

CCBE and ELF project on the implementation of the European Arrest Warrant (EAW)

This project is a joint project between the Council of Bars and Law Societies of Europe (CCBE) and the European Lawyers Foundation (ELF).

Objectives

The project focuses on the following objectives:

- Identification of the implementation at national level of the Framework Decision 2002/584/JHA on the European Arrest Warrant in all EU Member States.
- Identification of good practices carried out in the 28 Member States in order to ensure defence rights
- Presentation of recommendations focussed on the improvement of defence rights in EAW cases

Activities

The objectives will be achieved in three parts which will take the form of a study (the study will be based on the responses to a national questionnaire which is attached as an annex to this note):

- Part (1) an analysis of the implementation of the EAW in all Member States
- Part (2) identifying good practices that have been implemented in Member States; and
- Part (3) providing recommendations to improve defence rights in EAW cases

Expected results (project will be completed by the end of October 2016)

- The project aims to provide a comprehensive analysis of the state of play on the implementation of the EAW in the different Member States from the point of view of the defence.
- The project will aim to identify a catalogue of good practices in EAW proceedings in different Member States that can be used by authorities and the defence at a national level to assist with any existing problems.
- The project will include recommendations which could be of use to the EU institutions when considering future legislation. In any case, the recommendations would also deal with short-term actions or recommendations that could assist defence rights in EAW proceedings.

The following are the draft Recommendations.

DRAFT - Recommendations sorted according to the topics raised in the questionnaire

Proportionality

- there should be an amendment to the Framework Decision which would introduce a mandatory proportionality test in both the issuing and executing state
- consideration should also be given to changes to the gravity of sentencing required before issue of an EAW, or even an overall merits based assessment
- as part of any new mandatory proportionality test above, it could become a condition of an EAW that there are mandatory preliminary steps in the proceedings in the executing state along the following lines:
 - that the requested person is first invited to return voluntarily to the issuing state
 - that a deferred surrender is considered (to allow a person to tie up his or her affairs before returning, while subject to bail-like conditions)
 - that a video link with the appropriate authorities in the issuing state is considered, to see whether matters can be resolved in that way
 - that full use is made of the European Supervision Order (see below)
 - or even that the person could be eventually imprisoned in the executing state's jurisdiction, to reduce the costs of the transfer procedure
- a proportionality defence can only succeed when it is raised in the courts of the issuing Member State, and so dual representation is important. The lawyer in the issuing state can try to negotiate a withdrawal of the EAW with the issuing judge or prosecutor, for example because the requested person undertakes to travel voluntarily to the issuing state for an interview. Such a step would save considerable costs to both issuing and executing state. If such an approach proves unsuccessful, the lawyer can start court proceedings in the issuing state, although these should be undertaken as soon as possible and should be enabled through speedy procedures without the need to call extensive evidence
- there needs to be more and better training of prosecutors, judges and lawyers in the fundamental rights aspects of the EAW framework, including of the possibility to refer cases to the Court of Justice of the European Union for a more harmonised and proportionate practice
- there should be broader use of bail

to resolve the recurring difficulties in obtaining expert opinion and evidence relating to the issuing state, there should be better access by the defence to the relevant materials in the hands of the prosecuting authorities or government (or perhaps from Eurojust), ideally by way of a web portal, whether national or Europe-wide, by which such information can be accessed quickly. The issuing state authorities should be under an obligation to keep this information up-to-date

- arrangements should be made for better communication between Member States, to avoid the problems caused by poor response rates and decisions made in the absence of relevant information

Is the case trial ready?

- dual representation, access to information in both states, training, public database of EAW lawyers (as above)
- use should be made of Directive 2014/41/EU on the European Investigation Order, when implemented
- the Framework Decision could be amended to provide for a certain level of suspicion before an EAW can be issued e.g. probable grounds, as determined by a court – this would help to reduce costs to the Member States
- procedures should be implemented to hasten the grant of legal aid, to avoid case delays
- alternatives to pre-trial detention should be used more to alleviate prison overcrowding, with maybe a push for convergence in practice across Europe; lengthy periods of remand should be avoided in trial-ready cases
- requests for further information should be responded to promptly between Member States, to reduce costs
- consideration to be given to an amendment to the Framework Decision to ensure that the issuing state provides more information in the EAW itself (examples of such information are given in various recommendations below, for instance the likely sentence to be imposed if the requested person is convicted, and reasons why the requested person needs to be put immediately into detention)
- more information should be published on the details of criminal procedures in each Member State, presumably on the website of the European Commission's e-justice portal or that of the European Judicial Network in criminal matters

Detention lengths

- there should be more use of electronic monitoring, and further consideration should be given to promoting other alternatives to detention at EU level, including bail and voluntary surrender
- the European Supervision Order should be implemented in all Member States and the European Commission should consider infringement proceedings against those Member States which have not yet implemented it
- more publicity should be given to the European Supervision Order, for instance by more training for prosecutors and judges on alternatives to detention. The failure to use the European Supervision Order more frequently results in unnecessary costs for Member States through the use of detention
- more judges with expertise in hearing EAW cases will lead to more efficiency and a reduction in pre-trial detention
- the excessive lengths of detention in the executing state while awaiting a transfer to the issuing state in order to be heard by a judge, and with unsatisfactory access by the defence to the file in the meantime, could be solved by letting the judge from the issuing state proceed to the hearing directly in the executing state. The judge could travel to the executing state, and this would reduce both the length and the cost of pre-hearing detention in the executing state. An alternative is the wider use of video links, for instance a court-to-court video conference on the case
- given the savings in costs highlighted in the above recommendations, consideration should be given to an audit of the overall costs of the EAW, and in particular detention costs, along the lines of the European Parliament report¹ of a couple of years ago, to persuade the Member States' authorities of the benefits of considering alternatives to detention in EAW cases
- in the case of a prosecution EAW, there should be an obligation for the issuing state to inform the executing state of the likely sentence to be imposed if the requested person is convicted, and the defence should be informed of this
- in the case of an execution EAW, there should be an obligation for the issuing state to inform the executing state of the likely release date, taking into account a) time spent in pre-trial detention in the issuing state; b) time spent in surrender detention in other executing states (if applicable); c) early release regimes
- in order for the above to work, there should be a requirement for the executing state to inform the issuing state of the days spent in surrender detention, even in cases where the

¹ Revising the European Arrest Warrant by the European Added Value Unit of the European Parliament - [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/510979/IPOL-JOIN_ET\(2013\)510979_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/510979/IPOL-JOIN_ET(2013)510979_EN.pdf)

surrender was in the end refused. At the moment, the Framework decision only provides for such an obligation if surrender has actually taken place

- there should be monitoring of the deduction by issuing states of time spent in pre-trial detention in executing states (and if it is found that the obligation is not being complied with, the European institutions should take further steps to guarantee compliance)
- the difference in treatment, relating to alternatives to detention, between suspects in purely national cases and requested persons under an EAW should lessen or disappear altogether, so as to promote more sensible use of alternatives to detention
- in the case of a prosecution EAW, consideration should be given to the issuing state giving reasons as to whether the requested person needs to be put immediately into detention

Detention – conditions

- use must now be made by the courts and the defence of the recent case law of the Court of Justice of the European Union on detention conditions. It may be better to codify it in an amendment to the Framework Decision, along with a fixed time limit within which the information must be provided by the issuing state, or else the execution of the EAW may be refused. It could also be made a requirement that the original EAW specify the detention facilities in which the requested person may be detained, with a duty placed on the court in the executing state to be satisfied that the detention conditions in the issuing state will not breach the fundamental rights of the requested person
- dual representation (as above)
- training of prosecutors, judges and lawyers (as above)
- consideration to be given to the creation of a European inspector of places of deprivation of liberty, and to developing basic minimum detention conditions EU-wide. Lawyers should be among the stakeholders consulted by such an inspector
- in Art. 4 par. 4 of the Commission's Proposal for the Directive 2013/48 (COM 2011/0326 final), there was a provision that gave the lawyer of the detained person the right to visit the place where the suspect or accused person is detained in order to check the detention conditions. This provision was not adopted in the final text of Directive 2013/48. The right of the defender to visit the place where the suspect or accused person is detained could lead to more transparency, and so contribute to the improvement of detention conditions. Therefore, the adoption of such a measure should be considered
- further resources should be made available for the European Committee for the Prevention of Torture, and there should be wider dissemination of their materials, to improve the skill-set of defence lawyers and inform the judiciary

- there should be increased mobility of the judge of the EAW issuing state, or wider use made of video facilities (as above)
- the Framework decision should be clarified as to whether a prosecutor, court or other relevant state authority may (or even must) take into account prison conditions in the executing state before issuing an EAW
- more funds should be made available for new and improved jail facilities

Relationship with existing fundamental rights

- the Framework Decision should be changed to mention specifically that human rights (discrimination, inhuman treatment) is a factor that the executing state must take into account before deciding whether to execute the EAW; if this happens, the time limit should be extended in such a case to allow the requested person the opportunity to collect the evidence required to satisfy the strong evidential burden required to engage Convention rights
- it is essential to publish a handbook about the grounds of non-execution of an EAW because of a possible violation of fundamental rights by the issuing state; this could contribute towards the harmonisation of Member States practices' on this matter
- national courts and defence lawyers should use the Court of Justice of the European Union more for such matters
- a right to appeal the issue of the EAW in the issuing state should be introduced – violations in procedure in the executing state could be addressed in this way, and considerable cost savings made
- dual representation (as above)
- training (as above)
- more funds for new and improved jail facilities (as above)
- the recommendations of the TRAINAC report should be implemented (<http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf>)
- there should be adequate translation services, with the possibility for the judge to send the EAW via computer for translation into the language of the executing state
- requested persons need to be guaranteed a legal aid system that is adequate and complete, with an automatic grant of legal aid

Dual representation

- there should be EU-wide harmonisation of the rules on access to the investigation file in cross-border cases
- the lawyer for the requested person should be permitted, in those Member States where it is not now possible, to participate in the issuing procedures of the issuing state; a copy of the EAW should be provided to such lawyers without delay, together with any decisions based on the EAW subsequently taken in the executing state
- there should be EU-wide harmonisation of legal aid in relation to cross-border criminal cases, including that legal aid should be available in the issuing state from the moment of arrest in the executing state, and more resources given to cross-border criminal legal aid
- training (as above)
- the right to translation should cover the translation for communications between dual representation lawyers
- there should be steps taken to make it easier for cross-border criminal lawyers (particularly those who undertake legal aid cases) to get in touch with each other – for instance, publication of details of eligible lawyers; contact information of the defence lawyer in the issuing state to be included in the EAW (and maybe also of the probation officer in that state); details of the lawyer in the executing state to be transmitted to the lawyer in the issuing state
- there should also be steps taken to make it easier for the requested person to be in contact with the lawyer in the issuing or executing state, and detention centres should be required to comply with such contacts (in accordance with the usual rules on lawyer-client communication while in detention)
- the rules on availability of legal aid for criminal cases in all Member States (including the process for applying) should be made generally and more easily available in all official languages (NOTE: the European Commission's e-justice portal is the obvious place for this; at present the portal states: 'In the future the European e-Justice Portal will provide detailed information in this area.')
- for the purpose of dual representation, a public database containing the contact details of EAW lawyers for every EU Member State would be very helpful (the Find-A-Lawyer database already exists on the e-justice portal², but EAW expertise is not specifically a category of practice mentioned there, only the much broader 'criminal law')
- also for the purpose of dual representation, there should be legal aid available in both Member States

² https://e-justice.europa.eu/content_find_a_lawyer-334-en.do

Lawyer's criminal law experience

- training in the area of representation in cases of EAW needs to be made a priority
- consideration should be given to the establishment of a specialisation in the area of representation in EAW cases, with objective standards set, and with a public register of lawyers trained and experienced in such matters; languages spoken should also be included in such a register
- in tandem with the above, consideration should be given to objective selection criteria for lawyers in cases involving representation for an EAW
- another solution for lawyer selection may be to have a specialist panel of lawyers available to be assigned by the Court to represent people who do not know a lawyer themselves (this would not interfere with their freedom of choice if they have a lawyer whom they trust and wish to represent them, but in many cases, particularly where the subject is a foreign citizen, they are completely at sea, and the random allocation of untrained lawyers is not in their best interests)
- the legal profession should itself develop best standards in the areas mentioned above

Rate of lawyer remuneration

- to consider a European legal aid fund for EAW cases
- to increase the level of legal aid remuneration, particularly in those Member States at the bottom of the scale
- in those Member States which have a system of payment by act, payment a long time in arrears, or payment of experts initially out of the lawyers' own funds, to bring the legal aid system into line with those Member States which recognise that representation covers a wider range of activities and that lawyers should be paid (including for disbursements) as the case continues
- there should also be a general recognition that legal aid should adequately cover preparation time for a case. This would improve the quality of representation and reduce costs through possible earlier resolution of the case

Right of appeal against the EAW decision

- consideration should be given to standardising throughout the EU the right to appeal in both the executing and issuing states, and the circumstances in which it can be exercised; such a standard should permit:

- a right of appeal in the issuing state from the moment when the requested person learns about the EAW or the detention decision
 - proper access to the file in both states
 - fairer deadlines which take account of the requested person's circumstances, with the authorities still treating the matter with a similar level of urgency to the urgency accorded to the issuance of the EAW; and
 - better access to national legislation on appeals in such cases (translated at least into English and French) on the European Commission's e-justice portal
 - reconsideration by the relevant authorities which falls short of a formal appeal
- training (as above), particularly on asking the Court of Justice of the European Union for a preliminary ruling
 - dual representation (as above)

Variations in sending a translated European Arrest Warrant

- the defence should be granted the right to request that the EAW be re-translated in the executing state if there is a reasonable question over its accuracy
- to continue to develop and promote high standards for interpretation and translation (see previous TRAINAC report - <http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf>)
- to harmonise the deadline for submission of the translated EAW
- to simplify the layout of the EAW (for example, with regard to sentencing options)
- to consider whether there should be a central EU agency for translation of EAWs into the language of the executing state

What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?

- training for prosecutors, judges, lawyers and any others involved in the process of issuing and executing an EAW (as above)
- dual representation (as above), since it would help with seeking only relevant information and understanding the information given

- lawyers for the defence should be in copy of all correspondence between issuing and executing state when additional information is sought, and better access to the relevant files in both states would help make the procedure fairer and more efficient
- the introduction of a requirement to respond to requests for information made in line with the Framework decision within a permitted period, for example 21 days
- consideration should be given to more standardised information and documentation to be provided by the issuing state to the executing state when issuing an EAW

Compensation for unjustified detention

- consideration should be given to an EU-wide harmonisation of compensation to remove the great disparities in availability and amount of compensation for unjustified detention, including guidance on which state (executing or issuing) should pay in which circumstances; this EU-wide scheme should also cover the question of payment of compensation when the EAW was issued for a disproportionate reason (and so, for instance, the requested person was released from detention in the issuing state after questioning); and consideration should also be given as to whether there should be an EU fund for this purpose
- the executing state should also offer compensation in case of its unjustified detention
- in those countries where the amount of compensation is very low, it should be increased; where there is a fee for claiming the compensation, it should be removed; and those Member States not applying a compensation scheme at all should introduce one
- compensation should also be available if an EAW is withdrawn after detention

SIS alerts remaining active

- dual representation (as above)
- consideration should be given to an EU-wide scheme to remove active SIS alerts once an executing state has refused to surrender a requested person; this would be equivalent to following the principle of *ne bis in idem* (so that a requested person does not face repeated arrests for the same circumstances), and would support the principles of mutual recognition and legal certainty. Consideration should therefore be given in particular to granting in the Framework Decision the right for a requested person to apply for a court ruling (either nationally or by application to the Court of Justice of the European Union) which would give binding effect across the EU to the initial refusal to surrender the requested person
- for as long as the recommendation above has not been implemented, and if the SIS alert is not to be removed, consideration should be given to including the information about the

refusal in the executing state within the SIS alert, to assist the requested person in defending against enforcement of the EAW in another Member State

Multiple requests for EAW for the same person

- consideration should be given to a mandatory EU-wide guideline on multiple EAWs
- Eurojust's opinions, when sought, should not be confidential to the court and/or prosecutor, since that is not compatible with the right of defence
- there should be better access to the case files in executing and issuing states, to help the defence
- consideration should be given to amending the Framework Decision to allow for the issue of only one EAW to cover a number of offences, with all necessary documentation

Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold

- research and comment from other Member States on aggregate sentences and specialty should be encouraged to see how many individuals are serving sentences for which they were not extradited, so that steps could be taken to deal with the problem
- based on the above, consideration should be given to a mandatory guideline or regulation on the treatment of accessory surrender, to harmonise practices among the Member States

Annex

Questionnaire on which the study is based

EAW-Rights questionnaire

Questionnaire preamble

Instructions

- (1) This questionnaire needs to be returned to Jonathan Goldsmith (jpgoldsmith@hotmail.com) by 16 May 2016. Please respect the time limit, because a report needs to be written based on all questionnaires within a strict time limit.
- (2) Please answer all questions, including sub-questions which sometimes follow a main question. If you have no information in respect of a particular question, please write 'No information'.
- (3) The questions have been divided into practices in the executing and issuing state (in that order, even if the interest in the question may be in the reverse order). Respondents will also have to bear in mind the two different kinds of EAW, for purposes of prosecution and enforcement, and answer in relation to either or both as appropriate.
- (4) An important part of the eventual report on the implementation of the Framework Decision will consist of good practices and recommendations for improvements to the Framework Decision itself and to its implementation from the point of view of the defence. If, for any question, you have examples of good practice or recommendations for improvement, please insert them. Good practices include initiatives which go in a helpful direction beyond the requirements of the Framework Decision itself, or which implement provisions which are not binding in the Framework decision (for instance, relating to quality).
- (5) Another important part of the eventual report will be its geographical coverage in your Member State. Your answers are expected to cover your whole jurisdiction. To assist you, it may be helpful for you to submit the questionnaire (or your draft answers) to others, in particular relevant committees of your bar, or to other competent authorities, such as the police, judges and prosecutors.
- (6) For practical reasons, this questionnaire focuses on certain themes in the Framework Decision, rather than on each article. If you have useful information or good practices about a part of the Framework Decision regarding which there is no question, please put your information in the 'General comments' section at the end.

- (7) The English text of the Framework Decision is attached. If you want to read the Framework Decision in your own language, please go to the following link for all language versions: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002F0584>.

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Topics and questions

1. Proportionality

The question of the different usage of the EAW by different Member States – some for trivial offences and so used very often, others going in the opposite direction - has been much discussed, along with solutions (obligatory proportionality test, double proportionality test, raising the threshold of usage, training of judges). This varied usage can have an impact on the budgets of both executing and issuing states, for instance via the resources of the investigating authority or the support given in legal aid.

- a) *What is the experience of defence practitioners in your Member State of the appropriate use of executing an EAW when your state is the executing state? For instance, can the factors mentioned in the Council Handbook³ be taken into account - the seriousness of the offence, the possibility of the suspect being detained, and the likely penalty imposed if the person sought is found guilty of the alleged offence, along with ensuring the effective protection of the public and the interests of the victims of the offence?*
- b) *What is the experience of defence practitioners in your Member State of appropriate use of the EAW when your state is the issuing state (taking into account the same kind of factors as mentioned in the question above)?*

³ Council, Revised version of the European handbook on how to issue a EAW, Doc. No 17195/1/10, 17 Dec. 2010 (<http://register.consilium.europa.eu/doc/srv?l=en&f=ST%2017195%202010%20REV%201>)

c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?

d) Do you have any solutions to the problems defence practitioners may have encountered, including in relation to reducing costs incurred in either the executing or issuing state?

2. Is the case trial-ready?

This is tied to the issue of proportionality above. The criminal procedures of the Member States vary widely, and so EAWs are requested at different times, often at times which can seem to some Member States, in accordance with their own system, as a fishing expedition to find evidence, rather than a true extradition request within the terms of the Framework Decision. In addition, the use of other mutual recognition instruments apart from the EAW – for instance, the instruments on the European Investigation Order and European Probation Order – should be considered under this heading, since they may fulfil the needs for which an EAW may otherwise be inappropriately issued. Again, this can have an impact on the budgets of the executing and issuing state.

a) *Since Article 1 para 1 of the Framework Decision says that an EAW should be issued 'for the purposes of conducting a criminal prosecution', at what stage in the proceedings is it considered appropriate to issue an EAW in your Member State?*

b) *What is the experience of defence practitioners in your Member State of appropriate times in the stages of criminal proceedings for executing an EAW when your state is the executing state? For instance, are EAWs executed for purposes other than strictly conducting a criminal prosecution, such as for hearing a witness or compelling someone to attend court or appear before a magistrate?*

c) *What is the experience of defence practitioners in your Member State of appropriate times in the stages of criminal proceedings for issuing the EAW when your state is the issuing state (taking into account the same kind of factors as mentioned in the question above)?*

d) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?*

e) *Do you have any solutions to the problems defence practitioners may have encountered, including in relation to reducing costs incurred in either the executing*

or issuing state?

3. Detention – lengths

This is another problem arising from the variety of practices in the Member States – different treatment of pre-trial detention, for instance, and different conditions of detention (detention conditions is the subject of a separate question below). Delays in communication can cause the subject of an EAW to be detained for months. This is clearly tied to the questions of proportionality and trial-readiness already mentioned, and some solutions may be common to the three. There are now alternatives to pre-trial detention, to be found in the Council Framework Decision 2009/829/JHA of 23 October 2009 on supervision measures as an alternative to pre-trial detention.

a) What is the experience of defence practitioners in your Member State of matters arising out of detention in either the executing or issuing state – for instance, the use of pre-trial detention, and whether detention served in the executing state is deducted from detention due to be served in the issuing state - when your state is the executing state of an EAW?

b) What is the experience of defence practitioners in your Member State of matters arising out of detention in either the executing or issuing state (taking into account the same kind of factors as mentioned in the question above) when your state is the issuing state?

c) What is the experience of defence practitioners in your Member State regarding the use of alternatives to pre-trial detention (for instance, use of the European Supervision Order) when your state is the executing state?

d) What is the experience of defence practitioners in your Member State regarding the use of alternatives to pre-trial detention (for instance, use of the European Supervision Order) when your state is the issuing state?

e) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?

f) Do you have any solutions to the problems defence practitioners may have encountered?

4. Detention – conditions

Following on from the above, there are also problems arising out of complaints about detention conditions, particularly in the issuing state. This ties in closely to the point made below about the EAW's relationship with fundamental rights.

a) *What is the experience of defence practitioners in your Member State of matters arising out of detention conditions in either the executing or issuing state when your state is the executing state of an EAW?*

b) *What is the experience of defence practitioners in your Member State of matters arising out of detention conditions in either the executing or issuing state when your state is the issuing state?*

c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?*

d) *Do you have any solutions to the problems defence practitioners may have encountered?*

5. Relationship with existing fundamental rights

The question of the relationship between the EAW and existing fundamental rights is an old one, and can be divided into two parts:

- i. the absence of express grounds for refusal based on fundamental rights in the Framework Decision. The questions raised by (1) – (4) above might be seen as touching on fundamental rights, for instance the right not to be subject to torture or degrading conditions in detention. (There are several preliminary references to the Court of Justice of the European Union – for instance, C 404/15 and C 659/15 – which relate to this question, and which therefore should be monitored during the project.)

a) Has your Member State enabled any grounds for refusing to execute an EAW on grounds of breach of fundamental rights? If so, what are they? How are they satisfied?

b) What is the experience of defence practitioners in your Member State of the absence of express grounds for refusal based on fundamental rights for executing an EAW in either the executing or issuing state when your state is the executing state?

c) What is the experience of defence practitioners in your Member State of the absence of express grounds for refusal based on fundamental rights in either the executing or issuing state when your state is the issuing state?

d) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?

e) Do you have any solutions to the problems defence practitioners may have encountered?

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- ii. the question of whether, particularly as a result of the three minimum procedural safeguard directives now passed – the right to interpretation and translation, the right to information, and the right of access to a lawyer⁴ (including especially the aspect of dual representation) - the balance between prosecution and defence rights in the EAW has become fairer to the defence.

a) What is the experience of defence practitioners in your Member State about the impact of the three minimum procedural safeguard directives in terms of creating more balance between the prosecution and the defence when your state is the executing state?

b) What is the experience of defence practitioners in your Member State about the impact of the three minimum procedural safeguard directives in terms of creating more balance between the prosecution and the defence when your state is the issuing state?

c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?

d) Do you have any solutions to the problems defence practitioners may have encountered?

⁴ • Directive 2010/64 on the right to interpretation and translation – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>
• Directive 2012/13 on the right to information – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>
• Directive 2013/48 on the right of access to a lawyer – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF>

6. Dual representation

This is now guaranteed by the directive on right of access to a lawyer (2013/48/EU). It is obviously of great assistance to the defence lawyer in the executing state if there can be contact with a defence lawyer in the issuing state, for instance for the purpose of obtaining more information from the investigative authorities or better understanding of the legal background. There are clearly issues related to resources, specifically legal aid, and interpretation and translation, which need to be further examined, including a general reflection on how the new provision is working in practice.

<p>a) <i>What is the experience of defence practitioners in your Member State about the benefits and problems of dual representation of the subject of the EAW in both executing and issuing states when your state is the executing state?</i></p>
<p>b) <i>What is the experience of defence practitioners in your Member State about the benefits and problems of dual representation of the subject of the EAW in both executing and issuing states when your state is the issuing state?</i></p>
<p>c) <i>What is the experience of defence practitioners in your Member State about the availability of legal aid to the subject of an EAW when your state is the executing state?</i></p>
<p>d) <i>What is the experience of defence practitioners in your Member State about the availability of legal aid to the subject of an EAW when your state is the issuing state?</i></p> <p><i>Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?</i></p>
<p>e) <i>Do you have any solutions to the problems defence practitioners may have encountered?</i></p>

7. Lawyer's criminal law experience

This is a very sensitive topic for lawyers. Because of the different legal systems, there are various methods for choosing lawyers for EAW cases. In some Member States, it might be a requirement of the legal aid system that the selected lawyer meets certain criteria of training and experience; in others, the next lawyer on a rota might be allocated by a court regardless of experience. This may be a topic worth examining further, with possible future recommendations on training, for instance.

<i>a) What is the experience of defence practitioners in your Member State about the methods of selecting a suitable defence lawyer (in both the executing and issuing state, if there is dual representation) when your state is the executing state?</i>
<i>b) What is the experience of defence practitioners in your Member State about the methods of selecting a suitable defence lawyer (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?</i>
<i>c) Does the subject of an EAW who is granted legal aid in your Member State have a choice of lawyer if your Member State is the executing state?</i>
<i>d) Does the subject of an EAW who is granted legal aid in your Member State have a choice of lawyer if your Member State is the issuing state?</i>
<i>e) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?</i>
<i>f) Do you have any solutions to the problems defence practitioners may have encountered?</i>

8. Rate of lawyer remuneration

This is tied to the issue above. The level of remuneration for lawyers undertaking criminal legal aid cases varies widely. It can be a great disincentive to good quality lawyers, who can earn better fees elsewhere, to devote themselves to this necessary work, which in turn undermines the quality of the criminal justice system as a whole.

a) What is the experience of defence practitioners in your Member State about the impact of the level of remuneration for criminal legal aid cases (in both the executing and issuing state, if there is dual representation) when your state is the executing state?

b) What is the experience of defence practitioners in your Member State about the impact of the level of remuneration for criminal legal aid cases (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?

c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?

d) Do you have any solutions to the problems defence practitioners may have encountered?

9. Right of appeal against the EAW decision

This again varies widely in the Member States, depending on their legal systems, and the views of defence lawyers on problems and solutions would be helpful.

<p><i>a) What is the experience of defence practitioners in your Member State about the impact of the varying scope of rights of appeal against the EAW (in both the executing and issuing state, if there is dual representation) when your state is the executing state?</i></p>
<p><i>b) What is the experience of defence practitioners in your Member State about the impact of the varying scope of rights of appeal against the EAW (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?</i></p>
<p><i>c) Is there a possibility to make a reference to the Court of Justice of the European Union regarding a question which has arisen during the execution of an EAW in your Member State?</i></p>
<p><i>d) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?</i></p>
<p><i>e) Do you have any solutions to the problems defence practitioners may have encountered?</i></p>

10. Variations in sending a translated European Arrest Warrant

Because the issuing state may not know in which Member State the subject will be found, the translation can arrive after the deadline (the deadline itself varies widely, although both the Commission and the Council are in favour of moves towards harmonisation of the deadline). Different Member States accept different languages i.e. not only in their national language but, say, in English. Some of the less common languages may prove a difficulty (qualified translators, timing). The experience of the defence, particularly in countries with less common languages, will be useful.

a) *What is the experience of defence practitioners in your Member State about the impact of the varying deadlines for sending a translated EAW when your state is the executing state?*

b) *What is the experience of defence practitioners in your Member State about other issues relating to translation – for instance, quality, the acceptance of languages other than your national language - when your state is the executing state?*

c) *Are there any good practices on this matter in your Member State?*

d) *Do you have any solutions to the problems defence practitioners may have encountered?*

11. What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?

Some Member States (UK, Ireland) are known for detailed further requests, sometimes beyond the scope of the Framework Decision. Others make no enquiries at all, and arrest the wrong person with the same name. The perspective of the defence, particularly in relation to solutions, would be helpful.

a) What is the experience of defence practitioners in your Member State about the impact (in both the executing and issuing state, if there is dual representation) of additional information requested by the executing authority when your state is the executing state?

b) What is the experience of defence practitioners in your Member State about the impact (in both the executing and issuing state, if there is dual representation) of additional information requested by the executing authority when your state is the issuing state?

c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?

d) Do you have any solutions to the problems defence practitioners may have encountered?

12. Compensation for unjustified detention

As usual, there are widely differing schemes and attitudes to compensating victims of unjustified detention through execution of an EAW.

a) What is the experience of defence practitioners in your Member State about the impact of a compensation scheme for unjustified detention (in both the executing and issuing state, if there is dual representation) when your state is the executing state?

b) What is the experience of defence practitioners in your Member State about the impact of a compensation scheme for unjustified detention (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?

c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?

d) Do you have any solutions to the problems defence practitioners may have encountered?

13. SIS alerts remaining active

Cases continue to be reported about subjects of an EAW being detained because a SIS alert remains active despite a Member State having already refused to execute an EAW request in respect of that person.

a) *What is the experience of defence practitioners in your Member State about the impact of an active SIS alert on a client where a Member State has already refused to execute an EAW request in respect of that person (in both the executing and issuing state, if there is dual representation) when your state is the executing state?*

b) *What is the experience of defence practitioners in your Member State about the impact of an active SIS alert on a client where a Member State has already refused to execute an EAW request in respect of that person (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?*

c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?*

d) *Do you have any solutions to the problems defence practitioners may have encountered?*

14. Multiple requests for EAW for the same person

This can cause various problems. For instance, if the various EAWs raise the same facts, then a conflict of jurisdiction may arise, as may consideration of the *ne bis in idem* principle. If the multiple requests come from several Member States, then Article 16 of the Framework Decision provides the criteria to be taken into account: ‘*due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order*’.

a) *What is the experience of defence practitioners in your Member State about the treatment of multiple requests for EAW for the same person (in both the executing and issuing state, if there is dual representation) when your state is the executing state?*

b) *What is the experience of defence practitioners in your Member State about the treatment of multiple requests for EAW for the same person (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?*

c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?*

d) *Do you have any solutions to the problems defence practitioners may have encountered?*

15. Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold

Accessory surrender enables surrender for one or several offences punishable by a lower sanction than the thresholds set out in Art. 2 para 1 of the Framework Decision when they are

accessory to another offence which does comply with one of the set thresholds. This possibility is

explicitly foreseen in the Council of Europe's 1957 extradition Convention.

Unfortunately, due to an oversight, no similar clause was inserted in the Framework Decision. The situation is problematic for both kinds of EAWs, i.e. for prosecution and enforcement. As a result, there are widely varying practices in the Member States – no accessory surrender allowed; courts to decide; or, accessory surrender explicitly catered for in legislation.

a) *What is the experience of defence practitioners in your Member State about the treatment of accessory surrender through an EAW (in both the executing and issuing state, if there is dual representation) when your state is the executing state?*

b) *What is the experience of defence practitioners in your Member State about the treatment of accessory surrender through an EAW (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?*

c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?*

d) *Do you have any solutions to the problems defence practitioners may have encountered?*

16. General comments

This questionnaire has concentrated on certain themes relating to the Framework Decision which were believed to be particularly important for the implementation of this project. If you have comments on other aspects of the Framework Decision to which you would like to draw attention, please put them here.

