

European Arrest Warrant - European Implementation Assessment - Study by Wouter van Ballegooij (2020)

On 6 November 2019, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested authorisation to draw up an own-initiative implementation report on the Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States (FD EAW, 2002/584/JHA) (rapporteur: Javier Zarzalejos, EPP, Spain). The Conference of Committee Chairs gave its authorisation on 26 November. This triggered the automatic production of a European implementation assessment by the Ex-Post Evaluation Unit of the Directorate for Impact Assessment and European Added Value, Directorate-General for Parliamentary Research Services (EPRS).

This study provides an assessment and conclusions on the implementation of the FD EAW. It also contains recommendations on how to address the shortcomings identified, as per the request of the rapporteur. It is intended to contribute to the Parliament's discussions on this topic, improving understanding of the subject, and ultimately feeding into the implementation report. The study concludes that the FD EAW has simplified and sped up handover procedures, including for some high-profile cases of serious crime and terrorism. A number of outstanding challenges relate back to core debates concerning judicial independence, the nature of mutual recognition and its relationship with international and EU law and values, constitutional principles and additional harmonisation measures. Furthermore, there are gaps in effectiveness, efficiency and coherence with other measures and the application of digital tools. The study recommends targeted infringement proceedings, support to judicial authorities and hearing suspects via video-link where appropriate to avoid surrender whilst ensuring the effective exercise of defence rights, as well as a range of measures aimed at achieving humane treatment of prisoners. In the medium term, for reasons of legitimacy, legal certainty and coherence, it recommends a review of the FD EAW as part of an EU judicial cooperation code in criminal matters.

The study recommends:

- The Commission could initiate targeted infringement proceedings against those Member States which have incorrectly or deficiently transposed the FD EAW.
- The Commission could initiate infringement proceedings against those Member States which have incorrectly or deficiently transposed the provisions of the procedural rights directives, which guarantee the rights of requested persons.
- Assistance and coordination by Eurojust to the judicial authorities in the Member States could be further promoted and funded through the EU budget.
- Training and exchanges of judicial authorities could be further promoted and funded under the EU budget.
- The Commission (in cooperation with Eurojust, the EJM/EJtN and the FRA) could develop and regularly update a 'handbook on judicial cooperation in criminal matters within the EU.
- A database could be developed containing the national jurisprudence on the EAW.
- Judicial authorities could be systematically involved in the development of EU monitoring mechanisms on democracy, the rule of law and fundamental rights.

- EU Member States should comply with their international obligations by properly executing ECtHR decisions and following up on CPT and NPM reports.
- All EU Member States should ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and set up independent and effective National Preventive Mechanisms (NPMs).
- The FRA could be requested to conduct a comparative study on the follow-up in the issuing Member States, to offer assurances as regards detention conditions in the context of EAW procedures.
- EU funding to modernise detention facilities in the Member States should be exploited.
- The Commission could propose EU legislation in the area of pre-trial detention addressing procedural requirements in terms of reasoning for pre-trial detention and regular reviews, as well as material detention conditions.
- The use of EAWs for low or medium crimes should be reconsidered.
- The EAW should not be issued for questioning.
- The proportionality test to be conducted by judicial authorities could be revised and further clarified in the light of CJEU case law and comparable provisions in the EIO.
- Access to a defence lawyer in the issuing Member State should be guaranteed; this defence lawyer should be able to access the case file prior to surrender.
- The Commission could adopt a communication discussing the list of 32 ‘serious crimes’ referred to in Article 2(2) FD EAW, relevant EU harmonisation measures and their national transposition. This communication should also assess the necessity and proportionality of adopting or revising the definitions and sanctions of these offences at EU level. Where deemed appropriate, the Commission should suggest updates to the list.
- The Commission could propose an EU judicial cooperation code in criminal matters.
- As part of the EU judicial cooperation code, the Commission could put forward a legislative proposal on the prevention and resolution of conflicts of competence.
- As part of the EU judicial cooperation code, the Commission could put forward a legislative proposal on transfer of proceedings.
- Technological advancement could be used improve the efficiency and fundamental rights compliance of the EAW procedure

The study can be downloaded [here](#)

See also the ECBA Handbook on the EAW for defence lawyers - How to defend a European Arrest Warrant case, ECBA, 2017, [here](#) which Vânia Costa Ramos co-authored with other ECBA Colleagues (Jodie Blackstock (JUSTICE), Edward Grange, Rebecca Niblock, Vânia Costa Ramos and Alex Tinsley).