

# FRA Report Sees Room for Improvement to Guarantee Rights in EAW Proceedings

## News

**Thomas Wahl**

At the end of March 2024, the EU Fundamental Rights Agency (FRA) published a report on how the principles and rights in European Arrest Warrant (EAW) proceedings are upheld in practice. The report is a response to a call from the Council towards FRA to extend its previous work on the application of the procedural rights directives to the specific application of selected procedural rights and safeguards in surrender proceedings. The report is based on desk research and interviews with persons involved in the proceedings, including requested persons and lawyers. It covers 19 EU Member States: Belgium, Croatia, Cyprus, Czechia, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia, Spain and Sweden.

The report is divided into the following four thematic chapters; each chapter considers different aspects of EAW proceedings and the corresponding procedural rights of requested persons at stake, with a look at both the law and practice:

- The fundamental rights implications of issuing and executing EAWs, focusing on proportionality aspects of issuing an EAW and fundamental rights-based grounds for non-execution (mainly violations of the prohibition of torture and inhuman or degrading treatment and the right to a fair trial);
- The right to access to a lawyer in EAW proceedings and the role it plays in ensuring respect for other procedural rights;
- The right to information in EAW proceedings;
- The right to interpretation and translation.

The report ends with a conclusion summarising the main findings. Key findings of the report are:

- The principles of mutual trust and recognition can lead judicial authorities to overlook personal circumstances, such as ill-health, family situation, or detention conditions in the issuing country. Therefore, it is important that wider rights implications of cross-border transfers are assessed in each individual case or even alternatives to ensuring justice without using the EAW are considered.
- Due to a lack of knowledge and ability defendants are hindered in their right to choose a lawyer freely instead of having State-appointed lawyers in the arresting state. Member States are called to improve mechanisms, together with the bar associations, that enable defendants to hire their own lawyer if they wish to do so; this should be accompanied by lists of lawyers experienced in EAWs that can be provided to the defendants. Member States should also ensure that sufficient time and adequate

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facilities are available to enable the requested persons to consult with their lawyers before the first hearing.

- Defendants are often either unaware of their right to have legal assistance not only in the executing country but also in the issuing country or they do not get help finding one. Hence, several measures should be implemented to ensure effective access to dual representation. These measures should include better guidance for police and judicial authorities highlighting the need to inform requested persons about this right without delay. Issuing Member States are encouraged to follow the good practice of including the name of the lawyer representing the requested person in the issuing state in the EAW form, or, if the person does not have a lawyer, to attach a list of lawyers to the EAW form.
- Even though requested persons, in general, are informed about their rights, the reasons for arrest and the content of the EAW, information is often delayed or information is not fully understood. As a result, materials should be provided in simple and accessible language avoiding legal jargon. Training, checklists and guidance could ensure the police and legal professionals inform those arrested so that defendants fully understand proceedings.
- Looking at translation and interpretation, the problem remains that often quality is poor. Sometimes this is due to short deadlines and the difficulty in finding people to translate less widely spoken languages. Member States should ensure, in every case where it is necessary, the availability of qualified interpreters and translators. If there is a lack of suitable interpreters and translators, pooling interpreters and translators between countries should be implemented. It is also important that Member States ensure an adequate standard, e.g., by introducing mechanisms for verifying interpreters' and translators' actual ability to understand, interpret and translate legal terms and concepts.

In sum, FRA's report on EAW proceedings and the rights guaranteed therein provides evidence to enable a critical assessment of the practical implementation of the Framework Decision on the EAW - 20 years after its entry into force.

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