/09, ECLI:EU:C:2010:683, paragraphs 39-40).

In the context of FD 2008/909/JHA the Court of Justice has held that assessing double criminality entails verifying whether ‘the factual elements underlying the offence (…), would also, per se, be subject to a criminal sanction in the territory of the executing State if they were present in that State’ (ECJ, judgment of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4, paragraph 38).

Issues concerning section (e)

Meaning of the term “offence”
Neither FD 2002/584/JHA nor the EAW-form contains a definition of the term “offence”.

Incomplete description of the offence
The description of the offence (whether listed or non-listed) does not always mention the time, place and/or the degree of participation of the requested person in the offence.

[18] A recent preliminary reference questions whether the executing judicial authority has any discretion in this regard: C-120/20 (*LU*), with regard to Art. 5(1) of FD Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (*OJ*, L 76/16).

Description of the investigation instead of description of the offence
In prosecution-cases, section (e) regularly describes the investigation of the offence, detailing *why* the requested person is suspected of having committed an offence instead of simply describing *which offence* he is suspected of having committed.

Detailing the number of offences (and numbering them separately)
In case of multiple offences, the number of offences is not always given and the offences are not always presented and numbered separately.

Divergence between number of offences described and the applicable legal classifications
In case of multiple offences, the offences described in section (e) are not always clearly linked to the applicable legal classifications. The number of offences described does not always correspond to the number of legal classifications mentioned.

Vague designations of listed offences
Some of the designated listed offences are so vague that it is hard to determine what is covered by that designation and to distinguish one listed offence from the other (*e.g.* 'fraud' and 'swindling').

Divergent designations of listed offences
The order of listed offences sometimes deviates from the official order in FD 2002/584/JHA. Designations of listed offences are sometimes used which deviate from the official designations in FD 2002/584/JHA.

Non-listed offence(s) not described under point II
Non-listed offences are not always described under point II of section (e).

Offences described both as listed and as non-listed
Offences are sometimes described both as listed and as non-listed, meaning that one of the categories of point I is ticked regarding a particular offence, while at the same time that offence is described under point II.

25. Have the issuing judicial authorities of your Member State experienced any difficulties with regard to section (e)? If so, please describe those difficulties and how they were resolved.

No. Such problem has not occurred during the examination.

26. Have the executing judicial authorities of your Member State experienced any difficulties with regard to section (e)? If so, please describe those difficulties and how they were resolved.

In the examined cases there were a couple of problems with the incomplete description of the offence, and I have also come across one or two cases where the description of the investigation was mentioned rather than the description of the crime itself. Supplementary information was required.

27. How do the executing judicial authorities of your Member State assess whether:

a) the requested person is the subject of a final judgment in respect of the same acts on which the EAW is based;

b) the acts on which the EAW is based constitute an offence under the law of the executing Member State? Does such an assessment take place:

- *ex tunc* – *i.e.* according to law at the time the acts were committed –;

- according to the law at the time of issuing the EAW; or

- *ex nunc* – *i.e.* according to law at the time of the decision on the execution of the EAW –?

The court has access to the criminal record of the person requested; thus, the court can compare the statement of facts; also could gather information from the person requested as well.

Ex tunc assessment takes place.
During the assessment, the court examines the statement of facts. The question is not whether the crime has the same or similar legal classification, but whether the facts of the crime as they are laid down in the EAW are consistent of an offence in national law.

There is no expressed reference of the assessment regarding the nulla poena principle in the national law; however, where double criminality assessed, nulla poena principle – in theory - ought to be examined within the legality principle of the offence itself. During the examination, I have not found specific guideline in decisions concerning this issue.

Have the executing judicial authorities of your Member State actually refused to execute an EAW, because the acts on which the EAW was based did not constitute an offender under the law of your Member State? If so, please give some examples;

Yes, it has. In one of the examined cases, a Member-state issued an EAW in order the execute a sentence of deprivation of liberty. The EAW contained two crimes. One of them was a listed offence, the other was a non-listed offence. The non-listed offence concerned an act of driving without licence, which was a crime in the issuing Member-state. Hungarian court declared that the EAW can only be executed partially, because driving without a licence in Hungary was not a crime, but a misdemeanour, thus double criminality principle had to be applicable.

The point of reference of the assessment correspond to the situation in *extradition* cases as well.

c) the act for which the requested person is being prosecuted in the executing Member State are the same acts on which the EAW is based;

During the assessment, the court examines the statement of facts of the incrimination.
See also (b)

d) the prosecution or punishment of the acts on which the EAW is based is statute-barred according to the law of the executing Member State? Does such an assessment take place:

- *ex tunc – i.e.* according to law at the time the acts were committed –;
- according to the law at the time of issuing the EAW; or
- *ex nunc – i.e.* according to law at the time of the decision on the execution of the EAW –?

I have not found such case.

27a. Regarding listed offences,

- (a) have the issuing judicial authorities of your Member State had any difficulties in deciding whether a certain offence constitutes a listed offence? If so, please describe those difficulties and how they were resolved;

No. Annex (1) of the Act CLXXX of 2012 is a spreadsheet that contains all the listed crime and their proper counterparts of the Hungarian Criminal Code. Thus, basically most of the crimes as they are named and described in the Hungarian Criminal Code can be matched to a listed crime.

- (b) do the executing judicial authorities of your Member State assess whether the issuing judicial authority correctly ticked the box of a listed offence? If so,
    - (i) please describe how they assess that;
    - (ii) are there instances in which the executing judicial authorities actually found that a listed offence was not applicable; if so, which listed offence(s) and did those listed offence(s) constitute an offence under the law of your Member State?

I have not seen indication of such assessment.

F. Other circumstances relevant to the case (optional information)

Explanation

Section (f) covers the information indicated in by Art. 8(1)(g) ('if possible, other consequences of the offence'). By way of example, section (f) refers to 'remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence'.

As is clear from the wording of Art. 8(1)(g) and the heading of section (f), the issuing judicial authority is *not* required to provide such information.

Extraterritoriality (Art. 4(7)(b) of FD 2002/584/JHA)

According to Advocate-General J. Kokott:

- the ‘spirit and purpose’ of Art. 4(7)(b) is ‘to enable the executing judicial authority, when executing the European arrest warrant, to take into consideration key decisions of the requested Member State on the scope of its own criminal jurisdiction’ (opinion of 17 September 2020, *Minister for Justice and Equality v JR (Conviction by an EEA third State)*, C-488/19, ECLI:EU:C:2020:738, paragraph 70);

- that ground for refusal ‘applies only if the offence was committed *entirely* outside the requesting State, whereas it is not sufficient if only part of it took place there’ (opinion of 17 September 2020, *Minister for Justice and Equality v JR (Conviction by an EEA third State)*, C-488/19, ECLI:EU:C:2020:738, paragraph 78);

- that ground for refusal ‘applies not only to the enforcement of a prison sentence (…), but also to criminal prosecution’ (opinion of 17 September 2020, *Minister for Justice and Equality v JR (Conviction by an EEA third State)*, C-488/19, ECLI:EU:C:2020:738, paragraph 79);

- ‘when determining the criminal offence committed, focus has to be on the actual act. The specific circumstances which are inextricably linked together are decisive’ (opinion of 17 September 2020, *Minister for Justice and Equality v JR (Conviction by an EEA third State)*, C-488/19, ECLI:EU:C:2020:738, paragraph 82).

Interruption of periods of time limitation

Time limitations according to the law of the *issuing* Member State do not constitute a ground for refusal (cf. Art. 4(4) of FD 2002/584/JHA). The existence of an *enforceable* national judicial decision (section (b)) implies that the prosecution or execution is not statute-barred according to the law of the *issuing* Member State. If the offence was committed or if the judgment was rendered a long time ago, to pre-empt requests for supplementary information (Art. 15(2) of FD 2002/584/JHA) it may be advisable to mention that the period of time limitation was interrupted.

Issues concerning section (f)

Extraterritoriality
Section (f) is only seldom completed. For the executing judicial authorities of Member States which transposed the optional ground for refusal concerning Art. 4(7)(b) of FD 2002/584/JHA, it would be helpful if the EAW contained a statement whether the offence(s) was/were committed wholly outside of the territory of the issuing Member State and, if so, which form of extraterritorial jurisdiction is claimed.

28. What kind of information do the issuing judicial authorities of your Member State usually provide in section (f)?

In the examined cases most of the issuing judicial authority described in section (f) the national rules of time limitations, and the specific date relevant to the crime from this regard.

29. What kind of information do the executing judicial authorities of your Member State usually encounter in section (f)? What kind of information would they like to see in section (f)?

Mostly it contains the rules of time limitations. Apart as it is indicated, no other suggestion I have come across during the examination of section f)

29a. Did the issuing and/or executing judicial authorities of your Member State encounter any problems regarding the exercise of extraterritorial jurisdiction in the sense of Art. 4(7)(b) of FD 2002/584/JHA? If so, please describe those problems and how they were resolved.

No such problem has been discovered in the examined cases. However, see also question 3. above.

However, Art. 4(7)(b) of FD 2002/584/JHA does not listed in national law as a ground for refusal.

G. The seizure and handing over of property

Explanation

Section (g) relates to Art. 29 of FD 2002/584/JHA. According to Art. 29(1), the executing judicial authority must in accordance with national law, either on its own initiative or at the request of the issuing judicial authority, seize and hand over two categories of property:

- property which may be required as evidence, and
- property which has been acquired by the requested person as a result of the offence.

Section (g) of the EAW-form affords the issuing judicial authority to indicate a request for seizure and handing over of property.

Issues concerning section (g)

Divergent language version of Art. 29(1) and section (g)
Regarding category (b) ('property which has been acquired by the requested person as a result of the offence') the Dutch language version of FD 2002/584/JHA contains a restriction which is not in the English, German and French language versions. The Dutch language version restricts category (b) to property acquired as a result of the offence *which is in the possession of the requested person* ('zich in het bezit van de gezochte persoon bevinden'). The Dutch

transposition of Art. 29 generally restricts the possibility of seizing and handing over property to property *found in the possession of the requested person* ('aangetroffen in het bezit van de opgeëiste persoon'). This term is to be understood as 'on his person or carrying with him', thereby excluding the possibility of seizing and handing over property which requires a search in a place of residence or in a place of business.

30. Does the national law of your Member State, as interpreted by the courts of your Member State, contain restrictions similar to the restriction contained in Dutch law (see the explanation) or other restrictions? If so, describe the restriction(s).

There is no such a restriction in Hungarian law as it is described in Dutch Law.

31. Have the issuing judicial authorities of your Member State experienced any difficulties when requesting the seizure and handing over of property pursuant to section (g)? If so, please describe those difficulties and how they were resolved.

No difficulties have occurred.

32. Have the executing judicial authorities of your Member State experienced any difficulties when confronted with a request for seizure and handing over of property pursuant to section (g)? If so, please describe those difficulties and how they were resolved.

No such a case I have come across during the examination.

H. Guarantees concerning life sentences

Explanation

Section (h) covers the guarantees of Art. 5(2) of FD 2002/584/JHA upon which the execution of an EAW may be made dependent, when the EAW concerns an offence which carries a life sentence in the issuing Member State (prosecution-EAW) or when the EAW concerns a life sentence which was imposed in that Member State (execution-EAW).

Issues concerning section (h)

Not clear when applicable and, if so, which guarantee

Because section (g) uses indents instead of boxes, it is not always clear if the issuing judicial authority intended to declare this section applicable and, if so, which of the guarantees. (Compare *Handbook on how to issue and execute a European arrest warrant*, C(2017) 6389 final, p. 108).

Art. 5(2) and section (h) do not fully reflect the case-law of the ECtHR
To be compatible with Article 3 of the ECHR – which corresponds to Art. 4 of the Charter –, a life sentence must be reducible *de jure* and *de facto*, meaning that there must be both a prospect of release for the prisoner and a possibility of review, both of which must exist from

the moment of imposition of the sentence (see, *e.g.*, ECtHR, judgment of 26 April 2016 [GC], *Murray v. the Netherlands*, ECLI:CE:ECHR:2016:0426JUD001051110, § 99). This line of case-law also applies to extradition (see, *e.g.*, ECtHR, judgment of 4 September 2014, *Trabelsi v. Belgium*, ECLI:CE:ECHR:2014:0904JUD000014010, § 131) and to surrender.

The imposition of a life sentence already is incompatible with Art. 3 of the ECHR where at the moment of imposition of that life sentence national law 'does not provide any mechanism or possibility for review of a whole life sentence'(ECtHR, judgment of 9 July 2013 [GC], *Vinter v. the United Kingdom*, ECLI:CE:ECHR:2013:0709JUD006606909, § 122).

The right to a review of a person sentenced to a life sentence 'entails an actual assessment of the relevant information whether his or her continued imprisonment is justified on legitimate penological grounds (…), and the review must also be surrounded by sufficient procedural guarantees (…). To the extent necessary for the prisoner to know what he or she must do to be considered for release and under what conditions, it may be required that reasons be provided (…)' (see, *e.g.*, ECtHR, judgment of 23 May 2017, *Matiošaitis v. Lithuania*, ECLI:CE:ECHR:2017:0523JUD002266213, § 174)

A person sentenced to a life sentence must have access to that review mechanism no later than 25 years after the imposition of the life sentence (see, *e.g.*, ECtHR, judgment of 26 April 2016 [GC], *Murray v. the Netherlands*, ECLI:CE:ECHR:2016:0426JUD001051110, § 99).

It is clear that the wording of Art. 5(2) of FD 2002/584/JHA and of section (h) does not fully reflect this case-law, *e.g.*, the conditions concerning the mechanism of review, which is not surprising because the adoption of the EAW predates this case-law. In the experience of Dutch issuing judicial authorities, section (h) often leads to requests for clarification by the executing judicial authority (the fact that the Dutch language version of Art. 5(2) and section (h) differs from other language versions (see below) could explain this).

Divergent language versions
In some language versions of FD 2002/584/JHA, the review of the life sentence must be possible *at least* after 20 years (ES ('al meno'); NL ('ten minste')), instead of 'at the latest after 20 years'.

33. Have the issuing judicial authorities of your Member State experienced any difficulties when applying section (h)? If so, please describe those difficulties and how they were resolved.

I have not come across a case where a life sentence was involved in an EAW. However, it can be an issue, because Hungarian law basically recognise a de facto life sentence punishment. I expect to have more problems in this regard with ECHR jurisprudence. In theory, such an EAW problem could be solved by applying the rules of guarantee if it is requested.

34. Have the executing judicial authorities of your Member State experienced any difficulties when confronted with EAW's in which section (h) was applicable? If so, please describe those difficulties and how they were resolved.

No difficulties have been detected.

I. Information about the issuing judicial authority and the Central Authority, signature

Explanation

Section (i) partly covers the information required by Art. 8(1)(b) of FD 2002/584/JHA ('the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority'). The information in this part of section (i) enables the executing judicial authority to identify the issuing judicial authority, and to contact it, if need be.

Further, section (i) requires contact information about the Central Authority of the issuing Member State, if that Member State designated such an authority, thus enabling the executing judicial authority to contact the Central Authority, if need be.

Lastly, section (i) requires information about (the 'representative' of) the issuing judicial authority, and a signature by or on behalf of (the 'representative' of) the issuing judicial authority.

Issues concerning section (i)

Distinction between the authority and its representative
Sometimes, under 'official name' the name and surname of the issuing judge or public prosecutor are given, whereas the term 'official name' – obviously – refers to the official name of the *authority* to which the issuing judge or public prosecutor belongs, *e.g.* the Court of X or the Public Prosecutor's Office in X. The name and surname of the issuing judge or public prosecutor should be mentioned under 'Name of its representative'.

Representative not a judge or a public prosecutor?
German EAWs are sometimes issued by a representative of the issuing Local Court (*Amtsgericht*) whose 'title/grade' is that of 'Direktor', which could be translated as 'manager', thus raising the question whether the representative of the issuing judicial authority is actually a judge.

35. Have the issuing judicial authorities of your Member State experienced any problems regarding section (i)? If so, please describe those difficulties and how they were resolved.

No such problem was experienced in the examined cases.

36. Have the executing judicial authorities of your Member State experienced any problems regarding section (i)? If so, please describe those difficulties and how they were resolved.

This problem has not occurred among the examined cases.

Part 4: problems not directly related to the EAW-form

Explanation

Part 4 concerns problems not directly related to the EAW-form. A common feature of the subjects dealt with in this part of the questionnaire is that they concern or are linked to providing information (either to decide on the execution of an EAW or on the issuing of an EAW or as a basis for measures after surrender).

These subjects are:

- supplementary/additional information necessary or useful for the decision on the execution of the EAW (Art. 15(2)-(3) of FD 2002/584/JHA);
- the time limits for deciding on the execution of the EAW (Art. 17 of FD 2002/584/JHA);
- the guarantee of return (Art. 5(3) of FD 2002/584/JHA);
- information about detention conditions and deficiencies in the judicial system in the issuing Member State;
- surrender to and from Iceland or Norway;
- (analogous) application of the *Petruhhin* judgment; and
- the speciality rule.

A. Supplementary/additional information (Art. 15(2)-(3))

Explanation

Part. 4A concerns information not included in the EAW but necessary or useful for deciding on the execution of that EAW. Art. 15(2) of FD 2002/584/JHA concerns providing supplementary information ('in particular with respect to Articles 3 to 5 and Article 8') at the request of the executing judicial authority, whereas Art. 15(3) of FD 2002/584/JHA concerns forwarding 'additional useful information' by the issuing judicial authority *proprio motu*. When requesting supplementary information, the executing judicial authority 'may' fix a time limit for the receipt of that information, given the need to observe the time limits for deciding on the EAW set out in Art. 17 of FD 2002/584/JHA.

Art. 15(2) affords the executing judicial authority the 'option' to request that the necessary supplementary information be furnished as a matter of urgency, if it finds 'that the information disclosed by the issuing Member State is insufficient to enable [it] to adopt a

decision on surrender'. However, 'recourse may be had to that option only as a last resort in exceptional cases in which the executing judicial authority considers that it does not have the official evidence necessary to adopt a decision on surrender as a matter of urgency' (ECJ, judgment of 23 January 2018, *Piotrowski*, C-367/16, ECLI:EU:C:2018:27, paragraphs 60-61).

In some situations, the 'option' is actually an *obligation* to request supplementary information (before deciding to refuse to execute the EAW):

- when examining whether the EAW meets the requirements of lawfulness set out in Art. 8(1) (ECJ, judgment of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385, paragraph 65;

- when examining whether the requirements of Art. 4a(1)(a)-(d) of FD 2002/584/JHA are met (ECJ, judgment of 10 August 2017, *Zdziaszek*, C-271/17 PPU, ECLI:EU:C:2017:629, paragraphs 101-103);

- when examining whether there is a real risk for the requested person of a violation of Art. 4 of the Charter or of a violation of the essence of the right to a fair trial as guaranteed by Art. 47(2) of the Charter (ECJ, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198, paragraph 95; ECJ, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the judicial system)*, C-216/18 PPU, ECLI:EU:C:2018:586, paragraph 77).

The issuing judicial authority is obliged to provide the requested information (ECJ, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198, paragraph 97, with regard to information about detention conditions). That obligation derives from the duty of sincere cooperation (Art. 4(3) TEU), which 'informs' the 'dialogue' between the issuing and judicial authorities when applying Art. 15(2)-(3) (ECJ, judgment of 25 July 2018, *Generalstaatsanwaltschaft (Detention conditions in Hungary)*, C-220/18, ECLI:EU:C:2018:589, paragraph 104).

Issues concerning Art. 15(2)-(3)

Information provided by another authority
Sometimes, requests for supplementary information pursuant to Art. 15(2) of FD 2002/584/JHA are answered by an authority other than the issuing judicial authority. Equally, sometimes such requests are answered by the Central Authority of the issuing Member State, without it being clear who actually provided the answer: the Central Authority itself, the issuing judicial authority or yet another authority.
A recent preliminary reference questions whether, if the EAW was issued by a judicial authority and supplementary information is provided by another authority (in this case a member of the Public Prosecutor's Office) which substantially supplements, or possibly changes the content of the EAW, that other authority should also meet the requirements of Art. 6(1) of FD 2002/584/JHA for being an 'issuing judicial authority' (*Generálna prokuratura Slovenskej republiky*, C-78/20).

Irrelevant information/standard questionnaires

Sometimes executing authorities ask additional specific questions or even submit a standard list of questions with regard to information that is not relevant. Sometimes issuing judicial authorities submit irrelevant information.

37. Did your Member State confer the competence to provide supplementary information – either at the request of the executing judicial authority or on its own initiative (see Art. 15(2)-(3) of FD 2002/584/JHA) – on another authority than the issuing judicial authority? If so, which authority?

Concerning Art. 15(2), supplementary information can be provided by the executing judicial authority. Se also question 9(d).

In practice, I would say it goes through the judicial authority. I mean that it comes mostly directly from the judge. If the information must be obtained from the prosecutor, still the judge shall be the one who provide practically the information according Art. 15 (2).

38. When the (issuing judicial) authorities of your Member State are asked to provide supplementary information, what kind of information are they usually asked for?

In the examined cases, the supplementary information aimed mostly further information of the crime itself, its description. For instance, to determine whether double criminality rule can be applicable, further information about the statement of facts, about the facts to determine time limitation principle.

39. When the (issuing judicial) authorities of your Member State provide supplementary information *proprio motu*, what kind of information do they usually provide?

I have seen only one case during the examination where the issuing judicial authority provided supplementary information proprio motu. In this case the issuing judicial authority informed the executing judicial authority that the person requested is represented by legal counsel in Hungary.

40. What kind of supplementary information do the executing judicial authorities of your Member State usually ask for?

The executing authority usually requests further information about the form, when it is not filled in correctly.

Furthermore, executing authority asks, for instance, the legal representation of the defendant, the number of the hearings held and the form and rules of the summoning of the defendant.

41. When requesting supplementary information, do the executing judicial authorities of your Member State fix any time limit for the receipt of that information?

In the examined cases, I could not determine an example, where a fix time limit was imposed. The executing judicial authorities often used the term 'as soon as possible'. Before the decision made on the surrender, the preliminary arrest of the requested person can be ordered by the court. This preliminary arrest can be ordered for a maximum time of 40 days. After that, the requested person can be put into preliminary surveillance which is a less severe intervention.

41a. Have the issuing judicial authorities of your Member State experienced receiving irrelevant questions and requests for irrelevant information? If so, please specify what questions and information.

No such a case was encountered.

41b. Have the executing judicial authorities of your Member State experienced receiving irrelevant information? If so, please specify what information.

This has not occurred among the examined cases.

B. Time limits (Art. 17)

Explanation

Part 4B concerns observance of the time limits of Art. 17(3) and (4) of FD 2002/584/JHA in cases in which the information in the EAW-form is insufficient to decide on the execution of the EAW.

The final decision on the execution of the EAW must, in principle, be taken with the time limits of Art. 17(3) and (4) FD 2002/584/JHA (ECJ, judgment of 16 July 2015, *Lanigan*, C-237/15 PPU, ECLI:EU:C:2015:474, paragraph 32), *i.e.* within 60 or 90 days.

When 'in exceptional circumstances' the executing judicial authority cannot observe the time limit of 90 days, its Member State must inform Eurojust thereof and give reasons for the delay (Art. 17(6) of FD 2002/584/JHA).

Such exceptional circumstances may occur when

- the executing judicial authority assesses whether there is a real risk that the requested person will, if surrendered to the issuing judicial authority, suffer inhuman or degrading treatment, within the meaning of Article 4 of the Charter, or a breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial, a right guaranteed by the second paragraph of Article 47 of the Charter or

- proceedings are stayed pending a decision of the Court of Justice in response to a request for a preliminary ruling made by an executing judicial authority, on the basis

of Article 267 TFEU (ECJ, judgment of 12 February 2019, *TC*, C-492/18 PPU, ECLI:EU:C:2019:108, paragraph 43).

42.

a) Have the executing judicial authorities of your Member State had any cases in which the time limits of 60 and/or 90 days could not be observed, because the information contained in the EAW was insufficient to decide on the execution of the EAW? If so, please state the decision taken by the executing judicial authority.

Through the examination and the practical experience, it can be stated that because of incorrectly completed forms, often more pieces of information are required. For this reason, the procedure may be delayed in certain cases. It is also a problem that in some cases the issuing authority fails to respond promptly to the request in due time. Thus, there have been a need for repeated urgency in certain cases.

b) Is recent statistical data available concerning compliance with the time limits by the authorities of your Member State?

Neither the National Office for Judiciary nor the courts collect statistical data specified on the practice of the European Arrest Warrant.

c) Pursuant to Art. 17(7) of FD 2002/584/JHA, does your Member State inform Eurojust when it cannot observe the time limits and does your Member State give the reasons for the delay?

The court ought to inform Eurojust about the delay and its reasons. According to the law, the issuing member states ought to be informed as well. During the examination, where a delay was ongoing, the court fulfilled its duty as requested above.

C. Guarantee of return (Art. 5(3))

Explanation

Part 4C concerns the guarantee of return.

The system of FD 2002/584/JHA, as evidenced, *inter alia*, by Art. 5(3) of FD 2002/584/JHA, 'makes it possible for the Member States to allow the competent judicial authorities, in specific situations, to decide that a sentence must be executed on the territory of the executing Member State' (ECJ, judgment of 21 October 2010, *B.*, C-306/09, ECLI:EU:C:2010:626, paragraph 51).

That provision refers to a guarantee, to be given by the issuing Member State, that a national or resident of the executing Member State who is the subject of a prosecution-EAW, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order to be imposed on him in the issuing Member State.

The object of that provision is to increase 'the chances of social reintegration of the national or resident of the executing Member State by allowing him to serve, in its territory, the custodial sentence or detention order which, after his surrender, under [an EAW], would be imposed in the issuing Member State' (ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 48).

Art. 5(3) does not require that the guarantee be given by the issuing judicial authority. Compare Art. 27(4) and Art. 28(3) of FD 2002/584/JHA which state that the issuing *Member State* must give the guarantees provided for in Art. 5(3) for the situations mentioned in that provision and ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 41: '(…) a guarantee to be given by the issuing Member State in particular cases (…)'.

If the executing judicial authority so requests, the issuing Member State *must* provide the guarantee. Compare, again, Art. 27(4) and Art. 28(3) and *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 41.

The return of the surrendered person should occur as soon as possible after the sentence in the issuing Member States has become final (ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 58).

However, if the surrendered person 'is required to be present in that Member State by reason of other procedural steps forming part of the criminal proceedings relating to the offence underlying the [EAW], such as the determination of a penalty or an additional measure' the issuing judicial authority must balance 'the objective of facilitating the social rehabilitation of the person concerned' against 'both the effectiveness of the criminal prosecution for the purpose of ensuring a complete and effective punishment of the offence underlying the [EAW] and the safeguarding of the procedural rights of the person concerned' (ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 56). The issuing judicial authority must, therefore, 'assess whether concrete grounds relating to the safeguarding of the rights of defence of the person concerned or the proper administration of justice make his presence essential in the issuing Member State, after the sentencing decision has become final and until such time as a final decision has been taken on any other procedural steps coming within the scope of the criminal proceedings relating to the offence underlying the [EAW]' (ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 59). It must 'take into account, for the purposes of the balancing exercise that it is required to carry out, the possibility of applying cooperation and mutual assistance mechanisms provided for in the criminal field under EU law' (ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 61).

Once the sentenced person is returned, 'an adaptation of the sentence by the executing Member State outside of the situations contemplated under Article 8 of [FD 2008/909/JHA]

cannot be accepted' (ECJ, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return)*, ECLI:EU:C:2020:191, paragraph 66).

43. According to the national law of your Member State, as interpreted by the courts of your Member State, is the decision to subject surrender to the condition that the issuing Member State give a guarantee of return *dependent* on whether the requested person expressly states that he wishes to undergo any sentence in the executing Member State? If so, does your national law distinguish between nationals and residents of your Member State in this regard?

The law requires the requested persons expressly stated wish. Only applicable to nationals who are also residents in Hungary. That means that nationals who are not resident do not fall under this rule.

44. Which authority of your Member State is competent to give the guarantee of return?

Ministry of Justice

45.
a) Do the issuing judicial authorities of your Member State use a uniform text for the guarantee of return? If so, what text?

b) Does a guarantee of return given by the competent authority of your Member State refer to 'other procedural steps forming part of the criminal proceedings relating to the offence underlying the [EAW], such as the determination of a penalty or an additional measure'?

c) Does the national law of your Member State, as interpreted by the courts of your Member State:

- (i) either require the consent of the surrendered person with his return to the executing Member State in order to undergo his sentence there, or, at least, allow him to express his views on a such a return;

- (ii) prohibits the return to the executing Member State to undergo the sentence there, if the answer to question (i) is in the affirmative and the surrendered person withholds consent to a return or is opposed to a return;

- (iii) differentiate between nationals of the executing Member State and residents of that Member State in this regard?

d) When is the surrendered person returned to the executing Member State to undergo his sentence there? Which authority of your Member State determines when the surrendered person is to be returned and according to which procedure?

The guarantee is provided by the Ministry of Justice. As far as I could search for it, it is a uniform text. I have no data about the exact form and text, because the case file itself does not contain it. The return can be executing after a legally binding decision was made.

On the reason that this question does not fell under the competence of the court, I have contacted with the officials of the Ministry of Justice. I have been told, that in a case where the sentence does not contain an expulsion, it is up to the person whether he/she wants to return or not.

46. Have the (issuing judicial) authorities of your Member State experienced any difficulties when they provided a guarantee of return? If so, please describe those difficulties and how they were resolved.

No such a case was encountered where this issue meant a problem.

47. Have the executing judicial authorities of your Member State experienced any difficulties with a guarantee of return? If so, please describe those difficulties and how they were resolved.

No such a case was encountered where this issue meant a problem.

D. Detention conditions/deficiencies in the judicial system

Explanation

Part 4D concerns information about detention conditions in the issuing Member State and deficiencies in the judicial system of the issuing Member State.

Detention conditions
In the *Aranyosi and Căldăraru* judgment, the Court of Justice devised a two-step test for assessing a real risk of a breach of Art. 4 of the Charter by reason of inhuman or degrading detention conditions in the issuing Member State.

The first step of the test aims at establishing whether detainees in the issuing Member State in general run a real risk of being subjected to inhuman or degrading detention conditions on account of 'deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention'. In doing so, the executing judicial authority must, initially, 'rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State'.

If the executing judicial authority finds that 'there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member', it must then take the second step of the test and assess, specifically and precisely, 'whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State'.

To that end, the executing judicial authority must engage in a dialogue with the issuing judicial authority and request pursuant to Art. 15(2) of FD 2002/584/JHA 'supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State'. The issuing judicial authority is obliged to carry out such a

request, if need be, with assistance of the central authority (Art. 7 of FD 2002/584/JHA) of its Member State.

If that assessment results in a funding of a real risk for the requested person if surrendered, the executing judicial authority must postpone the execution of the EAW 'until it obtains the supplementary information that allows it to discount the existence of such a risk', but 'if the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end' (ECJ, judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 & C-659/15 PPU, ECLI:EU:C:2016:198, paragraphs 88-104).

Deficiencies in the judicial system

In the *Minister for Justice and Equality (Deficiencies in the judicial system)* judgment, the Court of Justice essentially adapted the two-step *Aranyosi and Căldăraru* test and turned it into a test for assessing a real risk of a breach of the right to an independent tribunal, a right which belongs to the essence of the right to a fair trial as guaranteed by Art. 47(2) of the Charter.

Accordingly, the executing judicial authority must 'assess, on the basis of material that is objective, reliable, specific and properly updated concerning the operation of the system of justice in the issuing Member State (…), whether there is a real risk, connected with a lack of independence of the courts of that Member State on account of systemic or generalised deficiencies there, of the fundamental right to a fair trial being breached'.

A finding of the existence of such a risk, necessitates a further assessment, *viz.* whether there are substantial grounds to believe that the requested person will be exposed to that risk if surrendered.

That further assessment consists of two distinct steps. First, the executing judicial authority must, in particular, 'examine to what extent the systemic or generalised deficiencies, as regards the independence of the issuing Member State's courts, (…) are liable to have an impact at the level of that State's courts with jurisdiction over the proceedings to which the requested person will be subject'. Second, if it finds that those deficiencies are indeed 'liable to affect those courts', it must also 'assess, in the light of the specific concerns expressed by the individual concerned and any information provided by him, whether there are substantial grounds for believing that he will run a real risk of breach of his fundamental right to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial, having regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the [EAW]'.

Furthermore, the executing judicial authority engage in a dialogue with the issuing judicial authority and 'must, pursuant to Article 15(2) of Framework Decision 2002/584, request from the issuing judicial authority any supplementary information that it considers necessary for assessing whether there is such a risk'. As with requests about detention conditions, the issuing judicial authority is obliged to carry out such a request, if need be, with assistance of the central authority (Art. 7 of FD 2002/584/JHA) of its Member State.

If the executing judicial authority cannot 'discount the existence of a real risk that the individual concerned will suffer in the issuing Member State a breach of his fundamental right

to an independent tribunal and, therefore, of the essence of his fundamental right to a fair trial', it must 'refrain from giving effect' to the EAW (ECJ, judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the judicial system)*, C-216/18 PPU, ECLI:EU:C:2018:586, paragraphs 60-61 and 68-78).

Issues

Issuing judicial authority not competent
Sometimes, when the issuing judicial authority is not competent under national law to provide information and/or a guarantee, it will content itself with reporting this to the executing judicial authority instead of referring the matter to the competent national authority of engaging the services of its national central authority.

Detention conditions
48. Have the executing judicial authorities of your Member State had any cases in which they established that detainees in general would run a real risk of being subjected to inhuman or degrading detention conditions in the issuing Member State on account of systemic or generalised deficiencies, deficiencies which may affect certain groups of people, or deficiencies which may affect certain places of detention (the first step of the *Aranyosi and Căldăraru* test)? If so:

- with respect to which Member State(s);
- on the basis of which sources;
- did the executing judicial authorities use the database of the Fundamental Rights Agency[19] in stablishing that risk;
- what role, if any, did (measures to combat) COVID-19 play in establishing that risk?

It has not occurred in the examined cases.

49. Having established a real risk as referred to in the previous question:

- what kind of information did the executing judicial authorities of your Member State request from the issuing judicial authorities in order to assess whether the requested person would run such a risk if surrendered (the second step of the *Aranyosi and Căldăraru* test);
- did the executing judicial authorities of your Member State actually conclude that a requested person would run such a real risk, if surrendered;
- if so, was such a real risk excluded within a reasonable delay? If not, what was the decision taken by the executing judicial authorities of your Member State? If a (judicial) authority of the issuing Member State gave a guarantee that the detention

[19] The 'Criminal Detention Database 2015-2019': https://fra.europa.eu/en/databases/criminal-detention/criminal-detention.

conditions would comply with Art. 4 of the Charter, did the executing judicial authorities of your Member State rely on that guarantee? If not, why not?

See question 48.

49a. In case of a refusal to execute an EAW on account of detention conditions, what steps did your Member State take, as issuing or executing Member State, to prevent impunity (*e.g.* in case of an execution-EAW, initiating proceedings to recognise the judgment and enforce the custodial sentence in the executing Member State on the basis of FD 2008/909/JHA)?

As I have stated above, such case has not happened among the examined cases. In theory, the execution of the process or the punishment itself can be taken over.

50. Have the issuing judicial authorities of your Member State experienced any difficulties when requested to provide additional information in application of the *Aranyosi and Căldăraru* test? If so, please describe those difficulties and how they were resolved.

In three of the examined cases, the executing Member State (in two of the cases Germany and in one of the cases the UK) asked for guarantee concerning the detention conditions. This request included also the designation of the detention center itself where the defendant is going to be put into. The Ministry of Justice provided the requested guarantee, after which the judicial authorities executed the EAW without any problem.

51. Have the executing judicial authorities of your Member State experienced any difficulties when applying the *Aranyosi and Căldăraru* test? If so, please describe those difficulties and how they were resolved.

It has not occurred in the examined cases.

Deficiencies in the judicial system

52. Have the executing judicial authorities of your Member State had any cases in which they established that there is a real risk of a violation of the right to an independent tribunal in the issuing Member State on account of systemic or generalised deficiencies liable to affect the independence of the judiciary (the first step of the *Minister for Justice and Equality (Deficiencies in the judicial system)* test)? If so:

- with respect to which Member State(s);

- on the basis of which sources?

It has not occurred in the examined cases.

53. Having established a real risk as referred to in the previous question:

- what kind of information did the executing judicial authorities of your Member State request from the issuing judicial authorities in order to assess whether the requested person would run such a risk if surrendered (the second step of the *Minister for Justice and Equality (Deficiencies in the judicial system)* test);

- did the executing judicial authorities of your Member State actually conclude that a requested person would run such a real risk, if surrendered;

- if so, was such a real risk excluded within a reasonable delay? If not, what was the decision taken by the executing judicial authorities of your Member State?

See question 52-53. above.

54. Have the issuing judicial authorities of your Member State experienced any difficulties when requested to provide additional information in application of the *Minister for Justice and Equality (Deficiencies in the judicial system)* test? If so, please describe those difficulties and how they were resolved.

It has not occurred in the examined cases.

55. Have the executing judicial authorities of your Member State experienced any difficulties when applying the *Minister for Justice and Equality (Deficiencies in the judicial system)* test? If so, please describe those difficulties and how they were resolved.

It has not occurred in the examined cases.

55BIS
Did your courts consider to refer questions to the Court of Justice? If so, on which issues? Why did they not do so in the end?

We do not have a specified datebase concerning the issue.

E. Surrender to and from Iceland and Norway

Explanation

Part 4E concerns the application of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, *OJ* 2006, L 292/2.

The Agreement entered into force on 1 November 2019 (*OJ* 2019, L 230/1). It 'seeks to improve judicial cooperation in criminal matters between, on the one hand, the Member States of the European Union and, on the other hand, the Republic of Iceland and the Kingdom of Norway, in so far as the current relationships among the contracting parties, characterised in particular by the fact that the Republic of Iceland and the Kingdom of Norway are part of the EEA, require close cooperation in the fight against crime' (ECJ, judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262, paragraph 72).

According to the preamble to the Agreement, the contracting parties 'have expressed their mutual confidence in the structure and functioning of their legal systems and their capacity to guarantee a fair trial'.

The provisions of the Agreement 'are very similar to the corresponding provisions of Framework Decision 2002/584' (ECJ, judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262, paragraph 74). Equally, the Arrest Warrant-form, set out in the Annex to the Agreement, is very similar to the EAW-form.

56. Have the issuing judicial authorities of your Member State issued any Arrest Warrants under the EU Agreement with Iceland and Norway? If so, have they experienced any difficulties? If so, please describe those difficulties and how they were resolved.

No such a case was detected during the examination.

57. Have the executing judicial authorities of your Member State been confronted with any Arrest Warrants under the EU Agreement with Iceland and Norway? If so, have they experienced any difficulties? If so, please describe those difficulties and how they were resolved.

No such a case was detected during the examination.

I would like to also mention that the Agreement was adopted by the Act LXIX of 2014. In this Act Hungary declared:

- **Article 3(2) of the Agreement (double criminality) will not be applied in crimes indicated in Article 3(4) of the Agreement, on the condition that the issuing State would make such a statement as well and in the issuing State the maximum sentence for the involved crime is at least 3 years of dentation.**
- **According to Article 5(2) of the Agreement Hungary shall refuse the execution of the arrest warrant on the ground of Article 1a) b) c) d) f) of the Agreement.**
- **If the arrest warrant concerns to conducting a criminal prosecution and the involved person is a Hungarian citizen and also a resident, the arrest warrant can only be executed if the issuing State guarantees that the person involved can return to Hungary to undergo his sentence.**
- **Hungary executes only an arrest warrant made in Hungarian or one attached with Hungarian translation with**
    - **If Iceland and Norway accept the warrant in English, French or German, Hungary shall do the same**

57BIS
How would you answer questions 56 and 57 in relation to the United Kingdom?

During the examination I did not come accros a case where this issue came forth as a problem.

57TERTIUS
Does your Member State's legislation provide for executing EAWs issued by the EPPO?"

No. Hungary has decided not to join the EPPO.

F. (Analogous) application of the *Petruhhin* judgment

Explanation

Part 4F concerns the (analogous) application of the *Petruhhin* judgment.

***Petruhhin* judgment**
Some Member States do not extradite their own nationals, but do extradite nationals of other Member States. If such a Member State, to which a national of another Member State has moved (and thus exercised his right of free movement (Art. 21 TFEU)), receives an extradition request from a third State, it must inform the Member State of which the citizen in question is a national and, should that Member State so request, surrender that citizen to it, in accordance with the provisions of Framework Decision 2002/584/JHA, *provided that*:

- that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory, and

- in order to safeguard the objective of preventing the risk of impunity, the EAW must, at least, relate to the same offences as the extradition request (ECJ, judgment of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630, paragraph 50; ECJ, judgment of 10 April 2018, *Pisciotti*, C-191/16, ECLI:EU:C:2018:222, paragraph 54).

***Ruska Federacija* judgment**
In the *Ruska Federacija* judgment, the Court of Justice held that the *Petruhhin* judgment is applicable by analogy to unequal treatment regarding extradition of own nationals and nationals of a European Economic Area (EEA) State who in exercise of their EEA free movement rights have moved to the requested Member State. (The EEA consists of the EU Member States, Iceland, Liechtenstein and Norway.)

Thus, the requested Member State must inform the EEA State of which the requested person is a national and, should that State so request, surrender the requested person to it, in accordance with the provisions of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, under the provisos described above (ECJ, judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, ECLI:EU:C:2020:262, paragraphs 75-77). (Liechtenstein is not a party to the aforementioned agreement on surrender. Therefore, the *Ruska Federacija* judgment only seems relevant for nationals of Iceland and Norway.)

***Petruhhin* judgment**
58. Does the national law of your Member State, as interpreted by the courts of your Member State, prohibit the extradition of nationals, but allow the extradition of nationals of other Member States? If so:

- have the competent authorities of your Member State applied the *Petruhhin*-mechanism (*i.e.* informed the Member State of which the requested person is a national) and to what effect;

- what kind of information was provided to the competent authorities of the Member State of which the requested person is a national?

This issue is regulated by the Act XXXVIII of 1996.
According to this Act:

- **A Hungarian national who is <u>also a resident</u> of Hungary generally cannot be extradited**
    - **However, if the chief prosecutor decides that the takeover of the criminal process itself is not possible in the specific case, the Hungarian national and resident can be extradited, if the concerned crime is punishable in both of the countries at least by 1 year imprisonment, and the 'issuing' country provides a guarantee, that the defendant can return to Hungary to undergo his sentence.**

- **A Hungarian national who is not a resident of Hungary <u>and</u> has a citizenship of another country can be extradited (if there is no ground for refusal).**

- **If the extradition request concerns the execution of a detention**
    - **An EU national who is also a resident of Hungary can only be extradited, if he/she agrees to it.**

- **If the extradition request concerns to conducting a criminal prosecution**
    - **An EU national, whether a resident or not in Hungary, can be extradited (if there is no ground for refusal).**
        - **In this case the Hungarian authorities ought to inform the competent authority of that Member State whose citizen is involved in the extradition.**

During the examination, I have not found any example to this questions, so my answear based only on the legal hungarian framework.

59. Have the competent authorities of your Member State been notified by another Member State of requests for extradition concerning nationals of your Member State, pursuant to the *Petruhhin* judgment? If so:

- was the information provided by that Member State sufficient to decide on issuing an EAW? If not, why not;

- did the competent issuing judicial authority of your Member State actually issue an EAW; and

- if so, did the EAW actually result in surrender to your Member State?

It has not occurred in the examined cases.

***Ruska Federacija* judgment**
60. Does the national law of your Member State prohibit the extradition of nationals, but allow the extradition of nationals of EEA States? If so:

- have the competent authorities of your Member State applied the *Petruhhin*-mechanism by analogy (*i.e.* informed the Member State of which the requested person is a national) and to what effect;

- what kind of information was provided to the competent authorities of the EEA State of which the requested person is a national?

It does. For extradition of Hungarian and EU nationals see question 58. above. The rules of the Ruska Federacija judgement have not transposed yet.

G. Speciality rule

Explanation

Part 4G concerns a subject relating to the *consequences* of surrender: the speciality rule (Art. 27 of FD 2002/584/JHA).

Except when both the issuing Member State and the executing Member State do not apply the speciality rule on a reciprocal basis (Art. 27(1)),[20] the speciality rule prohibits prosecuting, sentencing or depriving the person concerned of his or her liberty for 'an offence committed prior to his or her surrender other than that for which he or she was surrendered' (Art. 27(2). This rule is subject to a number of exceptions with regard to 'other offences' than those for which surrender took place (Art. 27(3)). Of particular practical importance is the exception relating to an explicit renunciation by the requested person of his or her entitlement to the speciality rule (Art. 13(1) in combination with Art. 27(3)(e)).

This subject has a firm link with the EAW-form. When establishing whether a prosecution, a sentence or a deprivation of liberty concerns the same offence for which the person concerned was surrendered or rather another offence, the description of the offence on which the EAW is based (in section (e) thereof) together, of course, with the decision to execute the EAW – which may contain restrictions, *e.g.*, the exclusion of one or more offences from surrender – is determinative.

The description of the offence in the [EAW] must be compared with the description in a 'later procedural document', such as the charge against the defendant. The competent authority of the issuing Member State must 'ascertain whether the constituent elements of the offence, according to the legal description given by the issuing State, are those for which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision' (ECJ, judgment of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, ECLI:EU:C:2008:661, paragraphs 55 and 57).

[20] Only Austria, Estonia, and Romania are prepared to renounce the speciality rule on a reciprocal basis.

Issues concerning speciality

Missing EAW/decision on surrender
Sometimes, the case-file concerning a surrendered person does not contain the EAW and/or the decision on the execution of the EAW, thus leaving uncertain for which offence the person concerned was surrendered and whether he renounced his entitlement to the speciality rule.

61. Does a decision to execute the EAW state:

- a) for which offence(s) the surrender of the requested person is allowed and, if so, how;

- b) whether the requested person renounced his entitlement to the speciality rule?

Yes. The decision to execute the EAW states the offence concerned. This means not only the legal classification, but the main elements of the offence itself in order to fulfil the requirements of the speciality rule. The decision also contains the requested person's declaration where such a declaration has been made.

Legal counsel is mandatory in these cases. Also the court makes explanation what does the speciality rule in the specific case mean. The decision itself does not contain this. However, the written record made of the hearing contains it.

62. Are the issuing judicial authority and the requested person provided with a copy of the (translated) decision to execute the EAW?

Yes. For the issuing authority, translated version is a practice. For the requested person, it comes from the general principle of the criminal procedure writen in the law.

63. How does the national law of your Member State, as interpreted by the courts of your Member State, ensure that the speciality rule is complied with after surrender to your Member State?

The relevant Hungarian law declares the prohibition of prosecuting, sentencing or depriving the person concerned of his or her liberty for 'an offence committed prior to his or her surrender other than that for which he or she was surrendered'. For this reason, speciality rule prevents further proceedings.

The Act also exhaustively enlists the exceptions of the speciality principle. (Following Article 27(3) of FD 2002/584/JHA)

It means a general legal restriction. There is no formal procedure concerning the speciality rule itself, but it can be cited in all kind of legal remedy provided by the procedural act. At the end, it establishes ground for appeal against a judgement made by the court, as well.

64. Have the authorities of your Member State as issuing Member State experienced any difficulties with the application of the speciality rule? If so, please describe those difficulties and how they were resolved.

It has not occurred in the examined cases.

64BIS
What is the position of your country regarding the basis of requests for additional surrender (art. 27 (4) of FD 2002/584/JHA): should these be based on a specific national arrest warrant or could it be possible that the request is not based on a national arrest warrant if the issuing authority states that the additional surrender will not bring about an additional deprivation of liberty?"

Request for additional surrender should be handled as a EAW, thus the conditions should be examined accordingly.

65. Have the authorities of your Member State as executing Member State experienced any difficulties with the application of the speciality rule? If so, please describe those difficulties and how they were resolved.

It has not occurred in the examined cases.

As above (63.), it is no special mechanism concetrating to the speciality rule itself, but it must be examined within the general rules of the criminal procedure, where the breach of this principle is an obstacle to the new procedure.

Part 5: conclusions, opinions *et cetera*

66. Do requests for supplementary information by the executing judicial authority have an impact on the trust which should exist between the cooperating judicial authorities?

Personally, I do not think that a request for supplementary information have an impact on the trust exist between the cooperating judicial authorities. It caused a problem only, if those requests would be highly unreasonable and would not be deducible from the European legal framework. As I have mentioned before, during my examination or my practice no such a case I have come across.

67. What kind of questions should an executing judicial authority ask when requesting supplementary information?

As question indicated above, there should exist a mutual trust between judicial authorities, which means in this regard that the supplementary question should concentrate to the data and information which could provide and ensure the legality of the execution of the EAW for the executing authority.

68. Do executing judicial authorities occasionally ask too much supplementary information? If so, on what issues?

No such a problem I have found during my examination of the cases.

69. In your opinion, do issuing and executing judicial authorities adequately inform each other about the progress in answering a request for additional information in the issuing Member State and the progress in the proceedings in the executing Member State?

In my practice, I have had no problem with the cooperation with the authorities of other Member States.

70. In your opinion, would designating focal points for swift communications within the organisations of both issuing and executing judicial authorities enhance the quality of communications between issuing and executing judicial authorities?

I think any improvement or additional method to help swift the communications would enhance the quality of cooperation.

71. Are there Member States whose EAW's and/or whose decisions on the execution of EAW's are particularly problematic in your experience? if so, what are the problems that emerge?

Considering the examined cases, I cannot name a specific Member State particularly problematic.

72. Do you have any suggestions to improve FD 2002/584/JHA. If so, which suggestions?

See question 73.

73. In particular:

- a) in your opinion, should one or more grounds for refusal and/or guarantees:
    - (i) be totally abolished or amended? If so, which ground(s) and/or guarantee(s) and why;
    - (ii) be introduced? If so, which ground(s) and/or guarantee(s) and why?
- b) given that surrender proceedings are increasingly becoming more complex and protracted, what, in your opinion, is the effect on mutual trust?
- c) in your opinion, should the speciality rule be maintained, amended or abolished? Please explain.

In my view, neither of the grounds for refusal and guarantees should be abolish. I would rather endorse an approach that helps clarify the existing ones. Especially, in the cases where the jurisprudence of the Court of Justice introduced new ways and interpretations.

Complexity of the procedure itself, if its rules are reasonable, should not reduce the level of mutual trust.

I my opinion, speciality rule should be maintained. It can speed up the procedure, while the guarantees provided may ensure to use it properly.

I am in favore of keeping the speciality rule. I think that it has an important role in the protection of the rigths of the defendant. Also clarifies later disagreements emerging from situations that can slow down the whole criminal process.

74. What is your opinion on the usability of the *HANDBOOK ON HOW TO ISSUE AND EXECUTE A EUROPEAN ARREST WARRANT* (COM(2017) 6389 final) for judicial practitioners? If, in your opinion, the *Handbook* does not live up to expectations, how could it be improved?

I think the HANDBOOK is a useful tool to get familiar with the issue and the specific practices. However, in my experience, it is not wildly known or used among judges.

75. Do the issuing and/or executing judicial authorities of your Member State use the *Handbook* in the performance of their duties? If not, why not?

See question 74.

Judicial authorities tend to get information from other sources. (For instance: national handbooks, judicial networks dealing with specifically questions concerning the EU framework, etc.)

76.

a) What is your opinion on the relationship between the EIO and the ESO on the one hand and the EAW on the other, in particular with regard to the proportionality of a decision to issue a prosecution-EAW?

b) What is your opinion on the relationship between FD 2008/909/JHA and the EAW, in particular with regard to the proportionality of a decision to issue an execution-EAW?

c) Should the FD's and/or the directive establishing the instruments concerning the EAW, the transfer of the execution of custodial sentences, the EIO and the ESO be amended in this regard and, if so, in what way?

Personally, I have used repeatedly the EIO and I have very good experience with it. I think that in certain cases EIO is a very good alternative to EAW from the point of view of the proportionality.

During my professional work, I have not come across with ESO in practice. I believe in the approach according to which the EAW is the most serious and direct 'intervention' where proportionality plays an important role; thus, any other legal tool making an alternative measure should be promoted.

Concerning the ESO, I cannot give a valid estimation about the numbers of cases, because we don't have a specified database to conduct such an examination. However, in my opinion, it is not a widespread tool in practice.

The national law also allows for summoning in another Member-state. It can be an alternative to issuing an EAW. However, it depends the case itself. If the prosecution-EAW based on the fact, that the attendance of the accused person can only be ensured by compelling measures, it is required to fulfil the proportionality principle, in other words, try to ensure the present of the defendant by less coercive ways. To sum up, in these cases summoning in another Member-state might precede the EAW. On the other hand, in those cases, where the arrest warrant based on different grounds (for instance the threat of the continuation of the crime, escape from the procedure, etc.) the summoning cannot be an alternative of the EAW.

77. What relevance, if any, do your answers to Parts 2-4 have for other framework decisions or directives concerning mutual recognition of decisions in criminal matters?

They might provide additional information on the practical usage of the system; thus, it can help to improve it.

78. What consequences, if any, do measures to combat COVID-19 have on the operation of the EAW-system?

In my view, the lockdown between Member States caused by COVID-19 has slowed down the operation of the EAW-system. It might be useful to develop a clearer and more unified protocol to handle this situation in the future.

Because of the COVID-situation, however, the number of hearings by videoconference has been increased. This new way to conduct a hearing is highly accepted among judges. However, hearing by only phone has no legal basis in national law. It means that only videoconference can be used for hearings.

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