

# PRE-RIGHTS INTERNATIONAL CONFERENCE IN VENICE 22- 23 SEPTEMBER 2021

**NAVIGATING THE COMPLEXITIES OF  
JUDICIAL COOPERATION INSTRUMENTS**  
JUDICIAL & POLICE COOPERATION  
COOPERATION: MAIN OUTCOMES AND BEST  
PRACTICES



It is important to keep in mind, especially in international matters, what makes relationships among institutions and States more sensitive, and to ensure that this complexity merges into a smart aggregation of different needs on the basis of generally accepted principles. Judicial cooperation, throughout designated **instruments for cooperation**, is possible only if the fundamental rights of each State's nationals are respected. The fundamental rights set out in the Constitutional Charter of Italy (and Article 6 of the European Convention on Human Rights) provide an indispensable pillar so that the instruments used - be they substantive or procedural, precautionary, or preventive, probative or decision-making - can be combined and commonly grounded in one single focus: **respect for fundamental rights**. Such rights include the **presumption of innocence**, the **reasonable duration of a trial** and a penalty that not only has a function for retribution, but also and above all for **re-education** as stated in Article 27 of the Italian Constitution. Directive 2014/41/EU, in the field of judicial investigations, offers a response to refine cooperation from an investigative perspective. With the *Reform of the Italian Minister of Justice Marta Cartabia*, today, Italy is in the position to enter into a dialogue in these fields while remaining consistent with the fundamental principles that are paramount to such discussions. Judicial cooperation not only exists among different States and countries, but also among States and international bodies, such as the International Criminal Court, or other Courts, that have jurisdiction over core international crimes (e.g., war crimes, crimes against humanity, genocide). This raises the question of what is the common basis shared by all forms of judicial cooperation. The latter aims at ensuring that different jurisdictions work together.

## PRE-RIGHTS figures

Total project budget:

**806.673,00 €**

Project duration

01.10.2019

31.03.2022

**8 Project Partners**



## HOW TO IMPLEMENT THE EU LEGISLATION ON CRIMINAL MATTERS: NEW INSTRUMENTS

### EUROPEAN INVESTIGATION ORDER (EIO)

Before the EIO, the system of judicial cooperation was regulated by the **European Convention on criminal matters** (Strasbourg, 1959), which allowed direct contact among judicial authorities only through direct communication among Ministries of Justice. From 2000 onwards, the **Brussels Convention** fostered the introduction of the EIO which was accomplished with the **Directive 2014/41/UE**: it allowed the pre-existing bilateral agreements to remain valid, while introducing a new instrument, which remains a milestone in judicial cooperation. The instruments of the European Union do not derogate from these earlier instruments, but rather work together depending on the culture, the legal framework, and the conventions, which can be applied to the different cases. The EIO allows the **direct communication** from judge to judge and from prosecutor to prosecutor in the field of criminal matters and with a pre-determined list of offences: this **speeds up justice and criminal proceedings**.

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## EUROPEAN ARREST WARRANT (EAW)



The Courts of Appeal in Italy are the competent judges to recognise and execute the European Arrest Warrant (**EAW**) coming from the judicial authorities of other Member States. Recently, in February 2021, the fundamental law that transposed Framework Decision 584/2002 (Law 69/2005) was modified to make it more consistent with the provisions of the Framework Decision. Such law has shortened decision-making time and delivery (fundamental in the application of the principle of **mutual recognition of judicial decisions**) and, in homage to this principle which is a cornerstone of judicial cooperation in criminal matters, it has simplified and eliminated a series of reasons for refusal, that were provided for by our old law, by reducing them to a few essential mandatory and optional reasons as those provided by the Framework Decision.

### The Principle of Proportionality

The principle of proportionality is enshrined in art. 5 of the Text of the Treaty of the European Union and art. n. 7 of Framework Decision 584. In Italy although this principle is not explicitly stated, it is very meaningful since it inspires the adoption of the precautionary measures of the Criminal Procedure Code (art. 272 onwards) governing real precautionary measures.

### Issue concerning the EAW

The new law has modified the previous law with regard to the optional reason for refusal that occurs when the recipient is either of Italian nationality, or is a foreign person residing legally and effectively on Italian soil for at least 5 years. The Framework Decision does not have this limit, which was considered by the legislator as an indispensable criterion for the purposes of the resocialization of the person, rehabilitation during and after detention and, therefore, ensuring that he remains where he has family, friendships, if actually present in Italy for 5 years. Another important issue is the one on the **conditions of detention** and the **risk of inhumane and degrading treatment**. The 2016 ruling, known as ARANYOSI-CALDARARU of the Court of Justice of the European Union, paved the way for a series of similar judgments and rulings of the same Court. Also, the issue of the independence of the Judiciary issuing the European Arrest Warrant should be considered: this issue has touched our Court with a sentence of the Supreme Court which annulled the surrender decision because the EAW came from the Polish judicial authorities. Poland, since 2000, has undergone some legislative changes that have been deemed detrimental to the independence of the judiciary from the political power. The Court of Cassation decided that a request for information had to be made to reach a personalized analysis to exclude that the person is exposed to the risk of an unfair process pursuant to art. 6 of the European Court of Human Rights - ECHR.

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# TRAINING & EDUCATION

Judicial cooperation is also possible because the EIO provides for communication between the requesting and executing authorities. It has introduced a more balanced approach, for example for fundamental rights in Article 11. To this end, there is the need and also the request to implement more **in-depth training activities** on this judicial cooperation instrument and its possible applications.

Modern technologies can be useful in the judicial field because they enable better communication among the judicial authorities and advance means for Police Forces to fight crime. Nevertheless, such modern technologies also pose a very significant question about fundamental rights in democracy.

The European Commission has moved away from the use of a single instrument of judicial cooperation, and has again introduced a number of instruments: one of these is linked to **electronic testing**. Training and education are two fundamental aspects of judicial cooperation. It is important to create a culture of empathy against the internal and local approach, in order to overcome the narrow national perspective. It is important to use technology, avoid relying on the will of the individual, create a **collaboration network**, create the prosecution services in the various courts, engage people able to actively support international cooperation, create contact points on a permanent basis, and ensure commitment and the involvement of the relevant institutions.

*I do believe that the training of personnel in the use of instruments for trans-national judicial cooperation poses several challenges, because it raises the need to superimpose international standards and procedures over national practices that, in some cases, need to be appropriately adapted to respect the rule of law. [...] in order to meet such demands, policing must be entrusted to law enforcement agencies that, operating within a legal framework based on the **rule of law**, are representative of, responsive to, and accountable to the community they serve. (Gen. Barbano, CoESPU).*

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