

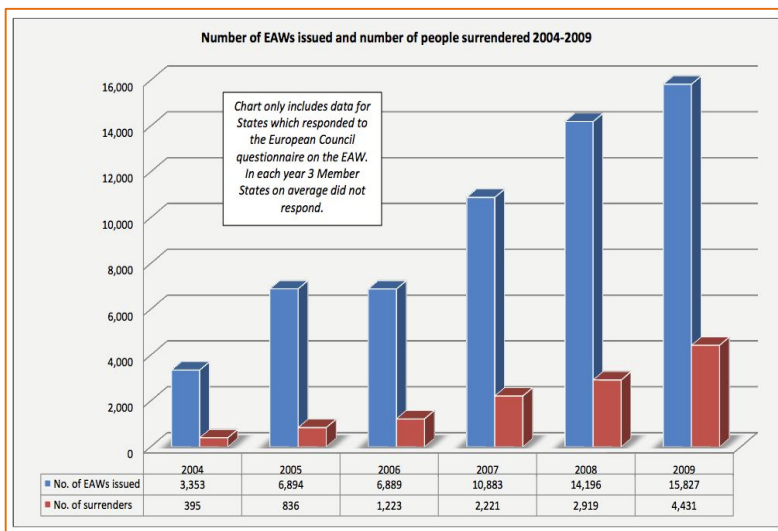


The European Arrest Warrant: One step closer to reform?

Introduction

The European Arrest Warrant (EAW) is a system in which one EU Member State can ask another EU Member State to deliver a suspect to face trial. It replaced the traditional extradition system between EU Member States in 2004. The EAW can be sought for suspects alleged to have committed offences for which the maximum sentence is one year or longer, or in cases in which a final sentence of imprisonment of at least four months has been applied.¹ Once an EAW is issued, it must be recognised by all EU Member States. If the suspect's location is known, the EAW may be transmitted directly to the central authority of the relevant Member State. When a person subject to an EAW is found and detained, the detaining Member State is required to implement the EAW. Alternatively, the issuing EU Member State may seek assistance from a particular centralised European justice body, such as the [European Judicial Network](#) to circulate the EAW, the [Schengen Information System](#) to issue an alert, or [Interpol](#) to issue a Red Notice to seek the location and arrest of a wanted persons.

Many policymakers, politicians, and NGOs regarded the previous extradition system as inefficient: the procedure to implement extradition was slow, and it took a long time to transfer a person from one Member State to another and to allow the latter Member State judicial power over the person in question (surrender). The EAW was created to speed up the surrender of a person from one EU Member State to another, whether to face trial, serve a prison sentence, or give a witness statement.



Numbers of European Arrest Warrants issued per year compared with surrenders, 2004 - 2009. [Fair Trials International 2011](#)

The EAW has successfully sped up transfer processes. A 2011 [Commission report](#) to the European Parliament and the Council on the implementation of the EAW, states that between 51% (2005) and 62% (2008) of people agreed to their extradition under an EAW.² Extraditions with consent took 14 to 17 days. For those who didn't consent, the average transfer time to the issuing Member State was 48 days. This is faster than the traditional extradition system, in which the average time for extradition was one year, according to the Commission report. However, there are still cases under the EAW

¹Europa, *European Arrest Warrant* [online], accessed 01 December 2013, available at: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33167_en.htm

² According to the European Commission, the percentage of persons transferred who consented was: 2005: 51%. 2006: 53%. 2007: 55%. 2008: 62%. 2009: 54% (*Report to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States COM(2011) 175 final* (September 2011) [on-line], accessed 01 December 2013, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0175:FIN:EN:PDF>).

where extradition procedures take an unacceptably long time and, because of this, people are detained for too long, awaiting trial.

Since its implementation in 2004, use of the EAW has risen.³ The number of EAWs issued per year across the EU increased fivefold in five years from 3,353 in 2004 to 15,827 in 2009.⁴ However, many EAWs issued are not executed: between 2005 and 2009, only 21% of EAWs issued were executed, and, in 2011, [only 29% of EAWs issued](#) were executed. This lack of execution may be for reasons such as an EAW issued for a minor offence, which has an increased likelihood of later being withdrawn. This is one example illustrating why lawyers, NGOs, and politicians are now calling for reform of the EAW. They believe that this judicial instrument should be used only when necessary, and that use must be proportionate to the alleged offence, respect the rule of law, and maintain a suspect's human rights.

1. Human Rights and the European Arrest Warrant

The EAW can be used to bring suspects to a trial or to bring someone to serve a sentence. A person who has been convicted and then has left the country, sometimes without letting the judicial authorities of a specific state know about their movement, may be brought back under the EAW. EU Member States have also issued EAWs to arrest people in order to hear them as witnesses rather than to prosecute them. Whichever situation is the case, it is necessary for the witness, suspect, or convicted person's human rights to be better upheld. One area that needs attention is the impact of the EAW on the presumption of innocence and on risk of detention.

The European Arrest Warrant and Unwarranted Detention

There are a number of issues with the use of the EAW which create a risk that people may be imprisoned for unjustly long periods of time. One issue results from the fact that EAWs can be issued for those who are suspected but not (yet) convicted of a crime. The EAW can also be used as a means to procure witnesses in order to extract statements or to interview a suspect. An EU Member State can issue an EAW before there is enough evidence, and before the suspect and the court are ready for trial, which can result in a suspect being detained after being transferred but prior to being tried. People transferred under an EAW therefore risk being imprisoned before any trial or conviction. In some cases, this detention has been for as long as a year.

Imprisonment prior to trial as well as after conviction still remains, in many cases, the default option for many EU Member State criminal justice systems. Imprisoning people pre-trial also puts more and more pressure on overcrowded prison systems and is extremely costly to the state.⁵ There is

The [Andrew Symeou](#) case described by [Fair Trials International](#) highlights how human rights may be violated if a person is not given [easy access to a lawyer](#), or to information about why he or she is detained, in a language they understand; all issues related to the correct functioning of the EAW.

Between 2009 and 2011, Andrew was held for over 10 months in pre-trial detention in Greece, after an EAW was issued against him. The detention conditions were described as appalling, and Andrew was repeatedly denied bail. When his case was finally brought to trial, it was discovered that the witness statements alleging his crime were false and had been extracted by force whilst the witnesses were in police custody. In June 2011, Andrew was cleared of the charges brought against him. However, as he had already been imprisoned for 10 months, Andrew was punished for being suspected of a crime. His presumed innocence was not upheld when the EAW was issued and implemented.

³ The Council Framework Decision on the European arrest warrant and the surrender procedures between member states of 13 June 2002 had an implementation date of 31st December 2003, according to JUSTICE, *The European Arrest Warrant: Ensuring and effective defence* [on-line], accessed 01 December 2013, available at http://www.ecba.org/extdocserv/projects/EAW/JUSTICE_EAW.pdf

⁴ Fair Trials International, *Appendix 1: EAW Statistics* [on-line], accessed 01 November 2013, available at http://www.fairtrials.org/documents/Appendix_1_-_EAW_statistics_May_2011.pdf

⁵ According to European Commission, *the European Commission Staff Working Document: Accompanying Document to the Proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member*

insufficient use of alternatives in place of detention, such as the use of the [European Supervision Order](#) (ESO). The ESO is a procedure by which the court of the one Member State can forward a decision on alternative supervision measures to the state of residence of the suspect, and the state of residence must recognise the decision and supervise the defendant. Another option is [the Probation Framework Decision](#) which allows recognition and monitoring of probation measures in Member States other than the state that pronounced the sentence.⁶

Prisoners transferred under an EAW are generally foreign nationals to the issuing country. They may be held prior to trial, and for longer lengths of time, in countries where it is assumed foreign prisoners are more likely to flee. And yet, in some Member States, up to 50% of those transferred for trial under the EAW are in fact finally acquitted. Their detention before trial is at odds with the presumption of innocence.

Another problem arises because an EAW can be issued for offences punishable by imprisonment or detention for a maximum period of at least a year, which means that the EAW can be issued for minor crimes.⁷ People later convicted of a minor crime should not be detained before the trial for a period longer than their final sentence, and yet this is a risk with the EAW, depending on how it is handled.⁸ QCEA supports the use of alternatives to detention at the pre-trial stage for minor crimes. How common a problem detention for minor crimes is, is not clear: the true number of cases involving minor crimes is difficult to determine, and there are often attempts at earlier stages, by defence lawyers, prosecutors or consulates, to revoke an EAW issued for a minor offence.

An additional problem arises because surrender proceedings can be rushed, as Member States must usually surrender the suspect within 60 days of the EAW being issued. Problems of mistaken identity have arisen, with too little time for a suspect to appeal their EAW. This can lead to people being detained when neither guilty nor even the person who is suspected of the crime.

A suspect's presumed innocence is not upheld if they are detained pre-trial just because they live in another country or when they are to be tried for a minor crime. Their right to a fair trial may also be denied if they are not given information about their detention and alleged offence in a language they understand nor have easy access to legal representation in the country where they are detained.⁹ This problem may be made worse if detention conditions are poor, or poorer than in the suspect's own country.

Detention Conditions and the European Arrest Warrant

Poor detention conditions inhibit the proper functioning of the EAW mechanism as they can inhibit mutual confidence and trust between Member States. Mutual trust between Member States relies

States of the European Union COM(2006) 463 final (August 2006) [on-line], accessed 01 December 2013, available at: http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2006/sec_2006_1079_en.pdf on average, it costs around 2,000 euro to keep a person in pre-trial detention per month.

⁶ Please see 'definitions' section to learn more about the European Supervision Order (ESO) and the Probation Framework Decision

⁷ Different Member States may view crimes and penalties differently. A person may therefore be extradited to another country, to face detention, trial, and imprisonment for something deemed legal in their home country. Length of detention and imprisonment may also vary. What is classed as a minor crime in one country could hold heavier penalties in another country. Article 2 of the Framework Decision on the EAW lists the offences which are not bound by both Member States recognising a crime in the same way. These include offences such as trafficking in human beings, terrorism and environmental crime. Please see: Council of the European Union, *Council Framework Decision of 13 June 2002 on the European arrest warrant and surrender procedures between Member States* (2002/584/JHA) [on-line], accessed 01 December 2013, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:190:0001:0018:EN:PDF>

⁸ Haggemüller, Sarah, 'The principle of proportionality and the European Arrest Warrant', *Onati Socio-Legal Series* (2013), pp.98-99 [journal on-line], accessed 08 December 2013, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200874&download=yes

⁹ A roadmap on procedural rights was adopted by the EU in 2009. For more information about the Roadmap, and its associate Directives on the right to interpretation and translation, the right to information, the right of access to lawyer please see: <http://ec.europa.eu/justice/criminal/criminal-rights/>

on commitments to freedom, democracy, and the respect for human rights. Under the principle of mutual recognition, a decision made in one Member State must be enforced in the other Member State without enquiring into the decision. Unequal detention conditions in different Member States undermine the trust between Member States and therefore the EAW's function.

Poor detention conditions may also leave those arrested under an EAW vulnerable to inhumane and degrading treatment, violating Article 3 of the [European Convention on Human Rights](#) (ECHR).¹⁰ This can have grave effects on the person in detention and, further, on their family and friends. If prisons remain overcrowded and the conditions are poor, not only are the detainee's human rights threatened, but the trust that ensures the proper functioning of the EAW mechanism is also threatened.

The European Arrest Warrant and Previous Conviction

EAWs can be issued for previously convicted people who have either left the country or have absconded without telling the judicial authorities. In one example, [Deborah Dark](#) was found 'not guilty' in 1989 of drug-related offences in a French court after being detained for three months prior to her trial. She returned to her life in the UK, but, meanwhile, the judge in France appealed her verdict in her absence, and she was found guilty in absentia. She was neither summoned to appear in court (denying her right to be present at trial), nor told on what basis she was convicted, nor told why her case had been appealed (denying her the right to access to information).¹¹ Nearly 20 years later, between 2007 and 2009, Deborah was arrested and released on three occasions when she attempted to travel in Spain, in Turkey, and when she returned to the UK. As a result, for fear of another arrest, she did not visit her family in Spain for three years. The EAW was finally removed in 2010, after the UK courts refused her extradition on the grounds that too much time had passed since the date of the alleged offences, and that there was limited chance of a fair retrial as evidence had disappeared and witnesses had either died or could no longer adequately remember the original events.¹² This example clearly shows how important it is to maintain a person's right to a fair trial and procedural rights when an EAW is issued, for the subject of an EAW to be adequately informed and permitted time to review the EAW, and for an authority to review outstanding EAWs so that the system remains trusted and robust when applied to important cases.

2. The Future of the European Arrest Warrant?

At the date of writing, the [UK Member of European Parliament \(MEP\) Sarah Ludford](#) has drafted a [report](#) about the EAW with the objective to examine the EAW's [proportionality and observance of human rights](#).¹³ European Parliament committees may be called upon to draft a report on legislative or non-legislative issues, when it concerns a policy area within their competency. A committee might also draft a report on its own legislative initiative, as is the case with this draft report on the EAW (legislative initiative report). The reports can be taken forward, to invite the Commission and [Council of the European Union](#) to present legislative proposals.

¹⁰ See for example the [Lithuania v Liam Campbell court case in Northern Ireland](#), in which Northern Ireland did not grant extradition of Liam Campbell to Lithuania as he was deemed to be at the risk of imprisonment in inhumane or degrading conditions in Lithuania, breaching Article 3 of the European Convention on Human Rights.

¹¹ The European Commission, on 27 November 2013 presented a package of proposals to further strengthen procedural safeguards for citizens in criminal proceedings which includes proposed directives to respect for the presumption of innocence, and the right to be present at trial: European Commission, DG Justice, *The European Commission wants more safeguards for citizens in criminal proceedings* [on-line], accessed 11 December 2013, available at http://ec.europa.eu/justice/newsroom/criminal/news/131127_en.htm

¹² Tran, Mark, 'France drops Deborah Dark arrest warrant', *The Guardian*, 25 May 2010 [newspaper on-line], accessed 01 December 2013, available at: <http://www.theguardian.com/world/2010/may/25/france-drops-deborah-dark-arrest-warrant>

¹³ Ludford, Sarah, 'European Arrest Warrant must be improved not destroyed, says MEP', *The Parliament.com*, 7 November 2013 [newspaper on-line], accessed 07 November 2013, available at: <http://www.theparliament.com/latest-news/article/newsarticle/european-arrest-warrant-needs-to-be-improved-not-destroyed-says-mep/#.UnzCkeAhe-M>

This draft report is a major step towards reform of the EAW and its implementation. It highlights the ongoing hurdles for the development of EU criminal justice policy with human rights at its heart. It also touches on the need to improve detention conditions, with the recognition that prisoners are also people with dignity and human rights. The report makes clear that infringement, or risk of infringement, of basic human rights should be grounds for refusal of an EAW, and that alternatives should be used in place of the EAW to limit misuse of this mutual recognition instrument for minor crime (maintaining proportionality) and to limit pre-trial detention. It also highlights that alternatives to the EAW should be used for minor offences and that concern exists about the failure to use other existing mutual recognition instruments. An example of an alternative instrument which QCEA supports is the ESO.¹⁴

As Quakers work to uphold human rights of those in custody, support of this report and the recommendations below is necessary so that the human rights and dignity of those subject to an EAW are not forgotten or ignored. The EAW is an important step toward coherence and mutuality within the EU with regard to justice: it should not be scrapped or re-written, but it does need reform. This reform can go hand-in-hand with other legislation: recent developments from the European Commission in relation to procedural safeguards and rights, if implemented correctly at Member State level, might reduce human rights violations and improve the chances of a fair trial under the EAW. These include directives regarding maintaining [presumed innocence](#), guaranteeing [access to a lawyer](#), and [information about their case, with translation and interpretation](#).¹⁵

Recommendations

As Quakers believe that there is that of God in everyone, it prompts us to see offenders as human beings with dignity and rights, and to care for their welfare no matter what their crimes. No one is outside of God's love. Where crimes have been committed, both forgiveness and justice are needed. Quakers' engagement with social and political problems means we are conscious of the root causes of crime and their effects on individuals' behaviour. The presumption of innocence must be maintained for people not (yet) convicted of any offence. Freedom of movement and the simple fact of European countries being in close proximity, means that cooperation between EU Member States is essential. It is therefore crucial that we support reform of the EAW, to learn from what has worked and not worked, and to maintain the human rights of people in the EU. Write to your MEP, and ask them to support the Ludford report on reform of the EAW. Here are some issues you could raise with your MEP:

- > The need for proportionality tests so that those accused of a minor crime are not imprisoned prior to trial. An EAW should only be used for more serious crimes: an example is to revise the criteria for use of an EAW to apply only to crimes with a maximum sentence of two years or more, rather than the current 12 months.
- > Increased use of alternatives to detention before trial and also after conviction, to support human rights and also further mutual trust between EU Member States. Member States should increase their use of the Probation Framework Decision ([2008/947/JHA](#)) and the [European Supervision Order](#) (ESO) in place of the EAW.¹⁶

¹⁴ The EU is founded on principles including respect for human rights. Key principles of the EU's [European Charter of Fundamental Rights](#) (ECFR) and Council of Europe's [European Convention of Human Rights](#) (ECHR), to which the EU has acceded, are: prohibition of torture, or inhumane and degrading treatment (Article 3 ECHR and Article 4 of ECFR), the right to liberty of person (Article 5, ECHR and Article 6 ECFR), the right to a fair trial (Article 6 ECHR, and Article 47 ECFR), and the presumption of innocence (Article 6.2, ECHR, and Article 48.1).

¹⁵ Please also see 'further reading' section on p.7

¹⁶ Please see 'definitions' for a more detailed explanation of the ESO and Probation Framework Decision

- > The protection of fundamental rights must be an adequate reason for an EU Member State to refuse an EAW, so that a person is not transferred or detained in inhumane or degrading detention conditions after extradition. National justice systems should be reformed to ensure that inequities between the judicial systems are equalized, and suspects are exposed to similar detention conditions in different Member States when an EAW is issued.
- > Member States must also ensure that an EAW is not issued until the judiciary of a state is ready for trial and has enough evidence for a reasonable chance of conviction, minimising the use of costly pre-trial detention and honouring the presumption of innocence by preventing punishment (by imprisonment) of people not yet convicted of a crime (and who may never be convicted if the case is dropped or they are found innocent).
- > Member State judiciaries must allow a right to review of unexecuted EAWs, including consideration of whether they should be withdrawn. This means that people are not affected by former unexecuted EAWs, if and/or when they travel or move country.

The European Parliament's draft report on the EAW was discussed in the European Parliament Civil Liberties, Justice, and Home Affairs (LIBE) committee on 27th November. The draft report will be voted on by MEPs in the March 2014 plenary session of the European Parliament in Strasbourg. Once adopted, it is for MEPs supporting the report to discuss the way forward with the European Commission, or a group of Member States in the European Council, so that the EAW legislation is either re-written or reformed, or more horizontal policy measures are introduced or promoted alongside the existing mechanism.¹⁷

Reform of the EAW is needed, although not necessarily an extensive re-writing of the legislation. EU policy-makers and Member States must recognise those subject to the EAW as people with rights and dignity, not only suspects and prisoners. Only then can the EU truly live up to its common European values, helping to uphold the mutual trust and mutual recognition needed for the optimal functioning of the EAW.

Conclusion

The European Arrest Warrant is an important first step forward in improving efficiency of intra-Member State extradition. However, experience has shown that its use must be proportionate to the alleged offence, respect the rule of law, and maintain a suspect's human rights. It should be combined with measures protecting human rights, including the presumption of innocence. The balance between human rights and the rule of law will be better maintained with proportionate treatment of witnesses, suspects, and people convicted of crimes. This would further build essential mutual trust between EU Member States and improve how the EAW mechanism functions.

***Researched and written by Imogen Parker
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¹⁷ For example, in 2009, the European Commission introduced the Roadmap on Procedural Rights encompassing directives on interpretation and translation (2010), the right to information in criminal proceedings (2012) and a recent directive on access to a lawyer (2013). In November 2013, a package of proposals were also presented to strengthen procedural safeguards for citizens in criminal proceedings, guaranteeing respect for the presumption of innocence, the right to be present at trial, the right to legal aid and safeguards for children facing criminal proceedings.

Definitions

European Supervision Order (ESO): The ESO is a tool enabling a person to be supervised but not necessarily detained, in their home country prior to trial in another country. The court of one EU Member State can forward a decision on alternative supervision measures to the State of residence of the suspect, which must recognise the decision and supervise the defendant.

The Probation Framework Decision allows the recognition and monitoring of probation measures in Member States other than the state that pronounced the sentence. The proper use of these mechanisms would lower the use of pre-trial detention for extradition procedures and increase use of alternatives to imprisonment.

Further reading:

The European Parliament, *Draft Report with recommendations to the Commission on the review of the European Arrest Warrant 2013/2109(INL)* [on-line], accessed 12 December 2013, available from <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BCOMPARL%2BPE-522.805%2B02%2BDOC%2BPDF%2BV0%2F%2FEN>

Fair Trials International, *The European Arrest Warrant seven years on: The case for reform* [on-line], accessed 12 December 2013, available from http://www.fairtrials.org/documents/FTI_Report_EAW_May_2011.pdf

Fair Trials International, *A guide to the European Supervision Order* [on-line], accessed 12 December 2013, available from http://www.ecba.org/extdocserv/projects/eso/ESO_GUIDEfinal_FTI.pdf

JUSTICE, *The European Arrest Warrant: Ensuring an effective defence* [on-line], accessed 12 December 2013, available from http://www.ecba.org/extdocserv/projects/EAW/JUSTICE_EAW.pdf

There is a wealth of resources about the European Arrest Warrant available online via the Library of the European Parliament: <http://libraryeuroparl.wordpress.com/2013/10/17/the-european-arrest-warrant-a-success-story-that-needs-to-be-revisited/>

Haggenmüller, Sarah, 'The principle of proportionality and the European Arrest Warrant', *Oñati Socio-Legal Series* (2013), pp.98-99 [journal on-line], accessed 08 December 2013, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200874&download=yes

Library of the European Parliament, *Parliament's legislative initiative* [on-line], accessed 12 December 2013, available from [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI\(2013\)130619_REV2_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI(2013)130619_REV2_EN.pdf)