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Mutual Recognition in criminal matters

-technical examination of the acquis Chapter 24 Justice, freedom and Security

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Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

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EU instruments in criminal proceedings

Investigation	Prosecution	Trial	Sentence and execution
➢ Directive on **European Investigation Order** (EIO) - EUMS except IE,DK ➢ **Mutual Legal Assistance Agreements** (MLA) and **2000 MLA Convention** – with IE,DK and other countries ➢ FD on **European**	➢ Framework Decision (FD) on the **European Arrest Warrant** (EAW)	➢ FD on decisions rendered ***in absentia***	➢ FD on the **European Arrest Warrant** (EAW) ➢ FD on the **Transfer of Prisoners** ➢ FD on **Probation and Alternative Sanctions** ➢ FD on the execution of **orders freezing** property and evidence

➢ FD on **previous convictions**

➢ FD on the **Conflicts of jurisdiction**
➢ FD on **Joint investigation Teams** (JIT)

➢ **European Criminal Records Information System** (ECRIS)

Relevant in all phases

➢ Directive establishing minimum standards on **the rights, support and protection** of **victims of crime**
➢ Directive on **European Protection Order**
➢ **NEW** Regulation on mutual recognition on orders to freeze and confiscate assets (from 2020)
➢ Council Decision establishing **Eurojust** and Council Decision establishing a **European Judicial network** (EJN)

Until the final conviction, execution not included

➢ Directive on **the Right to interpretation and translation** in criminal proceedings, Directive on the **Right to information**
➢ Directive on the Right of **access to a lawyer,** Directive on the **Right to legal aid**
➢ Directive on the **Presumption of innocence,** Directive on **Procedural safeguards for children**

Existing Mutual Recognition Instruments

Obtaining criminal evidence

Directive 2014/41/EU ***on European Investigation Order***

Detention related instruments :

FD 2008/909/JHA on ***transfer of prisoners***

FD 2008/947/JHA on ***probation measures***

FD 2009/829/JHA on ***supervision order***

Recognition of judicial decisions

FD 2009/299/JHA FD on ***decisions rendered in absentia***

2008/675/JHA on ***previous convictions***

FD 2009/948/JHA on ***conflicts of jurisdiction***

FD 2005/214/JHA on ***financial penalties***

Confiscation and Freezing Of Property – NEW instrument to replace
FD 2003/577/JHA on ***freezing orders*** *and FD 2006/793/JHA on* ***confiscation orders***

FD on ***European Arrest Warrant***

Victims 'rights related (Ch23) - Directive 2011/99/EU on ***European Protection Order***

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MUTUAL RECOGNITION INSTRUMENTS RELATED TO DETENTION

FD 2009/829/JHA on supervision order

FD 2008/947/JHA on probation measures

FD 2008/909/JHA on transfer of prisoners

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Pre trial supervision measure?

Hans, who is a resident of (Member) State A is arrested and charged with an offence in (Member) State B. His trial will not start for 6 months. If he was a resident of State A, the judge would release him on bail and impose reporting to the police station. Judge is reluctant to do so because Hans lives in another State and has to return there while awaiting the trial. The judge fears that Hans will not attend the trial and may even flee.

...the Framework Decision 2009/829/JHA on European Supervision Order

Under the ESO, the judge can allow Hans to return home (State A) while imposing a reporting condition. It can ask the authorities in State A to ensure that Hans does report to the police station in accordance with the order of the State B ` court.

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Transfer of conditional sentence?

Anna is a national of (Member) State A but is on holiday in (Member) State B. She is convicted of an offence in State B and sentenced to carry out community service in lieu of a custodial sentence.

…the Framework Decision 2008/947/JHA on Probation Measures :

Anna can return to her home MS and the authorities of that MS are obliged to recognise the community sentence and to supervise Anna's execution of it.

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Transfer of prisoners?

Hans is a national (Member) State A where he habitually lives. He is convicted of an offence in (Member) State B and sentenced to 2 years in prison

...the Framework Decision 2008/909/JHA on transfer of prisoners:

The authorities of State B may return him to State A to serve the sentence without seeking his consent

General characteristics of the FDs

- System of **certificates**
- System of Competent Authorities (CAs)
- **Obligation to accept** a transfer, unless grounds for refusal apply
- **No double criminality check** for list of 32 offences
- **At the request** of the concerned person or one of the MS involved
- No obligation to transfer for the issuing MS (**no right to a transfer**)

General characteristics of the FDs

Strict time limits:

- 90 days (+ 30 days for the actual transfer of the prisoner),
- 60 days and 20 (+20 days in case of legal remedy)

Mutual recognition: not to re-examine the decision of the issuing MS

Adaptation of the sentence is only possible if the **nature** or **duration** of the sentence is incompatible with national law (e.g. a maximum penalty)

Social rehabilitation should always be assessed

Why to use them ?

- Reduce pre-trial detention of non-resident offenders (often abusive)
- Petty crimes committed by non-residents no longer left unpunished
- Positive side-effect: promotion and approximation of alternative sanctions
- Reduce overcrowding and reduce costs on prison budgets

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Practical information in the area of detention*:*

-European Organisation of Prison and Correctional Services (EuroPris) - http://www.europris.org/

- Confederation of European Probation (CEP) - http://www.cep-probation.org/

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Instrument of recognition of judicial decisions

FD 2009/299/JHA on **decisions rendered in absentia**

FD 2008/675/JHA on **previous convictions**

FD 2009/948/JHA on **conflicts of jurisdiction**

FD 2005/214/JHA on **financial penalties**

FD 2009/299/JHA on decisions rendered *in absentia*

- clear approach to recognition of decisions rendered where the person was not physically present at those proceedings (in absentia)
- enhances the **procedural rights of persons** subject to such criminal proceedings (*to receive official information of the date and place of the trial and to be informed that a decision on his case may be handed down if he does not appear for the trial*)
- this FD amended: FD on EAW, FD on detention, FD on Confiscation and FD on Financial Penalties
- transposition is inherent if the above FDs are transposed (use the consolidated versions)

FD 2008/675/JHA on previous convictions

In the context of new criminal proceedings, the national judge :

- **must consider** the **previous convictions** - handed down against the same person for different facts - *in another EU country*
- **under the same conditions as *domestic*** previous convictions (*principle of equivalence)*

To be considered on **pre-trial/ trial/ execution** stage

In relation to **applicable rules of procedure** concerning: provisional detention; definition of the offence; type and level of the sentence; rules governing the execution of the decision

FD 2009/948/JHA on conflicts of jurisdiction

- FD helps to solve *positive* conflicts of jurisdiction- parallel criminal proceedings concerning the same facts and the same person
- FD obliges the judges who believe that parallel proceedings is conducted elsewhere **to contact and consult** themselves in order to **prevent that it is continued**
- There are **no binding rules on allocation of jurisdiction**
- If no agreement = the case shall be **referred to Eurojust**

FD 2005/214/JHA on financial penalties

- Where a **fine is imposed on a non-resident** person who **fails to pay** the fine and then leaves the country…
- If final decision (no longer possible to appeal) the judge can transmit the fine directly to another EU country to have the fine recognised and **executed** there **without any further formality**
- Applies to all offences where fines can be imposed
- No dual criminality checks on 39 listed offences
- Some grounds for refusal (when the same person has already been judged for the same offence; immunity,etc)

FD 2005/214/JHA on financial penalties

Financial penalty **under FD =** an obligation to pay:
- sum of money on conviction of an offence;
- compensation for benefit of victims
- money for costs of court or administrative proceedings
- money to public fund or victim support organisation

! fine should be higher than EUR 70

- Financial penalty under FD **is NOT** :
- orders for the confiscation of proceeds of crime;
- orders having a civil nature (damages and restitution)