

Final Report on 9th Round of Mutual Evaluations

Thomas Wahl

News

On 1 March 2023, the General Secretariat of the Council tabled the [final report on the ninth round of mutual evaluations](#). The round was dedicated to legal instruments of mutual recognition in the field of deprivation or restriction of liberty. Evaluators looked into the legislation and practice of the EU Member States with respect to the following four instruments:

- [Framework Decision 2002/584](#) on the European Arrest Warrant (FD EAW);
- [Framework Decision 2008/909](#) on mutual recognition of judgments imposing custodial sentences;
- [Framework Decision 2008/947](#) on the mutual recognition of probation measures and alternative sanctions;
- [Framework Decision 2009/829](#) on mutual recognition to decisions on supervision measures as an alternative to provisional detention (“European Supervision Order”).

The report includes recommendations to the Member States and EU institutions/agencies in order to further enhance application of the instruments under evaluation. It also highlights that there is currently no particular need for legislation at the EU level.

The report concludes that judicial cooperation among Member States based on the FD EAW and the FD on custodial sentences works well in practice. However, there is room for development in some key areas. The functional relationship and complementarity between these two instruments are quite complex, so that more clarity across the EU should be aimed for.

Regarding the FD EAW, the report stated, *inter alia*:

- The approach by some Member States to implement optional refusal grounds in the FD as mandatory ones impedes the proper functioning of judicial cooperation in criminal matters based on mutual trust;
- The executing judicial authority must have a margin of discretion when applying grounds for optional non-execution (in line with the ECJ judgment in Case C-665/20 PPU → [euclid 2/2021, 103-104](#));
- Regarding the recurring issues concerning the application of the proportionality principle, a significant improvement could be observed compared to the findings of the fourth round of mutual evaluations in 2009; however, proportionality checks by executing authorities are still carried out in few Member States, which conflicts with the principles of mutual recognition and mutual trust;
- There is a need to clarify the ECJ jurisprudence on the risks of inhuman or degrading treatment at EU level;

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- Member States that are affected by bad detention conditions, including overcrowding, have taken or are considering initiatives to improve the situation;
- If surrender procedures are suspended or halted because of the *Aranyosi and Căldăraru* two-step test on detention conditions, efforts should be made by the competent Member States' authorities to avoid impunity.

Regarding FD 2008/909 on custodial sentences, the key findings were the following:

- Increased emphasis should be laid on the actual prospects of social rehabilitation for the sentenced person eligible for a transfer under the FD. Hence, the issuing authority should consult the executing Member State in order to gather the relevant information;
- Member States should ensure that their competent authorities inform the sentenced person about the possibility to serve the sentence in another Member State in accordance with the FD, the relevant procedure for the transfer and its legal implications, in a simple and accessible way;
- The issue of partial recognition and adaptation of the sentence does not raise major challenges, but problems remain in view of the interpretation of some notions in the FD and differences between the legal systems;

The ninth round of mutual evaluations confirmed that there is a significant lack of application of FDs 2008/947 and 2009/829 concerning non-custodial measures respectively in the post-trial and pre-trial stages of criminal proceedings. Reasons are, for example, lack of awareness and knowledge among practitioners, complexity and length of the proceedings, and the low number of cases with cross-border implications. More specifically, the scant use of FD 2008/947/JHA is primarily due to the significant differences between national systems regarding the nature and duration of the applicable probation and alternative measures. The infrequent application of the European Supervision Order is usually linked to the difficulty in identifying appropriate cases. As a result, the report recommends raising awareness of these two FDs and providing guidance and tools for practitioners.

Lastly, the report assesses the cooperation with Eurojust and the European Judicial Network (EJN). It is concluded that both bodies could be involved more often in criminal cross-border cases. Therefore, Member States are encouraged to raise awareness and promote the use of Eurojust and the EJN and the tools they offer.

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