

Social Fieldwork Research (FRANET)

European Arrest Warrant proceedings – safeguards for requested persons

**Italy,
2022**

Contractors: Fondazione “Giacomo Brodolini”

Authors: Marta Capesciotti

DISCLAIMER: This document was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project: [European Arrest Warrant – safeguards for requested persons](#). The information and views contained in the document do not necessarily reflect the views or the official position of FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of Contents

EXECUTIVE SUMMARY	1
INTRODUCTION.....	3
RESEARCH FINDINGS.....	7
• 1.Right to information.....	7
a. Legal overview.....	7
b. Right to information in practice	9
• Provision of information	9
• Information about rights.....	10
• Information about the EAW – content and procedure.....	11
• Information on consenting to surrender	12
• Understanding of information	13
c. Discussion of findings	16
• 2.Right to interpretation and translation	17
a. Legal overview.....	17
b. Interpretation and translation in practice.....	18
• Provision of interpretation (decision and means)	18
• Translation of documents	22
• Interpretation of consultations with lawyers	23
c. Suggestions for improvement of the interpretation/translation system.....	24
d. Discussion of findings	24
• 3.Right to access to a lawyer	25
a. Legal overview	25
b. Right to access to a lawyer in practice	27
• Information about legal assistance (including on dual representation).....	27
• Legal assistance in executing State (access, consultations, lawyer’s tasks)	29
• Legal assistance in issuing State (access, consultations, lawyer’s tasks)	32
• Communication between the lawyers in both States.....	33
c. Additional best practices, challenges and suggestions for improvement.....	35
d. Discussion of findings	37
• 4.Issuing and execution of the EAW	38
a. Legal overview.....	38
b. Issuing and execution of the EAW in practice	42
• Factors considered when issuing the EAW	42

- Factors considered when executing the EAW..... 44
- c. Additional best practices, challenges and suggestions for improvement..... 49
- d. Discussion of findings 53
- 5. Use of digital and technological tools in EAW proceedings 53
 - a. Legal overview 53
 - c. Discussion of findings 57
- CONCLUSION..... 58**

List of Tables

Table 1: Description of the sample of professionals.....	4
Table 2: Are persons arrested on an EAW informed about their procedural rights?.....	11
Table 3: Are persons arrested informed of the contents of the EAW against them?	12
Table 4: Are the requested persons informed about what consenting to their surrender entails?	13
Table 5: Dual representation (in law)	27
Table 6: Cost-free legal assistance (in law)	27
Table 7: Are persons informed of their right to access a lawyer?	28
Table 8: Information on dual representation, interview findings	28
Table 9: Facilitating dual legal representation, interview findings (executing MS).....	31
Table 10: Providing dual legal representation, interview findings (issuing MS).....	33
Table 11: Cost-free legal assistance, interview findings	35
Table 12: Use of technological tools (in law)	54
Table 13: Use of digital tools, interview findings.....	56

EXECUTIVE SUMMARY

Right to information

The right to information on procedural rights and safeguards is partially respected in Italy: requested persons are informed of their rights by the judiciary police officers arresting them through a written form available in English, French and Italian. This is a standard form used for all arrested people: it does not include information on the EAW specifically. Information concerning the possibility of appointing a lawyer in the issuing State – which is a peculiar aspect of the EAW procedure – generally appears not to be provided. Judicial authorities – especially those validating the arrest – play a crucial role by providing the information again orally, checking the requested person’s comprehension, and explaining the most technical aspects of the procedure in detail (e.g., the consent to surrender and specialty rule). Besides police and judicial authorities, criminal lawyers play a pivotal role in ensuring the person’s comprehension of their situation and the procedure. This is the reason – as reported by many participants – they must have a specific expertise and solid experience in EAW procedures. As some technical aspects of the procedure are generally difficult for requested persons, especially third-country citizens, to understand because of language issues, the role of judges and lawyers is crucial.

Right to interpretation and translation

The right to interpretation and translation is formally guaranteed by the legislation applicable to all judicial proceedings, in compliance with the EU Directive 2010/64/EU of the European parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. However, some issues emerged in the research findings concerning the implementation of this right in practice that might hinder the effective possibility of the requested person to have access to an interpretation of high quality and to afford it. The assessment of the need for interpretation is preliminarily conducted by judiciary police officers at the moment of the arrest and then communicated to judicial authorities for the definitive assessment. Interpretation is provided in person, without the use of digital tools. Interpreters must always be present during judicial hearings; however, they are not provided and paid for by the State when it comes to consultations between requested persons and their lawyers. The quality of interpretation is another element of concern: interpreters are poorly paid and do not always have the technical knowledge and expertise to deal with complex judicial procedures. As for translation of documents, this is reported to be provided only for specific and limited judicial documents. In order to ensure a quick execution of the EAW, as required by the law, oral translation is often favoured: the court’s decision on the execution is generally read aloud and orally translated by the interpreter.

Right to access to a lawyer

Information on the right to a legal defence (including legal aid) is provided at the moment of the arrest through the written form on procedural rights. Legal defence is mandatory in Italy: either the requested person appoints a trusted lawyer or a public defender is appointed by the judicial authorities. In both cases, the name of the lawyer must be included in the arrest report, drafted by the police, signed by the arrested person and transmitted to the lawyer and the competent court. Information concerning the right to appoint a lawyer also in the issuing State seems to generally not be provided. Where lawyers are appointed in both States, the cooperation between them is neither governed nor facilitated by public authorities but it relies on the will and connections of the Italian lawyer and of the foreign one (when already appointed). Dual legal representation also depends on the financial resources of the requested person to bear the costs of two professionals. Legal aid is

formally guaranteed to requested persons who comply with the income requirements: however, in practice bureaucratic barriers can hinder access to legal aid. The type of legal assistance provided in Italy to requested persons is in practice identical to the assistance provided to any defendant involved in judicial proceedings in Italy.

Issuing and execution of the EAW – factors considered

Italian issuing authorities seem to comply with the existing legislation when deciding whether to issue an EAW; no additional elements are reported to be considered. The principle of proportionality is in practice applied, even if it is not explicitly envisaged by the legislation governing EAW procedures in Italy. The control exerted by Italian authorities executing EAWs is mainly formal: it is up to the lawyer to provide evidence-based information on possible risks in case of surrender of the requested persons, in terms of conditions of detention, procedural rights and individual vulnerabilities. Moreover, after the 2021 legislative reform – which significantly accelerated the execution of EAWs – lawyers have far less time to collect information to submit to the court.

Use of digital tools

The digitalization process of the Italian judicial system is not very advanced, and no legislative dispositions exist specifically focusing on the use of digital tools in EAW proceedings. An increased use of digital tools would be needed to foster exchange of documents and information between authorities of EU Member States, as well as to facilitate lawyers' access to the judicial casefile in the issuing State. During the Covid-19 emergency period videoconference techniques were used during judicial hearings and in consultations with the lawyer: however, these were abandoned at the end of the emergency period and most participants in the fieldwork welcomed the return of the in-person mode since it can better protect the procedural rights of people involved in criminal proceedings, including people requested under EAWs.

INTRODUCTION

The fieldwork carried out for this research project consists of ten semi-structured qualitative interviews involving judicial authorities – both judges and prosecutors – and criminal lawyers based in Turin and Rome, the two geographical locations selected for this research.

As far as criminal lawyers are concerned, the Italian research team had the opportunity to cooperate with the National Association of Criminal Lawyers (*Unione Camere Penali Italiane* – UCPI) for the purposes of this research. Namely, the Association relevantly contributed providing contacts of criminal lawyers with solid expertise in international judicial cooperation matters in general and European Arrest Warrants (EAWs) in particular who were keen at sharing their experiences with the interviewer. Three out of the five criminal lawyers interviewed were indicated by UCPI and relevantly contributed to the collection of information; however, one of these professionals was not based in the two selected locations but rather in another city of Northern Italy (Rovereto). The research team – with FRA’s authorisation – nonetheless decided to include the lawyer in the sample to benefit from their long-standing experience in this judicial field. As for the two remaining lawyers, they were recruited using alternative channels: the former further contributed to the research indicating the latter who agreed to be interviewed for this project.

Focusing on judicial authorities, the selected sample respects the geographic criterion – in that all interviewees are based in the two selected locations – and includes both judges and prosecutors. More specifically, the research team interviewed one prosecutor and four judges. Judges worked for different types of courts competent for different stages of the EAW procedure, namely the Court of Appeals of Turin – dealing with execution and issuing of EAWs – and the Court of Cassation of Rome, the Italian Supreme Court competent for complaints filed against judicial procedures and decisions. Working for different types of courts also entailed an expertise in specific aspects and stages of the EAW procedure, such as EAWs issuing or executing procedure, the initial phase immediately after the arrest of the requested person, the validation hearing and the complaint mechanism before the Supreme Court of Cassation. This composite landscape of competences and expertise allowed the research team to have insights on all different parts and stages of the EAW procedure in the Italian judicial system.

Despite that the Covid-19 emergency is considered as officially concluded by the Italian authorities, all interviews were conducted via electronic means of communication: this choice made both interviewees and the interviewer more at ease and made the matching of working schedules far easier. The interviewer used electronic platforms to communicate and an external device to record the interview audio. All interviewees left their camera on to facilitate smoother communication resembling an ordinary face-to-face conversation. Moreover, using electronic means of communication allowed some interviewees to take part in the fieldwork while already on vacation.

○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

All interviews were conducted by the same interviewer and their preparation for the fieldwork mostly consisted in mapping all relevant legislation, policies and jurisprudence while elaborating the legal desk research requested by FRA. However, pilot interviews, as well as each interview conducted in the initial phase of the fieldwork were crucial to enrich the interviewer’s expertise in the thematic field of the research: it was therefore possible to point out points of view, criticisms and experiences shared by more than one interviewee and refer to them during the subsequent interviews to prompt the participants.

The selection of the sample did not present specific difficulties, as all participants were extremely keen at sharing their valuable professional experience. Moreover, the cooperation of UCPI relevantly enriched the research providing contacts of criminal lawyers with a solid expertise in international judicial cooperation, and EAWs in particular (both in their issuing and executing phases). The only issue worth mentioning concerns the timing of the fieldwork: many participants – belonging to both professional categories – stressed that June is an intense month for the judicial system since many proceedings need to be concluded or dealt with before the summer break. For this reason, some interviews had to be rescheduled more than once to best suit the participants’ busy work schedule. Moreover, the research team had to ask FRA to authorise a slight delay in the conclusion of the fieldwork since one of the judges was not able to participate before the beginning of July due to already-scheduled business travel.

○ **SAMPLE AND DESCRIPTION OF FIELDWORK**

Defence lawyers:

Requested: 5, completed: 5

Judges/prosecutors:

Requested: 5, completed: 5

Table 1: Description of the sample of professionals

Group	Expertise in EAW proceedings	Gender
Defence lawyer	Lawyer with a long-standing experience in this field and also a direct experience with dealing with EAW cases.	M
Defence lawyer	Criminal lawyer whose name was suggested by the National Association of Criminal Lawyers (<i>Unione Camere Penali Italiane</i> – UCPI).	M
Defence lawyer	Criminal lawyer whose name was suggested by the National Association of Criminal Lawyers (<i>Unione Camere Penali Italiane</i> – UCPI).	M
Defence lawyer	Lawyer with a long-standing experience in this field and also a direct experience with dealing with EAW cases.	M
Defence lawyer	Criminal lawyer whose name was suggested by the National Association of Criminal Lawyers (<i>Unione Camere Penali Italiane</i> – UCPI).	F
Prosecutor	Public prosecutor with a solid expertise in the functioning of the Italian criminal system.	F
Judge	Judge and Deputy Public Prosecutor, head of the group of judges in charge of criminal execution.	F

Judge	Judge of the Italian Supreme Court of Cassation.	M
Judge	Judge working for the Court of Appeals.	F
Judge	Judge of the Italian Supreme Court of Cassation.	F

The interviews lasted between 38 minutes and 72 with an average length of 55 minutes; these were conducted between April and July 2022. The atmosphere of the conversations was generally relaxed and the level of trust sufficiently high as to allow to collect relevant information and insights on the practical implementation of the EAW procedure in the Italian judicial system.

○ **DATA ANALYSIS**

The present country report was drafted following a qualitative and thematic analysis of the ten interviews carried out during the fieldwork.

The preliminary step of the analysis consisted of the revision of the legal desk analysis as to update it with the legal and technical information emerging from the interviews. The desk analysis was then distributed into the different thematic sections of the country report.

The proper analysis of the interviews followed a thematic approach, that is each thematic section was dealt with separately retrieving information from the ten interviews. It was crucial to always distinguish the experiences and points of views shared by defence lawyers, on the one hand, and judges/prosecutors, on the other, as they present relevant points of divergence. Moreover, possible territorial differences were also taken into account, as to point out where conclusions could be generalised at the entire national context and where they were site-specific.

In order to draft the conclusions and the executive summary – the two sections that were completed at the end – all thematic sections were considered together as to have a complete overview of the EAW system in Italy.

○ **BRIEF OVERVIEW OF THE REPORT'S CONTENTS**

The structure of the report accounts for the most crucial themes concerning procedural safeguards in the EAW procedures, as governed by the EU legislation, namely the Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, the Directive 2012/13/EU on the right to information in criminal proceedings and the Directive 2013/48/EU on the right to access to a lawyer in criminal proceedings and in the European Arrest Warrant proceedings, as well as the 2002 European Arrest Warrant ('EAW') Framework Decision.

Each section of the report provides an overview of the national legal framework and policies implementing the EU Directives and governing the specific procedural safeguard considered. Subsequently, the information emerging from the professionals participating in the fieldwork is reported and analysed, highlighting critical aspects, as well as strong points, good practices and suggestions of improvement. More specifically, the sections of the report focus on the right to information of people requested under an EAW issued and executed by Italian authorities; their right to interpretation and translation; and their right to legal assistance.

The two final sections focus on practical aspects of the EAW procedure. On the one hand, the practical aspects of the issuing and executing procedures are considered, still in the light of the protection of

the rights of requested persons. Eventually, the role of digitalisation and digital tools in the EAW procedure in Italy is analysed, taking into account the changes brought about by the Covid-19 pandemic.

The report is introduced by an Executive Summary which briefly summarises the main elements emerging from the fieldwork and the conclusions of the research. A concluding chapter is included at the end of the report, pointing out the main recurring themes of the interviews and an overall assessment of the level of safeguards for persons requested under an EAW issued or executed by Italian authorities. The conclusion also presents the most crucial critical aspects of the procedure, as well as the promising practices and the ways forward suggested by the professionals.

RESEARCH FINDINGS

1. Right to information

a. Legal overview

The Directive 2012/13/EU was implemented in Italy with the Legislative Decree No. 101 of 1st July 2014 on the right to information in criminal proceedings¹. The legislative text is extremely concise and was defined as a *low-profile* transposition of the Directive², since the Italian legislator barely reformed and integrated the existing legislative framework in order to comply with the minimum standards established by EU law. As far as the European Arrest Warrant (EAW) is concerned, Art. 2 of the Legislative Decree No. 101/2014 integrated Art. 12 of the Law No. 69 of 22 April 2005³ which had transposed in Italy the Council Framework Decision of 13 June 2002 on the European arrest warrant, and which has been recently reformed in 2021.

Art. 12 of the Law No. 69/2005 establishes that judiciary police officers have obligations to provide information at the moment of arresting a requested person in Italy. The requested person has the right to be informed, in a language they can understand, about:

- the existence of an EAW concerning them;
- the content of the EAW;
- the possibility to consent to surrender;
- the right to appoint a lawyer;
- the right to be assisted by an interpreter.

This information must be provided in **written form** – this is comparable to providing a Letter of Rights although this definition is not formally adopted by the Italian legislation – using a plain and precise language. This legislative disposition also states that – in case the requested person does not proceed in appointing an entrusted lawyer – judiciary police officers must immediately appoint a public defender, in compliance with Art. 97 of the Italian Criminal Procedure Code⁴.

The report of arrest (*verbale di arresto*) – to be drafted by police officers and signed by the arrested person – must include information about the fulfilment of the above-mentioned obligations to provide information, as well as of the procedures used to ascertain the persons' identity. Moreover, the name of the lawyer must be included in the arrest's written report. The report of arrest – which must be transmitted to the court validating the arrest and to the appointed lawyer – is not valid if all the requested information is not included.

The **speciality rule** is governed by Art. 26 of the above-mentioned Law No. 69/2005, as reformed in 2021. According to this legislative disposition, the surrender of the requested person by Italian authorities is always subject to the condition that the person is not prosecuted or deprived of their personal freedom for an act other than and prior to the offense for which the surrender was granted. The second paragraph of this disposition envisages exceptions to this general rule:

¹ [Decreto Legislativo 1° luglio 2014, n. 101](#), “Attuazione della Direttiva 2012/13/UE sul diritto all'informazione nei procedimenti penali”.

² Ciampi, S. (2014), “[Diritto all'informazione nei procedimenti penali: il recepimento low profile della Direttiva 2012/13/UE da parte del D.Lgs. 1° luglio 2014 n. 101](#)”, *Diritto Penale Contemporaneo*, 2014.

³ [Legge 22 aprile 2005, n. 69](#), “Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri”.

⁴ [Art. 97 Codice di Procedura Penale](#).

- the surrendered person, having had the opportunity, has not left the territory of the State to which they were surrendered within 45 days of their final release or, having left it, have voluntarily returned to it;
- the offence is not punished with deprivation of liberty;
- the criminal proceeding does not allow for a measure depriving the person of their personal freedom;
- the person is subject to a penalty or a measure not involving deprivation of liberty, including a fine, even though it may restrict their personal liberty;
- the requested person has consented to the surrender, as well as renounced the speciality rule;
- after being surrendered, the person explicitly renounced the speciality rule in relation to specific offences occurred prior to the surrender.

The **judicial authority competent for the execution of the EAW in Italy** is the President of the Court of Appeals of the judicial district where the requested person resides. The President of the court – or a deputy judge – must convene the hearing within 5 days from the execution of the arrest (Art. 10 of the Law No. 69/2005). The requested person must be accompanied by their lawyer (entrusted one or public defender). This hearing is a crucial moment in terms of the provision of information to the requested person. More specifically, the President of the court – or a deputy judge – is compelled to repeat some of the information already provided at the moment of the arrest, integrate it and ascertain whether the requested person is aware of the situation and of the purpose of the proceedings. Namely, during the hearing, the requested person must be informed – in a language they can understand – about:

- the content of the European arrest warrant and the procedure for its execution;
- the right to consent to surrender to the requesting judicial authority, and the consequent right to waive the benefit of not being subjected to further criminal proceedings,
- the right not to be convicted or otherwise deprived of their liberty for an offence committed prior to their surrender other than that for which the surrender was ordered.
- the fact that consent and renunciation, once given, are not revocable.

As for the **existing complaint mechanisms** at the disposal of the requested persons in case of violation of their right to information, it is worth stressing that the report of the arrest is a formal public act and, as such, can be challenged by the requested person and their lawyer before the competent judicial authorities. However, a distinction must be made concerning the type of nullity entailed by the omission in the respect of procedural safeguards of the requested person. The types of nullities are governed by Articles 177 – 180 of the Italian Criminal Procedure Code⁵, and can be classified in absolute, intermediate, and relative. The first type concerns those infringements of procedural safeguards and judicial rules – such as the composition of the court, the presence of the public prosecutor at trial, the presence of the defendant’s lawyer at trial, the communication of the hearing to the victim – that cannot be remediated and cause the invalidation of the proceeding from the moment the infringement took place. The second and third types can be remediated but not at all stages of the proceedings; moreover, relative nullities must be presented to the court by the defendant and cannot be identified *ex officio*. The absence of the lawyer at trial is a cause of absolute nullity of the proceeding; however, the lack of information provided to the defendant concerning the right to appoint a lawyer has been for a long time considered not a cause of absolute nullity of the arrest. Nonetheless, a decision of the Preliminary Investigation Court of Avezzano of 2012⁶ changed

⁵ Art. [177](#), [178](#), [179](#) e [180](#) Codice di Procedura Penale.

⁶ Trib. Avezzano, Giudice per le indagini preliminari (dott. Taviano), [ord. 2 gennaio 2012](#).

this jurisprudence, declaring the invalidation of the arrest's report because judiciary police officers had not proceeded in immediately appointing a public defender for the arrested person who had not appointed their own lawyer. This jurisprudence can be extended to all the obligations that the judiciary police officers must accomplish, according to the above-mentioned Art. 386 of the Italian Criminal Procedure Code. If this type of nullity is not detected by the public prosecutor or by the judge in charge of the first hearing – which can either be the Judge validating the arrest or the Court of Appeals – the defender can submit a report to the court, explaining the infringement of the defendant's procedural safeguards. In case of absolute nullities, this report can be filed at any stage of the proceeding.

b. Right to information in practice

- Provision of information

All participants in the fieldwork – pertaining to both professional categories – confirmed that **information on procedural rights is generally provided** to requested persons arrested in Italy due to the execution of an EAW issued by another EU Member State.

Information on procedural rights is generally provided at the first contact of the requested person with Italian public authorities, namely judiciary police officers performing the arrest. **The arrest of a requested person can happen in two different modalities**, as reported by several participants. The requested person can either be arrested during random police checks if an alert was inserted in the SIS-II database at the disposal of police authorities throughout Europe. Alternatively, the issuing authorities can indicate in the EAW form the precise address of the requested person if they are aware of this information.

A crucial information provision activity is also performed – according to several interviewees – by lawyers and by the judges in charge of the validation hearing (*udienza di convalida*), that is the hearing where the territorially competent court assesses whether the legal requirements for the arrest are respected.

As for the method of the provision of information, all participants reported that **a written information form** – comparable to the Letter of Rights – is provided to the requested person at the moment of the arrest. The form is generally available in at least three languages – Italian, English and French – as to ensure a sufficient level of comprehension. According to one of the lawyers, third-country citizens concerned by EAWs might not adequately understand any of these three languages: however, in the early stages of the EAW procedure – when the person is arrested – the police cannot count on the support of an interpreter who generally intervenes at the validation hearing.

According to some participants, the same information is also provided orally by police officers.

Some participants stressed that the information provision procedure used in EAW proceedings is almost identical to the one carried out in ordinary arrests in Italy.

"I would say that the person subject to an EAW is generally informed of their rights at the time of arrest. Although the particularity of the procedure represented by a European Arrest Warrant is not very often specified: this is not because of any bad will but because it is a procedure that is not so well known, especially by the police, in the first instance, and then by the prison officers who therefore limit themselves to handing over the paper without knowing in detail what the subsequent steps are and the faculties and rights granted to the citizen who is the recipient of the measure" (Lawyer, Italy)

“La persona sottoposta a MAE viene tendenzialmente informata dei suoi diritti al momento dell’arresto. Benché non sia molto spesso specificata la particolarità della procedura rappresentata da un mandato d’arresto europeo: questo non per una qualche cattiva volontà ma perché si tratta di una procedura non così conosciuta soprattutto dalle forze di polizia, in prima battuta, e poi dagli operatori penitenziari che quindi si limitano a consegnare il papiro senza sapere nel dettaglio quali siano poi i passaggi susseguenti e le facoltà e i diritti concessi al cittadino destinatario del provvedimento”

One of the participants – a public prosecutor – specified this is because the EAW’s executing procedure is governed by the law of the executing Member State (*lex fori* principle).

‘Police officers follow the same protocol as they do when executing a national pre-trial supervision measure in the sense that the procedure for executing the arrest is that of the lex fori basically, i.e. our Italian one. There are some additional guarantees that are provided by the text that transposed the directive on the European arrest warrant: therefore, even more in favour of the suspected or accused person in the foreign proceedings’. (Public prosecutor, Italy)

“Le forze dell’ordine seguono lo stesso protocollo che seguono quando eseguono una misura cautelare nazionale nel senso che la procedura di esecuzione dell’arresto è quella della *lex fori* sostanzialmente, quindi la nostra italiana. Vi sono delle ulteriori garanzie in più che sono previste dal testo che ha recepito la direttiva sul mandato d’arresto europeo: quindi, addirittura fosse il procedimento ancora maggiormente a favore dell’indagato o imputato nel procedimento straniero.”

A lawyer clarified that **the written form is not the same at national level**: each police headquarters has its own form; in some cases, the prosecutor’s office might develop a form to be used by all police officers working in the judicial district.

- Information about rights

Participants seemed to agree on which information is generally provided to the requested person at the moment of the arrest, as far as procedural rights are concerned. Most interviewees mentioned the right to appoint a lawyer; the right to have a public defender immediately appointed if they do not have an entrusted lawyer; the right to remain silent; the right to legal aid. Moreover, requested persons are generally informed that the hearing validating the arrest is to be held within 48 hours, as well as of the date of the hearing itself. All the information provided to the requested person, as well as the name of the appointed lawyer/public defender, are included in the arrest’s report and signed for acceptance by the arrested person: the report is then shared by police officers with the lawyer and the court in charge of the validation hearing.

Information concerning the **right to appoint a lawyer in the issuing State** seems not to be provided at the moment of the arrest, or in following steps of the procedure (this issue will be treated in further detail in the section of this report concerning the right to legal assistance).

“The only peculiarity of the notice in the European Arrest Warrant is that, under penalty of nullity, the judge should inform the person of the right to appoint a lawyer in the issuing Country. [...] This notice is often omitted by the judicial authority and this omission, unfortunately, is sanctioned very mildly, in the sense that it is a nullity which is then remedied, so that it has no consequences if the lawyer does not immediately tell the judge that they should have advised the person of the possibility of having a lawyer in the issuing country.” (Lawyer, Italy)

“L'unica peculiarità dell'informativa nel mandato d'arresto europeo è che, a pena di nullità, il giudice dovrebbe avvisare la persona del diritto di nominare un avvocato nel Paese di emissione. [...] Questo avviso spesso viene omesso da parte dell'autorità giudiziaria e questa omissione, purtroppo, è sanzionata in maniera molto blanda, nel senso che è una nullità che poi viene sanata; quindi, che non ha conseguenze se l'avvocato non dice subito al giudice che doveva avvisare la persona della possibilità di avere un avvocato nel paese di emissione.”

Table 2: Are persons arrested on an EAW informed about their procedural rights?

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Lawyer 5	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Total
YES	X	X	X	X	X	X	X	X	X	X	10
In writing (Letter of Rights)	X	X	X	X	X		X			X	
Orally	-	-									
In writing (Letter of Rights) and orally		-				X			X		
NO	-	-									
Don't know/rem ember	-	-									
Did not answer	-	-									10

- Information about the EAW – content and procedure

Information on the functioning of the EAW procedure seems not to be provided at the moment of the arrest, except for the generic mention to the existence of an EAW as grounds for the arrest itself. According to one participant – a judge working for the Supreme Court of Cassation – the requested person is shown at the moment of the arrest the EAW or the SIS-II alert justifying their arrest.

A lawyer suggested that the reason why information on the EAW procedure is not provided is that judiciary police officers performing the arrest do not know how it actually works.

A crucial role in providing information about the functioning of the EAW procedure and on its contents is reported to be played by **judges** – especially those in charge of the validation hearing – and by criminal **lawyers**.

The **validation hearing** – which is held within 48 hours from the moment the arrest is communicated by police officers to judicial authorities – seems to be a pivotal moment for the requested person to understand the procedure and the content of the EAW against them. During the hearing, the person must be always assisted by their lawyer and by an interpreter when needed.

Lawyers can help the requested persons have full access and comprehension of the judicial case that led to the issuing of the EAW. According to one of the participants – one of the judges – the requested person is provided by Italian public authorities with the EAW form, the foreign definitive sentence or judicial decree ordering the pre-trial custody in case of EAWs concerning ongoing investigations: the person – with the assistance of their lawyer – will consequently file a request to obtain full access to the judicial file concerning the case.

Table 3: Are persons arrested informed of the contents of the EAW against them?

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Lawyer 5	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Total
YES		X		X	X	X	X	X	X	X	8
In writing							X				
Orally		X		X	X					X	
In writing and orally						X			X		
NO	X		X								2
Don't know/remember											
Did not answer											10

- Information on consenting to surrender

Information on the possibility to consent to surrender and on the consequences of this choice, as well as on the meaning and impact of the speciality rule, is **never provided at the moment of the arrest** by judiciary police officers. The only exception in this respect is represented by a public prosecutor who reported that information on these aspects is immediately provided to the requested person – at the moment of the arrest – and further explained during the hearings by the competent courts.

In this respect as well, the **role of lawyers/public defenders and judges** of the validation hearing and of the Court of Appeals dealing with the case is key. This information is mentioned by 9 out of 10 participants to the fieldwork: this is way Table 4 reports that information on these aspects is generally provided; however, provision does not occur at the first contact of the requested persons with police officers, but rather in the subsequent phases before competent courts.

One of the lawyers expressed a strong criticism reporting that the information provided on these aspects is extremely concise and judicial authorities do not take the time that is needed to explain the procedure in detail and make sure the person actually understands. This is because EAW cases are considered by Italian judicial authorities as an annoying business, something that belong to other judicial systems that must be solved and get rid of as quickly as possible. In his experience, he never witnessed hearings where judicial authorities spent time explaining the requested person all the technical aspects of the EAW procedure, including the principle of speciality. This information is generally provided and explained by lawyers.

“The level of communication with the requested person is totally inadequate because the idea is that the judge can't wait to get rid of this package. For example, you are on holiday at Lake Garda, you are arrested at four o'clock in the morning because your name appears in the SIS II database, and in the meantime you are put in prison, where no one understands you, where you are unable to ask how to take a shower because no one speaks English, you are brought in your stinking shirt from two days before in front of a judge who is in a beastly hurry, who does not speak English. The interpreter is often another prisoner or, at best, a guy who has been a pizza maker in Germany, France, or England. The interview is conducted in a very bureaucratic manner. And legitimate questions - like what happened to me? What can I do? How can I contact my family? - are simply seen as a nuisance.” (Lawyer, Italy)

“Il livello di comunicazione con la persona sottoposta al MAE è del tutto insufficiente perché l'idea è che il giudice non vede l'ora di liberarsi di questo pacchetto. Per esempio, lei è in vacanza sul lago di Garda, viene arrestato alle quattro di mattina perché il suo nome figura nel SIS II e viene intanto messo in carcere, dove nessuno la capisce, dove non è in grado di chiedere come ci si fa una doccia perché nessuno parla inglese, viene portato con la camicia puzzolente di due giorni prima davanti a un magistrato che ha una fretta bestiale, non parla l'inglese. L'interprete è spesso un altro detenuto o, nella migliore delle ipotesi, un tizio che ha fatto il pizzaiolo in Germania o in Francia o in Inghilterra. L'intervista viene svolta in maniera molto burocratica. E le domande legittime – del tipo cosa mi è successo? Come faccio? Come posso contattare i miei familiari? – vengono semplicemente viste come un fastidio.”

Another lawyer relevantly reported that, in his experience, requested persons are never asked about their intention to renounce to the speciality rule.

It is worth stressing that the requested person’s **decision concerning their consent to surrender** must be formally communicated before the Court of Appeals and this cannot be revoked. The definitive nature of this decision makes the role of criminal lawyers of the upmost importance: it is crucial that people concerned by EAWs are properly informed about the functioning of these aspects and have clear and thorough understanding of the consequences of their decision.

Table 4: Are the requested persons informed about what consenting to their surrender entails?

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Lawyer 5	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Total
YES		X	X	X	X	X		X	X	X	8
NO	X	-									1
Don't know/remember	-	-					X				1
Did not answer	-	-									10

- Understanding of information

The requested persons' level of understanding of the information they are provided seems to be **influenced by many factors**, concerning both the requested persons themselves and the authorities they get in contact with.

One of the judges stressed that the level of understanding might depend on the one hand, on the **personal background of the requested person**, in terms of culture, education and acquaintance with legal issues – opinion shared also by a judge working for the Supreme Court of Cassation –, and, on the other hand, on the professional **expertise of the lawyers** in international judicial cooperation cases, especially in EAW procedures.

Other participants mentioned the **nationality** of the requested person as another relevant factor. Italian citizens – or people with a high proficiency in the Italian language – will generally have fewer difficulties in understanding the information they are provided by public authorities.

Comprehension might be also hindered by **the complexity of the judicial case originating the EAW** in the issuing State: this is especially because the EAW form transmitted to Italian authorities is concise and merely report the general features of the case.

“Understanding of the information provided by public authorities depends perhaps also on objective factors because sometimes it may also be that the incoming EAW describes perhaps the essential elements of the case. But if the events, for example, are particularly complex, e.g. the conduct or the offences for which the warrant was issued, the warrant does not describe all the proceedings from which the arrest warrant originated, but describes the essential things. It may be that in this summary work, sometimes indeed elements are left out that the authority issuing the warrant knows. [...] and so in that sense there might be a problem of full understanding of the facts in the sense that the person might say I don't understand why they are accusing me of this when I had said or done this other thing.” (Judge, Italy)

“La comprensione delle informazioni fornite dalle autorità dipende magari anche da fattori oggettivi perché a volte può anche essere che l'atto che arriva descriva magari le cose essenziali. Ma se le vicende, per esempio, sono particolarmente complesse, per esempio le condotte o i reati per i quali è stato emesso il mandato, nel mandato non è che si descrive tutto il procedimento dal quale ha avuto origine il mandato d'arresto, ma si descrivono le cose essenziali. Può essere che in questo lavoro di sintesi, a volte effettivamente magari vengano lasciati fuori degli elementi che l'autorità che emette il mandato conosce. [...] e quindi in quel senso ci potrebbe essere un problema di piena comprensione dei fatti nel senso che la persona potrebbe dire non capisco perché mi accusano di questo quando io avevo detto o fatto quest'altro.”

The assessment of the requested persons' level of understanding of the information they are provided is the aspect where **the opinions of the two professional categories most diverged**.

Judicial authorities – both prosecutors and judges – provided an overall positive assessment of the level of understanding of the information, stressing the crucial role they play when getting in contact with the requested persons.

Moreover, some of them shared their **practical strategies** to make sure that the person adequately understands their situation and the functioning of the proceeding, which mostly relate to the use of a plain language that allows to overcome the **technicalities of the legal language** that might be difficult

to understand by Italian citizens as well, as stressed by a public prosecutor. The same opinion was shared by another participant – one of the judges – who stressed the crucial role of lawyers in making this technical language understandable by the requested persons.

"It's obvious, there's no point in hiding here, the information notice is written in very legal terms. So in my opinion the person reading it certainly doesn't understand at first glance and then has to have it explained to them by someone who generally is the defender." (Judge, Italy)

"È ovvio, è inutile stare qui a nasconderci, l'informativa è scritta in termini molto legali. Quindi secondo me chi legge sicuramente non capisce di primo acchito e deve poi farselo spiegare da qualcuno che tendenzialmente è sempre il difensore."

"In my experience, when I have had this contact with people who have been arrested, I have always tried to simplify the message, which then means clarifying what the person is accused of, clarifying their rights from that moment on, and above all clarifying to be very careful when giving consent because this is irrevocable." (Judge, Italy)

"Nella mia esperienza, nel momento in cui ho avuto questo contatto con le persone arrestate, ho sempre cercato di semplificare il messaggio, che poi significa chiarire di che cosa è accusata la persona, chiarire i suoi diritti da quel momento in poi e appunto, soprattutto chiarire di fare bene attenzione a prestare il consenso perché questo è irrevocabile."

Comprehension difficulties caused by the technicalities of the legal language seem to primarily concern the meaning and functioning of the consent to surrender and of the speciality rule since – according to a judge – these are technical clauses that need to be carefully explained, especially when foreign citizens are concerned. According to the participant's experience, even interpreters might not be able to explain them and this might have an impact on the rights of the requested person.

"We – as judges – personally provide information concerning consent to surrender when we validate the arrest and always specify that the consent to surrender is irrevocable and explain - and this is the most difficult thing - what the principle of speciality means. And this is not easy to explain, it is not easy to understand for them [the requested persons] what the surrender limited only to the facts for which we are proceeding means. And normally we, when we proceed against foreigners who do not have a good knowledge of the Italian language, we have an interpreter present, but because the terms are very technical, even the interpreter himself has difficulty explaining and so I always try to say it in a very practical and concrete way." (Judge, Italy)

"Io o i miei colleghi diamo personalmente le informazioni riguardanti il consenso alla consegna quando procediamo alla convalida dell'arresto e specifichiamo sempre che il consenso alla consegna è irrevocabile e spieghiamo – ed è la cosa più difficile – cosa significa il principio di specialità. E questo non è facile da spiegare, non è facile comprendere per loro [le persone arrestate] cosa significhi la consegna limitata solo ai fatti per cui si procede. E normalmente noi, quando procediamo nei confronti di stranieri che non hanno una buona conoscenza della lingua italiana, abbiamo la presenza di un

interprete e però, essendo termini molto tecnici, anche lo stesso interprete ha difficoltà a spiegare e quindi cerco sempre di dirlo in modo molto pratico e concreto.”

Lawyers stressed that understanding is possible mostly thanks to the contribution of the entrusted lawyer/public defender. Comprehension of the functioning of the procedure would not be possible only based on the information provided by police officers and judicial authorities. For this reason, the expertise of the lawyer seems to be a crucial element impacting the adequate understanding of the requested person: according to one of the lawyers, judicial authorities often assume that both the requested person and their lawyer are aware of the meaning and functioning of the speciality rule; however, it is often not the case, especially when public defenders are involved. Lawyers are not always acquainted with EAW procedures and might have a generic expertise of the more technical details, such as the speciality rule.

“The information on consent to surrender and on the speciality rule that is provided is very generic, especially in relation to the principle of speciality. The simple question is asked [about the consent to surrender], in the sense that this question assumes that not only the arrested person, but also the lawyer knows the principle of speciality. And often this is not known by either the arrested person or the lawyer, especially by public defenders.” (Lawyer, Italy)

“Le informazioni che vengono date in relazione al consenso alla consegna e alla regola della specialità sono molto generiche, soprattutto in relazione al principio di specialità. Viene fatta la semplice domanda, nel senso che questa domanda ha come presupposto che non solo l'arrestato/a, ma anche l'avvocato conosca il principio di specialità. E spesso questo non lo conosce né l'arrestato/a, né l'avvocato, specialmente quelli nominati di ufficio.”

Eventually, two lawyers reported that the **2021 reform** of the legislation governing the EAW procedure in Italy had a negative impact on the requested person’s level of understanding of the procedure due to the speeding up of the execution of EAWs transmitted by other EU Member States.

“In February 2021, the Italian regulations changed drastically and became much simpler. This can also be seen from the amount of documentation that is transferred, which is far less and there is no longer even the obligation to transmit the judicial order that is the basis of the EAW. And so even the lawyer who deals with the matter immediately often does not have all the information available. The problem is also, of course that of the effectiveness of legal assistance.” (Lawyer, Italy)

“A febbraio 2021 la normativa italiana è cambiata drasticamente ed è andata molto semplificandosi. Lo si vede anche dalla quantità di documentazione che viene trasferita che è di gran lunga inferiore e non c'è più neanche l'obbligo di trasmettere il provvedimento che è alla base del MAE. E quindi anche il legale che si occupa nell'immediatezza della vicenda, spesso non ha tutte le informazioni a disposizione. Il problema è anche quello, ovviamente, della effettività dell'assistenza legale.”

c. Discussion of findings

Participants reported that requested persons arrested in Italy in the framework of the execution of an EAW are provided with information concerning their procedural rights. Information is generally provided by police officers conducting the arrest through a written form, available in Italian, English and French. The information provision activity is reported to be identical to the one in place for any

person arrested in Italy. Information concerning the possibility of appointing a lawyer in the issuing State – which is a peculiar aspect of the EAW procedure – seems to be not provided.

Requested persons might be informed by police officers, at the moment of the arrest, of the existence of an EAW against them. However, detailed information on the content and on the technical aspects of the procedure is generally provided by the lawyers or the court in the subsequent steps of the procedure. The role of lawyers and judges in ensuring the person's comprehension of their situation and on the functioning of the procedure is reported to be key by all participants.

EAW is described by many participants as a highly technical procedure, especially as far as the consent to surrender and the specialty rule are concerned. This feature might have an impact on the person's understanding: in this case as well, lawyers and judges relevantly contribute to the understanding process.

2. Right to interpretation and translation

a. Legal overview

The Directive 2010/64/EU was implemented in Italy with the Legislative Decree No. 32 of 4 March 2014⁷. This Legislative Decree reformed Art. 143 of the Italian Criminal Procedure Code⁸ on the right to interpretation and translation of fundamental judicial documents. This legislation applies to all criminal proceedings, including the issuing and execution of EAWs. Moreover, both judiciary police officers in charge of the arrest, the court in charge of the validation hearing and the Court of Appeals hearing the person are requested to provide information to the requested person in a language they can understand.

The need for interpretation is established once for all at the beginning of the proceeding (stage of arrest of the requested person) by judicial authorities in charge of that procedure, as established by Article 143, paragraph 4 of the Italian Criminal Procedure Code. Moreover, an interpreter has to be appointed even when police officers and judicial authorities know the language of the requested person. According to Article 143, paragraph 1 of the Italian Criminal Procedure Code, the cost of interpretation is borne by the State during all stages of the proceeding.

The requested person has the right to be assisted by an interpreter in all hearings before the court. Moreover, Art. 104 of the Italian Criminal Procedure Code⁹ rules that the assistance of an interpreter must be ensured also during all communication with the lawyer, both inside and outside the courtroom.

As per the types of documents that need to be translated, Article 143, paragraph 2 of the Italian Criminal Procedure Code includes a list of documents that have to be translated: notice of investigation, notice on the right to counsel, preliminary injunctions directly affecting the accused person (e.g. pre-trial detention), notice of completion of preliminary investigations, decrees scheduling the preliminary hearing and court summons, and judgments and criminal convictions.

⁷ [Decreto Legislativo 4 marzo 2014, n. 32](#), "Attuazione della direttiva 2010/64/UE sul diritto all'interpretazione e alla traduzione nei procedimenti penali".

⁸ [Art. 143 Codice di Procedura Penale](#).

⁹ [Art. 104 Codice di Procedura Penale](#).

The Italian Criminal Procedure Code does not include the hypothesis of oral translation. However, Art. 51-bis, paragraphs 2, 3, 4 of the Dispositions implementing the Criminal Procedure Code¹⁰ establishes that when there are special reasons of urgency and a written translation cannot be provided promptly, judicial authority shall order, by reasoned decree and if this does not prejudice the defendant's right of defence, the oral translation, also in summary form, drawing up at the same time a written report. This safeguard applies to judicial acts and documents whose translation is mandatory according to Art. 143 of the Italian Criminal Procedure Code.

As for the quality of interpretation, there are neither quality checks of interpretation/translation services during the proceedings, nor professionals being responsible for monitoring the interpretation/translation activity. Article 145 of the Italian Criminal Procedure Code¹¹ enumerates all the possible cases of challenge to an interpreter/translator: none of them include the mediocre quality of interpretation/translation. However, inadequate quality might be used as a ground to challenge the court judgment and invalidate the proceeding, as established by art. 178 of the Italian Criminal Procedure Code¹². This procedure, however, does not offer an immediate tool to protect the right to translation/interpretation but only permits to consider invalid the proceeding and start it again from the beginning. In most cases, anyway, the interpreter/translator is replaced when they do not comply with their assignments in accordance with the deadline, as established by Art. 147 paragraph 1 of the Italian Criminal Procedure Code¹³.

The Italian legislator has not identified any kind of remedy in the event of non-translation to guarantee the fairness of the proceedings. The only form of appeal expressly provided for by the national legislation is envisaged by Art. 143, paragraph 3 of the Italian Criminal Procedure Code which provides for the possibility for the non-native defendant to appeal, together with the judgment, against the reasoned decision by which the court refused the optional translation of certain documents. According to some experts¹⁴, the lack of effective remedies is the key factor compromising the right to interpretation and translation.

b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

All participants – both lawyers and prosecutor/judges – reported that the right to interpretation is **formally envisaged** by the in-force legislation and **guaranteed in practice** in Italy. As reported above, the legislative provisions ruling this procedural safeguard apply to all people involved in criminal proceedings, and therefore also to requested persons in EAW procedures.

The **first issue** to address is the **assessment** of the need for interpretation, that is the assessment of the level of expertise of Italian language of the requested person arrested in Italy.

A **preliminary assessment** is conducted by **judiciary police officers** performing the arrest: speaking with the requested person they can figure out whether they are able to sufficiently speak Italian or if they need linguistic assistance. According to a prosecutor, police officers might use a vehicular language – i.e., English or French – to communicate to the requested person if an interpreter of the

¹⁰ [Art. 51 bis Disposizioni di attuazione del codice di procedura penale.](#)

¹¹ [Art. 145 Codice di Procedura Penale.](#)

¹² [Art. 178 Codice di Procedura Penale.](#)

¹³ [Art. 147 Codice di Procedura Penale.](#)

¹⁴ Di Molfetta, E. (2019), “[La traduzione degli atti per lo straniero alloggiato: un diritto incompiuto tra incertezze legislative e resistenze giurisprudenziali](#)”, in *Diritto, Immigrazione e Cittadinanza*, Fascicolo n. 2/2019.

specific language spoken by the requested person is not immediately available. In some cases, police officers directly proceed in appointing the interpreter choosing from the list at the disposal of the court and of the prosecutor's office.

"The necessity of an interpreter is prima facie decided by the police because when they are faced with a person who does not speak Italian well, there is a very early stage in which they resort to a vehicular language, which could be a little French or a little English. [...] But immediately afterwards there is the appointment of the language interpreter". (Public Prosecutor, Italy)

"A valutare la necessità di un interprete *prima facie* sono le forze dell'ordine perché quando si trovano davanti una persona che non parla bene la lingua italiana magari c'è una primissima fase in cui si arrangia con una lingua veicolare di mezzo che potrebbe essere un po' di francese un po' d'inglese. [...] Però immediatamente dopo c'è la nomina dell'interprete della lingua".

"There is a slight difference between two types of procedures because the warrant can be executed because the issuing State sends it directly to the executing country: for example, a German authority says I know that XXX [the requested person] lives in Rome, in Via XXX [the address]. So, I send the arrest warrant saying the person lives in Rome, in Via XXX. But there is also the other procedure, that is when the authority issuing the warrant does not know where the person is and in that case there the difference is that this warrant is put into the Schengen Information System that the police know about and the person can also be found by chance by the police perhaps during a control. [...] As far as the understanding of the language is concerned, the first entity that can realise the ability to speak the language in that case may already be the police who activate the interpretation services and who inform the Court that the person does not speak Italian." (Judge, Italy)

"C'è una leggera differenza tra due tipi di procedure perché il mandato può essere eseguito sia perché lo Stato lo manda direttamente al Paese destinatario: per esempio, una autorità tedesca dice so che XXX abita a Roma, in via XXX Allora io mando il mandato d'arresto dicendo guardate che lui abita a Roma, in via XXX. Ma c'è anche l'altra procedura di quando l'autorità che emette il mandato non sa dove si trova la persona e in quel caso lì la differenza è che questo mandato viene messo nello Schengen Information System che la polizia conosce e la persona può essere trovata anche casualmente dalla polizia magari durante un controllo. [...] E a proposito della comprensione della lingua, il primo ente che si può rendere conto della capacità di parlare la lingua in quel caso può essere già la polizia che attiva i sistemi di interpretariato e che informa la Corte del fatto che la persona non parla italiano."

The assessment carried out by police officers is generally included in the arrest's report transmitted to **judicial authorities**: this assessment can either be confirmed or revised during the validation hearing. As confirmed by a prosecutor based, when the competent court receives the arrest's report, it is already informed about the language assessment and appoints an interpreter to be present during the hearing. The court might even ascertain the language the requested person speaks the best is a different one from the language pointed out by police officers: in this case, the interpreter can be replaced. According to one of the lawyers, the preliminary assessment carried out by police officers

generally is rough and superficial: it is the Court of Appeals – directly interacting with the requested person – that assesses the level of comprehension of the requested person during the first hearing, checking if this person can understand either the original language of the EAW's documents or the Italian translation or summary provided by Italian authorities. Concerns about the actual ability of police officers to carry out the preliminary assessment were expressed also by another lawyer who considers them unable for this task: in his experience, the assessment is generally carried out asking the person for their identity (name, surname and identity documents). The assessment is reported in the arrest's report and signed by the requested person who, consequently, certifies the understanding of the Italian language without properly understanding what is going on. The interviewee also stressed that only a small number of the judges double-check this assessment, and this often happens because the lawyer makes evident that the assessment conducted by the police was superficial and incorrect.

The **second issue** emerging from the fieldwork concerns the differences existing between interpretation provided at the **moment of the arrest** – that is when the requested person gets in contact with judiciary police officers – and the interpretation provided **during judicial hearings**. As a general remark, interpretation seems to be always guaranteed during judicial hearings, in all stages of the procedure since the validation hearing. During the arrest, the form listing procedural rights – that was described in the previous section – is provided in three languages (Italian, French and English); however, the presence of an interpreter in this phase seems to be not always guaranteed.

Thirdly, some interviewees – especially lawyers – critically commented on the **quality of interpretation**. It might be sometimes difficult to find an interpreter professionally speaking the language of the requested person, especially when local languages or dialects are concerned, as reported by a judge working for the Supreme Court of Cassation.

“In some cases, police officers proceed directly at the time of arrest to appoint an interpreter, but certainly their indications provide us [as judges] with elements to select an interpreter of that particular language. This is not always easy to do: especially for some African dialects it is a bit complicated to find an interpreter immediately. However, there is a list of interpreters available in all Courts of Appeal from which we can choose.”
(Judge, Italy)

“In alcuni casi procedono direttamente gli agenti di polizia al momento dell'arresto all'individuazione di un interprete, ma sicuramente le loro indicazioni ci forniscono [come giudici] elementi per individuare un interprete di quella lingua particolare. Questo non è sempre semplice da attuare: soprattutto per alcuni idiomi africani è un po' complicato trovare immediatamente un interprete. Però c'è in tutte le Corti d'Appello un elenco di interpreti a disposizione ai quali si attinge.”

One of the lawyers stated that the appointment system of interpreters is far from efficient: interpreters are informed about the necessity of their presence during the hearing; however, these interpreters are not specifically qualified in this kind of judicial procedures and are also **poorly paid by the State**. According to the experience of another lawyer, interpreters and translators receive EUR 15 gross during the first hour of work, and EUR 7 in the following hours: with these fees, it is impossible to have professional qualified interpreters.

Moreover, interpreters appointed by the court are often those available in the judicial district: they might be able to speak a vehicular language – such as French or English – but not necessarily the specific language of the requested person.

"The interpreter is informed of the need for their presence without any particular specification. They then attend the hearing, during which they are often a general, non-specialist interpreter. Moreover, it often happens that for all English-speaking countries there is and is considered more than sufficient someone who speaks English. In Turin, for example, it happens that a citizen originally from a Maghreb country is asked to interpret for a Nigerian or a Ghanaian and speaks to them in broken English. This does not facilitate understanding. All this is increased by the compression of time and the court's need to come fast to a decision and by the fact that the interpreter is paid ridiculously, like EUR thirty per hearing." (Lawyer, Italy)

"L'interprete viene avvisato della esigenza della sua presenza senza particolari specificazioni. Quindi assiste all'udienza nel corso della quale non di rado è un interprete come dire generico non specializzato. Inoltre, capita spesso che per tutti i paesi anglofoni ci sia e venga reputato più che sufficiente qualcuno che parli inglese. A Torino capita per esempio che un cittadino originario di un Paese del Maghreb venga chiamato a fare da interprete per un nigeriano o per un ghanese e che gli parli in un inglese maccheronico. Questo non agevola la comprensione. Il tutto incrementato dalla compressione dei tempi e dall'esigenza di rapidità della Corte e dal fatto che poi l'interprete viene retribuito in maniera ridicola, tipo trenta euro a udienza."

The poor quality of translation was mentioned by one of the lawyers as the most critical issue of the EAW procedure, compromising procedural rights of requested people. The problem concerns the inadequate quality and lack of qualification of the interpreters who often are other detainees or people with a generic knowledge of the language who are often unable to explain the meaning of technical judicial terms and concepts.

"Also keep in mind that language assistance is a problem that threatens to blow up this entire system. I hope that eventually Italy will really end up under infringement proceedings, because we have never seriously implemented Directive 2010/64/EU, which is a pre-right. If the judge doesn't take the time to explain, if the interpreter is not qualified [...] if the interpreter doesn't know what the principle of speciality is, how can they translate it to the person?" (Lawyer, Italy)

"Tenga anche presente che l'assistenza linguistica è un problema che rischia di far esplodere tutto questo sistema. Spero che prima o poi l'Italia ci finisca davvero sotto procedura di infrazione, perché non abbiamo mai implementato in maniera seria la Direttiva 2010/64/UE che è un pre-diritto. Se il giudice non si prende il tempo di spiegarmi, se l'interprete non è qualificato [...] se l'interprete non sa cosa sia il principio di specialità, come fa a tradurglielo alla persona?"

As for the **means**, all interviewees reported that interpretation is provided by the interpreter in person, without using digital tools and devices. During the **Covid-19 emergency** some experimental attempts to use technologies in this field were introduced, but quickly abandoned when the ordinary judicial activity was resumed. During the pandemic, videoconference techniques were used during judicial hearings, with the requested person, their lawyer and the interpreter connected via online platforms. The possibility was ensured during the hearing for private consultations between the requested person and the lawyer, with the assistance – when needed – of the interpreter.

“We only used digital tools during the pandemic period. As soon as the emergency was over, everything went back to presence, so we no longer had these problems. Before, it was done with the tools we had, i.e. there was a computer with which the interpreter connected. We were all connected together, so everyone could speak and there was the possibility of letting the person speak confidentially with the defender and if necessary, in the presence of the interpreter.” (Judge, Italy)

“Abbiamo usato i metodi informatici solo nel periodo di pandemia. Appena terminata l'emergenza tutto è tornato in presenza, quindi non abbiamo più avuto questi problemi. Prima si faceva con gli strumenti che avevamo, cioè c'era un computer con cui l'interprete si collegava. Eravamo tutti collegati insieme, quindi, ognuno poteva parlare e c'era la possibilità di lasciare parlare riservatamente la persona con il difensore e se necessario, alla presenza dell'interprete.”

Most interviewees welcomed the **abandon of digital tools** as a way to better support the requested person and protect their procedural rights. For instance, one of the lawyers reported that during the Covid-19 emergency – when judicial hearings were often conducted via videoconference - the communication between the requested person and the interpreter also happened via phone call: the quality of the interpretation was sometimes compromised by the efficiency of the digital tool used (for instance, the quality of the Internet connection in the courtroom and/or in the detention facility). The EAW procedure necessarily requires the physical presence of the requested person in the courtroom, so there is no need to provide the interpretation using digital tools, as mentioned by one of the judges.

It is worth reporting that one of the lawyers – despite not encouraging an increase in the use of digital tools – suggested that this could be useful to cope with the shortage of qualified interpreters in the Italian judicial system. This is also because – when an interpreter is not available - lawyers often manage to communicate with the requested persons using English: however, some concepts can be quite technical – such as the consent to surrender or the speciality rule – and an interpreter speaking the same language as the requested person would be needed to make sure that the person actually understands all the steps of the proceeding, even if the support is provided digitally.

- Translation of documents

Participants in the fieldwork commented which judicial documents and acts are translated in practice in a language the requested person can understand.

These include:

- the title of the custody measure adopted in the executing Country and justifying the arrest
- the information-provision form listing the procedural rights provided at the moment of the arrest. However, as reported in the previous section, some interviewees reported that the rights form is generally available in Italian, English and French, that is in vehicular languages
- The Court of Appeals' decision concerning the execution of the EAW is read by the court during the hearing and translated by the interpreter orally. The formal written translation of the court's decision can be requested by the person through their lawyer
- A summary report of the judicial case in the issuing Country that led to the issuing of the EAW (this document was mentioned by some participants, such as one of the lawyers)

- The alert in the SIS-II database justifying the arrest of the requested person. In this respect, one of the lawyers mentioned a case of violation of the right to translation: the case concerned a person she assisted who was arrested due to an alert in the SIS-II database; the alert was in English and the EAW form was not translated into Italian and so she filed a formal request to the court to have these documents translated into Italian and easily obtained the official translation.

As for the **EAW itself**, it is generally translated from the language of the issuing Country into the one of the executing County. The EAW's form is therefore transmitted to Italian authorities in Italian. Moreover, the issuing authority is not requested to send – and translate – the **entire case file**. The case file can be requested by the executing authority in case the information provided in the EAW form is not clear enough and/or by the requested person and their lawyer. The 2021 legislative reform of the Italian EAW legislation is reported to have negatively influenced this possibility: one of the lawyers commented that the reform reduced the time available to judicial authorities to conclude the procedure, thus making it more difficult to translate the file for the requested person who often relies on a summary description made by the lawyer.

"The documents that are attached to the EAW always include the internal order of the issuing State and often a report on the facts charged. And having the report translated is not easy because it is time-consuming. Before the reform there was time. Now, with the tighter timeframe, it is much more complicated [...] I have to say that it is also true that not all requested people ask exactly what the supporting documentation is and therefore they trust the defender." (Lawyer, Italy)

"Ai documenti che vengono allegati al mandato c'è sempre l'ordinanza interna dello Stato richiedente e spesso una relazione sui fatti addebitati. E avere la traduzione della relazione non è semplice perché comporta una perdita di tempo. Prima della riforma il tempo c'era. Adesso, con i tempi più ristretti, è molto più complicato [...] Devo dire che è anche vero che non tutte le persone chiedono esattamente qual è la documentazione a supporto e quindi si fidano del difensore."

One of the judges, reported that the EAW form is translated in a language the requested person can understand.

Oral translation during the hearing was mentioned by some interviewees as a method that often replaces the official written translation of judicial documents. One of the lawyers reported that the documents relating to the EAW proceeding are generally summarised by the Court of Appeals during the hearing and translated by the interpreter assisting the requested person.

- Interpretation of consultations with lawyers

All participants – pertaining to both professional categories – reported that **interpreters are never provided** by State authorities to support the requested person in their consultations with the lawyer. If an interpreter is needed, they must be provided for by the requested person or their lawyer; the **cost of the interpretation** is therefore borne by the requested person themselves (unless they are eligible for free legal aid).

"The presence of the interpreter is guaranteed before the judicial body, in this case before the Court of Appeal. But if I then go to prison to talk to the requested person and this person does not speak my language, unfortunately it is very complicated because either the conditions for legal aid are met and at that point, I can appoint an interpreter, but otherwise the person has to pay for the interpreter." (Lawyer, Italy)

“La presenza dell'interprete viene garantita davanti all'organo giudiziario, in questo caso davanti alla Corte d'appello. Ma se poi io vado in carcere a parlargli e questa persona che non parla la mia lingua, purtroppo è molto complicato perché o ricorrono le condizioni per il patrocinio a spese dello Stato e a quel punto posso nominare un interprete, ma diversamente l'interprete deve pagarselo la persona.”

This situation glaringly entails a **class divide**, with wealthy requested persons being able to financially sustain the cost of an interpreter. According to one of the lawyers, the costs of the interpreter assisting the lawyer must be often anticipated by the lawyers themselves as they generally pay and are then refunded when the free legal aid is paid by the State.

For this reason, **strategies** are adopted by lawyers to communicate with their clients. These include the use of vehicular languages; resorting to other inmates – in case the requested person is detained in Italy pending the execution of the EAW – who can help in the communication.

“La presenza di un interprete durante i colloqui con l'avvocato non è prevista a meno che non se lo paghi la persona interessata. Ma diciamo che oramai i difensori, quasi tutti, riescono in qualche modo a parlare con i loro clienti perché un base di inglese più o meno ce l'hanno. E poi magari si tratta di persone che hanno vissuto in Italia; quindi, in qualche modo l'italiano lo parlano.”

“The assistance of an interpreter during the consultations with the lawyer is not guaranteed unless the person concerned pays for it. But let's say that by now the defenders, almost all of them, manage in some way to talk to their clients because they have a base of English more or less. And then maybe the requested persons have lived in Italy, so in some way they speak Italian.” (Judge, Italy)

Moreover, in case the requested person is detained in prison, the presence of an interpreter must be always authorised by the detention facility's administration.

An **exception** to this general opinion was expressed by a public prosecutor who reported that State authorities make available an interpreter to be used during consultations with the lawyers, also stressing that lawyers generally resort to their own interpreters, rather than using those made available by judicial authorities.

It is eventually worth stressing, that this section only refers to consultation with the lawyers that occur outside the courtroom. In fact, **during the hearings** the presence of an interpreter is always ensured. The requested person has the right to communicate with their lawyer at any time during the hearing: in that case, the communication will be assisted – when needed – by the interpreter participating in the hearing.

c. Suggestions for improvement of the interpretation/translation system

The poor quality of interpretation and the unavailability of interpreters in the initial stage of the EAW procedure – that it during the arrest phase – was mentioned by several participants in the research. One of the lawyers suggested that an additional standard form should be introduced – available in many different languages – where the procedural rights and the functioning of the EAW procedure (including the meaning of the speciality rule) is explained. This form could be delivered to the requested person at the moment of the arrest, as to ensure an adequate comprehension of the situation and functioning of the procedure even if an interpreter is not immediately available.

d. Discussion of findings

The right to interpretation is guaranteed by in-force legislative provisions for all defendants involved in criminal judicial proceedings in Italy, including EAW proceedings. The assessment about the need for interpretation is preliminarily conducted by judiciary police officers at the moment of the arrest: according to some participants, this assessment is often generic and rough. This assessment is communicated to judicial authorities for the definitive assessment.

Interpreters – who generally interact in person with the requested person, without the use of digital tools – are always present during judicial hearings, at any stage of proceeding. Some participants criticised the lack of expertise and qualifications of the interpreters who are also paid very low fees for their work. Interpreters are, on the opposite, never provided for the consultations between lawyers and requested persons that occur outside the courtroom (e.g., in detention facilities). The assistance of an interpreter would be in these cases paid by the requested person themselves.

Written translation of documents seems to be provided only for specific and limited judicial documents, such as the act deciding pre-trial custody measures. Some participants reported that – due to the reduced length of the EAW procedure – oral translation at courtroom is often privileged: this is the case, for instance, of the Court of Appeals’ decision concerning the execution of the EAW which is generally read aloud by the judge and orally translated by the interpreter to the requested person.

3. Right to access to a lawyer

a. Legal overview

The Directive 2013/48/EU was transposed in Italy with the Legislative Decree No. 184 of 15 September 2016¹⁵. This is an extremely concise legislative document made of five articles: Art. 1 enunciates the subject of the legislative innovation and Art. 5 states that the implementation of the Act would not entail an additional burden on the State’s budget. The substantial content of the Act reforms the Italian Criminal Procedure Code and the above-mentioned Law No. 69/2005 – governing the EAW procedure in Italy – setting the rules for the right of legal assistance in the context of EAW proceedings.

As described above, Art. 12 of the Law No. 69/2005 establishes that judiciary police officers executing the EAW – under the authorisation of the Court of Appeals – have the obligation to inform the requested person of the right to appoint a lawyer. This legislative disposition also states that – in case the requested person does not proceed in appointing an entrusted lawyer – judiciary police officers must immediately appoint a public defender, in compliance with Art. 97 of the Italian Criminal Procedure Code. The possibility to appoint a public defender in Italy is ensured to all requested persons arrested abroad as a result of an EAW issued by Italy, as stated by Art. 29, paragraph 4 of the Dispositions implementing the Italian Criminal Procedure Code.¹⁶

The right to appoint and be assisted by a lawyer in all stages of the proceeding, including police questioning – governed by Art. 364 of the Italian Criminal Procedure Code¹⁷ – is extended to requested

¹⁵ [Decreto Legislativo 15 settembre 2016, n. 184](#), “Attuazione della direttiva 2013/48/UE, relativa al diritto di avvalersi di un difensore nel procedimento penale e nel procedimento di esecuzione del mandato d'arresto europeo, al diritto di informare un terzo al momento della privazione della libertà personale e al diritto delle persone private della libertà personale di comunicare con terzi e con le Autorità consolari”.

¹⁶ [Art. 29 Disposizioni di attuazione del Codice di Procedura Penale](#).

¹⁷ [Art. 364 Codice Procedura Penale](#).

persons in EAW proceedings, thanks to the reform introduced by the above-mentioned Legislative Decree No. 184/2016. Once a lawyer has been appointed, the requested person has an absolute right to meet their own lawyer at any time. The lawyer has the right of access to their client's place of detention during the entire proceeding.

Moreover, according to Art. 9, paragraph 5-bis of the above-mentioned Law No. 69/2005, the requested person must be informed by judiciary police officers notifying the EAW about the right to appoint a lawyer in the issuing State. The President of the Court of Appeals competent to deal with the EAW in question is requested to inform the issuing State about the decision of the requested person to appoint a lawyer in the issuing State.

Generally, the costs of the legal assistance are borne by the defendant: in case of EAW proceedings, by the requested person. However, free legal assistance is ensured to defendants whose annual income is lower than a threshold established by the State. By formally filing a request to the court, the defendant can benefit from free legal assistance and this possibility applies to both entrusted lawyers and public defenders. The rules governing free legal assistance are provided by the Decree of the President of the Italian Republic No. 115 of 30 May 2002¹⁸. The Legislative Decree No. 24 of 7 March 2019¹⁹ transposed in Italy the Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. Thanks to this legislative innovation, free legal aid is ensured to requested persons subject to an EAW in both passive and active surrender procedures, that is irrespective of whether Italy acts as the executing or the issuing State: before the reform, the possibility of legal aid was not explicitly envisaged in EAW proceedings but only in internal criminal proceedings.

Cooperation between lawyers dealing with EAW cases in different EU Member States is not regulated by the Italian legislation, nor by specific guidelines issued by governmental authorities. However, Italian criminal lawyers have attempted or participated in international initiatives aimed at fostering this cooperation. This is the case of the “PenalNet: secure e-communication in Criminal Law Practice (PN)” project.²⁰ This project was aimed at the creation of an online platform for a secure exchange of documents between criminal lawyers in the EU: a possibility that is pivotal in EAW proceedings. The project – started back in 2007 – had an official website which is no longer available.²¹

The right to information and the right to be assisted by a lawyer are guaranteed by the Italian legislation and, as such, represent an obligation for all public authorities, including judiciary police officers and prosecutors. A violation of these rights represents a cause for the invalidation of the act (in the case of the report of arrest drafted by police officers) or of the entire proceeding (in the case where the requested person is not assisted by a lawyer). These violations can be challenged by the requested person and their lawyer before the Court of Appeals competent for the EAW proceeding in

¹⁸ [D.P.R. 30 maggio 2002, n. 115](#), “Testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia”.

¹⁹ [Decreto Legislativo 7 marzo 2019, n. 24](#), “Attuazione della direttiva (UE) 2016/1919 del Parlamento europeo e del Consiglio, del 26 ottobre 2016, sull'ammissione al patrocinio a spese dello Stato per indagati e imputati nell'ambito di procedimenti penali e per le persone ricercate nell'ambito di procedimenti di esecuzione del mandato d'arresto europeo”.

²⁰ Information on this project is available at the [website](#) of the European Commission.

²¹ No information on the outcome and/or continuation of this project is available online. However, in this 2015 [brochure](#) released by ERA it is stated that the Penalnet pilot project was meant to be extended to further national Bars, however, at the moment the brochure was drafted, there was no information available if this extension will actually take place.

question, in compliance with Articles 178²² and 179²³ of the Italian Criminal Procedure Code. As described previously, the violation or delay to the right to be legally represented in all judicial proceedings is a cause of absolute nullity of the proceeding itself: this violation can be put forward at any stage of the proceeding by the prosecutor, the court itself and by the defendant/requested person with their lawyer.

Table 5: Dual representation (in law)

Does the law of the executing MS foresee that the person arrested has a right to have the assistance of a lawyer in the issuing Member State and informed of this right?		
Country: Italy	YES X	NO

Table 6: Cost-free legal assistance (in law)

Free of cost lawyer provided in law	When your country is an executing State	When your country is an issuing State (e.g. to assist the lawyer in the executing State)
Country: Italy	YES	NO

b. Right to access to a lawyer in practice

- Information about legal assistance (including on dual representation)

As discussed in the section on the right to information, a requested person arrested in Italy is informed about their right to legal assistance by **judiciary police officers at the moment of the arrest**. Information on this right is included in the **written form** provided to them – often in three languages, i.e. English, French and Italian – at the first contact with police authorities.

More specifically, the form generally includes information on the right to legal defence and on the right to free legal assistance. The arrest’s report – drafted by the officers and transmitted to the validation hearing court and to the appointed lawyer – must include the name of the lawyer. This can either be an entrusted lawyer – if the requested person already knows one – or a public defender. Public defenders are criminal lawyers included in specific lists of professionals at the disposal of the local judicial district: public defenders are directly appointed by judicial authorities in charge of the EAW case. In any case, the arrest phase cannot be concluded if a lawyer has not been appointed since legal assistance is compulsory in Italian judicial proceedings. The **judges** in charge of the validation hearing – that receive the arrest’s report transmitted by judiciary police officers – must always check that the requested person has appointed a lawyer and that the defender is present during the hearing.

According to the participants, **information concerning the right to dual representation is generally not provided** to the requested person. The only professional who explicitly reported that this information is generally provided – one of the lawyers – also stressed that this right is nonetheless not enforced in practice:

²² [Articolo 178 Codice di Procedura Penale.](#)

²³ [Articolo 179 Codice di Procedura Penale.](#)

“At the level of information, this is provided, i.e. the requested person is informed of the fact that they have the right to have a lawyer in both countries, i.e. the issuing State and the executing State. Then from giving the information to actually guaranteeing this right, in my opinion there is a sea in the middle. Because, in most of the cases I have dealt with, the fact of being able to find a lawyer in the other country is left either to the requested person themselves who perhaps already has contact in that other country with a lawyer and contacts that lawyer also through relatives who are often fundamental in this phase; or thanks to the same lawyer in the State where they are arrested. [...] that is to say, it never happens that information moves on to giving specific directions on how to find a lawyer.” (Lawyer, Italy)

“A livello di informativa, questa viene data cioè il soggetto viene informato del fatto che ha diritto ad avere un difensore in entrambi i paesi, quindi lo Stato che emette e lo Stato che esegue. Poi dal dare l'informazione al garantire effettivamente questo diritto, secondo me c'è di mezzo il mare. Perché, nella maggior parte dei casi di cui mi sono occupata, il fatto di poter trovare un avvocato nell'altro paese è rimesso o al soggetto stesso che magari ha già un contatto in quell'altro paese con un avvocato e si rivolge a quell'avvocato anche tramite i parenti che spesso sono fondamentali in questa fase; oppure grazie allo stesso avvocato nello stato in cui viene arrestato. [...] cioè non succede mai che dalle informazioni si passi proprio al dare indicazioni specifiche su come trovare un avvocato.”

Table 7: Are persons informed of their right to access a lawyer?

	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Lawyer 5	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Total
YES	X	X	X	X	X	X	X	X	X	X	10
In writing	X	X	X	X	X		X			X	
Orally											
In writing and orally						X			X		
NO											0
Don't know/remember											
Did not answer											

Table 8: Information on dual representation, interview findings

Are persons arrested on an EAW informed by authorities on their right to have the assistance of a lawyer in the issuing Member State?											
	Lawyer 1	Lawyer 2	Lawyer 3	Lawyer 4	Lawyer 5	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Total
YES					X						1
NO		X	X								2

Don't know/remember							X				1
Did not answer	X			X		X		X	X	X	6

- Legal assistance in executing State (access, consultations, lawyer's tasks)

All participants reported that **legal assistance provided to requested person in Italy is in practice identical to the one provided to any defendant involved in criminal judicial proceedings**. In fact, requested persons have the right to immediately appoint a lawyer or to be appointed a public defender if they do not have an entrusted one. Judicial hearings cannot be held without the presence of the lawyer and the requested person can at any time confidentially consult the lawyer. Moreover, consultations with the lawyer must be guaranteed even if the requested person is held in pre-trial custody pending the execution of the EAW against them.

Despite the type of legal assistance being identical to that of other defendants, some shortcomings of the Italian judicial system can impact requested persons more. For instance, one of the lawyers reported that when the requested persons are detained pending surrender, communication with their lawyers becomes a sensitive and complicated issue. Before the **Covid-19 emergency**, lawyers could easily visit defendants – including persons subject to an EAW – in detention facilities. However, during the emergency, lawyers could not enter detention facilities. Some of these facilities sub-contracted cooperative societies or associations to provide an email service to the detainees that could be used to communicate with lawyers and families. However, the service was subject to a strict regulation that made communications slow and complicated. Moreover, some detention facilities activated a virtual call system: this system as well, though, was subject to strict rules that are different depending on the specific detention facility. These difficulties had a severe impact on EAW proceedings because **the timeframe of the procedure is extremely tight** and the requested person and their lawyer need to communicate rapidly.

Another aspect of legal assistance that is far more complicated when requested persons are concerned is their **relationship with their family members**, which can prove crucial in shaping the legal defence. One of the lawyers stressed that requested persons have the right to be visited by their families during the detention period; however, family members must file several documents proving their relationship with the requested person and their residency. The role of the lawyer in EAW proceedings also entails communication and explanations to the requested persons and their families concerning the functioning of judicial and administrative procedures in Italy, which is generally less frequently needed in ordinary judicial proceedings or when dealing with Italian defendants/requested persons.

Some participants stressed **aspects of legal assistance that are specific of the EAW procedure**. For instance, one of the judges stressed that – differently from ordinary criminal judicial proceedings – **Italian judicial authorities** competent for the specific case **are not provided with the entire casefile** by the issuing authorities: due to the principle of mutual recognition, only the EAW form must be shared with the executing judicial authorities. Because of this, lawyers do not have full access to the entire casefile and, consequently, they can count on less elements to shape their defence strategy. The entire casefile can be obtained only after lodging a formal request to the judicial authorities in charge of the case: however, this procedure can take a long time and cannot be carried out in time for the initial hearings of the proceeding.

“Legal aid in EAW proceedings is absolutely identical to ordinary legal aid. The specificity of the EAW is that very often the defence counsel, but also the judge, has very few elements on which to base their decision for the judges, and their defence for the defence counsel, and therefore it is an initial assessment on the basis of the scanty documents that are sent and then subsequently acquired.” (Judge, Italy)

“L’assistenza legale è assolutamente identica a quella ordinaria. La specificità del MAE è che molto spesso il difensore, ma d’altronde anche il giudice, nell’immediatezza ha pochi elementi su cui fondare la propria decisione per il giudice, la propria difesa per il difensore e quindi si tratta di una valutazione iniziale sulla base degli scarni atti che ci sono e che poi successivamente vengono acquisiti.”

Eventually, another element emerging from the interviews with criminal lawyers concerns the **crucial impact of the defence lawyers’ expertise** on the quality of the legal assistance provided. EAW proceedings – as it is the case of extraditions proceedings – require a specific expertise which must include a deep knowledge of national, EU and international legislation and jurisprudence. These issues are not necessarily included in the compulsory training provided to lawyers and judges. The lack of specific expertise can negatively impact the quality of the assistance provided to the requested person and their procedural rights. The lawyer’s role in explaining the functioning of the procedure, the importance and consequences of consent and the content of a judicial case decided in another EU Member State is crucial. Lawyers who have a generic expertise and who cannot understand other languages are often not able to handle this type of proceedings. According to one of the lawyers, the same applies to judicial authorities who might be not acquainted with EAW proceedings and not aware of the jurisprudence of the Court of Justice of the EU and of the ECHR.

“In Rome, for example, we have a specialised section of judges in the sense that there is a section dedicated to the EAW and therefore they are very familiar with these procedures, even though there too, paradoxically, we can find judges who do not know foreign languages and consequently do not know case law written in another language, starting with those of the State requesting a European arrest warrant. It is essential to know the judgments of the Court of Justice, but those are also translated into Italian, and the judgments of the European Court, which are not always, indeed almost never, translated into Italian.” (Lawyer, Italy)

“A Roma, per esempio, abbiamo una sezione specializzata di magistrati nel senso che c’è una sezione dedicata al MAE e quindi sono molto avvezzi a queste procedure, anche se poi pure lì possiamo trovare paradossalmente magistrati che non conoscono lingue straniere e conseguentemente non conoscono sentenze scritte in altra lingua, a partire da quelle dello stato di richiesta di un mandato di arresto europeo. È fondamentale conoscere le sentenze della Corte di Giustizia, che però quelle vengono anche tradotte in italiano, e le sentenze della Corte europea che non sempre, anzi quasi mai vengono tradotte in italiano.”

Moreover, lawyers who are used to work on this type of proceedings can generally count on a network of criminal lawyers in EU Member States, thus easing the cooperation between lawyers which is crucial in EAW proceedings. According to some of the lawyers participating in the fieldwork, entrusted lawyers are generally more expert in this kind of technical procedures, compared to public defenders.

"Public defenders are often inadequately trained. Because at university there is not a compulsory course in international judicial cooperation. And when you become a public defender, you follow a course that provides little training. [...] I know many colleagues who are public defenders in international judicial cooperation who do not speak a foreign language and therefore have no contact with their client except for a very brief contact with the interpreter just before the hearing. And that is effectively denying an effective defence." (Lawyer, Italy)

"Gli avvocati d'ufficio che normalmente sono spesso non adeguatamente preparati. Perché all'università non c'è la materia obbligatoria in cooperazione giudiziaria internazionale. E quando si diventa difensore d'ufficio si segue un corso che prevede una formazione molto ridotta. [...] Conosco moltissime colleghe e colleghi che fanno difensore d'ufficio in cooperazione internazionale che non parlano una lingua straniera e quindi non hanno nessun contatto con il proprio assistito se non quello brevissimo con l'interprete poco prima dell'udienza. E vuol dire di fatto negare una difesa effettiva."

Other interviewees stressed that this type of expertise depends on the professional path of the lawyer, regardless of if they are assisting the requested person as an entrusted lawyer or as public defender.

"Legal assistance is entirely different because when we talk about the EAW it means that there is a competence that relates to European Union law [...] this legislation has then often been authentically interpreted by the European Court of Justice and judges are not always informed and neither are lawyers who are simply registered on the lists of public defenders. And so the lawyer must be familiar with what the European Union says, they must be familiar with the EAW legislation and the subsequent directives which even if they are not directly related to the EAW but may be an appendix to it." (Lawyer, Italy)

"L'assistenza legale è del tutto differente perché quando si parla di MAE vuol dire che viene in essere una competenza che riguarda il diritto dell'Unione Europea [...] questa normativa è poi stata spesso interpretata in modo autentico dalla Corte di Giustizia europea e non sempre i magistrati sono informati e figuriamoci poi gli avvocati che sono semplicemente iscritti nelle liste dei difensori di ufficio. E quindi l'avvocato deve conoscere il detto l'Unione europea, deve conoscere la normativa MAE e le direttive successive che anche se non sono direttamente collegate al MAE ma ne possono essere un'appendice."

Table 9: Facilitating dual legal representation, interview findings (executing MS)

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing? (When your country is an executing State)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1		X	
Lawyer 2		X	
Lawyer 3		X	
Lawyer 4		X	
Lawyer 5		X	
Judge 1		X	

Judge 2		X	
Judge 3		X	
Judge 4		X	
Judge 5		X	
Total		10	

- Legal assistance in issuing State (access, consultations, lawyer’s tasks)

All participants reported that **Italian legislation does not intervene** in the type and quality of legal assistance provided to the requested person in the issuing Country. This aspect is entirely governed by the **legislation in force in the EU Member State that issued the EAW**. In fact, the proceeding in place in the issuing State and the EAW’s execution are two completely different proceedings: Italian authorities must only ensure that the requested person is legally assisted in Italy; when the person is surrendered, they will resort to legal assistance in the issuing State. This is because the EAW system is based on the mutual trust between EU Member States: authorities in the executing States assume that procedural safeguards – including legal assistance – are generally respected in all EU Member States.

A prosecutor stressed the importance of the **type of EAW issued**. In EAW proceedings concerning definitive judicial sentences, the legal assistance of the requested person in the issuing State is considered less relevant and there might not even be a defender in the issuing State since the original proceeding has been concluded. On the contrary, where the EAW concerns ongoing judicial proceedings, all procedural safeguards must be guaranteed in the executing State, including the appointment of a lawyer. Once the person is surrendered to the issuing State, it is an obligation of that State’s authorities to ensure adequate protection of these safeguards in their turn.

The complete separation of legal assistance systems in the two countries could **compromise the effective protection of the requested person’s procedural rights**. As stressed by one criminal lawyer, while the appointment of a lawyer is mandatory in Italy when a requested person is arrested, a lawyer is not automatically appointed also in the issuing country. To explain this issue they mentioned a case they dealt with concerning a man from Morocco who was arrested in France due to an EAW issued by Italian authorities. This arrest occurred in 2021, and the arrest warrant concerned a criminal charge of 2017. The man appointed a lawyer in France who contacted the interviewee who therefore became his lawyer in Italy. The man had moved to France before Italian prosecutors issued the arrest warrant. He had therefore been classified as untraceable by Italian investigation authorities and was not aware about the proceedings or about the arrest warrant. In her opinion, the EAW instrument was used unnecessarily since Italian authorities had only to notify this person of the existence of the judicial proceeding against him. The French colleague sent the interviewee the EAW form issued by Italian authorities, and the Italian lawyer noticed that the EAW form referred to an arrest warrant issued by Italian investigation authorities. However, the court ruling on the case in Italy had decided on house arrest rather than detention. The Italian issuing authorities had, therefore, reported incorrect information in the EAW, thus causing the requested person to be detained in France when in Italy he would have been subject to house arrest. In her opinion, this mistake was possible because the original arrest warrant was not transmitted to French executing authorities together with the EAW form, due to the simplification of the procedure. She asked the French colleague to file a complaint to French judicial authorities; in the meanwhile, she filed a request in Italy for the withdrawal of the arrest warrant since many years had passed since 2017. The case could be solved and the person released thanks to the cooperation between the lawyers in the two countries.

Table 10: Providing dual legal representation, interview findings (issuing MS)

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing in another MS? (When your country is an issuing state)			
Interviewees	YES	NO	Didn't know/answer/remember
Lawyer 1	X		
Lawyer 2	X		
Lawyer 3	X		
Lawyer 4	X		
Lawyer 5	X		
Judge 1	X		
Judge 2	X		
Judge 3	X		
Judge 4	X		
Judge 5	X		
Total	10		

- Communication between the lawyers in both States

The first element worth stressing is that the requested person **cannot always count on having a defence lawyer in each of the two States**. It is a choice of the person themselves, often depending on the financial resources they can count on: if the requested person is not eligible for legal aid, they would have to bear the costs of two professionals – one in each country – assisting them.

The general impression emerging from the fieldwork is that communication and legal cooperation between the lawyers in the two countries is not envisaged and governed by law. Where such cooperation exists, it is an **independent initiative of the Italian lawyer** and it often depends on the **network and connections they can count on** (for instance, belonging to international network of criminal lawyers such as Fair Trials International or the European Young Bar Association).

"The next step is even more insuperable and that is that often, as an Italian lawyer, you would need an interface in the country of origin and not a family member but a competent interlocutor who is your colleague. But first of all it is difficult to find one, then there is the problem of language. And then there is always the economic aspect, which counts. Because, even if the Italian lawyer is devoted to supporting the requested person, the interlocutor is not necessarily able to give you information on the procedures and on the respect of the rules followed in the country of origin, moreover, just trusting your identity, which is normally explained by telephone" (Lawyer, Italy)

"Il passo successivo è ancora più insuperabile e cioè che spesso, come legale italiano, avresti bisogno di un'interfaccia nel paese di origine e non di un familiare ma di un interlocutore competente tuo collega. Però intanto è difficile trovarlo, poi c'è il problema della lingua. E poi c'è sempre l'aspetto economico e conta. Perché se anche il legale italiano è votato al sostegno del prossimo però l'interlocutore non è detto che per mero titolo di colleganza e di simpatia ti dia delle indicazioni sulle procedure e sul rispetto delle regole seguito nel paese di provenienza, oltretutto al buio sulla base di una tua verbalizzazione che normalmente è telefonica."

According to one of the judges, this cooperation is easier in case of EAWs enforcing definitive sentences because judicial proceedings already occurred in the issuing State and the requested person was already assisted by a lawyer. The situation is more complex when it comes to EAWs concerning

ongoing investigations: in those cases, the requested person might not be aware of the investigation itself and, consequently, might not have an appointed lawyer in the issuing Country. However, according to one of the lawyers, cooperation between lawyers would be far more crucial in EAW cases concerning ongoing investigations: in this respect, he reported that it happened to him sometimes to be contacted by the lawyer of the requested person in the issuing State who provided him with relevant information on the case and/or on the proceeding to be used with the requested person and to report to the Italian competent court.

- Free of cost access to a lawyer (or legal aid)

As reported above, requested persons arrested in Italy **are entitled to the same type of legal assistance** as any other defendant involved in criminal judicial proceedings in Italy. This right also includes the **possibility to benefit from legal aid** – that is having the costs of legal assistance borne by the State – if they fulfil the income requirements established by the law. It is worth stressing that legal aid provided by the Italian State can be used **only to sustain the costs of the Italian lawyer**, not those of the lawyer in the issuing State.

"The requested person also has the possibility of obtaining free legal aid: that is, if the person is in such a condition as to have no income or at least a minimum income below the threshold established by law, they can ask to be admitted to free legal aid. So if they decide to choose an entrusted lawyer, this lawyer will be paid by the State." (Judge, Italy)

"La persona ha anche la possibilità di ottenere il gratuito patrocinio: cioè se il soggetto si mostra in condizioni tali da non avere reddito o comunque di avere redditi minimi sotto la soglia stabilita dalla legge può chiedere di essere ammesso al patrocinio. Quindi se decide di scegliere un avvocato di fiducia questo verrà pagato dallo Stato."

Despite this formal entitlement, some participants expressed **concerns about the effective possibility** of requested persons arrested in Italy to have access to this provision. According to one of the lawyers, even if free legal assistance is a right guaranteed also to persons requested under an EAW, this right is difficult to implement in practice: this is because the bureaucratic procedure is quite complex and, when **third-country citizens** are concerned, the authorities request both the identity document and a declaration of the authorities of the State of origin concerning their low income. Since the EAW procedure is quite fast and the decision must be rapidly made by the Court of Appeals, there is often not enough time to complete the procedure needed to obtain free legal aid.

"Legal aid unfortunately carries with it national problems. I have never witnessed in dozens and dozens of European Arrest Warrant cases someone taking advantage of legal aid. Because the Italian legislation also provides for a series of bureaucratic requests for income [...] in which all cohabiting persons must be counted. So if I am a student who lives with ten people in Berlin, according to Italian law I have to take into account the income of the ten students who live with me [...] And this sum also includes the emoluments that do not constitute income: so, for example, also the pocket money that my father pays monthly into my account. Explaining this to an Italian is extremely complicated, to a foreigner I don't even try and so I have never actually assisted anyone in legal aid for an EAW." (Lawyer, Italy)

"Il patrocinio a spese dello Stato purtroppo si porta dietro i problemi nazionali. Non ho mai assistito in decine e decine di casi di mandato d'arresto europeo a qualcuno che ha usufruito del patrocinio a spese dello Stato. Perché la normativa italiana prevede anche qui una serie di richieste burocratiche di reddito [...] in cui vanno conteggiate tutte le

persone conviventi. Quindi se io sono uno studente che a Berlino abita con dieci persone, secondo la normativa italiana dovrei tenere conto del reddito dei dieci studenti che vivono con me [...] E in questa somma vanno conteggiati anche gli emolumenti che non fanno reddito: quindi, ad esempio, anche la paghetta che il papà riversa mensilmente sul mio conto. Spiegare questo a un italiano è complicatissimo, a uno straniero non ci provo neanche e quindi di fatto non ho mai assistito nessuno in *legal aid* per un mandato all'estero.”

A similar point of view was expressed by another lawyer who stressed that access to **free legal assistance generally is smooth for EU citizens**: this is because they can autonomously declare and certify their income, as it is the case for Italian citizens. It is much more difficult for third-country citizens for the reasons mentioned above. Moreover, he added that not all criminal lawyers accept to be paid with state-funded free legal assistance: this is because the **payment might take a long time**, even years.

Table 11: Cost-free legal assistance, interview findings

Free of cost lawyer provided	When your country is an executing State	When your country is an issuing State for the purposes of procedures in the executing MS (e.g. to assist the lawyer in the executing State)
Lawyer 1	YES	NO
Lawyer 2	YES	NO
Lawyer 3	YES	NO
Lawyer 4	YES	NO
Lawyer 5	YES	NO
Judge 1	YES	NO
Judge 2	YES	NO
Judge 3	YES	NO
Judge 4	YES	NO
Judge 5	YES	NO
Total	10	10

c. Additional best practices, challenges and suggestions for improvement

Most participants commented on the most crucial challenges concerning legal assistance in EAW proceedings, in some cases pointing out ways forward to address them.

According to some, **specific aspects of the legal assistance** already provided in Italy should be further reinforced and invested on. These include the free legal aid system which should be strongly financed and more accessible; services of interpretation and cultural mediation.

Another challenge emerging from the interviews concerns **cooperation between lawyers in the two involved Member States**. In this respect, the connections and acquaintances of the lawyer in the executing State are deemed to be pivotal. The lack of cooperation between professionals could compromise the requested person’s ability to challenge the content of the judicial act on which the EAW is based. If the requested person already has a defender in the issuing State or if the Italian

defender has professional connections in that country, the requested person might have the opportunity to challenge the judicial file originating the EAW. However, when the EAW concerns a pre-trial custody order – and consequently concerns a judicial proceeding that still is at the investigation phase – the requested person might not even know that they are involved in a proceeding in the issuing State and, consequently, might not have a lawyer in that country.

“The person who, for example, wants to contest the grounds on the merits, must do so in the State that issued the arrest warrant. There is no system to connect the defender in Italy with a defender outside Italy. My impression is that it is still very much based on individual ability. So if a person appoints a lawyer in Italy who perhaps belongs to a firm that has networks or contacts with other colleagues in the other State, it is fine, otherwise I have the impression that it is a problematic situation.” (Judge, Italy)

“La persona che per esempio volesse contestare i motivi di merito, lo deve fare nello Stato che ha emesso il mandato d'arresto. Non c'è un sistema che metta in collegamento il difensore in Italia con un difensore fuori dall'Italia. La mia impressione è che sia ancora tutto molto basato sulle capacità individuali. Quindi come dire se una persona nomina in Italia un difensore che magari appartiene a uno studio che ha dei network o dei contatti con altri colleghi nell'altro stato va bene, altrimenti ho l'impressione che sia una situazione problematica.”

The impossibility for criminal lawyers in the executing State to **have prompt and full access to the entire case file in the issuing Country** was mentioned as another crucial challenge of the EAW procedure. One of the lawyers reported that having access to the case file would allow the lawyer in Italy to better shape the defence strategy. He mentioned the case of a French requested person he assisted who had received a definitive sentence from a French Court and was arrested in Italy: the interviewee is not aware of the functioning of the French legal and judicial system and he could understand the case only because the requested person had with him the judicial documents concerning his case in France. Otherwise, the interviewee would have had only the French definitive sentence and the EAW form. This same challenge was mentioned also by another lawyer who commented that the **2021 Italian legislative reform** further harshened this barrier since the timeframe of the EAW execution is extremely reduced (15 days after hearing the requested person), and this does not give enough time to the Italian lawyer to obtain access to the judicial file in the issuing country: in this respect as well, a solid cooperation with a criminal lawyer in the issuing country could facilitate access to judicial documents and acts.

As for the **suggestions for improvement** of the legal assistance system, the digitalization of the judicial case file was mentioned as a useful instrument in EAW proceedings, including in terms of an effective cooperation between the lawyers based in the two concerned EU Member States.

“The digitalisation of the file is always a useful thing: think of European Arrest Warrants in execution of pre-trial custody measures relating to very complex proceedings in the issuing country where there is cooperation between the Italian lawyer and the lawyer, let's always take the Spanish example, with an exchange of information that is fundamental for example in the judicial phase of recognition of the sentence. The fact of having the digital file in the country issuing the EAW is very useful in the sense that if, by chance, the Spanish lawyer is already in possession of some of the copies of the acts, the fact of being able to transmit them digitally to the Italian lawyer is always a great convenience.” (Public Prosecutor, Italy)

“La digitalizzazione del fascicolo è sempre una cosa utile: pensi a dei mandati d'arresto europeo in esecuzione di misure cautelari relative a procedimenti molto complessi nel paese di origine in cui ci sia un'interlocuzione tra l'avvocato italiano e l'avvocato, facciamo sempre l'esempio spagnolo con uno scambio informativo che sia fondamentale, per esempio, nella fase giudiziale di riconoscimento della sentenza. Il fatto di avere il fascicolo digitale nel paese di emissione del MAE è molto utile nel senso che se per caso l'avvocato spagnolo è già in possesso di una parte delle copie degli atti il fatto di poterle trasmettere digitalmente all'avvocato italiano è sempre una grande comodità.”

Additionally, the use of digital tools could also ease communications between the requested persons and their lawyers in the issuing States.

Moreover, some of the lawyers stressed the importance of a further harmonization of legal and judicial systems existing in the different EU Member States:

“One of the main challenges would be the progressive uniformity of criminal legal systems. [...] I mean, it is true that at EU level it is difficult to envisage legal frameworks that would suit all Member States. But to dictate rules of principle, however magnificent and shareable, without, however, there being the harmonisation of their effect on the ground of every single country, causes crazy complications. Therefore the first imperative is the need for a progressive uniformity [...] of immediately applicable and uniform rules” (Lawyer, Italy)

“Una delle principali sfide sarebbe la progressiva uniformizzazione dei sistemi giuridici penali. [...] Cioè è vero che a livello di Unione europea è difficile immaginare degli articolati normativi che possano andar bene per tutti gli stati membri. Ma dettare delle regole di principio, per quanto magnifiche e condivisibili, senza che però che ci sia l'armonizzazione della loro ricaduta sul terreno di ogni singolo Paese determina delle complicazioni pazzesche. Quindi il primo imperativo è la necessità di una progressiva uniformizzazione [...] di discipline immediatamente applicabili in concreto e uniformi.”

Furthermore, another lawyer suggested that it would be important to **include in the EAW form** shared with Italian authorities **the name of the lawyer** assisting the requested person in the issuing Country, including any contact details. In this way, the Italian lawyer could immediately and easily get in contact with the colleague in the issuing Country.

d. Discussion of findings

Information concerning the right to legal assistance is provided to requested persons arrested in Italy by judiciary police officers at the moment of the arrest: a lawyer – either an entrusted one or a public defender – must be immediately appointed. The judge of the validation hearing court must necessarily check the effective appointment, also because no hearing can be held without the presence of a lawyer since legal defence is in Italy both a right and an obligation. On the opposite, information concerning the right to appoint a lawyer also in the issuing State seems to generally not be provided. In this respect, cooperation between lawyers in the two Countries is mostly based on the spontaneous initiative of Italian lawyers and not supported and ruled by the in-force legislation. It therefore also depends on the financial ability of the requested persons to bear the costs of two professionals.

Information on legal aid is provided as well, and requested persons are formally entitled to this benefit if they comply with the requirements envisaged by the legislation. However, most professionals

reported that requested persons – especially third-country citizens – face major difficulties in actually benefitting from this possibility due to bureaucratic barriers.

The type of legal assistance provided in Italy to requested persons is in practice identical to the assistance provided to any defendant involved in judicial proceedings in Italy. However, some specific aspects make this defence more complex, especially due to the limited possibility of lawyers to have access to the entire judicial file in the issuing Country.

Many professionals – especially lawyers – stressed the crucial impact of the lawyers' expertise in international judicial cooperation matters on the effective legal assistance of requested persons. According to some, public defenders are generally less qualified in dealing with this type of procedures. According to others, expertise depends on the professional path of the lawyers, regardless of them being entrusted lawyers or public defenders. In any case, expertise proves to be crucial when it comes to cooperation between lawyers in the two countries: only Italian lawyers who have a solid expertise in the EAW field can count on a network of colleagues in the other EU Member States and, therefore, have an easier access to judicial acts and documents that are needed to better shape the legal defence.

4. Issuing and execution of the EAW

a. Legal overview

As reported above, the legislative act governing EAW proceedings in Italy is the Law No. 69/2005, as partially reformed in 2021. The judicial authority in charge of EAW proceedings – with Italy being either the issuing or the executing State – is the Court of Appeals that is competent for the locality where the requested person resides; if this criterion cannot be applied, the Court of Appeals of Rome is competent for the case.

The EAW can be issued to obtain the surrender of a person who is subject to a personal pre-trial measure (custody in prison or house pre-trial detention); who is subject to a definitive sentence or a personal security measure; and who resides or lives in another Member State of the European Union. The EAW can be issued by judicial authorities who adopted the above-mentioned measures or by the public prosecutor in charge of the case. Once the EAW is issued, the Ministry of Justice proceeds – after the translation of the Act into the language of the executing State – to transmit the EAW to the executing State.

According to Art. 30 of the Law No. 69/2005, the EAW must include:

- The identity and nationality of the requested person
- Contact details of the issuing judicial authority
- The existence of one of the judicial acts mentioned above
- The type of criminal offence
- Details of the case (e.g., the circumstances of the offence and the role of the requested person)
- The penalty imposed, if there is a final judgment, or, in other cases, the minimum and maximum penalty established by the national law
- Other consequences of the criminal offence if any

The EAW is no longer effective if the judicial act justifying it is revoked. In this case, the Court of Appeals must immediately inform the Ministry of Justice that is in charge of informing the executing State (Art. 31 of the Law No. 69/2005).

The Italian Court of Cassation has clarified – with the Decision No. 1960 of 2015²⁴ – that the Italian procedural safeguards governed by Italian legislation and Criminal Procedure Code are enforceable and must be ensured only after the requested person is transferred to Italy from the executing State. The treatment received by the requested person abroad – including the procedures and safeguards in place in the executing State – are not under the jurisdiction of the Italian authorities.

Any decision of the Court of Appeals can be challenged before the Supreme Court of Cassation, which is the Italian highest court with a national competence, together with the Constitutional Court. The complaint can be filed by the requested person with their lawyer and/or by the Attorney General at the Court of Appeal. The complaint must be filed within five days from the moment the EAW is issued or executed, and it has a suspensive effect on the sentence. The decision of the Court of Cassation must be lodged within fifteen days. Some experts have stressed that the deadline for the submission of the complaint is far too short and might represent a potential violation of the constitutional right to file a complaint against judicial decisions (Art. 111, paragraph 7 of the Italian Constitution)²⁵.

According to Art. 18 of the Law No. 69/2005, the surrender of a requested person by Italian authorities can be denied in some specific circumstances. The execution must be denied if: the extinction of the offence by amnesty occurred, when there is jurisdiction of the Italian State over the case; a judicial sentence exists issued by Italy or another Member State on the same offence if the sentence has not been served; the criminal offence is perpetrated by a person younger than fourteen.

The requirements for executing the EAW and surrendering the requested person are listed by the Law No. 69/2005. These are:

- The existence of a foreign judicial decision issuing the EAW: this must be either a definitive sentence or a protective order signed by a judge and motivated
- The formal request issued by the judicial authorities of the issuing State including: the identity and nationality of the requested person; contact details of the issuing judicial authority; the type of criminal offence; details of the case (e.g., the circumstances of the offence and the role of the requested person); the penalty imposed, if there is a final judgment, or, in other cases, the minimum and maximum penalty established by the law of the issuing State; other consequences of the criminal offence, if any
- A report of the facts charged against the person, indicating the sources of evidence
- The text of the applicable legal provisions, including an indication of the type and duration of the sentence
- Any information useful for the identification of the requested person.

A further disposition was integrated with the 2021 reform (Art. 6, paragraph 1-bis of the Law No. 69/2005), establishing that if the requested person was judged *in absentia* in the proceeding underlying the EAW, the issuing State must indicate in the request for surrender - without the need to provide documentary evidence - that they have been effectively summoned, or, in any event, were assisted by a lawyer, that they have acquiesced in the principal measure, or that they will be informed of their right of appeal after the delivery of the document.

²⁴ [Corte Suprema di Cassazione, Sezione Seconda Penale \(ud. 11/12/2014\) 16-01-2015, n. 1960.](#)

²⁵ Scollo, L. (2021), "[La riforma del Mandato d'Arresto Europeo. Meno diritto e più diritti](#)", in *Giurisprudenza Penale*, 2021.

Moreover, the execution of the EAW is subject to three warranties to be ensured by the issuing State:

1. if the EAW was issued *in absentia* of the requested person, the surrender may be subject to the right of the requested person to have a trial held in the issuing State
2. If the EAW was issued for a criminal offence that can be punished with life penalty, the surrender may be subject to the possibility for the requested person to request a revision of the sentence
3. If the EAW concerns a person commonly residing in the executing State, surrender may be subject to the possibility for the requested person to spend their detention period in the executing State.

Art. 2 of the Law No. 69/2005 further establishes – as a general principle – that Italy shall execute an EAW issued by another Member State only if the proceeding respects the following rights and principles:

- Fundamental rights as established by the European Convention on Human Rights
- Fundamental rights as established by the Italian Constitution.

National authorities are authorised to deny the execution of the EAW in case of reiterated and severe violations of the rights enshrined in Art. 6 of the TFUE and in the EU Charter of Fundamental Rights, as ascertained by the Council of the European Union decision to suspend for that EU Member State the functioning of the EAW mechanism (Art. 7 of the TUE).

As far as the execution procedure is concerned, the Court of Appeals is the judicial authority in charge of executing the EAW. The procedure can be activated in two ways.

In the first case, the Ministry of Justice receives the EAW that is promptly transmitted to the competent Court of Appeals. The Attorney General is also informed. The measure depriving the requested person of their personal freedom is adopted by the Court of Appeals, after consulting the Attorney General, and it must be adequately motivated. The requested person can benefit from the safeguards in place for all defendants subject to personal custody measures. If the court deems that reasons exist to refuse the surrender of the requested person, they will be heard – assisted by their lawyer – within five days by the Court of Appeals. After hearing the requested person, the court must issue its decision within 15 days: the decision must be transmitted to the Attorney General, the requested person and their lawyer.

In the second case, the procedure is activated after the arrest by judiciary police officers following entry of the alert in the Schengen Information System (S.I.S.) (Art. 11 of the Law No. 69/2005). Judiciary police is the authority in charge of proceeding with the arrest of the requested person: the arrest is communicated to the President of the Court of Appeals within 24 hours and to the Ministry of Justice. The Ministry is the authority in charge of informing the issuing State about the arrest. The requested person is heard before the Court of Appeals within 48 hours from the arrest.

The requested person can consent to the surrender at the moment of the arrest and/or during the hearing before the Court of Appeals: the consent is registered by the President of the court (Art. 14 of the Law No. 69/2005). The requested person can express their consent also in later stages of the proceeding, lodging a declaration addressed to the Director of the prison who will immediately forward it to the President of the Court of Appeals, as well as during any other hearing of the proceeding. However, the consent – once expressed – cannot be revoked. After the consent is expressed, the decision on the execution must be adopted within ten days by the Court of Appeals and communicated to the lawyer.

If the requested person denies their consent, the decision is made by the Court of Appeals, after consulting the Attorney General, the lawyer, the requested person and – if available – a representative of the issuing State. The decision must be adopted within 60 days from the arrest.

The surrender must occur within ten days from the adoption of the decision by the Court of Appeals according to the agreements in place between the two States (Art. 23 of the Law No. 69/2005). The surrender can be suspended by the President of the Court of Appeals in the event of force majeure, humanitarian reasons or serious grounds for believing that surrender would represent a serious danger to the life or health of the person concerned. The suspension is notified to the Ministry of Justice, and it is valid until the reason justifying it remains.

The jurisprudence of the Italian higher courts – specifically, the Supreme Court of Cassation and the Constitutional Court – has contributed over the years to define the limits of the discretionary power of Italian authorities when deciding whether to execute an EAW issued by another EU Member State. Some case-law refers to the implementation of the EAW legislation in place before the 2021 reform²⁶. In some cases, the issues raised by the courts were solved by the legislator: this is the case of the jurisprudence of the Supreme Court of Cassation²⁷ concerning information gaps in the EAW issued by foreign authorities; after the reform, in order to execute an EAW, Italian authorities only need the EAW decree itself without checking all the judicial documents and acts adopted in the issuing State. The Supreme Court of Cassation²⁸ also dealt with detention conditions and treatment in the issuing State, specifying the evaluation that the Court of Appeals is requested to carry out before executing the EAW. The Court of Appeals must, in the first place, ask whether the person requested to be surrendered will be held in a prison and, if so, will have to ask for information about the conditions of detention. As an alternative, the Court of Appeals may ask the issuing authority for the name of the facility where the person will be detained, the minimum individual intramurals space that will be reserved for them, the hygienic conditions of the accommodation, as well as national or international mechanisms for monitoring the actual conditions of detention of the surrendered person. The Court of Appeals will also have to set a time limit - not exceeding 30 days - within which the issuing authority must communicate the requested information. If the information provided allows to exclude the risk of inhumane and degrading treatment, the EAW can be executed; otherwise, it has to be refused. However, if the issuing authority transmits the requested information, the Court of Appeals can adopt a positive decision on the EAW and execute it.

Some case-law also intervened after the 2021 reform. In November 2021, the Constitutional Court – with the Ordinanze No. 216²⁹ and 217³⁰ – decided the referral of two questions to the Court of Justice of the European Union for a preliminary ruling concerning the interpretation of Framework Decision 2002/584/JHA. The Ordinanza No. 216 concerned the case of an EAW issued by Croatia to prosecute an Italian citizen for the offence of possession and transfer of drugs. A medical report ordered by the Court of Appeals dealing with the EAW execution had found that the defendant was suffering from a chronic mental illness of indefinite duration, incompatible with detention in prison. Since the Italian law on the European Arrest Warrant does not provide that the Italian judicial authority may refuse surrender in such a case, the Court of Appeals had asked the Constitutional Court to declare that the Italian rules were unconstitutional, arguing that they conflicted with the right to

²⁶ Manfredini, F. (2018), *La Giurisprudenza sul Mandato d'Arresto Europeo*, in Camaldo, L. (Ed.), "[Mandato d'Arresto Europeo e Investigazioni Difensive all'Estero](#)", Centro di ricerca coordinato (CRC) "Garanzie difensive e processo penale in Europa" Università degli studi di Milano, 2018.

²⁷ For instance, [Cass. Pen., Sez. VI, 12 December 2006 No. 40614](#).

²⁸ For instance, [V. Cass. pen., Sez. VI, 3 June 2016 No. 23277](#).

²⁹ [Corte costituzionale, ordinanza n. 216/2021](#).

³⁰ [Corte costituzionale, ordinanza n. 217/2021](#).

health, protected by Articles 2 and 32 of the Constitution. However, the Constitutional Court noted that not even the Framework Decision on the European arrest warrant provides for the possibility of refusing to surrender a person in such a case. Therefore, the doubts as to the compatibility of the national law with the fundamental rights of the person concerned cannot but also affect the Framework Decision itself: this is the reason the court decided for the referral to the CJEU.

Ordonnance No. 217 concerned the case of an EAW issued by the Romanian judicial authority that had requested the surrender of a non-EU national, who had been resident in Italy for at least ten years and was now firmly established there, so that he could serve a five-year prison sentence in Romania. Also in this case, the Court of Appeals had called on the Constitutional Court to declare the constitutionality of the national law on the European Arrest Warrant, in so far as it does not provide for the possibility of refusing the surrender of a non-EU citizen who has lawful and effective residence in Italy, subject to the commitment of the Italian State to execute in Italy the sentence imposed on them. The Constitutional Court noted that the Italian law transposing the Framework Decision provided that the refusal to surrender can be ordered only in favour of an Italian national or a national of another Member State who has been lawfully and effectively resident in Italy for at least five years, whereas nothing is provided for non-EU foreigners. The question therefore arises as to whether the unfailing obligation to surrender a third-country national, who is now permanently and lawfully resident in our country, infringes their right to private and family life, which is protected by Article 2 of the Constitution, Article 8 of the ECHR and Article 7 of the Charter of Fundamental Rights of the European Union. Eventually, in January 2022 the Supreme Court of Cassation – with Ordonnance No. 15143³¹ – referred another question to the CJEU with a view to clarifying whether Italy is obliged to execute a European arrest warrant issued by the Belgian judicial authority against a mother of a child under three years of age.

b. Issuing and execution of the EAW in practice

- Factors considered when issuing the EAW

When issuing an EAW, judicial authorities – as reported by all participants – must comply with the requirements established by the in-force legislation (see Legal overview of this section): reduced room is left to the discretionary power and decision of the court.

More specifically, a distinction must be stressed between EAWs that are issued to enforce definitive sentences and EAWs concerning ongoing judicial investigations.

In the first case, Italian judicial authorities – namely the Court of Appeals – are allowed to issue an EAW only when enforcing definitive sentences that are not inferior to a **threshold established by the law**: some participants reported this threshold to be 12 months others 4 years. According to one of the judges this time criterion is necessary because issuing an EAW is an expensive and complex procedure that entails high costs for Italian authorities.

The **principle of proportionality** is not explicitly mentioned in the legislation governing EAW procedure: however, many participants stressed that this principle is a cornerstone of the Italian judicial system and that the threshold fixed to issue EAWs when enforcing definitive sentences must be considered as a *de facto* application of the principle itself.

“Non so se con l'ultima modifica della normativa è stato aggiunto, però comunque per lunghi anni non era menzionato il principio della proporzionalità nella normativa italiana.

³¹ [Cass., Sez. VI, ord. 14 gennaio 2022 \(dep. 19 marzo 2022\), n. 15143](#) .

Però, comunque, è sicuramente uno dei principi che va tenuto presente. Quindi, come dire, non si emette un mandato d'arresto europeo per un furto di 50€ al supermercato. [...] Mi sembra che fin dall'inizio siamo sempre stati molto prudenti su questo, cioè che il principio di proporzionalità, pur non essendo scritto, sia sempre stato tenuto presente”

“I don't know whether the principle of proportionality was added with the last amendment to the legislation, but for many years the principle of proportionality was not mentioned in the Italian legislation. However, it is certainly one of the principles that must be kept in mind. So, as if to say, one does not issue a European arrest warrant for a theft of EUR 50 at the supermarket. [...] It seems to me that from the beginning we [Italian authorities] have always been very cautious about this, that is, that the principle of proportionality, although not written, has always been kept in mind” (Judge, Italy)

On the contrary, one of the lawyers highlighted that EAWs issued in Italy may frequently violate the principle of proportionality. In his opinion, **European Investigation Orders** should be used more and better in cases of ongoing investigations, rather than issuing EAWs with the mere purpose of questioning a defendant/suspect person. In his experience, EAWs are massively used by national judicial authorities because they represent an extremely afflictive measure and are used to re-establish the sovereign power of the States on the individuals who are involved in investigations or judicial proceedings. The disproportionate use of EAWs was reported also by another lawyer:

“I think there is still a bit of unpreparedness, in the sense that I have noticed that sometimes, trivially, the other tools available [with respect to the MFA] are not sufficiently known. This obviously depends on the training provided to the various categories. Certainly, the situation has improved, because I know that in the last few years there has been a very important increase both in the training of lawyers and in the training for judges and prosecutors, in relation to all the European directives and framework decisions, therefore also those relating to procedural rights in general. Therefore, I believe that there is certainly more awareness of the tools available than a few years ago. And here I would like to hope that recourse is made to the EAW instrument only when it is actually necessary. So, in the case of execution the need is higher because it is a matter of executing a sentence. For procedural needs today there are instruments that make it possible to acquire evidence and interrogate a requested person without even moving them from one State to another” (Lawyer, Italy)

“Credo che ci sia ancora un po' di impreparazione, nel senso che ho notato che a volte, banalmente, gli altri strumenti a disposizione [rispetto al MAE] non sono sufficientemente noti. Questo ovviamente dipende dalla formazione garantita alle varie categorie. Sicuramente la situazione è migliorata, perché so che negli ultimi anni c'è stato un incremento molto importante sia della formazione degli avvocati che della formazione per giudici e pubblici ministeri, in relazione a tutte le direttive e le decisioni quadro europee, quindi anche quelle attinenti ai diritti procedurali in generale. Quindi, io credo che sicuramente rispetto a qualche anno fa ci sia più consapevolezza degli strumenti a disposizione. E qui voglio sperare che si faccia ricorso allo strumento del MAE solo quando sia effettivamente necessario. Quindi nel caso di esecuzione la necessità è più alta, perché si tratta di eseguire una sentenza. Per le esigenze procedurali oggi esistono degli strumenti che permettono di acquisire la prova e di interrogare un soggetto senza nemmeno farlo spostare da uno Stato all'altro”

One lawyer commented that the application of the proportionality principle mainly depends on the personal approach and sensitivity of the judicial authority in charge of the case and the **type of crime**: definitive sentences concerning criminal conducts which are highly stigmatised at social level – he mentioned the case of sexual assaults – are more often object of EAWs issued by Italy. This impression was shared also by another lawyer.

When it comes to **EAWs issued in the context of ongoing judicial investigations**, the criteria governing this possibility are the same that apply to the decision to adopt a pre-trial custody measure in ordinary Italian criminal proceedings, that is serious evidence of guilt, risk of flight, repetition of the conduct, or contamination of evidence. Moreover, when this second type of EAW is concerned, the decision on the possible issuing of the warrant is up to the judicial authorities dealing with the case: the public prosecutor assesses if the presence of the suspect person is crucial for the investigation and present this necessity to the judge for the preliminary investigation.

Eventually, as far as **complaint mechanisms** are concerned, the general impression is that the requested person can resort to ordinary mechanisms in place to challenge judicial decisions; i.e., no specific complaint instruments exist for EAW procedures. For instance, in case of EAW issued when investigation is still ongoing, the requested person – through their lawyer – can highlight to the competent court the violation of the requirements needed to adopt a pre-trial custody measure as governed by Art. 274 of the Italian Criminal Procedure Code, as any other defendant.

According to the experience of interviewees, complaints on the grounds of an alleged violation of the proportionality principle in the issuing country are rare. One of the lawyers shared an experience in this field: he dealt with one case concerning an EAW issued by the Polish judicial authorities who requested the surrender of a person to carry out an investigative act. It was not an executive EAW, nor an EAW needed because of a pre-trial custody measure. In this case, the EAW was challenged because the judicial act authorising it in the first place was not legitimate. According to one of the judges this kind of complaint is not allowed by the in-force legislation: the requested person cannot challenge an EAW issued by Italian authorities on grounds of the violation of the proportionality principle.

- Factors considered when executing the EAW

The issue of which factors are considered when deciding whether to execute an EAW is the question showing the **most polarization in the opinions of the two categories of professionals**, with judges/prosecutors reporting that factors such as proportionality, conditions of detention, procedural safeguards and individual conditions are often considered, and lawyers reporting that these factors are never considered autonomously by the court if the lawyers do not argue that they should be considered.

“There is no ex officio control on detention conditions, the judge never takes action. Because there is no study office, no centralised office, no reference body to ask: it is the defender who has to document it, and in general the attitude is always very suspicious, i.e. the EAW execution rates are above 90 per cent on a national basis” (Lawyer, Italy)

“Non c'è un controllo d'ufficio sulle condizioni di detenzione, il giudice non si attiva mai. Perché non c'è un ufficio studi, un ufficio centralizzato, un ente di riferimento a cui chiedere: è il difensore che lo deve documentare e in generale l'atteggiamento è sempre

di molto sospetto, cioè le percentuali di esecuzione MAE sono superiori al 90% su base nazionale”

This impression was confirmed by a judge working for the Supreme Court of Cassation who reported that Italian executing authorities only exercise a formal control on the EAW procedure, that is they control that issuing authorities transmit all the requested documents, and that no mandatory information is missing. Moreover, they control that all formal steps of the executing procedure are respected in Italy. Going into more specific controls would entail an **interference in the decisions of foreign judicial authorities** and, consequently, a potential violation of international agreements.

“Italian authorities do not assess the proportionality of the EAW. No, there are the legal limits and we are bound by them [...] Those are the limits and we cannot create other limits for ourselves because otherwise we would be in violation of international agreements. So, from this point of view, I repeat, it is all down to the foreign authority. We only have to verify the formal regularity of both the procedure that led to the issuance of the EAW by the foreign State and the formal regularity of our own EAW procedure. This is the scope of our control.” (Judge, Italy)

“Le autorità italiane non valutano in qualche modo la proporzionalità del provvedimento. No, ci sono i limiti legali e siamo vincolati a quelli [...] Quelli sono i limiti e non possiamo crearne di altri anche perché altrimenti entreremmo in violazione di accordi internazionali. Quindi, da questo punto di vista, ripeto, il merito è tutto dell'autorità estera. Noi dobbiamo solo verificare in definitiva la regolarità formale sia del procedimento che ha portato all'emissione del MAE da parte dello Stato estero, sia la regolarità formale del nostro procedimento MAE. Questo è l'ambito di controllo”

Considering these factors separately, **proportionality** seems to be the least relevant factor in this respect: Italian judicial authorities rarely question the proportionality of the EAW issued in another Member State in compliance with the principle of mutual recognition of judicial procedures in the EU. A judge working for the Supreme Court of Cassation even reported that proportionality concerns are not among the reasons that can be invoked to deny the execution of an EAW: the proportionality assessment must be carried out by the issuing authorities and it is not generally questioned by the executing ones.

Conditions of detention are reported to be the element that is more often used to challenge the execution of EAWs in Italy, although some participants reported that the increasing harmonisation between EU judicial and detention systems, as well as the CJEU’s jurisprudence in this field makes this issue far less crucial than it used to be in the past. In this respect, one of the lawyers stressed that this type of concerns are more frequent in extradition procedures, where non-EU countries are concerned. Criminal lawyers play a pivotal role in this field, often collecting information dossiers on detention conditions in the issuing country and sharing them with the competent court, asking for the suspension of the execution.

“No, no, Italian authorities do not consider the detention conditions in the issuing State. [...] this is only done at the request of the defence. If no one objects, they hand the person over. [...] In Europe there are currently no States whose prison conditions are such as to prevent judicial cooperation. And despite the fact that there are some pilot judgments of

the European Court that have concerned Hungary, Romania, Italy itself over the years, these are not evaluated much by the Italian Courts of Appeal" (Lawyer, Italy)

"No, no, le autorità italiane non prendono in considerazione le condizioni di detenzione nel Paese di emissione [...] questo viene fatto solo su richiesta difensiva. Se nessuno eccepisce nulla, consegnano la persona. [...] In Europa non ci sono al momento degli Stati la cui condizione carceraria è tale da impedire la cooperazione giudiziaria. E nonostante ci siano delle sentenze pilota della Corte Europea che hanno interessato nel corso degli anni l'Ungheria, la Romania, l'Italia stessa, queste non vengono valutate granché dalle Corti di Appello italiane"

Relevantly, another lawyer stressed that, even when the lawyer succeeds in presenting evidence-based information on the inadequacy of detention conditions in the issuing State, **diplomatic assurances** intervene to mitigate the impact of this assessment. If the authorities of the issuing State reassure Italian authorities that detention standards are adequate, Italian authorities generally authorise the execution of the EAW.

"Le condizioni di detenzione nello stato di emissione sono uno dei motivi più spesso vittoriosi nei ricorsi in Italia perché lì c'è ormai una forte influenza della giurisprudenza europea e italiana che vieta la consegna quando vi siano degli standard di detenzione non dignitosi. Tenga presente che questo è mitigato dalle cosiddette *diplomatic assurances* o informazioni supplementari perché se l'Italia chiede al Belgio com'è lo standard di detenzione e il Belgio risponde che va benissimo, l'Italia è comunque obbligata a mandare"

"Detention conditions in the issuing State are one of the most often victorious grounds for appeals in Italy because there is now a strong influence of European and Italian jurisprudence prohibiting surrender when there are undignified standards of detention. Bear in mind that this is mitigated by so-called diplomatic assurances or additional information because if Italy asks Belgium what the standard of detention is like and Belgium replies that it is fine, Italy is still obliged to execute the EAW" (Lawyer, Italy)

Procedural safeguards, including the right to a free trial, are a key critical issue emerging from the fieldwork. In fact, this is the field where the least controls are carried out by Italian judicial authorities that generally do not raise concerns on the conduct of foreign EU judicial authorities .

"As far as procedural rights of the requested person are concerned, you would have to prove that there is a specific legislation of the issuing State which is in open violation with national rules. But the first problem is that I don't know what the Swedish or Danish rules are and how different they are from the Italian ones. And, moreover, even if I were in a position to make this type of comparison, I fear that I would not be successful in this type of assessment, also because after so many years the regulatory mechanism represented by the orientation to the European Court has obtained results and has made progress" (Lawyer, Italy)

"Per quanto riguarda i diritti procedurali della persona interessata dal provvedimento, bisognerebbe provare che c'è una specifica disciplina dello Stato richiedente che è in aperta violazione con le norme locali. E però il primo problema è che io non so cosa prevede disciplina svedese o danese e quanto siano difformi rispetto a quella italiana. E, inoltre, se anche fossi in condizione di fare questo tipo di comparazione temo che non avrei successo su questo tipo di valutazione anche perché dopo un po' di anni il

meccanismo regolatore rappresentato dall'orientamento alla Corte europea ha ottenuto dei risultati e ha fatto dei passi avanti”

Moreover, this also emerges as **the most difficult issue to raise to challenge the execution of an EAW**: Italian judicial authorities would need to prove that there was a clear violation of the specific procedural rights of the requested person. A general issue in the functioning of the judicial system in the country that would indicate a high likelihood of violations of procedural rights— such as the lack of independence of prosecutors from ministerial authorities – would not be enough.

“At the systemic level, it is to be excluded that this general assessment [on the functioning of the foreign legal and judicial system] could invalidate the execution of the EAW because, I repeat, we are bound by international agreements that have already established that, unless, in that specific case, for the type of crime, perhaps a political crime, there is persecution towards the specific requested person, then in that case it may have had an influence. At the moment in my experience it has not yet occurred. There is only a general assessment that does not fall in the specific case and is therefore not relevant” (Judge, Italy)

“A livello sistemico è da escludere che questo rilievo generale [sul funzionamento del sistema legale e giudiziario estero] possa inficiare l’esecuzione del MAE perché, ripeto, noi siamo vincolati ad accordi internazionali che hanno già stabilito che, a meno che, nello specifico, non si deduce che proprio in quel caso, per il tipo di reato, magari un reato politico, ci sia una persecuzione verso il soggetto specifico, allora in quel caso possa aver influito. Al momento nella mia esperienza non si è ancora verificato. C’è soltanto una deduzione generica che non si cala nel caso specifico e che quindi non è rilevante”

However, this emerged as a key aspect to concern: according to a judge working for the Supreme Court of Cassation, this is an aspect that must be assessed by Italian authorities when deciding whether to execute the warrant. The EAW must be issued by an **independent judicial authority**. The problem is that in some EU Member States the role of the public prosecutors is not that of an independent judicial authority and, so, EAWs issued by public prosecutors (or by police authorities) can potentially be rejected. Concerns are also sometimes raised regarding the **mechanisms in place to file complaint against judicial decisions** which can be extremely different in each country.

In the field of procedural safeguards, the issue that is most often dealt with concerns **in absentia proceedings**, that is the effective participation of the requested person in the trial proceeding. When doubts emerge in this respect, an information integration is always requested to national issuing authorities by executing ones on how the proceeding was conducted and why the defendant was not informed about it and/or did not participate. One of the judges reported that Italian authorities – when acting as issuing authorities – often receive requests of this kind from other EU Member States. This is because *in absentia* proceedings have been eliminated in Italy when implementing EU law; however, some of these proceedings – which had started before the transposition of EU law in Italy – are only now reaching their final stages before the Supreme Court of Cassation. For this reason, it can happen that EAWs concerning definitive sentences are issued by Italy in relation to *in absentia* judicial proceedings. In these cases, the requests for integration filed by the executing States are extremely demanding; moreover, in most cases the requested person generally files a complaint against the EAW and the definitive sentence, and they are generally set free.

Finally, the **individual situation** of the requested person is considered by Italian judicial authorities, especially in terms of length of residency and presence in the Italian territory and society.

“For the purposes of executing the EAW, the person's roots in Italy are certainly taken into account, and it happens quite frequently, especially with some countries, that particular attention is paid to the rooting. It happens very often, for example, with Romania because there are many Romanian requested persons who are rooted in Italy. In concrete terms, therefore, we try to understand if it is a long-standing rootedness and not relative to the specific moment, so we acquire all the documentation that can be the rent contract, the school enrolment of any children, and the enrolment in the Italian healthcare system” (Judge, Italy)

“Ai fini dell’esecuzione del MAE, viene assolutamente considerato il radicamento in Italia della persona e capita abbastanza frequentemente, soprattutto con alcuni paesi che venga valutato con particolare attenzione il radicamento. Capita molto spesso, ad esempio, con la Romania perché ci sono molti soggetti rumeni che sono radicati in Italia. In concreto, quindi si cerca di capire se è un radicamento risalente e non relativo al momento specifico, per cui si acquisisce tutta la documentazione che può essere il contratto di affitto, l’iscrizione a scuola di eventuali figli e l’iscrizione alla sanità italiana”

Some participants also mentioned other aspects that might be taken into account by judicial authorities. For instance, a public prosecutor mentioned the case of requested persons who are HIV-positive or addicted to narcotics. Also, pregnancy and mental impairments were mentioned by other professionals.

A final remark concerns how judicial authorities collect information on the above-mentioned issues.

The primary **channel of information** collection is represented by information integration requests sent by Italian executing judicial authorities to judicial authorities in the issuing country concerning any aspect of the judicial proceeding that originated the EAW or the EAW request itself which is not adequately clear or that leaves room to possible violations of procedural rights. A public prosecutor reported that Italian authorities – when doubts about the opportunity to execute an EAW emerge – can file a request to the issuing Member State for an integration of the documents transmitted with the EAW. However, in his experience, this possibility **only concerns EAWs related to ongoing proceedings** in the issuing State. When the EAW concerns a definitive sentence, Italian authorities do not enter into the merits of the decision adopted by foreign judicial authorities.

The **2021 legislative reform** seems to have had an impact in this respect as well. According to one of the judges, the Italian authorities used to ask for a lot of information and integrations from the issuing judicial authorities: this practice, however, has drastically decreased after the 2021 reform because of the mutual recognition principle. Currently, Italian executing authorities receive a concise EAW document and have no direct access to the case file which can nonetheless be requested when needed. Italian executing authorities have an extremely limited power of intervention on the assessment of proportionality when it comes to an EAW issued in another EU Member State.

“On the proportionality of the measure there is certainly no interlocution with issuing authorities. There was until the reform in 2021, a long period in which the Italian authority, which certainly has a regime, we see it on the basis of the comparison with foreign States, much more analytical on the elements necessary to apply a custody measure and therefore we asked for a lot of information. I believe that this was also one of the reasons why the legislation of the EAW was reformed in 2021. So, in fact today we don't ask for a lot of information anymore.” (Judge, Italy)

“Sulla proporzionalità della misura sicuramente non ci sono interlocuzioni con le autorità dello Stato di emissione. C'è stato fino alla riforma nel 2021, un lungo periodo in cui l'autorità italiana che sicuramente ha un regime, noi lo vediamo sulla base del confronto con gli Stati esteri, molto più analitico sugli elementi necessari per applicare una misura cautelare e quindi chiedevamo moltissime informazioni. Credo che questo sia stato anche uno dei motivi per cui nel 2021 è stata modificata la disciplina del MAE. Per cui di fatto oggi noi non chiediamo più molte informazioni”

A similar point of view was shared by one of the lawyers who reported that –after the 2021 legislative reform – the EAW system has become almost automatic and based on the mutual recognition and trust between European judicial authorities. So, Italian authorities often do not question EAWs issued by other Member States and only request the EAW form, and not – as it was the case before – the judicial act the EAW is based on.

Information requests sent to issuing authorities must be **as specific as possible**: for instance, information on detention conditions must relate to the specific detention facility where the requested person will be detained once surrendered and the detention regime they will be subject to, and not on the general situation of detention facilities in the country. Some participants also stressed that the replies to these information requests by issuing authorities can often be generic and unsatisfactory.

When an autonomous control power was reported to be exerted by judicial authorities, the source of information is reported to be, for instance, the reports of the Council of Europe Anti-torture Committee especially as far as detention conditions are concerned.

c. Additional best practices, challenges and suggestions for improvement

Some of the participants commented on the main challenges to address and the good practices to replicate and foster in EU Member States when issuing and executing EAWs. Moreover, some of them proposed suggestions for improvements based on their experience.

Challenges

The lack of a strong **harmonization** between judicial systems and legislation in EU Member States was mentioned by some participants as a barrier in the smooth implementation of EAW procedures. For instance, one of the judges explained that it is a common practice in Italy to merge judicial sentences concerning the same person, even when different courts and judicial districts are concerned. It is generally the court in charge of the most recent case to deal with the enforcement of all previous sentences. For this reason, when issuing the EAW, Italian authorities only issue one even if it regards different proceedings. However, foreign authorities executing the EAW often ask Italian authorities to explain the functioning of the merging of sentences or to issue an EAW for each sentence.

“There should be some general awareness of the conditions in some States compared to others. So, let's say there is a uniformity of elements and judgements in some European countries, this is much more difficult in relation to other European countries. There are different systems, there are different guarantees and so that makes this work a bit difficult. So, at the European level I think there should be more uniformity. I would like to see greater uniformity of legal systems, but also of enforcement because I do not know the conditions of prisons in some countries compared to ours or the alternative measures

that exist in some countries. I do know for sure that often the same prisoners try to execute the sentence in Italy as well, and therefore to show that they are rooted here. So maybe this means that in our country, despite the overcrowded prisons, the system is a guaranteed system.” (Judge, Italy)

“Ci dovrebbe essere un po’ una presa di consapevolezza generale sulle condizioni di alcuni Stati rispetto ad altri. Per cui diciamo che c’è un’uniformità di elementi e di giudizi in alcuni paesi europei, questo è molto più difficile in relazione ad altri paesi europei. Ci sono sistemi diversi, ci sono garanzie diverse e quindi questo rende un po’ difficile questo lavoro. Per cui a livello europeo secondo me dovrebbe essere valutata una maggiore uniformità. Io auspico una maggiore uniformità dei sistemi giuridici, ma anche propri esecutivi perché io non so le condizioni delle carceri di alcuni paesi rispetto al nostro o le eventuali misure alternative che ci sono in certi paesi. Io so per certo che spesso gli stessi detenuti cercano di eseguire anche in Italia e quindi di dimostrare un radicamento. Quindi forse questo vuol dire che nel nostro Paese, nonostante le carceri sovraffollate, il sistema è un sistema garantista”

Some participants mentioned **specific technical shortcomings** of the EAW procedure. For instance, one of the lawyers reported that, in his experience, when persons arrested abroad arrive in Italy, they are never provided by a formal document – issued by executing authorities – reporting the judicial act executing the EAW and the detention period they spent in the executing country. In the interviewee’s opinion, this is a major problem because it makes it impossible for the Italian lawyer – and for Italian judicial authorities – to assess the speciality rule and to reduce the definite sentence to serve in Italy considering the period already spent in detention in the executing State. In his opinion, this shortcoming is due to an insufficient communication between judicial authorities of EU countries. In this case as well, it is up to the Italian lawyer to formally request these documents to protect the rights of the surrendered person.

“So the weakest point concerns active EAWs [when Italy is the issuing authority]: in surrender procedures, often the person who arrives in Italy arrives without any document. They do not arrive with the measure that accepted the surrender, which is fundamental to understand the principle of speciality. And they arrive without the count of preventive detention periods suffered abroad. And so, punctually in Italy detention orders are issued in violation of the principle of speciality and in violation of the fungibility of the pre-trial detention. Why is this? Because there is a communication problem since the executing States do not send the documents but also because the ministry does not request the documents and the public prosecutor’s offices do not request the documents” (Lawyer, Italy)

“Allora il punto di debolezza riguarda i MAE attivi: nelle procedure di consegna, spesso la persona che arriva in Italia arriva senza alcun documento. Non arriva con il provvedimento che ha accolto la consegna che è fondamentale per capire il principio di specialità. E arriva privo del computo di carcerazione preventiva subita all'estero. E quindi puntualmente in Italia vengono emessi ordini di esecuzione in violazione del principio di specialità e in violazione della fungibilità della custodia cautelare. Questo perché? Perché c’è un problema di comunicazione perché gli Stati di esecuzione non inviano i documenti ma anche perché il ministero non richiede i documenti e le procure non richiedono i documenti”

Good practices

The **2021 legislative reform** – mentioned by some of the participants as having a negative impact on procedural rights of requested persons (as reported in the sections above) – was nonetheless proposed as an example of good practice by others. For instance, a judge working for the Court of Cassation stated that the reform improved the EAW system in Italy. In their opinion, the previous system and the controls Italian judicial authorities were allowed to carry out conveyed a sense of mistrust toward foreign judicial authorities. This mistrust should not exist in the EU.

“In my opinion, the 2021 reform certainly is an improvement, because the previous legislative system was based on a mistrust that had no reason to exist at a time when we are all in a European legal space and therefore it did not make sense to start with a double judicial check” (Judge, Italy)

“A me sembra sicuramente la legge del 2021 sia un miglioramento, perché quella precedente era basata su una diffidenza che non aveva ragione di esistere nel momento in cui siamo tutti in uno spazio giuridico europeo e quindi non aveva senso partire da un doppio controllo giudiziario”

One of the lawyers expressed the need to establish **specialized sections in the Italian Courts of Appeals dealing with EAW cases**, formed by judges with a specific expertise in this field who are aware of national and international jurisprudence. A section of this type exists at the Court of Appeals of Rome, as reported in previous sections. Alternatively, specific modules on EAWs should be included in the mandatory training of Italian judges.

Suggestions for improvement

Most suggestions for improvement proposed by participants in the fieldwork concerned the further **harmonization of judicial systems** and legislation across EU Member States, as well as a more incisive role of **EU judicial cooperation instruments and institutions**.

“Perhaps the biggest limitation is that we are still a long way from harmonising our systems and it is a titanic task. In fact, the judicial practices are objectively different. It's a bit funny that I'm perfectly qualified to act as a defence lawyer in a German criminal trial. So, perhaps the focus has been more on the so-called freedom of establishment of workers within the European Union, which has in fact then forced the harmonisation of pension and social security regulations. It would be highly desirable if the same were to happen in the different judicial areas” (Lawyer, Italy)

“Forse il più grosso limite è che è ancora molto lontana l'armonizzazione dei nostri sistemi ed è un'impresa titanica. Infatti, gli orientamenti sono oggettivamente diversi. Fa un po' ridere che io sia perfettamente abilitato a fare il difensore in un processo penale tedesco. Quindi, forse l'attenzione è stata dedicata alla cosiddetta libertà di stabilimento dei lavoratori nell'ambito dell'Unione Europea che ha nei fatti poi imposto l'armonizzazione delle discipline relative ai trattamenti pensionistici e alla previdenza. Sarebbe assolutamente auspicabile che avvenga lo stesso nei distinti ambiti giudiziari”

In this respect, one of the lawyers believes that directives – as legal instruments – allow national authorities to apply their discretionary implementing power to soften the impact they might have on the national legal system. A more immediately **enforceable EU legislative instrument** would force the States to implement in practice the more than appreciable principles and procedures enshrined in EU law.

As for practical proposals, a public prosecutor hopes for a more pivotal role played by **Eurojust** in coordinating the exchange of information between the issuing and the executing States. Judicial authorities composing Eurojust can play a relevant role in coordinating investigation and the application of judicial dispositions and procedures in place in the two States concerned by the EAW.

"It is fundamental, in the phase of information exchange between the issuing and executing judicial authorities, especially for EAWs in the investigation phase, that the authorities request coordination from Eurojust. Because Eurojust is a body in which there are desks of all the European member countries and they are magistrates who do that for a living, in the sense that they do an investigative coordination but also a criminal procedural one, just connected to the application of the lex fori but also to the coordination of the two lex fori, therefore, also to avoid that there are then exceptions of nullity, problems after the execution of the arrest warrants" (Lawyer, Italy)

“È fondamentale proprio nella fase di scambio informativo tra le autorità giudiziarie di emissione ed esecuzione, soprattutto per i MAE in fase di indagine, la richiesta di coordinamento che le autorità fanno in capo a Eurojust. Perché Eurojust è un organo in cui ci sono i desk di tutti i paesi europei aderenti e sono magistrati che fanno quello di mestiere nel senso che fanno un coordinamento investigativo ma anche processuale penale proprio collegato all'applicazione delle *lex fori* ma anche del coordinamento delle due *lex fori* quindi anche per evitare che ci siano poi delle eccezioni di nullità, delle problematiche successive all'esecuzione dei mandati d'arresto”

A judge working for the Court of Cassation recognised that a **European prosecutor office** could efficiently contribute to the EAW system, coordinating the procedures taking place in different States and fostering the prompt exchange of information and documents. This same suggestion was proposed also by one of the lawyers. A similar suggestion was made by another lawyer who proposed the creation of **EU judicial bodies** made of judges from different countries, whose aim would be to decide cases that have an EU-level interest.

Eventually, a relevant suggestion was proposed by one of the lawyers who stated that public authorities should foster the existence of an **official database of criminal lawyers based in different EU Member States** that requested persons could resort to if involved in EAW proceedings. This would facilitate the fulfilment of the right to double legal assistance in both the issuing and the executing Member State. The same professional also suggested to update the [EU Commission's Handbook on how to issue and execute an EAW](#) since it was adopted in 2013, as to include the recent jurisprudence and practical cases. An updated version of this tool would be useful for all professionals, including criminal lawyers with a limited professional experience in EAWs and international criminal proceedings.

"Another useful thing would be a European database on European arrest warrant jurisprudence, both national and supranational. Something like a big database would be very useful for all practitioners. It should be accessible, for lawyers, for judges, for interested parties. I think this would be a very, very useful thing, as we move more and more towards a regime of public accessibility of judicial affairs" (Lawyer, Italy)

"Un'altra cosa utile sarebbe un database europeo relativo alla giurisprudenza sui mandati d'arresto europeo, che sia nazionale e sovranazionale. C'è un grande contenitore, ma questo è molto utile per tutti gli addetti ai lavori. Dovrebbe essere accessibile, per gli avvocati, per i magistrati, per le parti interessate. Credo che questa sarebbe una cosa molto, molto utile, dato che si va sempre di più verso un regime di pubblicità di accessibilità anche alle vicende giudiziarie"

d. Discussion of findings

Italian issuing authorities seem to comply with the in-force legislation when deciding whether to issue an EAW, but no additional elements are reported to be considered. The principle of proportionality is – according to some participants – in practice applied, even if it is not explicitly envisaged by the legislation governing EAW procedures in Italy. Its application is evident when it comes to the minimum time threshold established by the law to issue an EAW for a definitive sentence.

When executing an EAW, Italian authorities seem to mostly check the formal elements of the administrative procedure. The burden of showing that risks exist in case of surrender of the requested persons – in terms of conditions of detention, procedural rights, and individual vulnerabilities – must be proven in detail by the defence lawyers. This activity might be compromised by the 2021 legislative reform which significantly reduced the time available to judicial authorities to execute the EAWs.

5. Use of digital and technological tools in EAW proceedings

a. Legal overview

No specific standards on this issue are available or were adopted due to the Covid-19 pandemic. Hearings done via videoconference have been used before and during the Covid-19 pandemic but not for the specific purposes of the execution or issuing of EAWs.

It does not seem that the experience of the pandemic will entail a progressive digitalisation of the judicial system: in fact, a decision of 2021 of the Italian Court of Cassation³² ruled that, in the extradition procedure, the fear of an intramural contagion from Covid-19 in the country of destination does not justify the rejection of the foreign request for delivery. Indeed, according to the court, the risk for the fundamental rights of the individual must be excluded if the requesting State provides specific reassurance about the adoption of the health initiatives necessary to ensure the safety of the person.

³² [Cass., Sez. VI, sent. 3 November 2020, n. 30642.](#)

Moreover, since 2020 the European Judicial Network (EJN)³³ has been collecting information among EU Member States concerning the measures adopted by national judicial authorities to cope with the epidemic's impact on judicial proceedings. As far as Italy is concerned³⁴, the surrender of requested persons continued during the pandemic. Requested persons did not have to test negative before the surrender: they were subject to ordinary medical screening during detention, according to the protocols adopted by the Detention System Administration during the emergency. Moreover, it is worth stressing that EAW proceedings were excluded from the temporary suspension of judicial hearings decided with Art. 83 of the Law-Decree No. 18 of 17 March 2020, converted into Law No. 27 of 24 April 2020³⁵.

Table 12: Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing State)	Facilitating access to a lawyer in the executing Member State (when an issuing State)
Country	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO
Italy	NO	NO	NO	NO	NO	NO	NO
TOTAL							

b. Interview findings

As reported above, there are no legislative provisions in force governing digitalisation in EAW proceedings.

More generally, **the use of digital tools** in judicial proceedings and procedures in Italy is reported to be at its initial stage by many respondents.

³³ Information on the information collection is available at the EJN [website](#).

³⁴ Bargis, M., "[La cooperazione giudiziaria in materia penale alla prova dell'emergenza da Covid-19](#)", in Sistema Penale, 24 June 2020.

³⁵ [Legge 24 aprile 2020, n. 27](#), "Conversione in legge, con modificazioni, del decreto-legge 17 marzo 2020, n. 18, recante misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19. Proroga dei termini per l'adozione di decreti legislativi".

"The digital tool does not yet exist. In Italy, professionals are now starting to try to send documents by e-mail instead of delivering them manually. We are still in our infancy of the digitalization process." (Lawyer, Italy)

"Lo strumento digitale non esiste ancora. In Italia, si sta cominciando adesso a provare a mandare gli atti con la posta elettronica anziché andarli a consegnare manualmente. Siamo ancora agli esordi."

The stage of digitalization was analysed in relation to interpretation, consultations with lawyers and the issuing/execution of EAWs in Italy. **Interpretation** is reported to be provided to the requested person in person by the interpreter who is present during judicial hearings. As far as issuing/execution of EAWs are concerned, the use of digital tools was commented in connection with the **exchange of information between authorities** of the two involved EU Member States: in this respect, the stage of digitalisation is reported to be extremely diverse depending on the specific judicial administrations concerned. This exchange generally happens via email between judicial authorities. Italian executing authorities can directly communicate with the foreign judicial authority that issued the EAW; alternatively, the contact request can be issued also by the Italian Ministry of Justice. The information requests transmitted by Italian executing authorities to foreign issuing authorities generally concern judicial documents needed to understand the judicial case originating the EAW request; or information concerning the treatment the requested person will receive after the surrender, especially as far as detention conditions are concerned.

Opinions on the necessity to **invest more and foster the digitalization** of the Italian judicial system differ among participants. Those who supported further digitalization, did that especially in view of the **digitalization of the judicial casefile and of judicial documents and acts**. This possibility would also ease cooperation between lawyers of the issuing and executing Member States: as reported by a one of the lawyers, lawyers still have to request the hardcopy of the documents to the chancellery of each court; moreover, courts do not communicate with each other, and lawyers must often resort to their colleagues based in different cities to obtain a copy of the documents. Another lawyer further stressed that the digitalization of the judicial casefile would be crucial because the 2021 legislative reform drastically reduced the time at the disposal of lawyers to file complaints before the competent courts for the suspension of EAWs. Some professionals suggested the creation of digital databases collecting EAW decisions and jurisprudence adopted by national, EU and international courts: these databases should be easily accessible by public authorities, police officers, Europol, Eurojust and lawyers.

"Another useful thing would be a European database on European arrest warrant jurisprudence, both national and supranational. Something like a big database would be very useful for all practitioners. It should be accessible, for lawyers, for judges, for interested parties. I think this would be a very, very useful thing, as we move more and more towards a regime of public accessibility of judicial affairs" (Lawyer, Italy)

"Un'altra cosa utile sarebbe un database europeo relativo alla giurisprudenza sui mandati d'arresto europeo, che sia nazionale e sovranazionale. C'è un grande contenitore, ma questo è molto utile per tutti gli addetti ai lavori. Dovrebbe essere accessibile, per gli avvocati, per i magistrati, per le parti interessate. Credo che questa sarebbe una cosa molto, molto utile, dato che si va sempre di più verso un regime di pubblicità di accessibilità anche alle vicende giudiziarie"

Lawyers suggested that digital tools could be useful to allow the detained requested person to **communicate with their lawyer in the issuing country**. However, as reported by one of the lawyers, this possibility would be nonetheless limited by the strict regulations governing communications in detention facilities.

Most experiences reported by the professionals referred to the **Covid-19 emergency** period when, out of necessity, digital tools were used far more in all judicial proceedings, especially as far as videoconference techniques are concerned. In fact, during the pandemic, videoconferencing was used during judicial hearings, with the requested person, their lawyer and the interpreter connected on online platforms. The possibility was ensured for private consultations between the requested person and the lawyer, with the assistance – when needed – of the interpreter. One of the lawyers **criticised the tools used during the emergency period**, stating that it was not a real digitalization since it was based on obsolete devices and connection systems that actually compromised the regular functioning and development of judicial proceedings. This false digitalization also compromised the defendants’ rights since poor internet connections limited communications with lawyers and interpreters; moreover, police officers and other detainees were often present during the hearings held in videoconference from detention facilities, thus compromising the right to privacy and confidential communication with the lawyer.

However, it emerged from the interview that, after the **conclusion of the emergency period**, most digital tools and techniques were again abandoned to go back to an in-person mode, both in judicial hearings and in the consultations between requested persons/defendants and their interpreters and lawyers. Some professionals welcomed the return to the in-person mode after the end of the pandemic: dealing physically with the requested person in judicial hearings and during confidential consultations was reported to be a better way to ensure and protect procedural rights, especially the rights to a fair trial and to legal defence. Lawyers stressed vehemently this point of view. One of the lawyers reported that during the Covid-19 emergency – when the use of videoconferencing increased significantly – he often had to choose whether to participate in judicial hearings from the detention facility, from his office or from the courtroom: he always decided to stay in courtroom in order to directly communicate with the court. However, the communication with the defendant – happening via phone call – was more difficult compared to the direct interaction that is possible when the defendant is in the courtroom as well. The communication between the person and the interpreter also happened via phone call: the quality of the interpretation was sometimes compromised by the efficiency of the digital tool used (for instance, the quality of the Internet connection in the courtroom and/or in the detention facility).

Table 13: Use of digital tools, interview findings.

Interviewees per Country	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an	Facilitating access to a lawyer in the executing Member State (when an

						executin g State)	issuing State)
LAWYER 1	NO	NO	NO	-	NO	NO	NO
LAWYER 2	NO	NO	NO	-	NO	NO	NO
LAWYER 3	NO	NO	NO	-	NO	NO	NO
LAWYER 4	NO	NO	NO	-	NO	NO	NO
LAWYER 5	NO	NO	NO	-	NO	NO	NO
JUDGE 1	NO	NO	NO	YES	NO	NO	NO
JUDGE 2	NO	NO	NO	YES	NO	NO	NO
JUDGE 3	NO	NO	NO	YES	NO	NO	NO
JUDGE 4	NO	NO	NO	YES	NO	NO	NO
JUDGE 5	NO	NO	NO	YES	NO	NO	NO
TOTAL	10/10	10/10	10/10	5/10	10/10	10/10	10/10

c. Discussion of findings

The digitalization process of the Italian judicial system is at its initial stage, and no legislative provisions exist specifically focusing on the use of digital tools in EAW proceedings.

Some participants would encourage an increasing use of such tools to foster the exchange of documents between judicial authorities, as well as the prompt access of professionals – including lawyers – to judicial documents and casefiles in the issuing country.

However, most participants negatively commented the use of videoconference techniques that drastically increased during the Covid-19 period, stating that these can relevantly compromise the procedural rights of the people involved in criminal proceedings, including people requested under EAWs.

CONCLUSION

The Italian legal system has implemented EU Directives governing procedural rights and EAW procedure. Overall, procedural rights enshrined in EU law are formally guaranteed in Italy; however, some concerns and shortcomings emerged from the fieldwork concerning their implementation in practice.

The first element worth stressing is procedural rights in EAW proceedings – such as the right to information, to interpretation and translation and the right to legal assistance – are not governed with specific legal provisions: these rights are protected and enforced in the same way for all people involved in criminal proceedings in Italy, including persons requested through EAWs issued or executed by Italian authorities. This approach, despite having the benefit of avoiding a fragmentation of legislation, does not allow the introduction of specific safeguards that are needed in EAW cases. An example in this respect concerns the right to information and to legal assistance: the written form listing procedural rights – which is provided to requested persons at the moment of the arrest – is the same for all arrested persons and does therefore not include specific information on the EAW procedure and on the right to appoint a lawyer in the issuing State. The information missing in the standard informative procedures must be provided by judicial authorities during the hearings and especially by the lawyers assisting the requested persons.

The second element highlighted by several professionals – especially lawyers – concerns relevant professionals' lack of specific EAW expertise. Training modules focusing on EAW are generally not included in the compulsory training destined to future judges, prosecutors, and lawyers. This lack of expertise might compromise procedural rights of the requested persons, as well as their comprehension of the procedures. The Court of Appeals of Rome established a specialised section dealing only with EAWs and extraditions, with judges having solid expertise in this field. This can be considered a positive practice to replicate in other Italian judicial districts. The lack of specialised expertise was mentioned as a problem also when it comes to professional interpreters assisting requested persons.

A third element strongly emerging from the participants' experiences and opinions, concerns dual legal assistance in both the issuing and executing States. This right is not governed by the existing legislation and securing such representation is not facilitated by the Italian authorities, who only have the obligation to ensure that the requested person is assisted by a criminal lawyer when dealing with the Italian judicial system. This is the reason why not all requested persons in Italy also have a lawyer assisting them in the other EU Member State. The possibility of double legal assistance therefore depends on the financial means of the requested person – who will have to pay for the costs of two professionals – and on the professional connections of the Italian lawyer who will have to autonomously contact a colleague abroad. In this respect, some respondents – lawyers in particular – suggested the creation of an official European database of criminal lawyers with a specific expertise in EAW procedures.

As for the issuing and execution of EAWs in Italy, judicial authorities seem to merely consider whether the formal requirements established by the relevant legislation have been respected. The principle of proportionality – which is not explicitly envisaged – is *de facto* applied in that EAWs cannot be issued for definitive sentences that are inferior to a threshold established by law. As for the execution of EAWs, the lawyers participating in the research complained that Italian judicial authorities do not generally assess the respect of the individual's rights before surrender: the burden of proof must be

borne by the lawyers who are requested to provide evidence-based information to the court concerning conditions of detention, possible violations of procedural rights and individual vulnerabilities or specific situations. Moreover, only severe and specific reasons for suspending the execution are considered because the execution of the EAW is one of the crucial applications of the principle of mutual recognition of EU Member States' judicial systems. In this respect – and to better protect the rights of requested persons – many respondents encouraged a further harmonization of judicial systems and procedures in Europe, as well as the reinforcement (or the creation) of EU judicial bodies that could coordinate EAW procedures in a more centralized manner.

Finally, some remarks emerged concerning the 2021 legislative reform of the EAW legislation in Italy. This reform contributed to the relevant reduction of the time available to Italian authorities to execute EAWs issued by other Member States. While this reform simplified the procedure and made the execution smoother, according to some respondents – especially lawyers – it also drastically reduced the time lawyers can count on to collect information and organise their legal defence, as well as the timeframe available to lodge complaints. This reform might therefore have a negative impact on the procedural rights of requested persons surrendered by Italian authorities executing EAWs.