



Council of the  
European Union

123006/EU XXVII. GP  
Eingelangt am 02/12/22

Brussels, 2 December 2022  
(OR. en)

13193/1/22  
REV 1

COPEN 342  
DROIPEN 134  
EVAL 22  
JAI 1279  
EUROJUST 92  
EJN 37  
CATS 60

**NOTE**

---

From: General Secretariat of the Council

To: Delegations

---

Subject: **EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL  
EVALUATIONS**  
**9th round of Mutual Evaluation on Mutual recognition legal  
instruments in the field of deprivation or restriction of liberty**  
**REPORT HUNGARY**

---

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

**9th round of Mutual Evaluation on Mutual recognition legal instruments in the field of  
deprivation or restriction of liberty**

**REPORT HUNGARY**

## Table of Contents

<b>Table of Contents .....</b>	<b>3</b>
<b>1. EXECUTIVE SUMMARY .....</b>	<b>6</b>
<b>2. INTRODUCTION .....</b>	<b>13</b>
<b>3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW) .....</b>	<b>16</b>
<b>3.1. Authorities competent for the European Arrest Warrant (EAW) .....</b>	<b>16</b>
3.1.1. Central authority. ....	16
3.1.2. Competent authorities .....	18
3.1.3. Police organisation .....	20
<b>3.2. The principle of proportionality .....</b>	<b>22</b>
<b>3.3. Exchange of information .....</b>	<b>24</b>
3.3.1. Additional information.....	24
3.3.2. Translation .....	25
<b>3.4. Grounds for refusal .....</b>	<b>26</b>
3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention.....	26
3.4.2. Refusal in the event of a judgment in absentia .....	27
3.4.3. Other grounds for refusal .....	27
<b>3.5. Further challenges .....</b>	<b>30</b>
3.5.1. Time limits .....	30
3.5.2. Detention of the requested person.....	31
3.5.3. National arrest warrant.....	32
3.5.4. Eurojust / EJN .....	32
3.5.5. Legal aid.....	33
3.5.6. Identification of the requested person .....	34
3.5.7. Flagging .....	35
3.5.8. Transit .....	35

3.5.9. Differences in legal systems .....	36
3.5.10. Ancillary competence .....	36
<b>3.6. Training.....</b>	<b>37</b>
3.6.1. Judiciary's training.....	37
3.6.2. Lawyers' training .....	38
<b>3.7. Conclusions .....</b>	<b>39</b>

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

<b>4.1. Authorities competent for the recognition of the judgment and execution of the sentence .....</b>	<b>41</b>
4.1.1. Central authority. ....	41
4.1.2. Competent authorities. ....	42
<b>4.2. Documents required for recognising the judgment and executing the sentence .....</b>	<b>45</b>
<b>4.3. Criteria for assessing the facilitation of social rehabilitation.....</b>	<b>45</b>
4.3.1. Exchange of information between the issuing State and executing State.....	45
4.3.2. Opinion and notification of the sentenced person.....	46
<b>4.4. Adaptation of the sentence.....</b>	<b>48</b>
<b>4.5. Grounds for non-recognition or non-enforcement.....</b>	<b>49</b>
<b>4.6. Partial recognition .....</b>	<b>50</b>
<b>4.7. Challenges relating to compliance with the deadline for recognition and enforcement</b> <b>50</b>	
<b>4.8. Law governing the enforcement of the sentence.....</b>	<b>50</b>
<b>4.9. Further challenges .....</b>	<b>50</b>
<b>4.10. Training.....</b>	<b>51</b>
<b>4.11. Statistics.....</b>	<b>51</b>
<b>4.12. Conclusions .....</b>	<b>52</b>

<b>5. LINK BETWEEN FD 2002/584/JHA ON EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES .....</b>	<b>53</b>
<b>5.1. Problems relating to the link between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences .....</b>	<b>53</b>
<b>5.2. Conclusions .....</b>	<b>54</b>
 <b>6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS .....</b>	<b>55</b>
<b>6.1. Authorities competent for Framework Decision 2008/947/JHA .....</b>	<b>55</b>
<b>6.2. Problems relating to the failure to apply Framework Decision 2008/947/JHA .....</b>	<b>56</b>
<b>6.3. Training .....</b>	<b>60</b>
 <b>7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO) .....</b>	<b>68</b>
<b>7.1. Authorities competent for Framework Decision 2009/829/JHA .....</b>	<b>68</b>
<b>7.2. Problems relating to the failure to apply Framework Decision 2009/829/JHA .....</b>	<b>68</b>
<b>7.3. Training .....</b>	<b>70</b>
<b>7.4. Conclusions .....</b>	<b>70</b>
 <b>8. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES .....</b>	<b>71</b>
<b>8.1. Suggestions by Hungary .....</b>	<b>71</b>
<b>8.2. Recommendations .....</b>	<b>71</b>
8.2.1. Recommendations to Hungary .....	71
8.2.2. Recommendations to other Member States .....	75
8.2.3. Recommendations to the European Union and its institutions .....	77
<b>8.3. Best practices .....</b>	<b>78</b>

## 1. EXECUTIVE SUMMARY

The Hungarian authorities organised the visit in a professional way. The experts learned about Hungarian legislation and the institutional system through a series of presentations, visits to relevant public authorities and institutions, and meetings with representatives of the courts, prosecutors' offices and other competent authorities in Hungary.

In a preliminary assessment regarding the four FDs, the experts stress that the Hungarian system gathers all mutual recognition instruments under the same law, Act CLXXX of 2012. The Act is considered to be a positive feature of the procedural rules in the field of mutual legal assistance. The reason is that, as opposed to having recourse to separate laws, the Act promotes the knowledge and use of such instruments among stakeholders.

The version of the Act CLXXX that the experts were provided with for the onsite visit, and which was taken into account for the draft report was an outdated one since it had been previously amended as regards the provisions relevant for the evaluation, a circumstance only learned by the experts at a later stage. In addition, the law has undergone some further fundamental amendments which were provided after the draft report was elaborated: the translation of the updated version of the law was provided by the Council Secretariat. It has to be underlined, that the Hungarian authorities are by no means responsible for this clerical error. All these circumstances are reflected in the content of this report in its final version. The current updated version is a completely different law, it has different provisions, different structure than the one provided for the visit: it is not just an “amended” version. It has addressed some of the deficiencies in the transposition of the FDs under analysis; however, this updated version could have led the experts to have identified the practical difficulties in their application in a more accurate fashion during the onsite visit.

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

The EAW system works properly regardless of whether Hungary is the issuing or the executing Member State. The experts stress that the centralized Hungarian system, in terms of executing authorities, enables uniformity and minimizes the risk of contradictory decisions. However, the experts note that the mandatory intervention of the Ministry of Justice as a central authority breaches the principle of direct contacts between competent authorities, as provided for under the FD. The experts therefore recommend that the law be amended in order to allow competent authorities to decide, on a case-by-case basis, whether or not to resort to the assistance of the Ministry of Justice.

As a rule, the principle of proportionality is applied correctly. The Hungarian judicial authorities do not issue an EAW in the absence of a serious offence. In addition, they do not carry out any check of proportionality when executing an EAW. Accordingly, they correctly apply the principle of mutual trust. However, the experts note that the exact meaning of “*severity of the crime*” and “*essential for criminal proceedings*” are too vague.

A recent legislative change broadened the scope of optional grounds for refusal but there is still room for improvement to align mandatory vis-à-vis optional grounds for refusal according to the EAW FD.

The experts also noted that, according to Hungarian legislation, the scope to refuse an EAW for the purpose of execution under Article 4.6 of the FD was only possible for Hungarian citizens residing in Hungary. It did not apply to foreign persons resident in Hungary. After the onsite evaluation, experts were informed that in fact this provision had been modified on 1 March 2022, which broadened the scope to foreign persons resident in Hungary. The experts recommend that a common definition of “*residency*” be drawn up at EU level.

The prison conditions in Hungary have been a major concern for executing authorities in a number of EU Member States. For this reason, Hungary has improved such conditions to align them with the standards of the ECHR. The Hungarian authorities complained that, when checking prison conditions, some executing Member States make surrender subject to their domestic standards, even in cases where these standards are higher than those specified under the ECHR criteria.

The Hungarian authorities are well aware of the respective roles of Eurojust and the EJN as actors in the field of mutual legal assistance. However, the experts consider that the number of EJN contact points should be higher and that they should be chosen from among qualified senior legal experts.

## **FRAMEWORK DECISION 2008/909/JHA**

The Hungarian system entails a sort of ‘co-decision’ procedure, in which responsibility is shared between the Ministry of Justice and the judge competent for the enforcement of the sentence. While the competent authority is the enforcing judge, the Ministry of Justice has the power to conduct a preliminary assessment to decide whether the criteria to issue a certificate are met. The Ministry of Justice may eventually decide not to forward a certificate already issued by the competent court.

The evaluation team considers this to be a dysfunctional feature in the system. The team recommends that the decision-making role of the Ministry of Justice be removed.

Hungarian legislation, in line with Article 6 of the 909 FD<sup>1</sup>, does not require the consent of the sentenced person, except in the cases foreseen by the FD. However, the certificate is always issued at the request of the sentenced person. This approach should be reconsidered, and the certificate should be issued *ex officio*. After the onsite evaluation, and as a consequence of the preliminary recommendations, the experts were informed that since January 2022 sentenced persons are heard, but the certificate is issued even if they do not consent, where the legal requirements are met; this is indeed a positive new approach of the Hungarian authorities.

---

<sup>1</sup> Article 126 (2) and 120/A of Act CLXXX of 2012



The question of social rehabilitation must also be examined in those cases where the consent of the sentenced person is not needed. The only exception<sup>2</sup> is where the requested person is a Hungarian national with an address in Hungary or a Hungarian national to be expelled to Hungary, the presumption is that in these cases, the condition of social rehabilitation applies automatically. The experts note that Hungarian law, after being amended, mentions social rehabilitation not only when referring to cases where the consent of the sentenced person is necessary<sup>3</sup> but also in cases where such consent is not needed<sup>4</sup>. Rehabilitation should always be the primary objective.

According to the information on national provisions provided for the onsite visit, all grounds for refusal were mandatory. This made it more difficult for a court to take into account the merits of a case with a view to rehabilitating a sentenced person. Nevertheless, the legislation has changed and now there are mandatory and optional grounds for refusal, but there is still room for improvement.

The experts also recommend that the law be amended in view of the fact that it is not possible to appeal against a decision not to issue the certificate under FD 2008/909.

Hungarian authorities may decide to require that the translation of the judgment sent by the issuing Member State be limited to the relevant parts of the judgment needed for taking the decision. That is a positive feature of the system, since it avoids unnecessary allocation of resources and saves time.

## **LINKS BETWEEN FD 2002/584/JHA ON EAW AND FD 2008/909/JHA**

According to Hungarian legislation, when the person to be surrendered is a Hungarian citizen residing in Hungary, it is mandatory to refuse an EAW for the purpose of execution if the suspect does not consent to the surrender. In such case, a certificate under FD 2008/909 needs to be issued for Hungary to recognise the judgment and execute the sentence.

In the meantime, the competent court orders the detention of the sentenced person during a maximum period of 30 days while the certificate is received.

---

<sup>2</sup> Article 120/A (4) of Act CLXXX of 2012

<sup>3</sup> Article 126 (1) Act CLXXX of 2012

<sup>4</sup> Article 126 (2) and 120/A of Act CLXXX of 2012

## FRAMEWORK DECISION 2008/947/JHA

In contrast to the EAW and the provisions in place for the transfer of sentenced persons, Hungary has not designated a central authority for this instrument. Therefore, direct contact between competent authorities is the rule.

However, this EU instrument of mutual recognition is not much used. It is likely that the reason is the lack of awareness of as well as lack of familiarity among stakeholders and potential beneficiaries with the instrument.

In addition, the absence of a central contact point for information, advice and guidance on the application of FD 2008/947 in Hungary to respond to external or internal enquiries regarding possible transfers out of Hungary constitutes a significant knowledge and information gap. It is likely that this also explains the limited use of this FD.

The authorities reported some difficulties in applying the instrument, e.g. problems relating to adaptation. The experts note that the absence of experience in dealing with a substantial number of cases may be a reason for the difficulties encountered. They therefore suggest that further consultation, exchanges and sharing of experience with other competent authorities could help identify ways in which to address the issue and facilitate transfers.

In other cases, the probation service described how supervision orders imposed by Hungarian courts are monitored and supervised remotely when the person has left Hungary to live in another EU Member State. This supervision is conducted mainly by telephone with the agreement of the supervised person who has left the jurisdiction. The experts consider that this form of remote supervision is of very limited, if of any, value. This practice should cease. The practice needs to be in line with the provisions set out in FD 2008/947.

## **FRAMEWORK DECISION 2009/829/JHA**

FD 2009/829 has been used very rarely. There are no registered statistics. Even so, around 10 to 20 cases have been identified.

The most outstanding reason for the limited use of this mutual recognition instrument is the fact that stakeholders lack knowledge of and familiarity with the instrument.

In addition, the limited use of this instrument may be attributable to a ‘mindset’ according to which if the presence of the charged or accused person is needed in the course of the proceedings, for whatever reason (conducting investigative measures, presence in the trial phase, etc.), the competent investigative authority is not willing to let him/her leave the country.

The experts note that increasing its use may reduce the prison population in Hungary.

## **TRAINING**

To a large extent, the Hungarian system takes specialization into account: there are four specialized prosecutors and five (exceptionally six) specialized judges in the Budapest Regional Court and two appeal chambers specialized in mutual legal assistance cases. In all other jurisdictions in Hungary, there is at least one prosecutor and one judge who are specialized in this field.

The Hungarian Academy of Justice is responsible for the initial and in-house continuous training of judges and court staff.

The prosecution service organizes regular training sessions to discuss the practical problems that prosecutors face in their daily work in terms of mutual legal assistance.

However, it is worth emphasizing that such training mainly relates to FDs 2002/584/JHA and 2008/909/JHA. There is an absence of dedicated training and documented information dissemination on FDs 2009/829/JHA and 2008/947/JHA.

The Bar Association representatives expressed concerns about the lack of knowledge about the FDs among lawyers. Accordingly, the experts consider there is a need for additional and better quality training offered to lawyers. The latter also need to be involved in joint initiatives with judges and prosecutors. This training should focus on the sharing of experience and of best practices.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA on 5 December 1997, a mechanism was set up to evaluate the application and implementation, at national level, of international undertakings in the fight against organised crime.

In line with Article 2 of Joint Action 97/827/JHA, CATS decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

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

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

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

With regard to FD 2008/947 on probation and alternative measures and FD 2009/829 on ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, for practitioners to consider the legal issues and, in particular, relevant practical and operational aspects linked to the implementation of those instruments in the context of criminal proceedings. This enables shortcomings and areas for improvement to be identified. It also enables the sharing of best practices between Member States. The ninth mutual evaluation round thus helps ensure a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the European Union.

More generally, a more coherent and effective implementation of this package of legal instruments could significantly enhance mutual trust among the Member States' judicial authorities and improve cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input for those Member States which may not have implemented all aspects of the various instruments.

Hungary was the sixteenth Member State to be evaluated during this round of evaluation. This was in line with the schedule adopted by CATS on 13 May 2019. This schedule was subsequently amended following proposals made by certain Member States in the absence of any objections<sup>5</sup>.

---

<sup>5</sup> ST 9278/19 REV 2

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

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

The experts entrusted with the task of evaluating Hungary were Ms Katre Poljakova (EE), Mr Gerry McNally (IE) and Mr Pedro Perez (Spain). Observers were also present: Mr Silvio Franz (Eurojust) and Ms Carmen Giuffrida from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council. It was based on findings arising from the evaluation visit that took place in Hungary between 11th and 15th October 2021, and on Hungary's detailed replies to the evaluation questionnaire together with its detailed answers to the ensuing follow-up questions.

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

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

##### *3.1.1. Central authority.*

One of the most relevant features of the Hungarian system in terms of the EAW is the key role played by the central authority, which is the Ministry of Justice. According to the Hungarian transposition law, Act CLXXX of 2012, all incoming and outgoing requests should be channelled via the Ministry of Justice. Moreover, all communications and notifications between issuing and executing authorities should be conducted through the Ministry of Justice. The principle of direct contacts enshrined in all mutual recognition instruments does not apply in Hungary as regards the EAW, since the intervention of the central authority is always mandatory. During the evaluation visit, the authorities stated that, even in those cases where they already knew the contact details of the relevant authority in the other Member State, any communication/notification with that authority had, legally, to be conducted through the central authority. The Hungarian competent authorities seem to be comfortable with the intervention of the central authority. The reason is that they understand that the system is well organised, that the central authority acts immediately upon any request made by the Hungarian authorities and no delays are caused because of this intermediate step.

Pursuant to Act CLXXX of 2012, all EAWs issued by Hungarian authorities or by the national authorities of other Member States should be sent or received via the Ministry of Justice. The Ministry then sends it to the competent authority in the other Member State in the case of outgoing EAWs or to the Hungarian competent authorities in the case of incoming EAWs.



As for incoming EAWs, the Ministry of Justice is notified by the executing court of the decision to remand the requested person in custody or not<sup>6</sup>, the decision not to surrender<sup>7</sup>, non-compliance with a deadline<sup>8</sup>, requests for lifting immunity<sup>9</sup>, the need for additional information<sup>10</sup>, the decision to surrender<sup>11</sup>, the wish of the requested person to appoint a lawyer in the issuing Member State<sup>12</sup>, the request to send the EAW when it has not been received after the arrest of the requested person<sup>13</sup> or the decision to postpone the surrender<sup>14</sup>. It is a competence of the Ministry of Justice to notify the issuing Member State of the decision on the execution of the EAW<sup>15</sup>. All EAWs issued by Hungarian courts should be notified to the Ministry of Justice<sup>16</sup>, sent to the competent authority of the executing Member State via the Ministry of Justice<sup>17</sup>, as well as the withdrawals<sup>18</sup>.

As for outgoing EAWs, after the arrest of the requested person in another Member State, the competent court must send the EAW to the Ministry of Justice ‘for the purpose of forwarding’<sup>19</sup>. The same procedure applies in the case of additional requests in line with the principle of specialty<sup>20</sup>. The translation of EAWs issued by Hungarian authorities is also a competence of the Ministry of Justice in urgent cases.

---

<sup>6</sup> Article 13 (1) of Act CLXXX of 2012

<sup>7</sup> Article 9 (5) and 15 (3) of Act CLXXX of 2012

<sup>8</sup> Article 16 (2) of Act CLXXX of 2012

<sup>9</sup> Article 19 (2) of Act CLXXX of 2012

<sup>10</sup> Article 10 (2) Act CLXXX of 2012

<sup>11</sup> Article 20 (1) of Act CLXXX of 2012

<sup>12</sup> Article 7 (4) of Act CLXXX of 2012

<sup>13</sup> Article 9 (5) of Act CLXXX of 2012

<sup>14</sup> Article 20 (6) of Act CLXXX of 2012

<sup>15</sup> Article 20 (2) of Act CLXXX of 2012

<sup>16</sup> Article 25 (4) of Act CLXXX of 2012

<sup>17</sup> Article 26 (1) of Act CLXXX of 2012

<sup>18</sup> Article 25 (9) of Act CLXXX of 2012

<sup>19</sup> Article 26 of Act CLXXX of 2012

<sup>20</sup> Article 30 of Act CLXXX of 2012

Stakeholders did not show any concern about this unusual competence of the central authority and the system seems not to hamper speedy communication. Even so, such mandatory intervention of the central authority is against the principle of direct contacts between competent authorities. Therefore, the law should be amended in order to allow competent authorities to decide whether or not to call on the assistance of the Ministry of Justice on a case-by-case basis. In addition, this system creates different communication mechanisms. The reason is that the executing authorities in other Member States, when dealing with Hungarian EAWs, can always contact the Hungarian authorities directly since the obligation to channel the notifications or requests cannot be imposed on them. This is not possible vice-versa.

Lastly, Hungary has not designated a central authority for FD 2008/947 and FD 2009/829. This contrasts starkly with the role of the central authority in the EAW. The authorities considered that the different regime is due to the fact that the FDs in question are more recent instruments and the role of the central authority has been reconsidered here.

### *3.1.2. Competent authorities*

#### *3.1.2.1. Issuing authorities*

In the case of EAWs for the purpose of investigation and prosecution, the ‘investigative judge’ dealing with the case is competent for issuing the EAW. The Hungarian judge does not really have investigative powers at all, but is a ‘judge of guarantees’. This means that he/she has the competence to authorise certain investigative measures upon the request of the prosecutor dealing with the investigation. The Bob Dogi doctrine is clearly set in the Hungarian law, that requires a national arrest warrant to be issued before or simultaneously to the EAW. In addition, such national warrant may be issued by a prosecutor or “an investigative authority and approved by the prosecutor’s office”<sup>2122</sup>. This possibility to issue a EAW based on a detention order other than that issued by a court was not foreseen in the initial version of Act CLXXX. In any case, the competence to issue a EAW always lies with the court and there is no need to bring about the doctrine of the ECJ on the concept of “*competent issuing authority*” as regards the EAW.

---

<sup>21</sup> Article 25 (4) of Act CLXXX of 2012

<sup>22</sup> Article 119 (1) of Act XC of 2017 on the Criminal Procedural Act

According to the initial version of the Hungarian law, an EAW can be withdrawn ‘if the reasons for the issue thereof no longer prevails’. However, if there are pending criminal proceedings, the EAW ‘may not be withdrawn until the final and non-appealable termination of the proceedings, except in the case of the accused person’s arrest in the territory of Hungary or the accused person’s death’<sup>23</sup>. This provision was dysfunctional and difficult to understand in the context of the principle of proportionality. However, according to the new wording of the same provision, now under Article 25 (9) “the European arrest warrant shall be revoked without delay if the reason for issuing it has ceased to exist (...)”. The reference to pending criminal proceedings has been deleted and such limitation no longer exists.

In the case of EAWs issued for the purpose of executing a sentence, the ‘enforcing judge’ dealing with the execution of the judgment is the competent authority<sup>24</sup>.

#### *3.1.2.2. Executing authorities*

The Hungarian system is centralised as regards executing authorities: the Budapest Capital Regional Court is competent at first instance and the Budapest Capital Regional Court of Appeal is competent at second instance<sup>25</sup>. This feature of the Hungarian procedural system should be regarded as positive, since a centralised system is a way of ensuring uniformity and avoiding contradictory decisions owing to the specialisation of the competent authorities. The Supreme Court (Kúria) does not have a role in EAW proceedings.

---

<sup>23</sup> Article 25 (8) of Act CLXXX of 2012

<sup>24</sup> Article 25 (4) of Act CLXXX of 2012

<sup>25</sup> Article 4 of Act CLXXX of 2012

The Ministry of Justice is the competent authority for the cases of transit through Hungarian territory<sup>26</sup>. All the provisions related to transit (EAW FD, 909 FD and EIO FD) have been merged into a single chapter (Chapter X) of Act CLXXX, a very positive feature of the system since a number of the provisions on transit apply similarly to all the aforementioned instruments. The initial provision on transit in the context of the EAW was included in Article 34. It should be noted that, according to Article 25 of the FD, if the circumstances described in such provision are met, the transit is mandatory; in this regard, Article 34 established that the “Minister shall authorise the transit”, whereas, according to Article 146/A(3) the “Minister may authorise the transit”. The experts team suggest the rewording of this phrase and change the verb “may” to “shall”, because there is no margin of discretion for the Ministry of Justice if the requirements are met.

Under the current wording, the right or refusal to authorise transit in case of national or residents in the case of EAWs issued of the execution of custodial sentences or the guarantee of return in case of EAWs issued for the purpose of prosecution has been removed from the initial legislation (Article 3 (2) and (3)).

### *3.1.3. Police organisation*

NEBEK is the Hungarian International Law Enforcement Cooperation Centre (ILECC), a police division that includes the Europol national unit, the Interpol national unit and the **SIRENE** bureau under the same organisational umbrella. Act LIV of 1999 on cooperation and information exchange with the law enforcement network of the EU and Interpol is the legal framework for the functioning of NEBEK. Hungary has been part of Europol since 1 September 2004 and has been part of the Schengen area since 21 December 2007.

---

<sup>26</sup> Article 146/A-D of Act CLXXX of 2012

Like other Member States, Hungary has created a single point of contact (SPOC) for the exchange of information with other Member States. This operates as a single-entry port for notifications and requests. The ILECC combines strategic and operational activities. Strategic activities included international and domestic coordination or the drafting of legal documentation. Operational activities include the surrender procedure and the permanent service (24/7) provided by Interpol and SIRENE.

The SIRENE representative interviewed by the evaluation team identified no specific problems in relation to the surrender procedure other than that of a significant decrease in the transfer of requested individuals during the toughest times of the COVID pandemic. The ILECC is responsible for all the logistics related to the surrender procedure. According to the SIRENE representative, this procedure always takes place within the deadlines foreseen in the law. The specific competences of NEBEK are foreseen in Article 20 of Act CLXXX.

The A Form of all outgoing EAWs includes a full identical description of the facts in the EAW (not a summary of facts). The aim is to avoid difficulties in understanding the facts by the executing Member State, as the A form is normally received prior to the EAW. The form is translated into English by the ILECC services. As regards incoming EAWs, Hungarian authorities claim that the A form does not often include a full and clear description of the facts, but a much shorter version. This may cause some difficulties during the initial hearing before the court, when the translation of the EAW is still not available.

The SIRENE representative stated that it would be useful to have an EU Handbook that included information of all the procedures followed by the Member States as regards the surrender protocols. The reason is that the systems differ significantly from one another and, to a certain extent, this creates uncertainty in terms of procedure.

### 3.2. The principle of proportionality

An EAW can be issued if the circumstances foreseen in Article 25 (2) of Act CLXXX of 2012 are met, which are the same as those provided for in Article 2 (1) of the FD.

In addition, an EAW for the purpose of prosecution must be issued ‘provided it is warranted by the seriousness of the offence’<sup>27</sup>. The authorities did not clarify what should be understood by ‘seriousness of the offence’. However, this provision should be read together with Article 119 of the Criminal Procedural Act, which narrows down the scope for competent authorities to issue EAWs only where it is essential for the purpose of the criminal proceedings in a crime punishable with a custodial sentence. As an initial step, if the accused person needs to be present at a trial, he/she should be always summoned at his/her foreign address and an EAW would only be issued if the accused person does not turn up or if his/her whereabouts are unknown<sup>28</sup>. After pressing charges, an EAW can only be issued if the prosecutor has requested in the indictment that a custodial sentence be imposed. In this regard, Article 25 (3) of Act CLXXX of 2012 adds to the general requirements under the EAW FD that “a European arrest warrant may only be issued against an accused person detained abroad if his or her participation in the criminal proceedings or his or her presence in the procedural steps cannot be ensured by lodging a request for legal assistance or cannot be ensured adequately due to the seriousness of the offence or the assessment of the case”.

In 2012, the Deputy Chief Prosecutor of the Metropolitan Prosecution Office issued EAW guidelines concerning the criteria that prosecutors should take into account when deciding on the issuance of an EAW. These provide for alternative measures and the need to conduct a proportionality check; references to the EAW Handbook are introduced in these guidelines.

---

<sup>27</sup> Article 25 (1) of Act CLXXX of 2012

<sup>28</sup> Article 433 of Act XC of 2017 on the Criminal Procedural Act

In addition, in order to decide whether the EAW is the most suitable instrument in terms of investigation, the Hungarian authorities claimed that the criteria in the Commission's EAW Handbook are always taken into account. An assessment on a case-by-case basis is always conducted to decide whether to issue a European investigation order (EIO) to hear the suspect/charged person or an EAW.

An additional problem in relation to the choice between the EAW and EIO lies in the grounds for refusal in the context of an EIO: some Member States do not accept videoconference for the interrogation of suspects/accused persons (the Netherlands). This may render an EAW necessary beyond what would be reasonable when following the proportionality principle.

So, Hungarian legislation provides for additional prerequisites apart from those in the EAW FD as regards the issuance of an EAW. In addition, Article 119 (1) of Act XC of 2017 (CPA) provides for the prerequisites for the issuance of a national detention order: "When a criminal offence is punishable by imprisonment, the court, the prosecution service and the investigating authority may issue an arrest warrant, by adopting a decision, to take the defendant, or the person reasonably suspected of having committed the criminal offence into custody, provided that a) the actual place of residence of the defendant or the person reasonably suspected of having committed a criminal offence is unknown, and his apprehension and custody is justified by the goals to be achieved by coercive measures affecting personal freedom subject to judicial permission, b) the actual place of residence of the defendant or the person reasonably suspected of having committed a criminal offence is known, but his apprehension and custody is justified by the goals to be achieved by coercive measures affecting personal freedom subject to judicial permission, c) the defendant or the person reasonably suspected of having committed a criminal offence is in detention in another country, the conditions for issuing an international or European arrest warrant are met, and surrendering or extraditing the defendant or the person reasonably suspected of having committed a criminal offence to Hungary is justified".

Finally, Hungarian authorities conduct a case-by-case assessment on the most adequate legal instrument for the purpose of the criminal investigation. The proportionality principle seems to be applied in a proper manner.

### 3.3. Exchange of information

#### 3.3.1. Additional information

As already mentioned, any requests for additional information that may be required by the Hungarian competent authorities in the execution of an EAW (and also for the transfer of sentenced persons) must be channelled via the Ministry of Justice. It is not possible for the executing authorities to liaise directly with the executing authority, even if the contact details of the latter are known to the former.

The Hungarian authorities consider that this system works properly and that alternative ways in which to contact the issuing authorities are not efficient: consultation via EJM contact points is usually unsuccessful. The lack of response, difficulties in identifying the competent executing authority, a lack of familiarity with the available tools (EJM Atlas) or an outdated list of contact points show the weakness of the direct contacts principle. In turn, this gives rise to the undesired intervention of the central authority in relation to requests for additional information.

The most recurrent reasons for requesting additional information as an executing Member State include the lack of information on judgments *in absentia*, insufficient description of facts where double criminality needs to be assessed, missing information on the statute of limitations or a lack of information in cases of accumulated sentences. With regard to the issuing Member State, requests for additional information on prison conditions, and subsequently guarantees, are common. In addition, information on the period of detention in the executing Member State is very often missing.



As for the deadlines to provide requested information, Hungarian courts normally set a time limit that is rarely complied with by the issuing authorities of other Member States; this situation affects particularly courts other than the Budapest-Capital Regional Court. Deadlines are long enough for the issuing authority to respond and reminders are sent via the Ministry of Justice. This clearly causes an unnecessary delay in the execution of the EAW. Moreover, such additional information is sometimes received in hard copies in the post. This practice should be discontinued and email or fax should be the only way in which to transmit the needed information.

### *3.3.2. Translation*

Hungary accepts as executing Member State EAWs translated into Hungarian, German, English or French, but these three foreign languages are only accepted “(i)f the issuing Member State has made a declaration that it will accept a European arrest warrant in an official language other than its own”<sup>29</sup>. The fact that the provisions on translations are included in the law and not in declarations may make it more cumbersome any modifications in the translation regime.

Translation is also normally requested when Hungary is a transit country, in case the necessary information upon Article 25 (1 a)-d) of the FD 2002/584/JHA is not provided in those languages. However, Hungary - when receiving a request for transit in a surrender case - can abstain from receiving the EAW if the A-form including all necessary information is being attached to the transit request. The fact that EAWs are issued in a wide range of languages, including English, is a positive feature of the Hungarian system. The Hungarian authorities interviewed in the on-site visit were very flexible in relation to translation issues. This flexible approach should be considered as a model that should be followed by other Member States.

The Bar Association representatives did not express any concerns about this issue and considered that translation and interpretation is normally of good quality and the right of defence is not hampered because of any particular issue in this regard.

---

<sup>29</sup> Article 3 (6) of Act CLXXX of 2012

### 3.4. Grounds for refusal

#### 3.4.1. *Refusal in the event of a potential risk of violation of fundamental rights in relation to detention*

After the ECJ judgments in the Aranyosi/Caldararu and the Dumitru-Tudor Dorobantu cases, the Hungarian authorities have received a number of requests to provide information on prison conditions in Hungary, in particular from Germany, Netherlands, Italy and formerly from the UK. Some of those requests for additional information have resulted in refusals to surrender to Hungary the requested person. In these cases, the investigation/sentence was not taken over by the executing authority and there were no further contacts between competent authorities to solve the issue in order to ensure follow-up.

The competent authority as regards assurances on prison conditions is the National Headquarters of the Hungarian Prison Service. The authorities complained about the fact that, depending on the Member State involved in the case, the standards required to proceed with the execution of the EAW differ. It is the understanding of the expert team that at the time of the onsite visit, Hungary had two prison facilities that complied with the requirements of the UN Standard Minimum Rules for the Treatment of Prisoners and another prison facility that complies with the European Prison Rules of the Council of Europe<sup>30</sup>. Nevertheless, after the onsite visit the Hungarian authorities have claimed that all Hungarian prisons comply with the UN Standard Minimum Rules as well as the European Prison Rules of the CoE<sup>31</sup>. It should be borne in mind that the ECJ states that, as there are no minimum EU rules, the executing authorities should follow the criteria laid down by the ECHR in order to ascertain that there is no risk of inhuman or degrading treatment. Member States may make the surrender subject only to the compliance of these criteria, not to their domestic standards if the latter are higher.

---

<sup>30</sup> Recommendation n° R (87) 3

<sup>31</sup> As of 1st January 2015, Hungary has signed, ratified and implemented the Optional Protocol to the UN Convention against Torture (OPCAT) and has set up The General Ombudsman as its National Preventative Mechanism. Accordingly, the General Ombudsman will monitor compliance with the assurances.

Hungary's prison facilities have undergone renovation in order to comply with the ECJ rulings. Nevertheless, there is still room for improvement so as to avoid refusals from other Member States. Hungary should continue to improve conditions in its prison facilities.

As for the rule of law, the Hungarian authorities stated that, in contrast to other Member States, there has been no particular concern with regard to the independence of the judiciary in Hungary and no refusals to surrender requested persons have taken place.

#### *3.4.2. Refusal in the event of a judgment in absentia*

As an executing State, the most pressing problem in terms of judgments *in absentia* is whether or not, in the vast majority of EAWs, the judgment was *in absentia*, and if so, whether the actual details concerning such a judgment are available. The competent court has to request additional information in such cases. As an issuing State, Hungary has received some requests for additional clarifying information with regard to this same issue. No actual cases of refusals, in cases where Hungary was an issuing or executing Member State, were identified in the course of the evaluation visit.

As for the Tupikas, Zdiazsek and Ardic judgments, no cases were identified where, because of such judgments, the time limits could not be complied with. No increase of requests for additional information was identified.

#### *3.4.3. Other grounds for refusal*

Hungary has followed some of the recommendations included in the report of the 4th round of Mutual Evaluations<sup>32</sup>:

- Recommendation No 7, namely to align the national law with Article 4.4 of the FD in the sense that, when the crime does not fall within the jurisdiction of Hungary, the statute of limitations cannot be considered as grounds for refusal<sup>33</sup>,

---

<sup>32</sup> ST 8302/09

<sup>33</sup> Article 5 lit c FD 2002/584/JHA

- and Recommendation No 9 related to judgments *in absentia* against Hungarian nationals who could not be surrendered even if guarantee for retrial was given. This limitation that has now changed after the transposition of the FD of 2009 on decisions rendered *in absentia*<sup>34</sup>.

In the initial drafting of the Hungarian law, all grounds for refusal (Articles 5, 6 and 8), other than the situation foreseen in Article 4.7.a of FD 2002/584/JHA (offence committed in whole or in part in the territory of Hungary: Article 7), were considered mandatory. This legal framework was later amended and now all grounds for refusal have been merged under Article 5; the scope of optional grounds for refusal has been broadened but there is still a lack of alignment of mandatory vis-à-vis optional grounds for refusal according to the EAW FD.

Pending proceeding (Article 4 (1) and territoriality (Article 4 (7)(a) of the FD 2002/584/JHA) are optional grounds for refusal under the HU legislation which turn into mandatory if a joint investigation team (JIT) has been set up and the competent authorities involved in the JIT agree on the surrender, thus playing a fundamental role in the decision making process as their opinion is binding (Article 5(8)). Although this feature departs from the FD 2002/584/JHA, it can be considered as positive feature of the system as it avoids a potential risk in the course of the consideration of the best placed jurisdiction and transfer of proceedings. However, other than the context of a JIT, the HU competent authority may surrender the requested individual against which there are pending proceedings in HU “subject to the condition that the Member State takes over the Hungarian criminal proceedings”. This condition is contrary to the EAW FD and is certainly dysfunctional for various reasons, among them, the possibility that the issuing Member State does not have jurisdiction over the HU case or all the problems associated to the transfer of proceedings, including translation or validity of evidence; recourse to a postponed or provisional surrender under Article 24 of FD 2002/584/JHA should be the better solution in this regard.

The general conclusions of the Fourth Round of Mutual Evaluations include a remark that the experts involved in the evaluation were, in general, critical in this regard. They ‘emphasised the undesirable consequences that may result in practice from depriving the executing judicial authorities of the discretionary power to apply some of the grounds for non-execution conceived as optional in the Framework Decision’.

---

<sup>34</sup> Article 6 FD2002/584/JHA

The experts uphold the approach of the previous evaluation round and consider that national legislation should be aligned with FD 2002/584/JHA as regards mandatory and optional grounds for refusal, which should be consistent across the EU. In addition, as the ECJ stated in the Poplawski judgment, the competent national authorities should be able to assess on a case-by-case basis whether or not they should apply the grounds for refusal where such grounds have been considered as optional in the FD 2002/584/JHA.

Also, as clarified by the ECJ, when a Member State decides to transpose a non-mandatory ground for refusal into national legislation, the competent judicial authority must hold a margin of discretion when deciding whether or not such grounds should give rise to a decision not to surrender (more recently: [Case C-665/20 PPU, X \(Mandat d'arrêt européen - Ne bis in idem\)](#), Judgment of 29 April 2021).

As for the distinction between nationals and residents, according to the initial legislation provided for the onsite visit, the ground for refusal based on Article 4 (6) or guarantees for return based on Article 5 (3) of the FD 2002/584/JHA, were only applicable for Hungarian citizens with a place of residence in Hungary (Article 8 (2) and 8 (5) of the initial version of Act CLXXX of 2012, respectively). Despite the scope to apply the ECJ doctrine in this regard in relation to the principle of application in conformity, the Hungarian authorities did not clarify whether this is applied in this context. After the onsite visit, it was clarified by the Hungarian authorities, that Act CLXXX has undergone two fundamental amendments in this regard: as of 1.1.2022 the guarantee of return has been expanded to residents (Article 5 (1) lit (e)). In addition, it was also noted, regarding the refusal to surrender for execution of sentences based on nationality, Article 5.3 applies to all “*accused persons*”, which should be construed as including nationals and residents (entry into force in 2019).

On 9 June 2021, the Commission opened infringement proceedings against five Member States, including Hungary, for the incorrect or incomplete transposition of the FD in terms of the non-transposition or non-conformity of some Articles and, in particular, incorrect transposition on the grounds of non-execution. The Hungarian authorities confirmed that they are already working on a draft to amend the law in line with the demands of the Commission. Following this procedure, the Hungarian authorities have informed that in order to transpose Articles 4a (1) and 5 (3) of the FD

2002/584/JHA, the Hungarian government committed itself to amend the national legislation before January 2022. Act CXXXIX of 2021 on the amendment of certain criminal laws – in order to provide full compliance with the dispositions of the FD referred to above – amended the Act CLXXX of 2012. The notification and the update of the correlation table occurred on 7 February 2022.

The most common grounds for refusal for the EAWs issued by the Hungarian authorities are dual criminality (Article 4 (1) of the FD 2002/584/JHA) and cases of EAWs issued for the purpose of execution of sentences by nationals of the executing Member State (Article 4 (6) of the FD 2002/584/JHA). As for dual criminality, the most relevant cases are related to crimes against property. The reason is that, under a threshold of 50.000 HUF (135 EURO), the theft would normally not qualify as a crime under the Hungarian criminal code. Driving without a license is another typical case, because such conduct is an administrative offence in Hungary.

In those cases where the double criminality rule has to be assessed against the Hungarian criminal code, the Hungarian authorities claim that additional information related to a more detailed description of the facts is usually needed. The reason is that the information provided in the EAW is usually minimal and too insufficient in terms of establishing a legal classification under Hungarian criminal legislation.

### **3.5. Further challenges**

Hungarian authorities seem to feel rather comfortable as to how the EAW system works either when Hungary is the issuing or the executing Member State. They made no specific remarks or complaints in this regard.

#### *3.5.1. Time limits*

The execution of EAWs by the Hungarian competent authorities takes place within the established deadlines. Even so, a number of cases of a breach of time limits have been notified to Eurojust (see 3.5.4.). However, no further details could be provided as for the reasons for such delays.

Hungarian authorities gave the following example: as issuing authority, when executing the surrender procedure, the captain of the airplane had to refuse boarding for security reasons on account of the active opposition of the surrendered person. It was said in the questionnaire that this ‘may lead to refusal’. In this regard, the Vilkas judgment<sup>35</sup> should be borne in mind: competent authorities remain obliged to agree on a new surrender date if the time limits mentioned in Article 23 of the FD 2002/584/JHA have expired.

### 3.5.2. *Detention of the requested person*

The police arrest period cannot last longer than 72 hours<sup>36</sup>. Police detention can be terminated with the “permission” of the prosecutor in the cases described in Article 7 (4a) of Act CLXXX of 2012. The arrested person is brought before the competent court following the procedure foreseen in Article 7 of Act CLXXX of 2012.

At the time of the onsite evaluation, a temporary arrest would follow as a result of a court decision<sup>37</sup>. Based on the way in which these provisions were drafted, it appeared that provisional arrest was always mandatory regardless of the circumstances of the case. According to Article 12 of FD 2002/584/JHA, ‘the executing judicial authority shall take a decision on whether the requested person should remain in detention’ as long as the final surrender decision can be executed. This allows for a margin of discretion for the competent court to conduct an assessment based on the merits of the case. This initial law was later amended, as provided by the Hungarian authorities after the onsite visit, and detention is no longer mandatory and the court can impose a curfew taking into account the circumstances of the case which aligns the Hungarian legislation with the FD 2002/584/JHA in this regard<sup>38</sup>. The Hungarian legislation provides for very specific rules on the supervision of the curfew.

---

<sup>35</sup> ECJ Case C- 640/15, 25 January 2017

<sup>36</sup> Article 7 (1) Act CLXXX of 2012

<sup>37</sup> Articles 11 (1) lit c, 13 (1) (4) and 15 (2) according to the initial version of Act CLXXX of 2012

<sup>38</sup> Articles 9 (1) and 9/A of Act CLXXX of 2012

Hungarian procedural law has been amended in order to include the need for a national arrest warrant as a first compulsory step before an EAW can be considered. In doing that, the Hungarian authorities have complied with the first recommendation included in the report on the Fourth Round of Mutual Evaluations and with ECJ jurisprudence<sup>39</sup>.

### 3.5.3. Eurojust / EJN

The Hungarian authorities are well aware of the respective roles of Eurojust and the EJN as actors in the field of mutual legal assistance. Eurojust has been involved in a number of complex cases. Nevertheless, no further details were provided as for the role of Eurojust in the context of the execution of the mutual recognition instruments at stake.

According to the information provided by Eurojust, the Hungarian Desk has been involved in EAW cases to improve execution in 114 cases. In addition, Hungary, as requesting country, has been involved in two cases of competing EAWs under Article 16 of FD 2002/584/JHA<sup>40</sup>. Two notifications of breach of time limits have been received under Article 17 of FD 2002/584/JHA.

As executing Member State, 111 cases have been opened to improve the execution of EAWs, four cases of competing EAWs under Article 16 of FD 2002/584/JHA and four cases of notifications of breaches of time limits under Article 17 of FD 2002/584/JHA. This data comprises the period between 2009 and 2021. It seems that there are a number of EAW cases that have been opened to facilitate their execution. Nevertheless, only one coordination meeting was held in the context of these cases. The problems identified by Eurojust, or by the national authorities involved in the cases, were not made available to the evaluation team. This concerns, in particular, details of the specific circumstances of the decision-making process with regard to competing EAWs.

---

<sup>39</sup> Bob-Dogi judgment, Case C- 241/15, 1 June 2016

<sup>40</sup> Article 6 of Act CLXXX of 2012



As for the EJM, only four persons within the judiciary, the Prosecution Service or the Ministry of Justice have been appointed as EJM contact points. In view of the increasing workload in the field of mutual assistance requests over the last years, the experts consider that the number of contact points is small. Those contact points should be assigned to qualified senior legal experts.

#### 3.5.4. *Legal aid*

The assistance of a lawyer is always granted throughout the whole process of the execution of the EAW. Translation and interpretation are also provided<sup>41</sup>. The arrested person has the right to have a private interview with his/her lawyer in advance in order to be informed of the consequences of the consent to be surrendered and of the waiver of the speciality principle. The Hungarian authorities stated that in more than 80% of the EAWs, the arrested person's consent to be surrendered to the issuing Member State and the surrender procedure takes place within a period of ten days after the consent has been given.

The requested individual has to be heard by the Budapest Capital Regional Court within 72 hours of arrest. According to Hungarian law<sup>42</sup>, if the requested person does not have a lawyer, the court must appoint one. Such a right to be assisted by a state-paid lawyer is mandatory since the initiation of the process without undue delay, including during the police custody period<sup>43</sup>.

During the pandemic, Member States' competent authorities have made use of videoconference for a number of court hearings, included EAW hearings. It is important to make sure that the right of defence is not affected by the fact that the arrested person and his/her lawyer cannot have physical contact in these situations. In this regard, the Hungarian authorities have given assurances that the private interview between the arrested person and his/her lawyer can take place via telephone call and that the right of defence is not hampered at all. The representatives of the Bar Association did not express concerns with regard to this '*remote*' assistance.

---

<sup>41</sup> Article 7 (2) and (3) of Act CLXXX of 2012

<sup>42</sup> Article 8 (4) of Act CLXXX of 2012

<sup>43</sup> Article 7 (2) and (3) of Act CLXXX of 2012

Hungary has transposed the FD on legal aid for suspects and accused persons in criminal proceedings, in particular the provision foreseen in Article 5 concerning the right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State and the right to legal aid for such purposes. The authorities did not identify any practical experience as regards the request to appoint a lawyer in the issuing Member State during the on-site visit.

The Bar Association representatives stated that the assistance of lawyers is not mandatory for Hungarian citizens in the context of the execution of incoming EAWs, and that such an obligation is only mandatory for foreign citizens. The Hungarian authorities later refuted this assertion, saying that, in accordance with the 2018 Criminal Procedural Act, all individuals, regardless of their nationality, be it Hungarian or any other, are entitled to legal aid in the context of EAW proceedings. It is the case that such distinction applies, under certain circumstances, to domestic proceedings, but never to EAW cases. This confusion shows that all practitioners need further training in this regard.

According to the representatives of the Bar Association, few lawyers are familiar with the instruments under analysis.

#### *3.5.5. Identification of the requested person*

The Hungarian authorities have had to face a relevant number of EAWs where the real identity of the requested individual had been challenged against that of the arrested person. However, the **SIRENE** bureau has a forensic service with 24/7 availability to analyse the biometrics of the arrested person. It has always been possible to establish actual identity. Failing this, the detainee would be immediately released<sup>44</sup>.

---

<sup>44</sup> Article 7 (5) of Act CLXXX of 2012

### 3.5.6. Flagging

Flagging is a major issue in terms of the validity of EAWs in all Member States. According to the information provided, any decision on flagging will only be taken in Hungarian territory with a previous decision of the competent executing authority. This is in line with Recommendation No 13 of the 4<sup>th</sup> round of Mutual Evaluations and takes into account the 2018 SIS Regulation. The flagging processes are included in Act CLXXX of 2012 which provides for judicial decision, control or supervision of any decision taken in this regard<sup>45</sup>.

### 3.5.7. Transit

As regards transit through Hungarian territory, the cases of Hungary as transit territory involve mostly Austria and Romania as competent authorities. The authorities considered that there are no particular issues when they are requesting authorities. As requesting authorities, the Hungarian stakeholders complain that executing authorities from Germany have recently started to request assurances in terms of prison conditions even when Germany is just a transit country. Experts consider that this practice does not appear to be in line with Article 25 of the Framework Decision.

According to Hungarian law in its former version: *In the case of an EAW issued for prosecution, if the requested person is a Hungarian citizen resident in Hungary, he or she may be transited through Hungarian territory only if the issuing authorities provide guarantees that he or she will be returned to Hungary to serve the sentence imposed;*

*In the case of an EAW issued for the execution of a sentence, if the requested person is a Hungarian citizen with a place of residence in Hungary, the execution shall be refused.*

---

<sup>45</sup> Article 24 of Act CLXXX of 2012

This provision on guarantees of return in the case of an EAW for prosecution or prohibition of transit in the case of an EAW for execution was in line with Article 25 of the FD 2002/584/JHA. Even so, apart from the fact that Hungarian law distinguished between nationals and residents, the experts believed that the provision on prohibition of transit of Hungarian nationals through Hungarian territory hampers actual surrender because the subject will, in any case, eventually be surrendered to the issuing Member State. In any event, the distinction between nationals and residents was a departure from the FD 2002/584/JHA.

The version of the law provided after the onsite visit, compiles all provisions on transit for all mutual recognition instruments under Chapter X (see 3.1.2) and the abovementioned prohibition or conditioning of the surrender, as well as distinctions between nationals and residents have been removed.

#### *3.5.8. Differences in legal systems*

The Hungarian authorities claimed that the very diverging rules of the Member States often makes interaction between the competent authorities very difficult. They consider there is a need for a handbook containing the most relevant features of all national systems. This would improve understanding of how the instruments are used in all Member States.

#### *3.5.9. Ancillary competence*

Member states have different approaches as regards ancillary competence, and the thresholds established in the FD 2002/584/JHA maybe always mandatory in order to exclude from the EAW all crimes under such threshold. In the case of Hungary, surrender may also be granted “(i)f the European arrest warrant relates to several offences and at least one of these offences meets the maximum penalty threshold set out in paragraph (1), surrender may also be authorised for the other offences which do not meet this threshold, but which also constitute an offence under Hungarian law”<sup>46</sup>. This can be considered by the experts as a positive feature of the system in order to avoid impunity for some type of crimes under the thresholds established in the FD 2002/584/JHA.

---

<sup>46</sup> Article 3(4) of Act CLXXX of 2012

### 3.6. Training

#### 3.6.1. Judiciary's training

The Hungarian Academy of Justice is responsible for the initial and in-house continuous training of judges and court staff. It has had its own budget in this regard since 2006. It is responsible for the training of the European Law Advisor's Network (ELAN), which comprises judges who are experts in the field of mutual legal assistance. They provide their colleagues with updated information on EU case law and assist them in any query related to their field of expertise. The bulk of these experts are seconded to the Budapest Capital Regional Court. However, they are also deployed across country in all court jurisdictions and can be easily contacted by all members of the judiciary. Training in the field of mutual legal assistance is provided twice a year.

Practitioners can be permanently updated on the case law of the ECJ through the access to the ELAN webpage.

The prosecution service holds regular training sessions to discuss the practical problems that prosecutors face in their daily work as regards mutual legal assistance. When organising such sessions, a consultation procedure is first launched and the prosecutors dealing with these cases can propose subjects for the training sessions.

To a large extent, the Hungarian system takes specialization: there are four specialized prosecutors and five (exceptionally six) specialized judges in the Budapest Regional Court and two appeal chambers specialized in mutual legal assistance cases. In all other jurisdictions in Hungary, there is at least one prosecutor and one judge who are specialized in this field.

The experts consider that regional meetings, including meetings with neighboring Member States or with those Member States as identified by the EJM, have been shown to be useful in terms of building trust and tackling the common problems and drawbacks.

### 3.6.2. *Lawyers' training*

As for the training of lawyers, the Bar Association representatives in the evaluation expressed concerns about the poor knowledge of the relevant FDs among lawyers. For this reason, since 2020, once candidates have passed their exams to qualify as lawyers, they have to register for mandatory training on mutual legal assistance. This training covers all the different aspects of international cooperation in this regard. Candidate lawyers have the status of trainee for a period of three years, a period during which they need to undergo an evaluation of their performance. This also entails a number of different courses.

In addition, mandatory training entails 16 hours free training comprising online courses. One of these is a 3-day course on 'EU legal foundations', available for all lawyers. To date, 30 lawyers have taken this course.

The Bar Association claimed that lawyers have very little experience because they handle only a very small number of relevant cases in their professional careers. Few of them are familiar with the EAW procedures. Most of them are not aware of the mechanism foreseen in FD 2008/909/JHA. EU training tools seem to be unknown by the Bar Association. The Bar Association considers that a manual with information on mutual recognition instruments, guidelines and best practices for lawyers would assist lawyers. This would, in turn, benefit their clients.

The experts consider that lawyers have recourse to more and better quality training. In addition, lawyers could also be involved in joint initiatives with judges and prosecutors in order to share experience and best practices.

### 3.7. Conclusions

- Acknowledging that there is still room for improvement to overcome obstacles and drawbacks, the Hungarian authorities consider that the national system on EAWs works in an adequate manner. The overall assessment of the evaluation team is positive. However, some issues should be highlighted.
- The Hungarian system compiles all mutual recognition instruments under the same law, Act CLXXX of 2012. The evaluation team considers this to be a positive feature of the procedural rules in the field of mutual legal assistance, as it facilitates the knowledge and use of such instruments by stakeholders, rather than having separate laws.
- The Hungarian system of executing judicial authorities is centralised in the Budapest Capital Regional Court. This ensures consistency and the specialisation of judges and prosecutors.
- The principle of direct contacts does not apply in Hungary. The Ministry of Justice exerts a role that goes far beyond what a central authority should do in the context of the EU, as all communications and notifications between competent authorities go through the Ministry.
- Eurojust is involved in EAW cases where there are difficulties in the execution of the request or in competing EAWs. Time limits are normally complied with. Whenever this is not possible, Eurojust is notified.
- Requests for additional information are normally related to *in absentia* judgments, description of facts or information on a detention period in the executing Member State. Deadlines for providing such information are not always respected.
- The principle of proportionality is reflected in the fact that the EAW can only be issued when the seriousness of the offence is taken into account. A prior national order should be issued if this is essential for the proceedings. The exact meaning of the terms 'gravity' and 'essential' is too vague. In addition, an assessment on whether an EIO instead of an EAW would serve the interest of the investigation is conducted on a case-by-case basis.

- Provisional detention is no longer mandatory and the court can impose curfew, taking into account the circumstances of the case. Also, the Hungarian legislation provides for very specific rules on the supervision of curfew.
- The Hungarian legislator has made a big effort in aligning the national legislation with the European legal framework as regards mandatory vis-à-vis non-mandatory grounds for non-recognition, but the national legal framework can still be improved as regards the FD 2002/584/JHA. The treatment of nationals vis-à-vis residents was initially not in line with FD 2002/584/JHA and the jurisprudence of the ECJ, but it was clarified after the visit that such treatment is now in line with the EU legal framework
- Prison conditions in Hungary have been a major concern for executing authorities in some EU Member States. For this reason, Hungary has improved such conditions to align them with the standards of the ECHR.
- Legal aid is provided and the requested person is informed of his/her rights. Lawyers do not receive sufficient training and few of them are familiar with mutual legal assistance matters.
- The **SIRENE** bureau is integrated with Europol and Interpol units under the same organisational umbrella in the International Law Enforcement Cooperation Centre.



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

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

###### *4.1.1. Central authority.*

The mediation role of the Ministry of Justice as central authority for the transfer of sentenced persons is similar to its role in relation to the EAW. The principle of direct communications between competent authorities does not apply in the context of the transposition legislation for FD 2008/909/JHA.

In fact, if Hungary is the executing Member State, if any court or other authority receives a certificate under FD 2008/909/JHA for which it is not competent, it must forward it to the Ministry of Justice<sup>47</sup>. If additional information is needed by the competent Hungarian authority, such information should be requested via the Ministry of Justice<sup>48</sup>. If the executing court cannot comply with the deadlines, it must inform the issuing authority via the Ministry of Justice<sup>49</sup>.

If Hungary is the issuing Member State, the certificate issued by the competent court must be sent via the Ministry of Justice<sup>50</sup>. The Ministry forwards it, in turn, to the competent authority of the executing Member State<sup>51</sup>. In addition, the Ministry of Justice deals with any preliminary

---

<sup>47</sup> Article 120 (2) of Act CLXXX of 2012

<sup>48</sup> Article 122 (3) (4) of Act CLXXX of 2012

<sup>49</sup> Article 117/B of Act CLXXX of 2012

<sup>50</sup> Article 128 (5) and 127 (2) of Act CLXXX of 2012

<sup>51</sup> Article 127 (2) (3) of Act CLXXX of 2012

consultations<sup>52</sup>, additional needed information by the issuing court<sup>53</sup> or the notification issued to the convicted person that the certificate has been sent to the executing authority<sup>54</sup>.

The only case where the Ministry of Justice does not play a mediation role concerns notification of the impossibility to comply with deadlines once the transfer has been agreed. However, the experts assume this is just an omission in the law and that, in terms of practical implementation, this notification is also handled by the Ministry of Justice.

For the sake of brevity, the same observations about the role of the central authority in the context of the EAW apply here.

#### *4.1.2. Competent authorities.*

##### *4.1.2.1. Issuing authorities*

The competent issuing authority is the ‘enforcing judge with jurisdiction at the place of detention’<sup>55</sup>.

One of the most confusing issues that was examined during the on-site visit was establishing the role of the Ministry of Justice in the issuance of a certificate under FD 2008/909/JHA. This goes far beyond its role as central authority.

---

<sup>52</sup> Article 126 (3) of Act CLXXX of 2012

<sup>53</sup> Article 119/a (2) of Act CLXXX of 2012

<sup>54</sup> Article 127 (5) of Act CLXXX of 2012

<sup>55</sup> Article 128 (1) of Act CLXXX of 2012

According to the information provided by the practitioners, by the responses in the questionnaire and by domestic legislation, whenever a sentenced person makes a request to be transferred, such a request is transmitted to the Ministry of Justice. The latter ‘may conduct preliminary consultations with the judicial authority of the executing Member State’<sup>56</sup>. According to the questionnaire the ‘Ministry of Justice decides on the transfer requests based on the judgments and the personal record of the sentenced person’. Therefore, the Ministry of Justice acts a preliminary filter in assessing the merits of the case and in taking into account all the circumstances of the case. ‘In case the Minister agrees, the certificate is prepared and the other necessary documents are gathered by the law enforcement judge’<sup>57</sup>. The judges explained this by saying that the competent authority is alone responsible in terms of the execution of the sentence. After the certificate has been issued, the Ministry of Justice may maintain further contacts with the executing authority in order, for instance, to assess whether the rehabilitation criteria are met. The final decision to send out the certificate lies with the Ministry of Justice, which ‘shall decide on the handover of enforcement’<sup>58</sup>.

In addition, the decision to withdraw the certificate in cases of adaptation of the sentence also lies with the Ministry of Justice. If the Ministry of Justice, after consultation with the executing authority, considers that the transfer of the sentenced person would not serve the interest of rehabilitation, the court has no margin of discretion and the certificate needs to be withdrawn.

It could easily be argued that the Hungarian system designs a sort of ‘co-decision’ procedure, where the responsibility is shared between the Ministry of Justice and the judge competent for the enforcement of the sentence. While the competent authority is the enforcing judge, the Ministry of Justice has the power to conduct a preliminary assessment to decide whether the criteria to issue a certificate are met and may eventually decide not to forward a certificate already issued by the competent court. The evaluation team considers this to be a dysfunctional feature within the system. Member States have a margin of discretion to designate competent authorities pursuant to Article 2.1 of FD 2008/909/JHA. Nevertheless, once such authorities have been designated, they should take all relevant decisions.

---

<sup>56</sup> Article 119/A (2), 126 (3) of Act CLXXX of 2012

<sup>57</sup> Reply to the questionnaire, question n° 29

<sup>58</sup> Article 127 (2) of Act CLXXX of 2012

In the case of Hungary, the competent authority is the enforcing judge. It should be the judge, and no other authorities, who is competent to conduct any preliminary assessment of whether the criteria to issue a certificate are met. Once the certificate has been issued, the Ministry of Justice, as central authority, must not have any discretion to take any decisions. However, in the Hungarian system, the Ministry of Justice may eventually decide not to forward a certificate already issued by the competent court.

The experts consider that this decision-making role of the Ministry of Justice should be removed.

The decision taken by the issuing judge is not appealable. The evaluation team considers that any decisions taken by courts to issue or not to issue a certificate under FD 2008/909/JHA should be subject to revision by an appellate court.

#### *4.1.2.2. Executing authorities*

The Hungarian system as regards executing authorities is centralised. The Budapest Capital Regional Court is the competent executing authority<sup>59</sup>. Its decision can be appealed to the Budapest Capital Regional Court of Appeal<sup>60</sup>. The Act CLXXX of 2012 does not say explicitly in its current version which court acts as secondary court, so the general rules of the Criminal Procedural Act apply<sup>61</sup>.

This feature of the Hungarian procedural system should be regarded as positive, since it is a way of granting uniformity and avoiding contradictory decisions attributable to the specialisation of the competent authorities.

---

<sup>59</sup> Article 122 (1) of Act CLXXX of 2012

<sup>60</sup> Article 12 (2) b) of Act XC of 2017 on the Criminal Procedural Act

<sup>61</sup> However in its initial version such competence was included in Article 115 of Act CLXXX.

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

Pursuant to Article 120 (2) of Act CLXXX of 2012, the Ministry of Justice is the authority competent to receive the certificate and the sentenced person's opinion and to conduct a preliminary assessment of the requisite documentation. After the preliminary assessment, the relevant documents, together with the judgment, are sent to the competent executing authority.

Hungarian authorities usually require the translation of the judgment, limited to the parts needed for taking the decision, in case the sentence is very long. A consultation process via the Minister of Justice is foreseen in the law to decide whether the complete sentence or only "the essential parts" should be translated<sup>62</sup>. This is a positive feature of the system since it saves time and the unnecessary allocation of resources. The Hungarian authorities claim that some Member States automatically request the translation of the whole document. This increases costs and causes delays.

## **4.3. Criteria for assessing the facilitation of social rehabilitation**

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

As an issuing Member State, Hungary does not regularly consult the executing Member State to ascertain whether or not the transfer of the sentenced person would serve the interest of his/her rehabilitation. Such consultation only takes place regularly when the previous consent of the executing authority is needed under Article 4(1)(c) FD 2008/909/JHA. In any event, if the competent court needs to contact the issuing authority, it would be done via the Ministry of Justice. However, it is normally the Ministry of Justice, on its own initiative, that contacts the issuing authority to request information on rehabilitation.

---

<sup>62</sup> Article 122 (3) of Act CLXXX of 2012

Pursuant to the information provided for the onsite visit, the experts noted that Hungarian law mentioned social rehabilitation only in cases where the consent of the sentenced person was necessary<sup>63</sup> and not in cases where such consent was not needed<sup>64</sup>. This situation changed with further amendments of the law<sup>65</sup> and now social rehabilitation must also be examined in the cases where the consent of the sentenced person is not necessary. Article 120/A (2) of the Act CLXXX of 2012 incorporates the cases referred to in Article 120/A (3) as well. The only exception is Article 120/A (4) of the Act concerning Hungarian nationals with address in Hungary or to be expelled to Hungary, as in these cases, the law assumes the existence of the social rehabilitation principle automatically. Since there are no cases of transfer, apart from those procedures initiated at the request of the sentenced person, the Hungarian courts have not had the opportunity to interpret Hungarian law vis-à-vis the FD 2008/909/JHA.

#### 4.3.2. *Opinion and notification of the sentenced person*

Hungarian legislation, in line with Article 6 of FD 2008/909/JHA<sup>66</sup>, does not require the consent of the sentenced person, except in the cases foreseen by the FD 2008/909/JHA. Even so, in practice, the certificate is issued only at the request of the sentenced person.

This approach should be reconsidered. The certificate should also be issued *ex officio*, as the main objective of the FD is to facilitate the social rehabilitation of the sentenced person, a task in which the competent authorities should be actively involved. Following the exchange of opinions between the Hungarian authorities and the experts during the onsite visit, the Ministry of Justice has informed that, starting January 2022, this practice has changed and now the courts are asked by the Ministry of Justice to issue the certificates *ex officio* upon the list of EU nationals received each month from the Hungarian Prison Service. Sentenced persons are always heard, but the certificate is issued even if they do not consent, where the legal requirements are met.

---

<sup>63</sup> Article 127 (2) of Act CLXXX of 2012

<sup>64</sup> Article 127 (1) of Act CLXXX of 2012

<sup>65</sup> Articles 126 (1) and 120/A (3) of Act CLXXX of 2012

<sup>66</sup> Article 120/A (3) and (4) of Act CLXXX of 2012

Persons serving sentence in a Member State are not necessarily aware of their right to be transferred to another Member State. Taking into account the information received during the interviews, it was unclear whether the sentenced person receives all the requisite information upon admission to prison in a written format that is understandable to him/her. However, after the onsite visit, the Hungarian authorities have informed that the Hungarian Prison Service informs each foreign national in a written form of their right to ask for the transfer as soon as the decision is final. The evaluation team considers that an EU-standardised information sheet needs to be distributed among inmates in EU prisons in all EU languages. This would help inform sentenced persons of their rights in this field.

Finally, the prosecutor has no role in this context and cannot make a request to the competent court to issue a certificate under FD 2008/909/JHA. Amending the law to enable the prosecutor responsible for dealing with the case to make a request to transfer the sentenced person could increase the number of cases that are processed in line with FD 2008/909/JHA.

According to the information sent after the evaluation visit, the experts note that in 2021 there were 52.750 inmates in Hungarian prison facilities of whom 50.453 were Hungarian nationals, 1.281 were nationals of other Member States and 1.010 were nationals of third States. The nationality of another 6 was not indicated. There is therefore a significant number of inmates who could be considered for transfer to another Member State.

According to Article 131 (2) of Act CLXXX of 2012, ‘the National Headquarters of the Hungarian Prison Service shall inform the Minister every month about the persons holding the nationality of one of the Member States of the European Union, on whom a custodial sentence or detention order has been imposed on a final and non-appealable basis’. The evaluation team considers that such a provision purports to provide the central authority with the needed information to initiate transfers, regardless of the requests of the sentenced persons.

Before issuing the certificate, the opinion of the sentenced person must be recorded<sup>67</sup>, and it is forwarded to the Ministry of Justice along with the certificate and a copy of the judgment<sup>68</sup>. Hungarian law does not provide for the possibility that the opinion be given by the legal representative owing to the age of the person or the person's mental or physical condition. This should not prevent the issuing court from proceeding accordingly, in the light of the ECJ judgments.

Article 127 (5) of Act CLXXX of 2012 provides that the sentenced person is notified in his/her mother tongue or any other language understandable by him/her in case he/she is in the executing Member State (upon Annex II of the FD 2008/909/JHA). In case the sentenced person is serving sentence in a Hungarian prison, a translation would be provided in their mother tongue or any other language understandable by them upon Article 8 (3) of the Criminal Procedural Act.

During the interviews, it became clear that, when Hungary is the executing Member State, the opinion of the sentenced person was very often missing. This situation is causing delays because of the need to request additional information to the issuing authority.

#### **4.4. Adaptation of the sentence**

As an executing Member State, Hungary reported that it had adapted some sentences because their duration was longer than that foreseen in Hungarian criminal legislation. Such adaptation did not lead to the withdrawal of the certificate by the issuing authority.

In cases where Hungary was the issuing Member State, the Hungarian authorities stated that some cases of withdrawal have taken place because of the adaptation of the sentence in the executing Member State. This situation has had an impact on the certificates sent to Romania where, on some occasions, the length of the sentence should have been reduced by 50%. The competent authority for this decision is the Ministry of Justice, and not the issuing authority, as already mentioned.

---

<sup>67</sup> Article 129 (3) of Act CLXXX of 2012

<sup>68</sup> Article 128 (5) of Act CLXXX of 2012



The experts consider that harmonised criminal typologies and penalties beyond “EU crimes<sup>69</sup>” would minimise the difficulties and obstacles linked to the adaptation of sentences, reducing the risk of withdrawal.

#### **4.5. Grounds for non-recognition or non-enforcement**

In contrast to FD 2008/909/JHA, where all the grounds for refusal are considered as optional in Article 9, Article 112 of Act CLXXX of 2012, the former Hungarian legislation established that all grounds for refusal were mandatory <sup>70</sup>. This impeded the court’s discretion to take into account the merits of the case, in particular, with a view of rehabilitating the sentenced person. In the version of the law provided after the onsite visit, the Hungarian legislator has addressed this issue and now not all refusal ground are mandatory. Article 114 (1) lists all the mandatory grounds (6 cases) and Article 114 (2) and 122/A of Act CLXXX of 2012 lists the optional grounds (5 cases). Although a big step has been taken, there is still room for improvement and the Hungarian legislator should consider redrafting the abovementioned provisions in order to further align them with the EU standards.

In cases where Hungary was the executing Member State, the Hungarian authorities stated that the most common grounds for non-recognition are related to double criminality and the fact that criminal conduct was statute-barred according to Hungarian law.

In cases where Hungary was the issuing Member State, the most common grounds for refusal were also linked to double criminality and lack of guarantees in relation to judgments *in absentia*. No further information was provided as regards particular problems that arose during these cases.

---

<sup>69</sup> Article 7 FD 2008/909/JHA

<sup>70</sup> Article 112 of Act CLXXX of 2012

#### **4.6. Partial recognition**

The Hungarian authorities identified some cases of partial recognition. These cases are related to situations where the judgment included facts that are not crime under Hungarian law, along with crimes that match the double criminality principle. In these cases, the competent executing court in Hungary could only take over the execution of the latter part of the sentence. The cases explained in this particular situation did not give rise to withdrawal of the certificate by the issuing authority in the other involved Member State. No further problems linked to partial recognition were raised during the on-site visit.

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

The Hungarian authorities did not identify any difficulties with regard to complying with the deadlines for adopting the decision within the deadlines provided for in Article 12 of FD 2008/909/JHA. However, the issuing authorities claimed that they often do not receive any information from the executing authority in the other involved Member State when such deadlines are not practicable.

#### **4.8. Law governing the enforcement of the sentence**

The law of Hungary as an executing Member State is the applicable law. The authorities did not identify any particular problem with regard to this question.

#### **4.9. Further challenges**

Some of the authorities confirmed that one of the most important deficiencies in the notifications of the executing Member States relates to the lack of information on the beginning of the period of conditional release, which is compulsory according to Article 21(g) of FD 2008/909/JHA. It is of utmost importance that this information is shared. The reason is that it is one of the most relevant decisions in the execution of a sentence that might eventually be relevant for the issuing authorities.

The Bar Association representatives considered that the lawyers assisting sentenced persons are not aware of the possibilities foreseen in FD 2008/909/JHA, and do not inform their foreign clients accordingly.

Requests for additional information are common when executing a certificate under FD 2008/909/JHA. These requests are usually related to the deficient or missing information on some of the sections of the certificate or missing information on the notification/opinion of the sentenced person. These situations cause unnecessary delays.

Certificates issued by Hungarian authorities had to be withdrawn because of the regime on early or conditional release in the executing Member State. No further details were provided during the on-site visit.

#### **4.10. Training**

General information on training can be found in 3.6.

The ELAN members have received training on FD 2008/909/JHA twice a year. The topics are also discussed in the sessions of the criminal division of the regional courts. The Ministry of Justice participates in the EuroPris meetings. The materials received are shared with the National Headquarters of the Hungarian Prison Service.

#### **4.11. Statistics**

No annual statistics based on cases under FD 2008/909/JHA are published by the Hungarian Ministry of Justice or another institution. The experts recommend that such data be published annually.

#### 4.12. Conclusions

- The observations made with regard to the role of the central authority in the context of the EAW can, *mutatis mutandis*, be applied to FD 2008/909/JHA.
- The competent issuing authority is the ‘enforcing judge with jurisdiction at the place of detention’. Nevertheless, the Ministry of Justice has a role that goes beyond that of a central authority, and can assess whether the requirements to send out the certificate to the executing authority are met, in particular if it would serve the interest of rehabilitation.
- Hungarian authorities do not regularly consult the executing authorities to assess the rehabilitation requirement other than in cases where such consultation is needed.
- In Hungary, the translation of the full sentence is not always needed, but instead only a translation of the relevant parts of the sentence.
- The certificates under FD 2008/909/JHA are issued only at the request of the sentenced person. Following the onsite visit, this practice has recently changed and certificates are being issued *ex officio*.
- Adaptation is habitual either as an issuing Member State or as executing Member State. Hungary withdrew some certificates sent to other Member States because of the different duration of the sentence.
- Some grounds for refusal are mandatory and some optional under Hungarian law, which is not in line with FD 2008/909/JHA where such grounds are optional.
- Hungarian authorities claim that the executing authorities do not often notify breach of time limits or initiation and termination of the conditional release.

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

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

According to Hungarian legislation provided during the onsite visit, when the person to be surrendered is a Hungarian citizen residing in Hungary, it is mandatory to refuse an EAW for the purpose of execution. (Article 8). Under the current legal framework such provision is still in place in Article 5(4)(c), but according to the feedback of the Hungarian authorities, this provision should be read together with Article 120/A, and taking these two both provisions into consideration it can be stated that the executing authority does have a discretion to decide whether or not to refuse the execution of an EAW. At the time of the visit this rule did not apply to foreign persons resident in Hungary.

It was initially unclear from the wording of the law whether a certificate is needed or if there is only a need for the issuing authority to send the judgment sentencing the person to Hungary. However, it was explained in the questionnaire and during the on-site visit that a certificate needs to be issued by the issuing authority of the other involved Member State. In such a case, a certificate under FD 2008/909/JHA needs to be issued so that Hungary can recognise the judgment and execute the sentence.

In the meantime, the competent court orders the detention of the sentenced person during a maximum period of 30 days while the certificate is received. If the certificate is not received during this period, the sentenced person has to be released. This situation has arisen on some occasions. However, the person can be detained when the certificate is received.

As an issuing Member State, Hungary always sends a certificate if the requesting authority has refused to surrender the requested person on the grounds of nationality or residence.

## 5.2. Conclusions

- According to Hungarian legislation, the surrender of nationals residing in Hungary is an optional ground for refusal, at the time of the visit this rule did not apply to foreign persons resident in Hungary.. In these cases, a certificate under FD 2008/909/JHA is mandatory to ensure the transfer of the execution of the sentence. The requested person would be remanded in custody for a maximum period of 30 days until the certificate is received in Hungary. If such a period elapses and the certificate has not been received, the sentenced person is released.
- As an issuing Member State, Hungary always sends a certificate if the requesting authority has refused to surrender the requested person on the grounds of nationality or residence.

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

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

Taking into account the information available during the onsite visit, Article 145 Act CLXXX of 2012 did not identify a single central court or competent authority that should issue the certificate under FD 2008/947/JHA. According to the questionnaire, the competent issuing authority was the district court in whose jurisdiction the person in question lives. In Budapest, and where the person's address is unknown, the Central District Court of Buda was the competent authority. It was later informed that this legal landscape has changed and that as of 1 January 2021<sup>71</sup> the competent authority is the first instance court dealing with each specific case.

As regards receiving and deciding on applications from other EU Member States, the district court in whose jurisdiction the affected person lives is the competent authority. In Budapest, the Central District Court of Buda is the competent executing authority for persons with no fixed address<sup>72</sup>. Overall, there are 133 courts acting as separate and independent competent authorities in Hungary in respect of incoming and outgoing applications under FD 2008/947/JHA.

In contrast to the EAW and the transfer of sentenced persons, Hungary has not designated a central authority for this instrument. This feature of the Hungarian system is surprising, because the Central Authority plays a strong and controlling role in respect of FDs 2002/584/JHA and 2008/909/JHA, and exercises influence and control beyond what would be expected of a central authority. Therefore, direct contact by the applicant or external competent authority with the local Hungarian Competent Authority is the rule<sup>73</sup>. The absence of a central authority also means that there is no centralised gathering or reporting of data or dissemination of information regarding the promotion and use of FD 2008/947/JHA.

---

<sup>71</sup> Article 119 (1a) Act CLXXX of 2012

<sup>72</sup> Article 113/A Act CLXXX of 2012

<sup>73</sup> e.g., Articles 113/B (1)-(3), 113/C, 119/A (2) Act CLXXX of 2012

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

In the questionnaire or during the on-site visit, the Hungarian authorities did not provide statistical data or details of specific cases related to the application of FD 2008/947/JHA, in cases where Hungary was the issuing or executing State. There is no central data gathering or reporting on the use of this FD in Hungary. However, it seems evident that this instrument is very rarely used.

It is likely that the minimal use of this mutual recognition instrument is due to the fact that stakeholders and potential beneficiaries are not aware of or familiar with the instrument. Limited information has been disseminated among court professionals and few trainings have been organised. Instead, there is an assumption that they would know about it because of the legislation.

The probation service and lawyers in general also appear to be unaware of this instrument. It appears that little or no information has been disseminated to potential beneficiaries regarding this FD. There is no evidence that the authorities have estimated or are aware of how many persons could benefit from the application of this FD.

It was found that supervising authorities in Hungary prefer seeking an early termination in court of the execution of a sentence to filing an application under FD 2008/947/JHA in a cases where a person has returned to their home EU jurisdiction. However, there was no data available on this procedure in relation to the FD.

The experts stress that the purpose of FD 2008/947/JHA is to support the rehabilitation and resettlement of the person through the transfer of the supervision order. Therefore, the termination rather than the transfer of the supervision order is not consistent with that objective.

Concerns about trust, limited knowledge of supervision options and practice in other jurisdictions and workloads did appear to be influential factors in relation to the limited use of this FD.



The authorities reported some difficulties in applying the instrument. Anecdotal reference was made to one case involving the Czech Republic. In this case, the issuing State withdrew the certificate because of the difficulty in resolving disparities between the applicable measure in Hungary and the measure imposed in the issuing State to achieve adaptation. Difficulties arose, it appears, not only in relation to the duration of the alternative sanctions, but also in their equivalence and nature. This appeared to render the adaptation pursuant to Article 9 of the FD impossible in certain cases.

The experts note that the lack of experience in dealing with a substantial number of cases may explain why there have been difficulties in resolving adaptation issues. Further consultation, exchanges and the sharing of experience with other competent authorities and a central authority acting as an expert and data resource at national level could help identify ways of achieving satisfactory resolution of such adaptations and could therefore facilitate transfers.

The establishment of a small body of legal and professional experts familiar with the FD as well as international training and best practice would also support and strengthen problem-solving experience and the resolution of most adaptation issues.

In other cases, the probation service described how supervision orders imposed by Hungarian courts are monitored and supervised remotely when the person has left Hungary to live in another EU Member State. This supervision is conducted mainly by telephone by agreement with the supervised person who has left the jurisdiction.

The experts consider that this form of remote supervision is of very limited, if of any, value. The supervisory body has no independent means of checking compliance with the conditions of the order. In addition, the supervisory body is unlikely to know of or unlikely to be able to access support, treatment and any other service in the jurisdiction where the person is and has no local facilities to enable home visits or face-to-face meetings. It is an unsatisfactory 'historic' practice that has been replaced, in most jurisdictions, by the transfer of supervision orders under FD 2008/947/JHA.

The evaluation team believes that the probation service's customary remote supervision by phone of persons living outside the jurisdiction and in other EU Member States does not fulfil the requirements of meaningful and effective supervision. Such a practice entails extraterritorial exercise of domestic powers without the authority of the Member State in which the affected person is being supervised. This practice should cease. Such powers should be transferred as provided for in FD 2008/947/JHA.

Data was not usually published on the number or distribution of EU citizens subject to probation service supervision in Hungary. The following figures were provided for this evaluation:

**Number of persons with nationality of at least 1 Member State of the EU covered by cases handled by the Probation Service (both in Budapest and in the country) on 30 September 2021**

Pending cases on 30 September 2021		
Nationality	Type of case	
	Execution of community service	Execution of other measures under probation service
Belgian	1	
Czech	2	
Dutch		1
Latvian	1	
Lithuanian	8	1
German	1	1
Italian		1
Austrian	1	1
Romanian	25	12
Slovak	1	6
Altogether:	40	23
	63	

In order to promote the application of FD 2008/947/JHA, the Hungarian authorities should publish data of all the EU citizens who could be eligible for the transfer of probation or for a conditional release period and for all other measures foreseen in the FD. Many may be permanently resident in Hungary. Nevertheless, others may be eligible and interested in applying for the transfer of their probation or alternative sanctions to another EU Member State. Data on eligible persons would be an important first step in the sharing and dissemination of information on eligibility for transfer of supervision.

Information and promotional materials in the relevant languages should be provided to EU citizens subject to supervision in Hungary. Probation Officers should be trained, informed and equipped to provide information on FD 2008/947/JHA transfer opportunities to eligible persons supervised by them. As already mentioned, at the time of the on-site visit there were 1,281 citizens of other Member States in Hungarian prisons. The number of eligible persons subject to supervised conditional release or other probation service supervision orders was not known.

Some have suggested that this instrument is useful primarily for Member States with close ties, frequent interaction and a higher level of cooperation, for instance in cases where citizens frequently move back and forth across the border, as is the case in the Benelux countries. The principles underpinning FD 2008/947/JHA include enhancing mutual trust and understanding among all Member States, in particular in relation to their criminal justice systems and agencies. This would facilitate free movement, as well as movement of labour and support rehabilitation and resettlement. While there should be good cooperation between neighbouring Member States, this trust and cooperation should also be applied to all Member States within the European Union.

It is important that a central authority should gather and report national and regional data on cases in which applications are received or made in respect of FD 2008/947/JHA. This would inform training, information dissemination and promotion as well as policy, planning and practice development.

The experts consider that promoting the use of FD 2008/947/JHA to enable EU citizens to be supervised in their own or in other EU jurisdictions could, in a small way, reduce the probation service workload and possibly the prison population in Hungary. Equally, application of FD 2008/947/JHA in other EU Member States could help ensure that Hungarian citizens supervised in other jurisdictions could be supervised in Hungary. This would be in the interest of their better rehabilitation and resettlement.

### **6.3. Training**

General information on training can be found in 3.6.

Given the absence of dedicated training and documented information dissemination on the FDs among criminal justice professionals, the limited awareness of and application of FD 2008/947/JHA is not surprising. Training focused on this FD for probation officers, judges, prosecutors and other legal representatives and professionals would help raise awareness among stakeholders about the purpose and potential of this mutual recognition instrument.

There appears to be a lack of awareness of training support and resources available across the EU. It would be a positive step if Hungarian experts, legal professionals and probation officers were to participate in the various European criminal justice professional networks and projects supporting the application of FD 2008/947/JHA. For example, in relation to FDs 2008/947/JHA and 2009/829/JHA, the Confederation of European Probation (CEP) ([www.cep-probation.org](http://www.cep-probation.org)) has an open expert network group dedicated to these FDs. They share expertise, experience and knowledge and promote the use of FDs 2008/947/JHA and 2009/829/JHA among probation services and professionals. In addition, the Commission-funded PONT project ([www.probationobservatory.eu](http://www.probationobservatory.eu)) has a range of free online training courses on the application of FDs 2008/947/JHA and 2009/829/JHA, the completion of required documentation and the management of adaptation and transfer processes.

Awareness-raising among, and training of, probation service staff directly involved in supervision would be a valuable step in promoting the use of the FDs. This would also inform eligible EU citizens of the possibility of being able to move to another EU Member State and of being supervised there in the interests of their rehabilitation and resettlement. It would also ensure that the probation service would be better informed to make arrangements to transfer the supervision of Hungarian citizens resident in other EU Member States to the appropriate equivalent supervision service in that jurisdiction.

A (professional/legal) handbook with step-by-step guidance on the application and implementation processes for FDs 2008/947/JHA and 2009/829/JHA would be an important resource for practitioners. This would be particularly useful in cases where contact with eligible persons is infrequent and experience is limited.

Template general information leaflets and information packs on FDs 2008/947/JHA and 2009/829/JHA should be developed and distributed centrally by the Commission. These need to be adapted by each Member State to include local regulations and contact points in their jurisdiction and disseminated.

General information leaflets and information packs on FDs 2008/947/JHA and 2009/829/JHA, in the supervised person's language, should be developed and distributed to eligible persons supervised by the Probation Service in Hungary and in other Member States. These would promote knowledge of and access to the provisions and benefits of FD 2008/947/JHA. Similar promotion and information materials should be provided to all probation service personnel conducting supervision.

However, the Ministry of Justice provided statistics on the trainings organized by the Probation Service, for the years 2018-2021.

<b>Trainings at the Probation Service 2018</b>				
<b>Title of the training</b>	<b>Per year</b>	<b>Hours per year</b>	<b>All training hours per year</b>	<b>Participants</b>
Training of new probation officers - professional preparatory training - general legal training	1	16	16	45
Training of new probation officers - professional preparatory training - Criminology, protection of children and minors, social work, addictology, data protection, statistics, protection of victims	1	16	16	47
Training of new probation officers- professional preparatory training - practical skills for specific case types	1	16	16	34
Training on the new Criminal Procedure Act and rules of the operation of the Probation Service	2	6	12	296
Methodology of identification of victims	2	4	8	188
Supervision for probation officers	2	6	12	31
Organization and supervision of community work - advanced training of probation officers	2	6	12	53
Theoretical training of mentor mediators	1	8	8	20
Reunion of mentor mediators	1	8	8	21
Technics of restitutorial justice administration - advance training of mediators	1	30	30	16
			<b>138</b>	<b>751</b>

## Trainings at the Probation Service 2019

Title of the training	Per year	Hours per year	All training hours per year	Participants
Training of new probation officers - professional preparatory training - general legal training	1	16	16	28
Training of new probation officers - professional preparatory training - Criminology, protection of children and minors, social work, addictology, data protection, statistics, protection of victims	1	16	16	29
Training of new probation officers- professional preparatory training - practical skills for specific case types	1	16	16	16
Training of probation officers to lead programmes dealing with young offenders	1	20	20	26
Training of probation officers dealing with cases concerning children	3	12	36	60
Supervision for probation officers	2	24	48	31
Organization and supervision of community work - advanced training of probation officers	2	6	12	44
advanced methodology training for mentor mediators - Reunion of mentors	1	8	8	20
Theoretical training for mediators	2	6	12	30
Theoretical training for mentor mediators	1	6	6	21
Mediator training	1	60	60	21
			<b>250</b>	<b>326</b>

<b>Trainings at the Probation Service 2020</b>				
<b>Title of the training</b>	<b>Per year</b>	<b>Hours per year</b>	<b>All training hours per year</b>	<b>Participants</b>
Training of new probation officers - professional preparatory training - general legal training	1	16	16	39
Training of new probation officers - professional preparatory training - Criminology, protection of children and minors, social work, addictology, data protection, statistics, protection of victims	1	16	16	43
Training of new probation officers- professional preparatory training - practical skills for specific case types	1	16	16	22
Training of probation officers to lead programmes dealing with young offenders	0	20	0	0
Training on the use of new informatic system of the probation office	15	6	90	360
Training on the use of new informatic system of the probation office - Consultation	2	4	8	54
Supervision for probation officers	1	24	24	10
Organization and supervision of community service - advanced training of probation officers	2	6	12	35
Practical training for mediators	2	14	28	31
Advanced theoretical training of mentor mediators - reunion of mentors	1	6	6	18
Advanced methodology training of mediators - regional training, case studies	3	6	18	37
Practical training for mentor mediators	1	14	14	16
			<b>248</b>	<b>665</b>



<b>Trainings at the Probation Service 2020</b>				
<b>Title of the training</b>	<b>Per year</b>	<b>Hours per year</b>	<b>All training hours per year</b>	<b>Participants</b>
Training of new probation officers - professional preparatory training - general legal training	1	16	16	26
Training of new probation officers - professional preparatory training - Criminology, protection of children and minors, social work, addictology, data protection, statistics, protection of victims	1	16	16	21
Training of new probation officers- professional preparatory training - practical skills for specific case types	1	16	16	11
Supervision for probation officers	1	24	24	15
Training on the use of new informatic system of the probation office	2	6	12	31
Basic training for administrative staff of the probation service	1	7	42	9
Advanced training of probation officers- How to identify and handle domestic violence cases	1	6	6	153
Advanced training of probation officers - Case study concerning execution of community service	2	3	6	22
Advanced training of probation officers - Case study concerning preventive probation service	1	4	4	13
Training of probation officers to lead programmes dealing with young offenders	1	20	20	20
advanced training of probation officers - Interactive training concerning domestic violence	1	16	16	
advanced methodology training of mentor mediators - Reunion of mentors	1	6	6	19
Advanced methodology training of mediators - regional training, case studies	5	6	30	53
Practical training for mediators	2	14	28	28

Advanced training of mentor mediators - practical experiences during the process of mentoring	1	6	6	17
			<b>248</b>	<b>438</b>

## Conclusions

- In contrast to the EAW and the transfer of sentenced persons, there is no designated central authority with responsibility for FD 2008/947/JHA in Hungary.
- The competent authority for FD 2008/947/JHA is located in 113 district courts. There is no evidence of a structured and centralised process for the receipt and issuance of applications for transfer as well as for the adaptation of probation measures or alternative sanctions under FD 2008/947/JHA.
- The fact that competent authority decision-making in respect of FD 2008/947/JHA is distributed among 113 district courts suggests that it is unlikely that any single court or expert would have the requisite depth of experience and knowledge to manage complex applications or requests.
- FD 2008/947/JHA is rarely used. This is due to lack of knowledge among practitioners, including lawyers, differences in legal regimes in relation to the nature and duration of the alternative sanctions, a possible lack of trust or knowledge of systems in other jurisdictions, and a general perception that this instrument is not useful. There is also a lack of awareness among eligible persons subject to supervision in Hungary, or already living outside Hungary and being supervised remotely, about the possibility to transfer the supervision.

- Cross-border remote supervision is not advisable because of the lack of real supervision of the probation measures and lack of knowledge and access to local resources and enforcement. The certificate under FD 2008/947/JHA should always be completed and sent.
- Increased and effective use of this instrument in the interests of social rehabilitation entails the need to increase awareness about and the dissemination of information, through a SPOC, regarding the provisions of FD 2008/947/JHA among the key stakeholders, namely prosecutors, judges, lawyers, probation officers, as well as eligible supervised persons.
- The absence of a central contact point for information, the lack of advice and guidance on the application of FD 2008/947/JHA in Hungary for external internal enquiries regarding possible transfers out of Hungary constitutes a significant knowledge and information gap. It is likely that this is a significant factor in the limited use of FD 2008/947/JHA.
- Establishing a SPOC for FD 2008/947/JHA (supporting the competent authorities) would enable access to knowledge and expert guidance for Hungarian practitioners and international enquiries prior to the submission of applications to the relevant competent authority in Hungary, or through a Hungarian competent authority to a central authority in another European jurisdiction.

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

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

Article 87 of Act CLXXX of 2012 does not identify the specific court competent for issuing the certificate under FD 2009/829/JHA. Even so, according to the clarifications provided after the on-site visit, the competent issuing authority is the district court assigned with the specific investigation.

The district court in whose jurisdiction the affected person lives is the competent executing authority. In Budapest, the Central District Court of Buda is the competent executing authority<sup>74</sup>. If the residence of the person to be supervised is unknown, then the Central District Court of Buda is also the competent executing authority.

Surprisingly, as is the case for probation decisions (see above), no central authority has been designated for FD 2009/829/JHA. The principle of direct communications applies to the transfer of decisions<sup>75</sup>.

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

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

The key reason for the minimal use of this mutual recognition instrument is the fact that stakeholders lack knowledge of and familiarity with it. Accordingly, judges, prosecutors and lawyers rarely take into consideration the possibilities that this instrument provides. The role of lawyers in this field is particularly relevant. Promoting its use may reduce the population of persons remanded in custody and awaiting trial and as well as the prison population in Hungary.

---

<sup>74</sup> Article 74 (1) of Act CLXXX of 2012

<sup>75</sup> Article 88 (2), 75, 78 (3) of Act CLXXX of 2012

In addition, the lack of use of this instrument may be linked to a ‘mindset’. This mindset assumes that the presence of the charged or accused persons is needed in the course of the proceedings for whatever reason (conducting investigative measures, presence in the trial phase, etc.). As a result, the competent investigative authority is not willing to let the person leave the country. Hungarian authorities do not seem to trust the effectiveness of such alternative measures in terms of countering the risk of the person absconding. Only if the residence in another Member State has been confirmed and the relevant competent authority is in agreement, the application of FD 2009/829/JHA should be considered as an alternative to keeping a person in custody. The FD 2009/829/JHA should not be needed for use in cases of minor or petty offences. These should be dealt with expeditiously.

The observations made under 6.2 as regards FD 2008/947/JHA in relation to highly integrated Member States - as well as to ‘remote supervision’ - can be, *mutatis mutandis*, applied in relation to FD 2009/829/JHA. It should be borne in mind that, unlike other instruments, the interaction between the issuing and executing authority should be ongoing. The reason is that, during the execution process, the executing authority must update the issuing authority on compliance with the supervision of the measures imposed: any breach has to be notified so that the issuing authority can adopt the subsequent decisions<sup>76</sup>. This is not always the case. Lack of communication may lead to undesirable consequences.

There was a case of an unsuccessful European supervision order request. A potential risk of the person not being available for the trial phase in Hungary in times of COVID was the reason for the decision not to transfer to the other involved Member State.

In another case involving another Member State as the issuing authority, the supervision measure was a curfew imposed on the accused person. In this case, the maximum period for monitoring the measure had elapsed according to Hungarian law<sup>77</sup> and the issuing authority did not respond when a request was made for the extension of the curfew period. In the end, the supervision had to be disrupted. The experts consider this demonstrates the need for effective communication channels and good relations between competent authorities.

---

<sup>76</sup> Article 18 (1) and 19 (3) of FD 2009/829/JHA

<sup>77</sup> Article 20 (2) lit b of FD 2009/829/JHA

### **7.3. Training**

General information on training can be found in 3.6. Moreover, comments on the need for training on FD 2009/829/JHA are made in 6.3.

Training focused on FD 2009/829/JHA would help raise awareness among stakeholders about the objectives and possibilities of the mutual recognition instrument.

### **7.4. Conclusions**

- In contrast to the EAW and the transfer of sentenced persons, there is no designated central authority for FD 2009/829/JHA.
- This instrument is rarely used in Hungary. Competent authorities are not willing to allow the suspect/accused person to leave the country whenever his/her presence is going to be needed in the course of the proceedings. This means that national authorities do make use of the intended purpose of the instrument.
- Ongoing interaction between the issuing and executing authority to monitor compliance with the measures is not easy. It entails significant commitment on the part of the executing authority to communicate immediately any lack of compliance with the measures imposed.

## 8. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

### 8.1. Suggestions by Hungary

There have been no suggestions made by the Hungarian authorities.

### 8.2. Recommendations

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

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

The evaluation team saw have made a number of recommendations which they have put to the Hungarian authorities. Based on the various good practices, related recommendations are also being submitted to the EU, its institutions and agencies, as well as to Eurojust and the EJN.

#### 8.2.1. *Recommendations to Hungary*

##### 8.2.1.1. Crosscutting recommendations

Recommendation No 1: Hungary should circumscribe the role of the Central Authority in accordance with FDs 2002/584/JHA and 2008/909/JHA in order to promote direct contact between competent authorities (cf. 3.1.1. and 4.1.1).

Recommendation No 2: Hungary should continue making efforts to improve its prison conditions in order to level them with the EU standards in line with the ECJ judgments so as to avoid refusals from other Member States as regards the surrender requested persons (cf. 3.3.1).

Recommendation No 3: Hungary should consider increasing the number of EJM contact points and should select them among qualified senior legal experts (cf. 3.4).

8.2.1.2. Regarding Framework Decision 2002/584/JHA

Recommendation No 4: Non-mandatory grounds for refusal in the execution of an EAW should not be made mandatory, in line with FD 2002/584/JHA. The aim is to promote the principle of mutual recognition and enable a court's discretion (cf. 3.3.3).

Recommendation No 5: The recommendations of the fourth round of mutual evaluation should be followed up (cf. 3.3.3).

8.2.1.3. Regarding Framework Decision 2008/909/JHA

Recommendation No 6: The decision on whether the transfer of the sentenced person would serve the interest of rehabilitation should lie exclusively with the issuing authority. The Ministry of Justice should not interfere in the course of the decision-making process (cf. 4.1.1.).

Recommendation No 7: The decision taken by the competent issuing court as regards the transfer of sentenced persons should be appealable as regards all judicial decisions. (cf. 4.1.2.1.)

Recommendation No 8: Hungarian authorities should continue with the practice initiated in January 2022 of considering issuing the certificate under FD 2008/909/JHA on their own initiative and not only at the request of the sentenced person. (cf. 4.3.2)

Recommendation No 9: Hungary should provide to all sentenced persons relevant information, including information on the right to be transferred. This should be in an accessible format and in the language of the concerned person. (cf. 4.9)



Recommendation No 10: Non-mandatory grounds for refusal as regards the execution of a transfer of sentenced persons should not be made mandatory, in line with FD 2008/909/JHA. The aim is to promote the principle of mutual recognition and enable a court's discretion (cf. 4.5).

8.2.1.4. Regarding the Framework Decisions 2008/947/JHA and 2009/829/JHA

Recommendation No 11: The issues of trust in and knowledge of other Member States' practice in pre-trial and post-trial supervision should be addressed and improved in Hungary. The aim is to increase the use of FDs 2008/947/JHA and 2009/829/JHA (cf. 7.2).

Recommendation No 12: Hungary should establish a central contact point for information, advice and guidance on the application of FD 2008/947/JHA for external and internal enquiries regarding possible transfers into and out of Hungary (cf. 6.4.).

Recommendation No 13: The transfer of supervision, in the interests of the execution of the court order and the rehabilitation of the person, should be pursued and facilitated, whenever possible (cf. 6.2).

Recommendation No 14: Hungary should appoint a Central Authority or body responsible for gathering and reporting data on persons in Hungary eligible for transfer under the terms of FD 2008/947/JHA and FD 2009/829/JHA (cf. 6.2).

Recommendation No 15: Hungary should appoint a Central Authority or body responsible for gathering and reporting data and information on the location of persons subject to supervision orders imposed by Hungarian Courts, but resident in other Member States, who would be eligible for transfer under the terms of FD 2008/947/JHA (cf. 6.2).

Recommendation No 16: The Probation Service's remote supervision by phone of persons living outside Hungary in other EU Member States should cease and such supervision should be transferred as provided for in FD 2008/947/JHA (cf. 6.2).

#### 8.2.1.5. Regarding training

Recommendation No 17: Lawyers dealing with mutual legal assistance matters should be appropriately trained to provide their clients with quality counsel. A handbook or guidelines could be drawn up for this purpose (cf. 3.4 and 3.5).

Recommendation No 18: All stakeholders involved in mutual recognition instruments should be brought together for shared training and networking events. The aim is to enhance cooperation, mutual trust and understanding as regards differences of perspective (cf. 3.5).

Recommendation No 19: Training focused on FDs 2008/947/JHA and 2009/829/JHA should be organised for all stakeholders (judges, prosecutors, lawyers and probation officers). This would promote knowledge and enhance cooperation, as well as enhance mutual trust, knowledge and the use of such instruments (cf. 6.3 and 7.3).

Recommendation No 20: Hungarian experts should increase their participation in the various European criminal justice professional networks and projects supporting the application of FD 2008/947/JHA (cf. 6.3).

Recommendation No 21: Awareness among, and the training of, Probation Service staff directly involved in supervision should be enhanced as regards the application of FD 2008/947/JHA. The aim is to improve prospects of social rehabilitation (cf. 6.3).

Recommendation No 22: General information leaflets, social media and information packs on FDs 2008/947/JHA and FD 2009/829/JHA, in the supervised person's language, should be developed and distributed to eligible persons supervised by the Probation Service in Hungary, as well as to eligible persons in other Member States. This would promote knowledge, as well as enhance trust and confidence in supervision practice (cf. 6.3).

### 8.2.2. *Recommendations to other Member States*

Recommendation No 23: Member States, as executing authorities, should take into account the prison conditions as laid down by the ECJ, in accordance with the ECHR, to ascertain a risk of inhuman or degrading treatment. Higher standards should not give rise to a refusal to surrender (cf. 3.3.1).

Recommendation No 24: Information on prison conditions should only be requested by the executing Member State, and not by transit countries (cf. 3.4).

Recommendation No 25: Wherever possible, it is vital that the executing State takes over the investigation or the execution of the sentence after the surrender of a person is refused on the grounds of prison conditions. This would avoid impunity (cf. 3.3.1).

Recommendation No 26: Competent issuing authorities should execute requests for additional information with due regard to the deadlines set by the executing authorities in order to avoid unnecessary delays (cf. 3.4).

Recommendation No 27: Competent issuing authorities should always fill in certificates in a comprehensive manner (cf. 3.4).

Recommendation No 28: Executing authorities should always inform the issuing authority about the period of detention spent in their State at the time when the requested person is actually surrendered to the issuing Member State (cf. 3.4). Information whether the rule of speciality is applicable would also be highly welcomed.

Recommendation No 29: Where the court hearing has to be conducted via video link, it is of utmost importance that this not an obstacle for the right of defence and that private interview of the defendant and his/her lawyer should always be granted (cf. 3.4).

Recommendation No 30: The competent executing authorities for FD 2008/909/JHA should consider, on a case-by-case basis, whether the translation of the full text of a sentence or the translation of only the relevant parts thereof is needed. The aim is to save resources and time (cf. 4.2).

Recommendation No 31: When forwarding the certificate under FD 2008/909/JHA, issuing authorities should always attach the document containing the opinion of the sentenced person (cf. 4.3.2).

Recommendation No 32: Competent executing authorities should take due account of the obligations to inform the issuing authority of the decisions taken in the course of the execution of the certificates under FD 2008/909/JHA. This relates, in particular, to difficulties in complying with deadlines or with the beginning and end of the conditional release period (cf. 4.7 and 4.9).

Recommendation No 33: The transfer of the supervision of eligible persons, in the interests of the execution of the court order and the rehabilitation of the person, as provided for in FD 2008/947/JHA, should be promoted and facilitated, whenever possible (cf. 6.2).

Recommendation No 34: The establishing of a SPOC for enquiries as regards FD 2008/947/JHA (supporting the competent authorities) in each Member State would provide an accessible local source of knowledge and expert guidance for practitioners. This would also facilitate international enquiries, prior to the submission of applications to the relevant Competent Authority. The aim is to facilitate social rehabilitation (cf. 6.4).

Recommendation No 35: Member States should regularly update the EJM contact points list (cf. 3.4).

Recommendation No 36: Member States should put in place specific rules on the supervision of the curfew (c.f. 3.5.2).

### *8.2.3. Recommendations to the European Union and its institutions*

Recommendation No 37: A Handbook containing the most relevant features of all national systems in the context of practical surrender procedures would help SIRENE offices and other authorities to better understand the practical application of the instruments in all Member States (cf. 3.4).

Recommendation No 38: Harmonising criminal typologies and penalties would be advisable. The aim is to facilitate the application of the mutual recognition principle. This would avoid problems in the adaptation process and prevent the withdrawal of certificates under FD 2008/909/JHA (cf. 4.4).

Recommendation No 39: The Commission should consider drafting a document and other media content and material which would communicate all the requisite information on the rights of the sentenced persons. This would help protect the rights of these persons (cf. 4.9 and 6.3).

Recommendation No 40: A (professional/legal) Handbook with step-by-step guidance on the application and implementations processes for FDs 2008/947/JHA and 2009/829/JHA would be an important resource for practitioners, particularly in cases where applications are infrequent and experience is limited (cf. 6.3).

Recommendation No 41: A central data and information gathering and reporting office should be established to assemble and regularly publish data and information on the use and implementation of FDs 2008/947/JHA and 2009/829/JHA across all EU Member States (cf. 6.3.)

Recommendation No 42: Consideration should be given to the development of a common and shared definition of the requirements for an EU citizen to be recognised as resident in a Member State for the purposes of FD 2002/584/JHA. (cf. 3.5.8)

### 8.3. Best practices

This section will include a list of best practices to be adopted by other Member States.

The Member States:

1. are encouraged to compile all mutual recognition instruments in the same Act. Reference is made here to Act CLXXX of 2012. This approach facilitates access, knowledge and use of such instruments (cf. 3.6).
2. are encouraged to follow the Hungarian system on flagging, as the processes are regulated in Article 24 of Act CLXXX of 2012 which provides for judicial decision, control or supervision of any decision taken in this regard (c.f. 3.5.7.).
3. are encouraged to create a centralized system for the execution of mutual recognition instruments, as is the case for the EAW orin relation to the transfer of sentenced persons. This would help ensure specialization of judges and prosecutors and consistency in judicial decisions with regard to the execution of such instruments. Reference is made here to the practice in Hungary (cf. 3.1 and 4.1).
4. are encouraged to follow the Hungarian system which is very flexible as regards other languages: English, French or German are accepted for the execution of EAWs (cf. 3.4).
5. are encouraged to follow the efficient Hungarian system where all police units dealing with International matters (SIRENE, Europol national unit, Interpol national unit) are under the same organizational umbrella and are encouraged to create a SPOC for incoming requests or notifications (cf. 3.4).
6. are encouraged to appoint specialized judges and prosecutors to the different regional districts to support their colleagues at the different levels of the judiciary and the prosecution service. Reference is made here to the practice in Hungary (cf. 3.4.).

**11-15 October 2021, Budapest**

**Day 1: Monday, 11 October 2021**

Arrival of the evaluation team

Internal meeting of the evaluation team

**Day 2: Tuesday, 12 October 2021**

9:00 Meeting with the evaluation team at the hotel, escort to the Ministry of Justice

9:30 - 9:40 Reception and greeting of the evaluation team

9:45 - 12:30 (Coffee break 11.00-11.30)

- Review of the agenda of the week

- Role and tasks of the Ministry of Justice

12:30 - 14:00 Lunch organised by the host

14:30 - 16:00 Meeting with the Hungarian Bar Association

16:00 - 17:00 Internal meeting of the evaluation team

### **Day 3: Wednesday, 13 October 2021**

9:30 Appointment with the evaluation team at the hotel, escort to the Office of the Prosecutor General / Chief Prosecution Office of the Capital

10:00 - 12:00 Office of the Prosecutor General / Chief Prosecution Office of the Capital

12:00 - 14:00 Lunch organised by the host

14:30 - 16:00 : INTERPOL / SIRENE National Central Bureau

16:30 - 17:30 Internal meeting of the evaluation team

### **Day 4 Thursday, 14 October 2021**

9:30 Meeting with the evaluation team at the hotel, escort to the Hungarian Academy of Justice

10:00 - 12:30 Hungarian Academy of Justice

13:00 - 14:30 Lunch organised by the host

After 15.00 Internal meeting of the evaluation team

### **Day 5 Friday, 15 October 2021**

9:30 Meeting with the evaluation team at the hotel, escort to the Ministry of Justice

10:00 - 12:00 Closing consultation in the Ministry of Justice with the participation of the Office of the Prosecutor General and the National Office for the Judiciary



## ANNEX B: PERSONS INTERVIEWED/MET

*Venue: 12-10-2021, morning, Ministry of Justice*

Person interviewed/met	Organisation represented
Tünde FORMAN	Head of Department of International Criminal Law, Ministry of Justice
Borbála GARAI	Legal, expert, Ministry of Justice
Nikoletta VÖRÖS	Legal expert, Ministry of Justice

*Venue: 12-10-2021, afternoon, Hungarian Bar Association*

Person interviewed/met	Organisation represented
Balázs GYALOG	Solicitor, Hungarian Bar Association

*Venue: 13-10-2021, morning, Office of the Prosecutor General*

Person interviewed/met	Organisation represented
Mária RAHÓI	Prosecutor, Office of the Prosecutor General
Andrea RÉPÁSI	Prosecutor, Prosecutor's Office of Budapest
Richárd SZOBOSZLAI-SZÁSZ	Prosecutor, Head of Department, Office of the Prosecutor General
Tünde SZÉKELY-SIMON	Prosecutor, Prosecutor's Office of Budapest

*Venue: 13-10-2021, afternoon, INTERPOL SIRENE*

Person interviewed/met	Organisation represented
Gergely MOGYORÓDI	Head of Department for Cooperation in Criminal Matters

*Venue: 14-10-2021, Hungarian Academy of Justice*

Person interviewed/met	Organisation represented
Judit SZABÓ	Judge, Budapest Capital Regional Court
Tamás MATUSIK	Judge, Central District Court of Buda
Sándor BERCZELI	Judge, Central District Court of Pest
Ildikó CSÁKI	Probation Service

*Venue: 15-10-2021, Ministry of Justice*

Person interviewed/met	Organization represented
Tünde FORMAN	Head of Department of International Criminal Law, Ministry of Justice
Borbála GARAI	Legal expert, Ministry of Justice
Nikoletta Vörös	Legal expert, Ministry of Justice
Tamás MATUSIK	Judge, Central District Court of Buda
Sándor BERCZELI	Judge, Central District Court of Pest
Balázs GARAMVÖLGYI	Prosecutor, Office of the Prosecutor General


## ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	HUNGARIAN OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CATS		Coordinating Committee in the area of police and judicial cooperation in criminal matters
CEP		Confederation of European Probation
CJEU		Court of Justice of the European Union
COVID		Corona Virus Disease
CPT		European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment
EAW		European arrest warrant
ECHR		European Court of Human Rights
ECJ		European Court of Justice (Court of Justice of the European Union)
EIO		European Investigation Order
EJN		European Judicial Network
EJTN		European Judicial Training Network
ELAN		European Law Advisor's Network
ERA		Academy of European Law
ESO		European Supervision Order
EU		European Union
FD		Framework Decision

GSC		General Secretariat of the Council
ICCM		International Cooperation in Criminal Matters
ILECC	NEBEK	International Law Enforcement Cooperation Centre
JHA		Justice and Home Affairs
SIRENE		Supplementary Information Request at the National Entries
SIS		Schengen Information System
SPOC		Single Point of Contact
UN		United Nations

---

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

<p><b>HUNGARY</b></p> 	
<p><b>EAW</b></p> <ul style="list-style-type: none"> <li>- issuing of EAWs <i>(suspension; impact on EAWs already issued; prioritisation in issuing new EAWs + criteria)</i></li> <li>- execution and postponement of the actual surrender <i>(legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding)</i></li> <li>-expected resumption of surrenders</li> <li>-transit</li> </ul>	<p><b>Impact on the issuance of EAWs</b> EAWs are being issued in a normal manner.</p> <p><b>Impact on the execution of EAWs and postponement of the actual surrender</b> Decisions on the execution of EAWs are normally made under the time limits stipulated by Article 17 of the EAW FD. Most trials are being held via video conference. If the issuing Member State cannot take over the requested person within the time limits stipulated in the EAW FD because of the lower number of available flights as a result of the pandemic, it is still possible to postpone the surrender on the basis of Article 23(3). Postponement is also possible under Article 23(4) in the event that the person involved falls ill.</p> <p><b>Impact on the execution of surrenders by air</b> As traffic is still relatively limited, it is not always possible to organise surrenders within the time limit stipulated in Article 17(2) and 23(2).</p> <p><b>Legal basis for postponing the actual surrender</b> Articles 23(3) and 23(4) EAW FD</p> <p><b>Adequacy of these provisions</b> The executing judicial authorities are consistently applying these provisions.</p> <p><b>Releases of requested persons following the postponement of the surrender</b> No such case encountered during the last year.</p> <p><b>Measures to prevent released persons from absconding</b> For the executing Member State, if there is no ground for refusal of the EAW but the surrender cannot be executed on the basis of Article 23(3) or 23(4), arrested persons remain under arrest or under criminal supervision (house arrest with electronic surveillance) to prevent them from absconding.</p> <p><b>Expected resuming of the surrender</b> Surrenders can be executed in a normal manner.</p> <p><b>Transit</b> Transit through Hungary can be executed in a normal manner.</p>

<p><b>Precautionary measures for surrender,</b></p>	<p><b>Precautionary measures</b> Officials of another Member State or a third State can enter the territory of Hungary without any restriction. No quarantine prescribed, no compulsory medical check-up. The person to be surrendered/extradited/transited is not</p>
<p><b>extradition and transfer</b> - COVID19 test - health certificate - quarantine - face masks</p>	<p>submitted to a medical check-up. However, for safety reasons, the persons who were surrendered to Hungary or have been transferred to Hungary will be isolated from the other detainees / convicted persons for a period of two weeks.</p> <p><b>Need (or not) for further guidance on precautionary measures</b> As the pandemic situation is worsening again, regularly updated guidance on precautionary measures might still be useful but only in the event that there is a change in a Member State's practices in the field of criminalcooperation.</p>
<p><b>Extradition</b> -suspension -legal basis -third countries involved -expected durationof suspension</p>	<p><b>Impact on extradition procedures</b> In connection with extradition to third countries, trials continue to be held and extradition can be ordered in a normal manner. Trials are held via video conference in most cases.</p> <p><b>Legal basis for postponing the actual surrender</b> Article 18(5) of the European Convention on Extradition. There are similar provisions in bilateral treaties as well. If there is identifiable no ground for refusal, the requested person must either remain under extradition arrest or under criminal supervision (house arrest with electronic surveillance) in order to prevent them from absconding.</p> <p><b>Need (or not) for further exchange of information</b> Information regarding the impact of COVID-19 on extradition can be adequately exchanged with third countries bilaterally.</p> <p><b>Expected resuming of the extradition procedures</b> After the emergency security measures hindering the extradition are withdrawn, the requested person must be extradited to the requesting third country.</p>
<p><b>Transfer of sentenced persons</b> -prioritisation in issuance /execution</p>	<p><b>Impact on the issuing of requests for transfer of sentenced persons</b> No restrictions are being applied.</p> <p><b>Impact on the execution of transfer of sentenced persons</b> No restrictions are being applied, transfers can be executed normally.</p>
<p><b>SIRENE Bureaux</b> -working of SIS bureau -exchange of information with other SIS Bureaux</p>	<p><b>Impact on the working of the SIRENE Bureau</b> SIRENE Hungary is working normally, the pandemic situation has not affected the 24/7 operational capacity.</p> <p><b>Impact on the exchange of information with other SIRENE Bureaux</b> No severe impact detected.</p>

<b>EIO and MLA</b> -prioritisation in issuance/execution -electronic transmission -whom to contact	<b>Impact on the issuing of EIOs and MLA requests</b> No obligatory prioritisation, no restrictions are being applied.  <b>Impact on the execution of EIOs and MLA requests</b> To be executed in a normal manner
	<b>Electronic transmission and contact details</b> EIOs/MLA requests must be sent by email to the addresses indicated in the EJM Atlas y, not via the central authority.
<b>Freezing and confiscation orders</b> -prioritisation in issuance/execution	All forms of judicial cooperation are being applied in a normal manner.
<b>JITs</b> -prioritisation and alternative telecommunication Solutions	All forms of judicial cooperation are being applied in a normal manner.
<b>Recommended channels for transmission of</b> -urgent requests -information exchange	The most effective channels in emergency cases are Eurojust and SIRENE. The EJM can also be useful for informing about the applicable emergency rules or practices of other Member States.
<b>Any other relevant information</b>	-