

Procedure file

Basic information		
INI - Own-initiative procedure	2019/2207(INI)	Procedure completed
The Implementation of the European Arrest Warrant and the Surrender Procedures between Member States		
Subject 7.40 Judicial cooperation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Civil Liberties, Justice and Home Affairs	 ZARZALEJOS Javier	02/12/2019
		Shadow rapporteur	
		 ROBERTI Franco	
		 PAGAZAURTUNDÚA Maite	
		 DELBOS-CORFIELD Gwendoline	
		 BUXADÉ VILLALBA Jorge	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Constitutional Affairs	 RANGEL Paulo	19/02/2020

Key events			
19/12/2019	Committee referral announced in Parliament		
01/12/2020	Vote in committee		
08/12/2020	Committee report tabled for plenary	A9-0248/2020	Summary
18/01/2021	Debate in Parliament		

20/01/2021	Results of vote in Parliament		
20/01/2021	Decision by Parliament	T9-0006/2021	Summary
21/01/2021	End of procedure in Parliament		

Technical information

Procedure reference	2019/2207(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Implementation
Legal basis	Rules of Procedure EP 55
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/9/02108

Documentation gateway

Committee draft report		PE655.688	03/09/2020	EP	
Amendments tabled in committee		PE658.878	07/10/2020	EP	
Committee opinion		PE648.270	14/10/2020	EP	
Committee report tabled for plenary, single reading		A9-0248/2020	08/12/2020	EP	Summary
Text adopted by Parliament, single reading		T9-0006/2021	20/01/2021	EP	Summary
Commission response to text adopted in plenary		SP(2021)223	09/07/2021	EC	

The Implementation of the European Arrest Warrant and the Surrender Procedures between Member States

The Committee on Civil Liberties, Justice and Home Affairs adopted an own-initiative report by Javier ZARZALEJOS (EPP, ES) on the implementation of the European arrest warrant and the surrender procedures between Member States.

This report assesses the application of the mechanism established by Framework Decision 2002/584/JHA on the European Arrest Warrant in the Member States concerned. This instrument is based on the principle of mutual recognition, which means that European arrest warrants issued in one Member State must be directly recognised and enforced in another Member State, except in certain specific cases.

General overview of the implementation of the European arrest warrant

Members recognise that the European arrest warrant is an effective instrument to combat serious cross-border crime and to bring to justice the perpetrators of serious criminal offences within the Member State in which criminal proceedings have been or are being conducted. However, they note that there are some problems and that there is a need to improve it to make it more effective,

The problems encountered mainly concern:

- detention and prison conditions, proportionality and the implementation of procedural safeguards enshrined in EU law, in particular the right to dual legal representation in both executing and issuing States;
- training;
- specific rule of law issues, execution of custodial sentences, time limits and decisions in absentia;
- the issue of dual criminality;
- inconsistency in the application of the grounds for refusal to execute European arrest warrants;
- the lack of a comprehensive data system to produce reliable statistics on both qualitative and quantitative aspects of the issuing, execution or refusal to execute European arrest warrants.

Members recommended that the European arrest warrant should not be misused for minor offences, where grounds for pre-trial detention do not exist, while suggesting that the use of the European arrest warrant should be limited to serious criminal offences.

Recommendations to improve the functioning of the European Arrest Warrant

In particular, the report makes the following recommendations:

- collect reliable and up-to-date data and transfer them to the Commission in a systematic way in order to better evaluate judicial cooperation and detect weaknesses;
- strengthen the principle of loyal cooperation and to clarify the issue of double criminality, which is a problem in some cases, mainly as regards differences of interpretation of the scope of verification and the question of the list of offences for which no verification should take place;
- ensure the full implementation of the Directives on procedural rights with a view to guaranteeing the right to a fair trial;
- an analysis of common offences between Member States in order to better define when the European arrest warrant should be used;
- assess the inclusion of new offences or categories of offences, such as environmental crimes, certain forms of tax fraud, offences hate crimes, sexual abuse, gender violence, offences committed with the use of digital tools, offences involving the use of violence or constituting a serious threat to the public order of the Member States, crimes of genocide, crimes against humanity and war crimes;
- define more precisely the obligations and competences of national authorities and EU bodies involved in European arrest warrant proceedings and ensure that they are specialised and have practical experience;
- ensure uniform application and effective monitoring with regard to time limits;
- provide adequate funding for legal aid for persons subject to European arrest warrant procedures;
- support the European Judicial Training Network and existing national training platforms for the judiciary, as well as launch, if necessary, a new training platform for practitioners on mutual recognition instruments.

Fundamental rights

The report called on Member States to respect the obligations under Article 2 of the Treaty on the European Union on human dignity, freedom, democracy, equality, the rule of law and human rights, including minority rights. In this respect, detention conditions should respect human dignity and investigations should be carried out in case of violation of rights.

While reaffirming the importance of an EN mechanism for democracy, the rule of law and fundamental rights, Members called on the Commission: (i) to study the feasibility of supplementing instruments on procedural rights, such as on the admissibility of evidence and conditions of pre-trial detention, based in particular on Council of Europe standards and (ii) to establish an assessment of compliance with the *ne bis in idem* principle and a proportionality check when issuing a European arrest warrant.

Ensuring the coherence of the legal framework of the European Arrest Warrant

Members considered that consistency and efficiency remain the main problems, and that there is room for improvement in this respect. They called on the Commission to ensure coherence in the area of mutual recognition, in order to take account of the case law of the Court of Justice of the EU, the current level of harmonisation of Member States' criminal law and procedures and the fundamental rights recognised by the Charter of Fundamental Rights.

The Implementation of the European Arrest Warrant and the Surrender Procedures between Member States

The European Parliament adopted by 444 votes to 139, with 106 abstentions, a resolution on the implementation of the European Arrest Warrant and the surrender procedures between Member States.

General overview of the implementation of the European Arrest Warrant

Members agreed that the European Arrest Warrant is an effective instrument to combat cross-border crime and to bring the perpetrators of serious crimes to justice in the Member State where criminal proceedings have taken or are taking place. It has contributed to the maintenance of the area of freedom, security and justice and has considerably facilitated cooperation on surrenders.

However, certain problems have arisen which point to the need to strengthen and improve the European Arrest Warrant to make it more effective, more immediate and more respectful of the decisions of national courts.

The problems encountered mainly concern (i) the conditions of detention and imprisonment, (ii) proportionality, (iii) the implementation in the European Arrest Warrant procedures of the procedural safeguards enshrined in EU law, in particular the right to dual legal representation in both executing and issuing States, as well as (iv) training, (v) specific rule of law issues, (vi) the execution of custodial sentences, (vii) time limits and (viii) in absentia decisions.

Members recommended that the European arrest warrant should not be misused for minor offences, where grounds for pre-trial detention do not exist, while suggesting that the use of the European arrest warrant should be limited to serious criminal offences where it is strictly necessary and proportionate.

Recommendations to improve the functioning of the European Arrest Warrant

Parliament made the following recommendations:

- collect reliable and up-to-date data and transfer them to the Commission in a systematic way in order to better evaluate judicial cooperation and detect weaknesses;
- strengthen the principle of loyal cooperation and to clarify the issue of double criminality: mutual recognition should work automatically, without reassessment of the substantial grounds for accusation and that decisions should not be refused unless there are the reasons to invoke one of the grounds for refusal exhaustively listed in the European Arrest Warrant Framework Decision;
- ensure the full implementation of the Directives on procedural rights with a view to guaranteeing the right to a fair trial;

- with regard to the punishment threshold provided for in the Framework Decision on the European Arrest Warrant, assess the possibility of reducing the three-year threshold for certain offences such as trafficking in human beings, sexual exploitation of children and child pornography;
- define more precisely the obligations and competences of national authorities and EU bodies involved in European arrest warrant proceedings and ensure that they are specialised and have practical experience;
- ensure uniform application and effective monitoring with regard to time limits;
- provide adequate funding for legal aid for persons subject to European arrest warrant procedures;
- support the European Judicial Training Network and existing national training platforms for the judiciary, as well as launch, if necessary, a new training platform for practitioners on mutual recognition instruments.

Fundamental rights

Parliament called on Member States to respect the obligations arising from Article 2 of the EU Treaty with regard to human dignity, freedom, democracy, equality, the rule of law and human rights, including minority rights. Any person wanted under a European Arrest Warrant who sees his or her rights and freedoms guaranteed by EU law violated should have the right to an effective remedy before a court of law.

While reaffirming the importance of an EU mechanism for democracy, the rule of law and fundamental rights, Members called on the Commission to study the feasibility of supplementing instruments on procedural rights, such as the admissibility of evidence and conditions of pre-trial detention, based in particular on Council of Europe standards.

Members also asked the Commission to take advantage of funding opportunities under the EU structural funds to modernise detention facilities.

Ensuring the coherence of the legal framework of the European Arrest Warrant

Members considered that consistency and efficiency remain the main problems, and that there is room for improvement in this respect. They called on the Commission to ensure coherence in the area of mutual recognition, in order to take account of the case law of the Court of Justice of the EU, the current level of harmonisation of Member States' criminal law and procedures and the fundamental rights recognised by the Charter of Fundamental Rights.