

The European Arrest Warrant and Joint Investigation Teams in Practice

Report from the ERA Conference in Trier, 24–25 April 2008



Report

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The seminar at the Academy of European Law (ERA) focused on the practical application of two important instruments of police and judicial cooperation in the European Union, namely the regime of the European Arrest Warrant and Joint Investigation Teams (JITs). The participants, mainly legal practitioners from various EU Member States, seized the opportunity to share their experiences and best practices with these two instruments which exemplify the leading principles of justice and home affairs cooperation, i.e., mutual recognition and mutual trust.

The first day was dedicated to the European Arrest Warrant (EAW), with emphasis placed on practical concerns. In the first part of the session, the implementation and practical application of the EAW was discussed from the perspective of the European institutions, i.e., the Commission and the Council. The officials shared their experience – based not only on the Commission's implementation reports of 2005 and 2007, but also on the current round of mutual evaluations on a Member-State-by-Member-State basis. Although it was reiterated that the EAW is a success story, several shortcomings were pointed out. Implementation of the EAW still differs, leading to a lack of consistency in the application of the instrument among the Member States.

Some Member States, for instance, inserted reservations into their national legislation with regard to aspects of surrender of own nationals, thus indicating residual mistrust of other EU criminal justice systems. It is additionally problematic that some Member States transposed an optional ground for refusal into a mandatory one or included grounds for refusal not provided for in the Framework Decision. Problems experienced by executing states with in absentia judgements led to the overall question of how the guarantees with regard to the fundamental rights of the requested person are ensured in the course of EAW proceedings. Another major current problem which was highlighted during the conference is the issuing of EAWs for apparently minor offences or offences for which little punishment is expected, causing these EAWs to clash with the principle of proportionality.

A more consistent and homogenous application is therefore expected from the handbook on the EAW which is being drafted by the Council Secretariat. The state of play of the handbook as well as its contents was presented in detail. The handbook will address problems in practice and aims at assisting legal practitioners by providing uniform guidelines on how to fill in the EAW form. It will be the first time that all relevant practical information on the EAW is contained in one document. The participants welcomed this project designed to

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facilitate the handling of EAWs. In particular, the fact that the handbook will be translated into all EU languages was considered an important step towards ensuring a more consistent and transparent application of the instrument.

In the second part of the session on the EAW, experts discussed experiences in national practice with the application of EAWs, including the United Kingdom, Sweden, Portugal, the Czech Republic, and Italy. All in all, the speeches showed that each national legal system still retains certain typicalities concerning surrender under the EAW. Interestingly, the speeches also revealed that common law and continental law systems are faced with similar problems regarding mutual recognition and mutual trust, but provide different solutions. In this context, participants discussed best practices which could also apply in each other's – principally different – legal orders. Issues which were addressed in this context were, for example, how to protect nationals from extradition, how to prevent surrender if draconic or inappropriate punishment is likely, or how to take into account possible procedural rights infringements.

The session on the EAW ended with the presentation of views from Eurojust and liaison magistrates. The lessons learnt by these two actors confirmed the conclusion drawn after the first day that the EAW instrument is being successfully used in practice, especially in comparison to the circumstances and difficulties prior to its existence. However, administrative and practical problems still need to be resolved, the currently most important problem being how to take into account the principle of proportionality.

In the course of the second day, the tool of Joint Investigation Teams (commonly abbreviated JITs), created by a Council Framework Decision of 2002, was examined. So far, little experience exists as all JITs have been carried out on a bilateral basis up until now. The experts addressed three aspects of JITs:

(1) Emphasis was put on concerns regarding the gathering of evidence within the teams and the use of foreign evidence in national criminal law proceedings.

(2) Concrete insight into the practical work of JITs was given by presenting experiences between Belgium and the Netherlands in the Rhine-Maas region as well as between Finland and Estonia in the Baltic Sea region.

(3) Representatives from Europol and Eurojust explored their role in implementing JITs and possibilities for their participation in JITs.

All in all, legal practitioners who had experience with JITs highly appreciated this tool. However, during the discussion, participants still doubted whether JITs would also run well if three or more states were involved, since experience has gained so far only in smaller JITs on a bilateral basis. A major obstacle in this context was seen in the somewhat cumbersome and lengthy procedure used to conclude agreements on the setting up of JITs. With regard to a potential future strategy, participants agreed that the added value of JITs must be examined on a case-by-case basis and that it is essential to gain further practical experience with JITs so that other Member States which may still be rather sceptical will more readily accept and implement this instrument.

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