

Discussion Paper for the Third Plenary of the High-Level Forum on the Future of EU Criminal Justice

Enhancement of ex-third pillar instruments: follow-up discussion on the basis of the preliminary findings of the “Explanatory Study on the possible ‘Lisbonisation’ of ex-third pillar acquis in the area of mutual recognition in criminal matters”

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Introduction

The Commission launched an “*Exploratory study on possible ‘Lisbonisation’ of ex-third pillar acquis in the area of mutual recognition in criminal matters*”, to be carried-out by the consortium of ICF and Spark by Autumn 2025.

The Study has a two-fold objective:

1. to assess the legal transposition and practical implementation of seven existing Framework Decisions on mutual recognition in criminal matters¹ (hereinafter ‘FDs’) identifying persistent problems best practices; and
2. To evaluate the need and feasibility of further EU action, including the adoption of new legislation, where warranted, and the establishment of one single coherent framework.

The study’s methodology is rooted in a comprehensive evaluation of current jurisprudence, national practices, and recurring legal issues in the field of mutual recognition of criminal decisions and cross-border judicial cooperation. While the study considers a wide range of non-legislative tools, including guidance and digitalisation efforts, it also outlines both targeted and structural legislative options. Preliminary findings indicate a need for greater clarity, coherence, and practical usability of mutual recognition instruments.

During the discussions held in the context of the High-Level Forum (‘HLF’), particularly during the technical meeting of 12 February 2025 and the second plenary of 20 May 2025 the effective functioning of certain mutual recognition instruments, most notably the European Arrest Warrant (EAW) was underlined by participants. However, there was no consensus on this matter, and some Member States, alongside practitioners and academics, have called for potential revisions to enhance consistency and overcome underuse. Others favoured more limited amendments, to be considered only if justified by the study’s final findings.

As the study nears completion, the Commission intends to propose a follow-up discussion based on its preliminary findings. This paper presents the preliminary findings per instrument and outlines policy options, both legislative and non-legislative. Participants are invited to reflect on both the findings and the emerging options, in particular the potential need for legislative reform to address any structural shortcomings.

¹ FD EAW (2002/584/JHA), FD Transfer of Prisoners 2008/909/JHA, FD Probation and Alternative Sanctions (2008/947/JHA), FD European Supervision Order (2009/829/JHA) FD Financial Penalties (2005/214/JHA), FD Previous Convictions 2008/675/JHA, and FD Conflicts of Jurisdiction (2009/948/JHA).

1. Framework Decision 2005/214/JHA on mutual recognition of financial penalties

The preliminary results of the study reveal a series of legal and practical shortcomings in the application of this instrument.

Despite its broad scope, covering criminal and quasi-criminal offences² that may result in financial penalties, the Framework Decision suffers from inconsistent and incomplete transposition across Member States. Legal uncertainty frequently arises from discrepancies in how key rules are implemented, particularly those governing the transmission of decisions, grounds for refusal, procedures for communication between issuing and executing States, and translation obligations. One of the reasons for this is the vague and general language often used in this Framework Decision, which make it very difficult to ensure consistent transposition and application.

One of the most persistent challenges lies in the **divergent classification of offences as administrative or criminal across different jurisdictions** notably regarding the particular area of road safety-related traffic offences but also in the area of taxation , employment and agriculture policy.

As regards the particular area of road safety-related traffic offences ,this issue arose clearly with the adoption of Directive 2024/3237 revising Directive 2015/413 on cross-border exchange of information on road-safety-related traffic offences (hereinafter the ‘CBE Directive’)³ and was also dealt with by the Court of Justice of the European Union (hereinafter ‘CJEU’) in case C-60/12, *Balaz*⁴.

While the revised CBE Directive has introduced procedures for enforcing administrative fines related to road safety related traffic offences in other Member States, including by introducing mutual assistance mechanisms and procedural safeguards in relation to the right to information and remedy, the Framework Decision continues to govern the enforcement of such fines when classified as criminal or quasi-criminal. However, in situations where the issuing State classifies an offence as administrative and the executing State considers it criminal, the penalty may fall outside the scope of both instruments, creating a risk of impunity.

In addition, the **evolving jurisprudence of the CJEU** interpreting this Framework Decision further clarified the circumstances under which mutual recognition may be refused, particularly in relation to procedural safeguards and fundamental rights. The absence of adequate translation of decisions imposing a financial penalty for a road traffic offence, for example, has been accepted as a ground for refusal (C-338/20⁵). While the revised CBE Directive has responded to such concerns by including detailed provisions on the language of communication and minimum content of information letters⁶, the Framework Decision has not been updated accordingly.

² FD Article 1a) iii) and iv) extends the scope of application of FD and limits it at the same time to decisions by courts “having jurisdiction in particular in criminal matters”

³ Directive 2024/3237 of 19 December 2024 amending Directive 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences - Consolidated version of the two Directives - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02015L0413-20250119>

⁴Judgement of the Court of Justice of 14 November 2013, *Balaz*, Case C-60/12, ECLI:EU:C:2013:733

⁵ Judgment of the Court of Justice of 6 October 2021, D.P., C-338/20, ECLI:EU:C:2021:805

⁶ see Recital 27 and Article 5, 5a.

Operational inefficiencies also persist, especially on aspects of communication between the issuing and executing State, which can be cumbersome and costly. The process of transmitting and recognising financial penalties remains burdensome for authorities. Although informally standardised forms were introduced in 2017⁷ to improve efficiency, their voluntary nature and inconsistent use, coupled with the continued need for translation, reduce their effectiveness.

Against this background, the preliminary findings of the study identify a number of possible solutions: , targeted towards road traffic offences which represent the vast majority of financial penalties, but the solutions could also be mainstreamed to cover other areas where similar issues arise, e.g. taxation as outlined before.

Non-legislative options include enforcement action, the development of new guidelines to clarify the respective scopes of the Framework Decision and the revised CBE Directive, the creation of a practitioner handbook synthesising case law and best practices, and the integration of standardised forms into the decentralised IT system for communications established under Regulation 2023/2844⁸.

As to **legislative options**, the Study proposes targeted amendments which could align with the revised CBE Directive by addressing legal gaps related to offence classification, thereby creating a more coherent enforcement framework. This could be achieved by revising the Framework Decision to ensure applicability across all types of classifications of road traffic offences and to incorporate stronger rules on procedural rights mirroring those existing in the CBE Directive.

A more ambitious approach would be to **fully repeal and replace the instrument**, maintaining the broad scope of the Framework Decision and expanding it to include not only enforcement but also earlier procedural stages such as investigation, while also codifying relevant CJEU jurisprudence on procedural safeguards and protection of fundamental rights and introducing digital-by-default communication mechanisms.

Questions for discussion:

1. Should the gap caused by divergent offence classifications as criminal or administrative across Member States be addressed at EU level?
2. Would a legislative revision serve this purpose and better support mutual trust and fundamental rights protection in the enforcement of financial penalties?

2. Framework Decision 2009/948/JHA on conflicts of jurisdiction

The study highlights significant deficiencies in the practical application of the Framework Decision on conflicts of jurisdiction. Although its purpose is to prevent parallel criminal proceedings against the same individual for the same facts, thereby safeguarding the principle of *ne bis in idem*, the instrument has proven insufficiently robust to achieve this aim. Moreover, the co-legislators recently adopted Regulation (EU) 2024/3011 on the transfer of proceedings in criminal matters, which establishes rules for transferring proceedings from one Member States to another, where competent authorities decide, following consultations in accordance

⁷ <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/1984>

⁸ Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, OJ L, 2023/2844, 27.12.2023.

with the Framework Decision, to concentrate proceedings in one Member State through a transfer. The current initiative regarding the Criminal Justice Cross-check Mechanism (CJCM), which aims to establish a technical solution for the secure cross-checking of ongoing investigations and prosecutions, is also closely related to the Framework Decision on conflicts of jurisdiction.

However, it is considered that **there are still elements that could benefit from improvements to prevent and solve conflicts of jurisdiction in the EU Area of Freedom, Security and Justice**, since the Regulation only allows Member States to transfer proceedings, and establishes jurisdiction only in very specific situations, without however providing a general system of EU jurisdiction able to prevent conflicts of jurisdiction from the outset or solve them on the basis of precise legal provisions.

The Framework Decision imposes a mere obligation of consultation between Member States but lacks any binding mechanism to prevent or resolve jurisdictional conflicts. As a result, conflicts are either left unresolved or handled through protracted bilateral discussions that do not always result in legal clarity or resolution. The role of Eurojust is helpful but it is optional. Addressing this issue would allow for a stronger protection of the right to a fair trial and the *ne bis in idem* principle as enshrined in the Charter of Fundamental Rights.

Moreover, many the transposition of the Framework Decision by the Member States is highly divergent due to the vague language of the instrument, while awareness of the instrument and its potential utility appears to be limited among practitioners, further contributing to its underuse.

To address these shortcomings, the preliminary findings of the study suggest a range of measures.

Soft-law measures could include expert training, new guidelines explaining the scope of the instrument and its relationship to other EU tools, particularly the recently adopted Regulation (EU) 2024/3011 on the transfer of criminal proceedings, and updates to the Eurojust guidelines that provide clearer criteria for determining the choice of jurisdiction. However, the study notes that these measures may be insufficient to resolve the fundamental legal limitations of the instrument.

More structured **legislative options** would entail:

- a proposal codifying the Eurojust guidelines on jurisdiction into binding legal rules, thereby creating a more predictable legal framework.
- to strengthen Eurojust's role in resolving jurisdictional conflicts in the forthcoming revision of the Eurojust Regulation.
- to adopt new EU legislation that lays down clear criteria for the choice and exercise of jurisdiction by Member States in cross-border cases, as the missing piece for a fully functioning EU Area of Freedom, Security and Justice.

Questions for discussion:

1. Should the EU establish binding criteria for jurisdiction in cross-border criminal cases to improve legal certainty?
2. Would enhancing Eurojust's role improve the resolution of jurisdictional conflicts and reduce parallel prosecutions? How should such role look like?

3. Framework Decisions on Detention and the European Arrest Warrant

The group of instruments governing detention-related cooperation, namely the Framework Decisions on the European Arrest Warrant (FD EAW), the Transfer of Prisoners (FD TOP), Probation and Alternative Sanctions (FD PAS), and the European Supervision Order (FD ESO), represent key components of the EU's mutual recognition architecture.

However, the study reveals persistent deficiencies in their legal coherence, practical implementation, and ability to support mutual trust among Member States.

The transposition of these instruments, including the EAW, remains uneven and incomplete. Key provisions are interpreted and applied differently across jurisdictions, leading to divergent practices and inconsistent legal standards. This is particularly evident in the application of the FD EAW, where repeated judgments by the CJEU have aimed to clarify a number of legal ambiguities. However, these clarifications have sometimes resulted in added complexity for practitioners, rather than greater legal certainty.

Similar inconsistencies are found in the application of the other detention-related Framework Decisions. Variations in how Member States understand and implement core concepts, such as grounds for refusal, procedural guarantees, and timelines, have made cooperation less predictable and more difficult to manage in practice. The result is a legal framework that, while operational, continues to pose significant challenges for authorities seeking to apply it efficiently and consistently across the EU.

On the practical level, the study identifies a number of **recurrent shortcomings**. In operational terms, the instruments often fail to function as intended.

The FD ESO, which was envisaged as a cornerstone of mutual trust in pre-trial contexts, remains severely underutilised. The concept of allowing a suspect to await trial in their home Member State under supervision rather than in pre-trial detention has rarely materialised in practice. One reason is that the decision-making and transmission processes are incompatible with the rapid procedural timelines that typically apply at the pre-trial stage. The legal architecture is not aligned with the procedural realities of national systems, undermining the instrument's core objective of offering a viable alternative to detention.

Similarly, the FD PAS and FD TOP, which aim to facilitate the social rehabilitation of sentenced persons and the effective implementation of non-custodial measures across borders, are inconsistently applied. Differences in national sentencing practices and execution modalities often result in confusion or reluctance to initiate transfers. This limits their effectiveness and contributes to continued reliance on custodial measures, even in situations where alternatives could be appropriate.

A recurring theme across all four instruments is the deterioration of mutual trust due to fundamental rights' related concerns. The CJEU has developed a significant body of case law allowing Member States to postpone or refuse cooperation when there is a real risk of inhuman or degrading treatment, notably in relation to prison conditions or rule of law concerns in the issuing State. While these rulings reinforce the importance of rights-based safeguards, they also expose the fragility of mutual recognition when systemic deficiencies arise. In practice, this has introduced greater complexity into the application of the FD EAW and led to growing divergence in Member State practices.

To address these challenges, the study considers a range of non-legislative and legislative options.

As concerns **non-legislative avenues**, many tools have already been used to facilitate effective judicial cooperation and increase efficiency of the instruments, in particular: the Handbooks on FD EAW and FD TOP, funding for training, enforcement action, guidelines on extradition, financial support, experts group and the 2022 Recommendation on pre-trial detention and detention conditions.

Additional soft law measures could include improved procedural guidance adapted to digital workflows, more systematic and practice-oriented training for judicial authorities, additional financial support to enhance digital infrastructure and detention conditions, and a strengthened consultative role for Eurojust in complex cases.

However, these measures may only partially address the deeper legal and structural shortcomings. The study therefore puts forward several **legislative options**.

One option would be to consider targeted revisions of individual Framework to address specific technical or operational gaps, improve legal clarity, and ensure alignment with current practice and jurisprudence, including on grounds for refusal and minimum procedural safeguards. Another option would be to also clarify the interaction between specific instruments, for example by codifying rules for the transfer of persons under FD TOP when guarantees have been provided during surrender under the EAW.

Finally, a more ambitious approach would involve the simultaneous repeal of all detention-related Framework Decisions and replacing them by a new instrument to bring them fully in line with current legal standards and expectations for fundamental rights protection. The study contemplates a general reform providing a unified, coherent legal basis for mutual recognition, reducing fragmentation and reinforcing mutual trust across all phases of cooperation, which could forecast a coherent body of rules, and possibly a building block for any future European Criminal Procedural Code.

A mix of legislative and non-legislative measures is also presented as a viable solution by the study.

Questions for discussion:

1. Given the persistent fragmentation in the transposition and application of the FD EAW, FD TOP and related instruments, do you consider that targeted legislative revisions are necessary to harmonise key provisions, including safeguards and grounds for non-execution, and strengthen legal certainty?
2. Should the EU consider a more ambitious legislative revision, including repealing the detention-related Framework Decisions by replacing them by a Regulation or a Directive, or the development of horizontal rules, to address recurring issues in the implementation of the detention Framework Decisions?