

# The Interdependent Relationship of Mutual Trust, Proportionality and Fundamental Rights in the Area of Freedom Security and Justice of the EU

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## Context

- EU Member States cooperation **on transfers of individuals** in the context of the AFSJ based on mutual trust, in light of **violations of fundamental rights**. E.g. Framework Decision on the European Arrest Warrant; Dublin III Regulation

## Problem

- Rigid, automatic approach in Member States' cooperation in light of violations of fundamental rights
- Based on **'blind' or 'presumed' trust** with only **extreme exceptions** e.g. Art 3 ECHR/Art 4 Charter
- Underdevelopment of proportionality test

## Core Argument

- Mutual trust, fundamental rights and proportionality should be in a close, interconnected relationship in which the one feeds the other.
- Mutual trust calls for proportionality and proportionality calls for rights.

- Through a **sophisticated, active and qualified** model of mutual recognition based on real mutual trust, providing more room for derogations and allowing a quest for **equivalences**

### 1. Reconceptualising mutual trust and mutual recognition

### 2. Embedding proportionality

- A qualified mutual trust and mutual recognition require a **proportionality-based analysis** to identify excessive interferences with rights caused by mutual recognition instruments or a risk of them

- Given its neutrality, proportionality needs an environment where the protection of the individual is effective and where a **consistent theory of fundamental rights** is embedded to its neutral structure.
- Their **special force** needs to be recognised as the normative basis of their definition.

### 3. Reconceptualising fundamental rights