



2019/2207(INI)

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

PA_NonLeg

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 Chaïbi, 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