



# The European Arrest Warrant: An Introduction to the Framework Decision

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# Background to the EAW

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- 1999: Tampere European Council conclusions (35)
  - 2000: Programme of measures to implement the principle of mutual recognition in criminal matters
  - 2001-09-11
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# Objectives

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- Political: further the creation of an area of freedom, justice and security
    - free movement of pre-sentence and final decisions in criminal matters
  - Practical: reduce delays and complexity of extradition procedures between the Member States
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# Concept of EAW

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- Judicial decision issued by a MS with a view to the arrest and surrender of a requested person by another MS
  - Two purposes:
    - conducting criminal prosecution (suspects)
    - executing a custodial sentence or detention order (convicted persons)
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# Issuing of an EAW

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- Any offence punishable in the issuing state by at least 12 m or for which a sentence/detention order has been passed/made of at least 4m
  - List of 32 offences: no double criminality if punishable in the issuing state by at least 3 years
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# Concept of EAW

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- Judicial decision embodied in a certificate issued by a MS with a view to the arrest and surrender of a requested person by another MS
  - Direct transmission to competent executing authority: judge to judge
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# Guiding principles

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- Surrender pursuant to an EAW should become a judicially controlled process
    - primary control takes place by issuing judicial authority
    - Judge-to-judge transmission: limitation of the role of competent (i.e. administrative) authorities
  - Human rights protection
    - based on a high level of confidence in each other judicial system - persecution as ground of refusal
    - safeguard constitutional principles
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# Handling of an EAW by executing judicial authority

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- Obligation to arrest person
    - detention shall be governed by law of executing MS + Article 5 ECHR
    - right to counsel + interpreter
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# Handling of an EAW - information of person concerned

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- Duty to inform the arrested person of :
    - the EAW and of its content
    - the possibility to consent to surrender
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# Handling of an EAW - delays for decision to surrender

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- If person consents, decision needs to be taken within 10 days after consent
  - Otherwise:
    - decision within 60 days after arrest
    - executing authority may extend by 30 days by informing the issuing authority
    - if time limits are not respected, reasons must be given
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# Handling of an EAW - taking of decision to surrender

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- Principal obligation for executing state to execute it - except grounds of non-execution
  - Abolished grounds of refusal:
    - Political offence exception
    - Non-extradition of nationals
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# Handling of an EAW - taking of decision to surrender

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- Distinction (non-)mandatory grounds
    - non-mandatory grounds will depend on the legislation of the executing MS
    - discretion for executing authority?
  - In case of refusal: reasoned decision
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# Handling of an EAW - taking of decision to surrender

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- Mandatory grounds of non-execution:
    - amnesty
    - double jeopardy (sentence served or no longer executable)
    - person under the age of penal responsibility
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# Handling of an EAW - taking of decision to surrender

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- Non-mandatory grounds of non-execution
    - double criminality when applicable (2)
    - ongoing prosecution for same act in executing MS
    - other forms of ne bis in idem:
      - decision not to prosecute or other final judgment
      - final judgment in 3rd State
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# Handling of an EAW - taking of decision to surrender

- Non-mandatory grounds of non-execution
  - statute-barred offences (in case of jurisdiction)
    - Problematic in case of extensive extraterritorial jurisdiction, e.g. in cases related to nationals or residents (e.g. Moreno-Garcia)
  - offence committed in territory of executing state or extraterritorial jurisdiction claim not recognized by executing state
  - EAW issued for execution of sentence against nationals/residents: execution in executing state

# Handling of an EAW - taking of decision to surrender

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- Three situations where guarantees may be demanded by the executing authority
    - 1) in absentia
    - 2) life sentences
    - 3) return of nationals
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# Handling of an EAW: decision in case of multiple requests

- Due consideration of all circumstances, in particular
  - relative seriousness and place of the offences
  - respective dates of EAW's
  - suspects or convicted persons
- Decision by executing judicial authority (Eurojust advice) in case of EAW's - by competent authority in case of concurrence with extradition request from third state

# Decision to surrender: remedies available

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- No mention in Framework decision
  - Domestic law of executing MS
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# Surrender of persons pursuant to an EAW: time limits

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- Immediate notification of decision to surrender to the issuing judicial authority
  - Surrender asap but no later than 10 days after final decision, on date agreed
  - In case of unforeseen circumstances agree on new date and surrender within 10 days of that date
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# Surrender of persons pursuant to an EAW: time limits

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- Exceptional temporary postponement for serious humanitarian reasons
  - In case of violation of these time limits: release
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# Surrender of persons pursuant to an EAW: postponement

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- Possibility to postpone surrender in order to allow prosecution/service of sentence in executing MS
  - Alternative: surrender on conditions agreed by executing and issuing judicial authorities
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# Effect of surrender pursuant to EAW:

- Deduction of period of detention served in the executing MS
- Speciality principle
- Surrender or subsequent extradition

# 1 January 2004: end of extradition (?)



- Entry into force of the Framework Decision on the European arrest warrant
- Article 31: replaces the corresponding provisions of European extradition conventions

# 1 January 2004: end of extradition (?)

- Transitional arrangements: extradition continues to apply in respect of:
  - requests received before implementation date
  - requests for acts committed before
    - 7 August 2002: IT (+LU, and SI!)
    - 1 November 1993: FR
    - 1 January 2004: AT
    - 1 November 2004: CZ (from 1/7/2006: only for CZ nationals)
- Repetition of old extradition requests possible

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THANK  
YOU

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