



European Arrest Warrant and extradition procedures



European Commission

DG Justice - Judicial cooperation in criminal matters in the EU

History

- 1999 Tampere summit – priority to speed up and simplify extradition between EU Member States. Replace extradition with surrender on the basis of trust and mutual recognition. Process accelerated after the September 2001 attacks in the US
- Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (FD on the EAW) (O.J. L190/1 18.07.2002)
- Entered into force in August 2002 and began to be operated on 1 January 2004 (although the FD was not transposed into domestic law by all then-Member States until April 2005)



Application

- FD replaces existing multilateral instruments on extradition between Member States. The previous EU instruments on extradition built on the Council of Europe 1957 Convention on Extradition and its protocols. Based on this Convention to which all Member States were parties, closer co-operation on extradition was agreed in the following instruments:
 - Convention of 10 March 1995 on Simplified Extradition Procedures between the Member States of the European Union
 - Convention drawn up on the basis of Article K.3 of the Treaty on European Union, of 27 September 1996 relating to Extradition between the Member States of the European Union
- Member States can continue to apply existing or conclude new bilateral or multilateral agreements in so far as they further simplify or facilitate procedures for surrendering persons for whom EAWs have been issued (Article 31). Finland, Denmark and Sweden have given notice (O.J. L246/1 29.09.2003) that they will continue to apply the uniform extradition law in force between them



Application

- From 1 January 2004, extradition requests – even for offences committed before- that date- are made using an EAW and pursuant to the domestic legislation implementing the FD. However at the time of adoption of the Framework Decision by the Council in 2002, the then-Member States could specify that the EAW will not apply to extradition offences before a specified date, no later than 7 August 2002 (Article 32). This was a once-off possibility and is not now available to any acceding or current Member State, The following countries have so specified:
 - Austria - acts committed before 7 August 2002
 - France - acts committed before 1 November 1993
 - Italy - acts committed before 7 August 2002
- Therefore the extradition instruments that the EAW replaced (or a bi-lateral agreement) may still be used where the use of the EAW is excluded by virtue of the declarations made by Austria, France and Italy.



Definition

- An EAW is defined in Article 1(1) of the FD as a *"judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order"*
- Application of EAW is based on the principle of mutual recognition- i.e. warrants that have been issued under the national law of one EU Member State must be accepted as such by other EU Member States, even if their respective laws relating to criminal prosecution and execution of sentences are different



Scope

- An EAW may be issued (i) for offences punishable by the law of the issuing Member State by imprisonment or a detention order for a maximum period of at least 12 months or (ii) if a sentence has been passed or a detention order has been imposed for a period of at least four months (Article 2(1)).
- Member States can provide that surrender pursuant to an EAW is subject to verification of double criminality unless the offence is punishable by at least 3 years imprisonment and falls into one of 32 categories of offences listed in the Framework Decision in respect of which verification of double criminality does not apply – i.e. the executing Member State is not allowed to verify whether the suspected behaviour constitutes a crime under its national laws.

Procedure

- EAW is based on the principle of judicial cooperation - that judicial authorities (rather than political or diplomatic authorities) of the issuing and executing Member States will communicate directly with each other.
- EAW form must contain 7 categories of information set out in Article 8 FD
- In case of arrest, a requested person must be made aware of the contents of the warrant, is entitled to the services of a lawyer and interpreter (Article 11) and must be heard by the executing judicial authority (Article 14). A requested person may be detained in accordance with the national law of the executing state (Article 12)
- The executing judicial authority must make a final decision on execution of the warrant no later than 60 days after arrest (extendable by 30 days) and in the case of consent to surrender within 10 days of consent (Article 17).



Grounds of refusal

- Mandatory Grounds (Article 3): Amnesty in the executing Member State; ne bis in idem; not criminally responsible by virtue of age.
- Optional Grounds (Article 4) Seven grounds on which the executing judicial authority may refuse including prescription; where the requested person is being prosecuted for the same acts in the executing MS; and where, in respect of a resident or national, the executing Member State will execute a sentence.
- An executing Member State may also request guarantees from the issuing member state in particular cases (Article 5)
- All surrender decisions are subject to the overriding obligation to respect fundamental rights and fundamental legal principles (Article 1(3) and Recitals 12 and 13).

Instruments complementing the EAW Framework Decision

- Council Framework Decision 2009/299/JHA^[1] of 26 February 2009 amending Framework Decision 2002/584/JHA, 2005/214/JHA, 2006/783/JHA and 2008/947/JHA thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. This Framework Decision inserts a new Article 4(a) on in absentia trials into the FD on the EAW, deletes Article 5(1) and amends the EAW form. It entered into force on 28 March 2009 and has an implementation date of 28 March 2011.
- Council Framework Decision 2008/909/JHA^[2] on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, makes specific provision for the enforcement of sentences in cases under Articles 4(6) and 5(3) of the FD on the EAW. It entered into force on the 6 December 2008 and has an implementation date of 5 December 2011

[1]

OJ L 81, 27.3.2009, p.24

[2]

OJ L 327, 5.12.2008, p.27



Current issues – Procedural Rights for accused persons

- Mutual trust in Member States' judicial systems - essential for the operation of the EAW- will be improved by measures currently being adopted to ensure common minimum standards of procedural rights for suspects and accused persons across the EU. The rights to be ensured are as follows:
 - the right to interpretation and translation;
 - the right to information about rights, (Letter of Rights);
 - the right to legal advice before trial and for a detained person to communicate with family members, employers and consular authorities;
 - The right to Legal aid in criminal proceedings
 - the right to protection for children and vulnerable suspects.
 - The presumption of innocence
- In addition, COM has produced a green paper on detention
- The legislative measures have specific provisions dealing with the EAW



Current issues - proportionality

- Confidence in the EAW has been affected by the systematic issue of EAWs for the surrender of persons sought in respect of often very minor offences.
- It has been agreed by the Council of the European Union (via an amendment of the EAW handbook^[1]) that executing judicial authorities should operate a proportionality check before issuing an EAW and several aspects should be considered including the seriousness of the offence, the length of the sentence, whether there is an approach that would be less onerous for both the person sought and the executing authority and a cost/benefit analysis of the execution of the EAW. It is hoped that in time this will lead to a uniform application of a proportionality check by issuing judicial authorities across the EU

• ^[1] Council document 17195/10 COPEN 275 Handbook on how to issue a European Arrest Warrant



The effect of the Lisbon Treaty

- The Lisbon Treaty provides that once a pre-Lisbon instrument like the Framework Decision on the EAW is amended, the power of the Commission to take infringement proceedings and the jurisdiction of the European Court of Justice will become applicable to the amended measure (these powers will apply in any event after 31 November 2014 when the transitional period laid down in the Treaty ends).
- In addition, in the event that there was to be any amendment of the Framework Decision, the new rules introduced by the Lisbon Treaty for the adoption of legislative measures in this area will apply. These rules include co-decision between the European Parliament and Council and the possibility of the non-participation of some Member States^[1].

^[1] Pursuant to Protocols 21 and 22 of the Lisbon Treaty UK, IE and DK do not participate in measures in the area of Justice and Home Affairs. The UK and IE have the possibility to opt in to a measure.



Statistics

- Available Statistics compiled for the years 2005 to 2012^[1] record 88,159 issued EAWs and 22,507 executed EAWs in that time. as follows:
 - 2005 – 6 894 issued - 836 executed (No data from BE, DE)
 - 2006 – 6 889 issued – 1 223 executed (No data from BE, DE, IT)
 - 2007 – 10 883 issued - 2 221 executed (No data from BE, BG, DK, IT),
 - 2008 – 14 196 issued - 2 919 executed (No data from BE, BG, IT, NL, PT, UK)
 - 2009 – 15 827 issued – 4 431 executed (No data from BG, IT)
 - 2010 - 13 891 issued – 4 293 executed (no data from IE, IT, NL, AT, PT)
 - 2011 - 9 784 issued – 3 153 executed (no data from BG, EL, IT, HU, NL, AT, RO, FI)
 - 2012 – 9 795 issued - 3 431 executed (no data from BG, DK, EL, IT, LV, HU, NL, AT, RO, SI, UK)
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- From 2005 to 2011, between 47% to 62% of requested persons consented to their surrender, which took place in 14 to 17 days on average. Average surrender time for those who did not consent was a consistent 48 days.

^[1] Council documents 9005/5/06 COPEN 52; 11371/5/07 COPEN 106; 10330/2/08 COPEN 116; 9743/4/09 COPEN 87; 7551/7/10 COPEN 64; 9120/2/11 COPEN 83; 9200/7/12 COPEN 97; 7196/2/13 COPEN 34



Conclusion

- In April 2011, the Commission released its third implementation report on the EAW (Commission documents COM(2011)175 and SEC(2011)430) , which discussed on-going issues in relation to the operation of the EAW. The report also brought together all of the recommendations in respect of each country identified in both the Council evaluations and the previous Commission reports with a view to being a working tool for practitioners and an aide to Member States in identifying shortcomings in relation to the implementation of the FD
- The EAW has been now been operating for 9 years and has been very successful. To date 12 preliminary references have been referred by national courts to the European Court of Justice resulting in a body of jurisprudence on aspects of the Framework Decision.



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