The Implementation of the European Arrest Warrant and the Surrender Procedures between Member States

2019/2207(INI) - 20/01/2021 - Text adopted by Parliament, single reading

The European Parliament adopted by 444 votes to 139, with 106 abstentions, a resolution on the implementation of the European Arrest Warrant and the surrender procedures between Member States.

General overview of the implementation of the European Arrest Warrant

Members agreed that the European Arrest Warrant is an effective instrument to combat cross-border crime and to bring the perpetrators of serious crimes to justice in the Member State where criminal proceedings have taken or are taking palce. It has contributed to the maintenance of the area of freedom, security and justice and has considerably facilitated cooperation on surrenders.

However, certain problems have arisen which point to the need to strengthen and improve the European Arrest Warrant to make it more effective, more immediate and more respectful of the decisions of national courts.

The problems encountered mainly concern (i) the conditions of detention and imprisonment, (ii) proportionality, (iii) the implementation in the European Arrest Warrant procedures of the procedural safeguards enshrined in EU law, in particular the right to dual legal representation in both executing and issuing States, as well as (iv) training, (v) specific rule of law issues, (vi) the execution of custodial sentences, (vii) time limits and (viii) in absentia decisions.

Members recommended that the European arrest warrant should not be misused for minor offences, where grounds for pre-trial detention do not exist, while suggesting that the use of the European arrest warrant should be limited to serious criminal offences where it is strictly necessary and proportionate.

Recommendations to improve the functioning of the European Arrest Warrant

Parliament made the following recommendations:

- collect reliable and up-to-date data and transfer them to the Commission in a systematic way in order to better evaluate judicial cooperation and detect weaknesses;

- strengthen the principle of loyal cooperation and to clarify the issue of double criminality: mutual recognition should work automatically, without reassessment of the substantial grounds for accusation and that decisions should not be refused unless there are the reasons to invoke one of the grounds for refusal exhaustively listed in the European Arrest Warrant Framework Decision;

- ensure the full implementation of the Directives on procedural rights with a view to guaranteeing the right to a fair trial;

- with regard to the punishment threshold provided for in the Framework Decision on the European Arrest Warrant, assess the possibility of reducing the three-year threshold for certain offences such as trafficking in human beings, sexual exploitation of children and child pornography;

- define more precisely the obligations and competences of national authorities and EU bodies involved in European arrest warrant proceedings and ensure that they are specialised and have practical experience;

- ensure uniform application and effective monitoring with regard to time limits;

- provide adequate funding for legal aid for persons subject to European arrest warrant procedures;

- support the European Judicial Training Network and existing national training platforms for the judiciary, as well as launch, if necessary, a new training platform for practitioners on mutual recognition instruments.

Fundamental rights

Parliament called on Member States to respect the obligations arising from Article 2 of the EU Treaty with regard to human dignity, freedom, democracy, equality, the rule of law and human rights, including minority rights. Any person wanted under a European Arrest Warrant who sees his or her rights and freedoms guaranteed by EU law violated should have the right to an effective remedy before a court of law.

While reaffirming the importance of an EU mechanism for democracy, the rule of law and fundamental rights, Members called on the Commission to study the feasibility of supplementing instruments on procedural rights, such as the admissibility of evidence and conditions of pre-trial detention, based in particular on Council of Europe standards.

Members also asked the Commission to take advantage of funding opportunities under the EU structural funds to modernise detention facilities.

Ensuring the coherence of the legal framework of the European Arrest Warrant

Members considered that consistency and efficiency remain the main problems, and that there is room for improvement in this respect. They called on the Commission to ensure coherence in the area of mutual recognition, in order to take account of the case law of the Court of Justice of the EU, the current level of harmonisation of Member States' criminal law and procedures and the fundamental rights recognised by the Charter of Fundamental Rights.