

The Impact of COVID-19 on Judicial Cooperation in Criminal Matters

The Eurojust Experience



Article

Mário Ernest, Mariana Radu

ABSTRACT

The global COVID-19 pandemic has had a far-reaching impact on the administration of public matters worldwide and on cooperation among states in general. It has also seriously impacted judicial cooperation in criminal matters. In this note, we briefly outline the direct effect the pandemic has had on judicial cooperation in criminal matters as experienced in Eurojust's casework.

AUTHORS

Mário Ernest

Judicial Cooperation Advisor
Eurojust

Mariana Radu

Assistant to the National Member for
Romania - Chair of the Judicial Co-
operation Instruments Team
Eurojust

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From the early stages of the COVID-19 pandemic, Eurojust casework revealed that practitioners from the Member States faced a number of difficulties when dealing with cases involving judicial cooperation in criminal matters. These issues were repercussions of the measures implemented by the Member States to combat the spread of COVID-19, and they affected all instruments commonly applied in the field of judicial cooperation. The following provides a summary of an analyses of cases registered at Eurojust since the beginning of the pandemic.¹

Within the framework of the **European Arrest Warrant (EAW)**, Eurojust cases can be divided into three main groups, depending on which provision of the EAW Framework Decision is applied. More specifically, these cases concerned the application of Arts. 15(2), 17, and 23 of the EAW Framework Decision:

Pandemic-related measures and overall uncertainty over the functioning of judicial systems in the Member States resulted in executing authorities needing to more frequently contact issuing authorities in order to request supplementary information (Art. 15(2)). The requests made by the executing authorities most often concerned details relating to the pandemic situation in the issuing state and its impact on the surrender procedure, as well as measures applied in the issuing state regarding possible quarantine and health care available to the requested person following his/her surrender.

The cases registered with Eurojust demonstrated that the executing authorities were already aware of the obstacles existing due to the pandemic and that they sought to inform the issuing authorities about the fact that deadlines stipulated by the EAW Framework Decision would not be able to be observed (Art. 17). In several cases, the executing authorities explained that the workload of judicial authorities, in combination with the extraordinary situation, would result in failure to make a final decision on an EAW on time.

The relevant casework showed that the pandemic, particularly in its initial stages, had a serious impact on the final stage of the EAW procedure – the physical transfer of the requested person to the issuing Member State. Against the background of transfers not being possible, the issuing and executing authorities commenced negotiations, with the aim of finding a new surrender date, following the rules laid down in Art. 23 of the EAW Framework Decision. However, these negotiations were often cumbersome and exposed a lack of common EU interpretation on the applicability of Art. 23(3) – postponed surrender due to *force majeure* – and Art. 23(4) – postponed surrender on *humanitarian grounds*; another problematic issue was that a common understanding is lacking of what the relationship is between these two paragraphs of Art. 23.

Uncertainties regarding pandemic-related measures led to additional questions as to whether Art. 23 provides an appropriate legal framework for keeping the requested person in detention during these conditions and as to the application of Art. 23(5), which foresees that the requested person be released from custody within 10 days of the postponed surrender date. Despite the preliminary struggles, the EAW mechanism remained functional and, in the majority of cases, the surrender of the requested person was carried out after a new date was agreed upon.

Abrupt changes in the everyday work of judicial authorities throughout the Member States due to COVID-19 measures, including the termination of public services and limited office hours, triggered doubts regarding the feasibility of the **European Investigation Order/Mutual Legal Assistance** requests (EIO/MLA) execution. In the majority of these cases, the requests from practitioners concerned clarifications as to whether and how it would be possible for the executing authority to conduct witness hearings (including hearings by videoconference) or house searches. Although the execution of EIOs/MLAs was still possible, in some instances the Member States were only willing to do so in urgent and extraordinary cases.

Transmission of an EIO/MLA/**freezing order** and its follow-up were the most frequent requests for assistance addressed to Eurojust during the pandemic. The practitioners needed a reliable communication channel

for a situation in which standard means or channels of communication were not available or were unreliable. From this perspective, one way forward could be the establishment of a single electronic platform to exchange the most frequently applied instruments of judicial cooperation, including access for Eurojust. This would be in line with preparations for the implementation of the e-Evidence Digital Exchange System (e-EDES), which is part of the Digital Criminal Justice project launched by the European Commission.² The analysed cases so far have demonstrated that practitioners can only benefit from Eurojust's access to this electronic system and thus facilitate its ability to properly fulfil its tasks.

Over the last decade, **Joint Investigation Teams (JITs)** became a frequently used judicial cooperation tool among the states. Efficient cooperation of the JIT parties requires frequent communication and regular meetings in order for them to agree on a common investigation strategy and to plan joint action days. The measures related to COVID-19 heavily affected this part of JIT cooperation and resulted in delays in planning and executing common JIT activities. The meetings of JIT members that had been scheduled in the early stages of the pandemic were cancelled or postponed for the same reason.

The pandemic also impacted the work of **Eurojust** itself. Requests to organise coordination meetings were addressed to Eurojust from the outset of the pandemic, as the national authorities needed to proceed with their investigations, discover the status of linked investigations in other states, and plan coordinated investigative actions.

Despite the COVID-19 pandemic restrictions and the variety of measures implemented, Eurojust remained fully operational. Immediately after the outbreak of the pandemic, Eurojust rapidly transitioned to remote working in order to ensure the continuation of its core business. As a result, Eurojust services, such as coordination meetings and coordination centres, were successfully held using a secure online communication platform when necessary. Specifically, in 2020, Eurojust organised 371 coordination meetings (242 by videoconference), 19 coordinated action days, and provided support to 74 newly established JITs.³

In addition to these activities and analyses of pandemic-related casework, Eurojust has been contributing to the Joint Eurojust–EJN compilation on the impact of COVID-19 on judicial cooperation in criminal matters.⁴ This compilation combines information from the Member States in response to questionnaires launched by the Council of the European Union, Eurojust, and the European Judicial Network on pandemic-related measures having an impact on judicial cooperation. It is regularly updated and circulated among practitioners.⁵

1. For further details, see the Eurojust Casework Report "The Impact of COVID-19 on Judicial Cooperation in Criminal Matters, May 2021, available at: <<https://www.eurojust.europa.eu/impact-covid-19-judicial-cooperation-criminal-matters>>. The full report is available in English. Executive summaries are also available in the other official languages of the EU.←
2. For e-EDES, see Communication from the Commission, "Digitalisation of justice in the European Union – A toolbox of opportunities", COM(2020) 710 final, pp. 15, 16 (sum up at [eucrim 4/2020_262](https://eucrim.4/2020_262)); for the Digital Criminal Justice project, see <<https://www.eurojust.europa.eu/judicial-cooperation/judicial-cooperation-instruments/digital-criminal-justice>>.←
3. For Eurojust's work in 2020, see Eurojust, *Annual Report 2020*, March 2021, available at: <<https://www.eurojust.europa.eu/eurojust-annual-report-2020-criminal-justice-across-borders-eu>>. A sum up is reported at [eucrim 1/2021_16](https://eucrim.1/2021_16).←
4. Cf. C. Riehle, "Eurojust/EJN: Impact of COVID-19 on Judicial Cooperation in Criminal Matters", (2020) [eucrim_109](https://eucrim.109).←
5. The updated compilations are published as a Council document (LIMITE); see the publications at the EJN website at: <https://www.ejncrimjust.europa.eu/ejn/EJN_DynamicPage/EN/86>.←

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