



Plenary sitting

A9-0248/2020

8.12.2020

REPORT

on the implementation of the European Arrest Warrant and the surrender
procedures between Member States
(2019/2207(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Javier Zarzalejos

CONTENTS

	Page
EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS	3
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	7
OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS.....	23
INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE	29
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE	30

EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

Procedure and sources

The 2002 Framework Decision on the European Arrest Warrant (EAW) is the first mutual recognition instrument in the field of EU criminal, and thus the instrument where most experience as regards the issue of mutual recognition exists. It is based on Articles 31(a) and (b) and Article 34(2)(b) of the former TEU and was proposed by the Commission under the former third pillar. It had to be transposed till 31 December 2003. Thus, Member States have 16 years of experience with the mentioned instrument. All Member States participate in the instrument. This report represents an opportunity to assess how the mechanism set up by Framework Decision 2002/584/JHA was applied in the Member States concerned.

As stated above, this instrument is based on the principle of mutual recognition, which means that EAWs issued in one Member State have to be directly recognised and enforced in another Member State, except in certain specific cases.

The report will look into:

- the obstacles encountered in the implementation at Member States level;
- the connection with complementary instruments;
- challenges related to the diversity of measures that Member States may apply in execution of the EAWs;
- the impact of the instrument in terms of protection of fundamental rights;
- recommendations on how to overcome the diverse challenges encountered in implementation.

The rapporteur has collected information and has relied on the following sources, among others:

- an extensive exchange of views with stakeholders in the LIBE committee meeting held on 20 February 2020;
- an Ex-post Impact assessment by Parliament's EPRS services, published in June 2020;
- exchange of information with the relevant stakeholders, such as the European Commission, Eurojust, FRA, academics (including the 2016 EP EAW report) and practitioners using the instrument;
- the Commission implementation report of 2 July 2020.

General overview of the implementation of the EAW

Since the entry into force of Framework Decision 2002/584/EU on the EAW in 2004, a substantial amount of data exists, although there is sometimes an issue with the coherence of data collected and to understand them correctly, for example the statistical divergence between EAWs issued and EAWs enforced whereby a simple reading of numbers would create the wrong impression that the rate of compliance is low. This is not the case as explained by the Commission. In addition, a comprehensive number of national and Court of Justice judgments exists further clarifying some issues and showing the need for possible improvements or consolidations. In addition, practitioners and EU bodies, such as Eurojust have collected a significant amount of expertise, as for example Eurojust published even a guidebook of CJEU case-law of the EAW. The issue has been also substantially analysed by NGOs, for example Fair Trials International, 2016 CCBE report and others.

Based on such data input it can be established that as a general principle the EAW functions satisfactory. However, some areas through the application of the instruments showed the need for further clarifications. They relate to:

- The definition of *ne bis in idem*; in the past the CJEU clearly defined the issue of the obligatory non-recognition based on *ne bis in idem* in Article 3(2) EAW, whereby the question of “same acts” and “execution of sanction” had to be clarified;
- The issue of several EAWs from different Members States and their order;
- The issue of proportionality – the issuing of EAWs for minor offences in some Member States; issue has been addressed through the EAW Manual;
- The issue of additional non-recognition grounds not foreseen explicitly in the EAW Framework Decision and relating to fundamental rights, such as prison conditions or independence of judiciary; it has been clarified by the CJEU that Article 3 ECHR (Article 4 of the Charter) fully applies as regards prison conditions as well as certain basic safeguards of a fair trial, like independence and impartiality of judiciary whereby CJEU used a lighter standard for assessment (not ECtHR flagrant denial of justice);
- Issues with the definition of judicial authority, CJEU clarified that issuing authorities can be only independent prosecutors and judges; in that regard Eurojust prepared a guide for interpretation of the different national prosecutorial systems;
- The issue of double criminality as regards assessment of offences outside the list of 32 offence for which double criminality has been excluded;
- The issue of coherence with other instruments as regards rights of the suspect, such as Directive on interpretation and translation in criminal proceedings, Directive on right to information in criminal proceedings and Directive on access to a lawyer, as well as regards other mutual recognition instruments, such as Council Framework Decision 2008/909/JHA of 27 November 2008 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, or Directive 2014/41/EU on the European Investigation Order;
- The issue of common understanding of certain EAW concepts, such as a common understanding of EAWs during a criminal procedure (and the notion of “trial ready”),

the issue of accessory offences, time limits and notification requirements, etc.

Main finding and recommendation of the Rapporteur

Based on the above mentioned the rapporteur would like to point out the following:

a. General issues

The EAW system, based on available statistics, is a success and existing limited problems do not put this into question. One of the main points of added value is the applicability to all EU Member States; in that regard any corrections and improvements should take this into account and built on it.

b. Past legal issues and the role of the CJEU and other soft law tools

A significant amount of open legal questions could be addressed by a cooperation between national courts and the CJEU through preliminary questions; based on this answers on the definition of “issuing judicial authority” were provided (courts and independent prosecutors); prohibition of torture, inhuman and degrading treatment as regards prison conditions as well as the importance of independence of national judicial systems has been highlighted; the principle of ne bis in idem has been clarified: as well as connection with other instruments clarified (on recognition of prison sentences), etc. In addition questions could be clarified in the past by soft law measures, such as EAW manuals, Eurojust information notices, training of judges and experts.

c. Dual criminality and further development of the Area of Freedom, Security and Justice

Dual criminality presented an issue in certain cases mainly as regards the different interpretation of the scope of the check and the issue of the category of 32 offences for which no check should take place; certain practical and judicial clarification in that regard seems necessary. In that regard, in view of further integration, a possible enlargement of the list of 32 offences should be considered (for example hate crime or offences against public order and constitutional integrity of Member States) or even a different approach within the Framework Decision on the European Arrest Warrant on the matter with a so-called “negative list as was foreseen in Articles 27/28 of the initial Commission proposal on the EAW (COM(2001)0522 final). There the Commission stated: “Under Article 27, each Member State may draw up a list of forms of conduct for which it declares in advance it will refuse to execute European arrest warrants (“negative list” system). This list may include forms of conduct that do not constitute offences in the Member State making the list but which are in other Member States. Offences which have been decriminalised over the years (abortion, drug use, euthanasia, etc.) are typical of what might be on this list. Decriminalisation in these cases can be seen as the outcome of a democratic debate within the State which, consequently, no longer agrees to cooperate with other States which still treats these forms of conduct as criminal offences. The list will also cover more general aspects of criminal liability, such as the minimum age for liability. The list of offences provided for by this Article must be communicated to the General Secretariat of the Council and to the Commission, and it must be published. But at least three months will be needed after publication of the list before the Member State can rely on the exceptions in it.”.

d. Coherency

The Rapporteur considers that one of the main issues is coherency of application. The issue is often not the EAW FD as such but mainly a different understanding of some concepts and the need by the Commission to offer certain guidance and, if necessary, to start infringement proceedings to provide for a common understanding;

In that regard it is important that a clear coherent vision for EU criminal law and mutual recognition in criminal law exists, taking into account also the existing level of harmonisation of procedural and fundamental rights in criminal law. Such a coherent view demands that the same solution is applied in different mutual recognition instruments and a case by case patchwork is neither good legislation not helpful for practitioners. For example the use of obligatory and facultative non-recognition grounds in the EAW FD but only facultative ones in other instruments, the systematic use and definition of a fundamental rights non-recognition ground and the same catalogue of non-recognition grounds, etc.

The identified coherency issues shall be addressed by practical measures (training of practitioners), soft-law (manuals and recommendations), possibly very targeted legislation (definition of judicial authority, *ne bis in idem*, fundamental rights, etc.) and supplementing legislation (pre-trial detention). In the medium and long term also an EU code in criminal matters shall be established.

e. Training

Training is one of the main components for an adequate application of the EAW. A lot has been done through past years by platforms such as EJTN, co-financed by the Commission, introducing special training for judges and prosecutors on EU mutual recognition instruments and language training. Unfortunately, not all member States and schools of judiciary are regularly part of such training. In that regard an additional EU platform, including all EU Member states, shall be considered, intended for information exchange and learning, including an overview of the different national EAW case-law.

f. Harmonisation of procedural rights and guarantees and mutual trust

Often the issue is not the FD EAW but the lack of mutual trust due to lack of harmonisation of certain common fundamental procedural rights and standards. A certain achievement was made by the six directive on procedural rights of suspects, the Directive on victims' rights and harmonisation of certain criminal offences under Article 83(1) TFEU. However, as a priority supplementing legislation shall be assessed in the field of admissibility of evidence (the importance of common standards as regards final judgments and their mutual recognition) and even more as regards pre-trial detention. For prison conditions in the phase of pre-trial detention a legal basis in Article 82(2) TFEU exists. Such standards should aim for the highest possible standards and not the lowest common denominator. It should be avoided, as in the past in some directives, that unclear exceptions are provided furthering Member States to use them in a broad way (like limitations to a right to a lawyer in the pre-trial phase). In that regard as a matter of urgency the Commission should warn Member States that did not transpose common standards and start infringement proceedings, if necessary. Only a full adherence to commonly agreed standards can foster mutual trust.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI))

The European Parliament,

- having regard to Articles 2, 3, 6 and 7 of the Treaty on European Union (TEU) and Article 82 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 4, 47, 48 and 52 thereof,
- having regard to the case law of the European Court of Human Rights (ECtHR) referring to mutual recognition, fundamental rights and obligations under Article 2 of the European Convention on Human Rights (ECHR) on the right to life¹,
- 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 Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions³,
- having regard to Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/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 trial⁴,
- having regard to Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention⁵,
- 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 revised version of the handbook on how to issue and execute a

¹ See ECtHR judgment of 9 July 2019 in *Romeo Castaño v. Belgium* on a violation of a procedural aspect of Article 2 of the ECHR (effective investigation).

² OJ L 190, 18.7.2002, p. 1.

³ OJ L 337, 16.12.2008, p. 102.

⁴ OJ L 81, 27.3.2009, p. 24.

⁵ OJ L 294, 11.11.2009, p. 20.

European Arrest Warrant,

- having regard to its resolutions of 15 December 2011 on detention conditions in the EU⁶, of 27 February 2014 with recommendations to the Commission on the review of the European Arrest Warrant⁷, and of 5 October 2017 on prison systems and conditions⁸,
- having regard to its position adopted at first reading on 17 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Justice programme⁹,
- having regard to the 2009 Council roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings¹⁰,
- having regard to Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings¹¹,
- having regard to Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings¹²,
- having regard to Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty¹³,
- having regard to Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings¹⁴,
- having regard to Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings¹⁵,
- having regard to Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European Arrest Warrant proceedings¹⁶,
- having regard to Directive 2014/41/EU of the European Parliament and of the Council

⁶ OJ C 168 E, 14.6.2013, p. 82.

⁷ OJ C 285, 29.8.2017, p. 135.

⁸ OJ C 346, 27.9.2018, p. 94.

⁹ Text adopted, P8_TA(2019)0406.

¹⁰ OJ C 295, 4.12.2009, p. 3.

¹¹ OJ L 280, 26.10.2010, p. 1.

¹² OJ L 142, 1.6.2012, p. 1.

¹³ OJ L 294, 6.11.2013, p. 1.

¹⁴ OJ L 65, 11.3.2016, p. 1.

¹⁵ OJ L 132, 21.5.2016, p. 1.

¹⁶ OJ L 297, 4.11.2016, p. 1.

- of 3 April 2014 regarding the European Investigation Order in criminal matters¹⁷,
- having regard to the European Parliamentary Research Service (EPRS) European Implementation Assessment of June 2020 on the European Arrest Warrant,
 - having regard to the Commission report of 2 July 2020 on the implementation of Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (COM(2020)0270),
 - having regard to the European Added Value Assessment completed in January 2014 at the request of EPRS on the European Arrest Warrant and to the EPRS cost of non-Europe study on procedural rights and detention conditions of December 2017,
 - having regard to the final report of the Council of 27 May 2009 on the fourth round of mutual evaluations – the practical application of the European Arrest Warrant and corresponding surrender procedures between Member States,
 - having regard to the Commission report of 26 September 2019 on the implementation of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European Arrest Warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (COM(2019)0560),
 - having regard to the Council conclusions of 13 December 2018 on mutual recognition in criminal matters – ‘Promoting mutual recognition by enhancing mutual trust’¹⁸,
 - having regard to the Council conclusions of 16 December 2019 on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice¹⁹,
 - having regard to the EU Strategy on victims’ rights (2020-2025) (COM(2020)0258),
 - having regard to the reports by national, European and international NGOs,
 - having regard to Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust)²⁰,
 - having regard to the Commission communication of 30 September 2020 on its 2020 Rule of Law Report: the rule of law situation in the European Union (COM(2020)0580),
 - having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights²¹,

¹⁷ OJ L 130, 1.5.2014, p. 1.

¹⁸ OJ C 449, 13.12.2018, p. 6.

¹⁹ OJ C 422, 16.12.2019, p. 9.

²⁰ OJ L 295, 21.11.2018, p. 138.

²¹ Texts adopted, P9_TA(2020)0251.

- having regard to the 2002 Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,
 - having regard to the work carried out by the EU Agency for Fundamental Rights, in particular the reports entitled ‘Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings’ of 13 September 2019, ‘Criminal detention conditions in the European Union: rules and reality’ of 11 December 2019 and ‘Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers’ of 9 November 2016, and the database on criminal detention conditions launched in December 2019,
 - having regard to the conventions, recommendations and resolutions of the Council of Europe on prison matters and on criminal law cooperation,
 - having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
 - having regard to the opinion of the Committee on Constitutional Affairs,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0248/2020),
- A. whereas judicial cooperation in the Union is a relevant factor in achieving the environmental, social, economic and digital challenges posed;
- B. whereas the European Arrest Warrant (EAW) procedure is a simplified cross-border and fast-track judicial surrender procedure which was adopted following the 9/11 terrorist attacks and which, since its launch, has become the flagship and most commonly used instrument for mutual recognition in criminal matters;
- C. whereas the EAW is generally a success and has replaced extraditions with surrenders; whereas surrenders have been shortened to 40 days on average in 2017 from 50 days on average in 2016 where the individual does not consent, although in some Member States there is a delay or failure to comply with mutual recognition requirements; whereas in some rare cases Member States reported surrender procedures lasting up to 90 days where the individual does not consent;
- D. whereas of the 150 000 EAWs issued between 2005 and 2016, 43 000 were executed; whereas such raw numbers are misleading as regards the methodology used and the overall success, as the Commission has explained;
- E. whereas EU judicial cooperation on criminal matters is based on mutual recognition formulated by the 1999 Tampere European Council; whereas the Treaty of Lisbon significantly changed the EU’s constitutional configuration and provided an explicit legal basis for rules and procedures for ensuring mutual recognition of all forms of judgments and judicial decisions in Article 82 of the TFEU;
- F. whereas mutual recognition is not a new concept developed in the area of freedom, security and justice (AFSJ), but was initially developed in the internal market (*Cassis de Dijon* logic); whereas, however, mutual recognition in criminal justice has a different

logic and legal basis than the mutual recognition of market access rules; whereas in that regard, mutual recognition in the AFSJ has specific characteristics, given the implications for fundamental rights and national sovereignty and the extent to which it needs to be facilitated by the harmonisation of substantive and procedural criminal law, particularly as regards procedural safeguards; whereas any move away from applying the principle of mutual recognition in criminal matters may have negative consequences and affect its application in other fields, such as the internal market;

- G. whereas mutual recognition means the direct recognition of judicial decisions from other Member States with non-recognition as an exception, and means that a judicial decision should not be refused only on the basis that it is issued in another Member State; whereas application of mutual recognition of decisions taken by other Member States is not compatible with the revision of such decisions unless it is done on the grounds provided for in Framework Decision 2002/584/JHA; whereas cooperation and mutual trust between the competent judicial authorities has to prevail in the application of this instrument; whereas mutual recognition and fundamental rights must go hand in hand;
- H. whereas mutual recognition requires a high level of mutual trust between Member States and is a consequence of it based on a common understanding of the rule of law and fundamental rights; whereas the European Union requires this trust at this historic and crucial juncture in order to tackle common challenges successfully; whereas reinforcing trust is key for the EAW to operate smoothly;
- I. whereas the establishment of the EU mechanism on democracy, the rule of law and fundamental rights should be instrumental for the purpose of strengthening mutual trust as it is intended to point out areas where improvement is required as regards the rule of law; whereas the inadequate and inconsistent implementation of Framework Decision 2002/584/JHA by some Member States is not helping to reinforce this mutual trust; whereas an EU mechanism on democracy, the rule of law and fundamental rights may be useful to provide elements to ensure a consistent application where executions have been rejected on the basis of a breach of fundamental rights and therefore enhance mutual recognition between the Member State;
- J. whereas mutual trust requires Member States to be compliant with EU law and, in particular, with the fundamental rights recognised by the Charter and the rule of law, such as judicial independence;
- K. whereas the EAW has helped to develop and consolidate an AFSJ; whereas Article 6 of the TEU on the Charter of Fundamental Rights and the ECHR, Articles 8, 15(3), 16 and 18 to 25 of the TFEU, the directives on procedural rights and Directive 2012/29/EU on victims' rights²² are all crucial elements of the framework of the AFSJ; whereas the incorrect application of the EAW could have damaging effects on police and judicial cooperation across the Union, on individuals and their families, and on the functioning of the Schengen area and fundamental rights;
- L. whereas membership of the European Union implies respect for a set of values such as human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as laid down in both

²² OJ L 315, 14.11.2012, p. 57.

Article 2 of the TEU and Member States' legal systems, in compliance therewith;

- M. whereas a Union of equality that protects must ensure protection for all victims of crime²³ while also protecting the rights suspects and accused persons; whereas the EU has adopted instruments that aim to strengthen victims' rights by adopting a variety of instruments in addition to the detention and surrender of suspected and convicted people;
- N. whereas most issues raised by the application of the EAW have been addressed on certain questions by the Court of Justice of the EU (CJEU), such as *ne bis in idem*²⁴, judicial authority²⁵, primacy and EU harmonisation²⁶, independence of the judiciary²⁷, fundamental rights²⁸, double criminality²⁹, grounds for refusal, and extradition of EU citizens to third countries³⁰; whereas, at the same time, judicial rulings cannot become a substitute for well-drafted legislation at Union level;
- O. whereas double criminality is a concept of international extradition and, although scarcely compatible with mutual recognition, in practice it may be needed in a very limited way for requested persons in accordance with CJEU case law; whereas double criminality is only an optional ground for refusal of the EAW and is rarely invoked by executing authorities; whereas the list of offences without double criminality already includes a broad array of offences, many of which have not yet been very well harmonised in the Member States, and whereas such a list should be reassessed and possibly broadened in accordance with the procedure laid down in Article 2(3) of Framework Decision 2002/584/JHA;
- P. whereas the concept of mutual recognition would not require the harmonisation of criminal material law and procedure as such, but whereas the practice of judicial cooperation has shown that the harmonisation of certain and limited common standards and definitions are necessary to facilitate mutual recognition, as acknowledged by Article 82(2) of the TFEU; whereas some progress has been made in the last few years, namely the adoption of six directives on procedural rights, Directive 2012/29/EU on victims' rights, alternative measures to the EAW such as the European Investigation Order (EIO) and the harmonisation of some criminal offences; whereas, however, the six directives on procedural safeguards have not been fully and correctly implemented, which remains a matter of concern;
- Q. whereas the Commission has stressed that there are difficulties with the implementation of certain provisions of Directive 2013/48/EU on the right of access to a lawyer and the EAW, in particular as regards the possibility of accessing a lawyer both in the executing and the issuing Member State; whereas the transposition of the other directives on procedural safeguards containing specific provisions on the EAW (2010/64/EU,

²³ EU Strategy on victims' rights (2020-25).

²⁴ CJEU, C-261/09, *Mantello*.

²⁵ CJEU, C-453/16 PPU, *Özçelik*; C-452/16 PPU, *Poltorak*; C-477/16 PPU, *Kovalkovas*; Joined Cases C-508/18 and C-82/19 PPU, *OG and PI*.

²⁶ CJEU, C-399/11, *Melloni* or C-42/17, *M.A.S. and M.B.*

²⁷ CJEU, C-216/18 PPU, *Minister for Justice and Equality*.

²⁸ CJEU, Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru*; C-128/18, *Dorobantu*.

²⁹ CJEU, C-289/15, *Grundza*.

³⁰ CJEU, C-182/15, *Petruhhin*; C-191/16, *Pisciotti*; C-247/17 *Raugevicius*; C-897/19 PPU, *I.N. v. Ruska Federacija*; etc.

2012/13/EU, 2016/800/EU and 2016/1919/EU) has been inadequate so far, including as regards taking into account the equality of arms;

- R. whereas other instruments have helped to address some EAW issues, such as Directive 2014/41/EU on the EIO and Regulation (EU) 1805/2018 on the mutual recognition of freezing and confiscation orders³¹, and have applied the mutual recognition principles to other types of judicial decisions;
- S. whereas the 2009 EU roadmap for strengthening criminal procedural rights recognises the issue of periods of pre-trial detention; whereas prison conditions are an issue in many Member States and have to be in compliance with the values enshrined in Article 2 of the TEU; whereas there are rule of law issues in some Member States, as reflected by ECHR judgments;
- T. whereas in its resolution of 27 February 2014 on the review of the EAW, the European Parliament called, inter alia, for the introduction of 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; whereas in 2017, fundamental rights issues led to refusal to surrender in 109 cases;
- U. whereas mutual recognition requires practitioners, including criminal lawyers, to be trained in EU law;
- V. whereas Eurojust plays an essential role in facilitating and coordinating the execution of EAWs; whereas the assistance of Eurojust is increasingly requested in the execution of EAWs, which has significantly increased its workload; whereas in 2019 alone, Eurojust facilitated the execution of EAWs in 703 new cases and 574 ongoing cases; whereas Eurojust is an independent, self-standing agency alongside the European Public Prosecutor's Office;
- W. whereas data comparisons show a trend of rising numbers of EAWs, with the number of EAWs issued increasing year-on-year;
- X. whereas a harmonised EAW implementation, together with the full and correct implementation of the procedural rights directives, an enhanced use of alternative measures to the EAW and the establishment of EU minimum standards, such as on prison and detention conditions, will prevent forum shopping; whereas a full and correct EAW implementation in all Member States is necessary to properly assess the functioning of the relevant legislative instruments and the need for possible amendments;

General assessment of EAW implementation

1. Points out that the EAW is a major achievement and an effective, useful and indispensable instrument for combating serious cross-border crimes and for bringing the perpetrators of serious crimes to justice in the Member State where criminal proceedings have taken or are taking place, and has positive effects on the maintenance of the AFSJ; recognises that the EAW has substantially facilitated and improved

³¹ OJ L 303, 28.11.2018, p. 1.

cooperation on surrenders; points out, however, that in the last 20 years the world has been undergoing a digital transformation that has changed the ecosystem of crime;

2. Notes the existence of particular problems; finds that these do not call the system into question or place it at risk, but show that it has to be improved and updated and that such issues do need to be addressed so as to eliminate certain blind spots and thus strengthen the overall system and safeguard compliance with the rule of law and fundamental rights in all Member States; states that the Schengen area and digital transformation have created numerous opportunities for EU citizens; notes, however, that open borders and new technologies also require effective tools for law enforcement and the judiciary to prosecute serious transnational crimes;
3. Notes that such problems mainly relate to detention and prison conditions, proportionality, implementation in EAW proceedings of the procedural safeguards enshrined in EU law, in particular dual legal representation in both executing and issuing states, and training, specific rule of law issues, the execution of custodial sentences³², time limits³³ and *in absentia* decisions; acknowledges that certain cases have raised the issue of double criminality³⁴; perceives, in other cases, an inconsistency in the application of grounds for refusing to execute EAWs; highlights further the absence of a comprehensive data system enabling the establishment of reliable qualitative and quantitative statistics on the issue, execution or refusal of EAWs; points out that such problems not only undermine mutual trust between Member States but are also costly in social and economic terms to the individuals concerned, their families and societies in general;
4. Notes that some issues have been partially addressed and that attempts are being made to solve them by a combination of soft law (EAW handbook), mutual assessments, assistance from Eurojust, funding of training programmes and toolkits for practitioners under the EU Justice Programme, CJEU case law and supplementing legislation (Framework Decision 2009/299/JHA and the adoption of the directives on procedural rights for suspects and accused persons as set out in the roadmap of 2009, in particular Directive 2013/48/EU), although other issues remain;
5. Points out that the EAW should be enhanced and improved to render it more effective, immediate and respectful of national courts' decisions, while respecting proportionality, as one of the aims of a stronger Union requires that Member States trust the legal systems and prison systems of other Member States, for which this mechanism is essential; recalls that any weakening of mutual recognition in criminal matters can only lead to its weakening in other areas, which would be prejudicial to tackling common policies, such as the internal market, effectively;
6. Notes that Protocols No 21 and No 22 to the TEU provide special status for two Member States – Ireland has an opt-in option and Denmark does not take part in EU criminal law – meaning that they participate in the EAW system but not necessarily in other instruments, such as the procedural safeguards directives; highlights the importance of ensuring consistency in the area of freedom, security and justice;

³² CJEU, C-579/15, *Poplawski*.

³³ CJEU, C-168/13 PPU, *Jeremy F.*

³⁴ CJEU, with guidance from C-289/15, *Grundza*, referring to Council Framework Decision 2008/909/JHA.

7. Underlines that the EAW should not be misused for minor offences, where grounds for pre-trial detention do not exist; recalls that use of the EAW should be limited to serious offences where it is strictly necessary and proportionate; urges the use of less intrusive legal instruments where possible before an EAW is issued, such as the EIO; points out that issuing authorities should carry out proportionality checks, taking into account (i) the seriousness of the offence, (ii) the likely penalty imposed if the person is found guilty of the alleged offence, (iii) the likelihood of detention of the person in the issuing Member State after surrender, (iv) the impact on the rights of the requested person and his or her family, and (v) the interests of the victims of the offence; calls on Member States and their judicial authorities to process EAW cases without undue delay once an EAW has been issued, in order to keep pre-trial detention to a minimum;
8. Highlights that according to the CJEU, the refusal to execute an EAW is an exception to mutual recognition and must be interpreted strictly³⁵ where one of the grounds for non-recognition (Articles 3 and 4 of Framework Decision 2002/548/JHA) or one of the guarantees (Article 5 of the same) applies or in accordance with CJEU case law;
9. Calls for refusal to be permitted where there are substantial grounds to believe that the execution of the EAW would be incompatible with the executing Member State's obligation in accordance with Article 6 of the TEU and the Charter of Fundamental Rights; points out that when non-execution is justified on the basis of a breach of fundamental rights, the executing Member State has to attribute the serious risk of violation of fundamental rights and establish the grounds for refusal of execution on the basis of factual and objective elements, in order to avoid legal uncertainty and potential impunity; recalls that, according to the case law of the Court of Justice of the EU, the Charter is the common standard for protection of fundamental rights in the EU³⁶;

Recommendations to improve the functioning of the EAW

10. Calls on the Commission to provide clear, understandable, comprehensive and comparable data, as the existing data is confusing and can offer a false impression of the (non-)efficiency of EAWs; calls on the Commission to set out the method by which the Member States should fulfil their obligation to systematically collect and transfer reliable and up-to-date data to the Commission; calls on the Commission to assess the possibility of creating a common database containing judicial decisions on EAWs, using solely anonymised data, which would become a smart and efficient instrument for assessing judicial cooperation, identifying weak points and being better prepared for any adjustments; recalls that judicial cooperation is a key element in guaranteeing social, economic, environmental and digital stability; reiterates its call to 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;
11. Believes that further horizontal measures need to be adopted to enhance the principle of sincere cooperation as enshrined in Article 4(3) of the TEU and to increase mutual trust in national criminal justice systems, thereby leading to more efficient judicial cooperation; points out that a double criminality check limits mutual recognition and, according to the CJEU, must be interpreted restrictively; emphasises, however, that

³⁵ See, for example, CJEU, C-216/18 PPU, *Minister for Justice and Equality*.

³⁶ Cf. CJEU, C-399/11, *Melloni*, para. 63 and C-128/18, *Dorobantu*, para. 79.

there are ongoing concerns about the lack of a proper definition of criminal offences to which the double criminality rule no longer applies; notes that mutual recognition should ideally work automatically³⁷ without reassessment of the substantial grounds for accusation and that decisions should not be refused unless there are the reasons to invoke one of the grounds for refusal exhaustively listed in the EAW Framework Decision or unless other circumstances, as recognised by the CJEU, justify placing limitations on the principles of mutual recognition and mutual trust between Member States;

12. Underlines that the principle of mutual recognition must be premised upon mutual trust, which can be achieved only if respect for the fundamental and procedural rights of suspects and accused persons in criminal proceedings is guaranteed throughout the Union; recalls the importance of implementing the procedural rights directives with a view to guaranteeing the right to a fair trial; urges the Commission, in this regard, to ensure the full and correct implementation of these directives and to consider launching infringement proceedings where necessary;
13. Calls on the Commission to analyse common offences in the Member States with a view to better defining when the EAW should be used and to facilitate proportionality assessments; calls on the Commission to carry out a formal and substantive consistency assessment of the list of 32 categories that do not require a double criminality check, including criteria such as the gravity of the offence, its cross-border dimension or its harmful effect in undermining the fundamental values of the Union; notes that greater legal certainty must be provided to all involved in implementation, thereby avoiding unnecessary disputes; calls on the Commission to fully evaluate the issues of drawing up, where possible, a homogeneous list of categories of offences, based in specific offences and interests protected by law; recommends, furthermore, that the inclusion of an annex containing definitions for each list entry be assessed, in order to facilitate interpretation;
14. Highlights the importance of assessing the inclusion of additional offences or categories of offences such as environmental crimes (e.g. ship-source pollution offences), certain forms of tax evasion, hate crimes, sexual abuse, gender-based violence, offences committed through digital means such as identity theft, offences involving the use of violence or a serious threat against public order of the Member States and crimes against the constitutional integrity of the Member States committed by using violence, crimes of genocide, crimes against humanity and war crimes in the framework of an enhance commitment to judicial cooperation, the rule of law and fundamental rights by Member States; stresses that closer judicial cooperation regarding offences of this nature would help the Union to achieve its own priority objectives, while at the same time strengthening the notion of respect for democracy and rule of law in the Union;
15. Welcomes the EAW coordination group recently set up by the Commission; believes that this group will contribute to enhancing the rapid exchange of up-to-date and reliable information and good practices and to strengthening cooperation, which should lead to a more uniform application of the EAW between judicial authorities as well as resulting in better exchange of information between lawyers representing the persons

³⁷ See, for example, the Commission communication of 26 July 2000 on the Mutual Recognition of Final Decisions in Criminal Matters (COM(2000)0495).

concerned by EAWs in executing and issuing Member States;

16. Recalls that in principle, the punishment threshold laid down in Article 2(2) of the EAW Framework Decision aims to ensure the proportionality of the EAW; calls on the Commission, however, to analyse the possibility of reducing the three-year threshold for certain offences, such as trafficking in human beings, sexual exploitation of children and child pornography;
17. Calls on the Commission to clarify the issue of offences accessory to or related to the main offences that meets the EAW threshold, for example by considering updating the EAW handbook or possibly via EU instruments in the field of harmonisation of criminal law, including the indication of the application of EAWs in Member States in that regard; recalls, in this regard, that the EAW does not regulate surrender for accessory or related offences and that the speciality rule might apply precluding the issuing Member State from prosecuting those offences;
18. Stresses the importance of defining more precisely the duties and competencies of the national authorities and EU bodies involved in EAW procedures and ensuring that they are specialised and have practical experience; affirms that a broad margin of discretion for the executing authority is deemed scarcely compatible with or even runs counter to the principle of mutual recognition, outside the non-recognition grounds laid down in Articles 3 and 4 of the EAW Framework Decision and as explained by the CJEU; believes that any review of the EAW Framework Decision must establish a procedure whereby an EAW can, if necessary, be validated by a judge, court, investigating magistrate or public prosecutor in the issuing Member State, in accordance with CJEU case law, in order to overcome the differing interpretations of the term ‘judicial authority’; considers that, if legal certainty can be provided regarding offences which clearly fall within the definition of double criminality and those which do not, then discretion should be limited in cases of double criminality; affirms that the improvement of the rule of law, fundamental rights, prison conditions and practitioner’s knowledge of other legal systems will contribute to strengthening mutual trust and mutual recognition;
19. Calls on the Commission to continue assessing the transposition of the EAW and other judicial cooperation instruments and to initiate infringement proceedings where necessary;
20. Calls on the Member States to implement the EAW, the relevant judgments of the Court of Justice on the EAW and other legal instruments on criminal matters in a timely and proper fashion; stresses that instruments such as Framework Decision 2008/909/JHA on the transfer of prisoners, Framework Decision 2008/947/JHA on probation and alternative sanctions, the EIO, the European Supervision Order, the European Convention on the Transfer of Proceedings in Criminal Matters³⁸, both complement the EAW and provide useful and less intrusive alternatives to it; stresses that the EAW should only be used if all other alternative options have been exhausted and that states should not have recourse to the EAW in situations where a less intrusive measure would lead to the same results, for example hearings by videoconference or related tools; urges Member States’ authorities, where possible, to use such alternative instruments instead

³⁸ Council of Europe Treaty No.073, 15 May 1972.

of issuing an EAW;

21. Calls on the Member States to ensure that judicial authorities are able to order available alternatives to detention and coercive measures in EAW proceedings, particularly where a person consents to their surrender, unless a refusal is necessary and justified;
22. Notes the Commission's worrisome report on the implementation of Directive 2013/48/EU on the right of access to a lawyer in EAW proceedings; urges the Commission to continue to assess Member States' compliance with the directive and to take appropriate measures, including infringement proceedings, to ensure conformity with its provisions; urges the Commission to step up efforts to ensure the full implementation of all directives on procedural safeguards in order to make sure that requested persons have recourse to effective defence in cross-border proceedings; urges the Commission to consider taking action in the light of the inadequate implementation of the Commission recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings³⁹, in particular in respect of vulnerable adults;
23. Calls on the Member States to provide flexibility for EAW language regimes and to develop and apply common practices in that regard, while upholding the right to interpretation and translation for persons in criminal proceedings in line with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; calls on Member States, in that regard, to introduce the necessary mechanisms to avoid delays or obstructions; regrets the fact that Framework Decision 2002/584/JHA does not stipulate deadlines for the transmission of translated EAWs;
24. Calls on the Commission to provide for a uniform application and effective monitoring of time limits;
25. Calls on the Commission to ensure adequate funding for Eurojust and the European Judicial Network (EJN) to enable them to facilitate and coordinate the EAW; deplores the fact that the Commission's current budgetary appropriations for Eurojust are insufficient in the light of the challenges faced by the agency with regard to its continuously growing caseload, and that they have led to a stagnation in financing despite an increased workload; points out that it is essential that the budget of Eurojust matches the agency's tasks and priorities in order to enable it to fulfil its mandate; reiterates its call for a specific EAW judicial network;
26. Calls on the Commission and the Member States to provide appropriate funding for legal aid to persons concerned by EAW proceedings, including for legal assistance in both the issuing and executing Member States before surrender is ordered, funding for suitably qualified interpreters and translators, specific training on the EAW for practitioners, including police, prosecutors, the judiciary and defence lawyers, particularly in areas such as the fundamental rights aspects of the EAW, the assessment of proportionality and alternative measures to detention, representation in EAW cases, and regarding the procedure for requesting a preliminary ruling of the Court of Justice of the EU and for seeking assurances from other Member States' authorities; underlines the value of European Judicial Training Network (EJTN) programmes such as EAW simulations and language training; stresses that in order to ensure equality of arms,

³⁹ OJ C 378, 24.12.2013, p. 8.

lawyers should have access to targeted, accessible and affordable training; calls on the Commission to promote and facilitate the provision of such training;

27. Calls on the Commission, in cooperation with Member States, to support and eventually further develop the EJTN and existing national training platforms for the judiciary and, if necessary, launch an additional training platform for experts and practitioners on mutual recognition instruments, including the EAW; affirms that it should provide them with knowledge about the close relationship between instruments, including a common space for the exchange of experiences;
28. Notes that cooperation between authorities, including compliance on fundamental rights, may be improved by using secure technology and digitalisation; welcomes the establishment of the Criminal Detention Database of the EU Agency for Fundamental Rights (FRA); requests that a centralised database be developed containing the national case law on the EAW application (as is the case in other areas of EU law)⁴⁰; considers that a specific public database of EAW lawyers could contribute to guaranteeing the right of access to a lawyer;
29. Calls for regular review of non-executed EAWs and consideration of whether they, together with the corresponding Schengen Information System II (SIS II) and Interpol alerts, should be withdrawn; calls in addition for EAWs and corresponding SIS II and Interpol alerts to be withdrawn where the EAW has been refused on mandatory grounds such as the principle of *ne bis in idem*;
30. Calls on the Commission to take account of the opinions of national parliaments, in line with Protocol 2 to the TEU, if it decides to propose legislative acts in the field of EU criminal law, as their participation provides a check on the application of the principles of subsidiarity and proportionality in EU criminal law;

Recommendations on fundamental rights

31. Calls on Member States to respect the obligations arising from Article 2 of the TEU on human dignity, freedom, democracy, equality, the rule of law and human rights, including minority rights; stresses that Member States must ensure that every person, including victims of crime or requested persons of an EAW, whose rights and freedoms as guaranteed by the law of the Union are violated, has the right to effective remedy before a tribunal in accordance with Article 47 of Charter of Fundamental Rights and the established case law of the Court of Justice of the European Union; stresses that remedies in the executing state, while fully respecting the right to an effective remedy, must be in line with time limits set by the applicable mutual recognition instrument or, in the absence of explicit time limits, must be delivered with sufficient promptness to ensure that the purpose of the mutual recognition process is not jeopardised;
32. Notes that although implementation of the procedures provided for in Article 7(1) of the TEU has an impact on mutual recognition, in accordance with the existing CJEU case law, the executing authority must assess in each specific case whether there are substantial grounds for believing that, following surrender, the person will run the risk of having their fundamental rights contravened; underlines that the triggering of Article 7(1) and (2) of the TEU does not amount to automatic non-recognition in view

⁴⁰ See the EPRS European Implementation Assessment of June 2020 on the EAW.

of the importance of cooperation in criminal matters and the functioning of the whole EU judicial cooperation system; highlights the role of Eurojust in assisting Member States when issuing or executing orders in this context, with a view to enhancing confidence and mutual trust; recommends, therefore, the introduction of a system of precautionary measures, including the suspension of the instrument, to underpin the guarantees provided, while enhancing confidence and mutual recognition between Member States;

33. Highlights the link between detention conditions and EAW measures and reminds Member States that Article 3 of the ECHR and the relevant case law impose on the Member States not only negative obligations, 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 in the event of rights violations; calls on the Commission to explore the legal and financial means available at Union level to improve standards of detention;
34. Is concerned about prison conditions in certain Member States; welcomes in this regard the new FRA Criminal Detention Database⁴¹ and considers it a positive first step towards a better common assessment of prison conditions in the EU;
35. Reiterates its call⁴² for Member States to improve deficient prison conditions; calls on the Commission to fully exploit the possibility of financing the modernisation of detention facilities through EU Structural Funds; recalls in this regard that in its 2018 conclusions on promoting mutual recognition by enhancing mutual trust⁴³, the Council also invited the Commission to promote the use of EU funds to support the Member States in addressing the problem of deficient detention conditions;
36. Reiterates the importance of an EU mechanism on democracy, the rule of law and fundamental rights, in the form of a possible legislative proposal and underpinned by an interinstitutional agreement consisting of an annual independent and evidence-based review to assess the compliance of all Member States with Article 2 of the TEU, as well as country-specific recommendations, so as to enhance mutual recognition between the Member States; notes that an EU mechanism on democracy, the rule of law and fundamental rights would be a key tool contributing to stronger mutual trust between Member States in the context of the application of the EAW Framework Decision;
37. Calls on the Commission to study the feasibility of supplementing instruments on procedural rights, such as those on admissibility of evidence and prison conditions in pre-trial detention, in particular on the basis of Council of Europe standards or higher, including with regard to time limits on pre-trial detention; states that the Commission should aim for the highest standards while respecting the principles of subsidiarity and proportionality; calls on the Commission to strengthen the information tools for national executing authorities on the conditions of pre-trial detention and imprisonment in each Member State;

⁴¹ FRA Criminal Detention Database 2015-2019, <https://fra.europa.eu/en/databases/criminal-detention/criminal-detention/home>

⁴² European Parliament resolution of 5 October 2017 on prison systems and conditions, OJ C 346, 27.9.2018, p. 94.

⁴³ OJ C 449, 13.12.2018, p. 6.

38. Calls on the Commission to provide, inter alia, an assessment of compliance with the principle of *ne bis in idem*, a proportionality check for the issuing of an EAW, based on all the relevant factors and circumstances such as the seriousness of the offence, whether the case is trial-ready, the impacts on the rights of the requested person, the cost implications and the availability of appropriate, less intrusive alternative measures, a standardised consultation procedure whereby the competent authorities in the issuing and executing Member State can exchange information regarding the execution of an EAW, in particular with regard to proportionality, trial-readiness and conflicts of jurisdiction, and an overview of possible legislative actions pursuant to Article 82(1) of the TFEU;
39. Calls on the Member States to ratify the Optional Protocol to the UN Convention against Torture;
40. Points out that shortcomings in judicial cooperation, including on the EAW, may run counter to the interests of victims and can lead to the denial of access to justice and a lack of protection for victims; emphasises that impunity as a result of deficiencies in judicial cooperation may have a detrimental and negative impact on the rule of law, judicial systems and public confidence in institutions, as well as on victims themselves and society in general;
41. Stresses that according to the FRA, the information provided to defendants regarding their procedural rights in criminal proceedings differs both in scope and in how it is conveyed; calls on the Member States to put in place safeguards to ensure that individuals are effectively informed about their procedural rights as soon as they are suspected of having committed an offense;
42. Notes the standards of the ECtHR as well as the requirements set out in Directive 2013/48/EU on the right of access to a lawyer and Directive 2010/64/EU on the right to interpretation and translation; urges the Commission and the Member States to ensure that the right of access to a lawyer and to legal aid in both the issuing and executing Member States is guaranteed both in law and in practice;

For a coherent EAW legal framework

43. States that the EAW is effective; believes, however, that the main issues with the EAW relate to its coherence and efficiency, where there is room for improvement, even if limited questions about compliance with EU values and fundamental rights have been raised;
44. Calls on the Commission to provide for a coherent policy on mutual recognition which takes into account the case law of the CJEU, the current level of harmonisation of Member States' criminal law and procedures, and the fundamental rights recognised by the Charter of Fundamental Rights;
45. Calls on the Commission to conduct a cross-case study of mutual recognition instruments so as to prevent divergences and ensure their coordination and the correct interplay between them; urges in particular that the practical implementation of the instrument in different countries be observed, with a view to identifying good practices that result in a high degree of compliance with warrants issued by certain countries as well as the specific difficulties encountered where the level of non-compliance with

EAWs is particularly high;

46. States that identified coherency issues related to the implementation of the EAW Framework Decision must be addressed through a combination of practical measures (training of practitioners), soft law (handbooks and recommendations), very targeted legislation (the definition of judicial authority, *ne bis in idem*, fundamental rights, etc.) and, as a second step, via means deemed necessary, taking into account the ninth round of mutual evaluation, to supplement targeted legislation (pre-trial detention); considers that the Commission should work towards the full and correct implementation of the EAW in all Member States, taking into account CJEU case law;
47. Recommends, in the medium term, the promotion of an EU judicial cooperation code in criminal matters that systematically compiles the existing legislation to guarantee legal certainty and the coherence of the various EU instruments;

Brexit

48. Calls on the Commission to continue negotiations with the UK aimed at preserving EU standards in respect of the procedural and fundamental rights of suspects and accused persons; express its concern that the results achieved in the UK since the introduction of the EAW might be dramatically reversed;

◦

◦ ◦

49. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

12.10.2020

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the implementation of the European Arrest Warrant and the Surrender Procedures between Member States
(2019/2207(INI))

Rapporteur for opinion: Paulo Rangel

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas the link between European Arrest Warrant (EAW) and EU citizenship makes the EAW a corollary of the free movement of people based on the principle of mutual recognition; whereas mutual trust between Member States is a *sine qua non* condition for the effective functioning of the EAW, and is underpinned by shared respect for fundamental rights as set out in the Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union;
 - B. whereas concerns over the lack of independence of national judicial authorities and detention conditions in some Member States have contributed to undermining mutual confidence in recent years;
 - C. whereas the UK authorities have been responsible for issuing and executing a substantial number of EAWs; whereas the Political Declaration on the future relationship states that the UK and the EU ‘will provide for comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters’;
 - D. whereas new arrangements for criminal justice cooperation between the EU and the UK are still under negotiation;
 - E. whereas the withdrawal of the UK from the EU renders obsolete Articles 10(4) and (5) of Protocol 36 of the TEU;
1. Recalls that the Framework Decision on European Arrest Warrant (FDEAW), establishing one of the oldest instruments based on mutual recognition in criminal matters is a successful instrument for judicial cooperation that has led to considerable simplification, and contributed to speeding up surrender procedures between EU

Member States in comparison with traditional systems of extradition cooperation between different jurisdictions;

2. Recognises that the FDEAW is a cornerstone of the European area of freedom, security and justice, and that its correct implementation is of key importance to ensuring smooth cooperation between law enforcement authorities;
3. Recognises that implementing the FDEAW has put legal systems in many Member States under strain, particularly with regard to the extradition of their own nationals; notes that the FDEAW has revealed stark national differences in substantive and procedural criminal law;
4. Believes that the cross-border dimension of an increased number of crimes, including those related to corruption, trafficking, digital crimes, environmental damage and gender-based violence, makes Member States' respect for the rule of law and fundamental rights even more crucial, in particular when it comes to procedural rights;
5. Highlights that the effective end of the transitional measures in Justice and Home Affairs under Title VII of Protocol 36 of the TEU increases the responsibility of Member States, in line with the principle of sincere cooperation enshrined in Article 4(3) of the TEU, to refrain from adopting any measure which would jeopardise the attainment of the Union's objectives, including those laid out in Article 3 of the TEU;
6. Notes that the implementation of the EAW is still below its full potential due to the lack of trust between Member States; insists that Member States are responsible for ensuring a high level of mutual trust, which is premised on their obligation to respect the Treaties, the Charter of Fundamental Rights and EU legislation, as well as on the adherence of their institutions to EU values, including the respect for the rule of law and fundamental rights (Articles 2 and 6 of the TEU);
7. Stresses that the principle of mutual recognition, on which the EAW system is based, is itself founded on Member States' confidence that their respective national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter;
8. Highlights therefore, with regard to the EAW, that Member States have the obligation to ensure a high level of protection for procedural and fundamental rights and respect for the rule of law, as well as ensuring the independence of their judiciary, in order to guarantee effective legal protection; takes note of significant developments in the case law of the Court of Justice of the European Union (CJEU) which confirmed those principles;
9. Highlights that the establishment of an EU mechanism on democracy, the rule of law and fundamental rights will contribute to reinforcing mutual trust between Member States, thus enhancing the functioning of the principle of mutual recognition;
10. Notes that any breach of the EU values enshrined in Article 2 of the TEU by a Member State compromises the application of the FDEAW by diminishing this trust; insists therefore that the respect for these values should be ensured through the deployment of all available monitoring and corrective mechanisms;

11. Notes in this regard the Rule of Law Review Cycle Initiative announced by the Commission in July 2019, and the first Annual Rule of Law Report covering all Member States of 30 September 2020;
12. Considers that the application of the FDEAW should be analysed against the backdrop of the establishment of such a mechanism; calls on the Commission to update its ‘Handbook on how to issue and execute a European arrest warrant’ in order to reflect substantial jurisprudential developments regarding this matter;
13. Believes that further horizontal measures need to be adopted to increase mutual confidence in national criminal justice systems, thereby leading to more efficient judicial cooperation;
14. Underlines, in this regard, the important role of agencies, such as the EU Agency for Criminal Justice Cooperation (Eurojust), and of initiatives, such as the recent establishment of the EAW coordination group, which aims to develop mutual trust;
15. Recalls the importance of ensuring that all persons subject to an EAW are guaranteed their procedural rights, including the rights to information on proceedings, to be advised and represented by a lawyer, to legal aid, and to interpretation and translation;
16. Emphasises that, once procedural requirements are fulfilled for the offences listed in Article 2(2) of the FDEAW, the principle of mutual recognition should apply fully, and any exception should be interpreted restrictively, without judging on the substance of the charges,
17. Underlines that further improvements to the application of the FDEAW are needed and should include further implementation of the procedural rights of suspected persons, guarantees on the respect of minimum standards with regard to prison conditions, application of the *ne bis in idem* principle, and of the rules regarding the execution of an arrest warrant if the person who is the subject of an EAW is a minor who may not, owing to their age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing Member State;
18. Recalls that the FDEAW was adopted using the intergovernmental cooperation method under the former third pillar on police and judicial cooperation in criminal matters; acknowledges the advantages of bringing the FDEAW fully under the Lisbon Treaty as an EU regulation in the sense of Article 288 of the TFEU and into conformity with Article 10(2) of Protocol 36 of the TEU, thereby allowing the European Parliament to act as co-legislator;
19. Is convinced that this ‘lisbonisation’ process would provide substantial benefits in terms of democratic legitimacy, legal certainty and transparency, enhance coherence with other criminal law instruments adopted under the ordinary legislative procedure, and allow for clarification of ‘judicial authority’ as an autonomous concept in EU law; believes that this process should, inter alia, provide for an obligation for the issuing authority to consistently apply a proportionality test, establish explicit grounds for refusal to surrender a person in accordance with Article 6 of the TEU and the Charter of Fundamental Rights, provide for explicit obligations for Member States to report on how they issue and execute EAWs, and enhance the Commission’s enforcement powers; recalls however that this integration should not be done at the cost of a swift

improvement of the application of the current legal framework;

20. Proposes, in this regard, that during the current legislative term Parliament holds regular hearings with Member States and Eurojust in order to increase dialogue and transparency on the application of the FDEAW;
21. Supports revision of the list of the offences listed in Article 2(2) of the FDEAW in line with the relevant experience with its application;
22. Stresses that the Charter of Fundamental Rights, as a source of primary law, always has precedence over any piece of secondary legislation on the EAW; insists that, as is stated in Article 51(1) of the Charter, Member States and, thus their courts, must respect the Charter when they are implementing EU law, which is the case when the issuing judicial authority and the executing judicial authority are applying the provisions of national law adopted to transpose the FDEAW; is of the opinion, therefore, that automatic surrender is out of the question, as confirmed by CJEU in the Aranyosi judgment (C-404/15); insists that judicial control is always necessary to verify, inter alia, whether a lawful decision has been adopted, a competent authority has been involved, and fundamental rights have been respected; notes that where the judicial authority of the executing Member State has evidence of a real risk of a violation of fundamental rights in the issuing Member State, that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender of a person to the authorities of the issuing Member State;
23. Notes that the withdrawal of the UK from the EU creates opportunities for further unification of the criminal justice area; recalls that the Political Declaration on the future relationship states that the UK and EU ‘will provide for comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters’;
24. Points out that if the EU and the UK fail to adopt a new extradition agreement as part of an overall partnership agreement by the end of the transition period, the parties will have to revert to the 1957 European Convention on Extradition of the Council of Europe, which entails much slower procedures of a political and diplomatic nature, rather than technical ones;
25. Insists that any agreement between the EU and UK in the field of criminal justice cooperation must be underpinned, inter alia, by their commitments on fundamental rights, including the UK’s continued adherence and implementation of the European Convention on Human Rights, respect for the *ne bis in idem* principle and procedural rights, as well as by the role of the CJEU in this matter.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	12.10.2020
Result of final vote	+: 23 -: 5 0: 0
Members present for the final vote	Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Geert Bourgeois, Fabio Massimo Castaldo, Leila Chaibi, Włodzimierz Cimoszewicz, Gwendoline Delbos-Corfield, Pascal Durand, Daniel Freund, Charles Goerens, Esteban González Pons, Sandro Gozi, Brice Hortefeux, Laura Huhtasaari, Giuliano Pisapia, Paulo Rangel, Antonio Maria Rinaldi, Domènec Ruiz Devesa, Helmut Scholz, Antonio Tajani, László Trócsányi, Mihai Tudose, Loránt Vincze, Rainer Wieland
Substitutes present for the final vote	Jorge Buxadé Villalba, Sophia in 't Veld, Miapetra Kumpula-Natri

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

23	+
GUE/NGL	Leila Chaibi, Helmut Scholz
NI	Fabio Massimo Castaldo
PPE	Esteban González Pons, Brice Hortefeux, Paulo Rangel, Antonio Tajani, László Trócsányi, Loránt Vincze, Rainer Wieland
RENEW	Pascal Durand, Charles Goerens, Sandro Gozi, Sophia in 't Veld
S&D	Gabriele Bischoff, Włodzimierz Cimoszewicz, Miapetra Kumpula Natri, Giuliano Pisapia, Domènec Ruiz Devesa, Mihai Tudose
VERTS/ALE	Damian Boeselager, Gwendoline Delbos Corfield, Daniel Freund

5	-
ECR	Geert Bourgeois, Jorge Buxadé Villalba
ID	Gerolf Annemans, Laura Huhtasaari, Antonio Maria Rinaldi

0	0

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	1.12.2020
Result of final vote	+: 45 -: 14 0: 9
Members present for the final vote	Magdalena Adamowicz, Katarina Barley, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Patrick Breyer, Saskia Bricmont, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Marcel de Graaff, Anna Júlia Donáth, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Balázs Hidvéghi, Evin Incir, Sophia in 't Veld, Patryk Jaki, Livia Járóka, Marina Kaljurand, Assita Kanko, Fabienne Keller, Peter Kofod, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Nicola Procaccini, Emil Radev, Paulo Rangel, Terry Reintke, Diana Riba i Giner, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoş Tudorache, Milan Uhrík, Tom Vandendriessche, Bettina Vollath, Jadwiga Wiśniewska, Elena Yoncheva, Javier Zarzalejos
Substitutes present for the final vote	Beata Kempa, Leopoldo López Gil, Kris Peeters, Anne-Sophie Pelletier, Sira Rego, Franco Roberti, Miguel Urbán Crespo, Hilde Vautmans

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

45	+
PPE	Magdalena Adamowicz, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Lena Düpont, Andrzej Halicki, Balázs Hidvéghi, Livia Járóka, Jeroen Lenaers, Leopoldo López Gil, Nuno Melo, Nadine Morano, Kris Peeters, Emil Radev, Paulo Rangel, Ralf Seekatz, Tomas Tobé, Javier Zarzalejos
S&D	Katarina Barley, Pietro Bartolo, Caterina Chinnici, Maria Grapini, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Franco Roberti, Birgit Sippel, Bettina Vollath, Elena Yoncheva
Renew	Anna Júlia Donáth, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Michal Šimečka, Ramona Strugariu, Dragoş Tudorache, Hilde Vautmans
Verts/ALE	Alice Kuhnke
ECR	Patryk Jaki, Beata Kempa
NI	Laura Ferrara

14	-
ID	Marcel de Graaff, Nicolaus Fest, Tom Vandendriessche
Verts/ALE	Patrick Breyer, Saskia Bricmont, Damien Carême, Terry Reintke, Diana Riba i Giner, Tineke Strik
GUE/NGL	Cornelia Ernst, Anne-Sophie Pelletier, Sira Rego, Miguel Urbán Crespo,
NI	Milan Uhrík

9	0
ID	Nicolas Bay, Jean-Paul Garraud, Peter Kofod, Annalisa Tardino
ECR	Jorge Buxadé Villalba, Assita Kanko, Nicola Procaccini, Jadwiga Wiśniewska
NI	Martin Sonneborn

Key to symbols:

+ : in favour

- : against

0 : abstention