

European arrest warrant

European Parliament resolution of 27 February 2014 with recommendations to the Commission on the review of the European Arrest Warrant (2013/2109(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Articles 2, 3, 6 and 7 of the Treaty on European Union and to the Charter of Fundamental Rights of the European Union,
- having regard to Article 5 of its Decision 2005/684/EC, Euratom of 28 September 2005 adopting the Statute for Members of the European Parliament¹,
- having regard to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States²,
- having regard to the Commission reports on the implementation of the European arrest warrant and the surrender procedures between Member States (COM(2005)0063 and SEC(2005)0267, COM(2006)0008 and SEC(2006)0079, COM(2007)0407 and SEC(2007)0979 and COM(2011)0175 and SEC(2011)0430),
- having regard to the Council's final report of 28 May 2009 on the fourth round of mutual evaluations - the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States (8302/4/2009 – CRIMORG 55),
- having regard to its resolution of 23 October 2013 on organised crime, corruption, and money laundering: recommendations on action and initiatives to be taken (final report)³,
- having regard to the revised version of the European Handbook on how to issue a European Arrest Warrant (17195/1/10 REV 1),
- having regard to Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020⁴,
- having regard to the Commission Communication of 13 September 2011 entitled 'Building Trust in EU-wide justice, a new dimension to European Judicial Training' (COM(2011)0551),
- having regard to its resolution of 15 December 2011 on detention conditions in the EU⁵,

¹ OJ L 262, 7.10.2005, p. 1.

² OJ L 190, 18.7.2002, p. 1.

³ Texts adopted, P7_TA(2013)0444.

⁴ OJ L 354, 28.12.2013, p. 73.

⁵ OJ C 168 E, 14.6.2013, p. 82.

- having regard to its recommendation of 9 March 2004 to the Council on the rights of prisoners in the European Union¹,
 - having regard to the assessment of the European added value of Union measures concerning the European Arrest Warrant, carried out by the European Added Value Unit of the European Parliament,
 - having regard to the Framework Agreement on relations between the European Parliament and the European Commission of 20 October 2010²,
 - having regard to Rules 42 and 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0039/2014),
- A. Whereas the European Union has set itself the aim of offering its citizens an area of freedom security and justice, and whereas, pursuant to Article 6 of the Treaty on European Union (TEU), it respects human rights and fundamental freedoms, thereby taking on positive obligations which it must meet in order to honour that commitment; whereas to be effective, the principle of mutual recognition must be premised upon mutual trust which can only be achieved if respect for the fundamental rights of suspects and accused persons and procedural rights in criminal proceedings are guaranteed throughout the Union; whereas mutual trust is enhanced through training, cooperation and dialogue between judicial authorities and legal practitioners, creating a genuine European judicial culture;
- B. Whereas Framework Decision 2002/584/JHA has for the most part been successful in meeting its aim of speeding up surrender procedures throughout the Union compared to the traditional extradition system among Member States and constitutes the cornerstone of mutual recognition of judicial decisions in criminal matters, now laid down in Article 82 of the Treaty on the Functioning of the European Union (TFEU);
- C. Whereas problems have however arisen in its operation, some specific to Framework Decision 2002/584/JHA and resulting from gaps in the Framework Decision such as failing to explicitly include fundamental rights safeguards or a proportionality check as well as from the incomplete and inconsistent implementation thereof; whereas other problems are shared with the set of mutual recognition instruments due to the incomplete and unbalanced development of the Union area of criminal justice;
- D. Whereas clearly defined and effective instruments for mutual recognition of judicial measures are of key importance to national prosecution services in connection with investigations into serious cross-border crimes and will be equally important in investigations carried out by the European Public Prosecutor's Office once it has been set up;
- E. Whereas in its final report the Special Committee on Organised Crime, Corruption and Money Laundering (CRIM) stressed the need to ensure swift mutual recognition, whilst fully respecting the principle of proportionality, of all judicial measures, with particular reference to criminal judgments, confiscation orders and European Arrest Warrants

¹ OJ C 102 E, 28.4.2004, p. 154.

² OJ L 304, 20.11.2010, p. 47.

(EAWs);

F. Whereas concern exists *inter alia* about:

- (i) the absence in Framework Decision 2002/584/JHA and other mutual recognition instruments of an explicit ground for refusal where there are substantial grounds to believe that the execution of the measure would be incompatible with the executing Member State's obligations in accordance with Article 6 TEU and the Charter of Fundamental Rights of the European Union ("the Charter");
- (ii) the absence of a provision in Framework Decision 2002/584/JHA and other mutual recognition instruments on the right, as laid down in Article 47 of the Charter, to an effective remedy which is left to be governed by national law, leading to uncertainty and inconsistent practices between Member States;
- (iii) the lack of regular review of the Schengen Information System (SIS II) and Interpol alerts as well as the lack of an automatic link between the withdrawal of an EAW and the removal of such alerts, and uncertainty as to the effect of a refusal to execute an EAW on the continued validity of an EAW and the linked alerts with the result that persons subject to EAWs are unable to move freely within the area of freedom security and justice without the risk of future arrest and surrender;
- (iv) the lack of precision in the definition of serious crimes list related to the EAW but also to other Union instruments which make constant reference to that list, and the inclusion of crimes the seriousness of which is not envisaged in the criminal codes of all Member States and which may not satisfy the proportionality test;
- (v) disproportionate use of the EAW for minor offences or in circumstances where less intrusive alternatives might be used, leading to unwarranted arrests and unjustified and excessive time spent in pre-trial detention and thus to disproportionate interference with the fundamental rights of suspects and accused persons as well as burdens on the resources of Member States;
- (vi) the lack of a definition of the term 'judicial authority' in Framework Decision 2002/584/JHA and other mutual recognition instruments which has led to a variation in practice between Member States causing uncertainty, harm to mutual trust, and litigation;
- (vii) the absence of minimum standards to ensure effective judicial oversight of mutual recognition measures which has led to inconsistent Member State practices in regard to legal safeguards and protections against fundamental rights violations, including on compensation for victims of miscarriages of justice such as mistaken identity, contrary to standards laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and in the well-established case-law of the Court of Justice of the European Union (ECJ);
- (viii) while recognising the necessity of pre-trial detention under certain criteria, the absence of minimum standards on such detention including regular review, its use as a last resort and consideration of alternatives, coupled with the lack of proper assessment of whether the case is trial-ready, can lead to unjustified and excessive periods of suspects and accused persons in pre-trial detention;

- (ix) the unacceptable conditions in a number of detention facilities across the Union and the impact that this has on the fundamental rights of the individuals concerned, in particular the right to protection against inhuman or degrading treatment or punishment pursuant to Article 3 of the ECHR and on the effectiveness and functioning of Union mutual recognition instruments;
 - (x) a lack of legal representation being provided for those persons sought under an EAW in the issuing Member State as well as the executing Member State;
 - (xi) the absence in Framework Decision 2002/584/JHA of deadlines for the transmission of the translated EAWs, leading to variable practices and uncertainty;
 - (xii) the lack of a proper definition of criminal offences to which the test of dual criminality no longer applies;
 - (xiii) the failure to use other existing Union judicial cooperation and mutual recognition tools;
1. Keeping in mind the new legal framework from 2014 under the Lisbon Treaty, considers that this resolution should not deal with problems arising solely from the incorrect implementation of Framework Decision 2002/584/JHA since such problems can and should be remedied by correct implementation by Member States and enforced through Commission proceedings;
 2. Calls on Member States to implement in a timely and effective manner the whole body of Union criminal justice measures since they are complementary including the European Investigation Order, the European Supervision Order and procedural rights measures, thereby making available to judicial authorities alternative and less intrusive mutual recognition instruments whilst also ensuring respect for the rights of suspects and accused persons in criminal proceedings; calls on the Commission to carefully monitor their correct implementation as well as their impact on the functioning of the EAW and the Union area of criminal justice;
 3. Calls on Member States and their judicial authorities to explore all the existing possibilities within Framework Decision 2002/584/JHA (such as Recital 12) to safeguard the protection of human rights and fundamental freedoms; to exhaust all possible alternative mechanisms before issuing an EAW; and to process the case without undue delay once an EAW has led to an arrest in order to keep pre-trial detention to a minimum;
 4. Points out that full recognition and rapid enforcement of judicial measures are a step towards the establishment of a Union area of criminal justice, and emphasises the EAW's importance as an effective means of combating serious cross-border crime;
 5. Considers that as the problems highlighted in recital F arise out of both the specifics of Framework Decision 2002/584/JHA and the incomplete and unbalanced nature of the Union area of criminal justice, the legislative solutions need to address both issues through continued work to establish minimum standards on inter alia the procedural rights of suspects and accused persons and a horizontal measure establishing principles applicable to all mutual recognition instruments, or if such a horizontal measure is not feasible or fails to remedy the problems identified in this resolution, amendments to Framework Decision 2002/584/JHA;

6. Considers that the weaknesses identified not only undermine mutual trust but are also costly in social and economic terms to the individuals concerned, their families and society in general;
7. Therefore requests the Commission to submit, within a year following the adoption of this resolution, on the basis of Article 82 of the TFEU, legislative proposals following the detailed recommendations set out in the Annex hereto and providing for:
 - (a) a procedure whereby a mutual recognition measure can, if necessary, be validated in the issuing Member State by a judge, court, investigating magistrate or public prosecutor, in order to overcome the differing interpretations of the term “judicial authority”;
 - (b) 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;
 - (c) a standardised consultation procedure whereby the competent authorities in the issuing and executing Member State can exchange information regarding the execution of judicial decisions such as on the assessment of proportionality and specifically in regard to the EAW to ascertain trial-readiness;
 - (d) a mandatory refusal ground where there are substantial grounds to believe that the execution of the measure would be incompatible with the executing Member State's obligation in accordance with Article 6 of the TEU and the Charter, notably Article 52(1) thereof with its reference to the principle of proportionality;
 - (e) the right to an effective legal remedy in compliance with Article 47(1) of the Charter and Article 13 of the ECHR, such as the right to appeal in the executing Member State against the requested execution of a mutual recognition instrument and the right for the requested person to challenge before a tribunal any failure by the issuing Member State to comply with assurances given to the executing Member State;
 - (f) a better definition of the crimes where the EAW should apply in order to facilitate the application of the proportionality test;
8. Calls for a clear and consistent application by all Member States of Union law regarding procedural rights in criminal proceedings linked to the use of the EAW; including the right to interpretation and translation in criminal proceedings; the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest; and the right to information in criminal proceedings;
9. Calls on the Commission to request from Member States comprehensive data relating to the operation of the EAW mechanism and to include such data in its next implementation report with a view to proposing appropriate action if any problems are found;
10. Calls for a regular review of non-executed EAWs and consideration of whether they, together with the corresponding SIS II and Interpol alerts, should be withdrawn; also calls for the withdrawal of EAWs and the corresponding SIS II and Interpol alerts where the

EAW has been refused on mandatory grounds, such as on the ground of *ne bis in idem* or incompatibility with human rights obligations; calls for provision to be made for SIS II and Interpol alerts to be mandatorily updated with information on the grounds for refusing the execution of the EAW corresponding to the alert and for appropriate updating of Europol files;

11. While stressing the primary importance of correct procedures including appeal rights, calls for Member States, as either an issuing or executing Member State, to provide for legal mechanisms to compensate damage arising from miscarriages of justice relating to the operation of mutual recognition instruments, in accordance with the standards laid down in the ECHR and in the well-established case-law of the ECJ;
12. Calls on the Council to include in its revised version of the European Handbook on how to issue a European Arrest Warrant (17195/1/10 REV 1) a six day time limit for the transmission of translated EAWs in order to provide greater clarity and certainty;
13. Calls on Member States and the Commission to cooperate in strengthening contact networks of judges, prosecutors and criminal defence lawyers to facilitate effective and well-informed EAW proceedings, and to offer relevant training at national and Union level to judicial and legal practitioners in *inter alia* languages, the proper use of the EAW and the combined use of the different mutual recognition instruments; calls on the Commission to draft a practical Union handbook designed for defence lawyers acting in EAW proceedings and easily accessible throughout the Union taking into account the existing work of the European Criminal Bar Association on this matter and complemented by national handbooks;
14. Calls on the Commission to facilitate the setting up of a specific European Arrest Warrant Judicial Network and a network of defence lawyers working on European criminal justice and extradition matters and to provide adequate funding to them as well as to the European Judicial Training Network; believes that the Commission can ensure the appropriate funding via the existing programmes in the Union area of criminal justice;
15. Calls on the Commission to establish and make easily accessible a Union database collecting all national case-law relating to EAW and other mutual recognition proceedings to facilitate the work of practitioners and the monitoring and assessment of implementation and any problems arising;
16. Highlights the link between detention conditions and EAW measures and reminds Member States that Article 3 of the ECHR and the case-law of the European Court of Human Rights (ECtHR) impose on the Member States not only negative obligations, by banning them from subjecting prisoners to inhuman and degrading treatment, but also positive obligations, by requiring them to ensure that prison conditions are consistent with human dignity, and that thorough, effective investigations are carried out if such rights are violated; calls on Member States to take particular account of the rights of vulnerable persons and in general thoroughly examine alternatives to detention;
17. In order to ensure the effectiveness of the mutual recognition framework, calls on the Commission to explore the legal and financial means available at Union level to improve standards of detention including legislative proposals on the conditions of pre-trial detention;
18. Confirms that the recommendations respect fundamental rights, the principle of subsidiarity

and the principle of proportionality;

19. Considers that any financial implications of the requested proposals for the budget of the Union should be covered by the existing budgetary allocations; stresses that for both Member States and citizens, the adoption and implementation of those proposals would lead to substantial cost and time savings, and will thus be beneficial both in economic and social terms, as clearly pointed out in the European Added Value Assessment of Union measures concerning the review of the EAW;
20. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council.

ANNEX TO THE RESOLUTION: RECOMMENDATIONS AS TO SOME ENVISAGED LEGISLATIVE PROPOSALS

Validation procedure for Union mutual legal recognition instruments:

- “Issuing authority” in Union criminal legislation shall be defined as:
 - (i) a judge, a court, an investigating magistrate or a public prosecutor competent in the case concerned; or
 - (ii) any other competent authority as defined by the issuing Member State, provided that the act to be executed is validated, after examination of its conformity with the conditions for issuing the instrument, by a judge, court, investigating magistrate or a public prosecutor in the issuing Member State.

Proportionality check for the issuing of Union mutual recognition legal instruments:

- When issuing a decision to be executed in another Member State, the competent authority shall carefully assess the need for the requested measure based on all the relevant factors and circumstances, taking into account the rights of the suspected or accused person and the availability of an appropriate less intrusive alternative measure to achieve the intended objectives, and shall apply the least intrusive available measure. Where the executing authority has reason to believe that the measure is disproportionate, the executing authority can consult the issuing authority on the importance of executing the mutual recognition decision. After such consultation, the issuing authority may decide to withdraw the mutual recognition decision.

Consultation procedure between the competent authorities in the issuing and executing Member State to be used for Union mutual recognition legal instruments:

- Without prejudice to the possibility of the competent executing authority to avail itself of the grounds for refusal, a standardised procedure should be available whereby the competent authorities in the issuing and executing Member State can exchange information and consult each other with a view to facilitating the smooth and efficient application of the relevant mutual recognition instruments or the protection of the fundamental rights of the person concerned such as the assessment of proportionality, including, with regard to the EAW in order to ascertain trial-readiness.

Fundamental rights refusal ground to be applied to Union mutual recognition legal instruments:

- There are substantial grounds to believe that the execution of the measure would be incompatible with the executing Member State's obligations in accordance with Article 6 TEU and the Charter.

Provision on effective legal remedies applicable to Union mutual recognition instruments:

- Member States shall ensure in accordance with the Charter, the established case-law of the ECJ and the ECtHR, that everyone whose rights and freedoms are violated by a decision, action or omission in the application of an instrument of mutual recognition in criminal

matters has the right to an effective remedy before a tribunal. If such a remedy is exercised in the executing Member State and has suspensive effect, the final decision on such a remedy shall be taken within the time limits set by the applicable mutual recognition instrument or, in the absence of explicit time limits, with sufficient promptness to ensure that the purpose of the mutual recognition process is not jeopardised.