

Council Conclusions on Current Challenges and Way Forward for European Arrest Warrant

Thomas Wahl

On 1 December 2020, the Council agreed on [conclusions how to meet the current challenges and move forward regarding the European Arrest Warrant and extradition procedures](#). They set out how the effectiveness of the main instrument of judicial cooperation within the EU on the basis of the principle of mutual recognition could be improved. The conclusions deal with [five main topics](#) and include, *inter alia*:

(1) *Improving national transposition and practical application of the European Arrest Warrant framework decision:*

- Member States should ensure correct transposition of the Framework Decision (FD) on the EAW, taking due account of CJEU case law and recommendations resulting from the Council's mutual evaluation rounds;
- Member States are encouraged to lay down non-binding guidelines for application of the EAW, in order to facilitate practical work with the instrument;
- The EU should establish a centralised portal that collects and continuously updates all relevant information on use of the EAW (possibly based on an improvement of the existing EJM website).

(2) *Supporting executing authorities when dealing with fundamental rights evaluations:*

- Member States are called on to take the necessary measures to ensure compliance with existing instruments that protect against inhuman and degrading treatment, in particular the European Prison Rules established by the CoE;
- It must be ensured that practitioners have the necessary information to carry out the two-step assessment as set out in the CJEU judgment in *Arranyosi* (→ [eu crim 1/2016, 16](#)). The Commission may assist the evaluation by creating a template by which to request supplementary information;
- Similar to the approach against inhuman and degrading treatment, Member States are called on to address deficiencies in safeguarding fair trial procedures. They should additionally avoid the risk of politicisation of cooperation in criminal matters. The Commission, in consultation with the FRA, should explore ways to improve practitioners' access to information;
- The executing judicial authority must rely on assurances by the issuing authority that the person concerned will not suffer a violation of his/her fundamental rights if surrendered, barring any specific indications to the contrary.

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(3) *Addressing certain aspects of the procedure in the issuing and in the executing Member States:*

- The FRA is invited to continue its studies on the practical effectiveness of procedural rights in EAW proceedings, taking increasing account of the experiences of lawyers acting in surrender proceedings;
- Member States should – to a greater extent – consider accepting translations in one other/more other official EU language/s in order to simplify and accelerate the surrender procedure;
- Plans for an EU legislative instrument on the transfer of proceedings and conflicts of jurisdiction should be followed through;
- Increased use of alternatives to detention or other judicial cooperation measures next to the EAW should be considered.

(4) *Handling requests to extradite EU citizens to third countries:*

- On the basis of the joint Europol and EJM report on the challenges of the *Petruhhin* judgment (à separate news item under “Judicial Cooperation”), the Council will further analyse whether any follow-up action should be taken and, if so, in what way;
- The Commission is encouraged to consider actions against unfounded, abusive, and politically motivated search and extradition requests from third countries.

(5) *Strengthening EAW surrender procedures in times of crisis, following experiences so far with the COVID-19 pandemic:*

- A coordinated approach to streamlining the collection and distribution of information is essential. In the future, an electronic platform (still to be created) should provide updated information on judicial cooperation in times of crisis;
- The digitalisation of judicial cooperation must be stepped up, whereby several aspects must be taken into account, e.g., secure electronic communication, the mutual recognition and use of electronic signatures, and the possibilities to transmit large data files.

The conclusions on the EAW had been preceded by several discussions on how judicial cooperation can be further improved within the EU. During the Austrian Presidency in 2018, the Council adopted, for instance, conclusions on mutual recognition in criminal matters (→ [eucrim 4/2018, 202-203](#)). Impetus came from the Commission’s latest implementation report on the FD EAW (→ [eucrim 2/2020, 110-111](#)), the EP’s implementation assessment of the EAW (→ [eucrim 2/2020, 111](#) plus the procedure file [2019/2207\(INI\)](#)), and a [virtual expert conference on 24 September 2020](#) organised by the German Council Presidency.

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