



Implementing the European Arrest Warrant Decision

Various stakeholders have expressed concerns about how the European Arrest Warrant (EAW) operates in practice, in particular in relation to the procedural rights of surrendered persons. The 2011 Commission [report](#) on implementing the EAW Council Framework Decision has confirmed persistent problems in this respect.

The EAW Decision

The 2002 [EAW Decision \(amended in 2009\)](#) replaced extradition for transferring suspected and sentenced persons between Member States (MS). So far, the Commission has presented three reports on the implementation of the Decision (in [2005](#), [2006](#) and [2011](#)).

Uneven implementation

Whilst all MS have now implemented the Decision (some of them with considerable delay, however), the three reports reveal imperfections in the functioning of the system. In April 2011, 12 MS had yet to amend their legislation to conform to [Council](#) and Commission recommendations.

Even though all MS are parties to the [European Convention on Human Rights](#), the procedural rights of suspected and accused persons differ throughout the EU. Moreover, the Decision makes only a general reference to the right to legal assistance, and does not set minimum standards in this respect.

Furthermore, detention conditions differ considerably from one Member State to another. This is important given that non-residents, once transferred to a state under an EAW, are often kept in pre-trial detention.

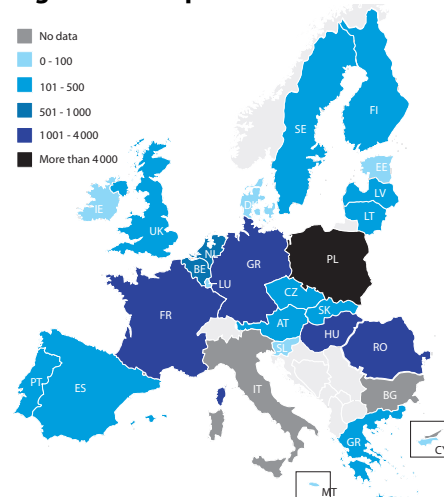
Yet another problem is the alleged overuse of EAWs by some MS. Statistics for the period 2005–09 show a considerable number of EAWs issued (54 689, of which 11 630 were executed). There is a tendency among some MS to issue warrants even for relatively minor offences. This suggests that a proportionality test of the seriousness of the offence, based on

the specific circumstances of the case, is not systematically undertaken by the issuing authorities. Firstly, this undermines the trust on which the principle of mutual recognition of decisions in criminal matters in general, and the EAW system in particular, are based. Secondly, it may tempt the executing states to refuse such disproportionate requests, even though such 'grounds for refusal' have not been provided for in the Decision.

Procedural rights in EAW proceedings

There seems to be common agreement at EU level that mutual recognition, as the cornerstone of judicial cooperation, implies the development of equivalent standards of procedural rights in criminal proceedings. However, the Commission's comprehensive [proposal](#) for a Council framework decision concerning these rights failed despite the [support](#) of the European Parliament. A 'step-by-step' approach was adopted instead by the Council in its 2009 [Roadmap](#), which favours individual measures on specific rights. The [Directive on the right to interpretation and translation in criminal proceedings](#) was the first text to be adopted, which was followed in 2012 by the [Directive on the right to information](#). Both texts expressly apply the relevant rights to EAW cases.

Figure 1 - European Arrest Warrants issued in 2009



Source: [Council of the EU](#)