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9th round of Mutual Evaluation on Mutual recognition legal instruments in the field of deprivation or restriction of liberty - REPORT ON IRELAND

**EVALUATION REPORT ON THE
NINTH ROUND OF MUTUAL EVALUATIONS**

**9th round of Mutual Evaluations on mutual recognition legal instruments in the
field of deprivation or restriction of liberty**

REPORT IRELAND

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1. EXECUTIVE SUMMARY

The visit was efficiently organised by the Irish authorities. It included meetings with all the relevant actors dealing with European judicial cooperation and the implementation and operation of European policies.

The representatives of all of the institutions and the bar association who had been selected to attend the meeting were highly professional. They shared their experiences and thoughts with the evaluation team, helping create a comprehensive picture of the four instruments of judicial cooperation to be evaluated.

1.1. Framework Decision 2002/584/JHA

Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('the EAW FD') was given effect in the Irish legal system by the European Arrest Warrant Act 2003 ('the EAW Act 2003').

The issuing judicial authorities are the District Courts, Circuit Courts, the High Court or a Special Criminal Court. Requests are issued on application by the Office of the Director of Prosecutions(ODPP).

The executing competent authority is the High Court upon request from the Chief State Solicitors Office (CSSO).

The justice ministry - the Department of Justice (DoJ) -has been appointed as the Central Authority. It is worth noting that section 20 of the EAW Act 2003 has been amended to more closely reflect the role of the Central Authority as provided for in the Framework Decision. As a consequence, the DoJ no longer engages in interaction with the foreign jurisdiction at its own initiative, but only on behalf of the court. The Irish authorities stressed that the role of the Central Authority does not delay the process, but rather facilitates communication.

When issuing an EAW, the Irish Authorities conduct a proper proportionality test. This includes checking the severity of the crime, the condition of the victim, the penalty provided for and the time lapse since the offence was perpetrated. In addition, when Ireland as issuing authority needs to question a person before being able to decide whether to prosecute them, the Irish authorities will not have recourse to an EAW, which is fully in line with the EAW FD. In such a scenario, because Ireland did not opt into the European Investigation Order (EIO), the competent authorities will seek and provide criminal legal assistance pursuant to the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (ETS No.30) ('the MLA') and relevant EU instruments such as the Convention of 29 March 2000 on Mutual assistance in criminal matters between the Member States of the European Union. Finally, it should be noted that because cases in which a person is judged *in absentia* are rare in Ireland, EAWs are mainly issued for the purposes of prosecution, defined as the moment in which the person sought is likely to be taken before a court for a trial.

When executing an EAW, Irish representatives correctly acknowledged that it was not for them to assess the proportionality of an incoming EAW and that they therefore execute the EAW. They refuse the EAW only if it is clear that it is not for the purpose of 'prosecution', but rather for gathering evidence.

The experts noted and welcomed the fact that several shortcomings which had been raised during the 4th round of mutual evaluations had been remedied by the Irish legislator. However, the current EAW Act 2003 is still not fully in line with the EAW FD in several respects, mainly concerning the grounds for refusal. The evaluation team also observed, for instance, that internal proceedings and multiple remedies against a decision on surrender occasionally still resulted in considerable delays in the final decision, which did not comply with the time limits provided for in the EAW FD. The Irish authorities are therefore encouraged to take measures to limit such occurrences.

The Irish authorities explained that they were in the process of amending the EAW Act 2003 to remedy infringements listed in the Commission's letter of formal notice of October 2020 which stated that Ireland had failed to adequately transpose 17 provisions of the EAW FD.

The Department of Justice (DoJ) prepared a **General Scheme of EAW (Amendment) Bill**, which was published in July 2021. The Bill is currently being drafted by the Office of the Attorney General.

1.2. Framework Decision 2008/909/JHA

Ireland has been slow to transpose Council Framework Decision 2008/909/JHA ('FD 2008/909/JHA'); the Criminal Justice (Mutual Recognition of Custodial Sentences) Bill ('Bill 103 of 2021') intended to implement FD 2008/909/JHA has made progress in the Irish Parliament, and was expected to be enacted and come into operation within 6-8 weeks from the evaluation visit¹.

Under the national procedures to be introduced to implement FD 2008/909/JHA, responsibility – both as issuing and executing authorities - will be shared between executive (ministerial) and judicial functions. For outward transfers, the Minister for Justice has been designated as the competent authority, while the courts have limited functions. For inward transfers, the competent authorities are the courts, but the determination of whether to consent to a transfer under Article 4(3), and the assessment of social rehabilitation are made by the DoJ, which is also the Central Authority.

Under Bill 103 of 2021, a determination that a transfer would facilitate social rehabilitation is a precondition for the issuing of a certificate, and the Irish authorities have stated that the opinion of the sentenced person is central to the decision on issuing the certificate. The experts share the view that, once the law has entered into force, although the sentenced person's opinion should be considered, it is also important for the decision not to be taken solely on the basis of the opinion/consensus. In fact, the decision must be taken with the sole purpose of enhancing social rehabilitation.

As FD 2008/909/JHA has not still been implemented, the experts are not in a position to assess it or to ascertain whether problems arise with the link between the EAW FD and FD 2008/909/JHA on custodial sentences.

¹ After the onsite evaluation experts were informed by the Irish authorities that FD 2008/909/JHA would enter in force in June 2022.

1.3. Framework Decision 2008/947/JHA on probation and alternative sanctions

Framework Decision 2008/947/JHA on probation and alternative sanctions ('FD 2008/947/JHA') was transposed into the national legislation of Ireland by the enactment and commencement of the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019..

The functions of the competent authority in Ireland are divided between the Minister and appropriate courts; however, the Minister has designated the Probation Service as the Competent Authority representing the Minister. The evaluation team was not able to ascertain details regarding information exchange mechanisms and the division of responsibilities between the DoJ, the Probation Service and the appropriate courts. The Irish authorities reported that development of co-operation protocols between the DoJ, the Probation Service and appropriate courts was still an ongoing process.

The experts have identified multiple cases of inefficient communication between competent authorities of the Member States.

The evaluation team would point out that the Irish authorities have not carried out enough awareness raising, information dissemination and training activities in Ireland regarding the transposition of FD 2008/947/JHA into national legislation.

1.4. Framework Decision 2009/829/JHA on the European Supervision Order (ESO)

Framework Decision 2009/829/JHA 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 ('FD 2009/829/JHA') was transposed into the national legislation of Ireland by the enactment and commencement of the Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020. This Act entered into force on 5 February 2021.

Where Ireland is the issuing State, the Competent Authority is the court competent to impose supervision measures on the person concerned.

Where Ireland is the executing Member State, the Competent Authority is the District Court, or, in the case of certain offences, the High Court. The Garda Síochána subsequently monitors the decision.

It is worth noting that, since FD 2009/829/JHA was transposed into Irish national legislation, no incoming or outgoing transfer requests have been recorded and there is consequently no practical experience in the application of FD 2009/829/JHA. Further awareness raising activities for criminal justice professionals on the matter are nevertheless necessary.

2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime had been established.

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, CATS decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of legal instruments in the field of mutual recognition and their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW'),
- Framework Decision 2008/909/JHA 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 ('Custodial sentences'),

- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures'). Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle on mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on those specific aspects of such instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the link between the legal and operational links between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947/JHA on probation and alternative measures and FD 2009/829/JHA on the ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the 9th mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also - and in particular - relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

More generally, promoting the coherent and effective implementation of this package of legal instruments at its full potential could make a significant contribution towards enhancing mutual trust among the Member States' judicial authorities and ensuring a better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input to Member States which may not have implemented all aspects of the various instruments.

Ireland was the 27th Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended on the proposal of certain Member States and in the absence of any objections (ST 9278/19 REV 2).

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in the evaluations to be carried out. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request sent on Friday 17 May 2019 to delegations by the Secretariat of the Council of European Union.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the 9th round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJNI should be invited as observers.

The experts entrusted with the task of evaluating Ireland were Mr Imants Jurevicius (Latvia), Ms Paola Cameran (Italy), and Mr Manuel Olmedo (Spain). Observers were also present: Ms Christine Janssens (Eurojust), together with Ms Carmen Giuffrida from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Ireland between 29th November and 3rd December 2021, and on Ireland's detailed replies to the evaluation questionnaire together with its detailed answers to the ensuing follow-up questions.

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

3.1. Authorities competent for the European Arrest Warrant (EAW)

Issuing authorities

Undersection 33 of the European Arrest Warrant Act 2003 ('the EAW Act 2003'), as amended, the issuing judicial authorities are the District Courts, Circuit Courts, the High Court or a Special Criminal Court. Requests are issued upon an application made by the Office of the Director of Public Prosecutions(ODPP).

Once an EAW has been issued by the Court, the ODPP forwards it to the Garda Síochána, which raises an alert in the SIS II system, to which Ireland has been connected since 15 March 2021. Before Ireland joined SIS II, EAWs were transmitted directly by the Central Authority to a Member State (section 34 of the EAW Act 2003). The Irish authorities explained that the connection to SIS II had been well prepared and had gone very smoothly overall (only minor problems were encountered in the initial phase). Ireland works with the PULSE system, which was changed so as to integrate it with SIS II and have a fully integrated system. Garda International Bureau (GIBS) is a new case management system that was developed to support the new SIRENE office. The Irish authorities presented the different processes in the system related to Article 26. The evaluation team was satisfied with the expertise of the authorities and the quality of the system. Regular meetings between all competent authorities involved to address any possible operational issues were seen as good practice.

It should be noted that because cases in which a person is judged *in absentia* are rare in Ireland, EAWs are mainly issued for the purposes of prosecution, defined as the moment in which the person sought is likely to be taken before a court for a trial.

Executing authorities

According to section 9 of the EAW Act 2003, the executing competent authority is the High Court upon request of the CSSO.

Since Ireland fully joined the SIS II system (March 2021), the process starts whenever a person subject to an alert is located in Ireland. In that case, the person is arrested and the detention is immediately communicated to the CSSO, which presents the case for a first hearing before the High Court (section 14 of the EAW Act 2003). This first hearing takes place within hours. The defendant may be put on bail until the full hearing or remanded in custody. Requests for further information may be adopted by the High Court, and are transmitted to the authority of the issuing Member State via the DoJ. The defendant is granted the right to be assisted by a lawyer, solicitor or barrister, who may raise objections to the surrender based on different grounds. The main two categories of these objections are: the possible violation of human rights relating to prison and detention conditions in the issuing Member State; and judgments *in absentia*. The problem of extraterritoriality may also arise during these hearings. All these objections will be analysed later on in section 3.4 of this report.

The decision to surrender adopted by the High Court may be challenged before the Court of Appeal provided that the defendant is granted leave to do so. An additional remedy might be granted to a defendant who can, in that event, challenge the decision before the Supreme Court. As a result of these remedies, the time limits as provided for in the EAW FD are frequently not met.

Eurojust is always notified, as required under Article 17(7) of the EAW FD and section 16 of the EAW Act 2003, and as confirmed by the Eurojust statistics.

On the one hand, the evaluation team considers this notification to be best practice and notes that it also complies with recommendations addressed during the 4th round of mutual evaluations; on the other hand, it underlines that further steps are necessary in Ireland to ensure compliance with time limits. The Irish authorities informed the experts that, following the General Scheme of EAW (Amendment) Bill 2021, as approved by Government on 21 July 2021, sections 15 and 16 will be amended to ensure better compliance with the time limits (see section 3.5 of this report).

Central Authority

The DoJ has been designated as Central Authority. It is informed by the **SIRENE** bureau in the Garda Síochána whenever a person sought is located in a Member State. If any further information is needed by the executing Member State, it is transmitted to the Court through the DoJ.

Before the SIS II system was fully implemented in Ireland, all requests for the execution of EAWs were filed via the DoJ (section 12 of the EAW Act 2003) and an administrative check on EAWs was carried out by the DoJ. Such checks could result in a request for further information being made to the issuing Member State, or even to the EAW being rejected *in limine*.

The experts noted that, since the 4th round of mutual evaluations, section 20 of the EAW Act 2003 had been amended to more closely reflect the role of the Central Authority as provided for in the EAWFD. Currently, the DoJ no longer engages in interaction with the other jurisdiction at its own initiative, but only on behalf of the court. The Irish authorities stressed that the role of the Central Authority did not delay the process, but rather facilitated communication.

3.2. The principle of proportionality

The Irish Authorities seem to make proper use of the principle of proportionality, as suggested in the Commission EAW Handbook, which is used by the competent authorities together with additional guidelines based on the Handbook.

As issuing authorities, the conditions for issuing a European Arrest Warrant under Irish law are set out in section 33 of the EAW Act 2003 as amended.

The test of proportionality is mainly applied by the ODPP upon receiving a request for an EAW by the Garda Síochána. The Garda Síochána itself is familiar with this test and therefore also applies the test before submitting a request to the ODPP.

It must be said that in Ireland EAWs are only sought by the ODPP for offences covered by Article 2(1) of the Framework Decision.

The proportionality test includes checking the severity of the crime, the condition of the victim, the penalty involved and the time lapse since the offence was perpetrated.

The Irish representatives reported that, as a result of the application of the proportionality test, no requests to issue an EAW had been rejected by the Court as yet.

When Ireland, as issuing authority, needs to question a person before it can decide whether to prosecute, the Irish authorities do not use an EAW, which is fully in line with the EAW FD. In such a scenario, as Ireland did not opt into the EIO, the competent authorities will seek and provide criminal legal assistance pursuant to the Council of Europe Convention on MLA and relevant EU instruments such as the Convention of 29 March 2000 on Mutual assistance in criminal matters between the Member States of the European Union.

It is also worth highlighting that no EAW is requested and issued during the investigative phase; this is only done during the prosecution phase. However, whilst it seems a necessary criterion that a case should be ready for prosecution, this does not require, according to the case law of the Irish Supreme Court, that the formal step of ‘indictment’ must have been taken before the surrender. The Irish authorities believe that this is an issue that might also end up before the CJEU for further clarification.

As executing authority, Irish representatives reported that, in their view, other Member States’ issuing authorities do not always assess the ‘proportionality’ correctly before issuing an EAW. However, they correctly acknowledged that it is not for them to assess the proportionality of an incoming EAW and therefore they execute the EAW.

In some exceptional cases, Irish authorities might refuse to execute an EAW if it is clear that the EAW is not for the purpose of ‘prosecution’ but rather for gathering evidence, and the case is still in the investigative phase.

3.3. Exchange of information

In relation to incoming EAWs, additional clarifications are sought in relation to prison conditions, judgments rendered *in absentia* and the independence of Member States' judiciary and prosecution services.

In general Member States comply with deadlines set for the provision of any such additional information. The Irish authorities also clarified that they did not tend to set short deadlines for replying to requests for additional information and agreed to extend the deadline if needed.

Occasionally they ask for Eurojust support to get responses, particularly in relation to urgent cases, as confirmed by the Eurojust statistics. On the contrary, recourse to the European Judicial Network (EJN) is less frequent in the context of the EAW, but prosecutors in the ODPP regularly engage with the online practical tools provided on the EJN website via two EJN points of contact in the ODPP.

In relation to outgoing EAWs, the Irish authorities said that requests for additional information from other EU Member States were extremely rare, but they had received some requests from the UK (e.g. information on passage of time; prison conditions; absconding of the person; etc.). The Irish authorities have not experienced any cases where information sought by the executing authorities would not be considered 'necessary'. The ODPP is not aware of any cases where unnecessary judgments and additional supporting documentation are requested, at least on a regular basis. The ODPP is informed of certain follow-up information, such as the duration of the detention period.

3.4. Grounds for refusal

During the evaluation visit, the Irish authorities explained that they were in the process of amending the EAW Act (2003) to remedy infringements listed in the Commission's letter of formal notice of October 2020 stating that Ireland had failed to adequately transpose 17 provisions of the EAW FD.

The DoJ has prepared a **General Scheme of the EAW Bill**, which was published in July 2021. The Bill is currently being drafted by the Office of the Attorney General.

Amendments to the European Arrest Warrant Act 2003, as approved by the Government on 21 July 2021, should be completed so as to make the Act more closely aligned with the EAW FD. In particular, the following sections of the Act should be duly amended, as provided for in the document passed by the Government on 21 July 2021:

- Section 13(2), replacing optional endorsement ('may') with an obligation to endorse ('shall').
- New section 14A so as to achieve the full transposition of Article 18(1) to (3) and 19(4) to (6) of the EAW FD.
- Section 15, in several subsections, so as to achieve full alignment with the EAW FD as regards time limits in the event of consent to surrender and regarding the principle of specialty.
- Section 16, replacing optional surrender ('may') with an obligation to surrender ('shall'), and speeding up contact between authorities.
- Section 18, in order to speed up contact between authorities.
- Section 19, on conditional surrender.
- Deletion of section 21A, on refusal of surrender where there is no decision to prosecute.
- Section 22(7), replacing the High Court's discretion ('may') with an obligation ('shall') and setting a time-limit by which the rule of speciality must be disapplied.
- Section 23(5), replacing the High Court's discretion ('may') with an obligation ('shall') and setting a time-limit by which consent must be given, in this occasion regarding surrender or subsequent extradition to another Member State.
- Insertion of new section (30A) on extradition arrangements with third countries.
- Insertion of new section (35A) on the guarantees surrounding custodial sentences imposed *in absentia*.
- Section 37(1b) and (1c) to avoid refusals to surrender based solely on the Irish Constitution without further consideration.
- Sections 39 and 41(1) on grounds for mandatory non-execution in the event of a pardon or amnesty and in the event of double jeopardy.

- Section 42 on grounds for optional non-execution in the event of the person being prosecuted in Ireland.
- Section 45, for cases of persons convicted *in absentia*.
- Section 46, regarding privileges and immunities.

All the above amendments address the Commission's letter of formal notice of 30 October 2020 and need to be fully accomplished so as to achieve better alignment of the European Arrest Warrant Act 2003 with the EAW FD. The evaluation team assessed positively the efforts the Irish authorities are making to bring their legislation more in line with the EAW FD and trusts that the Parliament will soon adopt the Act in line with the above.

3.4.1. Refusal in the event of a potential risk of violation of fundamental rights in relation to detention

Irish national authorities have been involved, both as issuing and executing authorities, in EAW proceedings where issues related to detention conditions were raised.

As **issuing Member State**, Ireland was asked by UK authorities for additional information regarding the existence of sanitary facilities in the cells of some Irish prisons. A lack of sanitary facilities did occur in old prisons, but - according to what was reported to the evaluation team - the problem does not exist anymore.

As **executing Member State**, this issue has been raised in many occasions by defendants. No checks on the possible risk of violation of fundamental rights in relation to detention conditions in the issuing State is made *ex officio*. Usually it is for the defendant's lawyer to submit some evidence such as NGOs' reports and even experts' reports.

Additional information may then be requested via the DoJ by the issuing Member State's authorities to check that prison and detention conditions in the issuing Member State comply with the minimum standards determined by the European Court of Human Rights. Requests relate mostly to cell space, medical care and personal safety. A deadline is set for to the issuing authority and it is generally complied with. Failure to comply with a deadline or to provide the requested information may result in the release of the person sought. Nonetheless, Irish authorities tend to strive for the execution of EAWs even if this involves going beyond the deadlines of the EAW FD.

The Irish authorities reported that it had become easier to deal with such cases, as issuing authorities now knew better what they needed to provide, even though there were still considerable differences in the information provided by the different Member States. However, in some cases, as a result of such requests, considerable delays to the execution of an EAW have occurred, and have even led to the judicial authority's ultimate refusal to execute an EAW. In addition, it still seems difficult to balance and assess a bundle of reports submitted by the defendant's lawyer against the other Member State's assurances. The Irish judge interviewed suggested a European agency could conduct an official assessment of the Member States' prisons as a possible future solution.

3.4.2. *Refusal in the event of a judgment in absentia*

Since Framework Decision 2009/299/JHA entered into force, Irish national authorities have faced some challenges with regard to grounds for refusal in the event of judgments *in absentia*. The *Tupikas*, *Zdziaszek* and *Ardic* judgments have resulted in the seeking of additional information in very many cases involving *in absentia* decisions to make sure that a person's right to a fair trial, as interpreted by the CJEU in the aforementioned cases, has been respected. In many cases, the information provided by the issuing Member State in that regard was found deficient by the Irish judicial authority. In some of these cases, the time limits have been exceeded as a result. The Irish judicial authority considers that more extensive information should be included in an EAW whenever Article 4a of the EAW FD applies.

When an EAW concerns a sentence that includes a number of convictions and sentences which are aggregated in one sentence, Irish authorities noted that the issuing judicial authority should fill in section D, mentioning each sentence and relevant penalty specifically and separately.

The judicial authority also reported that some *in absentia* judgments are not covered by Article 4a(1) of the EAW FD, e.g. where the defendant was summoned at an address or through a person of their choice. The judicial authority recommended that these cases should be included in the EAW FD, even if they acknowledged that these situations could be somehow included in the CJEU case law when mentioning ‘other circumstances’ (see *Dworzecki*, paragraphs 50-51; *Tupikas*, paragraph 96) or ‘all the circumstances characterising the case brought before it’ (as set in ruling 2 *in fine* of the *Zdziaszek* judgment,).

3.4.3. *Other grounds for refusal*

In a small number of cases, perhaps two or three, the *ne bis in idem* principle and the issue of double criminality (e.g. failure to pay family maintenance) have been raised and have resulted in a refusal to surrender.

Regarding Article 4(7)(b) of the EAW FD, it should be noted that Ireland does not contemplate extraterritoriality jurisdiction. The Irish Supreme Court does not yet have a unanimous interpretation of section 44 of the EAW Act 2003 in the light of the aforementioned article. The CJEU’s judgment in *Case C-488/19 Minister for Justice and Equality (European Arrest Warrant - Conviction by an EEA third State)* provided some clarity on the interpretation of Article 4(7)(b) of the EAW FD.

3.5. Further challenges

The Irish authorities reported the following additional challenges:

- **Statutory limitations.** Sometimes there were problems of clarity with regard to the expiry of the statutory limitation, e.g. when the form filled in by the issuing judicial authority did not include essential information such as the suspension of the limitation period while the person was at large. It is advisable that such information be included immediately when the EAW is issued.
- **Return of nationals/residents of the executing State(Article 5(3) EAW FD).** Application of this Article has so far been problematic due to the fact that it was based on the consent of the requested person. However, the Irish authorities explained that section 45B would be amended to give effect to FD 2008/909/JHA and then the issue would be resolved (under FD 2008/909/JHA this consent is no longer always required).
- **Temporary/conditional surrender.** The Irish authorities explained that they had been facing difficulties in reaching agreements on temporary surrender since Ireland relies greatly on granting bail. Authorities of other Member States are therefore not keen to agree to a temporary surrender, fearing that the requested person might not return.
- **Application of the *Petruhhin* mechanism.** Ireland has no ban in relation to the surrender of its own nationals. Therefore, one could argue that the *Petruhhin* line of case law would not apply to Ireland in circumstances where an Irish person is sought by a third country to which Ireland extradites its own citizens.
- **Competing EAWs.** the Irish authorities explained that they had occasionally dealt with cases of competing EAWs. They are familiar with the *Eurojust Guidelines on competing requests for surrender and extradition*, which they tend to apply. Involving Eurojust might mean cases could be handled very quickly and could provide the executing authority with coordinated and well-informed advice according to which an EAW should be executed (first), taking into consideration all relevant aspects. Whilst this is certainly not an obligation, it is a possibility that could be considered for future cases.

3.6. Conclusions

- In general, the Irish Authorities deal correctly with the mechanisms of the EAW FD. All actors involved in EAW proceedings seem to have very good knowledge of the EAW FD and the CJEU's case law.
- The evaluation team is satisfied to see that several changes have been made to address shortcomings identified in the 4th round of mutual evaluations: the role of the Central Authority has been brought more in line with the EAW FD and the staffing levels in all authorities dealing with EAWs seem to be adequate.
- The use of the proportionality test by the Irish authorities could be considered as an example of best practice.
- Ireland's joining SIS II went smoothly and was followed by very positive developments. The fully integrated system works well and there were only limited shortcomings in the initial phase.
- Internal proceedings and multiple remedies against a decision on surrender are repeatedly resulting in considerable delays in the final decision, which does not comply with the time limits provided for in the EAW FD. The Irish authorities are encouraged to take measures to limit such occurrences.
- Other Member States should follow the example of Ireland in notifying Eurojust of cases of non-compliance with time limits and the reasons for it, in accordance with Article 17(7) EAW FD.
- Judgments *in absentia* sometimes result in refusals to surrender or delays in the decision, due mainly to the lack of necessary and correct information. Authorities of other Member States should be encouraged to be more accurate and complete when filling in section D of the EAW form. In addition, the EU legislator might need to consider taking steps to improve the EAW FD and/or the template in relation to this issue.

- In relation to a potential risk of violation of fundamental rights, the case law of the European Union Court of Justice (CJEU) has clarified the test, and the application of this test has improved in recent years, yet it remains a cumbersome task for the executing authority. Moreover, different practices seem to exist in the Member States as regards the obligation (or not) to carry out an assessment *ex officio*. In this regard, a uniform approach would be desirable at EU level.
- The experts note and welcome the fact that several shortcomings that were raised during the 4th round of mutual evaluations have been remedied by the Irish legislator. In addition, a lot of legislative work has been done to address the issues listed in the Commission's letter of formal notice. The experts would welcome it if the amendments to the EAW Act 2003 as set out in the Bill passed by the Irish Government on 21 July 2021 were adopted in due time by the Parliament. Reasons for refusal and time limits would be then fully aligned with the EAW FD. Until then, the Irish judicial authority disposes of some discretion regarding the decision on surrender that is not in line with the EAW FD.

4. FRAMEWORK DECISION 2008/909/JHA 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

Ireland has been slow to transpose Council Framework Decision 2008/909/JHA ('FD 2008/909/JHA'); the Criminal Justice (Mutual Recognition of Custodial Sentences) Bill ('Bill 103 of 2021') intended to implement FD 2008/909/JHA has made progress in the Irish Parliament, and was expected to be enacted and come into operation within 6-8 weeks from the evaluation visit. The major reasons for delay have been legal issues relating to conditional release that arose in 2014 due to precedent-setting case-law².

Up to now, international prisoner transfer has been managed under the Transfer of Sentenced Prisons Acts 1995-1997 and Transfer of Execution of Sentences Act 2005 implementing the 1983 Council of Europe Convention on the Transfer of Sentenced Persons.

The new system of prisoner transfer set out in Bill 103 of 2021 will operate alongside the current system. It will replace the Convention on transfers between EU Member States, while prisoner transfers to and from the UK (and other non-EU Convention states) will continue to take place under the 1995 Act.

² See *Sweeney v. Governor of Loughan House & Ors* [2014] IESC 42: The system of supervised release operated by the UK from the halfway point of the sentence was part of the legal nature of the sentence, and was binding on the administering/executing state – a longer term could not be imposed after transfer.

4.1. Authorities competent for the recognition of the judgment and execution of the sentence

Under the national procedures to be introduced to implement FD 2008/909/JHA, responsibility – both as issuing and executing authorities - will be shared between executive (ministerial) and judicial functions.

Issuing authority

For outward transfers, the Minister for Justice has been designated as the competent authority. Day-to-day responsibility for the transfer process (including, for example, consultation with the executing State) lies with the Irish Prison Service (IPS), but final decisions on forwarding a judgment are made by the Minister personally. The IPS is an executive agency within the DoJ and does not have separate legal personality.

The courts have limited functions in respect of outward transfers; they mainly decide requests in respect of speciality and make orders when a person has escaped or absconded.

Executing authorities

In respect of inward transfers, both the courts and the Minister for Justice will be involved as competent authorities. The Minister for Justice will be competent, firstly, for consultation with issuing State and decisions on consent to inward transfer (where Article 4(1)(c) applies) and the issuing of a reasoned opinion, and subsequently for the administration of the sentence (incl. early/conditional release).

Courts will be competent for e.g. decisions on recognition and making enforcement/committal orders, adaptations and partial recognitions. According to reports by the Irish representatives, the assessment of social rehabilitation will be made by the Minister for Justice (supported by the IPS). The experts consider that a judicial remedy should be provided for to make it possible to challenge the Minister of Justice's decision not to accept the execution when the sentenced person wants to serve the sentence in the executing State and has reasons to believe that this would result in their better rehabilitation.

The Minister (through the IPS) enforces the sentence and makes decisions in respect of the administration of the sentence.

Central Authority

Contacts with other Member States' competent authorities are maintained via the IPS, while judicial authorities do not have direct contact with other competent authorities. The Irish authorities pointed out that this option facilitated and speed up communication and, at the same time, did not involve any interaction with the other competent authority.

The IPS works closely with its counterparts in other Member States and participates in the EuroPris group on the operation of FD 2008/909/JHA. It also communicates via the EJN. These channels have already been positively assessed in establishing useful contacts with other Member States' authorities

The IPS manages the administration of both inward and outward transfers centrally.

4.2. Documents required for recognising the judgement and executing the sentence

Section 6(5) provides that documents that may be used for recognising the judgement and executing the sentence are: a copy of the certificate, a copy of the judgment, and a translation of the certificate or a translation of the judgment. The draft legislation does not specifically require a written judgment: 'judgment' is defined as 'a final decision, direction or order' and includes a record in writing of that decision, direction or order. Ireland has not made a notification under Article 23 about the translation of the certificate, and the draft legislation does not require the judgment to be translated. So, where the translation is required, the Minister will arrange for this without recourse to the issuing State.

Section 38(2) of Bill 103 of 2021 provides that the appropriate court may, before refusing to grant an application, request additional documentation or information from the competent authority of the issuing State, and that the Minister must notify the competent authority of such a request. As the system is not yet operational, it is not possible to say whether supplementary information will be frequently needed. However, experience with the Convention suggests that detailed consultation with the issuing State is often required, mainly about the circumstances of the case where a person was judged *in absentia* (using the *Tupikas*, *Zdziaszek* and *Ardic* judgments for guidance).

4.3. Criteria for assessing the facilitation of social rehabilitation

The Irish authorities highlighted the criteria for the assessment of facilitating social rehabilitation (Article 4(4) of FD 2008/909/JHA, section 32(2) of Bill 103 of 2021). Based on:

- reports from the Gardaí and the Irish Probation Service;
- the opinion of the person, potentially also informed by legal advice on implications for sentencing of the transfer;
- the assessment of the IPS.

The Minister must have regard to:

1. the presence in the executing State of any family members of the sentenced person;
2. the nature and extent of any linguistic, cultural, social or economic connections between the sentenced person and the executing State, and
3. such other matters as the Minister considers appropriate (Section 16(2)(c) of Bill 103 of 2021).

4.3.1. Exchange of information between the issuing State and executing State

In considering whether to forward a judgment, the IPS will consult with the executing State (Article 4(3) and (4) of FD 2008/909/JHA) and reports will be sought from the relevant authorities (police, probation and prison services). Based on these considerations, the IPS makes a recommendation to the Minister.

To proceed, the Minister must be satisfied that the enforcement of the sentence by the executing State would facilitate the sentenced person's social rehabilitation and successful reintegration into society having regard to the above mentioned criteria.

As the system is not yet operational, the Irish national authorities have not yet been presented any opinions by an executing State on the basis of Article 4(4) and (5) of FD 2008/909/JHA. Nonetheless under Section 15(2) of Bill 103 of 2021, the Minister is obliged to consider the views of the executing State (including any reasoned opinion provided).

4.3.2. Opinion and notification of the sentenced person

The draft procedure to allow the sentenced person to state their opinion in accordance with Article 6(3) is as follows :an opinion may be provided with the initial application if the application is made by the sentenced person; if such an opinion is not provided, or if the application is made by another party, an opportunity will be given to the person to state their opinion; the opinion may be given orally or in writing, and if given orally, the IPS will make arrangements for it to be recorded in writing.

The opinion of the sentenced person is an important factor in the decision on whether to issue the certificate, but the Minister may decide to issue a certificate notwithstanding that the sentenced person does not support the transfer, provided that the Minister is satisfied that it would facilitate the persons social rehabilitation. Until FD 2008/909/JHA is introduced, Ireland has been operating a transfer system based entirely on consent under the Convention, and has entered a reservation in respect of Article 3 of the Additional Protocol to the Convention. Transfers have generally only taken place on the application of the person and, accordingly, up to now transfers have not taken place if the person does not support it. The experts stress that once the law has entered into force, the person's opinion should be requested and taken into account, but the decision should not be taken solely on the basis of the opinion/consensus, because it must be taken with the sole purpose of enhancing social rehabilitation.

Experts discussed with the Irish delegation possible cases of ‘judicial tourism’ and of sentenced persons’ attempts to abuse the ‘social reintegration’ objective. This relates to cases where persons in the interest of e.g. more comfortable prison conditions or the early release mechanism have invoked social reintegration objectives even though their links with the respective country were in fact quite limited. Such cases illustrate the need to pay great attention when assessing the social reintegration objective and the opinion of the sentenced person.

In implementing FD 2008/909/JHA, Ireland is providing for the possibility of non-consensual outward transfers where:

- the person is being returned to the home State where they live;
- the person will be deported/removed to their home State at the end of their sentence as a consequence of the judgment;
- the person fled to the executing State.

Such a transfer would require the Minister being satisfied that the transfer would ‘facilitate the sentenced person’s social rehabilitation and successful reintegration into society’ (section 16(2)(c) of Bill 103 of 2021).

The Irish authorities expect that, in practical terms, at least at the outset, most transfers will be initiated by the sentenced person.

A sentenced person may withdraw their consent, where such consent is required, before a decision by the competent authority of the executing State to recognise the judgment and enforce the sentence in that State.

The transfer decision is communicated to the sentenced person in accordance with Article 6(4), pursuant to sections 17(1)(b) and 17(1)(c) of Bill 103 of 2021. Furthermore, section 11 of Bill 103 of 2021 provides that the Minister is obliged to notify the sentenced person of:

- a decision by the Minister to forward the judgment in respect of the application;
- a decision in respect of partial recognition and enforcement;

- the receipt of a decision to recognise the judgment in respect of the application;
- the receipt of information regarding the adaptation of the sentence;
- a decision (including reasons for the decision) to withdraw the certificate.

4.4. Adaptation of the sentence

Adaptation of the sentence by an appropriate court may be needed because (i) the duration or (ii) the legal nature is incompatible with the law of the Ireland, as both executing and issuing State.

Issues about the legal nature have arisen in respect of incompatible sentences under the Convention. A decision of the Irish Supreme Court in *Sweeney v. Governor of Loughan House & Ors* [2014] IESC 42 found that the system of conditional release operated by the UK from the halfway point of the sentence was part of the legal nature of the sentence, and was binding on the administering/executing State. The implication of this case was that adaptation of conditional release elements of a sentence was potentially required in all cases.

In transposing FD 2008/909/JHA, the draft legislation relies on Article 17 to determine that such measures are not part of the legal nature of the sentence, and should instead be considered as the administration of the sentence by the executing State.

Section 40(5) provides for adaption where the duration of the sentence is adapted to that of a sentence prescribed by the law of Ireland for an offence similar to that for which the sentence was imposed.

In both cases Irish national law for similar offences is the reference, according to Article 8 of FD 2008/909/JHA. However, Ireland has made a declaration that it will not apply Article 7(1), and will therefore require verification of double criminality in all cases.

While no withdrawals on the grounds that a sentence is too lenient after adaptation have occurred in respect of FD 2008/909/JHA, two points have been highlighted in respect of Convention transfers:

- the Irish authorities are aware that certain States are reluctant to transfer prisoners who have been sentenced to life subject to a minimum custodial period (tariff) where the effect of a transfer to Ireland would be the application of the Irish parole system (which allows for eligibility for parole after 12 years);
- the Minister has previously not proceeded with the transfer of a person sentenced to life because he was advised by the administering State that an adaptation was likely to lead to a shorter determinate sentence.

It is expected that adaptation will be required for sentences in excess of the maximum duration that may be imposed in Ireland, and that it might be required for certain sentencing measures (such as minimum custodial terms for life sentences), but that it will not be routinely required.

Clearly no cases have arisen under FD 2008/909/JHA yet, as either executing or issuing State.

4.5. Grounds for non-recognition or non-enforcement

Section 38(1) lays down the grounds on which the court may refuse to grant an application to recognise a judgment and enforce a sentence, in line with Article 9 of FD 2008/909/JHA.

Obviously, no cases have arisen yet where a transfer has not been finalised or initiated due to the prison conditions in the executing State, as the system is not yet operational. However, it is expected that – similarly to EAW proceedings where arguments relating to detention conditions were raised – there will be refusals in the event of a potential risk of violation of fundamental rights. Indeed, the CJEU's judgements (especially the *Aranyosi and Căldăraru* test, even though the CJEU has not yet applied it as such to FD 2008/909/JHA transfers) can be used as guidance for interpretation.

For the major issue of judgments *in absentia*, please see paragraph 3.4.2 about EAW proceedings.

As regards decisions that find a person not criminally responsible and impose psychiatric care, the potential to transfer persons found not guilty by reason of insanity under the Convention has recently been litigated in Ireland in the case of *S. v Minister for Justice* [2020] IEHC 632. Previously, Ireland had taken the view that the Irish legislation implementing the Convention did not permit such a person to be transferred under it. However, the High Court overruled this interpretation.

Express provision has been made in the draft legislation for the transfer of such persons.

4.6. Partial recognition

Given that the system is not yet operational, according to the Bill 103 of 2021:

- For inward transfers, in line with Article 10 of FD 2008/909/JHA, section 39 provides that the court has the responsibility for determining whether to accept partial recognition and enforcement of a judgment where it may not be recognised in full due to grounds for non-recognition, unless to do so would aggravate the duration of the sentence. The draft legislation provides for the views of the competent authority of the issuing State to be sought via the Minister and, where appropriate, for the issuing State to consent to the recognition taking place in respect of part of the judgment.
- For outward transfers, the Minister may similarly consent to a transfer taking place based on recognition of only part of the judgment.
- For both inward and outward partial recognitions, the only specific limitation imposed is that partial recognition may not aggravate the duration of the sentence. However, provision is made in respect of inward transfers to the effect that an aggravation must not be considered to occur solely because a sentence is enforced in respect of fewer offences.

4.7. Challenges relating to compliance with the deadline for recognition and enforcement

As the system is not yet operational, the Irish authorities are unable to foresee whether the deadline provided for in Article 12(2) will be complied with.

However, as executing State, the draft legislation requires the Minister/IPS to provide relevant information to the issuing State under Section 50 (specifically Section 50(e) regarding delays).

4.8. Law governing the enforcement of the sentence

The executing State's applicable provisions on early or conditional release as per Article 17(1) of FD 2008/909/JHA may lead to the withdrawal of the certificate in both inward and outward transfers.

Having regard to Ireland as executing State, it is worth knowing that Ireland operates a remission-based system, the standard terms of which provide for an unconditional release after 75% of the sentence has been served. In accordance with the Court of Justice's ruling in *Ognyanov*, the Irish interpretation is that this remission may only be applied to the portion of the sentence served after transfer.

Accordingly, in the absence of a provision for Article 17(4) of FD 2008/909/JHA, situations may arise where a conditional release system (i.e. a system providing for automatic or discretionary release subject to conditions at a specified point in the sentence) applies and a person transferring to Ireland does not obtain any benefit from such a system.

Provisions to give effect to Article 17(4) which would make it possible to agree to apply a provision of national law indicated by the issuing State are currently being finalised with Ireland's Attorney General and are expected to be introduced into the draft legislation before it is enacted. It must be noted that extensive work has been done in the context of the draft legislation in respect of this provision.

As the system is not yet operational, it is not possible to foresee whether problems related to the deduction of a period of deprivation of liberty already served in the issuing country will arise.

4.9. Further challenges

Given that up to now international prisoner transfers have been managed under the 1983 Council of Europe Convention, there have not been any practical or legal problems related to transit. The IPS have not encountered any legal problems since the warrant to effect the transfer is already in hand prior to arrangements for a transfer date. In practical terms the only issues are:

- agreeing a suitable transfer date for all parties involved (availability of escorting resources etc.);
- that if an officer named on the warrant can no longer effect the transfer, a new warrant issued citing the replacement escort officer's details must be obtained;
- if a flight is cancelled or delayed.

To date (since 2012) there has only ever been one incident where an officer's name had to be changed at the last minute, and the Minister was available to sign the new warrant. Experience to date has been good in that no major obstacles have been encountered.

Desirable improvements to cross-border cooperation and the procedure for issuing the certificate and recognising and executing the judgement have been indicated:

- according to the Irish Central Authority, issues will arise in managing the effect of early and conditional release measures in respect of inward transfers. As noted above, Ireland operates an early release system based on remission, and the effect of the CJEU decision in *Ognyanov* is interpreted as meaning that remission cannot be applied to the portion of the sentence served pre-transfer. Accordingly, a bespoke category of executive release is being considered to give effect to Article 17(4) to avoid the potential of a significant increase in the de facto custodial term to be served;

- given the increasing range of post-release supervision measures imposed, there may be a need to re-examine the interaction between FD 2008/909/JHA and FD 2008/947/JHA to effectively facilitate such transfers. The Commission Handbook notes in passing that the transfer of a partially suspended sentence may be achieved through the use of both measures together, and the Irish draft legislation refers to this possibility. There may be value in reconsidering how the instruments may operate together, and whether legislative amendments are needed to improve their coherence.

4.10. Statistics

There is a domestic legislative obligation under both the existing Convention regime and the draft legislation for FD 2008/909/JHA to keep comprehensive statistics on applications and transfers and to publish an annual report detailing these.

The DoJ gave us the following transfer statistics for 1995-2019:

- ☐ 553 applications for inward transfer (450 from UK, 20 from Spain, <10 others)
- ☐ 154 inward transfers completed (133 from UK)
- ☐ 515 applications to transfer out (391 from the UK, 39 Netherlands, 13 Poland, 10 Romania)
- ☐ 194 completed (151 UK, 24 Netherlands, <3 others)

4.11. Conclusions

- Since FD 2008/909/JHA has not yet been implemented, it is difficult to draw conclusions. The draft provision that the Minister for Justice personally takes the decision to consent to inward or outward transfer is aligned with FD 2008/909/JHA, because Union law does not require judicial intervention to decide on cross-border transfers, provided that such a decision can subsequently be challenged before a judicial body. However, the experts consider that a judicial remedy should be provided for to make it possible to challenge the Minister for Justice's decision not to accept execution when the sentenced person wants to serve the sentence in the executing State and has reasons to believe that this would result in their better rehabilitation.
- The evaluation team considers that 'non-consensual outwards transfer' constitutes a major difference between the Convention and FD 2008/909/JHA and might be a challenge. It is worth noting that, under the Convention, the Minister does not generally transfer *unless sought by or on behalf of the sentenced person*. It is noteworthy that it was stressed during the evaluation visit that a change in this position would represent a significant shift in policy, and that such a change has not yet been considered. However, this seems not to be in keeping with the spirit of FD 2008/909/JHA, the aim of which is precisely to introduce transfers without the sentenced person's consent, in certain circumstances, provided that the reintegration objective is met. Moreover, although prisoners are fully informed of the transfer possibilities, no operational process exists to instigate transfers where the sentenced person does not seek one – and there is currently no work under way to put one in place. However, the legislation does not preclude such an approach on a case-by-case basis, or the possibility of a structured process being put in place in the future.

Another issue to be mentioned relates to adaptation: the implementation of FD 2008/909/JHA takes a different approach when compared to Irish case law and is intended to make the need for adaptation less common. This could be an improvement compared to the current system. It is expected that adaptation will mainly be required only in situations where a maximum sentence length is concerned, and that incompatible ‘add-ons’ will be removed.

- Finally, detention conditions in the Member States of destination pose further challenges to efforts to achieve the purpose of FD 2008/909/JHA. The issuing authority is entitled to solicit information from the executing one. Should the latter fail to provide appropriate indications on the post-transfer situation of the transferee – including updated information on personal ties, the facility to which he or she will be sent, the rehabilitation programmes available therein, and the material detention conditions – the issuing authority should carefully consider prioritising the protection of the individual and the *intentio legis*.

5. LINK BETWEEN FD 2002/584/JHA ON THE EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES

5.1. Problems relating to the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences

The draft legislation amends the EAW Act 2003 to make provision for returns to serve a sentence under Article 5(3) of the EAW FD to be made using FD 2008/909/JHA. The Minister must forward the judgment and the certificate under FD 2008/909/JHA for the national to be returned (Ireland does not have a bar to the surrender of its own nationals; there will be amendments to the EAW Bill for residents of the executing State).

As FD 2008/909/JHA has not yet been implemented, the experts are not in a position to ascertain whether problems with the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences have arisen. It is expected that questions may arise regarding consent, particularly if the requested person revokes it.

The status quo is that a bespoke transfer system exists to facilitate Article 5(3) returns. In practice, this has relied on the Convention. Practical issues have arisen for a transfer in respect of costs.

5.2. Conclusions

As FD 2008/909/JHA has not yet been implemented, the experts are not in a position to ascertain whether problems with the link between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences have arisen.

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS

FD 2008/947/JHA on probation and alternative sanctions ('FD 2008/947/JHA') was transposed into national legislation of Ireland by the enactment and commencement of the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019. This Act came into operation in full on 23 September 2019.

6.1. Authorities competent for Framework Decision 2008/947/JHA

The functions of the competent authority in Ireland for the purposes of FD 2008/947/JHA are divided between the Minister and the appropriate courts; however, the Minister has designated the Probation Service as the competent authority representing the Minister under the terms of the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019. The evaluation team was not able to ascertain details regarding information exchange mechanisms and the division of responsibilities between the DoJ, the Probation Service and the appropriate courts. In this regard the Irish authorities reported that the development of co-operation protocols between the DoJ, the Probation Service and appropriate courts was still an ongoing process.

PROCEDURE

Ireland as issuing Member State

The request for the Minister to forward the judgement and, where applicable, the probation decision ('the judgement') to the other Member State may be submitted by the Director of the Probation Service in respect of the sentenced person or by the sentenced person themselves.

On receipt of a request to forward a judgement to another Member State, the Minister may forward the judgement if they are satisfied that the sentenced person: (a) is lawfully and ordinarily residing in the other Member State, (b) has returned, or wants to return, to that State, and (c) one of the following has occurred: (i) the ordinary time for bringing an appeal against the judgment has expired without any such appeal having been made; (ii) such appeal has been withdrawn or abandoned; (iii) on any such appeal, that judgment was upheld.

If the sentenced person asks for the judgement to be forwarded to the Member State but they are not lawfully and ordinarily residing there, the Minister may forward the judgement to the competent authority of the Member State to which the request relates if the Minister is satisfied that: (a) that Member State's competent authority has consented to such forwarding, and (b) one of the following has occurred: (i) the ordinary time for bringing an appeal against the judgment has expired without any such appeal having been made; (ii) such appeal has been withdrawn or abandoned; (iii) on any such appeal, that judgment was upheld.

Where the Minister has made a decision to forward the judgment, the Minister must forward the judgment, accompanied by a certificate referred to in Article 6 of FD 2008/947/JHA ('Article 6 certificate') (and a translation of the Article 6 certificate in a relevant language), signed by the Minister, directly to the Member State's competent authority by any means capable of producing a record in writing under conditions allowing the Member State's competent authority to establish the authenticity of the two (or, if applicable, three or four) documents. The Minister may, at the same time as such forwarding or subsequently, make a request in writing to the Member State's competent authority to inform the Minister of the maximum custodial sentence, or other measure involving the deprivation of liberty, that could be imposed on the sentenced person if they failed to comply with the probation measure or alternative sanction concerned.

The Minister may, after having regard to the information or adaptation of the judgement received from the competent authority of the executing Member State, decide to withdraw the Article 6 certificate concerned if the Minister is of the opinion that it would be in the public interest or the interests of justice to do so.

The Minister must, as soon as is practicable, give notice in writing to the court which gave the judgment on decision of the competent authority of the executing Member State regarding transfer of a judgement.

The Minister must inform the Member State's competent authority, by any means capable of producing a record in writing, as soon as the Minister becomes aware, in relation to the judgment in Ireland, of any circumstances or findings which, in the opinion of the Minister, could, if the Member State's competent authority were aware of the circumstances or findings, result in one or more than one subsequent decision being taken by the Member State's competent authority in relation to the sentenced person.

Where, whilst the probation measure or alternative sanction concerned is being supervised by the executing State, the sentenced person is charged with an offence under the law of Ireland, the Minister may request the competent authority of the executing Member State to transfer the competence, in so far as such competence relates to that probation measure or alternative sanction, back to Ireland pursuant to Article 20(2) of FD 2008/947/JHA.

Where Ireland has resumed jurisdiction in relation to the probation measure or alternative sanction concerned, the Minister shall give notice in writing of the resumption to the sentenced person or, if jurisdiction was transferred back to Ireland because the sentenced person has absconded or no longer has a lawful and ordinary residence in the executing Member State, make all reasonable efforts to give such notice to the sentenced person.

Ireland as executing Member State

When Ireland is the executing Member State, a natural person who lawfully had their principal residence in Ireland for the 12 months immediately preceding the date of receipt by the Minister of a judgment in respect of that person forwarded by the competent authority in the issuing State is taken to be lawfully and ordinarily residing in Ireland on the date of such receipt.

Notwithstanding that the sentenced person concerned is not lawfully and ordinarily residing in Ireland, the Minister may consent to the forwarding of a judgment if: (a) the person is an Irish citizen, or (b) in the opinion of the Minister, the person has close ties with Ireland and it is in the interests of the person's social rehabilitation to do so.

The judgement from the issuing Member State must be transmitted to the Minister (contact details of the Probation Service are provided). If a judgement is not accompanied by an Article 6 certificate or if this certificate is in a language other than Irish or the English language, or incomplete, or obviously does not correspond to that judgement, the Minister must, as soon as is practicable after a relevant matter arises, by notice in writing given to the competent authority in the issuing Member State: (a) inform it of the relevant matter, and (b) specify a reasonable period of time within which the competent authority in the issuing Member State may take the necessary remedial action in relation to the relevant matter.

After the Minister has received a judgment, the Minister must: (a) make an application, on notice to the sentenced person, to the Probation Service and the superintendent of the Garda Síochána for the district in which the sentenced person resides or will reside, to the appropriate court for the recognition of that judgment, or (b) refuse to recognise that judgment for the purposes of the assumption by Ireland of responsibility for supervising the probation measure or alternative sanction concerned.

The Minister must make an application to the appropriate court as soon as is practicable and, in any event, in sufficient time to enable the appropriate court to decide on the application within a period of 60 days of the receipt by the Minister of a judgment together with the accompanying Article 6 certificate. In cases where a judgement received by the Minister from the issuing Member State is not accompanied by an Article 6 certificate or this certificate is in a language other than Irish or the English language, or incomplete, or obviously does not correspond to that judgement, and the Minister has requested the competent authority of the issuing Member State to take the necessary remedial action in relation to that matter, the court has to decide on the application within 60 days of the remedial action concerned being taken.

When, in exceptional circumstances, it is not possible for the Minister to comply with the time limit, the Minister must, as soon as is practicable, inform the competent authority in the issuing Member State, by any means capable of producing a record in writing, of that delay, the reasons for the delay, and the estimated time needed for a final decision to be taken on the judgment concerned.

When, in exceptional circumstances, it is not possible for the appropriate court to comply with the time limit (60 days), it must, as soon as is practicable, inform the Minister of that delay, the reasons for the delay, and the estimated time needed for a final decision to be taken on the judgment concerned. The Minister must, as soon as is practicable after the receipt of this information, by any means capable of leaving a record in writing, give that information to the competent authority in the issuing Member State.

The Minister may refuse to recognise a judgment if one or more than one of the following grounds applies:

(a) judgement is not accompanied by an Article 6 certificate or this certificate is in a language other than Irish or the English language, or is incomplete, or obviously does not correspond to that judgement, and the reasonable period of time specified in the notice given to the competent authority in the issuing Member State in respect of that matter has expired without the necessary remedial action having been taken in respect of that matter;

(b) that Article 6 certificate includes a probation measure or alternative sanction that does not fall within section 19(1) of the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019;

(c) the sentenced person, by virtue of any Act of the Oireachtas, is, under the law of Ireland, immune from prosecution for an offence consisting of an act or omission that constitutes, whether in whole or in part, the offence to which the judgment and, where applicable, the probation decision relates;

(d) the judgment and, where applicable, the probation decision provides for medical or therapeutic treatment which, in the opinion of the Minister, it would be impossible or impracticable for the Ireland to provide or supervise;

(e) the judgment relates to an offence which is regarded under the law of Ireland as having been committed wholly or for an essential part in Ireland.

The Minister must refuse to recognise a judgment if one or more than one of the following grounds applies:

(a) the sentenced person has not returned and does not want to return to Ireland;

(b) the Minister has not consented to the forwarding of the judgment in respect of the sentenced person where such person is not lawfully and ordinarily residing in Ireland;

(c) it is immediately clear from the information provided in the Article 6 certificate concerned that recognition of the judgment would infringe the *ne bis in idem* principle;

(d) the judgment relates to an offence under the law of the issuing Member State which does not correspond to an offence under the law of Ireland;

(e) the offence under the law of the issuing Member State to which the judgment relates corresponds to an offence under the law of Ireland in respect of which a person of the same age as the sentenced person could not be proceeded against by reason of his or her age at the time of the offence;

(f) the sentenced person did not appear in person at the proceedings resulting in the judgment, unless the Article 6 certificate accompanying the judgment indicates the matters required by points 2, 3 and 4 of point (h) of Annex I to FD 2008/947/JHA;

(g) the probation measure or alternative sanction concerned is of less than 6 months' duration or the remaining duration of the measure or sanction is less than 6 months.

If the Minister considers refusing to recognise a judgement, the Minister may, by any means capable of producing a record in writing, request the competent authority in the issuing Member State to supply the Minister with any additional information required as soon as is practicable, before the Minister decides not to recognise a judgment.

On receipt of an application from the Minister regarding recognition of a forwarded judgement, the appropriate court must make an order endorsing the judgment for the purpose of recognition and the assumption by Ireland of responsibility for supervising the probation measure or alternative sanction concerned. If the court is of the opinion that the probation measure or alternative sanction concerned is, by its nature, or its period of duration, incompatible with the law of Ireland, the court may adapt the measure or sanction to that of a measure or sanction prescribed by the law of Ireland for an offence which corresponds to the offence for which the probation measure or alternative sanction was imposed, and specify the adaptations concerned in an order.

The court has authority not to recognise a judgement by referring to the same grounds of refusal as those that the Minister may or must apply. If the court considers refusing to recognise a judgement, the court may request the Minister to obtain from the competent authority in the issuing Member State any additional information required by the court as soon as is practicable, before the court refuses to endorse a judgment.

Neither the Minister nor the court may refuse to recognise a judgment on the ground that, in relation to a revenue offence: (a) no tax or duty of the kind to which the offence relates is imposed in Ireland, or (b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing State differ in nature from the rules that apply in Ireland to taxes, duties, customs or exchange control.

Where the appropriate court has made an order to recognise a judgement, it must cause a certified copy of the order, to which is annexed a copy of the judgment, to be sent, within 4 working days of the making of the order, to (a) the sentenced person, (b) the Minister, (c) the Director of the Probation Service, and (d) the superintendent of the Garda Síochána for the district in which the sentenced person resides or will reside.

Where an order has been made to recognise a judgment and, where applicable, the probation decision, the Minister must: (a) recognise, for the purposes of the assumption by Ireland of responsibility for supervising the probation measure or alternative sanction concerned, the judgment and (b) as soon as is practicable, take all necessary steps for the supervision of the probation measure or alternative sanction.

The Minister must immediately notify the competent authority in the issuing State, by any means capable of producing a record in writing, of any of the following: (a) the recognition by the Minister of a judgment; (b) any decision of the Minister or of the appropriate court regarding refusal to recognise a judgement, together with the reasons for the decision; (c) an order of the appropriate court adapting a probation measure or alternative sanction, together with the reasons for the adaptation; (e) if section 30 of the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 applies to a judgment, that Ireland will not assume responsibility for making a relevant decision.

The Minister must without delay inform the competent authority in the issuing State, by any means capable of producing a record in writing, of any of the following: (a) the forwarding of a judgement, an Article 6 certificate or its translation to the Minister; (b) the non-commencement or discontinuance of the supervision of the probation measure or alternative sanction concerned due to an amnesty, pardon or remission of punishment having been granted under the law of Ireland or the issuing Member State to the sentenced person in respect of the offence to which the judgment and, where applicable, the probation decision relates.

Where, because the sentenced person cannot be found in Ireland after the forwarding of the judgment and, where applicable, the probation decision together with the accompanying Article 6 certificate to the Minister pursuant to Articles 5 and 6 of the Framework Decision, it is in practice impossible for the probation measure or alternative sanction concerned to be supervised by Ireland, the Minister must, as soon as is practicable, inform the competent authority in the issuing Member State, by any means capable of producing a record in writing, of that fact.

Where a judgment has been recognised by the Minister, the Minister must, as soon as is practicable, inform the competent authority in the issuing Member State, by any means capable of producing a record in writing, of any subsequent decision: (a) modifying the probation measure or alternative sanction concerned, (b) revoking the suspension of the execution of the judgment, (c) revoking the decision on conditional release, or (d) in consequence of a failure by a sentenced person to comply with the probation measure or alternative sanction— (i) enforcing a custodial sentence, or other measure involving the deprivation of liberty, on the person, or (ii) imposing a custodial sentence, or other measure involving the deprivation of liberty, on the person.

The Minister must, as soon as is practicable, notify the competent authority in the issuing Member State which has jurisdiction for a relevant decision of: (a) any finding which is likely to result in the revocation of the decision on conditional release by using form set out in Annex II to FD 2008/947/JHA, (b) all further facts and circumstances which the competent authority in the issuing Member State requests to be provided, or (c) all further facts and circumstances, knowledge of which is essential in order to allow the competent authority in the issuing Member State to take such relevant decision in accordance with its national law.

The Minister may transfer jurisdiction in respect of the supervision of the probation measure or alternative sanction concerned and in respect of all subsequent decisions referred to in Article 14 of FD 2008/947/JHA relating thereto back to the competent authority in the issuing Member State if (a) the Minister is satisfied on reasonable grounds that the sentenced person has absconded or is no longer lawfully and ordinarily residing in Ireland, or (b) new criminal proceedings are brought against the sentenced person in the issuing State and the competent authority in the issuing State so requests. The Minister must notify the appropriate court of the transfer of jurisdiction back to the issuing Member State within four working days of the transfer having been effected.

6.2. Problems relating to the failure to apply Framework Decision 2008/947/JHA

FD 2008/947/JHA was transposed into national legislation two years ago, but there has been little practice regarding transfers of judgements between Ireland and other Member States since then. It was reported to the evaluation team that after the commencement of the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019, only eight transfer requests (applications) had been processed (four incoming and four outgoing) and none of those had been successfully transferred up to the date of the evaluation mission.

It has been noted by the evaluation team that in the case of eight reported transfer requests (applications), the exchange of information between the competent authorities of the Member States was not sufficiently efficient; compliance with the 60-day time limit to complete a transfer is an issue. In some cases, the competent authorities of the other Member States did not provide Ireland with any response at all, which might have a worrying impact on mutual trust in other Member States' legal systems and on application of the principle of the mutual recognition of probation decisions and alternative sanctions.

Here are some examples of cases highlighting these issues regarding communication between competent authorities of the Member States were reported to the evaluation team by the Irish authorities:

Ireland as an issuing Member State

- In May 2020 Ireland sent a transfer application to another Member State regarding the community supervision of a person sentenced for sexual assault. In June 2021 (one year later) the competent authority of the executing Member State refused to accept the transfer due to the fact that the supervision order was due to expire in mid-July 2021.

- In February 2020 Ireland sent a transfer application to another Member State regarding the community supervision of a person sentenced for sexual assault because the sentenced person had changed his place of residence to that other Member State in 2019. The Irish authorities have information that the sentenced person has met with a probation officer of that Member State as part of their process to assess suitability, but no formal feedback has been received from the executing Member State confirming the transfer of the order, despite the competent authority of Ireland having repeatedly asked the competent authority of the executing Member State to provide information about whether or not the transfer has been confirmed or refused. As a result, jurisdiction for executing the order still belongs to Ireland.
- In July 2021 (five months ago) Ireland sent a transfer application to another Member State regarding the community supervision of a person sentenced for sexual assault because the sentenced person had been removed from Ireland at the end of the custodial part of his order, but the order still had a community supervision part (partially suspended sentence). The competent authority of the executing Member State consented to the request being made to transfer the community supervision part of the order to the executing Member State. The transfer certificate was submitted to it, but no response had been received up to the date of the evaluation mission as to whether the transfer had been confirmed or refused. As a result, jurisdiction for executing the order still belongs to Ireland.

Ireland as an executing Member State

- In February 2020 Ireland received a transfer application from another Member State regarding the community supervision of a person sentenced for indecent assault. The certificate of transfer contained incorrect information regarding the address of the person's place of residence in Ireland. The Irish authorities were not able to locate the person and the transfer was refused.
- In March 2020 Ireland received a transfer application from another Member State regarding a community service order for a person sentenced for fraud. The certificate of transfer contained incorrect information regarding the address of the person's place of residence in Ireland. The Irish authorities were not able to locate the person and transfer was refused.
- In June 2020 Ireland received a transfer application from another Member State regarding the community supervision of a person sentenced for theft. The Irish authorities were able to locate the sentenced person in Ireland. The appropriate court decided to accept the transfer and to adapt the transferred judgement to Irish law. It asked the competent authority of the issuing Member State to approve this decision, but no confirmation was received from the issuing Member State. As a result, the court order was not transferred to Ireland.
- In October 2021 Ireland received a transfer application from another Member State regarding a community service order for a person sentenced for theft. According to the information provided by the competent authority of the issuing Member State, the sentenced person is in Ireland, but the Irish authorities had not been successful in locating the person up to the date of the evaluation mission.

The evaluation team would point out that the Irish authorities have not carried out enough awareness raising, information dissemination and training activities in Ireland regarding the transposition of FD 2008/947/JHA into national legislation.

6.3. Conclusions

- FD 2008/947/JHA has been transposed into Irish national legislation recently and is new practice, with few cases of practical application.
- The experts have identified multiple cases of inefficient communication between competent authorities of the Member States which might result in (a) a worrying impact on mutual trust in other Member States' legal systems, (b) several court orders being executed simultaneously in several Member States for one offence, (c) the court order not being executed at all and the sentenced person avoiding punishment, (d) failure to achieve the social rehabilitation of the sentenced person and the protection of victims and of the general public.
- The experts note that efficient and timely communication between the competent authorities of the Member States is of the utmost importance to promote application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative measures and the aims of FD 2008/947/JHA. Ineffective communication between the competent authorities of the Member States may cause a lack of compliance with time limits to complete transfers. Awareness raising, information dissemination and training activities in Ireland regarding the transposition of FD 2008/947/JHA into national legislation have not been sufficient.
- The development of co-operation protocols between the DoJ, the Probation Service and appropriate courts should be finalised.

7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)

FD 2009/829/JHA 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 ('FD 2009/829/JHA') was transposed into the national legislation of Ireland by the enactment and commencement of the Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020. This Act entered into force on 5 February 2021.

7.1. Authorities competent for Framework Decision 2009/829/JHA

Issuing Member State:³

Where Ireland is the issuing State, the competent authority is the court competent to impose supervision measures on the person concerned.

A supervision decision does not replace a court decision on bail. It is a parallel provision that provides for the monitoring of specified conditions by the executing State while the person is on Irish bail.

A supervision decision may be sought by a person either at the time of an ordinary bail application or subsequent to the granting of bail. The application is made to the Court otherwise handling bail, and by the supervised person on notice to the prosecutor and to the Central Authority.

³According to information dissemination material "Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020: Summary of operational arrangements and responsibilities" provided to the evaluation team by Irish national authorities (see in annex).

A supervision decision may only be made in respect of:

- a) a person who is charged with an offence that carries a maximum penalty of at least 12 months imprisonment;
- b) the Member State in which the person is ordinarily and lawfully resident.

The Act restricts the forwarding of decisions to the Member State where the person is ordinarily and lawfully resident. It does not provide for decisions to be forwarded to other Member States.

If the court agrees to order a supervision decision, the Court Service liaises with the Central Authority and prosecutor to prepare the certificate and the Central Authority contacts the executing Member State. If an issue arises with recognition, the Central Authority brings it back to the court for appropriate action.

If the executing State agrees to recognise the supervision decision, the Central Authority informs the parties, and, where the person is remanded in custody, the governor of the prison. The governor then arranges for the taking of the recognisance and the release of the person. Where the person is on bail and the recognisance has not been taken, the court arranges for it to be taken. Thereafter, the person must report to the executing Member State as specified by that State.

When the decision has come into effect, the Central Authority transmits to the court and prosecutor subsequent notifications from the executing Member State regarding the supervision decision.

The court can make a subsequent decision in respect of the supervision decision, either on its own initiative or on the application of the prosecutor or supervised person. These decisions include: (a) renewal, (b) revocation or (c) modification of the supervision decision. Revocation of a supervision decision may take place if:

- a) conditions have been breached (revocation is the court's decision based on the circumstances and the breach);
- b) the person cannot be found or has moved to a different State (mandatory revocation);
- c) the executing State can no longer monitor the decision (mandatory revocation).

The court's actions are notified to the executing Member State via the Central Authority. Where a modification of the decision is made, the Central Authority notifies the executing Member State and requests agreement to the modification. If the executing Member State refuses to accept the modification, the Central Authority returns to the court to determine whether the decision will be revoked.

On the natural expiry of a supervision decision (i.e. where the date of expiry is reached without an intervening event) the court may request an extension on its own initiative or on the application of the prosecutor or supervised person.

Executing Member State⁴

Where Ireland is the executing Member State, the Competent Authority is the District Court, or, in the case of certain offences, the High Court. The Garda Síochána thereafter monitors the decision.

The Central Authority receives a supervision decision and certificate from an issuing Member State. The Central Authority confirms that the certificate has no clear defects (missing information and/or not corresponding to the decision it accompanies) and requests further information and translation if required.

Thereafter, it instructs CSSO to make an application to the relevant court to endorse the supervision order.

Supervision measures which may be subject to a supervision decision are initially limited to the mandatory measures set out in the outward application section above, but may be extended by the Minister.

⁴According to information dissemination material "Criminal Justice (Mutual Recognition of Decisions on Supervision Measures) Act 2020: Summary of operational arrangements and responsibilities" provided to the evaluation team by Irish national authorities (see in annex).

The court is required to endorse the supervision decision unless the grounds for refusal apply. These include:

- a) the person is neither lawfully and ordinarily residing in Ireland nor an Irish citizen;
- b) the person does not wish to return to Ireland;
- c) the offence is a summary offence that could have been prosecuted in Ireland but for the fact that it has become statute-barred;
- d) an EAW could not be issued in relation to the offence;
- e) it is immediately clear that *ne bis in idem* would apply;
- f) dual criminality is not present;
- g) the person could not be proceeded against by reason of age in respect of the same offence in Ireland;
- h) the proposed measures do not fall within the allowable supervision measures.

If a supervision measure specified is incompatible with the law of Ireland, the court may adapt the measure to one which:

- a) falls under the allowable measures;
- b) is imposable in Ireland as a condition of bail;
- c) corresponds as far as possible to the original measure;
- d) is no more severe than the first measure.

A general time limit of 20 working days applies from receipt of the decision by the Central Authority to the making of the decision of the court. If this limit is exceeded, the Central Authority should inform the issuing Member State.

On endorsement of the decision, the measure is monitored in Ireland as if it were a decision made in Ireland, and on making the order the court must direct that compliance be monitored by the Garda Síochána. An endorsement order must also specify the superintendent of the Garda Síochána for the district in which the supervised person resides or will reside to whom the supervised person must report as soon as is practicable after his or her arrival in Ireland.

On endorsement of a decision, the court should send a copy of the decision to the Central Authority, the relevant Garda Síochána superintendent and the supervised person. The Central Authority then provides information to the issuing Member State.

The issuing Member State may renew, amend or revoke the decision. Such an action will be communicated to the Central Authority and an application should be made to the court to reflect this action.

Where an alleged breach of the supervision decision occurs, a member of the Garda Síochána may apply to the court with sworn information in respect of the alleged breach. If the court agrees that a breach has occurred, it instructs the Central Authority to give a notice to the issuing Member State. If the issuing Member State does not revoke or modify the decision after two or more notices have been sent, the court issues a final notice. If the issuing Member State still has not acted, the court revokes the endorsement of the supervision decision.

Where the supervised person cannot be found in Ireland, a member of the Garda Síochána may apply to the court with sworn information to that effect. The court may then revoke the endorsement of the order, but in any event will inform the Central Authority, who will, in turn, notify the issuing Member State.

The Minister is designated as the Central Authority in Ireland for the purposes of FD 2009/829/JHA when Ireland is either executing or issuing Member State.

7.2. Problems relating to the failure to apply Framework Decision 2009/829/JHA

Since FD 2009/829/JHA was transposed into Irish national legislation, no incoming or outgoing transfer requests have been recorded; there is consequently no practical experience in the application of FD 2009/829/JHA. Further awareness raising activities for criminal justice professionals on the matter are nevertheless necessary.

7.3. Conclusions

- There is no practical experience in the application of FD 2009/829/JHA. Awareness raising activities for criminal justice professionals on the matter are necessary.

8. TRAINING

8.1. Training relating to FDs 2002/584/JHA, 2008/909/JHA 2008/947/JHA , 2009/829/JHA

The International Unit in the ODPP offers induction training for new prosecutors as well as ongoing training on legal developments and regular unit meetings. They are provided with regular updates, including updates of the Commission Handbook or strategic documents from Eurojust or the EJM. There is also a training series on EU and international law.

Judges can participate in different training programmes organised by the High Court. Solicitors and barristers are subject to a Continuous Development Programme (25 hours per year). Training is provided by the Law Society and private enterprises. Different educational institutions frequently organise seminars on the EAW.

Other training opportunities include the Association for Criminal Justice Research and Development (ACJRD), training or seminars organised by ERA, Eurojust or the EJM.

The team in the International Unit includes five prosecutors who are highly specialised.

Within the High Court there is one judge (almost) exclusively dealing with EAW cases (who is therefore highly specialised and keeps abreast of developing CJEU case law), and another one will join him soon.

8.2. Conclusions

Further awareness raising and training activities for criminal justice professionals regarding the application of FDs 2002/584/JHA, 2008/909/JHA, 2008/947/JHA and 2009/829/JHA are necessary.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions by Ireland

None

9.2. Recommendations

As regards the practical implementation and operation of the Framework Decisions, the evaluation team was able to satisfactorily review the system in Ireland.

Ireland should conduct an 18-month follow-up to the recommendations set out below after this report has been adopted by the Working Party concerned.

The evaluation team saw fit to make a number of suggestions for the attention of Ireland's authorities. Furthermore, based on the various good practices, related recommendations are also being put forward to the EU, its institutions and agencies, and to Eurojust and the EJM in particular.

9.2.1. Recommendations to Ireland

- 1) It is recommended that Ireland implement recommendations number 9 and number 12 of the 4th mutual evaluation round, undertaking a review of practice and procedures for a final decision on EAWs, including appeal and cassation and, if necessary, amending the law (paragraph 3.1).
- 2) The ongoing amendment to EAW Act 2003 regarding section 37(b) should be completed in a way that neither provides for non-mandatory grounds for refusal as mandatory nor opens possible grounds for refusal other than those provided for in FD 2002/584/JHA (paragraph 3.4).
- 3) All amendments to the EAW Act 2003 comprised in the Bill passed by the Irish Government on 21 July 2021 should be completed, in particular those that respond to the Commission's letter of formal notice of 30 October 2020 (paragraph 3.4), as follows:
 - a. Section 13 (2), replacing optional endorsement ('may') with an obligation to endorse ('shall').
 - b. New section 14A so as to achieve the full transposition of Article 18(1) to (3) and Article 19(4) to (6) of the EAW FD.
 - c. Section 15, in several subsections, so as to achieve full alignment with the EAW FD regarding time limits in the event of consent to surrender and regarding the principle of specialty.

- d. Section 16, replacing optional surrender ('may') with an obligation to surrender ('shall'), and speeding up contact between authorities.
- e. Section 18, in order to speed up contact between authorities.
- f. Section 19, on conditional surrender.
- g. Deletion of section 21A, on refusal of surrender where there is no decision to prosecute.
- h. Section 22(7), replacing once more the High Court's discretion ('may') with an obligation ('shall') and setting a time-limit by which the rule of speciality must be disapplied.
- i. Section 23(5), replacing the High Court's discretion ('may') with an obligation ('shall') and setting a time-limit by which consent must be given, in this occasion regarding surrender or subsequent extradition to another Member State.
- j. Insertion of new section (30A) on extradition arrangements with third countries.
- k. Insertion of new section (35A) on the guarantees surrounding custodial sentences imposed *in absentia*.
- l. Section 37(1b) and (1c) to avoid refusal to surrender based solely on the Irish Constitution without further consideration.
- m. Sections 39 and 41(1) on grounds for mandatory non-execution in the event of a pardon or amnesty and in the event of double jeopardy.
- n. Section 42 on grounds for optional non-execution in the event of the person being prosecuted in Ireland.
- o. Section 45, for the case of persons convicted *in absentia*.
- p. Section 46, regarding privileges and immunities.

4) Progress in implementing FD 2008/909/JHA (paragraph 4) should be speeded up.

5) A judicial remedy should be provided for that makes it possible to challenge the Minister for Justice's decision not to accept execution when the sentenced person wants to serve the sentence in the executing State and has reasons to believe that this would result in their better rehabilitation (paragraph 4.1).

6) To finalise development of co-operation protocols between the DoJ, the Probation Service and competent judicial authorities for the purposes of the implementation of FD 2008/947/JHA and to develop guidelines for practitioners (paragraphs 5.3 and 5.5).

7) To improve communication between the competent authorities of the Member States (paragraph 5.5).

8) To raise awareness between practitioners and facilitate training for practitioners regarding the transposition of FD 2008/947/JHA into national legislation and practicalities relating to implementation (paragraphs 5.4 and 7.1).

9) Since FD 2009/829/JHA was transposed into Irish national legislation, no incoming or outgoing transfer requests have been recorded and there is consequently no practical experience in the application of FD 2009/829/JHA. Awareness raising activities for criminal justice professionals regarding FD 2009/829/JHA are necessary (paragraphs 6.2. and 7.1).

9.2.2. Recommendations to the other Member States

- 1) To provide comprehensive information on the circumstances of the case where a person was judged *in absentia*, and align it with one of the possibilities set out in Article 4a of the FD 2002/584/JHA. This would assuage doubts that have arisen in the executing Member States' judicial authorities, so no need for further information would arise.
- 2) To complete section D of the EAW form mentioning each sentence and relevant penalty specifically and separately whenever an EAW concerns a number of convictions and sentences which are aggregated in one sentence.
- 3) To enhance awareness of competent authorities regarding the importance of sound and efficient communication with competent authorities of other Member States to secure the successful and timely transfer of a sanction in accordance with FD 2008/947/JHA.

9.2.3. Recommendations to the European Union and its institutions.

- 1) Article 4a of the FD 2002/584/JHA should be reviewed so as to check whether all possible cases of judgments *in absentia* in the Member State are comprised in its subsections.
- 2) Have a European agency conduct an official assessment of the Member States' prisons that should be taken into consideration *ex officio* by all Member States when executing a request under FD 2008/909/JHA.

9.3. Best practices

- 1) The Irish authorities use the proportionality test correctly as both issuing and executing authority.
- 2) The Irish authorities always comply with the obligation to send a notification to Eurojust when the time limits provided for in the Framework Decisions are not met.

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

Detailed Programme		
Date	Time	Sites and activities
		Arrival of Delegation
Monday 29 November	19.00 -20.00	Internal meeting of evaluation team
		Opening meeting (Atrium - Department of Justice)
Tuesday 30 November	09.30 – 10.00	Transfer of evaluators from the hotel to DOJ, 51 St. Stephens Green
	10.00 – 10.30	Welcome and introductions
	10.30 – 11.00	Opening remarks
	11.00 – 12.00	Presentation on Council Framework Decision 2002/584/JHA on European Arrest Warrant followed by Q&A
	12.00 – 12.15	Coffee break
	12.15 – 13.15	Presentation on Council Framework Decision 2008/909/JHA on Custodial Sentences followed by Q&A
	13.15 – 15.00	Lunch
	15.00 – 16.00	Presentation on Council Framework Decision 2009/829/JHA Mutual Recognition of Decisions on Supervision Measures followed by Q&A
	16.00 – 16.15	Closing remarks
	16.30 – 17.30	Internal meeting of evaluation team
		Probation Service / Law Society

Wednesday 1 December	10.30	Transfer to Probation Service, Haymarket, Smithfield, Dublin 7
	11.00 – 11.30	Introductions / Opening remarks from Mark Wilson (Director of Probation Service)
	11.30 – 11.45	Coffee break
	11.45 – 13.00	Presentation on Council Framework Decision 2008/947/JHA on Probation and Alternative Sanctions followed by Q&A
	13.00 – 14.30	Lunch
	14.30 – 15.30	Internal meeting of evaluation team
	15.30	Coffee break
	16.00	Transfer to Law Society
	16.30 – 17.30	Meeting with Law Society
	17.30	Transfer to hotel
	17.45 – 18.45	Internal meeting of evaluation team
	19.30	Dinner hosted by DOJ officials at Darwins Restaurant, 80 Aungier Street, Dublin 2
		SIRENE / Judiciary / Department of Justice (DPP)
Thursday 2 December	09.30 – 10.00	Transfer to Garda Headquarter (SIRENE)
	10.00 – 10.45	Presentation including Q & A
	10.45 – 11.00	Coffee
	11.00 – 11.30	Tour of SIRENE
	11.30	Transfer to Criminal Courts of Justice
	12.00 – 13.00	Meeting with Mr. Justice Paul Burns
	13.00	Transfer to DOJ, 51 St. Stephens Green

	13.30 – 14.30	Lunch
	14.30 – 15.30	Meeting with Prosecutors from the Office of the Director of Public Prosecutions, DOJ, 51 St. Stephens Green
	16.00	Transfer to hotel
	16.15 – 18.15	Internal meeting of evaluation team
		Closing meeting (1st Floor Meeting Room - Department of Justice)
Friday 3 December	09.30 – 10.00	Transfer of evaluators from the hotel to DOJ, 51 St. Stephens Green
	10.00 – 13.00	Wrap up meeting

ANNEX B: PERSONS INTERVIEWED/MET

Meeting on 2002/584/JHA (European Arrest Warrant)

Venue: Department of Justice (Tuesday 30th November)

Person interviewed/met	Organisation represented
Yvonne Furey	Director of Criminal Justice Service Delivery, Department of Justice
Michael O'Donoghue	Advisory Counsel, Department of Justice
Dan Kelleher	Criminal Legislation, Department of Justice
James Moloney	Mutual Assistance & Extradition, Department of Justice
Frank McNamara	Criminal Legislation, Department of Justice
Paul Mannering	Irish Prison Service
Declan Keating	Senior Principal Prosecutor, Office of the Director of Public Prosecutions
John Laffan	European Affairs, Department of Justice
Chris Quattrociocchi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Meeting on 2008/909/JHA (Mutual Recognition of Custodial Sentences)

Venue: Department of Justice (Tuesday 30th November)

Person interviewed/met	Organisation represented
Brendan Bruen	Criminal Legislation, Department of Justice
Paul Mannering	Irish Prison Service
John Laffan	European Affairs, Department of Justice
Chris Quattrociocchi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Meetings on 2008/829/JHA (Mutual Recognition of Supervision Measures)

Venue: Department of Justice (Tuesday 30th November)

Person interviewed/met	Organisation represented
Brendan Bruen	Criminal Legislation, Department of Justice
James Moloney	Mutual Assistance & Extradition, Department of Justice
John Laffan	European Affairs, Department of Justice
Chris Quattrociocchi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Meetings on 2008/947/JHA (Mutual Recognition of Probation & Alternative Sanctions)

Venue: Probation Service (Wednesday 1st December)

Person interviewed/met	Organisation represented
Lena Timoney	Assistant Principal Probation Officer
Gerry McNally	Assistant Director, Probation Service
Mary O'Regan	Criminal Justice Policy, Department of Justice
Timothy Hurley	Criminal Justice Policy, Department of Justice
Chris Quattrociocchi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Meeting with Law Society

Venue: Department of Justice (Wednesday 1st December)

Person interviewed/met	Organisation represented
Robert Purcell	Law Society of Ireland
Chris Quattrociocchi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Meeting with An Garda Síochána (SIRENE Bureau)

Venue: Headquarters, An Garda Síochána, Phoenix Park, Dublin 8 (Thursday 2nd December)

Person interviewed/met	Organisation represented
Tony Kelly	Detective Superintendent, An Garda Síochána
Neil Casley	Detective Inspector, An Garda Síochána
Chris Quattrociocchi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Meeting with the Judiciary

Venue: Criminal Courts of Justice, Dublin (Thursday 2nd December)

Person interviewed/met	Organisation represented
Mr. Justice Paul Burns	Judiciary
Michael O'Donoghue	Advisory Counsel, Department of Justice
Chris Quattrociocchi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Meeting with the Office of the Director of Public Prosecutions

Venue: Department of Justice (Thursday 2nd December)

Person interviewed/met	Organisation represented
Declan Keating	Senior Principal Prosecutor, Office of the Director of Public Prosecutions
Tricia Harkin	Senior Principal Prosecutor, Office of the Director of Public Prosecutions
Michael Durkan	Senior Prosecutor, Office of the Director of Public Prosecutions
Maria O'Toole	Prosecutor, Office of the Director of Public Prosecutions
Chris Quattrociochi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

Wrap up meeting


Venue: Department of Justice (Friday 3rd December)

Person interviewed/met	Organisation represented
Brendan Bruen	Criminal Legislation, Department of Justice
Michael O'Donoghue	Advisory Counsel, Department of Justice
James Moloney	Mutual Assistance & Extradition, Department of Justice
Paul Mannering	Irish Prison Service
Lena Timoney	Assistant Principal Probation Officer
Declan Keating	Senior Principal Prosecutor, Office of the Director of Public Prosecutions
Doncha O'Sullivan	Head of European Affairs, Department of Justice
John Laffan	European Affairs, Department of Justice
Chris Quattrociochi	European Affairs, Department of Justice
Emma McHugh	European Affairs, Department of Justice

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	ENGLISH
EAW	European Arrest Warrant
FD	Framework Decision
ODPP	Office of the Director of Prosecutions
CSSO	Chief State Solicitors Office
EIO	European Investigation Order
MLA	Mutual Assistance in Criminal Matters of the Council of Europe
DoJ	Department of Justice
GIBS	Garda International Bureau
EJN	European Judicial Network
CJEU	European Union Court of Justice
IPS	Irish Prison Service
EJTN	European Judicial Training Network

1. Ireland (IE)

<p style="text-align: center;">IRELAND</p> 	
<p>EAW</p> <p>-issuing of EAWs</p> <p><i>(suspension; impact on already issued EAWs; prioritization in issuing new EAWs + criteria)</i></p> <p>- execution and postponement of the actual surrender</p> <p><i>(legal basis, adequacy, release of surrendered persons, measures to prevent released persons from</i></p>	<p>Impact on the issuing of EAWs</p> <p>Decisions on issuing EAWs will be taken on an individual basis so long as the current crisis impacts on the operational viability of the system.</p> <p>Impact on the execution of EAWs and postponement of the actual surrender</p> <p>The High Court acts as the executing judicial authority for the purposes of the European Arrest Warrant and Extradition under the Extradition Act 1965 (as amended). It is working to capacity on the Extradition list, but due to the number of postponements arising from COVID-19-related transport/movement issues, surrenders are taking longer to effect under the EAW framework.</p> <p>An Garda Síochána are still in a position to repatriate fugitives from other jurisdictions but are managing a significant backlog. Extensions to surrender will only be requested in exceptional circumstances where the deadline cannot be fulfilled.</p> <p>An Garda Síochána continue to facilitate the surrender of fugitives to other jurisdictions with clear guidance to visiting colleagues that Government / Health Service Executive (HSE) advice must be adhered to when present in Ireland. This now includes the requirement for foreign law enforcement colleagues to enter the country with a proof of a negative COVID-19 test.</p> <p>Legal basis for postponing the actual surrender</p> <p>Where appropriate, Ireland is postponing EAW surrenders on humanitarian grounds, pursuant to section 18(1)(a) of the European</p>

<p><i>absconding)</i></p> <p>-expected</p> <p>resuming of surrenders</p> <p>-transit</p>	<p>Arrest Warrant Act 2003. This provision reflects Article 23(4) of the EAW Framework Decision. This now includes the requirement for foreign law enforcement colleagues to enter the country with a proof of a negative COVID-19 test.</p> <p>Releases of requested persons following the postponement of the surrender</p> <p>The granting of bail to persons held in custody on foot of EAWs is a matter for the judicial authority and cases are being considered on application to the judicial authority.</p> <p>Expected resuming of the surrender</p> <p>As stated above, the High Court is working to capacity on the Extradition list, but due to the number of postponements arising from COVID-19-related transport/movement issues, surrenders are taking longer to effect under the EAW framework.</p> <p>Any person (includes police officer) entering Ireland from a foreign jurisdiction for the purpose of Extradition business will be expected to comply with the EU traffic lights system. They will:</p> <ul style="list-style-type: none"> i) be required to complete the COVID-19 Passenger Locator Form (https://www.gov.ie/en/publication/ab900-covid-19-passenger-locator-form/?referrer=http://www.gov.ie/locatorform/) before entry; ii) be advised to follow the HSE guidance in relation to self-isolation up to a maximum of 14 days (unless whilst performing their official duties it is not possible to self-isolate). iii) provide evidence that they have a negative or ‘not detected’ result from a COVID-19 Reverse Transcription Polymerase Chain Reaction (RT-PCR) test carried out no more than 72 hours before they arrive into Ireland, or have evidence that you are exempt from this legal requirement; <p>Transit</p> <p>N/A</p>
Precautionary	<p>Precautionary measures</p> <p>An Garda Síochána Extradition members have been issued with Personal</p>

<p>measures for surrender, extradition and transfer</p> <ul style="list-style-type: none"> - COVID19 test - health certificate - quarantine - facial masks 	<p>Protective Equipment (PPE) both for the member & the fugitive (for example, they have access to spit hoods for the fugitive but they will only be used if absolutely necessary). Members have gloves, masks, visors etc. A COVID-19 negative test is not required at the time of writing. Appropriate transports are utilised.</p> <p>Need (or not) for further guidance on precautionary measures</p> <p>Irish authorities would welcome advice or guidance from our European colleagues in relation to additional precautionary measures in facilitating future extraditions. A corporate approach would be preferable.</p>
<p>Extradition</p> <ul style="list-style-type: none"> -suspension -legal basis -third countries involved -expected duration of suspension 	<p>N/A</p>
<p>Transfer of sentenced persons</p> <ul style="list-style-type: none"> -prioritization in issuing/execution 	<p>Impact on the transfer of sentenced persons</p> <p>That is dependent on the nature of the case in question and the processes required to execute it. In cases requiring the involvement of the courts, only emergency cases are being considered. The progress of other cases are susceptible to operational considerations in the wider context of the current COVID 19 situation.</p>
<p>SIRENE Bureaux</p> <ul style="list-style-type: none"> -working of SIS 	<p>Operational since the 15th March 2021. The initial impact of Ireland's participation in the Schengen Information System (SIS II) is at the end of proceedings as borders are closed, surrender dates are postponed or new dates for surrender are fixed which is lengthening the Extradition process. More court time is taken up in the form of the application to</p>

bureau -exchange of information with other SIS Bureaux	postpone or fix a new date and then more often than not there will be a bail application should the Respondent be in custody.
MLA -prioritization in issuing/execution -electronic transmission -whom to contact	Electronic transmission and contact details Requests for mutual legal assistance in criminal matters should be sent by email to the address indicated in the EJN Atlas, currently MARRequests@justice.ie
Freezing and confiscation orders -prioritization in issuing/execution	N/A
JITs -prioritization and alternative telecommunication solutions	N/A
Recommended channels for transmission of -urgent requests -information exchange	Eurojust For the transmission of MLA requests, <i>see</i> above 'MLA'.

Any other relevant information	<p>On 30 March 2021, the Government announced a phased easing of public health restrictions, to commence on 12 April, continuing through April, with further easing under consideration from 4 May (subject to the prevailing public health situation).</p> <p>As many of the larger communication service providers (CSPs) have located their headquarters in Ireland, the number of requests for "digital evidence" to Ireland is unusually high. Furthermore the legal process in obtaining such evidence involves three distinct steps - approval by the Central Authority; application to the District Court either for a Production Order or Subpoena duces tecum, and finally the collation of the digital evidence by the CSP itself.</p> <p>Unfortunately, each step has been adversely affected by the restrictions put in place by the Irish Government in the context of dealing with the current pandemic. In particular, up to the end of 2020, the courts were only able to sit to hear urgent applications, generally murder cases or cases involving child sexual abuse. Also, officers of the CSPs are finding it difficult to collate the evidence as they are required to work from home.</p> <p>In spite of these restrictions it has been possible to obtain and transmit evidence in the most urgent serious cases, due to the efforts of the Irish authorities.</p> <p>Being keen to address the backlog that has now built up, and in recognition of its international obligations, the Irish authorities have put in place a number of new initiatives, including an increase in dedicated personnel.</p> <p>Also, despite the continuing restrictions, it is no longer a pre-requisite to satisfy the Irish Courts that a level of seriousness and/or urgency exists, in order for the application to be made. However, due to the significant backlog that now exists, if you are in a position to advise the Central Authority, or alternatively, the Irish Desk at Eurojust of specific grounds of seriousness or urgency relating to a specific request, such grounds/urgency should be provided in order that it can be prioritised and dealt with as soon as possible.</p> <p>All such mutual legal assistance requests are being accepted digitally, when sent to the following email address: MARequests@justice.ie . Seeking and obtaining a preservation order from the CSP, and including the reference number in the request is strongly advised and will greatly assist a successful execution.</p>