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#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Conclusions by the European Judicial Network (EJN) - Current developments on the application of the EAW 2021

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Delegations will find attached the abovementioned conclusions by the EJN, which is a ‘compilation’ of the main outcomes and conclusions of the EJN meeting in 2021 concerning the application of Framework Decision 2002/584/JHA on the European Arrest Warrant (EAW).

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EJN/2022/1

## EJN CONCLUSIONS CURRENT DEVELOPMENTS ON THE APPLICATION OF THE EAW 2021

Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States (EAW FD) remains one of the most effective and frequently used legal instruments in the field of judicial cooperation in criminal matters. Over the years the European Arrest Warrant (EAW) has been discussed within the EJN on numerous occasions. The fact that the EJN Contact Points remain a reliable channel to facilitate the execution of EAWs and as representatives of the judicial authorities in the EU, they have accumulated valuable practical experience with the application of the EAW FD.

The instrument was also discussed in a number of EJN meetings in 2021, focusing on the latest jurisprudence of the CJEU on “issuing and executing” judicial authorities for EAW and its application as well as on practical matters relevant for the practitioners such as filling in the EAW form and requesting assurances for detention conditions in EAW proceedings.

The following report provides an overview of the main outcomes and conclusions of the EJN concerning the application of the EAW.

### 1. Impact of the CJEU case-law national procedures on issuing and executing EAWs

In the last two years, the Court of Justice of the EU (CJEU) rendered several judgments that gave new interpretation to the FD and in particular to Article 6 EAW FD, defining the requirements for “issuing” and “executing” judicial authorities for EAWs. This jurisprudence is now a set of prerequisites to be considered by issuing authorities across the EU, including requirements for independence of the Public Prosecutor<sup>1</sup> and the concept of “effective judicial protection” for the person subject to an EAW<sup>2</sup>. The reasoning was also extended to the concept of “executing judicial authorities”<sup>3</sup>. This set of judgments had a deep impact in the national legal conditions concerning the competence to issue an EAW and, consequently, in the practical application of this form of cooperation.

#### Discussions and conclusions

The EJN provided a forum for discussion on the impact of the judgments during the 56<sup>th</sup> EJN Plenary meeting in order to deliberate on the latest CJEU judgments and their continuous impact on judicial cooperation. The **EJN Contact Points underlined the crucial role and support within the Network and to the national judicial authorities in executing EAWs by providing timely information on the changes in the national procedures** as a result of the judgments and facilitating exchange of information.

<sup>1</sup> Joined cases C-508/18 and C-82/19 PPU

<sup>2</sup> See e.g. Joined Cases C-566/19 PPU JR and C-629/19 PPU YC, Case C-625/19, Case C-627/19 and Case C-648/20

<sup>3</sup> Case C-510/19 AZ

Discussing the impact of the judgments, the Contact Points observed that the implementation of the judgments across the Member States and their direct implications vary significantly. The representatives of Germany, The Netherlands and Denmark provided an overview of the **procedural changes introduced in the legislation in their countries where the competence to issue an EAW was shifted from the prosecutor to the judge. For these countries, as a result from the judgments, it was sometimes necessary to re-issue the pending EAWs by a judge.** In other countries such as Bulgaria, Greece, Finland and Sweden the prosecutor is still the authority issuing the EAW as its autonomy is enshrined in the national laws.

The EJNI Contact Points discussed the practical implications for the judicial practitioners in light of the judgments and the changes in the national procedures. It could be concluded that **no serious delays are experienced in the situations where the judges are issuing or verifying EAWs.** Additionally, the EJNI Contact Points reported that there is **no decrease in the number of EAWs issued** on a yearly basis as well as there are **rarely denials from judges to issue an EAW.** Some Contact Points, where changes in the national procedures were introduced, shared that the changes imply an extra procedural step for them in requesting the verification of an EAW from a judge or drafting a proposal to the judge for the issuing of the EAW. Some Contact Points from countries where the prosecutor is the authority issuing the EAW raised a concern of existing uncertainty whether they would meet requirements of the CJEU when sending EAWs to other Member States for execution.

In view of the practical application of the case-law interpreting “executing judicial authorities”, the Contact Points from The Netherlands and Germany reported that judgment C-510/19 directly impacted their procedures and they had to introduce changes in order to comply with the judgment. The EJNI Contact Points reported that some delays were experienced due to the need to receive additional information and/or documents from the executing authorities.

In order to facilitate the work of the judicial practitioners, the EJNI together with Eurojust contributed to a *Joint EJNI-Eurojust compilation*<sup>4</sup> collecting information about the specificities of the national procedural rules on issuing and executing authorities in the EU Member States as well as in Norway, Iceland and the UK. The compilation is regularly updated to reflect the changes in the national procedural rules. **The EJNI Contact Points underlined the added value of the Joint Compilation in providing a concise information on the national systems and procedures.** They highlighted that the Compilation itself is not valid in the national courts for deciding on the execution of pending EAWs, but it provides a valuable guidance in assessing the position of the public prosecutors in the other countries and anticipating difficulties. The EJNI is **encouraged to keep contributing to the compilation and to pro-actively inform the EJNI Secretariat in case of changes in the national procedures.**

#### Role of the EJNI

**Facilitating exchange of information and support to EAW cases:** The EJNI Contact Points’ support to EAW cases is invaluable especially in cases of urgency and legal uncertainty. The Contact Points are encouraged to keep supporting the national authorities in cooperation in EAW cases as well as to provide information, when requested, on national law or the structure of the judicial system in their country.

<sup>4</sup> EJNI-Eurojust Joint Compilation on the Requirements for Issuing and Executing Judicial Authorities in EAW Proceedings pursuant to the CJEU’s Case-Law: <https://www.ein-crimjust.europa.eu/ein/libdocumentproperties/EN/3389>

**Follow-up and contributing to the EJM-Eurojust Joint Compilation:** The EJM should continue to closely monitoring the developments in the jurisprudence of the CJEU in the area of EAW and particularly with regards to the interpretation of Article 6 EAW FD. The EJM Contact Points are encouraged to pro-actively inform the EJM Secretariat in case the judgments have an impact on their national procedures or in case there are changes in the procedural law in terms of issuing and executing of EAWs. This information would be timely reflected in the Joint Compilation.

## 2. Best practices in filling in the EAW form

In 2021, in two of the EJM meetings, the EJM Contact Points discussed best practices and difficulties in filling in the EAW form. These best practices are based on the accumulated practical experience of the Contact Points while supporting the judicial authorities in executing EAWs<sup>5</sup>. During the discussions, the Contact Points underlined that very often when the EAW forms are not filled in correctly that leads to difficulties and delays in the execution of the EAWs. From the deliberations **it could be generally concluded that it would be beneficial if the practitioners get regular training sessions on working with mutual recognition instruments** and in particular with the EAW.

### Discussions and conclusions

One of the difficulties identified by the EJM Contact Points is that **on occasions the wrong or altered version of the EAW form is filled in and subsequently sent**. According to Art 8 EAW FD only the form in the Annex of the FD could be considered by the judicial authorities. The Contact Points pointed out that usually using the wrong form is due to inexperience. They identified most frequently this concerns **the EAW form that does not include the information on in absentia<sup>6</sup> and identified this as one of the most common reasons for refusals to execute the EAW**. It was concluded that **in order to prevent such situations, the national authorities should be trained, in particular to use the EJM website** where the most updated forms are collected and uploaded.

A best practice that was identified by the EJM Contact Points is for the national judicial authorities **to include in the EAW information on the national arrest warrant as it is a pre-requisite for issuing EAW**, also confirmed by the CJEU case-law<sup>7</sup>. It was noted that on occasions this information is missing in the EAW or is not complete while the executing authorities strictly observe the pre-requisites for the validity of the EAWs. In addition, **it is necessary for the issuing authority to include as much information as possible** in Section e) of the EAW form **with regards to the nature and legal classification of the criminal activity according to the domestic law** in order to avoid difficulties in the execution stage. The executing authority should be able to verify the description of the criminal act with the list of offences in Art 2(2) EAW FD or to have enough information to make an assessment pursuant Art 2(4) EAW FD. Moreover, the EJM Contact Points pointed out that it is helpful to include also a accessory offences in the EAW as well as to point out the degree of involvement of the individual. Including as much information as possible ensures that the executing authority will not request additional information from the issuing authority and as such delays could be avoided.

<sup>5</sup> In 2019-2020 the EJM Contact Point supported the national judicial authorities in more than 1900 EAW cases

<sup>6</sup> 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, Art 2

<sup>7</sup> See e.g. Case C-414/20 *MM*, para 49 and case C-241/15 *Bob-Dogi*, para 57

The EJNI particularly stressed on the **difficulties that come up because of the different national standards when it comes to *in absentia* in light of Article 4a EAW FD**. Information on summoning and participation in the proceedings are often described using national criteria while they also have to take into consideration the criteria of the CJEU<sup>8</sup>. This often leads to requests for additional information to the issuing authorities and subsequently to delays in execution. The EJNI Contact Points welcomed the initiative of the EU Commission for national fiches on *in absentia* to be developed together with the EJNI and included in the EJNI Fiches Belges.

#### Role of the EJNI

**Raising awareness of the EJNI website resources and organizing training sessions:** The EJNI Contact Points are experienced in dealing with execution of EAWs and resolving issues that arise in the EAW proceedings. The EJNI Contact Points are encouraged to keep supporting the national authorities in drafting the EAWs, and to advise them on the information to be included in the form. Additionally, the EJNI Secretariat and EJNI Contact Points should look for opportunities to raise awareness of the resources available on the EJNI website among the national judicial authorities where all the correct forms and legal instruments are uploaded.

The EJNI should assess the possibility to organize training sessions on the instruments for judicial cooperation as provided in the EJNI Decision<sup>9</sup>.

### **3. Detention conditions and EAW procedures**

In 2021, the EJNI also discussed best practices and difficulties about requesting and issuing assurances on detention conditions in the framework of the execution of EAWs. As in previous years, the EJNI discussed the practical application of the jurisprudence of the CJEU on detention conditions in EAW proceedings and the procedure introduced by the Court in requesting information on detention conditions<sup>10</sup> prior to the final decision on the execution of the EAW.

#### Discussions and conclusions

The Contact Points agreed that the current practice shows that **the national executing authorities are closely observing the case-law of the CJEU in requesting supplementary information from the issuing Member State on the detention conditions**. This has turned into a normal practice and part of the EAW execution procedure. The EJNI Contact Points explained that the main concerns that the issuing authorities are seeking assurances on, is the m<sup>2</sup> per person in the cell as well as the facilities in the detention centre. They also discussed the possibility of having additional and more detailed requirements stemming from the jurisprudence of the European Court of Human Rights.

While issuing of assurances has been established as a standard practice, the EJNI Contact Points shared a number of difficulties that they encountered in their practice and that have gone beyond the requirements of the jurisprudence. They reported that they are **occasionally receiving additional requests and information to be included in the assurances, such as granting permission to a foreign expert or the lawyer of the sought person to inspect the prison**. It can also happen that assurances are requested by an EU Member State that will be a transit country for the execution of the EAW, in addition to the ones requested by the executing country. Additionally, some of the Contact Points mentioned they have experienced practical

<sup>8</sup> See e.g. Case C-270/17 *Tadas Tupikas* on interpretation of Art 4a "trial resulting in the decision"

<sup>9</sup> Council Decision 2008/976/JHA on the European Judicial Network, Art 4(3)

<sup>10</sup> Joined Cases C-404/15 and C-659/15 *Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen*



difficulties caused by lack of feedback from the executing Member State or very short deadlines to provide assurances.

#### Role of the EJN

**Facilitating exchange of information:** The EJN was identified as a key channel for facilitating the communication between the competent authorities. According to the EJN Contact Points they have not encountered difficulties in establishing contacts with the other Member States and swiftly obtaining the requested information on detention conditions.

**Assurances:** On numerous occasions EJN Contact Points have facilitated in cases where there was a need for assurances, e.g. by providing information on the competent national authority to issue the requested assurances and with the actual transmission of the assurances.

**Co-operation with FRA on the Detention conditions Database:** The EJN website hosts information and a direct link to the FRA Detention conditions database that provides valuable and concise information on the detention conditions in the EU Member States. Additionally, the EJN provided feedback and suggestions to FRA for potential additional needs from the practitioners. The EJN is encouraged to continue cooperating with FRA in contributing to and promoting the detention conditions database and projects related to detention conditions.