Council of the European Union

Brussels, 2 December 2022
(OR. en)

13190/1/22
REV 1

COPEN 340
DROIPEN 132
EVAL 20
JAI 1277
EUROJUST 90
EJN 35
CATS 58

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	**EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL EVALUATIONS** **9th round of mutual evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty** **REPORT ON THE NETHERLANDS**

ANNEX

EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL EVALUATIONS

9th round of mutual evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty

REPORT ON THE NETHERLANDS

Table of Contents

Table of Contents 3

1. EXECUTIVE SUMMARY 6

2. INTRODUCTION 15

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW) 18

3.1.1. Procedure when the Netherlands acts as an executing State 19

3.1.2. Procedure when the Netherlands acts as an issuing State 22

3.2. The principle of proportionality 23

3.3. Exchange of information 24

3.4. Grounds for refusal 27

3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention 27

3.4.2. Refusal in the event of a judgment in absentia 32

3.4.3. Other grounds for refusal 33

3.5. Further challenges 35

3.6. Statistics 36

3.7. Conclusion 37

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 38

4.1.1. Procedure when the Netherlands act as an executing State 39

4.1.2. Procedure when the Netherlands act as an issuing State 45

4.2. Documents required for recognising the judgment and executing the sentence 46

4.3. Criteria for assessing the facilitation of social rehabilitation 47

4.3.1. Exchange of information between the issuing State and the executing State 47

4.3.2. Opinion and notification of the sentenced person 50

4.4. Adaptation of the sentence 51
4.5. Grounds for non-recognition or non-enforcement 53
4.6. Partial recognition 54
4.7. Challenges relating to compliance with the deadline for recognition and enforcement 55
4.8. Law governing the enforcement of the sentence 56
4.9. Further challenges 59
4.10. Statistics 60
4.11. Conclusions 61

5. LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES 62
5.1. Problems relating to the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences 62
5.2. Conclusions 63

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS 64
6.1. Authorities competent for Framework Decision 2008/947/JHA 64
6.1.1. The procedure where the Netherlands acts as an executing State 65
6.1.1. The procedure where the Netherlands acts as an issuing State 67
6.2. Problems relating to the failure to apply Framework Decision 2008/947/JHA 69
6.3. Conclusions 75

7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO) 77
7.1. Authorities competent for Framework Decision 2009/829/JHA 77
7.1.1. The procedure where the Netherlands acts as an executing State 78
7.1.2. The procedure where the Netherlands acts as an issuing State 79
7.2. Problems relating to the failure to apply Framework Decision 2009/829/JHA 80
7.3. Conclusion 84
7.4. Bar Association 84

8. Training 87
8.1. Training relating to FDs 2002/584/JHA and 2008/909/JHA 87
8.2. Training relating to FDs 2008/947/JHA and 2009/829/JHA 88
8.3. Conclusions 90

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES 91
9.1. Suggestions by the Netherlands 91
9.2. Recommendations 92
9.2.1. Recommendations to the Netherlands 92
9.2.2. Recommendations to all Member States 93
9.3. Best practices 95

1. EXECUTIVE SUMMARY

The on-site visit was organised by the Dutch authorities in a professional way. The visit included meetings with almost all the relevant actors with responsibilities in the field of European judicial cooperation and in the implementation and operation of European policies. However, not being able to meet with the Arnhem-Leeuwarden Court of Appeal judges, responsible - to some extent - for applying 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, must be considered an organisational weakness. The Arnhem-Leeuwarden Court of Appeal provided experts with the information letter in which they shared some experiences and thoughts with the evaluation team; however, it cannot substitute the live meeting.

Representatives of the judicial authorities and administrative bodies selected to attend the meeting were highly professional and were open and sincere in their responses to the experts. Their sharing of experiences and additional thoughts with the evaluation team helped establish a comprehensive picture of the state of implementation and practice regarding the four relevant framework decisions.

Framework Decision 2002/584/JHA

The Framework Decision on the European Arrest Warrant ('FD EAW') has been implemented by the Surrender Act of 29 April 2004 (OLW - *Overleveringswet*) which has been amended several times since then. The jurisprudence of the CJEU in EAW cases, in particular, has led to various positive amendments of the law to eliminate deficiencies in the OLW.

When the Netherlands acts as the executing State, the District Court of Amsterdam is the executing judicial authority and is responsible for decisions on the execution of EAWs.

According to the Netherland's Surrender Act, no authority is designated as a central authority responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto. However, the International Centre for Mutual Legal Assistance (IRC) Amsterdam is competent for receiving and processing an EAW and bringing EAW cases before the District Court of Amsterdam.

The IRC is part of the Public Prosecutor's Office in Amsterdam. The IRC team includes specialised public prosecutors and legal assistants.

The surrender of a Dutch national may be permitted in so far as this has been requested for prosecution purposes, and there is an assurance that, after an unconditional custodial sentence has been rendered in the issuing Member State, the person will be allowed to undergo the punishment in the Netherlands. However, to be enforceable, the judgment must be final, i.e. no longer be subject to appeal. This also applies to foreign nationals who have resided lawfully in the Netherlands for at least five years without interruption.

The surrender of a Dutch national for execution of a sentence may be refused if the court considers that the enforcement of that sentence can be taken over.

It is mandatory to have a lawyer in incoming EAW cases.

If the wanted person consents to his/her immediate surrender, the court is the authority that decides on the surrender.

The OLW does not contain a rule that prescribes an assessment of the proportionality of an EAW. If an EAW meets the (minimum) requirements the court accepts it as proportionate.

Additional information is requested in more than 80% of cases. In principle, the District Court is responsible for requesting supplementary information, but the IRC Amsterdam has a practice of anticipating these requests, where possible.

It is a problem for the court to have to decide on the EAW within the 90 days' deadline under the amended OLW. An extension of the deadline is possible only in very limited situations (awaiting a judgment of the CJEU, or assessing in *concreto* or in *abstracto* the risk of violation of the Charter of Fundamental Rights of the EU). However, it was indicated by a Netherlands practitioners that this is the subject to further 'Re-evaluation on the Draft Bill on the reimplementation of European Criminal Law".

As regards grounds for refusal, detention conditions in EAW proceedings play a major role in respect of various Member States and can delay the decision for considerable periods of time.

When the District Court of Amsterdam establishes that there is a general, real danger of a violation of fundamental rights in the issuing Member State, it assesses on the basis of Article 4 of the Charter whether that danger may exist for the requested person.

The District Court has not denied any EAWs due to detention conditions. However, the treatment of Romanian EAWs in recent years has often led to the termination of the proceedings.

The number of refusals of EAWs on the grounds of an 'in absentia' judgment used to be high but since 1 April 2021, when the OLW was amended, this ground for refusal has been optional and the number of refusals has decreased considerably.

Other relevant grounds for refusal are the absence of double criminality and an expired limitation period for enforcement under the law of the requested Member State (Article 4(4) of FD 2002/584/JHA).

An EAW for execution concerning a non-listed offence has, according to the OLW, to meet two conditions cumulatively (sentence imposed for a period of at least four months for an offence which must carry a maximum penalty of at least twelve months in the issuing Member State). Recognising the alternative nature of the condition for issuing an EAW, the District Court of Amsterdam gave a conforming interpretation to the OLW: in the case of an execution of the EAW, only the requirement concerning the duration of the sentence imposed applies.

The practice of the competent District Court of Amsterdam to ask for preliminary rulings by the CJEU has led quite often to a huge backlog of cases because the questions submitted to the CJEU are relevant to many similar cases, so a final decision cannot be taken in any of these cases before the ECJ has rendered its judgment.

When the Netherlands acts as an issuing State the examining judge is competent for issuing the EAW.

The Fugitive Active Search Team - FAST (cooperation between the National Police and the Public Prosecutor's Office) takes care of the outgoing EAWs (search and detention, and provision of additional information to the executing authority).

It was suggested by Dutch practitioners that conferences on international cooperation should receive sufficient (financial) support, because knowing colleagues abroad could lead to better cooperation.

Offering training and fostering exchanges as the EJTN does, could enhance the use of mutual recognition instruments and increase mutual understanding.

Framework Decision 2008/909/JHA

Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('FD on custodial sentences') was implemented by the Netherlands in 2012, by virtue of the Mutual acknowledgement and execution of detention and probation sanctions Act (*Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties*), known as WETS. As introduced in domestic law, the procedure seems to involve a combination of judicial and administrative components. In addition to the courts and the prosecution service, the Ministry of Justice is involved in both issuing and executing the certificate. With regard to judicial authority, the Arnhem-Leeuwarden Court of Appeal is the territorially specialised body for acting in this area.

The court provides the Minister with a reasoned opinion on certain fundamental aspects of the case (grounds for refusal, double criminality and the qualification of the act under Dutch law and necessary adaptations to the imposed sentence). Afterwards, according to Article 2:12 of the WETS, the Minister (the IRC on behalf of the Minister) must decide on recognising of the judgment in line with the court opinion.

Where the Netherlands acts as an executing authority, the procedure is almost fully administrative. Even the court jurisdiction is strictly confined, so its activity in this field is not considered judicial. As a result, the Arnhem-Leeuwarden Court of Appeal has no competence to lodge the preliminary requests to the European Court of Justice. However, the Dutch authorities states, that the judgment/decision rendered by the Arnhem-Leeuwarden Court shall be taken into account by the Minister, while making the decision. In other words, the Arnhem-Leeuwarden Court's decision is actually (even if not technically) binding for the Minister. If so, the Arnhem-Leeuwarden Court should have full opportunity to turn to the CJEU with the preliminary request. According to Article 267 TFEU where a question concerning the validity and interpretation of acts of the EU law is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. The Arnhem-Leeuwarden Court, which is important stakeholder of the procedure under FD 2008/909, is deprived of this opportunity.

According to the Dutch authorities, in case the person concerned considers that the recognition of the judgment and enforcement in the Netherlands is unlawful, he is entitled to start proceedings before the civil court in the Hague, whether or not in summary proceedings. The power of this civil court to recognize the disputes against the government, if other legal protection is inadequate, has already been acknowledged by the Dutch Supreme Court. During this summary proceedings the civil court may lodge the preliminary request. However, it does not change the situation, that the Arnhem-Leeuwarden Court still has not this opportunity. If it is the court, and if its decision is binding for the Minister, this solution is clearly non-compliant with Article 267 TFUE. It must be deemed the weakness of the system.

When dealing with decisions to execute a sentence, the following criteria are used to decide whether to issue an EAW or a certificate for recognition of a judgment and execution of a sentence under FD 2008/909/JHA where a person is staying in, or is a national or a resident of the executing State: the nationality of the person involved, aspects of social rehabilitation, proportionality, and prevention of impunity are important aspects in this regard. The guiding principle for issuing a certificate for recognition of a judgment and execution of a sentence under FD 2008/909/JHA, is the social rehabilitation of the sentenced person in question.

When The Netherlands is executing Member State for an EAW issued for the execution of a sentence rendered in the issuing Member State a separate certificate pursuant to Council Framework Decision 2008/909/JHA is no longer required under Netherlands law in cases of refusal of surrender under Article 4(6) of Council Framework Decision 2002/584/JHA. The sentence can be executed in The Netherlands based on the information in the EAW.

If the Netherlands acts as an issuing State, the proceeding is mixed, both administrative and judicial.

Where the Netherlands acts as an issuing Member State, Dutch law does not contain any specific requirements as to whether or not the executing Member State is allowed to execute the sentence for which the surrender has been refused without a certificate under Council Framework Decision 2008/909/JHA.

In the context of this instrument, the Netherlands is open in its approach to language, accepting documents translated into Dutch and English.

The Netherlands seems to have a well-developed legal framework concerning the FD on custodial sentences, and some solutions, such as the abovementioned language policy, can definitely be considered best practice. The judicial and administrative staff working on cooperation in this field have a high level of professional knowledge, performance and dedication.

Framework Decision 2008/947/JHA

The IRC-North Holland, as the Netherlands competent authority ('CA'), has an established and impressive structure for efficient processing of applications under FD 2008/947/JHA. There is transparency in the process and evident good relations and cooperation between the IRC team and the *Reclassering Nederlands* (RN) International Office. The Netherlands authorities have benefited from their close relationship with the executing authority, the RN International Office and legal professionals. Through their experience of working together they have gathered valuable knowledge and a critical understanding of the limitations and deficiencies, in practice, of FD 2008/947/JHA.

The IRC and RN colleagues have been lead participants in the Confederation of European Probation (CEP) annual network meetings on FD 2008/947/JHA and FD 2009/829/JHA. The IRC system has been praised as a model of good practice for other jurisdictions.

The Netherlands authorities have initiated a good data-gathering process. It would be of considerable benefit if that data gathering model could be expanded and shared with other jurisdictions, so as to establish a comparable body of data and information in as many jurisdictions as possible across Europe, which could in turn enable analysis of trends, gaps and opportunities for informing planning and practice.

There is considerable further work to be done in the Netherlands on awareness raising, information dissemination, training and skilling among legal and supervision professionals and bodies. There is a particular challenge in disseminating information and raising awareness about FD 2008/947/JHA among relevant persons in the Netherlands and among Netherlands nationals and residents in other jurisdictions.

Considerable experience has been gathered and many lessons have been learned across Europe from the work of the IRC as the Netherlands competent authority, and its partners. They will be valuable experts in contributing to developing practice, increasing mutual trust and promoting the use of FD 2008/947/JHA in Europe.

Framework Decision 2009/829/JHA

The IRC-North Holland has an established and effective structure for efficient processing of applications under FD 2009/829/JHA. Centralising the competence for handling requests under FD 2009/829 JHA in a single office is very sensible. This specialisation enhances the knowledge and experience of dealing with incoming and outgoing requests and increases efficiency, effectiveness and speed.

This specialisation is also very important in view of the relatively low number of requests under FD 2009/829 JHA. Splitting up the competence regionally could lead to fragmented knowledge and experience and probably even to lower numbers of completed requests. The IRC model is an example of good practice that could be considered by other jurisdictions.

Raising awareness about FD 2009/829 JHA is of utmost importance for improving the number of requests. Further work should be done in the Netherlands on information dissemination, as well as training and skilling amongst judicial and other legal professional and training bodies. There is a particular challenge in disseminating information and raising awareness of FD 2009/829/JHA among relevant persons in the Netherlands, and among Netherlands nationals and residents in other jurisdictions.

Confidence in pre-trial supervision in other jurisdictions, trust in their authorities and effective remedies where problems arise should, over time, contribute to an increase in the use of FD 2009/829/JHA. That will in turn be a particular challenge for the training and information experts, as well as for the competent authorities, in the Netherlands and elsewhere, as they work together.

Training

Overall, there was a mixed experience of training and information dissemination across the four FDs examined in this evaluation. There is room for improvement, particularly in relation to awareness raising, information dissemination, skills and trust regarding FD 909, FD 829 and FD 947 among professionals and potential beneficiaries.

Regarding the European Arrest Warrant (FD 2002/584/JHA), there is a strong training and knowledge exchange programme led primarily by the SSR. However, there is some room for improvement in terms of wider dissemination of training and knowledge to other criminal justice professionals.

In relation to FD 2008/909/JHA, only limited structured training programmes are available. Training is dependent in large part on the work of the Department of International Transfer of Criminal Judgments of the Custodial Institutions Agency´(IOS) whose tasks do not, however, include training. An online education and training initiative similar to the PONT project (FDs 829 and 947) would be of particular value for FD 2008/909/JHA. Dissemination of knowledge, information and skills in relation to FD 2008/909/JHA among relevant criminal justice professionals and advisers should be an ongoing priority.

For Framework Decision 947/2008 and Framework Decision 829/2009 the importance of information dissemination, and also of training for legal and other professionals in the Netherlands has been highlighted in the evaluation. Increased awareness of the FDs and competence in their use will be valuable drivers.

The competent authority and RN partners have been active participants and contributors in cross-jurisdiction training with the CEP on FD 829 and FD 947 and have been acknowledged for their efficiency and expertise. As mentioned above, the PONT education and training project (https://probationobservatory.eu/), funded by EC DG Justice is a good resource for framework decisions 947/2008 and 829/2009 and should be promoted.

Continued training and development of expertise, confidence/trust and dissemination of knowledge among the criminal justice community will be critical in promoting awareness among potential beneficiaries of FDs 909, 829 and 947 and in promoting the use of those framework decisions.

2. INTRODUCTION

Through the adoption of Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

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.

Due 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 on 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 legal and operational links between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947 on probation and alternative measures and FD 2009/829 on the 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 evaluations round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also - and in particular - relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would help identify both shortcomings and areas for improvement, together with best practices to be shared between Member States, thus helping to ensure a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

More generally, promoting the coherent and effective implementation of this package of legal instruments to its full potential could make a significant contribution towards enhancing mutual trust among the Member States' judicial authorities and ensuring a better functioning of 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 to Member States which may not have implemented all aspects of the various instruments.

The Netherlands was the twenty-fourth Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended at the proposal of certain Member States and in the absence of any objections (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 have nominated experts with substantial practical knowledge in the field pursuant to a written request sent to delegations on Friday 17 May 2019 by the Secretariat of the Council of European Union.

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

The experts entrusted with the task of evaluating the Netherlands were Mr Rafal Kierzynka (Poland), Mr Joachim Ettenhofer (Germany), and Mr Gerry McNally (Ireland). Observers were also present: Ms Martina Hluštíková (Eurojust), Ms Jesca Bender (Commission), as well as Ms Maria Bačová from the General Secretariat of the Council.

This report was prepared by the team of experts with assistance from the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in the Netherlands between 8 and 10 March 2022, and on the Netherlands' detailed replies to the evaluation questionnaire and detailed answers to the ensuing follow-up questions.

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

The Act of 29 April 2004 (Surrender of Persons Act, *Overleveringswet*) implemented the Council Framework Decision on the European Arrest Warrant and the surrender procedures between the Member States of the European Union in the Netherlands. However, the Surrender Act has been changed several times, and the last amendments came force on 7 May 2021.

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

When the Netherlands acts as the executing State, the District Court of Amsterdam is the executing judicial authority and is responsible for decisions on the execution of EAWs issued by judicial authorities from other Member States. The *Officier van Justitie te Amsterdam* (Public Prosecutor in Amsterdam) at the International Centre for Mutual Legal Assistance ('IRC') is the central authority for receiving and processing the European Arrest Warrant (Framework Decision 584/2002) and bringing the EAW before the District Court of Amsterdam. The IRC has a practice of anticipating these requests, wherever possible. If, in the opinion of the Public Prosecutor, a European arrest warrant does not meet the requirements or additional information is needed, he/she gives the issuing judicial authority the opportunity to complete or correct it.

Originally, all Dutch public prosecutors (attached to a district court) were designated as the issuing judicial authority. However, as all members of the Dutch Public Prosecution Service are subject to specific instructions from the Minister of Justice and Security (Article 127 of the Law on the organisation of the courts), they do not have the required independence vis-à-vis the executive to be recognised as the issuing judicial authority. For those reasons, the Law on Surrender was amended with effect from 13 July 2019, and now it is only the examining judges of the District Court of Overijssel.

The Fugitive Active Search Team (FAST) of the National Public Prosecution Office deals with execution-EAWs. Thus, the FAST is competent to request the issuance of an EAW for sentences of which at least 120 days remain to be served" imposed on persons who do not have a known address in the Netherlands or who do have a known address in the Netherlands but were not apprehended within three months after they were flagged in the relevant system. FAST is located in Zwolle, and, consequently, requests for issuing an execution-EAW are sent by FAST only to the examining judge in the District Court of that area (District Court of Overijssel).However, in the pre-trial phase, every prosecutor in charge of a case for which an EAW needs to be issued may request the examining judge of the competent district court (i.e. the court to which the public prosecutor is attached) to issue the EAW as well as in the cases where a first instance judgment was rendered, but the judgment is not final yet, because either the requested person or the public prosecutor appealed it.

The Netherlands has not designated central authorities.

The Netherlands authorities involved in the EAW procedure generally use direct contacts with the competent authorities of the other Member States.

3.1.1. Procedure when the Netherlands acts as an executing State

The International Centre for Mutual Legal Assistance (IRC Amsterdam) is part of the Public Prosecutor's Office in Amsterdam and is responsible for receiving and handling incoming EAWs, which are heard and decided by the District Court of Amsterdam. The IRC team includes specialised public prosecutors and legal assistants. The large increase in incoming EAWs at the IRC Amsterdam, has increased the volume of work there. There has also been an increase in work as a result of rulings of the Court of Justice of the European Union.

The surrender of a Netherlands national may be permitted provided it has been requested for the purposes of a criminal investigation against him or her and subject to an assurance that, in respect of the acts for which surrender may be authorised if the person is sentenced to an unconditional custodial sentence in the issuing Member State, he or she will be allowed to serve this sentence in the Netherlands. This also applies to foreign nationals who, during the interrogation by the court, prove that they have resided lawfully in the Netherlands for at least five years without interruption, in so far as he can be prosecuted in the Netherlands for the facts on which the European arrest warrant is based and in so far as he is expected to be prosecuted in the Netherlands (Article 6(1) and 6(3) of the Surrender Act).

According to Article 7 of the Surrender Act, surrender may be permitted for:

a) a criminal investigation initiated by the authorities of the issuing Member State or the European Public Prosecutor's Office in respect of the suspicion that, in the opinion of the issuing judicial authority, the requested person is guilty of:

    1. an offence appointed under the law of the issuing State, which is also included in the list set out in Annex 1 to the law (which corresponds to Article 2 of the FD), and is punishable by a custodial sentence of at least three years under the law of the issuing Member State; or

    2. another offence punishable under both the law of the issuing State and that of the Netherlands and punishable by a custodial sentence of a maximum of at least twelve months under the law of the issuing Member State;

b) the execution of a custodial sentence of four months, or a longer duration, by the requested person in the territory of the issuing Member State for an offence referred to in paragraphs 1 or 2.

As regards the language regime, the Netherlands accepts certificates and documents translated into Dutch or English.

The surrender of a Dutch national to enforce a custodial sentence imposed on him or her by a final judgment in the issuing State may be refused if the court considers that the enforcement of that sentence can be taken over. In the event of a refusal to surrender, the court orders the execution of the custodial sentence imposed at the same time as the refusal. The provision also applies to foreign nationals, if two conditions are met (Art. 6a(9)) i.e., he/she during the interrogation by the court, proves that he has resided lawfully in the Netherlands for at least five years without interruption, in so far as he is expected not to lose his right of residence in the Netherlands as a result of the penalty or measure imposed. Any evidence must be submitted by the court in good time prior to the hearing.

When assessing a request for such a surrender, the court considers whether:

- there are grounds for refusal;
- the custodial sentence to be executed was imposed for an offence that is also punishable under Dutch law, and, if so, which offence this constitutes;
- whether the duration of the custodial sentence imposed gives rise to an adjustment and, if so, what type of adjustment.

Where additional information is required, the public prosecutor of IRC is responsible for requesting it (application of Article 15(2) FD EAW). The IRC has a practice of anticipating these requests where possible.

If additional information is required by the other Member State it is answered by the IRC (at the Public Prosecutor's Office in Amsterdam), as they are responsible for receiving and processing the incoming EAWs. Furthermore, prosecutors have exclusive power to institute proceedings and prosecute concerning international criminal cooperation, including the EAW.

It is mandatory to have a lawyer for incoming EAW cases. However, within the Amsterdam Bar Association, there is a list of specialised lawyers in EAW cases (approximately 25). Three of them are available 24/7 on call who take over the representation of a person in EAW cases. The person can waive that right but they must be advised of it.

If the wanted person consents to his immediate surrender, the District Court of Amsterdam decides on the surrender. If there is consent, the actual surrender will take place within approximately 10 days after the arrest.

If the wanted person does not consent to his/her surrender, the District Court of Amsterdam, Chamber for International Cooperation in Criminal Matters decides on the EAW. According to Dutch law the court will decide within 60 days after the arrest, and can extend this timeframe by 30 days.. After the decision on the EAW, the Amsterdam Prosecutor's Office will have 10 days to arrange for the actual surrender. If this time frame cannot be met, the period can be prolonged by 30 days.

No appeal is possible against a court decision on an EAW.

3.1.2. Procedure when the Netherlands acts as an issuing State

An EAW may be issued only for offences punishable by the law of the issuing Member State and punishable by a custodial sentence of up to a maximum of at least twelve months or if a sentence or measure has been imposed with a duration of at least four months.

If the whereabouts of the requested person is known, the EAW may be transmitted directly to the executing judicial authority in the Member State of residence except in cases where a Member State has designated a central authority for the transmission or receipt of EAWs.

The request to process an EAW is usually prepared by an assistant *(parketsecretaris)* to the public prosecutor (*officier van justitie)*, under the direction of the public prosecutor. The assistant fills in the EAW on the basis of the case-file and draws up a request that is submitted to the examining judge of the competent District Court who is the competent authority for issuing an EAW.

The Public Prosecutor's Office (through the Fugitive Active Search Team-FAST) handles outgoing EAWs for the purpose of executing a measure involving deprivation of liberty. FAST also takes care of the actual surrender from other countries once it is known in which country a requested convict is located. If a convicted person has a custodial sentence of 120 days or more and is not found in the Netherlands, FAST handles the international notification.

3.2. The principle of proportionality

The Surrender Act (an implementing act) does not contain any rule prescribing an assessment of the proportionality of an EAW. The District Court of Amsterdam and the Amsterdam Public Prosecution Office apply the concept of 'system proportionality' in this context.

In other words, if an EAW meets the (minimum) requirements (minimum penalty of 4 months), it is considered to be proportionate.

Only one case is known (from more than five years ago) where the District Court of Amsterdam refused an EAW due to lack of proportionality. However, this was an exceptional case; the person requested was terminally ill.

The principle of proportionality is taken into account when issuing an EAW. The severity of the crime determines whether an EAW is issued. In addition, the expected penalty and alternatives that can achieve the same goal but are less restrictive, such as the European Investigation Order (EIO), are considered before the transfer procedure begins.

In the fourth round of mutual evaluations, no recommendation was made to the Netherlands with regard to the proportionality test.

3.3. Exchange of information

As the executing State

Once the standard EAW form has been received, practitioners report that additional information is requested in more than 80% of cases. This mainly concerns the following situations:

- *In absentia* judgments and options for applications for retrial ;
- Number of offences (and in the case of the prosecution, the maximum sentence associated with each of those offences);
- Inadequate description of the facts (e.g. time and place, or details of behaviour are missing);
- Rule of law developments;
- Detention conditions;
- Return guarantee;
- Competence of issuing authorities (prosecutor);
- Elements important for assessing double criminality.

The legal advisers of the IRC Amsterdam request additional information directly from the issuing authority (through the application of Article 15(2) FD 584). The deadline is usually set between one and two weeks. If there is no response, a reminder is sent by e-mail or verbal contact is sought, if possible bearing in mind the language of the issuing country.

In emergency cases of where communication is difficult, the assistance of Eurojust or a known colleague in the country concerned (local liaison officer or EJN contact point) is called on.

Where requests for additional information are sent, in 70% of the cases a decision is made within the 90 days. In some instances, the 90 days' time limit is not followed because the additional **information was not obtained** or was not obtained on time. However, the most common reason for the delay has been in cases where the court of Amsterdam had made a preliminary reference to the CJEU that also influenced similar cases pending before the District Court of Amsterdam (Aranyosi v Caldararu; on detention conditions, Tupikas v Zdziasek/Dworzecki; on possible *in absentia* problems, etc.).

Since the amended law came into force on 1 April 2021, an extension of the time limit beyond 90 days is only allowed in 3 exhaustively defined situations[1]:

- the District Court of Amsterdam is awaiting a judgment by the Court of Justice of the European Union in response to a preliminary reference – either by the District Court itself or by another judicial authority – which is relevant to the case at hand. In such cases, the court may extend the time limit by a maximum period of 60 days each time until the Court of Justice has given its judgment and the District Court had handed down its own judgment (Article 22(4) of the Law on Surrender);
- the District Court of Amsterdam is in the process of assessing whether an *in abstracto* real risk of a violation of the EU Charter of Fundamental Rights exists. In such cases, the court may extend the time limit by a maximum period of 30 days each time until the District Court hands down its judgment (Article 22(5) of the Law on Surrender);
- the District Court of Amsterdam has decided to postpone its decision on the execution of the EAW on account of an *in concreto* real risk of a violation of the EU Charter of Fundamental Rights. In such cases, the court may extend the time limit by a maximum period of 60 days each time until the District Court renders its judgment (Article 22(6) of the Law on Surrender).

[1] From the country report for the Netherlands in the *ImprovEAW* project, written by Vincent Glerum and Hans Kijlstra (published in Renata Barbosa, Vincent Glerum, Hans Kijlstra, André Klip, Christina Peristeridou, Małgorzata Wąsek- Wiaderek & Adrian Zbiciak, *European Arrest Warrant: Practice in Greece, the Netherlands and Poland*, Boom Juridisch: The Hague 2022 (Maastricht Law Series 23)).

In cases not concerning these exhaustively defined situations, the District Court of Amsterdam may not extend the time limit of 90 days and, consequently, may not request supplementary information needed to decide on the execution of the EAW.

If the time limit of 90 days cannot be extended, the District Court is forced to take a decision on the execution of the EAW at the latest on the 90th day of the time limit.

In some cases, the District Court of Amsterdam was not able to extend the time limit because none of the exhaustively defined situations was applicable and consequently had to render a decision on the execution of an EAW, even though it did not have all the information necessary for such a decision. This may have led to refusals which could have been avoided if an extension of the time limit of 90 days had been permitted. Besides, in cases where the time limit of 90 days had already expired before the case comes before the District Court of Amsterdam, there is no legal basis for the continuation of detention based on the EAW.

As regards the necessary follow-up information, the IRC Amsterdam always provides information about the detention period in the Netherlands during the surrender procedure. This information is provided *ex officio* in a standard letter, with which a copy of the decision is sent to the issuing authority.

As the issuing State

In rare cases, information requested by the executing authorities has been considered 'unnecessary', e.g. Italy requested, in addition to the EAW, that all the rulings made in the relevant case be forwarded. Such requests are treated favourably, so the request from the Italian authorities was met. Sufficient knowledge and experience are available to respond quickly and promptly to additional questions. FAST always answers the questions within the specified time limit.

As regards necessary follow-up information, the information provided to FAST from abroad is generally good. This comes directly from the authorities or via Sirene.

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

As the executing State:

Detention conditions in EAW proceedings play a major role in respect of various Member States. In recent years, the District Court of Amsterdam has instructed the Public Prosecution Office to inquire about detention conditions in: Romania, Hungary, Lithuania, Italy, France, Greece, Portugal, the United Kingdom, Belgium, Sweden, Poland and Bulgaria.

Defences at the hearing concerning detention conditions have led to long delays. The District Court of Amsterdam initially grants an extra period in order to obtain the correct information from the issuing authority. If it takes a long time, the District Court will end the proceeding of the EAW. This often occurs with EAWs from Romania.

Assessment of the potential risk of the violation of fundamental rights

When the District Court of Amsterdam establishes that there is a general, real danger of a violation of fundamental rights in the issuing Member State, it assesses whether this danger also applies to the requested person on the basis of Article 4 of the Charter.

The District Court of Amsterdam assesses, as a first step, the potential risk of violation of fundamental rights in detention based on various sources, as explicitly mentioned in *Aranyosi & Caldararu*. Step one is used to determine a general real danger. The following sources are important for the District Court of Amsterdam:

1) CPT public statements and reports (note: the topicality of these reports is important);
2) United Nations or Council of Europe documents;

3) Judgments of the ECHR. However, these are often considered not to be sufficiently up to date. However, these are often considered not to be sufficiently up to date, since all national legal remedies must first be exhausted and the judgment before the ECHR takes an average of 3 years.. If many judgments have been delivered by the ECHR, this may again be taken into account in the assessment by the Court of Justice. The Court of Justice also attaches importance to the judgment of the ECHR regarding *Rezmives & others* (reason for questions about Romanian detention conditions).
4) Reports from non-governmental human rights organisations, e.g. APADOR-CH in the Romanian case, Court of Justice Amsterdam, 2 May 2016, ECLI: NL: RBAMS: 2016: 2629, r.o. 6.3. These reports have a supporting role.
5) Reports of the Ombudsman: Court of Justice Amsterdam, 6 October 2016, ECLI: NL: RBAMS: 2016: 6316, r.o. 8. With regard to Portugal, this report identified a general danger.
6) 6) However, the District Court of Amsterdam Court of Justice has also occasionally reopened an investigation ex officio after taking note of newspaper reports about warden strikes: District Court of Amsterdam Court of Justice Amsterdam,, 7 June 2016, ECLI: NL: RBAMS: 2016: 3409, r.o. 8. This type of research also has a more supportive role.
7) Information from authorities of the issuing Member State and also from authorities of other (non-issuing) Member States.

As sources of information for retrieving and assessing relevant information on general detention conditions and detention conditions in the issuing Member State in specific cases, CPT reports are prioritised. ECHR rulings, rulings of other Member States, reports from NGOs, country reports from foreign affairs sources are also taken into account.

Advisors also provide (newspaper) articles and messages from foreign colleagues.

The nature of the information (i.e. type of questions asked) requested by the Netherlands executing authorities to assess whether there is a risk of inhuman or degrading treatment - as a second step - depends on the defects found (in the above-mentioned sources).

The District Court of Amsterdam requested the following information, inter alia, from the issuing judicial authorities in the context of step 2 of the *Aranyosi and Căldăraru* test (with regard to both prosecution- and execution-EAWs since in both cases the requested person would be detained after surrender).

- Information about detention conditions such as:
  - square meters of living space;
  - duration of the detention;
  - duration of stay inside and outside the prison cell;
  - state of the sanitation facilities;
  - recreational, educational and work facilities;
- Information in which prison the requested person would be detained after his/her surrender.
- Information about the duration of the stay in a specific prison.

Assigned deadlines for requesting additional information or guarantees from issuing States:

A period of two weeks is observed in principle for a request for additional information. However, if the case is scheduled for a hearing within two weeks, the issuing State will be requested to provide the requested information as soon as possible, but no later than several days before the hearing.

Experience shows that issuing authorities generally adhere to deadlines.

In case of non-compliance, there will be a reminder by e-mail or in case of urgency contact is made by telephone. Contact is sometimes made via the Liaison Officer, via Eurojust or via an EJN contact point.

The Netherlands has no experience with diplomatic assurances.

The District Court of Amsterdam established in a number of cases that the requested person would run a real risk of being exposed to violation of fundamental rights. In some cases such a real risk was excluded within a reasonable time. In cases in which such a real risk was not excluded within a reasonable time, the Court decided to bring the procedure to an end, i.e. to declare the request of the prosecutor to process the EAW inadmissible.

With regard to guarantees given when applying step 2 of the test, the following approaches of the District Court of Amsterdam can be identified.

- In some cases, the District Court did not rely on a mere guarantee that the detention conditions would comply with Article 4 of the Charter and/or did not rely on general information, because the guarantee/information was not deemed to be sufficiently concrete to base the assessment in step 2 on. Relying only on such a guarantee and such information was considered not to be in line with the *Aranyosi and Căldăraru* test which requires a specific and precise assessment in step 2 in view of the establishment of a real risk in step 1.
- In some cases, the District Court did rely on a guarantee that contained information that was deemed to be sufficiently concrete to base the assessment in step 2 on.
- In some cases, the District Court did rely on a guarantee that a requested person would not be detained in a facility with conditions that did not comply with Article 4 of the Charter
- In some cases, the District Court did rely on a guarantee that a requested person would be detained (most likely) in a facility regarding which no in *abstracto* real risk was established when applying step 1.
- Some of the guarantees were given with regard to a specific requested person. Others were given with regard to unspecified requested persons who are in the same situation (e.g. the guarantee that all requested persons would (not) be detained in a specific facility).

The District Court of Amsterdam has encountered a few cases where a guarantee was initially not honoured (because the prison authorities were unaware of the guarantee). However, when the IRC intervened at the request of the person concerned, the guarantee was complied with.

In one case, the authorities of the issuing Member State did not honour the guarantee initially. However, when the surrendered person's legal counsel in the issuing Member State drew their attention to the guarantee, the surrendered person was placed in a cell that did comply with that guarantee.

There is no system in place to monitor compliance with guarantees.

The **District Court has not denied any EAWs** due to the detention conditions. However, the treatment of the Romanian EAWs in recent years has often led to the termination of the proceedings. Until the situation in the Romanian detention centres improved this has often hampered the EAW proceedings.

In particular, the semi-open regime was an obstacle for the District Court of Amsterdam. The problem was that the number of square meters available per prisoner in that regime was less than 3. The request of the prosecutor to process the EAW was then declared inadmissible.

Dozens of proceedings regarding Romanian EAWs have not resulted in surrender in recent years.

Finding alternative solutions to avoiding impunity

The Public Prosecution Office Amsterdam is not in favour of refusal of surrender to a Member State due to detention conditions and then offering an alternative (such as taking over execution of the punishment or taking over criminal proceedings).

As the issuing State:

The Netherlands as an issuing State has not been asked questions about detention conditions or to provide guarantees.

3.4.2. Refusal in the event of a judgment in absentia

Many problems have been experienced since the entry into force of FD 2009/299.

Prior to 1 April 2021, the number of refusals of EAWs with regard to an '*in absentia*' judgment has risen sharply. This increase can first be explained by the rulings of the Court of Justice of the EU in the *Dworzecki, Zdiaszek and Tupikas* cases. These rulings have made the assessment of the grounds for refusal very complex but also provide a useful clarification on how to apply the national legislation adopted to transpose the FD.

The impact of the *Tupikas, Zdziaszek and Ardic* judgments have certainly led to an increase in requests for additional information. The impact of the Tupikas, Zdziaszek and Ardic judgments has increased requests for additional information, which in some cases prevented the deadlines of Article 17 from being met.

The optional ground for refusal concerning judgments *in absentia* was originally implemented in The Netherlands as a mandatory ground for refusal[2]. As from 1 April 2021 on which date the law on surrender (OLW) was amended, this changed. The ground for refusal is now an optional one and the number of refusals has decreased considerably.

Furthermore, the Dutch default system differs from that in other EU Member States, including (and in particular) Germany. More than one Dutch EAW has been rejected on the ground that it was a default judgment. This also relates to cases where is only a lawyer present and the judgment is therefore a contradictory one under Dutch law.

[2] Article 12 of old Act:
'Surrender shall not be allowed if the European arrest warrant concerns execution of a judgment given in absentia without the suspect being summoned in person or otherwise personally notified of the date and place of the proceedings at the session, unless the issuing judicial authority gives sufficient guarantee that the requested person will, after surrender, be given the opportunity to apply for and be present at a retrial'.

The issuing authorities must provide information on the proceedings resulting in the final sentence. Nevertheless, these authorities often only provide information about parts of the proceedings. And information about appeals or cumulative sentences is not provided. Many issuing authorities appear not to be sufficiently aware of the required information.

Furthermore, issuing authorities often state legal qualifications in the EAW under section d), whereas it would be better to actually describe how a judgment has been reached.

3.4.3. Other grounds for refusal

An EAW for execution concerning a non-listed offence has according to Article7 (1) of the OLW to meet two conditions cumulatively (the sentence imposed has to be for at least four months and the non-listed offence for which the sentence was imposed has to carry a maximum penalty of at least twelve months in the issuing Member State), whereas Article 2(1) of FD 2002/584/JHA clearly sets alternative conditions for EAWs for prosecution and for execution, respectively. However, the District Court of Amsterdam interprets the provision in conformity with FD 2002/584/JHA, where the condition concerning the maximum sentence in the issuing Member State and the condition concerning the duration of the sentence imposed are alternatives.

Pursuant to Article 26(4) of the OLW, if the requested person states that he or she is not guilty of the offences for which his/her surrender is sought, he or she must prove his or her innocence at the hearing and the executing judicial authority must examine his or her statement. If the executing judicial authority finds that the requested person cannot be guilty of the offences for which surrender is sought – i.e. that it is impossible that he or she committed those offences –, pursuant to Article 28(2) of the OLW the executing judicial authority must refuse to execute the EAW. The District Court of Amsterdam recently recognised that Articles 26(4) and 28(2) of the OLW are not in conformity with FD 2002/584/JHA. Since a compliant interpretation of those provisions - i.e. an interpretation that does away with those provisions - would be *contra legem*, the District Court held, instead, that it had previously interpreted and would in future continue to interpret those provisions strictly, thus reducing their possible application and thereby reducing possible deviations from the framework decision.

According to the strict interpretation, the requested person is required to show that he or she cannot possibly have committed the offence mentioned in the EAW. Merely proffering an alibi does not suffice. As a rule, producing defence witnesses or written statements of defence witnesses will not suffice either.

As regards challenges in respect of other grounds for refusal, e.g. *ne bis in idem* (particularly with regard to the assessment of the 'same acts' and 'final judgment' elements) or double criminality, two grounds for refusal (in addition to the default ground) are often invoked:

1. Absence of double criminality.
2. The limitation period for enforcement has expired under the law of the requested country. Compared to other EU Member States, The Netherlands has relatively (very) long or even no limitation periods for certain offences.

As regards grounds for refusal *ne bis in idem* has so far not caused any problems.

Regarding the ground for refusal on lack of double criminality, as issuing authorities, the Netherlands authorities stated that they provide a factual account of the punished conduct so that the executing authority has sufficient information to check the criminal nature under its own relevant criminal law.

In relation to incoming EAWs a clear picture has emerged over the years of offences that are not punishable in the Netherlands, but are punished in other Member States. The description of the facts of the case is usually not the problem.

As regards the impact of the extensive jurisprudence of the CJEU on the FD EAW, the Netherlands judicial authorities have initiated 24 preliminary rulings by the District Court of Amsterdam since 2015.

These procedures often arose as the OLW had not been implemented in accordance with the framework decision. The jurisprudence of the CJEU led to the amended version of the OLW of 1 April 2021.

3.5. Further challenges

Organising transit

Every year, the Netherlands receives around 300 requests for transit pursuant to Article 25 FD EAW (329 in 2017, 237 in 2018 and 241 in 2019). The majority concern requests from Romania. In almost all cases it concerns transit at airports, and only rarely land transit.

Receiving such a request at very short notice in view of the requested transit date can cause problems. The Royal Netherlands Marechaussee at the airports must be able to schedule such a transit well in advance and free up capacity. Overall, the experience has been good. Cooperation with the Marechaussee is going well.

Other legal or practical problems related to the practical application of the EAW:

A review of an EAW is now more complicated than a review of an extradition request. According to the IRC, a testing of detention conditions, powers of issuing authorities and fair trial requirements is very complicated. However, the District Court does not endorse this view at all.

Suggestions on the improvement of EAW procedures and cooperation:

Experience has shown that when colleagues are known in the other Member State, cooperation runs more smoothly. If you have a contact person in the other country who speaks the English language, barriers can sometimes be removed.

That is why international conferences should take place more frequently and institutions such as the ERA in Trier should receive sufficient (financial) support.

The instruments of mutual recognition will only be effective if the practitioner uses the instruments frequently and successfully.

This can be stimulated by drawing more attention to these instruments in seminars, and by offering training and supporting exchanges as the EJTN does, so as to increase mutual understanding of specific barriers and challenges of local origin.

3.6. Statistics

Outgoing EAWs:

In 2019, 2020 and 2021 there was an average of 200 outgoing EAWs.

2019: 88 transfers carried out; 15 EAWs rejected

2020: 67 transfers carried out; 16 EAWs rejected

2021: 47 transfers carried out; 10 EAWs rejected

Decreasing trend due to the COVID-19 pandemic.

Reasons for rejection:

- sentence has expired in the executing State;
- no double criminality;
- convict stays abroad for a longer time. Mostly, this leads to transfer of the sentence;
- Dutch sentence imposed for different criminal offences;
- Not a criminal offence in the Netherlands;
- Dutch procedure differs from procedure in foreign country; for example: Germany rejected an EAW because the convict was not present at the court of appeal.

Incoming EAWs:

Number of incoming EAWs: 2018 - 928, 2019 - 1077, 2020 - 947

Simplified procedure: 2018 - 66, 2019 - 86, 2020 - 71

Surrender granted: 2018 - 560, 2019 - 502, 2020 - 405

Surrender rejected: 2018 - 114, 2019 - 143, 2020 - 80

Backlog: The practice of the competent District Court of Amsterdam to ask for preliminary rulings of the CJEU (24 preliminary rulings initiated since 2015) has quite often led to a huge backlog of cases as the questions submitted to the CJEU are relevant for many similar cases, so a final decision has not been possible in any of the cases before the ECJ has delivered its judgment.

3.7. Conclusion

The jurisprudence of the CJEU in EAW cases has led to *various positive* amendments of the respective law of the Netherlands. Th*is positive* effort to eliminate deficiencies in the OLW should be continued.

For example:

a) the requirements of Article 7(1) of the OLW regarding EAWs for execution concerning non-listed offences (sentence imposed has to be for at least four months and the non-listed offence has to carry a maximum penalty of at least twelve months) might be changed.
b) The time limits in Article 22 should be reworked as they could lead to refusals which could have been avoided if an extension of the time limit of 90 days were permitted.

The practice whereby detention of the requested person is regularly ordered after the final hearing and the decision to grant surrender, is welcomed. This ensures a quick and smooth surrender procedure.

It is sensible to centralise the competence for EAW proceedings by keeping it at the District Court of Amsterdam and the IRC Amsterdam. The fact that the competent judges and legal advisors of the District Court of Amsterdam meet regularly to discuss problems in connection with EAW procedures, so as to avoid discrepancies in the jurisprudence of the court, is a good practice.

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

Framework Decision 2008/909/JHA was implemented by 5 December 2011, whilst the The Act on Mutual Recognition and Enforcement of Detention and Conditional Sanctions *(Wet Wederzijdse Erkenning en Tenuitvoerlegging vrijheidsbenemende en voorwaardelijke Sancties - WETS),* transposing this FD came into force in the Netherlands on 1 November 2012.

Authorities competent for the recognition of the judgment and execution of the sentence

The main actors ensuring cooperation under the Framework Decision are the competent authorities of the issuing State and the executing State. Member States are free to designate their competent authority or authorities under their national laws, both when acting as an issuing State or an executing State (Article 2 FD). It is noteworthy that the Framework Decision does not limit the definition of 'competent authority' to a judicial authority, thereby allowing Member States the discretion to select the competent authority deemed most appropriate to deal with the procedures under this instrument. Therefore the competent authority can be an administrative one (such as the Ministry of Justice) or a judicial body (such as a court). The choice of domestic competent authorities also determines the nature of their procedures.

In October 2012, the Netherlands government sent the declaration by the Netherlands pursuant to Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327), and pursuant to Article 2(1) nominating the Minister of Justice and Security as the competent authority for the Netherlands for incoming and outgoing requests based on Framework Decision 2008/909/JHA.

However, the International Transfer of Criminal Judgments (IOS) and Department of the Custodial Institutions Agency (DJI) under the Ministry of Justice and Security decide on behalf of the Minister of Justice and Security.

There is no designated Central Authority.

The structure of the competent authorities in the Netherlands fully reflects the practice of territorial specialisation, widely exercised in the country. There are territorial units of the courts and prosecution offices, which deal with the specific instruments. This approach has obvious benefits, not least in view of the high level of excellence and experience of the judges, magistrates and administrative staff involved. It should however be noted that it also has some disadvantages, stemming mainly from the restricted number of stakeholders – if a group of people working together, in one place, deals with the same sort of cases., This is not due to the specialisation itself, but rather to its territorial nature. Having said that, it should be understood and accepted that this is a traditional Dutch approach to appointment of the competent authorities, and appears to be a hallmark of the judicial framework in the Netherlands. .

The Netherlands competent authorities have **direct contacts** with other Member States' competent authorities. The Netherlands do not use the other channels for establishing direct contacts with other Member States' authorities, however in some cases contact is made via embassies or police or judicial liaison officers.

4.1.1. Procedure when the Netherlands act as an executing State

When the Netherlands acts as an executing authority the procedure is either mixed or administrative. When the International Transfer of Criminal Judgments (IOS), on behalf of the Minister of Justice, considers it clear from the outset that there are grounds for non-recognition of the judgment, the procedure is administrative.

In all other cases, the procedure is mixed: the Minister forwards the judgment and certificate to the advocate-general at the Public Prosecutor's Office, so that they can be presented promptly to a special chamber of the Arnhem-Leeuwarden Court of Appeal (Article 2:11 WETS). The IOS then takes the decision on behalf of the Minister in accordance with the opinion of the Arnhem-Leeuwarden Court of Appeal (Article 2:12 WETS).

The execution procedure is initiated by the IOS. It is its duty to make a so-called first assessment of the case, to examine the existing ties of the given person to the Netherlands (Article 4(1), (a) to (c) of FD 2008/909) and to check whether there are still six months of the sentence remaining to be served (Article 9(1)(h) of FD 2008/909). This initial formal check is purely administrative – no court is involved. If the IOS decides that there is a lack of the aforementioned prerequisites, it can terminate the procedure. There is judicial control in such decisions exercise by the court of the Hague. They can be challenged only as any other administrative decision, by checking its general lawfulness before the civil court. This general measure cannot however be understood as a specific, tailor-made judicial control measure.

It is certainly true that FD 2008/909 does not prohibit the application of non-judicial procedures when applying the mechanism provided for in the FD. However, it must be remembered that the given FD was adopted 14 years ago. In the meantime, the understanding and interpretation of the criminal law of the EU has evolved, mostly due to CJEU rulings. Such a clearly administrative procedure, resulting in termination of the transfer, could be understood as being contrary to the direction of this evolution, albeit not to any single, specific ruling of the CJEU. Moreover, in such circumstances in a proceeding, the IOS may – on a fully discretional basis – decide on the issues which may be assessed, such as the existence of links between the sentenced person and the Netherlands.

According to the written information presented by the Court in Arnhem, although there is no possibility of appeal against the final decision of the Minister (including the initial one), the sentenced person can start proceedings at the civil court in The Hague on the basis of an unlawful government act. These civil proceedings can examine not just written material, but can include a hearing where parties can present their cases. The competence of the civil court of first instance is not restricted to a 'marginal' assessment. To ensure the sentenced person's right to an effective remedy before a tribunal, the civil court is competent to carry out a full assessment of the case. As an argument it cited the judgment of the Court in The Hague (ECLI:NL:RBDHA:2021:15089).

This argument seems, however, not to be fully convincing. Summary procedure, as exercised by the civil court in the Hague is apparently focused on the unmeritorious or unlawful decisions, made in the previous stage. But "the previous stage" in this context means a very initial decision of the Minister, nor followed either by the comments of the prosecutor or by the judgments of the court Therefore the team takes the view that the Netherlands authorities should re-consider this element of the procedure, i.e. the absence of specific (dedicated) judicial control of the merits of the final decision of the IOS on terminating the transfer.

According to Article 2:11 WETS, unless the IOS, acting on behalf of the Minister, already takes the view that there are grounds for refusing to recognise the judgment, it is to submit the judgment and the certificate to the advocate general at the Procurator General's office at the Court of Appeal in Arnhem-Leeuwarden. The formulation of this provision ('he shall submit…unless') should be noted as being fully in line with the general principle of the mutual recognition system, where the rule should be recognition and enforcement of the judicial decision, whilst the refusal must remain exceptional. The prosecutor delivers its advice and comments to the IOS and to the court and backs up the motion before the latter. The Court of Appeal Arnhem-Leeuwarden (Penitentiary Chamber) renders an opinion, which however – accordingly with the WETS - is not binding for the IOS, although the NL authorities stated ***that in accordance with*** case law of the civil court in t***he Hague, the decision of the Court of Appeal Arnhem-***Leeuwarden ***is considered binding in practice.*** Lastly, the Minister of Justice & Security issues the final decision on the execution of the sentence imposing deprivation of liberty or refuses its execution. The decision in question is immediately valid and binding and cannot be challenged.

According to written information presented by the Arnhem-Leeuwarden Court of Appeal the proceedings before this court have also a predominantly administrative character. This is because of the following features:

- there is no court hearing where the counsel of the sentenced person can present its case;
- the proceedings are in writing;
- the Court of Appeal is not the authority that takes the (final) decision (the Minister is);
- there is no possibility of appeal to this court against the final decision of the Minister.

The Court made an arrangement with the Ministry that if the sentenced person has a lawyer at this stage – which does not happen very often − the lawyer may send in written comments of which the chamber will take note.

The Court has a restricted task within the proceedings. It is only empowered to assess:

- whether there are mandatory grounds to refuse the recognition of the judgment;
- whether the sentence was imposed for an act that constitutes a criminal offence under Dutch law and, if so, what offence this act constitutes, and
- whether the imposed sentence (in terms of its duration) exceeds the maximum penalty provided for similar offences under Dutch law (if so, the duration of that sentence is reduced to that maximum penalty).

In addition, the Court has to assess whether the imposed sentence (in terms of its nature) is incompatible with Dutch law. If so, the Court may adapt the imposed sentence to a sanction provided for under Dutch law that corresponds as closely as possible to the imposed sentence.

What seems to be especially important from the point of view of European law, based on the aforementioned information, is that the predominantly administrative character of the proceedings means that the Court does not consider itself competent to request the Court of Justice of the EU to give a preliminary ruling on the interpretation of Framework Decision 2008/909. Also, the opinions of the Court cannot be published owing to their essentially advisory nature. This first issue needs examination. According to Article 19(1) of the Treaty on European Union, the Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. This standard has recently been interpreted by the CJEU in light of the rule of law as the obligatory right of the domestic court to request a preliminary ruling (see the judgment of 26 March 2020 in joined cases C-558/18 and C-563/18, ECLI:EU:C:2020:234, where paragraphs 55-57 stipulate that the keystone of the judicial system established by the Treaties is the preliminary ruling procedure provided for in Article 267 TFEU, which, by setting up a dialogue between one court and another, between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniformity in the interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraph 176, and judgment of 24 October 2018, C-234/17, EU:C:2018:853, paragraph 41)). Article 267 TFEU gives national courts the widest discretion in referring matters to the Court of Justice if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them.

National courts are, moreover, free to exercise that discretion at whatever stage of the proceedings they consider appropriate (judgments of 5 October 2010, C-173/09, EU:C:2010:581, paragraph 26, and of 24 October 2018, C-234/17, EU:C:2018:853, paragraph 42 and the case-law cited). Therefore, a rule of national law cannot prevent a national court from using that discretion, which is an inherent part of the system of cooperation between the national courts and the Court of Justice established in Article 267 TFEU and of the functions of the court responsible for the application of EU law, entrusted by that provision to the national courts (judgment of 19 November 2019, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 103).

It is clear that neither the Minister of Justice nor the Public Prosecution Service can request the CJEU to give a preliminary ruling concerning FD 2008/909, as they are not courts. If the specialised court dealing with transfer of prisoners is also deprived of this option, this means that the entire Dutch system of administration of justice lacks it completely. In consequence, no request for a preliminary ruling concerning FD 2008/909 can be lodged when the Netherlands acts as the executing State. And this constitutes a clear lack of conformity with the aforementioned standard of the TEU. It should therefore be recommended that the Netherlands authorities amend the current procedure or practice of the Arnhem court, to enable this body to ask for preliminary rulings..

Lastly, the number of bodies involved in the execution of the sentence seems to be high. There are the IOS, acting on behalf of the Minister of Justice and Security, the public prosecution service, the Court in Arnhem and the civil court in The Hague. According to the information provided by the Court in Arnhem, as the proceedings at this Court are not adversarial, where the sentenced person wishes to make use of regular adversarial proceedings, he or she has to start civil proceedings at the court of first instance in The Hague after the decision of the Minister based on the opinion of the Court. This course of events can take a lot of time. Moreover, the current state of affairs is that multiple Dutch courts apply the Dutch law that implements Framework Decision 2008/909, without any structure or facility for ensuring that the legal provisions are interpreted in the same way. This brings a risk of differences in interpretation and application of the law, e.g. on the interpretation of consent by the sentenced person. This state of affairs (competence, proceedings, legal protection) seems neither efficient nor desirable. Consequently, the Netherlands authorities might re-consider facilitation and streamlining of the proceedings in this area.

4.1.2. Procedure when the Netherlands act as an issuing State

As regards issuing of a decision on outgoing transfer of a sentenced person on the basis of FD 2008/909, there is in principle an administrative procedure, run by the IOS.
According to the IOS officers, the first important step to apply FD 2008/909 is identification of prisoners eligible for transfer. This action is taken in accordance with the so-called *Aliens in criminal law* (*VRIS)* protocol. This protocol applies to foreign nationals residing in the Netherlands, with or without lawful residence, who are suspected of committing a crime in the Netherlands and/or have been convicted for it.

Identification of the person in question is not carried out solely by the IOS. The Ministry cooperates with many public bodies administering, in a broad sense, justice or related areas. These include public prosecutors' offices, the immigration service and the Central Judicial Collection Agency *(CJIB: Centraal Justitieel Incassobureau),* which is a specialised agency of the Ministry of Justice and Security responsible for collecting a range of different fines, such as traffic fines and punitive orders. It is noteworthy that according to the IOS officers, the notifications and opinion delivered by the prosecutors are mainly based on information from the victims and from ongoing procedures in the Netherlands.

Sentenced persons eligible for transfer, such as those who are staying in the Netherlands illegally, are placed in the Penitentiary Institution (PI) Ter Apel, which is a VRIS facility in a single location and houses more than 400 detainees. The role of the *PI Ter Apel* is preparing, in collaboration with the Repatriation and Departure Service, detainees for return to their country of origin.

This is when the regular proceeding provided for in FD 2008/909 actually starts. After the decision is made and the prisoner is informed about the intention to forward the certificate to another Member State, he or she may, within a period of fourteen days after receipt of the notification, use the opportunity provided for in Article 2:27 WETS to file an objection against the Minister's intended forwarding with the special chamber of the Court of Appeal in Arnhem referred to in Article 67 of the Judiciary (Organisation) Act.

When a sentenced person files an objection against the Minister's intended forwarding of a certificate with the special chamber of the Arnhem-Leeuwarden Court of Appeal, the procedure is mixed. When the Court of Appeal considers the objection to be well-founded, the Minister must refrain from forwarding the judgment to the executing State (Article 2:27 WETS).

Due to the lack of opportunity to meet the judges from Arnhem, the nature of this judicial arrangement was not clear enough. However, by comparing Article 2:27 WETS with the aforementioned 2:11, which deals with the judicial part of the execution procedure, it transpires that they differ substantially. For example: Article 2:27.5 stipulates that the convicted person will be heard during the investigation, or at least summoned. If the convicted person has no legal counsel, the chairman is to instruct the board of the legal aid council to appoint a legal counsel. Thus, the procedure concerning outgoing transfers appears more adversarial than that for incoming ones. Moreover, the decision of the Court is binding on the Minister and in that sense it is final.

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

According to Article 2:8 WETS, the essential documents for execution are the court decision and the certificate. Therefore, the IOS may request the competent authority of the issuing Member State to submit a certified copy of the court decision if needed for making a decision. If the certificate is incomplete or apparently not in line with the court decision, the IOS must request the competent authority of the issuing Member State to submit, supplement or correct it.

With regard to the language regime, where the certificate is not drawn up in Dutch or English, the IOS requests the competent authority of the issuing Member State to translate the certificate. According to the Netherlands authorities, a translation of the entire certificate is not always required, and a translation of the most important parts may be considered sufficient.

As for the judgment, in general the Netherlands legislation does not require the judgment to be translated. This can however be required if the IOS considers the content of the certificate insufficient as grounds for taking a decision on the recognition of the judicial decision. In such a situation, the IOS may request the competent authority of the issuing Member State for a translation of the judicial decision or of the main parts of it into Dutch or English. Thus, the translation should be provided by the issuing State.

Additionally, it should be underlined that the Netherlands has worked out some specific practices when acting as an issuing State. The Netherlands authorities usually send a translation of the entire verdict, enclosing it with the certificate, without a prior request from the executing State.

The acceptance of English, which is not an official language of the executing State, is not provided for as an obligation in Article 23 FD 2008/909. Indeed, it is fully optional. As a result, the open attitude to the language regime followed by the Netherlands should be regarded as a best practice.

4.3. Criteria for assessing the facilitation of social rehabilitation

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

Social rehabilitation is a key aspect of FD 2008/909. Accordingly, the competent authority of the issuing State needs to be 'satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person' (cf. recital 9 and Article 4(2) FD). According to the Handbook on the transfer of sentenced persons and custodial sentences in the European Union (2019/C 403/02) the assessment of the facilitated social rehabilitation may not be restricted to the mere establishment of a geographical connection but needs to be based on a thorough, case-by-case evaluation. To that end, the instrument provides for a consultation procedure between the issuing State and the executing State.

Bearing this in mind, where the Netherlands acts as the issuing State the authority takes into account the criteria of nationality and last place of residence, in respect of which a period of 5 years is used and/or the results of the prisoners' questionnaire. This questionnaire provides the person concerned with the opportunity to present relevant facts and give his or her opinion on the possibility of sending a certificate to the executing State.

As mentioned before, the person concerned has the option of lodging an objection with the Arnhem-Leeuwarden Court of Appeal against the intended forwarding of the certificate. The Court is empowered to carry out an overall judicial check on whether these criteria are met and its decision is binding on the IOS.

According to the Netherlands, information included in Dutch certificates is generally deemed sufficient, but clarification is regularly required concerning the:

- detention start date;
- detention already served;
- the applicable scheme for conditional release;
- therapeutic measures imposed, resulting in deprivation of liberty but not constituting regular imprisonment.

The Netherlands' issuing authorities do not consult their counterparts in the executing States on a regular basis as to whether the sentence would serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person. Consultations before the forwarding of the certificate sometimes take place, though only in exceptional situations. The purpose of such consultation does not concern social rehabilitation, in respect of which the decision is taken autonomously by the Netherlands authorities, but logistic matters, such as whether the person concerned resides in that Member State.

The Netherlands authorities also reported that they had received reasoned opinions from executing States based on Article 4(4), e.g. that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society. The authorities declared that in such cases they took this opinion into account when deciding whether to withdraw the certificate, however there has not been a single example of withdrawal of the certificate by the Netherlands.

The approval from the executing Member States (Article 21 of the FD) generally takes longer than three months. In addition, after the transfer of the sanction, no further information is usually provided on enforcement of the sentence. Therefore the Netherlands must request such information. This information is needed to close the file on the transfer and, most importantly, the file on the sentence enforcement.

The Netherlands has not established any practical arrangements on a bilateral basis with the other Member States for facilitating the application of FD 2008/909/JHA. However, the Netherlands have a good working relationship with Belgium and Germany and a good comprehension of their legal system. They participated in the METIS program (France, Spain, Belgium and the Netherlands) to stimulate mutual understanding and cooperation. They also use the Europris network to build relationships with the other Member States.

Where the Netherlands acts as the executing State, the question of social rehabilitation is addressed in Article 2:8 para 7 of WETS. This provides that where the Minister holds the opinion that the enforcement of the court decision in the Netherlands will not contribute to the social reintegration of the convicted person, he or she is to immediately inform the competent authority of the issuing Member State of this, stating the reasons. To establish whether a person has ties with the Netherlands, the first check is done on the county register, where all Dutch citizens need to be registered. However, as they noted, it may differ from other forms of registration in the other Member States.

If a person is or has been at any point registered within 5 years before his arrest, it is considered as he/she has enough ties with the Netherlands. If he/she has not been registered, he/she can send any proof of his ties with the Netherlands. The proof can be a leasing contract of a house, proof of labour, phone bills, bank accounts etc. The decision of IOS can be challenged before the civil court in The Hague.

4.3.2. Opinion and notification of the sentenced person

The procedure for the sentenced person to state his or her opinion follows Article 6(3).

When the Netherlands is an executing State, the IOS notifies him or her of the sending of the certificate and the court decision as sent by the issuing Member State. This duty applies only where the convicted person is in the Netherlands. Formal and fully administrative proceedings (even before a court) pertaining to incoming transfers suggest that the opinion of the sentenced person is apparently not taken into account.

The situation differs where the Netherlands is the issuing State. According to Article 2:27 WETS, the IOS must give the convicted person the opportunity to express his or her opinion on the intention to send a court decision to the executing Member State. The person concerned has the opportunity to give his or her opinion on the possibility of sending a certificate to the executing State. The sentenced person's opinion is to be in writing - the relevant questionnaire is used. This procedure does not apply if the convicted person is not in the Netherlands or has himself/herself requested that the judicial decision be sent.

Within fourteen days of receipt of the notification, the convicted person may submit a notice of objection against the intended forwarding of the certificate. The objection is to be lodged with the special chamber of the Arnhem-Leeuwarden Court of Appeal. As soon as possible after receipt of a notice of objection submitted on time, the Court opens its examination. As mentioned before, the convicted person will be heard during the investigation, or at least summoned. He or she also has the right to legal counsel.

According to the Netherlands authorities, the opinion of the convicted person plays an important role in the decision on whether or not to issue a certificate.

The Court of Appeal informs the Minister (via the IOS) and the convicted person in writing of its decision. If it considers the notice of objection to be well-founded, the IOS refrains, on behalf of Minister, from sending the court decision to the executing Member State and thus all the proceedings are terminated. No legal remedy is available against the decision of the Court, other than an appeal in cassation in the interests of the law.

The final decision about the transfer is communicated to the sentenced person in accordance with Article 6(4) FD 2008/909. As regards other information provided to the sentenced person, he or she has the option of contacting the IOS via a special information phone line. The Ministry of Justice and Security has a special information line for the WETS (on the basis FD 2008/909) and WOTS (transfer on the basis of other conventions, outside of the EU). The dedicated number is mostly used for Dutch citizens detained in the other Member State. This specific solution can be regarded as best practice.

4.4. Adaptation of the sentence

Pursuant to Article 2:11 WETS, if the imposed custodial sanction has a longer duration than the maximum penalty applicable for the same offence under Dutch law, the duration of the sentence is to be reduced to that maximum penalty, as provided for in Netherlands law. Moreover, if the nature of the custodial sentence imposed is incompatible with Netherlands law, the sentence is to be altered to a sentence or measure provided for in that law and which corresponds as closely as possible to the custodial sentence imposed in the issuing Member State. None of these adjustments must in any way entail an aggravation of the custodial sanction originally imposed.

The first assessment of the need for adjustment is carried out by the Arnhem-Leeuwarden Court of Appeal, under Article 2:11, para 3 (c) of WETS. The IOS takes the final decision on adaptation on behalf of the Minister based on the Court decision that, in practice, is **said to be** binding.

In practice, a second type of adjustment, pertaining to the nature of the measure, occurs where the sentence imposes a measure of psychiatric or health care, involving deprivation of liberty but not constituting regular imprisonment.

According to the Netherlands authorities, they have encountered only limited challenges with regard to the adaptation process. It was mentioned that in few cases there was no equivalence between the Dutch and foreign measures.

In some cases the certificates has been withdrawn by the foreign issuing State. The Netherlands never refused a sentence as an executing State. Nor has the Netherlands withdrawn a sentence as an issuing State.

As regards updated information concerning the adaptation of a sentence, in incoming cases, the sentenced person is informed by the IOS through an information sheet about the legal consequences (the information sheet is sent to each sentenced person, not only in adaptation cases) and the way in which the punishment will be enforced/taken over by the Netherlands, following approval of the adaptation.

4.5. Grounds for non-recognition or non-enforcement

Article 9 of FD 2008/909 lists the grounds for non-recognition and non-enforcement. They are all optional, however in the Netherlands they are divided into two groups – optional and obligatory.

Altering the nature of grounds for refusal during implementation has for years been the subject of discussions in the EU. On the one hand, it has been pointed out that the Member States should enjoy a certain degree of discretion in the implementation of secondary Union legislation. It follows from Article 288 of the TFEU that in selecting measures it is necessary to ensure the full effectiveness of the act transposed into the domestic legal order, in relation to the objectives and the substance of specific EU regulations, and not only to consider the literal wording of the legislation (see e.g.: CJEU judgments C-123/08 of 16 May 2005, and C-42/11 of 5 September 2012). On the other hand, however, it is noted that in some situations it is not the state, but the judicial body examining a specific case that enjoys this discretion (see CJEU judgment C-665/20 PPU of 29 April 2021). As the aforementioned rulings were delivered in relation to the EAW and not on the application of the FD 2008/909, no firm conclusion or clear recommendation in relation to FD 2008/909 can be issued.

The obligatory grounds for refusal, as provided for in Article 2:13 WETS are, inter alia, those related to the absence or the quality of the certificate, the absence of the general conditions for transfer, the age of the sentenced person (under the age of twelve in the Netherlands), immunity, double criminality, statute of limitation, defaults concerning *in absentia* proceedings, and sanctions including a health care component that cannot be enforced in the Netherlands.

The optional grounds for refusal, as provided for in Article 2:14 WETS, are those related to the Dutch territorial jurisdiction and the situation where, at the time of receipt of the court decision, less than six months of the custodial sentence imposed remain to be enforced.

According to the Netherlands authorities, in practice the most common grounds for non-recognition or non-enforcement encountered by the Netherlands, both as issuing and executing State, are as follows:

- Link with the country (Article 9(1)(b)) - criteria set out in Article 4(1) are not met;
- Withdrawal of residence permit (Article 9(1)(b);
- Short length of penalty remaining (Article 9(1)(h)) - less than six months of the sentence remains to be served;
- Measure not to be implemented (Article 9(1)(k)) - psychiatric or health care treatment;
- Unsatisfactory prison conditions in some Member States.

Due to the last ground, in some cases transfer has not been finalised or initiated. Moreover, in some cases poor prison conditions were a reason for the Netherlands not to submit a certificate when acting as an issuing State. As a result of this, the Netherlands authorities discontinued the outgoing transfer procedure.

4.6. Partial recognition

Pursuant to Article 2:12:2 WETS, the IOS may agree with the competent authority of the issuing Member State a partial recognition of the transferred court decision, insofar as that authority can indicate which part of the imposed custodial sentence is not affected by an applicable ground for refusal. The IOS may add the condition that no further enforcement of the judgment in the issuing Member State will take place after enforcement in the Netherlands.

The Netherlands authorities declared that the most frequent reasons for partial recognition of judgments are:

- if there is no equivalent of a measure with treatment components;
- if the person concerned has been convicted of several offences and one or more offences are not punishable in the Netherlands (especially in the case of ‘aggregated penalties’).

The main difficulty reported by the Netherlands authorities stems from the principle of aggregation of penalties, where one of the basic penalties relates to behaviour which is not a crime in the Netherlands. In such cases it is difficult to determine afterwards what part of the sentence was imposed for that specific offence.

As an issuing State, the Netherlands has not encountered cases of partial recognition, so there has been no reason for withdrawing the certificate.

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

Challenges relating to compliance with the deadline for recognition and enforcement as for the deadline provided for in Article 12(2), NL stated that as an executing State, the deadline is met in most cases.

The most common reasons for delays are:

- Workload;
- Additional information needed;
- Special circumstances of the case, like e.g. aggregating penalty, where one of the basic offences is not punishable under the Netherlands laws.

As an issuing State, the experience is that deadlines are often not met by the executing States. In most cases, no justification or a very general one is given.

As an executing State, the Netherlands does not always immediately provide information to the issuing authority concerning reasons for a delay and the estimated time needed for taking a final decision. In some cases, a postponement is requested if certain information is missing in the certificate. Exceeding of the deadline is usually limited to one to two months at most.

As an issuing State, the Netherlands authorities do not receive this information on time and usually have to send several reminders.

Considering this, a recommendation could be made to the Member States to pay more attention to carrying out the steps smoothly, and trying always to keep to the deadline provided for in Article 12(2) of FD 2008/909.

4.8. Law governing the enforcement of the sentence

The Framework Decision clearly stipulates that the enforcement of the sentence must be governed by the law of the executing State. The authorities of the executing State alone are competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early and conditional release (Article 17 FD 2008/909). However, the actual duration of imprisonment depends largely on the provisions on early and conditional release in the executing State. It is widely known that the differences between Member States are considerable in this respect.

Until 1 July 2021, a prisoner could be released on parole if he or she had served two-thirds of the sentence and provided that other conditions were also met. However, the system of conditional release changed as from 1 July 2021 through the amendment of the Penitentiary Principles Act, the Criminal Code and any other laws relating to the Detention Phasing and Conditional Release Regulations (the Punishment and Protection Act).

In accordance with the amendments mentioned above, conditional release may be granted:

a) to a person sentenced to a custodial sentence of more than one year and a maximum of two years if the detention has lasted at least one year and if one third of the remainder of the sentence to be executed has been served;
b) to a convicted person serving a temporary prison sentence of more than two years where he or she has served two-thirds thereof, on the understanding that the period for which conditional release is granted cannot be longer than two years.

The discrepancies in parole between the Member States constitute the rationale of Article 17(3) FD 2008/909. Pursuant to that article, the competent authority of the executing State must, upon request, inform the competent authority of the issuing State of the applicable provision on possible early or conditional release. When this information is provided, the issuing State may agree to the application of such provisions or may choose to withdraw the certificate and end the transfer process.

According to the Netherlands' authorities, the Dutch law applies in general to the execution of transferred sentence, which seems to be in line with the aforementioned principle provided for in the FD. The Netherlands, acting as the issuing State, reported that it has not had cases in which it would have withdrawn the certificate owing to applicable provisions on early or conditional release in the executing State.

As the executing State, there had been cases where the certificate was withdrawn by the issuing State due to the application of the conditional release scheme, on the basis of which the remaining sentence was too short.

Member States may provide for any decision on early or conditional release to take account of those provisions of national law cited by the issuing State under which the person is entitled to early or conditional release at a specified point in time (Article 17(4)). According to the Netherlands' authorities, the Netherlands may take into account another State's date for conditional release provided that:

- this date is more favourable to the sentenced person than the Dutch date, and
- the date is fixed, or has a high degree of probability.

In such situations, the substantive conditions provided for in Dutch law other than the timing of the release, must however be met. If they are not met, the Netherlands does not apply the provision of national law indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

The Netherlands authorities also pointed out, with regard to the deduction of a period of deprivation of liberty already served in the issuing country, that it is not possible in most cases to trace back how the calculation was made and which period of deprivation of liberty was included in the calculation. As practitioners noted, there are considerable differences between the Member States concerning the law and application of parole in practice. E.g. in Belgium, a sentenced person can apply for parole after one-third of the sentence, and the matter is to be decided by the Court for the execution of penalties, whereas in the Netherlands, parole cannot be given before the execution of two-thirds of the sentence. They added that problematic cases are those in which, as a result of the discretionary arrangement in the issuing State, it cannot be established with certainty what the parole date would have been in that State but in which the sentenced person would likely have been granted parole before having served two-thirds of the sentence. The Court has the impression that this is at stake in many cases. For example, in several recent decisions regarding Belgian sentences, the Court in the Hague ordered the Minister to consult Belgian authorities to establish what would have been the probable date of parole if the execution had been continued in Belgium. Moreover, within the framework of pardon proceedings, the Court of Appeal Arnhem-Leeuwarden considers the probability of earlier release in the issuing State.

4.9. Further challenges

As regards transit, the Netherlands' authorities stated that they had not encountered problems when organising the transit of a sentenced person, from either a practical or legal point of view.

As regards legal or practical problems associated with the practical application of the FD 2008/909/JHA, the Netherlands has faced the following problem: If a court in a particular region/place of residence is competent, the court can be found via the EJN site. However, when no reply is received after sending the certificate or additional question, it is unclear whether or not the competent authority received it. Additionally, where there is no Central Authority in another Member State, it is a challenge to find a competent authority. As practitioners added, it is challenging concerning countries they are unfamiliar with, and language can also be a factor, e.g. the courts in Poland. Moreover, the FD 2008/909 itself provides a widely-known solution to this problem, by stipulating that when an authority of the executing State which receives a judgment together with a certificate is not competent to recognise it and take the measures needed for its enforcement, it must, *ex officio*, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly.

Another factor pointed out by the Netherlands is that competent authorities in other Member States have limited experience with the framework decision. This makes it difficult to execute a transfer (within the period set). This results, however, from the system of justice adopted and exercised in the given State, which is beyond the scope of the mutual evaluation system.

The Netherland's suggestions on how to improve cross-border cooperation and the procedure for issuing the certificate and recognising and executing the judgment are as follows:

- make it clearer on a website what the correct authority is;
- provide more information about the different measures in countries;
- provide more information about the regulations regarding conditional release abroad;
- obtain better access to registered addresses and relevant data in other Member States, so as to promote recognition of the importance of rehabilitation.

4.10. Statistics

The Netherlands as the executing State

Incoming persons: 2017 – 208; 2018 – 177; 2019 – 248; 2020 – 157.

Incoming judgments: 2017 – 65; 2018 – 40; 2019 – 66; 2020 – 103.

Actual incoming transfers under WETS: 2014 – 54; 2015 – 80; 2016 – 207; 2017 – 208; 2018 – 222; 2019 – 211; 2020 – 185.

The Netherlands as the issuing State

Outgoing persons: 2017 – 8; 2018 – 5; 2019 – 8; 2020 – 11.

Outgoing judgments: 2017 – 16; 2018 – 12; 2019 – 17; 2020 – 15.

Actual outgoing transfers under WETS: 2014 – 5; 2015 – 3; 2016 – 5; 2017 – 6; 2018 – 3; 2019 – 11; 2020 – 15.

The statistics, which are aggregated on a regular basis in the Netherlands, show clearly the considerable discrepancy between the number of incoming and outgoing requests and transfers. The incoming figures, every year, are many times larger than the outgoing figures. It might be inferred that Netherlands citizens prefer to serve their sentences in their home country rather than abroad. This is indirect but tangible evidence of the quality of the Dutch prison system.

4.11. Conclusions

The evaluation of the Dutch system for transfer of convicted persons based on FD 2008/909 and WETS is generally positive. The mechanism introduced by WETS functions properly. The territorial specialisation, notwithstanding the doubts mentioned above, undoubtedly facilitates the acquisition of sectoral experience by the participating authorities. The pragmatic approach to certain issues, such as the language regime or the availability of information through the use of informal means such as a dedicated telephone line, should also be appreciated.

At the same time, there is a noticeable shift in the procedure towards administrative proceedings. While the literal content of FD 2008/909 allows this, it should not lead to depriving the Dutch judiciary of the possibility to submit preliminary questions relating to the application of the FD 2008/909 by the Netherlands as executing State.

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

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

When dealing with decisions to execute a sentence, *the following criteria are used* to decide whether to issue an EAW or a certificate for recognition of a judgment and execution of a sentence under FD 2008/909/JHA where a person is staying in, or is a national or a resident of the executing State*:* the nationality of the person involved, together with considerations relating to social rehabilitation, proportionality and prevention of impunity. The guiding principle for issuing a certificate for recognition of a judgment and execution of a sentence under FD 2008/909/JHA is the social rehabilitation of the sentenced person involved. When it is clear that the rehabilitation of the sentenced person involved will be better served in another Member State, for instance because he or she is a national or resident of that State or is staying there for a certain period, the Netherlands will consider issuing a certificate under 2008/909/JHA.

Where the sentenced person involved is a Dutch national or resident, it may make more sense to issue an EAW for the purposes of executing the sentence in the Netherlands. The Netherlands can also request the issuing state to send the judgment and certificate. Consideration will always be given to the social rehabilitation aspects in the individual case, and issuing an EAW must always meet the proportionality criteria.

In cases under Article 4(6) of Council Framework Decision 2002/584/JHA, a separate certificate pursuant to Council Framework Decision 2008/909/JHA is no longer required by the Netherlands, as an executing Member State, for enforcing a sentence handed down in the issuing Member State. The sentence can be executed on the basis of the information in the EAW since the amended OLW entered into force on 1 April 2021. The law has been changed to prevent impunity.

When the Netherlands issued an EAW, Dutch law does not contain any specific requirements as to whether or not the executing Member State is allowed to execute the sentence for which the surrender has been refused without a certificate under Council Framework Decision 2008/909/JHA.

If an executing Member State requests a certificate under FD 2008/909 for the purpose of applying Article 4(6) of the Council Framework Decision 2002/584, the Netherlands will, in general, send the certificate, in order to contribute to the prevention of impunity.

Where the surrender is granted on the basis of Article 5(3) of Council Framework Decision 2002/584/JHA and a person is surrendered to the Netherlands on the basis of an EAW, the return of this person is based on FD 2008/909 and vice versa. The Netherlands uses a certificate under FD 2008/909.

5.2. Conclusions

The decision of the legislator to amend the OLW as a result of the Poplawski judgments of the CJEU in such a way that in cases under Articles 4(6) of Council Framework Decision 2002/584/JHA a separate certificate pursuant to Council Framework Decision 2008/909/JHA is no longer required to start the execution of the sentence, has helped to avoid situations of impunity in such cases. There have been no complaints from other Member States against this practice so far.

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

FD 2008/947/JHA is implemented in in The Act on Mutual Recognition and Enforcement of Detention and Conditional Sanctions *(Wet Wederzijdse Erkenning en Tenuitvoerlegging vrijheidsbenemende en voorwaardelijke Sancties - WETS),*

Chapter one and Chapter three (Article 3:1 and the following articles) provide for the recognition and execution in the Netherlands of decisions on supervision measures issued by another state (under FD 2008/947/JHA).

The Netherlands appears to have a comprehensive range of probation measures consistent with those provided for in Article 4 and clear systems available to adapt measures and sanctions where necessary.

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

The Centre for Mutual Legal Assistance *(International Rechtshulp Centrum Noord-Holland)* (hereinafter '*IRC-North Holland*'), a department at the Public Prosecutor's Office, is the competent authority for applications in respect of Framework Decision 947/2008. The Netherlands has therefore a Central Authority regarding requests on Framework Decision 947/2008.

The IRC-North Holland has a structured and timely process for receipt and issuing of applications for transfer and for the adaptation of probation measures or alternative sanctions. The IRC-North Holland works closely with the International Desk of the Probation Service (*Buitenlandbalie van Reclassering Nederland*) on the transfer process and dissemination of information and they have a positive and mutually beneficial relationship; they have a clear distribution of roles and tasks and work cooperatively and positively.

In practice, the IRC-North Holland is a specialised department composed of only three professional prosecutors trained in dealing with the subject matter.

The Public Prosecution Service is authorised (under, Article 3:3(1) to decide on the recognition of a decision on supervision measures received from an issuing Member State with a view to execution in the Netherlands. The Public Prosecution Service is also authorised (under Section 5:3:4:2) to forward a decision on supervision measures issued by the Netherlands to the executing Member State with a view to recognition and execution in that state.

The Netherlands has designated IRC North-Holland as the central authority.

The Netherlands central authority always keep direct contact with the competent authorities of the other Member States insofar as they are known.

6.1.1. The procedure where the Netherlands acts as an executing State

General provisions are laid down in Part 1 of the *Act on mutual recognition and enforcement of custodial and conditional sanctions*.

The scope of the application refers to judgments - the final decision of a court imposing probation measures and alternative sanctions (or the decision based on that judgment) - issued in another Member State and subject to transfer for execution in the Netherlands.

The procedure for recognition and enforcement of foreign judgments in the Netherlands is laid down in Chapter three, part 2 of the national law (the Act on Mutual Recognition and Enforcement of Detention and Conditional Sanctions).

A judgment delivered in the issuing State may be recognised and enforced in the Netherlands if a convicted person is in the issuing State or in the Netherlands and the competent authority (‘CA’) of the Netherlands has consented to the forwarding of the judgment. Consent is not required if the convicted person is permanently residing in the Netherlands and has returned or wishes to return to the Netherlands.

It is important that consent be confirmed in some form since implicit consent, if the person has returned to the executing State, cannot be assumed.

There is no normative decision on what residence means, however the CJEU Kozlowski case (C-66/08, 2008) can be of assistance in establishing evidence: substantial and stable *de facto* connections with the State (family, employment or education).

The Netherlands accepts documents for recognition in the Dutch and English languages.

The judgment, together with a completed certificate, is to be drawn up by the competent authority of the issuing State in the standard form and may be transmitted by regular mail, fax or electronic mail, provided that it is possible to establish the authenticity of the transmitted documents.

After receiving a certificate and related documents, the Netherlands CA checks the address of the convicted person, to see if they have social ties, and sees whether the certificate is complete and understandable. It also verifies the feasibility of the sanctions with the International Desk of the Probation Service, which serves as an information point that provides information and advice to the CA, probation workers, justice partners and lawyers.

If the submitted documents are incomplete or incorrect, the ICR directly contacts the CA of the issuing State to ask for the additional information. It also does so in cases where it is necessary to adjust the probation measure. For instance, in the Netherlands the probation period is three years, whilst in Belgium the probation period is mostly five years.

The measures that can be transferred to the Netherlands mentioned in Article 3:2, Chapter 3 of the national law is the same as those mentioned in Article 4 of FD 2008/847/JHA. It is also possible to transfer the requirement not to commit a new crime pursuant to the CJEU case-law of 26 March 2020.

Grounds for refusing recognition and supervision, time limits, and obligations of the authorities involved where the issuing State has jurisdiction for subsequent decisions are clearly outlined in the provisions in Book Five, Part Three, of the Netherlands Code on Criminal Procedure.

Netherlands practitioners stated that they mostly managed to take a decision within 60 days since the procedure is simple. The CA decides on recognition. The matter does not need to be presented to a court for decision.

After recognition, the CA is responsible for ensuring the enforcement of the foreign judgment (part 2, Section 3, Article 3:14). It contacts the Probation Service to supervise the convicted person's compliance with the obligations imposed on him or her and to assist him or her in this respect.

6.1.1. The procedure where the Netherlands acts as an issuing State

Under Chapter 3, part 3 the CA's procedure for forwarding a Netherlands judgment to the executing State for recognition and enforcement is the same as in the preceding chapter, and it is the IRC-North Holland that acts as the CA.

For selecting cases suitable for transfer, the Netherlands authorities use the electronic system in which criminal cases are registered with information on convicted persons' residence. The system automatically selects cases where a convicted person has an address within the EU.

However, if a person has a permanent residence in the Netherlands and a temporary residence[3] in another Member State, the electronic system does not select him/her. So the case is handed over to a probation service for handling in the Netherlands. Subsequently, if the probation service finds that the person concerned has social ties in another Member State, he contacts the local authority that imposed the probation measure, which then contacts the IRC prosecutor and applies for a certificate.

[3] Same issues regarding residence as outlined in comments in 6.1.1 above apply, as there is no normative decision on what residence means. Again, the CJEU Kozlowski case (C-66/08, 2008) provides some suggestions about evidence for establishing residence: substantial and stable de facto connections with the State (family, employment or education).

As regards consent, initially, the IRC used to ask defendants for written consent; however, since the IRC rarely received any response, they decided no longer to ask for written consent. However, the International Desk of the Dutch Probation Service always asks advisors and supervisors to have the client sign a declaration of consent, if that is still possible, even if it is not always a requirement to have it in writing.

The probation decision or other alternative sanction can be executed in another Member State, as long as the person consents (Commission 2014 Report to the European Parliament and the Council on the Implementation of FDs 2008/909/JHA, 2008/947/JHA and 2009/829/JHA)[4]. It is important that consent be confirmed in some form, since implicit consent cannot be assumed if the person has returned to the executing State.

The IRC checks the person's address, any social ties the person has in the other Member State, and whether there is enough time left for the transfer (more than 6 months). It also contacts the International Desk, which provides the IRC with information about the feasibility of conditional sentences in the other Member State.

If the case is suitable for transfer, the IRC asks the local prosecutor to fill in the certificate and then checks that this has been done correctly, and arranges for the translation of documents.

According to the Netherlands national legislation, it is possible to transfer all measures set out in Article 4 of FD 2008/947/JHA. It is also possible to transfer the requirement not to commit a new crime pursuant to the CJEU case-law of 26 March 2020.

The IRC forwards the Netherlands judgment to the CA of the executing State, provided that it has consented to the forwarding. Consent is not required if the convicted person is permanently residing in the executing State and has returned or wishes to return to this state.

[4] The link on the Commission's 2014 Report to the European Parliament and the Council on the implementation of FDs 2008/909/JHA, 2008/947/JHA and 2009/829/JHA
https://eur-lex.europa.eu/legal content/EN/TXT/PDF/?uri=CELEX:52014DC0057&from=EN

The probation decision or other alternative sanction can be executed in another Member State, as long as the person consents. (Commission 2014 Report to the European Parliament and the Council on the Implementation of FDs 2008/909/JHA, 2008/947/JHA and 2009/829/JHA - see footnote 2). It is important that consent be confirmed in some form since implicit consent, if the person has returned to the executing State, cannot be assumed.

After the recognition, the IRC ensures the registration of the transfer cases in the national system.

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

Issues with transfers identified and discussed

The questionnaire response and discussions identified significant obstacles and challenges in enabling transfers. The Netherlands reported that it was sometimes difficult to identify or ensure equivalent treatment for incoming and outgoing applications in cases involving orders for specific psychiatric treatment. Practitioners pointed out that the provisions on treatment differed between Member States so comparisons were difficult. The legal rules vary, leading to discussions on which FD is applicable.

The practice of informal transfers and remote supervision appears to be continuing, particularly in border areas of neighbouring jurisdictions and between the services there. Remote supervision, by telephone for example, can take place over great distances. These practices can have implications for enforcement and implementation of orders. In some cases, it was commented that the behaviour arose from lack of familiarity with FD 2009/947/JHA and 'old habits'. These practices should be addressed locally through information dissemination, training and clear guidelines on good practice.

The Netherlands authorities highlighted particular challenges in relation to timely responses from the relevant competent authorities in other jurisdictions. In some there were lengthy delays in responding to applications submitted. In cases where applications were received, there were similar lengthy delays in responding to requests for further information or clarifications. In some instances requested translations to enable decision-making were not provided. The reported failure to respect the 60-day time-limit in some jurisdictions has affected the Netherlands in completing transfers. The delays can result in there being less than 6 months remaining on the supervision order, thus rendering the persons ineligible for transfer.

It was reported that in Germany the legal processes for transfer can require longer that the 60 day time-limit. Also, Spain and France occasionally did not respond on time so the transfer had been withdrawn on that ground. In some cases, the Netherlands authorities did not receive any response; for instance, Malta did not respond in one case, so the Netherlands had to withdraw the transfer.

It was also reported that complexities in interpretation could complicate community service order transfers with Germany. The establishment of a local cross-border working group with Nordrhein-Westfalen was recognised as a positive response, aimed at developing solutions for cross-border transfers.

The issue of consent for making a transfer application was raised by the Netherlands authorities. The consent of the person for making an application was viewed as a critical component of good practice. However, it was often difficult to confirm that consent, leading to withdrawal of the application.

Community service orders

The most significant legislative problem identified by the Netherlands team was in relation to the transfer of community service orders. Until January 2020, there was no provision to suspend the time period for performing the community service order, when the transfer process started. The time period for carrying out the community service order therefore continued and if the transfer was not completed promptly, this period could expire without the community service order being completed. As of 1 January 2020, the law in the Netherlands has changed on this point. This is a matter that is important in every jurisdiction. Provision should be made in the FD and/or in local legislation for the suspension of a community service order in order that it can be fully completed on transfer.

The Netherlands authorities reported that, in their view, there are some disparities in measures applying under this FD. For example, German legislation does not regard community service as a primary sanction in its own right. However, in the Netherlands, community service is available as a primary sanction, as an alternative to a prison sentence. As a result, such orders are not seen as equivalent and community service orders transferred by the Netherlands authorities had been refused by German authorities.

For outgoing cases provisions vary: in Hungary the replacement detention sentence is reported to be one day for each day of community service; in Poland the replacement detention sentence is reported to be 0.5 day for each day of community service, whilst in Belgium the replacement detention sentence is reported to be 8 months for 80 hours of community service.

In incoming cases in the Netherlands, the replacement detention sentence in force, applied after recognition and transfer, is reported to be 40 days in prison for 80 hours of community service. In Belgium, the substitute detention is reported to be carried out by means of electronic surveillance. This considerable divergence in alternative sanctions across jurisdictions where community service is not performed does need to be addressed in the interests of fairness, transparency and consistency.

The Netherlands authorities stated that, in their view, when the Netherlands community service order is transferred, the ground for refusal referred to in Article 11(1)(j) of FD 2009/947/JHA is often incorrectly interpreted. The time period for the detention substituting for community service is confused with the time period for the supervised period for carrying out the community service order. The Netherlands replacement custody for community service has a maximum of 6 months, whereas the period for fulfilling community service is 18 months. In their view, it appears that Article 11 does not apply to the alternative custodial sentence where community service is an alternative to custody or is part of a suspended sentence.

The Netherlands authorities also reported that some convicted persons who had been convicted and sentenced in the Netherlands and do not live far from the border prefer to perform the community service in the Netherlands and vice-versa.

Experience in the Netherlands highlights the importance of taking particular care and ensuring clarity in completing Section j of the FD 2008/947/JHA certificate regarding the duration and nature of the probation measure or alternative sanction.

Rejected applications

Where transfers are rejected by a receiving CA in another jurisdiction the Netherlands authorities identified the absence of an appeal process as a significant issue to be considered and addressed when reviewing FD 2009/947/JHA and its operations. They would like to have some form of appeal process.

Competent authorities

The IRC-North Holland is in direct contact with the CAs of other Member States, insofar as they are known, based on the information on the EJN website. However, the competent authorities listed reportedly do not always respond or there are significant delays in their responses. In some instances, the information on the EJN website is not up to date so the IRC has resorted to local contacts to identify the relevant CA. The Netherlands authorities say there is a need for a prompt updating of contact points and details on the EJN website as this is an essential and authoritative central resource.

Experienced CAs were said by the Netherlands authorities to be more efficient and timely in their processing of applications, reflecting the value of regular practice. Lack of experience and knowledge was reported as being reflected in incomplete applications, applications deleted or 'timed out', difficulties with identifying or agreeing alternative or substitute measures, and mistakes in applications. These shortcomings and inconsistencies present real obstacles in developing and strengthening mutual trust and cooperation. There is a particular need to develop appropriate guidance and support materials for jurisdictions with limited experience or with many CAs with limited experience. The development of an FAQs package, or a European central reference point to which queries and questions could be addressed, might be helpful.

One recommendation from this evaluation would be to have, where possible, an experienced central competent authority in each jurisdiction with a positive relationship with their executing authorities, good communications with legal professionals and training bodies and the means to promote awareness and understanding of FD 2008/947/JHA with potential beneficiaries.

Awareness and knowledge gaps

A principal obstacle to more frequent use of FD 2008/947/JHA, cited during the evaluation, was a lack of knowledge of its possible benefits among legal and supervising professionals of the other Member States and, most significantly, among potential beneficiaries in the Netherlands and in other jurisdictions. As a result, convicted persons often contact the Netherlands authorities asking for help with a transfer of a decision from another Member State to the Netherlands. It seems that some foreign authorities are not familiar with the FD.

A significant information and promotion campaign for eligible persons subject to community sanctions and measures in the Netherlands would be helpful, in order to maximise participation and uptake of the opportunities provided to complete the sanctions or measures in their home jurisdiction. In addition, information and training should be provided to legal professionals, including the judiciary, prosecution and defence counsels and Probation Service staff. This could be done through wide provision and active promotion of short briefings, training sessions, information leaflets, newsletters, leaflets and short videos. It might also be helpful to consider disseminating information through migrant support bodies and services, advocacy groups and social service centres.

The Netherlands authorities are already leading participants in, and contributors to the Confederation of European Probation (CEP) annual network meetings on FD 2008/947/JHA and FD 2009/829/JHA. These meetings provide valuable opportunities to share knowledge and experience, develop a network of CAs and increase mutual trust between CAs and executing bodies. It could be useful for more CAs to join this annual meeting and network.

Information from the executing State

There is a requirement for the competent authority (CA) of the executing State to inform the competent authority of the issuing State without delay of all decisions relating to modification or revocation of a probation measure or alternative sanction, enforcement of a custodial sentence or measure involving deprivation of liberty because of non-compliance with a probation measure or alternative sanction, and of the potential ending of a probation measure or alternative sanction.

However, the Netherlands authorities stated that they do not usually receive the information from the CA of an executing State about the completion of the execution of a probation measure, so they have to ask for it to register that information in the registry and close the case in the electronic system. On the other hand, they admitted that they also do not manage to inform the CA of the issuing State due to a shortage of staff.

Data gathering

The IRC-North Holland gathers and has provided valuable data on incoming and outgoing applications. There is a gradual increase in incoming and outgoing applications. However, there is potential for many others to avail of the FD 2008/947/JHA provisions. It would be helpful to develop the data report further by tabulating length of time to complete transfers, reasons for non-completion or refusal of transfers, transfers by issuing/recipient jurisdiction, age and gender profiles, etc. This could inform policy and decision-making, identify trends and assist planning.

6.3. Conclusions

The IRC-North Holland has an established and impressive structure for efficient processing of applications in respect of FD 2008/947/JHA and FD 2009/829/JHA. There is transparency in the process and evident good relations between the prosecution team and the RN International Desk of the Netherland Probation Service. The IRC and RN colleagues have been lead participants in the Confederation of European Probation (CEP) annual network meetings on FD 2008/947/JHA and FD 2009/829/JHA. The IRC system has been praised as a model of good practice for other jurisdictions.

The Netherlands authorities have benefited through their close relationship with the executing authority, the RN International Desk of the Netherland Probation Service and legal professionals. Through their experience they have gathered valuable knowledge and a critical understanding of the limitations and gaps in practice in respect of FD 2008/947/JHA. Their comments will be important when reviewing operations and legal provisions.

The Netherlands authorities have initiated a valuable data-gathering process. It would be of considerable benefit for that data-gathering model to be expanded and shared with other jurisdictions, so as to establish a comparable body of data and information covering as many jurisdictions as possible, thereby enabling analysis of trends, gaps and opportunities to inform planning and practice.

There is significant further work to be done in the Netherlands regarding awareness raising, information dissemination, and training and skills development among legal and supervisory professionals and bodies. There is a particular challenge with disseminating information and raising awareness of FD 2008/947/JHA among eligible persons and Netherlands nationals and residents in other jurisdictions.

FD 2008/947/JHA is a most valuable European provision supporting the rehabilitation, integration and settlement of persons subject to community sanctions and measures. It is still at an early stage of implementation. Considerable experience has been gathered and many lessons have been learned through the work of the Netherlands competent authorities and their partners. They will be important partners in contributing to developing practice, increasing mutual trust and promoting the use of FD 2008/947/JHA across Europe.

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

FD 2009/829/JHA has been implemented in Book five, Part 7, of the Code on Criminal Procedure - International and European cooperation in criminal procedural matters (hereinafter 'Book five').

General provisions are in chapter one (sections 5.7.1-5.7.4), provisions concerning the Netherlands acts as an executing State in chapter two (sections 5.7.5-5.7.15), and provisions covering when the Netherlands acts as an issuing State in chapter three (sections 5.7.16-5.7.20).

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

According to Book five of the national Act, the Public Prosecution Service is the competent authority for deciding on recognition of a decision on supervision measures received from the issuing Member State with a view to execution in the Netherlands and for forwarding decisions on supervision measures issued by the Netherlands to the executing Member State with a view to recognition and execution in that state.

However, in practice, it is the specialised department within IRC-North Holland, which acts as the competent authority and is responsible for assessing all incoming and outgoing cases. The IRC is a specialised and professionally trained authority.

Whenever it is deemed necessary, the IRC communicates directly with the competent authorities in the issuing or executing Member State to ensure a smooth and efficient implementation of the provisions of this FD.

7.1.1. The procedure where the Netherlands acts as an executing State

A decision on supervision measures may be recognised if the person concerned has his/her habitual abode or residence in the Netherlands and, after having been informed of the supervision measures, has consented to return to the Netherlands. In other cases, a decision on supervision measures may be recognised if the person concerned has requested the forwarding of the execution of the supervision measure and there is a demonstrable and sufficient relationship with the Netherlands.

The decision on supervision measures, together with the certificate, may be forwarded by ordinary mail, fax or e-mail, provided that the authenticity of the forwarded documents can be established.

The Netherlands accepts documents for recognition in the Dutch and English languages.

After receiving the request for recognition the IRC checks the address, social ties, the certificate, and the feasibility of execution of the requested measures.

The following types of decisions imposing one or more supervision measures may be recognised and executed in the Netherlands or forwarded to another Member State of the European Union in accordance with Netherlands law:

a. an obligation to inform a specific authority of any change of place of residence or abode;
b. an obligation not to enter certain localities, places or defined areas;
c. an obligation to be at a specified location at specified times or during a specified period;
d. a limitation on leaving the territory of the executing Member State;
e. an obligation to report at specified times to a specific authority;
f. an obligation not to contact or to avoid contact with specific persons or institutions;
g. other supervision measures which the executing Member State is prepared to monitor[5].

[5] Chapter 1, Section 5:7:3, paragraph 2 of the CPC, supervision measures as referred to in subsection (1)(g) may be designated by Governmental Decree, insofar as relating to the Netherlands as the executing Member State.

The IRC must decide within 28 days of receipt of the certificate whether or not to recognise the decision on supervision measures.

The grounds for refusal (section 5.7.10) correspond to those listed in Article 15 of the FD.

There is no hearing of the defendant before the decision of the Netherlands authorities on the recognition, but the defendant is informed about the decision.

The modification of supervision measures at the request of the issuing State is regulated in section 5.7.14. If the defendant asks the Netherlands authorities for a modification, he or she is advised to contact the issuing authority for this.

The IRC contacts the International Desk of the Netherland Probation Service to monitor compliance with the supervision measures imposed on the person. The duty of the Probation Service is to inform the IRC of any non-compliance with the supervision measure. The IRC reports to the issuing State any changes in the place of abode or residence of the person concerned or obstacles to monitoring the supervision measures.

7.1.2. The procedure where the Netherlands acts as an issuing State

Suspension court orders may be forwarded to another Member State (different from the one the suspect is a resident of), provided the suspected person has requested such a transfer, and the other State has agreed to the forwarding.

Mostly the initiative for a request for transfer comes from the local prosecutor. However, sometimes defendants/their lawyers ask for an ESO in court. The transfer has to be authorised by the court.

When pre-trial detention is suspended, the local prosecutor contacts the Public Prosecution Service which starts by identifying the competent authority in the other Member State for recognition purposes. The local prosecutor also contacts the Public Prosecution Service if he or she expects that the pre-trial detention will be suspended, so as to speed up the procedure and start preparing the case for transfer, and checks if a transfer is possible since the procedure on the recognition takes quite a long time and the defendant is kept in custody until the recognition.

The relevant provisions for the suspension of pre-trial detention are sections 80ff. of the Netherlands Criminal Procedure Code.

The certificate is filled in by the local prosecutor who sends it to the IRC, which controls the documents, arranges translations into the official language of the executing State or a language mentioned in the declaration (deposited with the General Secretariat of the Council of the EU) and then transfers the documents to the executing State.

Suspects/defendants are always informed about the consequences of non-compliance with the obligation. In two cases the Netherlands authorities had to issue an EAW because the defendant failed to fulfil the obligations.

During the transfer of the supervision order, the Public Prosecution Service stays in contact with the authorities of the relevant Member State and a local prosecutor until the decision on the supervision measure is recognised and subsequently informs the relevant local prosecutor and the court about the decision on recognition.

If the Netherlands authorities refuse to transfer the supervision order, the suspects/defendants person has the right to appeal against such a decision and ask for a change to the measure imposed.

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

The IRC continuously assesses national legislation in conjunction with the framework decisions. According to practitioners, the national legislation concerning the application of FD 2009/829/JHA is sufficient and clear.

The Netherlands authorities provided us with statistical data about incoming and outgoing cases for the period from 2018 until April 2020. The numbers presented in the table below show that the FD 2009/829/JHA is not often used, however the expert team wishes to acknowledge that the Netherlands is one of the few states that have so far used this FD in practice.

	Incoming 2018	Outgoing 2018	Incoming 2019	Outgoing 2019
Recognised	9	6	4	1
Being processed			3	
Evaluated, no transfer	1			
Turned down	1			
Total number of cases	**11**	**6**	**7**	**1**

The main reason seems to be a lack of knowledge amongst courts, prosecutors and defence lawyers. But there may also be some concern that defendants will fail to appear in court when summoned - if they are abroad due to an ESO - so it might be difficult to get them back easily and on time using an EAW.

The Netherlands CA presented some examples of problems with the application (or non-application) of the FD:

- Knowledge of this Framework Decision sometimes appears to be limited abroad. For instance, after receiving the certificate the prosecutor in Germany asked the Netherlands authorities for an EIO instead of starting the procedure on recognition. Owing to the discussion and unnecessary requests (requiring other decisions from the Netherlands Court), the certificate was withdrawn. Nowadays in such cases the CA asks for the assistance of the BES (office for cooperation between Germany, Belgium and the Netherlands).

- Romania sent a certificate for medical research which in fact was not an ESO matter. Romania was unwilling to discuss the matter and also did not want to release the suspect without recognition. The suspect needed a medical check, and he had already missed it once.

So the Public Prosecution Service decided to be practical and recognised it anyway. It did not want the suspect to be a victim of this discussion and to miss the medical check. The suspect followed all obligations until he returned to Romania.

- Defendants abroad contact the CA to arrange a transfer. Probably the foreign authorities are often not familiar with this procedure. The CA then contacts the competent authority of the other Member State, sends them the certificate in their language and ask to arrange the transfer. Also, they refer to the EJN website.

- Some countries release suspects even before the recognition certificate is sent. In the executing State, it must still be assessed whether the transfer can be recognised. For instance, France releases suspects before or at the same time as they send the certificate. Before the recognition, there is no supervision. Sometimes suspects report to the police or the CA on their own initiative but the latter do not know anything about a transfer.

- In Hungary, two 21-year-old men were released from pre-trial detention but obliged to stay on house arrest in Hungary. Although the Public Prosecutor informed the Hungarian authority that the Netherlands could supervise and monitor this measure the men were kept on house arrest in Hungary. Moreover, these young men had to pay for a rental apartment, and had to ask for help with doing shopping. The Hungarian authority was unwilling to use the FD.

- In many cases, there is no information provided to the Netherlands authorities that the supervision measures have ended. Sometimes it is convicted persons who inform the Netherlands' competent authorities about this fact.

- Some translation problems have arisen. For instance, the community service measure that a convicted person had to serve was expressed in months instead of days in a translation, but this only came to light after the convicted person had contacted the Netherlands Public Prosecution Service. Another misunderstanding caused by translation relates to a supervision order from Hungary. The obligation imposed by the Hungarian court was not to leave the country, however, it was translated as not to leave the *residence*. Afterwards, a lawyer for the convicted person pointed this out to the Public Prosecution Office which contacted the issuing authority, and it transpired that there was a mistake in the translation.

- Some countries require a periodic extension of the supervisory decision. This requires extra work from the Netherlands authorities (monitoring of deadlines and drawing up documents for extension).

- Sometimes, the EJN site only provides general information regarding the competent authority, such as 'district court'. Sometimes the competent authority listed by the EJN does not respond. In addition, the information on the EJN website is not always up to date.

According to practitioners, the instrument is not used often because not many practitioners want to transfer the suspended pre-trial detention and thus lose control over a suspect.

Other reasons why the FD is not used very often and why the practitioners do not have a proactive approach to selecting cases suitable for transfer under FD 2009/829/JHA are:
- the limited capacity within the IRC-North Holland (they are short of a legal assistant and a prosecutor);
- limited support of their electronic system, which needs to be developed.

The Netherlands has two electronic systems for registering criminal cases; an old system and a new system. However, only the new system can select cases, and pre-trial cases have not been included for long in the new system.

Practitioners also noted that, according to their experience, personal contact is most important for cooperation. So improving collaboration and more frequent implementation of the FD would be facilitated by organising annual meetings with experts from Member States asking for recognition of measures and vice versa.

7.3. Conclusion

As already mentioned and described under 6.3, the IRC-North Holland has an established and impressive structure for the efficient processing of applications in respect of FD 2008/947/JHA and FD 2009/829/JHA. Centralising competence for handling requests under FD 2009/829 JHA in a single office is very sensible. This specialisation enhances knowledge and experience of dealing with incoming and outgoing requests and increases efficiency, effectiveness and speed. The competent prosecutor at the IRC-North Holland and her assistants work in close cooperation with the International Desk of the Dutch Probation Service.

This specialisation is also very important when considering the relatively low number of requests under FD 2009/829 JHA. Splitting up the competence regionally would have led to fragmented knowledge and experience and probably even lower numbers of outgoing requests.

With regard to the numbers of outgoing requests there is still room for improvement. Raising awareness in respect of FD 2009/829 JHA is therefore of utmost importance to making full use of this FD. On the other hand, higher numbers might make it necessary to provide more staff for the CA.

7.4. Bar Association

The evaluation team also met with representatives of the Netherlands Bar Association, with whom we had an open and fruitful discussion. Representatives of the Bar Association pointed out several matters that lawyers consider problematic and have encountered when applying the FDs covered by this evaluation.

The first topic discussed related to the education of lawyers concerning FDs covered by the evaluation, as well as selection and specialisation requirements.

A person who wants to become a member of the Bar Association has to pass a three-year internship organised by the educational department of the Bar Association concluding with successful exams. The Bar representatives noted that it was enough, six years ago, to attend courses, listen to lectures, and sign an attendance list to obtain proof, in order to pass the exam. However, this has changed, and now it is a high-level exam. During these three years of internship, the trainees choose their specialisation area and it is marked in the Bar Association system.

The education is provided at the academic level by qualified lawyers and professors from various universities and at a practical level by prosecutors and judges.

Lawyers must follow 20 hours of training per year, 12 hours of which need to be on criminal law and international cooperation legislation e.g. on the EAW. Certificates of successful exams must be submitted to the Bar Association system.

With regard to specialisation, the Amsterdam Bar Association has a list of specialised lawyers dealing with EAW cases. If a lawyer wants to be on this list, they must fulfil the Bar Association's criteria (experience, training on the EAW and international legislation, the Surrender Act, WETS and FDs). There is an emergency system for lawyers specialising in EAW cases who are placed on on-call duty for the whole week (two or three lawyers). As soon as somebody is arrested, the Amsterdam public prosecutor provides the lawyers on emergency duty with documents, and one of the lawyers on duty will take the case over if the detained person does not have a lawyer. A detained person remains free to choose their lawyer, even from people not on duty. However, emergency lawyers are informed about the chosen lawyer, and they can contact him or her and discuss how he or she can take over the case.

However, there is no such system outside Amsterdam as only the Amsterdam court is the central authority dealing with all incoming EAW cases. If a person is arrested based on an EAW in other parts of the Netherlands, he or she will get a lawyer who is not specialised on the EAW. This is because the Bar Association does not have a national policy on specialisation, and, as has been noted elsewhere, because there are not many arrests in other areas.

Representatives of the Bar Association commented that problems occur in cases where a person was convicted in another Member State and wants to be transferred to the Netherland to serve a sentence, because in such cases it is not mandatory to provide the person with a lawyer (this provision was cancelled two years ago). Thus, the convicted person does not have anyone to advise him on his/her situation and what would be better for him/her in view of the different provisions in the Member States on conditional or early release.

Representative of the Bar Association mentioned an issue they have encountered, i.e. if a person is sentenced to 6 years by Belgian authorities, under Belgian law, it is possible to apply for parole after 1/3 of the sentence has been served (after two years). However, if the person is surrendered to the Netherlands after serving one year, he or she cannot apply for parole under Belgian law when serving a sentence in the Netherlands. The matter is to be decided by the court executing the sentence and, as a representative of the Bar Association explained, there is no enforcement court in the Netherlands and once a person is transferred to the Netherlands, parole cannot be granted before serving 2/3 of the sentence.

With regard to FD 2009/829/JHA, representatives of the Bar Association stated that it is complicated and sometimes impossible to achieve a change of pre-trial detention into a supervision measure, even for less severe offences. They also added that this FD is rarely used due to lack of trust of a convicted person.

8. TRAINING

8.1. Training relating to FDs 2002/584/JHA and 2008/909/JHA

There is no systematic training on FD 2008/909/JHA but IOS practitioners provide on-the-job training sessions for new colleagues. Furthermore, they noted that they work based on a four-eyes principle, and Senior legal advisors review all letters and decisions; therefore, they deem to have a high standard and knowledge of the working of the FD 909. The IOS gives presentations to various institutions involved, to raise awareness about FD 2008/909/JHA, including members of the Prosecution Office and courts.

Practitioners sometimes participate in meetings with other countries though not in training at EU level. The Netherlands is an active participant and contributor to **Europris** training events on FD 2008/909/JHA. The competent authority (IOS) is familiar with the online tools provided by the EJN and Europris.

In relation to FD 2002/584/JHA (EAW), courses are given every year by the Study Centre for the Administration of Justice (SSR) on the surrender procedure and how to issue an EAW, and experience and knowledge are exchanged. The courses are open to prosecutors, judges and legal support staff and attract around 75 participants. During the course on the EAW, case law of the Court of Justice of the EU is also discussed. The Court's case reports from Eurojust are also distributed to the network.

The annual international conference organised by the ERA, on current affairs in the field of mutual recognition instruments (Framework Decision 2002/584, Framework Decision 2008/909, etc.) is always attended by professionals from the Netherlands. Every year, each prosecutor from IRC Amsterdam attends an international conference (6 officers in total). Secretaries from the IRC also participate in conferences.

Several times a year there are national meetings at which experts on the EAW share knowledge and experience. During these meetings, reference is also made to the Handbook for issuing an EAW (2017 version). In addition, there is a national EAW Handbook that can be found on the national intranet of the Public Prosecutor's Office. Recent case law is shared during meetings of the experts involved.

The EJN website acts as a source of information for cross-border legal cooperation with other Member States. The Ministry of Justice annually draws attention to the EJN website and encourages use of the various tools. The *Fiches Belges* are useful and are used regularly.

There is a solid programme of training and knowledge exchange on FD 2002/584/JHA, run primarily by the SSR. There is some room for improvement through wider dissemination of training and knowledge to other criminal justice professionals.

In relation to FD 2008/909/JHA, there are limited structured training programmes available. Training is dependent in large part on the work of the IOS whose tasks do not include training. Participation in Europris and ERA events is helpful for FD 2008/909/JHA but appears to attract limited numbers. An online education and training initiative similar to the PONT project (FDs 829 and 947) would be of particular value for FD 2008/909/JHA. Dissemination of knowledge, information and skills should be an ongoing priority.

8.2. Training relating to FDs 2008/947/JHA and 2009/829/JHA

Training is provided by the Judicial Academy, which is the Netherlands national training centre on criminal law but provides training only to a very limited extent. The training centre provides courses for the public prosecution offices and courts and also for lawyers. The training usually lasts only one afternoon. Training is provided by professionals.

However, the Netherlands was not able to provide us with figures on training events or on how many practitioners had participated in such training.

The IRC provides training to practitioners but on an incidental basis. However, they also organise presentations for judges, prosecutors and their staff if asked.

Dissemination of training materials within the Public Prosecutor's Office is carried out by the IRC, although it has not officially been allocated that task.

The Study Centre for the Administration of Justice (*SSRBa-Studiecentrum Rechtspleging*), provided training for 25 practitioners in its yearly European criminal law course.

The IRC participates in training courses and meetings in a European context, such as training courses organised by the EJTN and the ERA and themed meetings of EJN, BES, PONT and CEP. However the number of participants is unknown. The Netherlands practitioners also have access to online practical tools provided by the EJN.

Webinars were organised presenting the content of the Judicial Academy website, where relevant information relating to each FD can be found. However, these webinars are very brief, lasting only 10 minutes, as practitioners explained at the VTC meeting.

Information can also be found on the intranet page of the Public Prosecutor's Office and from comments in newsletters.

As regards existing online tools and databases, the practitioners consider that there is some overlap. It would be much better to find all the information in one place (perhaps with links to other websites) and for it to be regularly updated.

8.3. Conclusions

Regarding the European Arrest Warrant (FD 2002/584/JHA), there is a strong programme of training and knowledge exchange in place run primarily by the SSR. There is some room for improvement through wider dissemination of training and knowledge to other criminal justice professionals.

In relation to FD 2008/909/JHA, there are limited structured training programmes available. Training is dependent in large part on the work of IOS whose tasks do not include training. Participation in Europris and ERA events, is helpful for FD 2008/909/JHA but attracts limited numbers, it appears. An online education and training initiative similar to the PONT project (FDs 829 and 947) would be of particular value for FD 2008/909/JHA. Dissemination of knowledge, information and skills should be an ongoing priority.

For Framework Decision 947/2008 and Framework Decision 829/2009 the importance of information dissemination and also of training for legal and other professionals has been highlighted.

Lack of experience and knowledge has been evident in incomplete applications, delayed and 'timed-out' applications, difficulties in identifying or agreeing alternative or substitute measures and mistakes in applications. There is a particular need to develop appropriate guidance and support materials for jurisdictions with limited experience. There could also be benefits from developing an FAQs package or a European central reference point to which queries and questions can be addressed.

One recommendation of this evaluation is to have, where possible, an experienced central competent authority in each jurisdiction with a positive relationship with their executing authorities, good communications with legal professionals and training bodies and a means of promoting awareness and understanding of FD 2008/947/JHA to potential beneficiaries.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions by the Netherlands

Suggestions concerning FD 947 and FD 829:

It has become apparent that there is a considerable discussion between Member States regarding the transfer in respect of FD 947 concerning medical treatments. Therefore our proposal is that each Member State will include a list on EJN (the Fiches Belges page) holding the kind of medical treatments and measures which can be recognised under FD 947 so that the transfer of these cases will proceed more smoothly.

Another matter to think about is that it might be proficient to make a guide in which practical and didactic tools are admitted and wherein the obstacles accompanying the usage of the instruments on Mutual Recognition will be aimed. Between Spain, France, Belgium and the Netherlands such an guide has been made during the METIS project. The Netherlands played an important role in this and made an important contribution to this guide with their professional expertise. It contains the practical effect of three instruments on mutual recognition in those four countries. Such a guide is very useful, especially for the MS who are working together a lot.

A third suggestion is the idea of appointing a CA in each jurisdiction might be considered. In this way, knowledge will be centralised and the knowledge of these instruments will strongly increase. A CA will be able to answer questions from for example public prosecutors offices in their jurisdiction. Besides this, a CA will simplify the cooperation between MS because maintaining contact should this way be easier.

In conclusion, the awareness of FD 829 should be improved (as well in the Netherlands as in other MS). More trainings and meetings are necessary to improve this awareness.

Suggestions concerning FD 909:

Concerning the date of granting parole or conditional release: the date of granting parole or conditional release is based on information of the issued country, but they only give a number of days which must be taken in account to find out the date of parole or release. Foreign countries should also give information which period exactly someone has been in prison so the Netherlands can verify if the number of days is correct.

9.2. Recommendations

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

The Netherlands 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 fit to make a number of suggestions for the attention of the Netherlands authorities. Furthermore, based on the various good practices, related recommendations are also being put forward to the EU, its institutions and agencies, and to Eurojust and the EJN in particular.

9.2.1. Recommendations to the Netherlands

Recommendation 1: (EAW) The evaluation team encouraged the Netherlands authorities to welcome the jurisprudence of the CJEU for assisting with the elimination of deficiencies in the OLW.

Recommendation 2: (909) Transfer of sentenced persons is one of the key elements of judicial cooperation within the EU. Therefore, the availability of the CJEU judicial review of the interpretation of the FD 2008/909 in the light of domestic regulations is of the utmost importance. However, no request for a preliminary ruling concerning FD 2008/909 when the Netherlands acts as the executing State can be lodged. Thus, it is recommended that the Netherlands authorities amend the present procedure or practice of the Arnhem court to let this body ask for a preliminary ruling.

Recommendation 3: (FD 2008/909/JHA) Concerning the adaptation of the sentence, the final decision is taken by the IOS on behalf of the Minister based on the reasoned opinion of the Arnhem-Leeuwarden Court of Appeal. According to 2:8 WETS the Minister takes the court ruling and the certificate into consideration. However, he final decision on the adaptation should be made by judicial authorities and not by the IOS. The evaluation team encourage the Netherlands to reconsider the national legislation (4.4., paragraph 2 of the report and Article 2:12 of the new law).

Recommendation 4: (829, 947) To be able to use the full potential of FD 2009/829/JHA and FD 2008/947/JHA, it is of utmost importance to enhance the knowledge of these FDs. Therefore, raising awareness of these FDs and promoting their use is very important. This could be done, for example, in training sessions, newsletters, or through leaflets distributed among the judiciary and to defence lawyers and defendants.

9.2.2. Recommendations to all Member States

Recommendation 1: (909, 947) The executing State should always provide the information to the issuing State when the convicted person has served the entire sentence.

Recommendation 2: (FD 947) Each national jurisdiction should provide clear instructions regarding the number of hours to be completed on community service work and also provide a clear statement of the alternative penalty where a sanction is not completed as an alternative to custody. In some jurisdictions, one day of community service can represent 4 or 6 or 8 hours, so the figure is not clear and it **should be explained on the certificate that 1 day of community service represents 6 or 8 hours.**

Recommendation 3: (FD 947) With regard to custody, when the person has not completed the community sanction the calculation concerning the number of days as an alternative sentence is not easy to interpret. The issuing State should provide a clear statement of the alternative penalty where a sanction is not completed as an alternative to custody.

Recommendation 4: The Netherlands has a well-structured single point of contact for each FD which has considerable centralised experience and knowledge. The use of an expert single point of contact in each jurisdiction dealing with incoming and outgoing applications under the FDs is encouraged as a model of very good practice.

Recommendation 5: (909, 947, 829) The Netherlands uses its data to identify possible applicants for FD transfers in its databases. This could, with appropriate safeguards, be a way of promoting the use of FDs 947 and 829 among potential beneficiaries.

Recommendation 6: In respect of applications under FD 947, there is a need, highlighted in the Netherlands, for a legal suspension of the time for execution of a community service order from the moment of sending the application in order to provide for recognition. This would take account of the time taken to complete the transfer of the community service order and allow time to complete the order after has been transferred. A similar arrangement for other orders under FD 947 should be considered to enable greater use of such transfer opportunities.

Recommendation 7: As in other jurisdictions, awareness among possible applicants, legal professionals and others of the possible benefits of transfers under FDs 947, 829 and 909 is limited. Nevertheless, there is potential value in sharing information dissemination materials and training programmes across Europe. There is also the possibility to develop and disseminate information through leaflets and other media, including social media (FD 909, FD 947 and FD 829).

Recommendation 8: The Netherlands has a volunteer group (ENCP), which maintains contact with Dutch prisoners in other countries around the world to help them. This is a model that could be replicated in other jurisdictions and would help promote awareness and opportunity for the increased use of FD 2008/909/JHA whilst supporting positive resettlement after release (909).

Recommendation 9: The SSR provides a valuable training and information service for the Netherlands judiciary on the use of the EAW (FD 2002/584/JHA). Similar training and information dissemination models should be encouraged and promoted for FDs 909, 947 and 829 in the Netherlands and in other jurisdictions.

Recommendation 10: The PONT Project (https://probationobservatory.eu/) provides a valuable international online training and knowledge base (https://pont.unibuc.ro/login/index.php) for FD 947 and FD 829. It should be promoted and used widely in all EU jurisdictions and a similar initiative in respect of FD 909 should be encouraged.

9.3. Best practices

1. The Netherlands has a volunteer group within the International Desk of the Dutch Probation Office (), which maintains contact with Dutch prisoners in other countries around the world to help them. This is model of practice that could be replicated in other jurisdictions and would help promote awareness and opportunity for the increased use of FD 909 as well as supporting positive resettlement after release. There is also the possibility to develop and disseminate information through leaflets and other media including social media. (FD 909, FD 947 and FD 829).

2. (947) The Probation Service provides information to all probation officers, lawyers and judges and training input, which is a good idea.

3. (all FDs) The Netherland authorities accept certificates not only in Dutch but also in English. It is considered one of the best practices.

4. The competent Netherlands authorities (prosecutors and judges), which deal with the various instruments of international cooperation, are narrowly specialised. Nevertheless, such an approach has obvious advantages, including the expansion of knowledge and experience on handling incoming and outgoing requests and increasing efficiency and speed.

Programme of the VTC preparatory meeting with the Netherlands' representatives

Thursday, 22 April 2021

[Venue: VTC meeting]

[Participants representing the High Criminal Court, the county courts, the County State Attorney's Office, the Probation Office and the Ministry of Justice, for discussion on FDs 2008/847/JHA and 2009/829/JHA]

9:00 - 9:10	Opening speeches, introduction of the host team and evaluation team
9:10 - 11:30	Presentation concerning FD 2008/947/JHA, followed by Q&A and discussion
11:30 - 11:45	Break
11:45 - 14:00	Presentations concerning FD 2009/829/JHA, followed by Q&A and discussion
14:10 - 15:30	Internal meeting of the evaluation team and observers.

Programme of the on-site evaluation visit with the Netherlands' representatives

Monday, 7 March 2022

Arrival of the evaluation team in the Netherlands

18:00 - Internal meeting of the evaluation team

Tuesday, 8 March 2022

[Venue: Utrecht, Conference centre at Karel V hotel]

[Participants: Director of the Ministry of Justice and Security; Senior Legal Advisor of the Ministry of Justice and Security Directorate for Law and Legal Affairs; legal advisor from the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries; policy officers from the Ministry of Justice and Security; Prosecutor of the Arnhem-Leeuwarden Public Prosecution Office; policy officer from the Arnhem-Leeuwarden Public Prosecution Office and Judge of the Special Chamber of the Arnhem-Leeuwarden Court of Appeal]

09:30 - 09:40 Welcome speeches, introduction of the host team and the evaluation team;

09:40 - 12:00 concerning FD 2008/909/JHA, followed by Q&A and discussion

12:00 – 13:00 Lunch break

13:00 – 16:00 Presentations concerning FD 2008/909/JHA, followed by Q&A and discussion

17:00 – 18:30 Internal meeting of the evaluation team

Wednesday, 9 March 2022

[Venue: Utrecht, Conference centre at Karel V hotel]

[Participants: lawyers and representatives of the Dutch Bar Association; legal advisors of the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries; policy officers of the Ministry of Justice and Security, and legal advisors from the Fugitive Action Search Team of the National Public Prosecution Office]

9:30 – 12:00	Meeting with the representatives of the Bar Association, Q&A and discussion
10:30 – 10:45	Coffee break
10:45 - 12:00	Continuation of the discussion
12:00 – 13:30	Official lunch
13:30 – 16:00	Presentation by FAST team of the Dutch National Public Prosecution Office followed by Q&A and discussion
18:00 - 19:30	Internal meeting of the evaluation team

Thursday, 10 March 2022

[Venue: Public Prosecutor´s Office, Amsterdam]

[Participants: prosecutors from the International Centre for Mutual Legal Assistance (IRC) of the Prosecutor's Office Amsterdam; Senior Legal Advisor from the Ministry of Justice and Security Directory Law and Legal Affairs; legal advisor from the Ministry of Justice and Security Directory Law and Legal Affairs; legal advisor from the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries; policy officers from the Ministry of Justice and Security; judges and Chair of the International Chamber of The District Court Amsterdam ('IRK'); legal advisors from the IRK and professors of international and European criminal law and legal advisor from the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries]

09:00 – 9:15	Welcoming speeches and introduction of the teams
9:15 - 11:30	Presentations prosecutors of IRC (the Public Prosecutor's Office), followed by Q&A
11:30 - 14:30	City trip Amsterdam including lunch
14:30 - 16:00	Presentation provided by judges of IRK, followed by Q&A and discussion
16:00 - 17:00	Wrap up meeting, final speeches
19:00 - 20:00	Internal meeting of the evaluation team

Thursday, 22 April 2021, from 9:00 to 14:00, VTC preparatory meeting with representatives of the High Criminal Court, county courts, County State Attorney's Office, Probation Office and Ministry of Justice, for discussion on FDs 2008/847/JHA and 2009/829/JHA.

Venue: 22/04/2021 - VTC preparatory meeting

Person interviewed/met	**Organisation represented**
Marina Beun	Prosecutor at the International Centre for Mutual Legal Assistance, based at the Public Prosecutor's Office
Joyce Dreessen	Legal Advisor on Criminal Law at the Ministry of Justice and Safety
Leontien Kuijer	Coordinator of the international office of the Dutch Probation Service
Raymond Swennenhuis	Policy advisor, international office of the Dutch Probation Service
Juul Dresen	Policy advisor at the Dutch Ministry of Justice
Ron Goudsmit	Policy advisor at the Dutch Ministry of Justice
Elisa Sason	Ministry of Justice

Persons interviewed during the on-site visit

Tuesday, 8 March 2022, from 9:30 to 12:30, meeting with representatives; the Director of the Ministry of Justice and Safety, Policy officers of the Ministry of Justice and Safety, legal advisor of the Ministry of Justice and Security Directory Law and Legal Affairs, the Custodial Institutions Agency, National Administration of Penitentiaries.

Venue: Karel V Conference Centre Utrecht, Geertebolwerk 1 Utrecht

Person interviewed/met	**Organisation represented**
Drs. Justus Kox	Director of the Ministry of Justice and Security, Directorate of Sentences and Protection, also concerning execution and transfer of sentences and measures
Dr. Jeroen de Jong	Senior Legal Advisor at the Ministry of Justice and Security, Directorate for Law and Legal Affairs
Mr. Jan-Peter van Bodegraven	Legal advisor on the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries
Mr. Ron van der Beek	Policy Officer, Ministry of Justice and Security
Drs. Ron Goudsmit	Policy Officer, Ministry of Justice and Security (International cooperation on criminal matters)

Tuesday 8 March 2022, from 13:30 to 16:00, meeting with representatives of the Ministry of Justice and Safety, Public Prosecution Office, the Special Chamber of the Arnhem Court of Appeal, the Custodial Institutions Agency, National Administration of Penitentiaries.

Venue: Karel V Conference Centre Utrecht, Geertebolwerk 1 Utrecht

Person interviewed/met	**Organisation represented**
Mr. Vincent Smink	Prosecutor at the Public Prosecution Office Arnhem-Leeuwarden, Legal Office Executive
Mr. Andre de Meij	Policy officer at the Public Prosecution Office Arnhem-Leeuwarden, Legal Office Executive
Mr. Hans Lensing (written contribution)	Judge of the Special Chamber of the Arnhem-Leeuwarden Court of Appeal
Mr. Jan-Peter van Bodegraven	Legal advisor of the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries
Drs. Ron Goudsmit	Policy Officer, Ministry of Justice and Safety (International cooperation on criminal matters)
Mr. Ron van der Beek	Policy Officer, Ministry of Justice and Safety

Wednesday, 9 March, from 9:30 to 12:00, meeting with representatives of the Bar Association; legal advisor of the National Administration of Penitentiaries and Policy Officer of the Ministry of Justice and Security

Venue: Karel V Conference Centre Utrecht, Geertebolwerk 1 Utrecht (entire day)

Person interviewed/met	**Organisation represented**
Mr. Robert Malewicz	Lawyer and representative of the Dutch Bar Association
Mr. Chris Beuze	Legal advisor on the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries
Drs. Ron Goudsmit	Policy Officer, Ministry of Justice and Safety (International cooperation on criminal matters)

Wednesday, 9 March 2022, from 13:20 to 16:00, meeting with legal advisors of the Fugitive Action Search Team of the national Public Prosecution Office; legal advisor of the National Administration of Penitentiaries and Policy Officer of the Ministry of Justice and Safety.

Venue: Karel V Conference Centre Utrecht, Geertebolwerk 1 Utrecht (entire day)

Person interviewed/met	**Organisation represented**
Mr. Robert Jansen	Legal advisor of the Fugitive Action Search Team of the National Public Prosecution Office
Mr. Nienke Haaijer	Legal advisor of the Fugitive Action Search Team of the National Public Prosecution Office
Mr. Chris Beuze	Legal advisor of the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries
Drs. Ron Goudsmit	Policy Officer of the Ministry of Justice and Safety (International cooperation on criminal matters)

Thursday, 10 March, from 9:30 to 11:30, meeting with prosecutors from the International Centre for Mutual Legal Assistance; advisors at the Ministry of Justice and Security, advisors at the National Administration of Penitentiaries and Policy Officer of the Ministry of Justice and Security.

Venue: Public Prosecutor´s Office Amsterdam, IJdok 163 Amsterdam

Person interviewed/met	**Organisation represented**
Mr. Kasper van der Schaft	Prosecutor of the International Centre for Mutual Legal Assistance (IRC) of the Public Prosecutor's Office Amsterdam
Mr. Marjolein Westerman	Prosecutor of the International Centre for Mutual Legal Assistance (IRC) of the Public Prosecutor's Office Amsterdam
Mr. Dr. Jeroen de Jong	Senior Legal Advisor of the Ministry of Justice and Security, Directory Law and Legal Affairs
Mr. Dominique Lenssen	Legal advisor of the Ministry of Justice and Security Directory Law and Legal Affairs
Mr. Jan-Peter van Bodegraven	Legal advisor of the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries
Drs. Ron Goudsmit	Policy Officer of the Ministry of Justice and Security (International cooperation on criminal matters)

Thursday, 10 March, from 15:00 to 17:00*,* meeting with Judges of the International Chamber of the District Court (IRK) of Amsterdam; legal advisors of IRK; legal advisor of the National Administration of Penitentiaries and Policy Officer, Ministry of Justice and Security.

Venue: International Chamber of the District Court Amsterdam, Parnassusweg 280 Amsterdam

Person interviewed/met	**Organisation represented**
Mr. Marlies James-Pater	Judge and Chairman of the International Chamber of the District Court of Amsterdam (IRK)
Mr. Hans Kijlstra	Judge at the IRK and former Chairman IRK
Dr. Vincent Glerum	Senior legal advisor at the IRK and Professor on International and European Criminal Law of the University of Groningen
Mr. Jan-Peter van Bodegraven	Legal advisor on the International Transfer of Criminal Judgments of the Custodial Institutions Agency, National Administration of Penitentiaries
Drs. Ron Goudsmit	Policy Officer, Ministry of Justice and Security (International cooperation on criminal matters)

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

NETHERLANDS	
EAW *-issuing of EAWs (suspension; impact on EAWs already issued; prioritisation in issuing new EAWs + criteria)* *- execution and postponement of the actual surrender (legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding)* *Expected resumption of surrenders* *-transit*	Impact on the issuing of EAWs There is no general decision to suspend the issuing of EAWs. We do not apply restrictions with regard to specific Member States. Impact on the execution of EAWs and postponement of the actual surrender The International Centre for Legal Assistance Amsterdam (IRC), as the competent authority to receive and to execute all incoming EAWs, can provide the following information relating to COVID-19: The situation as of 24 June 2020: • Arrests of wanted persons for an EAW are taking place at about 2/3 of the normal rate. • On 28 April 2020, the Court of Amsterdam resumed court sessions to decide on surrenders. These mostly concern detained persons, but court sessions with conditionally released wanted persons have also now resumed. This means on average that 20 surrender cases a week are being dealt with in court sessions. • Physical surrenders (handing over of wanted persons) take place with every Member State now, though not always within the prescribed period of ten days after the decision on surrender. Impact on the execution of surrenders by land There has been no general decision to suspend the execution of surrenders or extraditions in the Netherlands. With regard to surrenders, the central authority ('CA') will decide on a case-by-case basis whether or not to proceed with the actual surrender depending on the measures of Member States. All actual surrenders

	still take place with Germany and Belgium over land. Transfers by air have been hampered, however, by cancellation or lack of flights in the Netherlands and Member States. Several Member States have requested an extension of the time period for the actual surrender. Since the end of May, some physical surrenders by (especially arranged non-commercial) flights have taken place to Poland and Spain. Releases of requested persons following the postponement of the surrender After a request for an extension of the time period for the actual surrender, the Public Prosecution Office ('PPO') assesses if a prolongation of the detention is necessary. This is based on the risk of absconding. The Court decides, on the same basis, on requests from the defence to conditionally release the wanted person. A limited amount of persons were conditionally released, whilst the majority remained detained. Measures to prevent released persons from absconding With regard to the persons in custody because of an EAW, it will be examined in each case if the requested person is a flight risk. If there is no risk of absconding, the PPO will examine if house arrest is a possibility. Other conditions will be handing over of travel/identity documents and reporting at a police station once or twice a week. Expected resuming of the surrender At the moment as an executing authority we still encounter some requests for postponement of the physical surrender, but this is usually accompanied by a later date for a flight (later then the first ten days after the decision on surrender). Transit Requests for transits are still hampered and are approached on a case-by-case basis. Detainees cannot be held in the cell block of the

	Royal Marechaussee at Schiphol Airport and escorting officers will not be accompanied by the Marechaussee unless there is a threat to public order.
Precautionary measures for surrender, extradition and transfer *- COVID19 test* *- health certificate* *- quarantine* *- facial masks*	Specific measures for the person to be transferred The PPO did not receive requests regarding health certificates or protective equipment. No COVID-19 test was needed. In order to be able to detain a requested person with symptoms of COVID-19, a declaration by a GGD-doctor is required that he or she is not ill. Detainees cannot be held in the cell block of the Royal Marechaussee at Schiphol Airport. No medical certificate or negative test is required. The penal establishments and the services that take care of the transport of the requested persons will take all necessary measures that have been imposed nation-wide because of COVID-19. Specific measures for the escorting police officers No regulation on testing of escorting officers, as far as we know. If travelling by public transport a mask should be worn. Public transport has resumed to a normal schedule. Hotels are open, however availability could be limited. A distance of 1.5 metres from other persons should be maintained at all times. Need (or not) for further guidance on precautionary measures If guidance means that every Member State requires the same certificate and precautionary measures, then 'no'. If guidance means a compilation of the required precautionary measures in each Member State, 'this could be helpful'.
Extradition *-suspension* *-legal basis* *-third countries involved* *-expected duration of suspension*	Impact on extradition procedures Extradition procedures have not been suspended. The Central Authority is following normal procedures and delivering extradition decisions as normal. The Netherlands Central Authority received no official communication from any third state that extradition procedures were suspended, although in practice it can be assumed that in some states they are. For obvious reasons, the actual transfer of persons is often delayed or even suspended,

	because of practical obstacles. On a case-by-case basis, the Netherlands looks where possible for solutions to this problem, giving priority to urgent cases. In addition, in some countries there seems to be an increase in the amount of conditional releases, again for obvious reasons. It is as yet unclear what the consequences of this practice will be. Need (or not) for further exchange of information The Netherlands is interested in exchanging information on possible suspensions of extradition procedures by third countries and on practical solutions for transfer of persons in the framework of extraditions.
Transfer of sentenced persons *-prioritisation in issuing/execution*	Impact on the transfer of sentenced persons Regarding transfers of prisoners the same procedure applies as for surrender of requested persons. The CA will decide on a 'case-by-case' basis whether or not to proceed with the actual transfer, depending the measures of Member States. With regard to transfers of convicts, the CA continues its substantive examination of cases. However, all international transport of convicts have been postponed until further notice. No distinction has been made between transfers over land and transfers by air. Following recent developments, the resumption of transfers of convicts is being examined. It is likely that the actual transfers of convicts over land will be resumed at an earlier stage than transfers by air.
SIRENE Bureaux *-working of SIS bureau* *-exchange of information with other SIS Bureaux*	Impact on the working of the SIRENE Bureaux The Dutch SIRENE Bureau is working at full capacity and has worked at full capacity since the outbreak of COVID-19. We do not face challenges to ensure 24/7 operation at the moment. In early March we divided the team into a 'front office' working at the physical SIRENE location and a 'back office' working from home. The front office worked with a minimal workforce of two team members. Overall, normal capacity was maintained. All irregular shifts took place at the office. We are now slowly increasing the

	amount of personnel in the office. At the moment we have three team members working at the office location. Impact on the exchange of information with other SIRENE Bureaux There have been a few occasions where there was a time delay in exchange of information. However, the effects were minimal and this did not lead to any threat to business operations.
EIO and MLA *-prioritisation in issuing/execution* *-electronic transmission* *-whom to contact*	Impact on the issuing of EIOs and MLA requests EIOs will still be issued, however we are aware of the restrictions that apply in several Member States. Impact on the execution of EIOs and MLA requests EIOs and MLA requests will be executed not only in emergency situations. Of course, the measures taken with regard to the pandemic result in prioritising the execution of MLAs. The actual limitations mainly concern requests/EIOs that require physical contact, such as questioning and search of premises. All other requests can be handled and executed. Electronic transmission and contact details Preferably by email, to the ordinary addresses in EJN Atlas. Through mail is still possible, but can no longer be guaranteed.
Freezing and confiscation orders *-prioritisation in issuing/execution*	Impact on the issuing of (freezing and) confiscation orders NL has temporarily stopped sending requests under FD 2006/783/JHA (confiscation orders) to other Member States. This is partly because of the uncertain delivery of post via regular mail and partly because several Member States have indicated that they cannot process these requests at the moment due to the effect of the COVID-19 situation in that Member State. In urgent cases, we will try to contact the competent authority in the other Member State to discuss which possibilities there are to transfer that urgent case. Impact on the execution of (freezing and) confiscation orders There are no special provisions in NL for incoming cases under FD

	2006/783/JHA (confiscation orders). NL can still receive those cases and is also able to recognise them and initiate the enforcement procedure (during the enforcement procedure special attention will be paid to the circumstances caused by the COVID-19 measures). NL is also able to receive and deal with follow up correspondence on these cases.
Financial Penalties *-prioritisation in issuing/execution*	Impact on the issuing of decisions for the payment of financial penalties NL has temporarily stopped sending requests under FD 2005/214/JHA (financial penalties) to other Member States. This is partly because of the uncertain delivery of post via regular mail and partly because several Member States have indicated that they cannot process these requests at the moment due to the effect of the COVID-19 situation in their Member States. In urgent cases, we will seek contact with the competent authority in the other Member State to discuss which possibilities there are to transfer that urgent case. Impact on the execution of decisions for the payment of financial penalties There are no special provisions in NL for incoming cases under FD 2005/214/JHA (financial penalties). NL can still receive those cases and is also able to recognise them and initiate the enforcement procedure (during the enforcement procedure special attention will be paid to the circumstances caused by the COVID-19 measures). NL is also able to receive and deal with follow up correspondence on these cases.
JITs *-prioritisation and alternative telecommunications solutions*	N/A
Recommended channels for transmission of *-urgent requests* *-information exchange*	All urgent requests from Member States can be sent by e-mail to the LIRC, the National International Centre for Legal Assistance: LIRC-LP@politie.nl

Contact details	Contact can be made through SIS Sirene and Interpol (24/7).The communications between the EJN NCs or CPs or other specific contact points mentioned by Member States in separate mails, have been very helpful, so this channel is also useful. Communication could also take place through Eurojust. Since it is still possible that the (international) service of regular mail (by post) is hindered because of COVID-19 measures, it is advised to send an email to centralauthority@cjib.nl if you do not receive any response after sending a request or letter to check if the request/letter has been received by the CJIB (central authority for FD 2005/214/JHA (financial penalties) and FD 2006/783/JHA (confiscation orders)).
Any other relevant information	Impact of general COVID-19 measures on the processing of requests Dutch judicial and police authorities will continue to execute requests and decisions for cooperation in criminal matters. However, preventive measures have been taken in the Netherlands which have a limiting effect on our possibilities in executing the request. (…) Therefore it is possible that we will have to prioritize on the execution of your requests. Execution of requests may also be delayed, especially when physical contact is necessary for the execution of the request, like the interview of a witness or a house search. Furthermore, due to the preventive measures that have been taken, there is limited access to courts. Most judges and public prosecutors and colleagues working at our Central Authority will work from home. For this reason, we would advise sending requests by email only, either directly to the IRC – where direct contact is possible – or to the competent central authorities. We also advise considering whether requests can be postponed and sent later in the year. (…)

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
EAW		European Arrest Warrant
ECJ		European Court of Justice
ECHR		European Court of Human Rights
EJTN		European Judicial Training Network
CEP		Confederation of European Probation
CJEU		Court of Justice of the European Union
CJIB	Centraal Justitieel Incassobureau	Central Judicial Collection Agency
CPT		The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DJI		Department of the Custodial Institutions Agency
FAST		Fugitive Active Search Team
FD		Framework Decision
IRC		International Centre for Mutual Legal Assistance
IOS		International Transfer of Criminal Judgments
JHA		Justice and Home Affairs
NGO		Non-governmental organisation
OLW	Overleveringswet	Surrender Act
PI		Penitentiary Institution
PONT		Probation Observatory, Training and Network

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X- LAND OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
RN	Reclassering Nederland	International Desk of the Dutch Probation Service International Desk of the Dutch Probation Service
SSR	Stichting Studiecentrum Rechtshandhaving	Law Enforcement Study Centre Foundation
WETS	Wet wederzijdse erkenning en tenuitvoerlegging vrijheidsbenemende en voorwaardelijke sancties	Mutual Acknowledgement and Execution of Detention and Probation Sanctions Act
WOTS	Wet overdracht tenuitvoerlegging strafvonnissen	Transfer of Sentenced Persons Act