

51st Plenary Meeting of the European Judicial Network on 22 - 23 November 2018 in Vienna

PANEL DISCUSSIONS – MUTUAL RECOGNITION INSTRUMENTS

The EJN Plenary Meeting under the Austrian Presidency focuses on the implementation and application of European legal instruments based on mutual recognition and the impact for the Network and its Contact Points as well as practitioners in general. The aim of the discussions is to identify practical problems and possible solutions to the (non-) application of the instruments that have proven less utilised and functional to EU practitioners.

In order to enable an in-depth discussion at the plenary meeting, the EJN contact points were asked to reply to a questionnaire. Around 100 Contact Points from 26 Member States expressed their views and shared their experience. Please see *[Annex to the Panel Discussions](#)* (Analysis of the replies to the EJN Questionnaire on the Application of European Legal Instruments Based on Mutual Recognition in Criminal Matters and Problems Related thereto) for summarized answers of the Contact Points.

PANEL 1

This panel will be dealing with the following Mutual Recognition Instruments:

- I. COUNCIL FRAMEWORK DECISION **2009/829/JHA** of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;
- II. 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;
- III. COUNCIL FRAMEWORK DECISION **2008/947/JHA** of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions; and
- IV. DIRECTIVE **2011/99/EU** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the European Protection Order.

Moderator: Joachim ETTENHOFER (DE)

Panellists: Marina BEUN (NL)

Nina CHLAPECKOVA (SK)

Tuuli EEROLAINEN (FI)

Joana FEREIRA (PT)

I. FD on mutual recognition to decisions on supervision measures as an alternative to provisional detention (2009/829/JHA).

1. Which problems have you encountered related to the recognition and monitoring of supervision measures as executing state/ issuing state?
2. What non-custodial alternatives to pre-trial detention are available in your Member State? Do they work (well) in practice?
3. What do you think are reasons/obstacles why this FD is rarely used? What would you propose in order to increase the application of the instrument, including a need for amendments of the instrument?
4. Do you consider it useful to provide an overview on the EJN website on different types of supervision measures as an alternative to provisional detention available in each Member State? What else could the EJN do to assist the practitioners with the practical application of the instrument?

II. FD on mutual recognition of custodial sentences or measures involving deprivation of liberty (2008/909/JHA)

5. Rule of Speciality: Application of the FD Custodial Sentences or the FD EAW:

Case: X is serving a sentence in Member State A and shall be transferred to your Member State in accordance with the FD. Before the decision on the transfer is taken, it turns out that: i. there is an investigation pending in your Member State; ii. X has already been convicted to a custodial sentence in your Member State.

What criteria are you applying in order to determine whether to issue an EAW or to submit a request for consent under the FD (Art 18(3)) for the prosecution of X?

6. Calculation of the sentence:

- i) How do you adapt the sentence (Art 8) to your own legislation? Is the sentence "calculated" based on the particular crime in question (*in concreto*) or a category of crimes e.g. drug crimes (*in abstracto*)?

- ii) Does your law provide for calculating a term of imprisonment in days? If the sentence is imposed in years or months how do you convert them into days for the purposes of the FD 2008/909/JHA (e.g. in an abstract way: 1 year = 360 days; 1 month = 30 days or in a concrete way: following the calendar)? As an executing state, what other problems have you encountered in relation to calculating penalty and/or release dates, which may cause delays in executing the request?

7. Imprisonment in lieu of a fine:

- i) Would your Member State enforce the imprisonment in lieu of a fine under the FD 2008/909/JHA
 - ii) Does your national legislation limit the length of imprisonment in lieu of a fine?
8. Do you consider it useful to provide an overview of the different measures involving deprivation of liberty existing in each Member State on the EJN website? (Some information is also provided by EuroPris).
9. How else could the EJN assist the practitioners in the practical application of this instrument?

III. FD on mutual recognition of supervision of probation measures and alternative sanctions (2008/947/JHA).

10. As an executing state, how would you deal with a situation if a probation measure/ alternative sanction does not exist in your Member State?
11. What problems have you encountered in the application as issuing/executing MS?
- i) What do you think are reasons/obstacles why this FD is rarely used?
 - ii) What would you propose in order to increase the application of the instrument, including a need for amendments of the instrument?
12. What could the EJN do to assist the practitioners with the practical application of the instrument?

IV. Directive on the European Protection Order (EPO) (2011/99/EU)

13. Please share your experience, and problems you have encountered with the EPO.
- i) What do you think are reasons/obstacles why this instrument is rarely used?
 - ii) What would you propose in order to increase the application of the instrument, including a need for amendments of the instrument?
14. What could the EJN do to assist the practitioners with the practical application of the instrument?

PANEL 2:

This panel will be dealing with the following Mutual Recognition Instruments:

- V. COUNCIL FRAMEWORK DECISION 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
- VI. COUNCIL FRAMEWORK DECISION 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

Moderator: Florin Razvan RADU (RO)

Panellists: Danka HRZINA (HR)

Ondřej PERICH (CZ)

Karolina Etelka VARGA (HU)

V. FD on mutual recognition to financial penalties (2005/214/JHA)

15. Have you encountered any problems in the practical application of this instrument, as issuing or executing state? If yes, what were the problems?

16. Discontinuation of Proceedings Taking into Consideration the Payment of an Amount of Money:

Case: The national law of Member State A provides for the discontinuation of proceedings (either by the PPO or – after indictment – the court) without a formal sentencing taking into consideration certain circumstances such as the payment of a certain amount of money by the accused.

Would your Member State recognize such payment of money without the accused being formally sentenced as: a) financial penalty within the meaning of the FD 2005/214/JHA b) probation measure within the meaning of the FD 2008/947/JHA c) alternative sanction within the meaning of the FD 2008/947/JHA?

17. **Accrual of Monies Obtained from the Enforcement of Decisions:** Do you consider it useful to provide an overview of the different rules on asset sharing existing in each Member State on the EJN website (Art 13)?

18. What could the EJN do to assist the practitioners with the practical application of the instrument?

VI. FD on mutual recognition of confiscation orders (2006/783/JHA)

19. Which problems have you encountered:

- i. Related to the enforcement of confiscation orders as executing state/issuing state?
Please give examples.
- ii. In cases where the confiscation order is a follow up to a freezing order transmitted under FD 2003/577/JHA?

20. How detailed should the asset to be confiscated be described in the certificate? How about inquiring measures in order to find assets in the executing state – does your Member State require an EIO/MLA to be issued in addition to the confiscation order for the purpose of tracing and finding assets?

21. What do you think are reasons/obstacles why this FD is rarely used?

- i) Which elements have you recognised from the new Regulation that would assist the efficiency of the process?
- ii) Would you require further changes?

22. What could the EJN do to assist the practitioners with the practical application of the instrument?