**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.

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

## 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.

## 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**

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.

The respective provisions have been transposed trough Article 87 (1) and (2) of Law 302/2004 on international judicial cooperation in criminal matters. During the transposition of the FD 2002/584/JHA there was a public debate particular with the Romanian Network on judicial cooperation in criminal matters composed of judges and prosecutors. The Law 52/2003 provides for the procedures concerning the participation of citizens and legally constituted associations in the process of drafting normative acts and in the decision-making process. This law applies as to any drafting normative acts including on those on judicial cooperation in criminal matters.

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?

Until this moment, no infringement procedures as to EAW Framework Decision has been initiated against Romania.

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)?

The grounds for refusal as provided by Art. 3-4a of FD 2002/584/JHA as well as the guarantees as Art. 5 of FD 2002/584/JHA have been transposed into several articles 98, 99 (1) and (2), 101 (6) and 104 (4) of Law 302/2004 on international judicial cooperation in criminal matters

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? Not the case.

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)?

There is no such provision for applying the two-step test for assessing a real risk of a violation within the national law transposing the FD 2002/584/JHA, namely Title III of Law 302/2004 on international judicial cooperation in criminal matters. However, particularly in light of points 12 and 13 from the recital of FD 2002/584/JHA nothing prevents the Romanian executing court to observe the fundamental rights and principles as reflected in the Charter of Fundamental Rights of the European Union and have them applied to a concrete case.

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?

According to the Romanian system, national arrest warrants and EAWs are issued by the court only. The judgements on the national arrest warrants (prosecution or trial) are always subject to judicial review under the Romanian Criminal Procedure Code.

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 national law transposing the FD 2002/584/JHA does not deviate from the FD itself. As to the public debate when having the FD 2002/584/JHA transposed please see reply to question 2.

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?

The Law 302/2004 on international judicial cooperation in criminal matters transposing FD 2002/584/JHA does not differentiate between Romanian nationals and residents. Law 123/2001 is the one regulation the regime of foreigners in Romania. In the context of FD 2002/584/JHA, Articles 99 (2) c) and 99 (3) and (4) of Law 302/2204 provides concrete elements namely the person to actually live in Romania and have a continuous and legal residence on the territory of Romania for a period of at least 5 years.

- (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?

The Law 302/2004 on international judicial cooperation in criminal matters transposing FD 2002/584/JHA provides that that, when the surrender of a national or a resident for the purposes of executing a sentence is refused the custodial sentence subject to the EAW is recognized and executed. This is to be done either in the context of the EAW proceeding when the Romanian executing court has all the information and documents for such a recognition to be made or in a separate procedure upon the request of the issuing state. Thus, Article 99 (3) of Law 302/2004 states that (3) in the situation where, in the case, the case provided by Article 99 (2) lit. c), prior to the pronouncement of the decision on the EAW, the Romanian executing judicial authority requests the issuing judicial authority to send a certified copy of the conviction decision, as well as any other necessary information, informing the issuing judicial authority about the purpose for which such documents are requested. The recognition of the foreign criminal conviction is done, incidentally, by the court before which the procedure for the execution of the European arrest warrant is pending. If the Romanian executing judicial authority has recognized the foreign criminal judgment of conviction, the warrant for the execution of the sentence is issued on the date of pronouncing the decision provided in art. 109 of Law 302/2004. According to Article 99 (4) in the case provided by Article 99 (3), if the requested person is under arrest and the issuing judicial authority delays the transmission of the requested documents, the provisions of art. 104 para. (4) of Law 302/2004 shall apply accordingly.

Article 99 (4) of Law 302/2004 states that in the situation where the issuing judicial authority does not transmit the documents provided at Article 99 (3), within 20 days from the date of the first request, if the Romanian executing judicial authority refuses to execute the European arrest warrant, it shall inform the issuing judicial authority of the possibility to request the recognition and execution of the criminal conviction instruments applicable in the relationship between Romania and the issuing Member State or, in their absence, on the basis of reciprocity.

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?

Not the case

## 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?

According to Article 86 (1) of Law 302/2004 the courts (local courts, district courts, courts of appeal and High Court of Cassation and Justice) have been designated as issuing judicial authorities. There is thus no national authority designated centralise the competence to issue EAWs.

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?

Romania did not conferr the competence to issue EAWs on public prosecutors. In Romania, according to Article 23 (4) of the Romanian Constitution the preventive measure of arrest is taken by the judge only irrespectively if taken during the prosecution or trial stage. This principle is to be found largely regulated within the Romanian Criminal Procedure Code. The Law 302/2004 on international judicial cooperation in criminal matters transposing FD 2002/584/JHA follows the same constitutional principle having only the courts designated as issuing judicial authorities irrespectively if the EAWs are issued for prosecution, including trial or enforcement of custodial sentences.

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?

Article 89 (4) of Law 302/2004 on international judicial cooperation in criminal matters transposing FD 2002/584/JHA states that it is always for the judge to issue the EAWs and to also supervise its transmission in accordance with the law.

For the record of the activity each court is under the obligation to keep the EAWs Register. The following entries are made in the register: current number; name, surname and nationality of the requested person; the procedural phase in which the European arrest warrant was issued, the offense, the sentence applied or applicable, the number and date of the address of the prosecutor's office or of the court in which the criminal case is pending; the number of the enforcement court file; the date of issue of the European arrest warrant; the date of transmission of the European arrest warrant; information on the execution of the European arrest warrant; reasons for non-execution of the European arrest warrant; the date of delivery of the requested person; the date of withdrawal of the European arrest warrant. The register is not public.

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.

When issuing an EAW the judge needs to check if certain conditions are met. Thus, according to Article 89 (1) of Law 302/2004 the court issue a European arrest warrant taking into account the nature of the offense committed, the age and criminal record of the requested person, as well as of other circumstances of the case and only if the following conditions are met: a) the requested person is in the territory of another Member State of the European Union; b) the arrest warrant or the warrant of execution of life imprisonment or imprisonment is valid; c) the status of limitation of the criminal responsibility or of the execution of the punishment or the amnesty or pardon did not intervene, according to the Romanian law; d) when arrest and surrender are requested: (i) in order to exercise criminal prosecution or trial, the punishment provided by Romanian law for the crime committed is life imprisonment or imprisonment of 2 years or more; (ii) for the purpose of serving the sentence, the sentence imposed or the remainder of the sentence remaining to be served shall be life imprisonment or imprisonment of one year or more; (iii) for the purpose of enforcing the custodial measure, the duration of the measure is 6 months or more. When the measure of arrest is taken as a result of the replacement by the competent Romanian judicial body of a measure or obligation the observance of which has

[2] Compare the consolidated EAW-form in word format at: https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/5/-1/0.

previously been supervised by the executing State, the European arrest warrant may be issued even if the condition as indicated at (i) is not met. The condition provided in Article 89 (1) lit. d) shall apply whenever the executing State notifies the application, in this case, of the provisions of art. 2 para. (1) of Council Framework Decision 2002/584 / JHA, as transposed into national law of that State.

The EAW form *in word* is as available on the EJN website (the form as such is an integrative part of the national implementing legislation).

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?

From the perspective of our system we have two concepts. The warrant for preventive arrest as a preventive measure issued within the context of prosecution and trial and secondly warrant for enforcement of a custodial sentence once the judgement of conviction final and enforceable.

The issuing of a warrant for preventive arrest is subject to several conditions and follows a strict procedure as provided by the Romanian Criminal Procedural Code.

According to Article 202 (1) and (3) of the Romanian Criminal Procedural Code, preventive measures may be ordered if there is evidence or probable cause leading to a reasonable suspicion that a person committed an offense and if such measures are necessary in order to ensure a proper conducting of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offense. Any preventive measure has to be proportional to the seriousness of the charges brought against the person such measure is taken for, and necessary for the attainment of the purpose sought when ordering it

According to Article 223 (1) of the Romanian Criminal Procedure Code preventive arrest may be ordered by the Judge for Rights and Liberties, during the criminal investigation, by the Preliminary Chamber Judge, in preliminary chamber procedure, or by the Court with which the case is pending, during the trial, only if evidence generate a reasonable suspicion that the defendant committed an offense and if one of the following situations exists: a) the defendant has run away or went into hiding in order to avoid the criminal investigation or trial, or has made preparations of any nature whatsoever for such acts; b) a defendant tries to influence another participant in the commission of the offense, or a witnesses or an expert to destroy, alter or hide or to steal physical evidence or to determine a different person to adopt such behavior; c) a defendant exerts pressures on the victim or tries to reach a fraudulent agreement with them; d) there is reasonable suspicion that, after the initiation of the criminal action against them, the defendant committed a new offense with intent or is preparing to commit new offense.

Preventive arrest of the defendant can also be ordered if the evidence generate reasonable suspicion that they committed a offense with direct intent against life, an offense having caused

[3] *I.e.* a national judicial decision ordering the arrest and/or detention of a person.

bodily harm or death of a person, an offense against national security as under the Criminal Code and other special laws, an offense of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism, money laundering, counterfeiting of currency or other securities, blackmail, rape, deprivation of freedom, tax evasion, assault of an official, judicial assault, corruption, an offense committed through electronic communication means or another offense for which the law requires a penalty of no less than 5 years of imprisonment and, based on an assessment of the seriousness of facts, of the manner and circumstances under which it was committed, or the entourage and the environment from where the defendant comes, of their criminal history and other circumstances regarding their person, it is consider that their deprivation of freedom is necessary in order to eliminate a threat to public order.

During the investigation stage, if the prosecutor believes that the requirements set by law are met, prepare a justified application. The application together with the case file is submitted to the Judge for Rights and Liberties of the court that would have the competence of jurisdiction to rule on the case in first instance or of the court of the same level within the territorial jurisdiction of which the venue where the defendant is held in custody, the venue where the committed offense was ascertained or the premises of the prosecutors' office to which the prosecutor having prepared the proposal works are located. The application is ruled only in the presence of the defendant, except for situations where he or she is unjustifiably absent, is missing, is avoiding coming to court or cannot be brought before the judge due to his or her health condition or to *force majeure* events or a state of necessity. The decision ruling on the preventive arrest is subject to appeal (articles 204, 205 and 206 of the Romanian Criminal Procedure Code).

From the perspective of the warrant for the enforcement if the custodial sentence, according to Article 555 of the Romanian Criminal Procedure Code imprisonment and life detention penalties are enforced by issuing a warrant for enforcement of a custodial sentence. Such warrant shall be issued by the delegated judge in charge of enforcement on the date when the judgement of conviction remains final. Thus, the court is under an obligation to issue such a warrant and there is no room for proportionality to be consider.

If so,

- (i) please describe in which way this examination takes place and which factors are taken into consideration. Please give some examples; please see the answer above as to national warrant for preventive arrest

- (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; not the case

- (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?

Framework Decision 2009/829/JHA of 23 October 2009 was transposed trough Chapter 1 of Title VII of the Law 302/2004 on international judicial cooperation in criminal matters. From the perspective of the Romanian system the alternative to preventive arrest are judicial control and judicial control on bail. Both are considered preventive measures and therefore consideration made as to Article 202 (1) and (3) of the Romanian Criminal Procedural Code are valid as well (see the previous reply)

The judicial control may be ordered by the prosecutor directly, during the criminal investigation, or by the preliminary chamber judge, in preliminary chamber procedure, or the court, during the trial, if such preventive measure is *necessary* for the attainment of the purpose set by Article 202 (1) of the Romanian Criminal Procedure Code.

The content of the judicial control is set by Article 215 of the same normative act, some obligations being mandatory ex lege (Article 215 (1)) while others also provided by the law are to be imposed subject to the appreciation of the prosecutor of the judge (Article 215 (2)).
Article 187 of Law 302/2004 on international judicial cooperation in criminal matters states that when in order to ensure the proper conduct of a criminal proceedings or to prevent the evasion from criminal prosecution or trial of a person who does not have the usual legal residence on the territory of Romania, it is considered necessary to take a non-custodial preventive measure, the competent judicial body may consult the authorities of the executing State on the possibility of supervising, in the territory of that State, the observance of the obligations by the supervised person. Consultation of the executing State may be initiated where by a given declaration: a) during the criminal proceedings, the supervised person indicates that he or she has his or her habitual residence in the territory of another Member State of the European Union; or b) during the supervision by the competent Romanian authorities of the observance of the obligations previously established by the competent Romanian judicial body, the supervised person communicates the change of residence on the territory of another Member State of the European Union and the return to the executing state. Consultation shall be compulsory where the executing State is other than that in whose territory the supervised person indicates that he or she has his lawful habitual residence. The competent Romanian judicial body may request the executing State to communicate information regarding the identity and, as the case may be, the residence of the supervised person, as well as any other data necessary and useful for taking, modifying, replacing or terminating the supervision measures, as appropriate.

- 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,

[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?

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

Article 89 (1) of Law 302/2004 regulates the procedure to issue and EAW and also the criteria to be taken into account. Thus, according to the law and EAW is issued *when in view of the nature of the offense committed, the age and criminal record of the person sought, as well as other circumstances of the case, the judge consider it appropriate to do so*, **and** a) the requested person is in the territory of another Member State of the European Union, b) the warrant of pre-trial detention or the warrant of execution of life imprisonment or imprisonment is valid, c) the prescription of criminal liability execution of the sentence or amnesty or pardon, d) when arrest and surrender are requested: (i) in order to exercise criminal prosecution or trial, the punishment provided by Romanian law for the crime committed is life imprisonment or imprisonment of 2 years or more; (ii) for the execution of the sentence, the sentence applied or the remaining sentence to be executed is life imprisonment or imprisonment of one year or more (iii) for the purpose of enforcing the measure of deprivation of liberty, if the duration of the measure is of 6 months or more.

The same articles states (Article 82 (2)) that when the measure of pre-trial detention is taken as a result of the replacement by the competent Romanian judicial body of a measure or obligation the observance of which was previously supervised by the executing State, the EAW may be issued even if the condition provided in Article 89 (1) d)is not fulfilled. The condition provided in par. (1) lit. d) shall apply whenever the executing State notifies the application, in this case, of the provisions of art. 2 para. (1) of Council Framework Decision 2002/584 / JHA, as transposed into national law of that State.

These provisions have been subject to consitutional review and trough Decision no. 775 of November 17, 2015 regarding the exception of unconstitutionality of the provisions of art. 88 para. (1) of Law no. 302/2004 on international judicial cooperation in criminal matters, the court rejected the exception (raised ex officio by a court) considering that the respective provisions are constitutional. The court stated that the legislator is fully free to set the conditions that must be met in order for an EAW to be issued. This is in no way tantamount to overturning judgments, as the EAW, as its definition suggests, "is a judicial decision by which a competent judicial authority of a EU MS requests the arrest and surrender of to another Member State of a person for the purpose of the prosecution, trial or execution of a custodial sentence or security measure ". Also, the possibility of the judge issuing or not issuing a European arrest warrant depending on the examination of opportunity regarding the nature of the crime committed, the age and criminal record of the requested person, as well as other circumstances of the case, is not meant to deny the established by the warrant of pre-trial detention or the warrant of execution of life imprisonment or imprisonment that justified the initiation of the procedure. Thus, the judge decides on the arrest of the person requested under the law, only after verifying, in advance, whether the necessary conditions for issuing the warrant have been met, and does not rule on the merits of the investigation or conviction previously ordered or on the opportunity pre-trial detention. Moreover, as long as pre-trial detention ordered under the Code of Criminal Procedure is an exception that can be taken only under certain conditions provided by law, then the issuance of a European arrest warrant is a possibility also conditioned by the fulfillment of other requirements. by law. Therefore, the issuance of EAW is an instrument that the Romanian authorities have in order to bring into the country the persons who fall within the limits provided by art. 88 para. (1) of Law no. 302/2004. In addition, insofar as the competent judge will find that the conditions provided in par. (1), so including the criticized conditions of opportunity,

then will issue a reasoned decision that can be challenged by the prosecutor within 3 days from the communication, the appeal will be judged by the superior court, which may oblige the judge of rights and freedoms initially notified to issue a EAW. Moreover, according to art. 2 para. (1) of Framework Decision 2002/584 / JHA of 13 June 2002, a EAW "may" be issued under certain conditions. The Constitutional Court stated that this does not mean that, if a EAW is requested for the execution of a sentence, the authority of res judicata is affected, because the examination of opportunity made available to the judge does not concern the conviction, but the choice of a enforcement in such a way that, in accordance with the criteria laid down for the nature of the offense committed, the age and criminal record of the requested person, as well as other circumstances of the case, the purpose set for the Union is achieved, namely to become an area of freedom security and justice, without thereby, in accordance with the principle of proportionality, exceeding what is necessary to achieve the object.

- (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;

See above

- (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 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?

From the perspective of prosecution, whether or not it is necessary to take preventive measures, arrest or judicial control with the establishment of obligations to be supervised, or it is necessary to hear as a suspect or defendant, this is a matter related to the nature, object, objectives and concrete needs of each criminal case.

[6] This directive does not apply to Ireland.
[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?

The preventive measures, whether about arrest or judicial control, are distinct in purpose and content from the evidentiary procedures by which the means of proof are obtained, for example the statement of a suspect or defendant.

From the perspective of the Romanian system, as indicated in previous replies, the Code of Criminal Procedure establishes the obligation for the judicial body, when choosing the preventive measure, to cumulatively analyse the following general conditions: 1) to have solid evidence or indications from which results the reasonable suspicion that a person committed a crime, 2) the measure is proportionate to the gravity of the accusation, 3) the preventive measure is necessary to achieve the purpose pursued by its disposition - the condition of necessity of measures depriving or restricting liberty being expressed under the condition of their exceptional character, and 4) there should not be, at the time of order, confirmation, extension or maintenance of the preventive measure, any cause that prevents the initiation or exercise of the criminal action.

The purpose of the preventive measure is understood as what particular danger must be prevented or removed, the judicial body having the obligation to choose the appropriate and sufficient measure to achieve that purpose. The danger to which the criminal trial could be exposed and which would threaten the good development of the criminal trial can materialize in hiding, abolishing or altering the traces of the crime, evading the defendant from prosecution, trial or execution of the sentence, thwarting the truth by influencing witnesses or experts. Similarly, the proper conduct of criminal proceedings could be affected by the misconduct of the suspect or defendant - attempting to influence co-defendants, witnesses, injured persons or experts, attempting to destroy or alter material means of evidence, to prevent the administration of the necessary evidence or other such activities. In its jurisprudence (Decision of the Constitutional Court no. 744 of December 13, 2016), the Romanian Constitutional Court has shown that the meaning of the phrase "good conduct of criminal proceedings" is to prevent situations in which the defendant could seriously interfere with the good and correct development of the criminal process, through its conduct trying to alter the evidence on the basis of which the judicial bodies must establish the truth. The good conduct of the criminal process presupposes, in these conditions, the prevention of concrete activities through which the defendant, directly or through another person, would try to influence the criminal process by dishonest means, other than the procedural ones allowed by the exercise of the right to defense.

The statement of the suspect or defendant can be approached from at least two perspectives as evidence and as a component of the right to defense.

Therefore, when asking about the possibility of issuing EIO for the hearing of a suspected or accused person, by videoconference or other audiovisual transmission, or otherwise, instead of issuing a prosecution-EAW, there should be a general commonly agreed understanding that indeed hearing a person, regardless of the perspective from which it is approached, is the alternative to pre-trial detention. They are different both in nature and content and serve to different purposes.

Instead, the question of the subsidiary relationship between one preventive measure or another can be analysed in terms of EAW and Framework Decision 2009/829/JHA as we are essentially

talking about two preventive measures intended to serve the same purpose although at different levels.

The possibility of applying Framework Decision 2008/909/JHA instead of issuing an execution-EAW is addressed in practice either at first hence or as it is frequently the case as a second option after the EAW was refused.

c) 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?

The Romanian central authority is the Ministry of Justice. In this capacity, according to Article 86 (4) of Law 302/2004, the Ministry of Justice: a) receives EAWs issued by a judicial authority from another Member State of the European Union and sends it to the prosecutor's office of court of appeal in whose district the requested person was located or to the Prosecutor's Office of the Bucharest Court of Appeal, if the requested person has not been located, whenever the issuing judicial authority fails to transmit the EAW directly to the receiving Romanian judicial authority, b) transmits the EAWs issued by an authority Romanian judicial authority, if it cannot transmit it directly to the receiving foreign judicial authority or when the executing Member State has designated as receiving authority the Ministry of Justice, c) keeps records of the EAWs issued or received by the Romanian judicial authorities, for statistical purposes; d) fulfils any other attribution established by law meant to assist and support the Romanian judicial authorities in issuing and executing EAWs. Further on, according to Article 91 (2) of Law 302/2004 if the EAW has been issued for the purpose of criminal prosecution or trial and the requested person is a national or resident of the executing State, the Ministry of Justice, through the specialized directorate, shall guarantee that in case of conviction , once handed over, the respective person may be transferred under the conditions of this law.

## 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?

Execution of the EAWs is within the competence of all 15 Courts of Appeal and of the High Court of Cassation and Justice as appealing court.

Thus, according to Article 86 (2) of Law 302/2004 the Romanian executing judicial authorities are the courts of appeal. Further on, according to Article 86 (3) of Law 302/2004 the Romanian authorities competent to receive EAWs are the Ministry of Justice and the prosecutor's offices of to the courts of appeal designated according to 86 (2) in whose jurisdiction the requested person was located. If the place where the requested person is located is not known, the EAW is sent to the Prosecutor's Office attached to the Bucharest Court of Appeal.

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;

In terms of the competence the national law does not differ meaning that it is only for the court to decide on surrender irrespectively of whether the person consent or not. The law does differ as if there is consent, which if given it is irrevocable, the judgement is final as of first instance. If there is no consent the judgement on surrender is subject to appeal.

- 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)?

Decision related to the above articles are all taken by the courts.

d) 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? Not the case. The matter of proportionality lies within the competence of the issuing authority.

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

d) If your Member State designated public prosecutors as executing judicial authorities, Not applicable to Romania. The prosecution offices are designated as authority competent to receive the EAWs.

- (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?

Yes. According to Article 86 (3) of Law 302/2004 the Romanian authorities competent to receive the EAWs are the Ministry of Justice and the prosecution offices of the court of appeal in which jurisdiction the requested person was located. If the location of the requested person is not known, EAWs is sent to the Prosecutor's Office of the Bucharest Court of Appeal. Article 86 (4) states that the Romanian central authority is the Ministry of Justice. In this capacity, the Ministry of Justice: a) receives the European arrest warrant issued by a judicial authority from another Member State of the European Union and sends it to the prosecutor's office of the court of appeal in which jurisdiction the requested person was located or to the Prosecutor's Office

[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).
[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?

of the Bucharest Court of Appeal, if the requested person has not been located, whenever the issuing judicial authority fails to transmit the European arrest warrant directly to the receiving Romanian judicial authority.

The Ministry of Justice has no competence to request additional information but the prosecution office yes in the context of the preliminary procedures. Thus, according to Article 100 of Law 302/2004 (1) Within 48 hours after receiving an EAW, the prosecutor checks whether the EAW is accompanied by a translation into Romanian or in either of English or French. If the warrant is not translated into any of the languages referred to above, the prosecutor's office shall request the issuing judicial authority to issue a translation. If the EAW is translated into English or French, the competent prosecutor may order that a translation of the warrant be made, as a matter of emergency. (2) The prosecutor shall check whether the European Arrest Warrant contains the information stipulated in Article 86 (1). If the EAW does not contain such information or is inaccurate, as well as when the provisions of Article 98 (2) i) (iv) apply, the prosecutor shall request the issuing authority to deliver, within no more than 10 days, the information necessary or a copy of the sentencing decision rendered in absentia, translated into the language understood by the sentenced person, as the case may be. Failure by the issuing judicial authority to deliver the sentencing decision rendered in absentia shall bear no effect on the apprehension of the requested person and the notification of the court in accordance with Articles 101 and 102. (3) If the EAW contains the information stipulated in Article 86 (1) and has been translated in accordance with the provisions of paragraph (1), the prosecutor shall take the actions necessary to identify, search, locate and apprehend the requested person. The provisions of Articles 521-596 of the Code of Penal Procedure shall apply accordingly.

(4) If, further to the verifications conducted, it is found that the requested person falls under the territorial jurisdiction of another prosecutor's office, the prosecutor shall immediately deliver the EAW to the competent prosecutor's office and informs the issuing judicial authority and the Ministry of Justice in such respect. (5) If the verifications conducted reveal that, beyond any doubt, the requested person is not located in the Romanian territory, the prosecutor shall order that the case be closed and shall inform the issuing judicial authority and the Ministry of Justice in such respect. (6) If the requested person is subject of ongoing criminal proceedings, for the same acts for which the EAW has been issued, the prosecutor shall deliver, for information purposes, to the relevant prosecutor or the competent court, a copy of the European Arrest Warrant, the translation and, if available, the additional information provided by the issuing judicial authority, requesting the latter to assess and immediately inform whether the criminal prosecution or trial may be suspended until the case is settled by the executing Romanian judicial authority. The provisions of Articles 312 and 313 and 367 of the Criminal Procedure Code shall apply accordingly. (7) If the ongoing criminal procedures against the requested person refer to offences other than the ones covered by the EAW, the competent prosecutor shall also deliver, for information purposes, to the relevant prosecutor or the competent court, a copy of the EAW, its translation and, if available, the additional information provided by the issuing judicial authority, requesting to be informed without delay of the stage of such proceedings. (8) The preliminary proceedings stipulated in paragraphs (6) and (7) shall not preclude the measures contemplated under paragraph (3). (9)If the surrender of the requested person is conditional upon another Member State or a third State giving its consent, the measures aimed at apprehending the requested person shall be taken on the date when the consent of such State is received. (10) The procedure described in this article shall not be public.

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?

As regards the matter of the temporary surrender there are specific regulations in Law no.302/2004, namely art. 114 in conjunction with Art. 58 paragraphs (1)-(5) and 7, for those situations when RO is executing authority st and Art. 94 for those situations when RO is issuing authority. You will find in the articles below all the necessary pieces of information

Article 114 Postponed or conditional surrender
(1) The provisions of Article 58 (1) - (5) and (7) shall apply accordingly.
(2) The conditions for temporary surrender shall be determined by the agreement concluded between the Romanian authorities and the foreign authorities. For Romania, the competent authority is the court of appeal that has executed the European arrest warrant. The taking over the surrendered person and return of such person shall be carried out by the competent authorities of the issuing State, on the territory of Romania. The expenses incurred by the taking over and return of the surrendered person shall be borne by the issuing State.

ART.58
Postponed surrender
(1) If the extradited person is prosecuted by the Romanian judicial authorities, the surrender of such person shall be postponed until final settlement of the case. In case of conviction with execution of punishment under detention, the surrender shall be postponed until the release as a result of conditional release or until the execution of the punishment to term.
(2) The surrender may be postponed when:
a) it is established, based on a forensic report, that the extradited person is suffering from a serious illness that makes it impossible for such person to surrender immediately. In this event, the surrender shall be postponed until the health condition of the extradited person improves;
b) the extradited person is pregnant or has a child less than one year old. In this event, the surrender shall be postponed until the cause that has determined the postponement has ceased to exist, in order to make the surrender possible;
c) because of special circumstances, the immediate surrender would have serious consequences for the person extradited or for the family. In this case, the surrender may be postponed 3 months at the most and only once.
(3) In case of postponement of the surrender of the extradited person, the court shall issue a provisional arrest warrant in view of extradition. If the extradited person is, at the time of admission of the request for extradition, under the power of a preventive arrest warrant or warrant for execution of a prison sentence issued by the Romanian judicial authorities, the provisional arrest warrant in view of extradition shall take effect on the date of termination of the reasons that have justified the postponement.
(4) Notwithstanding the provisions of paragraph (1), at the express request of the requesting State, the extradited person may be surrendered temporarily, for a period mutually agreed upon by the Romanian authorities and the requesting State.
(5) Where the request provided in paragraph (4) is transmitted after the judgment of surrender remains final, the temporary surrender shall be approved by the president of the Criminal division of the court of appeal that has settled the request for extradition, by a reasoned interlocutory judgment, given in the council chamber. At the request of the president

of the criminal division of the court of appeal, the judicial body where the cause is pending or the execution court shall forward the information requested. (6) The conditions on the temporary surrender shall be determined by the agreement between the competent Romanian and foreign authorities. For Romania, the competent authority shall be the Ministry of Justice, through the specialised directorate. Taking over and returning the extradited person shall be carried out by the competent authorities of the requesting State, on the territory of Romania. The expenses incurred by the take-over and return of the extradited person shall be borne by the requesting State (7) If the person extradited according to paragraph (4) is executing a custodial sentence or a measure involving deprivation of liberty, the execution of the punishment or of the measure shall be considered suspended as from the date on which the person was taken over by the issuing State until the date of return of such person.

Article 94 Temporary surrender

(1) If the executing judicial authority, after having approved the surrender of the requested person, orders the postponement of the surrender, the issuing court, ex officio, at the request of the competent prosecutor or the court before which the case is pending for settlement, may request that the person to be temporarily surrendered in view of hearing or of participating in the criminal prosecution or in the trial. The temporary surrender shall be carried out under the conditions mutually agreed upon between the issuing court and the competent foreign authority.

(2) Bringing into the country and returning the requested person to the executing judicial authority for which the executing judicial authority has ordered the temporary surrender shall be carried out by the International Police Cooperation Centre within the General Inspectorate of the Romanian Police.

(3) Reception to the remand and preventive detention centres that are organized and operate under the subordination of the Ministry of Internal Affairs shall be made based on the preventive detention warrant or on a warrant for execution of the prison sentence underlying the European arrest warrant. The duration of the arrest shall be extended or maintained subject to legal conditions.

(4) A person temporarily surrendered shall remain in detention until his return, unless the authorities of the executing State request the release and, in this case, only if the person is no longer under the power of the preventive detention warrant or of the warrant for execution of punishment. The release of a person deprived of liberty shall also be achieved when, within a period not exceeding 18 days from the date of revocation or of replacement of the preventive detention measure or from the date of pronouncing the interlocutory judgment which has established that the measure of preventive detention has ceased de jure, the surrendered person has not been taken over by the authorities of the executing State. By the end of the 18-day time limit, the surrendered person shall remain in detention, at the disposal of the authorities of the executing State.

## 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.

## 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?
Yes, a declaration has made.

If so,

- what does this declaration entail?

- where was it published? Please provide a copy in English. Copy is available on the JN website https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3171

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. No difficulties have been reported.

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? The fact that the translation deviates from the available form does not have a direct implication in the execution of the EAW. This aspect takes into account the standard form. But what is essential is that the translation of the information included in the form is intelligible. From the perspective of Romania as the issuing state, the translators are provided with the existing word form on the EJN website in the language in which they are to perform the translation.

## 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. No difficulty has been reported.

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. Yes, difficulties have been reported along the years. There were situations although not very common in which the EAWs were issued on the names of persons other than those who committed the crime or issued not with real data but with aliases or the wrong date of birth. New EAWs have been requested. The greatest difficulties existed when the EAW was issued on the basis of final convictions for wrong or false identities as in order to have the EAWs ritghly issued the issuing states had to firstly correct to the judgements of conviction.

## 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. No difficulties have been reported as to the issuing process. However, numerous requests for additional information were reported as being submitted by the foreign executing authorities regarding the final conviction decisions on the basis of which Romanian EWAs were issued. Most such situations concerned the plurality of crimes, the sanctioning regime, the revocation of the conditional suspension and the presence at trial.

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. No difficulties have been reported. Most of the EAWs received for being executed were issued for prosecution. Where issued for serving a custodial sentence the difficulties difficulties arose when the issuing foreign authorities resorted to launching in parallel with the EAWs procedures the procedures provided by FD 909 or when the issuing foreign authorities did not send the conviction decision in due time.

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, …)

When issuing the EAW it has to be in full conformity with the domestic warrant , no additional offences can be added. As executing authority, in case there are unclear elements in

the EAW that would lead to uncertainty about the existence of a domestic arrest warrant in the Issuing State, usually the courts are formulating requests for additional information. This kind of situations is rather exceptional in nature though.

## 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.

[16] For the purposes of this project:

*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;
- 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'?*

- 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.

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? As an issuing state according to Article 89 of Law 30/2004 when arrest and surrender are requested: (i) in order to exercise criminal prosecution or trial, the punishment provided by Romanian law for the crime committed shoud be life imprisonment or imprisonment of 2 years or more; (ii) in order to execute the sentence the sentence applied or the remaining sentence to be executed should be life imprisonment or imprisonment of one year or more. When issued for the execution of a custodial sentence the law does not distinguishes among the offences for which the custodial sentence was applied but what interest is the length of the custodial sentence applied, whether it is a total or resultant punishment, or the rest of the punishment remaining to be executed. As EAW is a mean to ensure enforcement of a final and enforceable sentence, it is not possible at the time of issuance to distinguish between the offenses that were the subject of the trial because it would essentially mean a violation of the principle of legality and res judicata. As such, it is possible that among the offences for which the total or resulting punishment was applied, there are also some minor ones that, if they had been tried separately in a single procedure, would not have led to the possibility of issuing an EAW. The situation for the EAWs issued for prosecution is different since as already replied the possibility to issue the national arrest warrant is limited to specific offences for which the threshold is really high.

As an executing state, Article 97 of Law 302/2004 is the one regulating the offences for which the surrender from Romania is possible. This Article is implementing Article 2 (2) and (4) of the FED on EAW. Article 97 (2) provides that for other facts than those provided in 97 (1), surrender is subject to the condition that the facts that motivate the issuance of the European arrest warrant constitute a crime according to Romanian law, regardless of the constituent elements or its legal classification. In light of this it is possible that even if the EAWs was issued for offences that does not reach the threshold surrender to still be granted with the main condition the respective offence be also a crime according to Romanian law.

To be noted that Article 2 (1) of FD on EAW is applicable only from the perspective of Romania as issuing state.

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? When issued for prosecution the respective EAW is to list all the offences for which the national arrest warrant was issued and consequently indicates the sentences as provided by the Romanian law for each offence.

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? As explained above, when having an EAW issued for the execution of a custodial sentence what is to be considered is the judgement of conviction only and thus no issuing judge can act otherwise than in accordance with has to enforce in accordance with the Romanian law.

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? When issuing an EAW for serving a custodial sentence as explained above the threshold in the Romanian law is higher meaning life imprisonment or imprisonment of one year or more which as the law provides could be the sentence applied or the remaining sentence to be executed.

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? As already indicating when issued for multiple offences the condition the Romanian executing courts look into is that each of the respective offence be also crime from the perspective of the Romanian law.If presumably that is not the case the surrender is granted under the rule of speciality except where the person in case voluntarily renounced to its effects.

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. The difficulties noted in practice of the Romanian issuing courts were related to the misunderstanding by some executing states of the sanctioning regime and system in Romania. Hence within those situation it was noted the tendency of some member states to integrate and interpret the EAWs from the perspective of the sanctioning regime of the EAWs executing states which to our view goes beyond the scope of the FD on EAW (compared with the FD on 909 where indeed the executing state is entitle to do so). Thus, a lot of requests for additional information were related to this topic. On the other hand, it is also true that the EAW form does not help too much from this perspective as it gives to the issuing authority limited possibilities in filling in the appropriate information as from the very beginning.

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 difficulties have been reported.

## 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*

[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).

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.

*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. The difficulties have been explained when replying at question 23. In practice to overcome them and thus give the executing authorities a better perspective the title based on which the EAW was issued was enclosed as well (judgement of conviction or national arrest warrant which due to its content is very detailed in description of offences).

26. Have the executing judicial authorities of your Member State experienced any difficulties with regard to section (e)? No difficulties have been reported. If so, please describe those difficulties and how they were resolved.

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; If indeed the person in case is already subject to a final judgement of conviction for the same acts this is primarily considered in the context preliminary procedure the prosecutor receiving the EAW needs to follow. Thus, the prosecutor is the one firstly to check at the national level if the person was convicted previously or if subject to criminal proceedings. If convicted and already executed the sentence or currently executing the sentence the prosecutor when submitting the EAW to the court will inform the court accordingly which is then to look into the matter of if about the same acts or not. In this context the CJEU jurisprudence as to the criteria to be applied in assessing if about the same facts is considered.

If about a judgement delivered by another EU Member state (other than Romania or issuing state) or a third state, the possibilities for the prosecutor to check in this respect are limited and thus it is only if the person in case indicates that he was so convicted for additional information to be requested from the respective other EU MS or third state.

The criterion used to determine whether the acts constitute an offence: the description of the acts. The Romanian court determines whether the conduct of the sought person is punishable as a criminal offence under Romanian law. Any differences between the legal classification and denomination of the offence do not influence the decision.
In Europe and internationally, a fundamental principle of criminal law has gradually been consolidated in the sense of the application of a criminal law which provides for a more lenient punishment even if it was adopted after the commission of the crime.
The general rule, in the matter of conflicts of laws, is that more lenient criminal rules will always apply, and the jurisprudence of the European Court of Human Rights, if it is more favorable than the internal regulation will apply, and if it is more restrictive, it will not apply, In accordance with Art. 20 para. (2) of the Constitution, according to which if there are inconsistencies between international pacts and treaties on human rights to which Romania is a party and domestic laws, the latter will have priority whenever they contain more favorable provisions (ruling of the Constitutional Court 1470/2011).
On the other hand, in the case of Mihai Toma against Romania, the ECHR ruled art. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms requires, by virtue of well-established principles, that the law prohibit the retroactive application of more punitive criminal law to the detriment of the accused and ensure the more favorable retroactive application of the law.
The same principle is applicable in extradition cases.

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 principles governing the application of criminal law over time are intended to determine the applicable law. The Romanian legal system knows the principle according to which the Romanian criminal law applies to crimes as it is in force, as well as the principles of non-retroactivity according to which when it comes to criminalizing facts the criminal law provides only for the future and not for the past, and retroactivity of the criminal law (abolition criminis). From the perspective of the issuing state, the fact is certainly always an offence both at the time of commission and at the time of issuing the EAW, as no EAW can be issued for facts that are not offences according to the national law of the issuing state. From the perspective of the executing state, in light of the two principles, non-retroactivity and retroactivity, the assessment of the double criminality depends on the date when the offence subject of the EAW was committed. Therefore, if at the date of receiving the EAW it is found that compared to the moment of committing the crime the fact was not provided by the Romanian criminal law, it will be considered that there is no double criminality. If at the date of receiving the EAW it is found that, compared to the time of the offence, the fact was provided by Romanian criminal law but later in Romania a law intervened that decriminalizes it, by virtue of the principle of retroactivity of criminal law will be considered that there is no double criminality.

Therefore, to our view (which might deviate from the ones of the courts when executing the EAWs), the moment when the double incrimination is verified relates to procedural aspects related to EAWs proceedings which is distinct from the substantial part of the aspects which is moment when the fact is committed. Apart from this according to Article 4 (1) of FD the lack of double criminality is an optional ground of refusal and thus even if not an offence under the Romanian substantive criminal law, this will not absolutely lead to having the EAW not executed.

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? Not the case If so, please give some examples;

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; What is relevant for the assessment to be made is the description of facts subject to the EAW and subject of the Romanian investigation

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?

What is relevant is first of all if the fact is a crime from the perspective of Romanian legislation. If the issue of double criminality is solved and the deed is a crime, then from the perspective of national legislation, the prescription of criminal liability is always calculated from the date when the offences was committed. Thus according to Article 154 (2) of the Romanian Criminal Code (2) the statute of limitations terms stipulated under Article 152 (1) shall run as of the date the offense is committed. In case of continuing offenses, the statute of limitations term runs as of the date the action or inaction is ceased, in case of continuous offenses, as of the date the last action or inaction is performed, and in case of habitual offenses, as of the date the last act is performed. In case of progressive offenses, the statute of limitations of criminal liability runs as of the date the action or inaction is performed and shall be computed in consideration of the penalty that is appropriate for the final consequence it caused. In case of offenses against sexual

freedom and integrity the victim of which is an underage person, the liability limitation term runs as of the date the victim becomes of age. If the underage person dies before becoming of age, the statute of limitations term runs as of the date of death.

As to the statute of limitations of punishment the terms provided by Article 161 (1) of the Romanian Criminal Code runs as of the date the conviction sentence is final. In case of withdrawal or rescission of postponement of penalty enforcement, suspension of service of a penalty under supervision or probation, the statute of limitations term runs as of the date the decision on such withdrawal or rescission is final. In case of revocation of probation, as per Art. 104 par. (1), the statute of limitations term runs as of the date the revocation decision is final and shall be computed proportional to the penalty remained to be served. In case of replacement of the fine by imprisonment, the statute of limitations term runs as of the date when the decision on such change is final and shall be computed considering the duration of the imprisonment.

The assessment takes place at the time of the decision on the execution of the EAW.

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 –?

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 difficulties have been reported
- (b) do the executing judicial authorities of your Member State assess whether the issuing judicial authority correctly ticked the box of a listed offence? When there have been discrepancies between the description of facts and the listed offences the executing court has requested clarification from the issuing state.

  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?

## 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)? Generally this section is used for providing information as to the lapse of time and any possible interruption or suspension

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)? Lapse if time.

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? No problems have been identified. If so, please describe those problems and how they were resolved.

## 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). Article 115 of Law 302/2004 provides that , (1) The Romanian executing judicial authority may order, upon the request of the issuing judicial authority or ex officio, the freezing and handing over, in accordance with the Romanian law, of articles constituting material means of evidence or which have been acquired by the requested person as a result of having committed the offence having formed the basis for the EAWs, without prejudice to the rights held by the Romanian State or third parties over the same. (2) The articles referred to in paragraph (1) shall be handed over even if the EAWs cannot be enforced as a result of the death or escape by the requested person. (3) If the articles are susceptible of seizure or confiscation in Romania and, at the same time, necessary for the appropriate conduct of the criminal trial pending before the Romanian judicial authorities, the Romanian executing authority may refuse to hand them over or may order their temporary hand over, subject to return. At the practical level consideration is given to the property found in the possession of the requested person firstly because so indicated in the EAWs but also due to the fact that in most of the cases the EAWs have been executed simoultenouslly with searches conducted based on the EIOs issued by the same MS. There have been cases when the issuing states have opted to include in the EIO also the property found in the possession of the requested person as compared with the EAW having e.g. a phone handed under EIO take place immediately why handed over within the EAWs proceedings only after the EAWs proceedings are finalized.

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.

Not the case

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.

Not the case. When requested in the context of the EAWs article 115 of Law 302/2004 applies.

## 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. Not the case.

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. Not the case.

## 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. Not the case

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. Not the case

## 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? The supplementary information can be provided either at the request of the executing judicial authority or on the initiative of the Romanian issuing court.

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? Summoning procedure, present at trial, lawyer, prison condition. [19]

39. When the (issuing judicial) authorities of your Member State provide supplementary information *proprio motu*, what kind of information do they usually provide? Summoning procedure, service of the custodial sentence, lapse of time

40. What kind of supplementary information do the executing judicial authorities of your Member State usually ask for? Identity of the person in case, judgments of conviction

41. When requesting supplementary information, do the executing judicial authorities of your Member State fix any time limit for the receipt of that information? Yes, a time limit is always to be set due to the procedural constraints. The time limit is generally set for an initial period 10 or 15 days which can be extended for another 10 or 15 days. Generally, the time limits have been observed (to be noted that in 2019, 22 EAWs have been refused of lack of additional information while in 2020, 2 such cases have been registered). In some cases EJN or Eurojust has been involved in order to facilitate receiving the reply within the respective deadline.

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. In the spirit of a good collaboration, it was appreciated that the executing authorities are fully responsible for the relevance of the information they request. Therefore, the approach was to answer them even if in certain situations the questions were related to an issue that had been answered previously. An essential factor that often distorts the meaning of information is the quality of the translations.

41b. Have the executing judicial authorities of your Member State experienced receiving irrelevant information? If so, please specify what information. Not the case

[19] With regard to requests for supplementary information concerning *in absentia* decisions you could refer to the *InAbsentiEAW* project, unless there are developments which justify expressly dealing with such requests in this project.

## 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. As indicated when replying to Q41, in 2019 22 EAWs and in 2020 a number of 2 have been refused due to the lack of additional information. Even in such cases the time limits if FD on EAW have been observed.

b) Is recent statistical data available concerning compliance with the time limits by the authorities of your Member State? No statistics in terms of "compliance" by Romanian authorities, as issuing or executing authorities, are available.

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? Generally as executing authorities the time limits are observed. When not possible to observe, the notification is made in accordance with the applicable provisions. Eurojust has published a note, Notifications to Eurojust of breaches of time limits in the execution of European Arrest Warrants (Article 17(7) (first sentence) of FD on EAW) and create a form, in relation to the reporting of such breaches. The note aims to raise awareness of the services Eurojust can provide at an operational and strategic level to Member States regarding their obligation to inform of delays. In the note, Eurojust also provides relevant information regarding breaches of time limits, including by identifying common reasons for delays in the execution of EAWs as well as offering practical information regarding the submission of notifications of delays.

The note can be viewed at
https://www.eurojust.europa.eu/sites/default/files/Publications/Reports/2014-05_Notifications-of-time-breaches-in-execution-of-EAW.pdf.

The form is available in PDF in 22 language versions.

## 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? Yes If so, does your national law distinguish between nationals and residents of your Member State in this regard? No

44. Which authority of your Member State is competent to give the guarantee of return? As answered already in previous questions, when acting as an issuing state, the Ministry of Justice is competent to give the guarantee that if convicted in Romania will be returned to the executing state.

45.
a) Do the issuing judicial authorities of your Member State use a uniform text for the guarantee of return? Is a general standard text. If so, what text? “in case of surrender to Romania, if convicted, the person in case is going to be returned to the executing state in accordance with the applicable instruments”

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’? The Romanian law simply says that If the EAW has been issued for the purpose of prosecution or trial and the requested person is a citizen or resident of the executing State, the Ministry of Justice, through the specialized directorate, guarantees that, in case of conviction, once handed over , the respective person may be transferred to Romania under the conditions of this law.

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

The national law provides as follows (article 168 of Law 302/2004)

Execution of the foreign court decision as an effect of a European arrest warrant (1) When, according to art. 98 para. (2), the surrender of a Romanian citizen/rezident from Romania, based on a European arrest warrant, was carried out under the condition of his transfer, in case of conviction in order to execute the sentence, in a penitentiary or medical unit in Romania, the consent provided in art. 167 para. (1) lit. (2) is not necessary. The transfer to Romania, in order to execute the sentence, is made on the basis of the certificate provided in annex no. 5 and the court decision transmitted by the issuing State. The convicted person is escorted back, received and detained in the penitentiary on the basis of the sentence which previously ordered the surrender of the convicted person and, if applicable, the sentence by which consent was given to his investigation and for other offenses than those was the subject of the first sentence. The detention in the penitentiary based on this sentence is made for a period that cannot exceed 90 days from the date of taking over the convicted person. The 90-day period is deducted from the sentence applied to the convicted person. After the transfer of the convicted person to Romania, the execution of the decision pronounced by the court of the issuing state shall be carried out by the competent Romanian court, according to art. 172. The provisions of this Article shall apply only if the certificate and the judgment are transmitted by the issuing State within a maximum of 3 months from the date on which the judgment can be enforced. If the certificate and the court decision are sent after the expiration of this term, the provisions of art. 166 applies (meaning the regular course of procedure under FD 909).

From the other perspective, Article 178 (5) of Law 302/2004 provides that by exception from the provisions of Article 178 par. (3) and para. (4) lit. a) -c), f) and g), the request to initiate the procedure mentioned in par. (1) entails the obligation to transmit the judgment and the certificate of the executing state, when the convicted person has been previously handed over, based on a European arrest warrant issued by a Romanian court or the extradition request made by the Ministry of Justice, provided that , in case of conviction, the person should be returned to the executing state.

Also, in accordance with the Romanian law, the judge delegated for the execution of custodial sentences, appointed for the penitentiary where the convicted person is, verifies whether the conditions provided in art. 178 para. (3) and (4), as well as: a) in the case of persons who were previously handed over on the basis of extradition requests made by the Ministry of Justice or European arrest warrants issued by Romanian courts, if the extradition or surrender was carried out under the condition return in case of conviction, mentioning if the sentenced person agrees to be transferred to the executing State. For this purpose, the judge delegated for the execution of custodial sentences shall hear that person, at the place of detention, in the presence of a lawyer appointed ex officio or elected and, if the convicted person expressly requests, to the diplomatic or consular representative of the executing State, drawing up in this respect a report signed by the judge, the convicted person and the lawyer. The consent of the convicted person is irrevocable.

- (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; The Return as such is subject to a procedure to be initiated by the issuing state (EAW issuing state which is also the issuing state under FD 909). See the information referred above

- (iii) differentiate between nationals of the executing Member State and residents of that Member State in this regard? No

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 procedure as such relates to the implementation of the FD 909 and not of the EAW. When surrendered to Romania, and if surrender was done under the condition of being return, this is marked in a Registry (National Administration of Penitenciary). Once the person is finally convicted the judge delegated for the execution of custodial sentences, appointed for the penitentiary where the convicted person is verifies the legal situation of the person and ensure the condition is fulfilled.

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. Not the case

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. Not the case. In fact the return when applicable is included in the judgement of surrender as a condition/obligation for the issuing state to follow. However, it has been noted that in practice the issuing states simply forget of the obligation to return.

## 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)? Not the case 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[20] in stablishing that risk;

- what role, if any, did (measures to combat) COVID-19 play in establishing that risk?

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 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?

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 an issuing state in some cases the procedure under FD 909 was initiated.

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. At this stage the matter is fully understood and the information is provided as requested.

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. Not the case

**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

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

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)? Not the case If so:

- with respect to which Member State(s);

- on the basis of which sources?

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?

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. Not the case

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. Not the case

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?

## 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? Yes mostly related to Norway, but no difficulties have been identified. If so, have they experienced any difficulties? If so, please describe those difficulties and how they were resolved.

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? Yes, these cases were mostly related to Norway but no difficulties have been identified. If so, please describe those difficulties and how they were resolved.

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

Yes, we have registered cases of Arrest Warrants issued by UK or addressed to UK. No difficulties have been encountered.

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

Please see Article 33 of EPPO Regulation. Pre-trial arrest and cross-border surrender

1. The handling European Delegated Prosecutor may order or request the arrest or pre-trial detention of the suspect or accused person in accordance with the national law applicable in similar domestic cases.

2. Where it is necessary to arrest and surrender a person who is not present in the Member State in which the handling European Delegated Prosecutor is located, the latter shall issue or request the competent authority of that Member State to issue a European Arrest Warrant in accordance with Council Framework Decision 2002/584/JHA

The issuing authorities are those designated by each state. Thus, in the states where the prosecutor can issue EAW then the European delegated prosecutor for that state can issue an

EAW as well, where only the judge can issue, the European Delegated prosecutor asks the court to issue as it the case in Romania.

The Romanian legislation provides for the execution of the EAWs issued in accordance with Council Framework Decision 2002/584/JHA.

## 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? Extradition from Romania of the Romanian nationals is allowed under certain conditions. In this respect, art. 20 of Law 302/2004 is of relevance. Please find, below, the legal provisions:

Extradition of Romanian citizens

(1) Romanian citizens may be extradited from Romania based on the international multilateral conventions to which Romania is a party and based on reciprocity, only if at least one of the following conditions is met:

a) the extraditable person resides on the territory of the requesting State at the date when the request for extradition is filed;

b) the extraditable person has also the citizenship of the requesting State;

c) the extraditable person has committed the act on the territory or against a citizen of a Member State of the European Union, if the requesting State is a Member State of the European Union.

(2) In the case provided in paragraph (1) a) and c), when extradition is requested in order to conduct the criminal prosecution or the trial, an additional condition is that the requesting State provide assurances considered as sufficient that, in case a conviction to a custodial sentence by a final judgment, the extradited person shall be transferred in order to execute the punishment in Romania.

(3) The Romanian citizens can be extradited based on the provisions of the bilateral treaties and based on reciprocity.

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; Yes the *Petruhhin*-mechanism was applied in 9 cases (registered between 2017 and July 2020). In none of those cases the notified EU MS issued EAW
- what kind of information was provided to the competent authorities of the Member State of which the requested person is a national? Limited information as to description of facts and person in case. To our knowledge there were no such cases until now as pursuant to *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)* judgment?]

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? Yes, Between 2017 and July 2020 Romania was notified of 36 cases of requests for extradition addressed to other EU MS by third states Within the same time reference 5 cases under Pisciotti judgement have been registered. If so:

- was the information provided by that Member State sufficient to decide on issuing an EAW? Usually information provided by other MS when asking us to decide based on Petruhhin is most of the time insufficient, sometimes just an email with scarce information is provided. However, as good practices we mention Spain and Bulgaria

who have provided us with complete extradition package received from third country. Nevertheless, even in these cases, from an operational and practical point of view the prosecutor does not have enough information to open a criminal investigation, should he or she decide that the case could be prosecuted in Romania, as per our Criminal Procedural Code. If not, why not;

- did the competent issuing judicial authority of your Member State actually issue an EAW; Not the case and

- if so, did the EAW actually result in surrender to your Member State? Not the case as no EAW was issued.

As to this topic please also see joint report of Eurojust and the European Judicial Network on the extradition of EU citizens to third countries EJN and Eurojust Report https://www.eurojust.europa.eu/sites/default/files/2020-12/2020-11_Eurojust-EJN-report-on-extradition-of-EU-citizens.pdf

***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? See the answer above. Thus, as you could see from the answer above, the extradition of Romanian nationals is possible under certain conditions prescribed by the law 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?

## 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)),[21] 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)).

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

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).

**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: Yes for both situations (facts and legal qualifications)

- 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? The person can consent to the surrender and at the same time not renounce to the speciality rule. A lawyer is appointed for the sought person od his own choosing or ex officio. The lawyer and advise the sought person. In addition, the judges are usually informing the sought person during the court session about the consequences of the specialty rule.

62. Are the issuing judicial authority and the requested person provided with a copy of the (translated) decision to execute the EAW? The issuing judicial authority is provided always with a copy in Romanian only. the requested person provided with a copy of the (translated) decision to execute the EAW if he or she is not a Romanian speaker.

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? As it is very rarely to know if a surrender was done under the rule of speciality (this

information is missing or simply not considered by the executing authority of the other state) it is for the p[prosecution office or the court in charge with the other offence to check on this matter and if needed ask the consent. The person is entitled to lodge any possible requests that would be allowed in accordance with the Criminal Procedural Code. Usually though such situations do not occur, because the person is heard during the trial or criminal investigation and they can raise the issue of speciality in front of the judge or prosecutor in charge of the case. Then the competent Romanian judiciala authority will immediately start asking information about

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. Yes, as indicated above, when surrendered to Romania there is no clear indication as the execution was done or not under the rule of speciality. Another problem relates to the duration of having the consent given or a decision taken.

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?"

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. Not the case

**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? We presume that all requests for supplementary information by the executing judicial authority should be directly linked with objective of the EAW proceedings.

67. What kind of questions should an executing judicial authority ask when requesting supplementary information? Limited to the purpose of procedure to the EAW and in full respect of principle of mutual trust.

68. Do executing judicial authorities occasionally ask too much supplementary information? If so, on what issues? Yes, in some occasions, some states, yes. Prison conditions and service of summons.

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? Is a case by case approach.

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?

There is no need for focal points. EJN contact points as well as Eurojust are more than enough to support practical application of the EAW.

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? Not the case

72. Do you have any suggestions to improve FD 2002/584/JHA. If so, which suggestions? Not the case

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.

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? It is a very good document that should be extensively used. If, in your opinion, the *Handbook* does not live up to expectations, how could it be improved?

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? Depends on the courts.

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?
The Romanian law allows for summoning in another state. As mentioned before, in order to issue an EAW it is needed to have a national arrest warrant and, according to the Code of Criminal Procedure, preventive measures involving deprivation of liberty may be ordered after hearing the suspect or defendant, in the presence of a retained or court appointed counsel. Therefore, it is obvious that the suspect/defendant is summoned.
A person can be arrested *in absentia* only under specific conditions. A pre-trial arrest proposal shall be ruled only in the presence of the defendant, except for situations where they are unjustifiably absent, are missing, are avoiding coming to court or cannot be brought before the judge due to their health condition or to *force majeure* events or a state of necessity.
Summoning in another state cannot be an alternative to an EAW, because the purpose is fundamentally different. Indeed, summoning is a compulsory condition before deciding whether to issue a national warrant (on the basis of which an EAW can be issued subsequently), but there is a fundamental difference between the measure meant to inform the person about an ongoing trial and the need to be present before the court and the decision to enforce a custodial warrant. It should precede an EAW, but one should always bear in mind the specifics of the case.
Between 2018 and 2020, during prosecution, no ESOs were issued. 21 were received, from which 19 were executed. Only 4 certificates issued during trial were received.

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? FD 2008/909/JHA should be more extensively used and should in some cases be considered ab initio.

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? Not clear the question

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? Not clear the question

78. What consequences, if any, do measures to combat COVID-19 have on the operation of the EAW-system? The consequences as to EAW have been all related to the surrender of the persons sought.

On a general note, the COVID pandemic led to more videoconferencing. By Law 114/2021 on some measures in the field of justice in the context of the COVID-19 pandemic the following provisions were adopted: If the judicial authority is convinced that this does not affect the proper conduct of the trial or the rights and interests of the parties, persons deprived of their liberty, other than those under house arrest, shall be heard by videoconference at the place of detention, without their consent. Hearing of other persons than those previously mentioned can also be done by videoconference, at the place where they are, with their consent. This possibility will be made known to them at the first hearing or, as the case may be, by a notice communicated by telephone, e-mail or other such means which ensure the transmission of the notice and confirmation of receipt, the person being asked if he agrees. These provisions do not apply in the case of the hearing during the criminal investigation nor in the trial of cases with juvenile defendants, of those related to judicial rehabilitation, nor when the court declares the court hearing as non-public. Phone hearing is not an option according to Romanian rules of criminal procedure.

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