MR2.0 RECOMMENDATIONS

1 Introduction

This chapter deals with the recommendations elaborated on the basis of the Overarching Analysis and the country reports for Germany, the Netherlands, Poland, and Spain. The research focuses on the coherent, efficient, and effective application of several instruments of judicial cooperation and their interplay and will therefore emphasise their interconnectedness. Recommendations will address the application of a single instrument when issues of coherence, efficiency and effectiveness in relation to other instruments are at stake.[1]

The recommendations will be grouped according to the thematic structure of the Overarching Analysis.[2] Although it is intended that the recommendations can be interpreted and understood as a single document, the supporting argumentation is found in the Overarching Analysis. Each recommendation refers to the relevant part of the Overarching Analysis. The recommendations indicate to whom they are addressed (EU/European legislator, national legislator, competent authorities, etc.).

Lastly, recommendations directed at one or more participating Member States may also be relevant for Member States that are not part of this project, depending on the circumstances. As a general guideline, Member States not directly involved in the project are encouraged to review these recommendations and evaluate their applicability to their own context.

2 The EU/European legal framework[3]

Lisbonisation

With regard to the EU/European legal framework, two general issues require reconsidering the current legal set-up. One problem is the fact that the authorities of Member States sometimes have different interpretations of the legislation on the European level.[4] The second issue lies in

[1] For the latter kind of recommendations see e.g. with regard to the EAW: Improveaw, Annex I.
[2] See OA, para. 7.1.3.
[3] OA, para. 7.2.
[4] See *e.g.* OA para. 7.2.1 of the overarching analysis with regard to ensuring the presence of the suspect at the trial by issuing an EIO: 'Although it is hard to fault this logic (…) recent mutual evaluation reports on the EIO show that not every Member State recognises it' (*i.e. 'Ensuring the presence at the trial, in itself, is not geared at*

the fact that Member States do not always transpose EU legislation into their national legal framework in an adequate manner.[5] 'Lisbonisation'[6] of the EU instruments can prevent inadequate transposition into national law. 'Lisbonisation' can also limit the room for national authorities to cherish their own particular interpretations of EU legislation.[7]

2.1 Recommendation

To the EU legislator

Consider replacing framework decisions and other legal instruments that need transposition into national law with regulations.

Relationships and interplay between the different instruments

For the coherent, efficient, and effective application of different instruments, it is essential to understand their relationships and interplay. However, the current legal framework consists of separate legal frameworks for different instruments, and at the EU/European level, these relationships are rarely clarified.[8] Moreover, coherence is challenged by two factors: (i) the traditional mutual legal assistance regime has not been fully replaced by mutual recognition instruments, and (ii) the existing cooperation instruments are not in tune with one another. A unifying European code on judicial cooperation in criminal matters could enhance clarity by explicitly defining these relationships and incorporating common provisions into a chapter applicable to multiple instruments.[9] This would provide practitioners with a clearer overview and easier access to the legal framework. Clarifying the relationship between the existing

obtaining evidence')'. Another example is the ESO, where the Spanish report seems to reflect a different view on the requirements for issuing an ESO than the reports of Poland, Germany and the Netherlands.

[5] The most eye-catching example is perhaps transposing optional grounds for refusal as mandatory grounds for refusal.

[6] Cf. the study *on possible Lisbonisation of ex-third pillar acquis in the area of mutual recognition in criminal matters* commissioned by the Directorate-General for Justice and Consumers of the European Commission (DG JUST), and entrusted to ICF, a consultancy firm, in consortium with Spark Legal & Policy Consulting (New study on the lisbonisation of the ex-third pillar acquis | Spark Legal and Policy Consulting). Lisbonisation of the third pillar *acquis* means substituting Framework Decisions with Directives and Regulations.

[7] For some nuance with regard to the advantages of putting in place legal instruments with direct effect and replacing legal instruments without such direct effect, see R. Barbosa, V. Glerum, H. Kijlstra, A. Klip & C. Peristeridou, *Improving the European arrest warrant*, Maastricht Law Series 27 (Eleven Publisher, 2023), p. 275.

[8] An example of explicit reference to the interplay between different instruments: see the preamble of Directive 2014/41/EU (EIO) about the EAW.

[9] See OA, para 7.2.4.

cooperation instruments can, in particular, contribute to a more proportionate use of these instruments (e.g. by recourse to the ESO instead of the EAW).[10]

2.2 Recommendation

To the EU legislator

Clarify the relationships and interplay between the different instruments, with a view to their proportionate use[11] and consider achieving this by adopting a code on judicial cooperation in criminal matters.

Dictionary of judicial cooperation

A recurring issue in judicial cooperation concerns the interpretation of EU legislation, particularly in relation to translation, terminology, and legal concepts that either do not exist in certain Member States or are known by different names. These discrepancies can cause confusion, delays, and even legal misinterpretations, ultimately hindering effective, coherent and efficient judicial cooperation.

An official EU dictionary should be developed to minimise language barriers and improve legal clarity, compiling key legal concepts, terms, and annexes related to mutual recognition instruments and judicial cooperation. This dictionary should provide detailed definitions, synonyms, and equivalent terms across the Member States' official languages, particularly where confusion or discrepancies exist. Such a resource would enhance the mutual understanding of legal systems and contribute to more effective and reliable judicial cooperation across the EU.

2.3 Recommendation

To the EU legislator

Consider introducing an official dictionary of EU judicial cooperation terminology.

Simplification of EU legislation

[10] Proportionality is one of the dimensions of the concept of coherence. See OA, para. 7.1.1.
[11] *E.g.* between the ESO and the EAW (see OA, para. 7.2.2).

EU legislation, particularly Regulations and Directives, is often drafted with frequent cross-references to prior legal texts. While this approach ensures legal continuity, it can also make the texts difficult to read and apply. This complexity may hinder effective implementation and accessibility of EU law. See, for instance, the formulation of Directive (EU) 2023/2843 on the digitalisation of judicial cooperation and Regulation (EU) 2023/2844. The preamble and the text of both instruments represent an example of regulatory chaos, complexity and confusion.

2.4 Recommendation

To the EU legislator

Consider simplifying the wording and adopting more user-friendly texts to make them easier to understand.

ESO

Although the current Framework Decision does not stand in the way of a national legal framework that allows for issuing an ESO when the person involved is not in the issuing Member State,[12] it does not explicitly provide for this possibility. It also does not contain an incentive to broaden the scope of applicability of this instrument.

2.5 Recommendation

To the EU legislator

Amend the current set-up with regard to the requirements for issuing an ESO by providing a legal basis for issuing an ESO when the person involved is not in the issuing Member State.

ESO and EAW

In cases in which the person concerned fails to comply with supervision measures, authorities consider the procedure for issuing a national arrest warrant and an EAW to be too lengthy and complex. This may allow the person to abscond.[13]

[12] See OA, para. 7.2.2.
[13] See OA, para. 7.2.2 '**ESO**' 'Consequences of non-compliance with supervision measures?'.

Depending on the Member State, the ESO can be implemented according to two different models. In some Member States, the issuance of an ESO requires that a national arrest warrant be first issued. When the ESO is issued, the execution of the national arrest warrant is then suspended. This approach allows for the possibility of subsequently issuing an EAW if needed. In another group of Member States, the ESO can be issued independently, without the requirement of a national arrest warrant. In these countries, it is not possible to issue an EAW later on, as the EAW must always be grounded in a prior enforceable national judicial decision or arrest warrant. These Member States, therefore, need more time to issue an EAW when the person concerned breaches the conditions of the ESO. This results in significant differences in how breaches of supervision measures under the ESO can be addressed, depending on the national legal framework. Our Recommendation intends to serve both groups of Member States.

2.6 Recommendation

To the EU legislator

Consider amending the ESO Framework Decision to allow: (i) issuing authorities to issue an ESO and an EAW simultaneously; and (ii) the executing authority to provisionally arrest and detain, for a limited period of time,[14] a person who fails to comply with supervision measures, pending the issuing authority's decision on issuing an EAW.

EIO for ensuring the presence of the accused person at the trial by videoconference

EU law does not provide a clear legal basis for using videoconferencing as a means to ensure the presence of the accused person at trial. The recent judgment in the *Delda* case clarifies that an EIO may only be issued for 'investigative measures', the ultimate purpose of which must be that the executing Member State sends certain evidence to the issuing Member State.[15] Ensuring the presence of the accused person at the trial does not serve such a purpose and does not constitute an 'investigative measure'. This means that the issuing authority has no other instrument than the EAW at its disposal to ensure that the accused person is present at his trial, and *in absentia* proceedings are more likely to occur.[16]

[14] See the rules on provisional arrest in Article 16 of the European Convention on Extradition (Paris, 13 December 1957, ETS No. 024).
[15] Case C-583/23, *Delda*, C:2025:6, para. 32.
[16] See OA, para. 7.2.3. Of course, a summons or an informal way of informing the accused of the date and time of the trial could be an alternative.

One possible solution is to grant courts the discretion to conduct trials with the accused person participating via videoconference in cases where in-person attendance is impractical or would cause unnecessary delays. However, this should not be framed as a right of the accused person to opt for remote participation but rather as a judicial tool to ensure his presence when his physical participation is not feasible. While videoconferencing can enhance judicial efficiency, it must remain an exception rather than a replacement for in-person hearings, preserving the principle of direct participation in trial proceedings.

To address these challenges, options include extending the scope of Directive 2014/41/EU, adopting a new legal framework for mutual legal assistance, or introducing an additional instrument explicitly regulating videoconferencing in criminal trials.

2.7 Recommendation

To the EU legislator

Provide a clear legal basis for using videoconferencing to ensure the presence of the accused person at trial.

To the national legislators of the Member States

Consider introducing a national legal basis that grants courts the discretion to initiate and to grant requests for participation of accused persons in trials via videoconference.

ESO and EAW (derogation)

The potential application of Article 2(1) of the EAW Framework Decision in surrender proceedings following the issuance of an ESO creates a barrier to issuing an ESO for 'less serious offences'.[17] The result being that people are kept in detention for less serious offences and released for more serious crimes.

2.8 Recommendation

To the EU legislator

[17] See OA, para. 7.2.2.

Deprive Member States from the possibility to derogate from the EAW FD and to maintain the exceptions.

To the national legislators of the Member States

Withdraw the notification on the basis of Article 21(3) of FD 2009/829/JHA in order to remove an obstacle for issuing an ESO for a 'less serious offence' carrying a sentence of less than 12 months in the issuing Member State.

EIO for interrogation of the accused at the trial by videoconference

There are doubts about whether the Directive allows for the interrogation of the accused person at the trial by videoconference. Allowing for this way of conducting the trial would contribute to a coherent, efficient, and effective way of applying the cooperation instruments in the trial stage. However, since an interrogation of the accused person at his trial would be an 'investigative measure' within the meaning of Directive 2014/41/EU (by contrast to ensuring the presence of the accused person at his trial), the recent judgment in the *Delda* case would seem to dispel those doubts.[18] Nevertheless, clarification of the legal basis in Directive 2014/41/EU might still be beneficial, given the staunch opposition by some Member States.

2.9 Recommendation

To the EU legislator

Clarify Article 24 of the Directive by providing a clear legal basis for interrogating the accused person at the trial by videoconference.

EIO and temporary transfer

The country reports state different opinions about the possibility of a temporary transfer for interrogating the suspect at the trial. According to the Polish and Dutch reports, an EIO can be issued to request the temporary transfer for interrogating the suspect at trial. Contrarily, the

[18] See Case C-583/23, *Delda*, C:2025:6, para. 32.

German and Spanish reports state that the EIO is not the correct instrument to carry out such an activity.[19]

2.10 Recommendation

To the EU legislator

Clarify the scope of Article 22 of the EIO Directive, specifying that it can be used to request a temporary transfer for interrogating the suspect at trial in the issuing Member State.

EAW for investigative purposes

In Spain, the EAW is repeatedly used to carry out investigative measures, such as interrogations of suspects or accused persons. Even though this practice is against the Framework Decision, as members of the Research Team agree, it does not explicitly prohibit it.

2.11 Recommendation

To the EU legislator

Consider amending the EAW Framework Decision to explicitly prohibit its use for investigative purposes only.

3. The national legal framework[20]

Transposition of optional grounds as mandatory grounds

Transposing optional grounds in EU legislation into national law as mandatory grounds is incorrect and has a negative impact on judicial cooperation.[21]

3.1 Recommendation

To the national legislators of the Member States

Amend national legislation by turning mandatory grounds into optional grounds in conformity with EU legislation and the case-law of the Court of Justice of the European Union.

[19] See OA, para. 7.2.3, '**EIO**', 'Temporary transfer for interrogation of the accused at trial?'
[20] OA, para. 7.3.
[21] However, see for optional grounds concerning fundamental rights violations OA, para 7.3.2.

EAW and hearing the requested person or obtain a temporary transfer

Some Member States do not provide a mechanism for their issuing authorities to request a hearing of the requested person or to arrange his temporary transfer to their countries while a decision on the execution of an EAW is pending.[22] This lacuna means that these Member States have not ensured the full effectiveness of the EAW regime.

3.2 Recommendation

To the legislator of the Member States

Consider providing a legal basis for hearing the requested person and/or a temporary transfer of the requested person as foreseen in Article 18 of the EAW Framework Decision.[23]

Transfer of sentences involving deprivation of liberty and psychiatric treatment

Polish law does not cover transferring the enforcement of 'security (protective) measures involving deprivation of liberty, which entails a stay in a medical (psychiatric) facility'.[24] Consequently, Poland cannot forward a judgment imposing such a measure to another Member State on the basis of FD 2008/909/JHA.[25]

3.3 Recommendation

To the legislator of the Member States

Consider amending national law in those Member States that do not currently allow for the transfer of security or protective measures on the basis of FD 2008/909/JHA, so that it is possible to transfer security (protective) measures involving deprivation of liberty which entail a stay in a medical (psychiatric) facility to another Member State.

[22] See OA, para. 7.3.3.1.
[23] See Recommendation 10.1.
[24] Polish report, para. 1.1(b) and OA, para. 7.3.3.2.
[25] See OA, para 7.3.3.2, where the instruments that may be used in Poland to enforce security measures are discussed.

Transfer of alternative sanctions

Framework Decision 2008/947/JHA does not provide for the issuing authority to retain all powers in enforcing the sentence. The issuing authority may request the executing authorities of other Member States to assist it in the procedure by keeping in contact with the convicted person while he is in another Member State. The issuing authority should be able to revise or commute the alternative sanction in case of non-compliance.

Additionally, the alternative sanction might be unknown in the executing Member State, which could have difficulties in enforcing the sentence. This can cause problems for Member States whose legal system provides for imposing alternative sanctions on adult offenders.[26]

3.4 Recommendation

To the EU legislator

Consider amending Framework Decision 2008/947/JHA by allowing the issuing authority to retain all powers in enforcing the sentence, which includes the possibility to revise or commute the alternative sanction.

To the legislator of the Member States

Consider providing a legal basis for executing alternative sanctions originating from another Member State unknown to your system.

Codification of national legislation on judicial cooperation in criminal matters

Three Member States—Germany, Spain, and Poland—transposed EU mutual recognition instruments in a single legislative act, thus contributing to efficiency and aspects of coherence (notably consistency, comprehensiveness and proportionality; for the benefits of unified legislation, see also the explanation to recommendation 2.2).[27]

3.5 Recommendation

To the national legislators of the Member States

[26] See OA, para. 7.3.3.3.
[27] See OA, para. 7.3.4.

Consider adopting single and uniform national legislation for all mutual recognition instruments in criminal matters.

4. Arrangements[28]

Practices at the enforcement stage, sovereignty and legal certainty

Convicted individuals placed on probation may exercise their right to free movement, travelling between Member States. While crossing borders does not itself constitute a violation of probation, it can complicate the supervision. Member States have therefore developed various informal practices to reach or maintain contact with these individuals, such as remote communication, or requiring them to report to local police authorities. These practices are often driven by practical needs, especially in cases where the individual moves frequently (e.g., truck drivers), and are not fully reflected in current legal instruments, which generally presume a stable stay and residency in another Member State to be invoked. In order to alleviate both sovereignty concerns of the Member State where the individual is located,[29] and to create legal certainty for the individual,[30] Member States should regulate the matter with greater flexibility.

A possible solution is that the State contacting the individual seeks the consent of the State where the individual is. Neither EU law nor national law currently address the matter.

4.1 Recommendation

To the EU legislator

Consider introducing a legal basis to ask and grant consent when a Member State needs to contact an individual on probation who is temporarily in the territory of another Member State. The instrument should exemplify the situations in which such consent is required, to overcome potential sovereignty issues.

To the authorities of all Member States

In case of a sentenced person staying in another Member State, consider the practice of having him report to and keep in contact with the probation officer remotely without the use of

[28] OA, para. 7.4.
[29] See OA, para. 7.4.1.
[30] See OA, para. 7.4.2 '**Informal practices at the investigation/prosecution stage'** 'Supervision measures without an ESO'.

Framework Decision 2008/947/JHA for cases in which the sentenced person's stay in another Member State is of a temporary character.

Practices at the investigation stage, sovereignty and legal certainty

Individuals under investigation may travel or temporarily reside in another Member State, exercising their right to free movement. Some Member States have developed the practice of interrogating such individuals at the consulates of the Member State where the individual is present.[31] In order to alleviate both sovereignty concerns of the Member State where the individual is located, and to create legal certainty for the individual, Member States should deal with it with great flexibility.

4.2 Recommendation

To the national legislators of the Member States

Agree with the practice of interrogating a national of another Member State at a consulate of that Member State located in your territory or enter into bilateral treaties with that Member State that regulate this practice.

5 Institutional arrangements[32]

Competent authorities

Both the EU and national legislators allocate competences to specific authorities that are competent for a specific legal instrument only. As a consequence, authorities may not be able to choose between various alternatives because they do not have competence over more than one legal instrument. This can lead to an incoherent, ineffective, and inefficient application. In addition, the competence is often allocated to non-judicial authorities. This raises two major concerns: (i) how to provide an 'effective remedy' and 'dual level of protection',[33] and (ii) the 'referral gap', which arises when the authority that can act as issuing authority lacks the power to refer questions to the Court of Justice because, for instance, it does not fall within the meaning

[31] See OA, para. 7.4.2 '**Informal practices at the investigation/prosecution stage**' 'Interrogation on consular premises'.
[32] OA, para 7.5.
[33] See OA, para. 7.5.3.2.

of judicial authority as elaborated by the Court itself.[34] Allocating the competence to use the instruments to judges/courts (only) could help address the issues mentioned above.[35] It could also contribute to the coherent application of the instruments.

5.1 Recommendation

To the EU legislator

Consider, when drafting/amending legislation, allocating the competences to use the instruments only to judges/courts.[36]

To the national legislators of the Member States

Consider allocating the competences to use the instruments to judges/courts.[37]

5.2 Recommendation

To the EU legislator

Consider, when drafting/amending legislation, allocating the competence to use different instruments as much as possible with one and the same authority.[38]

To the national legislators of the Member States

Consider allocating the competence to use different instruments as much as possible to one and the same authority.[39]

Central authorities

Although the tasks of central authorities are limited, concentrating these tasks on different instruments within a single central authority could help coordinate efforts among authorities, ensuring that their decisions lead to the 'effective and coherent application' of the instruments.

5.3 Recommendation

[34] See OA, para. 7.5.3.
[35] See recommendations 2.2 and 5.2 of *Improveaw*. This issue is related to issues of centralisation, specialisation and concentration (see OA, para. 7.8).
[36] See also Recommendation 8.1.
[37] See also Recommendation 8.1.
[38] See also Recommendations 5.1 and 8.1.
[39] See OA, para. 7.5.4. See also Recommendations 5.1 and 8.1.

To the national legislators of the Member States

Designate the same central authority under each of the mutual recognition instruments that provide for designating a central authority.[40]

Establishing National Coordinating Authorities for Judicial Cooperation (similar to EUROJUST)

To improve judicial cooperation and ensure the effective use of legal instruments, Member States could set up national administrative authorities with coordination roles similar to those of EUROJUST at the EU level. These authorities would act as central hubs, helping domestic institutions work together on cross-border cases, thereby contributing to efficiency, effectiveness and coherence.

Their role would be to coordinate between national authorities, making sure all available legal tools are considered in each case. They would also facilitate communication between institutions to avoid situations where relevant instruments are overlooked simply because they fall under a different authority's competence. Additionally, they could offer guidance on which judicial cooperation mechanism best fits a particular situation, ensuring a smoother and more consistent approach.

5.4 Recommendation

To the national legislator of the Member States

Consider establishing national central authorities to improve coordination in the application of judicial cooperation instruments.[41]

6 Awareness/knowledge[42]

Regular training for issuing (and executing) (judicial) authorities

Some instruments are reportedly underused due to a lack of awareness or knowledge among issuing (judicial) authorities. For example, this applies to the ESO, the EIO for temporary

[40] See Recommendation 8.1.
[41] See Recommendation 8.1.
[42] OA, para. 7.8.

transfer to the issuing Member State (Article 22 of Directive 2014/41/EU), and the transfer of proceedings. Insufficient awareness of the applicability of certain instruments can lead to incoherent and/or ineffective and/or inefficient application of the available instruments, while a lack of knowledge about how to apply a particular instrument can lead to suboptimal decisions.[43]

6.1 Recommendation

To the EU Commission

Establish Union-wide training programs and workshops for issuing and executing authorities of all Member States. For each legal instrument, as well as on their interconnectedness.

To issuing Member States

Set up training programs for issuing (judicial) authorities (and their legal support staff), to regularly update them on EU and national case-law and legislation on judicial cooperation in criminal matters, with a focus on the interconnectedness of the various legal instruments.

Regular training for defence lawyers

The underuse of some instruments of judicial cooperation is also caused by a lack of awareness/knowledge of these instruments among defence lawyers. A lack of awareness/knowledge by lawyers hampers the effective, efficient, and coherent application of EU/European instruments on judicial cooperation, as the view of the defence on the proportionality of the measure is not taken into account.

6.2. Recommendation

To the EU Commission

Create the financial support to organise training programs for lawyers.

To criminal bar associations in Member States and the European Criminal Bar Association

Host training sessions for defence counsels to regularly update them on EU and national case-law and legislation on judicial cooperation in criminal matters.

[43] OA, para. 7.6.3.

7 Efficiency[44]

EAW, safe conduct and summoning

Granting safe conduct in order to interrogate the accused person in the issuing Member State could be more efficient than having the EAW executed. It would be a less intrusive instrument when the requested person's detention resulting from an EAW is suspended by the executing judicial authority.[45] When granting safe conduct, the person concerned should be given a time limit within which to appear voluntarily. If the person concerned does not appear voluntarily within that period, an EAW may be issued.

7.1 Recommendation

To the issuing judicial authorities of Member States

Consider granting safe conduct, in order to interrogate the suspect or accused person in the issuing Member State.

EAW and transfer of sentence

The option of executing a sentence in another Member State is sometimes considered only *after* an execution-EAW is not successful. One would expect that authorities take into consideration whether to transfer a sentence *ab initio*, especially if there is reason to suspect that an EAW will not be successful, instead of first trying to have such an EAW executed. According to the Court of Justice of the EU, when determining whether issuing an EAW would be proportionate, the issuing judicial authority must consider, *inter alia*, the prospects of its execution. Issuing an EAW that does not result in surrender is neither effective nor efficient, particularly if a certificate must subsequently be sent to have the sentence executed.[46]

7.2 Recommendation

To the issuing judicial authorities of the Member States

[44] OA, para. 7.7.
[45] German report, para 2.2.2 b(ii)(aa)(bb) and OA para 7.7.4, '**Pre-trial stage**', 'EAW, safe conduct and summoning'.
[46] OA, para. 7.7.4, '**Enforcement**', 'EAW and transfer of sentence'.

When deciding on whether or not to issue an execution-EAW, take into account the possibility of forwarding the judgment, together with a certificate for transferring the sentence, to the executing Member State.

Composite sentences

The distinct parts of composite sentences are governed by two distinct regimes (*i.e.* that of FD 2008/909/JHA and that of FD 2008/947/JHA), requiring, in principle, two distinct decisions on whether or not to forward the judgment and the certificate and, if the decision is taken to forward the judgment, the completion of two distinct certificates (*i.e.* the 2008/909-certificate and the 2008/947-certificate). Distinct proceedings resulting in the forwarding of distinct certificates with regard to one and the same sentence are less efficient than combining the decision-making and the completion of the forms, as well as their forwarding.[47]

7.3 Recommendation

To the national legislators of the Member States

Consider conferring the competence to forward judgments under FD 2008/909/JHA and FD 2008/947/JHA to one and the same issuing authority.

8 Centralisation, coordination and specialisation[48]

Centralisation and specialisation

Centralisation and specialisation can have a positive impact on the effective, efficient, and coherent application of instruments. In the absence of centralisation of competences under different instruments with a single authority, specialisation of the authorities and mechanisms for coordination can contribute to the effective, efficient, and coherent application of instruments.[49]

8.1 Recommendation

To the Member States

[47] OA, para. 7.7.4, '**Enforcement**', 'Composite sentences'.
[48] OA, para. 7.8.
[49] OA, para. 7.8.

Consider centralising the power to issue decisions under different instruments to a single authority. If a Member State does not opt for centralisation, it should at least distribute competences among specialised authorities and establish mechanisms for coordination.[50]

9 Transfer of proceedings[51]

Taking a transfer of proceedings into account ab initio

The transfer of proceedings is one of the options available in situations in which the suspect or accused person is present in another Member State. One might, therefore, expect that this option is taken into account *ab initio*. However, some of the national practices described in the reports suggest that transfer of proceedings is mainly seen an option that comes into play when other options fail.[52]

9.1 Recommendation

To the issuing authorities of the Member State

Before deciding whether to use a certain instrument of mutual recognition, consider whether a transfer of proceedings would be a sufficiently effective and less intrusive alternative to that instrument.

10 Digitalisation[53]

Hearing the requested person (by videoconference) (Article 18(1)(a) of FD 2002/584/JHA)

Hearing the requested person pending the decision on the execution of a prosecution-EAW affords the requested person an opportunity to put forward arguments challenging the EAW or the national arrest warrant and might lead to a withdrawal of the EAW. Such a hearing also enables the issuing authority to assess whether continuing the surrender procedure is necessary. Thus, hearing the requested person pending the decision on the execution of a prosecution-

[50] See Recommendations 5.3 and 5.4.
[51] OA, para. 7.9.
[52] OA, para. 7.9.2 and OA, para. 7.7.4, '**Pre-trial stage**', 'EAW, EIO and transfer of proceedings'. Similar recommendations were made in Improveaw, recommendation 6.1.
[53] OA, para. 7.10.

EAW can serve the interests of the requested person (with regard to proportionality) as well as the interests of the issuing judicial authority (with regard to effectiveness and efficiency).[54]

10.1 Recommendation

To the issuing judicial authorities of the Member States

Consider requesting a hearing of the requested person on the basis of (the amended) Article 18(1)(a) of the EAW Framework Decision, once the requested person is arrested in the executing Member State.[55]

Widening the scope of Article 18(1)(a) of FD 2002/584/JHA to include execution-EAWs

The possibility of hearing a requested person against whom an execution-EAW is issued pending the decision on the execution of that EAW can serve the same interests as a hearing in case of a prosecution-EAW.[56] This affords the requested person the opportunity to plea for forwarding the judgment instead of surrendering him, and the issuing judicial authority the opportunity to determine whether to continue the surrender procedure. However, currently Article 18(1)(a) of the EAW Framework Decision only applies to prosecution-EAWs.[57]

10.2 Recommendation

To the EU legislator

Consider widening the scope of (the amended) Article 18(1)(a) of the EAW Framework Decision in order to allow the hearing of a requested person against whom an execution-EAW is issued pending the decision on the execution of that EAW.

Videoconferencing as an alternative to temporary surrender in postponed surrender cases

Article 24 of the EAW Framework Decision only provides for the temporary surrender of the requested person if surrender is postponed in the executing Member State. However, allowing videoconferencing in such situations would provide a more flexible and efficient alternative.

[54] OA, para. 7.10.2.
[55] See Recommendation 3.1.
[56] See Recommendation 7.1.
[57] OA, para. 7.10.2.

10.3 Recommendation

To the EU legislator

Consider amending Article 24 to provide for interrogation via videoconferencing in postponed cases.

Improvement of videoconferencing security

Judicial institutions must ensure the security of the technological tools used for videoconferencing. This includes safeguarding against external interference and guaranteeing that communications remain confidential and tamper-proof. An additional concern relates to the risk of not being sure about the identity of the person or the potential coercion this person can suffer during remote proceedings and/or interrogations.[58]

10.4 Recommendation

To the national legislators of the Member States

Member States should ensure that judicial authorities have access to secure videoconferencing tools. The States must guarantee the security of these systems by offering robust, encrypted infrastructures and dedicated communication lines, protecting judicial communications from external interferences and ensuring confidentiality.

To legal professionals involved in judicial cooperation matters

To improve the security of videoconferencing, ensure the presence of a court authority or a legal professional at the location where the person being interrogated is located.

Digital and interactive decision making support system

Using a digital and interactive system, including digital and interactive forms like the EAW-form and certificates, to support decision making by the issuing (judicial) authorities could contribute to a more effective, coherent, and efficient application of the instruments.[59]

[58] Including also witnesses interrogations.
[59] OA, para 7.10.3.

10.5 Recommendation

To the European Commission

Develop a digitalised interactive system, including digital and interactive forms like the EAW-form and certificates, in order to support issuing (judicial) authorities in making decisions about whether to apply an instrument of judicial cooperation or not (and follow-up decisions).[60]

11 Anticipating the application of instruments: sentencing[61]

Anticipating problems with regard to judicial cooperation when sentencing

Anticipating (im)possibilities with regard to judicial cooperation when sentencing can have a positive effect on the effective, efficient, and coherent application of judicial cooperation instruments. After all, such problems could lead to a failure to execute a sentence (which is not effective) and at the same time to a waste of financial and human resources (which is not efficient).[62]

11.1 Recommendation

To national courts and judges

When sentencing, take into account judicial cooperation possibilities and impossibilities for judicial cooperation in cases in which there is reason to believe that judicial cooperation might be needed to execute that sentence.

12 Summoning a suspect or accused person abroad[63]

Harmonising rules on serving summonses abroad

EU rules on summoning a suspect or accused person abroad do not guarantee (proof) that the summons has actually reached the addressee. This creates legal uncertainties, impacts efficiency negatively, and can lead to delays, refusals, unnecessary *in absentia* trials, and the need for retrials.

[60] See OA, para 7.10.3.
[61] OA, para. 7.11.
[62] OA, para. 7.11.
[63] OA, para. 7.12.

A harmonised framework could ensure that the accused person has actually obtained knowledge of the summons, preventing reliance on legal fictions or presumptions regarding notification. Summons can be used for interrogation, trial, or serving a sentence and may serve as a less intrusive alternative to issuing an EAW. Moreover, serving the convicted person with the judgment or penalty order is a precondition for enforcing the imposed sentence.[64]

To enhance reliability, legislative measures could provide clear guidance on warnings for the accused, ensuring they are informed that non-compliance may lead to an EAW being issued and executed. Additionally, digital solutions should be considered, such as the electronic service of documents via access points (as outlined in the Digitalisation Regulation). A mandatory electronic mailbox could provide a more secure and efficient means of communication between the judiciary and the accused, offering an alternative to the authorisation of a domestic resident to accept service of penalty orders, which has proven inadequate in ensuring actual awareness.

12.1 Recommendation

To the EU legislator

Consider harmonising the rules on serving summonses on suspects or accused persons who are present and have a known address in another Member State in such a way that these rules ensure (proof) that the summons actually reached the addressee and, given the trend of digitalisation of judicial cooperation, take into account the possibilities of electronic service.

13 Various

'Dialogue' between competent authorities (issuing and executing)

The exchange of ideas and knowledge between competent authorities of Member States is not facilitated. An online platform and on-site meetings would, in this regard, contribute to a better mutual understanding of each other's interpretation of the EU law at stake and of each other's national legislative and institutional set-ups.

13.1 Recommendation

To the EU Commission

[64] OA, para. 7.12.

Put in place an online platform and onsite meetings between competent authorities of different Member States in order to exchange ideas, information and knowledge.[65]

Improve communication between defence lawyers in Member States

A key issue in EAW proceedings is the lack of direct communication between defence lawyers in the issuing and executing Member States. While EU legislation and national laws acknowledge the importance of such communication, in practice, there is no formal mechanism to facilitate it. The EAW form does not include details of the defence lawyer representing the requested person, either in the issuing or executing state, making it difficult for legal representatives to coordinate unless the requested person provides this information. This gap can significantly impact the procedural rights and guarantees of the person under investigation.

13.2 Recommendation

To the EU legislator

Consider including in the EAW Framework Decision and other mutual recognition instruments a specific section for providing the contact details of the defence lawyers in both the issuing and executing Member States.

Enhancing legal professionals' involvement in EU legislation drafting and implementation

While new legal instruments are drafted at the European level, those who apply them in practice, such as judges, prosecutors, and enforcement authorities, are not always consulted beforehand. This can also lead to implementation challenges.

13.3 Recommendation

To the national legislators of the Member States

[65] See also Recommendation 6.1.

Consider seeking the opinion of legal professionals through consultations when drafting and before transposing EU legislation into national law.

Caution on the use of videoconferencing in judicial cooperation

While digitalisation brings significant benefits to judicial cooperation, it also introduces risks, particularly regarding the rights and procedural guarantees of individuals under investigation or prosecution.

13.4 Recommendation

To the issuing authorities of all Member States

Digitalisation in judicial cooperation should be applied cautiously, ensuring it respects procedural guarantees, and the rights of individuals involved.

The role of Eurojust and EU institutions in judicial cooperation

Opinions on the role of Eurojust and other EU institutions in judicial cooperation vary. Some legal professionals argue that Eurojust's involvement in communications between judicial authorities of the Member States slows down the exchange of information. They believe that the principle of mutual recognition, which relies on judicial independence and mutual trust, eliminates the need for an intermediary body, as direct communication between issuing and executing authorities ensures efficiency.

Others, however, emphasise the valuable support provided by Eurojust and similar institutions, particularly in offering legal guidance, assisting with the selection of appropriate mutual recognition instruments, and addressing procedural and language barriers. These institutions also facilitate dialogue between judicial authorities when direct communication proves challenging.

Given these differing views, national judicial authorities should have greater discretion in deciding whether to engage Eurojust's assistance. Where communication with institutions like Eurojust is required, this obligation could be fulfilled through national structures that already manage international judicial cooperation and maintain direct contact with domestic authorities.

13.5 Recommendation

To the issuing judicial authorities of all Member States

National authorities should have the discretion to engage with Eurojust when dealing with cross-border cases.

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