European Commission

The European arrest warrant

-technical examination of the acquis Chapter 24 Justice, Freedom and Security

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Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Justice and Consumers

Legal framework

- Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (O.J. L190/1 18.07.2002). Entered into application on 1 January 2004.
- 2002 Framework Decision amended by Framework Decision 2009/299/JHA (enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial)
- Used over 10 000 times per year (2016: over 15,400 issued)
- The EAW has been now been operating for 14 years and has been very successful.

Application

FD replaced the corresponding provisions of multilateral instruments on extradition between Member States.

Member States can continue to apply existing or conclude new bilateral or multilateral agreements in so far as they further simplify or facilitate procedures for surrendering persons for whom EAWs have been issued (Article 31).

Instruments complementing the FD on EAW

- Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby **enhancing the procedural rights** of persons and fostering the application of the principle of mutual recognition to decisions rendered **in the absence of the person concerned at the trial** (OJ L 81, 27.3.2009)

- Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008)

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Handbook on how to issue and execute a EAW (2017/C 335/01)

- Issued in October 2017

- Practical guidance for MS practitioners on features and requirements of an EAW, main European Court of Justice decisions

- Guidance on proportionality in issuing an EAW

- available in all EU official languages on the E-justice portal:

https://e-justice.europa.eu

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Main features of the EAW

- **Application of EAW is based on the principles of mutual recognition and mutual trust**

- Limited grounds for refusal (mandatory and optional grounds for refusal, Art. 3, 4, 4a)

- Direct contact between judicial authorities

- An EAW may be issued for :

  (i) for offences punishable by the law of the issuing Member State by imprisonment or a detention order for a maximum period of at least 12 months or

  (ii) (ii) if a sentence has been passed or a detention order has been imposed for a period of at least four months

- **No verification of double criminality for 32 categories of crimes**

- **Surrender much quicker than in most extradition proceedings** (max. 10 days when person consents; 60 days when person doesn't consent)

Main ECJ case law on the EAW:

* Principle of Mutual trust and mutual recognition :

Duty for Member States to execute EAWs. Optional grounds for refusal must give latitude to the executing judicial authority.

- Case C-237/15 PPU Lanigan, 16 July 2015 (expiry of time limits, obligation to make a decision, possibility of keeping the person in detention)

- Case C-640/15 Vilkas, 25 January 2017 (time limits for surrender and for execution of EAW, interpretation of "circumstances beyond the control of any of the Member States“)

- Case C-579/15 Popławski, 29 June 2017 (transposition of facultative grounds of refusal as obligatory, possibility to refuse a surrender if the executing judicial authority undertakes to execute the sentence or detention order in accordance with its domestic law)

Main ECJ case law on the EAW:

<u>* Guarantees in the issuance of an EAW:</u>

- Case C-241/15 Bob-Dogi, 1 June 2016 (validity of EAW only if based on a national arrest warrant)

- Cases C-452/16 PPU Poltorak, C-453/16 PPU Özçelik, C-477/16 PPU Kovalkovas, 10 November 2016 (concepts of "judicial decision" and "issuing judicial authorities“ – **EAW cannot be issued by a Ministry of Justice or a police department; it must be issued by an “authority that administer criminal justice”)**

+ An executing Member State may also request guarantees from the issuing member state in particular cases (Article 5 – return guarantee for EAW regarding prosecutions, review procedure when lifetime detention)

Main ECJ case law on the EAW:

* Member States responsibilities or obligations :

All surrender decisions are subject to the overriding obligation to respect fundamental rights and fundamental legal principles (Article 1(3) and Recitals 12 and 13).

- Joint cases C-404/15 and C-659/15 PPU Aranyosi and Căldăraru, 5 April 2016 (fundamental rights of the person regarding detention conditions, multiple step test)

- Case C-216/18 PPU Ministry for justice and Equality LM, 25 July 2018 (execution of EAW when procedure regarding rule of law launched under Art. 7(1) TEU procedure)

- Case C-182/15 Petruhhin, 6 September 2016 (Extradition to Russia of EU nationals from another Member State);

- Case C-191/16 Pisciotti, 10 April 2018 – (Extradition to the US of a national of another Member State)