

EP Adopted Own Report on EAW Implementation



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News

On 20 January 2021, the European Parliament adopted its [own initiative report on the implementation of the European Arrest Warrant \(EAW\)](#) and the surrender procedures between Member States. The report was prepared by MEP [Javier Zarzalejos \(EPP, ES\)](#) and is also based on comprehensive assessment reports drafted by the European Parliamentary Research Service (→ [eucrim 2/2020, 111](#); [eucrim 1/2020, 26](#); and the article by [Wouter van Ballegoij, eucrim 2/2020, 149-154](#)). For the drafts of the EP report in the committees → [eucrim 3/2020, 193](#).

While [MEPs consider](#) that the EAW is “generally a success” and has “positive effects on the maintenance of the AFSJ [Area of Freedom, Security and Justice],” they believe that the time is ripe to improve and update the instrument, particularly since digital transformations have changed the ecosystem of crime. On the one hand, improvements should make the EAW more effective, on the other they should focus on better respecting the principle of proportionality. In accordance with CJEU case law, the approach must be maintained that the refusal of EAWs should be the exception and refusal grounds be interpreted restrictively. However, MEPs call 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 Art. 6 TEU and the CFR. The report makes several specific recommendations to improve the functioning of the EAW, *inter alia*:

- The Commission must ensure the full and correct implementation of the procedural rights directives which is a prerequisite for mutual trust;
- The Commission should “carry out a formal and substantive consistency assessment of the list of 32 categories that do not require a double criminality check”; to this end, a homogeneous list of categories of offences should be drawn up, possibly combined with an annex containing definitions of each list entry;
- Additional offences should be included on the list so that more automatic surrender is allowed; this extension could include environmental crimes, 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, genocide, crimes against humanity, and war crimes;
- The possibilities to exercise (broad) discretion on the part of the executing authority should be diminished as far as possible;
- Member States are urged to ensure that an EAW is only issued if less intrusive measures would not lead to the same result, e.g., hearings by videoconference or similar tools;

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- Member States should ensure that available alternatives to detention and coercive measures in EAW proceedings can be ordered, particularly if a person consents to his/her surrender;
- Effective defence in cross-border proceedings must be ensured in full compliance with Directive 2013/48; to this end, the Commission and Member States must provide appropriate funding for dual representation of the requested person as well as specific training for practitioners involved in EAW proceedings;
- The SIS II and Interpol system should regularly be reviewed in respect of possible withdrawals of alerts, e.g., if the EAW has been refused on mandatory grounds such as the principle of *ne bis in idem*.

Another set of recommendations concerns fundamental rights, for instance:

- Member States must guarantee that every person, including victims of crime or requested persons of an EAW, whose rights and freedoms as guaranteed by Union law are violated, has the right to effective remedy before a tribunal in accordance with Art. 47 CFR; however, these remedies must be fully in line with the time limits set in the FD EAW;
- The introduction of a system of precautionary measures, including the suspension of the instrument, should be considered if the person will run the risk of having his/her fundamental rights contravened in the issuing State;
- Several efforts must be undertaken that strengthen mutual trust; these efforts include the EU mechanism on democracy, the rule of law, and fundamental rights as proposed by the EP (→ [eucrim 3/2020, 160-161](#)), a feasibility study on supplementing instruments on procedural rights, such as those on admissibility of evidence and prison conditions in pre-trial detention, and measures that ensure the follow up to assurances provided by the issuing judicial authorities.

MEPs voiced concerns over bad prison conditions in some EU Member States that have a considerable impact on the EAW system. They reiterate their call for Member States to improve deficient prison conditions. The Commission is called on to fully exploit the possibility of financing the modernisation of detention facilities through EU Structural Funds.

Ultimately, the resolution recommends a more coherent EAW legal framework. The Commission must provide a more coherent policy on mutual recognition that considers CJEU case law and prevent divergences across the various mutual recognition instruments. Coherency issues related to the implementation of the FD EAW must be addressed through a combination of practical measures (training of practitioners), soft law (handbooks and recommendations), targeted legislation (the definition of judicial authority, *ne bis in idem*, fundamental rights, etc.) and, as a second step, supplementary legislation (pre-trial detention). In the medium term, the legislator should promote an EU judicial cooperation code in criminal matters that systematically compiles the existing legislation, so that legal certainty and the coherence of the various EU instruments can be guaranteed.

The EP resolution is not legally binding but has an appealing character. It ties in with a long-standing discussion of the EAW topic in EU institutions. Already in July 2020, the Commission published its report in which the handling of the EAW was evaluated (→ [eucrim 2/2020, 110-111](#)). On 1 December 2020, the Council adopted conclusions on the EAW under the German Presidency (→ [eucrim 4/2020, 290](#)).

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