



## The Competence of the CJEU in the AFSJ

### Mutual Recognition instruments: grounds for non-execution and the role of the CJEU

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Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain



- Protocol 36 Article 10
- 1. As a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at the date of entry into force of that Treaty: the powers of the Commission under Article 258 of the Treaty on the Functioning of the European Union shall not be applicable and the powers of the Court of Justice of the European Union under Title VI of the Treaty on European Union, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said Treaty on European Union.
- 3. In any case, the transitional measure mentioned in paragraph 1 shall cease to have effect five years after the date of entry into force of the Treaty of Lisbon.

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain



- How affects Protocol 36.1 Lisbon Treaty to AFJS – criminal matters?

- 1) On preliminary ruling procedures (art.35(2) Treaty of EU (former K7) acceptance jurisdiction CJ
- 2) On Infringement procedures ex 258 TFEU

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain



- Transfer of Prisoners, FD 2008/909, 27 November
- Probation and alternative Sanctions, FD 2008/942, November
- Supervision measures as alternative to provisional detention FD 2009/829, 23 October
- European Arrest Warrant, FD, 2002/584, 13 June + 2009/299, 26 February

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain



- **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**
- **on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention**

Brussels, 5.2.2014 COM(2014) 57 final

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain



- No notification has been received from the following Member States:
  - Transfer of Prisoners: BG, CY, DE, EE, EL, ES, IE, LT, PT and SE.
  - Probation and Alternative Sanctions: CY, DE, EE, EL, ES, FR, IE, IT, LT, LU, MT, PT, SE and UK.
  - European Supervision Order: BE, BG, CY, DE, EE, EL, ES, FR, IE, IT, LT, LU, MT, PT, SE and UK.

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- Some Member States have not implemented all grounds for refusal as indicated in the Framework Decisions (HU, LU, NL, DK, LV)
- Others have added additional grounds (AT, BE, DK).
- Some Member States have correctly implemented the grounds for refusal as optional for the competent authority (FI, LV, BG), others have implemented them as mandatory (AT, IT, MT, SK) and in a third group the final result consists of a mix of optional and mandatory grounds (BE, DK, HU, LU, NL, PL).
- **Implementing additional grounds for refusal and making them mandatory seem to be both contrary to the letter and spirit of the Framework Decisions.**
- **The grounds for refusal should be implemented as optional for the competent authority.**

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain




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**EAW:**

- Report Committee on Civil Liberties, Justice and Home Affairs of January 2014
- Report from the Commission "On the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States", Brussels, 11.4.2011 COM(2011) 175 final.

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- Proportionality test:
- Judicial authorities should use the EAW system only when a surrender request is proportionate in all the circumstances of the case and should apply a proportionality test in a uniform way across Member States.
- Fundamental Rights:
- Refusal if there are grounds to believe that the execution of the measure would be incompatible with the executing Member State's obligations in accordance with Article 6 TEU and the Charter.
- Differences between nationals and residents
- Optional grounds for refusal, regulated as mandatory

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- Wolzenburg of 6 October 2009
- Mantello of 16 November 2010
- West of 28 June 2012
- Lopes da Silva of 5 September 2012
- Radu of 29 January 2013
- Stefano Melloni of 26 February 2013
- Spasic of 26 February 2014

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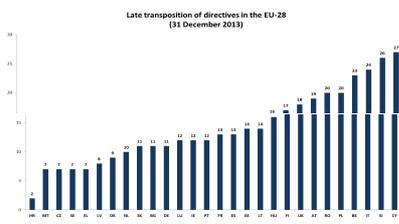
- Infringement Procedure 258 TFEU:
- **Overcome non transposition of the 3 FD on transfer prisoners, probation and supervision measures**
- **Action against wrong transposition:**
- Additional causes
- Optional grounds of refusal transformed in mandatory
- Infringement procedures: possibility of harmonizing from "ex ante"

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain




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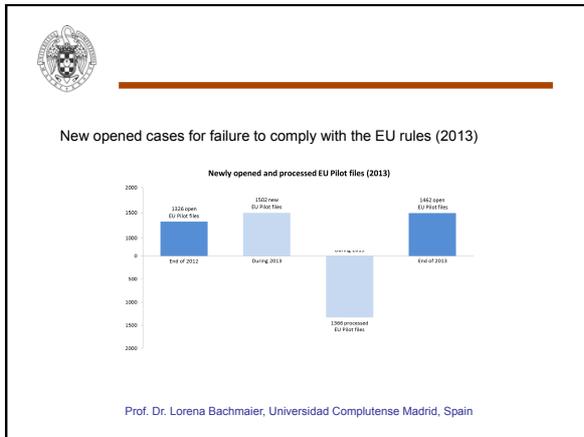
- Late transposition of Directives in the EU28



Late transposition of directives in the EU 28 (31 December 2013)

Member State	Number of Late Transpositions
BE	1
BG	2
CY	2
CZ	2
DE	2
DK	2
EE	2
ES	2
FI	2
FR	2
GR	2
HU	2
IE	2
IT	2
LU	2
LV	2
LT	2
MT	2
NL	2
PL	2
PT	2
RO	2
SK	2
SI	2
UK	2
SE	2
TR	2
EU28	28

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- Conclusion:
  - More “dialogue” between legislator and Commission in criminal matters
  - More integration-harmonization “ex ante” and not once at the court stage
  - More harmonization with MS who do not file preliminary rulings
  - Speed up transposition of Directives
- Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain

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PER LA VOSTRA  
ATTENZIONE**

Prof. Dr. Lorena Bachmaier, Universidad Complutense Madrid, Spain