

Executive Summary of the Report on Eurojust's Casework in the field of the European Arrest Warrant

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Executive summary

The framework decision on the European Arrest Warrant and the surrender procedures between Member States (EAW FD) was adopted in 2002. It was the first instrument in the field of judicial cooperation in criminal matters that was based on the principle of mutual recognition and aimed at simplifying and accelerating cooperation between Member States. Over the past 17 years, Member States have gained a lot of experience with the EAW FD.

The aim of this report is to inform both practitioners and policymakers of the main difficulties encountered in the practical application of the European Arrest Warrant (EAW) on the basis of Eurojust's casework and to highlight, where relevant, the role that the European Union Agency for Criminal Justice Cooperation (Eurojust) has played in overcoming such difficulties. Between 2017 and 2020, 2 235 cases involving EAWs were registered at Eurojust. The report clearly indicates that there are still several ongoing issues with the use of the EAW and that Eurojust has played an important role in facilitating cooperation and ensuring coordination in both bilateral and multilateral cases involving EAWs.

Based on Eurojust's casework, solutions and best practices were identified, but the report also stresses some challenges that one should be aware of and sets out the main conclusions reached and recommendations proposed. Some of the conclusions of this report, particularly those that touch upon core features of the principle of mutual recognition, are similar to those of other Eurojust reports on other mutual recognition instruments. Such issues might therefore require a more horizontal approach. The most relevant issues identified in the report, followed by, where possible, Eurojust's recommendations / best practices, are as follows.

- **Content of EAWs.** The execution of EAWs was often put on hold because of missing, unclear or inconsistent information about the content of the EAWs. Eurojust assisted in clarifying misunderstandings, replying to questions and providing additional information or documents. Requests for additional information were justified to clarify poorly drafted EAWs that were missing crucial information. In a few cases, Eurojust observed requests for additional information that seemed to go beyond what could reasonably be considered justified under the mutual recognition regime.
 - *National authorities might benefit from further guidance on how to fill in EAWs and how to provide correct, concise, complete and consistent information. Cases involving different offences, different sentences and/or different criminal provisions are particularly challenging. In absentia judgments, particularly concerning appeal proceedings, are also challenging with*

the current EAW FD template. Moreover, (national) templates for some specific scenarios (e.g. return guarantees for nationals or residents) could be seen as a good practice.

- **Impact of the case-law of the Court of Justice of the European Union (CJEU).** National authorities often approached Eurojust with questions on issues addressed in CJEU judgments, involving, for instance, issues related to the validity of the EAW (e.g. the concept of issuing and/or executing judicial authorities and requirements of effective judicial protection), grounds for non-execution (particularly *in absentia* judgments, nationals or residents, *ne bis in idem*), fundamental rights issues (prison conditions, rule of law) and extradition of EU citizens to non-EU countries. Either authorities were unaware of certain CJEU judgments, or they were aware but struggling with how to apply them in practice or struggling with issues not yet (fully) settled in the CJEU's case-law.
 - *Eurojust will provide frequent updates of Eurojust's overview of CJEU case-law on the EAW.*
 - *National authorities should not refrain from sending requests for preliminary rulings to the CJEU, as further clarifications of interpretation can improve the correct application of the EAW FD.*
 - *Eurojust will continue to update relevant compilations, if needed, and/or be ready to launch new ones, if needed, in view of further case-law developments.*

- **Limits of direct contact.** Direct contact is an excellent point of departure in judicial cooperation and it might work very well in many cases. However, this report confirms that, for various reasons, direct contact sometimes fails. In most cases, involving Eurojust was the crucial step in breaking the deadlock. Eurojust brought clarification and a better understanding of the legal or practical concerns of the national authorities so that, jointly, workable and satisfying solutions could be agreed upon and the EAWs could be executed.
 - *National authorities should not refrain from contacting Eurojust or the European Judicial Network, in accordance with their respective competences and depending on the specificities of the cases, when direct contact is not working.*

- **Good translations and good language skills.** A good translation of an EAW is key to avoiding misunderstandings and unnecessary delays. This might seem obvious and redundant, yet it is a crucial rule that, in practice, is often not complied with, which then becomes problematic.
 - *Further investment in good translations and also in good language training (to facilitate direct contact) is crucial and is a key factor in improving the functioning of mutual recognition instruments in general.*

- **Requests for information.** When requests for information remained unanswered, direct contact failed and Eurojust was contacted. Eurojust assisted national authorities in relation to requests for information at different stages and in relation to different topics. Particularly significant was the high number of cases in which executing authorities failed to provide information on how much time the requested person was in detention in the executing Member State on the basis of the EAW (Article 26 of the EAW FD).
 - *As requests for additional information are one of the main reasons for non-compliance with time limits, it would be good to provide national authorities with further support on how to*

apply Article 15 of the EAW FD. In relation to Article 26 of the EAW FD, national authorities are kindly invited to comply with the obligations included in this provision.

- **Compliance with time limits.** Time limits constitute one of the major features of mutual recognition instruments. Article 17(7) of the EAW FD was meant to keep a good overview of cases in which ‘in exceptional circumstances’ time limits could not be met and to identify underlying reasons for recurrent delays. Unfortunately, no accurate information is currently available on the number of cases for which time limits are not met. The template that Eurojust created in 2018 for this purpose is hardly used and only a few countries notify Eurojust when time limits cannot be observed. Yet Eurojust’s casework reveals that requests for additional information led to considerable delays in some cases. Furthermore, appeal proceedings in certain Member States seemed to allow cases to last for many years before a final decision was taken.
 - *National authorities are kindly invited to comply with the obligations in Article 17(7) of the EAW FD.*

- **Grounds for non-execution and fundamental rights.** The report confirms that there is still margin to further improve the interpretation and application of certain grounds for non-execution and to ensure the assessment of fundamental rights grounds in line with the case-law of the CJEU and the European Court of Human Rights (ECtHR).
 - *Practitioners should receive further guidance on how to deal with questions on detention conditions and/or fundamental rights. Further guidance on the case-law of both the CJEU and the ECtHR is relevant in this regard.*
 - *Practitioners should receive further guidance on how to apply certain grounds for non-execution.*
 - *In cases for which parallel proceedings are ongoing in two Member States, Eurojust can provide support in coordinating and helping to decide which jurisdiction is best placed to prosecute.*
 - *When the execution of EAWs cannot take place on fundamental rights grounds, further reflection at EU level is needed on how to avoid impunity in such cases, not only in relation to EAWs for the purpose of prosecution, but also, and more importantly, in relation to EAWs for the purpose of the execution of custodial sentences.*
 - *In relation to the application of the dual criminality check, it should be underlined that this test should not be applied in relation to ‘list offences’ and that the question of whether an offence falls within this list is determined by the issuing Member State’s legal framework.*
 - *In complex cases, or cases with parallel proceedings or cases in which requests could not be solved through direct contact within a reasonable time, Eurojust can provide assistance with requests for additional information, to avoid multiple requests being sent back and forth. Eurojust can support authorities in obtaining and providing quickly all relevant information to make the correct assessment.*

- **Relation to other instruments.** Eurojust’s casework revealed difficulties, but also opportunities, in the use of EAWs vis-à-vis other instruments, particularly European Investigation Orders and

transfers of sentenced persons. The report also highlights challenges in the coordinated use of different instruments and/or the choice of alternatives if the EAW is not an option.

- *There is a need for further clarification of the interrelationship between the EAW FD and the framework decision on the transfer of sentenced persons (FD 909), for example the obligation (or not) to send FD 909 certificates in the context of Article 4(6) of the EAW FD, or the margin of discretion of the executing authority in relation to the execution of the sentence in the light of the obligation of ‘actually enforcing the sentence’.*
 - *Eurojust can assist national authorities with the choice of the most appropriate instrument, coordinating the use of different instruments and/or coordination among Member States.*
- **Competing requests for surrender and extradition.** Although the EAW FD sets out an explicit role for Eurojust, few Member States have implemented this possibility in their national laws and relatively few cases are brought to Eurojust. Yet the report confirms that Eurojust’s involvement in such cases can bring many benefits.
- *National authorities are invited to bring more cases on competing requests for surrender and/or extradition to Eurojust to ensure that a well-informed decision can be taken and to ensure coordination of any required follow-up measures, if needed.*
- **Postponement of the actual surrender.** The report indicates that, even in cases in which a decision is taken to execute the EAW, many issues can arise before the actual surrender takes place.
- *Close cooperation, communication and coordination are extremely important in scenarios in which the actual surrender has to be postponed.*
- **Speciality rule.** The application of the speciality rule has been rather cumbersome in some cases.
- *There is a need for further clarification of the scope of the principle of speciality and a need for measures to ensure a correct and more efficient application of the speciality rule in order to avoid considerable delays in the criminal proceedings in the issuing Member State.*

A more detailed explanation of the issues, recommendations and best practices mentioned above, including several other ongoing issues, can be found in this report. In addition, (anonymised) case examples, presented by Eurojust National Desks, have often been provided to clarify the issues at stake.