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European Arrest Warrant to replace extradition

European Commission

Directorate-General
Justice and Home Affairs

No safe havens for criminals in European Union

The European Union is replacing lengthy extradition procedures with a new efficient way of bringing back suspected criminals who have absconded abroad and for people convicted of a serious crime who have fled the country. The European Arrest Warrant (EAW) will enable such people to be returned within a reasonable time for their trial to be completed or for them to be put in prison to serve their sentence.

The EAW will replace present extradition procedures for serious crimes, including terrorism. It will be valid throughout the European Union. Under the present system the decision whether or not to extradite a person involves a lengthy procedure. This requires a court decision in the country where the person has been found, perhaps followed by appeals, sometimes lasting years. Extradition is sometimes refused by courts because they do not always recognise the legal proceedings or the court decisions in the country where these people were tried. Then after the court decision the question is finally decided by the political authority (usually the Minister of Justice or Home Secretary) which can refuse extradition on political or other grounds.

EU member states agreed in principle in December 2001 to replace the traditional extradition system within the EU with the European arrest warrant. This provides for the rapid return of such people to the country where they are accused of having committed a serious crime or where they were sentenced. Six months later, in June 2002, The Council of the EU agreed a framework decision to introduce the European arrest warrant in the EU and requiring member states to introduce legislation to bring the EAW into force. Under the decision all EU member states are required to give effect to the EAW by the end of 2003 so that it can enter into force on 1 January 2004.

How will it work?

A European arrest warrant may be issued by a national court if the person whose return is sought is accused of an offence for which the penalty is at least over a year in prison or if he or she has been sentenced to a prison term of at least four months. The framework decision on the EAW is based on the principle of mutual recognition of judicial decisions. This means that a decision by the judicial authority of a member state to require the arrest and return of a person should be recognized and executed as quickly and as easily as possible in the other member states.

The European arrest warrant will introduce some novelties compared to the former extradition procedures:

1) faster procedures: The state in which the person is arrested has to return him/her to the state where the EAW was issued within three months or 90 days of the arrest.

2) simpler procedures: criminals and terrorists should not escape arrest and return to the country looking for them because of national differences in the definition of what is a crime. The dual criminality principle - which means that both the country requesting extradition and the country that should arrest and return the alleged criminal recognize and accept that what he or she is alleged to have done is a crime - is abolished for 32 serious offences.



These include being member of a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, corruption, fraud, money laundering, counterfeiting of money, and illicit trafficking in arms, ammunition and explosives.

European arrest warrants issued in respect of crimes or alleged crimes on this list have to be executed by the arresting state irrespective of whether or not the definition of the offence is the same, providing that the offence is serious enough and punished by at least 3 years' imprisonment in the member state that has issued the warrant.

3) no political involvement: The political stage in current extradition procedures, where a government minister takes the final decision on whether or not to extradite someone, is abolished for extradition procedures under the EAW. This means that the execution of these warrants will simply be a judicial process under the supervision of the national judicial authority which is, *inter alia*, responsible for ensuring the respect of fundamental rights.

4) countries can no longer refuse to surrender their own nationals: The European arrest warrant is based on the principle that EU citizens shall be responsible for their acts before EU courts. This means that it will not be possible any more for a member state to refuse to surrender one of its citizens who has committed a crime in another EU state on the ground that he or she is a national. On the other hand, it will be possible for a member state, while surrendering this person, to ask for their return on its territory to serve their sentence in order to facilitate future reintegration.

Characteristics of EAWs

The framework decision on the European arrest warrant ensures a good balance between efficiency and strict guarantees that the arrested person's fundamental rights are respected.

In implementing the framework decision on the EAW, member states and national courts have to respect the provisions of the European Convention on Human Rights and to ensure that it is respected.

The "ne bis in idem" or double jeopardy principle is applied. This means that the person will not be returned to the country that issued the arrest warrant if he or she has already been tried for the same offence.

A member state can refuse to return a person if an amnesty covers the offence in its national legislation or if it is statute barred (which means that the time limit has been passed and that it is too late under that country's laws to prosecute the person).

A member state can also refuse to return a person who is a minor and has not reached the age of criminal responsibility under its national laws.

Where someone arrested under an EAW may be sentenced to life imprisonment, the state executing the EAW may insist, as a condition of executing the arrest warrant, that the accused person will not have to serve life even if sentenced to life. There is no mention of the death penalty as the death penalty has been abolished in the European Union.

Anyone arrested under a EAW may have a lawyer, and if necessary an interpreter, as provided by the law of the country where he or she has been arrested.

If judgement was given in his absence against anyone later arrested under an EAW, he has to be retried in the country requiring his return.

Persons arrested under an EAW may serve their sentence in the country in which they were living when arrested, rather than in the country where they were sentenced.

The time served in custody as a result of the execution of the warrant is to be deducted from the total sentence if the person is later convicted in the issuing Member State.

Open borders law enforcement

When the European arrest warrant becomes operational it will improve the effectiveness of law enforcement within the European Union. It will open the borders within the European law enforcement area by making it easier for the rule of law to be administered across borders between EU member states. It will also make it much harder for convicted criminals and people prosecuted for a crime to use the differences between national legal systems to avoid arrest or to find a safe haven in another EU country.

Defendants in criminal proceedings who come from other EU countries will benefit from the introduction of the EAW. They may well get bail and be allowed to return to their home country until their trial as the courts will know that if the offender fails to return for trial, it will be far easier to compel him or her to do so by means of an EAW. At present they are usually kept under arrest until the trial so they cannot flee the country as bringing them back for trial normally involves lengthy extradition proceedings if they are recaptured abroad.

The European arrest warrant implements a decision taken in October 1999 by the European Council - the heads of state or of government of all 15 EU countries - at Tampere, Finland, to improve judicial co-operation in the European Union and, in particular, to abolish formal extradition procedures for persons "who are fleeing from justice after having been finally sentenced". Its effectiveness depends on EU member states trusting each other's legal systems and accepting and recognizing the decisions of each other's courts. Its objective - which is agreed by all EU states - is to ensure that criminals cannot escape justice anywhere in the EU.

However, the framework decision on the EAW allows EU member states to use the warrant to request indicted persons and convicted criminals to be returned to the state issuing the warrant as soon as it has been introduced into the national law of the two states involved. Six member states (Belgium, France, Germany, Luxembourg, Portugal and Spain) have already announced their intention to introduce the European arrest warrant in their national legislation by 1 January 2003. It is therefore fair to assume that the European arrest warrant will already be in use in 2003 for the speedy return of some wanted people to the EU state from which they had fled or absconded

