



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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MODULE 4

European Cooperation in Criminal Matters

1

Reading Lecture 4

European Arrest Warrant

In this lecture you will learn about...

- the difference between extradition and surrender,
- European Arrest Warrant and its functionality,
- the efficacy of this instrument and
- several leading cases.

Learning time – approximately 3 hours



1. Cooperation between authorities

Revise your knowledge!



cooperation in criminal matters

facilitation and juridification of cooperation between MS

Check again:

MODULE 2 Yellow Badge (reading lecture 6) and

MODULE 3 Mutual Trust (reading lecture 2 & 3)

And remember – “today, cooperation between authorities in the EU has completely moved away from the traditional model. In addition to maintaining the recognition of sovereignty, the so-called mutual trust is governing, which has significantly expelled the brakes resulting from the unrestricted sovereignty from of the system.”

2



2. European Arrest Warrant – Introduction

Read the text!

The European arrest warrant is a simplified cross-border judicial surrender procedure – for the purpose of prosecuting or executing a custodial sentence or detention order. A warrant issued by one EU country's judicial authority is **valid in the entire territory of the EU**. The European arrest warrant has been operational since 1 January 2004. It has **replaced the lengthy extradition procedures** that formerly existed between EU countries.

van Ballegooij: “**The 9/11 attacks fundamentally reshaped the policy agenda when it came to implementing the AFSJ, placing a stronger emphasis on the security aspect.** This resulted in the introduction of fast track transfer and extradition (now renamed 'surrender') procedures to meet the immediate need to fight terrorism more effectively. A European Arrest Warrant is a judicial decision issued, in a special form by a Member State, with a view to the arrest and surrender by another Member State of a requested person for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. The surrender **procedure must be completed within 60 days**, with an optional extension of 30 days. Applying mutual recognition to extradition procedures also implies limiting grounds for refusal (or non-execution) based on national sovereignty, such as the above-mentioned double criminality and nationality exception. Finally, Member States included several provisions on the **rights of the requested person** during EAW procedures, including the right to be assisted by a legal counsel and by an interpreter in accordance with national law. The legal norm of the EAW [a framework decision from 2001, a FD] has been in use since 1 January 2004, i.e. for over 16 years. It is pertinent to note here that



'in absentia' procedure means that the court proceeding was carried out in the absence of the defendant whose whereabouts is unknown - in such cases, the judgement can later be compelled and a new court procedure requested if the defendant shows up.

several important changes have been made during this period. The FD EAW was amended in 2009 as regards decisions following proceedings **in absentia** (at which the person concerned was not present) by a framework decision that added specific grounds for non-execution. Since 2009, several directives have also been adopted that approximate the rights of suspects and accused persons more generally. Those directives also cover the rights of individuals subject to EAW procedures. [See Green Badge and MODULE 4 reading lecture 3] Finally, in the meantime, a number of other mutual recognition instruments have been adopted that both complement the EAW system and in some instances provide useful and less intrusive alternatives to it.”¹



3. European Arrest Warrant – more explanation

The video below is produced by Utrecht University and provides an explanation of the EAW.

https://www.youtube.com/watch?v=Uzz_nkAkzb4

- How many days does the execution of an EAW take?
- What are the main advantages of the EAW system?
- Who makes the decision on the surrender, the judge, or politics?

Watch the video.

Answer the questions.



¹ Wouter van Ballegooij: European Arrest Warrant: European Implementation Assessment. EPRS | European Parliamentary Research Service, June 2020.



4. European Arrest Warrant – a comparison

Match the characteristics (features). Write the number preceding each feature in the appropriate column below.

<i>Extradition</i>	<i>Surrender</i>

- 1. based on mutual trust and mutual recognition
- 2. less administrative burden
- 3. more cost effective
- 4. very fast
- 5. 14 days
- 6. averages 1-1,5 years
- 7. limiting the influence of central authorities
- 8. no political influence
- 9. political decision needed
- 10. based on sovereignty
- 11. legal automatism with exemptions

- 12. case-by-case decision
- 13. partial abolition of double criminality
- 14. requirement of double criminality
- 15. documentation limited to standard form
- 16. formalities are not foreseen
- 17. time limits
- 18. no time limits
- 19. direct communication between judicial authorities
- 20. direct communication between judicial authorities is not possible
- 21. communication via diplomatic-political channel



5. European Arrest Warrant – shadows

Watch the video!

A)

https://www.youtube.com/watch?v=i3EP970VY_0

Check the website of Fair Trials

<https://www.fairtrials.org/campaign/extradition-reform>



What do you think how could be avoided the addressed traps and struggles?

5



B) Proportionality

van Ballegooij: "The growing number of EAWs issued (at 17 491 in 2017) has been a cause for concern amongst Member States and the Commission with regards to proportionality. This has particularly been the case when EAWs related to 'minor' or 'trivial offences', such as the theft of a chicken, and for cases that were not 'trial ready', also taking into account the (pre-trial) detention conditions in certain issuing Member States. Beyond the detrimental impact on the individuals concerned, these practices undermine mutual trust and potentially lead to refusals to execute EAWs, even if proportionality is not formally cited as the reason for doing so.

When looking at the seriousness of the offence, it is pointed out that in 2017 the most commonly identified category for which EAWs were issued **was theft and criminal damage** (2649 EAWs). For some of these cases, which may include shoplifting, one might wonder **whether issuing an EAW was the most proportionate measure** even if the formal conditions for issuing it were met."

What is here the key element of the proportionality issue? Just a hint: in a similar purely domestic situation the perpetrator does not face incarceration (pre-trial detention) in most cases... but if he or she escapes to other EU MS... the execution of the EAW means the necessary (?)



van Ballegooij:” In reply to a European parliamentary question the Commission referred to a 2013 study indicating that at that point the majority of Member States had mechanisms for ensuring that EAWs were not issued for minor offences. The Commission was however not in a position to provide a comprehensive list of cases where EAWs had been issued for 'trivial offences', **as there was no common EU definition of trivial offences.**(...) Again referring back to the 2017 data, roughly one third of EAWs (2 960 out of 9 005) were issued for prosecution. However, as discussed in the section above, in absence of a common definition of the notion of a 'criminal prosecution' referred to in Article 1(1) FD EAW, it is not possible to establish how many of these EAWs related to cases that were 'trial-ready', a notion that is in any case difficult to define given the differences between Member States' criminal procedures and practices.”

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Issued	6.894	6.889	10.883	14.910	15.827	13.891	9.784	10.665	13.142	14.948	16.144	16.636	17.491
Executed EAWs	836	1.223	2.221	3.078	4.431	4.293	3.153	3.652	3.467	5.535	5.304	5.812	6.317

Identify several important findings based on these numbers.

On the other hand, there are recent indications of number of examples of EAWs that were issued prematurely, resulting in the requested person remaining in pre-trial detention for a lengthy period after having been surrendered by the judicial authorities of another Member State. In a 2014 resolution based on a legislative own-initiative report, the European Parliament called on the Commission to propose a proportionality check when issuing mutual recognition decisions, based on all the relevant factors and circumstances, such as the seriousness of the offence, whether the case is trial-ready, the impact on the rights of the requested person, including the protection of private and family life, the cost implications and the availability of an appropriate, less intrusive alternative measure.



As regards the **cost implications**, the European Added Value Assessment accompanying Parliament's legislative own-initiative report provided a conservative estimate of the **average costs of enforcing an EAW at €20 000 per case**. In terms of **direct costs** to the Member States alone it can include: the costs of enforcement (wages of police officers escorting the surrendered person, cost of flights for both the surrendered person and the police officers, cost of hotel accommodation for the police officers, etc.); operating detention facilities (costs relating to prison guards and administrators) and warehousing detainees (food, clothing, beds and healthcare, assuming these are provided); and investigation and judicial fees linked to the EAW. The cost implications for the individual concerned were not included. However, the 'cost of non-Europe' report [see under further readings] in the area of procedural rights and detention conditions, produced by EPRS in December 2017, does provide some additional data on the cost of pre-trial detention, estimated at €115 per day, with significant cost variation across Member States, as well as the detrimental effects of detention on employment, education, private and family life, mental and psychological health.

7



6. Questions for review

1. What are the main differences between surrender and extradition?
2. How many days does the execution of an EAW take?
3. If addressing the seamy side of the EAW system, which issues shall be mentioned?
4. What is the core issue relating proportionality?
5. What is multilevel governance in the context of EAW?
6. Explain the cost of the EAW.



In the first video, there is a 'bug' relating to word usage. Can you find it – after studying the reading lecture on European Arrest Warrant?



References

Petra Bárd: A rocky road. Law Society Gazette, 2014.

http://www.okri.hu/images/stories/kutatok/bardpetra/bp_rocky%20road.pdf

Wouter van Ballegooij: European Arrest Warrant: European Implementation Assessment. EPRS | European Parliamentary Research Service, June 2020.

[www.europarl.europa.eu/RegData/etudes/STUD/2020/642839/EPRS_STU\(2020\)642839_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/642839/EPRS_STU(2020)642839_EN.pdf)

<https://www.fairtrials.org/campaign/extradition-reform>

8

Further Readings

W. van Ballegooij, The Cost of non-Europe in the area of Procedural Rights and Detention Conditions, EPRS, December 2017,

[ww.europarl.europa.eu/RegData/etudes/STUD/2017/611008/EPRS_STU\(2017\)611008_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/611008/EPRS_STU(2017)611008_EN.pdf)

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