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

REPORT ON GREECE

28 October 2021

Dr. Christina Peristeridou, Assistant Professor

MAASTRICHT UNIVERSITY

ImprovEAW
RESEARCH PROJECT

Table of Contents

Introduction

This report concerns the implementation and application of the FD 2002/584/JHA on European Arrest Warrant to Greek law. The report was written following the structure of a questionnaire designed 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 report 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 the issues under Greek law, I also indicate whether the issues mentioned in the explanation-part exist in Greece.

Besides answering the questions as appearing in the questionnaire, the EAW form used in Greece is provided as attachment in Greek.

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.

This report is written by Dr. Christina Peristeridou, who is assistant professor in criminal law and procedure at Maastricht University. Dr. Peristeridou completed her Bachelor studies in Greek law in Aristotle University of Thessaloniki (Greece) and is member of the bar of Thessaloniki since 2008. She is expert in comparative criminal procedure and European Criminal Law and her expertise includes inter alia pre-trial detention and the European Arrest Warrant.

Method of conducted research

Dr. Peristeridou completed the questionnaire after having researched Greek law, case law and literature. She has also conducted several semi-structured interviews with prosecutors and judges in the criminal courts of Athens and Thessaloniki (largest two courts dealing with EAWs in Greece) and administrative staff who is tasked to handle EAW requests. The interviews took place either in person or, due to the Covid-19 measures, virtually, from August 2020 to October 2021. Several of the interviewed practitioners have delivered their experience and answers in writing. Dr. Peristeridou further studied 167 EAW judgments provided by the two aforementioned courts, which included extensive reference to all documents of the case files. This report has been up to date up until 28 October 2021.

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

A. General questions

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 FD 2002/584/JHA (here after FD) was transposed with Law 3251/2004 of 9 July 2004 (thereafter 'national law').[1] This law has been amended to implement the amendments of FD 2009/299/JHA, namely by Law 4596/2019 of 26 February 2019.[2]

The EAW is not consolidated within the Greek Code of Criminal Procedure (hereafter GCCP) but exists as special criminal law. The GCCP still contains the provisions of extradition that apply to third countries (art 437ff GCCP). Consequently, the Greek courts might apply analogically some provisions of extradition (as *lex generalis*) to EAW procedures (as *lex specialis*), if there are lacunae, but only to the extent that the spirit of the EAW is not violated.[3] One example is the possibility to adjudicate on an already refused request. According to art 454 GCCP a decision of the court to refuse extradition does not preclude a novel request being submitted, if new elements come to light. This provision is applied *mutatis mutandis* to the EAW.[4]

Art 8 (1) of the FD has been transposed **almost verbatim** into national law, specifically art. 2 national law. One only deviation can be found in paragraph f of art 8 (1) FD, where there is mention of the penalty imposed if there is a *final judgment*.

In the Greek version of the FD, the term used is not 'enforceable judgement'; a translation alluding to the distinction of different instances was chosen, which is not helpful: the term *τελεσίδικη/telesidiki* judgement is used in the Greek version of the FD, i.e. these are judgements against which there is no more remedy on the merits but it is still possible to appeal to the Supreme Court on points of law. In the national (implementing) law the term used is that of an *αμετάκλητη/ametakliti* judgement: these are judgments against which there is no more possible remedy (law or merits). That implies that under Greek law execution-EAWs must be based on judgments against which there is absolutely no remedy left, which is not how this is applied in practice, see (Part 3 B 16).

The **EAW form** used (see annex) is an almost verbatim reproduction of the amended EAW form, with one difference: in the Greek EAW form there are two additional fields requesting the **first names of the father and mother of the requested person** under a) of the form. This addition addressed the frequent phenomenon of arresting suspects with refugee or immigrant status, who tend to declare (when they arrive to Greece) commonly used names e.g. Muhammad Khan. Thus, arresting and detaining the wrong person or multiple persons happens often. See for more under (Part 3 A 15).

[1] Νόμος υπ' αριθ. 3251 – ΦΕΚ Α'127/9.7.2004.
[2] Νόμος υπ' αριθ. 4596/2019 – ΦΕΚ Α' 32/26.2.2019.
[3] Δ. Μουζάκης, Το Ευρωπαϊκό Ένταλμα Σύλληψης, Νομική Βιβλιοθήκη, 2009, σ. 456επ.
[4] ΣυμβΕφΘεσ 1080/2008.

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?

Yes, on 9 June 2021 Greece has been officially notified by the Commission based on art 258 TFEU for its **intention to commence infringements proceedings** for incorrect implementation of the FD EAW.[5] Given the Commission's recent 4th Implementation Report on EAW and subsequent interviews with prosecutors, the main reasons relate to the wrongful implementation regarding grounds of refusal.[6]

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)?

Yes, all grounds for refusal and all guarantees have been implemented in articles 10, 11, 12, 13 national law.

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?

Please consult the following table.

[5] INFR(2021)2003 from https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=0&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=EL&DG=JUST&title=&submit=Search

[6] Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, 2.7.2020, COM/2020/270 final, p. 13.

MANDATORY

FD EAW	National legislation
3 para 1 - amnesty	MANDATORY[7]
3 para 2 – ne bis in idem	MANDATORY[8]
3 para 3- age of responsibility	MANDATORY[9]

OPTIONAL

FD EAW	National legislation
4 para 1 – double criminality	MANDATORY[10]
4 para 2 – national prosecution for the same act	MANDATORY for **nationals** [11]
	OPTIONAL for **residents**[12]
4 para 3 – decision not to prosecute	OPTIONAL[13]
4 para 4 – statute of limitation	MANDATORY[14]
4 para 5 - ne bis third state	OPTIONAL[15]
4 para 6 – undertaking execution	MANDATORY for **nationals**[16]
	OPTIONAL for **residents**[17]
4 para 7 – territorial jurisdiction	MANDATORY [18]

GUARANTEES

FD EAW	National legislation
5 para 2 – life imprisonment guarantee	GUARANTEE[19]
5 para 3 – return to serve guarantee	MANDATORY ground for **nationals**[20]
	GUARANTEE for **residents**[21]

Greece implemented **many optional grounds as mandatory** while it made the additional **distinction between Greek nationals and residents** (eventually non-Greek nationals) for grounds 4 para 6, the guarantee 5 para 3 and for ground 4 para 2 EAW. Accordingly, for Greek nationals these grounds are presented as mandatory, whereas for non-Greek nationals (for residents more accurately) they are optional or as a guarantee.

According to the *travaux préparatoires,* these choices were motivated by the desire to maintain national sovereignty, i.e. to **minimize the surrender of Greek nationals**.[22] The ground on

[7] Art 11 para α) of the national law.
[8] Art 11 para β) of the national law.
[9] Art 11 para γ) of the national law.
[10] Art 10 para 1 α) of the national law.
[11] Art 11 para η) of the national law.
[12] Art 12 para α) of the national law.
[13] Art 12 para β) of the national law.
[14] Art 11 para δ) of the national law.
[15] Art 12 para δ) of the national law.
[16] Art 11 para στ) of the national law.
[17] Art 12 para ε) of the national law.
[18] Art 11 para ζ) of the national law.
[19] Art 13 para para 2 of the national law.
[20] Art 11 para η) of the national law.
[21] Art 13 para 3 of the national law.
[22] ΕΙΣΗΓΗΤΙΚΗ ΕΚΘΕΣΗ στο σχέδιο νόμου «Ευρωπαϊκό ένταλμα σύλληψης, τροποποίηση του ν. 2928/2001 για τις εγκληματικές οργανώσεις και άλλες διατάξεις» p. 2.

territorial jurisdiction was made mandatory for the same reason and for ensuring the sovereignty over acts committed in Greek territory. The ground on statute limitation was made mandatory because of its importance in Greek law as *ius cogens* rules with little exceptions.[23] The ground of double criminality for non-list-offences became mandatory to maintain as much as possible the old regime, protecting the sovereignty and realm of national criminal law definitions.

Apparently, the Greek legislator wanted to limit the impact of mutual recognition on national sovereignty and the national system (surrendering nationals, protection of national definitions of offences or other important rules, power to exercise jurisdiction) as much as possible. One explanation is that the Greek legislator of 2004 was fearful of such a 'new' – back then – system. Yet, in the amendment of 2019, none of these errors were fixed.

Importantly, I must emphasize that contrary to the legislator, **Greek legal practice depicts a positive stance towards mutual recognition**. As it will be demonstrated throughout the report, Greek practitioners show a loyal attitude towards mutual trust and the execution of EAWs. While the legal framework might not leave wiggling room, one observes a gap between law and practice, with the legislator maintaining a conservative regime, and courts and prosecutors attempting to minimize obstacles in mutual cooperation.

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)?

The legislation does not provide for a two-step test for assessing such violation but there is a ground of mandatory refusal regarding *some other* human rights in the legislation (see below question 7).

Refusing execution on human rights grounds (whatever these grounds are, e.g. fair trial, conditions of detention, prejudicial prosecution) is *rare* in Greek jurisprudence. Thus, there was no chance to develop criteria, other than that any violation of human rights must be proven by objective grounds and evidence.[24]

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?

Looking at the ECJ's case law, to satisfy the dual level of protection:

First, there must be a *judicial authority* – as this is interpreted in art 6 para 1 EAW – issuing at least one of the two warrants (national or EAW). As I will explain below, the investigative judge (or judicial council) issues the national arrest warrant and the prosecutor the EAW. The Greek prosecutor does not satisfy the definition of the judicial authority of art 6 EAW (see below under B). But the investigative judge and the judicial council issuing the national warrant do satisfy that definition. Hence, this requirement of dual protection is complied with at the level of the national warrant.

Second, there must be *effective judicial protection* meaning either a remedy against the issuing of a EAW or alternatively, a judicial review where 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

[23] ΕΙΣΗΓΗΤΙΚΗ ΕΚΘΕΣΗ στο σχέδιο νόμου «Ευρωπαϊκό ένταλμα σύλληψης, τροποποίηση του ν. 2928/2001 για τις εγκληματικές οργανώσεις και άλλες διατάξεις» p. 3.
[24] ΑΠ 236/2015.

(Parquet Suède), C-625/19 PPU, ECLI:EU:C:2019:1078, paragraphs 52-53). Accordingly, Member States are given some discretion to comply with this requirement. Greek law does not provide a specific remedy against issuing the EAW, but there is effective judicial protection when issuing the national warrant. The investigative judge has full access to the file, she assesses whether there is reasonable suspicion and whether there is a serious risk based on objective facts that the suspect might abscond or reoffend. These are part of the conditions for issuing the national warrant. Also, the national warrant must be explicitly justified with reference to these conditions, which much be included in the warrant's text, following art 276 para 2 GCCP. Moreover, the prosecutor (who issues the EAW) is consulted before issuing the national warrant. Thus, it can be said that within the assessment of issuing a national warrant, the investigative judge will *de facto* reflect upon the possibility or necessity for issuing an EAW, as she must reflect upon the status of the suspect as a fugitive or more generally where the suspect resides.

Whether this is taken into account to a sufficient degree in legal practice is a different issue. There is no legal obligation to explicitly mention the possibility of an EAW in the text of the national warrant or to take into account the proportionality of a possible EAW as such. It remains thus to the discretion of the investigative judge to fully appreciate the proportionality of a possible EAW as a consequence of the national warrant.

Importantly, there is **some judicial review post-EAW**. Such review concerns not the EAW per se as the EAW ceases to exist upon surrender. But right after surrender and during deciding the pre-trial detention, the lawfulness and proportionality of the pretrial detention that ensues the surrender does include a test of proportionality and alternatives. Inevitably this leads to a proportionality and necessity control of the EAW as well, or, to put it more accurately, of the effect of the EAW post-surrender. Hence, it is legally possible that a suspect surrendered with a EAW is released unconditionally or conditionally after surrender, if the court finds out that the conditions for pretrial detention are not met or that further detention after surrender would be unnecessary.

To conclude, I believe the Greek legal framework does comply with the dual protection requirement.

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.

Wrongful implementation
As seen above, several **optional grounds (and one guarantee) were implemented as mandatory**, which constitutes undoubtedly an incorrect implementation. This is indeed confirmed in most scholarship, even authored by prosecutors;[25] occasionally some authors still consider the term 'optional' as referring to the power of the legislator to choose how to implement the grounds as mandatory.[26] The Supreme Court or other courts never held that the national legislation is erroneous implementation.

[25] For example, Γ. Ναζίρης, Η σχέση του ελέγχου της παραγραφής ως λόγου υποχρεωτικής άρνησης εκτέλεσης ευρωπαϊκού εντάλματος σύλληψης με τον αποκλεισμό του ελέγχου του διττού αξιοποίνου κατ' άρθρο 10 παρ. 2 Ν 3251/2004, Ποινική Δικαιοσύνη, 2018, Τεύχος 1, σ. 21. Π. Αδάμης, Ευρωπαϊκό Ένταλμα Σύλληψης – Ο ρόλος της Eurojust και της Ευρωπαϊκής Εισαγγελίας και η νομολογία του ΔΕΕ, η Ποινική Δικονομία της Ευρωπαϊκής Ένωσης Τάσεις και Προκλήσεις, Ένωση Ελλήνων Ποινικολόγων, 2020, σ. 215-220.
[26] Ν. Τσιακουμάκη, Ευρωπαϊκό ένταλμα σύλληψης, Νομική Βιβλιοθήκη, 2019, σ. 149.

One general but practical consequence of the Greek legal framework relates to the size of court judgments on the execution of EAWs: given the formalistic style of Greek legal system, courts must explain why *none of the mandatory grounds* applies in a well-reasoned manner *for each ground separately*. And given the number of mandatory grounds to go through, judgements are long and must cost some effort to be produced in a timely manner.

Discrimination of non-nationals

Greece makes a **distinction between nationals and non-nationals**. *Prima facie*, Greece does not violate the principle of non-discrimination as the ground exists for both Greek and EU citizens (with a strict read of C-42/11 Da Silva Jorge, para 41 and 52). But in my view, the fact that for Greeks this ground is mandatory amounts to a different treatment, which would violate the principle of non-discrimination. Indeed, when looking into legal practice, for nationals those grounds are raised as mandatory, but for residents the court has discretion. One reason, in my view, for such discrepancy is that the Greek legislator (in contrast to the Greek courts) did not approach these grounds as means to achieve rehabilitation, but as a way to sneak into the EAW the old-fashioned protection of Greek nationals from surrender.

Double criminality

There are problems with the implementation of the refusal ground regarding **double criminality** outside list-offences. Checking double criminality outside the list-offences is not even presented as a ground for refusal per se, as it is not part of art 11 or 12 of the national law where all grounds for refusal are listed. It is found in art 10 together with the scope of the EAW, emanating thus more importance. The national law sets as starting point that dual criminality must be complied with, presenting the existence of double criminality as a rule, whereas the abolition of the double criminality for list-offences appear as the exception (in para 2 of the same article). Art 10 para 1 of the national law entitled "Cases in which the execution is allowed' reads: *"Subject to the provisions of articles 11 - 13 hereof the European arrest warrant shall be executed if: a) the punishable act, for which the European arrest warrant has been issued, also constitutes an offence according to the Greek penal laws, independently of the legal description*[27]*, which (offence) is punishable in the issuing Member State by a custodial sentence or a detention order, for a maximum period of at least twelve months."* Similar is the codification for an execution-EAW in the next paragraph. Note that there is an additional article mentioning only the scope of the EAW in art 5 national law, so this formulation in art 10 seems unnecessary. Please note that for the list-offences, the provision uses the term 'execution is permitted', implying thus discretion but not obligation as in art 2 para 2 FD EAW – although, thankfully, the courts do take it as obligation.[28]

This codification appears merely an issue of semantics, but of importance in my view, as it shows that the legislator wanted to elevate the double criminality check outside list-offences to something more than a mandatory ground.[29] Indeed, courts often conduct a double criminality check even it concerns a list-offence. In most judgements that I have studied, judges engage into the redundant practice to review double criminality, only to end up in the 'nevertheless this is a list-offence' point. In my view, this might stem from the need of reassuring that double criminality would not be an issue even if such control was allowed. The legislator has also reassured in the *traveaux* that all list-offences are criminalised in Greek law.[30]

[27] Emphasis added.

[28] Γ. Ναζίρης, Η σχέση του ελέγχου της παραγραφής ως λόγου υποχρεωτικής άρνησης εκτέλεσης ευρωπαϊκού εντάλματος σύλληψης με τον αποκλεισμό του ελέγχου του διττού αξιοποίνου κατ' άρθρο 10 παρ. 2 Ν 3251/2004, Ποινική Δικαιοσύνη, 2018, Τεύχος 1, σ. 21.

[29] ΕΙΣΗΓΗΤΙΚΗ ΕΚΘΕΣΗ στο σχέδιο νόμου «Ευρωπαϊκό ένταλμα σύλληψης, τροποποίηση του ν. 2928/2001 για τις εγκληματικές οργανώσεις και άλλες διατάξεις» p. 3.

[30] ΕΙΣΗΓΗΤΙΚΗ ΕΚΘΕΣΗ στο σχέδιο νόμου «Ευρωπαϊκό ένταλμα σύλληψης, τροποποίηση του ν. 2928/2001 για τις εγκληματικές οργανώσεις και άλλες διατάξεις» p. 3.

Territorial jurisdiction

The ground that stands out as being the most problematic in legal practice is the ground on **territorial jurisdiction**. This being mandatory means that once the offence is even partly committed in Greece, the court has no choice but to refuse execution. This ground leads to many refusals (see statistics Part 4 B 42). Some legal practitioners complain that their hands are tied, as they must refuse execution in cases where Greece has little interest to prosecute. Prosecutors have reported various conflicts with other countries over this. Ultimately mutual trust is compromised in their view. For example, the Court of Appeals of Athens refused to surrender to Romania a Romanian national who had illegally purchased drugs in Greece and transported them to Romania, because part of the act was committed in Greek territory. The Romanian authorities brought the issue to Eurojust and complained that Romania had clearly more legitimate interest to adjudicate, since the drugs were fed into their market. Usually when execution is refused on this ground, the court returns the file to the prosecutor who may or may not prosecute. Note that the Greek system follows the legality principle in prosecution (with exceptions), so prosecution must take place if evidence exist.

This is by far not an isolated case. Multiple other examples exist, and some are particularly bothersome as the link with territoriality might be too weak.[31] A recent case of a sophisticated cartel of illegal immigration in Germany could not be prosecuted where most of the acts took place, because some minor aspects of the cartel took place in Greece.[32] Another notable example is a Belgian request for a human trafficking case that took place in Belgium. Part of the act was the forgery of documents which took place in Greece, which is only a small part of the offence – but Greece refused surrender. Also, cybercrime or bank fraud cases that have been mainly committed abroad and their consequences have not affected Greece whatsoever can be kept for prosecution in Greece, if the suspect was physically present in Greek territory when committing the online offences.[33] Serious problems with acquiring evidence and witnesses are inevitable for those cases, and more instruments of mutual recognition must be used. In the end, the judgements rendered for these cases could be quite lenient, due to lack of evidence.[34]

An additional aspect that amplifies this situation is that, currently, the Greek sentencing regime is very lenient (punishments, but also the regime of conditional release), thus defence counsels try to invoke this ground as much as possible.[35] Defining territorial jurisdiction is an abstract and nebulous part of criminal law and so it becomes the opportunity for the defence to ensure a Greek trial and Greek sanction. There are examples where the defence attempts to invoke universal jurisdiction in cases where international conventions prescribe it, e.g. money laundering;[36] these cases are not accepted by Greek courts.[37] This is even the case when there was a genuine issue of universal jurisdiction, e.g. in the case of crimes under the ICC for a member of ISIL (Islamic State of Iraq and Levant) who kidnapped, raped, tortured and killed a Yazidi young girl in Iraq and was requested from Germany; the Greek court rejected the argument of universal jurisdiction and executed the EAW request. At the time of drafting this report, a new legislation with stricter

[31] Π. Αδάμης, Ευρωπαϊκό Ένταλμα Σύλληψης – Ο ρόλος της Eurojust και της Ευρωπαϊκής Εισαγγελίας και η νομολογία του ΔΕΕ, η Ποινική Δικονομία της Ευρωπαϊκής Ένωσης Τάσεις και Προκλήσεις, Ένωση Ελλήνων Ποινικολόγων, 2020, σ 219.
[32] ΣυμβΕφΑθ 164/2021.
[33] ΣυμβΕφΑθ 89/2019.
[34] Γ. Βούλγαρης, Το Ευρωπαϊκό Ένταλμα Σύλληψης, Π. Αδάμης, Λ. Κοτσαλής, Ευρωπαϊκή Δικαστική Συνεργασία "Eurojust" – Ευρωπαϊκή Εισαγγελία, Σάκκουλας, 2019, σ. 43.
[35] ΣυμβΕφΑθ 87/2021.
[36] ΣυμβΕφΑθ 7/2021.
[37] The mainstream argumentation is to make a distinction between genuine crimes of universal jurisdiction (e.g. offences of international criminal law falling within the ICC) and non-genuine crimes of universal jurisdiction, e.g. offences for which universality exists to ensure their proper prosecution and cooperation of states.

measures on the sentencing regime is pending before the Greek parliament, so it is expected that this problem might be slightly diminished in the future.[38]

On occasion, courts might try to "save the EAW and surrender" when possible. There are judgements with an attempt to interpret the ground of refusal restrictively, but the Supreme Court did not approve. One notable case concerned a French EAW for Georgian members of the infamous Russian mafia V.v.Z (Thieves in Law) committing organised thefts and laundering in France and elsewhere. The case was so crucial it required a Joint Investigation Team. Two of the offences, namely setting up a criminal organisation and laundering were committed in Greece, whereas the main criminal activities (theft and robberies) in France and England. The French issuing authority, knowing the Greek *modus operandi*, anticipated the predicament and **argued already in the supplementary part of the EAW form at section (f)** that although these two offences were committed in Greece, these are by-products of the main criminal activity, and that France would not prosecute the thefts committed in Greece. The Court of Appeals of Thessaloniki granted the execution for all offences, interpreting the ground of refusal restrictively and in the spirit of the *ratio legis* of EAW.[39] Clearly any other result would harm effective prosecution immensely in such serious case. Yet the Supreme Court squashed this judgment and executed the EAW only partially, following a very formal read of the EAW.[40]

For all of this, it is submitted that this ground should become optional in Greek law and perhaps the EAW should be amended as to add as criterion that **national courts should decide based on where the crime had the most affect or make a link with the FD 2009/948/JHA on solving conflicts of jurisdiction.**

Statute of limitation

Finally, the mandatory ground on **statute limitation** has presented difficulties, in relation to its scope. For offences committed exclusively abroad by non-Greek nationals, the ground does not apply.[41] There is however a problem with its application to list-offences. Statute of limitation rules are considered in Greece part of substantive law. Checking if the facts would be barred from prosecution is somewhat a check of criminalisation. Thus, the question arose whether this ground applies also to list-offences. The argument is that in that case, checking statute of limitation is a type of double criminality check: a check of criminalisation in time. Since 2016, the Supreme Court is of the opinion that this ground applies **solely for offences outside the list-offences**.[42] This might be contrary to how other Member States understand this ground. Modern Greek scholarship criticises the Supreme Court ruling as erroneous: the list-offences are independent from grounds of refusal and these two themes although loosely connected play a different function within the EAW instrument; following this logic also other grounds of refusal should not apply to the list-offences; moreover, the check of grounds of refusal is done *in concreto* while the double criminality is done *in abstracto*.[43]

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

[38] http://www.opengov.gr/ministryofjustice/?p=15352
[39] ΣυμβΕφΘεσ 474/4.7.2018.
[40] ΣυμβΑΠ 1365 / 2018.
[41] ΑΠ 399/2015.
[42] ΑΠ 800/2016, ΑΠ 1890/2016.
[43] Γ. Ναζίρης, Η σχέση του ελέγχου της παραγραφής ως λόγου υποχρεωτικής άρνησης εκτέλεσης ευρωπαϊκού εντάλματος σύλληψης με τον αποκλεισμό του ελέγχου του διττού αξιοποίνου κατ' άρθρο 10 παρ. 2 Ν 3251/2004, Ποινική Δικαιοσύνη, 2018, Τεύχος 1, σ. 21.

- (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?
- (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?

Greek nationals

As seen in the table above, there are three distinctions, namely for grounds art 4 para 2, 4 para 6 and 5 para 3 FD EAW.

For **Greek nationals**, the execution **must be refused** if:

- There is criminal prosecution for the same offence in Greece. According to jurisprudence, prosecution must already have been launched until the very day of the court session.[44] Thus the mere possibility is insufficient. Also, launching preliminary investigation or an official complaint to the police is insufficient To invoke this ground, the preliminary investigation (the first stage of investigations, handled by the police and prosecutor) must have finished, and the prosecutor must have decided to press charges/prosecute the suspect.

- If is not guaranteed that the Greek national will return to execute the sentence in Greece (art 5 para 3 FD) – for prosecution-EAWs. Although a guarantee in the FD this is implemented as a refusal ground in art 11 national law. Thus, Greek courts must always request such guarantee before executing (see Part 4 C).

- If, in an execution-EAW (art 4 para 6 FD), Greece undertakes to execute the sentence in Greece. Please note the **consent here is not required**. For example, in the case of a Greek national requested from Czech Republic for an execution-EAW, the requested person did not appear to the hearing nor was he represented by lawyer, but the court refused execution as he is a Greek national and the execution was ordered to take place in Greece.[45] Several issues are created especially when the trial was in *absentia*. Since the *in absentia* ground is optional while the ground of art 4 para 6 is mandatory under Greek law, the rather strange situation can occur where Greece must execute in its territory a judgement *in absentia* delivered, without any way for the person to return and challenge this; this has occurred in least one case and there the Appeal Court of Thessaloniki circumvented the issue and refused the execution. The argument was the right to be present to his own trial is more important in this case than the protection against surrender to a foreign country.[46]

Residents

Residents (non-Greek nationals) receive less protection from surrender. The above grounds are for them **optional or as guarantee**. The content is similar, only the character of the ground as mandatory or non-mandatory (or a guarantee) change.

How is residency established? Residency is established following the *traveaux,* when there is an element of permanent residency,[47] on a case-by-case basis. Please note that the national law

[44] ΑΠ 854/ 2016, ΑΠ 994/2010, ΑΠ 558/2007 ΠοινΧρ ΝΖ', 597; Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, Ποινική Δικαιοσύνη, Τεύχος 12, Δεκέμβριος 2018, σ. 1224.

[45] ΣυμβΕφΑθ 20/2020.

[46] ΣυμβΕφΘεσ 135/2005, ΠοινΧρ 2005, 847.

[47] ΕΙΣΗΓΗΤΙΚΗ ΕΚΘΕΣΗ στο σχέδιο νόμου «Ευρωπαϊκό ένταλμα σύλληψης, τροποποίηση του ν. 2928/2001 για τις εγκληματικές οργανώσεις και άλλες διατάξεις» p. 3.

correctly makes the required distinction between **residency** and **stay**. And these two concepts are **interpreted in line with EU law** (see C-66/08 Koslowski and C-123/08 Wolzenburg).

Residency is defined when the person has established himself in a specific place in Greece which has become the main and permanent centre of relationships and life. *Stay* refers to living in Greece without intention of permanent residency but in a continuous and prolonged period and have thus created bonds and relationships similar to residency.[48]

In conformity with the FD, the guarantee of art 5 para 3 FD EAW applies only to **residents**, while the execution of execution-EAWs in Greece of art 4 para 6 FD EAW applies to **residents** and those **staying** in Greece (as in the FD).

Residency or staying?
How to interpret when someone is resident or staying? The first step is to decide whether one of the two terms applies (staying or resident) and the second step concerns whether there is **legitimate interest** for the person to make use of this ground (rehabilitative grounds). The interdependence between the steps is unclear (so whether someone could be 'staying' in the country but not have legitimate interest), but apparently courts employ various criteria to establish legitimate interest: the duration, nature and conditions of presence in the country, the family and financial ties. Whether one has legitimate interest would depend then on the intensity of fulfilment of these criteria and of course whether the individual invoke the ground to begin with.[49] There is a good number of case law on this topic. For example, an Albanian, who a month before arrest, had acquired a 'staying' permit, had submitted taxes in Greece for the last year and was working at a gas station for 8 months, was not considered having legitimate interest of rehabilitation since his wife was also in Albania and they married only recently;[50] similar conclusion was reached for a French national with family and work in France, who came to Greece shortly before arrest with false passport.[51] But the Indian national who had married a Greek, lived in Greece for 30 years, owned a shop and had social insurance and his general life in Greece, was considered to be a resident and the ground was invoked.[52] Similarly, the Romanian father of two children who lived in Greece for 20 years with his wife, and had his whole affairs in Greece was considered a resident.[53] I should highlight that the court **will hear witnesses** (if submitted by the defence) regarding the level of integration and bonds in Greece, next to accepting all kinds of written documents as evidence.[54]

How to invoke the optional grounds/guarantee?
For activating art 4 para 6 FD EAW there used to be a third step until 2012, namely to provide the guarantee that Greece will undertake the execution of the sentence: this was given as a written and explicit declaration of commitment by the Ministry of Justice, as the central authority (art 7 FD). This should be acquired by the defence attorney. Without this declaration the ground could not be invoked according to the Supreme Court.[55] But scholarship disagreed strongly: the execution of EAWs cannot depend on the Ministry and this requirement puts a significant burden to requested persons for whom this provision is meant to work as benefit. Rehabilitation is not

[48] ΑΠ 862/2015; Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, Ποινική Δικαιοσύνη, Τεύχος 12, Δεκέμβριος 2018, σ. 1224.
[49] ΑΠ 603/2020.
[50] ΑΠ 603/2020.
[51] ΑΠ 862/2015.
[52] ΑΠ 451/2020.
[53] ΣυμβΕφΑθ 21/2021.
[54] For example ΣυμβΕφΑθ 4/2021.
[55] ΣυμβΑΠ 324/2012.

served, according to this view, if excessive administrative obstacles exist.[56] Indeed, in the experience of some prosecutors, this guarantee has been too difficult to acquire as the Ministry often refused to provide it due to the overloaded infrastructure.[57] I should add that such a condition amplified the discriminatory treatment of non-Greeks.

Since 2012, the Supreme Court has changed direction: there is **no need for the declaration by the Ministry of Justice** to invoke these grounds for rehabilitation; the court alone is responsible to decide whether to accept this this ground.[58] But as it will be explained, many Appeal courts have not been aware of the change and continue **rejecting the applications to invoke these grounds without a declaration.**

Challenges
An important challenge relates to the sentencing regime. Given the often inappropriate detention conditions, the financial problems of the state and the workload of the system, the Greek legislator introduced over the last years several measures to decrease actual prison time. Part of these measures are possibilities to buy-off a sentence, quick probation and conditional release, and a smarter calculation of prison time. The past many years the legislative regime has been quite lenient and requested persons often want to stay in Greece to execute their sentence. Currently, legislation pending introducing stricter measures, so to some extent this situation might change.[59]

But this favourable regime together with the set of mandatory grounds for serving the sentence in Greece and other mandatory grounds (e.g. territorial jurisdiction) has **severely impacted EAWs and mutual trust**. Greek practitioners report that frequently some other Member States find the Greek system of sanctions too lenient. One notable case concerned an execution-EAW issued by Germany. Greece refused execution of the EAW and kept execution in Greece using art 4 para 6 EAW. The requested person served his time in Greece only to be arrested again with the same SIRENE entry (German authorities retained SIRENE entry) in another country and surrendered to Germany; this case clearly violates *ne bis in idem* but it also demonstrates that the German authorities simply did not recognised the Greek execution of penalties as valid.

Often the arguments put forward by other Member States are not justifiable at all: there is often the assumption that the requested person will buy-out the sentence imposed in Greece (transpose into a fine). But this is an inaccurate understanding of the discretion in executing art 4 para 6 FD EAW: when Greece undertakes the execution of a sentence, the sentence per se cannot be altered e.g. transformed into a fine (this was reaffirmed by the Supreme Court several times).[60] Greece is only responsible for the execution, and there indeed the lenient probation and conditional release measures do apply.

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?

One additional mandatory ground was added.
In art 11 para e) of the national law, the EAW must not be executed if it was issued to prosecute or sentence someone on grounds of gender, race, ethnicity, religion, origin, nationality, language,

[56] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 12 παρ. 53.
[57] Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, Ποινική Δικαιοσύνη, Τεύχος 12, Δεκέμβριος 2018, σ. 1224.
[58] ΑΠ 324/2012; ΑΠ 1826/2019.
[59] http://www.opengov.gr/ministryofjustice/?p=15352.
[60] ΑΠ 105/2015, ΣυμβΕφΘεσ 268 /2017.

political believes, or sexual orientation or for their action for freedom (the latter one alluding to freedom-fighters, in lack of better translation).

This human right's ground does not refer to all human rights violations but concerns **only discriminatory or politically motivated prosecution or punishment**; thus, it does not protect against deficiencies of the legal system such as defence rights, judicial independence, or detention conditions akin to the existing ECJ case law. The Supreme Court has in the past refused to accept under this ground other human rights violations. In a case of a French EAW the complain of fair trial violation was squashed as *contra legem*.[61]

According to the *traveaux*, this was an implementation of rec. 12 of the Preamble of the FD EAW and art 5 para 2 Greek Constitution (right of non-description and freedom). Please note that it is not a verbatim reproduction of the preamble as the national law includes also freedom fighters, whereas the FD does not. Protection of freedom fighters is long tradition of Greek society and system.[62] It is not debated that this ground of refusal is against the FD. Yet its practical impact appears limited as to my knowledge and research this ground has **never been used** by courts to refuse the execution EAWs.

Other human rights' concerns e.g. detention conditions, fair trial, are usually discussed by raising art 1 para 2 of the national law, implementing art 1 para 3 of the FD EAW about the general fundamental rights clause. Only in very few cases that I discuss below there was a refusal for human rights violations (see Part 2 C 10).[63]

B. Your Member State as issuing Member State

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

Issuing authority according to art 4 national law is the **prosecutor of the Court of Appeals** of the district where the offence was committed or the judgment to be executed was issued. There is **no centralised authority**, the prosecutors of **any Court of Appeal** may issue an EAW. There are 19 Court of Appeals in the following cities serving broader regions: Athens, Thessaloniki, Pireas, Heraklion, Syros, Mytilini, Kozani, Agrinio, Rodos, Chalkida, Komotini, Ioannina, Kalamata, Corfu, Chania, Lamia, Larisa, Nafplio, Patra.

The larger Courts of Appeals (e.g. Athens and Thessaloniki) have a special unit for extradition and surrender with specialised prosecutors and support staff. This means that not all prosecutors can issue EAWs in those larger courts, but in smaller courts this is different. In some smaller districts e.g. in Corfu, Syros, Nafplio, EAWs are rarely issued and these prosecutors could be less experienced. Often those prosecutors might contact their colleagues in larger districts for help.

In my experience, larger courts might develop different judicial cultures in the way they handle EAWs. The lack of a more centralised competence is problematic as smaller district courts have little expertise. At the same time, the Dutch approach – having one court as centralised issuing authority – would not work. The Greek judiciary lacks adequate funding, and the workload is

[61] ΑΠ 236/2015.
[62] For example the unconventional extradition of Ozalan to Turkish authorities caused major negative public reaction see for more CASE OF ÖCALAN v. TURKEY (Application no. 46221/99) 12 May 2005.
[63] ΣυμβΕφΑθ 56/2018 & 57/2018.

excessive for one court. A more practical approach would be if only 3-4 of the larger courts (evenly distributed) throughout Greece could handle EAWs. In this way, expertise and coherency are ensured.

Before moving forward, I would like to explain how the national arrest warrants are issued, because the prosecutor issues the EAWs completely on the basis of the national warrant. And while the EAWs are issued by prosecutors, the national warrants are issued by judges.

How are national arrest warrants issued?
The national arrest warrant is issued by the following authorities depending on the case:

- The **investigative judge** (who is a proper judge enjoying all aspects of impartiality and independence of a court), after consulting the prosecutor. Controversy arises as to whether the opinion of the prosecutor is **binding or not (or obligatory to acquire)**. Is this a co-decision or does the prosecutor only give an opinion? Whereas the wording implies a mere opinion, the **legal practice** and mainstream view **is that the prosecutor and investigative judge must both agree** and in case of disagreement, the judicial council decides (art. 307 GCCP). The argument is that the prosecutor functions here as an additional pair of eyes. Influential scholars though disagree with the current legal practice for many convincing reasons *inter alia* that it defeats the purpose of arrests if cumbersome dispute resolution procedures are involved.[64]
- The **judicial council** in its decision to indict the suspect to court. This is a court functioning at the pre-trial phase (mainly) comprised by three judges (thus enjoying all aspects of impartiality and independence of a court). See for more below question 10.
- The prosecutor for red-handed offences (not interesting for EAWs)

Thus, the **national warrant** on which the EAW is based is always issued by an **independent and autonomous judicial authority** in the meaning of the ECJ case law.

8.
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;

Indeed, Greece follows the principle of mandatory prosecution (art 43 GCCP), with exceptions. This principle does not extend to issuing the EAW per se, but it concerns mainly the **obligation to initiative prosecution** if there is enough evidence. Prosecution is initiated in specific ways: direct indictment to trial, directing the case to the prosecutor of the Court of Appeals for specific cases, by commencing the main judicial investigation, or with the application for a penal order.[65]

The exceptions to mandatory prosecution do not yield to the opportunity principle (according to Greek theory), but are an application of proportionality (cases where the prosecution would cause disproportional damage) and procedural economy.[66] And these exceptions are exclusively enumerated in the law, and they all concern specific offences e.g. minor offences, when the defendant is serving a long prison sentence, political offences, some cases of fraud, misdemeanours of minors, for some felonies with some conditions (art. 44-50 GCCP). The decision

[64] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 276 παρ. 5.
[65] Art 43 para 1 (a) GCCP.
[66] Ν. Ανδρουλάκης, Θεμελειώδεις έννοιες της ποινικής δίκης, 2012, σ. 62, υποσημ. 40,65, 284επ; Αιτιολογική Έκθεση Ν4620/2019, σ. 23.

(not) to prosecute one of these offences (when they fall under the scope of EAW) would influence indirectly the issue of EAWs.

Please note that for deciding whether to prosecute, the discretion of the prosecutor to interpret the law is limited: prosecutors are bound by courts' jurisprudence as to whether certain acts are penalised. If the jurisprudence is unclear or against criminalisation of an act, prosecutors must still initiate prosecution if there is a chance for conviction, as long as the prosecution is well reasoned and not excessively zealous. Importantly, the prosecutor cannot abstain from prosecution if he considers a law unconstitutional, unless this view is supported by higher courts.[67]

- (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;

In my view, they do not (although as I explained before, the requirement of dual protection is fulfilled on account of the judicial review - see question 5bis). Greek prosecutors are alumni of the National School of Judges and are trained with judges. Yet their status and position within the process has been debated in literature for long. The questions raised are: is the prosecutor a judicial authority, is it a body that adjudicates (a court), is he one of the parties and is he independent (from the courts and from the executive)? The main reason for these questions arises from the internal antithesis of the prosecutor's role in inquisitorial systems: representing the interests of the state and, concomitantly, leading an impartial investigation. Greek scholars have disagreed and there is no consensus on this topic,[68] not even in jurisprudence with competing rulings, depending on whether these are criminal law courts or administrative law courts.[69]

In the Greek Constitution (art 87-92) the prosecutor is referred to as judicial authority with a lifelong service, but not a judge who awards justice, and thus without the complete independence of a judge. Under the GCCP, the prosecutor is not a party (art 70 GCCP), but he is the prosecuting authority (art 27 para 3 GCCP). Summarizing these and looking at the literature, the most recent mainstream approach is that the Greek prosecutor is: a judicial authority but does not administrate/award justice (as this belongs to judges), the prosecutor is neither an administrative authority nor a judge, but an autonomous and independent authority vis-à-vis judges, and he belongs to the officers of the court i.e. a *Justizbehörde* (authority participating to the administration of justice).[70]

Regarding the independence and autonomy of the prosecutor, the following can be summarised: Prosecutors, according to art 27 para 2 GCCP, are **independent from any other authority** (courts or executive authority) in exercising their competences to prosecute offences. This independence however is **not absolute** and is limited in the following ways:

- By judges in specific situations, e.g. the court may interrupt or limit the right of the prosecutor to pose questions or to speak during trial if he goes off-topic (art 334 GCCP).

[67] Λ. Μαργαρίτης, Ν. Βασιλειάδης, Η ποινική δίωξη στα όρια της, Νομική Βιβλιοθήκη, 2021, σ. 50-51.
[68] See for an overview of the debate and a plethora of literature see, Λ. Μαργαρίτης, Ν. Βασιλειάδης, Η ποινική δίωξη στα όρια της, Νομική Βιβλιοθήκη, 2021, σ. 21-25.
[69] See for example ΑΠ 54/2014 ΠοινΔικ 2014, 928; ΑΕΔ 2/1977, 151; ΣτΕ 1160/1989.
[70] Ν. Ανδρουλάκη, Το «νόμω αστήρικτον» της μηνύσεως ή αναφοράς (άρθρο 43 παρ. 1 ΚΠΔ) και το «νόμω αβάσιμον» της εγκλήσεως (άρθρο 47 παρ. 1 ΚΠΔ), ΠοινΧρ 1970, 1 επ; Λ. Μαργαρίτης, Ν. Βασιλειάδης, Η ποινική δίωξη στα όρια της, Νομική Βιβλιοθήκη, 2021, σ. 24; Λ. Μαργαρίτης, Κατηγορούμενοι έχοντες ψυχική ή διανοητική διαταραχή. Ποινικό (δικονομικό) κανονιστικό πλαίσιο (ΜΕΡΟΣ Α΄), ΠοινΔικ Τεύχος 3-4/2020, σ. 317.

However this does not extend to giving instructions for the substantial execution of the prosecutors' duties.[71]

- Importantly, following art. 29 GCCP, the **Minister of Justice has the power to suspend or postpone the prosecution of an offence, in cases where the international relations might be affected or in political crimes**. Note that this intervention is historically the most minimalistic one, as in previous amendments the Ministry had the power to order the initiation of prosecution (e.g. by N 2854/2000 and later by N 3160/2003). The powers of the Ministry to intervene and order prosecution have been dismantled over the years, as a way to reinstate the independence of the judiciary after the dictatorship during the 70s.[72] According to the *traveaux* of the current GCCP, it was necessary to leave the decision to prosecute only to the hands of judicial authorities and thus the power of the Ministry is limited only to a negative role (**to suspend or postpone prosecution, not commence it)**.

- As an administration, public prosecutors form a **single** and **indivisible authority** which functions based on the principle of **hierarchy**. Single and indivisible means that the actions of one prosecutor are taken as the actions of any prosecutor and thus prosecutors can be replaced during their functions e.g. take over if the other prosecutor is absent (see art 24 Law of Organisation of Courts[73] – however this does not apply for replacement during the trial).[74] The hierarchical dependency means that prosecutors are subordinate to their superior prosecutors (the rank top-down goes as follow: Prosecutor General of Supreme Court, Prosecutor of Supreme Court, Senior Prosecutor of Court of Appeals, Prosecutor of Court of Appeals[75], Senior Prosecutor of First Instance Court, Prosecutor of First Instance Court, Junior Prosecutor).[76] They must execute the instructions given by superiors, but while executing these instructions they are entitled to their opinion, they act autonomously and follow only the law and their conscience (art 24 para 4 Law of Organisation of Courts). **This means that a higher rank prosecutor can order the Prosecutors of the Court of Appeals to issue a EAW but the latter can refuse if the conditions are not fulfilled in his opinion**.

Considering the ECJ rulings and what has been presented, I do not see how the Greek prosecutor can be considered an autonomous and independent judicial authority in the meaning of EU law. Unlike German law in *C-508/18 and C-82/19 PPU, OG & PL,* there is no overall supervision of the prosecutors by the executive (they are supervised only by the Prosecutor General of the Supreme Court) and the only intervention by the Ministry refers to specifically suspending or postponing prosecution, not other acts. Yet looking at the other case law, the ECJ has interpreted independence as no risk whatsoever of influence by the executive: "*to any risk of being subject, inter alia, to an instruction in a specific case from the executive*".[77] The *ratio legis* is to exclude the executive influence from the EAW in contradiction to the old regime of surrender. The Greek prosecutor, theoretically, could receive the order to suspend or postpone prosecution at a case

[71] Λ. Μαργαρίτης, Ν. Βασιλειάδης, Η ποινική δίωξη στα όρια της, Νομική Βιβλιοθήκη, 2021, σ. 29.
[72] Β. Μακρής, Η λειτουργική ανεξαρτησία του Εισαγγελέα και το άρθρο 30 του ΚΠΔ, ΠοινΔικ, 6/2000, σ. 669.
[73] Ν 1756/1988 Κώδικας Οργανισμού Δικαστηρίων και Κατάσταση Δικαστικών Λειτουργών, όπως τροποποιήθηκε με τον Ν 4800/2021.
[74] ΑΠ 555/2005.
[75] These two issue EAWs.
[76] Translated from Greek: Εισαγγελέας του Αρείου Πάγου, Αντεισαγγελέας του Αρείου Πάγου, Εισαγγελέας Εφετών, Αντεισαγγελέας Εφετών, Εισαγγελέας Πρωτοδικών, Αντεισαγγελέας Πρωτοδικών και Εισαγγελικός Πάρεδρος.
[77] Para 52: "That 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," PF (Prosecutor General of Lithuania), C-509/18, EU:C:2019:457.

harming the international relations or political crimes, which would mean then that no EAW can be issued. Most striking, although the prosecutors are accountable only to the Prosecutor General of the Supreme Court, that Prosecutor General is appointed by the Ministry following art 90 para 5 of the Greek Constitution, by choosing one of the existing Supreme Court judges (thus from the existing pool at the Supreme Court). The use of this power has been recently criticised severely by constitutional law jurists, when the previous Government chose suddenly to replace the president of the Supreme Court and the Prosecutor General only days before the parliamentary elections and after that government had already resigned and was acting only as temporary government.[78] In my view, **the Greek prosecutor would not pass the test on autonomy and independence of the ECJ** for all these reasons.

On the bright side, the Prosecutor General of the Supreme Court has in 2020 released an order to reaffirm the principles under which prosecutors should operate. These include inter alia, independence, the principle of material truth (being objective and seeking the truth and all evidence supporting it), respect of the rights of the suspect and to follow their own judgement and conscience.[79] Hence, other aspects of the ECJ's definition of what constitutes an autonomous judicial authority are found in the Greek prosecutor, namely that a judicial authority *"must be capable of exercising its responsibilities objectively, taking into account all incriminatory and exculpatory evidence."*[80]

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

The prosecutor himself writes and fills in the form. From my interviews it did come up that often a member of the support staff might help out with some parts of the form especially for easier cases, but apparently the prosecutors have full oversight.

9.
b) What are the formalities for issuing an EAW? Does your Member State have a (digital) template of the EAW-form?[81] If so, please attach a hardcopy of the template to the questionnaire.

Once the prosecutor has the national warrant issued by the investigative judge, he makes the decision of whether to issue an EAW. First comes the SIRENE entry. When authorities are notified of this arrest, the prosecutor swiftly issues the EAW by filling in the form, the EAW must be first translated by the translation service of the Ministry of Foreign affairs and then and submitted it to the SIRENE.

There is a digital template of the form (see annex) which is filled in digitally.

c) When deciding on issuing:

- a *national* arrest warrant,[82] do the judicial authorities in your Member State examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that national arrest warrant? If so,

[78] https://www.kathimerini.gr/society/1026210/n-alivizatos-giati-den-mporei-na-ginei-i-epilogi-diadochon/
[79] ΕγκΕισΑΠ 11/2020.
[80] C-510/19, Openbaar Ministerie (Faux en écritures), ECLI:EU:C:2020:953, para 44.
[81] Compare the consolidated EAW-form in word format at:
https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/5/-1/0.
[82] I.e. a national judicial decision ordering the arrest and/or detention of a person.

- (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;

In Greek law, an arrest (not pursuing to a red-headed act) can be ordered only for the offences and conditions for which pre-trial detention can be ordered. In this sense, Greece follows the style of the German and Dutch legal systems where the arrest is tied to pre-trial detention.

An arrest (and pre-trial detention) can only be ordered, following art 286 and 282 GCCP, for: a) felonies (min 5 years imprisonment) or manslaughter (with negligence as *mens rea*) when committed as multi-act concurrence; b) only if the alternative measures of home arrest with electronic monitoring and other measures do not suffice, c) when there is serious suspicion for the above offences, d) to prevent reoffending and absconding.

According to these provisions, risk of absconding can be established when there is lack of known address in Greece, preparatory acts to abscond, previous absconding, or violating alternative measures in the past ***and* from this, it becomes evident that he will most likely abscond if left free** (art 286 GCCP) – thus this risk must be real and imminent *ad hoc*. For establishing the risk of reoffending, previous offences similar to the ones in question must exist (art 286 GCCP). If e.g. the suspect is accused for rape but he has committed in the past robberies, he cannot be held in pre-trial detention (or arrested) for risk of reoffending. For some very serious offences (e.g. terrorism), risk of reoffending can be based also on the special characteristics of the present act, but the seriousness of the offence on its own cannot be a reason.

Although not interesting for arrests, note that the regime for pre-trial detention has been recently modernised. The starting point must be alternative measures, and there is even a scale of seriousness: first other alternatives (e.g. reporting to the police), then house arrest with electronic monitoring and only if none of these suffice, pre-trial detention. This is to show that the respect of proportionality has been intensified since 2019 with the most recent amendments of the GCCP (N 4620/2019).

Proportionality (codified in art 25 para 1 Greek Constitution) in the context of the arrest is partly already imbued in the law, as the arrest is restricted to only specific offences, when there is serious suspicion, and only when there are grounds for absconding or reoffending. Most importantly, the warrant must be reasoned in detail including an explanation of the grounds that justify it, but also a description of the facts and evidence that support these grounds.[83] An arrest is only justifiable when preventing those risks is imperative.[84]

That the requested person is a Union citizen exercising his right to free movement does not seem to play a role in considering the arrest disproportional. **But it could actually be taken as a sign of risk of absconding.** As seen above, not having a known address in Greece is one of the possible signs for risk of absconding. In the previous version of this article, that was an irrebuttable presumption: if the suspect had no known address in Greece he was presumed to be at risk of absconding – no discussion. The current version of art 286 GCCP added the sentence that from these indicators it must become evident that the suspect will indeed abscond (the sentence in

[83] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 276 παρ. 10.
[84] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 276 παρ. 3.

bold). This improves a bit the discrimination of those not residing in Greece. But ensuring that the investigative judge will use *in concreto* arguments is not a given.

A general criticism for the current legislation is the cohabitation of arrest and pretrial detention. Obviously, pretrial detention will be more rigorously justified than arrest; while the law has the same criteria for both implying that there is no qualitative difference, these are undoubtedly two different measures.[85] Indeed decisions on pre-trial detention are reasoned with greater detail than arrests.

Is there a remedy to challenge a national warrant?
There is no remedy to challenge an arrest warrant but of course upon surrender the lawfulness and necessity of any further detention (detention on remand/pretrial detention) is reviewed. As such if the national warrant was based upon an erroneous assessment of the evidence and no reasonable suspicion existed, the suspect is released following the provisions on pretrial detention.

The only possibility *before arrest* is that the **investigative judge revokes the warrant** (art 276 para 4 GCCP), only with the consent of the prosecutor, if the conditions for its issuing do not exist any longer. Thus, the defence may request from the investigative judge to revoke it. But no actual remedy for the defence exists to a different authority. Revocation is possible only until the execution of the warrant. If the suspect is brought to the authorities, the warrant anyway ceases to exist, so there is no point of ex-post facto remedy for the arrest warrant per se, only for the ensuing pretrial detention.

But once brought to the authorities, the suspect can challenge before the police, the prosecutor and the investigative judge a variety of topics: identity error or that the arrest warrant was not in force (it ceased to exist) (see art. 279 GCCP). Especially before the prosecutor and the investigative judge, the existence of suspicion can be also argued, and of course the possibility of pretrial detention (to the investigative judge).[86]

If the warrant is not executed lawfully, e.g. arrest during the night, or too violently (art 278 GCCP), no procedural nullity is triggered, although the suspect is entitled to compensation while the authorities involved will be subject to disciplinary action.[87]

- (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)[88], instead of issuing a national arrest warrant, expressly addressed in that examination, both in law[89] and in practice?

[85] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 276 παρ. 3.
[86] ΣυμβΕφΠειρ 85/2016.
[87] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 278 παρ. 6.
[88] According to the information provided on the website of the European Judicial Network, only Ireland has not transposed FD 2008/829/JHA yet.
[89] 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?

There is no legislative or case law-based obligation to consider this instrument before arrest. This FD is not used. Although prosecutors are aware of its existence, it is not considered a practice-friendly or effective instrument. Additionally, my experience with pretrial detention in Greece is that alternative measures are considered only when the risks associated with pretrial detention are minimal.

- an EAW, do the issuing judicial authorities in your Member State examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that EAW? If so,
    - (i) please describe in which way this examination takes place and which factors are taken into consideration. Please give some examples;
    - (ii) does the fact that a requested person is a Union citizen who exercised his right to free movement play any role in that examination;

There is no explicit proportionality control as a requirement for a EAW within the legislation. But in my interviews with prosecutors, it appears that there might be a *de facto* proportionality control on whether the circumstances of the case justify an EAW even if prima facie the requirements are met. But such control is within the discretion of the prosecutor and not really regulated by law or case law.

To explain, the driving force for issuing EAWs is not so much the principle of mandatory prosecution, but the legally established **responsibility of the prosecutor to execute judicial decisions** (art. 549 GCCP for the execution of court judgments and art 277 GCCP for executing the national warrant). Prosecutors must take all measures available to them to execute judicial decisions and thus, if the legal requirements for a EAW are met, the EAW will be issued. My research has shown that **it is unclear to Greek prosecutors, whether they would be entitled to refuse issuing EAWs for grounds of proportionality and whether this would be seen as negligent execution of their duties.** Some appear to just follow the national arrest warrant and issue EAWs; others are more eager to not do so in some minor cases, but any such room of discretion is exceptional. In absence of explicit discretion or a check of proportionality in the legislation (either the FD or the implementation), prosecutors might not feel empowered to make use of proportionality.

Additionally, there seems to be a practice of case-selection in some courts. In the considerably larger and busier court of Athens not all national warrants where the suspect is fugitive abroad will be forwarded to the prosecutor for issuing EAWs. The same goes for execution-EAWs. The prosecutors of the Court of Appeals that issue EAWs do not have knowledge of all national warrants or judgments unless they are forward to them. And, apparently, only the most serious national warrants/court judgments will be sent for an EAW to be issued. That begs the question of how the decision is made and which cases are serious enough for an EAW. The answer is that usually **felonies** will be forwarded for an EAW. Indeed, the prosecutors in the interviews conducted, repeated many times that Greece issues EAW mainly for felonies (defined as offences with imprisonment from 5 years). But the test of that decision remains opaque, unregulated and flexible. Most importantly, my interviews showed that this is not necessarily a decision motivated by proportionality only, but also seen as a **practical and operational aspect of workload-management.**

The problem of disproportional EAWs affects also Greek practice and there is discussion amongst practitioners on best practices: for example, some suggest that EAWs should be issued with great caution if the sentence for an execution-EAW is above 4 months, but still significantly low (e.g. 6

months),[90] or when there is a remedy pending against the judgement in execution-EAWs. A notable case concerned an execution-EAW by the Prosecutor of the Appeals Courts of Herakleion (Creta) to England for a murder conviction of a 20-year sentence, while a remedy to the Supreme Court was still pending against this conviction matters of law.[91] Another well-documented case was that of A. Symeou, where he was surrendered with to Greece to spend one year in pre-trial detention only to be found innocent.[92]

The Union citizenship is not taken into account in relation to the right to free movement. On the contrary, the practice has shown that non-residents will escape and that alternative measures do not work.[93] Accordingly, those surrendered to Greece with a EAW will most likely be kept in pre-trial detention.

Greek legal practice would **benefit from a prescription of proportionality in the EAW form**, especially when it concerns sentences too close to the limits of art 2 EAW, e.g. sentences of 6 months.

Sometimes the problems lie with the national warrant. A premature issuing of the national warrant based on insufficient suspicion has a spill over to the EAW. The Chair of Prosecutors of the Appeal Court of Thessaloniki is of the opinion for example that EAWs should be in principle be issued only *after* the admittance of a case to court (case is trial-ready), which is an official moment signalising the end of investigations, because only then the maturity of suspicion is at its prime; thus EAWs would be only to stand trial, not to be present during all investigations.[94] That would leave the room to use EIOs for interrogations.

- (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)[95], 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,[96] by videoconference or other audiovisual transmission,[97] or otherwise,[98] 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

[90] Γ. Πυρομάλλης, Η αρχή της αναλογικότητας στις διαδικασίες του Ευρωπαϊκού Εντάλματος Συλλήψεως, σε «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 193.
[91] Γ. Πυρομάλλης, Η αρχή της αναλογικότητας στις διαδικασίες του Ευρωπαϊκού Εντάλματος Συλλήψεως, σε «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 191.
[92] https://www.fairtrials.org/case-study/andrew-symeou
[93] Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, Ποινική Δικαιοσύνη, , Τεύχος 12, Δεκέμβριος 2018, σ. 1224.
[94] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 234.
[95] This directive does not apply to Ireland.
[96] 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).
[97] 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).
[98] 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).

execution-EAW, expressly addressed in that examination, both in law[99] and in practice?

There is no legislative requirement to first use a EIO before an EAW. The EIO works well but it is not used for hearing the accused. The practice of EIOs in Greece does not include this option, especially since in most cases, the requested person is needed to stand trial, not only for interrogation. Furthermore, the actual practice of EAWs prevents the use of EIO as a less intrusive alternative: the EAW is issued only after the person is caught based on the SIRENE registry. So often there is significant time passed in-between the SIRENE registration and arrest. And once the arrest takes place, alternatives are not explored because the person is caught; the desire is to finally acquire that individual. Accordingly, the room and desire for alternatives is limited for EAWs because of the energy spent to arrest those persons and the risk of absconding being assessed as higher than other suspects.

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

Following art 3 of the national law, and the notification sent to the EU, the **Ministry of Justice** is responsible with receiving and sending requests.[100] For those EAWs issued by Greece, they must first be translated by the translation service of the Ministry of Foreign Affairs.

Supplementary requests of art 15 FD EAW are received by the Ministry/SIRENE but forwarded to the appropriate **prosecutors** who are tasked with answering. Again the additional information when ready is forwarded to the Ministry of Justice for translation and sending to the Member States in question.

C. Your Member State as executing Member State

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

The officially designated authority in the notification sent by Greece is a **judicial authority**, either the Presiding Judge of the Appeal Court or the Judicial Council of the Appeal Court (see below).[101]

However, the national law has **two phases** of execution, the preliminary phase of arrest and the execution of the EAW. The execution is therefore spread over two different executing authorities:

1) The first phase is the arrest of the individual. The executing authority is **the Prosecutor of the Appeal Court** (art 9 para 1 national law).

[99] 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?
[100] EAW Notification of Greece, 4 October 2004, 12887/04 https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/14/-1/-1/-1.
[101] EAW Notification of Greece, 4 October 2004, 12887/04 https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/14/-1/-1/-1.

2) At the second phase, the person is **brought to a court**, depending on whether the person has consented to the surrender before the said Prosecutor. This is the executing authority in the sense of art 6 para 2 FD EAW.

- In case of consent (art 9 para 2 national law), the executing authority is one judge, namely a **Presiding Judge of the Court of Appeal**, (Proedros Efeton/ Πρόεδρος Εφετών) of the area where the person was arrested. The name 'presiding judge' refers to a rank, namely that of a **senior judge of Appeal Court**. This judge (and a secretary) meets the individual in chambers with the optional presence of a counsel. Usually, each Court of Appeals designates specific Senior Judges for this task. The right to see the judge can be waived by the person in a written and explicit manner, which is part of the file.[102] This judgment cannot be appealed according to the national law, since the individual's declaration regarding the consent and the renunciation of speciality (two different declarations) are both non-revokable, according to art 17 para 1 national law.
- In case of no consent (art 9 para 3 national law), the executing authority is the **Judicial Council of the Appeals Court**, (Symvoulio Efeton/Συμβούλιο Εφετών), a court of 3 judges (a senior and two junior judges of the Appeals Court). This is a court that decides all kinds of matters mainly during the pre-trial stage, e.g. indictments for some felonies, pre-trial detention, extradition to third countries. It handles some other issues during trial or for the execution of the sentence, e.g. conditional release. Please note that while this body convenes usually in chambers, extraditions and EAWs are always in **open court session** (the prosecutor and a secretary are also present) with the obligatory presence of a counsel. The judgment can be appealed to the Supreme Court.

Spreading the execution between two authorities brings trouble, e.g. if the suspect consents to the surrender before the prosecutor, can he revoke that consent when he sees the judge? See below under c) for that matter.

10.
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;

Yes, see above. The consent does not impact the right to see a judge, but which judge (one-judge court in chambers or a 3-judge court) and the right to have a lawyer which is optional in the first case, but obligatory in the second case.

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

A decision to surrender if the suspect has consented comes from the **Presiding Judge of the Court of Appeal** and if not, the **Judicial Council of the Appeals Court**. In the rest of the cases mentioned in the question it is either the abovementioned prosecutor or the court, specifically:

Art 23 para 3: The Prosecutor of the Court of Appeals.
Art 24: the judicial authority (one of the two courts mentioned).
Art 28 para 2-3: the prosecutor will apply to the court, which will decide.

[102] See for example ΠρΕφΑθ 1/2021.

Art 27 para 3g and 4: the prosecutor will apply to the court, which will decide.

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

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

The Greek legislation does not require an explicit obligation to check proportionality when executing EAWs. Greek courts **refuse categorically to check proportionality** as executing authority, but **this appears to be changing now**, in my view.[103] In cases where proportionality has been invoked (and often the defence will raise that), this has been rejected vigorously until recently.[104] The justification has been consistent: there is mutual recognition and trust, this lies with the issuing authority, Greek courts only check grounds for refusal, no 'content checks'. This is even though misdemeanours in Greek law cannot lead to an arrest, so Greece executes EAWs for crimes for which normally there is no national arrest. Examples from cases where proportionality is discussed but always rejected as a forbitten check are requests that concern minor fraud e.g. appropriation of loan of 8000 Euro (usually from Germany). The devotion of Greek courts to mutual trust as far as proportionality is concerned, while other courts within Europe take a different path, has been criticised by scholarship.[105]

Please note that Greece will **usually not execute EAWs for offences which are infractions** in Greek law, i.e. a category of even less serious offences than misdemeanours (less than 1 month imprisonment or a fine). It is rare to receive a EAW for an act that would satisfy the conditions for an EAW at the issuing state and yet be an infraction under Greek law. Even more so rare for an infraction in Greece to fall within the list-offences under the law of the issuing state. Thus, if it happens to receive a request to execute a EAW for an infraction under Greek law, it is usually within the context of double criminality check (for non-list-offences) that Greece would refuse execution. This practice does not seem in line with EU law, namely that the categorisation of the offence in the executing state would be of importance.

Regarding a refusal to execute based on proportionality, there are two known cases, where execution of the EAW was refused as disproportional and both fall under the saying: 'hard cases make bad law'.

The Italian case

One concerned a series of EAWs issued by the Court in Milan requesting the surrender of several Greek nationals for resisting arrest with the use of weapons, plunder, and pillaging (imprisonment 3-15 years in Italy). The offences took place as part of violent demonstrations in Milan during the EXPO 2015. Although according to the mainstream and established case law by the Supreme Court, proportionality was not to be checked, the Judicial Council of the Court of Athens decided otherwise in this case. The rationale was the use of an arrest – and more specifically a EAW – for offences that are not serious per se in Greek law. These acts are also punishable under Greek law but as misdemeanours for which an arrest is not possible. The Greek court found the EAW

[103] Γ. Πυρομάλλης, Η αρχή της αναλογικότητας στις διαδικασίες του Ευρωπαϊκού Εντάλματος Συλλήψεως, σε «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 209.
[104] ΑΠ 659/2012, ΑΠ 395/2012 (proportionality of punishment)
[105] Γ. Πυρομάλλης, Η αρχή της αναλογικότητας στις διαδικασίες του Ευρωπαϊκού Εντάλματος Συλλήψεως, σε «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 209.

disproportional and refused execution.[106] Not only proportionality, but also **fair trial** was set forth as a ground because the persons were without a lawyer at the police station, without a translator and forced to give DNA. Please note that this particular case has received significant attention by the press. During the court session, the room was filled with demonstrators protesting against the surrender and the atmosphere in the room was reported to be particularly tense. The decision has been criticised by other jurists as *contra legem.*[107] but the Supreme Court did not reverse it for some other formal reasons.[108]

The Maltese case

A second case referred to a particularly problematic set of two requests from Malta to surrender a former employee of a Maltese bank. The first request was for financial offences and the second for slander and false testimony after the requested person accused the Maltese police of corrupt investigation of the first case. To the first case I will return later on as it raises issues of independence of courts (Part 4 B 53).[109] But the second request was refused for two reasons, namely the lack of national arrest warrant and the **principle of proportionality**: two offences did not even cross the threshold of 1 year (and the EAW could not be executed for that one anyway), and the other was also very minor (the falsified evidence). The argument was that such surrender and possible pre-trial detention would burden the requested person and her family excessively.[110] The prosecutor appealed to the Supreme Court laming that a proportionality check is unlawful. Yet the Supreme Court upheld the decision but because of the lack of national warrant.

After these two cases a slight wind of change is observed in jurisprudence. In a request from Cyprus, the Supreme Court mentioned that proportionality could be included also to the control of the executing authority.[111] In the years to come, there could be a shift in jurisprudence in my view. The Supreme Court has started putting attention on the seriousness of the offence and the potential sentence to justify whether the pretrial detention will be proportional.[112]

- (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;

Only as a ground for refusal, with regard to Greek residents invoking the relevant grounds for social rehabilitation.

- (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)[113], 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,[114] by videoconference or

[106] ΣυμβΕφΑθ 1, 2, 4, 6/2016.
[107] Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, ΠοινΔικ, Τεύχος 12, Δεκέμβριος 2018, σ. 1224.
[108] ΑΠ 1040/2018, 1041/2018.
[109] ΣυμβΕφΑθ 58/2018.
[110] ΣυμβΕφΑθ 57/2018.
[111] ΑΠ 854/2016.
[112] ΑΠ 1390/2016.
[113] This directive does not apply to Ireland.
[114] 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).

other audiovisual transmission,[115] or otherwise,[116] 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[117] and in practice?

The possibilities of the EIO to interrogate the suspect are not used by Greece, as mentioned before. For execution-EAWs, the FD on custodial sentences is used as a way to execute the grounds for refusal regarding social rehabilitation (of art 4 para 6 or 5 para 3 EAW), not within the concept of proportionality by the executing authority.

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

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

As explained, prosecutors are not the indicated executing authority, but as far as the renunciation of the speciality rule is concerned and the consent, this takes place before the prosecutor (first phase of execution). And as explained above, prosecutors do not fulfil the requirements of independence set by the ECJ.

Consequently, following C-510/19, Openbaar Ministerie (Faux en écritures), a judicial authority should review the renunciation of the speciality rule (and the consent). But this is not possible as according to the Greek implementing legislation (art 17), **these two consents given to the prosecutor are non-revocable**. As the execution phase is split between the prosecutor and the court, it is very unclear which revocation counts as the official: the one before the prosecutor or before the judge? Can the requested person revoke the waiver of the speciality rule or the consent when he sees the judge? Interestingly, the Greek **courts often do accept those revocations**.[118] An example is the Court of Appeals of Herakleion, when a Romanian consented to surrender before the prosecutor (and signed all documents thereupon) but when appearing next day to the Presiding Judge he retracted his consent. The Presiding Judge accepted that request and thus referred the case to the Judicial Council where the execution without consent is adjudicated. The Judicial Council of Appeals decided that the requested person had not actually consented in full

[115] 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).
[116] 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).
[117] 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?
[118] Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, ΠοινΔικ, Τεύχος 12, Δεκέμβριος 2018, σ. 1224.

comprehension of the consequences.[119] Many judges share this view and do accept revocations.[120] But there is no harmonious approach, in other cases judges will not accept a revocation.[121]

The main argument stemming from national law in favour of allowing the requested person to revoke is intuitively that of judicial review: what would the role of the judge then be? Only formal? This is indeed the right approach according to EU law, but *contra legem* in Greek law as art 17 clearly states that both consents cannot be revoked. To be in line with EU law, the Greek legislation has to clearly change, either by allowing those consents to be officially revoked before the judge, or to ensure that the authority is an independent and autonomous authority within the meaning of EU law. Please note that the consent given to the Presiding Judge cannot be then revoked according to case law.[122]

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?

The competent authority to receive the EAW is the **Prosecutor by the Court of Appeal**, in whose territory is the person located or the Public Prosecutor by the Court of Appeal of Athens, if the location of the sought person is unknown (art 14 national law).[123]

There has been no notification for art 15 (2) but in art 19 national law, it is explicitly stated that the **judicial authority** (Judicial Council of Court of Appeals) decides whether supplementary information is required, and this is handled by the Prosecutor of the Court of Appeals who executes this decision. For some cases, even before the case goes to court, the prosecutor might take the initiative to request supplementary information, especially when there is *prima facie* problem with the EAW upon receival. This is especially the case with reassurances for art 5 para 3 FD which are always requested, or obvious problems in the form.

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?

The postponement of the surrender is not obligatory if the execution of another sentence in Greece is undergoing, however if the suspect does request the postponement, then the refusal to postpone must be reasoned.[124] Also the consent of the suspect is not relevant, meaning that postponement could be decided against his will.

The temporary transfer is decided by the court and is thus based on the written judgment of the court: it is mentioned in the text of the judgment that the execution is subjected to the condition that the person will return to Greece immediately after proceedings at the issuing state. In that sense, the practical application of art 24 para 2 is similar to the art 5 para 3 guarantee. The execution of such temporary transfer takes place in consultation with the issuing authority upon

[119] ΣυμβΕφΚρ 34/2014.
[120] Βουρλιώτης Χ., Ο θεσμός της έκδοσης κατά το ελληνικό δίκαιο. Αίτηση έκδοσης και εκτέλεσης ευρωπαϊκού εντάλματος σύλληψης, ΠοινΧρ ΝΖ΄, σ. 199.
[121] ΣυμβΕφΑθ 147/2020.
[122] ΑΠ 163/2017.
[123] EAW Notification of Greece, 4 October 2004, 12887/04 https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/14/-1/-1/-1.
[124] ΣυμβΑΠ 1408/2010.

terms decided mutually in a written form.[125] There have been no problems reported in my research; this is an often-used aspect of EAWs. One prosecutor that I interviewed mentioned as way of example a very recent case where the suspect was temporarily transferred based on art 24 para 2 FD EAW because the statute of limitation of the offence at the issuing state was almost up and there was urgency for the proceedings at the issuing state to finalise.

D. EAW-form

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

Yes, by now after the 2019 amendment which implemented the amended form, Greece uses the amended form (see annex) with only very minor addition (see Part 2, question 2).

E. Language regime

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

- what does this declaration entail?
- where was it published? Please provide a copy in English.

No such declaration has not been made. Our only declaration concerns art. 6 (3), 7 (2) and 25 (2) FD EAW.[126] Greece only accepts EAWs translated in Greek.

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.

The main problem relates to the translation speed. When the prosecutor issues a EAW it must be translated by the translation office of the Ministry of Foreign Affairs (which is not even the same Ministry as the Ministry of Justice tasked with forwarding the documents). The translation office though has serious workload and is difficult to reach. The translation office has made a commitment to translate EAWs within **72 hours**; this is barely on time for some Member States like Bulgaria which request that the EAW is sent within 72 hours after arrest. Often SIS entries are registered without the actual EAW been issued and then after arrest Greece must issue the EAW quickly on a set by the executing state deadline. That deadline for Bulgaria is only 72 hours from arrest. And if the individual is arrested on a Friday by the Bulgarian authorities, the translation service will barely make it on time. There have been cases where the 72 hours that Bulgaria requires lapsed on Monday 10am, while the EAW arrived on 12pm, by which time it was already too late: the person had been released already (and then recaptured).

The problem is even more excessive when the translation request concerns **supplementary information of art 15 (2).** In this case, the translation service does not commit to a 72 deadline which means that these cases are bound to have unnecessary delays. Taking into account that

[125] ΑΠ 509/2016, ΑΠ 616/2016, ΑΠ 1365/2015, 280/2017, ΑΠ 855/2016; Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, ΠοινΔικ, Τεύχος 12, Δεκέμβριος 2018.
[126] https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/316.

Greece is nowadays often required to send supplementary documents regarding prison conditions, many EAWs that Greece issues are delayed.

Often courts will bypass the official translation service by the Ministry, and use google-translator so that the executing authority can move along while awaiting the official translation – a far from ideal solution. Having said that, several judges and prosecutors complained that the translation service of the Ministry outsources the task to private translation services and the quality is frequently not adequate.

Delays that might go beyond the time limits might be also observed to translate essential documents in the language of the requested person (pursuant to the so-called EU procedural Directives). This is especially the case when these documents concern supplementary information.[127]

To battle this situation, several practitioners would welcome the **funding and/or establishing a translation office in each Member State by the EU for mutual recognition instruments**. The argument is that the EU should support the administration costs and services of EAWs. Alternatively, advancing the EU form into a fully digitalised system, where the form can be filled in and signed online and translated immediately by an AI system was also suggested.

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?

In those cases, usually Greek authorities will request supplementary information from the issuing authority. If the deviation is very minor and does not impact the substance of the request, the authorities might try to address this themselves in an effort to execute quickly (e.g. checking online translation).

One example is the case of an Indian requested by England for drug trafficking. By accident the Greek translation of the EAW had a random paragraph referring to rape and child molestation; it was clearly a mistake by the translator who must have copy pasted the text of another EAW. The court observed that the original EAW did not include that reference, that it represents an obvious error and the rest EAW leaves no room for doubt regarding the nature of offences. The request of the defence for supplementary information was rejected.[128]

[127] ΣυμβΕφΑθ 12/2021.
[128] ΣυμβΕφΑθ 8/2020.

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

A. Information regarding the identity of the requested person

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.

Little difficulties are reported by the prosecutors. It is important according to case law that enough information is given to avoid wrongful arrests.[129] Most problems are reported when Greece executes requests.

One interesting point refers to the relationship between the national and EAW warrants. Sometimes, to avoid archiving the case, the investigative judge will issue a national warrant on persons insufficiently identified (e.g. only with first and last name). If the prosecutor blindly executes this by issuing a EAW it could lead to excessive arrests as it has been the case several times at the Court of Thessaloniki.[130] Prosecutors indicate that if the national warrants are not properly issued, the EAW might be "contaminated" as well.

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.

Similar to the aforementioned problem, there is often insufficient information regarding the identity of the requested person: no home address, or father's name and no fingerprints. Greece has many refugees or immigrants whose true or full personal details are unknown to the police. It has occurred frequently that in executing warrants the Greek police **arrest the same person again and again, or many persons with the same first and last names until we find the right one**. The Greek EAW form includes the father's and mother's first names to ensure that this is avoided, **but the official EAW does not**. Thus, these details which are useful, are often omitted by issuing states. An example, amongst many, is the case of a Belgian request for an Albanian national where the father's and mother's first name, address and fingerprints were omitted and as there was contradictory information regarding the place of birth, the EAW was refused as being against art 8 EAW.[131] **It is submitted that first names of father-mother should be included in the EAW form.**

More general, it is imperative that **issuing authorities be more diligent in filling up the personal details in the form** of art 8 EAW and include all information regarding a person's identity. Often, the information necessary for identification, whereas being at the disposal of the issuing authority, is not included in the EAW form and is acquired only after Greece requests additional information following art 15 para 2 EAW. Unnecessary delays are thus often for these reasons.

B. Decision on which the EAW is based

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.

[129] ΣυμβΑΠ 1665/2016 ΠοινΔικ 2017, 310.
[130] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 233-234.
[131] ΑΠ 1665/2016.

The main issue in my view relates to the *enforceable judgement*, i.e. when to issue an execution-EAW – which I suspect might be dealt differently in other legal systems. As in *Tupikas*, our Supreme Court has held that the judgement on which the EAW is based in an execution-EAW **need not have exhausted all remedies, as long as it is enforceable**.[132] But when do we have an enforceable judgment in Greek law?

Generally, there are three court instances: first instance, Court of Appeals and Supreme Court. The first two are remedies on the law and merits, while the remedy before the Supreme Court is only on points of law. All three are ordinary remedies. According to art 545 GCCP, an enforceable judgement is the one against which there is no remedy possible anymore. But there are various exceptions to this rule and therefore a pending remedy does not necessarily have a suspended effect to the sentence.[133]

In particular two such cases are rather important for EAWs:

- Judgments of the Court of Appeals (second instance) are **immediately enforceable**. Thus, launching the remedy before the Supreme Court does not have a suspended effect to the sentence. Any suspension must be requested by a separate procedure and under very special circumstances.
- But also launching an appeal court to the Court of Appeals against a judgment of the first instance court does not always entail the automatic suspension of the sentence ordered by the first instance court. **Thus, immediately enforceable are the judgements of the first instance court, if the imposed imprisonment is more than 3 years** (art 497 para 3 GCCP) ***and*** **the court has not explicitly bestowed a suspended effect to the sentence**. The court has full discretion in those cases. *A contrario*, if the sentence is up to 3 years, launching an appeal has automatically a suspended effect to the sentence (art 497 para 2 GCCP).

Especially the second bullet might be more problematic as it means that execution-EAWs could be issued for judgments against which an appeal to the Appeal Court is still pending, as these are enforceable if the sentence is above 3 years and the court has not given a suspended effect per se. In those cases, it becomes a question of proportionality whether the prosecutor will wait for the appeal or even the last remedy at the Supreme Court. One must wonder whether waiting for all remedies is necessary if the decision is enforceable under Greek law. Why would you wait with issuing an EAW, if for a national case that individual would be already arrested and imprisoned? This is where proportionality comes in and, according to some practitioners, it would be a good place to differentiate between EAWs and national warrants.

Practice varies according to my research, but most prosecutors will refrain from issuing a EAW when appeal at the second instance is pending and **some even acquire a certificate from the Supreme Court** that no remedy is possible anymore. Yet again, depending on the importance of the case, some prosecutors will not wait for all remedies to end.[134]

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.

When executing execution-EAW, the foreign judgement on which the request is based must be enforceable, but remedies could still be pending, according to the Supreme Court.[135] Sometimes

[132] ΑΠ 1677/2010.
[133] Of courses acquittals are immediately enforceable.
[134] Γ. Πυρομάλλης, Η αρχή της αναλογικότητας στις διαδικασίες του Ευρωπαϊκού Εντάλματος Συλλήψεως, σε «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 191.
[135] ΑΠ 1594/2007/; ΑΠ 1983/2006.

there is little information which is solved with supplementary information. Greece does not require copies of the judgements or the national warrants (that seemed to have been the practice the first years of the EAWs but not anymore).

The Greek courts have applied the ECJ case law (*Bob-Dogi*) and refused the execution of two Maltese EAWs as there was no indication of a national warrant; in that EAW form, only the number of the EAW was mentioned again at the field where the number of the national warrant (and date) should be.[136]

In the past, before the term judicial authority received an EU autonomous concept, the Greek Supreme Court had accepted that only the law of the issuing state determines what an issuing authority is (in line with mutual trust), even this is not a judicial authority. Thus, the Supreme Court had squashed the decision of the Court of Appeals of Athens,[137] which had refused the execution of a EAW issued by the Danish Ministry of Justice.[138] The same approach was followed in next cases as well.[139] Now this case law line is outdated.

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, …)

It is not possible for the Greek prosecutor to add offences to the EAW which were not included in the national warrant upon which the EAW was based. Thus, the content of the national warrant defines the content and scope of the EAW – of course for the offences in the national warrant for which there can be an EAW. But the Greek prosecutor can produce one EAW based on two or more national warrants for the same person.

As executing authority Greece will normally not request a copy of the national warrant. The issuing authority will be trusted to comply with the EAW rules, and it is expected that other authorities will not violate *Bob-Dogi* in that respect. If there are suspicions that the national warrant is lacking or the offence or facts are unclear in the EAW, there will be supplementary information requested, but not a copy of the national warrant per se. There has been at least one case where the national warrant was lacking: see for example the Maltese case above.

C. Indications on the length of the sentence

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

There is no legislative reference to accessory offences or sentences. Legal practice created its own approach: the mainstream view is that Greece **does not allow the issuing or executing of an EAW with regard to accessory offences or sentences**.[140]Accordingly, other Member States

[136] ΣυμβΕφΑθ 56/2018, 57/2018.
[137] ΣυμβΕφΑθ 32/2005 ΠΛογ 2005, 695.
[138] ΣυμβΑΠ 1735/2005 ΠοινΧρ 2006, 504.
[139] ΣυμβΕφΘεσ 819/2008 ΠοινΧρ 2009, 159.
[140] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 232.

might choose to issue these EAWs, but Greek courts will execute those only partially (so not the accessory offences or sentences part).

Not everyone agrees with that. In scholarship, there is also the view that accessory offences and sentences should be executed following an analogical application of the provisions in Greek law regarding extradition.[141]

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?
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?
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?
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?

I would like to address all these questions together.

First, the threshold in art 2 FD EAW refers to the **duration of the imposed sentence**.[142] This has been confirmed by the Supreme Court. In this case, the Supreme Court accepted that even if the remaining sentence is less than 4 months, the EAW should be executed, as long as the imposed sentence complied with the threshold. It did however acknowledge that issuing such a EAW would potentially trigger the proportionality principle.[143] These EAWs are executed by the Greek courts, but many prosecutors will not issue EAWs when the remaining is less than 4 months. The duration of the remaining sentence must be mentioned.[144] [Question 21]

Second, for prosecution-EAWs, the **prosecutor cannot indicate a single maximum sentence**. Each offence will have each own separate penalty, without a possibility for a single sentence. [Question 19]

Third, for execution-EAWs in case of more offences, practice is far more complicated, since Greek law recognises several forms of concurrence of offences. The so-called concurrences of offences and their sentencing is one of the most complicated and disliked topics amongst practitioners due to the conceptional difficulties. Depending on the case, EAWs could have different treatment.

[141] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 10 παρ. 6.
[142] Δ. Μουζάκης, Το Ευρωπαϊκό Ένταλμα Σύλληψης, Νομική Βιβλιοθήκη, 2009, σ. 493.
[143] ΑΠ 1006/2006. Ν. Τσιακουμάκη, Ευρωπαϊκό ένταλμα σύλληψης, Νομική Βιβλιοθήκη, 2019, σ. 64.
[144] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 234.

True concurrence

In the true concurrence (αληθινή συρροή), there are more offences committed (more *Rechtsgut* violated). And this can be done either with one act (κατ'ιδέαν) or with more acts (πραγματική). Example: the terrorist with one grenade kills 10 persons or shoots and kills each person separately. It could be also one person but different *Rechtsgut*, e.g. a rape of minor and incest. What is important is that there are different *Rechtsgut*; in all these cases there are different *Rechtsgut* involved: more lives, or more interests of one person. In all these cases, according to art 94 GCC (Greek Criminal law Code), the court will give a separate individual sentence for each offence but then provide also an aggregate sentence. This aggregate sentence is given by the same court in the same procedure but after the individual sentences are pronounced.[145]

Quasi concurrence

For the quasi concurrence (φαινομενική συρροή), there is the same *Rechtsgut* violated but the concurrence refers to more violations in the law, so a concurrence of provisions, e.g. grabbing and removing a watch from someone's hand, this is covered by more provisions, i.e. robbery, theft but also unlawful violence. In these cases, the court will give a sentence only for one of these, and the other will be absorbed to the main one with different techniques. Thus, here there will be one offence at the end and one individual sentence.

What happens when there is true or quasi concurrence of offences in EAWs?

- Usually, these matters are left for the issuing authority to determine. Whether true or quasi concurrence, and however this is dealt with in the issuing state, *usually* Greek authorities when executing the EAW will not be concerned with this. For example, EAWs issued by Germany requesting persons for offences that under Greek law would be an obvious quasi concurrence and should not be treated as different offences: the Greek court will *usually* execute these requests without taking issue with this. Of course, every now and then comes the odd case: in one of those examples, the Greek court simply merged the offences according to Greek law and executed the EAW. But be merging the offences, essentially, the EAW was partially executed, since it is not apparent that the execution is for the other offences as well.[146] There is divergence in legal practice.
- Which sentence counts? When executing or issuing the EAW, the Greek authorities will determine the **threshold only on the basis of the aggregate sentence** (so the overall). And it is immaterial if some of these separate offences concern sentences of below 4 months.[147] This will be the case even for the quasi concurrence, as Greek courts cannot know how the law in the issuing state deals with these concurrences.
- The same will take place if there is a concurrence of judgements done by a different procedure. This is possible in Greek law under art 551 GCCP, namely to request the calculation of one overall sentence for more convictions (more judgements).
- Although the aggregate sentence is all that matters, according to case law, information for each offence or each judgement must be mentioned (facts, legislation but also other features such as in absentia aspects), because Greek authorities may still raise grounds of refusal for each sentence/judgement separately.[148] This includes also the mentioning of the individual sentences. For example, if the EAW considers two convictions which concur and for one of them there is a ground for refusal, e.g. committed in Greece, the court will

[145] Whether one or more acts has an impact on how to calculate the aggregate sentence, hence the distinction is very relevant.

[146] ΣυμβΕφΑθ 68/2018.

[147] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 231.

[148] ΑΠ 394/2008.

execute only for the other act.[149] If grounds of refusal apply for one offence, then the EAW will be **executed partly.**[150] *[questions 20 and 22]*

Thus, 1) it must be **clear from the form that this concerns concurrent/aggregated sentences,** 2) **the aggregated (or cumulative) sentence** must be provided in order to check the threshold of art 2 FD EAW**, 3) but also each offence and sentence must be furthermore listed and explained individually** (facts, provisions and in absentia elements) for possible grounds of refusal.

The latter is something that other Member States do not always do in the form, and Greece must then require supplementary information. It would be good if the EAW form would require more **specifically some elements for each judgement/offence or generally direct the issuing authority to specifically mention each judgment/offence in case of cumulative or aggregate sentences.**

Taking all this into account, in a **prosecution-EAW, Greece would not accept** a single sentence for more offences (neither issuing such EAW or executing it). It would request the penalty thresholds for each offence *[question 19].*

Continuous offences (repeated offence)
Finally, there is another group of concurrent offences, namely the continuous offences i.e. more instances of the same offence over a period time (I do not refer here to continuing offences i.e. offences with duration, e.g. kidnaping, but offences repeated again and again). An example is different rapes committed from the same perpetrator over a period of time. There must be a common intention and the offences must be relatively close together chronologically. Each offence preserves its independence regarding statute of limitation but following art 98 GCC, the court gives a **single individual sentence**. The commission of a continuous offence is rather problematic for EAWs if some of these offences are committed in Greece, or there are other grounds for refusal applicable to some but not all offences. In those cases, breaking apart the offences into the more instances and executing the EAW partially is not an option. Here, **the EAW will be refused in its entirety,** if there are grounds of refusal only for some of the committed offences. [151] An example was a case of cyber criminality, where there were several instances of fraudulent behaviour described in the British EAW, but the Greek court could not distinguish which were committed in Greece and which in England (even after requesting supplementary information), so it refused the EAW altogether given that the act was described as a continuous offence.[152]

It is therefore crucial that issuing authorities in the form are very clear as to what type of punishment has been allocated: are there separate sentences and then one aggregated one, or from the beginning one single sentence?

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.

No issues arise.

[149] Π. Μπρακουμάτσος, Αναφυόμενα ζητήματα κατά την εφαρμογή της εκτέλεσης ευρωπαϊκού εντάλματος σύλληψης - αιτημάτων έκδοσης και δικαστικής συνδρομής, ΠοινΔικ, Τεύχος 7, Ιούλιος 2017, σ. 601.
[150] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 234.
[151] Π. Μπρακουμάτσος, Αναφυόμενα ζητήματα κατά την εφαρμογή της εκτέλεσης ευρωπαϊκού εντάλματος σύλληψης - αιτημάτων έκδοση ςκαι δικαστικής συνδρομής, ΠοινΔικ, Τεύχος 7, Ιούλιος 2017, σ. 601.
[152] ΣυμβΕφΑθ 89/2019.

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.

Often the remaining sentence is not mentioned, or only the remaining is mentioned, or the sentence for all offences/judgements is not mentioned, or it unclear whether the sentence mentioned refers to all offences for which the EAW is requested or is it a single accumulated sentence (see above). **Generally, there is often no correlation between the offences described and their sentences': it is not clear which sentence is for which offence.**

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.

Greece was not part of the *InAbsentiEAW* project and accordingly, I would like to explain briefly the current status quo.

It is important to highlight that Greece implemented Framework Decision 2009/299/JHA only as of **1 July 2019** (N. 4620/2019). That meant that until that point, Greece was **using the old EAW-form** that led to extreme difficulties in getting our EAWs executed by other Member States. To combat this delay and the negative impact to the use of EAWs, prosecutors and the support staff came up with a practical patch-up solution to **add manually a footnote/note in each old form** where they explain how the requirements of 4a are addressed in each case; sometimes that was added as annex if the space in the bottom of the form was not enough. That worked sufficiently until 2019, when Greece could use the new form.

A second issue with the late implementation is that that the previous regime of summoning was particularly liberal in its presumptions. Up until the implementation of the FD2009/299, it was not required that the individual had actual knowledge of the summons. Knowledge was presumed if this was delivered to other persons without proof of being informed, and summoning was even possible to the secretariat of the local court. Moreover, there was no possibility of serving again the summons after the EAW was executed and to launch an appeal. That meant that Greece **until July 2019 could not provide those guarantees** of art 4a EAW. The result of this was catastrophic as many Greek EAWs were rightfully refused and the whole EAW mechanism was severely handicapped.[153]

Now this is no longer the case. After the implementation, the methods of summoning were retained (incl. delivering the summons to the local court in case of persons without known address) but with art 473 para 1 GCCP, the judgement will be served again to the person after execution if it is not proven that he is aware. Further the legislator added that 'other means' entails *proven knowledge* of the day/time of the trial, in line with *Dworzecki*.

However the fact that summons can still operate under many presumptions is problematic, even for the EAW hearing, as EAWs hearings could take place without the person being present or represented by a lawyer and without being proven that he had knowledge of the time/place of the hearing because the summons was delivered by means of affixing, namely affixing the summons

[153] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 237.

outside of the door of the person's residence. The hearing for the EAW then continued lawfully without the requested person as he did not appear and was not represented by counsel.[154]

E. Offences

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.

Only in relation to the offences in the list.

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

Since Greece has an extensive list of mandatory grounds, all information necessary to examine those grounds must be provided in the form. And if not, then supplementary information must be requested. This means for example the *locus delicti* must be mentioned otherwise Greek courts will not be able to check the relevant mandatory grounds. However this is not often included under e) as the form requires. Greek authorities would like section e) to be more elaborate. Greek practitioners indicated the following challenges:

Facts
The description of the facts is very limited, or several important elements are missing. Especially EAWs issued from Spain are reportedly so laconic that the court cannot proceed without supplementary information. Often the description of the involvement of the person is missing or the time, place.[155] This takes place to such an extent that many applications to replace detention with alternatives when the case concerns Spain are habitually granted because Greek authorities expect delays in the process; prosecutors in those cases might raise as ground for refusal the disproportionality of detention pending the EAW, when the Greek authorities can already assess that the EAW is too vague and supplementation information will be needed.[156]

One example concerns an EAW about participation to criminal organisation. The facts as explained in the EAW (translated from Greek, translated from Spanish) are the following: *"The requested person was a member of a criminal organisation with hierarchical structure. The requested person was the subordinate of X (name) with whom and others formed a criminal organisation to commit offences against persons and property. During criminal investigations, interceptions of telecommunications showed and proved that X acting upon the order of Y and Z was ordered to transfer weapons and to assault as revenge enemies of the criminal organisation."* [157] The location was mentioned to be Spain and the time between 2009 and 2010. Greek authorities requested supplementary information.

Offences
The same goes for the description of offences especially when there are more offences. Often there is no distinctive description of each offence. Thus, the EAW will be issued for 3 offences but only 2 will be explained. Often under offences, only the numbers of legal provisions are listed without any description, or the provisions in the code will not be mentioned and that raises concerns as well. Greek judges report that the statute of limitation is often not included in the description of

[154] ΣυμβΕφΑθ 19/2021.
[155] ΣυμβΕφΑθ 24/2021.
[156] ΣυμβΕφΑθ 120/2020.
[157] ΣυμβΕφΑθ 135/2020.

offences which is problematic for Greece courts since they do check that (even if not in accordance with the EAW).

Offence and facts
Another issue that offences and facts do not match, i.e. the facts concern only some of the offences but not all. For example, the EAW is issued for three offences, but the facts describe only two of the offences. Greek practitioners report a frequent inconstancy and lack of correlation between the facts, offences and their sentences.

Essentially **the lack of proper description of facts/offences can lead to a quasi-proportionality check**. In one case with Cyprus, the facts were so vaguely described that supplementary information did not solve the issue. After the second request, the Cypriot authorities admitted that there were no more details in the investigation file and the case is still in progress. The Greek court refused the execution for an art 8 violation, but essentially this was a premature, disproportional use of an arrest warrant.[158]

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;

In the past Greek authorities requested a copy of the foreign judgment. Now this is not requested any longer and we trust that the issuing authority will comply with this obligation.

Regarding the definition of same acts in several places of the EAW (e.g. art 3 para 2), it appears that jurisprudence and literature is confusing with antithetical opinions, and consequently, Greek courts avoid dealing with *ne bis in idem* as much as possible.[159]

To establish the same acts, the facts are examined without looking into the legal qualification. Yet in practice judgements are very laconically reasoned. One example is an EAW for a double attempted and completed murder, where the defendant argued that a court in Greece had already convicted him for the same acts. The Supreme Court refused this ground arguing that the Greek judgement concerned the forming of a criminal organisation to commit murders; the murders and the formation of criminal organisation are independent offences which concur according to the Supreme Court.[160] But this is not a reasoning corresponding to the criterion of same acts in *ne bis in idem* because it concerns the legal classification. Similarly confusing was the judgment of the Appeal Court of Athens regarding a EAW on EU fraud. The person was a Commission employee of a high-ranking position and was favouring specific companies when allocating EU subsidies between 1990-1997. There was another decision in Belgium during the same period on forgery of documents to defraud the EU commission. The Athenian Court of Appeals again did not consider those as same acts.[161]

Overall, my research shows that the Greek approach to the same acts-criterion is quite different than the ECJ jurisprudence. The Supreme Court determines *prima facie* the same act in a similar way as the ECJ, namely a factual happening in its whole, thus taking into account time, place and other circumstances.[162] But this includes also the material and immaterial act with all its

[158] ΣυμβΕφΑθ 83/2019.
[159] Ν. Τσιακουμάκη, Ευρωπαϊκό ένταλμα σύλληψης, Νομική Βιβλιοθήκη, 2019, σ. 49.
[160] ΑΠ 236/2015.
[161] ΣυμβΕφΑθ 25/2007.
[162] ΣυμβΑΠ 1209/2007 ΠοινΧρ 2008, 335.

consequences to the external world and its course.[163] Here, there is an additional requirement, that of the *same consequence*. And it is that element creating a link between facts and violated legal goods or offences.[164] As a consequence, when all these are applied, the definition of same acts is narrower for Greek courts in that it boils down to the elements of offences, as these take flesh with the facts at hand. Hence, whereas the ECJ considers part of 'same acts' also events not necessarily part of the merits of the judgment, but which are inextricably linked with that act, the Greek courts do not. The same facts, according to the Supreme Court, are basically the facts as these are determined from the elements of the offences of the first trial. Hence, according to the Supreme Court the *ne bis in idem* cannot be triggered by other offences not covered by the first trial.[165] So to conclude, the criterion under Greek law may seem *prima facie* to be about facts and circumstances, but it works, in end, with relation to offences and their requirements, which is not the line of jurisprudence of the ECJ.

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 prevalent opinion is that this check takes place ***ex nunc****:* following the law at the time of the execution, and apparently even if the offence was not criminalised under Greek law when it was committed.[166] Because Greece is the executing authority, no actual prosecution takes place for these acts in Greece. The only real procedure where the Greek state exercises is *ius punendi* is the EAW procedure and hence the timing of that procedure is decisive.

Yet this is debated in literature because of *lex mitior;* according to that view the principle of legality (*nullum crimen*) and of *lex mitior* would mean that the act should be also prohibited in Greece both at the *tempus delicti* and at the time of the surrender.[167]

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

The double criminality control according to the Supreme Court takes place by comparing the facts as they are described in the EAW with the Greek code and seeing whether they are criminalised. This is an *in abstracto* test: it suffices if they are criminalised in Greek law *in abstracto* i.e. somewhere, thus not with the same constitutive elements and the legal classification. Some examples in case law: a EAW for illegal trafficking could be tax evasion in Greece[168] or an EAW against property could be fraud in Greek law.[169]

[163] ΑΠ 1/2007 ΠοινΧρ 2007, 910
[164] ΟλΑΠ 1/2011 ΠοινΧρ 2011, 500
[165] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 11 παρ. 15.
[166] Δ. Μουζάκης, Το ευρωπαϊκό ένταλμα σύλληψης, Νομική Βιβλιοθήκη, 2009, σ. 525.
[167] Ν. Τσιακουμάκη, Ευρωπαϊκό ένταλμα σύλληψης, Νομική Βιβλιοθήκη, 2019, σ. 77, see e.g. ΑΠ 907/2014.
[168] ΣυμβΑΠ 659/2012.
[169] ΣυμβΑΠ 395/2012 ΤΝΠ ΔΣΑ.

I provide here (with my translation) part of the ruling of the Supreme Court, which I believe is in line with *Grundza*:

> "The examination of double criminality as prerequisite for the execution of a EAW takes place on the basis of the facts and the overall circumstances of the commission of the offence, as these are described in the EAW and in the decision on the basis of which the EAW was issued … without requiring the identical legal characterisation of the act in the law of the issuing and the executing state…It suffices if the acts for which the EAW is issued are criminalised in both the issuing and executing state in the sense of an abstract codification of the act in the criminal code or other special criminal law, irrespectively of the legal elements of the offence. An examination and identification from the judicial authority of the executive state of all required elements of the offence of art 14 GCC [*this article establishes the constitutive elements of offences, actus reus, mens rea and the like.*] … may only exist within the limits set by art 11 and 12 of Law 3251/2004 to establish whether any mandatory or optional grounds of refusal are present."[170]

Here, the Supreme Court rejected the defence's argument that the double criminality rule was not fulfilled because the type of weapon was not included in the list of weapons in Greek law.

Translations might cause some trouble. There are examples where the description of offences is translated very poorly and it is difficult to comprehend what the offence is all about. For example, let us take a look at this peculiar translation: *'appropriation to a great degree under conditions of extended criminality (more than one acts) of someone else's' property to a great extent, property that the perpetration possesses or has."*[171] The court looks at the description of the facts rather than the – sometimes – awkward translation of the offence, which might be due to the inevitable legal jargon. This is why a proper description of the facts is vital. In this case even with this poor translation, the Greek court could determine that the facts described were criminalized under Greek law.

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;

Please be reminded that the ground of refusal of art 4 para 2 FD EAW is in Greek law mandatory for Greek nationals and optional for non-nationals. For determining the same facts, the Greek prosecutors use the same test as with *ne bis in idem* (see above).[172] The prevalent opinion is that this check takes place ***ex nunc,*** so as the law stands in Greece at the time of the EAW execution.

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

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

[170] ΑΠ 1677/2010.
[171] ΣυμβΕφΑθ 37/2019, my translation from Greek which I even tried to make more understandable in English.
[172] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 12 παρ. 4.

The starting point is *ex tunc*, the law of the time of commission.[173] But eventually, none of the above, as the court will apply the **most lenient** law if there more laws were enacted in between, i.e. the one that provides a shorter statute of limitation.[174] In this case, *ratio legis* is the *nullum crimen nulla poena sine lege* in conjunction with *lex mitior:* the most lenient provision will be applied even if retroactively. Also in purely national setting, the *nullum crimen* principle applies in statutes of limitation.

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;

There are some very minor derogations between the Greek version of art 2 para 2 FD EAW (I compare with the English one) and then with the national legislation in art 10 implementing the list-offences. In some cases, the Greek legislator actually corrected the Greek FD, while implementing it.

In the following table, I only include the most obvious differences. Other minor ones aiming at proper assimilation of the legal jargon are not mentioned, e.g. arson being translated as *arson with intention,* because arson is meant in English language as an intentional act, while in Greek law there is also non-intentional arson; same for murder, translated as *manslaughter with intention* to match the national term.

FD English	**FD Greek (my translation in EN)**	**National law implementing**
Corruption	Bribery	Crimes of corruption and bribery
Organised or armed robbery	Organised or armed theft	Organised or armed robbery and theft
Fraud + crimes against Euro	Defrauding creditors + crimes against the Euro	Crimes against the financial interests of the EU
Swindling	fraud	fraud
Racketeering and extortion	Unlawful protection of unlawfully gained profit and extortion	Extortion

Considering that the list should be identical in all Member States to ensure a trustworthy automatism, some of these discrepancies pose a problem. The Greek legislator attempted to rationalize some categories that are not making much sense in Greek law, and assimilate the Greek version of the FD to the English one, perhaps because of translation issues: for example the English FD names corruption, but the Greek FD has this as bribery. Clearly these are not the same offences, hence the Greek legislator implemented that as corruption and bribery together.

Issues might occur with the fraud and crimes against the EU. In the Greek EAW form, that box is for crimes against the financial interest of the EU (not only the Euro); fraud is the box corresponding to swindling. The fact that the list here is a bit different might confuse the executing

[173] ΑΠ 1030/2008.
[174] ΑΠ 1832/2016.

authority. **It would be prudent if the choice of these offences is revisited to ensure that the categories make sense language-wise.** Often legal terminology follows English-law terms, but not the legal terminology of other languages.

How to decide whether some offences fall under the list? The prevalent opinion is that these terms refer to categories of crimes not offences per se.[175] The constituting elements of the offence according to Greek law (when issuing) must have common features with a category in the list. Hence the prosecutor first looks which offence under Greek law is at stake and then tries to see if this would conceptually fit under any of the list; whether the elements of the offence could be described with the one of the list-offences. This is sometimes problematic. Some prosecutors report that less experienced colleagues struggle, as this list is far from intuitive for Greek-speaking jurists.

To give an example: neither just theft nor just robbery is in the list. The Greek version of the FD mentions 'armed theft' while the English version 'armed robbery'. But neither of the two exist under Greek law as offences. For robbery this is not an issue because armed robbery is robbery (the 'armed' is superfluous) under Greek law. Armed theft does not exist but there is an offence titled 'aggravated theft' (art 374 (d), GCC) that would fall under the list as a type of organised theft. The fact that it is called 'aggravated theft' presents no problem, because the constituent elements describe an organised theft.[176]

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

Yes, Greek courts conduct a general check of whether the facts and offences as described would match the ticked box *in abstract* and not specific to Greek law. This control is not the same as the Greek prosecutor does to issue the EAW (see above). The court only looks whether there is a logical match consistent with criminal law in general. For example, if the facts describe a rape and the box of murder is ticked, that would be a problem and the issuing authorities would be contacted. Such control is only to catch obvious mistakes or typos that might have occurred.

Greek courts including the Supreme Court have reiterated on several occasions that it is the law of the issuing state that defines whether the offence falls under the list. And any objections reaching the Supreme Court have been crushed with a stereotypical reasoning: these are defined by the law of the issuing state, in any case the offence falls within the list and in any case it is criminalized under Greek law;[177] the latter comes from the *traveaux* where the legislator admitted that all the crimes in the list are already criminalized in Greece.[178]

[175] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 236.
[176] Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 236.
[177] ΑΠ 591/2005, ΑΠ 2135/2005, ΑΠ 2149/2005 (mostly sexual offences).
[178] ΕΙΣΗΓΗΤΙΚΗ ΕΚΘΕΣΗ στο σχέδιο νόμου «Ευρωπαϊκό ένταλμα σύλληψης, τροποποίηση του ν. 2928/2001 για τις εγκληματικές ορ-. γανώσεις και άλλες διατάξεις» p. 2.

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

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

I will answer these questions together. Greece provides and requires the **statute of limitation**, whether as issuing or executing state. This is a must in all EAWs. As an **executing** state Greek court **will control whether the offence has been barred in the issuing state**. This is essentially a prohibited check, but it is present in most judgements. The argument is that it would be completely arbitrary and disproportional to surrender the individual if the offence is barred in the issuing state. A deeper reason refers to the importance of statutes of limitation in Greece, which is seen as element of validity of the whole procedure. This appears to be a **standardised check** even if the offence did not take place long time ago. If the statute of limitation is not given it will be asked as supplementary information.[179] This takes place to the large majority of cases. However, very recently the Athenian Appeal Court has **explicitly refused to control the statute limitation of the issuing state**; and in doing so it implicitly criticised the previous decision of the same court to suspend the procedure and request supplementary information for that matter (see for more below under Part 4 B).[180] Other information found under f) is the interruption of statute of limitation, or information regarding suspended sentences.

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

The main problems come from literature where this ground is criticised as incomprehensible in many ways. It is not a ground with much practical application and most of the discussion is purely academic. There are two conditions: first, the act has been committed outside the territory of the issuing state, and second, for the same acts if were to be committed outside Greece, Greece would not be allowed to prosecute. The test is applicable with the legal framework in Greece at the time of the EAW execution, not when the offence was committed, so *ex nunc.* Essentially, this ground would be relevant in cases where the jurisdiction of the issuing state has different scope than the jurisdiction of the executing state, e.g. in cases where the principle of universal jurisdiction is used at the issuing state to prosecute a case, but the executing state does not provide universal jurisdiction for this act or there is an additional condition attached to it, e.g. residence of the suspect, that does not apply in this case.[181] For determining the "same acts", a reversal or adaptation of facts is required to a fictitious situation, of what would have happened if that situation had occurred in relation to Greece: if the suspect had for example temporary residence in Greece (and not the issuing state) and had committed these acts.

Some problems that exist are the following:

[179] Just as an example ΑΠ 1390/2016, Α. Καμηλάρης, Η έκδοση του ΕΕΣ και τα ανακύπτοντα κατ'αυτήν ζητήματα, «Ποινική Δικονομία της Ευρωπαϊκής Ένωσης, Τάσεις και Προκλήσεις», Νομική Βιβλιοθήκη, 2020, σ. 235.
[180] ΣυμβΕφΑθ 4/2021.
[181] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 11 παρ. 72.

- According to which Member State's legislation was the act committed outside the territory of the issuing state? So, who defines extraterritoriality?[182] From the transposition, it is crystal clear that only the second part is defined according to Greek law, i.e. that Greece would not be able to prosecute. But the first part, thus, defining the extraterritoriality for the issuing state, remains vague and different opinions exist in literature.
- The scholarship is perplexed regarding the second part: what does the 'does not allow prosecution' mean? Some read it in terms of extraterritoriality, but most scholars in Greece argue that this is broader, including also the prohibition of prosecution because of lack of criminalisation; the latter view proposes that this ground includes also a double criminality check.[183]

G. The seizure and handing over of property

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).

No, art 29 national law defines the property as all objects that can be used as evidence or objects in possession of the requested person as the result of the criminal act. Thus, this does not include only objects found on his body, but also other evidence. Indeed, even when the requested person is arrested within a/his residence, any evidence collected from the house search can fall under art 29.

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.

We hardly use this as issuing authority, only for passports.

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.

The search and collection must take place in accordance with the GCCP.[184] In the earlier days of EAW the authorities were not used to this mutual recognition procedure. In a movie-worthy case, the vehicle of the surrendered person was not confiscated and impounded according to GCCP and transferred to the issuing state – England – according to art 29 EAW. But it was privately purchased by a British policeman after communication with the Greek police and transferred to England for collection of fingerprints. The Supreme Court surprisingly did not find a violation of the national procedure in this case.[185]

In legal practice, this possibility is used mainly for passports or other identification documents. The EIO is currently well in use in Greece and prosecutors might prefer a EIO than this article.

[182] Μ. Καϊάφα-Γκμπάντι, Ευρωπαϊκό ένταλμα σύλληψης: Οι ρυθμίσεις του Ν 3251/2004 και η μετάβαση από την έκδοση στην «παράδοση», ΠοινΔικ Τεύχος 11, 2004. Σ. 1294.
[183] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 11 παρ. 70-75.
[184] Π. Μπρακουμάτσος, Αναφυόμενα ζητήματα κατά την εφαρμογή της εκτέλεσης ευρωπαϊκού εντάλματος σύλληψης - αιτημάτων έκδοσης και δικαστικής συνδρομής, ΠοινΔικ, Τεύχος 7, Ιούλιος 2017, σ. 601.
[185] ΑΠ 2149/2005; Ν. Τσιακουμάκη, Ευρωπαϊκό ένταλμα σύλληψης, Νομική Βιβλιοθήκη, 2019, σ. 245.

H. Guarantees concerning life sentences

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 really. There is life imprisonment in Greece as punishment, but it never means life. Since 2019, the GCCP determines that 20 years is the maximum time of actual prison-time.[186]

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

No difficulties were reported here. Art 13 of the national law refers to "the latest after 20 years". Often the issuing state will anticipate this an include assurances in the EAW when issuing it.[187]

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

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

No issues were reported here.

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.

No issues were reported here apart from occasional mistakes that were clarified with supplementary information (e.g. not complete signature).

[186] ΓνωμΕισΑΠ 8/2019 ΠοινΔικ 2019,1109.
[187] ΣυμβΕφΑθ 87/2019.

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

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

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?

As **issuing** state, the supplementary information is provided by the **prosecutor** who might cooperate or receive the information from the Ministry or correction facilities (prison). All these requests go through SIRENE and/or Interpol. The problem here is to send translated responses which can delay the procedure considerably.

When Greece is the **executing** state, the **court** decides that supplementary information is required and requests the prosecutor to communicate and handle this request. Sometimes the prosecutor might pre-emptively request supplementary information when this is obviously necessary, even before the case goes to court (e.g. regarding the guarantee of art 5 para 3, which is always required when it concerns Greek nationals).

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?[188]

In the overwhelming majority according to my research, it is usually information regarding **detention conditions** and to specify to which prison the person will be held.

Other type of information is clarification about facts, in absentia aspects. For more see question 41a.

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

We used to provide extensive information regarding the notification of trial to the accused to avoid refusal for cases of *in absentia*.

Statute of limitations is given always *proprio motu*.

As far as I understood, detention conditions, or to which prison the person will be hosted is not given *proprio motu*. Although it would have saved time.

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

Given the extensive list of mandatory grounds and the often-abstract description of facts and offences in the form, we tend to request often for supplementary information:

- Most concern information regarding facts and offences: which national provisions, explain better the facts, involvement of person to the offence, better explanation of how many

[188] 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.

offences, clarification of punishment threshold.[189] Sometimes more than one requests are sent. In one the cases explained earlier, where the Spanish authorities had a very general description of the facts regarding a criminal organisation, the Greek authorities requested: precise description of every act with adequate description of the time, place and the participation of the requested person; they also requested the indictment translated.[190] The Spanish authorities replied but the additional information did not really address those points, they only provided some context and describe the investigations and evidence. Greece requested again more information, at which point the Spanish authorities sent a copy of the previously sent information. In the end, the EAW was executed partly only for the offence of criminal organisation as it was the only one explained sufficiently.

The court will refuse a request for supplementary information if this is superfluous, e.g. in a Romanian EAW the authorities had explained in extensive detail for 8 pages the offences and facts. The prosecutor requested the provisions of the Romanian law translated but the court refused arguing there is no added value.[191] The court will also refuse to execute if the supplementary information is completely inadequate, as it happened in a case with an EAW from Cyprus where the facts and offences were too abstractly explained.[192]

- Clarifications regarding the enforceability of the judgments if it appears that the sentence was suspended.
- Statute of limitations of the issuing state since Greek courts insist to check that. The issuing state will comply usually.
- Aspects of jurisdiction, e.g. where did the offence take place, especially if the EAW concerns more offences. This is a reason that leads to many supplementary information.
- When art 8 is concerned: clarification whether national warrant exist.

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

In all cases, the authorities set a deadline (usually 30 days or less depending on what is requested) to the issuing authority to comply otherwise the requested person is released.[193]

When the suspect is not in custody but on bail, then more time might be given.[194] Similar also to cases involving Spain often more time is given.[195] Giving so much time will inevitably lead to exceeding time limits.

In setting the deadline, the following aspects are considered: time limits of art 17, whether the suspect is in custody, importance of information requested, the bulk or difficulty of the information required and how long it is expected to take or how difficult it will be to comply with it (a realistic deadline for the issuing state).

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.

[189] For example, ΣυμβΕφΑθ 12/2021.
[190] ΣυμβΕφΑθ 135/2020.
[191] ΣυμβΕφΑθ 62/2019.
[192] ΣυμβΕφΑθ 83/2019.
[193] ΣυμβΕφΑθ 12/2021.
[194] ΣυμβΕφΑθ 138/2020.
[195] ΣυμβΕφΑθ 152/2020.

Yes, several times Greek authorities receive questions regarding the **merits** of the case for example:

- How many witnesses appeared at trial;
- Where and how were the results of the preliminary investigation notified to the suspect;
- What evidence is there supporting the case;
- Copies of legislation translated, copies of judicial judgments translated.

Most of these random requests concern **execution-EAWs**. Prosecutors in Greece indicate an increasing difficulty in getting our execution-EAWs executed by other Member States. It was reported in the interviews that some Member States feel insecure with the fairness and material truth of the trial process, much more than with the prosecution.

Often Member States will request information multiple times and not collect their questions in one request. This dialogue can go back and forth a few times.

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

Not necessarily irrelevant but too bulky. The information is sometimes not tailored to what is required, taking into account that Greece is a foreign court to the system of the issuing state. For example, in a case with Italy, the EAW lacked a proper definition of facts, provisions, and punishment levels. And the Italian authorities responded to the request by sending the lengthy full judgments of pretrial detention from which the Greek judge had to extract the relevant info.[196]

Some countries might send copies of their judgments or copies of their legal provisions, or other material from the case file that is not useful; the impression is that some countries expect that Greek authorities will do extensive double checks.

B. Time limits (Art. 17)

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.

The impression from the Greek legal practice is that the Greek authorities do whatever it takes to meet the deadlines, whether an issuing or executing state.

However there have been many cases where these deadlines cannot be met. This is especially the case when the supplementary information is requested. Also, my impression is that the extension of 30 days is casually used. Generally, unless the defence raises an issue with time limits, the court will not take issue with it.

[196] ΣυμβΕφΑθ 12/2021.

To elaborate, I would like to give an example of a 2021 case with Poland as issuing state. The requested person was requested based on several EAWs for diverse offences: fraud, forming a criminal organization for the commission of tax-related offences, money laundering, fraud in relation to biofuel, illegal trade of fuel.[197] The Polish national was arrested 24 June 2020 and the first hearing at the Appeal Court of Athens was 17 July 2020. The court suspended the procedure to request supplementary information regarding the statute of limitation and to inquire whether Poland still wishes the execution of the EAW. The Polish authority responded on 30 October 2020 and the second hearing was on 12 January 2021.

The defence complained that the violation of the time limits and the failure to inform Eurojust were grounds to refuse surrender. The Appeal Court of Athens quite rightly recognised here and quoted *C-492/18 PPU TC* in rejecting those arguments. The failure to inform Eurojust, according to the court forms no reason of refusal or of validity of the procedure.

Please note that the 10-day limit when the requested person consents starts when the consent is given. As this happens both before the prosecutor and then again before the judge, it is unclear which consent is taken for the deadline. Looking at the judgment, the consent in front of the prosecutor seems to count, otherwise this time limit would not make sense at all.

Another important information that might be different in other Member States is that Greek law has prescribed a **remedy, an appeal on the merits against the decision of the Appeal Court to (not) execute the EAW**. The appeal can either be launched by the requested person or the prosecutor and is dealt with by the Supreme Court. The deadline for launching it is 24 hours after the decision of the Appeal Court and the Supreme Court must deliver its decision within 8 days (art 22 national law). There does not seem to be a problem with this procedure given the short time limits.

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

In my research I could only locate the information what was communicated to the EU Commission and found in the 4th Implementation Report. [198] However, in my research I produced some statistics regarding time limits.

From the 112 judgements (Court of Appeals of Athens and Thessaloniki) randomly selected from the years 2018-2021 that I studied in relation to the time limits, it can be seen than only 11 cases exceeded all time limits (10/60d+30d). The 10-day limit for cases where there is consent is usually not met and exceeded by 1-2 weeks. Another observation relates with the explanation for using the 30-day extension: this is not given. It appears that there is a per default assumption that the time limits include the extension and are 10/60 + 30 days.

Also, in those cases where the upper limits are violated, it is never mentioned whether Eurojust was informed, apart from two cases where the defence argued a nullity of the procedure for that reason. In most – if not all – cases observed, the defendant was on bail when the case went beyond the time limit. Most cases exceeding the time limits were for requesting supplementary information.

[197] One example, ΕφΑθ 4/21.
[198] Commission Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Brussels, 2.7.2020, SWD(2020) 127 final.

	Refused	Executed	Executed partly	Complying with time limits 10/60* and 30d	Exceeding time limits 10/60d* and 30d	Eurojust not informed**	Supplementary Information requested	Speciality waived
Court of Appeals judgments	**25**	**86**	**1**	**101**	**11**	2	11	2
* Consent is given with an explicit written signed document before the prosecutor and again the judge. I use the date of the written consent to the **prosecutor**.	Grounds of refusal seen: article 4: § 6, § 4, § 7 And article 8.		Vague description of some offences *even after* suppl. info	The 10 days is usually not respected.	in most cases violations are due to supplementary information request. But in many of these cases the defendant is on bail.	**In most cases the court mentions that obligation but does not clarify whether it was fulfilled. I include here only when it was explicitly violated		

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?

It is unclear as to whether this happens consistently. The prosecutors I have interviewed know and respect this obligation, but no information was mentioned in the cases I studied regarding its compliance.

Looking at the EU commission statistics from 2019 recently published, it appears that Greece reported to Eurojust both cases which were delayed that year.[199]

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

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

[199] COMMISSION STAFF WORKING DOCUMENT Statistics on the practical operation of the European arrest warrant, Brussels, 6.8.2021 SWD(2021) 227 final, p. 37.

The conditions for art 5 para 3 are similar to the ones for art 4 para 6, hence I have explained under Part 1 A already some aspects, e.g. the definitions of resident, which I will not repeat here.

Greece has implemented the guarantee of art 5 para 3 for **Greek nationals as a mandatory ground** but for **residents as a guarantee** (see Part 2 A 6). Thus, for Greek nationals the court must always require this guarantee. For non-nationals, it is implemented as a guarantee, which may be raised optionally by the court. The court must normally execute but may choose to attach that guarantee (see art 13 national law).[200] In this way, the differential treatment between Greeks and non-Greeks becomes larger.

Non-Greeks must request from the court to acquire the guarantee. But for Greeks, the court must acquire this before execution. What about **consent**? This is **not provided in the law**. Scholars criticize the legislation here as particularly inflexible.[201] But there has been at least one case where the requested person wished to be surrendered; the court decided in favor of surrender *exceptionally* and the consent was given in a written manner.[202]

But in most cases the court will apply this without consent. For example, in the case of a Greek national who resides in Rotterdam requested from Germany, the prosecutor preemptively acquired assurance by Germany regarding the return, whereas the requested person clearly mentioned that he resides in the Netherlands, he is in Greece only on holidays (and he had not requested this return anywhere). That precluded furthermore the use of the FD on custodial sentences for the execution of the sentence in the Netherlands as a country of residence.[203] **In this sense the mandatory use of grounds relating to rehabilitation, sabotages other instruments that aim at rehabilitation**.

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

When Greece is executing state, the guarantee will be requested by the court. When it concerns Greek nationals, the prosecutor will even request these assurances already before the hearing, as supplementary information since this is reassurance is mandatory for Greek nationals.[204]

When Greece is issuing state, the guarantee will be given by the prosecutor.

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

The guarantee given does not have a specific pre-determined text.

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

[200] Δ. Βούλγαρης, Ευρωπαϊκό Ένταλμα Σύλληψης, Σ. Παύλου, Θ. Σάμιος, Ειδικοί Ποινικοί Νόμοι, Κατ'άρθρο ερμηνεία, Π.Ν. Σάκκουλας, 2020, αρθρ. 13 παρ. 2.
[201] Δ. Μουζάκης, Πρακτικά προβλήματα από την εφαρμογή του Ν 3251/2004 για το ευρωπαϊκό ένταλμα σύλληψης (Με βάση την πρόσφατη νομολογία του Αρείου Πάγου και του Δικαστηρίου της Ευρωπαϊκής Ένωσης), ΠοινΔικ, Τεύχος 1, 2012, σ. 57.
[202] ΣυμβΕφΘεσ 135/2005, ΠοινΧρ 2005, 847.
[203] ΣυμβΕφΑθ 70/2019.
[204] ΣυμβΕφΑθ 70/2019, ΣυμβΕφΑθ 111/2019.

There is no reference to any 'other procedural steps'.

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

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

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

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

Once the person consents to the return at the executing authority, Greece as issuing authority will not require consent again to execute the return guarantee and the person will be returned even if he does not consent to the return at a later stage after the procedures at the issuing state are finished. This takes place however only within the limits of FD 2008/909, i.e. art 6 para 2 regarding the cases where consent is not required.

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 prosecutor who undertakes the execution of the court judgment will make decisions regarding the return. When this time comes the Greek authorities notify the executing state, that the surrendered person 'is ready to be picked up'.

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.

My research has shown a lack of consistency regarding the procedure used to execute the return guarantee: in most cases the procedure of the FD 2008/909 will be used but this is only because other Member States will request for this certificate. The Greek authorities see it as repetitive and double work because it leads to similar checks as with the EAW that has been already issued and executed. The relationship between the two instruments must be clarified.

In two examples in my research, (one with Germany where Greece was executing state, and one with Bulgaria where Greece was issuing state), the Greek authorities attempted to complete the process without the certificate of the FD 2008/909 which led to dead end.

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.

Some of the problems I have already mentioned, e.g. the lack of consent for nationals. Another problem relates with the use of this guarantee for non-nationals, which is optional. The guarantee of art 5 para 3 is fundamentally the same as with art 4 para 6. As with that procedure, non-

nationals are not required anymore to acquire a written guarantee by the Ministry of Justice.[205] This means that Greek courts executing the EAW must make themselves the decision, without such document, on whether they should use the guarantee or not. **Yet not all courts are aware of this change in the jurisprudence: even in very recent decisions some judges will reject the request to invoke this guarantee for non-Greeks without the written reassurance by the Ministry.**[206] The persistence on such requirement makes the procedure for non-Greeks quite difficult.

Whether issuing or executing state, Greek authorities report that often the execution of this guarantee is forgotten and there is no follow-up. Basically, it all lies with the defence counsel or the requested person. If they do not prompt the prosecutor to execute the guarantee or the other state does not remind Greece, we might forget to request or send the person. But this situation of 'forgotten' guarantees of return could lead to issues regarding the execution of conditional release: these people still want to return to their country but if their sentence is suspended with conditions (as it happens often under Greek law), they are trapped in Greece as the conditions for their release usually involve close contact with the police station. Greek authorities do not really use the FD 2008/947 as it is too complicated and sometimes intermediary creative solutions are found in cooperation with the embassies: instead of reporting to the Greek police stations, to report to the Greek embassy at the other state.

D. Detention conditions/deficiencies in the judicial system

Detention conditions

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

- with respect to which Member State(s);
- on the basis of which sources;
- did the executing judicial authorities use the database of the Fundamental Rights Agency[207] in stablishing that risk;
- what role, if any, did (measures to combat) COVID-19 play in establishing that risk?

To my knowledge and research this has never been the case with Greece as **executing** state. While the defence might raise the argument, the courts do not accept it and argue that there are no objective grounds to prove a violation of human rights (courts usually refer to the Charter, ECHR, Greek Constitution and art 1 para 2 FD EAW).[208] There have been some exceptions (e.g. the Malta and Italian cases) but these do not concern prison conditions. The general tendency is to execute the requests as much as possible in the spirit of mutual trust.

Additionally, I believe that Greece is not in a position to be too demanding in this field, given that as issuing state our detention conditions pose constantly problems.

[205] ΑΠ 324 / 2012; ΑΠ 1327 / 2014; ΑΠ 1826/2019.
[206] ΣυμβΕφΑθ 4/2021.
[207] The 'Criminal Detention Database 2015-2019': https://fra.europa.eu/en/databases/criminal-detention/criminal-detention.
[208] ΑΠ 603/2020.

There are some recent cases where the argument is raised by the defence, i.e. that the overcrowding will amount to possible health risk for the individual who is in a vulnerable group for Covid-19, but the court has argued that the measures taken by Member States (in this case Italy) are enough to minimize the risk.[209]

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?

As mentioned, there are not such cases to my knowledge.

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 mentioned, there are not such cases to my knowledge.

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.

As issuing state we are asked to provide additional information and assurances **frequently** before but mainly after *Aranyosi*. The requests have been plenty to have created already a judicial culture around this issue. Also please note that despite all supplementary information, many of these requests are not executed. This is the main reason of non-execution of Greek requests, according to my research.

The most interesting points to discuss are the following:

1) The **number of requests & mutual trust**

The majority of requests for additional information concern questions and reassurances regarding the conditions of detention. And these come from specific countries. The usual suspects requesting reassurances or supplementary information are mainly Germany but also England (before Brexit), the Netherlands, Austria, Ireland and Scandinavian countries. It appears that the requests have multiplied so much recently that – although the Greek judicial authorities are themselves aware of the situation at the overpopulated prisons – they have started considering

[209] ΑΠ 603/2020.

these requests as **excessive and exaggerated** and harming mutual trust. This has been a common view by several practitioners in my interviews.

This impression is amplified from the fact that they concern **only execution-EAWs**, whereas also with prosecution-EAWs prison conditions might be an issue (if convicted) and especially if in pre-trial detention. Thus, the feeling is that these requests are mainly an excuse to avoid execution, rather than a genuine concern for human rights.

2) **Questions arrive one-by-one and not all together**

Apparently, some executing authorities do not know exactly what to ask from the start, and often the questions are sent one by one and not altogether. For example: "how many square meters is each cell and how many inmates sharing the cell" and then after this question is answered, another one arrives "How often and how long do they spend time outside". Generally, most questions received can be answered, e.g. to which prison will he go, how many square meters the cell, with how many people will it be shared, are there private toilets, are the toilets in the cell, how big is the window, is there heating/airconditioning, how much time outside, how many meals and showers, medical care, leisure time.

Please note that each of these requests is answered by the prosecutor in cooperation with the director of the prison in question. The prosecutor decides in which prison the requested person will be sent (depending on the type of offence and numbers of population) and he contacts the relevant facility to receive the information necessary. It is unclear whether each prison keeps standardised forms with the number of inmates and other conditions of living, but it is a fast process, because prison directors usually **respond within 24 hours** with the information.

3) Current procedure

Greek prosecutors report a need for a more normalised formal way to relay the information. Indeed, some Member States already add in the request *proprio motu* **which prison** they would prefer. In those cases, Greece drafts a **guarantee**. Alternatively, a *proprio motu* request from the executing state might include which **requirements they want the prison to fulfil** or even **which prison they do not want** (typically *Korydallos*). In general, there are already two detention centres which happen to be '*Aranyosi-proof*' so they fulfil the requirements of the ECHR and the Charter; yet as of late, the prosecutor of the Court of Appeals of Thessaloniki acknowledged that one of the two might even be too overcrowded at this point.

Greek authorities do not wish to include this information *proprio motu*, e.g. already giving the guarantee of using a specific prison. Most EAWs still continue without this requirement, reassurances for detaining people at specific prisons cannot be made for all detainees as there is no space, and the Greek authorities experience this as a lack of mutual trust.

4) Confusing standards

Importantly, confusion persists regarding what the standards should be. The ECHR and EU standards are known to courts, but apparently executing judicial authorities might be a bit more flexible. It has been observed that the same conditions are sufficient for one judge, but not for the other. There have been simultaneous EAWs pending before two different German courts for example, where the exact same prison (with the exact same numbers, capacity, and conditions of life) is good enough for one court but not the other. **This creates uncertainty for Greece as issuing state.** Often Greek prosecutors are very uncertain whether the information sent is good enough and what discretion will be applied.

The EAW procedure according to some prosecutors has lost its certainty and reliability. From an instrument with relatively well-defined grounds for refusal has become an instrument where one square meter proves decisive.

From my research into the legal practice, I see two attitudes emerging in the way Greece as issuing state responds to these requests.

i. Responsibility lies with issuing state

This appears as the default position of most Greek authorities, who will do their best to find a prison or an arrangement within a prison that would satisfy the executing state. From my research, prosecutors had this as default especially immediately after *Aranyosi* and also for EAWs of large cases where a lot is at stake. In this case, those surrendered with EAW receive better treatment and possibly even held at different prisons that those with similar offences.

ii. Responsibility lies with executing state

With this approach, the Greek authorities do not make the extra effort to find the better suiting prison. The prosecutor simply picks the prison that would match the offence, or the current availability and informs the executing authority of all features pertinent to that facility. Then the burden to decide if this suffices rests with the executing authority. Prosecutors are more inclined to have this attitude in busy courts, or when all prisons have similar conditions. My impression is that this attitude that will be adopted soon. Already prosecutors indicated that in most cases they cannot anymore accommodate requests. They subsequently take a gamble, which given the subjectivity of standards, often pays off.

Previously, another system existed, where the Minister of Justice would draft a personally signed document where s/he would commit personally that this suspect would stay in an appropriate prison or cell. This mechanism used to work very well, it bestowed to the process more trust and security. Nowadays, practice shows that assurances from the prosecutor in charge are often not trusted, even if the conditions described are up to the standards of the Charter or the ECHR.

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.

As mentioned, there are not such cases, to my knowledge.

There is plenty case law of refusing extradition to third countries for a risk of violating art 3 ECHR. Looking at that case law (in order to see what approach exists for those issues in the national legal practice), one can see that Greek courts require official reports from NGOs or international organisations and other sources (e.g. press) to establish a serious and generalised risk, and they examine the possible fate of the person in question as well.[210] Thus, the methodology is not too far from the *Aranyosi* test.

Deficiencies in the judicial system

52. Have the executing judicial authorities of your Member State had any cases in which they established that there is a real risk of a violation of the right to an independent tribunal in the issuing Member State on account of systemic or generalised deficiencies liable to affect the

[210] For example, ΣυμβΕφΘεσ 120/2019.

independence of the judiciary (the first step of the *Minister for Justice and Equality (Deficiencies in the judicial system)* test)? If so:

- with respect to which Member State(s);
- on the basis of which sources?

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?

I will address questions 52 and 53 together.
This ground is **rarely accepted as refusal ground**, looking at the case law, literature and after consultation with prosecutors and judges.

One notable case was the Maltese case, which I discussed under Part 2 C 10.[211] The case concerned two EAWs issued, requesting Maria Efimova, a known whistle-blower allegedly informant of the now-murdered journalist Daphne Caruana Galizia. Efimova was a bank employee accused of bank related offences. She argued that she was asked to forge documents and signatures to cover up financial scandals committed by the bank in connection to major politicians; she insisted that the prosecution against her was completely made up to silence her and that the judicial system in Malta is corrupt. One EAW concerned the offences related to her bank activities, while the other for perjury (regarding the accusations made against the police and the judicial system).

The Athenian Court of Appeals refused to execute them on the basis of a risk to **fair trial, lack of proportionality** and art **8 FD EAW** because a national warrant was lacking (in addition some offences did not cross the art 2 threshold and they were described in a vague manner).[212] The case went to the Supreme Court, which took a more conservative view: it accepted as ground of refusal the art 8 FD (lack of national warrant) and did not proceed to the second ground (fair trial) as this was redundant.[213]

The Appeal Court of Athens when refusing execution due to a fair trial violation took into account the following material *inter alia*:

- The testimony of the requested person;
- The report of the special visitation committee of the European Parliament to Malta;
- A letter from members of the European Parliament to the Greek Prime Minister;
- A signed petition from 36 members of the European Parliament to award asylum;
- Press releases from various NGOs regarding this specific case including the Hellenic League for Human Rights;
- Various publications in the press including the Guardian and well-respected Greek newspapers where it was explained why this specific individual would not receive fair trial in Malta.

[211] ΣυμβΕφΑθ 57/2018.
[212] ΣυμβΕφΑθ 56/2018; ΣυμβΕφΑθ 57/2018.
[213] ΑΠ 1040 / 2018.

Additionally, during the hearing, the court **heard witnesses** explaining the situation and the real risk that the requested person would face. In particular: two members of the European Parliament - one of which participated in the committee on the Panama Papers - having expert knowledge on this topic, testified extensively about the real danger the requested person would run. The witnesses further explained, that unlike Poland or Hungary which acquired the problems of judicial independence recently, the problem in Malta is inherent to the system since its infancy, which explains why it has not gained the attention it deserves by European institutions.

Looking at the overall ruling, the court addressed both aspects of the two-prong test but not in a clear way separating those two and without referring to the ECJ case law. The assessment was conducted in a more intuitive manner: the court relied on sources proving a general and systematising deficiencies and assessed the real risk of that person.

Importantly, the court rejected the possibility of supplementary information as unnecessary. That would be pointless, according to the court, as the facts put forward were so generally described, most offences were so minor that they fell outside the scope of EAW and clearly there was no national warrant. Hence this part was not in accordance with the *Aranyosi* saga. Please note the court did not use the fair trial argument as the direct ground for rejecting the EAW. It was however heavily implied in the final ruling (and also seeing that the court spent the whole trial session taking witnesses about this issue), when the court stated that that whole case constitutes a violation of fundamental human rights of the requested person who remains a 'hostage' of a serious procedure violating her freedom.[214]

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.

Greece has not yet received this type of requests for additional information.
Recently, the Netherlands requested information regarding the concept of issuing authority and its independence in the context of art 6 FD EAW.

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.

From the Maltese case, it can be seen that the Greek court did not see the point to request supplementary information from Malta since they were convinced that the answer would not be credible. One has to wonder whether such supplementary information makes sense if there are suspicions of corruption of a system altogether, not about a specific aspect of the system such as the formal independence of courts.

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?

As far as my research goes, there has been no such occasion where this was seriously considered. Sometimes the defence counsel might request that a preliminary reference procedure is launched, but the Greek courts are very reluctant to delay procedures. Generally, the judicial culture in Greece does not encourage delays and is not keen on deploying the preliminary reference

[214] ΣυμβΕφΑθ 56/2018.

procedure.[215] There are very few preliminary references launched by Greek courts in all fields of law to begin with. To my knowledge and research, Greek courts have *never* referred a question to the ECJ for the EAW or other EU instruments of criminal law cooperation.

Against this backdrop, Greece is often at the receiving end of supplementary information regarding detention conditions, and as such they are reluctant to create more obstacles and delays to judicial cooperation.

E. Surrender to and from Iceland and Norway

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

My research has showed only few cases with Norway, but there has been no issue in these cases.

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

Ibid.

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

My research has not showed any cases where the agreement has been used yet.

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

There is no explicit provision regarding the execution or issuing of EAWs by the EPPO included in the current legislation for EAW. Some aspects of the EPPO Regulation have been addressed with Law 4786/2021 of 31 March 2021, but this legislation does not mention or address in any way art 33 of the Regulation that provides for the issuing of EAWs.

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

***Petruhhin* judgment**

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

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

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

[215] CJEU, Annual Report 2020: a year in review, and Annual Report 2020: judicial activity.

Greece does prohibit the extradition of nationals to third countries (not in the Constitution but art 438 GCCP) but not of other EU nationals. We do extradite other EU nationals to third countries. My research has not revealed any equivalent protection for non-nationals (*Generalstaatsanwaltschaft Berlin*, *C-398/19)*, at least not yet; the ECJ case law is relatively recent.

A far as my research goes, the *Petruhhin* mechanism has not been applied apart from one case where the authorities of Spain were notified for a possible extradition of a Spanish national to a third country, but there has been no follow up. It is unclear whether a deadline or more specific procedure was set with Spain.

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

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

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

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

Not to my knowledge.

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

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

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

Not to my knowledge.

G. Speciality rule

61. Does a decision to execute the EAW state:

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

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

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

I will address these questions together.

The issuing state (and the individual) is provided with a translated copy of the judgement. Within the judgement it is stated whether the speciality rule has been waived and by whom (by the authority or the person). Usually, judgments do include reference to the speciality rule. Yet, in my research I located some judgments where this was not stated explicitly, but implied. Please note that according to the Greek law implementing the EAW (art 34), the speciality rule is waived for all prior offences, the requested person cannot choose. Of course, in the judgment the offences for which the surrender is permitted are defined in detail; if the EAW is partially executed this is also specified (for which offences and which not).

Please note that renouncement of the speciality rule and consenting to the surrender are two different decisions under Greek law, so that consenting to the surrender does not impact the renouncement of the speciality rule.

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?

Violating the speciality rule in extradition/surrender is one of the grounds for appeal to the Supreme Court, explicitly mentioned in art 510 para 1, θ΄ GCCP. It is thus considered a serious flaw of the procedure. Also, even earlier the prosecution would be considered unlawful according to literature.[216] Arguing this violation lies with the defence and in practice the defence will supply the necessary proof and argumentation when launching such complains. At the same time the legal ground mentioned above is titled as "abuse of power/ultra vires": it is hence expected that the prosecutor will act within their legal powers and if not so, there might be also disciplinary measures.

Practitioners I have interviewed mentioned one anecdotal case of a blatant violation of the speciality rule with a EAW from Cyprus, that ended up in disciplinary actions taken against the prosecutorial authorities involved.

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.
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.

I will answer these together.
The speciality rule is rarely waived (from 112 judgements, it was waived only 2 times - see previously the table for the time limits). Problems might occur with defining the 'same acts'. Abstractness in the definition of offences is not necessarily a violation of the speciality rule (decided in a case by case basis).[217] But there are examples of cases where Greek courts have assessed that a vague description of offences and facts have been a violation of the speciality rule.[218]

[216] Δ. Χρυσικός, Η έκδοση ως θεσμός του Ποινικού Δικαίου. Ανάλυση και ερμηνεία υπό το πρίσμα της προστασίας των δικαιωμάτων του ανθρώπου, 2003, Π. Ν Σάκκουλα; Χ. Μυλωνόπουλος, Η αρχή της ειδικότητας στην έκδοση, ΠοινΧρ ΜΓ, σ. 117-125.
[217] ΑΠ 1261/2013.
[218] ΣυμβΕφΔωδεκ 78/2019.

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?

Greece has received requests (e.g. Germany, Poland) of art 27 para 4, namely to waive the speciality rule after the execution of the EAW. There seems to be no problem in dealing with these requests.[219] The Greek authorities usually require a European Arrest Warrant,[220] but I have come across also cases where a EAW is not mentioned, only a national one.[221]

[219] ΣυμβΕφΑθ 150/2020; ΣυμβΕφΑθ 24/2019.
[220]; ΣυμβΕφΑθ 24/2019.
[221] ΣυμβΕφΑθ 150/2020.

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?

In my research, I found that to be true especially when it concerns detention conditions or requests that are seen by Greek authorities as excessive or relate to issues falling outside the realm of the executing authority. The prosecutors I have interviewed view themselves as quite zealous and diligent in issuing EAWs and some of these requests are perceived as indicators of a decreased mutual trust and recognition of being equal partners.

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

Regarding the supplementary information for detention conditions and deficiencies of the judicial system, it is unclear whether the supplementary information should refer to assurances and/or information regarding a particular aspect of the system. Greek authorities to expedite the process will give information regarding prisons and give assurances in the same answer, even if not asked: "these are our prisons we promise to keep him in this cell". It would help if a more standardised text or guidelines were to emerge where both would be requested together to avoid delays.

Most importantly, the EU should consolidate the standards on prison conditions. See Part 4 D for more.

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

Yes, regarding detention conditions and the substance of the case file, e.g. evidence, witness, or summoning (other than *in absentia*).

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?

Generally, practitioners report a good cooperation and communication amongst countries.

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?

Yes, it would help a lot, given the language issue and expertise.

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?

Greek practitioners report a harmonious cooperation with most countries. The following situations have stood out as creating some delays:

- Spanish authorities often issue too vague EAWs, in particular the description of facts and/or offences is laconic;[222]

[222] ΣυμβΕφΑθ 24/2021.

- German and (before Brexit) English authorities require too often excessive supplementary and unnecessary information indicating lack of mutual trust and/or do not executing EAWs without clear explanation even after the information has been provided; [223]
- Italian authorities often request copies of judgments;
- Bulgarian legislation has too short deadlines for issuing the EAW after arrest, namely in cases where Greece has not issued yet the actual EAW (the EAW is not yet attached to the SIS alert), Bulgaria sets too short deadlines for supplying the EAW (72 hours) and taking into account that the EAW must be translated, Greek authorities often do not manage to provide that on-time (see question 13).

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

- Consider replacing the FD with a **Regulation**: this is to circumvent faulty implementations which in the case of Greece have costed the feasibility of the EAW in many cases, especially since many optional grounds are implemented as mandatory. The Greek practice is 'EAW-friendly' while the legislator is not. This leads to the development of incoherent national practices.[224]
- Add criteria of **proportionality** to be checked by the issuing state and perhaps in the EAW form to be ticked.
- The form should be much more instructive regarding the description of facts and law, especially concurring offences, penalty limits. There seems to be a need to include some aspects of the Handbook as entries with the form.
- Explore possibilities for fully digital EAW form including translation.

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?

- Add clear prohibition to differentiate between nationals and non-nationals in the way some grounds of refusal apply. While there are some differences imbued in the EAW (art 4 para 6 refers to staying, residency or nationality, but art 5 para 3 refers only to residency or nationality), Member States should not create a favourable regime for their nationals in this regard. Some of these grounds should not be mandatory anyway as they are optional in the FD, but any practical obstacles for non-nationals should be avoided also in practice.
- Many grounds should be limited in use, one is jurisdiction. It cannot be that within the EU area of justice, territoriality is so strictly applied; there are offences so complicated that they should best stay together for the interest of justice. Extensive use of territoriality breaks cases apart. Perhaps a criterion should be added for this ground, namely that national courts should decide whether to invoke this ground based on where the crime had the most affect or make a link with the FD 2009/948/JHA on solving conflicts of jurisdiction.

[223] Γ. Βούλγαρης, Η εκτέλεση του Ευρωπαϊκού Εντάλματος Σύλληψης στην πράξη, ΠοινΔικ, Τεύχος 12, Δεκέμβριος 2018, σ. 1224.
[224] Π. Αδάμης, Ευρωπαϊκό Ένταλμα Σύλληψης – Ο ρόλος της Eurojust και της Ευρωπαϊκής Εισαγγελίας και η νομολογία του ΔΕΕ, η Ποινική Δικονομία της Ευρωπαϊκής Ένωσης Τάσεις και Προκλήσεις, Ένωση Ελλήνων Ποινικολόγων, 2020, σ. 215-220.

- b) given that surrender proceedings are increasingly becoming more complex and protracted, what, in your opinion, is the effect on mutual trust?

The practice views it as negative; some practitioners used the term 'on mechanical support' to refer to EAWs. Surrender now takes much longer than before.

If objections regarding the quality of legal systems and prisons lead to more funding and adjustments, the impact could be in the long-run positive for mutual trust.

- c) in your opinion, should the speciality rule be maintained, amended or abolished? Please explain.

Most prosecutors argued in favour of abolishing it, which is in line with mutual trust and the EAW being different than typical extradition. Why would you trust the executing authority for one case but not others? However, most requested persons do not waive it and judges approach it as vital protection within the EAW procedure.

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

"Everything about the EAW can be useful" – is the approach of legal practice in my research. The digitalisation of the handbook and inclusion of a case law-guide would very useful. Also, a list of '**what not to do'** in each section, e.g. common mistakes.

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?

Many prosecutors do, especially in larger courts with more expertise in EU matters.

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 ESO is seen in Greek legal practice as a failed instrument without practical application. To my knowledge it is not used at all. In my opinion, the ESO (or a modernized version of it) and the EIO should be more often used, when possible, instead of the EAW. It should be explored whether the EAW can be limited only when the case is ready for trial or somehow create an escalating use of these instruments that mirrors proportionality.

Please note that other options instead of EAWs are also used, e.g. summoning abroad. If someone has known address abroad, the authorities will try to summon him. Then a EAW might be issued only if the person does not show up. Generally, the EAW is only issued for persons with unknown address or persons that are known to be fugitives. If someone has a known address abroad, a EAW will not be issued in principle.

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?

Greece makes use of the rehabilitation grounds in a mandatory way for nationals, irrespective of consent: these are mandatory grounds for refusal or mandatory guarantees and there is an irrebuttable presumption in the *ratio legis* of the legislation that rehabilitation is served for nationals if they serve their sentences in Greece – which is untrue for many cases. If the grounds/guarantees relating to rehabilitation are mandatory for nationals, other instruments such as the FD 2008/909 and the ESO are sabotaged.

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?

I think a broader instrument consolidating the topic of the detention (pre/post trial) of the requested person might be better.

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?

I have mentioned in various parts of the report that several instruments have connections with the EAW such as EIO, ESO, FD 2008/909 and FD 2008/947. But their exact interrelation in practice is not really known or perhaps not even similar for all countries.

If used improperly, the EAW could sabotage other instruments, e.g. if all nationals are kept in Greece to execute their sentence there, then other instruments on rehabilitation cannot be used. Also, apparently the FD 2008/909 has a meeting point with the EAW for the return guarantee, but it is unclear how this will work in relation to the consent; should the issuing authority acquire again the consent before executing the return guarantee? These meetings points must be clarified.

As explained, the practice of EAW also in Greece has become quite complicated, with so many ECJ judgments coming out and changing the conditions of mutual recognition, adding criteria and all sorts of checks (e.g. detention conditions, issuing authority). It is questionable whether Greek authorities can keep up with these developments that take place parallel to national law developments. More training is in my view beneficial.

Furthermore, having increasingly complex procedures impacts negatively on the efficient operationalisation of procedural rights. Many procedural rights established by the EU legislation (the so-called 'procedural rights directives') require expertise, resources, time and money and ever more so for EAWs, where these rights must operate in a different context. For EAWs, we need these rights to function in the quick pace of EAW procedure and often in different languages. Different problems there might occur, for example the lack of proper translation and interpretation services as I mentioned.

One aspect that I find interesting is that of the quality of legal advice (Directive 2013/48/EU): Only a few Greek defence counsels are experts in EAWs. This is a difficult field of law outside the beaten track. I am asking myself how many lawyers (especially in systems such as the Greek one where defence attorneys face many financial challenges, have less institutional support, and cannot focus on only one field of expertise) can really keep up to date with the ECJ case law and the complexities of EAWs procedures altogether. This is not a procedure that you can simply walk into without expertise. Proper legal advice for EAWs procedures might become a luxurious aspect of the practice. Additionally, Greece (as many other countries with serious financial challenges) might have difficulty securing funding to comply with the procedural rights in the context of legal aid.

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

The measures against Covid-19 did not include suspension of EAWs, these were procedures considered urgent and where completed. What has been observed was a significant reduction of the EAWs received during that time from other Member States. An implication of Covid-19 was the extra difficulties with surrendering the requested person, as Greece is geographically a bit further than other EU countries. In cases of neighbouring countries this was done by road to the borders but for other Member States, flight restrictions made surrender difficult and lasting 2-3 months. In those cases, the ECHR case law for extraordinary situations was used by Greece to justify why surrender was delayed. As far as my researched showed, videoconferencing or telephone was not used in the context of EAWs during Covid-19 (or before the pandemic). Please also note that Greek courtrooms are not equipped with such technology.

Funded by the
European Union