Review of the European Arrest Warrant

2013/2109(INL) - 27/02/2014 - Text adopted by Parliament, single reading

The European Parliament adopted by 495 votes to 81, with 11 abstentions, a resolution on containing recommendations to the Commission on the review of the European Arrest Warrant (EAW).

Framework Decision 2002/584/JHA has been successful in meeting its aim of speeding up surrender procedures throughout the Union compared to the traditional extradition system among Member States. It constitutes the cornerstone of mutual recognition of judicial decisions in criminal matters.

Problems regarding the implementation of the EAW Decision: problems have however arisen in its operation and resulting from gaps in the Framework Decision. Other problems are shared with the set of mutual recognition instruments. In particular, the following cause concern:

- the absence of explicit references to Fundamental Right guarantees;
- the absence of a provision on an effective remedy, this right should be governed by national law which leads to legal uncertainty;
- the lack of regular review of the Schengen Information System (SIS II) and Interpol alerts as well as the lack of an automatic link between the withdrawal of an EAW and the removal of such alerts;
- the lack of precision in the definition of serious crimes list;
- disproportionate use of the EAW for minor offences;
- the lack of a definition of the term ‘judicial authority’;
- the absence of minimum standards to ensure effective judicial oversight of mutual recognition measures;
- the absence of minimum standards on pre-trial detention;
- the unacceptable conditions in a number of detention facilities across the Union;
- a lack of legal representation being provided for those persons sought under an EAW;
- the lack of a proper definition of criminal offences to which the test of dual criminality no longer applies.

Recommendations for the revision of the EAW: in the light of the weaknesses outlined, the Commission was requested to **submit, within a year, on the basis of Article 82 of the TFEU, legislative proposals** following the detailed recommendations set out in the Annex of this report and providing for:

- a **procedure** whereby a mutual recognition measure can, if necessary, be validated in the issuing Member State by a judge, court, investigating magistrate or public prosecutor, in order to overcome the differing interpretations of the term “judicial authority”;
- a **proportionality check** when issuing mutual recognition decisions, based on all the relevant factors and circumstances such as the seriousness of the offence, whether the case is trial-ready, the impact on the rights of the requested person, including the protection of private and family life, the cost implications and the availability of an appropriate less intrusive alternative measure;
- a **standardised consultation procedure** whereby the competent authorities in the issuing and executing Member State can exchange information regarding the execution of judicial decisions such as on the assessment of proportionality and specifically in regard to the EAW to ascertain trial-readiness;
- a **mandatory refusal ground** where there are substantial grounds to believe that the execution of the measure would be incompatible with the executing Member State's obligation in accordance with Article 6 of the TEU and the Charter of Fundamental Human Rights of the European Union;
- **the right to an effective legal remedy** in compliance with the European Convention on Human Rights (ECHR), such as the right to appeal in the executing Member State against the requested

execution of a mutual recognition instrument and the right for the requested person to challenge before a tribunal any failure by the issuing Member State to comply with assurances given to the executing Member State;
- a **better definition of the crimes** where the EAW should apply in order to facilitate the application of the proportionality test.

Parliament, furthermore, called for:

- a **clear and consistent application** by all Member States of Union law regarding procedural rights in criminal proceedings linked to the use of the EAW;
- a regular **review of non-executed EAWs** and consideration of whether they, together with the corresponding SIS II and Interpol alerts, should be withdrawn;
- **better cooperation between the Member States and the Commission** to strengthen contact networks of judges, prosecutors and criminal defence lawyers, and to offer relevant training at national and Union level to judicial and legal practitioners in *inter alia* languages, on the proper use of the EAW.

The Commission is called upon to:

- facilitate the setting up of a **specific European Arrest Warrant Judicial Network** and a network of defence lawyers working on European criminal justice and extradition matters;
- establish and make easily accessible a **Union database** collecting all national case-law relating to EAW and other mutual recognition proceedings;
- **ensure the effectiveness of the mutual recognition framework** and to explore the legal and financial means available at Union level to improve standards of detention including legislative proposals on the conditions of pre-trial detention.