

The European Arrest Warrant: Current Challenges and the Way Forward

The Framework Decision on the European Arrest Warrant has been successfully applied in the Member States of the European Union for over 15 years. In recent years, several issues have emerged that weaken mutual trust and create obstacles to the principle of mutual recognition. The legal, political and practical reality in the Member States as well as the case-law of the European Court of Justice present major challenges for the implementation of the Framework Decision and the smooth functioning of EAW surrender procedures. The ongoing 9th round of mutual evaluations in the Council, the Commission's Implementing Report that was published on 2 July 2020 and the own-initiative implementation report that is being prepared by the European Parliament's LIBE Committee form the basis for discussing current challenges and the way forward.

At the virtual conference on 24 September 2020, we want to discuss the challenges detailed below and possible solutions with experts from EU Member States and EU institutions, as well as legal practitioners and legal scholars. The findings of the conference will be published in a report that is intended to make a contribution to the ongoing discussion on the future of the EAW.

The Commission's perspective on the implementation of the FD EAW and current developments

Commissioner Didier Reynders will set the scene for the conference with a speech on the implementation of the Framework Decision on the EAW. We are curious to hear the Commission's perspective on the core issues, current developments and possible avenues for improvements. The presentation will be followed by a short Q&A session. If there are any specific issues that you wish to raise, you may submit questions via e-mail ask-a-question@bmjv.bund.de, preferably before 20 September 2020.

Virtual Working Groups

At the core of the virtual conference, four selected topics (detailed below) will be discussed in parallel working groups of approximately 25 participants each. The discussions in each working group (morning session and afternoon session) will be guided by an expert speaker and a moderator. At the end of the conference, the results of each working group will be presented in the virtual plenary. You will be able to ask questions and make comments via a chat feature. The questions will be answered by the moderators and expert speakers on the spot (if there is enough time) or will be taken into account when preparing the conference report.

Working Group 1: Detention conditions in the issuing Member State as a ground for non-execution of the EAW

The European Court of Justice has recognised that, subject to certain conditions, the executing judicial authority has an obligation to bring the surrender procedure to an end where surrender may result in the requested person being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights (cf. ECJ, 5 April 2016, C-404/15 and C-659/15 PPU, Aranyosi and Căldăraru, para. 104 and ECJ, 15 October 2019, C-128/18, Dorobantu, para. 50). In December 2019, the EU Agency for Fundamental Rights (FRA) launched a Criminal Database compiling information on detention conditions in all EU Member States (fra.europa.eu/en/databases/criminal-detention/criminal-detention).

With the participants of the first working group, expert speaker *Prof. Anne Weyembergh* and moderator *Dr. Matylda Pogorzelska* will discuss the practical ramifications of this jurisprudence, as well as current developments and possible solutions.

Working Group 2: Concerns regarding the rule of law in the issuing Member State as a ground for non-execution of the EAW

The EAW surrender procedure established by the Framework Decision is based on a high level of trust between Member States. In turn, this mutual trust is founded on the premise that all Member States meet the requirements of effective judicial protection, which include the independence and impartiality of the criminal courts that will oversee the procedure following the execution of the EAW. Accordingly, the European Court of Justice has held that the existence of a real risk that the requested person will, if surrendered, suffer a breach of his or her fundamental right to a fair trial as guaranteed in Article 47 of the Charter of Fundamental Rights may give rise to a refusal to execute the EAW (ECJ of 25 July 2018, C-216/18 PPU, Minister for Justice and Equality, para. 58, 59). In late July 2020, a Dutch court asked the ECJ to give a preliminary ruling on the question of whether the surrender of a suspected person to a EU Member State should be refused if the courts of that Member State – as a consequence of legislative reforms – can no longer function independently.

Guided by expert speaker *PD Dr. Frank Zimmermann* and moderator *Joana Ferreira*, the second working group will assess the implications of the ECJ's judgment on the EAW surrender procedure, first decisions by national courts and possible recommendations for the future.

Working Group 3: The procedure for issuing and deciding on the execution of the EAW

Expert speaker *Lea Dukič Japelj* and moderator *Prof. Dr. Holger Matt* will chair the third working group and, together with the participants, will analyse a broad variety of questions relating to the procedure for issuing and deciding on the execution of the EAW.

Topics that the working group may pay special attention to include the ECJ's jurisprudence on the independence of the "judicial authority", the issuing of EAWs and the search via SIS, the different stages of the procedure for deciding on the execution of the EAW (e.g. "trial readiness", apprehending the requested person, detention, decision on surrender, surrender procedure) and the procedural rights and legal remedies of the requested person in the issuing/executing Member State.

Working Group 4: The decision on the surrender to another Member State / the extradition to a Third State of own nationals, EU citizens and persons residing in the executing State

The fourth working group, chaired by expert speaker *Stefano Maffei, Ph.D.* and moderator *Tanja Pavelin, Ph.D.*, will work on questions concerning the tension between two fundamental principles: On the one hand, the obligation to avoid impunity by surrendering the prosecuted person to another Member State or a Third State. On the other hand, the duty to protect own nationals, EU citizens and persons residing in the executing State from any measure that unduly restricts their freedom of movement and residence as well as their chances for rehabilitation. In relations between the Member States, the Framework Decision provides certain rules in Articles 4 (6), 5 (3) and 16. In relations with Third States, the ECJ has decided on the question of whether an EU citizen of another Member State can be extradited if an own national under similar circumstances will not be extradited (e.g. ECJ, 6 September 2016, C-182/15, Petruhhin; 10 April 2018, C-191/16 Pisciotti; 13 November 2018, C-247/17 Raugevicius) and will soon decide on the scope of application of the principle of *ne bis in idem* (ECJ, pending case C-505/19 PPU).

The impact of the COVID-19 pandemic on judicial cooperation in criminal matters

To combat the spread of COVID-19, the Member States have adopted a broad variety of measures such as the closure of borders, the suspension of air traffic and rules on physical distancing. *Francisco Jiménez-Villarejo*, National Member for Spain at Eurojust, will inform us about the impact that these measures have had on the operation of EU instruments on judicial cooperation in criminal matters, in particular the EAW.

The presentation will be followed by a short Q&A session. If there are any specific issues that you wish to raise, you may submit questions via e-mail ask-a-question@bmjv.bund.de, preferably before 20 September 2020.