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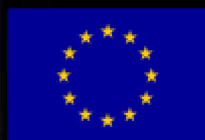
# EAW-Rights

## Analysis of the implementation and operation of the European Arrest Warrant from the point of view of defence practitioners



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# EAW Final Report

## Introduction

This report has been produced as the outcome of the EAW-Rights project[1], which was funded by the European Commission in order to provide an assessment by defense practitioners in the EU of the implementation of the Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

As laid out in the project conditions, this final project report also contains examples of good practice, and recommendations whose aim is to ensure that the objectives of the Framework Decision are fulfilled by the Member States.

The project lasted from 3rd November 2015 to 2nd November 2016.

### Procedure

The project based itself on expertise from EU Member States, and began with a kick-off meeting on 29 January 2016, where criminal law experts nominated by the delegations of the Council of Bars and Law Societies of Europe (CCBE) gathered to discuss a previously drafted questionnaire on the Framework Decision. This draft questionnaire had been discussed in advance with the relevant policy official of the European Commission (DG Justice and Consumers). After the meeting, further changes were made to the questionnaire in the light of the comments made, and the final version was sent to all the experts on 29 February 2016, with a two and a half-month time limit for completion. The final version of the questionnaire is attached as Annex 2.

The questionnaire did not cover every article of the Framework Decision, and so neither does this report. Instead, certain themes were selected and agreed in advance with the European Commission, covering the main problematic aspects. The starting point regarding the themes was the work undertaken by the European Parliament a couple of years ago in its reports and resolution[2]. This report will follow the structure of the questionnaire in dealing with the agreed themes.

The report is based on responses received from all Member States other than Romania. The names and Member States of the contributing experts are attached as Annex 1.

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[1] JUST/2014/JCOO/AG/CRIM/7709

[2] (1) European Parliament resolution of 27 February 2014 with recommendations to the Commission on the review of the European Arrest Warrant (2013/2109(INL)) - http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0174&language=EN&ring=A7-2014-0039

(2) Critical Assessment of the Existing European Arrest Warrant Framework Decision Research paper by Anne Weyembergh - http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/510979/IPOL-JOIN_ET(2013)510979(ANN01)_EN.pdf

(3) Revising the European Arrest Warrant by the European Added Value Unit of the European Parliament - http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/510979/IPOL-JOIN_ET(2013)510979_EN.pdf

There has been contact with the Fundamental Rights Agency (FRA) during the process of drawing up this report, and it has contributed comments. The FRA is due to publish its own report on alternatives to detention in the near future, which shares some of the concerns raised in this report, and is called '*Criminal detention and alternatives in the EU: fundamental rights aspects in pre- and post-trial cross-border transfer procedures'*.

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# Summary of main recommendations

## General

The many detailed recommendations made in this report are grouped below under the subject-heading within which they were made.

However, there were three areas in which recommendations appeared under several subject-headings. They can be seen, therefore, as horizontal recommendations covering the EAW more or less generally. The three are: dual representation, training and legal aid. They are picked out below under their own title headings, to group them in one place, but they also appear again under the EAW questionnaire headings within which they were originally suggested. Therefore, they appear twice.

There will finally, under this 'General' heading, be a listing of the recommendations which were addressed to the European legal profession itself.

At the end of all the recommendations, there is a further horizontal grouping of all those recommendations which propose amendments to the Framework Decision itself.

### *Dual representation*

If there is one overwhelming lesson from this report, it is that the level of fairness and justice around the EAW is much improved by the introduction of dual representation. It was mentioned by many experts many times.

The right to dual representation was introduced EU-wide in Article 10 of directive 2013/48/EU on the right of access to a lawyer, the implementation deadline of which falls in November 2016. Nevertheless, there was already considerable experience of dual representation, and a general feeling that it should become even more common and accessible.

It was mentioned as a solution to better administration of justice under the following headings, and a consideration of each one leads to a realisation of why having a lawyer in the executing and defending state might be helpful in each:

- proportionality
- is the case trial ready?
- detention conditions
- relations with existing fundamental rights
- right of appeal against an EAW decision
- additional information requested
- SIS alerts remaining active

In particular, there were some recommendations regarding dual representation which are not linked to a particular topic, but cover all aspects of it, such as:

- for the purpose of dual representation, a public database containing the contact details of EAW lawyers for every EU Member State would be very helpful (the Find-A-Lawyer database already exists on the e-justice portal[3], but EAW expertise is not specifically a category of practice mentioned there, only the much broader 'criminal law')

- consideration should be given to the establishment of a specialization in the area of representation in EAW cases, with objective standards set, and with a public register of lawyers trained and experienced in such matters; languages spoken should also be included in such a register

- also for the purpose of dual representation, there should be legal aid available in both Member States

- there should be steps taken to make it easier for cross-border criminal lawyers (particularly those who undertake legal aid cases) to get in touch with each other – for instance, publication of details of eligible lawyers; contact information of the defence lawyer in the issuing state to be included in the EAW (and maybe also of the probation officer in that state); details of the lawyer in the executing state to be transmitted to the lawyer in the issuing state

- the lawyer for the requested person should be permitted, in those Members States where it is not now possible, to participate in the issuing procedures of the issuing state; a copy of the EAW should be provided to such lawyers without delay, together with any decisions based on the EAW subsequently taken in the executing state

*Training*

Again, better training – not only of lawyers, but also of judges and prosecutors – was repeatedly mentioned as an obvious way to improve the administration of the EAW. The areas in which more training was requested include:

- the fundamental rights aspects of the EAW framework, including of the possibility to refer cases to the Court of Justice of the European Union for a more harmonised and proportionate practice

- alternatives to detention

- representation in cases of EAW (since it is felt that it is a specialised area of which many lawyers know little)

- asking the Court of Justice of the European Union for a preliminary ruling

*Legal aid*

[3] https://e-justice.europa.eu/content_find_a_lawyer-334-en.do

The availability and level of remuneration of legal aid were recurring themes in experts' answers on how to improve the EAW procedure, as follows:

- (as mentioned above) for the purpose of dual representation, there should be legal aid available in both Member States

- procedures should be implemented to hasten the grant of legal aid, to avoid case delays

- requested persons need to be guaranteed a legal aid system that is adequate and complete, with an automatic grant of legal aid

- there should be EU-wide harmonisation of legal aid in relation to cross-border criminal cases, including that legal aid should be available in the issuing state from the moment of arrest in the executing state, and more resources given to cross-border criminal legal aid

- the rules on availability of legal aid for criminal cases in all Member States (including the process for applying) should be made generally and more easily available in all official languages (NOTE: the European Commission's e-justice portal is the obvious place for this; at present the portal states: 'In the future the European e-Justice Portal will provide detailed information in this area.')

- to consider a European legal aid fund for EAW cases

- to increase the level of legal aid remuneration, particularly in those Member States at the bottom of the scale[4]

- in those Member States which have a system of payment by act, payment a long time in arrears, or payment of experts initially out of the lawyers' own funds, to bring the legal aid system into line with those Member States which recognise that representation covers a wider range of activities and that lawyers should be paid (including for disbursements) as the case continues[5]

- there should also be a general recognition that legal aid should adequately cover preparation time for a case. This would improve the quality of representation and reduce costs through possible earlier resolution of the case[6]

*European legal profession*

Finally, under this general discussion of the recommendations, there were some which were aimed at the European legal profession itself:

- consideration should be given to the establishment of a specialisation in the area of representation in EAW cases, with objective standards set, and with a public register of lawyers

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[4] Austria does not have a system of individual remuneration for legal aid cases; instead the remuneration for legal aid consists of a payment into the lawyers' pension fund. All lawyers provide legal aid and contribute to this system. Therefore, this recommendation does not apply to Austria.

[5] See footnote 4

[6] See footnote 4

trained and experienced in such matters; languages spoken should also be included in such a register[7]

- in tandem with the above, consideration should be given to objective selection criteria for lawyers in cases involving representation for an EAW[8]

- another solution for lawyer selection may be to have a specialist panel of lawyers available to be assigned by the Court to represent people who do not know a lawyer themselves (this would not interfere with their freedom of choice if they have a lawyer whom they trust and wish to represent them, but in many cases, particularly where the subject is a foreign citizen, they are completely at sea, and the random allocation of untrained lawyers is not in their best interests)[9]

- the legal profession should itself develop best standards in the areas mentioned above

~

## Recommendations sorted according to the topics raised in the questionnaire

### Proportionality

- there should be an amendment to the Framework Decision which would introduce a mandatory proportionality test in both the issuing and executing state

- consideration should also be given to changes to the gravity of sentencing required before issue of an EAW, or even an overall merits based assessment

- as part of any new mandatory proportionality test above, it could become a condition of an EAW that there are mandatory preliminary steps in the proceedings in the executing state along the following lines:

    - that the requested person is first invited to return voluntarily to the issuing state

    - that a deferred surrender is considered (to allow a person to tie up his or her affairs before returning, while subject to bail-like conditions)

    - that a video link with the appropriate authorities in the issuing state is considered, to see whether matters can be resolved in that way

    - that full use is made of the European Supervision Order (see below)

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[7] In Austria lawyers can obtain special training in several practice areas; however, the Austrian system does not provide for any formal specialisation. Moreover, all Austrian lawyers are trained in criminal law and practice. Therefore, this recommendation does not apply to Austria.
[8] See footnote 7
[9] See footnote 7

- or even that the person could be eventually imprisoned in the executing state's jurisdiction, to reduce the costs of the transfer procedure

- a proportionality defence can only succeed when it is raised in the courts of the issuing Member State, and so dual representation is important. The lawyer in the issuing state can try to negotiate a withdrawal of the EAW with the issuing judge or prosecutor, for example because the requested person undertakes to travel voluntarily to the issuing state for an interview. Such a step would save considerable costs to both issuing and executing state. If such an approach proves unsuccessful, the lawyer can start court proceedings in the issuing state, although these should be undertaken as soon as possible and should be enabled through speedy procedures without the need to call extensive evidence
- there needs to be more and better training of prosecutors, judges and lawyers in the fundamental rights aspects of the EAW framework, including of the possibility to refer cases to the Court of Justice of the European Union for a more harmonized and proportionate practice
- there should be broader use of bail or similar alternatives

  to resolve the recurring difficulties in obtaining expert opinion and evidence relating to the issuing state, there should be better access by the defence to the relevant materials in the hands of the prosecuting authorities or government (or perhaps from Eurojust), ideally by way of a web portal, whether national or Europe-wide, by which such information can be accessed quickly. The issuing state authorities should be under an obligation to keep this information up-to-date
- arrangements should be made for better communication between Member States, to avoid the problems caused by poor response rates and decisions made in the absence of relevant information

## Is the case trial ready?

- dual representation, access to information in both states, training, public database of EAW lawyers (as above)
- use should be made of Directive 2014/41/EU on the European Investigation Order, when implemented
- the Framework Decision could be amended to provide for a certain level of suspicion before an EAW can be issued e.g. probable grounds, as determined by a court – this would help to reduce costs to the Member States
- procedures should be implemented to hasten the grant of legal aid, to avoid case delays
- alternatives to pre-trial detention should be used more to alleviate prison overcrowding, with maybe a push for convergence in practice across Europe; lengthy periods of remand should be avoided in trial-ready cases

- requests for further information should be responded to promptly between Member States, to reduce costs

- consideration to be given to an amendment to the Framework Decision to ensure that the issuing state provides more information in the EAW itself (examples of such information are given in various recommendations below, for instance the likely sentence to be imposed if the requested person is convicted, and reasons why the requested person needs to be put immediately into detention)

- more information should be published on the details of criminal procedures in each Member State, presumably on the website of the European Commission's e-justice portal or that of the European Judicial Network in criminal matters

## Detention lengths

- there should be more use of electronic monitoring, and further consideration should be given to promoting other alternatives to detention at EU level, including bail and voluntary surrender

- the European Supervision Order should be implemented in all Member States and the European Commission should consider infringement proceedings against those Member States which have not yet implemented it

- more publicity should be given to the European Supervision Order, for instance by more training for prosecutors and judges on alternatives to detention. The failure to use the European Supervision Order more frequently results in unnecessary costs for Member States through the use of detention

- more judges with expertise in hearing EAW cases will lead to more efficiency and a reduction in pre-trial detention

- the excessive lengths of detention in the executing state while awaiting a transfer to the issuing state in order to be heard by a judge, and with unsatisfactory access by the defence to the file in the meantime, could be solved by letting the judge from the issuing state proceed to the hearing directly in the executing state. The judge could travel to the executing state, and this would reduce both the length and the cost of pre-hearing detention in the executing state. An alternative is the wider use of video links, for instance a court-to-court video conference on the case

- given the savings in costs highlighted in the above recommendations, consideration should be given to an audit of the overall costs of the EAW, and in particular detention costs, along the lines of the European Parliament report[10] of 2014, to persuade the Member States' authorities of the benefits of considering alternatives to detention in EAW cases

[10] Revising the European Arrest Warrant by the European Added Value Unit of the European Parliament - http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/510979/IPOL-JOIN_ET(2013)510979_EN.pdf

- in the case of a prosecution EAW, there should be an obligation for the issuing state to inform the executing state of the likely sentence to be imposed if the requested person is convicted, and the defence should be informed of this

- in the case of an execution EAW, there should be an obligation for the issuing state to inform the executing state of the likely release date, taking into account a) time spent in pre-trial detention in the issuing state; b) time spent in surrender detention in other executing states (if applicable); c) early release regimes

- in order for the above to work, there should be a requirement for the executing state to inform the issuing state of the days spent in surrender detention, even in cases where the surrender was in the end refused. At the moment, the Framework decision only provides for such an obligation if surrender has actually taken place

- there should be monitoring of the deduction by issuing states of time spent in pre-trial detention in executing states (and if it is found that the obligation is not being complied with, the European institutions should take further steps to guarantee compliance)

- the difference in treatment, relating to alternatives to detention, between suspects in purely national cases and requested persons under an EAW should lessen or disappear altogether, so as to promote more sensible use of alternatives to detention

- in the case of a prosecution EAW, consideration should be given to the issuing state giving reasons as to whether the requested person needs to be put immediately into detention

### Detention – conditions

- use must now be made by the courts and the defence of the recent case law of the Court of Justice of the European Union on detention conditions. It may be better to codify it in an amendment to the Framework Decision, along with a fixed time limit within which the information must be provided by the issuing state, or else the execution of the EAW may be refused. It could also be made a requirement that the original EAW specify the detention facilities in which the requested person may be detained, with a duty placed on the court in the executing state to be satisfied that the detention conditions in the issuing state will not breach the fundamental rights of the requested person

- dual representation (as above)

- training of prosecutors, judges and lawyers (as above)

- consideration to be given to the creation of a European inspector of places of deprivation of liberty, and to developing basic minimum detention conditions EU-wide. Lawyers should be among the stakeholders consulted by such an inspector

- in Art. 4 par. 4 of the Commission's Proposal for the Directive 2013/48 (COM 2011/0326 final), there was a provision that gave the lawyer of the detained person the right to visit the place where the suspect or accused person is detained in order to check the detention conditions. This

provision was not adopted in the final text of Directive 2013/48. The right of the defender to visit the place where the suspect or accused person is detained could lead to more transparency, and so contribute to the improvement of detention conditions. Therefore, the adoption of such a measure should be considered

- further resources should be made available for the European Committee for the Prevention of Torture, and there should be wider dissemination of their materials, to improve the skill-set of defence lawyers and inform the judiciary
- there should be increased mobility of the judge of the EAW issuing state, or wider use made of video facilities (as above)
- the Framework decision should be clarified as to whether a prosecutor, court or other relevant state authority may (or even must) take into account prison conditions in the executing state before issuing an EAW
- more funds should be made available for new and improved jail facilities

### Relationship with existing fundamental rights

- the Framework Decision should be changed to mention specifically that human rights (discrimination, inhuman treatment) is a factor that the executing state must take into account before deciding whether to execute the EAW; if this happens, the time limit should be extended in such a case to allow the requested person the opportunity to collect the evidence required to satisfy the strong evidential burden required to engage Convention rights
- it is essential to publish a handbook about the grounds of non-execution of an EAW because of a possible violation of fundamental rights by the issuing state; this could contribute towards the harmonisation of Member States practices' on this matter
- national courts and defence lawyers should use the Court of Justice of the European Union more for such matters
- a right to appeal the issue of the EAW in the issuing state should be introduced – violations in procedure in the executing state could be addressed in this way, and considerable cost savings made
- dual representation (as above)
- training (as above)
- more funds for new and improved jail facilities (as above)
- the recommendations of the TRAINAC report should be implemented (http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf)

- there should be adequate translation services, with the possibility for the judge to send the EAW via computer to such services for translation into the language of the executing state

- requested persons need to be guaranteed a legal aid system that is adequate and complete, with an automatic grant of legal aid

## Dual representation

- there should be EU-wide harmonisation of the rules on access to the investigation file in cross-border cases

- the lawyer for the requested person should be permitted, in those Members States where it is not now possible, to participate in the issuing procedures of the issuing state; a copy of the EAW should be provided to such lawyers without delay, together with any decisions based on the EAW subsequently taken in the executing state

- there should be EU-wide harmonisation of legal aid in relation to cross-border criminal cases, including that legal aid should be available in the issuing state from the moment of arrest in the executing state, and more resources given to cross-border criminal legal aid

- training (as above)

- the right to translation should cover the translation for communications between dual representation lawyers

- there should be steps taken to make it easier for cross-border criminal lawyers (particularly those who undertake legal aid cases) to get in touch with each other – for instance, publication of details of eligible lawyers; contact information of the defence lawyer in the issuing state to be included in the EAW (and maybe also of the probation officer in that state); details of the lawyer in the executing state to be transmitted to the lawyer in the issuing state

- there should also be steps taken to make it easier for the requested person to be in contact with the lawyer in the issuing or executing state, and detention centers should be required to comply with such contacts (in accordance with the usual rules on lawyer-client communication while in detention)

- the rules on availability of legal aid for criminal cases in all Member States (including the process for applying) should be made generally and more easily available in all official languages (NOTE: the European Commission's e-justice portal is the obvious place for this; at present the portal states: 'In the future the European e-Justice Portal will provide detailed information in this area.')

- for the purpose of dual representation, a public database containing the contact details of EAW lawyers for every EU Member State would be very helpful (the Find-A-Lawyer database already

exists on the e-justice portal[11], but EAW expertise is not specifically a category of practice mentioned there, only the much broader 'criminal law')

- also for the purpose of dual representation, there should be legal aid available in both Member States

## Lawyer's criminal law experience

- training in the area of representation in cases of EAW needs to be made a priority
- consideration should be given to the establishment of a specialisation in the area of representation in EAW cases, with objective standards set, and with a public register of lawyers trained and experienced in such matters; languages spoken should also be included in such a register[12]
- in tandem with the above, consideration should be given to objective selection criteria for lawyers in cases involving representation for an EAW[13]
- another solution for lawyer selection may be to have a specialist panel of lawyers available to be assigned by the Court to represent people who do not know a lawyer themselves (this would not interfere with their freedom of choice if they have a lawyer whom they trust and wish to represent them, but in many cases, particularly where the subject is a foreign citizen, they are completely at sea, and the random allocation of untrained lawyers is not in their best interests)[14]
- the legal profession should itself develop best standards in the areas mentioned above

## Rate of lawyer remuneration

As mentioned in the report, Austria does not have a system of individual remuneration for legal aid cases; instead the remuneration for legal aid consists of a payment into the lawyers' pension fund. All lawyers provide legal aid and contribute to this system. Therefore, other than the first recommendation below, the remaining ones apply only to those Member States which have a system of individual lawyer remuneration for legal aid.

- to consider a European legal aid fund for EAW cases
- to increase the level of legal aid remuneration, particularly in those Member States at the bottom of the scale

[11] https://e-justice.europa.eu/content_find_a_lawyer-334-en.do

[12] In Austria, lawyers can obtain special training in several practice areas; however the Austrian system does not provide for any formal specialisation. Moreover, all Austrian lawyers are trained in criminal law and practice. Therefore, this recommendation does not apply to Austria.

[13] See footnote 12

[14] See footnote 12

- in those Member States which have a system of payment by act, payment a long time in arrears, or payment of experts initially out of the lawyers' own funds, to bring the legal aid system into line with those Member States which recognise that representation covers a wider range of activities and that lawyers should be paid (including for disbursements) as the case continues

- there should also be a general recognition that legal aid should adequately cover preparation time for a case. This would improve the quality of representation and reduce costs through possible earlier resolution of the case

## Right of appeal against the EAW decision

- consideration should be given to standardising throughout the EU the right to appeal in both the executing and issuing states, and the circumstances in which it can be exercised; such a standard should permit:

    - a right of appeal in the issuing state from the moment when the requested person learns about the EAW or the detention decision

    - proper access to the file in both states

    - fairer deadlines which take account of the requested person's circumstances, with the authorities still treating the matter with a similar level of urgency to the urgency accorded to the issuance of the EAW

    - better access to national legislation on appeals in such cases (translated at least into English and French) on the European Commission's e-justice portal; and

    - reconsideration by the relevant authorities which falls short of a formal appeal

- training (as above), particularly on asking the Court of Justice of the European Union for a preliminary ruling

- dual representation (as above)

## Variations in sending a translated European Arrest Warrant

- the defence should be granted the right to request that the EAW be re-translated in the executing state if there is a reasonable question over its accuracy

- to continue to develop and promote high standards for interpretation and translation (see previous TRAINAC report - http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf)

- to harmonise the deadline for submission of the translated EAW

- to simplify the layout of the EAW (for example, with regard to sentencing options)

- to consider whether there should be a central EU agency for translation of EAWs into the language of the executing state

### What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?

- training for prosecutors, judges, lawyers and any others involved in the process of issuing and executing an EAW (as above)

- dual representation (as above), since it would help with seeking only relevant information and understanding the information given

- lawyers for the defence should be in copy of all correspondence between issuing and executing state when additional information is sought, and better access to the relevant files in both states would help make the procedure fairer and more efficient

- the introduction of a requirement to respond to requests for information made in line with the Framework decision within a permitted period, for example 21 days

- consideration should be given to more standardised information and documentation to be provided by the issuing state to the executing state when issuing an EAW

### Compensation for unjustified detention

- consideration should be given to an EU-wide harmonisation of compensation to remove the great disparities in availability and amount of compensation for unjustified detention, including guidance on which state (executing or issuing) should pay in which circumstances; this EU-wide scheme should also cover the question of payment of compensation when the EAW was issued for a disproportionate reason (and so, for instance, the requested person was released from detention in the issuing state after questioning); and consideration should also be given as to whether there should be an EU fund for this purpose

- the executing state should also offer compensation in case of its unjustified detention

- in those countries where the amount of compensation is very low, it should be increased; where there is a fee for claiming the compensation, it should be removed; and those Member States not applying a compensation scheme at all should introduce one

- compensation should also be available if an EAW is withdrawn after detention

### SIS alerts remaining active

- dual representation (as above)

- consideration should be given to an EU-wide scheme to remove active SIS alerts once an executing state has refused to surrender a requested person; this would be equivalent to following the principle of *ne bis in idem* (so that a requested person does not face repeated

arrests for the same circumstances), and would support the principles of mutual recognition and legal certainty. Consideration should therefore be given in particular to granting in the Framework Decision the right for a requested person to apply for a court ruling (either nationally or by application to the Court of Justice of the European Union) which would give binding effect across the EU to the initial refusal to surrender the requested person

- for as long as the recommendation above has not been implemented, and if the SIS alert is not to be removed, consideration should be given to including the information about the refusal in the executing state within the SIS alert, to assist the requested person in defending against enforcement of the EAW in another Member State

### Multiple requests for EAW for the same person

- consideration should be given to a mandatory EU-wide guideline on multiple EAWs

- Eurojust's opinions, when sought, should not be confidential to the court and/or prosecutor, since that is not compatible with the right of defence

- there should be better access to the case files in executing and issuing states, to help the defence

- consideration should be given to amending the Framework Decision to allow for the issue of only one EAW to cover a number of offences, with all necessary documentation

### Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold

- research and comment from other Member States on aggregate sentences and specialty should be encouraged to see how many individuals are serving sentences for which they were not extradited, so that steps could be taken to deal with the problem

- based on the above, consideration should be given to a mandatory guideline or regulation on the treatment of accessory surrender, to harmonise practices among the Member States

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### Proposed amendments to the Framework Decision

The following horizontal recommendations are of a different nature to the three already discussed in the opening section under 'General', because those concerned specific subject areas, whereas the category below covers a range of subject areas. Their common theme is that they all recommend legislative changes. They have all already appeared in the lists above, but are copied here again under a single coherent heading.

It is understood that there is little likelihood of any amendments to the Framework Decision being undertaken in the near future. But they have been included anyway for ease of reference for future reviews of the EAW by the European institutions. Sometimes, they mention specifically that the change should be brought about by an amendment to the Framework Decision; on other occasions, that seems to be the only way that they can be achieved:

- there should be an amendment to the Framework Decision which would introduce a mandatory proportionality test in both the issuing and executing state
- consideration should also be given to changes to the gravity of sentencing required before issue of an EAW, or even an overall merits based assessment
- the Framework Decision could be amended to provide for a certain level of suspicion before an EAW can be issued e.g. probable grounds, as determined by a court – this would help to reduce costs to the Member States
- consideration to be given to an amendment to the Framework Decision to ensure that the issuing state provides more information in the EAW itself (examples of such information are given in various recommendations below, for instance the likely sentence to be imposed if the requested person is convicted, and reasons why the requested person needs to be put immediately into detention)
- in Art. 4 par. 4 of the Commission's Proposal for the Directive 2013/48 (COM 2011/0326 final), there was a provision that gave the lawyer of the detained person the right to visit the place where the suspect or accused person is detained in order to check the detention conditions. This provision was not adopted in the final text of Directive 2013/48. The right of the defender to visit the place where the suspect or accused person is detained could lead to more transparency, and so contribute to the improvement of detention conditions. Therefore, the adoption of such a measure should be considered
- the Framework decision should be clarified as to whether a prosecutor, court or other relevant state authority may (or even must) take into account prison conditions in the executing state before issuing an EAW
- the Framework Decision should be changed to mention specifically that human rights (discrimination, inhuman treatment) is a factor that the executing state must take into account before deciding whether to execute the EAW; if this happens, the time limit should be extended in such a case to allow the requested person the opportunity to collect the evidence required to satisfy the strong evidential burden required to engage Convention rights
- a right to appeal the issue of the EAW in the issuing state should be introduced – violations in procedure in the executing state could be addressed in this way, and considerable cost savings made
- there should be EU-wide harmonisation of the rules on access to the investigation file in cross-border cases
- the lawyer for the requested person should be permitted, in those Members States where it is not now possible, to participate in the issuing procedures of the issuing state; a copy of the EAW

should be provided to such lawyers without delay, together with any decisions based on the EAW subsequently taken in the executing state

- to harmonise the deadline for submission of the translated EAW
- to simplify the layout of the EAW (for example, with regard to sentencing options)
- consideration should be given to standardizing throughout the EU the right to appeal in both the executing and issuing states, and the circumstances in which it can be exercised; such a standard should permit:
    - a right of appeal in the issuing state from the moment when the requested person learns about the EAW or the detention decision
    - proper access to the file in both states
    - fairer deadlines which take account of the requested person's circumstances, with the authorities still treating the matter with a similar level of urgency to the urgency accorded to the issuance of the EAW
    - better access to national legislation on appeals in such cases (translated at least into English and French) on the European Commission's e-justice portal; and
    - reconsideration by the relevant authorities which falls short of a formal appeal
- the introduction of a requirement to respond to requests for information made in line with the Framework decision within a permitted period, for example 21 days
- consideration should be given to more standardised information and documentation to be provided by the issuing state to the executing state when issuing an EAW
- consideration should be given to an EU-wide scheme to remove active SIS alerts once an executing state has refused to surrender a requested person; this would be equivalent to following the principle of *ne bis in idem* (so that a requested person does not face repeated arrests for the same circumstances), and would support the principles of mutual recognition and legal certainty. Consideration should therefore be given in particular to granting in the Framework Decision the right for a requested person to apply for a court ruling (either nationally or by application to the Court of Justice of the European Union) which would give binding effect across the EU to the initial refusal to surrender the requested person
- consideration should be given to amending the Framework Decision to allow for the issue of only one EAW to cover a number of offences, with all necessary documentation
- consideration should be given to a mandatory guideline or regulation on the treatment of accessory surrender, to harmonise practices among the Member States

## 1. Proportionality

The question of the different usage of the EAW by different Member States – some for trivial offences and so used very often, others going in the opposite direction - has been much discussed, along with solutions (obligatory proportionality test, double proportionality test, raising the threshold of usage, training of judges). This varied usage can have an impact on the budgets of both executing and issuing states, for instance via the resources of the investigating authority or the support given in legal aid.

### Executing state

Proportionality is taken into account in the execution of an EAW in only a minority of Member States. Sometimes it is part of the implementing legislation (Denmark, Portugal, UK), or it operates by way of a filter implemented by the prosecutor, who refuses to take forward non-serious or disproportionate EAWs (France). The Council Handbook[15] is explicitly mentioned as being used by the courts in only a couple of Member States (Denmark and Netherlands).

A number of Member States – Czech Republic, Lithuania, Luxembourg - complain about cases where the requested person is detained in the executing Member State, and then surrendered to the issuing state, only to be released by the issuing state after questioning or after a conditional sentence.

Practice also varies:

- Austria - if the EAW concerns a rather minor crime, the surrender proceedings are carried out without detaining the suspect

- Finland - does not allow proportionality, but allows for surrender to be refused 'if the extradition, in view of the age, state of health or other personal circumstances or special circumstances of the person in question would be unreasonable on humanitarian grounds and this unreasonableness cannot be avoided by postponing execution', which relates to the circumstances of the alleged offender rather than the alleged offence

- Ireland – proportionality is not allowed as a ground of refusal to execute an EAW, but defence lawyers note that a disproportionate request will be more vulnerable to challenges on other grounds (even if this is unstated or unacknowledged)

- United Kingdom - in 2014, the Home Office reported that 14 EAWs had not been certified (because they were disproportionate). More up to date figures are not available. In deciding whether a person's extradition would be disproportionate, a judge must take into account: (a) the seriousness of the conduct alleged to constitute the extradition offence; (b) the likely penalty that would be imposed if the person was found guilty of the offence; and (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of the requested person.

Against these more liberal practices, Portugal relates the following:

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[15] Council, Revised version of the European handbook on how to issue a EAW, Doc. No 17195/1/10, 17 Dec. 2010 (http://register.consilium.europa.eu/doc/srv?l=en&f=ST%2017195%202010%20REV%201)

- Portugal - in a recent decision, the Supreme Court (proceedings no 661/15.6RLSB.S1, 22.7.2015) concluded that when the request to surrender is formally correct the Member State is not allowed to consider exogenous factors, such as recent maternity (the requested person had given birth four months before) and severe health problems of both the requested person (namely, renal lithiasis and HIV) and her new-born child (who had been hospitalised for months after birth and had to undertake complex medical treatment). Such facts were not considered good enough "humanitarian reasons" (as stated in article 29/4 of Law No 65/2003 and article 23.4 of Council Decision 2002/584/JHA) to postpone the surrender of the Portuguese requested person (who was living in Portugal) to Bulgaria.

### Issuing state

The position is very different from the perspective of the issuing state, where the great majority of Member States report the use of proportionality in the issue of EAWs. Proportionality is reported to be not allowed in only Belgium, Bulgaria, Croatia and Estonia.

Poland has been the country which traditionally issued the most EAWs (in 2007, it issued 3,472, whereas the second-placed country – Germany – issued only 1,785). The law has now been changed, leading to lower figures. The amendments in the 2015 law mean that it is not permissible to issue a warrant if it is not in the interests of the administration of justice. The court should always consider the seriousness of the offence, the possibility of the suspect being detained, and the likely penalty imposed.

There are reports of disproportionate use even when there is a proportionality test (Austria, Czech Republic, Lithuania). Below are examples to show how proportionality works in practice:

- Austria - there are cases when, despite the issuing of an EAW, the court later does not approve pre-trial detention, and so the person is released shortly after surrender to Austria. This happens, for example, if pre-trial detention is not proportionate, in which case an EAW should not have been issued initially

- Belgium - some investigating judges try first to invite the suspect on a consensual basis to come to Belgium for an interview, and only if the latter refuses, or if it is impossible to locate him or her, issue an EAW. Others are quicker to issue EAWs

- Czech Republic - the EAW cannot be issued:
  1. if the court may presuppose imposing a sentence of imprisonment shorter than 4 months or imposing a penalty other than a sentence of imprisonment;
  2. if the costs or consequences related to the surrender would be evidently disproportionate to the public interest in the criminal prosecution or enforcement of a sentence of imprisonment; and
  3. if the surrender causes the requested person a harm evidently disproportionate to the importance of the criminal proceedings and the consequences of a criminal offence, in particular with regard to age, state of health or family relations.

  In practice, the expert had experienced only the application of the first point (when courts anticipate imposition of a conditional sentence only). In his experience, courts do not use the discretion allowed by points 2 and 3

- Estonia - It is not uncommon to see an EAW issued where alternative and less intrusive measures could in fact be applied -- the authorities simply find an EAW to be most convenient and effective, ignoring the issue of proportionality

- Greece - the main question concerning the proportionality principle relates to the fact that an EAW can be issued for offences less serious than the ones for which a national arrest warrant can be issued

- Ireland - the warrant is less likely to be sought in trivial cases. Particularly if the subject of the warrant is, in fact, an Irish citizen, there is an informal policy of simply waiting for the usually inevitable return to the jurisdiction of the offender in such cases to proceed on foot of a domestic warrant. This really relates to minor crimes against property rather than offences against the person

- Lithuania – there are still cases where the subjects of the EAW are surrendered to Lithuania, interviewed and then released from detention

- Malta - In *The Police vs George Clayton*[16], the defendant declared that he was willing to return voluntarily and admit to the charges, and the original complainants had even declared that, since they were fully reimbursed, they had no interest in further prosecution. It became apparent that, at that stage, the likelihood of punishment was reduced considerably, and he was not facing anything other than non-custodial punishment. Nevertheless, Malta insisted on its request, and the accused had to be forcibly remitted under arrest to Malta

### *Good practices*

- Belgium - invitation by the investigating judge or other appropriate authority to the suspect to come to the issuing country on a consensual basis

- Ireland - merely waiting for the more petty offender to return

- Finland - the person sought always has the right to a defence counsel of his/her choosing and if he/she asks, the counsel is appointed as a public defender and the costs are always then borne by the state; there exists no recovery for the costs incurred

- Spain - it is established by law that prior to the issue of an EAW, the Court may use the European Convention on judicial assistance in criminal matters (2000). It is also established that to issue an EAW, it is necessary that the circumstances comply with the requirements of Spanish procedural criminal law for proceeding to custody of the requested person. It is forbidden to issue an EAW for execution purposes when the imprisonment could be suspended or substituted under Spanish law. The Court cannot issue an EAW *ex officio*, it needs to be sought by the accusing party. The judiciary publishes a practical guide in which good practices are included, and it is accessible to all judges and magistrates

[16] Decided 9 December 2011, Court of Magistrates (Malta), per Magistrate Joseph Apap Bologna

- France and UK – the authorities weed out poor cases in advance. For instance, the prosecution (Scotland) or the National Crime Agency (Northern Ireland) suggest to the issuing state that warrants in such cases be rescinded. In appropriate cases, the authorities may well liaise with the issuing state to see whether alternative, less costly, less ponderous and less severe measures could be deployed instead, such as a trial in absence. Similarly, care is taken to weigh up the public interest in issuing a warrant: considering, for example, the financial cost to the public and the possible impact on victims in not proceeding, along with "proportional" factors such as gravity and likely sentence

- UK (England and Wales) - the court encourages communication from the requesting judicial authority. The greater the level (and detail) of communication post-issue, the safer the decisions. The judicial authorities in some Member States are either reluctant to provide additional information, delay providing information, or provide poorly translated information. Prompt, detailed and accurately translated replies to requests for further information are a great assistance to the court and all parties

- Portugal - the lack of legal criteria leads judicial authorities to fill the gap, resorting to constitutional principles as well as criminal proceeding regulations linked to resocialisation as an end favored by criminal punishment (Portuguese Supreme Court of Justice, proceeding no. 753/13.6YRLSB.S1, 21.11.2013) – unfortunately, however, in many cases, the lack of legal criteria leads to arbitrary decisions

*Recommendations*

- there should be an amendment to the Framework Decision which would introduce a mandatory proportionality test in both the issuing and executing state

- consideration should also be given to changes to the gravity of sentencing required before issue of an EAW, or even an overall merits based assessment

- as part of any new mandatory proportionality test, it could become a condition of an EAW that there are mandatory preliminary steps in the proceedings in the executing state along the following lines:

    - that the requested person is first invited to return voluntarily to the issuing state

    - that a deferred surrender is considered (to allow a person to tie up his or her affairs before returning, while subject to bail-like conditions)

    - that a video link with the appropriate authorities in the issuing state is considered, to see whether matters can be resolved in that way

    - that full use is made of the European Supervision Order (see below)

    - or even that the person could be eventually imprisoned in the executing state's jurisdiction, to reduce the costs of the transfer procedure

- a proportionality defence can only succeed when it is raised in the courts of the issuing Member State, and so dual representation is important. The lawyer in the issuing state can try to negotiate a withdrawal of the EAW with the issuing judge or prosecutor, for example because the requested person undertakes to travel voluntarily to the issuing state for an interview. Such a step would save considerable costs to both issuing and executing state. If such an approach proves unsuccessful, the lawyer can start court proceedings in the issuing state, although these should be undertaken as soon as possible and should be enabled through speedy procedures without the need to call extensive evidence
- there needs to be more and better training of prosecutors, judges and lawyers in the fundamental rights aspects of the EAW framework, including of the possibility to refer cases to the Court of Justice of the European Union for a more harmonised and proportionate practice
- there should be broader use of bail and similar alternatives
- to resolve the recurring difficulties in obtaining expert opinion and evidence relating to the issuing state, there should be better access by the defence to the relevant materials in the hands of the prosecuting authorities or government (or perhaps from Eurojust), ideally by way of a web portal, whether national or Europe-wide, by which such information can be accessed quickly. The issuing state authorities should be under an obligation to keep this information up-to-date
- arrangements should be made for better communication between Member States, to avoid the problems caused by poor response rates and decisions made in the absence of relevant information

## 2. Is the case trial-ready?

This is tied to the issue of proportionality above. The criminal procedures of the Member States vary widely, and so EAWs are requested at different times, often at times which can seem to some Member States, in accordance with their own system, as a fishing expedition to find evidence, rather than a true extradition request within the terms of the Framework Decision. In addition, the use of other mutual recognition instruments apart from the EAW – for instance, the instruments on the European Investigation Order and European Probation Order – are relevant under this heading, since they may fulfil the needs for which an EAW may otherwise be inappropriately issued. Again, this can have an impact on the budgets of the executing and issuing state.

### Appropriate stage for issuing proceedings

The stage at which an EAW may be issued varies greatly. The examples below are given just to suggest the range, and not to provide a complete overview. They range from 'at any stage of the proceedings' to 'when there is a genuine prospect of a trial being conducted'. This flexibility can lead to an early issue of an EAW, with the suspect never finally charged (this is a not uncommon experience), or to a wait of two years or more between initial arrest and the start of the eventual trial. Some Member States permit EAWs to be issued against suspects, while others only against those formally accused.

However, there is a difference between the theoretical and everyday practice, the latter veering towards the EAW being issued only where pre-trial detention would normally be ordered – although that in itself is subject to different customs and criteria in the Member States.

- Austria – any stage of the proceedings, but usually if it is likely that pre-trial detention will be imposed

- Cyprus – once a person is considered a suspect for the relevant offence. For a person to be considered a suspect, there must be evidence in the hands of the police affording reasonable grounds that he/she has committed a criminal offence

- Denmark - when it is considered firstly by the police/prosecution that it is necessary to prevent further crime, escape or influence on another – and that is justified to the court - plus that there is a substantial reason for a later conviction (at the same stage that pre-trial detention will be used for people living in Denmark)

- Estonia - immediately when the authorities have "sufficient reason" to believe that the suspect may have committed the offence (so it is not uncommon to see cases where the period between the suspect's initial arrest and the start of trial proceedings is 2 years or more)

- Finland - at any time after the pre-trial investigation has started, and therefore long before any charges are brought (the prosecutor may very well decide after the pre-trial investigation that the person who has been surrendered to Finland is never charged with the offence)

- France - at any stage of the criminal proceedings, from the early beginning of the investigation until the end of the trial

- Germany - the first phase of criminal proceedings (investigation proceedings)

- Greece - right before the end of the pre-trial investigation stage, and particularly after all the witnesses have been heard and the rest of the evidence has been gathered; the EAW can only be issued against a person who is officially being accused of a crime

- Hungary - when the authorities are unable to find the suspect

- Ireland - where there is a genuine prospect of a trial being conducted

- Italy - after the conclusion of the preliminary investigations, if precise and serious indications are gathered and if a risk of repetition of the offences occurs

- Latvia – where there is at least sufficient evidence to recognise a person as a suspect (the criminal prosecution has not yet started). But more often an EAW is issued at the stage when the person is accused by the prosecutor, before the court trial stage

- Lithuania - defence practitioners have the impression that the Office of General Prosecutor has often issued EAWs when there is no information about the location of a suspected person, disregarding the stage in the proceedings

- Luxembourg - at the beginning of an investigation. Also, in complex cases, when there are suspects that have been named or identified, an EAW is then issued to interview the suspect by the investigating magistrate

- Malta - in the very final stages of investigation, when it becomes very clear that the case is headed for prosecution of the accused. It is a known perception that Maltese nationals with strong roots to Malta are more likely to obtain bail pending trial than foreign nationals, owing to the fear of the latter fleeing or absconding

- Netherlands - whether the case is 'arrest ready'

- Poland - it is common practice for the EAW to be issued at the stage of pre-trial proceedings (approximately 90% of the EAW's issued in Poland). Polish law enforcement agencies use the warrant primarily as a fishing expedition to find evidence (at the expense of the executing state) rather than a true extradition request

- Portugal - the Supreme Court has decided that judicial authorities should not issue an EAW in order to submit a person to "*termo de identidade e residência*" – a form designed to assure that a defendant is well aware of his/her surrender duties and that a trial may take place *in absentia*.

- Slovakia - if any of the grounds for custody detention are present, and if it is not possible to summon, bring in or detain the accused, and thus secure his/her presence at the interrogation or other act

- Slovenia - usually when there is enough evidence for the prosecutor to demand that the court opens formal criminal proceedings against a suspect (probable cause will have to be shown)

- Sweden - an EAW may be issued only after a court decision on detention. There is no general practice of informing defence counsel of the requested person when an EAW has been issued. Nor does defence counsel receive a copy of the EAW. For these reasons, it is not possible to comment generally on the stage at which an EAW is issued after a decision on detention has been made

- UK-England and Wales, and Scotland – when a warrant to arrest is in force

## Appropriate stage for executing proceedings

Most experts reported that they have experience of executing an EAW only for the purpose of conducting a criminal prosecution.

Estonia raises the point that it is very difficult to ascertain, when one is in the executing state, whether there actually are sufficient grounds to treat someone as a suspect or not, since there is limited information available about proceedings in the issuing state. The expert adds that, since also in Estonian domestic proceedings a person can be arrested at a very early stage of proceedings, the question of whether an EAW was issued at an appropriate time in the issuing state is almost never raised.

As for whether an EAW could be executed for the purposes of bringing a witness to give evidence in the issuing state:

- Denmark - it could be used in theory, but in practice is not (since no-one can be forced to give evidence)

- Cyprus - the attendance of a witness in court does not come within the definition, since the witness is not the subject of criminal proceedings

- France - defence practitioners will oppose EAWs issued by EU countries which aim to arrest witnesses

- Slovenia – there have been some examples, but they are fairly rare

- Poland - the UK has refused to execute EAWs where the purpose was only to summon a witness to give evidence, but this occurred only through effective dual representation

Here are some further experiences on the appropriate stage for executing proceedings:

- Ireland - we seek an undertaking that a trial is the intended outcome, even if preliminary procedures, such as confrontation, or questioning, are also to take place

- Malta - in the case of *Il-Pulizija vs Michael Spiteri*,[17] Italy issued an EAW requesting the return of the accused to Italy, and the accused appealed a decision of the Maltese Court ordering the execution of the EAW. From the wording of the EAW, it appeared that the request was being

[17] Decided 25 November 2013, Court of Criminal Appeal (Inferior), per Magistrate Antonio Mizzi

made for the accused to be heard at inquiry stage, which is, procedurally speaking, at the investigation stage and not at prosecution stage. It turns out that within the Italian procedural system, the inquiry is already part of the prosecution, and the Court of Appeal stated that the EAW was correct in referring to the appellant as an accused. The problem therefore was how to resolve the two systems, so that the decision of the Court would be in line with the Council Framework Decision. Preventative custody under the Maltese system is a clear concept and is limited to 48 hours, within which the accused must be brought before the Court of Magistrates as a Court of Committal.[18] Under the Italian system, such custody envisages a long arrest period until the inquiry is concluded in its entirety. The Maltese Court was not willing to extend the definition of the term 'accused' to fit the Italian system, and accepted the appellant's argument that the case was not yet trial ready in Italy

- UK-England and Wales - The governing provision is s 12A Extradition Act 2003, which came into force in July 2014 and provides:

> *(1) A person's extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—*
>
> *(a) it appears to the appropriate judge that there are reasonable grounds for believing that—*
>
> > *(i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and*
> > *(ii) the person's absence from the category 1 territory is not the sole reason for that failure,*
> > *and*
>
> *(b) those representing the category 1 territory do not prove that—*
>
> > *(i) the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or*
> > *(ii) in a case where one of those decisions has not been made (or neither of them has been made), the person's absence from the category 1 territory is the sole reason for that failure.*

English courts have faced two particular difficulties with this provision. First, the issue of when "a decision to charge or try" has been made, because criminal proceedings in some other Member States lack the clear equivalent stages in their criminal proceedings. The second issue has concerned the assessment of whether someone's absence from the requesting state is the sole reason for the failure to take the procedural step.

[18] Section 15, Cap 276, Laws of Malta

The leading case is *Kandola v Generalstaatwaltschaft Frankfurt* [2015] EWHC 619 (Admin). It held that:

(1) "Decision to charge and decision to try" should be read in a "cosmopolitan" way, because the terms are likely to have different meanings across the EU;
(2) The burden under the first stage is on the requested person to raise the bar;
(3) "Reasonable grounds for believing" is a lower threshold than the civil standard of proof (the balance of probabilities);
(4) The EAW itself will usually be sufficient to dispose of the issue at the first stage: only if it is not clear should the judge examine extraneous evidence;
(5) For the second stage, the Crown Prosecution Service should ask short, simple questions of the judicial authority: the answers should be dispositive of the issue.

Nevertheless, the statutory provision is widely regarded as complex, and will continue to be a source of litigation.

- UK-Northern Ireland - the introduction of the 'Absence of Prosecution' bar makes clear that an EAW must be for a requested person in respect of whom a decision to charge or prosecute has been made. Extradition for any other purpose would be barred and the requested person discharged

*Good practices*

- Spain, Netherlands, UK-Scotland - there is a dedicated court for EAWs which ensures a consistent approach to this issue and others that have arisen

- UK-Scotland - the judges dealing with EAWs liaise regularly with their counterparts

- Italy - when judges approve requests made by lawyers pursuant to article 16 law n.69 of 22 April 2005 implementing the Framework Decision in Italian law, focused on asking issuing countries for additional information and assessments

- UK-England and Wales - the practice of the Crown Prosecution Service to ask clear, simple questions that target the statutory questions (but it is reliant on receiving clear answers from the requesting state)

- UK-Scotland - judges will only sign the EAW once they have seen the indictment (charges) and are satisfied that the EAW is designed for actual prosecution (rather than for "fishing" purposes)

- Ireland - the surrender of requested persons only for trial purposes

- UK-Northern Ireland - the introduction of a temporary transfer mechanism allows a requested person to return temporarily to the issuing state to attempt to resolve a matter which is in the prosecution stage. This may be a useful strategy in cases where a case is deemed to be trial

ready but the requested person is confident of their ability to have the case resolved or to prove their innocence

*Recommendations*

- dual representation, access to information in both states, training, public database of EAW lawyers (as above)
- use should be made of Directive 2014/41/EU on the European Investigation Order, when implemented
- the Framework Decision could be amended to provide for a certain level of suspicion before an EAW can be issued e.g. probable grounds, as determined by a court – this would help to reduce costs to the Member States
- procedures should be implemented to hasten the grant of legal aid, to avoid case delays
- alternatives to pre-trial detention should be used more to alleviate prison overcrowding, with maybe a push for convergence in practice across Europe; lengthy periods of remand should be avoided in trial-ready cases
- requests for further information should be responded to promptly between Member States, to reduce costs
- consideration to be given to an amendment to the Framework Decision to ensure that the issuing state provides more information in the EAW itself (examples of such information are given in various recommendations below, for instance the likely sentence to be imposed if the requested person is convicted, and reasons why the requested person needs to be put immediately into detention)
- more information should be published on the details of criminal procedures in each Member State, presumably on the website of the European Commission's e-justice portal or that of the European Judicial Network in criminal matters

## 3. Detention – lengths

This is another problem arising from the variety of practices in the Member States – different treatment of pre-trial detention, for instance, and different conditions of detention (detention conditions is the subject of a separate question below). Delays in communication can cause the subject of an EAW to be detained for months. This is clearly tied to the questions of proportionality and trial-readiness already mentioned, and some solutions may be common to the three. There are now alternatives to pre-trial detention, to be found in the Council Framework Decision 2009/829/JHA of 23 October 2009 on supervision measures as an alternative to pre-trial detention.

### Executing state

#### *Periods of detention*

Several Member States report no problem about respecting the time limits given in the Framework Decision (Articles 15, 17 and 23). That is not a universal experience, though. Luxembourg and Netherlands, for instance, both report national laws which permit the state to keep the requested person in detention while a non-EAW case is completed, maybe of a much lesser gravity.

Spain notes that, although there had previously been no possibility for them to extend detention once the Framework Decision's time limits had passed, the recent decision of the Court of Justice of the European Union in the *Lanigan* (Case C-237/15 PPU)[19] has now made such an extension possible.

- Estonia - there is a problem both in the Framework Decision and in domestic law concerning the absence of strict deadlines for the time in which the requested person must be handed over to the issuing state after the surrender decision has become final. The postponement options provided in Article 23 (3) and (4) of the Framework Decision have caused at least one case in Estonia where a person is kept in custody for months after final decision on surrender, and the person is also not informed about any new deadlines (effectively resulting in indefinite detention)

- Finland - the EU Extradition Act has time limits below the framework decision; a decision has to be made within three days from the giving of a consent (in court) if the person doesn't object and within 26 days otherwise, at the District Court level

- Ireland - regrettably, the intended short procedure for the arrest warrant has become very lengthy. It is routine for arrest warrant cases to take over 12 months to determine. There is a presumption, though, in favour of bail, and so many requested persons are on bail pending the determination

- Italy - the Supreme Court has affirmed that there is no need to consider an EAW when the sentence that has to be served abroad has already been entirely served in the form of preventive

[19] http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d597442ea052fe41d69d2287b1fdae7685.e34KaxiLc3qMb40Rch0SaxuTb3j0?text=&docid=165908&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=109984

detention during the surrender procedure (Section 6, n. 6416 6 February 2008-8 February Cvejn, magazine number 238396 14).

- Lithuania - long pre-trial detention is quite frequent, also for the subjects of an EAW, because the courts usually do not apply other measures as an alternative to pre-trial detention

- Luxembourg - as the executing state, Luxembourg can postpone the transfer of the subject of an EAW with no specific time limit, in application of the national law on EAW, when the person is also facing an ongoing criminal procedure in Luxembourg. The delay for the transfer can last as long as the local procedure is not over. This legal possibility has already lead to a problematic situation, where a person previously freed by a decision of the '*Chambre du conseil*' from a one year pretrial detention for an ongoing procedure in Luxembourg was put back in detention in Luxembourg, in execution of an EAW issued by France. This person was kept in prison in Luxembourg for almost one more year until the end of the very same Luxembourgish procedure he had previously been released for

- Netherlands - this rule proves particularly problematic in cases where the EAW was declared valid but physical surrender is not possible because of an ongoing prosecution in the Netherlands. National law prohibits the physical surrender of a requested person in such a case, meaning that the requested person will stay in surrender detention up until the moment that the other criminal case has been disposed of. This applies even in cases where the offence for which the prosecution in the Netherlands is ongoing is of a minor nature and pre-trial detention is not allowed for it under Dutch criminal law

- Poland - detention should, in principle, last 3 months, but if there is a failure to complete the proceedings within this time, the indicated time limit may be extended several times, practically with no deadline

- Portugal - generally, there is excessive use of detention, based on the alleged risk of escape

*Deduction of detention*

Although the Framework Decision itself allows for deduction of time spent in the executing state against the eventual sentence in the issuing sentence (Article 26), a number of Member States report that it is not followed or that there are difficulties.

The following report that there is no deduction in their Member State: Bulgaria and Greece.

The following report difficulties or other interesting consequences, among which is clear evidence that some requested persons use the deduction clause as a means of prison-shopping, in order to spend as much time as possible in those jails which have better conditions. The cases of Sweden and UK-Northern Ireland below are also to be contrasted, where the end of the Swedish lawyer's mandate may make the requested person's wish to prove the length of detention already served in Sweden more difficult.

- Ireland - in some cases, requested persons who might otherwise be entitled to bail do not even apply, or in other cases requested persons who are in custody will seek adjournments of their case so that the greatest possible time is spent in custody in Irish prisons. This is because credit

will be given for the entire time when they are ultimately surrendered and sentenced in the issuing state. This preference to spend time in Irish prisons is not confined to Irish persons, but is also evident among nationals of other Member States, presumably because of superior prison conditions in Ireland

- Luxembourg – the time served in Luxembourg was eventually deducted from the detention due to be served in France, but with the utmost difficulty, as no Luxembourgish authority accepted to confirm to the French authorities that the additional one year time served in prison was actually served in execution of the French EAW

- Sweden - the public defence counsel in Sweden has little or no information about the criminal proceedings in the issuing state following surrender. The reason for this is that the appointment as a public defence counsel is deemed terminated when the execution decision comes into legal force

- UK-England and Wales - individuals whose extradition has been ordered in the UK are sometimes advised to consider surrendering themselves to custody from the date of judgment in order to start accruing days in an English prison that can be deducted from the prison sentence in the requesting state (if conditions abroad are likely to be worse). Clearly, this is an unwise approach to take if requesting states are not complying with the article 26 duty

- UK-Scotland - the result can be that those who are eventually extradited may resist the process as Scottish conditions may be seen to be preferable ( “jail-shopping”)

- UK-Northern Ireland - there have been some instances where requested persons have experienced difficulties in having their detention time in Northern Ireland deducted from the sentence in the issuing state. This is rectified by the defence practitioner obtaining written confirmation of the total days served and communicating that to the authorities in the issuing state or to the requested person’s lawyer in that state

Since the experts submitted their responses, the Court of Justice of the European Union has issued a judgement in the case of *JZ v Prokuratura Rejonowa Łódź–Śródmieście* (C-294/16 PPU)[20], which held that measures equivalent to imprisonment must also be deducted. In that case, the defendant had been subject to a curfew and electronic monitoring for nearly a year in the UK before being returned to Poland. The Court held that, although there was nothing to stop the Polish authorities deducting the curfew and electronic monitoring period from his eventual sentence, the Framework Decision itself – which sets minimum standards only – did not require it, since curfew and monitoring meant a restriction of liberty, and not a deprivation of liberty as demanded by the Framework Decision. If there had been an alternative to which he had been subject in the UK, which had effectively deprived him of liberty, then that period must be deducted by the Polish authorities.

### *Use of detention*

20 http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30d5b95e7e641f2a4339aa5df81058ea2cae.e34KaxiLc3qMb40Rch0SaxuTchf0?text=&docid=182300&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=192811

The great majority report that pre-trial detention is almost always used by the executing state, with very little use of alternatives, even when the law allows it or when it is common in national practice (Estonia). The risk of flight persuades the courts nearly every time. The Czech Republic, for instance, reports that the courts strictly prioritise compliance with their obligations to other Member States over an individual's circumstances.

Regarding the European Supervision Order, UK-England and Wales reports that Fair Trials International, which has researched and campaigned on the use of European Supervision Orders since their inception, said in a report in May 2016 ("A measure of last resort? The practice of pre-trial detention decision making in the EU" at §17 and fn 19) that it was only aware of two instances of its use: one in the UK and one in Portugal (both requiring supervision in Spain). There is a possible further example in the UK (from December 2015, requiring supervision in the Canary Islands). It seems that there is little appetite to make such orders.

The exceptions to blanket pre-trial detention are as follows:

- Greece - the authorities apply the national criteria about the detention of accused people. In particular, they examine if the person has a known residence in Greece, if he could be considered an escape risk, or there is a possibility of the same offences being committed again. They always take into account the seriousness of the offence

- Ireland - there is a presumption in favour of bail, and many persons the subject of requests are on bail pending the determination

- Netherlands – before the court has ruled on the validity of the EAW, nationals and permanent residents are not remanded into custody but their surrender detention is suspended under certain conditions (usually an obligation to report to a police station on a weekly or fortnightly basis, a prohibition to leave the country, and sometimes also an obligation to post bail). In the case of non-permanent residents, a conditional suspension of the surrender detention is also possible, depending on the requested person's ties with the Netherlands (work, family, housing etc). Regardless of the flight risk, conditional suspension of the surrender detention is mandatory if it has proved impossible for the court to rule on the validity of the EAW within 90 days after the arrest of the requested person. Once the court has ruled on the validity of the EAW, there is a *de facto* statutory non-rebuttable assumption that there is a flight risk, and the requested person will be remanded into surrender detention up until the day (s)he is physically surrendered to the issuing state. However, there is now case-law that if there are indications that the total amount of days spent in surrender detention will exceed the prison sentence to be served (if convicted) in the issuing state, there is an obligation on the court to suspend conditionally the surrender detention

- Sweden - a detention decision will be reversed if a continuation of the deprivation of liberty would be unreasonable with regard to the detention already served or with regard to the likely penalty imposed (if convicted)

- UK- England and Wales - the Bail Act 1976 applies to extradition proceedings. Those facing accusation warrants enjoy a presumption in favour of bail. Those on conviction warrants do not. In practice, once an EAW has been issued and certified in the UK, individuals are arrested and brought in custody to Westminster Magistrates' Court in London. During the initial hearing

(often the same or next day), defence practitioners will be expected to suggest a "bail package" of conditions that will assuage the Court's fears that an individual may fail to attend their extradition hearing. A security (sum of money paid into court which is forfeited if a person fails to surrender in future) is the most common condition that is imposed. Others may include a requirement to report to a local police station at specified times; residence requirements; and the surrender of one's passport. Individuals who have complied with their bail conditions throughout their extradition proceedings are often granted bail even after the court has ordered their extradition and pending their removal from the country.

- UK-Northern Ireland - those appearing before the court on an EAW are entitled to apply for bail pending their hearing. For those sought for the purposes of a prosecution, the presumption is in favour of bail, and the court will decide the question of bail as if it were dealing with a normal application in criminal proceedings. For those sought to serve a sentence, there is no presumption in favour of bail, which will only be granted in exceptional circumstances

## Issuing state

### *Periods of detention*

Luxembourg complains about lack of access to the file during the requested person's detention in the executing state, and Netherlands says that an EAW should be withdrawn if the period spent in surrender detention exceeds the eventual prison sentence on conviction.

- Luxembourg - there is an absolute prohibition by the Luxembourgish law and authorities to let the subject of an EAW or his/her lawyer access the file and any relevant information about the procedure and accusations, except those few mentioned in the EAW itself. As a result, the subject of an EAW can be detained for more than two months in an executing state, before being sent to Luxembourg in order to be heard by the judge, without being able to prepare his/her defence. Sometimes it happens that the court ('*Chambre du Conseil*') will then decide to free the person

- Netherlands - Although there is no explicit provision for this in the law, it is suggested that a Dutch prosecutor is under an obligation to withdraw the EAW once it becomes apparent that the total amount of days spent in surrender detention will exceed the prison sentence to be served (if convicted)

### *Deduction of detention*

The responses are the same as before (see under the executing state), but Austria reports in addition that the requested person will receive compensation of between 20 and 50 euros per day for the time spent in surrender detention, if he/she is finally acquitted.

### *Use of detention*

Again, the great majority report that pre-trial detention is used on the surrender of the requested person to the issuing state.

Overall, there is very little use in either executing or issuing state of alternatives to detention. The European Supervision Order is either not in place yet or not used. Alternatives to detention exist, but are rarely, if ever, used in EAW cases. France, Poland and the UK-Scotland report more common uses of alternatives, such as bail or supervision. The following comments throw further light on usage:

- Denmark - if the pre-trial detention lasts for a long time, it might be possible to implement a scheme of deposit of passport, and regular visits to the police
- France - French lawyers think that there is an abusive use of pre-trial detention in executing states, but French judges never intervene to interrupt the EAW in such abusive situations
- Sweden - it can be assumed that the infrequent use of the European Supervision Order is due to low awareness of it

*Good practices*

- Ireland - the delays in execution of an EAW caused by appeals have been drastically reduced by introducing a requirement that appeals are no longer automatic, but that a certificate should be given first by the judge at first instance certifying that a point of law of exceptional public importance is at issue
- Belgium, Lithuania, Poland - electronic monitoring of suspects allows them to stay out of prison
- Belgium - bail could be used more by the executing state, as permitted by Belgian law
- UK-England and Wales - practitioners are very familiar with the Bail Act and its use in extradition proceedings

*Recommendations*

- there should be more use of electronic monitoring, and further consideration should be given to promoting other alternatives to detention at EU level, including bail and voluntary surrender
- the European Supervision Order should be implemented in all Member States and the European Commission should consider infringement proceedings against those Member States which have not yet implemented it
- more publicity should be given to the European Supervision Order, for instance by more training for prosecutors and judges on alternatives to detention. The failure to use the European Supervision Order more frequently results in unnecessary costs for Member States through the use of detention
- more judges with expertise in hearing EAW cases will lead to more efficiency and a reduction in pre-trial detention
- the excessive lengths of detention in the executing state while awaiting a transfer to the issuing state in order to be heard by a judge, and with unsatisfactory access by the defence to the file in

the meantime, could be solved by letting the judge from the issuing state proceed to the hearing directly in the executing state. The judge could travel to the executing state, and this would reduce both the length and the cost of pre-hearing detention in the executing state. An alternative is the wider use of video links, for instance a court-to-court video conference on the case

- given the savings in costs highlighted in the above recommendations, consideration should be given to an audit of the overall costs of the EAW, and in particular detention costs, along the lines of the European Parliament report[21] of 2014, to persuade the Member States' authorities of the benefits of considering alternatives to detention in EAW cases

- in the case of a prosecution EAW, there should be an obligation for the issuing state to inform the executing state of the likely sentence to be imposed if the requested person is convicted, and the defence should be informed of this

- in the case of an execution EAW, there should be an obligation for the issuing state to inform the executing state of the likely release date, taking into account a) time spent in pre-trial detention in the issuing state; b) time spent in surrender detention in other executing states (if applicable); c) early release regimes

- in order for the above to work, there should be a requirement for the executing state to inform the issuing state of the days spent in surrender detention, even in cases where the surrender was in the end refused. At the moment, the Framework decision only provides for such an obligation if surrender has actually taken place

- there should be monitoring of the deduction by issuing states of time spent in pre-trial detention in executing states (and if it is found that the obligation is not being complied with, the European institutions should take further steps to guarantee compliance)

- the difference in treatment, relating to alternatives to detention, between suspects in purely national cases and requested persons under an EAW should lessen or disappear altogether, so as to promote more sensible use of alternatives to detention

- in the case of a prosecution EAW, consideration should be given to the issuing state giving reasons as to whether the requested person needs to be put immediately into detention

[21] Revising the European Arrest Warrant by the European Added Value Unit of the European Parliament - http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/510979/IPOL-JOIN_ET(2013)510979_EN.pdf

## 4. Detention – conditions

Following on from the above, there are also problems arising out of complaints about detention conditions, particularly in the issuing state. This ties in closely to the point made below about the EAW's relationship with fundamental rights.

### General

Obviously, much has changed on this topic since the recent decisions of the Court of Justice of the European Union in the *Aranyosi* and *Căldăraru* cases (C-404/15 and C-659/15 PPU)[22]. Now, regardless of the actual wording of the Framework Decision, it is clear that detention conditions in the issuing state can be raised during proceedings in the executing state. The court decisions were published while the experts were completing their responses, and so they were aware of them. However, it was too early to assess their impact on local practice. The answers below reflect practice before the publication of the decisions.

Even before the decisions, a slight majority of Member States reported that detention conditions were taken into account. Of course, it always depends from where the EAWs are issued.

So Austria reported that, since the vast majority of EAWs executed in Austria come from Germany, Hungary and Italy, no particular issues regarding detention conditions arose with those Member States (even though, of course, the *Aranyosi* case concerned prison conditions in Hungary, and the Hungarian expert reports that 'the European Court of Human Rights has already initiated official proceedings against Hungary because of prison conditions. The most important problem is that the cells are too small and the prisoners do not have as many square meters as required').

Italy also reports that it has lost two cases at the European Court of Human Rights for the inhuman and degrading treatment of prisoners (16 luglio 2009 - Ricorso n. 22635/03 - *Sulejmanovic c. Italia* - *Torreggiani* (ricorsi nn. 43517/09, 46882/09, 55400/09; 57875/09, 61535/09, 35315/10, 37818/10) – 8 gennaio 2013). The expert goes on to say that some EU member states have requested assurances from the Italian state about the conditions of detention for those prisoners covered by an EAW when Italy is the issuing state. But the Italian state has finally taken measures to reduce the problem of overcrowding in its prisons – the concerns have diminished, but not finally been resolved.

There was an interesting case from UK-Northern Ireland, which showed what challenges on these grounds could do, and the response from Lithuania, which reflects this:

- UK-Northern Ireland - a recent case of note is that of *Lithuania v Liam Campbell* [2013] NIQB 9, where the court held that in the absence of any assurance by the Lithuanian authorities to the contrary, the extradition of Mr Campbell to Lukiskes remand prison in Lithuania would amount to a violation of his Article 3 rights. This was a key case in Northern Ireland and sparked an increase in challenges by requested persons of their extradition to Lithuania. In response the Lithuanian authorities have provided an undertaking that requested persons would not be held in this prison if returned to Lithuania. Similar challenges have been raised in respect of prisons in Poland and Greece recently.

[22] http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-04/cp160036en.pdf

- Lithuania - when Lithuania is the issuing state, the courts of some executing states seriously examine detention conditions in Lithuania. Such judicial practice is developed in the UK and Ireland. Taking into account the conclusions of the European Committee for the Prevention of Torture and the European Court of Human Rights that detention conditions in Lukiskiu prison and Siauliu prison are not in compliance with Art. 3 ECHR standards, the UK and Irish courts ask for assurances from Lithuania that the surrendered persons will be detained only in Kaunas prison, which has been evaluated as satisfactory by a British expert.

## Prison shopping

The answers given also provide more evidence of prison-shopping. For instance, Lithuania reports that requested persons, being detained in Lithuania, are frequently unwilling to challenge the EAW, because that would mean that they have to stay longer in detention, and detention conditions in Lithuania are widely reported to be not good.

And Luxembourg gives an example of how difference in prison conditions can impact a case:

- Luxembourg - one problem encountered is the difference of conditions of detention in the executing state and then in the issuing state. The EAW covered a married couple. During their two months of detention in the Netherlands, the couple had been granted daily phone communication and weekly time together. But, once in Luxembourg, no more communication was allowed, and a total separation was applied for more than one month. This made no sense, and was only frustrating and hurtful

## Evidence of prison conditions

One shared concern is that defence lawyers have difficulty obtaining supporting evidence to make a claim on behalf of their client. Again, this from UK-Northern Ireland and UK-England and Wales, which seems to reflect a more widespread feeling among defence lawyers, with a report from Ireland about the best method of going about the problem:

- UK-Northern Ireland - a defence practitioner faces a difficult task in establishing the requested person's claim, partly because of the high evidential burden to be met. Whilst many requested persons raise this claim, it is difficult to substantiate. In some cases expert evidence is available, whether commissioned by the defence or available from the European Committee for the Prevention of Torture. Indeed obtaining expert evidence to support the contention that Article 3 rights may be breached is the most difficult element in a defence of this nature. The starting point is that, as a member state, appropriate standards are adhered to. To suggest otherwise one would need to inspect the particular facility in question, and gaining access or authority is a difficult endeavour

- UK-England and Wales - in *Brazuks v Prosecutor's General Office Latvia* [2014] EWHC 1021 (Admin), the High Court endorsed the views of the Chief Magistrate, who had said "in all EAW cases, bearing in mind that the requesting state will be a member of the Council of Europe and a signatory to the ECHR, the court will not hear evidence challenging general prison conditions unless the defendant identifies from an internationally recognized source new factual issues that

could amount to clear, cogent and compelling evidence to show that there is a real risk of treatment contrary to article 3."

- Ireland - defence practitioners are very familiar with the up-to-date reports of the European Committee for the Prevention of Torture (CPT) who carry out inspections of prisons in various member states. CPT members are often engaged as academic witnesses in the trial of cases where prison conditions are relevant

It is also not easy to find out in which prison a requested person may be detained in. It may be a remand prison, a police station during the investigative process, or a sentence prison. In some cases, the issuing state simply does not reply.

The support for the work of the European Committee for the Prevention of Torture in helping defence cases is reflected in the recommendations below.

*Good practices*

- Ireland - refusing surrender where there are criticisms made by the European Committee for the Prevention of Torture is the most effective way of bringing international attention to the poor prison conditions in some Member States

- Italy, Lithuania and UK-England and Wales - the Ministry of Justice is able to give assurances for those requested persons with regard to prison overcrowding when the executing state expressly requests these (Italy); the assurances that requested persons will be detained only in Kaunas prison (with relatively better detention conditions than in other prisons) might be regarded as a good practice (Lithuania); Lithuania and Greece have given specific assurances that the requested persons, when returned, will be housed in conditions which would not breach their Article 3 rights; such assurances have been accepted by the English courts (UK-England and Wales)

- Poland - detention is used only when it is necessary to continue the proceedings. This also applies to law enforcement in the scope of the EAW. Lack of automatism enables the use of more appropriate legal measures

*Recommendations*

- use must now be made by the courts and the defence of the recent case law of the Court of Justice of the European Union on detention conditions. It may be better to codify it in an amendment to the Framework Decision, along with a fixed time limit within which the information must be provided by the issuing state, or else the execution of the EAW may be refused. It could also be made a requirement that the original EAW specify the detention facilities in which the requested person may be detained, with a duty placed on the court in the executing state to be satisfied that the detention conditions in the issuing state will not breach the fundamental rights of the requested person

- dual representation (as above)

- training of prosecutors, judges and lawyers (as above)

- consideration to be given to the creation of a European inspector of places of deprivation of liberty, and to developing basic minimum detention conditions EU-wide. Lawyers should be among the stakeholders consulted by such an inspector

- in Art. 4 par. 4 of the Commission's Proposal for the Directive 2013/48 (COM 2011/0326 final), there was a provision that gave the lawyer of the detained person the right to visit the place where the suspect or accused person is detained in order to check the detention conditions. This provision was not adopted in the final text of Directive 2013/48. The right of the defender to visit the place where the suspect or accused person is detained could lead to more transparency, and so contribute to the improvement of detention conditions. Therefore, the adoption of such a measure should be considered

- further resources should be made available for the European Committee for the Prevention of Torture, and there should be wider dissemination of their materials, to improve the skill-set of defence lawyers and inform the judiciary

- there should be increased mobility of the judge of the EAW issuing state, or wider use made of video facilities (as above)

- the Framework decision should be clarified as to whether a prosecutor, court or other relevant state authority may (or even must) take into account prison conditions in the executing state before issuing an EAW

- more funds should be made available for new and improved jail facilities

## 5. Relationship with existing fundamental rights

The question of the relationship between the EAW and existing fundamental rights is an old one, and can be divided into two parts:

- the absence of express grounds for refusal based on fundamental rights in the Framework Decision. The questions raised by (1) – (4) above might be seen as touching on fundamental rights, for instance the right not to be subject to torture or degrading conditions in detention
- the question of whether, particularly as a result of the three minimum procedural safeguard directives now passed – the right to interpretation and translation, the right to information, and the right of access to a lawyer (including especially the aspect of dual representation) - the balance between prosecution and defence rights in the EAW has become fairer to the defence

### The absence of express grounds for refusal based on fundamental rights in the Framework Decision

Obviously, as stated in the previous section, the recent Court of Justice cases of *Aranyosi* and *Căldăraru* will change some of the practices on which the responses in this section are based.

Nevertheless, many Member States had already enabled grounds for refusing to execute an EAW on the basis of breach of fundamental rights, such as breach of the European Convention on Human Rights or of the European Charter of Fundamental Rights. Only six report no such grounds (Bulgaria, Croatia, Latvia, Lithuania, Luxembourg and Slovenia), and five (Estonia, Finland, Greece, Malta and Slovakia) report that they are rarely used.

Many Member States report the difficulty of succeeding in such cases. For instance, Sweden again points out that, since the requested person rarely has access to supporting documents, such cases are often dismissed. UK-Northern Ireland describes this in more detail:

- UK-Northern Ireland - the evidential burden on the individual is too high, especially considering the tight time limits within which extradition cases are concluded. This is exacerbated by the fact that requested persons are usually in custody, and their ability to obtain evidence can be greatly reduced. Challenges to extradition as breaching Article 8 rights are most common. There are family members on hand to assist in the preparation of submissions highlighting the interference extradition will have with their ability to enjoy this fundamental right, and the interference will occur in the executing state. Interferences in the issuing state are more difficult. Challenges to prison conditions, potential torture scenarios or infringement with a fair trial are more difficult to advance. The language barrier between the defence practitioner and those representing the requested person in the issuing state can be a factor. The inability of the representative in the issuing state to communicate directly with the requested person is also a significant factor.

Below are some examples of success before the Court of Justice cases:

- Greece - as an exception, there was a recent decision of the Regional High Court of Athens (Efeteio Athinon, Decision No. 1/2016), where the execution of an EAW issued by the Italian authorities was refused on the ground that in a previous procedural stage many rights of the accused person were violated by the authorities of the issuing state (the accused person was not informed about the accusations against him, he was not allowed to have either a translator or a

lawyer and a pre-trial detention was already imposed, although he was not yet examined in the issuing state)

- Ireland - the principal articles that have been relied on by the Irish Courts are Article 3, in the context of prison conditions, and Article 8, in the context of the breakup of family arrangements, particularly if there has been delay in seeking the request

- Latvia - in 2014, an Austrian court refused to extradite a Latvian citizen, V. V., to Latvia for trial. The Court reasoned that extradition was not possible due to V. V.'s state of health and due to existing threats to his life in Latvia. In 2015, the Supreme Court of Ireland refused to extradite a Latvian citizen to Latvia for enforcement of a court sentence for several thieving convictions. The Court reasoned that extradition might inflict harm on the two small children of the convicted woman.

- Netherlands - the following three ECHR articles are invoked most frequently:

  - Art. 3 ECHR - for a rare successful example based not on prison conditions *sensu stricto* but on the precarious health condition of the applicant, see ECLI:NL:RBAMS:2011:BP5390)
  - Art. 6
  - Art. 8 ECHR - surrendering a person to the issuing state constitutes an interference with the requested person's private and family life as referred to in art. 8 ECHR. In general, this interference will pursue a legitimate aim (prevention of crime) and will also be proportionate (necessary in a democratic society). In assessing the proportionality, the court will take into account the severity of the offences in question and the fact that the interference will be temporary (Cf., for example, ECLI:NL:RBAMS:2010:BO8104). We were unable to find a single example of a case where this defence was successfully invoked.

- Portugal - an example of how fundamental rights are taken in consideration is found in the decision of the Portuguese Supreme Court of Justice (750/13.1YRLSB.S1, 9.8.2013). Although the Portuguese authority decided to surrender the requested person to Belgium, it did subject the surrender to the condition that, once the requested citizen had been judged, he should be resent to Portugal in order to serve the custodial sentence in a Portuguese detention centre, and very importantly, under Portuguese penalty application rules. In doing so, the Court intended that the requested person would not be subject to a life sentence, which is constitutionally forbidden in Portugal. Grounds for refusing to execute an EAW are often linked to resocialisation of the individual, his or her cultural and social attachment to Portugal (especially where residence and family are established in Portuguese territory), as well as personal factors such as age and health.

- UK- England Wales - requested persons still face a difficult burden to discharge to show that the issuing state will not comply with human rights obligations. In practice, they will need "clear and cogent evidence" which establishes the breach (*Agius v Malta* [2011] EWHC 759 (Admin)). The most common human rights argument made by requested persons is that extradition will breach their article 8 right to a family-life in the UK. The English courts are generally sceptical of such arguments, on the basis that there is a high public interest in respecting extradition requests

from other Member States. It is generally difficult to appeal against the rejection of article 8 arguments, as long as the first instance judge has cited the three leading cases (*HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25; *Norris v USA* [2008] UKHL 16 and *Poland v Celinski* [2015] EWHC 1274 (Admin)) and the relevant facts.

### *Good practices*

- Italy - legislation makes it mandatory to request from the issuing state clear details of the proposed detention conditions and requires details of where the detainee will be held

- Malta - the option to file a constitutional case or file a constitutional reference from within EAW proceedings is always an option. If there is a human rights issue, there is a right to have the case reviewed by the Court on the basis of human rights

- Poland - it is not permissible to issue a warrant, if it is not required in the interest of the administration of justice. The introduction of this condition led to a fall in the number of EAWs issued

- Spain - as an issuing State, there used to be a good practice in relation to trials *in absentia*, but this has now been ruled out by the CJEU in the *Melloni* case (C-399/11)[23] (Spain tried to make the execution of the EAW for a requested person who had been tried *in absentia* subject to the conviction being open to review, since trials *in absentia* are against the Spanish constitution - but failed)

- UK-England and Wales - in order to succeed with human rights arguments, it is necessary to rely on expert evidence to deal with the relevant complaint of a prospective violation. Instructing a lawyer familiar with the prison conditions or trial rights in the courts of the issuing state is indispensable

### *Recommendations*

- the Framework Decision should be changed to mention specifically that human rights (discrimination, inhuman treatment) is a factor that the executing state must take into account before deciding whether to execute the EAW; if this happens, the time limit should be extended in such a case to allow the requested person the opportunity to collect the evidence required to satisfy the strong evidential burden required to engage Convention rights

- it is essential to publish a handbook about the grounds of non-execution of an EAW because of a possible violation of fundamental rights by the issuing state; this could contribute towards the harmonisation of Member States practices' on this matter

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[23] http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30dd4ab8ba6d4c7e464e9ad1b3c5a4e0c86b.e34KaxiLc3qMb40Rch0SaxuTbx50?text=&docid=134203&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=317427

- national courts and defence lawyers should use the Court of Justice of the European Union more for such matters

- a right to appeal the issue of the EAW in the issuing state should be introduced – violations in procedure in the executing state could be addressed in this way, and considerable cost savings made

- dual representation (as above)

- training (as above)

- more funds for new and improved jail facilities (as above)

## Impact of the three minimum procedural safeguards

The experts are divided as to whether the introduction of the three minimum procedural safeguards made a big difference in their Member State, with the majority saying they did not (and mostly because the rights were previously by and large present in their national laws). A fuller account of the impact of the three directives in general, not only on the EAW, can be found here, in a report ('TRAINAC report') published with EU funding in 2016: http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf

It is generally agreed that the biggest impact of the directive on right of access to a lawyer has been the increased ability to have dual representation in EAW cases – which, as already stated in various parts of this report, is seen as a major benefit for successfully challenging EAWs.

A number of Member States (Estonia, Lithuania, Malta) complain about a lack of access to documentation relevant for challenging issues relating to the EAW pre-trial.

Here are some further comments on the impact of the three directives:

- Finland - the actual extradition order is nowadays normally translated

- Greece - the Supreme Court (*Areios Pagos*) judged in a recent decision in an EAW case (No. 851/2014) that, if the arrested person was not given a Letter of Rights and was only orally informed by the responsible prosecutor afterwards, this does not affect the further procedure and does not have any consequences at all. Such a decision undermines the right to information of the arrested person, as well as the effectiveness of the provisions set out in the directive 2012/13.

- Hungary - regarding balance, outside of an official translator for court hearings (which is paid for by the state), there remains the problem of when a lawyer wishes to hold a private consultation with his client. If they do not speak a common language, then the lawyer (who has been appointed to his client's defence) needs to find and pay for a translator. Furthermore, depending on the individual prison's rules, sometimes translators are barred from entering the prison to aid the consultation

- Belgium - a more important change would be the cessation of the practice whereby the prosecutor sits at the same table as the judge and goes with the judge into the deliberation room before the beginning of the hearing, as well as during any possible suspension of the hearing, and at the end of the hearing. This creates in the eyes of the parties to the case and of their lawyers, and in the eyes of the public in the court room, the appearance that there exists a special relationship between prosecutor and judge and that some talks may take place between them in the deliberation room outside of the view of the other parties and their lawyers

- Luxembourg – the decisions of the European Court of Human Rights in the *Salduz v Turkey* (application no. 36391/02)[24] case and in the *A.T. v Luxembourg* (application no. 30460/13)[25] case have had as significant an impact in furthering defence rights as the three directives

*Good practices*

- Denmark - details such as the name and address of the defending lawyer are a part of the court ruling

- Estonia - mandatory defence in execution proceedings of an EAW (as provided by Estonian law) ensures that the right of access to a lawyer is always respected

- Finland - a person sought for extradition always has the right to a lawyer of his/her own choosing

- Luxembourg – in some cases, a judge has freed the requested person, because he/she has a residence in Luxembourg and the EAW did not seem proportionate, on the condition that the requested person accepts being heard by the foreign judge and complies with any request for a hearing

- Poland – there is a fairly broad right to use an attorney/proxy during criminal proceedings. This applies to both pre-trial and trial proceedings. The attorney can participate in all relevant issues and is informed of any decision. At the pre-trial stage, where there is no legal obligation for the presence of an attorney, the suspect may be entitled to a public defender, but only in cases where he/she is not able to bear the costs of defence without detriment to the maintenance of him/herself and family. At the stage of the proceedings, the request of the accused is sufficient. This guarantees access to the right of defence, and is widely used

- UK-Scotland - the House of Lords Select Committee on Extradition Law. (http://www.publications.parliament.uk/pa/ld201415/ldselect/ldextradition/126/126.pdf) said at para 244:

  > "*It may be that automatic legal aid, followed by a period of means testing using the e-form, would offer a more balanced system, one which removes legal aid if the higher earnings threshold is met. Alternatively, additional funding for dual representation could*

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24 http://hudoc.echr.coe.int/eng#{"fulltext":["salduz"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-89893"]}

25 http://hudoc.echr.coe.int/eng?i=001-153960#{"languageisocode":["FRE"],"appno":["30460/13"],"documentcollectionid2":["CHAMBER"],"itemid":["001-153482"]}

*be offset by fewer proceedings in the UK. Again, if the cost-benefit is balanced, the interests of justice ought to take priority.*"

*Recommendations*

EU

- training (as above)
- dual representation (as above)
- the recommendations of the TRAINAC report (previously mentioned) should be implemented (http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf)
- there should be adequate translation services, with the possibility for the judge to send the EAW via computer to such services for translation into the language of the executing state
- a legal aid system that is adequate and complete, with an automatic grant of legal aid, should be guaranteed

National

- Belgium - to introduce the following rule:

  *"Under penalty of inadmissibility of the criminal prosecution :*
  *a) at the hearing the prosecutor stands and speaks exclusively from where the other parties and/or their lawyers stand and plead;*
  *b) the prosecutor may not be in the deliberation room or in the office of the judge without the presence of the other parties to the case and/or their lawyers.*
  *In case of inadmissibility of the criminal prosecution because of the violation of one or more of the preceding subsections a) and/or b), the civil action of the aggrieved party, if any, shall continue without the presence of the prosecutor, including all stages of the procedure."*

- Finland - there is no "case file" system, in which the file is given to the suspect and/or his/her lawyer, at least automatically, and if some information is given, there can be restrictions decided by the investigative authority and subject to appeal only in the Administrative Court, which makes an appeal ineffective. The solution could be that the decision not to give out information by the investigative authority would be subject to a separate appeal at the District (general) Court
- France - the law should provide for access to the file and a dialogue between prosecutor and defence before the arrival of the suspect in the issuing state
- Hungary - the state should assign translators to defence lawyers for any purpose that they require it for - court proceedings and client consultations. However, in this case, the defence

lawyer's duty to maintain confidentiality towards the client also needs to be legally enforced against the translator as well

- Lithuania - the impact of the three minimum safeguard directives, once all implemented, would be bigger if EAWs were issued by the courts instead of by the Office of General Prosecutor

## 6. Dual representation

This is now guaranteed by the directive on right of access to a lawyer (2013/48/EU). It is obviously of great assistance to the defence lawyer in the executing state if there can be contact with a defence lawyer in the issuing state, for instance for the purpose of obtaining more information from the investigative authorities or better understanding of the legal background. There are clearly issues related to resources, specifically legal aid, and interpretation and translation, which need to be further examined, including a general reflection on how the new provision is working in practice.

The 2013 directive on right of access to a lawyer is not yet implemented in most Member States (at the time of submission of the experts' responses).

### Benefits

There is overwhelming enthusiasm for the benefits of dual representation, for some of the following reasons:

- it helps with assessing grounds for non-execution, since the lawyer in the issuing state may have access to facts regarding the case or knowledge of formal procedures for issuing the EAW, which will be missing in the executing state

- if the requested person is willing to be extradited, communication with a lawyer in the issuing state usually makes it possible for the lawyer to prepare the case already prior to the requested person arriving to the issuing state

- if the suspect denies being guilty of the offence, the executing state has hardly any other choice but to extradite, whereas the lawyer in the issuing state may try to get the detention order (or EAW, where possible) overturned – which is obviously not possible in the executing state

- where a defence lawyer has been instructed in the issuing state, the EAW can be compromised in the issuing state, resulting in a withdrawal of the EAW and a discontinuance of the extradition proceedings. For example, a sentence of imprisonment can be re-suspended on application, or requested persons can plead guilty in their absence and receive non-custodial sentences

- it can be more satisfactory from the point of view of the states, as cooperation between lawyers often results in surrender proceedings being shortened because of a more efficient flow of information, or being abandoned altogether because the person is prepared to return voluntarily, or where it is acknowledged that the circumstances can be met by an administrative sanction, or similar

UK-Scotland gives an interesting example of success of dual representation. In less serious Polish cases, if compensation is paid, the warrant is withdrawn. Dual representation can facilitate this process. In other situations if further procedures or appeals are to take place in the issuing state, Scottish courts will be quick to offer further time for the matter to be sorted out.

## Difficulties

However, there are problems with the implementation of the measure. That does not mean that those giving examples of difficulties are against dual representation. The opposite is the case - as stated above, there is overwhelming enthusiasm for it among respondents. There is a feeling, though, that thought and resources should be given to the problems, to help make dual representation even more successful in allowing for a better defence.

The difficulties resolve themselves into the following major areas:

- finding an expert lawyer in the other Member State
- meeting the cost of dual representation
- accessing the case file in another Member State
- meeting the tight time-limits when there needs to be co-ordination between states
- language barriers

It is worth quoting the various difficulties raised as follows:

- Austria - when there is no mandatory defence in the issuing state (there is mandatory defence in Austria), problems arise in connection with legal aid and the financing of a defence lawyer in the issuing state; unless the suspect is able to pay for a defence lawyer him/herself, (s)he won't have dual representation

- Belgium - the problems are:
    - how to find quickly the right lawyer in the issuing Member State (meaning competent, and affordable for the arrested person), since the arrested person has not necessarily already a criminal lawyer in the issuing state nor knows one
    - the cost for the concerned person of two lawyers
    - the right of the lawyer in the issuing state to request access, and quickly enough, to the investigation file. This right may be of great importance in the context of the EAW

- Estonia - there are practical issues, due to which, in most cases, dual representation is not actually working - most lawyers (especially legal aid lawyers) do not have the necessary knowledge, experience, and contacts; quite often language is a barrier; the procedure of obtaining a legal aid lawyer to be assigned to the case in another Member State is difficult and time-consuming. For these reasons, and taken into account the fact that most EAW cases are handled by legal aid lawyers, there may be no dual representation

- France - when France is the issuing state, the lawyer unfortunately has no access to the file until the suspect has been surrendered

- Greece - the requested person is not informed about his right of dual representation nor about the obligation of the authorities to facilitate him/her in finding a lawyer in the issuing state. Greece has no list of lawyers that could be considered as specialised in the field of the EAW, or even in the field of criminal law generally. No specialisation is formally recognised in Greece. As a result, if the Greek authorities are requested according to Art. 10 par. 5 of the Directive 2013/48 to provide information in order to facilitate the requested person in appointing a lawyer in

Greece, they can either provide him/her with a general list of all the local lawyers (regardless of their true specialisation) or they can refer to the list of the legal aid lawyers. Even in the second case, it is not possible to know beforehand which lawyers have any experience with EAW procedures

- Lithuania – there is a lack of translation services for the communication between dual representation lawyers

- Luxembourg - lack of time to discuss the matter, and often the limited documents that are accessible, for instance because of language issues (the foreign procedure being in a non-comprehensible language for the Luxembourg lawyer) may hamper the efficiency of the defence in Luxembourg

- Malta - when Malta is the issuing state, it is very hard to obtain any particular information to assist defence counsel in the executing state because the issuance of these orders are an administrative decision without a hearing, in which the person being surrendered does not have a *locus standi* to appear

- Netherlands – there are three problems:
  a) finding a good lawyer in the issuing state
  b) access to the case file in the issuing state
  c) legal aid in the issuing state is usually also a major problem. In our experience, legal aid is either not (yet) available in the issuing state or legal aid fees are so low there that lawyers specialised in criminal law are not willing to take the case on that basis. This means that the requested person has to pay for the work of a lawyer in the issuing state him/herself. Usually, the requested person is unable to do so, meaning that (s)he will not be represented in the issuing state until arriving there

- Poland - it happens that cooperation between lawyers does not proceed fruitfully – the lawyer from another Member State does not stay in touch, does not provide adequate information or is distrustful. Dual representation creates certain problems. One of them is the costs of the proceedings, which increase considerably due to the need of covering the additional fee, costs of translations, mails, etc. Therefore, the trial lasts longer. Lawyers do not know each other's jurisdictions, which can affect communication, problems with decision-making can lead to inconsistencies – the lawyer who does not know the other's jurisdiction can take action with the best intention, but the result may be that the actions were unnecessary or even undesirable. Extension of the decision-making process and the language barrier between the lawyers are also important. They may lead to misunderstandings and – in consequence – making wrong decisions

- Portugal - the limited timelines regarding the EAW make it virtually impossible to have access to a lawyer and enable him/her to deliver an effective defence. States do not encourage dual representation. The fact that dual representation occurs depends on the lawyer (if there is one) in the executing state knowing about its importance and being able to find an appropriate lawyer in the issuing state at very short notice; If the client has no financial means, (s)he usually has to hope that a lawyer in the issuing state will act pro bono for him/her

- Sweden - the EAW does not contain any information on whether a defence counsel is appointed in the issuing state. Contact with any such counsel is therefore often dependent on the client´s own knowledge and information. Presumably, he or she rarely has any such knowledge. The defence counsel is generally not informed about the issuing of an EAW, nor of any decision based on such an order. Neither is he or she provided with contact information for the representing counsel in the executing state. Without this information, contact and co-operation with the counsel in the executing state is obviously not made easier

- UK-England and Wales - unless the requested person funds representation in the issuing state him/herself, it is unlikely to be effective, because legal aid in England and Wales does not extend to funding a lawyer in the issuing state

- UK-Northern Ireland - the language barrier however can be an issue, particularly when the requested person is in custody and communications take place between lawyers. Interpreters in Northern Ireland are readily available and a requested person would have the benefit of legal aid in almost all cases. That said, it is a slow process when each communication is required to be translated and authority required to incur those translation costs on each individual occasion. Legal aid is not readily available in other member states, particularly those issuing large volumes of extradition requests. Requested persons are rarely of significant means and therefore cannot afford effective representation. They may be in a position to instruct a lawyer initially but not for the required duration of the case

### Legal aid

Legal aid is available to the requested person in the executing state in all Member States except Ireland and Lithuania. It is available to the requested person in the issuing state in all Member States other than Ireland and Malta, with the position not clear in Estonia, Finland and Lithuania.

Sometimes, there can be difficulties. Two principal difficulties are the recovery of the legal aid undertaken by a number of Member States if the requested person is eventually found guilty; another is that the legal aid only becomes available in the issuing state when the requested person is returned to that state. Here are more difficulties:

### Executing state

- Italy - legal aid is not expected at the surrender stage

- Luxembourg - only available for the fees of a lawyer of the Luxembourgish Bar. The fees of the foreign defence practitioner cannot be covered by Luxembourgish legal aid

- Netherlands – (as above) the biggest problem is that legal aid fees are so low in the executing state that lawyers specialised in criminal law are not willing to take the case on that basis

- UK-Scotland - bureaucratic delays mean that it is often not in place by the time of the mandatory extradition hearing (within 21 days of arrest). Cases are adjourned until legal aid is granted

- UK-Northern Ireland - details of the legal aid systems in Member States are not widely available in Northern Ireland. In fact, defence practitioners routinely rely on the knowledge of their client in this regard. Generally it is the requested person who chooses their representative based on affordability

### Issuing state

- Czech Republic and Slovakia - free legal aid does not apply to suspects, only to those who are accused

#### *Good practices*

- Germany - The assignment of a defence counsel with the court order confirming the detention is obligatory in German procedural law

- UK-Northern Ireland - there is a system in place for requesting legal aid assistance in cases where the client is not present in the jurisdiction

#### *Recommendations*

- there should be EU-wide harmonisation of the rules on access to the investigation file in cross-border cases

- the lawyer for the requested person should be permitted, in those Members States where it is not now possible, to participate in the issuing procedures of the issuing state; a copy of the EAW should be provided to such lawyers without delay, together with any decisions based on the EAW subsequently taken in the executing state

- there should be EU-wide harmonisation of legal aid in relation to cross-border criminal cases, including that legal aid should be available in the issuing state from the moment of arrest in the executing state, and more resources given to cross-border criminal legal aid[26]

- training (as above)

- the right to translation should cover the translation for communications between dual representation lawyers

- there should be steps taken to make it easier for cross-border criminal lawyers (particularly those who undertake legal aid cases) to get in touch with each other – for instance, publication of details of eligible lawyers; contact information of the defence lawyer in the issuing state to be included in the EAW (and maybe also of the probation officer in that state); details of the lawyer in the executing state to be transmitted to the lawyer in the issuing state

- there should also be steps taken to make it easier for the requested person to be in contact with the lawyer in the issuing or executing state, and detention centres should be required to comply

[26] Regarding the Austrian legal aid system, see footnote 4.

with such contacts (in accordance with the usual rules on lawyer-client communication while in detention)

- the rules on availability of legal aid for criminal cases in all Member States (including the process for applying) should be made generally and more easily available in all official languages (NOTE: the European Commission's e-justice portal is the obvious place for this; at present the portal states: 'In the future the European e-Justice Portal will provide detailed information in this area.')

- for the purpose of dual representation, a public database containing the contact details of EAW lawyers for every EU Member State would be very helpful (the Find-A-Lawyer database already exists on the e-justice portal[27], but EAW expertise is not specifically a category of practice mentioned there, only the much broader 'criminal law')

- also for the purpose of dual representation, there should be legal aid available in both Member States

[27] https://e-justice.europa.eu/content_find_a_lawyer-334-en.do

# 7. Lawyer's criminal law experience

This is a very sensitive topic for lawyers. Because of the different legal systems, there are various methods for choosing lawyers for EAW cases. In some Member States, it might be a requirement of the legal aid system that the selected lawyer meets certain criteria of training and experience; in others, the next lawyer on a rota might be allocated by a court regardless of experience. This may be a topic worth examining further, with possible future recommendations on training, for instance.

## No method for selecting a lawyer

Many bars report that they have no methods or criteria for selecting a defence lawyer. Such a state of affairs can lead to a position where there is a major gap in knowledge and experience between the prosecution and the defence in EAW cases, with obvious consequences for equality of arms. For instance, both the Netherlands and UK-Scotland point out that the prosecutors in EAW cases deal exclusively with international requests for legal assistance, the vast majority of which concern EAW cases. Portugal points out that strictly the appointed lawyer should decline the case if he/she feels that they do not have the necessary skills and preparation for such a specific and complex matter.

Below is a representative selection of bars without selection methods (but similar systems are reported in Estonia, Greece, Ireland, Latvia, Lithuania, Luxembourg, Poland and Slovenia):

- Austria - legal aid is provided by all lawyers. All lawyers are trained in criminal law and practice

- Bulgaria - when a lawyer providing legal aid is needed, the competent court notifies the local Bar Association that a lawyer is needed. Then the local Bar Association appoints one. There is no formal requirement of the Bulgarian legal aid system that the selected lawyer should meet certain criteria of training and experience. The system is rather based on the principle that the next lawyer on the rota is allocated regardless of experience. The court will accept the lawyer nominated by the local Bar Association

- Czech Republic - courts administer a list of attorneys, who have consented to participate in this scheme (i.e. participation in the list is voluntary, not all attorneys participate) and have a seat in their districts; the list is drafted alphabetically according to the attorneys´ surnames. There is no specialisation in EAW cases or special training required. Attorneys experience the problem of "skipping" attorneys on the lists, so that the police authorities may manage appointment of a more "friendly" defence lawyer: if the attorney does not pick up a call about his appointment in urgent cases (when the phone rings for such a short time that it is in fact impossible to pick it up), he cannot return the call as it comes from an anonymous phone number used by the police; after making such a call, the police mark the attorney as unreachable, and continue calling another attorney on the list

- Finland - basically anyone with the right to represent people in court may be appointed

- Greece - the low level of remuneration leads mainly young and less experienced lawyers to legal aid. As a result, it is often possible that the allocated lawyer lacks the needed qualification in order to handle cases of serious criminal offences or cases which require special knowledge and training, like EAW cases

## A method for selecting a lawyer

- Belgium - the Belgian Bar has developed a specific system of legal assistance for any arrested person being interrogated to benefit from the assistance of a lawyer. The system is called "Salduzweb". It allows the police and/or investigating judge to find a Belgian lawyer within two hours of an arrest. It is an automated and secure system, backed up by an emergency phone number. It permits the suspect to have a confidential conversation with a lawyer before interrogation, followed by on-site assistance during the interrogation. To be admitted to the list, the lawyer needs respectively a) to volunteer for legal aid and b) pass the test to be admitted to the criminal section of legal aid (which tests a general competence in criminal law). Practically it works like this: after arrest, the police officer or investigating judge opens a file on 'SalduzWeb', and the software then calls lawyers sequentially based on the case parameters. If the lawyer accepts, the system sends the lawyer a text message and an email with case details. The lawyer can then obtain access to the case on the system. The lawyer can call the police officer or investigating judge in charge to speak to the suspect, or attend the suspect in person for a confidential conversation followed by on-site assistance during the interrogation. If no lawyer is found, the 'SalduzWeb' administrator at the Bar is contacted, and will receive an automatic call plus text message and email. The administrator will then manually search for a lawyer who, when found, takes over the case using the Salduz number. The system deals with around 4,000 cases a month. 77% of lawyers were assigned using the automated system, and 81% of the cases had a lawyer found through the system. The yearly cost of 'Salduzweb' is around 400,000 EUR. The Belgian lawmaker is about to organise public funding of it

- Denmark - the appointed lawyer is selected from a list of approved defending lawyers, all with experience

- Finland - the National Bureau of Investigation (the investigative authority in EAW cases) has its own lists of people who have handled these kinds of cases, and can therefore help detained suspects in getting a lawyer, but no real method exists

- France - in Paris, lawyers are not appointed if they cannot show that they have been trained in criminal law (but that is not the case in all cities)

- Hungary - the present rule is that the public defence lawyer is appointed by the authorities. This is in our opinion the wrong system, which will probably be modified in the forthcoming New Criminal Procedure Code, due in 2017, and the Bar Associations will then appoint public defence lawyers. This will hopefully eliminate tricky conflict of interest issues (the authorities currently both prosecute a defendant and appoint their lawyer). To become a public defence lawyer, there are no extra requirements, criteria or training above that expected for any criminal lawyer

- Italy - in order for public defenders to be certified, they have to meet specific requirements within the training programme. This needs to be improved because public defenders and lawyers registered on the list for legal aid require a major update about EU law and the European Convention on Human Rights

- Netherlands - when the wanted person is assisted on a legal aid basis, Dutch legal aid law requires that all lawyers in EAW cases should, as a minimum, be registered with the Council for Legal Assistance as a criminal law specialist. Registering as a criminal law specialist with the Council for Legal Assistance, however, does not require any experience with EAW cases. This is somewhat different in cases where the wanted person is arrested in Amsterdam, where legal aid is provided by duty lawyers specialised in EAW cases (but most are arrested outside Amsterdam)

- UK-England and Wales - the quality of defence lawyers varies. Solicitors who wish to act as a duty solicitor at Westminster Magistrates' Court (the only court in England & Wales which deals with extradition matters) must apply to be included on the extradition rota. There is no formal requirement for a duty solicitor to have competency in extradition law, although clearly this is the expectation. Two duty solicitors will be available at Court each day. An individual who does not have a solicitor retained already (or know which firm he wishes to instruct) is likely to be represented by the duty solicitor

- UK-Scotland - there is a small number of firms that undertake work in this field (all based in Edinburgh, where all EAW cases are dealt with). Other firms will usually refer EAW cases to them.

## Choice of lawyer

The Member States are rather evenly divided on the question of whether the requested person has the choice of lawyer in either the executing or issuing state. In some, there is a choice only if the lawyer is paid for privately (Hungary, Latvia, Poland and Spain for instance); others point out that the lawyer has to be willing to take on the case if it is legally aided, which is not an obligation (Belgium and the Netherlands). The broad division between choice and no-choice is as follows:

Choice – Austria, Belgium, Bulgaria (some courts), Cyprus, Czech Republic, Denmark, Finland, Ireland, Luxembourg, Netherlands, Poland, Slovakia, Sweden, UK-England and Wales, UK-Scotland and UK-Northern Ireland

No-choice - Croatia, Estonia, France, Germany, Greece, Latvia, Lithuania, Malta, Poland, Portugal, Slovenia

### *Good practices*

- Czech Republic - the system is automatic: if a ground of mandatory defence applies, the accused may remain passive, but his or her defence rights are guaranteed

- Luxembourg - the defence lawyers in Luxembourg have constituted an association of criminal lawyers, called ALAP. The association intervenes with the judicial authorities to try and improve any issue arising out of criminal procedure. It also circulates information amongst its members, in order to facilitate the work of their members

- UK-Scotland - the prosecutor's office often notifies the relevant defence firms of changes to procedure, as do court officials. On occasion, as an officer of the court, a prosecutor will assist a

defence practitioner who is unfamiliar with this area of the law. There are occasional training seminars for defence lawyers

*Recommendations*

- training in the area of representation in cases of EAW needs to be made a priority
- consideration should be given to the establishment of a specialisation in the area of representation in EAW cases, with objective standards set, and with a public register of lawyers trained and experienced in such matters; languages spoken should also be included in such a register[28]
- in tandem with the above, consideration should be given to objective selection criteria for lawyers in cases involving representation for an EAW[29]
- another solution for lawyer selection may be to have a specialist panel of lawyers available to be assigned by the Court to represent people who do not know a lawyer themselves (this would not interfere with their freedom of choice if they have a lawyer whom they trust and wish to represent them, but in many cases, particularly where the subject is a foreign citizen, they are completely at sea, and the random allocation of untrained lawyers is not in their best interests)[30]
- the legal profession should itself develop best standards in the areas mentioned above

[28] In Austria, lawyers can obtain special training in several practice areas; however, the Austrian system does not provide for any formal specialisation. Moreover, all Austrian lawyers are trained in criminal law and practice. Therefore, this recommendation does not apply to Austria.
[29] See footnote 28
[30] See footnote 28

## 8. Rate of lawyer remuneration

This is tied to the issue above. The level of remuneration for lawyers undertaking criminal legal aid cases varies widely. It can be a great disincentive to good quality lawyers, who can earn better fees elsewhere, to devote themselves to this necessary work, which in turn undermines the quality of the criminal justice system as a whole.

The general consensus is that legal aid rates are far too low, and so act as a disincentive to lawyers to take on the work. This in turn affects the quality and scope of the work undertaken, and the reputation of work undertaken through legal aid. In some countries, lawyers are remunerated for undertaking a specific act, and not for the full panoply of representation required (Czech Republic, Greece and Slovakia).

As for the amounts paid, these vary widely:

- Belgium - 25 EUR per hour (taxes not deducted) – and paid to the lawyers one or two years after filing their invoices

- Bulgaria - the minimum level of remuneration for lawyers undertaking EAW legal aid cases in Bulgaria is BGN 80 (approximately equal to 40 EUR) per case, and the maximum level of remuneration is BGN 120 (approximately equal to 60 EUR) per case

- Denmark - DKK 1.700 per hour (approximately 226 EUR)

- Finland - the rate for public defence/legal aid work is for the time being 110 EUR per hour + VAT, which can be increased by up to 20 % if the work has to be done within a very tight time frame or in a foreign language or if the case has exceptional relevance to the client. This is far behind the normal defence practitioner's rates, which usually start from 200 EUR per hour + VAT

- France – 132 EUR per case

- Germany - the remuneration for legal aid ranges between 515 EUR and 1.030 EUR per case; in absolutely extraordinary cases (difficulty, length, necessary frequency and number of visits in detention) there is a chance for an additional legal aid remuneration of 2.000 EUR

- Greece - legal aid lawyers are remunerated for each individual act. For example, for an appearance before the judicial council that will decide the execution of the EAW, the minimum remuneration is about 400 EUR. The same amount is provided for lodging an appeal against the decision that orders the execution of an EAW. No remuneration is provided for legal advice and consulting

- Hungary - the hourly rate is now approx. EUR17+VAT per hour. If a public defence lawyer goes to prison to visit a suspect, he only receives 50% of the EUR17+VAT per hour, and this amount excludes the travelling time. This kind of hourly rate is not comparable with Budapest lawyers who earn hourly rates from private clients

- Latvia – the remuneration for one hour of defence in a court session is 30.00 EUR

- Netherlands - lawyers receive a flat rate fee of approximately 900 EUR (ex 21% VAT) for assisting a client before the Amsterdam District Court in an EAW case.

Here are other comments:

- Austria – there is no system of individual remuneration for legal aid cases; instead the remuneration of legal aid consists of a payment into the lawyers' pension fund. All lawyers provide legal aid and contribute to this system.

- Cyprus - the level of legal aid remuneration is very low and is a great deterrent for good quality lawyers to render their legal services to defendants eligible for legal aid

- Czech Republic - the difficulties of the system are the following:
  - the state pays the defence costs directly to a defence lawyer only after the final termination of the criminal proceedings (an advance may be paid in the course of the proceedings in bigger cases);
  - not all acts of an attorney needed to execute proper defence in the case are covered (as they are not stipulated in the regulation) - in particular any phone or email communication, letters to the client, consultations with the client lasting less than 1 hour, any expert consultation, preparation e.g. for the court hearing
  - if the attorney intends to use an interpreter, translator or expert, the attorney has to pay them from his or her own resources and claim repayment from the state only after the final termination of the criminal proceedings (in case of experts, the alternative to such a procedure would be to propose to the court to order the expertise, which the court could reject)
  - any motions drafted by the attorney are paid per se no matter how many hours the attorney spends on their drafting

- Estonia - only about 10 % of all members of the Bar Association agree to take legal aid cases

- Poland – apart from enthusiasts, the very young, inexperienced, unsuccessful or dissatisfied lawyers undertake legal aid in proceedings concerning EAW

- Slovakia - the judges and prosecutors are paid monthly, but the lawyer who works on legal aid cases is paid after the case has finished. Not all acts of the lawyer are covered, although lawyers have to execute a proper defence in the case

- Ireland and UK-Scotland – preparation time before the hearing is not adequately remunerated on legal aid

*Good practices*

- Belgium - the Belgian legal aid system includes the possibility, on a voluntary basis, for high skilled lawyers to be part of it

- Finland - the client doesn’t need to worry about recovery if the case is handled on a legal aid/public defense basis

*Recommendations*

As mentioned above, Austria does not have a system of individual remuneration for legal aid cases: the remuneration of legal aid consists of a payment into the lawyer’s pension fund. Therefore, other than the first recommendation below, the remaining ones apply only to those Member States which have a system of individual lawyer remuneration for legal aid.

- to consider a European legal aid fund for EAW cases

- to increase the level of legal aid remuneration, particularly in those Member States at the bottom of the scale[31]

- in those Member States which have a system of payment by act, payment a long time in arrears, or payment of experts initially out of the lawyers’ own funds, to bring the legal aid system into line with those Member States which recognise that representation covers a wider range of activities and that lawyers should be paid (including for disbursements) as the case continues [32]

- there should also be a general recognition that legal aid should adequately cover preparation time for a case. This would improve the quality of representation and reduce costs through possible earlier resolution of the case[33]

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[31] Austria does not have a system of individual remuneration for legal aid cases; instead the remuneration of legal aid consists of a payment into the lawyers' pension fund. All lawyers provide legal aid and contribute to this system.
[32] See footnote 31
[33] See footnote 31

## 9. Right of appeal against the EAW decision

This again varies widely in the Member States, depending on their legal systems

There is generally, but not always, a right of appeal against the EAW in both the executing and issuing state.

It is not so much the right of appeal which causes problems, but the likelihood of success. A number of Member States (Austria, Estonia, Greece, Lithuania, Portugal, Slovakia and UK-Scotland) report a very low success rate for appeals. One of the reasons is the extremely tight time limits applied:

- Austria - it is likely to take some time to get the defence in the issuing state up and working. Moreover, during the challenge in the issuing state, the strict timeframes for surrender from the executing state are running. Therefore, a successful challenge in the issuing state can often be completed only after the surrender, (i.e. at the stage of the proceedings when the court in the issuing state has to decide on pre-trial detention)

- Cyprus - an appeal against a judicial decision to surrender the requested person must be filed within three days

- Portugal - article 24 of Law No. 65/2003 states that the requested person may appeal within the very limited time of 5 days from the surrender decision. Such a limited time frame, particularly regarding such a complex matter, means in practice denial of the right to appeal

But that is not the only reason:

- Estonia - due to the generally very formal nature of EAW proceedings, and very limited options of raising human rights and proportionality arguments, appeals are almost never successful, and as such, the impact of the right of appeal is minimal

Both Ireland and UK-Northern Ireland report that conditions have been introduced into the appeals process to reduce the number of appeals:

- Ireland - if the High Court makes an order for the surrender of the subject, the subject must get the same High Court judge to certify that there are sufficient grounds to appeal that decision to the Court of Appeal. This has had a dramatic effect in reducing the number of appeals. In fairness, when the right of appeal was an automatic one, it became the invariable practice of persons who sought to delay their surrender to appeal and, at that time, the delay in the Supreme Court (prior to the introduction of the Court of Appeal) was of the order of three to four years

- UK-Northern Ireland - prior to the introduction of the Anti-social Behaviour, Crime and Policing Act 2014, there was an automatic right of appeal in fact and law to the High Court. This led to a large number of extradition appeals, many of which were frivolous. Many requested persons would use this right as a means to extend their time in the executing state, in particular to accumulate custody time in the preferable conditions of the executing state. The 2014 Act has amended the Extradition Act 2003, and 'leave' of the high court is now required before an appeal can be heard

- Finland - the decision can be appealed to the Supreme Court, but it requires leave to appeal, which the Supreme Court does not have the obligation to grant. The Finnish Bar Association objected to this amendment to the law, stating that there should be at least one level of appeal without restrictions

Both Belgium and Poland point to the difficulty caused to the defence by there being different appeal systems in the different Member States.

Netherlands and Poland are two Member States without a right to appeal. However, in the Netherlands it is possible – but rare and difficult - to bring legal proceedings on other grounds (the interest of the law, or proceedings against the decision of the prosecutor to surrender the requested person). And in Poland the decision which constitutes the basis for the EAW (order of detention or conviction) and the decision on surrender of the subject of the EAW can be appealed.

There is always the possibility to make a reference to the Court of Justice of the European Union.

*Good practices*

It is obviously a good practice to allow an appeal in both the executing and issuing states, which a number of Member States do. It is questionable whether the introduction of a need to obtain leave to appeal is a good practice, even if it reduces the number of appeals and the length of the surrender process.

*Recommendations*

- consideration should be given to standardising throughout the EU the right to appeal in both the executing and issuing states, and the circumstances in which it can be exercised; such a standard should permit:

    - a right of appeal in the issuing state from the moment when the requested person learns about the EAW or the detention decision

    - proper access to the file in both states

    - fairer deadlines which take account of the requested person's circumstances, with the authorities still treating the matter with a similar level of urgency to the urgency accorded to the issuance of the EAW; and

    - better access to national legislation on appeals in such cases (translated at least into English and French) on the European Commission's e-justice portal

    - reconsideration by the relevant authorities which falls short of a formal appeal

- training (as above), particularly on asking the Court of Justice of the European Union for a preliminary ruling

- dual representation (as above)

# 10. Variations in sending a translated European Arrest Warrant

Because the issuing state may not know in which Member State the subject will be found, the translation can arrive after the deadline (the deadline itself varies widely, although both the Commission and the Council are in favor of moves towards harmonization of the deadline). Different Member States accept different languages i.e. not only in their national language but, say, in English. Some of the less common languages may prove a difficulty (qualified translators, timing).

As mentioned in the brief introduction above, the Member States have varying criteria for the deadline by which the translated EAW must arrive and the languages in which it is accepted.

In the examples below, the deadlines for translated EAWs vary between 40 days and 48 hours:

- Austria - the timeframe is 40 days after the arrest. Due to the length of this period, the translated EAW arrives usually in time

- Croatia - the police will require from the issuing state translation within 48 hours of arrest. If the state attorney does not receive the translation within 48 hours from the arrest, the investigating judge can on his or her suggestion extend the detention of the arrested person by another 36 hours. If the issuing state does not deliver the translation within these limits, the arrested person shall be released. If the issuing state delivers the translated documentation after these deadlines, the police will again arrest the requested person

- Czech Republic - if the EAW is not delivered within 20 days after the arrest of the requested person, the requested person has to be released from custody

- Estonia - all incoming European arrest warrants must be sent to the Ministry of Justice within 3 working days after receiving information that the person in question has been provisionally arrested in Estonia. The arrested person must be released immediately if the EAW has not arrived in time

- Finland - the National Bureau of Investigation is responsible for the translation of the request into Finnish or Swedish. If the requested person is being detained pending extradition, the detention must be reviewed by a court at the latest within 96 hours from when the person has been taken into custody. Even though all the material may not be translated at this stage, they are normally translated very quickly. Since it is ultimately the responsibility of the National Bureau of Investigation to take care of the translation, this is not really an issue in Finland

- Lithuania - the deadline is 48 hours

- Slovakia - if the EAW is not delivered within 18 days after the arrest of the requested person, the requested person might be released. If the EAW is not delivered within 40 days, the requested person has to be released

- UK-England and Wales - the late arrival of translated EAWs was not a problem in England and Wales until the UK acceded to Schengen 2 in April 2015. Up until that point, EAWs were always translated into English from the national language of the issuing judicial authority before they

were certified by the designated authority (currently the National Crime Agency, NCA). Indeed, the National Crime Agency (and its predecessors) simply wouldn't certify a warrant that wasn't translated. However, since the UK has signed up to Schengen 2, the NCA can simply download the Form A which contains some (but not all) relevant information about the EAW in English and certify the warrant accordingly. As a consequence, there are increasing numbers of EAW cases at first instance where the only documents available to the court and the requested person is the EAW in the national language and a copy of the Form A. This has led to delays in proceedings at first instance whilst the translated copy is made available by the issuing judicial authority. At present, the delays are relatively minor as the majority of EAWs are still provided with a corresponding English translation.

Regarding languages, some Member States (France, Germany, Greece, Poland, Slovenia, for instance) accept the EAWs only in their national languages. Many others (Belgium, Croatia (in urgent cases), Cyprus, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands and Sweden) also accept English. Austria will accept EAWs in the languages of those other Member States which accept German EAWs in return, but then it may be in a language not understood by the requested person, and so the Austrian authorities translate it.

Mostly, the requested person is released if the translated EAW does not arrive in time, and re-arrested on its arrival, but Germany reports that a delay will never result in release from detention. Ireland reports that surrenders have been refused on the basis of poor translation and poor compliance with form.

Many Member States complain about the poor quality of the translations. In Belgium, the court can correct translations, provided that the defence is informed. In UK-Scotland, an EAW may be returned for clarification. UK-England and Wales reports that the quality of translations from new accession states, such as Poland and Lithuania, is generally good, but that from Spain, France and Italy tends to be poor.

*Good practices*

- Belgium – the ability of the court to rectify translations
- Estonia - a strict rule according to which an arrested person must be released immediately when the EAW is not sent within 3 working days is an effective guarantee against undue delays
- Finland and Greece – the EAWs are translated by official agencies in the executing state, which guarantees quality
- Various – the acceptance of English and other languages

*Recommendations*

- the defense should be granted the right to request that the EAW be re-translated in the executing state if there is a reasonable question over its accuracy

- to continue to develop and promote high standards for interpretation and translation (see previous TRAINAC report - http://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf)

- to harmonise the deadline for submission of the translated EAW

- to simplify the layout of the EAW (for example, with regard to sentencing options)

- to consider whether there should be a central EU agency for translation of EAWs into the language of the executing state

## 11. What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?

Some Member States (UK, Ireland) are known for detailed further requests, sometimes beyond the scope of the Framework Decision. Others make no enquiries at all, and may arrest the wrong person with the same name.

The role of the defense lawyer in relation to the request of additional information varies. Sometimes the requests mainly come from the defense:

- Belgium - the national lawyer plays here a very important role in asking, if necessary, the national competent judicial authority to request immediately from the issuing Member State all information which is possibly missing, unclear or unspecified, and which is relevant for the effective application of the national rules on executing an EAW

- Estonia - requests for additional information can be applied for by the defence, and sometimes such requests are granted. However, judges usually adopt a narrow approach to whether they consider additional information as relevant, and this comes down to the minimum information that needs to be contained in an EAW. As a general rule, further information is requested only when the defence files an application for it, judges almost never do this proactively

Sometimes the defence is hardly involved in the process:

- Finland - if there are additional requests, they are usually made before the defence becomes aware of the matter. They are not very common. A State Prosecutor who has dealt with a lot of EAWs says that there have been some cases in which the forms have not been filled out properly and in order to find out what the offence is, it has been necessary to make an additional request. Some countries have used old forms relating to *in absentia* decisions, and it has been necessary to make requests for the actual decisions

- Luxembourg - Luxembourg asks additional information when needed. Lawyers do not have the possibility to do much

As for the additional information sought, it covers a wide variety of factors:

- Cyprus - especially with regard to an EAW issued against a person convicted *in absentia*

- Denmark - a decision was postponed by the court as it was unclear whether or not there was a question of "*ne bis in idem*"

- France - typically these questions concern the facts, details about the offence, the statute of limitation, the identity of the requested person, and the evidence already collected by the foreign authorities

- Greece - the Greek authorities often ask for additional information before executing an EAW. The information mainly concerns issues like the place where the offence was allegedly

committed (in order to examine if the offence was committed on Greek territory), the time of the offence (relevant to the issue of the period of limitation), or the degree of involvement of the requested person. They often ask also for a copy of the relevant provision, which constitutes the legal basis of the accusation against the requested person. Regarding requests made of Greece, the requested information in recent times often concerns not only the EAW itself but also detention conditions in Greece, as well as matters related to judicial decisions "*in absentia*"

- Poland - they ask about different issues – mostly those associated with unknown legal matters or those regulated in a different way (e.g. cumulative sentences, issues related to the stages of criminal proceedings and the obligations of the person sought)

- Portugal - Portuguese courts usually ask for additional information in order to ascertain the whereabouts of the requested person (e. g. tax data; information regarding the requested person's criminal registration, voter registration, driver's license; name and address of the employer; last residence where he/she requested his/her identity card)

- UK-England and Wales - it is almost impossible to categories the requests made. Perhaps the most common type of requests are directed towards (i) the nature of the domestic offence(s); (ii) the sentence imposed (in conviction cases) or likely to be imposed (in accusation cases); (iii) the stage at which the domestic criminal proceedings have reached (if there is a suggestion on the face of the EAW that the person is requested for the purpose of questioning rather than trial); and (iv) the circumstances of *in absentia* convictions where there is a dispute as to whether the requested person had been notified of their trial. There are also requests made of certain jurisdictions where the Council of Europe CPT has expressed concern about the prison conditions in the issuing state, or there has been a pilot judgment by the Strasbourg Court. In particular, there have been serious concerns about the conditions in Greek, Italian, Romanian and Lithuanian prisons. Requests are made for assurances from the relevant authority in the territory of the requesting state that has responsibility for prisons to provide information as to which prison and in what conditions the requested person will be housed, either on remand or following conviction

Overall, several Member States report that requests for additional information from their authorities are rare (Croatia, Czech Republic, Finland, Lithuania, Slovenia). It is clear that UK and Ireland, on the other hand, are enthusiasts for making such requests, with Germany and France also mentioned. In Italy and the Netherlands, the court uses the procedure to remedy a defect in the EAW and so continue with its execution.

UK-Northern Ireland reports that it is often difficult to receive a response to the requests: delays in responding are common; some requests are simply ignored; it is difficult not to have the impression that it depends on whose desk the request falls upon; there is little consistency of approach. However, there is an interesting partial response to this from Poland: the answers from the courts are often incomplete, not because of malice from the courts, but from lack of understanding that the other court may not understand the basic assumptions of Polish criminal law and procedure.

#### *Good practices*

- Ireland - the existing practice of seeking the information is a good one

- UK-England and Wales - the experience of all practitioners is that additional information from the judicial authority in the requesting state is a considerable assistance to all parties and the court in a wide variety of circumstances. Indeed, further information is often required for the court to determine the issues that arise at the extradition hearing in many cases. It is good practice for: (i) a point of contact to be identified at the judicial authority by e-mail; (ii) requests for further information to be discussed between the parties before the preliminary hearing and approved by the court; (iii) the questions asked of the issuing judicial authority to be expressed clearly and succinctly.

*Recommendations*

- training for prosecutors, judges, lawyers and any others involved in the process of issuing and executing an EAW (as above)

- dual representation (as above), since it would help with seeking only relevant information and understanding the information given

- lawyers for the defence should be in copy of all correspondence between issuing and executing state when additional information is sought, and better access to the relevant files in both states would help make the procedure fairer and more efficient

- the introduction of a requirement to respond to requests for information made in line with the Framework decision within a permitted period, for example 21 days

- consideration should be given to more standardised information and documentation to be provided by the issuing state to the executing state when issuing an EAW

## 12. Compensation for unjustified detention

As usual, there are widely differing schemes and attitudes to compensating victims of unjustified detention through execution of an EAW.

There is no specific scheme for compensation for EAW victims anywhere, but there is a general compensation scheme everywhere, except in Ireland (only in an exceptional category of miscarriage of justice cases), Malta and the UK.

Many point out that, if the error arose out of an action in the issuing state, the claim for compensation should be addressed to the issuing state, even if the wrongful detention took place in the executing state. A claim would only arise in the executing state if it was the executing state which made its own unlawful decision.

The amounts of compensation vary widely. Many report that it is low (Belgium, Bulgaria, Estonia), and some that it is dependent on the person concerned being acquitted. Here are some of the figures quoted:

- Austria - between 20 and 50 EUR per day of detention
- Cyprus - the level of compensation is up to the discretion of the court subject to the criteria set out by the case law of the ECHR
- Estonia – about 30 EUR per day spent in detention
- Finland - the normal amount awarded for suffering is between 120-150 EUR per day spent in detention. In addition, loss of income and other direct expenses can be compensated for
- Germany - 25 EUR per day
- Greece - the amount granted can range between 8,80 to 29,35 EUR per day. The courts can recognise a higher amount of compensation if they consider it justified. In defining the amount of compensation, the financial and family situation of the applicant is taken into account
- Italy - the calculation is normally based on 235,82 EUR for each day of wrongful imprisonment. In the case of house arrest the figure of 177,91 EUR is applied
- Lithuania - the amounts of compensation possible without litigation against the Ministry of Justice are limited to 2900 EUR for pecuniary damages and 1500 EUR for non-pecuniary damages
- Netherlands – 105 EUR per day at the police station (usually the first three days of the surrender detention); 80 EUR per day in a pre-trial detention facility. If the issuing state has requested that the requested person should – in the interests of the investigation in the issuing state – be prohibited from receiving visits, using a telephone or watching television and using the internet, the amounts mentioned above are raised by 20 EUR for every day that this was the case
- Poland – approximately 25 EUR per day

*Good practices*

- Finland - the state usually pays compensation without unnecessary obstacles. Seeking compensation is quite simple, the State Treasury has specific forms for this, and it makes the decision usually in around one month; if the payment is made later, penal interest is also paid

- Lithuania - the victims of unjustified detention can ask for compensation from the Ministry of Justice without litigation

*Recommendations*

- consideration should be given to an EU-wide harmonisation of compensation to remove the great disparities in availability and amount of compensation for unjustified detention, including guidance on which state (executing or issuing) should pay in which circumstances; this EU-wide scheme should also cover the question of payment of compensation when the EAW was issued for a disproportionate reason (and so, for instance, the requested person was released from detention in the issuing state after questioning); and consideration should also be given as to whether there should be an EU fund for this purpose

- the executing state should also offer compensation in case of its unjustified detention

- in those countries where the amount of compensation is very low, it should be increased; where there is a fee for claiming the compensation, it should be removed; and those Member States not applying a compensation scheme at all should introduce one

- compensation should also be available if an EAW is withdrawn after detention

## 13. SIS alerts remaining active

Cases continue to be reported about subjects of an EAW being detained because a SIS alert remains active despite a Member State having already refused to execute an EAW request in respect of that person.

Many respondents report having come across this problem, and so a still-active SIS alert (after a Member State has refused to return a requested person) should not be considered as exceptional. The usual advice given is that the requested person should not leave the jurisdiction of the Member State which refused the surrender, because arrest could follow the crossing of a border.

The Czech Republic points out that the cancellation of the EAW must be undertaken by the issuing state, and not the executing state. Austria and Greece effectively reply by saying that just because an Austrian or Greek EAW has been refused in another state does not mean that Austria or Greece will withdraw the EAW. Finland says that the requested person would be able to appeal the underlying detention order if Finland were the issuing state. Luxembourg again highlights the importance of dual representation in such cases, because, through effective liaison between the two lawyers, it would be much easier for the requested person to understand the reason why the SIS alert is still active, and so try to have it removed.

UK-England and Wales summarises the position by saying that the experience of defence practitioners is almost universal – there is no mutual recognition of decisions across the EU, and therefore the fact that one Member State may have refused to extradite a requested person has no impact on the decision by another to certify an EAW.

*Good practices*

- Slovakia - there is scope for a lawyer to ask the issuing Slovak court to withdraw the EAW when it has been refused by another Member State

*Recommendations*

- dual representation (as above)

- consideration should be given to an EU-wide scheme to remove active SIS alerts once an executing state has refused to surrender a requested person; this would be equivalent to following the principle of *ne bis in idem* (so that a requested person does not face repeated arrests for the same circumstances), and would support the principles of mutual recognition and legal certainty. Consideration should therefore be given in particular to granting in the Framework Decision the right for a requested person to apply for a court ruling (either nationally or by application to the Court of Justice of the European Union) which would give binding effect across the EU to the initial refusal to surrender the requested person

- for as long as the recommendation above has not been implemented, and if the SIS alert is not to be removed, consideration should be given to including the information about the refusal in the executing state within the SIS alert, to assist the requested person in defending against enforcement of the EAW in another Member State

## 14. Multiple requests for EAW for the same person

This can cause various problems. For instance, if the various EAWs raise the same facts, then a conflict of jurisdiction may arise, as may consideration of the *ne bis in idem* principle. If the multiple requests come from several Member States, then Article 16 of the Framework Decision provides the criteria to be taken into account: '*due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order*'.

Most Member States have replicated the wording of Article 16 verbatim in their legislation and practice, including the possibility to consult Eurojust. There is not much experience of this provision.

- Italy - the Supreme Court has specified that when more EAWs are issued by different authorities from the same issuing state, this same state will have the responsibility to decide to which of the requesting judges the prisoner should be "given" after the surrender stage (Section. VI, n. 1795, 28 April 2008 – 5 May 2008, Romano)

- Netherlands - It is not uncommon that multiple EAWs relating to the same person are received from the same issuing state. Multiple EAWs for the same person but from different issuing states are quite rare. In such a case, it is up to the prosecutor to decide which EAW should be given preferential treatment. The court can only assess whether the prosecution could have reasonably come to its assessment in this regard. In practice the prosecution – sanctioned by the court – often follows the preference of the respective issuing states or, absent an agreement by the issuing states, the advice of Eurojust. If the EAWs also concern the same facts, preference is given to the issuing state with the most comprehensive prosecution (e.g. because it will also prosecute the wanted person for more and other offences)

- Poland - when Polish courts issue more than one EAW for the same person, but for a different act, courts from executing states, mainly from the UK and Ireland, inquire about the circumstances of each case - mainly why the matter was subjected to the EAW procedure at that stage

- UK-England and Wales - only one reported case has considered the application of Article 16 (finding it did not apply where the multiple EAWs were all issued by the same state)

- UK-Scotland - the principles of Article 16 have been deployed so that priority is given to the jurisdiction where the accused has the stronger family ties. In some cases, agreement has been reached between jurisdictions through the offices of Eurojust. There have also been cases of several EAW's originating from different courts in the same state. Care must be taken by the courts in ensuring that extradition is granted for specific charges/warrants and not simply on a carte blanche basis. There have also been occasions where a state has issued a fresh EAW for the same offence following a refusal, on the basis of material change of circumstances. The courts have been very slow to entertain such attempts

*Recommendations*

- consideration should be given to a mandatory EU-wide guideline on multiple EAWs
- Eurojust's opinions, when sought, should not be confidential to the court and/or prosecutor, since that is not compatible with the right of defence
- there should be better access to the case files in executing and issuing states, to help the defence
- consideration should be given to amending the Framework Decision to allow for the issue of only one EAW to cover a number of offences, with all necessary documentation

## 15. Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold

Accessory surrender enables surrender for one or several offences punishable by a lower sanction than the thresholds set out in Art. 2 para 1 of the Framework Decision when they are accessory to another offence which does comply with one of the set thresholds. This possibility is explicitly foreseen in the Council of Europe's 1957 extradition Convention. Unfortunately, due to an oversight, no similar clause was inserted in the Framework Decision. The situation is problematic for both kinds of EAWs, i.e. for prosecution and enforcement. As a result, there are widely varying practices in the Member States – no accessory surrender allowed; courts to decide; or, accessory surrender explicitly catered for in legislation.

The Member States are divided on whether they accept accessory surrender.

These Member States accept accessory surrender - Austria, Belgium, Czech Republic, Denmark, Finland, Ireland (with consent), Latvia, Lithuania, Slovakia, Spain, Sweden (prosecution EAW), UK-Northern Ireland.

These Member States do not accept accessory surrender – Cyprus, Croatia, Estonia, Netherlands (prosecution EAW), Poland, Slovenia (probably), UK-England and Wales (but see below) and UK-Scotland

There is no provision for accessory surrender in France, and the position is not clear in Luxembourg and Malta.

Below is a round-up of comments from the Member States. Of particular interest is that from Sweden, which indicates that there has recently been a preliminary reference to the Court of Justice of the European Union on a question related to accessory surrender:

### Executing state

- Germany - Germany would additionally need to apply the 1957 extradition convention in these cases

- Ireland - such offences are severed from the Request and Order, unless there is consent otherwise (which does arise)

- Netherlands – in the case of an execution EAW, the fact that surrender for one offence has to be refused for not complying with the threshold does not mean that the surrender as a whole should be refused, as long as the prison sentence in question was also imposed for offences that do comply with the threshold. The court is of the view that in such cases it is not competent to assess which part of the sentence was imposed for which offence. It is up the issuing state to assess this and limit execution of the sentence to the part resulting from offences for which the surrender was allowed. There has been at least one case where – had it not been for the

intervention of the requested person's lawyer in the issuing state – the requested person would have served the prison sentence in full

- Sweden - an EAW may be executed if the total term of imprisonment for all of the offences exceeds four months. If the EAW refers to several different offences, and if surrender is not possible for all of these, due to e. g. the principle of dual criminality, an inquiry shall be made to clarify whether the law of the issuing state enables a separation of the penalty imposed for the offences for which surrender may not be executed. If this can be done, the EAW may be executed for the remaining offences. If such a separation cannot be done, the legal situation is unclear. The Supreme Court has just recently made a reference to the ECJ on the matter (*Högsta domstolen* decision of the 8 March 2016, case Ö 227-16)

- UK-England Wales - no provision is made in the Extradition Act 2003 for accessory surrender. The difficulty arises in conviction cases where an individual has received an "aggregate sentence" for multiple offences, one or more of which is not an extradition offence. The English courts have taken a pragmatic approach, and held that this does not pose a problem for extradition: the expectation appears to be that the requesting state will comply with their specialty obligations and not require the individual to serve a sentence for any offence for which they have not been extradited. It is questionable whether this is a realistic approach

### Issuing state

- Cyprus - an EAW will not be issued for any criminal offence or sentence which falls below the threshold stipulated

- Denmark - it is required by Danish law that the crime can result in an imprisonment up to 1½ years. Denmark will not issue EAW for offences with lower sanctions

- Finland - the Office of the Prosecutor General has drafted a handbook, where it states regarding accessory surrender that as a general rule the offences included in the EAW shall fulfil the maximum penalty requirements. Also, even though a combined punishment for offences under the threshold can, when issuing a combined sentence for them, be above one year of imprisonment, they cannot by themselves form the basis of an EAW. Estonia, with whom Finland has a lot of EAW cases, has announced that it will not surrender for accessory offences, which makes it unnecessary to include these in the EAW

- Lithuania - the Office of General Prosecutor will issue an EAW for several offences as long as at least one of the offences complies with the threshold for the EAW

- UK-England and Wales – no provision for treating offences below the threshold levels of seriousness as extradition offences

#### *Good practices*

- Estonia – the strict rule by which surrender is only allowed when a sanction meets the threshold of Article 2(1) of the Framework Decision works well in practice

*Recommendations*

- research and comment from other Member States on aggregate sentences and specialty should be encouraged to see how many individuals are serving sentences for which they were not extradited, so that steps could be taken to deal with the problem

- based on the above, consideration should be given to a mandatory guideline or regulation on the treatment of accessory surrender, to harmonies practices among the Member States

## 16. General comments

- Estonia - whereas the Framework Decision in general provides strict time limits for EAW proceedings, one stage of the proceedings has a serious loophole in this respect. Article 23(2) provides for a strict 10 day limit for a person to be surrendered. However, Articles 23(3) and 23(4) provide for two fairly generally worded exceptions, which can be used by the authorities in such a way that a person held in detention under an EAW can remain in the executing state essentially indefinitely. There are no guarantees for the person concerned if those articles are applied -- he/she may not even be informed about what the Member States have agreed under such circumstances, there is no requirement for the authorities to consult the person, there is no possibility to challenge decisions. There is at least one (pending) case in Estonia where this has caused major problems

- Greece - in the case of an EAW for the purpose of prosecution, the requested person must often spend a long time away from the country of his or her nationality (or permanent residence) if the issuing state imposes pre-trial detention. It is therefore recommended that, in case of an imposition of pre-trial detention by the issuing state after the execution of an EAW, the accused person has the option to be held in the country of nationality (or permanent residence), particularly if it is expected that the detention will last over a certain period of time. The Regional High Court of Athens has recently refused (decision No. 2/2016) to execute an EAW, including on the ground that the requested person, a Greek national, should reckon on a long period of pre-trial detention abroad

- Netherlands - we would like to draw attention to the following three issues in Dutch practice in executing an EAW:

    - a problem often occurring in practice is that the requested person has already served part of the prison sentence in pre-trial detention in the issuing state. It is not uncommon that the remaining sentence to be served is (far) below the four months minimum as stipulated in the EAW Framework Decision. The Amsterdam District Court takes the view that what matters is not the remaining sentence to be served but the sentence that was imposed (ECLI:NL:RBAMS:2007:BC9797). In practice this means that a person could be surrendered even though (s)he only has to serve one more day of the sentence. We have doubts that this approach is in line with the Framework Decision and/or the proportionality principle

    - a similar problem concerns the so-called *Gesamtstrafe* approach of the Amsterdam District Court (ADC). The court is of the view that if the court in the issuing state has imposed a separate prison sentence for every single offence in the judgement what matters is not the duration of the individual prison sentences but the total sum. To some extent this approach is understandable if it concerns the same judgement. The ADC also applies the *Gesamtstrafe* theory, however, in cases where the sentences were imposed by totally unrelated judgements, or in cases where the law of the issuing state allows for a procedure where – for execution purposes – multiple unrelated judgements are

merged and a new sentence (often lower than the totality of the individual sentences) is imposed (see, for example, ECLI:NL:RBAMS:2007:BC9797)

- as to the application of the refusal ground concerning *in absentia* judgements, it is consistent case law of the Amsterdam District Court that this ground does not apply to judgements in the following procedures (see ECLI:NL:RBAMS:2013:9883):

  o where multiple convictions are merged (see above)
  o where it is decided that a suspended prison sentence should be executed
  o where it is decided that a decision to grant early release should be revoked
  o where the court at hand only decides on questions of law

We have doubts that this approach is in line with the Framework Decision and/or the EU Charter on Fundamental Rights.

- finally, in domestic criminal cases, Dutch law allows for the possibility to prohibit a suspect in pre-trial detention from receiving visits, using a telephone or watching television and using the internet (*beperkingen*). The EAW Framework Decision does not provide for the possibility to make such a request. The Amsterdam District Court, however, has ruled that imposing these restrictive measures is also possible in EAW cases if the issuing state has explicitly requested such measures in the letter accompanying the EAW (see, for example, ECLI:NL:RBAMS:2009:BI4378; and ECLI:NL:RBAMS:2014:3389). We have our doubts about this approach, and believe that for such an intrusive measure to be in line with the ECHR and the EU Charter on Fundamental Rights, there should be an explicit legal basis in the Framework Decision

- Spain - we believe article 38 of Law 23/2014 of 20 November represents a major achievement. In this article, the Spanish judge who issues the EAW will be able to request the executing state to take the requested person's statement through a request of mutual assistance under the Convention on Mutual Assistance in Criminal Matters between Member States of the EU, of 29 May 2000. It should be compulsory to use the existing cooperation instruments where relevant and possible, since they are less invasive and less damaging than the EAW mechanism

# Annex 1 – List of experts

| | |
|---|---|
| Austria | Rupert Manhart |
| Belgium | François Koning |
| Bulgaria | Dinko Kanchev |
| Croatia | Lovro Kovačić |
| Cyprus | Michalis Pikis |
| Czech Republic | Miroslav Krutina |
| Denmark | Jakob Arrevad |
| Estonia | Jaanus Tehver |
| Finland | Jussi Sarvikivi |
| France | Vincent Asselineau |
| Germany | Heiko Ahlbrecht |
| Greece | Dimitris Voulgaris |
| Hungary | Balazs Gyalog |
| Ireland | James MacGuill |
| Italy | Roberto Giovene di Girasole |
| Latvia | Janis Rozenbergs |
| Lithuania | Laurynas Bieksa |
| Luxembourg | François Moyse |
| Malta | Stefano Filletti |
| Netherlands | Han Jahae |
| Poland | Dominika Stępińska Duch |
| Portugal | Rogério Alves |
| Slovenia | Blaž Kovačič Mlinar |
| Slovak Republic | Ondrej Laciak |
| Spain | Salvador Guerrero Palomares |
| Sweden | Jonas Tamm |
| UK-England & Wales | Ben Brandon |
| UK-Northern Ireland | Ruairi Gillen |
| UK-Scotland | Murdo MacLeod |

# Annex 2 – EAW-Rights questionnaire

## Questionnaire preamble

### Instructions

(1) This questionnaire needs to be returned to Jonathan Goldsmith (jpgoldsmith@hotmail.com) by 16 May 2016. Please respect the time limit, because a report needs to be written based on all questionnaires within a strict time limit.

(2) Please answer all questions, including sub-questions which sometimes follow a main question. If you have no information in respect of a particular question, please write 'No information'.

(3) The questions have been divided into practices in the executing and issuing state (in that order, even if the interest in the question may be in the reverse order). Respondents will also have to bear in mind the two different kinds of EAW, for purposes of prosecution and enforcement, and answer in relation to either or both as appropriate.

(4) An important part of the eventual report on the implementation of the Framework Decision will consist of good practices and recommendations for improvements to the Framework Decision itself and to its implementation from the point of view of the defence. If, for any question, you have examples of good practice or recommendations for improvement, please insert them. Good practices include initiatives which go in a helpful direction beyond the requirements of the Framework Decision itself, or which implement provisions which are not binding in the Framework decision (for instance, relating to quality).

(5) Another important part of the eventual report will be its geographical coverage in your Member State. Your answers are expected to cover your whole jurisdiction. To assist you, it may be helpful for you to submit the questionnaire (or your draft answers) to others, in particular relevant committees of your bar, or to other competent authorities, such as the police, judges and prosecutors.

(6) For practical reasons, this questionnaire focuses on certain themes in the Framework Decision, rather than on each article. If you have useful information or good practices about a part of the Framework Decision regarding which there is no question, please put your information in the 'General comments' section at the end.

(7) The English text of the Framework Decision is attached. If you want to read the Framework Decision in your own language, please go to the following link for all language versions: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32002F0584.

This project is financed with the support of the

# Topics and questions

## 1. Proportionality

The question of the different usage of the EAW by different Member States – some for trivial offences and so used very often, others going in the opposite direction - has been much discussed, along with solutions (obligatory proportionality test, double proportionality test, raising the threshold of usage, training of judges). This varied usage can have an impact on the budgets of both executing and issuing states, for instance via the resources of the investigating authority or the support given in legal aid.

| | |
|---|---|
| *a)* | *What is the experience of defence practitioners in your Member State of the appropriate use of executing an EAW when your state is the executing state? For instance, can the factors mentioned in the Council Handbook*[34] *be taken into account - the seriousness of the offence, the possibility of the suspect being detained, and the likely penalty imposed if the person sought is found guilty of the alleged offence, along with ensuring the effective protection of the public and the interests of the victims of the offence?* |
| *b)* | *What is the experience of defence practitioners in your Member State of appropriate use of the EAW when your state is the issuing state (taking into account the same kind of factors as mentioned in the question above)?* |
| *c)* | *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| *d)* | *Do you have any solutions to the problems defence practitioners may have encountered, including in relation to reducing costs incurred in either the executing or issuing state?* |

[34] Council, Revised version of the European handbook on how to issue a EAW, Doc. No 17195/1/10, 17 Dec. 2010 (http://register.consilium.europa.eu/doc/srv?l=en&f=ST%2017195%202010%20REV%201)

## 2. Is the case trial-ready?

This is tied to the issue of proportionality above. The criminal procedures of the Member States vary widely, and so EAWs are requested at different times, often at times which can seem to some Member States, in accordance with their own system, as a fishing expedition to find evidence, rather than a true extradition request within the terms of the Framework Decision. In addition, the use of other mutual recognition instruments apart from the EAW – for instance, the instruments on the European Investigation Order and European Probation Order – should be considered under this heading, since they may fulfil the needs for which an EAW may otherwise be inappropriately issued. Again, this can have an impact on the budgets of the executing and issuing state.

| |
|---|
| a) *Since Article 1 para 1 of the Framework Decision says that an EAW should be issued 'for the purposes of conducting a criminal prosecution', at what stage in the proceedings is it considered appropriate to issue an EAW in your Member State?* |
| b) *What is the experience of defence practitioners in your Member State of appropriate times in the stages of criminal proceedings for executing an EAW when your state is the executing state? For instance, are EAWs executed for purposes other than strictly conducting a criminal prosecution, such as for hearing a witness or compelling someone to attend court or appear before a magistrate?* |
| c) *What is the experience of defence practitioners in your Member State of appropriate times in the stages of criminal proceedings for issuing the EAW when your state is the issuing state (taking into account the same kind of factors as mentioned in the question above)?* |
| d) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| e) *Do you have any solutions to the problems defense practitioners may have encountered, including in relation to reducing costs incurred in either the executing or issuing state?* |

## 3. Detention – lengths

This is another problem arising from the variety of practices in the Member States – different treatment of pre-trial detention, for instance, and different conditions of detention (detention conditions is the subject of a separate question below). Delays in communication can cause the subject of an EAW to be detained for months. This is clearly tied to the questions of proportionality and trial-readiness already mentioned, and some solutions may be common to the three. There are now alternatives to pre-trial detention, to be found in the Council Framework Decision 2009/829/JHA of 23 October 2009 on supervision measures as an alternative to pre-trial detention.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State of matters arising out of detention in either the executing or issuing state – for instance, the use of pre-trial detention, and whether detention served in the executing state is deducted from detention due to be served in the issuing state - when your state is the executing state of an EAW?* |
| b) *What is the experience of defence practitioners in your Member State of matters arising out of detention in either the executing or issuing state (taking into account the same kind of factors as mentioned in the question above) when your state is the issuing state?* |
| c) *What is the experience of defence practitioners in your Member State regarding the use of alternatives to pre-trial detention (for instance, use of the European Supervision Order) when your state is the executing state?* |
| d) *What is the experience of defence practitioners in your Member State regarding the use of alternatives to pre-trial detention (for instance, use of the European Supervision Order) when your state is the issuing state?* |
| e) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| f) *Do you have any solutions to the problems defence practitioners may have encountered?* |

## 4. Detention – conditions

Following on from the above, there are also problems arising out of complaints about detention conditions, particularly in the issuing state. This ties in closely to the point made below about the EAW's relationship with fundamental rights.

| | |
|---|---|
| a) | *What is the experience of defence practitioners in your Member State of matters arising out of detention conditions in either the executing or issuing state when your state is the executing state of an EAW?* |
| b) | *What is the experience of defence practitioners in your Member State of matters arising out of detention conditions in either the executing or issuing state when your state is the issuing state?* |
| c) | *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| d) | *Do you have any solutions to the problems defence practitioners may have encountered?* |

## 5. Relationship with existing fundamental rights

The question of the relationship between the EAW and existing fundamental rights is an old one, and can be divided into two parts:

i. the absence of express grounds for refusal based on fundamental rights in the Framework Decision. The questions raised by (1) – (4) above might be seen as touching on fundamental rights, for instance the right not to be subject to torture or degrading conditions in detention. (There are several preliminary references to the Court of Justice of the European Union – for instance, C 404/15 and C 659/15 – which relate to this question, and which therefore should be monitored during the project.)

| |
|---|
| a) *Has your Member State enabled any grounds for refusing to execute an EAW on grounds of breach of fundamental rights? If so, what are they? How are they satisfied?* |
| b) *What is the experience of defence practitioners in your Member State of the absence of express grounds for refusal based on fundamental rights for executing an EAW in either the executing or issuing state when your state is the executing state?* |
| c) *What is the experience of defence practitioners in your Member State of the absence of express grounds for refusal based on fundamental rights in either the executing or issuing state when your state is the issuing state?* |
| d) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| e) *Do you have any solutions to the problems defence practitioners may have encountered?* |

*

ii. the question of whether, particularly as a result of the three minimum procedural safeguard directives now passed – the right to interpretation and translation, the right to information, and the right of access to a lawyer[35] (including especially the aspect of dual representation) - the balance between prosecution and defence rights in the EAW has become fairer to the defence.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State about the impact of the three minimum procedural safeguard directives in terms of creating more balance between the prosecution and the defence when your state is the executing state?* |
| b) *What is the experience of defence practitioners in your Member State about the impact of the three minimum procedural safeguard directives in terms of creating more balance between the prosecution and the defence when your state is the issuing state?* |
| c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| d) *Do you have any solutions to the problems defence practitioners may have encountered?* |

[35] • Directive 2010/64 on the right to interpretation and translation – http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF
• Directive 2012/13 on the right to information – http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF
• Directive 2013/48 on the right of access to a lawyer – http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:EN:PDF

## 6. Dual representation

This is now guaranteed by the directive on right of access to a lawyer (2013/48/EU). It is obviously of great assistance to the defence lawyer in the executing state if there can be contact with a defence lawyer in the issuing state, for instance for the purpose of obtaining more information from the investigative authorities or better understanding of the legal background. There are clearly issues related to resources, specifically legal aid, and interpretation and translation, which need to be further examined, including a general reflection on how the new provision is working in practice.

| |
|---|
| *a) What is the experience of defence practitioners in your Member State about the benefits and problems of dual representation of the subject of the EAW in both executing and issuing states when your state is the executing state?* |
| *b) What is the experience of defence practitioners in your Member State about the benefits and problems of dual representation of the subject of the EAW in both executing and issuing states when your state is the issuing state?* |
| *c) What is the experience of defence practitioners in your Member State about the availability of legal aid to the subject of an EAW when your state is the executing state?* |
| *d) What is the experience of defence practitioners in your Member State about the availability of legal aid to the subject of an EAW when your state is the issuing state?* |
| *e) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| *f) Do you have any solutions to the problems defence practitioners may have encountered?* |

## 7. Lawyer's criminal law experience

This is a very sensitive topic for lawyers. Because of the different legal systems, there are various methods for choosing lawyers for EAW cases. In some Member States, it might be a requirement of the legal aid system that the selected lawyer meets certain criteria of training and experience; in others, the next lawyer on a rota might be allocated by a court regardless of experience. This may be a topic worth examining further, with possible future recommendations on training, for instance.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State about the methods of selecting a suitable defence lawyer (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* |
| b) *What is the experience of defence practitioners in your Member State about the methods of selecting a suitable defence lawyer (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* |
| c) *Does the subject of an EAW who is granted legal aid in your Member State have a choice of lawyer if your Member State is the executing state?* |
| d) *Does the subject of an EAW who is granted legal aid in your Member State have a choice of lawyer if your Member State is the issuing state?* |
| e) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| f) *Do you have any solutions to the problems defence practitioners may have encountered?* |

## 8. Rate of lawyer remuneration

This is tied to the issue above. The level of remuneration for lawyers undertaking criminal legal aid cases varies widely. It can be a great disincentive to good quality lawyers, who can earn better fees elsewhere, to devote themselves to this necessary work, which in turn undermines the quality of the criminal justice system as a whole.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State about the impact of the level of remuneration for criminal legal aid cases (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* |
| b) *What is the experience of defence practitioners in your Member State about the impact of the level of remuneration for criminal legal aid cases (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* |
| c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| d) *Do you have any solutions to the problems defence practitioners may have encountered?* |

## 9. Right of appeal against the EAW decision

This again varies widely in the Member States, depending on their legal systems, and the views of defence lawyers on problems and solutions would be helpful.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State about the impact of the varying scope of rights of appeal against the EAW (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* |
| b) *What is the experience of defence practitioners in your Member State about the impact of the varying scope of rights of appeal against the EAW (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* |
| c) *Is there a possibility to make a reference to the Court of Justice of the European Union regarding a question which has arisen during the execution of an EAW in your Member State?* |
| d) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| e) *Do you have any solutions to the problems defence practitioners may have encountered?* |

## 10.Variations in sending a translated European Arrest Warrant

Because the issuing state may not know in which Member State the subject will be found, the translation can arrive after the deadline (the deadline itself varies widely, although both the Commission and the Council are in favour of moves towards harmonisation of the deadline). Different Member States accept different languages i.e. not only in their national language but, say, in English. Some of the less common languages may prove a difficulty (qualified translators, timing). The experience of the defence, particularly in countries with less common languages, will be useful.

| |
|---|
| *a) What is the experience of defence practitioners in your Member State about the impact of the varying deadlines for sending a translated EAW when your state is the executing state?* |
| *b) What is the experience of defence practitioners in your Member State about other issues relating to translation – for instance, quality, the acceptance of languages other than your national language - when your state is the executing state?* |
| *c) Are there any good practices on this matter in your Member State?* |
| *d) Do you have any solutions to the problems defence practitioners may have encountered?* |

## 11. What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?

Some Member States (UK, Ireland) are known for detailed further requests, sometimes beyond the scope of the Framework Decision. Others make no enquiries at all, and arrest the wrong person with the same name. The perspective of the defence, particularly in relation to solutions, would be helpful.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State about the impact (in both the executing and issuing state, if there is dual representation) of additional information requested by the executing authority when your state is the executing state?* |
| b) *What is the experience of defence practitioners in your Member State about the impact (in both the executing and issuing state, if there is dual representation) of additional information requested by the executing authority when your state is the issuing state?* |
| c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| d) *Do you have any solutions to the problems defence practitioners may have encountered?* |

## 12.Compensation for unjustified detention

As usual, there are widely differing schemes and attitudes to compensating victims of unjustified detention through execution of an EAW.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State about the impact of a compensation scheme for unjustified detention (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* |
| b) *What is the experience of defence practitioners in your Member State about the impact of a compensation scheme for unjustified detention (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* |
| c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| d) *Do you have any solutions to the problems defence practitioners may have encountered?* |

## 13.SIS alerts remaining active

Cases continue to be reported about subjects of an EAW being detained because a SIS alert remains active despite a Member State having already refused to execute an EAW request in respect of that person.

| |
|---|
| a) *What is the experience of defence practitioners in your Member State about the impact of an active SIS alert on a client where a Member State has already refused to execute an EAW request in respect of that person (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* |
| *b) What is the experience of defence practitioners in your Member State about the impact of an active SIS alert on a client where a Member State has already refused to execute an EAW request in respect of that person (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* |
| *c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| *d) Do you have any solutions to the problems defence practitioners may have encountered?* |

## 14. Multiple requests for EAW for the same person

This can cause various problems. For instance, if the various EAWs raise the same facts, then a conflict of jurisdiction may arise, as may consideration of the *ne bis in idem* principle. If the multiple requests come from several Member States, then Article 16 of the Framework Decision provides the criteria to be taken into account: '*due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order*'.

| |
|---|
| *a) What is the experience of defence practitioners in your Member State about the treatment of multiple requests for EAW for the same person (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* |
| *b) What is the experience of defence practitioners in your Member State about the treatment of multiple requests for EAW for the same person (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* |
| *c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| *d) Do you have any solutions to the problems defence practitioners may have encountered?* |

## 15. Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold

Accessory surrender enables surrender for one or several offences punishable by a lower sanction than the thresholds set out in Art. 2 para 1 of the Framework Decision when they are accessory to another offence which does comply with one of the set thresholds. This possibility is explicitly foreseen in the Council of Europe's 1957 extradition Convention. Unfortunately, due to an oversight, no similar clause was inserted in the Framework Decision. The situation is problematic for both kinds of EAWs, i.e. for prosecution and enforcement. As a result, there are widely varying practices in the Member States – no accessory surrender allowed; courts to decide; or, accessory surrender explicitly catered for in legislation.

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|---|
| *a) What is the experience of defence practitioners in your Member State about the treatment of accessory surrender through an EAW (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* |
| *b) What is the experience of defence practitioners in your Member State about the treatment of accessory surrender through an EAW (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* |
| *c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* |
| *d) Do you have any solutions to the problems defence practitioners may have encountered?* |

## 16.General comments

This questionnaire has concentrated on certain themes relating to the Framework Decision which were believed to be particularly important for the implementation of this project. If you have comments on other aspects of the Framework Decision to which you would like to draw attention, please put them here.

# Annex 3 – Answers to the questionnaire

<table>
<tr><td colspan="2"><u>Question 1 - Proportionality</u><br>a) What is the experience of defence practitioners in your Member State of the appropriate use of executing an EAW when your state is the executing state? For instance, can the factors mentioned in the Council Handbook be taken into account - the seriousness of the offence, the possibility of the suspect being detained, and the likely penalty imposed if the person sought is found guilty of the alleged offence, along with ensuring the effective protection of the public and the interests of the victims of the offence?</td></tr>
<tr><td>Austria</td><td>Austria as executing state may assess an EAW issued by another Member State only to a very limited extent. Only if the person claims that the EAW violates basic principles laid down in Article 6 TEU (Charter of Fundamental Rights and European Convention of Human Rights). Therefore, a proportionality test is generally not possible, there is no legal basis to refuse the execution on the basis of proportionality.<br><br>Austria may not refuse to surrender a suspect, but it is possible not to take the person into custody (§ 18 (2) EU-JZG, § 29 ARHG). The same principles as for national pre-trial detention apply also for detention for surrender. If the EAW concerns a rather minor crime, the surrender proceedings are carried out without detaining the suspect.</td></tr>
<tr><td>Belgium</td><td>The Belgian law of 19 December 2003 on the EAW contains a relevant factor of proportionality since it states (art. 3) that an EAW may only be issued by an other Member State for :<br><br>- criminal offences whom according its national law are punishable with a penalty of deprivation of liberty amounting as a maximum at least 12 month (in other words, if the legal maximum penalty is under 12 months, Belgian will refuses to execute the EAW),<br><br>- the execution in the issuing State of a definitive penalty of deprivation of liberty amounting at least 4 month (in other words for a definitive penalty of less then 4 months, Belgian will refuse to execute the EAW.<br><br>Moreover article 5, paragraph 1, of the said Belgian law of 19 December 2003 on the EAW states that : “The execution may be refused if the fact at the ground of the issued EAW does not constitute a criminal offence in the light of the Belgian law.”<br><br>This so called “double incrimination factor” is however not applicable to 32 types of criminal offences as described under art. 2.2. of the Framework Decision of the Council of 13 June 2002 on the EAW, for whom the Belgian authorities have thus not to verify if this “double incrimination” condition is fulfilled.<br><br>Exception made of the abovementioned rules, no other proportionality factors are retained in Belgium to decide upon the execution of an EAW issued by an other Member State.</td></tr>
<tr><td>Bulgaria</td><td>The experience of defence practitioners in my country reflects a situation where no proportionality tests whatsoever are implemented by the courts in the EAW procedures when Bulgaria is the executing state. This could be explained by the fact that the Bulgarian Extradition and European Arrest Warrant Act (EEAWA) contains no rules providing for an assessment of proportionality when it is to be decided whether to surrender a given person or not. This peculiarity of EEAWA cannot be qualified as a “gap”</td></tr>
</table>

| | |
|---|---|
| | in law since the Framework Decision (FD) does not contain a strict requirement to assess proportionality and EEAWA is an almost verbatim reproduction of the requirements of the FD. The only factors to be considered in these cases are: the minimum threshold of punishment or detention and the grounds of non-execution of the EAW as provided for by the FD and EEAWA. Because of this situation, I myself, as well as other defence lawyers with whom I have discussed the matter, cannot say that we are aware of EAW cases where the courts have taken into account the factors mentioned in the Council Handbook (CH) - if the threshold of usage is covered and the grounds of non-execution are absent, any EAW will be executed by the courts in my country. For the same reasons we are neither aware of cases where defence lawyers have made objections based on proportionality. |
| **Croatia** | Other than those listed in Article 10 of Act on Judicial cooperation in criminal matters with the Member States of the European Union (Offical Gazette 91/10, 81/13, 124/13, 26/15) - participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trade in weapons, ammunitions and explosives, corruption etc., comepetent court shall execute European arrest warrant for offences if in issuing state they are punishable on the basis of domestic law by a custodial sentence for a maximum period of at least one year, or where the final sentence has been passed for a custodial sentence of at least four month provided that this act contains the essential elements of the offense also under domestic law, irrespective of the legal description and legal qualification of punishable act mentioned in the received warrant. No other factors mentioned in the Council Handbook have been taken into account. |
| **Cyprus** | The said factors cannot be taken into consideration for the following reasons: (1) the proportionality check referred to in the Council Handbook relates only to the issuing state of an EAW and not to the executing state. (2) They are not mentioned either in the Council Framework Decision 2002/583/JHA, or in the Cypriot transposing law (Law 133(I)/2004). When Cyprus is the executing state the only legitimate grounds for executing or not executing an EAW are those set out in the Council Framework Decision (articles 2, 3 and 4), transposed in articles 12, 13, 14 of Law 133(I)/2004. Cyprus case law follows the decision of the ECJ (Grand Chamber) in the case of Ciprian Vasile Radu – Case C---396/11 (see decision of the Supreme Court of Cyprus In Re Hadwen James, Civil Appeal No 184/2014, dated 17.07.2014). Moreover the execution of an EAW can be refused if any of the grounds in paragraphs 10, 12, 13 of the preamble of the Council Framework Decision apply (see decision of Supreme Court of Cyprus in the case of Michaelides v The Attorney---General, Civil Appeal No 221/13, dated 02.09.2013). |
| **Czech Republic** | When the Czech Republic (furthermore referred to only as “CZ”) is executing the EAWs, the above-mentioned factors are not considered as the respective implementing legislation does not presupposes so. Only fulfillment of prerequisites for conducting the EAW proceedings and grounds of non-execution are checked, the requested persons are being kept in custody. The Czech courts in my experience formally follow this procedure.<br>I have experienced cases when the requested person was detained on the basis of EAW in CZ for weeks, surrendered to another Member State, immediately released there and later finally sentenced only to a conditional sentence. |
| **Denmark** | The seriousness of the offence, the possibility of the suspect being detained, and the likely penalty imposed if the person sought if found guilty of the alleged offence, is a part of the Danish implementation. Ensuring the effective protection of the public and the interests of the victims of the offence are more indirectly imposed as the overall conditions.<br>The Council Handbook is explicit used by Supreme Court |
| **Estonia** | Proportionality is almost never among the issues that the authorities take into consideration when executing an EAW. It is generally believed that raising the argument of proportionality effectively means |

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| | putting the legality of the EAW is question, and that is off-limits due to principle of mutual recognition and trust. |
| **Finland** | In practice no. In Section 5, Paragraph 2 of the Act on Extradition on the Basis of an Offence Between Finland and Other Member States of the European Union (EU Extradition Act) there is, however, stated that "A request for extradition shall also be refused if the extradition, in view of the age, state of health or other personal circumstances or special circumstances of the person in question would be unreasonable on humanitarian grounds and this unreasonableness cannot be avoided by postponing execution on the basis of section 47" But this again refers to the personal circumstances of the person sought to be extradited, not an actual proportionality test relating to the offence. |
| **France** | There is no case where defense practitioners have to intervene in inappropriate matter. There is a filter organized by the French authorities (prosecutor), which refuses by advance to execute non-serious or disproportional EAW. |
| **Germany** | Yes they can but not in a legally binding way. The ordre public under sec. 73 of the german ACT ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS (AICCM) is the only and last barrier: "Limitations on Assistance (Ordre Public) Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system. Requests under Parts VIII, IX and X shall not be granted if compliance would violate the principles in Article 6 of the Treaty on the European Union." |
| **Greece** | In principle, the Greek authorities do not consider the proportionality principle (and respectively the factors mentioned in the Council Handbook) as a condition for the execution of an EAW.<br><br>A very few exceptions can be noticed in some very recent decisions. In these cases the Higher Regional Court of Athens (Efeteio Athinon) refused the execution of an EAW on the basis of the proportionality principle, taking into consideration factors like the seriousness of the offence, the fact that the Greek law did not allow a pre-trial detention for the alleged offences, as well as the fact that the issuing State had treated the suspect at a previous stage in a manner that violated the fair trial principle (Decisions No. 1/2016, 2/2016, 4/2016 and 5/2016).<br><br>It is still not clear if these recent decisions present just an exception or can be interpreted as a turnaround in the way that the Greek authorities consider the application of the proportionality principle in the EAW-procedure. |
| **Hungary** | The above factors are all taken into account. The ECHR is taken into account all procedures as well. |
| **Ireland** | The Irish Courts are extremely frustrated at being asked to make Orders in cases where they appear wholly disproportionate. However, under our existing law and practice, these Orders cannot be challenged on those grounds alone.<br><br>Defence lawyers perceive that a disproportionate request will however be more vulnerable to challenges on other grounds even if this is unstated/unacknowledged. |
| **Italy** | Italy does not have up to date statistics on the number of EAWs requested, nor the numbers that have been processed.<br><br>In Italy, art 6 of law 69/2005 on the implementation of the EAW decision framework considers that the issuing state has an obligation to send a detailed report on the laws that will apply to the case and any other available information. The jurisprudence of the Supreme Court has given a non binding interpretation of requirements deeming it sufficient to send a EAW request based on the model attached to the Framework Agreement. |

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| | Article 8 of law 69/2005 provides for the mandatory hand over, independently of the double criminality, for 32 categories of offenses, provided that the maximum penalty is equal to or greater than three years |
| **Latvia** | Execution of EAW in Latvia is associated with the grounds for the extradition of a person. A person located in the territory of Latvia may be extradited to a European Union Member State for the commencement and performance of criminal prosecution, trial, and the execution of a judgment, if the foreign state has taken a EAW in relation to such person, and the grounds for extradition exist. A person may be extradited for criminal prosecution, or trial, regarding an offence the committing of which provides for a punishment of deprivation of liberty the maximum limit of which is not less than one year. A person may be extradited for the execution of a judgment by the state that rendered the judgment and convicted the person with a punishment that is related to deprivation of liberty for a term of not less than four months. Offence shall be criminal in accordance with the law of Latvia, however, if a person has been extradited regarding an offence referred to in Annex 2 of Criminal Procedure Law, and if, regarding the committing of such offence, a punishment of deprivation of liberty is provided for in the state that took the EAW the maximum limit of which is not less than three years, an examination regarding whether such offence is also criminal on the basis of the Latvian law shall not be conducted. If a EAW has been taken in a foreign state regarding a Latvian citizen, then the extradition of such person shall take place with the condition that the person be transferred back to Latvia, after the conviction thereof, for the serving of a sentence of deprivation of liberty imposed on such person. |
| **Lithuania** | Such judicial practice (that the Lithuanian courts seriously examine proportionality factors in the issuing states) is not known. The cases are known when the subjects of the EAW are detained in Lithuania, then surrendered, interviewed and released from detention in the issuing state. |
| **Luxembourg** | Whilst in general there seem to be a rather proportionate use of the EAW, in some cases practice reveals that EAWs from abroad have been executed whilst the proportionality issue could be questioned. For example, in a case some Portuguese citizens were arrested and detained for 2-3 weeks, before being sent to Portugal. They were just questioned there, then could return freely to Luxembourg, where they were living… |
| **Malta** | It can be safely said that EAWs are processed relatively swiftly without major issues, however it is to be pointed out that the way in which the law is drafted as well as the interpretation of the Courts is such which renders the process a technical one rather than a legal one, such that if the formalities have been respected and the local prosecutor (the Attorney General, being the competent authority) for which the request to the Court is made is satisfied that the criteria have been fulfilled, the local Courts limit themselves to ascertain that the formalities have been adhered to, and order the return.<br><br>The Courts seem unwilling to entertain or use any form of discretion in the execution or in the processing of EAWs. This attitude could best be exemplified in a very recent EAW, in the case of *The Police vs Angelo Frank Paul Spiteri*, [1] where the person being surrendered raised a number of complaints among others being the detention conditions in the Lithuanian prison system, and also requested that the matter for his surrender be forwarded to the ECJ for an interpretation of the proper implementation of the Framework Decision in Maltese law. The Court rejected the argument of the defence and also the reference to the ECJ.<br><br>The Court decrees would thus seem to reaffirm the perception of practitioners that local Courts do not entertain any particular factors other than the formalities of the request in processing EAWs. |
| **Netherlands** | It is consistent case law of the Amsterdam District Court (hereinafter ADC)– which is the Dutch court exclusively tasked with the assessment of incoming EAWs – that a proportionality defence can only |

[1] Decided 15 January 2016, Court of Magistrates (Malta) as a Court of Preliminary Inquiry, per Magistrate Aaron Bugeja

| | succeed in exceptional cases. The standard judgement of the ADC in this regard is ECLI:NL:RBAMS:2009:BH6183 in which the court held as follows:<br><br>"*The Court understands the defence raised by counsel for the wanted person as a proportionality defence – i.e. the issuing of an EAW has disproportionate consequences for the wanted person whereas, according to counsel for the wanted person, the Spanish authorities have at their disposal other, less invasive, measures to secure the presence of the wanted person in Spain.*<br><br>*For the question whether there is (dis)proportionality in terms of the Surrender Act a distinction has to be made between the so-called 'system proportionality' of the Surrender Act and the proportionality of issuing a European Arrest Warrant in a concrete case.*<br><br>*The system of the Surrender Act is, pursuant to the underlying Framework decision, based on the premise that it, in line with the proportionality principle, will not go further than is necessary for achieving the aim of the Framework decision. Reference is made to the preambular paragraph 7 of the Framework decision and the legal framework of the Framework decision as formulated by the CJEU in its judgement of 3 May 2007 (Case C303/05 Advocaten voor de Wereld VZW tegen Leden van de Ministerraad. See also the opinion of AG Ruiz-Jarabo Colomer d.d. 12 September 2006, in Case C 303/05, 18-26).*<br><br>*This does not mean that the concrete application of the Surrender Act – i.e. the issuing of a European Arrest Warrant – cannot in certain circumstances be disproportionality onerous for the wanted person. The Council of the European Union, which had previously adopted the Framework Decision, specifically called for attention to this issue in the Handbook on how to issue a European Arrest Warrant. (8216/1/08 REV 2 COPEN 70 EJN 26 EUROJUST 31). This handbook inter alia provides as follows:*<br><br>*"(3. Criteria to apply when issuing an EAW – principle of proportionality) Considering the severe consequences of the execution of an EAW as regards restrictions on physical freedom and the free movement of the requested person, the competent authorities should, before deciding to issue a warrant, bear in mind, where possible, considerations of proportionality by weighing the usefulness of the EAW in the specific case against the measure to be applied and its consequences. (-)"*<br><br>*Even though this commentary only has the status of a recommendation to the Member States, and as such does not directly affect national law, the Council, referring to the Pupino judgement (CJEU, C-105/03), reminded the national judicial authorities of their obligation to interpret their national law in conformity with the Framework decision. This means that the national authorities have to take into account all provisions of national law and interpret these as far as possible in the light of the wording and purpose of the Framework decision. To this extent the recommendation therefore also provides guidance to the Court.*<br>*In light of the remarks above concerning the 'system proportionality' of the Framework decision, a proportionality defence will only succeed in exceptional circumstances.*<br><br>*The Court is of the view that [in the present case] the severity of the offence for which the surrender is requested, transporting almost 1000 kg of hashish, stands in the way of the defence succeeding. The argument that the Spanish authorities could also have invited the wanted person for the hearing by means of a summons to appear can, in the circumstances at hand, not lead to a different conclusion. There is therefore no reason to refuse the surrender on the aforementioned ground."* |
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| | Indeed, the proportionality defence has rarely been invoked successfully. We were able to find only two cases:<br><br>• ECLI:NL:RBAMS:2013:BZ3203 (wanted person was terminally ill (brain tumor) and had very limited life expectancy. ADC refused the surrender);<br><br>• ECLI:NL:RBAMS:2012:BY8250 (wanted person had severe form of PTSS. ADC assumed the French authorities were not aware of this when issuing the EAW. It ordered the prosecutor to inform the French authorities and invite them to withdraw the EAW)<br><br>*Up until September 2015 ADC refused surrender for minor offences under Dutch law*<br><br>Until recently, the Surrender Act was interpreted by the ADC as not only requiring that the offence for which the surrender was requested be a criminal offence under Dutch law, but also that the maximum penalty to be imposed for this offence under Dutch law is at least twelve months. As a result, the ADC frequently refused the surrender for offences that, under Dutch law, are considered to be minor offences. However, on 25 September 2015 the CJEU ruled that such a provision is not in line with the Framework decision (ECLI:EU:C:2015:634). Since then, the ADC interprets the Surrender Act in accordance with this decision and limits its assessment to one of double criminality (see, for example, ECLI:NL:RBAMS:2015:7460).<br><br>*Possible interference with art. 8 ECHR*<br><br>Finally, it should be noted that in certain circumstances, the proportionality of the surrender may be addressed by the ADC in cases where it is argued that a surrender would constitute an unjustifiable interference with the wanted person's private life as protected by art. 8 ECHR (see also below question 5b). |
| **Poland** | Cases in which Poland is an executing state relate to serious crimes such as drug trafficking or embezzlement. However, the practice shows that very often the aim of issuing the EAW is to perform a single procedural act, rather than to bring up a suspect in order to execute the sentence. When issuing the decision on conveyance of the suspect, case is examined only for the fulfillment of formal requirements. Generally, Poland has more experience as an executing state than as an issuing state. |
| **Portugal** | Although – as referenced in point 3 of Council Revised version of the European Handbook on how to issue a EAW – it is clear that the Framework Decision on the EAW does not include any obligation for an issuing Member State to conduct a proportionality check, Portuguese legislation compels judicial authorities to do so (either in cases where they stand as executing or issuing judicial authorities). It is clear that under Portuguese Constitution and Criminal Proceedings Code, preventive detention cannot be used if other non-custodial coercive measures are considered sufficient. However, practice shows a tendency to undermine the potential of non-custodial measures. In current times, where fear tends to take over, the balance between the community values of Freedom, Security and Justice tends to become a greater challenge. Paradoxically freedom of movement – a cornerstone of European values - tends to be used as an argument in favour of limiting people's freedom trough the widening of grounds of arrest and narrowing the use of both non-coercive measures and optional non-execution of EAW. Defence practitioners have often raised questions regarding the unappropriated interpretation of grounds for optional non-execution of the EAW (article 12 of Law no. 65/2013 and article 4 of Council Framework Decision 2002/584/JHA of 13 June 2002). The tendency to ignore important factors in detriment of a somewhat "blind" obedience to formalistic requirements shows lack of knowledge of the underlined importance of the role played by Member State legislation in defining the so called |

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| | "proportionality check". In a recent decision the Portuguese Supreme Court (proceedings no 661/15.6RLSB.S1, 22.7.2015) concluded that when the request to surrender is formally correct the Member State is not allowed to consider exogenous factors, such as, recent maternity (the requested person had given birth four months before) and severe health problems of both the requested person (namely, renal lithiasis and HIV) and her new-born child (who had been hospitalized during months after birth and was bound to undertake complex medical treatments). Such facts where not considered good enough "humanitarian reasons" (as stated in article 29/4 of Law No 65/2003 and article 23/4 of Council Decision 2002/584/JHA) to postpone the surrender of the Portuguese requested person (who was living in Portugal) to the Bulgarian issuing State. |
| **Romania** | |
| **Slovakia** | Based on my professional experience in the Slovak Republic the courts consider the formal requirements regulated in the Act on European Arrest Warrant (EAW) and related framework decision. In the EAW procedure that I have experienced or I have heard about in Slovakia there was not considered the factors mentioned above. |
| **Slovenia** | In my experience, the Slovenian authorities do not use the EAW different based on the seriousness of the offence or any other factor. But it is fair to say that when the offence is considered more serious (terrorism, drug related offences, etc.) the procedure will be more thorough. |
| **Spain** | The experience is NEGATIVE. The weighting/pondering of the proportionality criteria is not observed in many of the warrants issued by European authorities, particularly in Eastern countries, in which indiscriminate use of the EAW is made even for property crimes "bagatelle" or certain crimes in which Spain would rarely issue an arrest warrant (for example, crimes against road safety). In these cases, the practice is to order the provisional release of the accused during the surrender procedure when there is a minimum attachment to Spain, although the final surrender, which is imperative. |
| **Sweden** | The execution procedure can be divided into two parts: 1) deciding on arrest/detention and 2) deciding on surrender.<br><br>Detention<br>Before deciding on detention the court must always consider the principle of proportionality. In this assessment, any appropriate and less coercive alternatives shall be taken into account, see Question 3 c). As the proportionality test relate only to the question whether a detention is deemed necessary for the purpose of executing the requested surrender and not to the surrender itself, none of the criteria set out in the Handbook apply.<br><br>Surrender<br>There is no express provision stipulating a proportionality check. Nor is there any general practice of conducting a proportionality check before deciding on surrender. However, arguments based on the principle of proportionality may be made with reference to Chapter 2 Section 4 of the Act on executing an EAW. This provision states that an execution can be refused if surrender would violate any of the rights set out in the European Convention of Human Rights and its protocols. As the principle of proportionality in enshrined in the convention it may be argued that a surrender in certain cases would violate e g the right to family life ensured by Article 8.<br><br>If the requested person is under 18 years the prosecutor must investigate the possibilities to investigate the alleged offence in Sweden. The basic assumption is that all criminal proceedings concerning minor suspects shall be carried out in Sweden. |
| **UK** | **England and Wales**<br>There has been a 'proportionality bar' in UK extradition proceedings since July 2014, following widespread criticism by defence practitioners that court time and public funds were being wasted on |

trivial cases. These criticisms were reflected in the "Baker Report" to Parliament in 2011. Sir Scott Baker did not recommend that the UK Parliament unilaterally introduce a proportionality bar into domestic legislation, but that the UK should cooperate with member states to introduce a uniform approach to the issue. Notwithstanding this recommendation, Parliament introduced changes to the Extradition Act 2003 via the new sections 2 (7A) and 21A to the Act. The effect of these changes is that the National Crime Agency (NCA) (which is the designated authority in the UK in accordance with the Framework Decision) must, when making the decision as to whether to certify an EAW, decide whether a judge would be obliged to order the requested person's discharge on the basis that extradition would be disproportionate. If the NCA decides that the judge at the hearing would discharge for disproportionality, the NCA must refuse to certify. In 2014, the Home Office reported that 14 EAWs had not been certified for this reason. More up to date figures are not available. In deciding whether a person's extradition would be disproportionate, a judge must take into account: (a) the seriousness of the conduct alleged to constitute the extradition offence; (b) the likely penalty that would be imposed if the person was found guilty of the offence; (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of the requested person. Guidance as to how these questions are to be approached has been given by the High Court *in Miraszewaki v District Court in Torun, Poland* [2015] 1 WLR 3929 and an amendment to the Criminal Practice Directions [2014] EWCA Crim 1569. In summary, the judge is required to make a free standing as to whether the proposed extradition would be disproportionate. Seriousness of the conduct alleged is to be assessed against domestic standards, although the court will respect the views of the requesting state if they are given. The main components of the seriousness of conduct are the nature and quality of the acts alleged, the culpability of the requested person for those acts, and the harm caused to the victim.

**Scotland**

In Scotland – as in the rest of the UK – the situation has improved by virtue of s. 21A of the Extradition Act 2003 (in force from July 2014), which states that the court "**must take into account"** the seriousness of the offence, the likely penalty etc.

England has taken matters slightly further with the introduction of a detailed practice note (Criminal Practice Directions Amendment No2 para 17A). These have been referred to in Scottish courts and it seems clear that the same criteria now apply in both jurisdictions.

**Northern Ireland**

Prior to March 2014 the issue of proportionality was addressed only when raised as part of the greater argument of the potential infringement of a Requested Person's rights under the European Convention on Human Rights if extradited to the Requesting State. The most frequent of these challenges fell under the Article 8 umbrella. The appropriate judge would be compelled to consider 'proportionality' in the balancing exercise when deciding the question of whether the interference with the private and family life of the Requested Person and other members of his family was outweighed by the public interest in extradition. The issues of delay, seriousness of the offences, duration of detention and conditions were all considered in the balancing exercise.

On 13th March 2014 the UK enacted the **Anti-social Behaviour, Crime and Policing Act 2014.** Part 12 of the act specifically addressed extradition and Section 157 *'Proportionality'* introduced two amendments to the 2003 Extradition Act.

Firstly, the National Crime Agency (NCA), the agency responsible for the certification of EAW's, will decide whether an EAW is proportionate before certifying it. If they are of the opinion that the Courts are bound to find the EAW in question disproportionate, then it will be rejected. This will reduce the frequency with which warrants are received for offences perceived to be trivial or from the Member States of prosecutors who are governed by the principle of legality. Section 2 of the 2003 Act is amended as follows:

*In section 2 of that Act (Part 1 warrant and certificate), after subsection (7) there is inserted—*
*"(7A)But in the case of a Part 1 warrant containing the statement referred to in subsection (3), the designated authority must not issue a certificate under this section if it is clear to the designated authority that a judge proceeding under section 21A would be required to order the person's discharge on the basis that extradition would be disproportionate.*

*In deciding that question, the designated authority must apply any general guidance issued for the purposes of this subsection.*

*(7B)Any guidance under subsection (7A) may be revised, withdrawn or replaced.*

*(7C)The function of issuing guidance under subsection (7A), or of revising, withdrawing or replacing any such guidance, is exercisable by the Lord Chief Justice of England and Wales with the concurrence of—*

*(a)the Lord Justice General of Scotland, and*

*(b)the Lord Chief Justice of Northern Ireland."*

*(4)In deciding any question whether section 21A of the Extradition Act 2003 is compatible with European Union law, regard must be had (in particular) to Article 1(3) of the framework decision of the Council of the European Union made on 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA) (which provides that that decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union).*

*(5)In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.*

For those warrants certified by the NCA the second limb of the section 157 may apply and a new proportionality bar" has been introduced by Section 21A of the 2003 Act.

Section 11 of the 2003 Act provides the bars to extradition which may be relied upon by a Requested Person. If the judge decides any of the bars to extradition have been established he must order the person's discharge. If there are no bars to an accused person's extradition under section 11, a judge will be required to consider whether the Requested person was unlawfully at large.

If the Judge decides that a RP is unlawfully at large following his conviction he must proceed to consider whether the person's extradition would be compatible with their Convention rights and consider proportionality generally in the balancing exercise.

If, however, the Judge decides that a RP was not unlawfully at large post-conviction he must proceed under Section 21A to consider whether extradition would be both compatible with the requested person's human rights, and whether the extradition would be disproportionate.

Section 21A provides as follows:

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| | *21A Person not convicted: human rights and proportionality*<br><br>*(1)If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D")—*<br><br>*(a)whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;*<br><br>*(b)whether the extradition would be disproportionate.*<br><br>*(2)In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.*<br><br>***(3)These are the specified matters relating to proportionality—***<br><br>***(a)the seriousness of the conduct alleged to constitute the extradition offence;***<br><br>***(b)the likely penalty that would be imposed if D was found guilty of the extradition offence;***<br><br>***(c)the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.***<br><br>*(4)The judge must order D's discharge if the judge makes one or both of these decisions—*<br><br>*(a)that the extradition would not be compatible with the Convention rights;*<br><br>*(b)that the extradition would be disproportionate.*<br><br>*(5)The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—*<br><br>*(a)that the extradition would be compatible with the Convention rights;*<br><br>*(b)that the extradition would not be disproportionate.*<br><br>*(6)If the judge makes an order under subsection (5) he must remand the person in custody or on bail to wait for extradition to the category 1 territory.*<br><br>*(7)If the person is remanded in custody, the appropriate judge may later grant bail.*<br><br>*(8) In this section " relevant foreign authorities " means the authorities in the territory to which D would be extradited if the extradition went ahead. ]*<br><br>If, having consider the three specifics issues relating to proportionality, the Judge decides extradition would be disproportionate the request will be refused and the person discharged. |

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| | As this scenario arises only if the RP is not unlawfully at large it is anticipated that proportionality challenges under Human Rights grounds will continue to be popular.<br><br>If a person is unlawfully at large and is not raising a Human Rights bar proportionality cannot be considered by the appropriate Judge. |

| **Question 1 - Proportionality**<br>*b) What is the experience of defence practitioners in your Member State of appropriate use of the EAW when your state is the issuing state (taking into account the same kind of factors as mentioned in the question above)?* | |
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| **Austria** | In practice, Austrian criminal prosecution authorities have a rather sensible approach which limits the use of EAW to rather severe cases:<br>- First of all, there is a system of graduated penalties; in particular many offences against property have maximum penalties of less than a year.<br>- There is a proportionality test according to national law for executing an arrest warrant (§ 170 (3) of the Code on Criminal Procedure)<br>- In many cases, the prosecution authorities only issue national arrest warrants so that a person is arrested when he / she returns to Austria, even if issuing an EAW would be possible.<br><br>Nevertheless, there are cases when despite the issuing of an EAW the court later does not approve pre-trial detention so that the person is released shortly after surrender to Austria. This happens for example if pre-trial detention is not proportionate, in which cases an EAW should not have been issued initially. Moreover, such a situation may happen if the suspect is assumed to return to his / her home Member State, which is – according to Austrian case law – not a reason to impose pre-trial detention. |
| **Belgium** | The Belgian law of 19 December 2003 on the EAW (art. 32) submit the emission of an EAW by the Belgian judicial authorities to the same proportionality factors as already mentioned under point a).<br><br>For what concerns the propensity of the Belgian investigating judges to issue EAW when these legal factors of proportionality are effectively met, it depends of course of the personality of the concerned magistrate : some investigating judges tries indeed first to invite the suspect on a consensual basis to come to Belgium for an interview, and only if the latter refuses or if it is impossible to locate him, then issues an EAW. Other are quicker to issue EAW. |
| **Bulgaria** | The answer to Question 1.a refers also to the situation when Bulgaria is the issuing state. By the way, a similar conclusion referring to the absence of a proportionality requirement when Bulgaria is the issuing state, may be found in the Evaluation Report on the Fourth Round of Mutual Evaluations “The Practical Application of the EAW and the Corresponding Surrender Procedures between Member States” – Report on Bulgaria (“The Report”), dated 27/04/2009 (see item 7.2.1 of the Report. |
| **Croatia** | Other than those listed in Article 10 of Act on Judicial cooperation in criminal matters with the Member States of the European Union (Offical Gazette 91/10, 81/13, 124/13, 26/15) - participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trade in weapons, ammunitions and explosives, corruption etc., the competent court may issue a European arrest warrant for offences if they are punishable on the basis of domestic law by a custodial sentence for a maximum period of at least one year, or where the final sentence has been passed for a custodial sentence of at least four month. Also competent public body which leads criminal prosecution will issue a European arrest warrant for the purpose of opening of criminal prosecution if against persons to which the order relates detention has been determined. |
| **Cyprus** | The factors mentioned in the Council Handbook and in particular the principle of proportionality, can be taken into account by the judicial authority issuing an EAW. The Council Handbook was referred to by the Supreme Court of Cyprus as a useful guide in the issuing of an EAW in the case of John Constantinides v The Attorney---General, Civil Appeal No. 347/2014, dated 05.03.2015. |
| **Czech Republic** | The factors mentioned above are supposed to be considered by courts when issuing the EAWs as the respective implementing law explicitly states three such circumstances, demonstrating the application |

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| | of proportionality check, despite the fact that the FD on EAW does not explicitly include it. The legislator justified the inclusion of this proportionality check by the needs of the practice and also with regard to the encouraging approach of the EU (on the basis of the recent evaluation of EAW procedures in Member States).<br><br>The EAW cannot be issued (see the Section 193(3) together with the Section 79(2)(a)(c)(d) of the Act no. 104/2013 Coll., on international judicial cooperation in criminal matters, furthermore referred to only as “Act 104/2013”):<br>1. if the court may presuppose imposing a sentence of imprisonment shorter than 4 months or imposing a penalty other than sentence of imprisonment;<br>2. If costs or consequences related to the surrender would be evidently disproportionate to the public interest in the criminal prosecution or enforcement of a sentence of imprisonment; and<br>3. If the surrender causes the requested person a harm evidently disproportionate to the importance of the criminal proceedings and the consequences of a criminal offence, in particular with regard to her age, state of health or family relations.<br>It is an exhaustive list (though points 2 and 3 are drafted rather vaguely), therefore courts cannot apply other grounds for not issuing EAWs. In practice I experience only the application of the first point (when courts most likely anticipate imposition of a conditional sentence only). In my experience courts tend to follow formal procedures and do not use the discretion allowed by points 2 and 3. |
| **Denmark** | As the use of EAW is based on domestic law and court decisions the Danish Administration of Justice Act is in force, and the factors are a part of the proceedings. |
| **Estonia** | It is not uncommon to see an EAW issued where alternative and less intrusive measures could in fact be applied -- the authorities simply find EAW most convenient and effective, ignoring the issue of proportionality. |
| **Finland** | My experience is that the authorities (prosecutors) have a decent enough threshold when assessing whether or not to use the EAW. I am not aware of unnecessary use of the EAW in minor offences. |
| **France** | There is also an a priori self-control of the French authority, which never issues disproportional or non-serious EAW. |
| **Germany** | Although the principle of proportionality has to be taken into account when generally issuing a request for legal assistance under nr. 25 of the Guidelines on international cooperation in criminal matters (GICCM) the experience is that – in fact – there is no common practice and depends on the local issuing Prosecutor’s Office case-to-case decision. |
| **Greece** | In Greece, the main question concerning the proportionality principle relates to the fact that an EAW can be issued for offences less serious than the ones for which a national arrest warrant can be issued. More specifically: According to the Greek Code of Criminal Procedure, a (national) arrest warrant can be issued for crimes, which are punished with a sentence of at least five years imprisonment. On the other hand, an EAW can be issued –according to the Greek Law that implements the Framework Decision (Law 3251/2004)– for crimes that are punishable by a sentence of at least 12 months imprisonment.<br>When issuing an EAW the Greek authorities do not take into account the minimum threshold for a national arrest warrant, but only the threshold set out by the Law 3251/2004. That leads to the fact, that in Greece an EAW can be issued for crimes for which a national arrest warrant cannot be issued. |
| **Hungary** | The same as the previous question. |
| **Ireland** | The experience when we are the requesting country is somewhat better. The warrant is less likely to be sought in trivial cases. Particularly if the subject of the warrant is, in fact, an Irish citizen, there is an informal policy of simply waiting for the usually inevitable return to the jurisdiction of the offender in such cases to proceed on foot of a domestic warrant. This really relates to minor crimes against property rather than offences against the person |

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| **Italy** | Article 30 of law 69/2005 covers the enforcement of the framework Agreement on the EAW, with the requirement that the EAW contains all the information required in the model attached to the Framework Agreement. |
| **Latvia** | EAW issuing process is associated with the provisions for the submission of a request for the extradition of a person. EAW may be issued if grounds for believing that the following is located in a foreign state 1) a person who is a suspect or accused in the committing of a criminal offence that may be punished on the basis of the Criminal Law of Latvia, and regarding which deprivation of liberty is intended with a maximum limit of not less than one year, if an international agreement does not provide for another term; or 2) a person who has been convicted in Latvia with deprivation of liberty or custodial arrest for a term of not less than four months, exist. A request for the extradition of a person may not be submitted if the seriousness or nature of a criminal offence does match the expenses of the extradition. |
| **Lithuania** | In 2009 the proportionality test was included in the EAW Rules (Para. 5 and Para 12) issued by the Minister of Justice and the Prosecutor General. In 2013 the Code of Criminal Process was amended and the proportionality test was included in Art. 69(1) Part 3. The defence practitioners are of the opinion that the Office of General Prosecutor in the Republic of Lithuania has often issued the EAWs disregarding the proportionality test. From 2009 the practice is more proportional, but still the cases are known when the subjects of the EAW are surrendered to Lithuania, interviewed and released from detention. |
| **Luxembourg** | In general it seems that Luxembourg does not issue EAWs when it is not a meaningful case. Luxembourg judicial authorities seem to consider factors like the importance of the deed, whether a prison sentence is likely to be pronounced by a court etc. The problem is the lack of involvement of lawyers in such cases. |
| **Malta** | In some cases it has been shown that when the circumstances of a particular case change, it becomes doubtful as to whether the execution of an EAW is still justified. Notwithstanding this, the issuing state insists on the execution, calling into question the issue of proportionality throughout all stages.<br><br>In the case of *The Police vs George Clayton*,[2] the accused was wanted in Malta for having obtained money by false pretences to the detriment of multiple retail outlets in Malta. The accused had returned to the UK shortly after having committed the offences, and an EAW was issued against him. During the Court hearings in the UK in execution of the EAW, the subject brought forward evidence that he had reimbursed and paid for the fraud committed. He declared that he was willing to return voluntarily and admit to the charges, and the original complainants had even declared that since they were fully reimbursed they had no interest in further prosecution. It becomes apparent that at that stage, the liability of punishment was reduced considerably and furthermore he was not facing anything other than non-custodial punishment. Notwithstanding this, Malta insisted in its request, and the accused had to be forcibly remitted under arrest in Malta.<br><br>It is clear that the wrong was rectified and the execution of the EAW at that stage, rather than at request stage, was disproportionate, particularly when one takes into account the costs and expenses incurred in relation to the light sentence that the accused was facing, if at all.<br>From the point of view of a defence lawyer, it is difficult to contest the reasons and motivations for an EAW, simply because these are usually unknown to the person arrested. |
| **Netherlands** | It is our experience that the Dutch authorities do not issue a EAW lightly and take into account the factors mentioned in the Handbook in their assessment in this regard. We are not aware of EAWs having been issued for minor offences. |

[2] Decided 9 December 2011, Court of Magistrates (Malta), per Magistrate Joseph Apap Bologna

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| **Poland** | Poland uses EAW most often among all Member States. In 2007 Poland issued 3472 EAW documents, while second – Germany – only 1785 EAW documents. If the conditions for issuing the EAW are met, the Polish court issues EAW, which is a result of application of the principle of legality. Therefore, the prosecution using the EAW includes even trivial actions. This results i.e. in very high costs in proceedings with EAW – both in Poland as an issuing state, as well as in executing states. It encompasses costs of the proceedings, as well as prisoner's transport from abroad (approx. EUR 10.000 from the UK, approx. EUR 15.000 Spain or France), as well as legal assistance, both in the issuing state, and in the executing state. |
| **Portugal** | Please see point 1 a) above. |
| **Romania** | |
| **Slovakia** | In the courts practice might be seen an application of proportionality check. According to the Act on the EAW No. 154/2010 as amended the courts follow the legal conditions to issue the EAW: If the accused whose surrender is requested stays abroad or there are reasons to believe he stays in another Member State, presiding judge of a panel or judge of the competent court shall issue an European arrest warrant pursuant to this Act. In the pre-trial stage an issuing of the EAW is based on the proposal of the prosecutor. The matter of discussion is if the proposal of the prosecutor is always reasonable for the 100%. |
| **Slovenia** | No information. But I think it is fair to say that the same applies as in the cases when Slovenia is the executing state (see above). |
| **Spain** | When Spain is the issuing state, the principle of PROPORTIONALITY has been frequently applied, establishing issuance of EAWs only in the case of serious crimes, for which it would be appropriated to impose pretrial detention, or for final sentence of more than two years. Since Law 23/2014 this proportionality requirement is expressly stated in the article 39.1 y 1, and also in article 38 when it foresees the submission of CRI prior to EAW when the Court knows where is the requested person. |
| **Sweden** | According to Section 5 of the Regulation on issuing an EAW, the order may only be issued if it is proportionate in the circumstances. When conducting this proportionality check, certain factors shall be taken into account.<br><br>- The detriment of the suspected person.<br>- The delay and the costs that can be expected as a result of the EAW.<br>- Whether issuing an EAW can be motivated with regard to the relative seriousness of the alleged offence.<br>- Whether an EAW can be motived by other reasons, e g the likely penalty imposed if convicted, interests of the victim/s of the offence, the suspected person´s connection to Sweden.<br><br>If the suspect is under 18 years an EAW may be issued only if grounded on a serious alleged offence, if the minor has strong connection to Sweden or if there are other compelling reasons motivating such a decision. |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the 'issue' of EAWs in the United Kingdom. |
| | **Scotland**<br>Scottish prosecution authorities would only utilise the EAW route if the case merited solemn proceedings (i.e. before a jury in the High court or Sheriff court).<br><br>An example of an exception to the rule, where someone was sought in respect of summary proceedings punishable by up to 12 months imprisonment), related to a recidivist paedophile who had failed to comply with a notification requirement under the sex offenders register. One can see the public interest in having him returned for such an offence. |

| | **Northern Ireland**<br>Northern Ireland issue a very small number of EAW's annually and in cases which it is clear that the issuing is in the public interest. |
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| **Question 1 - Proportionality**<br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | As mentioned, some Belgian investigating judges tries first to invite the suspect on a consensual basis to come to Belgium for an interview |
| **Bulgaria** | The answers to Question 1.a and Question 1.b are to explain why I am not capable to point out examples of good practices in this matter. |
| **Croatia** | |
| **Cyprus** | I am not aware of any good practises. |
| **Czech Republic** | See the answer to the question b). |
| **Denmark** | The Administration of Justice Act |
| **Estonia** | No information |
| **Finland** | Unfortunately nothing really to be shared. |
| **France** | The good practices exist before the designation of defense practitioners. The French authorities work as a filter to obtain all relevant elements at the EAW to verify the proportionality. |
| **Germany** | No information. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | The fact that we can find the use of the arrest warrant to truly necessary cases is a good practice. Waiting for the return to the jurisdiction of petty offenders has achieved the desired result in many cases, without incurring the very substantial cost of the arrest warrant procedure. |
| **Italy** | Yes, the Italian lawyers try to get as much information as possible on the facts complained |
| **Latvia** | No information. |
| **Lithuania** | The inclusion of proportionality test in Art. 69(1) Part 3 of the Code of Criminal Process and in the EAW Rules (Para. 5 and Para 12) issued by the Minister of Justice and the Prosecutor General might be regarded as good practice. |
| **Luxembourg** | We know of one case of a Belgian citizen who had a lawyer there and who proposed to come voluntarily to be questioned in Luxembourg. Therefore, there was no need of an EAW.<br><br>At the time being, there are no further good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | None to report. |
| **Netherlands** | We believe that when it comes to proportionality, Dutch practice when issuing EAWs is in line with the idea and principles of the Framework decision and could serve as an example for other Member States. |
| **Poland** | There is an explicit limitation of EAW issued by Polish courts (in 2011 – 3.792 whereas in 2015 – 2.428). It seems that Polish courts issue EAW in fewer trivial matters, what should be considered as a good change in the juridical practice. The amendments in the law in 2015 result in such way that it is not permissible to issue a warrant, if it is not required by the interest of the administration of justice. The premise is very general and allows the Court to evaluate in each case, whether the circumstances justify issuing the EAW. The court should always consider the seriousness of the offense, the possibility of the suspect being detained and the likely penalty imposed, if the person sought is found guilty of the alleged offense. |
| **Portugal** | The lack of legal criteria leads judicial authorities to fill the gap resorting to main constitutional principles as well as criminal proceedings regulations linked to the resocialization as an end pursued by criminal |

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| | punishment (Portuguese Supreme Court of Justice, proceeding no. 753/13.6YRLSB.S1, 21.11.2013). Unfortunately in many cases, the lack of legal criteria regarding these matters simply leads to arbitrary decisions. |
| **Romania** | |
| **Slovakia** | I never experienced in Slovakia that the fundamental rights of the arrested persons would be ignored or violated (e.g. not to have an access to the lawyer, not to be interrogated by the court, etc.) |
| **Slovenia** | No information. |
| **Spain** | As issuing state, and even before the Law 23/2014, there is a good practice of pondering the principle of proportionality. In this respect, the General Council of the Judiciary, through its Department of International Relations, published a PRACTICAL GUIDE in which good practices on this matter are included and is accessible to all judges and magistrates. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>Generally, with proportionality issues, the court encourages communication from the requesting judicial authority. The greater the level (and detail) of communication post-issue, the safer the decisions. The judicial authorities in some member states are either reluctant to provide additional information, delay providing information, or provide poorly translated information. Prompt, detailed and accurately translated replies to requests for further information are a great assistance to the court and all parties. |
| | **Scotland**<br>From an executing perspective, it appears that care is taken by the prosecution in Scotland to “weed out” poor cases and to suggest to the issuing state that warrants in such cases are rescinded. In appropriate cases, the prosecuting authorities may well liaise with the issuing state to see whether an alternative, less costly, less ponderous and less severe measures could be deployed instead, such as a trial in absence. Similarly, care is taken to weigh up the public interest in issuing a warrant: considering, for example, the financial cost to the public and the possible impact on victims in not proceeding along with “proportional” factors such as gravity and likely sentence. As stated above, warrants are only issued for the most serious crimes (worthy of solemn procedure). |
| | **Northern Ireland**<br>The assessment of warrants by the National Crime Agency will reduce the volume of warrants for trivial offences incoming to Northern Ireland. The system is in the early stages but should prevent the courts being tasked with dealing with offences which are clearly disproportionate.<br><br>Likewise a similar test is applied to the issuing of warrants by NI which prevents the issuing of warrants for trivial offences which are not considered in the public interest to pursue by way of EAW. As a result only a small number of warrants are issued. |

| **Question 1 - Proportionality**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered, including in relation to reducing costs incurred in either the executing or issuing state?* | |
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| **Austria** | The most important problem is that the suspect should retain lawyers both in the issuing and in the executing state, which may be expensive and may cause problems concerning the cooperation and coordination between the two defence lawyers. The first problem can be mitigated by granting legal aid in both Member States, the second by appropriate training of defence practitioners. |
| **Belgium** | An European mandatory guideline/regulation regarding the proportionality factors would be a must in that respect, since it would rationalize the use and restrain accordingly the use of the EAW and the related costs. |
| **Bulgaria** | The general solution could be to amend the FD and then, on this basis, to amend respectively the EEAWA, by introducing a requirement to implement a proportionality test in one form or another. I do not expect that only the EEAWA could be amended without a preceding amendment of the FD. Only then the respective training of judges could be undertaken. Training of judges on the need to assess proportionality in EAW procedures could hardly be expected to be reliable, if the legal basis is not changed. Since no evaluation of costs incurred in these procedures has ever been made in Bulgaria, in my view it is not possible for the time being to use an argument based on reducing costs as a solution to the problems defence practitioners may have encountered. |
| **Croatia** | |
| **Cyprus** | A good solution for reducing cots is to be found in the recommendations of the European Criminal Bar Association for Dual Representation in EAW proceedings, stating (at p.18) that “dual representation will reduce costs by avoiding unnecessary and disproportionate surrender leading to withdrawal of EAW before their execution”. Dual representation is now enshrined in Directive 2013/48/EU, which has not yet been transposed into law in Cyprus. As informed by the Ministry of Justice, Cyprus will meet the deadline of 27.11.2016 for transposition of the said directive into municipal law. |
| **Czech Republic** | Legislative enactment of the proportionality check at the EU level is in my opinion needed so that the national authorities are obliged to comply with it. The attention should also be paid to the practical application of the respective national legal provisions on the proportionality check. |
| **Denmark** | There is a general need for having a defending lawyer in the issuing country to clarify the legal situation there and the condition for the client if he/she is deported. |
| **Estonia** | The issue of costs incurred is too abstract and "distant" for the officials or judges who make decisions in EAW cases -- they are in most situations even completely unaware of the financial impacts of their actions, and personally they are not held accountable in any way. Hence, they have no reason to care. Apart from that, training of prosecutors, judges, and lawyers in the fundamental rights aspects of the EAW regime is probably the most effective way to improve the situation with addressing proportionality. |
| **Finland** | Not really. Perhaps only the fact that in Finland the person sought to be extradited always has the right to a defence counsel of his/her choosing and if he/she asks, the counsel is appointed as a public defender and the costs are always borne by the state; there exists no recovery for the costs incurred. |
| **France** | No, defense practitioners are not interested in reducing costs in France or abroad. |
| **Germany** | Fast and electronic access to the case-files of the issuing state and the extradition-case-files of the executing state. Broader use of bail. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | The proportionality test needs to be recalibrated as a matter of urgency. |
| **Italy** | It is proposed that the Italian Courts of Appeals, in charge of the request for the performance of EAW, after the Cedu Aranyosi and Căldăraru Judgments, request additional documentation, to the issuing countries, on how citizens arrested in Italy, due to the European Arrest Warrant, will be held in |

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| | prison/will be treated, all the times in which problems according to the treatment of prisoners in each Member State have to be discussed, waiting for the Italian legislator to make the request for clarifications according to conditions of detention compulsory. |
| **Latvia** | In my opinion, in order to reduce costs incurred in either the executing or issuing state, seriousness and nature of the offence, as well as practicability must be taken into account in EAW issuing or executing process. |
| **Lithuania** | The proportionality test could have the more detailed regulation in the Framework Decision.<br>Regarding less serious offences the procedural measure for proportionality could be the obligation firstly to search for the persons and only after their refusal of voluntarily participation in the criminal investigation to issue the EAWs. |
| **Luxembourg** | The dialogue between the investigating magistrates and defense practitioners prove to be fruitful, when such contacts are possible: they should be encouraged, because they also reduce the cost of defence. |
| **Malta** | In relation to what has been stated above, a possible solution could include the introduction of an obligation for the competent authority to declare, when challenged or requested to do so, the reasons for the return of an individual where it becomes clear either that the facts for which a person was requested have been remedied or where it is clear that the punishment being imposed does not justify the arrest and return of the subject of the EAW. Thus it is being suggested that the principle of proportionality ought to be applied throughout all stages, particularly at committal stage.<br><br>Another possible measure could be introduced whereby an individual facing judicial proceedings pursuant to an EAW could apply to the Criminal Court of the issuing state to have the request reviewed. This is especially helpful when the circumstances of the case have changed, as above.<br><br>The introduction of a deferred surrender would be an interesting proposition; the accused may very well be willing to voluntarily surrender to a request, but would be tied with personal matters at that moment in time, which would make the execution of an EAW highly prejudicial (matters such as family commitments, professional projects, academic examinations, and so on). The person would be allowed to surrender at a certain deferred date that is more convenient, and would be subject to bail-like conditions during that period, all in all making the eventual execution of the EAW a more proportionate one. The benefit to either state is that this would encourage voluntary submissions, reducing length and cost of proceedings. |
| **Netherlands** | In our view it is clear that – at least from a Dutch perspective – a proportionality defence can only succeed when it is raised in (the courts of) the issuing Member State. We believe that the best thing to do for the wanted person in cases where an alternative solution seems to be more appropriate is to contact a lawyer in the issuing state. This lawyer can (try to) negotiate a withdrawal of the EAW with the issuing judge or prosecutor, for example because the wanted person undertakes to voluntarily travel to the issuing state for an interview. If this proves unsuccessful the lawyer could start court proceedings in the issuing state.<br><br>Although most Dutch lawyers have contacts with lawyers in other Member States this certainly does not apply to all of them. Furthermore, it is unlikely that a Dutch lawyer will know a colleague familiar with EAW proceedings in every Member State.<br><br>In most cases, the wanted person will also not (yet) have a lawyer in the issuing state.<br><br>For this reason we believe that some sort of (public) database containing the contact details of EAW lawyers for every EU Member State would be very helpful. (see also *infra* question 7f) |

| Poland | The improvement of this state might be done by a change in conditions concerning issuing of the EAW. It should be changed in a way limiting the usage of the EAW for trivial matters (e.g. by introducing a catalog of offenses prosecuted by EAW or by increasing the criminal threats, from which it is permissible to issue EAW – for example from 1 year up to 3 years of prison sentence). |
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| **Portugal** | Economic and financial crises makes it politically difficult for Governments to implement the necessary reforms in justice, especially in terms of granting legal aid to those who suffer from pour economic conditions. If more mobility means more capability to flea for justice, more information exchange between judicial authorities from all Member States will possibly undermine such risks. In order to obtain a good balance between justice effectiveness and the fundamental right of freedom lies in the ability to deepen cooperation. |
| **Romania** | |
| **Slovakia** | I would suggest the better legislative regulation of the of the proportionality check. |
| **Slovenia** | No information. |
| **Spain** | No information. |
| **Sweden** | Training on the EAW procedure and the legal framework/case law of ECHR of ECJ. A heightened awareness of the possibility to refer questions of interpretation to ECJ would most certainly lead to a harmonized and proportionate practice. |
| **UK** | **England and Wales**<br>If there is a proportionality challenge, it is plainly best to make it as soon as possible, as challenging the extradition on other grounds can be time consuming and expensive. It should be a relatively straightforward argument, without the need to call extensive evidence. |
| | **Scotland**<br>(1) Entitlement to, and funding for, dual representation should be automatic (see section on dual representation).<br>(2) In some instances, particularly with warrants originating from Poland, many years may have elapsed and the accused may be well settled in Scotland. The costly expense of transfer and the inevitable request for prisoner transfer back to Scotland could be avoided if there was the opportunity to imprison in this jurisdiction. This runs the risk of some sort of "jail-shopping" where the accused/convicted person simply makes off to what is perceived to be the most lenient system, but it is certainly worthy of consideration.<br>(3) There have been recurring difficulties in obtaining expert opinion and evidence relating to the issuing state. This might be alleviated by better access to the relevant materials in the hands of the prosecuting authorities/government (or perhaps from Eurojust), ideally by way of web portal, whether national or Europe-wide, by which such information can be accessed quickly. Greater transparency in this area is essential.<br>(4) Due to the difference in criminal procedure between Scotland and England & Wales, it would be helpful to have separate 'tailor-made' Scottish guidelines (as per the English Practice Directions) to avoid any room for misunderstanding. |
| | **Northern Ireland**<br>Costs would obviously be reduced in the executing state if the volume of cases were reduced. This is a political consideration and would fall to each individual member state to reassess their policy of issuing EAW's. The system employed by the NCA for incoming warrants would appear to prevent some warrants from making their way to the courts.<br><br>Early communication between defence practitioners, the representative of the requested person in the Issuing state and the IJA has proven to expedite the successful conclusion of cases. This is tied to the 'temporary transfer' mechanism which is discussed at question 2.<br>The introduction of an overall merits based assessment of the proportionality of each EAW request. |

| **Question 2 - Is the case trial-ready?**<br>*a) Since Article 1 para 1 of the Framework Decision says that an EAW should be issued 'for the purposes of conducting a criminal prosecution', at what stage in the proceedings is it considered appropriate to issue an EAW in your Member State?* | |
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| **Austria** | In theory, there is no limit to any stage of the proceedings. In practice, it is only sensible to issue an EAW if it is likely that the court will impose pre-trial detention, which includes (§ 173 of the code of criminal procedure):<br>- a proportionality test,<br>- urgent suspicion<br>- a reason for detention (danger of absconding, of collusions or of committing /repeating a crime)<br>- absence of less severe means. |
| **Belgium** | In Belgium, it is only an investigating judge (and never a Prosecutor) who may issue an EAW in the context of a criminal proceedings (see art. 32, §1, of the Law of 19 December 2003 on the EAW and art. 28septies of the Belgian Code of criminal procedure).<br><br>It will be thus during the preliminary criminal investigation led by the investigating judge that the latter may issue an EAW.<br><br>The Prosecutor may only issue an EAW when a criminal proceeding has definitively ended, in order to arrest and bring to Belgium a person who has been definitively sentenced to imprisonment (see art. 32, §2, of the Law of 19 December 2003 on the EAW). |
| **Bulgaria** | The matter is regulated by Article 56 of the EEAWA. An EAW may be issued at the pre-trial stage, if an accused person is to be surrendered. In this case the EAW shall be issued by the prosecutor. An EAW may be issued at the trial stage, if a defendant is wanted by the court and is to be surrendered. In this case the EAW shall be issued by the court. When a person convicted by a court in Bulgaria is to be surrendered to serve her/his sentence in Bulgaria, then the EAW shall be issued by the prosecutor after the sentence has become final. |
| **Croatia** | Competent public body which leads criminal prosecution will issue a European arrest warrant for the purpose of opening of criminal prosecution if against persons to which the order relates detention has been determined. |
| **Cyprus** | An EAW in Cyprus is issued once a person is considered a suspect for the commission of a criminal offence punishable with custodial sentence for a maximum period of at least 12 months, or where a sentence has been passed or a detention order has been made for a sentence of at least four months. For a person to be considered a suspect there must be evidence in the hands of the police affording reasonable grounds that he/she has committed a criminal offence (See Rule II of Judges Rules). |
| **Czech Republic** | The implementing law states in this respect 2 conditions for issuing the EAW (see Section 193(1) of Act 104/2013):<br>1. The EAW shall be issued (the procedure is obligatory) without undue delay if one of three warrants (detention warrant, arrest warrant or warrant to deliver person to a prison) was issued and within the time-limit of 6 months it was not possible to detain this person, arrest her or deliver to the prison.<br>2. The EAW may be issued (the procedure is facultative) also before the expiration of the above-mentioned 6 month period, if there are reasonable grounds to believe that the person concerned is staying in another Member State. |

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| | Please take note that the arrest warrant may be issued only in relation to the accused person (not in relation to a suspect; a suspect becomes accused in CZ when the resolution on commencement of the criminal prosecution is delivered to his own hands). The warrant to deliver person to a prison may be issued only in relation to a finally convicted person. The detention warrant is a new instrument introduced in 2014 applicable to suspects, when it is not possible to deliver the resolution on commencement of the criminal prosecutions to a suspect, one of grounds for custody is given and it is not possible to summon such person, brought or detain her either. |
| **Denmark** | When it is considered firstly by the police/prosecution that it is necessary to prevent further crime, escape ore influence on other – and that is justified to the court plus that there is a substantial reason for a later conviction<br>It might be at a rater early stage. |
| **Estonia** | An EAW can be issued immediately when the authorities have "sufficient reason" to believe that the suspect may have committed the offence. This may, and quite often does, happen at very early stages of proceedings. There is no time-limit on the length or pre-trial investigation, so it is not uncommon to see cases where the period between the suspect's initial arrest and the start of trial proceedings is 2 years or more. |
| **Finland** | An EAW can be issued at any time after the pre-trial investigation has started and thus long before any charges are brought. The EAW must be based on a detention order by a court, which usually means that the person sought is detained in absentia. The threshold for a detention order is that there are probable causes to suspect that the person suspected has committed an offence (and, that there is reason to be believe that he/she continues criminal activities, is a flight risk etc., save for so called “overly aggravated” offences, which carries a minimum prison sentence of 2 years). The prosecutor may very well decide after the pre-trial investigation that the person who has been surrendered to Finland is never charged with the offence. |
| **France** | At every stage of the criminal proceeding: since the early beginning of the investigation until the end of the trial. |
| **Germany** | In the phase of the investigation proceedings which is the first phase of criminal proceedings in Germany. |
| **Greece** | An EAW is normally issued right before the end of the pre-trial investigation stage and particularly after all the witnesses have been heard and the rest of the evidence has been gathered. The EAW can only be issued against a person who is officially being accused of a crime. After the execution of the EAW the suspect/accused person is being brought to the investigating authority in order to be questioned. The investigating authority then decides if the accused person stays in custody and sends the whole material to the judicial council, which will decide –on the basis of the suspicion– if it will dismiss the case or if the main trial will take place.<br><br>The Greek investigating authorities bring charges relative easily against someone who is allegedly involved in a crime, as this offers a wide range of investigating measures against that person, such as issuing a national or also a European Arrest Warrant. |
| **Hungary** | It is issued when the authorities are unable to find the suspect. |
| **Ireland** | Our courts will only make a Surrender Order where there is a genuine prospect of a trial being conducted. We will respect the trial definition in the requesting state, however, and have surrendered persons to what we would consider to be a very preliminary phase, upon an assurance being given that it is part of the necessary pre-trial procedure and that a trial is the intended outcome. |
| **Italy** | There is no difference on timing with regard to the possibility of issuing internal precautionary measures |
| **Latvia** | As mentioned above, issuing the EAW in Latvia is associated with the provisions for the submission of a request for the extradition of a person. Such request according to Section 682 (1) of Criminal Procedure Law can be issued regarding a person, who is suspect, accused or convicted. According to |

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| | Section 59 (2) of Criminal Procedure law, a person may be a suspect if the totality of evidence provides a basis for the assumption that such person has most likely committed the criminal offence to be investigated. So, in order to issue EAW, there must be at least sufficient evidence to recognize a person as a suspect. Usually such evidence is acquired during the investigation stage of the proceedings (when criminal prosecution is not started yet). If a suspect has been extradited during pre-trial proceedings, a public prosecutor or higher ranking public prosecutor shall submit a prosecution to this person (accuse this person) within 10 days after the taking of the person to Latvia. If the prosecuted person is extradited – the prosecution shall be submitted within 72 hours, but if the prosecution has been issued before – the rights to submit recusals and requests, submit complaints shall be explained to the person. |
| **Lithuania** | The defence practitioners are of the impression that the Office of General Prosecutor in the Republic of Lithuania has often been issuing the EAWs when there is no information about the location of suspected persons disregarding the stage in the proceedings. |
| **Luxembourg** | In Luxembourg it is considered appropriate to issue an EAW rather in the beginning of an investigation. Also, in complex cases, when there are suspects that have been named or identified, an EAW is then issued to interview the suspect by the investigating magistrate. |
| **Malta** | EAW are usually issued for purposes of prosecution, that is in the very final stages of investigation, when it becomes very clear that the case is headed for prosecution of the accused. |
| **Netherlands** | As far as we are aware, the Dutch authorities will not issue an EAW prematurely meaning that the investigation must have reached an advanced enough. That does not mean, however, that the case is necessarily ‘trial ready’ when the EAW is issued, if only because in some cases the wanted person has not yet been questioned by the police and this has to be done before the case can go to court. In our experience the relevant test appears to be whether the case is ‘arrest ready’. In other words: if the investigation has reached a stage where the prosecutor would normally have the suspect(s) arrested, (s)he will also issue an EAW unless a proportionality assessment leads to a different conclusion. |
| **Poland** | According to the Polish law, the EAW may be issued in case of suspicion that a person prosecuted for a crime within the jurisdiction of Polish criminal courts may reside in the territory of the Member State of the European Union. EAW may be applied to all acts which, under the Polish law, are punishable with at least one year of imprisonment or in case where a judgment of at least four months of detention has been issued as a protective measure of. Therefore, EAW can be used in the pre-trial stage, as well as after the conviction of the perpetrator. The stage of the proceedings and the circumstances of the case decide whether it is appropriate time to issue a EAW. |
| **Portugal** | As soon as the requested citizen is considered a suspect of committing specific categories of offenses (as detailed in article 2 of Law no. 65/2013 and article 2 of Council Framework Decision 2002/584/JHA of 13 June 2002) it is considered appropriate to issue an EAW in order. But we find this Article 1 to widely in deed. It´s application take us throughout an unacceptable abuse. To conduct a criminal prosecution must be understand in a comprehensive way, such as the one according that the EAW is only permitted if there are strong evidences against the citizen targeted, and it is really necessary is presence to go on with the criminal case. The question should not be just like in what stage in the proceedings. It can rather be in a preliminary stage. The question should be, how fundamental it is to obtain the extradition, in order to fulfil the investigation and protect the rights of the defendant. |
| **Romania** | |
| **Slovakia** | According to the Slovak Criminal Procedure Code, If any of the grounds for custody detention is present and if it is not possible to summon, bring in or detain the accused and thus secure his presence at the interrogation or other act, a president of the panel and in the pre-trial proceedings the judge for pre-trial proceedings on the proposal of the prosecutor, shall issue a warrant for the arrest of the accused. |
| **Slovenia** | Usually when there is enough evidence for the prosecutor to demand that the court opens formal criminal proceedings against a suspect (probable cause will have to be shown). This is the phase when |

| | the “informal” police investigation concludes and the “formal” judicial procedure begins (usually with the judicial investigation phase). |
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| **Spain** | There are three possible stages:<br>1. in the investigation procedure, in order to hear the person under investigation or to adopt personal interim measures;<br>2.within the pre-trial phase to ensure his attendance at trial when the sentence two or more year of imprisonment;<br>3. in the execution phase, as long as the penalty imposed may not be suspended. |
| **Sweden** | According to Section 3 of the Regulation on issuing an EAW, the EAW may be issued only after a court has decided to detain the requested person on the grounds of being suspected on probable cause of the alleged offence. The court´s examination is based on the information/documents submitted at a detention hearing. Thus, an EAW may be issued at any stage after the court´s decision on detention for a listed suspected crime or for an alleged offence punishable by a sentence of at least 12 months. |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the ‘issue’ of EAWs in the United Kingdom. However, s 142 of the Extradition Act 2003 specifies that a judge may issue an EAW request if one of the two following conditions is satisfied:<br>First, that there are reasonable grounds for believing that the person has committed an offence and a domestic warrant has been issued in respect of it; or<br>Second, the person has been convicted of an extradition offence in the UK; his extradition is sought for the purpose of him being sentence/serving his sentence; and a domestic arrant has been issued or he may be arrested without a warrant. |
| | **Scotland**<br>This occurs when a warrant to arrest is in force. |
| | **Northern Ireland**<br>The 2014 **Anti-social Behaviour, Crime and Policing Act** introduced a new bar to extradition: *Absence of a prosecution decision.* The 2003 Extradition Act is amended as follows:<br><br>***“12AAbsence of prosecution decision***<br><br>*(1)A person’s extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—*<br><br>*(a)it appears to the appropriate judge that there are reasonable grounds for believing that—*<br><br>*(i)the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and*<br><br>*(ii)the person’s absence from the category 1 territory is not the sole reason for that failure,*<br><br>*and*<br><br>*(b)those representing the category 1 territory do not prove that—*<br><br>*(i)the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or* |

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| | *(ii)in a case where one of those decisions has not been made (or neither of them has been made), the person's absence from the category 1 territory is the sole reason for that failure.*<br><br>*(2)In this section "to charge" and "to try", in relation to a person and an extradition offence, mean—*<br><br>*(a)to charge the person with the offence in the category 1 territory, and*<br><br>*(b)to try the person for the offence in the category 1 territory."*<br><br>*(3)In a case where the Part 1 warrant (within the meaning of the Extradition Act 2003) has been issued before the time when the amendments made by this section come into force, those amendments apply to the extradition concerned only if, at that time, the judge has not yet decided all of the questions in section 11(1) of that Act.*<br><br>In practical terms the defence practitioner would look to the content of the warrant to gauge whether a decision to charge or prosecute has been made, bearing in mind that each member state operates a different system and the idea of a 'trial' differs from state to state.<br><br>Further requests for information will often be necessary to ascertain the exact standing of the case in the issuing state. The requests are facilitated by the court and discussed in more detail below. In essence the Court will seek clarification on the status of the prosecution. In the absence of a response, or a response dispelling the concerns raised by the Requested person, the Court would be invited to find that there are reasonable grounds to believe a decision to prosecute has not been made. |

| **Question 2 - Is the case trial-ready?**<br>*b) What is the experience of defence practitioners in your Member State of appropriate times in the stages of criminal proceedings for executing an EAW when your state is the executing state? For instance, are EAWs executed for purposes other than strictly conducting a criminal prosecution, such as for hearing a witness or compelling someone to attend court or appear before a magistrate?* | |
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| **Austria** | The experience is mixed. As Austria may refuse to execute an EAW if there are compelling reasons to assume that the person is not sufficiently suspect of a crime (§ 9 EU-JZG, § 33 (2) ARHG), I am not aware of any cases that an EAW was executed for other reasons than conducting a criminal prosecution. However, it may happen that an EAW is executed in cases where proportionality criteria are not met, as the assessment must be done be the issuing state. |
| **Belgium** | EAW are generally issued by other Member states to conduct a criminal prosecution.<br><br>Belgium as executing Member state would not execute an EAW issued by a Member state to hear a witness since the Belgian law, being in that respect compliant with the European framework decision on the EAW, limits the scope of the EAW to suspects. Moreover, issuing a EAW to compel someone to attend court does not appear compliant with the Framework Decision (see in that respect the European handbook on the issuing of an EAW in the light precisely of the proportionality to be taken into account). |
| **Bulgaria** | I have no information about EAWs executed in Bulgaria for purposes other than strictly conducting a criminal prosecution. |
| **Croatia** | EAW is executed strictly for purposes of conducting criminal prosecution and executing a custodial sentence or detention order. |
| **Cyprus** | In general once an EAW is issued and the prerequisites stipulated in the transposing law (Law 133(I)/2004) are complied with, the EAW will be executed unless any of the grounds for mandatory non---execution or optional non---execution apply. In the absence of clear authority addressing the above---mentioned question it is debatable whether a valid objection can be raised against the execution of an EAW issued merely for the purpose of hearing a witness or compelling someone to appear before a judicial authority. It all depends on whether an EAW issued for such a limited purpose falls within the ambit of Art.1 of the Framework Decision. Strictly speaking the phrase "conducting a criminal prosecution" in Article 1 of the Framework Decision, means the institution and conduct of criminal proceedings against the defendant (requested person) for 4 criminal behavior. The institution of criminal proceedings includes the pre---trial stage. The attendance of a witness in court does not come within this definition since the witness is not the subject of criminal proceedings. |
| **Czech Republic** | My experience relates only to conducting criminal prosecution. |
| **Denmark** | As the issuing is subject to our Administration of Justice Act arrest can only be used, if there is a substantial reason for a later conviction that is necessary to prevent further crime, escape ore influence on other – and not unproportioned.<br>It can theoretically be used if a witness do not appear being duly called – but it is not used.<br>As nobody can be forced to give testimony to the police or anybody else, the EAW cannot be used. |
| **Estonia** | At least formally, those persons requested for the purposes of conducting a criminal prosecution, are being described as suspects or accused -- when the real reason for requesting their surrender is hearing a witness or compelling to appear in capacity other than suspect/accused, it is simply not known in the execution proceedings. For the purposes of proceedings in the executing state, it is very difficult to ascertain whether there actually are sufficient grounds to treat the persons as suspect or not (limited information about proceedings in the issuing state). Since also in our domestic proceedings a person |

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| | can be arrested at very early stage of proceedings, the question of whether an EAW was issued at an appropriate time in the issuing state is almost never raised. |
| **Finland** | I have no knowledge of Finland ever executing an EAW for hearing a witness. These kinds of issues are in the future covered by the European Investigation Order, which is in the process of being implemented by Finland. But if there is an executable detention order and the person sought to be extradited is “only” wanted to appear before a magistrate, I don’t believe Finland would have problems in executing the EAW. For example, Sweden has basically the same system than Finland that an EAW can be issued already at the pre-trial stage and this means that the person sought is “only” a suspect without any charges yet. Finland would – and has – executed these kinds of EAWs (or NAWs since the Nordic Extradition Treaty is still in force to a large extend) without any problems. |
| **France** | No, EAW are not executed or issued for hearing witnesses. Only suspect or sentenced people could be targeted by EAW. French defense practitioners will combat EAW issued by EU countries which purpose to arrest witnesses. |
| **Germany** | There is no such “bad” experience in EAW-cases. This experience is different talking about other jurisdictions…. |
| **Greece** | The Greek authorities that are responsible for the execution of an EAW do not examine if it was issued at the appropriate procedural time according to the law of the issuing State, or if the underlying purpose is other than strictly conducting a criminal prosecution, such as hearing a witness. They only examine the formal requirement that in the issuing State there is a national arrest warrant –or another judicial decision having the same effect– on which the European Arrest Warrant is based. |
| **Hungary** | In our experience, EAWs are not used for any other purpose. |
| **Ireland** | We seek an undertaking that a trial is the intended outcome, even if preliminary procedures, such as confrontation, or questioning, are also to take place. |
| **Italy** | Once the EAW has been executed, there is no follow up to determine what occurs later in the EAW issuing State. |
| **Latvia** | Criminal Procedure Law links execution of EAW to the extradition process. According to Section 714 (1) of Criminal Procedure Law, a person located in the territory of Latvia may be extradited to a European Union Member State for the commencement and performance of criminal prosecution, trial, and the execution of a judgment. I have no information about cases, when EAW was executed for purposes other than conducting a criminal prosecution. However, according to Section 718 of Criminal Procedure Law, if a European Union Member State has taken a EAW in order to ensure the criminal prosecution of a person, the Prosecutor General’s Office shall, before a decision is taken regarding the extradition or non-extradition of the person and on the basis of a request of the competent judicial authority of the Member State, interrogate the person, with the participation of a person chosen by the competent judicial authority of the Member State, or shall agree to the temporary relocation of the person, determining the time of return. |
| **Lithuania** | Such judicial practice (that the Lithuanian courts pay much attention to the stage in the proceedings in the issuing states) is not known. |
| **Luxembourg** | Indeed there have been cases where the foreign judicial authority has requested the arrest of a suspect just to hear him/her. Often it is a neighbouring country and the recourse to such compelling methods, whereby an invitation to testify or to appear before the homeland judge would seem to be appropriate, without an EAW. Such request may happen during a foreign investigation. |
| **Malta** | There is very little one can comment on pre-trial issues which occur in other states when Malta is the issuing state, as these issues would be contested in the executing state.<br><br>The question of trial-readiness is a complex one because the distinction between the different stages of criminal proceedings may vary between the issuing state and the executing state, creating problems as to whether the accused is ready to be prosecuted or not. For instance, in the case of *Il-Pulizija vs* |

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| | *Michael Spiteri*,[3] Italy issued an EAW requesting the return of the accused to Italy, and the accused appealed a decision of the Maltese Court ordering the execution of the EAW. From the wording of the EAW it appeared that the request was being made for the accused to be heard at inquiry stage, which is, procedurally speaking, at the investigation stage and not at prosecution stage. It turns out that within the Italian procedural system, the inquiry is already part of the prosecution, and the Court of Appeal stated that the EAW was correct in referring to the appellant as an accused. The problem therefore was how to resolve the two systems so that the decision of the Court may be in line with the Council Framework Decision. On the one hand, preventative custody under the Maltese system is a clear concept and is limited to 48 hours, within which the accused must be brought before the Court of Magistrates as a Court of Committal.[4] Under the Italian system, such custody envisages a long arrest period until the inquiry is concluded in its entirety. The Maltese Court was not willing to extend to definition of the term 'accused' to fit the Italian system, and accepted the appellant's argument that the case was not yet trial ready in Italy. |
| **Netherlands** | In our experience it is not uncommon that a wanted person is surrendered to the issuing state if only to be released the same day or a few days later after having been interviewed. |
| **Poland** | We have experience in cases when the executing state refused to surrender, stating that the EAW had not been released because of the investigation and intention to file charges but only to obtain evidences. However, such an argument has been presented only through cooperation with lawyers from Great Britain and Poland (Polish side completed an analysis of the act and provided expert report presenting the conclusions of the analysis, which allowed British lawyers to present adequate argumentation).<br><br>In addition, it happens that the prosecutor issues an EAW against a person he knows from other proceedings despite the fact that in this particular case, which was the basis of the EAW, suspect did not even know of the proceedings in pending (or could only guess that something is happening). There was a case in Poland, where the Prosecutor in such a situation asked the police in another EU country to press charges. We know form practice, that the law enforcement agencies require appearance of the suspect in person to press the charges. Regardless the circumstances of the case, if the law enforcement agencies are to press the charges, they issue the EAW. |
| **Portugal** | We have no enough information to assure a complete and sustained answer. Nevertheless and based on an empiricist observation and experience there are no evidences of an abuse of using EAW, for purposes other than conducting a criminal prosecution. See point c). |
| **Romania** | |
| **Slovakia** | My experience relates to the EAWs executed for criminal prosecution or executing a custodial sentence. |
| **Slovenia** | There were some instances when the EAW was issued for compelling a person to appear before a magistrate, but these are fairly rare. I don't think this is a serious problem in Slovenia (as an executing state). |
| **Spain** | Usually, all EAWs are executed for conducting a criminal prosecution, for both investigation and execution stages. |
| **Sweden** | According to Chapter 2 Section 1 of the Act on executing an EAW, an order may only be executed for the purposes of conducting a criminal prosecution. Further, Chapter 1 Section 4 of the Act corresponds to Article 8 of the Framework decision covering the information that the EAW should contain, including a national detention/arrest order by the issuing state. As the EAW procedure is based on the principle of mutual recognition, the courts do not make any further inquires into the substance of the suspicion |

[3] Decided 25 November 2013, Court of Criminal Appeal (Inferior), per Magistrate Antonio Mizzi

[4] Section 15, Cap 276, Laws of Malta

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| | of the alleged offence. It is therefore not possible to establish whether, and to what extent, issued EAW:s occasionally might have any other purposes. |
| **UK** | **England and Wales**<br>*a)* The governing provision is s 12A Extradition Act 2003, which came into force in July 2014 and provides:<br><br>(1) A person's extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—<br>(a) it appears to the appropriate judge that there are reasonable grounds for believing that—<br>(i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and<br>(ii) the person's absence from the category 1 territory is not the sole reason for that failure,<br>and<br>(b) those representing the category 1 territory do not prove that—<br>(i) the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or<br>(ii) in a case where one of those decisions has not been made (or neither of them has been made), the person's absence from the category 1 territory is the sole reason for that failure.<br><br>English courts have faced two particular difficulties with this provision. First, the issue of when "a decision to charge or try" has been made, because criminal proceedings in some other Member States lack the clear equivalent stages in their criminal proceedings. The second issue has concerned the assessment of whether someone's absence from the requesting state is the sole reason for the failure to take the procedural step.<br><br>The leading case is *Kandola v Generalstaatwaltschaft Frankfurt* [2015] EWHC 619 (Admin). It held that:<br><br>(1) "Decision to charge and decision to try" should be read in a "cosmopolitan" way, because the terms are likely to have different meanings across the EU;<br>(2) The burden under the first stage is on the requested person to raise the bar;<br>(3) "Reasonable grounds for believing" is a lower threshold than the civil standard of proof (the balance of probabilities);<br>(4) The EAW itself will usually be sufficient to dispose of the issue at the first stage: only if it is not clear should the judge examine extraneous evidence;<br>(5) For the second stage, the Crown Prosecution Service should ask short, simple questions of the judicial authority: the answers should be dispositive of the issue.<br><br>Nevertheless, the statutory provision is widely regarded as complex, and will continue to be a source of litigation. |
| | **Scotland**<br>EAW's which do not appear to be issued for the purpose of prosecution will be refused. There are, relatively rare, examples of people being extradited, remanded in custody in less than ideal conditions and then being told that there was no evidence implicating them (see for example https://www.fairtrials.org/cases/corinna-reid/).<br>It is fair to say that the courts in Scotland are alive to this possibility and strive to avoid its re-occurrence. |
| | **Northern Ireland** |

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| | The introduction of the 'Absence of Prosecution' bar makes clear that an EAW must be for a RP in respect of whom a decision to charge or prosecute has been made. Extradition for any other purpose would be barred and the RP discharged. |

| **Question 2 - Is the case trial-ready?**<br>*c) What is the experience of defence practitioners in your Member State of appropriate times in the stages of criminal proceedings for issuing the EAW when your state is the issuing state (taking into account the same kind of factors as mentioned in the question above)?* | |
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| **Austria** | It is only appropriate to issue an EAW if it is likely that pre-trial detention will be imposed, i.e. at an advanced stage of the proceedings and only for conducting a criminal prosecution. This is also the usual practice, but exceptions may happen. |
| **Belgium** | As stated above, the EAW may only be issued in Belgium during the preliminary investigation and exclusively by the investigating magistrate in charge of the said investigation (see art. 32, §1, of the Law of 19 December 2003 on the EAW and art. 28septies of the Belgian Code of criminal procedure). |
| **Bulgaria** | It is to be taken into account that the EEAWA does not provide for the participation of a defence lawyer in the issuing procedures. This is why I have no information about any experience of defence practitioners in my country of appropriate times in the stages of criminal proceedings for issuing the EAW when Bulgaria is the issuing state. |
| **Croatia** | Competent public body which leads criminal prosecution will issue a European arrest warrant for the purpose of opening of criminal prosecution if against persons to which the order relates detention has been determined. |
| **Cyprus** | An EAW will be issued against a suspect for the commission of a serious criminal offence or against a defendant in a criminal case who was released on bail and failed to appear in court at his/her trial. An EAW is not issued for purposes other than strictly conducting a criminal prosecution. |
| **Czech Republic** | As mentioned in the answer to the question a), EAWs were traditionally issued only in relation to accused or convicted persons, not suspects, which has changed since 2014. |
| **Denmark** | It is at the same stage pre-trail detention will be used for people living in Denmark |
| **Estonia** | Generally we do not have a problem of the authorities "disguising" witnesses or other subjects of proceedings as suspects for the purposes of securing their appearance through arrest, and hence this is not considered as an issue in EAW proceedings as well. However, as with domestic arrest warrants, EAWs could be issued at very early stage of proceedings, meaning that after arrest/surrender, a person could face a long wait before the case is trial-ready. |
| **Finland** | It's a bit difficult to say what the appropriate times would be for issuing an EAW. If the police and the prosecutor assesses that the offence is a) very serious or b) that it's imperative to hear the person being sought, the EAW can be issued already at the early stages of the investigation. However, also in cases where the suspected crime is a serious one but there appears to be no flight risk, judicial co-operation is and has also been used in order to hear the suspect in the Member State he/she is residing. I am currently working on a case regarding an alleged several million euros fraud, in which my client resides in the UK and an EAW has never been issued even though charges are brought and the main hearing will be in the fall. |
| **France** | France can issue an EAW at every stage during the criminal proceeding. |
| **Germany** | No bad experience at all. |
| **Greece** | [See above, lit. "a)"] |
| **Hungary** | It is issued when the authorities are unable to find the suspect. |
| **Ireland** | We only make Surrender Orders for the purposes of trial.If the request is not framed in those terms refusal is effectively automatic. |
| **Italy** | After the conclusion of the Preliminary Investigations, if precise and serious indications are gathered and if a risk of repetition of the offences occurs |

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| **Latvia** | Criminal Procedure Law links issuing the EAW to the extradition process and EAW could be issued as soon as person is declared by investigator as a suspect. But more often EAW is issued at the stage, when the person is accused by prosecutor (before the court trial stage). |
| **Lithuania** | The defence practitioners are of the opinion that appropriate issuing the EAW should avoid the situations when the subjects of the EAW were detained in the executing state, then surrendered, interviewed and immediately released from detention in the issuing state. |
| **Luxembourg** | The issuing an EAW may occur not only in the first stages of an investigation, but in the course of such investigation. Luxembourg does not use the European Investigation Order or the European Probation Order, as far as experience of criminal lawyers is concerned. |
| **Malta** | To a large extent it can safely be said that the reply of par (a) above is applicable here – EAWs are normally issued only in the final stages of investigation when it is clear that the case is going for prosecution.<br><br>When Malta is the issuing state, the accused is kept under arrest for a maximum period of 48 hours before being arraigned before the Court.[5] The Court can then consider bail. It is a known perception that Maltese nationals with strong roots to Malta are more likely to obtain bail pending trial than foreign nationals, owing to the fear of them fleeing or absconding. This matter might be looked into. |
| **Netherlands** | See above sub a. |
| **Poland** | Although the EAW can be used during pre-trial proceedings, the trial and after the conviction of the perpetrator, it is a common practice in Poland that EAW is issued at the stage of pre-trial proceedings. This practice applies to approximately 90% of the EAW's issued in Poland. It causes concerns that the Polish law enforcement agencies use the warrant primarily as a fishing expedition to find evidences (at the expense of an executing state) rather than a true extradition request. |
| **Portugal** | Please see point 2, a), above. Recently the Portuguese Supreme Court of Justice (proceeding no. 2911/09.9TDLSB-A.E1-A.S1, 26.03.2014) decided that Portuguese judicial authorities should not issue an EAW in order to submit a person to "termo de identidade e residência" – a form designed to assure that a defendant is well aware of his/hers surrender duties that trial may take place in absentia. |
| **Romania** | |
| **Slovakia** | In Slovakia the EAW was issued only in relation to accused or convicted persons, not suspect. |
| **Slovenia** | Usually the EAW is issued only when there is enough evidence for the prosecutor to demand that the court opens formal criminal proceedings against a suspect (probable cause will have to be shown). This is the phase when the "informal" police investigation concludes and the "formal" judicial procedure begins (usually with the judicial investigation phase). |
| **Spain** | Please refer to question 2.b). |
| **Sweden** | As described under Question 2 a) an EAW may be issued only after a court decision on detention. There is no general practice of informing the defense counsel of the suspected person when an EAW has been issued. Nor does the defense counsel receive a copy of the EAW. By these reasons it is not possible to give any general comments as to what stage after a decision on detention an EAW generally is issued. |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the 'issue' of EAWs in the United Kingdom. |
| | **Scotland**<br>EAW's are only issued when criminal proceedings are live. In terms of timing an EAW could be sought at the outset, once the warrant to arrest has been issued; or, at a later stage if the accused has not turned up for trial. |
| | **Northern Ireland** |

[5] Section 355AJ(3), Cap 9, Laws of Malta

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| | Defence practitioners are not involved in this process, save for when representing a client under the dual representation principles. Warrants in Northern Ireland are generally issued for those sought to stand trial and in any event for those who are the subject of a decision to charge. |

| **Question 2 - Is the case trial-ready?**<br>*d) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | See answers under a) and b). |
| **Bulgaria** | The answers to Question 2.a and Question 2.b are to explain why I am not capable to point out examples of good practices in this matter. |
| **Croatia** | |
| **Cyprus** | I am not aware of any good practices |
| **Czech Republic** | Suspects may be subject to EAW only under specified circumstances just before their accusation. |
| **Denmark** | No |
| **Estonia** | No information |
| **Finland** | As an executing state I would say no. As an issuing state I understand that Finland (along with at least Sweden) use the EAW at quite an early stage compared to other Member States, so unfortunately I cannot give any good practice here, either. |
| **France** | There are no special good practices in France. |
| **Germany** | No information. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | It is a good practice only to surrender persons for trial purposes. |
| **Italy** | Yes, when the judges approve the requests, made by lawyers pursuant to article 16 law n.69 of 22April 2005 of the transposition of directive EAW in the Italian law, based/focused on asking to the issuing countries additional information and assessments |
| **Latvia** | No information. |
| **Lithuania** | Answer is the same as in 1 c). |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Courts generally abide by the terms of Section 5 of the Extradition (Designated Foreign Countries) Order, Legal Notice 320/2004 amending the Extradition Act, Cap 276 of the Laws of Malta, which is in line with the Council Framework Decision of the 12th June 2002, whereby it is required that: *"the warrant is issued with a view to his arrest and extradition to the scheduled country* ***for the purpose of being prosecuted for the offence."*** |
| **Netherlands** | Not necessarily. |
| **Poland** | Under the previous legal status in Poland, the issue of EAW at the stage of the judicial proceedings, required an appropriate application from the Prosecutor. It gave rise to numerous complications. Often the Court saw the need for issuing the EAW ex officio but had to apply to the Prosecutor to consider the possibility of requesting the issue the EAW by the Court. The amendments in the law induced that at the stage of judicial and law enforcement, the court may issue the EAW ex officio. It facilitated the procedure and shortened the duration of proceedings. |
| **Portugal** | There is no information provided. |
| **Romania** | |
| **Slovakia** | I don´t have any relevant information about any good practice in this matter. |
| **Slovenia** | No information. |
| **Spain** | Please refer to question 2.c). |

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| **Sweden** | No information |
| **UK** | **England and Wales**<br>Decisions under s 12A must be based on detailed and clear information from the requesting state. The English Court can face a difficult task in establishing whether the procedural steps taken in the requesting state are equivalent to the decision to charge or try that would be made here. Problems have arisen where answers to requests for information have been poorly translated or unclear. The practice of the Crown Prosecution Service to ask clear, simple questions that target the statutory questions is a sensible one, but is reliant on receiving clear answers from the requesting state. |
| | **Scotland**<br>(1) EAW's are only signed by the Judge once he/she has seen the indictment (charges) and has thereby been satisfied that EAW is designed for actual prosecution (rather than for "fishing" purposes) (2) There is a dedicated court for EAW's which ensures a consistent approach to this issue and others that have arisen. Furthermore, the Scottish judges dealing with EAW's liaise regularly with their counterparts in England&Wales, Northern Ireland and the Channel Islands. |
| | **Northern Ireland**<br>As the executing state the 2014 amendment has made clear the position on trial readiness. The complex matrix of criminal procedures in each member state is now less of a factor. Once the bar has been raised the lawyers for the issuing state must make clear the procedure in that state and the point at which the case in that state has reached.<br><br>The introduction of the temporary transfer mechanism allows a RP to return temporarily to the issuing state to attempt to resolve a matter which is in the prosecution stage. This may be a useful strategy in cases where a case is deemed to be trial ready but the RP is confident of their ability to have the case resolved or to prove their innocence. A new section 21B is introduced to the extradition act but its effectiveness remains to be seen.<br><br>*21BRequest for temporary transfer etc*<br><br>*(1)This section applies if—*<br><br>*(a)a Part 1 warrant is issued which contains the statement referred to in section 2(3) (warrant issued for purposes of prosecution for offence in category 1 territory), and*<br><br>*(b)at any time before or in the extradition hearing, the appropriate judge is informed that a request under subsection (2) or (3) has been made.*<br><br>*(2)A request under this subsection is a request by a judicial authority of the category 1 territory in which the warrant is issued ("the requesting territory")—*<br><br>*(a)that the person in respect of whom the warrant is issued be temporarily transferred to the requesting territory, or*<br><br>*(b)that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.*<br><br>*(3)A request under this subsection is a request by the person in respect of whom the warrant is issued—*<br>*(a)to be temporarily transferred to the requesting territory, or* |

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| | *(b)that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.*<br><br>*(4)The judge must order further proceedings in respect of the extradition to be adjourned if the judge thinks it necessary to do so to enable the person (in the case of a request under subsection (2)) or the authority by which the warrant is issued (in the case of a request under subsection (3)) to consider whether to consent to the request.*<br><br>*An adjournment under this subsection must not be for more than 7 days.*<br><br>*(5)If the person or authority consents to the request, the judge must—*<br><br>*(a)make whatever orders and directions seem appropriate for giving effect to the request;*<br><br>*(b)order further proceedings in respect of the extradition to be adjourned for however long seems necessary to enable the orders and directions to be carried out.*<br><br>*(6)If the request, or consent to the request, is withdrawn before effect (or full effect) has been given to it—*<br><br>*(a)no steps (or further steps) may be taken to give effect to the request;*<br><br>*(b)the judge may make whatever further orders and directions seem appropriate (including an order superseding one made under subsection (5)(b)).*<br><br>*(7)A person may not make a request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already given consent to a request under the corresponding paragraph of subsection (2) in respect of that warrant (even if that consent has been withdrawn).*<br><br>*(8)A person may not make a further request under paragraph (a) or (b) of subsection (3) in respect of a warrant if the person has already made a request under that paragraph in respect of that warrant (even if that request has been withdrawn).*<br><br>*(9)If—*<br><br>*(a)a request under subsection (2) or (3) is made before a date has been fixed on which the extradition hearing is to begin, and*<br><br>*(b)the proceedings are adjourned under this section,*<br><br>*the permitted period for the purposes of fixing that date (see section 8(4)) is extended by the number of days for which the proceedings are so adjourned."* |

| **Question 2 - Is the case trial-ready?**<br>*e) Do you have any solutions to the problems defence practitioners may have encountered, including in relation to reducing costs incurred in either the executing or issuing state?* | |
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| **Austria** | See reply to question 1.d) |
| **Belgium** | Nothing to mention |
| **Bulgaria** | The answers to Question 2.a and Question 2.b are to explain why I am not capable to answer this question too. |
| **Croatia** | |
| **Cyprus** | A good solution for reducing cots is to be found in the recommendations of the European Criminal Bar Association for Dual Representation in EAW proceedings, stating (at p.18) that "dual representation will reduce costs by avoiding unnecessary and disproportionate surrender leading to withdrawal of EAW before their execution". |
| **Czech Republic** | No. |
| **Denmark** | No problems identified |
| **Estonia** | Proper use of double defence in issuing and executing states, enhanced cross-border cooperation between lawyers, training of prosecutors, judges and lawyers. |
| **Finland** | Not really. |
| **France** | French lawyers are not interested in reducing cost incurred in France or abroad. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | Dual Representation (dealt with later in this Questionnaire), provides the best solution to unnecessary, or premature, requests being entertained when there are obvious alternatives, including the use of the instruments referred to, or by simple administrative arrangements. |
| **Italy** | The commitment for the issuing country to insert a large amount of information, expected during the review of the EAW legislation would reduce the costs needed to acquire information. |
| **Latvia** | No significant problems encountered. |
| **Lithuania** | Answer is the same as in 1 d). In addition, after the implementation of the Directive 2014/41/EU the European Investigation Order could become another procedural measure for proportionality. |
| **Luxembourg** | The immediate right to access to information in both states would facilitate the work of lawyers. It would cut the difficulties encountered and thus also the scope of the work. It would also reduce the costs incurred by judicial assistance, if cooperation with the judicial authorities were to be easier in both states. |
| **Malta** | Nothing to report. |
| **Netherlands** | We would refer to our answer to question 1, sub d. A lawyer in the issuing state is often in the best position to find out if the EAW is genuinely issued for the purposes of a prosecution or if the issuing authorities just want to question the wanted person. In the latter case it is not uncommon that an alternative solution can be reached. |
| **Poland** | In order to limit the issue of the EAW for the pre-trial stage, the premises which empower to issue the EAW, only when the collected evidences allow to put the indictment to the Court or that there is much likelihood that such an act is justified, would be favorable. However, it is impossible to completely limit the use of the EAW for the pre-trial stage, in relation to the objectives it is currently being used for. |
| **Portugal** | No information. |
| **Romania** | |
| **Slovakia** | Nothing special. |

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| **Slovenia** | No information. |
| **Spain** | No information |
| **Sweden** | With regard to the question whether the EAW might be used for other purposes than conducting a criminal prosecution the following may be suggested. The directive could be complemented with a requirement whereby an AEW may not be issued unless the suspicion against the individual has reached a certain minimum level, e g on probable grounds. The level of suspicion should preferably be determined by court. |
| **UK** | **England and Wales**<br>See above. As requests from the Crown Prosecution Service for an explanation of the criminal process in the requesting state become more common, it is hoped that requesting states will become more accustomed to answering them. It may be that Member States could draw up template answers which set out what the criminal process is, and to which the particular facts of each case could be applied. |
| | **Scotland**<br>(1) Procedures should be implemented to hasten the grant of legal aid. Otherwise the commencement of cases is inevitable delayed. This is especially so given that there are only 150, or so, extradition cases annually; a fraction of the amount of domestic cases.<br>(2) Trial-ready cases should avoid lengthy periods of remand and thus pressure on prison systems. However, prison overcrowding remains problematic, and is said by some to be endangering the whole EAW system. Pre-trial alternatives to detention should be utilized more to alleviate this. Perhaps a push could be made for a convergence in practice across Europe. |
| | **Northern Ireland**<br>Prompt responses to a request for information reduces the time taken to bring a case to hearing in the executing state. This reduces defence and prosecution costs and indeed detention costs for those not granted bail. The monthly cost of detaining a person in Northern Ireland is estimated at £3500 per month. A delay of two or three months in responding to requests for information is exceptionally costly. |

| **Question 3 - Detention – lengths**<br>*a) What is the experience of defence practitioners in your Member State of matters arising out of detention in either the executing or issuing state – for instance, the use of pre-trial detention, and whether detention served in the executing state is deducted from detention due to be served in the issuing state - when your state is the executing state of an EAW?* | |
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| **Austria** | In practice, the maximum times as set by the framework decision and Austrian law are respected:<br>- Decision within 10 days if the suspect agrees to surrender, 30 days if he / she disagrees; if there is an appeal, the decisions must be final within 60 days, which can be extended by 30 days if there are particular difficulties of the case.<br>- 10 days after the decision is final and binding, the suspect must be handed over to the issuing state. |
| **Belgium** | In Belgium, Belgium being the executing Member state, the concerned person may indeed be placed in pre-trial detention during the delay of treatment of the EAW (in principle not longer than 60 days from the arrest – art. 19, § 1, of the law of 19 December 2003).<br><br>However the concerned person may also be left in liberty during the all delay of treatment of the EAW, upon decision of the Belgian investigation magistrate in charge of the EAW (art. 11 and 20, §§2 and 3, of the law of 19 December 2003).<br><br>The concerned person may indeed request to the investigation magistrate at any moment during the delay of treatment of the EAW, the be freed, and the investigating judge has to render his decision in that respect within the 15 days. In case of negative answer or absence of answer within the 15 days, the concerned person may submit his request to the Council chamber, a specific jurisdiction legally competent of the execution of EAW's. |
| **Bulgaria** | The EEAWA rules concerning detention when Bulgaria is the executing state are brief and scanty. The court may not impose detention of the wanted person, if the purposes of the EAW may be reached without detention. In these cases the court may impose another measure as provided by procedural law, such as recognizance to appear, bail or home arrest. On the part of the detained, she/he may request the court to substitute her/his detention by another measure. This opportunity is used by defence practitioners, mostly in cases of prolonged detention, but the lack of statistics does not allow defining the share of successful requests to substitute detention by another measure. The EEAWA does not provide for an opportunity to deduct detention. |
| **Croatia** | |
| **Cyprus** | At the time of surrender all information concerning the duration of detention of the requested person are transmitted by the executing Central Authority (Ministry of Justice) to the issuing judicial authority pursuant to Article 29(1) of Law 133(I)/ 2004. |
| **Czech Republic** | When CZ is the executing state, requested persons are in my experience in practice always held in custody, although the implementing law allows the application of alternative measures to custody similarly to domestic cases (see Section 204 of Act 104/2013). In practice courts argue with the risk of flee and do not allow e.g. bail, regular reporting to a probation officer, guarantee, written promise, submitting of a passport as they clearly prioritize compliance with the obligations to other Member States over the individual circumstances. Such practice is very strict.<br><br>The detention served in the executing state is obligatorily deducted from the detention or sentence of imprisonment to be served in CZ as the issuing state (see Section 92(4) of the Criminal Code (Act no. 40/2009 Coll.). |
| **Denmark** | Generally the "legal system" in the issuing state relation to pre-trail detention has not been a separate issue in DK. It can be a part of the proportionality issue. |

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| **Estonia** | In EAW proceedings, detention is a rule rather than exception -- when in domestic proceedings, alternatives to detention (such as bail against monetary security, electronic monitoring, etc) are fairly frequently used, these are almost never applied in EAW proceedings. Time of pre-trial detention (incl the same in EAW or extradition proceedings) is considered as sentence served if a person is convicted. Detention conditions are poor. Length of detention in EAW proceedings is generally not a huge issue, because the law provides strict time limits (in line with those provided by the Framework Decision). However, there is a problem both in Framework Decision and domestic law which concerns the absence of strict deadlines for the time in which the person must be handed over to the requesting state after surrender decision has become final -- the postponement options provided in Article 23 (3) and (4) of FD have caused at least 1 case in Estonia where a person is kept in custody for months after final decision on surrender, and the person is also not informed about any new deadlines (effectively resulting in indefinite detention). |
| **Finland** | Pre-trial detention times can be very lengthy in Finland, although detention times when Finland is the executing state are usually kept within the framework decision's time-limits (and actually the EU Extradition Act has time limits below the framework decision; a decision has to be done within three days from the giving of a consent (in court) if the person doesn't object and within 26 days otherwise, at the District Court level). In my understanding there have not been issues in applying Article 26 of the framework decision when Finland is the executing state. |
| **France** | Pre trial detention is often used in France, depending of the guarantees of suspect people. No specific information about the practices of the issuing state. |
| **Germany** | Only a very rare use of bail (risk of flight). Detention time is always deducted from any sentence rendered in EU from my (not allover EU) experience. |
| **Greece** | The Greek authorities that are responsible for the execution of the EAW apply the national criteria about the detention of accused people. In particular, they examine if the person has a known residence in Greece, if he could be considered suspect of escape, or if it is possible that he commits the same offences again. In any case, they always take into account also the seriousness of the offence.<br><br>The Greek Code of Criminal Procedure as well as the Greek Constitution provide for a maximum time of pre-trial detention for the same crime. That period can never exceed eighteen months. Due to the short time limits for the execution of an EAW, there are no cases in which exceeding the maximum period of detention time in the context of an EAW has been an issue. Though, in one case a regional Greek court (Higher Regional Court of Larissa, decision No. 334/2012) held that the maximum period of detention according to the Greek Code of Criminal Procedure does not apply to the extradition procedure or the procedure concerning the execution of an EAW, because these procedures cannot be considered as "criminal".<br><br>Furthermore, the deduction by the issuing State of the detention time in Greece does not concern the Greek authorities.<br><br>Also, if the subject of the EAW had served a certain period of detention in the issuing State for the same crime prior to the execution of the EAW (for instance in case he was in detention in the issuing State and afterwards escaped to Greece, where he was arrested due to an EAW), the Greek authorities will not deduct this period from the maximum time of detention that is allowed to be imposed in Greece for the execution of the EAW. |
| **Hungary** | When Hungary is an executing state, the period of the pre-trial detention is regulated and has a deadline. It is for the court to decide on whether pre-trial detention is appropriate in the particular case. |

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| **Ireland** | Regrettably, in Ireland, the intended short procedure for the arrest warrant has become very lengthy. It is routine for arrest warrant cases to take over 12 months to determine. There is a presumption in favour of bail and many persons the subject of requests are on bail pending the determination. |
| **Italy** | Yes, for example, the Supreme Court has affirmed that there is no need to consider a EAW when the sentence that has to be served abroad has already been entirely served in the form of preventive detention during the surrender procedure (Section 6, n. 6416 6February 2008-8February Cvejn, magazine number 238396 14). |
| **Latvia** | If circumstances are not known that exclude the admissibility of the extradition of a person, the executor of an examination shall submit a proposal regarding the application of an extradition arrest and a EAW to the district (city) court in the territory of operation of which the person was detained or the Prosecutor General's Office is located. A judge shall decide on the application of temporary arrest in a court session, with the participation of a public prosecutor and the person to be extradited. An extradition arrest shall be applied in accordance with the procedures specified in Section 701 of Criminal Procedure Law for 80 days from the day of the detention. In exceptional cases, a court may extend such term one more time by 30 days. The Prosecutor General's Office shall inform the competent authority of the state that took a EAW regarding the reason for the delay in the execution of the decision. |
| **Lithuania** | Long pre-trial detention is quite a frequent practice in Lithuania. It is also applicable for the subjects of the EAW, because the Lithuanian courts usually do not apply other suppressive measures alternative to pre-trial detention. |
| **Luxembourg** | There are very different scenarios possible and therefore it is difficult for a lawyer to predict what will happen with a detainee. The length of detention first depends on the fact of opposing or not the execution of an EAW.<br><br>As the executing state, the Luxembourg can postpone the transfer of the subject of an EAW with no specific time limit, in application of the article 15 of the Luxembourgish law about EAW, when this person is also facing an ongoing criminal procedure in Luxembourg. The delay for the transfer can last as long as the Luxembourgish procedure is not over.<br><br>This legal possibility has already lead to a problematic situation, where a person previously freed by a decision of the 'Chambre du conseil', from a one year pretrial detention for an ongoing procedure in Luxembourg, has been put back in detention in Luxembourg, in execution of an EAW emitted by France. This person was kept in prison in Luxembourg during almost one more year until the end of the very same Luxembourgish procedure he had previously been released for.<br><br>The time served in Luxembourg has eventually been deducted from the detention due to be served in France. But with most difficulties, as no Luxembourgish authority accepted to confirm to the French authorities, that the additional one year time served in prison was actually served in execution of the French EAW. |
| **Malta** | Regardless of whether Malta is the issuing or the executing state, some pre-trial detention is inevitable given that the accused under arrest will be physically transferred to an airplane and surrendered in the custody of the executive police or other competent authorities, where the accused will be detained for some time prior to being arraigned.<br><br>Because there is no rule stipulating the exact period of pre-trial detention or its limitations in the various Member States, a citizen may experience different pre-trial detention periods, depending on the legislation and efficacy of the issuing state. |
| **Netherlands** | *Before the ADC has ruled on the validity of the EAW* |

The only ground for surrender detention on the basis of the Surrender Act is the danger of absconding. In practice it is assumed that – bar any indications to the contrary – such a danger is (very) limited for Dutch nationals and permanent residents (i.e. residency of 5 years +). After all, the Surrender Act provides that such a person has the guarantee that:

- in case of a prosecution EAW: if convicted (s)he may serve the prison sentence in the Netherlands and this sentence will be converted to Dutch standards (exequatur procedure);
- in case of an execution EAW: the surrender will be refused and instead the prosecutor will offer the issuing State to take over the execution of the prison sentence on the basis of EU Framework decision 2008/909/JBZ.

The Dutch national or permanent resident will not have these guarantees if (s)he flees the country. It is therefore customary that Dutch nationals and permanent residents are not remanded into custody but instead the execution of their surrender detention is suspended under certain conditions (*schorsing*). Usually these conditions include an obligation to report to a police station on weekly or fortnightly basis, a prohibition to leave the country, and sometimes also an obligation to post bail.

In case of <u>non-permanent residents</u> a conditional suspension of the surrender detention is also possible. It will depend on the wanted person's ties with the Netherlands (work, family, housing etc) if a conditional suspension will be granted.

It should be noted in this regard, however, that the Dutch Surrender act also provides that – regardless of the flight risk – conditional suspension of the surrender detention is *mandatory* if it has proven impossible for the District Court to rule on the validity of the EAW within 90 days after the arrest of the wanted person (art. 22, par. 4 of the Surrender Act).

*After the ADC has ruled on the validity of the EAW*

For reasons unknown to us, the Surrender Act provides that suspension of the surrender detention is no longer possible once the Amsterdam District Court has ruled on the validity of the EAW. There is therefore a *de facto* statutory non-rebuttable assumption that there is flight risk once the ADC has ruled that the EAW is valid and that the wanted person may be surrendered to the issuing State.

This means that regardless of there being a flight risk, the wanted person will be remanded into surrender detention up until the day (s)he is physically surrendered to the issuing State. This rule applies to Dutch nationals and permanent residents as well non-permanent residents.

This rule proves particularly problematic in cases where the EAW was declared valid but physical surrender is not possible because of an ongoing prosecution in the Netherlands. The Surrender Act prohibits the physical surrender of a wanted person in such a case meaning that the wanted person will stay in surrender detention up until the moment that the other criminal case has been disposed of. This rule even applies in cases where the offence for which the prosecution in the Netherlands is ongoing is of a minor nature and pre-trial detention is not allowed under Dutch criminal law.

The only exception to this rule is based on case law. The Amsterdam Court of Appeal has ruled that if there are indications that the total amount of days spent in surrender detention will exceed the prison

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| | sentence to be served (if convicted) in the issuing state, there is an obligation for the courts to conditionally suspend the surrender detention (Cf. GH AMS NbSr 2012 /341). |
| **Poland** | Detention should in principle last 3 months, but if there is a failure to complete the proceedings within this time, the indicated time limit may be extended several times, practically with no deadline. In Poland, the intrinsic basis for the use of detention is being issued in another Member State of the European Union with a final conviction or other decision which constitutes the basis for detention.<br><br>In practice, the length of these terms depends on the complexity and the evidences gathered in the case. In case of EAW, Polish courts relatively quickly apply decisions concerning the detention, if they deem it necessary.<br><br>We have no information that detention served in Poland had not been deducted from detention period served in the issuing state. In Poland, the provisions expressly order to take into account the period of executed detention in the executing state. |
| **Portugal** | Only very recently has Portugal adopted the Council Framework Decision 2009/829/JHA of 23 October 2009 on supervision measures as an alternative to pre-trial detention trough Law No. 36/2015 of the 4th of May. What can be said about Portuguese judicial practice is that, generally, there is an excessive use of detention measures, based on the alleged risk of evasion. |
| **Romania** | |
| **Slovakia** | In the case Slovakia is the executing state, requested persons are taken to the custody almost always (I haven´t experienced or heard about any exemption). But the law theoretically allows application of so called alternative measures instead of the custody. But in fact, judges argue with the risk of flee and do not allow e.g. bail. |
| **Slovenia** | The pre-trial detention is used (police and judicial detention), usually if there is a flight risk, and this detention is not deduced from the detention due to be served in the issuing state (as far as I know). |
| **Spain** | When Spain is the executing state, it is foreseen to deduct the time of the imprisonment as regards the time for imprisonment in the issuing state (Art.26 DM y 45.1 y 58.6 LRM). In relation to the personal situation of the requested, LECr provisions shall be supplementary applied (art.4.1. LRM), without the possibility to extend the imprisonment once the surrender period have been exhausted (SSTC 95/2007 of 7 may and 99/2006, of 27 march) , however, the recent judgment of the CJEU C-237/15 note that is possible. Moreover, the STC 210/2013 of 16 December declares unconstitutional the possibility of agreeing prison by means of EAW, deferred until the individual is released when there is an existing pending case in Spain. |
| **Sweden** | Detention in Sweden<br>As follows from Chapter 4 Section 5 and 6 Act on executing an EAW, there is a presumption of arresting and detaining the requested person. Detention is also the most frequently used coercive measure when executing an EAW. The decision is generally motivated by an assumption that the individual will flee or otherwise evade surrender. The detention decision can also be based on an assessed risk that he or she will impede the investigation by removing evidence. A detention decision shall be reversed if a continuation of the depravation of liberty would be unreasonable with regard to the detention served or with regard to likely penalty imposed if convicted.<br><br>If the requested person is deprived of his or her liberty, a decision on the execution of the EAW must be made within 30 days after the arrest. If the requested person consents to surrender, the decision on execution shall be taken within 10 days after consent has been given. Surrender shall be executed within 10 days after the final decision. The time limits may be extended under certain circumstances but are generally complied with. |

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| | Detention in the issuing state<br>According to Chapter 1 Section 4 of the Act on executing an EAW, the EAW may be executed only if it contains information about an enforceable decision on arrest/detention by the issuing state. A general assumption is therefore that the use of pre-trial detention in the issuing state is common. The competent authority in Sweden shall inform the issuing state of the time period served in detention in order to facilitate deduction.<br><br>In this regard it should be mentioned that the public defense counsel in Sweden has little or no information about the criminal proceedings in the issuing state following surrender. The reason for this is that the appointment as a public defense counsel is deemed terminated when the execution decision sets into legal force. |
| **UK** | **England and Wales**<br>In England & Wales, the Bail Act 1976 applies to extradition proceedings. Those facing accusation warrants enjoy a presumption in favour of bail. Those on conviction warrants do not. In practice, once an EAW has been issued and certified in the UK, individuals are arrested and brought in custody to Westminster Magistrates' Court in London. During the initial hearing (often the same or next day), defence practitioners will be expected to suggest a "bail package" of conditions that will assuage the Court's fears that an individual may fail to attend their extradition hearing. A security (sum of money paid into court which is forfeited if a person fails to surrender in future) is the most common condition that is imposed. Others may include a requirement to report to a local police station at specified times; residence requirements; and the surrender of one's passport.<br><br>Individuals who have complied with their bail conditions throughout their extradition proceedings are often granted bail even after the court has ordered their extradition and pending their removal from the country.<br><br>With regards to time in UK custody being deducted from detention in the requesting state, practitioners tend to assume that requesting states comply with their duty under article 26 of the Framework Decision. We have no way of monitoring compliance with this obligation once an individual has been extradited. |
| | **Scotland**<br>The issue of pre-trial detention in the issuing state is one of particular concern to Scottish defence practitioners. In Scotland, for solemn proceedings (before a jury), the trial must commence no later than 140 days following first appearance where the accused is remanded in custody (detained in prison). The equivalent period for summary proceedings (punishable by up to one year's imprisonment) is 40 days. Periods of up to 1 or 2 years in prison awaiting trial are therefore anathema to Scottish lawyers.<br>It is generally understood that detention periods in the executing state are deducted from time to be served in the issuing state. The result can be that those who are eventually extradited may resist the process as Scottish conditions may be seen to be preferable (a variant on the "jail-shopping" concept mentioned above). The factors considered in determining the grant of bail are similar to those considered in domestic cases: e.g. gravity of offence, threat to employment/house tenancy (and consequent impact on family), flight risk etc. |
| | **Northern Ireland**<br>Those persons appearing before the court in Northern Ireland on an EAW are entitled to apply for bail pending their hearing. For those sought for the purposes of a prosecution the presumption is in favour of bail and the court will decide the question of bail as if it were dealing with a normal application in |

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| | criminal proceedings. For those sought to serve a sentence there is no presumption in favour of bail. Bail in these circumstances will only be granted in exceptional circumstances.<br><br>Pre-trial detention in the executing state is deducted from detention due to be served in the issuing state. The number of days served in both police and prison detention is calculated on the day of execution of the extradition order by the department of justice. This figure is communicated by the National Crime Agency to the issuing judicial authority.<br><br>There have been some instances where RP's have experienced difficulties in having their detention time in Northern Ireland deducted from the sentence in the issuing state. This is rectified by the defence practitioner obtaining written confirmation of the total days served and communicating that to the authorities in the issuing state or to the RP's lawyer in that state. |

| **Question 3 - Detention – lengths**<br>*b) What is the experience of defence practitioners in your Member State of matters arising out of detention in either the executing or issuing state (taking into account the same kind of factors as mentioned in the question above) when your state is the issuing state?* | |
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| **Austria** | Times served in surrender detention are taken into account when the suspect is punished, i.e. the times are deducted from the punishment. Moreover, the suspect will receive a compensation (between 20 and 50 euros per day) for the time of the surrender detention when he / she is finally acquitted.<br>The duration of the surrender detention in other Member States may be very different. |
| **Belgium** | In Belgium, any pre-trial detention, EAW included, is mandatory deducted from the later definitive sentence of imprisonment, if any (see article 30 of the Belgian Criminal Code). |
| **Bulgaria** | The EEAWA does not contain rules concerning detention when Bulgaria is the issuing state. Moreover, the rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. Therefore, my answer to this question is "No information". |
| **Croatia** | |
| **Cyprus** | According to Article 26 of the Framework Decision "[t]he issuing Member State shall deduct all periods of detention arising from the execution of an EAW from the total period of detention to be served in the issuing Member State as a result of a custodial or detention order being passed". The provisions of the said article are reflected in Article 35 of the Cypriot transposing law [Law 133(I)/2004)]. |
| **Czech Republic** | When CZ is the issuing state and the requested person is surrendered to CZ, my experience is again that such person is taken after her surrender to CZ into custody and courts do not apply the alternative measures, again on the basis of the risk of flee. |
| **Denmark** | In DK the pre-trail detention days are deducted in a later sentence or compensated if acquitted – and the conditions will be taken into consideration. |
| **Estonia** | Depending on which Member State is the executing state, different issues arise. Poor detention conditions are a problem in some. Generally, bail and other alternatives to detention seem more accessible in other Member States, compared to situation in Estonia. |
| **Finland** | The detention served is always deducted from a possible sentence when Finland is the issuing state. This is stated clearly in Section 67 of the EU Extradition Act: "(1) The court shall deduct the period of detention served by the person extradited to Finland as a consequence of the extradition proceedings from the penalty that may be imposed in accordance with chapter 6, section 13 of the Criminal Code. (2) If the extradition to Finland has taken place for the enforcement of a penalty, the warden of the prison deducts the period of detention served by the person extradited as a consequence of the extradition proceedings from the custodial penalty to be served following as appropriate the provisions of chapter 6, section 13 of the Criminal Code." |
| **France** | France takes into account the pre trial detention abroad when issuing an EAW. |
| **Germany** | see above. |
| **Greece** | For the consideration of the maximum time of detention, the Greek authorities will only take into account the detention time of the accused person in the Greek territory for the same crime. The detention time in the executing state –when Greece is the issuing State– is not taken into account by the Greek authorities. |
| **Hungary** | No information. |
| **Ireland** | In some cases, persons who might otherwise be entitled to bail do not even apply, or in other cases persons who are in custody will seek adjournments of their case so that the greatest possible time is spent in custody in Irish prisons. This is because credit will be given for the entire time when they are ultimately surrendered and sentenced in the requesting State. This preference to spend time in Irish |

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| | prisons is not confined to Irish persons , but is also evident among nationals of other member states, presumably because of superior prison conditions in our jurisdiction. |
| **Italy** | When Italy is the State issuing the EAW a reduced sentence is already proposed to the executing State; |
| **Latvia** | The term of detention shall be counted for an extradited person from the moment of the crossing of the border of the Republic of Latvia. The term that a person has spent, on the basis of a request of Latvia, under arrest in a foreign state shall be included in the term of a punishment. |
| **Lithuania** | Detention served in the executing state is deducted from detention due to be served in Lithuania. In other executing states the alternatives to pre-trial detention are more often applied than in Lithuania. |
| **Luxembourg** | When Luxembourg is the issuing state, a clear matter arising out of detention in the executing state (in this example : Nederland) is the absolute prohibition from the Luxembourgish law and authorities, to let the subject of an EAW or his lawyer access to the file, and therefore to any relevant information about the procedure and accusations, except those few mentioned in the EAW itself.<br><br>As a result, the subject of an EAW can be detained more than two month in an executing state, before being send to Luxembourg in order to be heard by the judge, without being able to prepare its defense.<br><br>Sometimes it happens that a court ('Chambre du Conseil') would decide to free a detainee. |
| **Malta** | It is not the case that these matters become an issue in Malta.<br><br>With that being said, reference must be made to the case of *The Police vs Alexander Bryan Hutchinson*,[6] which concerns a matter that is intimately linked with pre-trial detention where Malta is the issuing state. The facts of the case are as follows: the accused was brought to Malta from the UK after an EAW was issued for offences carried out in Malta. In Malta, the accused admitted to the charges and was given a suspended sentence. Under Maltese procedural law, the Attorney General (AG) is allowed eight days to file an appeal from the judgment,[7] and until the AG issues a certificate of no appeal, the subject's travel documents are retained. In the meantime, the subject is not under arrest or detention, but being without the documents represents a serious limitation on one's liberties, forcing them to remain in a state for a number of days, which can be seriously detrimental to one's circumstances and commitments abroad.<br><br>Another issue that linked to proportionality occurs in those instances where it is clear that the offence will not generate a custodial punishment, yet the accused must still be subjected to an EAW, which invariably means that the accused will face pre-trial arrest in the issuing state and detention in the executing state. |
| **Netherlands** | Art. 27, par. 1 of the Dutch Criminal Code provides that the total amount of days the wanted person has spent in surrender detention in the executing State has to be deducted from the time to be served in the Netherlands.<br><br>Although there is no explicit provision for this in the Dutch Surrender Act (nor is there any case law on this subject), we believe that a Dutch prosecutor is under an obligation to withdraw the EAW once it becomes apparent that the total amount of days spent in surrender detention will exceed the prison sentence to be served (if convicted). |
| **Poland** | Detention period varies depending on the complexity of the case. Approximately 60 days is a usual detention period in the matters of EAW. |

[6] Decided 10 May 2012, Court of Magistrates (Malta) per Magistrate Giovanni Grixti

[7] See Sections 413 *et seq*, Cap 9, Laws of Malta

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| | The decision on surrendering shall be issued within 60 days of the date of arresting the prosecuted person, and in the event that the person consents to surrender – the time limit is 10 days. In justified cases, when meeting these deadlines is not possible, the decision on surrender may be taken within 30 more days of the date of these deadlines passing. All the time limits concern, however, the rulings issued in the first instance. In practice, this means that more time passes before the decision on surrender becomes valid. |
| **Portugal** | Based on experience and observation only the experience is that the defendant is usually arrested while waiting for the decision being Portugal the executing state. Being Portugal the issuing state and because the crime seriousness and also the fact the EAW be needed when the defendant do not present himself to justice, the detention is mainly the consequence of the performed deliverance. |
| **Romania** | |
| **Slovakia** | In the case Slovakia is the issuing state and the requested person is surrendered to Slovakia, usually such a person is taken by the Slovak court to custody although sometimes happens that the court considers the reason for issuing the EAW as un-appropriate and the person is released. |
| **Slovenia** | No information. The time spent in detention in executing state is taken into account and counts the same as the time spent in detention in the issuing state. |
| **Spain** | It depends on the issuing state. There is no uniform response. When Spain is the executing state, pretrial detention is normally decided. |
| **Sweden** | Detention in Sweden<br>As an EAW may be issued only after a detention decision by the court, the surrendered person is generally subject to pre-trial detention after surrender. When surrendered, a detention hearing is held at court. Before deciding on detention any alternative measures should be taken into account by the court, see Question 3 c) below.<br><br>Detention in the executing state<br>Detention served in the executing state shall be deducted from a Swedish custodial sentence, if convicted. |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the ‘issue’ of EAWs in the United Kingdom. However, domestic legislation provides, in effect, that time spent in custody in the executing state will be deducted from any sentence of imprisonment to be served in the UK: see s. 243 Criminal Justice Act 2003. |
| | **Scotland**<br>Where Scotland is the issuing state and the accused has been returned, the time limits mentioned above tend to be strictly adhered to. Any extensions of time limits tend to be at the instance of the accused. Periods of detention are taken account of if/when sentence is passed (this is a mandatory requirement).<br>It appears that most states tend to detain those who are to be extradited to Scotland. |
| | **Northern Ireland**<br>The number of days spent in detention awaiting extradition should be communicated to the Nation Crime Agency when a warrant is successfully executed. The NCA will in turn notify the Department of Justice. A request for particulars of the calculation can be sought from the NCA if there is an issue concerning the failure to properly allocate detention time. |

| **Question 3 - Detention – lengths**<br>*c) What is the experience of defence practitioners in your Member State regarding the use of alternatives to pre-trial detention (for instance, use of the European Supervision Order) when your state is the executing state?* | |
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| **Austria** | The provisions to execute alternatives to pre-trial detention are in place (e.g. supervision of a suspect living in Austria, see §§ 100 et.sequ. EU-JZG). However, I am not aware of any cases when it has been used. |
| **Belgium** | As already mentioned under a), in Belgium, the investigating magistrate in charge of the treatment of the EAW issued by another Member state may decide to let the concerned person in liberty during the delay of treatment of the EAW, but the investigating magistrate may subordinate this liberty to certain alternative conditions or to the payment of a bail money (art. 11, §§ 4 en 5 of the law of 19 December 2013).<br><br>The conditions imposed by the Belgian investigating magistrate must guaranty that the concerned person does not escape the action of the justice, and are generally the payment of a bail money, the obligation to stay at a precise address, not to leave the concerned town without a prior permission of the investigating judge, etc. |
| **Bulgaria** | As to the use of the European Supervision Order – no information. As to the use of other alternatives – see the answer to Question 3.a. |
| **Croatia** | Instead of detention for the purpose of surrender, it is possible to impose precautionary measures according to domestic law on criminal procedure, provided these measures serve the same purpose as detention, necessary to ensure the surrender of the requested person. |
| **Cyprus** | There is no such experience of defence practitioners. The European Supervision Order has not yet been implemented into national law. As informed by the Ministry of Justice, a Bill transposing the directive was recently sent to the House of Representatives for approval and is expected to be enacted into law before the end of 2016. |
| **Czech Republic** | See the answer to the question a), I have not experienced, nor heard about the application of European Supervision Order (ESO) in any case by the Czech authorities when CZ is acting as the executing state in EAW proceedings, even though CZ implemented the FD on ESO already in 2014 (it is regulated in Act 104/2013). |
| **Denmark** | see a |
| **Estonia** | The situation is appalling -- alternatives to detention are very rarely used. |
| **Finland** | Unfortunately there’s very little, if any, experience regarding the European Supervision Order basically due to the fact that not many Member States have implemented it even though Finland has. |
| **France** | French Judges are open-minded about alternatives to pre trial detention when France is the executing state. French judges can order bail or judiciary control, nevertheless it depends of the concrete situation of the suspect in France. |
| **Germany** | The decision pro alternatives to pre-trial detention are discussed and executed more open in other EU-memberstates. |
| **Greece** | As already mentioned, by the execution of the European Arrest Warrant the Greek authorities apply the national criteria that are provided by the Greek Code of Criminal Procedure for the imposition of a detention or of other alternative measures. Alternative measures are for example: the warranty, the duty to regularly appear at the local police station, as well as the duty not to leave the country or a certain place. Recently also the possibility of electronic surveillance was introduced, though this measure had been applied until now only in a very few cases, none of which concern the execution of an EAW. |

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| | In 2014 Greece implemented the Framework Decision about the European Supervision Order. No cases are reported where the ESO has been applied. |
| **Hungary** | |
| **Ireland** | None. |
| **Italy** | The mutual recognition Instrument (in Italiy 15 febbraio 2016 D. lgs. n. 36 / 2016) allows for the possibility of pre trial house arrest detention. In consideration that three months have passed without further information |
| **Latvia** | On 23rd March 2016 amendments to the Criminal Procedure Law entered into force. According to newly adopted Section 699.1 (1) of Criminal Procedure Law, prosecutor, having regard to the nature and harmfulness of a criminal offence for which extradition is asked, the person personality, health and other relevant circumstances, can apply security measures, which are not related to the deprivation of liberty (for example, prohibition from departing from the state or bail). |
| **Lithuania** | According to Art. 72 of the Code of Criminal Process, theoretically all suppressive measures of Art. 120 of the Code of Criminal Process (pre-trial detention, intensive care, house arrest, order to live separately from the victim, bail, seizure of documents, order to register periodically at the police office, written promise not to leave the country) are applicable for the subjects of the EAW, but pre-trial detention is the most frequent practice in Lithuania. |
| **Luxembourg** | As far as we know, the use of alternatives to pre-trial detention like the European Supervision Order does not occur. In Luxembourg there are no legal provisions yet on the European Supervision Order yet. |
| **Malta** | These are not used. |
| **Netherlands** | See above under a. The use of a European Supervision Order as an alternative to surrender detention does not really make sense to us in a EAW case. |
| **Poland** | The use of alternatives to pre-trial detention is gaining popularity in Poland. Detention is used as ultima ratio when there is no possibility of using other, not insulating measure. Particularly the supervision is popular, which consists in complying with the requirements of the Court or Prosecutor (e.g. a prohibition to leave the indicated place, an obligation to appear at the local police station at a certain time, the notice of intended departure and date of return). |
| **Portugal** | Based on experience we would say that there is an insignificant use of such means. |
| **Romania** | |
| **Slovakia** | I mentioned it in the answer to question a). In Slovakia is the application of the European Supervision Order, as far I know, not used. |
| **Slovenia** | No information, but in some cases the bail was used instead of pre-trial detention (the bail was set at very high amount though). |
| **Spain** | It depends on the seriousness of the crime and on whether it is an investigation or execution request. In the latest, imprisonment is normally decided. |
| **Sweden** | According to Swedish law a travel ban, an obligation to report to the police and/or supervision may be an alternative to pre-trial detention. However, these alternative coercive measures are not commonly used. In practice, the alternatives are applied only in exceptional cases, e g when the requested person is a Swedish citizen residing here or when the requested person has a strong connection to Sweden. |
| **UK** | **England and Wales**<br>See above for the use of conditional bail. English courts are able to make European Supervision Orders under Part 7 of Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014/3141. However, they have barely been used. Fair Trials International, who has researched and campaigned on the use of ESOs since their inception, said in a report in May 2016 (“A measure of last resort? The practice of pre-trial detention decision making in the EU” at §17 and fn 19) that it was only aware of two instances of its use: one in the UK and one in Portugal (both requiring supervision in Spain). I have found reference online to a possible further example in the UK (from December 2015, requiring |

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| | supervision in the Canary Islands) but nevertheless, it seems that there is little appetite to make such orders. |
| | **Scotland**<br>Accused are often admitted to bail, perhaps with special conditions attached, such as surrender of passport and daily/weekly reporting to a designated police station. The ESO appears not to be used. |
| | **Northern Ireland**<br>The ESO has been implemented but appears never to have been used. |

| **Question 3 - Detention – lengths**<br>*d) What is the experience of defence practitioners in your Member State regarding the use of alternatives to pre-trial detention (for instance, use of the European Supervision Order) when your state is the issuing state?* | |
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| **Austria** | The provisions to ask another Member State to execute alternatives to pre-trial detention are in place (e.g. supervision of a suspect living in the other Member State, see §§ 115 et.sequ. EU-JZG). However, I am not aware of any cases when it has been used. |
| **Belgium** | The use of alternatives to pre-trial detention by other Member states in the context of the EAW seems to be the exception, not to say is quite rare. The executing Member states consider obviously as a priority to guaranty before anything else the effective delivery of the arrested person to the executing Member state. This is obviously due to the fact that the Framework decision and European handbook on the EAW insist on the mutual trust between Member states. |
| **Bulgaria** | Given the answer to Question 3.b., I am not capable to provide information on this issue. |
| **Croatia** | |
| **Cyprus** | My answer is the same as above. |
| **Czech Republic** | See the answer to the question b), I do not experience alternative measures to be used.<br>I experienced e. g. a case when the requested person was surrendered to CZ as to the issuing state for the purpose of the criminal prosecution from the executing state, where this person had lived before legally for years together with a husband, children and also worked there; the court did not comply with my motion to apply ESO, relied fully on the risk of fleeing instead and kept the person in custody in the course of the whole criminal proceedings in CZ. |
| **Denmark** | Alternatives to pre-trail detention (if the conditions are justified to the court) are rarely used. If the pre-trail detention last for a long time it might be possible to implement deposit of passport, regular appearance with the police. |
| **Estonia** | Generally, bail and other alternatives to detention seem more accessible in other Member States, compared to situation in Estonia. |
| **Finland** | See previous answer. |
| **France** | French lawyers think that there is an abusive use of pre trial detention in executing states. Especially in Estonia, Germany, Italy. French judges never intervene to interrupt the EAW in such abusive situation. |
| **Germany** | see above. |
| **Greece** | [Same as in "c)"] |
| **Hungary** | No information. |
| **Ireland** | None. |
| **Italy** | Generally, the collaboration between Italian and foreign lawyers is positive therefore, there is a satisfactory exchange of information regarding the preventive detention both when Italy is executing country and when it is issuing country |
| **Latvia** | No information. |
| **Lithuania** | In other executing states the subjects of the EAW issued by Lithuania are also frequently detained if they do not have stable place of residence or income. On the other hand, if they are integrated, the alternatives to pre-trial detention are more often applied than in Lithuania. E.g., bail is frequently applied in the UK. |
| **Luxembourg** | same answer as under c) |
| **Malta** | These are not used. |
| **Netherlands** | *Ibidem*. |
| **Poland** | Alternatives to pre-trial detention are widely used by executing states. This applies to situations where the application of such measures does not jeopardize the implementation of the EAW. This includes |

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| | duty to inform about the change of residence, ban on access to certain sites, an obligation to stay at a certain place and to report to a specific authority. |
| **Portugal** | See answer c) |
| **Romania** | |
| **Slovakia** | The alternative measures are used very rarely. When the person is surrendered to Slovakia usually is the person taken to the custody but see also answer to question b). |
| **Slovenia** | No information. |
| **Spain** | The practice is not uniform. |
| **Sweden** | Alternatives to pre-trial detention are not commonly used. A reason to this might be that the use of EAW is often limited to more serious alleged offences. When a decision on detention is motivated by an assessed risk that the suspected person will impede the investigation, alternative measures are not deemed to be appropriate. Nevertheless, it can be assumed that the infrequent use of an ESO is due to a low awareness. This probably applies to all involved parties in the EAW procedure. |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the 'issue' of EAWs in the United Kingdom. |
| | **Scotland**<br>No Information |
| | **Northern Ireland**<br>No information. |

| **Question 3 - Detention – lengths**<br>*e) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | As already mentioned under a), the possibility given by the Belgian law to the Belgian investigating magistrate i an EAW issued by another Member state, to decide to let or place the concerned person in liberty (whit respect of certain conditions) during the (in principle) 60 days delay of treatment of the EAW. |
| **Bulgaria** | The answers to Question 3.a, 3.b, 3c and 3.d are to explain why I am not capable to point out examples of good this matter. |
| **Croatia** | Until the execution of surrender, the court shall impose measures deemed necessary to ensure the surre requested person to the issuing State. The police may, according to its authorities regulated by domestic law procedure and authorities, arrest the person for whom a European arrest warrant has been issued and de detention supervisor within 24 hours. Also Police will notify the state attorney about the arrest on which occasi person shall be examined by the state attorney within 16 hours after he was delivered to detention supervisor. If st does not order precautionary measures according to domestic law, arrested person shall be brought before the i judge which will hold a hearing to decide about detention according to domestic law. For the purpose of surrende shall render a decision to keep the arrested person in detention for no longer than necessary to execute the surrender the requested person. |
| **Cyprus** | In either case, the only alternative to pre---trial detention is the release of the suspect on bail according to the cri in the case law of the ECHR which are identical to those applied by the Cypriot courts. |
| **Czech Republic** | Not in my opinion. |
| **Denmark** | No |
| **Estonia** | No information |
| **Finland** | Not really. In January 2016 a working group set up by the Ministry of Justice delivered a memorandum on the for pre-trial detention, but the suggestions in that memo are still at very early stages of legislative proce http://oikeusministerio.fi/fi/index/julkaisut/julkaisuarkisto/1455190709219/Files/OMML_5_2016_Tutkintavankeus |
| **France** | There are no good practices except the alternatives to pre trial detention. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | We have sought to speed up the process of the hearing of arrest warrant cases. One initiative, however, that wa which is not popular among defence practitioners, is to remove the automatic right of appeal, instead, discretionary right based upon a certificate that a point of law at issue is of exceptional public importance bein the judge who made the Surrender Order in the first instance. Defence practitioners believe that is illogical be effectively, requesting a judge who has ruled against the subject, to then certify a point of law as being exceptio cases are problematic. That being said, the experience previously (before the introduction of our new Court of A that the delays in cases coming on for appeal hearing in the Supreme Court meant that the whole process of warrant could take four to five years. |
| **Italy** | The frame work decision should consider as mandatory the information depending on weather the preventive de been served in the issuing country or not |
| **Latvia** | Amendments to the Criminal Procedure Law are newly adopted, so no stable practice developed yet. |
| **Lithuania** | In 2016 measure of intensive care (the suspect's control by electronic surveillance measures) as alternative detention started to function in the Lithuanian practice. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matte |
| **Malta** | As an issuing state there are no guidelines because the matter is wholly dependent on the executing state. Havi once a person is returned, he must be arraigned before the court before the lapse of 48 hours. |

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| | When Malta is the executing state, the timelines are clearly defined in the Extradition Act, Cap 276 of the Lav which creates very strict deadlines. From experience it has been shown that there are no real delays at committa |
| **Netherlands** | Not necessarily. |
| **Poland** | A good practice is to use no insulation measures used as an alternative to detention. This reduces costs of the p and allows to use penalties adequate to the status and circumstances of the offense. First of all, electronic moni more and more popularity in Poland, which allows direct and constant control of the suspect while letting suc function in conditions of almost unlimited freedom. Detention should be used only when necessary. |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | I don´t think so. |
| **Slovenia** | No information. |
| **Spain** | Yes, there are good practice as issuing State, since a principle of proportionality is followed, as required in the dc There is not as executing state. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>Practitioners are very familiar with the Bail Act and its use in extradition proceedings. Whilst its application to indiv is sometimes open to criticism, it does provide a clear framework for pre-trial decision making. |
| | **Scotland**<br>No Information |
| | **Northern Ireland**<br>No information. |

| **Question 3 - Detention – lengths**<br>*f) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | The Framework Decision 2009/829/JAI on the European Supervision Order has not yet been implemented in the Belgian law nor has it, obviously, in many other Member states.<br><br>This is a shame and constitutes of course an obstacle to the use of alternatives to pre-trial detention in the context of the EAW.<br><br>Europe should thus translate this Framework decision into a mandatory Directive or regulation.<br><br>One alternative to pre-trial detention into the prison could also be the electronic survey with ankle belt, as it exists already in the Belgian national law for domestic pre-trial detention. |
| **Bulgaria** | The answers to Questions 3.a, 3.b, 3c and 3.d are to explain why I am not capable to answer this question too. |
| **Croatia** | |
| **Cyprus** | I do not have any solution or comment to make other than emphasising the need for quick implementation of Council Framework Decision 2009/829/JHA in Cyprus legal order. |
| **Czech Republic** | Practice of Czech courts needs to be changed. There is a huge difference between the application of custody and alternative measures in purely domestic cases and cases with a cross-border dimension. The dual representation in both the issuing and the executing state in EAW proceedings could help to establish supporting documentations for the alternative measures to custody to be applied. |
| **Denmark** | No problems identified |
| **Estonia** | More training for the prosecutors and judges regarding ESO and alternatives to detention. |
| **Finland** | Nothing as for now; the suggestions by the working group are obviously something that the Bar Association can mostly adhere to, that is to reduce the amount of pre-trial detention and find alternative solutions to detention. |
| **France** | No information. |
| **Germany** | A legal basis in the german AICCM for the right to bail or alternative pre-trial detention alternatives. |
| **Greece** | A legislative regulation of this matter in a European level is necessary. When examining the issue of the detention time, each Member-State should consider the EAW-procedure as a whole. That means that the issuing State should always take into account the detention time in the executing State and vice versa.<br><br>In general, considering the procedures in the issuing and in the executing member state as separate and autonomous procedures, leads to a "fragmentation" of the whole EAW procedure. That has many times as a result the degradation of the position of the accused person and the indirect violation of his fundamental rights. Since the executing state operates on the ground of an official act of the issuing state, the procedure in the executing state should always be considered as part of the criminal procedure of the issuing state and not as a separate procedure (see about this issue, *Schomburg/Lagodny,* Verteidigung im international-arbeitsteiligen Strafverfahren, Neue Juristische Wochenschrift 2012, p. 348). |
| **Hungary** | No information. |
| **Ireland** | The appointment of more judges to deal with these cases who have specialist knowledge would improve the efficiency. |
| **Italy** | |

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| **Latvia** | No significant problems encountered after amendments to the Criminal Procedure Law entered into force. |
| **Lithuania** | No information. |
| **Luxembourg** | The problem stretched under 3 b) : Excessive length of detention in the executing state while waiting a transfer in the issuing state in order to be heard by a judge, with no access to the file in the meantime, could be solved by letting the judge from the issuing state proceed to the hearing directly in the executing state. The judge could travel to the executing state, and this would reduce both the length and the cost of pre-hearing detention in the executing state. |
| **Malta** | The problem highlighted in (b) above has been rectified by way of an amendment which has reduced delays in proceedings. Where a person files a guilty plea before the Court of Magistrates as a Court of Criminal Inquiry, even where punishment for the offence is in excess of ten years imprisonment, then the Court will order the files to be sent to the Attorney General within three days and shall inform the Registrar of the Courts of the guilty plea. The Attorney General has one month to file the bill of indictment.[8] This amendment means that the Court of Magistrates may convert itself to a court of Criminal Judicature and dispense with and determine the case itself, significantly reducing any time spent in pre-trial detention away from the EAW subject's home country.<br><br>A possible solution would be the introduction of trials in absentia, whereby the accused would be able to have his legal representatives present and ensure that the sentence and punishment are in accordance with the law, thus achieving the same result without the displacement of the accused. This would also reduce the need for EAWs.<br><br>Another possible solution is the introduction of the concept of a deferred surrender, as explained above.<br><br>Where the EAW is absolutely necessary, there have to be introduced alternatives to detention. It would seem to be the case that persons may be willing to acquiesce to the EAW, and in such cases there ought to be a mechanism allowing persons to come to Malta voluntarily. |
| **Netherlands** | We believe that the *de facto* statutory non-rebuttable assumption in the Dutch Surrender Act that there is flight risk once the ADC has ruled that the EAW is valid should be abolished. 7<br><br>Furthermore, the case law rule mentioned above – surrender detention must be suspended if it is going to exceed the sentence imposed (if convicted) – should be given a statutory basis in the Surrender Act.<br><br>Finally, in order for this ruled to be effective we believe that the EAW framework decision should be amended in the following manner:<br><br>• in case of a prosecution EAW there should be an obligation for the issuing State to inform the executing State of the likely sentence to be imposed if the wanted person is convicted;<br><br>• In case of an execution EAW there should be an obligation for the issuing State to inform the executing State of the likely release date taking into account a) time spent in pre-trial detention in the issuing State; b) time spent in surrender detention in other executing States (if applicable); c) early release regimes.<br><br>• In order for sub b to work, there should be a requirement for the executing State to inform the issuing State of the days spent in surrender detention, even in cases where the surrender was |

[8] Section 392B, Cap 9, Laws of Malta

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| | in the end refused. Right now, the Framework decision only provides for such an obligation if surrender has actually taken place (art. 26, par. 2 of the EAW framework decision). |
| **Poland** | A bigger efficiency is observed in cases where the authority issuing the EAW immediately pointed out that the effective implementation of the EAW will not need detention. This applies for example when a suspect is yet to be heard and there is no need to have him arrested at this stage. |
| **Portugal** | Those problems are not relevant enough to mobilize the Bar, the government or the rest of the authorities. We do not no specific solutions to this kind of problems. |
| **Romania** | |
| **Slovakia** | The Slovak courts are very sensitive in the matter of EAW cases and maybe too afraid to use the alternative measures as e.g. bail. I thinks the amendment of the European legislation would help. |
| **Slovenia** | The bail and house arrest should be used more often as alternatives to pre-trial detention. |
| **Spain** | There are not solutions, because appeals against the Spanish judge decisions are ineffective when he/she rule pretrial detention. |
| **Sweden** | Training, see under Question 1 d) |
| **UK** | **England and Wales**<br>The European Supervision Order appears to be a sensible mechanism for reducing the amount of time individuals spend in custody pre-trial. It is not clear why it has not received greater publicity or use. This is something that should be considered further within Member States and at an EU-wide level.<br><br>Similarly, I am not aware of any monitoring of the implementation of the obligation in article 26 to deduct time spent in custody pre-extradition from a later sentence of imprisonment. This is something that should be considered. Individuals whose extradition has been ordered in the UK are sometimes advised to consider surrendering themselves to custody from the date of judgment in order to start accruing days in an English prison that can be deducted from the prison sentence in the requesting state (if conditions abroad are likely to be worse). Clearly, this is an unwise approach to take if requesting states are not complying with the article 26 duty. |
| | **Scotland**<br>No Information |
| | **Northern Ireland**<br>The requirement for a certificate of attributed detention time to be communicated to the appropriate Judge in the executing state by the issuing state within 30 days of the extradition being completed, and thereafter made available to the defence practitioner. |

| **Question 4 - Detention – conditions**<br>*a) What is the experience of defence practitioners in your Member State of matters arising out of detention conditions in either the executing or issuing state when your state is the executing state of an EAW?* | |
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| **Austria** | Detention conditions in Austria (when Austria is the executing state) are the same as for any pre-trial detention in Austria, i.e. the so called "surrender detention" follows the same rules and procedures as pre-trial detention.<br>There is not a sufficient number of cases to give an overwiew of detention conditions in all issuing states. The vast majority of EAWs executed in Austria are issued from Germany, Hungary and Italy; with those member states, no particular issues regarding detention conditions arise. |
| **Belgium** | Problematic conditions of detention (as for instance risks of degrading or inhuman treatment due to "special detention regime", etc.) in the issuing Member state may bring the competent Belgian judicial authority (Investigating judge, Council Chamber, Accusation Chamber) to refuse to execute the EAW since the respect of the fundamental rights as guaranteed by the European Convention on Human rights is one of the legal factor, according the Belgian law on the EAW (see next question), to refuse to execute it. |
| **Bulgaria** | It is to be reminded that the refusals of Bulgarian courts to surrender the wanted person(s) are normally based on the minimum threshold of punishment or detention and on the grounds of non-execution of the EAW as provided for by the FD and EEAWA. The latter act does not provide for an opportunity to refuse on the grounds of poor detention conditions. Because of this situation, I myself, as well as other defence lawyers with whom I have discussed the matter, cannot say that we are aware of EAW cases where the courts have taken into account the conditions of detention - if the threshold of usage is covered and the grounds of non-execution are absent, any EAW will be executed by the courts in my country. For the same reasons we are neither aware of cases where defence lawyers have made objections based on poor detention conditions. |
| **Croatia** | |
| **Cyprus** | Detention conditions in the issuing state are not commonly a ground for refusing to execute an EAW unless there is cogent evidence which demonstrates that the requested person will be exposed to a real risk of inhuman and degrading treatment under Article 3 of the European Convention of Human Rights and Articles 1 and 4 of the European Charter of Fundamental Rights. Paragraph 13 of the Preamble of the Framework Decision prohibits the removal, expulsion or extradition of a person to a State where there is a risk that he or she would be subjected to the death penalty, torture or other degrading treatment or punishment. The said paragraph is transposed in Article 2(2) of Law 133(I)/2004. An executing state can legitimately refuse to execute an EAW in such circumstances as was decided by the European Court of Justice in Joined Cases C---404/15 and C---659/15. |
| **Czech Republic** | I have not experienced that Czech courts would check the detention conditions in the issuing Member States. However, such issue should be in my view certainly raised in relation to Member States marked recently by the Court of Justice of the EU and the European Court for Human Rights as in breach of human rights rules on the detention conditions. |
| **Denmark** | It is a part of the conditions in the law that that question has to be considered. The question about bad conditions in the issuing state is argued but not successfully until now. |
| **Estonia** | In Estonia, and in many other Member States, detention conditions are poor. Generally, these issues are not taken into consideration in EAW proceedings. |
| **Finland** | When Finland is the executing state, the person sought is usually not held in police establishments, at least for a longer period than a couple of days. Holding remand prisoners in police establishments is something that the CPT has criticized Finland from their first visit in 1994, and in their last report the criticism was again renewed (http://www.cpt.coe.int/documents/fin/2015-25-inf-eng.pdf ). As mentioned, this is however usually not an issue in EAW cases, in which the persons sought are normally |

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| | placed in detention prisons or other prisons than police facilities. One can always try to improve the detention facilities, and the CPT has criticized the so called travelling cells in Vantaa prison, where most of the persons detained by virtue of an EAW are held (starting from 1.1.2016 Helsinki District Court is the only court with jurisdiction in EAW cases therefore making Vantaa the closest remand prison). The CPT mentioned in its report from 2015: "Riihimäki and Vantaa Prisons' buildings had not changed significantly since the CPT's 2008 visit; also Kerava Prison had not undergone any structural changes since the CPT's last visit there. Overall, the material conditions for the mainstream population were good in the three above-mentioned prisons: the majority of cells were of adequate size, had sufficient access to natural light, artificial lighting and ventilation, and were suitably equipped and maintained in a good state of repair and cleanliness. That said, the so-called "travelling cells" at Vantaa Prison were dilapidated and dirty. **The CPT recommends that steps be taken to remedy this state of affairs**." The report alos states: "**the CPT recommends that further efforts be made in order to provide prisoners in all the establishments visited (and, in particular, Riihimäki and Vantaa Prisons) with purposeful activities tailored to their needs (including work, vocational training, education and targeted rehabilitation programmes**). |
| **France** | French defence lawyers are authorized to complain on behalf of their client about the detention condition in France or abroad. French lawyers have to provide evidences and could be heard by French jurisdiction if the minimum standard of detention is not concretely respected. |
| **Germany** | It can be raised as a topic in the extradition proceedings regarding inhumane treatment by prison conditions. Quite recently, Higher Regional Court Bremen called upon the European Court of Justice in December 2015 to decide whether extradition to Romania and Hungary should be executed because of the risk of inhumane treatment under art. 4 of the EU-charta of rights. The ECJ decided in March 2016 that there is no automatism of EAW-execution if there is the concrete risk of such a treatment (Cases Aranyos C-404/15 and Caldararu C-659/15). This is in conformity with a judgement of the german constitutional court (15.12.15, 2 BvR 2735/14). |
| **Greece** | No cases are reported, where the execution of an EAW was refused by the Greek authorities, due to bad detention conditions in the issuing Member-State.<br><br>On the other hand, Greece has been convicted several times in the past years by the ECHR because of the bad detention conditions during a pre-trial detention. The convictions concerned mainly the hygiene conditions, the lack of courtyard in the detention centers and the quality of food (ECHR, *Dimopoulos v. Greece*, 09.10.2012, app. no. 49658/09, ECHR, *Vafiadis v. Greece*, 02.07.2009, app. no. 24981/07, ECHR, V.S. v. Greece, 29.10.2009, app. no. 8249/07). |
| **Hungary** | There is no difference in the detention conditions for either a Hungarian or a EAW suspect. Unfortunately the Hungarian detention conditions do not conform so well with the EU standards - the European Court of Human Rights has already initiated official proceedings against Hungarian because of the prison circumstances. The most important problem is that the cells are too small and the prisoners do not have as many square meters as is stated in the international Act. |
| **Ireland** | The poor prison conditions in some requesting States are, in fact, one of the main grounds (along with Delay and Article 8) for successful challenge to arrest warrants in this jurisdiction. |
| **Italy** | Italy was convicted twice by the European Court of Human Rights for the inhuman and degrading treatment of prisoners (16 luglio 2009 - Ricorso n. 22635/03 - Sulejmanovic c. Italia - Torreggiani (ricorsi nn. 43517/09, 46882/09, 55400/09; 57875/09, 61535/09, 35315/10, 37818/10) – 8 gennaio 2013).Some EU member states have requested assurances from the Italian State about the conditions of detention for those prisoners covered by an EAW when Italy is the issuing State.<br><br>Under the Torreggiani ruling prison overcrowding has been deemed a structural problem in Italy. As a result of that judgement the Italian stet has finally taken measures to reduce the problem over |

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| | overcrowding in prisons. There are 193 prisons in Italy with a prison capacity of 49,697 inmates. The prison population as of 31 March 2016 was 53,873, of which 2,236 were women and some 18,085 were foreigners *source Italian Ministry of Justice).<br><br>The places are calculated on the basis of 9 sq metres per single detainee, plus 5 sq metres for others, which is the same calculation applied to the habitability of property, and is more favorable than 6 sq metres plus 4 sq metres recommended by the CPT. This information on prison capacity does not take into account any transitional situations or problems which could temporarily affect space per prisoner allocations. (Source, Italian Ministry of Justice).<br><br>To note, examination of official statistics shows that the prison overcrowding problem has diminished, but has not yet been fully resolved.<br><br>In Italy, there is a separate regime of rigorous imprisonment for those defendants convicted of serious offenses linked to organized crime which violates the principle of equality of treatment. |
| **Latvia** | Detention conditions are specifically regulated in Law On the Procedures for Holding under Arrest. The purpose of this law is to ensure commensurate conformity with the human rights and the interests of criminal proceedings in applying the security measure – arrest. Detention conditions at “investigative prisons” in general do comply with the provisions of Law On the Procedures for Holding under Arrest. |
| **Lithuania** | Such judicial practice (that the Lithuanian courts seriously examine detention conditions in the issuing states) is not known.<br>In addition, the subjects of the EAW, being detained in Lithuania, frequently are not willing to challenge the EAW, because that would mean that they have longer to stay in detention and detention conditions in Lithuania are not quite good. |
| **Luxembourg** | According to our experience as defence practitioners, none of the problems in relation with the detention when Luxembourg is the executing state is specific to the EAW.<br><br>The problems encountered are the same as for the other kind of detention in Luxembourg. |
| **Malta** | While the Court does not usually turn a blind eye where the accused brings forward allegations of poor detention conditions in the issuing state, it is usually the case that the risk must be a real one and not merely a fear of possible degrading or inhuman treatment. Even if the CJEU has pronounced itself on the degrading conditions of that particular prison, the accused must bring sufficient evidence to convince the court that the person of the accused will be subject to such treatment (Refer to the response to 5(a)). |
| **Netherlands** | Art. 11 of the Surrender Act obligates the Amsterdam District Court to refuse surrender in cases where surrendering the wanted person would lead to a flagrant violation of his or her human rights (see further below, question 5a).<br><br>Since April 2016, this provision is interpreted in line with the *Aranyosi and Căldăraru* judgement of the CJEU (ECLI:EU:C:2016:198). As a result, once it has been established (by the defence) that the prison conditions in the issuing State are such that, in general, there is a real risk of inhuman or degrading treatment , the ADC will request the issuing State to provide further details on the exact prison conditions of the wanted person if (s)he were to be surrendered. On the basis of this additional information the ADC will decide if there is also a real risk that the *wanted person* will suffer inhuman or degrading treatment in prison if surrendered. |

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| | • If the ADC decides that there is such a real risk it will not refuse the surrender but postpone its decision on the EAW pending new information from the issuing State on the basis of which it is satisfied that there no longer is real risk (*Cf.* ECLI:NL:RBAMS:2016:2630)<br>• If the ADC decides that there not such a real risk it will allow the surrender (*Cf.* ECLI:NL:RBAMS:2016:2629) |
| **Poland** | Polish courts proceed EAW with respect to the principle not to execute an EAW if there is a risk that the detention conditions in the issuing Member State are not compatible with the Charter of the Fundamental Rights of the EU.<br><br>When Poland is the issuing state detention period varies, however usually it typically lasts for a couple of weeks. Since conditions of detention are not very well in Poland, long period of its enforcement may be treated as additional sanction.<br><br>One of the problems in Poland as the executing state is, among others, detention of the requested person pending the decision on executing the warrant. The total period time of such a detention may in no case exceed 100 days – which is a restriction, introduced to polish criminal procedure in 2009. It also covers the time of postponed surrender. But, on the other hand, according to polish code of criminal procedure, the national detention order from the executing state and the custodial sentence, on which the EAW is based, constitute an independent premise for issuing a detention order in Poland, to secure the execution proceedings. According to some courts, this means that in EAW cases it shall be presumed that all the conditions of a detention order, as stipulated in code, are met. Especially, the general premise of all supervision measures - the high probability that the requested person has committed an offence. In such a case, the requested person that to prove otherwise. (For example, that there is no good reason to fear he/she may take flight or go into hiding) And even though all courts, in different decisions, notoriously emphasize that detention shall not be automatic, in practice - it is. |
| **Portugal** | There is no difference between detention conditions. Same conditions applied to all kind or arrested population, or, at least, there is no distinction concerning defendants arising from a EAW criminal case. |
| **Romania** | |
| **Slovakia** | The Slovak courts do not evaluate and consider in the EAW proceedings the detention conditions in the issuing Member States jails. This is even not regulated in the EAW law legislation. Although in my opinion this matter should be considered but it could be a problem as there is a principle of the mutual recognition of the judicial decisions within the EU.. so I see it as a good idea for an initiative of the improvement of the European legislation. |
| **Slovenia** | The detention conditions in Slovenia are generally poor, especially in Ljubljana jail (overcrowding). But this applies to all persons, not just those detained because of an EAW. |
| **Spain** | It depends on the issuing state, with different experiences. In any case, the prision conditions in Spain are apparently one of the most favourable in Europe. Persons under detention in other states complaints about conditions. When bad conditions exist, the defence may request the spanish enforcement judge to ask for more information to the issuing authorities. |
| **Sweden** | Detention conditions in Sweden<br>Detention conditions for individuals detained on the basis of an EAW are governed by the same rules that apply for suspected persons subject to pre-trial detention during a national preliminary investigation. The criticism that has been made against detention conditions in Sweden mainly concerns lengthy periods of detention and the frequent use of restrictions. Generally, these issues are not actualized in relation to the execution procedure of an EAW.<br><br>Detention conditions in the issuing state |

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| | Occasionally, requested persons may reject an execution of the EAW on the basis of inhuman detention conditions in the issuing state. Even though case law from the ECHR can be invoked in this regard, the defense counsel rarely has access to information or documents supporting the client´s fear in the specific case. |
| **UK** | **England and Wales**<br>Prison conditions in the UK are regularly criticised by various authorities, charities and campaign groups, but it has not, to this author's knowledge been successfully argued that the conditions are so poor that individuals' fundamental human rights would be breached were they to be extradited to England and Wales. However, this may change. Overcrowding in English prisons is a perennial problem, and security in prisons (and associated rates of violent assault) is reportedly deteriorating.<br><br>Prison condition issues arise when considering the human rights bar to extradition (discussed further below). In practice, the burden on establishing a breach of an individual's human rights due to prison conditions has been a heavy one for requested persons, at least in relation to states for which appellate decisions or pilot judgments have not expressed major concerns. In *Brazuks v Prosecutor's General Office Latvia* [2014] EWHC 1021 (Admin), the High Court endorsed the views of the Chief Magistrate, who had said "in all EAW cases, bearing in mind that the requesting state will be a member of the Council of Europe and a signatory to the ECHR, the court will not hear evidence challenging general prison conditions unless the defendant identifies from an internationally recognized source new factual issues that could amount to clear, cogent and compelling evidence to show that there is a real risk of treatment contrary to article 3." It will be interesting to see if the English courts' approach to prison conditions is in any way ameliorated by the CJEU's decisions in *Pál Aranyosi and Robert Căldăraru* (C-404/15 and C-659/15 PPU). |
| | **Scotland**<br>Experience shows that defence challenges regarding inhumane conditions/treatment tend to fail. It is thought that there is almost a presumption in favour of the issuing state and too great an onus on the accused to prove the poor level of conditions. As previously stated, there is insufficient access to expert evidence in this regard.<br><br>Putting aside the over-crowding issue, it appears that conditions appear to have improved somewhat in some Eastern European systems. |
| | **Northern Ireland**<br>Detention conditions are not considered an issue within Northern Ireland and are not considered to breach the RP's Article 3 Convention rights.<br><br>Detention conditions are regularly raised as a potential bar to extradition when Northern Ireland is the executing state. RP's claim their Article 3 rights will be breached by the potential to be held in a prison where conditions fall below the complying standard with Article 3 rights. A recent case of note is that of Lithuania v Liam Campbell [2013] NIQB 9, where the court held that in the absence of any assurance by the Lithuanian authorities to the contrary, the extradition of Mr Campbell to Lukiskes remand prison in Lithuania would amount to a violation of his Article 3 rights. This was a key case in Northern Ireland and sparked an increase in challenges by RP's of their extradition to Lithuania. In response the Lithuanian authorities have provided an undertaking that RP's would not be held in this prison if returned to Lithuania.<br><br>Similar challenges have been raised in respect of prisons in Poland and Greece recently. |

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| | A defence practitioner faces a difficult task in establishing the RP's claim. This is tied to the issue discussed at 5 below in respect of the high evidential burden to be met by the RP. Whilst many RP's raise this claim it is difficult to substantiate. In some cases expert evidence is available, whether commissioned by the defence or available from the European Committee for the Prevention of Torture. Indeed obtaining expert evidence to support the contention that Article 3 rights may be breached is the most difficult element in a defence of this nature. The starting point is that, as a member state, appropriate standards are adhered to. To suggest otherwise one would need to inspect the particular facility in question and gaining access or authority is a difficult endeavour.<br><br>A further problem is establishing which prison a RP may be detained in. The UK, and in particular Northern Ireland, issue many requests for further information to the issuing state to obtain details of the potential detention facility. This is a complicated and often convoluted process due to the differing detention arrangements in each member state. The RP may be held in a remand prison, a police station during the investigative process or a sentenced prison. In some cases the issuing state simply do not reply. |

| **Question 4 - Detention – conditions**<br>*b) What is the experience of defence practitioners in your Member State of matters arising out of detention conditions in either the executing or issuing state when your state is the issuing state?* | |
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| **Austria** | In Austria, if Austria is the issuing state, the suspect will be held in pre-trial detention after surrender. There are not particular experiences as regards surrender detention in the Member States Austria is issuing most EAWs to. |
| **Belgium** | Belgian prisons are known for overcrowding and based on a recent arrest of the European Court of Justice of 5 April 2016 (C-404/15 and C-659/15), this could potentially bring in the future executing member States to refuse to execute an EAW issued by Belgium. |
| **Bulgaria** | It is to be reminded that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. This is why I am not capable to answer this question, since I do not know practitioners, who have participated in these procedures. Anyway, I am aware of examples where other Member States (e. g. the UK and Germany), acting as executing states in cases where Bulgaria has been the issuing state, have refused to surrender the wanted person(s) because of the numerous judgments of the European Court of Human Rights that had found violations of Article 3 of the European Convention of Human Rights because of the poor conditions in prisons and places of detention in Bulgaria. My information about these examples comes from the media. |
| **Croatia** | |
| **Cyprus** | With regard to detention conditions in the executing state when Cyprus is the issuing state, I am not aware of any experience of defence practitioners in this field. In my opinion the presence of serious risk of inhuman or degrading treatment in the executing state, is a strong ground for not issuing a EAW and should weigh heavily in the exercise of the court's discretion. The issuing of an EAW despite the presence of such serious risk can lead to a gross violation of Article 3 of the European Convention of Human Rights and Article 4 of the European Charter of Fundamental Rights. Authority for this proposition is the landmark decision of the ECHR in the case of Soering v UK (application no 14038/88, judgment of 07.07.1089), and more recently the decision of the European Court of Justice in Joined Cases C---404/15 and C---659/15. With regard to detention conditions in the issuing state when Cyprus is the issuing state I am not aware of any instance in which detention conditions lead to the refusal of a judge to issue an EAW. |
| **Czech Republic** | See the previous answer, Czech courts do not pay attention to this issue in my experience. |
| **Denmark** | It is not an issue – "we expect that they will look forward to the good conditions in a DK jail!" |
| **Estonia** | The authorities pay no attention to detention conditions in the executing state. |
| **Finland** | As for conditions in Finland when Finland in the issuing state, see previous answer. What the conditions are in the executing state is difficult to comment on. To this regard it would perhaps be best to gather information from other the Member States concerned, since one can only guess if the clients' statements concerning the conditions in the executing state are always correct. Obviously the CPT's country specific reports can be of help. |
| **France** | French lawyers are entitled to represent their client in other EU countries but in fact we had colleagues from the executing state who assist their clients before local justice. In some cases French lawyers go and argue at court detention conditions abroad with colleagues from the executing state. |
| **Germany** | When the case comes to the german criminal court the defence will argue for how to calculate the detention time in the executing state (1:1, 1,5:1, 2:1 etc.). In the end, the criminal court has to determine the calculation. |

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| **Greece** | By the issuance of an EAW the probable (bad) detention conditions in an executing State are not taken into consideration by the Greek authorities. |
| **Hungary** | No information. |
| **Ireland** | Defence practitioners are very familiar with the up-to-date reports of the Committee for the Prevention of Torture who carry out inspections of prisons in various member states. CPT members are often engaged as academic witnesses in the trial of cases where prison conditions are relevant. |
| **Italy** | The CEDU judgments c-404/15 and c-659/15 regarding the Hungarian citizen Pal Aranyosi and the Romanian citizen Robert Căldăraru are well-known in Italy and have been widely distributed. The enshrined principles will be applied for sure even if they are still too recent in order for us to gather information. |
| **Latvia** | No information. |
| **Lithuania** | When Lithuania is the issuing state, the courts of some executing states seriously examine detention conditions in Lithuania. E.g., such judicial practice is developed in the UK and Ireland. Taking into account the conclusions of the CPT and the ECtHR that detention conditions in Lukiskiu prison and Siauliu prison are not in compliance with Art. 3 ECHR standards, the UK and Irish courts ask for the assurances from Lithuania that the surrendered persons could be detained only in Kaunas prison, which has been evaluated satisfactory by the British expert. |
| **Luxembourg** | One problem encountered is the difference of condition of detention in the executing state (In this case Nederland during two month) and then in the issuing state Luxembourg.<br><br>The EAW was aiming a married couple. During the two month of detention in Nederland, the couple had been granted daily phone communication and weekly time together.<br>But once in Luxembourg, no more communication was allowed and a total separation had been applied for more than one month. This made no sense and was only frustrating and hurting. |
| **Malta** | Given that in executing an EAW the time limits are quite strict, detentions are not prolonged in local prisons, however these are held in the local prison, of which there is only one. However the conditions are not very favourable although it is apt to note that there are not many particular complaints of detention pending an EAW. This is largely due to the fact that the time limits are strict, and due to the number of persons voluntarily submitting to their return. Thus the detention is not a prolonged one, and in addition, the person would be too absorbed with the proceedings to consider the conditions around him. Given that there is also good communication with the lawyer of the accused and with family members, this eases the conditions of the brief detention period. It is also apt to note that any medical or psychological treatment required is offered to the detainees. |
| **Netherlands** | As far as we are aware, prison conditions are not a problem in the Netherlands. |
| **Poland** | See a) |
| **Portugal** | See answer a) |
| **Romania** | |
| **Slovakia** | As I mentioned in the question a). The courts in Slovakia do not care about that. |
| **Slovenia** | No information, but there was a case when a Slovenian citizen was detained in France (in Paris jail) on the basis of the Slovenian EAW. He asked for immediate transfer to Slovenia because of very poor conditions there. It seems that the conditions during pre-trial detention are problematic across Europe... |
| **Spain** | The conditions of detention in Spain are, with some exceptions, quite decent, although a distinction must to be made between the conditions in the police stations (poor) and the conditions in prisons ( good). There is a problem with the transfer of detainees, given that the National Court has the competence to rule warrants, all the detainees must be transferred to Madrid and these conditions are not the best. |
| **Sweden** | Conditions in Sweden |

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| | See Question 4 a). When the issuing of an EAW is based on a suspicion of serious crime or if the investigating due to other reasons is time consuming, issues regarding lengthy periods of detention and the use of restrictions can be actualized after surrender. In this regard it shall be mentioned that the Swedish Government has responded to the criticism and has instituted an inquiry on the matter.<br><br>Conditions in the executing state<br>No information |
| **UK** | **England and Wales**<br>See above. |
| | **Scotland**<br>There appear to be no problems with this. |
| | **Northern Ireland**<br>No information. |

| **Question 4 - Detention – conditions**<br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | Nothing to mention |
| **Bulgaria** | The answers to Questions 4.a and 4.b are to explain why I am not capable to point out examples of good practices in this matter. |
| **Croatia** | Detention shall be executed in prisons designated for that purpose by the Minister in charge of justice affairs. Detention shall be executed in conditions which do not offend the person and dignity of the detainee. Authorized employees with the judicial police and guards may, in cases where the execution of detention is not feasible due to the active or passive resistance of the detainee, use means of force only when and in the manner prescribed. The rights and freedom of detainee may be restricted only to the extent necessary to achieve the purpose of detention, to prevent his flight, to prevent the commission of an offence and to remove the danger to life and health of people. Detainees shall be accommodated in rooms of an appropriate size which meet all requirements of health. Persons of opposite sex shall be detained sepa¬rately. As a rule, detainees shall not be accommodated in the same room as persons who are serving a prison sentence. A detainee shall not be accommodated with persons who may be of harmful influence to him, or whose company may be preju¬dicial to the course of the proceedings. |
| **Cyprus** | No information. |
| **Czech Republic** | No. |
| **Denmark** | No |
| **Estonia** | No information |
| **Finland** | Not really; the time limits are usually followed and persons being held by virtue of an EAW are usually treated quite ok since the Finnish authorities are not basically in charge of the actual investigation of the offence or the underlying detention order. |
| **France** | The good practices are to arise the attention of the Judges on detention conditions of the client abroad or in the country. This has to be made on practical issues like health, access to lawyer, visit of the family, and secret of the correspondence. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | Refusing surrender where there are criticisms made by the Committee for the Prevention of Torture is the most effective way of bringing international attention to the poor prison conditions in some member states. |
| **Italy** | The Ministry of Justice is able to give assurances for those subjects delivered to Italy under a EAW with regard to prison overcrowding when the executing State expressly requests these (U.K. for istance). |
| **Latvia** | No information. |
| **Lithuania** | The assurances from Lithuania that the surrendered persons could be detained only in Kaunas prison (with relatively better detention conditions than in other prisons) might be regarded as good practice. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |

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| **Poland** | Detention in Poland is used only when it is necessary to continue the proceedings. This also applies to law enforcement in the scope of the EAW. Lack of automatism, combining the issue of the EAW and the detention or arrest of a suspect, is favorable since it enables to use legal measures more adequate to the situation. |
| **Portugal** | No information. But the answer should be negative. |
| **Romania** | |
| **Slovakia** | Not at all. |
| **Slovenia** | No information. |
| **Spain** | Not specially. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>There have been a number of prison conditions cases in recent years concerning Lithuania and Greece. Both these states have been heavily criticized by EU institutions for the state of their prisons. These states have responded by giving specific assurances that the requested persons, when returned will be housed in conditions which would not breach their Article 3 rights. Such assurances have been accepted by the English courts. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 4 - Detention – conditions**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | Member states should absolutely instruct their respective judicial authorities to stop definitively to consider the pre-trial detention in general and as part of the EAW, as a convenient "pre-trial sentence". |
| **Bulgaria** | The general solution could be to amend the FD and then, on this basis, to amend respectively the EEAWA, by introducing a requirement to consider the conditions of detention as grounds to refuse to surrender the wanted person(s). Moreover, this solution would be in good compliance with the recent practice of the Court in Luxembourg. I do not expect that the EEAWA could be amended by the authorities in Bulgaria without a preceding amendment of the FD. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | Defence practitioners may especially resort to the recent case-law of the Court of Justice of EU and ECtHR. |
| **Denmark** | A colleague in the other country will be very helpful, save uncertainties and save unnecessary court hearings |
| **Estonia** | Enhanced exchange of information among defence practitioners regarding detention conditions in different member states. Training of prosecutors, judges, and lawyers regarding fundamental rights aspects of EAW proceedings. |
| **Finland** | Not really. |
| **France** | To the creation of an European controller of places of deprivation of liberty. |
| **Germany** | Defining the basic minimum conditions in detention EU-wide. |
| **Greece** | In Art. 4 par. 4 of the Commission's Proposal for the Directive 2013/48 (COM 2011/0326 final) there was a provision that gave the right to the lawyer of the detained person to visit the place where the suspect or accused person is detained in order to check the detention conditions. Unfortunately, this provision was not adopted in the final text of the Directive 2013/48, although it was in the right direction. The right of the defender to visit the place where the suspect or accused person is detained could lead to more transparency and thus contribute to the improvement of the detention conditions. Therefore, the adoption of such a provision on a European level following the example set by the before mentioned Commission's Proposal should be considered. |
| **Hungary** | No information. |
| **Ireland** | Further resourcing to the Committee for the Prevention of Torture and wider dissemination of their materials would improve the skill-set of defence lawyers and inform the judiciary, similarly. |
| **Italy** | For minor offenses, and for those offenses unlikely to cause public concern, lawyers ask that imprisonment during the investigation period be waived. |
| **Latvia** | No significant problems encountered. |
| **Lithuania** | The problem might be solved if the state practice followed the CtJEU recent judgment in joined cases C-404/15 and C-659/15 PPU (Aranyosi and Caldararu) from 5 April 2016. |
| **Luxembourg** | Creating an official way of communication that doesn't exist yet, between the defense practitioners and the judge of the issuing state.<br><br>An increased mobility of the judge of the EAW issuing state, as already explained at the point 3 f). |
| **Malta** | Nothing to report. |
| **Netherlands** | As far as we were able to ascertain it is unclear if a prosecutor may (or even must) take into account prison conditions in the executing State before issuing an EAW. We believe that the Framework decision and/or Surrender Act should be clarified in this regard. |

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| **Poland** | A good solution is submitting of a motion by the defense lawyer, asking to be informed of all actions taken in the case, which allows for a quick response in case the perpetrator was arrested or another preventive measure was applied against him. |
| **Portugal** | See answers a), b) and c). |
| **Romania** | |
| **Slovakia** | The current situation requires an approach in every particular case. |
| **Slovenia** | More funds for new jail facilities - most jails in Slovenia are more than 40 years old and have not been refurbished in this time (for instance - some still have the same furniture). |
| **Spain** | There is not solution. Conditions of detention and transfer are within the administrative scope, and it is not possible intervene, with few exceptions, |
| **Sweden** | As established by the ECJ in judgment in C 404/15 and C 659/15, a solution could be to introduce an obligation for the issuing state to provide the executing state with all necessary information when there are reasons to believe that the requested person might be subject to a risk of inhuman or degrading treatment if surrendered to the issuing state. Such obligation could be combined with a fixed time limit within the information should be provided, or the execution would be refused. |
| **UK** | **England and Wales**<br>One major difficulty is securing access to prisons within the EU which reportedly fall below acceptable international standards. Again, states such as Greece refuse to permit prison inspections from anyone other than members of the Greek parliament, the Greek prison's ombudsman and the CPT/UN Special Rapporteur. The only option is for defence practitioners to obtain copies of these various reports and provide them to the court. |
| | **Scotland**<br>Judges should be pressed to ask of the requesting state, which prison the accused is to be held in if extradited and a report as to the conditions in that prison. If the latter is not forthcoming it is possible that organisations such as the ICRC (International Committee of the Red Cross) may have inspected the institution and published a report. A proper assessment can then be made as to whether these conditions meet the Article 3 test (inhuman or degrading treatment). Again, the defence must be properly equipped/funded to properly explore this vitally important factor. |
| | **Northern Ireland**<br>A dedicated team in the issuing state to assist those representing the RP in the executing state. Assistance in the following ways would be of particular importance:<br><br>1. To facilitate the identification of experts in the executing state.<br>2. A requirement to outline on the EAW the detention facilities in which the RP may be detained.<br>3. A requirement to respond to requests from the executing state within a reasonable time frame.<br>4. To allow reasonable access to detention facilities for inspection. |

| **Question 5.i. - Relationship with existing fundamental rights**<br>*a) Has your Member State enabled any grounds for refusing to execute an EAW on grounds of breach of fundamental rights? If so, what are they? How are they satisfied?* | |
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| **Austria** | § 19 (4) EU-JZG provides: The execution of the EAW must be rejected due to objections raised by the person concerned, if his / her surrender would violate the principles recognized by Art. 6 of the Treaty on European Union (i.e. the Charter of Fundamental rights and the European Convention on Human Rights) or if there is objective evidence that the arrest warrant has been issued for the purpose of prosecuting or punishing the affected person for reasons of sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or if person's position would otherwise impaired for any of these reasons. The objections can be dismissed if the person could have brought the objections before the competent judicial authorities of the issuing State, before the European Court of Human Rights or the Courts of the European Union. |
| **Belgium** | YES, article 4, 5°, of the Belgium law on the EAW of 19 December 2003 states that the execution of an EAW issued by an other Member state has to be refused – mandatory refusal - if there are reasons to believe that the execution of the concerned EAW will have as effect to harm the fundamental rights, as guarantied by the European convention on Human rights, of the concerned person. |
| **Bulgaria** | My country has enabled **no** grounds for refusing to execute an EAW on grounds of breach of fundamental rights. The EEAWA, being an almost verbatim reproduction of the FD provisions, contains only rules providing for the grounds of mandatory and optional refusals as pointed out in the FD. |
| **Croatia** | According to the Act on Judicial cooperation in criminal matters with the Member States of the European Union (Offical Gazette 91/10, 81/13, 124/13, 26/15) there are grounds for the mandatory non-execution of a European arrest warrant and Optional grounds for the non-execution of the European arrest. The court shall refuse to execute a European arrest warrant in the following cases:<br>a) If the offence on which the arrest warrant is based is covered by amnesty in the Republic of Croatia, where the Republic of Croatia had jurisdiction to prosecute the offence under its own criminal law<br>b) If the court is informed that the requested person has been finally judged by a Member State in respect of the same act provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State,<br>c) If the requested person has not reached the age of 14 at the time the offence was committed.,<br>d) If the offence does not constitute an offence under domestic law; however, in relation to fiscal offences, the execution of a European arrest warrant shall not be refused on the ground that domestic law does not impose the same kind of tax or duty or does not contain the same type of rules on taxes, duties and customs and exchange regulations as the law of the issuing State;<br>e) If the person who is the subject of the European arrest warrant is being prosecuted in the Republic of Croatia for the same offence for which the European arrest warrant was issued, except state attorney and comeptent public body of issuing state has agree that prosecution shall be lead by judicial body of issuing state;<br>f) If the domestic judicial authority has decided not to prosecute for the offence for which a European arrest warrant was issued because the suspect has fulfilled the obligation imposed on him or her as a condition to cease prosecution;<br>g) If the prosecution or the execution of the sanction is statute-barred according to domestic law, providing that Croatian judicial authorities have jurisdiction for that offence under the domestic law;<br>h) If the court is informed that the requested person has been finally judged by a third State in respect of the same offence, provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State. |

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| | A court may, taking into account the principles of efficient co-operation, expediency and right to a fair trail, refuse to execute the European arrest warrant:<br>a) If the judicial authorities of the Republic of Croatia have decided either not to prosecute for the offence for which a European arrest warrant was issued or to discontinue proceedings, or if a final judgment has been passed upon the requested person in a Member State, in respect of the same offence;<br>The court may refuse to execute the European arrest warrant issued for the purposes of executing a custodial sentence or detention order rendered in absentia, unless the information according to the procedural rules of the issuing State provides that:<br>1. the requested person was personally and in due time summoned for a hearing at which a decision was rendered in absentia or that he or she has actually received an official notification in such a manner that it was unequivocally established that he or she was aware of the time and place of the hearing, and was warned about the possibility of a decision being rendered in absentia if he or she does not appear for the hearing;<br>2. the requested person was represented by an authorised or a court-appointed defence counsellor;<br>3. the requested person, after being personally served with the decision rendered in absentia and being instructed about his or her right to a retrial or an appeal in which he or she would be entitled to participate, in which the facts would be reassessed and new evidence presented, which might lead to a different decision, has explicitly stated that he or she does not dispute the decision rendered in absentia, or did not request a retrial or submit an appeal within the stipulated time limit;<br>4. the requested person was not personally served with the decision rendered in absentia, but will be personally served with it without delay after surrender to the authorities of the issuing State, and instructed about his or her right to a retrial or an appeal within the legally stipulated time limit, which could initiate the procedure described in item 3 of this paragraph. |
| **Cyprus** | No it has not. There is no decision of the Supreme Court refusing to execute an EAW on grounds of breach of fundamental rights. On the other hand it must be stressed that in many instances the Supreme Court emphasised that breach of fundamental rights in the issuing state is a valid ground for refusal to execute an EAW. Such grounds are: (1) a serious and prolonged violation of the principles set out in article 6(1) of the Treaty of the European Union; (2) a serious risk that the requested person would be subjected to the death penalty or torture or other inhuman or degrading treatment or punishment (see inter alia Michaelides v The Attorney Geneal, Civil Appeal No 221/2013, dated 02.09.2013; Sipriev v The Attorney General, Civil Appeal No 100/2014, dated 13.05.2014; The Attorney General v Miroslav Mrukwa, Civil Appeal No 41/14, dated 05.03.2014). The said grounds are set out in paragraphs 12 and 13 of the preamble to the Framework Decision and are reflected in Article 2(2) of Cypriot transposing Law 133(I)/2004. |
| **Czech Republic** | Yes, in Section 205(2)(l)(m) of Act 104/2013. These obligatory grounds of non-execution are not implementing the Articles 3 and 4 of the FD on EAW but rather points 12 and 13 of the preamble of the FD on EAW.<br><br>The ground in letter (l) states that the requested person shall not be surrendered, if the surrender is in breach of obligations stemming for CZ from the international treaties on human rights and fundamental freedoms.<br>The ground in letter (m) states that the requested person shall not be surrendered, if there is a reasonable fear that the requested person is in the issuing state persecuted due to her origin, race, religion, sex, affiliation to a certain national or other group, nationality, for political opinions, her position |

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| | in the criminal proceedings would deteriorate or when executing a sentence of imprisonment. I have not experienced in practice application of any of the above-mentioned grounds. |
| **Denmark** | Yes. EMRK as a general safeguard and argued – but in the law itself there corresponding grounds for refusing: |
| **Estonia** | The Code of Criminal Procedure contains the following general provision which is applicable in EAW proceedings -- § 436(1): The Republic of Estonia refuses to engage in international cooperation if: 1) it may endanger the security, public order or other essential interests of the Republic of Estonia; 2) it is in conflict with the general principles of Estonian law; 3) there is reason to believe that the assistance is requested for the purpose of bringing charges against or punishing a person on account of his or her race, nationality or religious or political beliefs, or if the situation of the person may deteriorate for any of such reasons. In practice, however, this provision has never been used to refuse to execute an EAW. |
| **Finland** | Yes. Section 5, Paragraph 1, subsection 6 provides of the EU Extradition Act states that extradition shall be refused, if: "6) there is justifiable ground to suspect that the requested person is threatened by capital punishment, torture or other degrading treatment or that he or she would be subjected, on the basis of origin, membership in a certain social group, religion, belief or political opinion, to persecution that threatens his or her life or liberty or to other persecution, or there is justifiable cause to assume that he or she would be subjected to a violation of his or her human rights or constitutionally protected due process, freedom of speech or freedom of association."<br>This section has been very seldom, if ever, applied. I am aware of one request by the Finnish Supreme Court for a preliminary ruling to the European Court of Justice, in which this issue was debated (C-105/10 PPU - Gataev and Gataeva). However, when the Lithuanian Ministry of Justice withdrew its request to extradite, the case to this extent was never ultimately decided (the District Court had refused extradition/postponed it). There is one precedent regarding this issue (KKO 2011:8) where the person sought invoked this section of the law but the District Court expressly stated that mutual recognition applies (concerning Estonia) and no grounds exist to refuse extradition; the Supreme Court confirmed this conclusion. A State Prosecutor who's an expert on EAWs also confirmed my understanding of the fact that this defence has hardly ever been raised and most likely never been applied as grounds to refuse extradition. |
| **France** | It is obviously not necessary to enable such guarantees in the French legislation for several reason:<br>• Fundamental rights belong to our codified law. (Regarding the EAW please confer 695-22 *Code de Procédure Pénale*)<br>• Since Lisbon treaty the charter of fundamental rights of the EU (including the jurisprudence of Strasbourg Court) binds French judges. |
| **Germany** | Not specifically regarding EAW-cases. However, sec. 73 AICCM applies:<br>"Limitations on Assistance (Ordre Public)<br>Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system. Requests under Parts VIII, IX and X shall not be granted if compliance would violate the principles in Article 6 of the Treaty on the European Union." |
| **Greece** | The Greek law that implements the FD for the EAW (Law 3251/2004) provides in art. 1 –following the rule of Art. 1 par. 3 of the Framework Decision– that: "the application of the provisions of this law cannot have as a result the violation of fundamental rights laid down in the Constitution and in Art. 6 of the Treaty for the European Union".<br><br>Nevertheless, no certain grounds have been developed for refusing to execute an EAW on grounds of breach of fundamental rights in Greece. |
| **Hungary** | |

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| **Ireland** | The principal articles that have been relied on by the Irish Courts are Article 3, in the context of prison conditions, and Article 8, in the context of the breakup of family arrangements, particularly if there has been delay in seeking the request. |
| **Italy** | Art 18 of law 60/2005 lists 20 reasons or cases where EAW may be refused. These reasons include the violation of human rights, such as the case of a EAW issued for the purpose of pursing a person due to sex, race religion or ethnic origin. Italian law proves for the refusal of delivery if there is a serous danger that the surrendered person could be condemned to death or subjected to torture or inhuman treatment, as provided by the recent ECHR judgment in the case of the Hungarian citizen Pal Aranyosi end that of the Rumanian national Robert Caldararu. |
| **Latvia** | Grounds for refusing to execute an EAW are provided in Section 714 (4) and (5) of Criminal Procedure Law. No grounds for refusing to execute an EAW based on breach of fundamental rights are provided in mentioned section. |
| **Lithuania** | No such practice is known. |
| **Luxembourg** | We do not know of any case in which Luxembourg has refused as such to execute an EAW on grounds of breach of fundamental rights. The practice would lead probably to get additional questions sent by the investigating magistrates to the requesting country. However in absence of real guidelines, it is premature to say if the cases C-404/15 and C-659-15) will fully be respected, but for sure lawyers will use this jurisprudence to object to the execution of suspects to a country where detention conditions seems inhuman. |
| **Malta** | Even though Legal Notice 320/2004 transposing the Framework Directive does not explicitly introduce grounds, it still forms part of the Extradition Act which is in turn part of the Constitution of Malta, whereby Chapter IV enshrines the fundamental rights and freedoms of the individual.<br><br>This means that certain rights are expressly entrenched in the Maltese Constitution, making them hierarchically important, and this is due to Malta's strong tradition of human rights. It is also understood that when implementing the Framework Decision, this was made subject to the entrenched fundamental human rights protection, as even from a legal perspective, the implementation of an EAW cannot be done in express violation of local constitutional rule. This is also a matter of public policy. Thus it is understood, even in legal circles, that human rights must be upheld, and if there are proven grounds, it would be expected that the Maltese courts would stop proceedings, as this would run counter to Constitutional principles. With that being said, in applying that law, a fundamental distinction must be made between alleged and proven circumstances of human rights violation. |
| **Netherlands** | Article 11 of the Surrender Act provides as follows:<br><br>"*The surrender will be refused in cases where, according to the District Court, there is a reasonable suspicion based on facts and circumstances that granting the request would lead to a flagrant violation of the fundamental rights of the wanted person as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights concluded in Rome on 4 November 1950.*" |
| **Poland** | Polish law introduced a restriction that it is not permissible to issue a warrant, if it is not required by the interest of the administration of justice. This premise should be interpreted broadly and covers all situations where issuing EAW would be incompatible with existing fundamental rights.<br><br>When Poland is the executing state, Polish law introduces mandatory conditions for refusal of execution of the warrant. This includes i.e. (a) the offence on which the European warrant is based, (b) where Polish criminal courts have jurisdiction to prosecute the offence, is covered by amnesty, final judicial decision was issued against the requested person in connection with the same offence, and in case of sentencing for the same offence, the requested person is either serving or had served his penalty or, |

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| | according to the laws of the State where the sentence was passed, the penalty cannot be executed, (c) a final and binding decision on surrender to a different Member State of the European Union was issued against a requested person, (d) the person who is the subject of the European warrant may not be held criminally responsible for acts on which the arrest warrant is based, owing to his age, (e) the warrant was issued in connection with a political offence committed without the use of violence, (f) it would violate human and citizen freedoms and rights. |
| **Portugal** | As indicated in point 1 c) above, grounds for refusing to execute an EAW are often linked to resocialization of the individual, his/hers cultural and social attachment to Portugal (especially when having residence and family established in Portuguese territory) as well as personal factors such as age and health issues. |
| **Romania** | |
| **Slovakia** | Although in the FD on EAW is in the preambula 12.,13. stated that “Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons. And also that no person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” There is no provision in the Act No. 154/2010 on EAW in this regard. I have not experienced in practice application of any of the above-mentioned grounds. |
| **Slovenia** | None, as far as I know. |
| **Spain** | While it is not a allegued breach of Fundamental Rights in the issuing state, but of the fundamental right of defence during the course of the procedure in Spain, Nacional Court decision nº 13/2015, of 2 March, argues that the Spanish enforcement judge should necessarily wait for the EAW report in order to decide on the merits and takes a substantive decision. In addition to being mandatory, this is due to the need of having all relevant information in order in order to allow the judge of the EAW may verify if all the requirements for the surrender are fulfilled “it is essential and affect the obligation for fair trail”, being also directly concerned the right of defence. “ the lack of all necessary information where the law requires the party must exercise his right to defence, involves the party cannot proceed in an appropriate and effective way with a minimum of guarantees” |
| **Sweden** | According to Chapter 1 Section 4 Act on execution of an EAW, the order shall be refused if surrender would violate any of the rights set out in the European Convention on Human Rights and its protocols. Further, an execution of the EAW shall also be refused if it would conflict with the Swedish constitution.<br><br>As the requested person rarely have access to supporting documents, an objection to surrender with reference to violation of fundamental rights in the issuing state is likely to be dismissed.<br><br>The question of the relationship between the EAW and ECHR was brought up before Swedish Supreme court in 2007 (Case NJA 2007 s 168). The judgment mainly concerned if surrender would be in violation with the rights set out in article 6 (1) of the convention. With reference to the principle of mutual recognition and recital 10 of the preamble to the Framework Decision, the Supreme court stated that a basic assumption is that the member states lives up to the rights set out in the convention. An EAW may only be refused if there are substantial circumstances in the specific case giving reasons to believe that an execution would violate a provision of the convention.<br><br>Moreover, the judgment establishes that due to the limited information in the EAW it is not possible to do an objective assessment of the presented circumstances. Without access to information regarding |

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| | the investigation and without giving the issuing state the opportunity to state its view, such an assessment would be one-sided. To conclude, there has been a limited scope for refusing surrender with reference to the provisions of the convention.<br><br>The issues raised by the Supreme court may now have been at least partly solved by the case law of the ECJ (See C 404/15 and C 659/15). |
| **UK** | **England and Wales**<br>Yes. S 21 of the Extradition Act 2003 provides:<br><br>21 Person unlawfully at large: human rights<br><br>(1) If the judge is required to proceed under this section (by virtue of section 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).<br><br>(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.<br><br>(3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.<br><br>English courts approach human rights arguments with the presumption that member states will comply with their human rights obligations. Some domestic cases in 2010 appeared to suggest that this presumption was almost irrebuttable. This no longer appears to be the case, but requested persons still face a difficult burden to discharge. In practice, they will need “clear and cogent evidence” which establishes the breach (*Agius v Malta* [2011] EWHC 759 (Admin)).<br><br>The most common human rights argument made by requested persons is that extradition will breach their article 8 right to a family/life in the UK. The English courts are generally skeptical of such arguments, on the basis that there is a high public interest in respecting extradition requests from other member states. It is generally difficult to appeal against the rejection of article 8 arguments, as long as the first instance judge has cited the three leading cases (*HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25; *Norris v USA* [2008] UKHL 16 and *Poland v Celinski* [2015] EWHC 1274 (Admin)) and the relevant facts. |
| | **Scotland**<br>This is built into the 2003 Extradition Act, by virtue of which a variety of fundamental rights are statutorily protected in the course of the process, viz:<br>(1) extradition is barred if it is sought is for prosecution (or punishment) on account of race, religion, nationality, gender, sexual orientation, political opinions, or, if extradited, he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions. (s.13)<br>(2) A person’s extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is committed the offence or became, unlawfully at large (s.14)<br>(3) Catch-all protections demanding that the judge considers “whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998” also feature later on in the Act (section 20 and the new section 21A)<br>All of these factors must be considered by the presiding judge during the EAW process. |

| | **Northern Ireland**<br>There are no absolute grounds for refusal based on breaches on fundamental rights, however the 2003 Extradition Act at section 21 does require the appropriate judge to consider whether extradition would be compatible with the Convention rights. The factors commonly raised in this regard have been discussed above: proportionality, torture or degrading treatment and private and family life. |
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| **Question 5.i. - Relationship with existing fundamental rights**<br>*b) What is the experience of defence practitioners in your Member State of the absence of express grounds for refusal based on fundamental rights for executing an EAW in either the executing or issuing state when your state is the executing state?* | |
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| **Austria** | As mentioned above, there are express grounds in Austria to refuse the execution of the EAW if Austria is the executing state. In practice however, I have never experienced a case of refusal of the execution due to objections based on fundamental rights. |
| **Belgium** | As already mentioned under point a), Belgium as executing Member state will refuse to execute an EAW if there are grounds of breach of fundamental rights of the concerned person in the issuing State. |
| **Bulgaria** | On the basis of my discussions with other defence lawyers I could say that the experience is not encouraging. As far as I know, the attempts of lawyers to reach refusals based on breaches of fundamental rights have not been successful, although these attempts do not seem to have been very frequent. Judges are inclined to reject any plea for a refusal based on breaches of fundamental rights because of the absence of express grounds for refusal based on fundamental rights in the law. |
| **Croatia** | |
| **Cyprus** | As earlier said Cypriot courts will not execute an EAW if there is reliable evidence that any of the fundamental rights of the requested person will be violated in case he or she is surrendered to the issuing state. |
| **Czech Republic** | See the previous answer. |
| **Denmark** | Limited – it is considered by the competent authorities – the Ministry of Justice – and by the court if requested. |
| **Estonia** | Absence of express grounds of refusal mean that it is very difficult to convince the court that there in fact are legal grounds of refusal where fundamental rights violations are an issue. Especially in the executing state there is common attitude among the judges and prosecutors that human rights issues in the issuing state are of no concern in the executing state because of the principle of mutual trust. |
| **Finland** | None really, see also answer above. |
| **France** | The French judges do not hesitate to refuse to valid EAW when fundamental rights are not respected. (Cass. Crim: 12 may 2010 – Private life / 7 Feb 2012 – Private life) |
| **Germany** | See above 4.a.) |
| **Greece** | By now, no cases have yet been reported where the Greek authorities refused the execution of an EAW because of the risk that fundamental rights of the accused person could be violated in the issuing state. As an exception a recent decision of the Regional High Court of Athens could be mentioned (Efeteio Athinon, Decision No. 1/2016), where the execution of an EAW issued by the Italian authorities was refused on the ground that in a previous procedural stage many rights of the accused person were violated by the authorities of the issuing state (the accused person was not informed about the accusations against him, he was not allowed to have neither a translator nor a lawyer and a pre-trial detention was already imposed, although he was not yet examined in the issuing state). |
| **Hungary** | |
| **Ireland** | Our experience is poor. Our Court has tended to take the view that it can, in most instances, rely on other member states to observe their obligations on the European Convention of Human Rights. Practical experience reveals that that is a misplaced confidence. However, the subject can only be raised in very limited circumstances, and subject to very adverse evidential provisions. |
| **Italy** | Italian law proves for the refusal of delivery if there is a serous danger that the surrendered person could be condemned to death or subjected to torture or inhuman treatment, as provided by the recent |

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| | ECHR judgment in the case of the Hungarian citizen Pal Aranyosi end that of the Rumanian national Robert Caldararu. |
| **Latvia** | Usually such grounds for refusal are not recognised in Latvia, if extradition is to EU state. |
| **Lithuania** | No such practice is known, but theoretically the courts could refuse to execute an EAW on grounds of breach of fundamental rights, because Art. 71 Part 3 Para. 8 of the Code of Criminal Process allows to refuse the execution of the EAW if there are grounds foreseen by other international treaties of the Republic of Lithuania. |
| **Luxembourg** | The absence of express grounds based on the breach of fundamental rights does deter lawyer to invoke violations of human fundamental rights. However these rights are less likely to be retained by the judges, when the case is heard (at the 'Chambre du conseil'). |
| **Malta** | Once again, it is to be noted that Malta has a strong tradition of human rights. Where there are proven human rights grounds, it is expected that the Court will refrain for proceeding with an execution. Constitutional human rights issues in EAWs are particularly rare, and in the recent case of *The Police vs Spiteri Angelo Frank Paul* (facts of the case detailed below), when this was raised, the Court reaffirmed the position that human rights will be a valid exception, but however pointed out the fact that the mere potentiality of a human rights breach is not sufficient in itself to stop the execution of the EAW.[9]<br><br>In the case of *The Police Vs Spiteri Angelo Frank Paul*, Malta as executing state ordered the return of the defendant to Lithuania, the issuing state. An appeal from the decision of the Court of Committal was entered into for various grounds, among them on the ground of possible inhuman and degrading conditions in Lithuanian prisons. The Court declared that it does not turn a blind eye to an outcry of a serious breach of human rights, and will provide all safeguards necessary to the subject of an EAW, but the risk must be concrete and real vis-à-vis the particular person, and not merely a possible fear of subjection to such treatment. It is up to the subject to bring sufficient evidence to convince the court that he will be subject to such treatment.<br><br>It appears that Article 5(3) of the Framework Decision, which allows the accused to be returned to the executing state to serve the custodial sentence, has not been transposed into Maltese law. In the above cited case, the defence counsel and Court debated the issue of whether this was the intention of the legislator or whether it was omitted erroneously, and a request by the defence counsel to suspend proceedings and refer the question to the ECJ was refused by the Court. This Court then had no option but to surrender the accused to Lithuanian authorities. |
| **Netherlands** | As can be seen above the threshold set by art. 11 of the Surrender Act is rather high. It is therefore not surprising that fundamental rights defences are almost never successful. In general the following three ECHR articles are invoked most frequently:<br><br>Art. 3 ECHR<br>For the applicable legal framework see above question 4b; (for a rare successful example based not on prison conditions *sensu stricto* but on the precarious health condition of the applicant, see ECLI:NL:RBAMS:2011:BP5390)<br><br>Art. 6 ECHR<br>Distinction should be made between defences related to *in absentia* proceedings and other art. 6 ECHR defences. |

[9] Decided 15 January 2016, Court of Magistrates (Malta) as a Court of Preliminary Inquiry, per Magistrate Aaron Bugeja

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| | All *in absentia* related issues are dealt with under art. 12 of the Surrender Act which implements Framework Decision 2009/299/JHA.<br><br>As to other art. 6 related defences a distinction should be made between execution EAWs and prosecution EAWs. In both cases, the art. 11 test needs to be satisfied. In case of a prosecution EAW, there is the additional requirement that the defence establishes that the wanted person will not have an effective remedy *ex* art. 13 ECHR in the issuing State to address the possible violation (*Cf.*, for example ECLI:NL:RBAMS:2009:BL1598). In light of the *Jeremy F.* judgement of the CJEU (ECLI:EU:C:2013:358) the ADC applies a rebuttable assumption that the issuing State will comply with its obligations under the ECHR and EU Charter of fundamental rights. Since this assumption also implies that – if unsuccessful in the courts of the issuing State – the wanted person can file a complaint against the issuing State at the ECtHR, in practice it is almost impossible to rebut this assumption. (ECLI:NL:RBAMS:2014:1303; ECLI:NL:RBAMS:2011:BU2954). We were unable to find a single example of case where this defence was successfully invoked.<br><br>Art. 8 ECHR<br>Surrendering a person to the issuing State constitutes an interference with the wanted person's private and family life as referred to in art. 8 ECHR. In general, this interference will pursue a legitimate aim (prevention of crime) and will also be proportional (necessary in a democratic society). In assessing the proportionality, the ADC will take into account the severity of the offences in question and the fact that the interference will be temporary (*Cf.*, for example, ECLI:NL:RBAMS:2010:BO8104). We were unable to find a single example of case where this defence was successfully invoked. |
| **Poland** | Polish courts examine the conditions of admissibility of execution of the EAW and have an obligation to its failure, if one of conditions described above appeared. In practice, if the warrant fulfills all formal conditions and clearly does not violate fundamental rights and freedoms, it is mostly executed on the territory of Poland. |
| **Portugal** | Please see point 5 a) above. An example of how fundamental rights are taken in consideration is found in the decision of Portuguese Supreme Court of Justice, proceeding no. 750/13.1YRLSB.S1, 9.8.2013. Although the Portuguese authority decided to surrender the requested person to Belgium, it did subject the surrender to the condition that, once the requested citizen where judged, he should be resent to Portugal in order to serve the custodial sentence in a Portuguese detention centre (and very importantly – under Portuguese penalty application rules. In doing so the Portuguese Court intended that the requested person would not be subject to life sentence which is constitutionally forbidden in Portugal (article 30/1 of the Portuguese Constitution), in accordance with article 13 of Law No. 65/2003 and article 5/2 of Council Decision 2002/584/JHA.<br>Family proximity is also taken in consideration amongst other factors, when assessing the option of refusal to execute an EAW (see decision of the Portuguese Supreme Court of Justice, proceeding No. 89/11.7YRCBR.S1). |
| **Romania** | |
| **Slovakia** | See the answer a). |
| **Slovenia** | No information. |
| **Spain** | The experience is negative. Since there is not ground of refusal , EAW means frequently a breach of a fundamental right, which take place, for instance , when EAW is implemented before the individual can appear in person or by videoconference in front of the issuing judge in investigation situation. This affects the proportionality principle and consequently the right to personal freedom. In addition, the judgment of the CJEU in case derailed the possibility to refuse the surrender in case of trail in absentia. It is worth to underline the Article 3 of the LRM that states, nevertheless, that "the current law shall apply under observance of fundamental rights and liberties" |

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| **Sweden** | Existence of grounds/remedies in the executing state addressing violations of fundamental rights in the issuing state<br>See Question 5 i a). Violations of fundamental rights may be invoked during the executing procedure with reference to the ECHR and the Swedish constitution. As described under Question 9, detention and surrender decisions may be appealed.<br><br>Existence of grounds/remedies in the issuing state addressing violations of fundamental rights in this state<br>No information |
| **UK** | **England and Wales**<br>N/A |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>There is no doubt that the Courts in Northern Ireland place paramount importance on the protection of fundamental rights. That said, the evidential burden on the individual is too high, especially considering the tight time limits within which extradition cases are concluded. This is exacerbated by the fact that RP's are usually in custody and their ability to obtain evidence can be greatly reduced. Challenges to extradition as breaching Article 8 rights are most common. There are family members on hand to assist in the preparation of submissions highlighting the interference extradition will have with their ability to enjoy this fundamental right and the interference will occur in the executing state.<br><br>Interferences in the issuing state are more difficult. Challenges to prison conditions, potential torture scenarios or infringement with a fair trial are more difficult to advance. The language barrier between defence practitioner and those representing the RP in the issuing state can be a factor. The inability of the representative in the issuing state to communicate directly with the RP is a significant factor. The RP is at a significant disadvantage when attempting to properly advance the arguments which will be considered by the appropriate judge in the balancing exercise referred to at 1 above. |

| **Question 5.i. - Relationship with existing fundamental rights**<br>*c) What is the experience of defence practitioners in your Member State of the absence of express grounds for refusal based on fundamental rights in either the executing or issuing state when your state is the issuing state?* | |
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| **Austria** | In Austria, an EAW issued by Austria may be challenged on the same grounds as a national arrest warrant. This includes the protection of fundamental rights as stipulated by the European Convention on Human Rights. |
| **Belgium** | The fact that an executing Member state does not consider the breach of fundamental rights as a ground for refusal the execution of the EAW issued by Belgium, may be source not only of discrimination between European citizens but also of legal uncertainty since Belgium, as any other Member state, may commit breaches of certain fundamental rights, as shown by the jurisprudence of the European court of Human rights. |
| **Bulgaria** | Since the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures, I am not capable to answer this question. |
| **Croatia** | |
| **Cyprus** | No information. All I can say is that the fundamental rights of the suspect or accused person (requested person) will be at all times protected by the Cypriot courts. If the requested person has grounds to believe that his or her fundamental rights will be violated Cyprus in case the EAW is executed, an issue must be raised with the competent judicial authority of the executing state. |
| **Czech Republic** | In the framework of the dual representation it is possible to cooperate on the application of this ground with colleagues representing the client in the executing state. |
| **Denmark** | Not relevant |
| **Estonia** | Same as (b) above |
| **Finland** | See answer above. |
| **France** | No information. |
| **Germany** | There is no such specific experience in EAW-cases. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | As stated above, our experience is poor. |
| **Italy** | Italy was condemned by the ECHR for the inhuman and degrading treatment of detainees for prison overcrowding. The situation in prisons has significantly improved, but the problem has not yet been completely resolved. |
| **Latvia** | In 2014 Austrian court refused to extradite Latvian citizen V. V. to Latvia for the trial. The Court reasoned that extradition is not possible due to V. V. state of health and due to existing threats to his life in Latvia.<br><br>In 2015 Supreme Court of Ireland refused to extradite Latvian citizen to Latvia for enforcement of the court sentence for several thievery episodes. The Court reasoned that extradition may inflict harm for two small children of the convicted woman. |
| **Lithuania** | Answer is the same as in 4 b). In addition, the reference for a preliminary ruling to the CtJEU in case C-105/10 (Gataev and Gataeva) included the questions about executing the EAW issued by Lithuania for the purposes of execution of a criminal sentence in Lithuania passed with possible problems of unfair trial and discriminatory prosecution. Lithuania cancelled the EAW itself, and, regretfully, the CtJEU did not issue the preliminary ruling. |
| **Luxembourg** | There is no special experience in this case. |
| **Malta** | Refer to (a) above. |
| **Netherlands** | None. |

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| **Poland** | The Polish law does not provide any special restrictions on issuing EAW relating to existing fundamental rights. Therefore, in practice, if the act for which EAW is to be issued, fulfills the conditions set out in the Directive (described similarly in Polish law), the EAW is issued, in accordance with the principle of legality. |
| **Portugal** | Please see point 5 a) and b) above. |
| **Romania** | |
| **Slovakia** | I have a few times cooperated with the lawyers from another member states were representing the clients in the EAW proceedings and arguing using abovementioned grounds. Usually using these reasons was not reasonable and appropriate as the standard of the fundamental rights in the EU member states is sufficient. |
| **Slovenia** | No information. |
| **Spain** | The UK practice shows that within the surrender procedure the allegation of torture or violation of fundamental rights are considered before deciding about the surrender |
| **Sweden** | <u>Existence of grounds/remedies in the issuing state addressing violations of fundamental rights in the executing state</u><br>The Regulation on issuing an EAW does not expressly provide for re-examining and withdrawing an issued EAW in case the executing state, in the course of the executing procedure, would violate the individual´s fundamental rights, e g by detention conditions.<br><br><u>Existence of remedies in the executing state addressing violations of fundamental rights in this state</u><br>No information |
| **UK** | **<u>England and Wales</u>**<br>N/A |
| | **<u>Scotland</u>**<br>No information |
| | **<u>Northern Ireland</u>**<br>No experience – defence practitioners not involved in that process. |

| **Question 5.i. - Relationship with existing fundamental rights**<br>*d) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | The fact that the Belgian law recognizes thus as ground for refusal to execute an EAW the risk for the concerned person to see his fundamental rights harmed. |
| **Bulgaria** | The answers to Questions 5.i.b and 5.i.c are to explain why I am not capable to point out examples of good practices in this matter. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | See the answer to the question a). |
| **Denmark** | No information |
| **Estonia** | No information |
| **Finland** | Unfortunately not, see also answer above. |
| **France** | No information. |
| **Germany** | No. However, the case law of the ECHR is (and has to be) respected by the german courts judging about extradition. See above 4.a.). |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | It would be preferable to allow the Courts to take the same approach as the European Court has mandated in migration cases, to ensure that persons are not transferred from one jurisdiction to another, where there is a likelihood of a breach of fundamental rights in that other jurisdiction. The current test applied in Ireland is extremely restrictive and very difficult to meet, both in legal and evidential terms. It should be made more amenable so that the invasion of rights can be addressed at the earliest possible opportunity, and not, perhaps, after a lengthy period of detention in the impugned member state. |
| **Italy** | Greater use of alternative measures instead of imprisonment. |
| **Latvia** | No information. |
| **Lithuania** | Answer is the same as in 4 c). |
| **Luxembourg** | The fact that defense attorneys are able to communicate and exchange is of added-value, to try and raise the issue of fundamental rights in both countries.<br><br>At the time being, there are no further good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | The option to file a constitutional case or file a constitutional reference from within EAW proceedings is always an option. If there is a human rights issued there is a right to have the case reviewed from this Court on the basis of human rights. |
| **Netherlands** | Not necessarily. |
| **Poland** | Polish law introduced a restriction that it is not permissible to issue a warrant, if it is not required by the interest of the administration of justice. The premise is described quite generally, but reduces issuing the applications to the other Member States. Poland was the record holder when it comes to the number of issued EAW, which was connected with the principle of legality, which obliges courts to issue a warrant in any case, if all the conditions are fulfilled. The introduction of this condition allowed to limit issued orders to cases where it was actually needed. |
| **Portugal** | No. It only takes what jurisprudence comes to decide in each case. |

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| **Romania** | |
| **Slovakia** | See the previous answers. |
| **Slovenia** | No information. |
| **Spain** | As issuing State, there were good practices in relation trails in absentia, but such a practice was ruled out by the CJEU in the Melloni Judgment. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>In order to succeed with human rights arguments, it is necessary to rely on expert evidence to deal with the relevant complaint of a prospective violation. Instructing a lawyer familiar with the prison conditions or trial rights in the courts of the requesting state is indispensable. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 5.i. - Relationship with existing fundamental rights**<br>*e) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | The recital 12 of the framework decision stating that the execution of an EAW may be refused if it relates to prosecution because of the sex, the religion, the ethnical origin, the nationality, the language or the political opinions or sexual orientation of the concerned person, should be expressively mentioned in the provisions of the framework decision, as the fact that it exists a risk that the concerned person could be submitted to the death penalty or torture or any other inhuman of degrading sentences. |
| **Bulgaria** | Here again the general solution could be to amend the FD and then, on this basis, to amend respectively the EEAWA, by introducing express grounds for refusal based on fundamental rights. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | Cooperation within the dual representation scheme. |
| **Denmark** | Again: A colleague in the other country |
| **Estonia** | Training of prosecutors, judges, and lawyers regarding fundamental rights aspects of EAW proceedings. |
| **Finland** | The threshold in applying this defence is extremely high. This has been criticized by many, including scholars, in other extradition matters (to non-European countries) and there is nothing to indicate that the threshold to apply this as grounds for refusal to extradite would be anything but higher in EAW cases. |
| **France** | Defense lawyers should never hesitate to lodge an application before the court of Justice of Luxembourg to draw attention of the EU authorities on the fundamental Rights. Judgment in joint cases: 5 April 2016: C404/15 – C659/15. |
| **Germany** | It would need a specific legally binding provision. |
| **Greece** | A legislative regulation on a European level, which would expressly force the member-states to follow the relevant case-law of the ECHR concerning the refusal of extradition on the ground of a possible violation of the fundamental rights of the requested person by the State that seeks the extradition (especially regarding the issue of the detention conditions) would be recommended. Member-states should also be obliged to refuse the execution of an EAW in case that the law of the issuing state contradicts fundamental rights set out by the EU Charter or also the "European public order".<br><br>Apart from that, a Handbook about the grounds of non-execution of an EAW because of a possible violation of fundamental rights or the European public order in the issuing state could be helpful for the harmonization of the practices of the member-states on this matter. |
| **Hungary** | No information. |
| **Ireland** | Realistically there is a need for a further framework decision. |
| **Italy** | Italian legislation makes it mandatory to request, from the issuing State, clear details of the proposed detention conditions and requires details of where the detainee will be held. |
| **Latvia** | In my opinion, grounds for refusing to execute an EAW based on fundamental rights should be provided in national law. |
| **Lithuania** | Answer is the same as in 4 d). |
| **Luxembourg** | No information |
| **Malta** | In the above-mentioned case, the defence counsel initially requested that surrender be subject to the condition that, if found guilty by the Courts of the issuing state (Lithuania), he would be returned to Malta to serve the custodial sentence here, and in accordance with Article 5 of the Framework Decision. |

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| | The Court declared that its hands were tied since this particular provision was not transposed into Maltese law. Adequate transposition would clarify issues and would also bring Maltese legislation in line with the Framework Decision. |
| **Netherlands** | We believe that the ADC should not postpone its decision on the EAW in cases where there is a real risk of a flagrant denial of the wanted person's ECHR rights (see question 4a). Not only is this approach contrary to the clear text of art. 11 of the Surrender Act but it also allows for a continuation of the surrender detention even though it is unclear if (and if so when) an actual surrender can take place. It should be noted in this regard that the ADC has also decided that art. 22, par. 4 of the Surrender Act (see above, question 3a) does not apply in this case since all time limits are also suspended (Cf. ECLI:NL:RBAMS:2016:2630).<br><br>In light of the above, the ADC should either reverse its case law or the Surrender Act should be amended in order to address these concerns. |
| **Poland** | The problems in the relationship of EAW with existing fundamental rights, which were evident in cases C 404/15 and C 659/15 will not disappear without a structured approach to the problem of the conditions of imprisonment. This requires substantial financial resources to adapt penitentiary centers to the conditions required by law, as well as punishment policy changes, by moving away from the insulating penalties to freedom penalties. Due to the conditions of prisons in Poland and abroad, even Poles often prefer to serve a prison sentence outside Poland. |
| **Portugal** | Guidelines on "humanitarian reasons" to postpone surrender must be properly diffused by European institutions. |
| **Romania** | |
| **Slovakia** | Cooperation in the dual representation system. |
| **Slovenia** | EU should consider amending the Framework Decision and include specific grounds for refusal based on breach of fundamental rights. |
| **Spain** | No |
| **Sweden** | In regard to Question 5 i c) the following may be suggested.<br><br>By introducing a right to appeal of a decision to issue an EAW, a court could re-examine the grounds for the decision together with any new information related to the procedure in the executing state. Hereby, imminent or ongoing violations due to the EAW procedure in the executing state could be addressed by the individual with assistance from the lawyer in the issuing state, see also Question 9. |
| **UK** | **England and Wales**<br>See above. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>1. More time is needed to properly contest an EAW when the RP's seeks to engage his Convention rights. The time limits should be extended to allow the RP the opportunity to collate the evidence required to satisfy the strong evidential burden.<br><br>2. A dedicated team in the issuing state to assist those representing the RP in the executing state. For example, to facilitate the identification of experts and provide lines of communication with lawyers in the issuing state who can assist with enquiries and making representations to the court in the issuing state if need be. |

| Question 5.ii. - Relationship with existing fundamental rights<br>*a) What is the experience of defence practitioners in your Member State about the impact of the three minimum procedural safeguard directives in terms of creating more balance between the prosecution and the defence when your state is the executing state?* | |
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| **Austria** | The directive on the right to interpretation and translation brought some improvements, in particular a clarification of the right to obtain a written translation of the EAW (§ 56 Code on Criminal procedure.<br>The directive on the right to information has improved the way the rights of the suspect are communicated to him / her (letter of rights, § 16a EU-JZG).<br>The directive on the right of access to a lawyer is not yet implemented. The draft implementation provides for one major improvement: The suspect can obtain a defence lawyer in the issuing state as well; if the suspect request such a defence in the issuing state, Austria as executing state must communicate that request to the issuing state immediately (§ 16a (2) EU-JUG, draft legislation). |
| **Belgium** | Given the fact that these three minimum procedural safeguards were already quasi totally fulfilled in the Belgian law before the vote of the said Directives, the latter did not change many things to the situation in Belgium within the context of the EAW.<br><br>This being said, due to the situation in a number of Member States (a.o. Belgium, France, Spain, Poland, Greece, Luxembourg, etc.), where at the hearing of all criminal jurisdictions, the prosecutor sits at the table of the judge and goes with him into the deliberation room before the beginning of the hearing, during any possible suspension of the hearing, and at the end of the hearing, which creates in the eyes of the parties to the case and their lawyers and in the eyes of the public in the court room, the very unpleasant appearance and belief that there exists a special relationship/influence between prosecutor and judge and that some talks may take place between them in the deliberation room outside of the view and the knowledge of the other parties and their lawyers, these three minimum procedural safeguards may appear more cosmetic and abstract than real and effective, since, at the end of the day, when it comes to the decision, the one who appears to have the ear of the judge and his sympathy (clearly expressed by their proximity), is the accusation, the Prosecutor.<br><br>You may compare the situation with a tennis player who would receive the “three best items to play the match” : the best shoes, the best short and the best racket, but would it be satisfactory if it would appear that the referee sits before the match with the opposite player in the changing room, and sits also next to him on the bench at the playing field and at each suspension of the match, and at the end of it goes back with the opposite player in the changing room before giving his decision on who will be the winner of the match…<br><br>One has not to say that if tennis would ever be played like this it would be long ago that no one would still ever look at it as a fair sport/play…<br><br>This is nevertheless what the person (being Belgian or European) facing a criminal prosecution in Belgium or being arrested in the context of an EAW with Belgium as executing Member state, may “enjoy” at the court hearings.<br><br>Numerous efforts since 20 years toward the Belgian lawmaker and recently toward the Council of Europe to initiate a change to this unfair situation remain vain… notwithstanding the fact that this change is crucial for the effectiveness of the right of defense. This message/call should come to the ears of the European lawmaker, absolutely. |

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| **Bulgaria** | I could not say that defence practitioners are sufficiently experienced in this matter because of several reasons. Only the Directive on the right to interpretation and translation was transposed in Bulgarian procedural law (the Criminal Procedure Code – CPC) but the manner in which the Directive was transposed has been criticized. No amendments of the CPC were introduced in response to the Directive on the right to information because Bulgarian authorities found that the existing procedural rules complied with the requirements of the Directive. The Directive on right of access to a lawyer has not yet been transposed having in mind the deadline for transposition but the future transposition is expected to result in amendments to the procedural rules in certain aspects. (**NB**! You can find more detailed comments on the compliance of Bulgarian law with the requirements of the Directives in my answers given to the TRAINAC Project questionnaires.) Since the EEAWA provides for the subsidiary application of the CPC in matters that are not explicitly regulated by the EEWA, the amendments made in the CPC following the Directives (in fact, only the Directive on the right to interpretation and translation) are applicable in the EAW procedures as well. It may be concluded that the impact on the fairness of the balance between prosecution and defence rights, if any, was rather small. |
| **Croatia** | When a requested person is arrested, the court shall inform that person of the European arrest warrant and of its content, and also of the possibility of consenting to surrender to the issuing judicial authority and expressing renunciation of the application of the speciality rule. Immediately after arrest and before the first interrogation requested person who is arrested for the purpose of the execution of a European arrest warrant will be handed written instruction in a language that the arrested person understands about right to be assisted by a defence counsel and by an interpreter in accordance with domestic law on criminal procedure, right to appeal against order on detention, right to review of the file, the right to inform consular authority or a person arrested person appointed about the arrest, right to emergency medical care and she will will be informed how the domestic law prescribes a maximum period of detention. A requested person shall be heard on his or her personal state, nationality, relations to the issuing State and whether he or she opposes arrest or surrender and for what reasons. The requested person's defence counsel must be present at the hearing. If the European arrest warrant was issued for the purpose of executing a custodial sentence or detention order rendered in absentia, the requested person may request to be served with a copy of the said decision before surrender to the issuing State provided that it had not been previously personally served or that he or she had not been officially informed of criminal proceedings conducted against him or her. In that case, the court shall request that the issuing authority without delay transmit a copy of the decision for the purpose of serving it on the requested person. Service of the copy of the decision shall not be considered as an official service from which the time limits for submitting requests for a retrial or appeal should be counted. This shall not delay the procedure of surrender of the requested person, or the rendering of a decision on surrender. |
| **Cyprus** | Directive 2012/13/EU on the right to information in criminal proceedings was transposed into Cyprus by Law 185(I)/2014, amending law 163(I)/2005. Directive 2010/64 on the right to interpretation and translation in criminal proceedings was transposed into Cyprus law by Law 18(I)/2014. Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings has not yet been transposed into Cyprus law. The transposition of the said directives into Cyprus law enhanced the protection of the rights of suspects or accused persons and the overall fairness of the criminal proceedings. In the absence of transposition of Directive 2013/48/EU into Cyprus law the said question cannot be answered. In general dual representation is very significant for the effective protection of the rights of the suspect in EAW proceedings and for reducing costs. |
| **Czech Republic** | Only the directives on the interpretation and translation and information have been implemented in CZ. They did not bring any significant changes into the domestic law on EAW proceedings. |
| **Denmark** | 1) interpretation – yes, but the quality? 2) translation – very limited, 3) the right to information – very limited 4), the right of access to a lawyer – yes, 5) dual representation - no |

| Estonia | The right to interpretation and translation has certainly improved, although problems with quality as well as the time required to receive translations remain. The right to information directive has been implemented in a way which allows prosecution to deny access to even those materials which are relevant in challenging detention -- a clear violation of the directive in my view. This prosecutorial discretion is widely used, effectively resulting in the defence having no access to evidence in EAW proceedings. So far, the courts have not been ready to set aside Estonian implementing law, and apply the Directive directly. For this reason, the right to information directive has had little impact. Access to lawyer was guaranteed before the directive, so this directive basically provides only dual representation as added value. The impact of this has been limited because of practical reasons -- most EAW cases are handled by legal aid lawyers who do not have the necessary contacts and experience to make use of dual representation. |
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| **Finland** | The right of access to a lawyer directive has not been implemented by Finland yet. Otherwise I would say that no significant changes have happened, the only one perhaps being that the actual extradition order is nowadays normally translated. The earlier practices have now been codified and the access to information directive is something that may still very well have the biggest impact in domestic jurisprudence. |
| **France** | The impact of directives is important. They are implemented in the French criminal code and in the French criminal proceeding code.<br>It means that, when France is the executing state, the suspect has access to a defense lawyer, interpreter and translator if necessary and gets information on his case by access to the file. |
| **Germany** | It is a great achievement. |
| **Greece** | General information:<br>The Directive 2010/64 about the right to interpretation and translation and the Directive 2012/13 about the right to information were implemented in the Greek legal system in the beginning of 2014. The Directive 2013/48 is still not implemented.<br><br>Right to translation:<br>The main benefit concerning the defence rights of the accused person (also in the context of the EAW) through the implementation of the Directive 2010/64 is that the accused person has now explicitly on the one hand a right to translation for his communication with his lawyer and on the other hand a right to translation of the documents that concern his accusation.<br>Although these steps are in the right direction, it should be mentioned that it is often very important for the defendant to have access also to documents other than those that strictly describe the accusations. Documents that concern the place or the time of the alleged offence could be very important for the defendant in order to prove that the offence became statute-barred or that it took place in the Greek territory and therefore the EAW cannot be executed.<br><br>Right to information:<br>The same problem described above, concerns also the right to information. The subject of the EAW has often no access at all to documents that could help him prevent the execution of the EAW, as such documents are many times not sent with the EAW.<br><br>Important is also that after the implementation of the Directive 2012/13 the Greek authorities are obliged to give to any suspect or accused person who is arrested or detained a written Letter of Rights (Art. 4 of the Directive 2012/13). Until the implementation of the Directive arrested persons were only orally informed about their rights. The official who conducted the arrest had to write this down in the arrest protocol. |

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| | Despite this (new) obligation for the authorities to provide the arrested person with a Letter of Rights right after the arrest, this usually takes place only when the arrested person is brought to the Prosecutor. That means that the arrested person is often informed about his rights and provided with the Letter of Rights even days after being arrested. In relation to that, the Greek Supreme Court (Areios Pagos) judged in a recent decision in an EAW case (No. 851/2014) that, if the arrested person was not given a Letter of Rights and was only orally informed by the responsible prosecutor afterwards, this does not affect the further procedure and does not have any consequences at all.<br><br>Such a decision undermines the right to information of the arrested person as well as the effectiveness of the provisions set out by the Framework Decision 2012/13.<br><br>It should also be noted that the process of informing the accused person is often only typically mentioned in the relevant report with the phrase "the accused person was promptly informed about his rights and the accusations against him", without any further details about which rights exactly were explained to him and in what extend he was informed about the accusations.<br><br>Right to access to a lawyer<br>As already mentioned, the Directive concerning the access to a lawyer is not yet implemented in the Greek legal system. Nevertheless, the Greek regulation in this matter meets the minimum safeguards that are provided for in the Directive.<br><br>Problems arise though in the practical field, as the conditions in the detention facilities often do not allow a prompt communication between the arrested person and his lawyer. For instance, in many cases, no special room is provided and as a result the communication takes place through a very small window, in front of the police officers.<br><br>(About the issue of dual representation see below, Nr. 6) |
| **Hungary** | The three minimum procedural safeguard directives are in force in Hungary. Everybody has the right to a translator, to the information and the access to a lawyer. Regarding balance, outside of an official translator for court hearings (which is paid for by the state), there remains the problem of when a lawyer wishes to hold a private conference with his client. If they do not speak a common language, then the lawyer (who has been appointed to his client's defence) needs to find and pay for a translator. Furthermore, depending on the individual prison's rules, sometimes translators are barred from entering the prison to aid the conference. |
| **Ireland** | For Ireland these replies are necessarily qualified by virtue of the fact that we have not opted into Measure C, the right of access to a lawyer. Accordingly, our experience is going to be different to the preponderance of member states.<br><br>There is not much experience yet, but interpretation had been acknowledged as an essential right before the Directive was passed, and our courts were familiar, from domestic criminal practice, with the requirement of information being provided. As such, these two Directives have not made any big impact in Ireland, but the previous practice was, in any event, compliant. |
| **Italy** | Positive when judges ask the issuing countries for additional information about the application of the directive. |
| **Latvia** | The balance between the prosecution and the defence did not changed significantly in Latvia, because Criminal Procedure Law in general already provided three mentioned minimum procedural safeguards before directives entered into force. |
| **Lithuania** | The impact would be expected if the directives were implemented. |

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| | Meanwhile, the right of access to a lawyer for the dual representation in the EAW procedure is not implemented in Lithuania neither as for executing, nor as for issuing state.<br>Regarding the right to information, Art. 181 Part 1 of the Code of Criminal Process gives the right for the prosecutor to refuse access of the defence to the pre-trial investigation information with a quite vague argument that such access to information can hinder the success of pre-trial investigation. In practice the advocates are frequently refused of the access to the pre-trial investigation information by the prosecutors, and such refusals are upheld by the judges.<br>Regarding the right to translation, it is mostly provided only during the judicial hearings and the actions of pre-trial investigation. Usually there is no possibility of translation for the legal consultations of clients. Another problem is the lack of competent and independent translators. Most translators are connected and provided by the pre-trial investigation institutions, and sometimes they do not even have the qualification sufficient for the competent translation. |
| **Luxembourg** | The impact seems to be minimal for the moment. The translation issue has not been a real one before the adoption of the directives. The right to information has not been transposed yet into national law and the draft law does not seem to include extended new rights of access to the file for lawyers. The right to a lawyer is limited due to the lack of information and access to the procedural file, |
| **Malta** | The right to interpretation and translation is protected under Maltese law and in effect this right has been guaranteed for quite a while,[10] therefore it is expected that during EAW proceedings one would have a competent interpreter, as well as the right to have documents translated to a language understood by the accused.<br><br>More nebulous and complicated are the right of information. Although in general there is a right to information, it is unclear what this right ought to extend to and to what extent. This becomes more complex in an EAW scenario because the local authorities are dependent on information from foreign authorities. It is unclear whether full disclosure is being applied across the board prior to the person being taken to Court. Once in Court, the person to be surrendered will have full access to the documents actually submitted in Court, but there is no guarantee that there will be access prior to that date, which might limit the preparation of the defence of EAW proceedings somewhat.<br><br>As to the right of a lawyer, if any interrogation is to take place, it is to be made clear that under Maltese law there is the right to legal advice for up to an hour prior to interrogation and not during interrogation.[11] Other than that, during proceedings one has direct access to a lawyer and if a person cannot afford or does not have a lawyer, he may use legal aid.<br><br>On this point, it is apt to mention that recently, comments were made on the adequacy of legal aid proceedings, given that the service offered needs to be updated to a higher standard. |
| **Netherlands** | We do not believe these directives have had a significant impact in EAW cases. |
| **Poland** | Rules introduced by the Directives certainly improved the rights of the defense of the accused during the criminal trial.<br><br>Directive 2010/64 on the right to interpretation and translation, introduces the obligation to provide a translation into a language that the person understands. Considering the fact that 90% of Polish sworn translators are grouped in 4 languages (English, German, French, Russian), it can be stated that the number of sworn translators is insufficient. In case of less popular languages, proceedings are pending much longer, due to the limited opportunity of a sworn translator participation. |

[10] Sections 534AC and 534AD respectively, Cap 9, Laws of Malta

[11] Section 355AT, Cap 9, Laws of Malta

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| | The right of access to a lawyer, described in Directive 2013/48 is implemented in Poland through access to the proxy of choice or ex officio at the stage of pre-trial proceedings or juridical proceedings. The right to information implies the duty of the Court to instruct all the parties of the incumbent responsibilities and about their rights. Lack of such instructions or erroneous instruction cannot result in negative effects on the process for its participant or any person concerned. In addition, the authority conducting the proceedings shall, where necessary, provide participants with information about the incumbent responsibilities and about their rights also in cases where the law clearly does not constitute such an obligation. In case of lack of such an instruction or erroneous instruction, when the circumstances of the case indicate that giving such instructions was indispensable, failure to undertake actions or participant's wrongdoing in the proceedings should not cause negative effects on the process.<br><br>Instructions are provided by the Polish courts, but they are often written in a way incomprehensible to the average person and include a lot of content, making the instructions unclear. |
| **Portugal** | There is a positive experience. Portuguese laws assigned the necessary means to preserve a proper defence. The three safeguard guarantees are duly protected as being executed. |
| **Romania** | |
| **Slovakia** | Only the directives have been implemented to the Slovak Criminal Procedure Code– the directive on the interpretation and translation and the directive on information in the criminal proceedings. I haven´t seen really big changes in the daily practice, except the translation of the relevant decision in the criminal proceedings. |
| **Slovenia** | No information (yet). |
| **Spain** | There is not impact |
| **Sweden** | Right of access to a lawyer – The requested person has a right of access to a lawyer during the whole EAW procedure in Sweden. The directive, not yet fully implemented, has not brought any specific changes to the procedure. For further information, see the Swedish answers to the TRAINAC questionnaire Implementation of Directive 2013/48/EU.<br><br>Right to interpretation and translation - The legislation is in general compliance with the directive. The directive has not brought any specific changes to the EAW procedure. For further information, see the Swedish answers to the TRAINAC questionnaire Implementation of Directive 2010/64/EU.<br><br>Right to information – The directive has not brought any specific changes to the EAW procedure. For further information, see the Swedish answers to the TRAINAC questionnaire Implementation of Directive 2012/13/EU. |
| **UK** | **England and Wales**<br>This issue has been addressed extensively in previous questionnaires. |
| | **Scotland**<br>These safeguards have been, effectively, built into the Scottish system for many years, so there has been little discernable change. |
| | **Northern Ireland**<br>The impact of the last of these three developments (especially 'dual representation') remains to be seen but it is anticipated that access to a lawyer in both states would tip the scales towards a fairer balance.<br><br>The right to translation and information are not issues of contention in Northern Ireland and the RP has the full benefit of these safeguards. |

| **Question 5.ii. - Relationship with existing fundamental rights**<br>*b) What is the experience of defence practitioners in your Member State about the impact of the three minimum procedural safeguard directives in terms of creating more balance between the prosecution and the defence when your state is the issuing state?* | |
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| **Austria** | No particular improvements due the the directives on the right to interpretation and translation and the right to information; the obligations from those two directives mostly concern the executing state.<br>As regards to right of access to a lawyer, the draft legislation provides that the Bar must be informed so that it can send a list of competent lawyers to the suspect so that he / she can choose a defence lawyer in Austria as issuing state (§ 30a EU-JZG, draft). |
| **Belgium** | See answers under point a). |
| **Bulgaria** | Since the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures, I am not capable to answer this question. |
| **Croatia** | |
| **Cyprus** | My answer is the same as above. |
| **Czech Republic** | See the previous answer. |
| **Denmark** | 1) interpretation – yes but the quality? 2) translation – very limited, 3) the right to information – very limited 4), the right of access to a lawyer – yes, 5) dual representation - no |
| **Estonia** | Same as (a) above |
| **Finland** | I would assume that the right to information directive is something that can very well have an impact, but there is still very little experience on this. This is an issue relating to all detention matters and the Helsinki Court of Appeal has already published one decision on the subject (not relating to EAW; HelHO 2015:15, http://www.finlex.fi/fi/oikeus/ho/2015/helho20151747), in which it stated that the Finnish Criminal Investigation Act may not really be in accordance with the directive when it states that the authorities can refuse access to material for example on public safety grounds also when it's a question of detention. We'll have to see if and how the case law evolves. |
| **France** | The impact of the three directives is important but less than in the situation mentioned in a) because the access to a defence lawyer is ruled by *code de Procédure Pénale* when the suspect has reached the French territory and not before. Article 695-19 CPP: Access to the file, to a lawyer, interpretation and translation are organized. So the defence lawyer in the executing state does the most important work. |
| **Germany** | depends on the law-reality in the executing state, especially in eastern Europe. |
| **Greece** | No information |
| **Hungary** | There is no balance between prosecution and defence. There is no real really useful right for the defence in this stage of the procedure. |
| **Ireland** | See (a) above. |
| **Italy** | Positive even if the directives have been applied recently in Italy. |
| **Latvia** | The balance between the prosecution and the defence did not changed significantly in Latvia, because Criminal Procedure Law in general already provided three mentioned minimum procedural safeguards before directives entered into force. |
| **Lithuania** | Even if the directives were implemented, the impact would not be big, because in Lithuania the EAWs are issued by the Office of General Prosecutor in the Republic of Lithuania, and the defence position is less respected there than in the courts. |
| **Luxembourg** | Basically the same comments apply. As for the right to a lawyer, it is the SALDUZ case of the European Court of Human Rights which actually changed things and allowed extended rights to a lawyer for |

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| | suspects or detainees, Also, a recent ECHR case, A.T. / Luxembourg (req. 30460/13 from 9 April 2015) actually furthered the cause of defense, by imposing access to a lawyer for EAW procedures. |
| **Malta** | There is absolutely no balance because when Malta is the issuing state - the issuance of the request is made by the competent authorities, and it is not a matter subject to a Court hearing or to which the party subject to the order has a right to appeal, attend or discuss. In this process, the person to be surrendered is completely extraneous to the procedure, and he would have a right to contest the moment in which the request is being executed in a foreign jurisdiction. |
| **Netherlands** | None. |
| **Poland** | With the adoption of the Directives, the rights contained therein are efficiently used, since they were harmonized between the Member States of the EU. Rights of the suspect or accused person in the exercise of the right of access to a lawyer, to receive the necessary instruction and information in criminal proceedings is not only illusory. Unit (the suspect or accused person) knows the situation in which she is located. The rights are thus more visible and more easily accessible. Impact of the Directive on the effectiveness of the defense is clear. It provides a minimum bundle of rights in each of the member countries. Unfortunately, the duration of proceedings in case of a person using unpopular language is longer than in the case of popular languages. However, the directive introduces minimum standards that facilitate the defense in the Member States. The sworn translator is always provided but level of his competence varies. The instruction is often not available in a paper form but provided through a translator. In fact, a letter of rights and obligations of a detained person is not available in a written, translated copy. |
| **Portugal** | See precedent answer. |
| **Romania** | |
| **Slovakia** | Nothing special. Just mentioned in the previous answer. |
| **Slovenia** | No information (yet). |
| **Spain** | There is not impact |
| **Sweden** | See answers to Question 5 ii a) above |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the ‘issue’ of EAWs in the United Kingdom. |
| | **Scotland**<br>As above |
| | **Northern Ireland**<br>No experience - defence practitioners are not involved in the process. |

| **Question 5.ii. - Relationship with existing fundamental rights**<br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | See answers under point a). |
| **Bulgaria** | The answers to Questions 5.ii.a and 5.ii.b are to explain why I am not capable to point out examples of good practices in this matter. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | No as no significant changes were introduced by these directives. |
| **Denmark** | Securing that the name address etc. of the defending lawyer is a part of the court ruling. |
| **Estonia** | Mandatory defence in execution proceedings of EAW as provided by the Estonian law could be a good measure to ensure that the right to access to a lawyer is always respected |
| **Finland** | As told, the access to a lawyer directive has not yet been implemented. But as a good practice can be mentioned that already now a person sought to be extradited always has the right to a lawyer of his/her own choosing. |
| **France** | No information. |
| **Germany** | As an executing state the experience is quite good and – as described – a great achievement. There is no good practice as issuing state. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | See (a) above. |
| **Italy** | A reasonable cooperation between judges and lawyers in order to abide by the fundamental rights laid down in the three directives. |
| **Latvia** | In some aspects procedural safeguards in national law are even stronger than three minimum procedural safeguards directives provide. |
| **Lithuania** | No information. |
| **Luxembourg** | When Luxembourg is the executing state, we know of cases of requests of foreign states to arrest a person to be sent to this state with compelling methods, although it would suffice to call the person to be heard , on a voluntary basis, by a foreign judge. In some cases the Luxembourg judge has freed the person sought for, because it has a residence in Luxembourg and the request deed not seem proportionate. Obviously the person-target of an EAW must declare to accept being heard by the foreign judge and comply with any request for hearing. |
| **Malta** | Nothing to report. |
| **Netherlands** | No. |
| **Poland** | Poland introduced a fairly broad right to use the attorney/proxy during criminal proceedings. This applies to both pre-trial and trial proceedings. The defender can participate in all relevant issues and is informed of any decision. At the pre-trial stage, when there is no legal obligation of occurrence of attorney, the suspect may be entitled to a public defender, only in situations where he / she is not able to bear the costs of defense without detriment to the maintenance of himself and his family. At the stage of the juridical proceedings, the request of the accused is sufficient. This solution guaranteeing access to the right to defense, in the form of participation of an attorney is widely implemented. |
| **Portugal** | The good practice correspond to the safeguards respect. |
| **Romania** | |
| **Slovakia** | |

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| **Slovenia** | No information. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>See above. |
| | **Scotland**<br>As stated above, there has been a strong adherence to the minimum standards regardless of the existence of procedural safeguard directives. The biggest issue relates to the provision of legal aid. The House of Lords recently suggested that the grant of legal aid should be automatic and that this would speed up the process while ensuring fairness at all stages. |
| | **Northern Ireland**<br>No information. |

| **Question 5.ii. - Relationship with existing fundamental rights**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | To introduce the following rule :<br><br>"Under penalty of inadmissibility of the criminal prosecution :<br><br>a) at the hearing the prosecutors stands and speaks exclusively where the other parties and/or their lawyers do stand and plead;<br><br>b) the prosecutor may not be in the deliberation room or in the office of the judge without the presence of the other parties to the case and/or their lawyers.<br><br>In case of inadmissibility of the criminal prosecution because of the violation of one or more of the preceding subsections a) and/of b), the civil action of the aggrieved party, if any, shall continue outside the presence of the Prosecutor, and the same goes for the rest of this civil action through all subsequent stages of the procedure." |
| **Bulgaria** | Because of the subsidiary application of the CPC in the EAW procedures, the solution could be to amend the CPC in full compliance with the requirements of the Directives. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | No. |
| **Denmark** | Implementation in DK of the directives where needed!! |
| **Estonia** | Training for defence lawyers, enhanced cross-border cooperation among lawyers |
| **Finland** | The right to access to material is very problematic in Finland. There is no "case file" system, in which the file would be given to the suspect/his/her lawyer, at least automatically, and if some information is given, there can be restrictions decided by the investigative authority and subject to appeal only in the Administrative Court, making an appeal absolutely non-effective. The solution for Finland could be that the decision not to give out information by the investigative authority would be subject to a separate appeal at the District (general) Court, but for some reason this seems to be very difficult to obtain. |
| **France** | The law would provide an access to the file and a dialog between Prosecutor and defence before the arrival of the suspect in the issuing state. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | The state should assign translators to defence lawyers for any purpose that he requires it for - court proceedings and client conferences. However, in this case, the defence lawyer's duty to maintain confidentiality towards his client also needs to be legally enforced against the translator as well. |
| **Ireland** | Obviously it would be preferable if Ireland ultimately becomes compliant with Measure C and is permitted to opt into it. |
| **Italy** | The need of translation services in each Member State so that judges can send the EAW requests also by computer in order for them to be translated in the language of the executive country. |
| **Latvia** | No significant problems encountered. |
| **Lithuania** | The impact would be expected if the directives were implemented.<br>It would be even bigger if the EAWs in Lithuania were issued by the courts instead of the Office of General Prosecutor in the Republic of Lithuania. |

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| **Luxembourg** | No information |
| **Malta** | A guarantee of full disclosure in a language understood, and right to legal assistance has to be guaranteed from the first moment in which the accused has contact with the competent authorities, as well as a guarantee of a legal aid system that is adequate and complete. |
| **Netherlands** | No. |
| **Poland** | A serious problem is awareness of the rights and duties and instructions used in this respect by the Polish courts. It is always recommended to contact a lawyer in the executing state to ensure adequate representation for his client.<br><br>An assumption can be made basing on a general experience that these three standards will not change much because the appointment of the sworn translator and defender, as well as providing information depend on the actions taken by law enforcement agencies. |
| **Portugal** | See answers a) to c). |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | No information. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>See above. |
| | **Scotland**<br>Automatic grant of legal aid would enhance the process. |
| | **Northern Ireland**<br>No information. |

<table>
<tr><td colspan="2"><u>Question 6 - Dual representation</u><br>a) What is the experience of defence practitioners in your Member State about the benefits and problems of dual representation of the subject of the EAW in both executing and issuing states when your state is the executing state?</td></tr>
<tr><td>Austria</td><td>The directive has not yet been implemented in Austria. However, if the person is held in surrender detention, there the law stipulates a “mandatory defence”, i.e. there must be a defence lawyer in Austria as executing state (§ 19 EU-JZG, § 29 (4) ARHG).<br>As long as there is no mandatory defence in the issuing state, problems arise in connection with legal aid and the financing of a defence lawyer in the issuing state; unless the suspect is unable to pay for a defence lawyer himself, he won’t have a dual representation.</td></tr>
<tr><td>Belgium</td><td>It has first to be mentioned that the Directive 2013/48/UE is not yet transposed into the Belgian law at the present time, but will be soon. A project of law is pending in that respect and includes expressively the dual representation right.<br><br>The <u>benefits</u> of it are very important, given the possibility to obtain precise and concrete information via the Colleague lawyer of the issuing Member state about, a.o., the possible existence of grounds for refusal for executing the EAW, since the Belgian law on the EAW retains as mandatory grounds for refusal:<br><br>a) the amnesty for the prosecuted facts ;<br>b) the “Non bis in idem” principal;<br>c) the minority of the concerned person;<br>d) the threat for the fundamental rights of the concerned person if the EAW would be executed (see supra answers to questions 5 i);<br>e) the absence of “double incrimination” (i.e. the prosecuted fact(s) need to be considered as criminal offence, whatever the qualification, both in the issuing Member state and in Belgium).<br><br>All those possible grounds for refusal in Belgium need indeed a clear, exact and precise information/analyze/research from the Colleague lawyer of the issuing Member state.<br><br>The problems are however:<br><br>i) how to find “quickly”, the “right” (competent, affordable for the arrested person) lawyer in the issuing Member state since the arrested person has not necessarily already a criminal lawyer in the issuing Member state nor knows one in particular.<br><br>In that respect, the Directive 2013/48 UE will normally facilitate the things by obliging the issuing Member state to furnish to the executing Member state the necessary information about available criminal lawyers.<br><br>The Belgian law is about to be adapted in the coming month in that sense.<br><br>ii) the cost for the concerned person of two lawyers… This issue is partly solved in Belgium as executing Member State since the suspect having no financial resources may enjoy free legal aid (and in any case a free translator) since the costs of it are supported by Belgium.</td></tr>
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| | Deprivation of liberty opens indeed automatically the right to legal aid (Royal Decree of 18 of December 2003, art. 1, § 2), however the legal aid may be later refunded by the Belgian State if it is proven that the concerned person has an income above certain legal limit (net income of 942 EUR/month ) or if his patrimonial situation improved in the meanwhile and exceeds this limit or if he lies about his real situation. However, on the field, no refund from the Belgian Stat appears to have ever happened !<br><br>The translator costs are instead definitively paid by the Belgian State and may never be refunded by the latter.<br><br>iii) the right of the lawyer in the issuing Member state to request access, and quickly enough, to the investigation file. In Belgium, the law authorizes the lawyer of the suspect to request access to the file of the ongoing investigation (art. 61ter C.i.c.). This right – if the investigation judge agrees to grant this access (he may refuse) – may be of great importance in the context of the EAW and should therefore be generalized to all Member states by an European mandatory regulation. |
| **Bulgaria** | No information. A probable reason for this lack of information is the fact that the Directive on right of access to a lawyer has not yet been transposed in Bulgaria. |
| **Croatia** | The biggest benefit is receiving all needed information about procedure and client from the attorney from the issuing state. |
| **Cyprus** | In the absence of transposition of directive 2013/48/EU into Cyprus law there is no such experience. |
| **Czech Republic** | As mentioned in the answer to the previous topic, the directive on the access to lawyer has not yet been implemented in CZ.<br>However, my experience with the application of the dual representation (before its formal introduction in the implementing law I already use it in practice) is positive, both when CZ is the executing state and when it is the issuing state.<br><br>In the proceedings on the execution of the EAW, to have an assistance of a defence lawyer in the issuing state helps with the assessment of the grounds of non-execution as the attorney colleague may provide information about the facts of the case, which is lacking in the executing state, or verify fulfillment of formal procedures for the issuing of the EAW.<br>The assistance is also provided vice versa - cooperation with the client in the executing state may enable the attorney in the issuing state to seek withdrawal of the EAW in the issuing state, for that purpose the issue of residency of the requested person, her movement between the issuing and the executing state and verification whether the person fled the issuing state or not (and left to pursue e.g. a job there) are important; the necessary documentation to fight custody in the issuing state after the surrender may also be prepared in the cooperation with the requested person and her attorney in the executing state; otherwise the defence lawyer in the issuing state would not have access to the client, while he is in custody in CZ. |
| **Denmark** | Not implemented |
| **Estonia** | The possibility of dual representation is certainly positive, and it is actually vital for effective defence. However, there are practical issues due to which in most cases, dual representation is actually not working -- most lawyers (esp legal aid lawyers) do not have the necessary knowledge, experience, and contacts; quite often language is a barrier; the procedure of getting legal aid lawyer assigned to the case in another Member State is difficult and time-consuming. Due to these reasons, and taken into account the fact that most EAW cases are handled by legal aid lawyers, there is actually no dual representation. |
| **Finland** | There are obvious benefits. If the person is willing to be extradited, communication with a lawyer in the issuing state usually helps to get him/her aware of the matter earlier and thus making it possible for the |

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| | lawyer to prepare the case already prior to the suspect arriving to the issuing state. Also, if the suspect denies being guilty of the offence, the executing state hardly has any other choices but to extradite, whereas the lawyer in the issuing state may try to get the detention order (or EAW, where possible) overturned – which is obviously not possible in the issuing state. |
| **France** | The benefit of the dual representation is obvious to check with the lawyer working in the issuing state the regularity of proceedings. For instance is the prosecutor allowed to sign an EAW? The lawyer working in the issuing state knows better the politic context. |
| **Germany** | Benefit is the payment. Problem is to find a good counter-part in some regions of the EU. |
| **Greece** | The requested person is not informed about his right of dual representation neither about the obligation of the authorities to facilitate him in finding a lawyer in the issuing state. |
| **Hungary** | It has worked well in Hungary, however better connections and communication with lawyers in certain countries would be more beneficial. |
| **Ireland** | While we are not party to Measure C, we have experience in privately funded cases where persons whose surrender has been sought have had the benefit of representation in the two relevant countries. In such cases, the outcome was generally much more satisfactory, from the point of view of the requested person, than where he had representation only in one jurisdiction. It was also more satisfactory, from the point of view of the States, as cooperation between lawyers often resulted in surrender proceedings being shortened because of a more efficient flow of information, or being abandoned altogether because the person is prepared to return voluntarily, or where it was acknowledged that the circumstances could be met by administrative sanction, or similar. The argument in favour of Dual Representation is unanswerable. It is, accordingly, a great disappointment that Measure C is not applying in Ireland. |
| **Italy** | Good collaboration between lawyers. |
| **Latvia** | No significant problems encountered. |
| **Lithuania** | If dual representation were implemented it would give the benefit of better checking the grounds for the EAW and the detention in the executing state. The main possible problems are listed in the answer to 5 (II) a). Additional problem could be the lack of translation services for the communication between dual representation lawyers. |
| **Luxembourg** | Though Directive 2013/48 has not been transposed yet into national law, it is clear that dual representation allows for a much better defense. It allows the lawyer in Luxembourg to be prepared to defend the client by having immediately a notion of why the person is being arrested and/or detained.<br><br>However the lack of time to discuss the matter and often the limited documents that are accessible, for instance because of language issue (the foreign procedure being in a non-comprehensive language for the Luxembourg lawyer) may hamper the efficiency of the defense in Luxembourg. |
| **Malta** | The contact between the defence lawyers in both States still relies heavily on the input of the person being surrendered, and is usually at his expense. In other words, if a person being surrendered is employing private legal counsel in two different states, they will more easily cooperate with each other given that they are acting on instruction of defence council. Communication between the two lawyers is essential to ensure that any conditions and all those relative defences which can be raised in the process are effectively brought forward to the competent authorities in the respective countries. This lack of communication between the legal representative in the respective countries is a great failing and is to the prejudice of the person being surrendered, who is being subjected to two different jurisdictions within the same Union. |
| **Netherlands** | Major problems are a) finding a good lawyer in the issuing State; b) access to the case file in the issuing State. Furthermore, legal aid in the issuing State is usually also a major problem.<br><br>See also *supra* question 1d and *infra* sub d and question 8. |

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| **Poland** | The presence of a defender in both states (the issuing and the executing) is very appropriate in order to enable the person whom the EAW concerns the comfort of control over the situation, continuity of actions, the flow of information and possibly most tranquil arrival to the issuing state.<br><br>Cooperation, especially with lawyers from the UK, in situations in which Poland is the issuing state, shows that our participation in the case [which involves presenting the expert report] allows providing arguments that the defender of the executing state would not be able to present. It is based on analysis of the case files and pointing out errors of the proceedings, which for various reasons can no longer change the judgment in Poland.<br><br>Dual representation guarantees primarily a fuller realization of the rights of defense in the extradition proceedings, ensures continuity of conduct which affects the comfort of the person conveyed, in terms of knowledge of his legal situation and being able to predict what is ahead In principle however, this cooperation is correct and effective.<br><br>However, the advantages of dual representation are not to be underestimated. Undoubtedly, such a lawyer uses the language in which the proceedings are pending fluently, as well as is better versed in the legal status of such a state. Such a lawyer can also gather information from the authorities conducting the proceedings swiftly. However dual representation creates certain problems. One of them are the costs of the proceedings, which increase considerably due to the need off covering the additional fee, costs of translations, mails, etc.<br><br>Therefore, the trial lasts longer. Lawyers do not know each other's jurisdictions, which can affect communication, problems with decision-making and lead to inconsistencies – the lawyer who does not know the other one's jurisdiction can take action with the best intention, but the result may be that the actions were unnecessary or even undesirable. Extension of the decision-making process and the language barrier between the lawyers are also important. They may lead to misunderstandings and – in consequences – making wrong decisions. |
| **Portugal** | In cases involving the request of an EAW it is crucial that the requested person is provided legal aid (whenever necessary) and the assistance of a lawyer practicing in the issuing state and a layer practicing in the executing State. Such possibility provides access to evidence, information related to the criminal proceeding and basic knowledge from the legal frame involving the case. As stated by Vânia Costa Ramos (in European Criminal Bar Association, Dual representation in EAW proceedings – how does it and how should it work?, Carlos Pinto de Albuquerque e Associados), «*It is not possible to grant effective legal representation in European Arrest Warrant cases without granting the possibility of access to the so-called double defence. It enables genuine reasons for refusal to be properly argued and spurious ones to be discontinued. The intervention of a lawyer from the issuing state is essential to help both the lawyer and the court in the executing state to assess the verification of any refusal grounds as swift as possible.*» In our opinion the limited timelines regarding the EAW make it virtually impossible to have access to a lawyer and enable him to deliver an effective defence. We recur to the words of Vânia Costa Ramos to empathise that there is "*no clear European legal basis for dual representation; States do not encourage dual representation; The fact that dual representation occurs depends on the lawyer in the executing State (if there is one) knowing about its importance and being able to find an appropriate lawyer in the issuing State at very short notice; If the client has no financial means, he usually has to hope that a lawyer in the issuing State will act pro bono for him*.» Also the lack of a "*…formalized way for defence lawyers to co-operate on a cross-border basis…*" makes it difficult to implement good practices regarding this matter. |
| **Romania** | |

| **Slovakia** | The directive on the access to lawyer has not yet been implemented to the Slovak Criminal Procedure Code, so there is not national legal base for that.<br>As I already mentioned above, I have an experience with the dual representation when Slovakia was the issuing state and I was asked by the lawyer from the UK.<br><br>The dual representation might be very effective for the evaluation of an existence of the grounds of non-execution as the local lawyer might get information which could not be available in the procedure of the EAW in the executing state. |
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| **Slovenia** | No information (yet). But there was a case of a Czech citizen when coordination between the Slovenian and Czech defence lawyer was important (there was a question concerning the phase of criminal procedure in Czech Republic in which the EAW was issued). |
| **Spain** | Dual representation is to the benefit of a better defence of the requested person as documents coming from the first issuing judicial authority can be presented at the first court appearance which wide the scope of the information in the application, or concerning foothold or voluntary appearances of the requested person before the Court, which are certainly valued when deciding on precautionary measures to be imposed on the requested person during the course of the proceedings. Additionally, the knowledge of what is happening in the issuing State is critically important to invoke certain grounds for refusal (trial in the absence of the accused, non bis in idem, conditions for the detention, sentence he faces…) |
| **Sweden** | The Directive 2013/48/EU on the right of access to a lawyer has yet not been implemented in regard to the EAW procedure. Amendments need to be made with reference to the rights set out in article 10.4 and 10.5 of the directive.<br><br>a) When Sweden is the executing state<br><br>The EAW does not contain any information on whether a defense counsel is appointed in the issuing state. Contact with any such counsel is therefore often dependent on the client´s own knowledge and information. Assumingly, he or she rarely has any such knowledge. |
| **UK** | **England and Wales**<br>There are many benefits to making contact with a defence lawyer in the issuing state. However, unless the requested person funds this representation himself, it is unlikely to be effective, because Legal Aid in England and Wales does not extend to funding a lawyer in the issuing state. Where a defence lawyer has been instructed in the issuing state, defence practitioners often find that the EAW can be compromised in the issuing state, resulting in a withdrawal of the EAW and a discontinuance of the extradition proceedings. For example, sentence of imprisonment can be re-suspended on application or requested persons can plead guilty in their absence and receive non-custodial sentences. Some issuing states (such as Poland), will in certain circumstances, agree to the withdrawal of the domestic warrant of arrest subject to the requested person returning to the issuing state voluntarily. This can only be done with the assistance of a local lawyer and results in the requested person not being returned in custody. |
| | **Scotland**<br>Dual representation is of great assistance. In some circumstances it may result in opposition to the EAW being dropped. For example, in one case an accused was returned to Spain, pled to a substantially reduced charge and was released immediately following a non-custodial disposal. If that outcome had been foreseen the caused would probably have consented at the outset. In less serious Polish cases, if compensation is paid, the warrant is withdrawn. Dual representation can facilitate this process. |

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| | In other situations if further procedures or appeals are to take place in the issuing state, Scottish courts will be quick to offer further time for the matter to be “sorted out”.<br>Dual representation would greatly assist in the foregoing situations. From a practical perspective, the presence of a lawyer in the issuing state also greatly enhances understanding of the practices and procedures in the issuing state without the need for lengthy inquiry by the defence or even by the Court if matters require clarification. |
| | **Northern Ireland**<br>Dual representation is extremely beneficial to the RP and his lawyer is the executing state. It enables the transmission of details not included on the warrant and often the possibility of negotiating the withdrawal of the warrant in the issuing state.<br><br>The language barrier however can be an issue, particularly when the RP is in custody in the issuing state and communications take place between lawyers. Interpreters in Northern Ireland are readily available and a RP would have the benefit of legal aid in almost all cases. That said it is a slow process when each communication is required to be translated and authority required to incur those translation costs on each individual occasion.<br><br>A key issue for a RP is the cost of representation in the issuing state. It is the experience of defence practitioners that legal aid is not readily available in other member states, particularly those issuing large volumes of extradition requests. RP’s are rarely of significant means and therefore cannot afford effective representation. They may be in a position to instruct a lawyer initially but not for the required duration of the case. There are other issues relating to lawyers experience and oversight which are discussed at 7 below.<br><br>In theory the right to dual representation is an important protection but in practical terms it remains to be seen if the issues relating to funding and translation can be overcome. |

| **Question 6 - Dual representation**<br>*b) What is the experience of defence practitioners in your Member State about the benefits and problems of dual representation of the subject of the EAW in both executing and issuing states when your state is the issuing state?* | |
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| **Austria** | Until now, there is no right to dual representation (in Austria as issuing state); this right will be implemented soon.<br>Until now, it is very difficult to retain a defence lawyer in the issuing state. The contact with a defence lawyer in the issuing state can only be established if the suspect has a defence lawyer in the executing state who is able to retain a lawyer on the suspect's behalf. Moreover, in practice legal aid was not granted in Austria as issuing state. The situation may improve after the implementation of the directive on access to a lawyer. |
| **Belgium** | Same answer as under a) |
| **Bulgaria** | No information. A probable reason for this lack of information is the fact that the Directive on right of access to a lawyer has not yet been transposed in Bulgaria. Another reason for this lack of information could be the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures |
| **Croatia** | The biggest benefit is receiving all needed information about procedure and client from the attorney from the executing state. |
| **Cyprus** | In the absence of transposition of directive 2013/48/EU into Cyprus law there is no such experience. |
| **Czech Republic** | See the previous answer. |
| **Denmark** | There will be a DK lawyer appointed before the court take is decision |
| **Estonia** | Same as (a) above |
| **Finland** | See above. The detention order can be appealed in the issuing state (when it's Finland), thereby possibly overturning the order and thus making the EAW null and void. |
| **France** | The cooperation between lawyers of the different countries involved in the EAW is required in order to defend properly the suspect. The lawyer when France is issuing state has unfortunately not access to the file until the suspect has been surrendered. |
| **Germany** | In some countries it is unclear – concerning the standard of experience and knowledge in criminal cases which sometimes is poor - how the counsel of the executing state could be/was assigned. |
| **Greece** | Greece has no list of lawyers that could be considered as specialized in the field of the EAW or even in the field of criminal law generally. No specialization is formally recognized in Greece. As a result, in case that the Greek authorities are requested according to Art. 10 par. 5 of the Directive 2013/48 to provide information in order to facilitate the requested person in appointing a lawyer in Greece, they could either provide him with a general list of all the local lawyers (regardless of their true specialization) or they could refer to the list of the legal aid lawyers. Even in the second case, it is not possible to know beforehand which lawyers have any experience with EAW-procedures. |
| **Hungary** | It has worked well in Hungary, however better connections and communication with lawyers in certain countries would be more beneficial. |
| **Ireland** | As above, it is absolutely essential for the proper representation of a subject to have access to lawyers in both relevant jurisdictions. It speeds the process up and identifies shortcomings and proper grounds for defence. |
| **Italy** | In Italy,the Parliament is examining a law that forsees the availability of the public defendant also in order to represent arrested people abroad due to the execution of the EAW that is accessory to the one mentioned in the executive country. The purpose of the sheme is to implement article 10 of the directive,taking into consideration n.46. |

| Latvia | No significant problems encountered. |
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| **Lithuania** | If dual representation were implemented it would give the benefit of better checking the grounds for the EAW and the detention in the executing state. The main possible problems are listed in the answer to 5 (II) a). Additional problem could be the lack of translation services for the communication between dual representation lawyers. |
| **Luxembourg** | The benefits of dual representation are immense. The lawyer may be prepared to the extradition and get some background information from the foreign attorney.<br><br>However also here the same issues of language as under a) may arise. Sometimes the person's lawyer has been appointed through legal aid and is not of great help to the national Luxembourg lawyer unfortunately. Also, though discussing the matter with the lawyer in the issuing state is of great importance, sometimes there are no legal means to intervene efficiently for a client. |
| **Malta** | When Malta is the issuing state, it is very hard to obtain any particular information to assist defence counsel in the executing state because the issuance of these orders are an administrative decision without a hearing, in which the person being surrendered does not have a locus standi to appear. In the executing state, legal aid is freely available. |
| **Netherlands** | The biggest problem is finding a good lawyer for the wanted person in the executing State. In most cases, the lawyer dealing with the case in the executing State is not (sufficiently) specialized in criminal law cases let alone EAW cases |
| **Poland** | See a) above |
| **Portugal** | Please see point 6 a) above. |
| **Romania** | |
| **Slovakia** | See the previous answer. |
| **Slovenia** | No information. |
| **Spain** | The same as the lastest answer, but in the opposite sense. The defence practitioner can give important information from the issuing state to the practitioner who is working in the executing State. |
| **Sweden** | The defense counsel is generally not informed about the issuing of an EAW, nor on any decision based on such order. Neither is he or she provided with contact information for the representing counsel in the executing state. Without this information, contact and co-operation with the counsel in the executing state is obviously not made easier. |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the 'issue' of EAWs in the United Kingdom. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>As stated previously Northern Ireland does not issue a large volume of warrants however legal aid assistance can be available to RP's sought for extradition in other members states. Similar to the process explained above it is possible to provide case details to those representing the RP in the executing state or to facilitate communication with the prosecutor responsible for the case.<br><br>The language barrier is less of an issue when representing a RP in the issuing state as they will generally speak English. There are also family members involved who facilitate communication with the client. It is certainly beneficial for the RP to instruct a lawyer in Northern Ireland to assist in the case. |

| **Question 6 - Dual representation**<br>*c) What is the experience of defence practitioners in your Member State about the availability of legal aid to the subject of an EAW when your state is the executing state?* | |
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| **Austria** | Legal aid is available and will be granted without problems. |
| **Belgium** | Same answer as under a) |
| **Bulgaria** | Legal aid is available to the subject of an EAW when Bulgaria is the executing state under the provisions of the EEAWA, the CPC and the Legal Aid Act (LAA). |
| **Croatia** | Immediately after arrest and before the first interrogation requested person who is arrested for the purpose of the execution of a European arrest warrant will be handed written instruction in a language that the arrested person understands about right to be assisted by a defence counsel and by an interpreter in accordance with domestic law on criminal procedure, right to appeal against order on detention, right to review of the file, the right to inform consular authority or a person arrested person appointed about the arrest, right to emergency medical care and she will will be informed how the domestic law prescribes a maximum period of detention. A requested person shall be heard on his or her personal state, nationality, relations to the issuing State and whether he or she opposes arrest or surrender and for what reasons. The requested person's defence counsel must be present at the hearing. |
| **Cyprus** | Legal aid is granted to the subject of an EAW when Cyprus is the executing state, provided he or she is eligible for legal aid under the provisions of Legal Aid Law of 2002 as amended (Law 165(I)/2002). |
| **Czech Republic** | The EAW proceedings when CZ is the executing state are a ground of mandatory defence, which means that the requested person has to be represented by a defence lawyer in these proceedings (see Section 14 of Act 104/2013). The requested person may choose one, or he will be appointed by a court (see Section 38 of the Code of Criminal Procedure (Act no. 141/1961, Coll., furthermore referred to only as “CCP”). No matter whether the court decides about the surrender or refuse it, the requested person does not pay costs for the appointed defence lawyer (see Sections 151, 152 of CCP). |
| **Denmark** | The subject will get legal aid – a lawyer will be appointed when the case is brought to court |
| **Estonia** | Legal aid in Estonia as executing state is guaranteed -- it is available without merits and means tests. Participation of defence lawyer is EAW proceedings is mandatory. |
| **Finland** | This is an issue which is in a good state in Finland. Section 20 of the EU Extradition Act states: “Section 20 — The right to counsel and defender (1) The requested person has the right to counsel. (2) The requested person has the right to a defender on request. The court shall order the payment of a reasonable remuneration to the defender, which shall be borne by the State. The provisions of chapter 2 of the Criminal Procedure Act (689/1997) apply to the appointment of a defender ex officio as well as otherwise to the defender as appropriate. (3) The police shall inform without delay the requested person who has been apprehended or otherwise found in Finland of his or her right to counsel and that a defender may be assigned to him or her.” |
| **France** | The legal aid is available when France is the executing state. |
| **Germany** | With the arrest a defence counsel is assigned who is paid by the state. |
| **Greece** | Law 3251/2004 provides explicitly for the right of the arrested person to legal aid during the process of execution of an EAW.<br><br>Legal aid is in fact often provided in case of an EAW. The arrested person shall prove that he has a low income (currently less than 6.600 Euros annually). |
| **Hungary** | The availability of legal aid in Hungary is ensured by law. |
| **Ireland** | Does not apply. |
| **Italy** | In Italy legal aid is not expected in the surrender stage. |

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| **Latvia** | No specific regulation provided in Criminal Procedure Law for legal aid to the subject of an EAW until person is extradited to Latvia. |
| **Lithuania** | No practice is known. |
| **Luxembourg** | In Luxembourg, the legal aid can be granted (in principle) for the cost of the procedure actually happening on the Luxembourgish territory, but only for the fees of a Lawyer of the Luxembourgish bar.<br><br>When Luxembourg is the executing state, this includes the procedure in Luxembourg until the actual delivery of the subject of the EAW.<br><br>In case of dual representation, the fees of the foreign defence practitioner cannot be covered by the Luxembourgish legal aid. |
| **Malta** | Legal aid is offered in Malta without any problems, and as a service it is offered without limitations. The lawyers employed have large experience but the service itself has come under criticism given that there is a strain on the available resources. Generally speaking, there is room for improvement. |
| **Netherlands** | *Legal aid in the Netherlands (executing State)*<br><br>Legal aid is automatically available in the Netherlands from the moment the wanted person is arrested by the Dutch police on the basis of the EAW / SIS alert and transferred to the police station. In cases where the person is arrested outside the district of Amsterdam, legal aid will be provided by the local duty lawyer who will, in most cases, not be specialized in EAW cases. Although this is not necessarily a problem for the initial phase of the EAW proceedings, this is more problematic once the case goes to court (see also below question 7a). If the person is arrested in the district of Amsterdam (or was arrested outside this district and upon arrival in Amsterdam it turns out that (s)he does not yet have a lawyer) legal aid will be provided by duty lawyers specialized in EAW cases. 11<br><br>In general, the eligibility for legal aid and the availability of legal aid lawyers is therefore not a problem. The only exception are cases where the person is not arrested, for example, in cases where there are two EAWs or where the wanted person is already detained in pre-trial detention in relation to a Dutch criminal case. In those cases obtaining legal aid is more complicated.<br><br>*Legal aid in the issuing State*<br><br>In our experience the biggest problem is that legal aid is either not (yet) available in the issuing state or legal aid fees are so low there that lawyers specialized in criminal law are not willing to take the case on this basis. This means that the wanted person has to pay for the work of a lawyer in the issuing State him-/ herself. Usually, the wanted person is unable to do so meaning that (s)he will not be represented in the issuing State until arriving there. |
| **Poland** | When Poland is an executing state, access to legal assistance is realized on a general basis indicated above. Subject of an EAW has access to legal aid at the stage of juridical proceedings. However, poor knowledge of the application of the provisions concerning EAW may be a problem, since only a few lawyers had the opportunity to conduct any proceedings in this scope.<br><br>When Poland is an issuing state, access to legal assistance is realized on a general basis indicated above. Subject of an EAW has access to legal aid at the stage of pre-trial and juridical proceeding.<br>There is no information about the practice of polish courts being interested ex officio as to the need to provide dual representation. In other countries, in the proceedings concerning EAW issued by Poland, the defense counsels are appointed. |
| **Portugal** | Please see point 6 a) above. |

| **Romania** | |
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| **Slovakia** | The EAW executing proceedings is the ground of mandatory defence. So another words there is an obligatory legal aid for the requested person, that has to be represented by a defence counsel. The person has always a choice to hire a lawyer or ask the court to appoint a legal aid lawyer. |
| **Slovenia** | Legal aid (defence lawyer) is provided always when there is a pre-trial detention or when the prosecutor is demanding that the pre-trial detention be used. Otherwise, the person will have to show eligibility for legal aid (based on his/her income, assets, etc.). |
| **Spain** | Availability is immediate once the detainee arrives at the National Court (Madrid). |
| **Sweden** | In principle, an individual subject to an AEW has right to a public defense counsel regardless whether Sweden is the executing or issuing state. The cost for such counsel is carried by the state. An exemption to this standard is if Sweden is the issuing state and the EAW is issued for the purpose of executing a custodial sentence. |
| **UK** | **England and Wales**<br>See the answer above at a) |
| | **Scotland**<br>Legal aid is routinely granted. The difficulty is that bureaucratic delays mean that it is often not in place by the time of the mandatory extradition hearing (within 21 days of arrest). Cases are adjourned until legal aid is granted. A more fundamental problem is that legal aid is not in place for dual representation. |
| | **Northern Ireland**<br>Details of the legal aid systems in member states is not widely available in Northern Ireland. In fact defence practitioners routinely rely on the knowledge of their client in this regard. Generally it is the RP who chooses their representative based on affordability. |

| **Question 6 - Dual representation**<br>*d) What is the experience of defence practitioners in your Member State about the availability of legal aid to the subject of an EAW when your state is the issuing state?* | |
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| **Austria** | Legal aid is available in principle, but will not be granted unless there are particular difficulties of the case. In practice, legal aid is granted only as soon as the suspect has been surrendered. |
| **Belgium** | The uncertainty for the concerned person whether or not the costs of the provided legal aid, if any, in the executing state, will be claimed back to him later, if sentenced.<br><br>Therefore is an unification of the national rules on legal aid a necessity. |
| **Bulgaria** | No information. A probable reason for this lack of information is the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | Immediately after arrest and before the first interrogation requested person who is arrested for the purpose of the execution of a European arrest warrant will be handed written instruction in a language that the arrested person understands about right to be assisted by a defence counsel and by an interpreter in accordance with domestic law on criminal procedure, right to appeal against order on detention, right to review of the file, the right to inform consular authority or a person arrested person appointed about the arrest, right to emergency medical care and she will will be informed how the domestic law prescribes a maximum period of detention. A requested person shall be heard on his or her personal state, nationality, relations to the issuing State and whether he or she opposes arrest or surrender and for what reasons. The requested person's defence counsel must be present at the hearing. |
| **Cyprus** | Legal aid may only be granted after surrender of the requested person to the Cyprus authorities, provided he or she is eligible for legal aid under the provisions of Legal Aid Law of 2002 as amended (Law 165(I)/2002). |
| **Czech Republic** | When CZ is the issuing state, standard rules for a right to defence lawyer apply. Under these standard rules mandatory defence applies (i.e. the person has to be represented by a defence lawyer, unless a waiver is made in a limited number of cases), when one of the grounds of mandatory defence as stipulated by CCP is fulfilled (in particularly the proceedings against fugitive, when the rate of sentence of imprisonment at stake exceeds 5 years, when person is in custody or executing a sentence of imprisonment). When a mandatory ground applies, the requested person may choose a defence lawyer or a defence lawyer is appointed by a court. If the requested person is found finally guilty, the requested person has to pay costs for the criminal proceedings, including the defence costs to the state (see Sections 36, 36a, 36b, 38, 151, 152 of CCP).<br><br>Mandatory defence does not apply to suspects, they may only choose a defence lawyer.<br>If the requested person does not have enough means, the requested person may ask for a free legal aid or legal aid for a reduced reward. A court decides about it (see Section 33 of CCP). The free legal aid does not apply to suspects, only to the accused. |
| **Denmark** | A lawyer will be appointed in court |
| **Estonia** | Before the person is actually surrendered and transferred to Estonia, getting legal aid is difficult because there are no specific provisions on how to handle such requests. There is no established practice for such cases. |
| **Finland** | This is something that is perhaps not quite clear. When Finland acts as the issuing state, there is always a detention order. In principle one could argue that a public defender should be appointed upon request, but since it's a detention order made in absentia, it's not absolutely clear. However, usually (if not always) the suspected offence is such that it carries a minimum sentence of 4 months, making it |

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| | possible to get a public defender (a lawyer of the suspect's own choosing). There is a question of recovery, if the person is subsequently found guilty, subject to means testing in accordance with the Legal Aid Act. |
| **France** | The legal aid is also available when France is the issuing state, but when the suspect is in France. |
| **Germany** | I have no experience about this. |
| **Greece** | In case of an EAW for the purpose of prosecution, legal aid can be provided in Greece during the pre-trial interrogation stage only for serious crimes, punishable with imprisonment of at least 5 years, and only to people who have an annual income of less than 6.600 euros. In case that the EAW was issued for an offence punishable with a sentence lower than 5 years, no legal aid can be provided.<br><br>The main problems concerning legal aid relate to the experience of the legal aid lawyers (see below, question No. 7), as well as their remuneration (see below, question No. 8). |
| **Hungary** | The availability of legal aid in other countries also seems to be ensured by law. |
| **Ireland** | Does not apply. |
| **Italy** | It depends on each executive country but we still don't have cases in which foreign colleagues are pleased with the remuneration in case of legal aid. |
| **Latvia** | No information. |
| **Lithuania** | No practice is known. |
| **Luxembourg** | In Luxembourg, the legal aid can be granted (in principle) for the cost of the procedure actually happening on the Luxembourgish territory, but only for the fees of a Lawyer of the Luxembourgish bar.<br><br>When Luxembourg is the issuing state, this includes the possible procedure in Luxembourg before the actual delivery of the subject of the EAW, and of course all the procedures starting from it's delivery to the Luxembourgish authorities. |
| **Malta** | This does not apply. The accused has no *locus standi,* as explained above. |
| **Netherlands** | *Legal aid in the Netherlands (issuing State)*<br><br>A distinction should be made between prosecution EAWs and execution EAWs;<br><br>• Prosecution EAW: legal aid is available as soon as a summons to appear before the District Court or Court of Appeal (*dagvaarding*) has been issued against the wanted person. In exceptional cases, however, it is possible to apply for legal aid before this moment. As indicated above, the majority of the Dutch cases in which an EAW is issued is not yet trial ready. This means that – bar exceptional circumstances – the wanted person will not qualify for legal aid until he arrives in the Netherlands and is arrested by the Dutch police (for arrested persons a special regime applies).<br><br>• Execution EAW:<br>• Bar exceptional circumstances legal aid will not be available in the Netherlands if the judgement for which the surrender is sought is already final.<br><br>*Legal aid in the executing State*<br><br>In our experience the biggest problem is that legal aid fees are so low in the executing state that lawyers specialized in criminal law are not willing to take the case on this basis. |
| **Poland** | See c) above. |
| **Portugal** | Please see point 6 a) above. |
| **Romania** | |

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| **Slovakia** | The legal aid in the case that Slovakia is an issuing state depends if there is a reason for the mandatory defense (obligatory legal aid) or not. When a mandatory ground applies, the requested person may choose a defence lawyer or a defence lawyer is appointed by a court.<br>If the requested person does not have enough means, the requested person may ask for a free legal aid or legal aid for a reduced reward. The legal aid does not apply to suspects, only to the accused persons. |
| **Slovenia** | No information but usually legal aid is provided when pre-trial detention is used. |
| **Spain** | When the issuing state is Spain, the accused who has not appeared before will lack of legal aid until he arrives to Spain. |
| **Sweden** | In principle, an individual subject to an AEW has right to a public defense counsel regardless whether Sweden is the executing or issuing state. The cost for such counsel is carried by the state. An exemption to this standard is if Sweden is the issuing state and the EAW is issued for the purpose of executing a custodial sentence. |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the 'issue' of EAWs in the United Kingdom. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>Legal aid is available and can be applied for in writing to either the Legal Services Agency or the relevant court. |

| **Question 6- Dual representation**<br><br>*e) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | See answer under point a). |
| **Bulgaria** | A probable example of a good practice is the opportunity of the subject of an EAW provided for by the EEAWA to have legal aid available in the detention procedure, as well as in the surrender procedure when Bulgaria is the executing state. |
| **Croatia** | |
| **Cyprus** | No information |
| **Czech Republic** | See the answers to previous questions in this topic. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | See above, when Finland is the executing state. |
| **France** | No information. |
| **Germany** | The assignment of a defence counsel with the court order confirming the detention is obligatory by german procedural law, sec. 141 para 3 of the German Criminal Procedure Code (GCPC). |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | It would obviously be preferable if we introduced Dual Representation and provided proper legal aid to underpin it. |
| **Italy** | In Italy,the possibility for lawyers to clear credits from legal aid has recently been introduced. |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | None to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | A good practice is a guarantee of a wide access to legal assistance and the possibility of using the help of a professional attorney by the suspect/accused. Unfortunately, the problem in this field as well may be poor knowledge of the application of the provisions concerning EAW, since only a few lawyers had the opportunity to conduct any proceedings in this scope.<br>Since interpretation of directive no 20013/48/EU on the right of access to a lawyer leads to the conclusion that according to the European legislator, proceedings in the executing state are not criminal proceedings, this may have an important influence on the right to access to a lawyer in other cases of legal assistance and cooperation. It gives additional arguments to support the opinion that executing mutual legal aid, for example when questioning witnesses abroad, is not a criminal proceeding, in which access to a lawyer must be ensured. Contrary to that, polish Constitutional Court in its decision from 5 October 2010 stated that “It is obvious that the guarantees provided by art. 6 of the ECHR apply to the extradition proceedings or to the proceedings to execute a European arrest warrant, in the executing state”. |
| **Portugal** | Nothing beside the law itself. |
| **Romania** | |
| **Slovakia** | Just what I described above. |
| **Slovenia** | No information. |

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| **Spain** | No. |
| **Sweden** | no information |
| **UK** | **England and Wales** |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>Legal aid is available and there is a system in place for requesting assistance in cases where the client is not present in the jurisdiction. |

| **Question 6 - Dual representation**<br>*f) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | An urgent, mandatory and deep unification of the legal aid system is a necessity. |
| **Bulgaria** | A probable solution could be to introduce, in one form or another, the opportunity of a defence lawyer providing legal aid to participate in the issuing procedures when Bulgaria is the issuing state. |
| **Croatia** | |
| **Cyprus** | No information |
| **Czech Republic** | The regulation of the legal aid at the EU level is advisable and should improve the situation and establish the right to free legal aid also in relation to suspects, not just accused.<br>Further following difficulties (when CZ is the issuing state) should be addressed and rectified: under the legal aid and mandatory defence scheme, the defence lawyers are paid only after the final termination of a case (with the exception of advances in bigger cases) and have to thus also pay costs e.g. on interpreters or experts from their own resources and claim after the final termination of the case their reimbursement without having it guaranteed; before courts decide about the legal aid application, the defence is already underway but not paid by the clients. There are no clear criteria for eligibility to the free legal aid as the respective national legal provision refers only to the insufficient means of the accused - though it keeps the system flexible, it rather causes uncertainty. |
| **Denmark** | --- |
| **Estonia** | Training for defence lawyers, enhanced cross-border cooperation among lawyers |
| **Finland** | Not really, other than that it could be made obligatory that a person always would have the right to counsel/public defender also when Finland is the issuing state, and that this would need to be done ex officio. But obviously this could create another issue; who would want to be appointed as a defence counsel without being able to discuss the matter with the client before accepting the case? |
| **France** | See 5. ii. d) |
| **Germany** | Defining minimum qualification standards for defence counsel in dual representation assignment situations. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | To continue to campaign for the implementation of the Measure C principles. |
| **Italy** | The possibility to apply for legal aid also in the surrender stage within the EAW subject. |
| **Latvia** | No information. |
| **Lithuania** | The right to translation should cover the translation services for the communication between dual representation lawyers as well. |
| **Luxembourg** | No information |
| **Malta** | In the issuing state, being Malta, the accused can engage a legal attorney to request a copy of all the information just as if the investigation were being held in Malta. Remitting this information to the other side could save valuable time and better prepare for defence both in executing state and upon return in Malta.<br><br>More resources must be granted to legal aid to ensure an effective legal aid with capability of legal aid lawyers to contact foreign lawyers in other jurisdictions for a proper and effective defence of persons being surrendered.<br><br>Exercising the right of dual representation would be greatly facilitated if defence practitioners are given |

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| | access, through the national Courts, to the roster and contact details of the respective legal aid lawyers in other jurisdictions.<br><br>The Commission for the Holistic Reform of the Justice Commission[12] concerning the Maltese criminal law system gives recommendations of what can be done to strengthen the right to legal assistance during criminal proceedings. These recommendations include having a lawyer present during the entire interrogation, having an audio recording of the interrogation, which would then be presented as evidence in court, and the abolition of inferences, among other recommendations. It would be a welcome measure to have these recommendations put in place especially with regard to the right of dual representation. |
| **Netherlands** | In our view, legal aid should be available in the issuing State at least from the moment that the wanted person is arrested in the executing State. A provision to this extent should be included in the forthcoming Directive on provisional legal aid. |
| **Poland** | The problem is primarily concerns choosing the right defense lawyer in another Member State. This lawyer should be familiar with the application of regulations concerning EAW and have a relevant experience in this scope. It is important to be able to quickly and clearly communicate with him, to ensure our clients the rights and guarantees during the trial. |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | The strong EU regulation on legal aid is highly required. The big problem regards the legal aid is the lawyer´s fees for legal aid cases. The lawyer is paid at the very end of the case and the rate is very low in comparison with the regular cases. If the proceedings lasts some time, it is kind or “credit of the lawyer to the state”. This is really un-appropriate. The judges, prosecutors are paid monthly, the lawyer who works in the legal aid cases is paid after the case finished. This should be changed immediately. |
| **Slovenia** | Legal aid in the procedures concerning EAW should be provided only by specialists – defence lawyers who have experience in criminal law and EAW procedures (for legal aid to be really effective). |
| **Spain** | No. |
| **Sweden** | In order to make contacts between the defense counsels in the concerned states more easy, standards could be introduced whereby:<br><br>- contact information for the defense counsel in the issuing state is noted in the EAW<br>- the defense counsel in the issuing state is provided with contact information for the representing counsel in the executing state, as soon as appointed.<br>- the defense counsel in the issuing state is provided with a copy of the EAW, without delay after issuing.<br>- the defense counsel in the issuing state is continuously provided with any decision based on the execution of EAW in the executing state.<br><br>In order to facilitate direct contact between the detained suspected/requested person and his/her defense counsel in the executing state/issuing state, a practice should be introduced whereby the detention center in the concerned state is informed and required to approve any contact with his/her defense counsel in the other concerned state. |
| **UK** | **England and Wales** |

[12] Report by the Commission for the Holistic Reform of the Justice System, 30 November 2013, Parliamentary Secretary for Justice, Malta.

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| | Legal aid should be available in the requested state to enable a requested person to instruct a defence practitioner in the issuing state for the purpose of assisting the defence practitioner in the requested state. |
| | **Scotland**<br>The benefit of dual representation to the fair and proper representation of an accused cannot be underestimated. At the very least it would of assistance if the lawyer in the executing state had the opportunity to speak with the accused's legal representative, where he has one. The EAW documentation should therefore provide details of the accused's lawyer in the requesting state. Many cases involve failure of the accused to comply with probation conditions. In such cases, the probation officer's details should also be provided within the EAW. Otherwise, it is usually the unvouched word of the accused against what is claimed on the face of the warrant. The lack of dual representation is therefore problematic. |
| | **Northern Ireland**<br>A publication of the availability of legal aid for criminal cases in each member state when the EAW is being processed by the executing state. This would include the process for applying for legal aid and a list of lawyers permitted/willing to accept instructions under the legal aid scheme.<br><br>This publication could be produced by the experts involved in this report together with their law society (or bar council) and department of Justice. |

| Question 7 - Lawyer's criminal law experience<br>*a) What is the experience of defence practitioners in your Member State about the methods of selecting a suitable defence lawyer (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* | |
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| **Austria** | There are no criteria to select a defence lawyer: Legal aid is provided by all lawyers. All lawyers are trained in criminal law and practice. |
| **Belgium** | The Belgian Bar has developed a specific system of legal assistance for any arrested person being interrogated to enjoy the assistance of a lawyer. This system is called "Salduzweb". It allows the police and/or investigating judge to find a Belgian lawyer within two hours of an arrest. It is an automated and secure system, backed up by an emergency phone number. It permits the suspect to have a confidential conversation with a lawyer before interrogation, followed by on-site assistance during the interrogation.<br><br>Practically it works like this: after arrest, the police officer or investigating judge opens a file on 'SalduzWeb', and the software then calls lawyers sequentially based on the case parameters. If the lawyer accepts, the system sends the lawyer a text message and an email with case details. The lawyer can then obtain access to the case on the system. The lawyer can call the police officer or investigating judge in charge to speak to the suspect, or attend the suspect in person for a confidential conversation followed by on-site assistance during the interrogation.<br><br>If no lawyer is found, the 'SalduzWeb' administrator at the Bar is contacted, and will receive an automatic call plus text message and email. The administrator will then manually search for a lawyer who, when found, takes over the case using the Salduz number.<br><br>The system deals with around 4,000 cases a month. 77% of lawyers were assigned using the automated system, and 81% of the cases had a lawyer found through the system. The yearly cost of 'Salduzweb' is around 400,000 EUR. The Belgian lawmaker is about to organise a public funding of it. |
| **Bulgaria** | As pointed out above, there is no dual representation in Bulgaria. Otherwise, when a lawyer providing legal aid is needed, the competent EAW court notifies the local Bar Association that a lawyer is needed. Then the local Bar Association is to appoint one. There is no formal requirement of Bulgarian legal aid system that the selected lawyer should meet certain criteria of training and experience. The system is rather based on the principle that the next lawyer on a rota might be allocated regardless of experience. The court would accept the lawyer as nominated by the local Bar Association. |
| **Croatia** | A requested person who is arrested for the purpose of the execution of a European arrest warrant has the right to be assisted by a defence counsel. At the request of the requested person, the court shall appoint a defence counsel according to the criteria prescribed by the domestic law for the appointment of defence counsel in relation to a defendant against whom the indictment has been submitted. Only a member of the Bar may be retained as defence counsel, but in proceedings for offences punishable by imprisonment for a term of less than five years he may be replaced by an attorney apprentice who has passed the Bar examination. Before the Supreme Court of the Republic of Croatia, only a member of the Bar may be a defence counsel, and where the Supreme Court of the Republic of Croatia decides in a panel of seven judges, only a member of the Bar who, after passing the Bar examination, has practiced for at least five years in the judiciary or in an attorney's office may be a defence counsel.<br>The requested person's defence counsel must be present at the hearing. Then the defence is mandatory. When no conditions for mandatory defence exist, the court may upon the defendant's request assign a defence counsel to the defendant if he, due to his fi¬nancial situation, is unable to pay the defence costs. The president of the panel shall decide on tills request and the president of the court |

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| | shall assign a defence counsel. In lieu of the appointed defence counsel the defendant may retain another defence counsel. The appointed defence counsel may request to be released only for a justifiable cause. The president of the court may release the appointed defence counsel who negligently carries out his duties. The president of the court shall assign another defence counsel in lieu of the released defence counsel. The Croatian Bar Association shall be notified of the release. |
| **Cyprus** | There is no such experience since Directive 2013/48/EU has not been transposed into Cyprus law. |
| **Czech Republic** | As mentioned in answers to the previous topic, when CZ is the executing state, proceedings on the execution of the EAW are a ground of mandatory defence. That means that the requested person has to be represented by a defence lawyer in these proceedings. The requested person may choose a defence lawyer, if no defence lawyer is chosen within the set reasonable time-limit, a court appoints a defence lawyer from a list of of defence lawyers. For the purpose of appointment of defence lawyers courts administer a list of attorneys, who have consented to participate in this scheme (i.e. participation in the list is voluntary, not all attorneys participate in) and have seat in their districts; the list is drafted alphabetically according to attorneys´ surnames. Attorneys are appointed according to the list as they follow (see Section 39 of CCP).<br>The fact that only any attorney (i.e. a member of the Bar association who passed Bar exam and fulfilled other set prerequisites required for the position of an attorney) may participate in this list guarantees the quality of the provided legal services.<br>No specialization in EAW cases or special training is required. This list serves for the appointment of attorneys in all criminal proceedings. |
| **Denmark** | The appointed lawyer is elected from a list of approved defending lawyer – all with experiences. |
| **Estonia** | Within the legal aid system, there are no special criteria of training and experience, i.e. any member of the Bar Association could take a case. The selection system is such that the suspect cannot choose a particular lawyer -- he/she shall be assigned one essentially on a random basis. This means that many EAW cases end up being defended by lawyers who have no experience in cross-border matters. |
| **Finland** | There really are no specific methods in selecting a suitable defence lawyer. Basically anyone with the right to represent people in court may be appointed. It's either an attorney (member of the Bar), a public legal aid lawyer (not very common in these kinds of cases) or a lawyer with a license to represent people in courts (not being a member of the Bar). The National Bureau of Investigation (who's the investigative authority in EAW cases) have their own lists of people who have handled these kinds of cases, and can therefore help detained suspects in getting a lawyer, but as told, no real method exists. |
| **France** | The legal aid system selects lawyers for EAW cases. There is no regulation at the national level in France. The legal aid systems organized by law societies and the Minister of Justice is different if you are in cities like Paris, Lyon and other areas.<br>In Paris, the lawyers are no appointed if they cannot justify training in criminal law, that is not the case in all cities. |
| **Germany** | see answers above in 6. |
| **Greece** | In the Greek legal aid system (Law 3226/2004) no certain criteria for the selection of lawyers exist. Each Bar Association has an alphabetical list of legal aid lawyers. Any member of the Bar Association can, at request, be registered in this list, regardless of its experience. When the accused or requested person asks for legal aid, the responsible authority (i.e. the prosecutor or the judge) refers to the local Bar Association, which allocates the next lawyer on a rota. The accused or requested person does not have a right to choose a specific lawyer. He must accept the allocated lawyer.<br><br>The training and experience of the allocated lawyers varies widely. No certain mechanism exists that could guarantee the efficiency of legal aid lawyers. In addition, the low level of remuneration leads mainly young and less experienced lawyers to legal aid. As a result it is often possible, that the allocated |

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| | lawyer lacks the needed qualification in order to handle cases of serious criminal offences or cases which require special knowledge and training, like EAW-cases. |
| **Hungary** | In Hungary the present regulation is that the public defence lawyer is appointed by the authorities. This is in our opinion the wrong system, which will probably be modified in the forthcoming New Criminal Procedure Code, due in 2017, and the Bar Associations will then appoint the public defence lawyers. This will hopefully eliminate tricky conflict of interest issues (the authorities currently both prosecute a defendant and appoint their lawyer). To become a public defence lawyer there are no extra requirements, criteria or training above that expected for any criminal lawyer. |
| **Ireland** | Our involvement is limited to the appointment of lawyers in the Irish Courts. There is freedom of choice of lawyer and, subject to the usual requirements of being in good standing, any lawyer is entitled to take on the defence of a European Arrest Warrant and to be paid, in appropriate cases, from the public purse for doing so. |
| **Italy** | In Italy, in order for the public defenders to be certified they have to meet specific requirements within the training program. |
| **Latvia** | No specific methods of selecting a suitable defence lawyer for EAW cases are provided in the national law. At the same time, according to Section 79 (2) of Criminal Procedure Law, sworn advocate or assistant of sworn advocate are the only persons who can practice criminal defence in Latvia. There are several requirements provided in the Advocacy Law for becoming a sworn advocate or assistant of sworn advocate, including minimum age restriction, education level and qualification. Several years of experience are required to become a sworn advocate. |
| **Lithuania** | The lawyers in Lithuania have general obligation to improve their qualification every year, i.e. they have to attend about ten hours (if they are practicing less than 5 years) or six hours (if they are practicing more than 5 years) of trainings each year, but there is no obligation to attend special trainings or know foreign languages in order to provide legal services in the EAW or other special cases. |
| **Luxembourg** | The selection process is not a very satisfying one. In most cases there is no way to make sure that adequate the specialized lawyers end up defending the right clients. Most of the selection is though done in an organized way, with a list of young lawyers contacted by the police. The same seems to be true in the issuing state, as often a lawyer there has been appointed by judicial aid and will not be very active in supporting the local lawyer. |
| **Malta** | In Malta, persons subject to an EAW select their own lawyers. We have never had a problem in the selection of lawyers because there are a handful of lawyers specializing in criminal law in Malta, and more importantly, reference may always be made to the Chamber of Advocates Malta, which holds a list of registered and approved lawyers working in the Maltese jurisdiction. |
| **Netherlands** | *Selection in the executing state (the Netherlands):*<br><br>A serious problem is that Dutch law does not require that the lawyer representing a client in EAW proceedings before the Amsterdam District Court has any experience with EAW proceedings or even criminal cases. It suffices that this person is admitted to the Dutch bar. Unfortunately, not all Dutch lawyers realize that assisting a client in EAW proceedings requires specific legal knowledge and experience. The lack of a specialization requirement is particularly problematic in light of the fact that the prosecutors in EAW cases deal exclusively with international requests for legal assistance, the vast majority of which concern EAW cases.<br><br>The situation is slightly better when the wanted person is assisted on a legal aid basis since Dutch legal aid law requires that all lawyers in EAW cases should, as a minimum, be registered with the Council for Legal Assistance as a criminal law specialist. It should be noted, however, that registering as a criminal law specialist with the Council for Legal Assistance does not require any experience with EAW cases. This is only (somewhat) different in cases where the wanted person is arrested in Amsterdam |

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| | (see *supra* question 6c). The vast majority of wanted persons, however, is arrested outside of the Amsterdam district.<br><br>In light of the above it will not come as a surprise that there can be a major knowledge and experience imbalance between the prosecution and the defence in EAW cases.<br><br>*Selection in the issuing state:*<br><br>See *supra* question 1d, 6a and 6d. |
| **Poland** | In Poland participation of a defense lawyer in the proceeding is either obligatory or optional, depending on the nature of the case. The party to the proceeding may have an attorney of his choice or from ex officio (if all the conditions for his appointment are fulfilled). In case of defense ex officio, the defender is determined from the list of defenders, which includes names of all persons entitled to represent clients as their defense. The list is run by every court. The accused may indicate whether he prefers the assistance of an attorney or a solicitor but the application does not have to be taken into account. There is no requirement that the lawyer has any particular experience or has been trained in the scope of application of regulations concerning the EAW. |
| **Portugal** | Please see point 1 d) above. Law No. 34/2004 of 29 of July (amended by Law No 47/2007 of 28 of august) and Dispatch No. 10/2008 of 3 of January (amended by Ordinances No. 210/2008 of 29 of February, Dispatch No 654/2010 of 11 of August and No 319/2011 of 30 of December) stipulate general conditions under which any person facing a legal matter can be granted legal aid in one (or more) of the following forms: (i) Exemption from payment of court fees and other charges; (ii) Appointment of a lawyer or defence counsel, and payment of his fee; (ii) Deferred payment of court fees and other charges; (iii) Deferred payment of the officially-appointed counsel's fee. Any suspect in a criminal investigation has the right to appoint a lawyer or apply for defending council to be appointed. But there are no special requirements and/or guarantees and legislation regarding legal aid available to defendants sought under EAW. This means that the lawyer appointed by the Portuguese Bar Association has to decline the case if he feels he hasn't the necessary skills and preparation to such a specific and complex matter. Again, time limits within these cases may pose serious obstacles to the effectiveness of legal aid and/or assistance. |
| **Romania** | |
| **Slovakia** | In a case Slovakia is the executing state the proceedings on the execution of the EAW is a legal ground for mandatory defence, so obligatory legal aid. The requested person has have a lawyer.<br>The requested person may hire a defence counsel and pay him or, a court appoints a lawyer from a list of of the lawyers in the Slovak Bar Association.<br>Of course the real quality and knowledge, and experience, of every particular lawyer may vary. But every licensed attorney (member of the Slovak Bar association had to pass the Bar exam that is possible after 5 years practice) so there is at least formal guarantee of some level of knowledge. I think it is much better in comparison with another member states where it is not practice required before passing the bar exam. |
| **Slovenia** | There is a list of lawyers who are available for legal aid in all criminal cases (not just EAW cases) in every District court (Okrožno sodišče). No special criteria is used (the lawyer must only be member of the bar). |
| **Spain** | If the defence practitioner is appointed personally, the only requirement is to be member of the Bar. If it's a within legal aid, she/he should have complied with the entry requirements for legal aid and have the necessary training to join the National Court's legal aid. |
| **Sweden** | Appointment of lawyer in Sweden |

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| | According to Swedish law the requested person has the right to choose the lawyer to be appointed as his or her public defense counsel. If the requested person does not have any suggestion, the court will appoint a public defense counsel on his or her behalf. In the latter situation various schemes apply at different courts. Many courts apply a routine whereby the advocate is picked by alphabetic order from an ´appointment list`. Besides being a member of the Swedish bar, there are no certain criteria that must be met to be allowed on the list. In more complicated cases, the court may deviate from the list.<br><br>Appointment of lawyer in the issuing state<br>No information |
| **UK** | **England and Wales**<br>The quality of defence lawyers varies. Solicitors who wish to act as a duty solicitor at Westminster Magistrates' Court (the only court in England & Wales which deals with extradition matters) must apply to included on the extradition rota. There is no formal requirement for a duty solicitor to have competency in extradition law, although clearly this is the expectation. Two duty solicitors will be available at Court each day. An individual who does not have a solicitor retained already (or know which firm he wishes to instruct) is likely to be represented by the duty solicitor. |
| | **Scotland**<br>There is a small number of firms that undertake work in this field (all based in Edinburgh where all EAW cases are dealt with). Other firms will usually refer EAW cases to them. It is felt that the level of specialism is not as high as it could be. This may be because there are relatively few cases in the jurisdiction and it is difficult to base a practice on this area of the law. The result is that it is invariably an offshoot of a criminal defence practice. By contrast, the prosecutors who undertake this work are engaged on a full-time basis and have considerable experience and expertise.<br>Training would undoubtedly assist, but there is very little domestically. The decision by the Commission to exclude UK participation in EU co-funded events at academies such as the European Academy of Law (due to the UK not signing up to the new justice programme), does not assist. Ultimately it is the accused that will suffer. |
| | **Northern Ireland**<br>When a RP is arrested it is generally the first time they have been detected by Police in that state. It is unusual that they have used a criminal lawyer in that state previously. In Northern Ireland all criminal defence firms are permitted to operate under the legal aid scheme. Each Police Custody Suite will operate a duty rota system. A detained person will be given access to a list of lawyers or can simply request the services on the duty solicitor. A RP will have access to a suitably qualified criminal lawyer but not necessarily one who has experience in extradition. There is currently no system which would give a RP guaranteed access to a lawyer experienced in extradition cases.<br><br>Following their arrest on an EAW the RP is advised to seek representation in the issuing state. This will be a lawyer of their choosing or a recommendation from their defence lawyer in the executing state. It is unlikely that a lawyer would be chosen in the issuing state who does not have criminal law experience. Many RP's are reluctant to instruct a lawyer in the issuing state due to the cost. The availability of legal aid, the reluctance of lawyers to accept instructions from client's they may not have met and the inability to properly monitor the work being done in the issuing state are all concerns which are raised by RP's. |

| **Question 7 - Lawyer's criminal law experience**<br>*b) What is the experience of defence practitioners in your Member State about the methods of selecting a suitable defence lawyer (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* | |
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| **Austria** | In practice, legal aid is granted only in exceptional cases before the suspect has been surrendered. Hence there is no particular experience. |
| **Belgium** | See answer under a) : this system works indeed to find a Belgian criminal lawyer not only when Belgium is executing Member state but also when it is the issuing Member state and that the arrested person abroad asks for a lawyer in the issuing state (Belgium).<br><br>The Belgian lawmaker is about to put this in the law as transposition of article 10.5 of the Directive 2013/48/EU. |
| **Bulgaria** | No information. A probable reason for this lack of information is the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | |
| **Cyprus** | There is no such experience since Directive 2013/48/EU has not been transposed into Cyprus law. |
| **Czech Republic** | See answer d) in the previous topic and the previous answer as the requested person may choose a defence lawyer or one of grounds of mandatory defence applies (the method for choice or appointment of a defence lawyer is the same as described in the previous answer) or free legal aid or legal aid for reduced award is granted )again the methodology is the same as described in the previous answer). Also both mandatory defence and free legal aid do not cover suspects. |
| **Denmark** | as a |
| **Estonia** | Same as (a) above |
| **Finland** | See answer above. However, usually in my experience the lawyer in the executing state is the one contacting a lawyer in the issuing state, if this becomes an issue. |
| **France** | See 7. a) |
| **Germany** | see answers above in 6. |
| **Greece** | See above, lit. a. |
| **Hungary** | Please see the previous answer. |
| **Ireland** | The existing system which gives the appearance of choice is, unfortunately, one that does not insist on standards being required in order to practise in this specialist area.It is a matter of conjecture how persons are chosen where subjects have only had interaction with arresting police. |
| **Italy** | Needs to be improved because the public defenders and the lawyers registered to the list for the legal aid require a major update about EU law and the Convention on the rights of man |
| **Latvia** | No specific methods of selecting a suitable defence lawyer are provided in the national law. |
| **Lithuania** | The lawyers in Lithuania have general obligation to improve their qualification every year, i.e. they have to attend about ten hours (if they are practicing less than 5 years) or six hours (if they are practicing more than 5 years) of trainings each year, but there is no obligation to attend special trainings or know foreign languages in order to provide legal services in the EAW or other special cases. |
| **Luxembourg** | The same kind of comments as under b) apply as well under this section. |
| **Malta** | In the issuing state it is not applicable given that there are no hearings involved. |
| **Netherlands** | *Selection in the issuing state (the Netherlands):*<br><br>In most cases the wanted person will not yet have a lawyer in the Netherlands. The biggest problem in those cases is for him/her to find one. For this (s)he is in most cases – given the surrender detention – |

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| | dependent on the EAW lawyer in the executing State and/or family members. Both are not necessarily very familiar with lawyers in the Netherlands.<br><br>*Selection in the executing state:*<br><br>See *supra* question 1d, 6a and 6d. |
| **Poland** | See a) above. |
| **Portugal** | Please see point 7 a) above. |
| **Romania** | |
| **Slovakia** | See the answer a) above and the answer d) in the previous section (dual representation). |
| **Slovenia** | No information, but it seems that no special criteria is used in most Member States either. |
| **Spain** | Please refer to previous answer. |
| **Sweden** | <u>Appointment of lawyer in Sweden</u><br>See question 2 a)<br><br><u>Appointment of lawyer in the executing state</u><br>No information |
| **UK** | **<u>England and Wales</u>**<br>Defence practitioners are rarely, if ever involved in the 'issue' of EAWs in the United Kingdom. |
| | **<u>Scotland</u>**<br>No information |
| | **<u>Northern Ireland</u>**<br>There is currently no system for the allocation of lawyers for those sought for extradition by Northern Ireland. A RP would be free to instruct a lawyer of their choosing, generally a solicitor who has represented them in the past. |

| **Question 7 - Lawyer's criminal law experience**<br>*c) Does the subject of an EAW who is granted legal aid in your Member State have a choice of lawyer if your Member State is the executing state?* | |
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| **Austria** | The suspect may request a particular lawyer. If this lawyer agrees to take the case, he / she will be appointed by the Bar. |
| **Belgium** | YES, but as far as the chosen lawyer accepts to work in the framework of the legal aid. Not all does nor are obliged to. |
| **Bulgaria** | The subject of an EAW is to be granted legal aid, if she/he has not authorized a lawyer of her/his own choice. Most of the courts appoint the lawyer who is to provide legal aid giving no opportunity to the subject of an EAW to choose a lawyer, although some courts (not so many) grant this opportunity to the subject of an EAW. |
| **Croatia** | NO. The president of the panel shall decide on tills request and the president of the court shall assign a defence counsel. |
| **Cyprus** | Yes, the subject of an EAW can have any lawyer of his or her choice who is willing to render his or her services under the provisions of the legal aid law. |
| **Czech Republic** | Yes, see the answer to the question a). |
| **Denmark** | Yes – he can choice any lawyer he want – and the lawyer will be paid through legal aid |
| **Estonia** | Generally -- no. Only in a situation where the subject knows a particular lawyer, and that lawyer has given the subject prior consent to represent him/her as legal aid lawyer, will the Bar Association appoint that particular lawyer. |
| **Finland** | See answer above in 6 c). |
| **France** | The rule in France is that every lawyer can be appointed by the legal aid system if he accepts the conditions. It means that suspect who is granted aid can choose is own lawyer who can accept or not to work on the legal aid base. The subject of an EAW cannot make is own choice on the list of. It's the role of the law society. |
| **Germany** | No. |
| **Greece** | See above, lit. a. |
| **Hungary** | All the suspects have the right to have a defence lawyer of their own choice if they can afford to pay the mandate. If they cannot afford to pay, they are unilaterally assigned a lawyer by the state. In the case that the state assigns the public defence lawyer, you can ask it to change the lawyer if you are not satisfied with them, but a request for a new lawyer must be reasoned and the authority decides upon the request. |
| **Ireland** | Yes. |
| **Italy** | In Italy, legal aid does not fall within the surrender stage. |
| **Latvia** | A person directing the proceedings shall not enter into an agreement regarding defence and may not retain a particular lawyer as a defence counsel, but shall ensure an interested person with the necessary information and provide such person with the opportunity to use means of communication for the retention of the lawyer. However, if a person is granted legal aid, there is no choice of advocate, and the person directing the proceeding will invite advocate in conformity with the schedule of the advocates on duty in respective and territory. Person has the right to request the participation of an advocate in the EAW issuing state. |
| **Lithuania** | The lawyers who participate in the state legal aid system are appointed and paid by the State Legal Aid Service. |

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| **Luxembourg** | In theory the subject of an EAW is free to choose any lawyer. However in practice many lawyers will not be ready to work under legal aid conditions and many will not be reachable. In the end, the subject of an EAW will very often have to choose a legal aid lawyer who is available. |
| **Malta** | As explained above, when it comes to being granted legal aid, there are no particular issues or problems encountered, but there is no right to choose a lawyer. A lawyer from an approved list by the Minister for Justice will be assigned according to a roster.[13] It is interesting to note that this system has been criticized because it was alleged that given that the salaries of legal aid lawyers are paid by the State, there is a potential conflict of interest given that the prosecuting body is essentially a State body, however this criticism is more of an academic nature than a legal one; legal aid lawyers, notwithstanding that they are paid by the state, owe their loyalty and allegiance to the person being surrendered, and not to the State. |
| **Netherlands** | Yes, but this lawyer should be registered with the Council for Legal Assistance as a criminal law specialist. Furthermore, this lawyer should, of course, be willing to accept the case (on a legal aid basis). |
| **Poland** | Subject of the EAW does not have a possibility to choose an indicated lawyer [except the situation it chooses a lawyer on his own]. One can only submit a request to use the assistance of an attorney or solicitor, but the application does not have to be taken into account. There is no possibility of choosing a particular lawyer in case of the defense *ex officio*. |
| **Portugal** | Please see point 7 a) above. Any person sought under EAW may apply for defending counsel to be appointed by the Portuguese Bar Association in order to assist him in the EAW proceeding. But the exemption of payment of the lawyer's legal fees and expenses only exists when the requested person accepts an officially-appointed lawyer (and provided that the requested person's is considered eligibility for legal aid in the form of exemption of payment of such fee). The requested person hasn't the right to benefit from the exemption of payment of the fees stipulated by the counsel of his own choice in order to assist him. |
| **Romania** | |
| **Slovakia** | Yes, see the answer above. |
| **Slovenia** | No. The next lawyer on the rota is allocated by the court (or the police in some instances). |
| **Spain** | No, unless the legal aid defence practitioner renounce fees |
| **Sweden** | Yes |
| **UK** | **<u>England and Wales</u>**<br>In theory, yes. Legal aid is granted to a specific firm: thus an individual should be able to select a firm (if the firm is willing to conduct extradition proceedings on legal aid), and the firm then assist in applying for legal aid. An individual who relies on the services of a duty solicitor will have no choice for the initial hearing, but could ask for legal aid to be transferred to another firm for the extradition hearing. |
| | **<u>Scotland</u>**<br>Yes. There is freedom to choose a solicitor. Sanction for the employment of Counsel (In Scotland an Advocate, which is the Scottish equivalent of the English barrister) may also be sought. The Court has a list of the firms that deal with EAW cases which can be provided if the accused is unrepresented. However, as stated above, the pool of lawyers is relatively small in this area. |
| | **<u>Northern Ireland</u>**<br>Yes. The RP can choose any lawyer qualified to practice in Northern Ireland, or can choose to represent themselves. |

[13] See Legal Notice 414/2014 Legal Aid Agency (Establishment) Order as part of the Public Administration act, Chapter 497 of the Laws of Malta.

| **Question 7 - Lawyer's criminal law experience**<br>*d) Does the subject of an EAW who is granted legal aid in your Member State have a choice of lawyer if your Member State is the issuing state?* | |
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| **Austria** | If legal aid is granted, see 7.c) |
| **Belgium** | Same answer as under c) |
| **Bulgaria** | No information. A probable reason for this lack of information is the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | NO. The president of the panel shall decide on tills request and the president of the court shall assign a defence counsel |
| **Cyprus** | After surrender of the requested person to the Cypriot authorities by the executing state provided he or she is eligible for legal aid there is a right to choose a lawyer. Pending the execution of an EAW the requested person is not eligible for legal aid if Cyprus is the issuing state. |
| **Czech Republic** | Yes, see the answer to the question b). |
| **Denmark** | Yes – when he become aware of the case |
| **Estonia** | Same as (c) above |
| **Finland** | See answer above in 6 d). When the case qualifies for legal aid, that also is possible; usually if not always the cases are however handled as public defence cases (if the client is not paying himself) since there is no recovery and no limits in law as to the time used in the case (although it has to be reasonable, of course). |
| **France** | See 7. c) |
| **Germany** | Not to my knowledge. |
| **Greece** | See above, lit. a. |
| **Hungary** | All the suspects have the right to have a defence lawyer of their own choice if they can afford to pay the mandate. If they cannot afford to pay, they are unilaterally assigned a lawyer by the state. In the case that the state assigns the public defence lawyer, you can ask it to change the lawyer if you are not satisfied with them, but a request for a new lawyer must be reasoned and the authority decides upon the request. |
| **Ireland** | Only applies where we are the Executing State. |
| **Italy** | In Italy, legal aid does not fall within the EAW, while instead the appointment of a public defendant among the registered ones, in accordance with a predetermined shift availability, is expected. |
| **Latvia** | If a person is granted legal aid, person directing the proceedings shall invite an advocate in conformity with the schedule of the advocates on duty of the territory of the relevant court. |
| **Lithuania** | The lawyers who participate in the state legal aid system are appointed and paid by the State Legal Aid Service. |
| **Luxembourg** | No, legal aid will not be extended to issues abroad. |
| **Malta** | Please see the response in (c) above. |
| **Netherlands** | *Ibidem*. |
| **Poland** | See c) above. |
| **Portugal** | See c). |
| **Romania** | |
| **Slovakia** | Yes, see the answer above. |
| **Slovenia** | No. The next lawyer on the rota is allocated by the court. |
| **Spain** | Please refer to previous answer. |
| **Sweden** | Yes |

| UK | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the ‘issue’ of EAWs in the United Kingdom. |
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| | **Scotland**<br>As above. Because Scotland invariably issues EAW’s in respect of the most serious offences, it is more likely that legal aid will be sanctioned for the employment of counsel. |
| | **Northern Ireland**<br>Yes. The RP can choose any lawyer qualified to practice in Northern Ireland. |

| **Question 7 - Lawyer's criminal law experience**<br>*e) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | See answer a) |
| **Bulgaria** | Taking into account the answers to the above questions, I am not capable to point out examples of good practices in this matter. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | See the answer to the question a). In case of mandatory defence, the accused is provided with a reasonable time to choose a defence lawyer; if he does not choose one, an attorney from the court´s list is appointed to him. That means that the system is automatic: in case a ground of mandatory defence applies, the accused may remain passive, but his defence rights shall be guaranteed. |
| **Denmark** | No |
| **Estonia** | No information |
| **Finland** | See answer above in 6 e) and c). |
| **France** | No information |
| **Germany** | No, see answers above in 6. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | It would be preferable to have a specialist panel of lawyers available to be assigned by the Court to represent persons who do not know a lawyer themselves. This would not interfere with somebody's absolute freedom of choice if they have a lawyer that they trust and wish to represent them, but in many cases, particularly where the subject is a non-Irish citizen, they are completely at sea and the random allocation of untrained lawyers is not in their best interests. |
| **Italy** | The public defendant needs to have specific requirements regarding the training program. |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | The defense lawyers in Luxembourg have constituted an association of criminal lawyers, called ALAP. The association intervenes with the judicial authorities to try and improve any issue arising of criminal procedure. It also circulates information amongst its members, in order to facilitate the work of their members. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | In the course of civil proceedings in Poland, it is possible to identify a particular lawyer's name in order to appoint him as one's legal aid. The lawyer is appointed to participate in a particular case, for as long as possible. |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | In a case of a mandatory defense, the Slovak courts work well and the accused person has always a lawyer. In my point of view in this regards the defense rights are mostly guaranteed. |
| **Slovenia** | No information. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>None |

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| | **Scotland**<br>The prosecutor’s office often notifies the relevant defence firms of changes to procedure as do court officials. On occasion, as an officer of the court, a prosecutor will assist a defence practitioner who is unfamiliar with this area of the law. There are occasional training seminars for defence lawyers. |
| | **Northern Ireland**<br>No information. |

| **Question 7 - Lawyer's criminal law experience**<br>*f) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | The suggestion could be made to generalize to all Member states the Belgian "Salduz web" system. |
| **Bulgaria** | I maintain that a system requiring that the selected lawyer should meet certain criteria of training and experience is to be introduced in Bulgaria. On this basis some form of mandatory training is also to be introduced. The now existing forms of optional training on the EAW issues are not sufficient. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | In the above-described system based on the appointment of lawyers from the courts´ lists Czech attorneys experience the problem of "skipping" attorneys on the lists so that the police authorities may manage appointment of a more "friendly" defence lawyer: if the attorney does not pick up a call about his appointment in urgent cases lasting so shortly that it is in fact impossible to pick it up, he cannot return the call as it comes from an anonymous phone number used by the police; after making such call, the police mark the attorney as unreachable and continue calling another attorney on the list. The appointment should be more objective. |
| **Denmark** | No |
| **Estonia** | Training of all legal aid lawyers in cross-border matters |
| **Finland** | Not really. |
| **France** | Law societies would organize special training to encourage lawyer to be specialized in this matter and then would hold a register of specialized lawyers speaking foreign languages. |
| **Germany** | see answers above in 6. |
| **Greece** | The regulation of the institution of legal aid on a European level could limit to a great extent the relevant problems. Member States shall be obliged to undertake measures in order to guarantee the efficiency of legal aid lawyers. Such measures could include on the one hand the accreditation of legal aid lawyers on the basis of their experience and training and on the other hand an evaluation-mechanism for the quality of the provided services in the context of legal aid.<br><br>In this direction the Commission's Recommendation of 27 November 2013 on the right to legal aid (2013/C 378/03) could be useful. |
| **Hungary** | No information. |
| **Ireland** | The practising profession should promote the development of best standards and transparent training, etc., in this area. |
| **Italy** | An increase in hours due to an update on the international law , the EU and the CEDU is expected for the lawyers registered to the list of public defenders. |
| **Latvia** | No significant problems encountered, except the problem that the lawyers undertaking criminal legal aid for persons, who are granted legal aid by the state in some cases do not sufficiently devote themselves to the necessary work (probably, due to low remuneration or amount of works), so the whole quality of granted defence is lower. Possible solution is provided in answers to the issue below. |
| **Lithuania** | The Bar Associations, the State Legal Aid Services or other institutions could be suggested to create web-sites with the lists of advocates, describing their specialization, language knowledge or even trainings attended in the EAW or other special fields of legal practice. Even if such lists were not used for appointing the advocates providing state legal aid in criminal cases, at least they could help the clients to find suitable defence advocates themselves. |
| **Luxembourg** | No information |

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| **Malta** | This is similar to the responses above – in essence, the legal aid system needs to be updated or allocated more resources. |
| **Netherlands** | We believe that there should be a specialization requirement for lawyers in EAW cases. Furthermore, some sort of (public) database containing the contact details of EAW lawyers and criminal defence lawyers for every EU Member State would be very helpful. (see also below supra question 1d) |
| **Poland** | When using ex officio legal aid, there may be a situation where the legal help will not be suitable. Polish regulations allow appointment of a new counsel on a reasoned request of the accused. The rationale for such request should be an indication that the previously appointed lawyer could not deal with the matter and take all the necessary steps in the case. |
| **Portugal** | In what legal aid concerns should be considered the criminal specialization by appoint an attorney for each and every cases. |
| **Romania** | |
| **Slovakia** | There should be an objective method for appointing the legal aid lawyers. Sometimes happens that one lawyer has 10 cases and some lawyer no one. This is caused by the lack of the legal regulation for circulation of the legal aid lawyers.<br>As a big problem I see the way of paying the legal aid lawyers. The fees should be much higher and the payment should be realized e.g. on monthly base. The current situation cases that the good lawyers usually don´t do legal aid or maximum a few cases per year, what is a pity. |
| **Slovenia** | Legal aid in the procedures concerning EAW should be provided only by specialists – defence lawyers who have experience in criminal law and EAW procedures (for legal aid to be really effective). |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>None |
| | **Scotland**<br>The Law Society and Faculty of Advocates (the professional body of advocates) should consider certification of practitioners as suitable for this type of work. This should not be an onerous process; perhaps attendance at the requisite amount of training seminars etc |
| | **Northern Ireland**<br>The introduction of a database of extradition lawyers similar to that used for allocation of lawyers in criminal cases. A solicitor, or firm, wishing to be admitted to the rota should first satisfy the Law Society that they have suitable experience and expertise to conduct an extradition case. This could be achieved by demonstration of instruction in previous cases or by completing a specified number of continuing professional development hours in the field of extradition. |

| **Question 8 - Rate of lawyer remuneration**<br>*a) What is the experience of defence practitioners in your Member State about the impact of the level of remuneration for criminal legal aid cases (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* | |
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| **Austria** | The remuneration of legal aid consists of a payment into the lawyer's pension fund, i.e. there is no individual remuneration. However, according to my experience, the personal commitment of a lawyer to a case does not depend on the individual remuneration. |
| **Belgium** | It is a fact that the level of the remuneration plays an important role in the motivation of the lawyers to participate, or not, in the legal aid system. "Feed them with peanuts and you'll get monkeys" use to say the Americans.<br><br>In Belgium, the legal aid system is very poorly paid – 25 EUR per hour (taxes not deducted !) – and paid to the lawyers one or two years after filing the invoices…!<br><br>The answer to that question supposes also to give a judgment about the general quality of colleagues, not necessarily young ones, trying, every day, to do their best in this hard context of the legal aid (because poorly paid and concerning mostly people being in very poor social conditions).<br><br>This being said, the level of quality of the provided legal assistance to arrested persons by lawyers working in the scope of the legal aid, is generally good but perhaps not always constant in terms of quality. However, the national Belgian Bars are presently working on programs to assure a more uniformity in the level (up) of quality of the lawyers providing legal assistance to arrested persons. |
| **Bulgaria** | The level of remuneration for lawyers undertaking criminal legal aid cases in Bulgaria is fixed by a formal tariff providing for a minimum and a maximum amount of remuneration. The tariff has the binding force of a legal rule since it is affirmed by a Ruling of the Bulgarian Government. So, the minimum level of remuneration for lawyers undertaking EAW legal aid cases in Bulgaria is BGN 80 (approximately equal to EUR 40) and the maximum level of remuneration is BGN 120 (approximately equal to EUR 60). Thus, defence practitioners in Bulgaria definitely assess the tariff as a really great disincentive to devote themselves to undertaking EAW cases. |
| **Croatia** | |
| **Cyprus** | The level of legal aid remuneration in Cyprus is very low and is a great deterrent for good quality lawyers to render their legal services to defendants eligible for legal aid. With regard to dual representation directive 2013/48/EU has not been transposed into Cyprus law. |
| **Czech Republic** | The fees of ex officio appointed defence lawyers (when CZ is the executing state, mandatory defence applies and the requested person may choose a defence lawyer or the court appoints an ex officio defence lawyer) are regulated by the regulation of the Ministry of Justice (no. 177/1996 Coll., Attorney´s Tariff).<br>The defence lawyers are paid per legal acts stipulated in the regulation (e. g. participation in the court hearing, police questioning).<br>In comparison to the cases, where the reward is agreed between an attorney and the client, especially in the capital Prague, these fees are lower.<br>Moreover, in recent years there has been a reduction to the set fees, since 2013 the reduction is set by the regulation to 20% and is has not been increased back to 100% since.<br>The difficulties of this system are furthermore especially following: the state pays the defence costs directly to a defence lawyer only after the final termination of the criminal proceedings (an advance may be paid in the course of the proceedings in bigger cases); not all acts of an attorney, that he has to do to execute proper defence in the case, are covered (as they are not stipulated in the regulation), in |

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| | particular any phone or email communication, letters to the clients, consultations with the clients lasting less than 1 hour, any experts consultation, preparation e.g. for the court hearing. If the attorney intends to use an interpreter, translator or expert, the attorney has to pay them from his own resources and claim the payment from the state after the final termination of the criminal proceedings (in case of expertise, the alternative to such procedure would be, instead to submit an expertise, only to propose to the court ordering of such expertise, which the court could reject). Any motions drafted by the attorney are paid per se no matter how many hours the attorney spends on their drafting. |
| **Denmark** | DKK 1.700 per hour (app 226 €) |
| **Estonia** | Remuneration for legal aid work in general is many times less than similar work done on contractual basis. This has resulted in a situation where only about 10 % of all members of the Bar Association agree to take legal aid cases. Small fees and caps (maximum flat rates applied regardless of the amount of work required) also mean that lawyers are often not motived enough to pursue all available options of defence. Reputation of legal aid work is low. All this has negative effect on quality. |
| **Finland** | The rate for public defence/legal aid work is for the time being 110 €/h + VAT, which can be increased with up to 20 % if the work is needed to be done in a very tight time frame or in a foreign language or if the case has exceptional relevance to the client. Usually there's no problem in also getting remunerated for the time put down in EAW cases, but ultimately the court has the discretion to make an assessment on how much time has been reasonably needed to put down on the case. Legal aid rates are far behind from normal defence practitioner's rates, which usually start from 200 €/h + VAT. All in all, more experienced lawyers may not find it very attractive to work on these cases on a legal aid basis but this is perhaps not the most problematic issue especially when considering what I've heard from other Member States. |
| **France** | The level of remuneration for criminal legal aid cases is low, of course it does not encourage lawyer to spend a lot of time on the file. (132€) |
| **Germany** | The remuneration by legal aid in these cases is inappropriate in comparision with the work to be done (visiting the client in custody, study of case file & getting in contact with co-counsel, gathering information, checking the arguments against execution, applying for non-execution at Higher Regional Court). A good and qualified EAW-defence takes a minimum of 50 hours. The remuneration by legal aid in Germany ranges between 515€ and 1.030 €; in absolute extraordinary cases (difficulty, lenghth, necessary frequence and number of visits in detention) there is a chance for an additional legal aid remuneration of 2.000 €. There is a general opinion that legal aid counsel cannot (afford to) defend against execution as good as privately paid defence counsel. |
| **Greece** | Legal aid lawyers are remunerated for each individual act according to the minimum applicable rate. For that reason, the remuneration depends on the overall acts that the legal aid lawyer will carry out during the whole procedure. As an example, for an appearance before the judicial council that will decide about the execution of the EAW the minimum remuneration is about 400 Euros. The same amount is provided for lodging an appeal against the decision that orders the execution of an EAW.<br><br>No remuneration is provided for legal advises and consulting. |
| **Hungary** | In Hungary, the remuneration of a public defence lawyer is regulated by the law. For a long time, it was EUR10+VAT per hour. 2 years ago, it was changed and the hourly rate is now approx. EUR17+VAT per hour. If a public defence lawyer goes to prison to visit a suspect, he only receives 50% of the EUR17+VAT per hour, and this amount excludes the travelling time. This kind of hourly rate is not comparable with Budapest lawyers who earn hourly rates from private clients. |
| **Ireland** | The rate of payment was modest to start off with and has been subject to a number of significant cuts in the rate of remuneration for all public services since the recession. Despite the fact that there are political claims that the recession has ended and, indeed, is reversing, there has been no proposal to |

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| | restore the remuneration rates to their pre-cut level. The payment structure allows very little for essential preparation focussing instead on time spent at actual hearing. |
| **Italy** | In Italy it is inaccessible to have recourse to legal aid during the surrender stage. In the other cases in Italy, the level of remuneration of lawyers who defend individuals appointed to practice at State expense is very low. In Italy, it is necessary to distinguish between the legal expenses of the State, to which there is an entitlement, even if you appoint a trusted attorney from the defense office. in fact in the latter case if the suspect does not appoint a trusted defense lawyer , the suspect is obliged to pay the legal fees. |
| **Latvia** | If a person chooses a lawyer, the question of remuneration is negotiated between the client and the advocate. However, if person may not invite a defence counsel due to his or her financial situation, the state shall ensure assistance of a defence counsel for such person and decide on the remuneration of the defence counsel from state resources, completely or partially discharging such person from such payment. If a person is discharged from payment, work remuneration of an advocate shall be covered by state resources in accordance with the procedures specified in regulatory enactments. The Latvian Council of Sworn Advocates may also release a person from payment for legal assistance and cover the work remuneration of an advocate from the budget thereof. The work remuneration of an advocate, who is granted by state, is regulated by Rules of The Cabinet of Ministers regarding state-guaranteed legal assistance Nr. 1493 (22nd December 2009). The level of remuneration provided in mentioned rules is several times lower than the average market rates (for example, remuneration for one hour of defence in a court session is 28,46 EUR). Have to admit that in some cases low remuneration affects the whole quality of granted defence. |
| **Lithuania** | The level of remuneration is quite low and sometimes the payments are delayed as well. For this reason the lawyers who have enough clients usually do not participate in the state legal aid system. The lawyers who participate in the state legal aid system and are appointed to provide legal aid in criminal cases sometimes are not motivated enough to invest much work into the preparation for the cases and prefer to meet their clients only during the judicial hearings. |
| **Luxembourg** | Due to the present system of calculation of the legal aid for Lawyers in Luxembourg still based on an hourly rate, no significant difference can ben enlightened between legal aid cases involving an EAW or not involving an EAW.<br><br>Therefore, the question of the impact of the level of remuneration for criminal legal aid cases cannot be considered specifically to cases involving an EAW.<br><br>As far as we know at the present time, there is no official information available about the impact of the level of remuneration for criminal legal aid cases in general. |
| **Malta** | Legal aid cases are not handled by freelance lawyers, but rather by lawyers who are registered and approved on a legal aid roster, which are paid by the State. The person using legal aid lawyers has no choice, but equally, does not pay legal fees. |
| **Netherlands** | Although legal aid fees are well below a commercial fee, it appears that sufficient Dutch lawyers are willing to assist clients in EAW proceedings before the Amsterdam District Court. Lawyers receive a flat rate fee of approximately €900,- (ex 21% VAT) for assisting a client before the ADC in an EAW case. |
| **Poland** | Legal aid is a crucial problem in Poland. Remuneration for the defense lawyer is very low and non-proportional to the amount of work which must be invested in proceedings. The official rates for providing legal help in the scope of EAW proceedings are on the same level as in other cases.<br><br>There is no list of specialist lawyers who provide legal aid in the scope of EAW proceedings as specializations are not implemented in polish legal system. Therefore, it means that any qualified |

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| | lawyer, who agreed to it, can be engaged in such a proceeding. In practice this results in a very low number of well-qualified practitioners in terms of EAW.<br><br>Expect the enthusiasts, the very young, unexperienced, unsuccessful or unsatisfied lawyers undertake providing legal aid in the proceedings concerning EAW. |
| **Portugal** | Please see point 7 a) and c) above. Again no specific regulations apply to EAW cases. Ordinance No. 1386/2004 of 10 of November (revoked and later replaced with the amendments of Ordinance No. 210/2008 of 29 of February) stipulates the remuneration of defending counsels in criminal proceedings. But this is only applicable to defending councils appointed by the Portuguese Bar Association under the legal aid system. In Portugal fees for lawyers that are not regulated. |
| **Romania** | |
| **Slovakia** | The fees of the lawyers providing legal aid are regulated by the regulation of the Ministry of Justice (no. 650/2005, Attorney´s Tariff).<br>The defence lawyers are paid per legal acts stipulated in the regulation (e. g. participation in the court hearing, police questioning).<br>The fees are much lower in comparison with the gees agreed with the client when the lawyer is hired.<br>Moreover, in recent years there has been even a reduction to the set fees, what was unreasonable and a big demotivation for the lawyers.<br>The lawyer is paid at the very end of the case and the rate is very low in comparison with the regular cases. If the proceedings lasts some time, it is kind or "credit of the lawyer to the state". This is really un-appropriate. The judges, prosecutors are paid monthly, the lawyer who works in the legal aid cases is paid after the case finished. This should be changed immediately.<br>Another thing is that not all acts of the lawyers are covered although the lawyers have to execute proper defence in the case. |
| **Slovenia** | The lawyers working in legal aid cases get only half fees compared to privately hired lawyers. It seems that this does not mean that good quality lawyers do not take legal aid cases, but it is possible that they tend to devote less time and energy to such cases. |
| **Spain** | It is not considered appropriate due to the work and specialisation it requires. Low remuneration may suppose in some cases a lack of motivation. |
| **Sweden** | Remuneration in the executing state<br>In EAW-cases the remuneration to the public defense counsel is based on a fix hourly rate. It can be assumed that the level of remuneration may have impact on quality.<br><br>Remuneration in the issuing state<br>No information |
| **UK** | **England and Wales**<br>Legal aid rates have been cut drastically by successive governments. This has had a serious detrimental impact on small criminal law firms dependent on legal aid, including those which practice in extradition law. |
| | **Scotland**<br>Although rates of remuneration are reasonable, the difficulty is that EAW work is generally far more labour intensive in terms of preparation, thus making it less profitable and less attractive. |
| | **Northern Ireland**<br>Executing State:<br>Costs in extradition proceedings are set by the Lord Chancellor, Direction 10, 2010. The costs allowed for in extradition cases are among the lowest allowed throughout the entire criminal defence regime. Many types of cases in Northern Ireland are paid by way of composite fees. Out of those still subject |

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| | to time-based rates, extradition hourly rates are lower than those allowed when representing a client at the Police Station, Crown Court or High Court.<br>At present there appears to be a willingness from firms to accept instructions in extradition cases however it is likely that there will be a reduction in these numbers as rising expenses threatens firms' ability to finance labour intensive cases.<br><br><u>Issuing State</u>:<br>The issues discussed at 6 above are relevant. It is unclear as to the legal aid scheme in each member state and RP's routinely advise that legal aid is not available for 'these type of cases' in the issuing state. It is apparent from recent cases that those seeking representation in the issuing state do so at their own expense. |

| **Question 8 - Rate of lawyer remuneration**<br>*b) What is the experience of defence practitioners in your Member State about the impact of the level of remuneration for criminal legal aid cases (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* | |
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| **Austria** | See 8.a) |
| **Belgium** | Same comments as under point a) |
| **Bulgaria** | No information because of the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | |
| **Cyprus** | The level of legal aid remuneration in Cyprus is very low and is a great deterrent for good quality lawyers to render their legal services to defendants eligible for legal aid. With regard to dual representation directive 2013/48/EU has not been transposed into Cyprus law. |
| **Czech Republic** | See the previous answer, the system of remuneration is the same in case of appointed defence lawyers (if one of the grounds of mandatory defence applies or when the free legal aid is granted). |
| **Denmark** | DKK 1.700 per hour (app 226 €) |
| **Estonia** | Same as (a) above |
| **Finland** | See answer above. |
| **France** | See a) |
| **Germany** | It appears to be less extreme. |
| **Greece** | See above, lit. a) |
| **Hungary** | In Hungary, the remuneration of a public defence lawyer is regulated by the law. For a long time, it was EUR10+VAT per hour. 2 years ago, it was changed and the hourly rate is now approx. EUR17+VAT per hour. If a public defence lawyer goes to prison to visit a suspect, he only receives 50% of the EUR17+VAT per hour, and this amount excludes the travelling time. This kind of hourly rate is not comparable with Budapest lawyers who earn hourly rates from private clients. |
| **Ireland** | We have no involvement where we are the Issuing State until the warrant is executed and the subject returned to Ireland, when they then fall into the sphere of the domestic criminal legal aid trial scheme. |
| **Italy** | Yes, and we are aware of the protests of both French and British colleagues at the continuous cuts in legal aid funding. |
| **Latvia** | See above. |
| **Lithuania** | The level of remuneration is quite low and sometimes the payments are delayed as well. For this reason the lawyers who have enough clients usually do not participate in the state legal aid system. The lawyers who participate in the state legal aid system and are appointed to provide legal aid in criminal cases sometimes are not motivated enough to invest much work into the preparation for the cases and prefer to meet their clients only during the judicial hearings. |
| **Luxembourg** | Same answer. |
| **Malta** | Same as above. |
| **Netherlands** | n/a In the vast majority of cases the wanted person will not qualify for legal aid in the Netherlands until his physical surrender to the Netherlands (see above, question 6d. |
| **Poland** | |
| **Portugal** | Please see point 8 a) above. |
| **Romania** | |
| **Slovakia** | See the answer a). |
| **Slovenia** | Same as above. |

| **Spain** | Please refer to the previous answer. |
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| **Sweden** | Remuneration in the issuing state<br>See Question 8 a).<br><br>Remuneration in the executing state<br>No information |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the ‘issue’ of EAWs in the United Kingdom. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>Costs when representing domestically a person sought for extradition are in line with any other criminal case. Costs in criminal cases have been negotiated recently with the Department of Justice and lawyers have agreed on the appropriate level of remuneration in criminal cases.<br><br>Those seeking representation in a criminal case would have a large selection of available firms. |

| **Question 8 - Rate of lawyer remuneration**<br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | The Belgian legal aid system includes the possibility, on volunteer basis, for high skilled lawyers to be part of it. |
| **Bulgaria** | Taking into account the answers to the above questions, I am not capable to point out examples of good practices in this matter. |
| **Croatia** | The remuneration of lawyers designated for a defence counsel, according to the provisions of the Law on the Legal Profession, is determined by Ordinance of the Ministry of Justice. According to the currently valid ordinance, it is determined in the amount of 30% of the remuneration for work that would belong to a lawyer for certain actions in the proceedings under the Tariff of Fees and Reimbursement of costs for lawyers (Official Gazette 91/2004, 37/2005, 59/2007, 148/2009). |
| **Cyprus** | No information. |
| **Czech Republic** | The fees are not big but they are not too low. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | The rate can be considered somewhat acceptable especially for sole practitioners, but they're far behind from normal rates, making them less appealing for more experienced lawyers. The good thing is that the client doesn't need to worry about recovery if the case is handled on a legal aid/public defence basis. |
| **France** | Any good practices on this matter. |
| **Germany** | no. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | There should be a proper rate of remuneration commensurate with the difficulty of the work. High standards will not be encouraged where there is poor remuneration, attractive only to inexperienced lawyers. |
| **Italy** | Compensation credit fo legal aid with the taxes |
| **Latvia** | Bar council and could initiate disciplinary cases against the advocates, who has not fulfilled their professional obligations in acceptable quality and where defence was not provided in accordance with professional standards. |
| **Lithuania** | No information. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | No information. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales** |

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| | None |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>Legal aid is readily available to those not having sufficient means to obtain legal representation. This ensures that RP's are represented throughout the entirety of the extradition process, including the initial arrest and detention in a police station.<br><br>If proceedings are live when the RP is sought domestically the same financial test applies and legal aid assistance is available.<br><br>In both scenarios there is an overriding interests of justice test which the courts apply to afford a person free legal aid. |

| **Question 8 - Rate of lawyer remuneration**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | To introduce an European funds of legal aid, financed via a 5% tax on all TV and publicity rights paid on sports events in Europe (Football, F.1 races, etc.).<br><br>This would be legitimate since these rights are essentially financed by publicity of non European Multinationals paying, as all knows, no taxes in Europe or so few. |
| **Bulgaria** | A new tariff is needed considerably increasing the minimum and maximum level of remuneration. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | Increase the fees.<br><br>The defence lawyers should also not be asked to have to pay experts and translators from their own resources and claim the fees from the state only once the criminal proceedings are finally terminated. The defence lawyers should not be paid only at the end of the criminal proceedings after final termination of the case but more regularly and they should not be paid only for a limited number of specified legal acts (see the answer . Only specified legal acts are paid (as e.g. a motion, consultation lasting more than 1 hour, participation in the court hearing or police questioning) but the attorney has to make in practice a lot of acts which are unpaid as any phone or email communication with the client,. |
| **Denmark** | --- |
| **Estonia** | The only solution would be the provision of adequate funding by the state. |
| **Finland** | Not really; understandably this is a budget issue for the state. |
| **France** | No solution except a politic one: increasing the budget of the minister of Justice. |
| **Germany** | Increasing legal aid remuneration. |
| **Greece** | No information |
| **Hungary** | The government should raise the hourly rates for public defense lawyers. |
| **Ireland** | A proper system of remuneration. |
| **Italy** | Increase of the funds for free patronage |
| **Latvia** | In my opinion, level of remuneration of granted legal aid should be increased, however this question shall be considered in conformity with state budget abilities. |
| **Lithuania** | The Law on State Legal Aid could explicitly formulate the obligation for the advocates providing legal aid in criminal cases at least to visit and consult their client before and after each judicial hearing, and the obligation for the State to pay for legal and translation services during such consultations. That could result that the advocates providing legal aid in criminal cases would meet their clients more often, prepare the defence before the court hearings and discuss the possibility of appeals after the court hearings. |
| **Luxembourg** | No information |
| **Malta** | Legal aid must be upgraded to offer a service of a higher quality. One also ought to consider the possibility of revamping the system whereby a person will have a right to choose the lawyer of his choice, who would be then remunerated by the state according to a tariff structure.[14] |
| **Netherlands** | Not necessarily. |
| **Poland** | |

[14] See Measure 236, Report by the Commission for the Holistic Reform of the Justice System, 30 November 2013, Parliamentary Secretary for Justice, Malta, p. 124

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| **Portugal** | There are no specific problems to defence practitioners is this field. |
| **Romania** | |
| **Slovakia** | The legal aid fees should be much higher and the payment might not be just at the very end of the particular criminal proceedings. If the proceedings lasts some time it is definitely a kind of a credit of the lawyer to the state what is not acceptable.<br>The lawyers in the legal aid cases even have to pay the evidences they want to provide, e.g. expertises, translations, etc. |
| **Slovenia** | The fees for lawyers in legal aid cases should be the same as in the cases where a defendant hires a lawyer at his own expense. |
| **Spain** | The solution would be to ensure a decent remuneration for the work carried out. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>None |
| | **Scotland**<br>Legal aid should better cover the amount of time that is required for preparation. On a related note, one of the reasons for the existence of Counsel (whether barristers in England or advocates in Scotland) is the time that they have to prepare cases, as opposed to sometimes hard-pressed solicitors who may have many other clients to deal with at the same time. Legal aid for counsel should therefore be granted more often to share the burden. |
| | **Northern Ireland**<br>A higher hourly rate for those undertaking extradition cases. This will ensure effective representation from suitably qualified and competent lawyers and help protect the fundamental rights which all RP's are to be afforded. |

| Question 9 - Right of appeal against the EAW decision<br>*a) What is the experience of defence practitioners in your Member State about the impact of the varying scope of rights of appeal against the EAW (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* | |
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| **Austria** | In Austria as the executing state, the grounds for appeal against an EAW are very limited, as the executing state usually only looks at the content of the EAW; the EAW can – apart from some formal issues – only be challenged successfully if there are compelling reasons to assume that the person is not sufficiently suspect of a crime (§ 9 EU-JZG, § 33 (2) ARHG) or if there is a violation of fundamental principles (§ 19 (4) EU-JZG). Therefore, successfully challenging an EAW in the executing state is very difficult.<br>A timely challenge in the issuing state is even more difficult. Practical issues arise from the fact that dual representation (i.e. a defence lawyer in the issuing state) can only be installed after the execution of the EAW, i.e. when the suspect is usually already in surrender detention. It is likely to take some time to get the defence in the issuing state up and working. Moreover, during the challenge in the issuing state, the strict timeframes for surrender from the executing state are running. Therefore, in my view, a successful challenge in the issuing state can often be completed only after the surrender, (i.e. at the stage of the proceedings when the court in the issuing state has to decide on pre-trial detention). |
| **Belgium** | The Belgian law on EAW grants a right of appeal against the decision on executing or not the EAW; this right of appeal is granted to the concerned person but also to the Prosecutor, and both of them enjoy also a possible recourse to the Supreme court (cour de cassation) against the decision of the Court of appeal (see articles 17 and 18 of the law of 19 December 2003 on the EAW).<br><br>A generalization of a right of appeal in all Member states appears a fundamental necessity.<br><br>Indeed, without a national recourse against the decision on executing or not the EAW, the effectiveness of the guaranty of the EAW procedure in the executing Member state is at risk.<br><br>The experiment shows indeed that any judicial authority whom decision may not be challenged nationally with a legal recourse, may quickly evolve into abuses of authority, knowing well that it runs no risks to act like this. Indeed the eventuality/perspective of a condemnation, years later, by an international court lets most of the national judges quite indifferent, since it will be their national State who will be sentenced and never the concerned judge(s) (No case known in Belgium of a national judge having experimented any sanction (because of the guaranteed independence of the judges), nor negative consequence due to a sentence against Belgium by the European court on Human rights of the European court of Justice.<br><br>Thus the need of a national recourse about the decision to execute or not the EAW is crucial.<br>Moreover, the danger of abuse is particularly high since the purpose of the EAW is to send someone out to be prosecuted abroad : the feeling of responsibility and implication is thus as much lower in the head of the first dealing judge, making a national recourse a must. |
| **Bulgaria** | As pointed out above, there is no dual representation in Bulgaria. Otherwise, the wanted person has the right of appeal against the decision to be detained and against the decision to execute the EAW. The appeals are to be examined by the Courts of Appeal. |
| **Croatia** | |
| **Cyprus** | An appeal against a judicial decision to surrender the requested person must be filed within three days according to article 24(1) of transposing Law 133(I)/2004. This is a very narrow time frame, which may |

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| | have a negative impact on the effective exercise of the right of appeal against the decision to execute an EAW. Effective preparation and filing of an appeal usually takes more than three days. |
| **Czech Republic** | When the court decides that the requested person will be or will not be surrendered to the issuing Member State, there is a right to submit a complaint against such decision. Such complaint has to be submitted within 3 days since the delivery of the decision on surrender. A high court shall decide about it. The experience is that higher court usually confirm decision of the regional court of the first instance. |
| **Denmark** | There is a right of appeal |
| **Estonia** | There is a possibility to appeal the decision to surrender a person under an EAW, and it is not uncommon for suspects to exercise this right. However, due to the generally very formal nature of EAW proceedings, and very limited options of raising human rights and proportionality arguments, appeals are almost never successful, and as such, the impact of the right of appeal is minimal. |
| **Finland** | The law has recently changed (from 1.1.2016). Earlier, the District Court's decision to extradite (or not to extradite) could be appealed directly to the Supreme Court. Nowadays the decision can still be appealed to the Supreme Court, but it requires leave to appeal, which the Supreme Court never has the obligation to grant. The Supreme Court has rarely changed the decisions of the District Courts, and since all of the decisions starting from January 2016 are made by Helsinki District Court, this is perhaps even more unlikely. But basically the Supreme Court has the right to review both fact and law, so a possibility for the appeal to succeed is at least in theory available. It may be worth noting that the Finnish Bar Association objected this amendment to the law, stating that there should be at least one level of appeal without restrictions. |
| **France** | France as executing state offers a right of appeal to the decisions authorizing the transfer of the suspect. This appeal lies to the Supreme Court, called "*Cour de Cassation*". As far as she receives the file, the *Cour de Cassation* has to take a decision within 40 days. This is a way to point out mistakes of law. |
| **Germany** | The main decision about the admissibility of extradition is rendered by the Higher Regional Courts – quite a high legal level. The Higher Regional Court can be encouraged to give the case to Court of Justice of the European Union (see above Higher Regional Court Bremen).<br>The final decision of the High Court about admissibility of extradition cannot be appealed. However at the German Constitutional Court a constitutional claim for stay and legal review of the instance decision can be lodged – this does work at least sometimes. |
| **Greece** | Against the decision of the judicial council that orders the execution of an EAW an appeal is allowed within 24 hours from the announcement of the decision. Responsible for the judgment of the appeal is the Greek Supreme Court (Areios Pagos).<br><br>The main problem concerning the right of appeal relates to the extremely short deadline that often leads to a failure to comply with it.<br><br>A further problem concerns the way of lodging an appeal when the requested person is in custody. In case of a decision in the context of the regular criminal procedure, the accused person can lodge an appeal also in the detention center where he is held. The Greek Law for the EAW does not have a similar provision, despite the very short deadlines. It only allows the lodging of the appeal at the relevant court registry. That means that lodging an appeal by a detainee is more difficult in case of an EAW. Furthermore, the subject of an EAW or also his lawyer is often not familiar with this difference, which leads to an inadmissible appeal in case that the appeal have been lodged in the detention center. |
| **Hungary** | The Metropolitan Court has exclusive jurisdiction, with the procedure of a single judge. Unless excluded by force of law, there is a right of appeal, which is trialed by the Metropolitan Court of Appeal. The appeal has no suspending effect on execution. There is no right of appeal in a simplified procedure and when the suspect consents to the EAW. |

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| **Ireland** | As stated above, when Ireland is the Executing State the case is heard, in the first instance, in the High Court. If the High Court makes an Order for the surrender of the subject, the subject must get the same High Court judge to certify that there are sufficient grounds to appeal that decision to the Court of Appeal. This has had a dramatic effect in reducing the number of appeals that are taken. In fairness, it has to be conceded that when the right of appeal was an automatic one, it became the invariable practice of persons who sought to delay their surrender to appeal and, at that time, the delay in the Supreme Court (prior to the introduction of the Court of Appeal), was of the order of three to four years. |
| **Italy** | In Italy there is not the possibility of an appeal on the merits of the case, but it is possible to take the case to Supreme Court against implementation of the EAW. This is a right provided by Article 111 of the Constitution. The article 22 law n.69/2015 that implements the provisions of the frame work decision 2002/584/GAI, expects, extraordinarily, that the Supreme Court decides also on substance. |
| **Latvia** | There is no such experience, because Latvian authorities and defence lawyers cannot control or influence a EAW appeal procedure, if such is provided in the EAW issuing state. |
| **Lithuania** | Theoretically – appeal is possible, but no practice is known when the appeal instance changes the decision of the first instance. |
| **Luxembourg** | In general, there is a general right of appeal (article 13) But its effectivity is limited |
| **Malta** | Article 18 of the Extradiction Act gives the right of appeal to request a review.[15] The right is a general one in the sense that one may appeal on both point of law and point of fact. |
| **Netherlands** | The ruling of the Amsterdam District Court on the validity of the EAW is final and cannot be appealed. Although there is the extraordinary legal remedy of cassation proceedings in the interest of the law (*cassatie in het belang der wet*), this remedy has been applied only thrice in the last ten years. Furthermore, regardless of the decision of the Supreme Court, the position of the wanted person will not be affected (art. 78, par. 7 of the Judiciary Act).<br><br>Although the ruling of the Amsterdam District Court on the validity of the EAW cannot be appealed, it is, in exceptional circumstances, possible to start summary injunction proceedings (*kort geding*) against the decision of the prosecutor to physically surrender the wanted person to the issuing State. The courts that have jurisdiction in such proceedings are the District Court of the Hague and the Amsterdam District Court.<br><br>It should be noted, however, that this remedy can only be applied against those aspects of the surrender involving prosecutorial discretion – that is: the very limited number of (legal) issues where it is not the ADC but the prosecution itself that is to decide on the lawfulness of the surrender. In the vast majority of EAW cases, summary injunction proceedings are therefore not possible.<br><br>Issues which have been the subject of summary injunction proceedings are, for example:<br>• humanitarian conditions demand that the physical surrender is postponed (e.g. the wanted person's present health situation does not allow for a surrender; most frequently in the vast majority of cases without success);<br>• the decision of the prosecutor to temporarily surrender the wanted person to the issuing State *ex* art. 24, par. 2 of the EAW Framework Decision;<br>• the decision of the prosecutor to physically surrender the wanted person to the issuing State despite the fact that a prosecution is still ongoing in the Netherlands (see also *supra* question 3a).; |

[15] 18. (1) An appeal from an order committing a person to custody under article 15 shall be made by an application to the Court of Criminal Appeal, containing a demand for the reversal of the court's order, and shall be filed in the registry of the court of committal not later than four working days from the date of the said order.

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| | • permission by the prosecutor *ex* 27 of the EAW Framework Decision not to apply the specialty principle; |
| **Poland** | The differences in the legal systems of the Member States regarding the right of appeal against the EAW decision constitute a problem in providing an effective legal assistance. The differences result in the possibility of the appeal omissions, occurring in one country and absent in another, as well as any irregularities in the application of measure.<br><br>In Poland, the Court order on issuing the EAW and repealing the EAW cannot be appealed. The decision which constitutes the basis for the EAW (order of detention or conviction) and the decision on surrender of the subject of the EAW can be appealed. |
| **Portugal** | As stated in press release no 69/13 of Court of Justice of the European Union "*EU law does not prevent Member States from providing for an appeal suspending execution of a decision extending the effects of a European arrest warrant EU law does, however, require that, in the case where the Member States choose to provide for such an appeal, the decision to extend should be taken within the time-limits provided for by EU law in cases concerning the European arrest warrant"* Although the Council Decision of June 2002 (2002/584/JHA) does not include any provisions regarding the right to appeal, article 24 of Law No. 65/2003 states that the requested person may appeal within the very limited time of 5 days from the surrender decision. Such limited time frame (moreover as it regards such a complex matter) practically means the denial of the right to appeal. |
| **Romania** | |
| **Slovakia** | When the court decides that the requested person will be or will not be surrendered to the issuing Member State, there is a right to file an appeal against such decision within a three days. The appeal´s court in the EAW cases it the Supreme court. Mostly the Supreme court confirms the decision of the court of the first instance. |
| **Slovenia** | The basis for an appeal against the EAW are the same as in other criminal cases. Defendant can appeal on the basis of the factual and/or legal error. |
| **Spain** | Until Law 23/2014 EAW's decisions could only be appealed before the Constitutional Court, with a very limited margin. Only recently, EAW's decisions taken by Judges from the Central Court of instruction may be appealed before the Criminal Chamber of the National Court, but without having current practical and useful information. |
| **Sweden** | The right to appeal an execution of an EAW in the executing state<br>Decision on detention – There is an unrestricted right to appeal a court decision to a court of appeal. A following appeal to the Supreme court requires a leave to appeal.<br><br>Decision on surrender - There is a right to appeal a surrender decision to a court of appeal and further to the Supreme court. Leave to appeal is required in both instances.<br><br>The right to appeal an EAW in the issuing state<br>No information |
| **UK** | **England and Wales**<br>All requested persons whose extradition is ordered have the right to apply for permission to appeal against the first instance decision. Applications for permission to appeal need to be lodged and served within 7 days of the extradition order being made. If permission to appeal is granted then the High Court will proceed to hear the appeal. A further appeal lies with the Supreme Court but only if the High Court certifies a point of law of general public importance and either the High Court or the Supreme Court grants leave to appeal. |
| | **Scotland** |

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| | In Scotland, where the appeal process is relatively straightforward, a right of appeal lies to the High Court on a point of law or fact. As is the case domestically, a sifting process is now in place to eliminate hopeless or speculative appeals.<br>The success rate of challenging an EAW remains extremely low. |
| | **Northern Ireland**<br>Prior to the introduction of the Anti-social Behaviour, Crime and Policing Act 2014 there was an automatic right of appeal in fact and law to the High Court. This led to a large number of extradition appeals, many of which were frivolous. Many RP's would use this right as a means to extend their time in the executing state, in particular to accumulate custody time in the preferable conditions of the executing state.<br><br>The 2014 act has amended the Extradition Act 2003 and 'leave' of the high court is now required before an appeal can be heard. An appeal can still be grounded on fact or law. The system is straight forward: An appeal must be lodged within 7 days of the decision of the appropriate judge;<br><br>A fee of £200 must be paid to lodge the appeal;<br><br>The notice of appeal must be accompanied by a skeleton argument setting out the basis on which leave to appeal is sought.<br><br>Once this has been done the application will be placed before a single Judge to decide whether to grant leave. If leave is granted the case will be listed for full hearing before a panel of three judges sitting in the Divisional court.<br><br>The introduction of the requirement for leave will reduce the number of appeals which are listed for full hearing, discourage the lodgement of frivolous appeals and reduce the costs associated with appeal hearings. |

| **Question 9 - Right of appeal against the EAW decision**<br><br>*b) What is the experience of defence practitioners in your Member State about the impact of the varying scope of rights of appeal against the EAW (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* | |
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| **Austria** | As pointed out under 9.a.) the EAW an appeal in the executing state is very limited.<br>An appeal in Austria as issuing state is likely to be successful only after the surrender, when the court has to decide on pre-trial detention. However, as opposed to a national arrest warrant, the suspect is in custody for a long period of time (i.e. for the time of surrender detention) until the court gets to decide on pre-trial detention. |
| **Belgium** | The absence of a right of appeal generally shorten the delays of delivery and transfer to Belgium of the arrested person, which may be sometimes a positive thing in avoiding to keep the concerned person in pre-trial detention in the executing Member state the time of the (sometimes) clearly vain recourse. |
| **Bulgaria** | EAWs issued by Bulgaria are not subject to appeals. |
| **Croatia** | |
| **Cyprus** | There is no right of appeal against the issuing of an EAW under Law 133(I)/2004. The only legal remedy is the filing of an application for certiorari in case there is a legal error apparent on the face of the record and/ or lack of jurisdiction of the court. The jurisdiction of the Supreme Court to issue prerogative orders is enshrined in Article 155.4 of the Cyprus Constitution. |
| **Czech Republic** | When CZ is the issuing state, there is no special legal remedy against issuing an EAW. The defence could only seek withdrawal of the EAW. |
| **Denmark** | There is a right of appeal |
| **Estonia** | Same as (a) above |
| **Finland** | The underlying decision regarding the EAW (detention order) can be appealed to the court of appeal (and thereafter, is leave to appeal is granted, to the Supreme Court). The actual EAW that is issued is not subject to appeal. The appeals against the detention orders are unlikely to succeed, but obviously the possibility exists. |
| **France** | The defense practitioners when France is the issuing state have to wait for the final decision of the executing state. The cooperation between lawyers is very important to decide whether or not it is timely to fight in the issuing state or in executing one. |
| **Germany** | There is a slight chance to fight the basic german arrest warrant. If successful this destroys the basis for an EAW. |
| **Greece** | Against the decision with which the Prosecutor issues an EAW no right of appeal exists. |
| **Hungary** | |
| **Ireland** | Both the initial surrender hearing and any appeal obviously benefit from the input of a lawyer from the other relevant state and puts the fullest possible information before the Court in the most professional fashion. Without Dual Representation, lawyers either rely on professional contacts, or must conduct desk-based research, which is not ideal. |
| **Italy** | In Italy, the EAW is issued by the judge that applied the arrests in prison or house arrests or by the public prosecutor who has issued the execution order for a final sentence of not less than one year, or for the use of custodial measure, for preventive purposes when the defendant or the condemned reside in another EU country. The EAW is cancelled when the internal decision is cancelled (for example, in Italy, the appeal to the Tribunale del Riesame and then to the Supreme Court, against the order of remand in prison or under house arrest issued by the Judge for the Preliminary Investigation,is expected). |

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| **Latvia** | According to Section 692 (6) of Criminal Procedure Law, if grounds for taking a EAW have been established, the Prosecutor General's Office shall take a EAW, which is not subject to appeal. So it is impossible to appeal an EAW issued in Latvia according to the national law. |
| **Lithuania** | When Lithuania is the issuing state, the right of appeal against the issued EAW or detention decision is not very effective, because the subjects of the EAW learn about such decisions when it is too late to appeal against them in Lithuania. Being not in Lithuania the subjects of the EAW are not informed about the EAWs issued by the Office of General Prosecutor in the Republic of Lithuania or detention decisions issued by the courts, because they are represented only by the advocates who are appointed to provide them state legal aid and who do not have the contacts with the subjects of the EAW. |
| **Luxembourg** | Actually there is no right of appeal in Luxembourg. |
| **Malta** | From our experience, when there is an appeal, the role of the issuing state being Malta would be, if at all, to provide further information to the competent authority of the executing state to defend any appeal. |
| **Netherlands** | Unknown. |
| **Poland** | See a) above. |
| **Portugal** | Please see point 9, a). |
| **Romania** | |
| **Slovakia** | There is no appeal against the issuing the EAW. If the lawyer is aware about the issued EAW, there is a space to file a motion clarifying existence of no reasons for the EAW and ask a withdrawal of the EAW. |
| **Slovenia** | No information. |
| **Spain** | When a judges issues an EAW, in theory, this decision is appealable by the standard appeal system (first before the judge himself and then, simultaneously, before the superior organ). The bottom line is that normally, the individual does not appear personally in the case, thus he is unaware that the warrant has been issued and therefore he cannot appeal it. |
| **Sweden** | The right to appeal a decision to issue an EAW in the issuing state<br>There is no provision in the Regulation on issuing an EAW enabling a right to appeal an issued EAW.<br><br>The right to appeal an execution of an EAW in the executing state<br>No information |
| **UK** | **England and Wales**<br>See above |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 9 - Right of appeal against the EAW decision**<br>*c) Is there a possibility to make a reference to the Court of Justice of the European Union regarding a question which has arisen during the execution of an EAW in your Member State?* | |
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| **Austria** | Yes, in theory. |
| **Belgium** | YES |
| **Bulgaria** | In principle there is but I am not aware of such cases. |
| **Croatia** | YES. |
| **Cyprus** | Yes there is, provided the question falls within the ambit of Article 267 of the Lisbon Treaty (TFEU). The right to make a reference to the Court of Justice of the EU under municipal law is provided by article 34A of the Courts of Justice Law 14/60 as amended. The said Article was inserted in the Courts of Justice Law by amending Law 119(I)/2008 (see inter alia, Pericleous v Ellinas Finance Ltd a.o., Civil Appeal 283/2010, decision dated 10.03.2015). |
| **Czech Republic** | Yes (see Section 9a of the Code of Criminal Procedure), but no Czech court has so far used such reference in EAW proceeding. The only reference to the Court of Justice of the EU made by a Czech court in the area of EU criminal law was made when CZ was executing a request under the Framework Decision on the financial penalties (case C 60/12 Baláž). |
| **Denmark** | Due to Denmark holds opt-outs it is domestic law – so my answer is: probably not. I have seen no attempts |
| **Estonia** | Yes |
| **Finland** | Yes. Both the District Court and the Supreme Court have this possibility, although I'm not aware that a District Court would ever have used this possibility. The Supreme Court has made a reference a couple of times. |
| **France** | Since the very beginning, the right of appeal before the *Cour de Cassation* has been granted by the *Code de Procédure Pénale.* |
| **Germany** | Yes, see above. |
| **Greece** | There is a possibility for a preliminary question by the Greek courts to the Court of Justice of the European Union according to the EU law. A few cases exist where the defendant of the requested person asked the responsible Greek judicial authority to make a preliminary question to the Court of Justice. The applications were rejected with a typical reasoning on the ground that a preliminary question was not necessary. |
| **Hungary** | There is no relevant practical experience, but in general, Hungarian laws does not exclude the possibility to make a reference to the Court of Justice of the European Union. |
| **Ireland** | Yes and referrals have been made. |
| **Italy** | Yes |
| **Latvia** | According to Section 2 (2) of Criminal Procedure Law, in the application of the legal norms of the European Union, the case law of the Court of Justice of the European Union shall be taken into account. So there is a possibility to make a reference to the Court of Justice of the European Union. |
| **Lithuania** | Theoretically – yes, but no practice is known. |
| **Luxembourg** | Indeed, there is a possibility to submit a preliminary question to the CJEU during the hearing at the 'Chambre du Conseil'. |
| **Malta** | No, there is no possibility to make a reference. This point was raised specifically in the case of *The Police v Angelo Frank Paul Spiteri*, cited above. The accused had appealed to the decision of the Court of Committal on the ground that, among others, the first Court refused to refer an issue on the transposition of the Framework Decision for a preliminary ruling. The Judge presiding the appeal dismissed this ground, citing Article 267 of the Treaty on the Functioning of the European Union, |

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| | whereby the Court may refuse to refer a question if there exists a judicial remedy from the decision of that Court under national law.[16]<br><br>With that being said, on issues of a human rights nature, the matter is entirely different. There would be a ground of appeal which could also end up at the CJEU or at the ECtHR. However it would seem that on a question of pure interperation, Maltese courts are reluctant to refer the issue.<br><br>Additionally, local remedies include referring a question of a human rights nature to the Constitutional Court for redress, as is the subject's right under the Extradition Act.[17] |
| **Netherlands** | Yes. |
| **Poland** | There is a possibility to make a reference to the Court of Justice of the European Union regarding the question which has arisen during proceedings underlying issuing of an EAW and during the procedure for the surrender of the subject of the EAW. The obligation of a preliminary ruling in the case which is pending before national courts rests with the governing body, whose decisions cannot be appealed (court of last instance or lack of possibility to appeal the decision). The Court is exempted from the occurrence of the initial question, if the problem was explained in another judgment, or if the issue requires no explanation because, in court's understanding, it is clear enough. |
| **Portugal** | Yes but only after the procedure is finished. There are no interlocutory appeal to the Court of Justice of European Union. |
| **Romania** | |
| **Slovakia** | Yes but I don´t have any information if the Slovak court has done it so far in the EAW proceeding. |
| **Slovenia** | In theory yes. But I have no information that this has already happened in the cases before the Slovenian courts (concerning EAW). |
| **Spain** | Yes, there is |
| **Sweden** | Yes |
| **UK** | **England and Wales**<br>Yes – in theory even a magistrates' court can make a reference to the CJEU (Plymouth Justices ex p Rogers [1982] QB 863). |
| | **Scotland**<br>Yes, but this route has not yet been taken. |
| | **Northern Ireland**<br>Yes. |

[16] Art 267 TFEU – "…Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court."

[17] The Extradition Act is rendered applicable to the EAW by way of regulation 25 of Legal Notice 320/2004.

| **Question 9 - Right of appeal against the EAW decision**<br>*d) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | Yes, since as explained, in Belgium, the decision on executing, or not, the EAW, is subject to a right of appeal and even of a subsequent recourse at the Supreme court (cour de cassation). |
| **Bulgaria** | No information. |
| **Croatia** | If the requested person consents to surrender to the issuing State, the investigating judge or panel outside the trial of the competent court shall without delay and no later than three days after the consent render a decision granting surrender, unless prevented by reasons for refuse to execute a European arrest warrant. If the requested person does not consent to surrender, the court shall hear him or her about the reasons for opposing the surrender. The competent state attorney may be present, while the requested person's defence counsel must be present at the hearing. The decision shall be served to the requested person, his or her defence counsel and the state attorney who can appeal within three days. The decision on the appeal shall be rendered within three days by the judicial panel of the competent court outside the trial. |
| **Cyprus** | No information. |
| **Czech Republic** | It is very advisable to introduce into the national system a legal remedy against the decision on the surrender. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | Not really. |
| **France** | No information. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | The decision to appeal should not depend on the judge at first instance. |
| **Italy** | Italian Lawyers' constant appeal to all the means of redress required by the law. |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | The extensive control referring the correctness of application of regulations concerning EAW was introduced in Poland. It applies to proceedings which result in issuing the decision which constitutes a basis for the EAW (order of detention or conviction) and of a decision on the surrender of the subject of the EAW. In both cases, filing an appeal and the possibility to lodge a cassation appeal to the Supreme Court (in the case of legal defects made by the court of first instance) is admissible. |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | No information. |
| **Spain** | No, there are not |
| **Sweden** | No information |

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| **UK** | **England and Wales**<br>None |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>The introduction of the requirement for leave to appeal has reduced the number of frivolous appeals being brought before the court. |

| **Question 9 - Right of appeal against the EAW decision**<br>*e) Do you have any solutions to the problems defence practitioners may have encountered?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | A generalization of a right of appeal in all Member states. |
| **Bulgaria** | Because of the above answers I am not capable to define any problems and to offer respective solutions. |
| **Croatia** | |
| **Cyprus** | More time should be given for the exercise of the right of appeal against a decision to execute an EAW. |
| **Czech Republic** | No. |
| **Denmark** | --- |
| **Estonia** | Training, esp on the subject of turning to ECJ |
| **Finland** | Especially when Finland is the issuing country and the client denies the charges, it would be very important to contact a Finnish lawyer in order to review the underlying detention order, because it's subject to appeal and the appeal is handled rapidly by the Court of Appeal (within a week or two, usually). |
| **France** | No information. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | See above. |
| **Italy** | A harmonisation of national procedure of appeal in the states member is expected. |
| **Latvia** | The question regarding rights to appeal a EAW issued in Latvia shall be discussed among national theoreticians and practitioners. |
| **Lithuania** | The right of appeal would be more effective, if it were guaranteed in the issuing state from the moment when the subjects of the EAW learn about the issued EAW or detention decision against them.<br>If the subjects of the EAW had the right to initiate the EAW cancellation procedures in the issuing state it could also solve the problem of not being timely informed about their right of appeal against the issued EAW or detention decision.<br>Effective dual representation (with the sufficient access to information and translation services) could at least better check the grounds for the EAW and the detention in the executing state if the right of appeal were not effective in the issuing state. |
| **Luxembourg** | A better access to the file in both countries would certainly help. |
| **Malta** | There ought to be a right of reference to the Court of Justice of the European Union when we Courts are using instruments of mutual recognition and mutual assistance in differing legal regimes and differing norms. In other words, there is the application of a European Law norm to two different jurisdictions, which would have two completely different legislations. These systems can produce legally untenable results in their implementation and interpretation of the Framework Decision, and the only safety valve and proper watchdog to this is the CJEU. |
| **Netherlands** | Not necessarily. |
| **Poland** | Due to the differences in the legal systems of the Member States, the defender should possess all necessary information on the exact course of the procedure, the provisions concerning the EAW, as well as all the legal remedies available at each stage. |
| **Portugal** | In order to assure an effective right to react to any illegal decision, provisions must statute a wider deadline for the requested person to present an appeal submitting a serious decision (and potentially life changing) to a higher court. Surrender procedures must be not only fast but also fair. |

| Romania | |
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| **Slovakia** | Maybe it could be a discussion on the exceptions from the mutual recognition of the judicial decisions in some cases, reasons. |
| **Slovenia** | No. I think that in Slovenia this problem is adequately solved. |
| **Spain** | No |
| **Sweden** | Uniform standards should be adopted ensuring that any decision on issuing and executing an EAW can be appealed within the national legal systems of the member states.<br><br>Access to information on legislation of the member states covering issuing and executing an EAW could also be improved. By making all relevant national EAW-legislation officially translated into at least English and consolidated on e g a website, the information would be easily accessible to defense counsels. Hereby transparency would increase. |
| **UK** | **England and Wales**<br>None |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 10 - Variations in sending a translated European Arrest Warrant**<br>*a) What is the experience of defence practitioners in your Member State about the impact of the varying deadlines for sending a translated EAW when your state is the executing state?* | |
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| **Austria** | The timeframe in Austria is 40 days after the arrest. Due to the length of this period, the (translated) EAW arrives usually in time. |
| **Belgium** | The Belgium law on the EAW of 19 December 2003 (art. 2, § 6) states indeed that : “The EAW sent to the Belgian authorities must be translated in Dutch, French, German or in English”.<br>However the Belgian Cour de cassation (supreme court) has decided that the said article 2 does not contain any sanction in case of no respect of his provisions (Cass., 28 September 2010, RG P.10.1512.N, Pas., 2010, nr. 557).<br><br>Moreover this provision does not mention expressively by who the translation “must” be realized, so nothing seems to exclude that the Belgian judicial authorities, based on the mutual trust requires by the Framework decision, could decide in such circumstances to proceed themselves to the appropriate translation of the EAW.<br><br>This solution has been indeed expressively admitted and recognized by the Belgian lawmaker in case of EAW’s established in English : in the law of 25 April 2014 who added “English” in the abovementioned provision, the lawmaker observed indeed that if the EAW is in English the Belgian authorities will translate it into the national language of the procedure (French, Flemish or German) (see Doc 53-3149/001, p. 79).<br><br>Nothing seems thus to prohibit the Belgian judicial authorities to take the initiative to also translate in the appropriate language of the procedure an EAW initially established in an other European language than English. |
| **Bulgaria** | No information. |
| **Croatia** | |
| **Cyprus** | The EAW must be written in one of the official language of the Republic of Cyprus namely Greek or English. As informed there was rarely if ever an instance in which translation of an EAW arrived after expiration of the deadline. |
| **Czech Republic** | The defence should control that the set deadline was met. If not (which I have not experienced), a motion to terminate the EAW proceedings shall be made (according to the Section 203(8) of Act 104/2013 the public prosecutor shall terminate preliminary EAW inquiry if the EAW is not delivered despite being specifically requested by CZ as the executing state).<br>If the EAW is not delivered within 20 days since the arrest of the requested person in CZ, the requested person has to be released from custody. |
| **Denmark** | It is an important part but we accept the major languages |
| **Estonia** | All incoming European arrest warrants must be sent to the Ministry of Justice within of three working days since receiving information that the person in question has been provisionally arrested in Estonia. Estonia accepts EAWs in Estonian or English languages. The law requires that the arrested person must be released immediately in case EAW has not arrived in time. These rules work in practice. |
| **Finland** | I haven’t experienced problems in this. Finland accepts request in Finnish, Swedish and English and in certain cases, also in other languages (Section 15 of the EU Extradition Act: “(1) The request shall be made in Finnish, Swedish or English, or a translation into one of these languages shall be appended to the request. (2) The competent authority in Finland may grant the request even if it has been submitted in a language other than Finnish, Swedish or English if there are otherwise no bars to granting the request. (3) If the request is submitted in a language other than Finnish or Swedish the |

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| | National Bureau of Investigation shall be responsible for the translation of the request into Finnish or Swedish.")<br>If the person is being detained pending extradition, the detention must be reviewed by a court latest within 96 hours from when the person has been arrested (taken into custody). Even though all the material may not be translated at this stage, they are normally translated very quickly. The extradition hearing needs to be held as quickly as possible and the District Court has by law to make a decision on the extradition within 26 days from when the person has been detained (unless there are special circumstances). If there have been problems with translations, I haven't heard of them. Already prior to the actual extradition hearing in court, the National Bureau of Investigation has the duty to as quickly as possible (usually this happens within a week or two from when the person has been detained) give formal notice of the request, and at that stage the translations have – save for some possible exceptional situations – been done and need to, by law, be given to the person sought in a language he/she understands. Since it's ultimately the responsibility of the National Bureau of Investigation to take care of the translation, this is not really an issue in Finland. |
| **France** | Regarding the translation of the file (demand, documents…) France, as usual, do not accept different languages except in case of emergency. It means that most of the files are translated into French properly and on time. |
| **Germany** | There is no impact since a delay will never result in a release from detention in Germany. |
| **Greece** | In general, a breach of the deadlines for sending a translated EAW is not common. Translated EAWs arrive usually on time. |
| **Hungary** | English appears to be the main language which is used for EAWs and this is generally fine for lawyers in Hungary. During the procedure we then receive the translated documents and everything at the trial is translated into Hungarian. |
| **Ireland** | The standard of translation varies enormously from member state to member state and, indeed, within some member states. Surrenders have been refused on the basis of the poor translation and poor compliance with form. |
| **Italy** | According to the Supreme Court,the surrendeer stage has to be refused when the translation of the EAW in the italian language,as expected by the Italian law,is missing (Section. 6, n. 17306 20March 2007-7May 2007, P.G. in proc. Petruzzella, magazine number 23658274, in this specific case the translation had been trasmitted after the conclusion of the hearing). |
| **Latvia** | According to Section 715 (1) of Criminal Procedure Law a person to be extradited shall be given EAW translated to the language the person understands before examination in relation to the extradition of a person to a European Union Member State is finished. According to mentioned Section decision in relation to the extradition of a person cannot be taken before translation is provided, but there is no specific deadline specified by Criminal Procedure Law. The need for translation may impact time of examination in relation to the extradition of a person to a European Union Member State. |
| **Lithuania** | The deadline is 48 hours. It is quite short, but it is reasonable, because only for 48 hours the person might be detained without the judicial decision. |
| **Luxembourg** | There does not seem to be a real issue in Luxembourg on deadlines of procedures due to translation of EAWs. |
| **Malta** | No particular issues have been registered on this matter. |
| **Netherlands** | The Netherlands accepts English EAWs. Translation issues are therefore very limited. In most cases the English translation of the EAW is received within 1-3 days. |
| **Poland** | Poland, as an executing state, proceeds EAW only when it is translated into polish language. Polish courts do not accept EAW's issued in any other language.<br>Additionally, the quality of translation in Poland is a general problem. In order for translation to be accepted by court, it must be realized by a sworn translator. Unfortunately, the remuneration of those paid by the state is very low, non-proportional to the remuneration of private experts. Therefore, the |

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| | quality of translation is often very poor and the deadlines are not kept. In some parts of Poland, it is almost impossible to find a translator specialized in a less popular language, which makes proceedings even longer. |
| **Portugal** | According to article 92/1 of the Portuguese Code of Criminal Procedure and article 2/3 of Law No. 65/2003 any procedural act must be conducted in Portuguese language; when a foreign document is presented it must be properly translated and an interpreter must be designated to the defendant if he/she does not speak Portuguese language. This important guarantee may, of course, lead to lengthy procedures. |
| **Romania** | |
| **Slovakia** | If the EAW is not delivered within 18 days since the arrest of the requested person, the requested person might be released. Almost always the deadline was met. But the quality of the translation was varied. If the EAW is not delivered within 40 days (during "preliminary custody") the requested person has to be released. |
| **Slovenia** | Usually the translation is sent fairly quickly after the issuing state is informed that the subject has been found. I do not have any information for instance that the subject was released from pre-trial detention because the translation was not sent before the deadline. Usually the EAW is sent in English and then the Slovenian court will translate it. I have no information that translation is a major problem for Slovenian courts that handle EAW cases. |
| **Spain** | No information on this matter. |
| **Sweden** | Sweden accepts translations in Swedish, Danish, Norwegian or English. If the translation is insufficient the competent judicial authority may request clarification from the issuing authority to be submitted within a time limit. If the request is not followed, surrender may be refused.<br><br>No accessible information indicates that translation issues generally causes delay in the execution procedure, this presumably as translations are generally done in English and as it is possible to refuse surrender on the basis of insufficiencies. |
| **UK** | **<u>England and Wales</u>**<br>The late arrival of translated EAWs was not a problem in England and Wales until the UK acceded to Schengen 2 in April 2015. Up until that point EAWs were always translated into English from the national language of the issuing judicial authority before they were certified by the designated authority (currently the National Crime Agency). Indeed, the National Crime Agency (and its predecessors) simply wouldn't certify a warrant that wasn't translated. However, since the UK has signed up to Schengen 2, the NCA can simply download the Form A which contains some (but not all) relevant information about the EAW in English and certify the warrant accordingly. As a consequence there are increasing numbers of EAW cases at first instance where the only documents available to the court and the requested person is the EAW in the national language and a copy of the Form A. This had led to delays in proceedings at first instance whilst the translated copy is made available by the issuing judicial authority. At present, the delays are relatively minor as the majority of EAWs are still provided with a corresponding English translation. |
| | **<u>Scotland</u>**<br>Delays are unusual. The bigger difficulty is with the quality of the translation. |
| | **<u>Northern Ireland</u>**<br>Not an issue as the warrant routinely arrives in English. |

| **Question 10 - Variations in sending a translated European Arrest Warrant**<br>*b) What is the experience of defence practitioners in your Member State about other issues relating to translation – for instance, quality, the acceptance of languages other than your national language - when your state is the executing state?* | |
|---|---|
| **Austria** | Austria accepts German or other languages in reciprocity (i.e. accepts receiving the EAW in the official language of a Member State which also accepts receiving the EAW issued by Austrian judicial authorities in German). It therefore may happen that the EAW is in a language the suspect does not understand, so that a translation (by the Austrian authorities) must be done.<br>The quality of the translation varies depending on the issuing state and is sometimes poor. |
| **Belgium** | The Belgian Cour de cassation has decided that a wrong translation of an EAW may be rectified by the Belgian judge for so far the latter informs expressively the concerned person about this rectification so that the latter is put in the position to exercise his defense in full awarness (Cass., 5 October 2004, Pas, 2004, nr. 456). |
| **Bulgaria** | No information. |
| **Croatia** | |
| **Cyprus** | As informed usually the quality of translation is good. |
| **Czech Republic** | The defence should control the correct language regime together with the set deadlines as mentioned in the previous answer.<br>The Czech Republic accepts EAWs only in the Czech language (with the exceptions of EAWs issued by Slovakia and Austria, when EAWs in Slovak and German are accepted on the basis of the declaration of CZ to the FD on EAW).<br>The quality of translation is not very high (due to the lack of knowledge of special terminology) but usually sufficient for understanding. |
| **Denmark** | It is an important part |
| **Estonia** | In most cases, EAWs are sent in English. The quality of translation varies greatly. |
| **Finland** | I believe the previous answer is sufficient to this question also. |
| **France** | See a) |
| **Germany** | As a defence counsel you need to verify the translation often. Sometimes with the help of the client sometimes with the help of an own translator. Generally said, german authorities do not appreciate to be provided with wrong or misleading translations. In Germany only a translation into german is accepted by law. |
| **Greece** | Greek authorities will not accept an EAW in another language other than the Greek.<br><br>According to the Greek authorities, the quality of the translation of an EAW depends on the issuing state. There are certain Member-States, which very often send translations of such poor quality that makes difficult the execution of the EAW. |
| **Hungary** | It is at a good level here in Hungary. |
| **Ireland** | Generally for proceedings before the Irish Courts, properly trained and competent interpreters will be available. However, if the documentation that is received from the requesting state has been poorly translated, that can be difficult to identify and the Courts do not always provide for translation of such documents. |
| **Italy** | It depends on each individual case; we refer to the principle of the previous answer. |
| **Latvia** | According to Section 715 (5) of Criminal Procedure Law, Latvia shall accept European arrest warrants for execution in the Latvian or English language. |
| **Lithuania** | English is accepted. |

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| **Luxembourg** | Several languages are in use in Luxembourg, including German and French. Lawyers are used to work in a multilingual environment. Also English is the most frequently used other language. The practice of the judicial authorities is to ask the issuing state some additional questions when the developments are not clear enough, to verify the legal conditions of execution of an EAW. In general the lawyers cope with the issue of languages. Sometimes however the description of the facts is rather vague and it is uncertain whether the right words have been used in English for example, in comparison with the original language. |
| **Malta** | It is to be noted that both the Maltese and the English language are the official languages of Malta, and therefore translations can be done in both languages without any problems. This greatly facilitates court procedure.<br><br>With that being said, we have had serious issues with foreign translations, as wrong translations can affect the rule of speciality. In the case of *Police v Fabio Zulian,* Zulian,[18] together with others, was arraigned for having formed, financed and promoted the formation of a group or association to commit a crime punishable for more than four years' imprisonment, among numerous other charges. In the course of proceedings, Zulian was granted bail and the opportunity to leave the island. At one point during the proceedings, Zulian left Malta but never returned, and an EAW was thus issued against him. Months later, Zulian was found in Italy and forcibly returned under arrest to Malta.<br><br>Upon his return, Zulian argued that the Court of Appeal in Torino,[19] which had ordered his return to Malta, listed specifically the offences for which he was being surrendered. It was argued that the Court had listed six distinct offences, which were:<br><br>*'sparizione dei soldi; il reato continuato per promuovere, costituire organizzare, finanziare o associare in una organizzazione di due o piu' persone con l'intenzione di commettere un reato penale a Malta; il reato continuato di ricettazzione; il reato continuato di guadagno fraudolente in eccesse di Eur23,293.70'.*<br><br>A problem arose with the first offence as described or translated in the issuance of the EAW by Malta to the Italian authorities. The offence of '*sparizione dei soldi'* or rather 'disappearance of monies' finds no equivalent in the Italian judicial system. It follows that such a description would violate the double criminality rule and thus this offence had to be discarded by the Italian courts when considering the request for surrender. It was further argued that, given that the judgment made absolutely no reference to the offence of money laundering, Zulian could in no way continue to face charged of money laundering in Malta since this would violate the rule of speciality. In other words, there was no corresponding offence in Malta to the offence referred to as 'disappearance of monies'.<br><br>Clarification was also sought from the Court of Appeal in Torino, Italy.[20] By means of a judgment, the Italian Court of Appeal upheld the view that there was no offence of money laundering actually mentioned in the request, and only reference to a general offence 'sparizione dei soldi' and self-laundering, both of which do not exist as offences under Italian law. Consequently it would follow that proceedings could not continue with respect to money laundering. Ultimately however, it would appear that this argument was abandoned by defence counsel. |
| **Netherlands** | We are not aware of any issues here. |
| **Poland** | |

[18] Decided 16 December 2014, Court of Magistrates (Malta), per Magistrate Miriam Hayman

[19] 14 November 2011, Court of Appeal, Torino

[20] 17 April 2013, Corte of Appeal, Torino

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|---|---|
| **Portugal** | There is a good experience based on the fact the translation is assured and provide a good quality standard. |
| **Romania** | |
| **Slovakia** | Basically, the Slovak authorities accept EAW only in the Slovak language with the exceptions of EAWs issued by Czech Republic courts because the Czech language is understandable and it is also based on the bilateral treaty.<br>The quality of translation is not very high, sometimes very good, but I have seen also very poor quality of the translation. |
| **Slovenia** | Usually the quality of translation is acceptable, in some cases there are errors because the translator has to work quickly (where pre-trial detention is being considered or is already ordered). The translation must be done in Slovenian language. |
| **Spain** | Problems from low quality translations due to the lack of a specialized group of translators remain. This is notably the case in the section concerning the description of the facts of the EAW. |
| **Sweden** | Sweden accepts translations in Swedish, Danish, Norwegian or English. If the translation is insufficient the competent judicial authority may request clarification from the issuing authority to be submitted within a time limit. If the request is not followed, surrender may be refused.<br><br>No accessible information indicates that translation issues generally causes delay in the execution procedure, this presumably as translations are generally done in English and as it is possible to refuse surrender on the basis of insufficiencies. |
| **UK** | **England and Wales**<br>The experience of defence practitioners in England and Wales is that the quality of translations varies very widely. It very much depends on the state and the judicial authority. In general terms, the experience of defence practitioners is that the quality of translations from accession states, such as Poland and Lithuania, is generally good. The quality of translation from Spain, France and Italy tends to be poor. |
| | **Scotland**<br>There can be formatting problems. As far translation difficulties are concerned, a courtroom interpreter may be asked to clarify. In circumstances where ambiguity remains, the EAW may be returned for clarification. It is understood that there have not been any cases to date where quality of translation has been fatal to execution of a request. |
| | **Northern Ireland**<br>Not an issue as the warrant routinely arrives in English. |

| **Question 10 - Variations in sending a translated European Arrest Warrant**<br>*c) Are there any good practices on this matter in your Member State?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | See the answers to point a) and b) : the Belgian law accepts EAW in English, and if the translation of the EAW provided by the issuing Member state contains certain errors, the Belgian judicial authorities may take the initiative to rectify these errors but have to inform the arrested person of this rectification. |
| **Bulgaria** | No information. |
| **Croatia** | The competent judicial authority shall execute the EAW if the EAW and the accompanying documents are translated into the Croatian language. In urgent cases, the English translation shall be accepted.<br>For the purpose of it's execution in another Member State, the EAW shall be translated into the official language of the executing State or other language acceptable in that State. When the police receives a European arrest warrant on the stipulated form or through the Schengen Information System, if the warrant is not accompanied by the translation , the police will require from the issuing state translation within 48 hours of arrest. Competent state attorney can also require directly from competent body of issuing state delivery of translation of EAW. If state attonrey is not in possesion of translation , he can order a detention which can last at the most 48 hours of arrest. If state attorney does not receive translation within 48 hours from arrest, investigating judge can on his suggestion extend detention of arrested person for next 36 hours. If issuing state does not deliver translation within these hours arrested person shall be released.<br>If the issuing state would deliver translated documentation after these deadlines, police will again arrest wanted person and within 24 hours of arrest bring her to the competent investigating judge for decision on detention and the surrender procedure. |
| **Cyprus** | No information. |
| **Czech Republic** | Not in my opinion. |
| **Denmark** | The Ministry of Justice do carefully look into the different requirements |
| **Estonia** | A strict rule according to which an arrested person must be released immediately when EAW is not sent within 3 working days is an effective guarantee against undue delays |
| **Finland** | I assume that the fact that it's the Finnish authority who's ultimately in charge of making the translations (also if requests are accepted in other languages than Finnish, Swedish or English), makes this really a non-issue in Finland. |
| **France** | No information. |
| **Germany** | No. |
| **Greece** | When Greece is the issuing state, the translation of the EAW is conducted by the official department for translation of the Ministry of Foreign Affairs, which guarantees a good quality of translation. |
| **Hungary** | No information. |
| **Ireland** | The competence and availability of interpreters and translators is generally good. |
| **Italy** | Urgent request of translation of documents to the legal authority of the issuing country. |
| **Latvia** | No information. |
| **Lithuania** | Acceptance of English. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | |
| **Portugal** | Nothing beside what is mentioned before (see b). |

| **Romania** | |
|---|---|
| **Slovakia** | |
| **Slovenia** | Slovenian courts seem to be very strict when it comes to translation of the EAW – it must be done before the subject is brought for the first time before the investigation judge (they handle the EAW cases in Slovenia in the first instance). |
| **Spain** | Legal practitioners in Spain acknowledge that the languages and official languages in every State have been duly updated in the European Judicial Atlas in Criminal Matters, where 15 out of 28 Members States ( Cyprus, Denmark, Estonia, Slovakia, Slovenia, Finland, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, United Kingdom, Romania and Sweden) admit the submission in English and others such as Germany and Greece start the process in English until there I translation. Croatia admits the English language in emergency situations. Moreover, the deadlines for translation of the EAW into the language of the State can be known prior consultation of the EJN web site. However, this information is to be used in an indicative manner, therefore they must adhere to what the executing State stablished in the first communication with the issuing judicial authority. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>Directions are made by the court for the translations to be made available. Defence practitioners are able to obtain independent translations if they have sufficient resources. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 10 - Variations in sending a translated European Arrest Warrant**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
|---|---|
| **Austria** | The quality of a translation would often be better, if the EAW was translated in the executing state- |
| **Belgium** | To generalize to all Member states the use of the French and English language for the EAW, since French is the unique language of the deliberation of the European Court of Justice who is precisely competent for the prejudicial questions on the EAW, and taking also into account that French and English are the both languages of the procedure in the front of the European court on Human Rights. |
| **Bulgaria** | Because of the above answers I am not capable to define any problems and to offer respective solutions. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | No. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | Not really. |
| **France** | What about creating a "task force in translation for Justice". We got it already at the parliament, at the council of the EU. Why not in our area? |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | To continue to develop and promote high standards of interpretation and translation. |
| **Italy** | An office at European level which enables immediate translation of issued EAW s in all languages of member States. |
| **Latvia** | No significant problems encountered. |
| **Lithuania** | Acceptance of English and harmonization of the deadline. |
| **Luxembourg** | The possibility of a dual representation in both the issuing and executing states makes things much easier to understand the legal circumstances of the case and to defend efficiently the person involved. |
| **Malta** | It is very hard to suggest any form of solutions especially when the problem arises with translations occurring in a foreign jurisdiction. |
| **Netherlands** | Not necessarily. |
| **Poland** | |
| **Portugal** | No need at all. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | It seems that this problem is adequately solved in Slovenia. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales** |
| | **Scotland**<br>It is thought that a simplified EAW layout would be beneficial, for example with regard to sentencing options. |
| | **Northern Ireland**<br>No information. |

| **Question 11 - What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?**<br><br>*a) What is the experience of defence practitioners in your Member State about the impact (in both the executing and issuing state, if there is dual representation) of additional information requested by the executing authority when your state is the executing state?* | |
|---|---|
| **Austria** | Austria may request additional information (§ 19 (2) EU-JZG) and has to request additional information within a reasonable timeframe. In practice such requests are only made if there are formal issues or if there are severe doubts that there as a sufficient suspicion. |
| **Belgium** | To obtain all the necessary information is a must for the effectiveness of the EAW procedure in the executing Member state since it will be precisely on the ground of these information that the judicial authorities of the executing Member state and the appointed national lawyer will be able to determine if all the national legal conditions to execute – or not – the EAW are well met.<br><br>It is thus up to the executing Member state and its concerned judicial authorities to ask from the issuing Member state all the useful and pertinent information required in the light of the national legal conditions for executing a EAW.<br><br>The national lawyer plays here a very important role in asking, if necessary, the national competent judicial authority to request immediately from the issuing Member state all possibly missing, unclear or unspecified information whom are relevant for the good, effective, and entire application of the national rules on executing an EAW. |
| **Bulgaria** | I cannot say that Bulgaria is a country known for detailed further requests in EAW procedures. Anyway, Bulgaria has always refused to execute an EAW, if a correct objection has been made that a wrong person with the same name may be arrested. |
| **Croatia** | There is no additional requested by the executing authority. |
| **Cyprus** | As informed requests for supplementary information are often submitted by the Cypriot authorities especially with regard to an EAW issued against a person convicted in absentia. |
| **Czech Republic** | In my experience Czech courts do not request additional information very often and if so, only to check that all prerequisites for conducting the proceedings were met and for the purpose of the application of grounds of refusal, if there are any doubts. |
| **Denmark** | It is primary the charges, the domestic law and procedural matters that are requested.<br>A decision was postponed by the court as it was unclear whether or not there was a question of "ne bis in idem" |
| **Estonia** | Requests for additional information can be applied for by the defence, and sometimes such requests are granted. However, judges usually adopt a narrow approach to whet they consider as relevant additional information, and this comes down to the minimum information that needs to be contained in an EAW. As a general rule, further information is requested only when the defence files an application for it, judges almost never do this proactively. |
| **Finland** | If there are additional requests, these are usually made already before the defence counsel becomes aware of the matter. In my understanding these are not very common; Finland is usually considered to be the “good student” in the EU and requests are carried out without lengthy additional information requests. I also spoke to a State Prosecutor who’s dealt with a lot of EAWs, and according to her there have been some cases in which the forms have not been filled out properly and in order to find out what the offence is, it has been necessary to make additional request. Some countries have used old forms relating to in absentia –decisions, which have made it necessary to make requests for the actual decisions. |

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| **France** | When France is the executing state it happens in certain circumstances that some more information are regulated from the issuing state. Typically these questions concern the facts, precision about the offence, the statue of limitation, the identity of suspect, and the evidence already collected by foreign authorities. Nevertheless, in many cases France makes application of the principle of mutual confidence. |
| **Germany** | First step is to encourage/force the german court to request further information. The more the better. If the request is not (fully) satisfied the chances to avoid extradition do increase. |
| **Greece** | The Greek authorities often ask for additional information before executing an EAW. The information concerns mainly issues like the place where the offence was allegedly committed (in order to examine if the offence was committed in the Greek territory), the time of the offence (relevant to the issue of the period of limitation), or the degree of involvement of the requested person. They often ask also for a copy of the relevant provision, which constitutes the legal base of the accusation against the requested person. |
| **Hungary** | No information. |
| **Ireland** | Both our Department of Justice, in the first instance, and the High Court, in the second instance, have been a very solicitous in seeking detailed information which is not apparent from the original request. We believe this to be a good practice. |
| **Italy** | Implementation of the Frameword Agreement of the EAW provides that the issuing State is obliged to issue a detailed report of the laws applicable to the case and any other appropriate information to identify the suspect. The Supreme Court has instead given a non binding interpretation of these requirements based on the EAW model;<br><br>The Italian Supreme Court assunmes that the issuing foreign judicial authority can modify “material errors” or request additional information when there are defaults in the EAW only before the hearing(this decision has been taken in a case in which the revision concerned wrong biographical data incorporated in the EAW and in the warning of the S.I.S. (Section 6, n. 13218 27March 2008-28March2008, Giuliano, magazine number 23891675) |
| **Latvia** | A public prosecutor shall conduct an examination in accordance with the procedures specified in Section 704 of Criminal Procedure Law. According to Section 704 (2) of Criminal Procedure Law if a request does not have sufficient information in order to decide a matter regarding extradition, the Prosecutor General’s Office shall request from the foreign state the necessary additional information for determining the term for the submission of information. An examination shall be completed within 20 days from the day of the receipt of an extradition request. If additional information is necessary for the examination, the term shall be counted from the day of the receipt of such extradition request. The Prosecutor General may extend the examination term. |
| **Lithuania** | Such judicial practice (that the Lithuanian courts request for additional information) is very rare and is met only in the exceptional cases (e.g., when there are serious doubts about the identity of the subjects of the EAW). If the defence advocates requested the courts to seek for additional information, usually the Office of General Prosecutor in the Republic of Lithuania would not agree and the Lithuanian courts would dismiss such requests. E.g., in one case the person was surrendered to Italy while he even had evidence that at the time of the offence in Italy he was in the UK. |
| **Luxembourg** | As far as we know, Luxembourg asks additional information when needed. Lawyers do not have the possibility to do much… |
| **Malta** | No particular issues to report in the issuing state. |
| **Netherlands** | It is very common that the prosecutor (*motu proprio* or because it was ordered to do so by the Amsterdam District Court) requests the issuing State for additional information. For example, because the EAW is unclear or incomplete or because the wanted person has submitted information or documents calling into question certain aspects of the EAW. In our experience the ADC is very reluctant |

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| | to refuse surrender simply because of a defect in the EAW. It follows from its practice that the issuing authority should always be given an opportunity to repair the defect by providing additional information. Only if, for whatever reason, it fails to do so (in a satisfactory manner) will the ADC refuse surrender. The ADC – in line with the Dutch Supreme Court in extradition cases – appears to take the position, however, that even in such a case the prosecutor is at liberty to submit a renewed EAW to the court for a fresh consideration (ECLI:NL:RBAMS:2011:BQ9849). |
| **Poland** | The court examines only the formal prerequisites and checks whether the form is properly completed and whether it is served together with the translation. The court may, however, request supplements. Thus, in the event that information provided in the EAW is not sufficient for the decision on surrendering the requested person, the Polish court may request the court issuing the EAW to supplement it within a prescribed period. After that time lapses without effect, the EAW is subject to consideration based on the earlier information |
| **Portugal** | Portuguese Courts usually ask for additional information in order to ascertain the whereabouts of the requested person (e. g. tax data; information regarding the requested person's criminal registration, voter registration, driver's license; name and address of the employer; last residence where he/she requested his/hers identity card). Although according to article 92/1 of the Portuguese Code of Criminal Procedure and article 2/3 of Law No. 65/2003 it is mandatory to translate to the Portuguese language any document written in a foreign language, if the defendant does to arise the question in a very strict period of time of up to three days, the acts depending on such document are considered valid. This softens the obligation to in fact provide the defendant proper information which is necessary to an effective defence, especially in cross-border cases. The Portuguese Supreme Court of Justice (proceeding No. 09P0685, 4.03.2009) emphasised that the lack of translation is considered composed in accordance to (namely) what is prescribed in article 123 of the Portuguese Code of Criminal Procedure. |
| **Romania** | |
| **Slovakia** | This is basically role of Police unit that realized the arrest to ensure that the arrested person is the right one. Of course, when the client is complaining about a different identity, then is the time for further identity check. But I haven´t hear that such a problem occurred. |
| **Slovenia** | Sometimes the investigation judge will demand further information from the issuing state, but it is exception from the rule. Usually there are no enquiries. The exception is when the identity of the subject cannot be 100% established. |
| **Spain** | Request for supplementary information will be taken depending on proper justification.<br>Article 55 of Law 23/2014 includes two cases where the request for further information will be admitted. Article 55: Conditioned surrender order. 1. When the offence on the basis of which the European arrest warrant is punishable by means of penalty of deprivation of liberty in perpetuity, the execution of the European order of detention by the Spanish judicial authority will be subjected to the condition that the issuing Member State allows for a review of the penalty or measure imposed or the application of measures of clemency to which the person is entitled aiming at a non-execution of such a penalty or measure. 2. Moreover, when the person against whom a European arrest warrant has been issued for the purpose of prosecution is a Spanish national or resident in Spain, surrender may be subject to the condition that the person, after being heard, is returned to Spain in order to serve imprisonment or deprivation of liberty measure against him in the issuing State. Compliance with such condition will be carried out to execute custodial sentences or measures involving deprivation of liberty measures. |
| **Sweden** | The threshold for requiring additional information is set relatively high. According to Chapter 2 Section 3 Act on executing an EAW, additional information may be requested only if the information is so insufficient that it cannot without considerable inconvenience serve as basis for the examination. As mentioned under Question 10 a), there is a possibility for the prosecutor to refuse execution on the basis of insufficiencies. |

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<tr>
<td rowspan="3">UK</td>
<td><u>England and Wales</u><br>Requests for further information are often made in EAW cases. It is almost impossible to categorize the requests made. Perhaps the most common type of requests are directed towards (i) the nature of the domestic offence(s); (ii) the sentence imposed (in conviction cases) or likely to be imposed (in accusation cases); (iii) the stage at which the domestic criminal proceedings have reached (if there is a suggestion on the face of the EAW that the person is requested for the purpose of questioning rather than trial); and (iv) the circumstances of in absentia convictions where there is a dispute as to whether the requested person had been notified of their trial. There are also requests made of certain jurisdictions where the Council of Europe CPT has expressed concern about the prison conditions in the requesting state, or there has been a pilot judgment by the Strasbourg Court. In particular, there have been serious concerns about the conditions in Greek, Italian, Romanian and Lithuanian prisons. Requests are made for assurances from the relevant authority in the territory of the requesting state that has responsibility for prisons to provide information as to which prison and in what conditions the requested person will be housed, either on remand or following conviction.</td>
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<td><u>Scotland</u><br>When a challenge is taken to the time taken to enforce the warrant, a chronology of events is often requested.<br>More importantly perhpas, whether through lack of funding or the absence of dual representation (or a point of contact) in the requesting state, the prosecuting authority seeking to execute will often be required by the court to seek additional information. This is particularly so given the nature of the human rights issues that arise, the requirement by Parliament through the Extradition Act (s.13, s,14, s. 21 and s.21A) that these rights be of the foremost importance, and the need for vouching in fact. As previously stated, evidence that corroborates the accused’s position can have a powerful impact and the Scottish courts have not been slow to request it.</td>
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<tr>
<td><u>Northern Ireland</u><br><u>Executing State</u>:<br>The courts in N.I. are willing to make enquiries when asked to do so and regularly send requests for information in the terms sought by the defence.<br><br><u>Issuing State</u>:<br>It is often difficult to receive a response to such requests. Delays in responding are common. Some requests are simply ignored. It is difficult not to have the impression that it depends on whose desk the request falls upon. There is little consistency of approach</td>
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| **Question 11 - What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?**<br><br>*b) What is the experience of defence practitioners in your Member State about the impact (in both the executing and issuing state, if there is dual representation) of additional information requested by the executing authority when your state is the issuing state?* | |
|---|---|
| **Austria** | Additional information requests often happen from common law countries. |
| **Belgium** | Of course the danger may exist that the executing Member state, when it goes about an important/influent national person and/or facts about sensitive national topics (i.e. to protect certain national financial activities, etc.), try to slow or impede the EAW by multiplying the requests for so called additional information expecting that this will discourage the judicial authorities of the issuing Member state to persevere…<br><br>Such a way of acting needs stronger rules on European level requiring that any additional question requested by the executing Member state has to be expressively and clearly motivated by the latter with a written and clear mention of the legal requirement(s) in its national EAW law whom justify these additional questions, and that in case of abuse the European Court may be requested to arbitrate the situation. |
| **Bulgaria** | No information because of the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | There is no additional requested by the executing authority. |
| **Cyprus** | As informed we do not often receive requests for additional information except from the UK authorities. |
| **Czech Republic** | In my experience Czech courts quickly provide the requested additional information. |
| **Denmark** | No information |
| **Estonia** | The authorities generally comply with requests for further information submitted by executing Member States |
| **Finland** | In my understanding Finnish requests are – again, save for possible exceptional cases – met without bigger problems. The prosecutors are well trained and requests are in my understanding not issued unless they meet requirements. According to a State Prosecutor the UK has, however, sometimes been eager to make additional requests especially regarding the status “charged”; i.e. has the requested person already been charged with something and therefore perhaps not quite understood the Finnish system. Other Member States have, according to her, not really made any additional information requests. All in all, this is not really an issue for the defence practitioners, since usually they are not aware of the EAW at this stage. |
| **France** | France, as issuing state always reply to additional information requested by the executing authority. |
| **Germany** | First, Germany does answer all requests as soon as possible. It is upon the german defence counsel to control the completeness by comparing it with the file records which have to be made available to the german defence counsel. |
| **Greece** | Greek authorities are often asked about additional information when Greece is the issuing State. Requests for additional information come usually from the U.K. and lately also Germany.<br><br>In the last period, the requested information often concerns not only the EAW itself but also the detention conditions in Greece, as well as matters related to judicial decisions "in absentia". |
| **Hungary** | No information. |

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| **Ireland** | We believe that the authorities are taking their responsibility seriously in this regard. |
| **Italy** | Reasonable. |
| **Latvia** | No information. |
| **Lithuania** | The Office of General Prosecutor in the Republic of Lithuania provides the additional information if it is requested by the executing states. |
| **Luxembourg** | No information |
| **Malta** | No particular issues to report. |
| **Netherlands** | None. |
| **Poland** | Quite often courts of Great Britain and Ireland turn to the courts issuing the EAW with a request for additional information. Often, they do it by themselves, without additional applications of defenders of the issuing state. They ask about different issues – mostly those associated with the unknown legal matters or those regulated otherwise (e.g. cumulative sentence, issues related to the stages of criminal proceedings and the obligations of the person sought) |
| **Portugal** | Please see point 11 a) above. |
| **Romania** | |
| **Slovakia** | As far I know the judicial cooperation and the judicial direct communication works very well. |
| **Slovenia** | No information. But I think that Slovenian authorities respond to any request from the executing state fairly quickly (based from my experience in extradition cases). |
| **Spain** | In effect, it is very common in countries such as United Kingdom but also sometimes in France. |
| **Sweden** | No general conclusion can be drawn from accessible information. |
| **UK** | **England and Wales**<br>Defence practitioners appear to rarely get involved in this process whether the UK court is the executing authority. |
| | **Scotland**<br>Extremely rare. One example is a request from the executing state about medical care within the Scottish prison system |
| | **Northern Ireland**<br>These requests are not dealt with by defence practitioners. Addition representation when there is dual representation would be between defence lawyers in each state. |

| **<u>Question 11 - What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?</u>**<br><br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | The Belgian judicial authorities replies in principle systematically to the additional questions asked by the executing Member states as well as they also ask all the relevant information to the issuing Member state. |
| **Bulgaria** | No information. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | Replies of Czech courts are in my experience quick and do not prolong the proceedings. |
| **Denmark** | The legal requirements and the question of proportionality must be examined |
| **Estonia** | No information |
| **Finland** | Not really. |
| **France** | No information. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | Our existing practice of seeking the information is a good one. |
| **Italy** | Urgent request of additional documentation to the legal authority of the issuing country. |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | Unfortunately, answers of the Courts are often incomplete. Lack of the commentary from the defense might be misleading. This results not from the malice of the courts but from the lack of understanding that the other court may not know basic assumptions of Polish criminal law and procedure. |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | See above. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **<u>England and Wales</u>**<br>The experience of all practitioners is that additional information from the judicial authority in the requesting state is a considerable assistance to all parties and the court in a wide variety of circumstances. Indeed, further information is often required for the court to determine the issues that arise at the extradition hearing in many cases. It is good practice for: (i) a point of contact to be identified at the judicial authority by e-mail; (ii) requests for further information to be discussed between the |

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| | parties before the preliminary hearing and approved by the court; (iii) the questions asked of the issuing judicial authority to be expressed clearly and succinctly. |
| | **Scotland**<br>As stated in (a) above, the courts are assiduous in requesting additional information when required. |
| | **Northern Ireland**<br>The courts in NI facilitate questions /requests for info. |

| **Question 11 - What kind of additional information may be requested by the executing authority? Is all the relevant information always requested?**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | No information. |
| **Belgium** | See answer under a) and b) |
| **Bulgaria** | I am not capable to define any problems and to offer respective solutions. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | For defence it is difficult to influence content of the additional information, which is directly and quickly exchanged between the Czech court and authority of another Member State (please take note that Czech courts, however, always use official translation for any communication to my knowledge). |
| **Denmark** | --- |
| **Estonia** | Training for prosecutors, judges and lawyers |
| **Finland** | Not really. |
| **France** | It would be efficient for the case, for the defense, that the lawyers shall be in copy of all the correspondences between issuing and executing state when additional information are requested. |
| **Germany** | No. |
| **Greece** | Training courses for the whole legal staff that is involved in the procedure of issuing and executing an EAW would contribute to a more accurate and complete filling in of the relevant forms with the needed information. |
| **Hungary** | No information. |
| **Ireland** | Defence practitioners are generally happy with the situation in this regard |
| **Italy** | The framework agreement should be modified with more obligations concerning documentation provided by the issuing State for the receiving State. |
| **Latvia** | No significant problems encountered as exchange of information between Member States is usually fine. |
| **Lithuania** | Effective dual representation (with the sufficient access to information and translation services) could solve the problems of not requesting relevant information. |
| **Luxembourg** | A better access to the file in both states would be helpful for the defense. |
| **Malta** | Nothing. |
| **Netherlands** | Not necessarily. |
| **Poland** | Certainly, strengthening of dual representation would allow defenders a better and fuller support of the Courts in asking the right questions and understanding the issue of rights of foreign courts for deciding to execute the EAW. |
| **Portugal** | Providing the requested person proper translation of all documentation related to his case is core to his/hers defence and should therefore not be seen as a "soft law" or a dispensable formality. Thus the need to reaffirm the effectiveness of article 8/2 of Council Decision 2002/584/JHA and article 3/2 of Law No. 65/2003.<br>Also any procedural deadline must be suspended while a proper translation is not provided to the requested person. |
| **Romania** | |
| **Slovakia** | I did a few times an analysis or some investigation about unclear fact that was required by the lawyer from the executing state. |
| **Slovenia** | It seems that this problem is solved adequately in Slovenia. |
| **Spain** | No. |
| **Sweden** | No information |

| UK | **England and Wales**<br>See above. |
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| | **Scotland** |
| | **Northern Ireland**<br>The introduction of a requirement to respond to requests for information made in line with the Framework decision within a permitted period, for example 21 days. |

| Question 12 - Compensation for unjustified detention<br>*a) What is the experience of defence practitioners in your Member State about the impact of a compensation scheme for unjustified detention (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* | |
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| **Austria** | The Austrian compensation scheme only applies if the person was arrested illegally. The Austrian ministry of justice has issued the opinion that the compensation of an illegal EAW is up to the issuing state. |
| **Belgium** | The Belgian law organizes a legal system of compensation for unjustified detention which also works for unjustified detention in the context of an EAW. However the level of the compensation is generally quite low and rather symbolic and it requires as key condition that the said detention was totally independent of the "own behavior" of the concerned person… which limits practically very much the scope of the system and its effectiveness.<br><br>Moreover any compensation of unjustified detention let entire the prejudice to the honor and reputation of the concerned person due to his/her arrest and detention in the context of the EAW. |
| **Bulgaria** | Victims of unjustified detention through execution of an EAW have the right to compensation under the rules of the Bulgarian Liability of the State and Municipalities for Damages Act (LSMDA). The impact of the existence of the LSMDA can be positively assessed because victims of unjustified detention through execution of an EAW often make use of the opportunities provided by the LSMDA. The only problem is that the amounts of the adjudicated compensations are not very high as a whole. |
| **Croatia** | |
| **Cyprus** | There is no compensation scheme for unjustified detention under transposing law 133(I)/2004. However the right to compensation for unjustified detention is enshrined in Article 5.5 of the European Convention of Human Rights, applicable in Cyprus by virtue of Law 39/62. It is also provided by Article 11.8 of the Constitution of Cyprus. In the case of Yiallourou v Nicolaou (2001) 1 CLR 558, the plenum of the Supreme Court decided that a right to compensation exists for every violation of human rights under Part II of the Constitution. Therefore the victim of unjustified detention through execution of an EAW has a right to compensation under Cyprus law. The level of compensation is up to the discretion of the Court subject to the criteria set out by the case law of the ECHR. |
| **Czech Republic** | When CZ is the executing state, the compensation scheme for unjustified detention does not apply if the criminal proceedings in the issuing state were unlawful. The respective act (Act no. 82/1998 Coll., about liability for damage caused by a decision or incorrect official procedure when executing public power) specifically states (in the Section 9) that if the requested person is in CZ in custody in the framework of the proceedings on the EAW, the damages for unlawful custody cannot be awarded (unless the damage in these proceedings was caused by the unlawful or incorrect procedure of the Czech authorities). |
| **Denmark** | Executing and/or issuing of and EAW is enforcement of power in a criminal mater, and per domestic law, there is a possibility of compensation – if acquitted |
| **Estonia** | The impact is minimal because the compensation scheme established by the relevant law in Estonia (became effective in May 2015) provides such restrictive conditions on compensation that the prospect of actually getting any meaningful compensation is virtually non-existent. |
| **Finland** | We don't have precedents or legislation regarding this issue specifically concerning the EAW, although general legislation obviously exists for compensation of wrongful imprisonment. However, we have a precedent – albeit already from 1991 – concerning detention on the basis of a request by Norway; KKO 1991:155, in which the Supreme Court stated that the detained person had the right to compensation for the time spent in detention in Finland, when the charges were ultimately dismissed in Norway, even though the detention order was based on a request by the Norwegian authorities. There's nothing to |

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| | suggest that this would not be the case when deciding the matter on an EAW basis, even though the most correct state to pay the compensation in my opinion would be the issuing state.<br>We don't have fixed schemes for compensation, but the State Treasury is the authority who decides as a first instance the amount of compensation. The normal amount awarded for suffering is nowadays between 120-150 €/day spent in detention. In addition, loss of income and other direct expenses can be compensated for. If the person concerned is not happy with the decision by the State Treasury the decision cannot be appealed, but he/she can file a claim against the state in a district court in normal civil proceedings. |
| **France** | The French criminal proceeding code makes provision for compensation in case of unjustified detention (art 149-150 +R26 à R40-22 CPP). This specific proceeding is independent of EAW regulation, and so has no impact and does not interfere with European matter. The plaintiff has to apply to the 1st President of the Court of Appeal where the prison is located in the 6 month of the verdict of not guilty. The decision of the first President in enforceable despite a possible appeal before the *"commission national de réparation des détentions*". France can be sentenced to pay money to have remains innocent people in jail as an executing state. |
| **Germany** | There is no experience about any EAW-case where this has been tried in Germany. Thereupon, there is no impact and – the compensation would only be 25 € a day. The compensation scheme would be quite difficult to be reached because "executing" does mean less responsibility. |
| **Greece** | Until 2001 the Greek courts almost never recognized a right to compensation for unjustified detention. After a conviction by the ECHR in 1997, the Greek legislator amended the relevant provisions of the Greek Code of Criminal Procedure so that it is now possible to award compensation for those who were unjustified convicted or detained.<br><br>According to the law, the granted amount can range between 8,80 to 29,35 euros per day (Art. 536 of the Greek Code of Criminal Procedure) both for material damage and non-material harm. Nevertheless, the courts can recognize also a higher amount of compensation if they consider it justified. For defining the amount of compensation the financial and family situation of the applicant is taken into account.<br><br>Requirement for awarding compensation is that the unjustified detained or convicted person has been acquitted. The decision about non execution of an EAW cannot be considered as an acquittal, so the relevant provisions of the Greek Code of Criminal Procedure are not applicable in cases where the requested person is released after being detained due to an EAW.<br><br>Furthermore, there are no cases reported where a requested person, after being acquitted in the issuing State, asserted claims against the Greek State for the time that he was detained in Greece in the context of an extradition- or an EAW-procedure. |
| **Hungary** | Since Hungarian authorities only execute an EAW, if later this turns out to be unjustified, the Hungarian state does not have any compensation liability. |
| **Ireland** | Controversially, we do not provide compensation in respect of wrongful detention, save in an exceptional category of miscarriage of justice cases. |
| **Italy** | With regard to compensation for wrongful imprisonment, the Court uses as criteria the ratio of the maximum amount available from legislator, the maximum duration of the sentence, and the actual amount of time served by the detainee.<br><br>The calculation is normally based on Euros 235,82 for each day of wrongful imprisonment. In the case of house arrest the figure of Euros 177,91 is applied. |
| **Latvia** | The question of compensation for unjustified detention is regulated by special Law "on damage compensation caused by unlawful or unreasonable acts of authorities, prosecutors or court". This law |

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| | provides comparatively short administrative proceeding to request and get compensation from the state for material damages (lost salary, legal costs) and regular civil proceeding to request compensation for non-material damages.<br>But there are no specific provisions for EAW cases. |
| **Lithuania** | No such practice is known, but according to the principles of compensation for unjustified detention, probably Lithuania would suggest the victims to ask for the compensation in the issuing state. |
| **Luxembourg** | We do not know of an impact of compensation for unjustified detention. There is a law in Luxembourg (loi du 30 décembre 1981 portant indemnisation en cas de détention préventive inopérante), which has existed for over 30 years. |
| **Malta** | There is no compensation scheme for unjustified detention when Malta is the executing state. Some form of compensation can only be obtained through redress to the courts proving that there was an illegality committed by local authorities in the execution of the EAW or if there is a fundamental breach of human rights. Following the above-cited case of *The Police vs Angelo Frank Paul Spiteri*, the defendant has recently sued the Prime Minister, the Minister of Justice and the Attorney General for compensation after the Judge refused to seek advice from the ECJ regarding his detention in Lithuania, which he alleged was known for its poor conditions.[21] |
| **Netherlands** | Compensation is possible if – and only if – the Amsterdam District Court has refused the surrender of the wanted person. If the EAW is withdrawn by the issuing State, for example, compensation is not possible even if the ADC has ruled that for this reason the motion of the prosecution to consider the EAW should be declared inadmissible (meaning the ADC has, to a certain extent, issued a decision in this case) (ECLI:NL:GHAMS:2012:BY4699). The ratio of this case law appears to be that compensation by the Netherlands is only opportune when its authorities can be “blamed” for the surrender not taking place. This is the case when the prosecution has made a wrong assessment by wrongfully (as in the EAW cannot lead to a successful surrender) submitting an EAW to the ADC. After all, the prosecution has the power to reject EAWs it believes will not be upheld by the ADC (*rauwelijkse afwijzing).* On the other hand, the Dutch authorities cannot be blamed when the surrender does not take place because the issuing State has withdrawn the EAW as it had no part in this decision. If such a case, the wanted person should claim compensation from the authorities of the issuing State. Oddly enough, however, compensation is also not possible when the physical surrender cannot take place because an injunction was ordered by the District Court in summary injunction proceedings (see *supra* question 9a).<br><br>The current compensation amounts are:<br>- €105,- per day at the police station (usually the first three days of the surrender detention);<br>- €80,- per day in a pre-trial detention facility (*huis van bewaring*);<br><br>If the issuing State has requested that the wanted person should – in the interests of the investigation in the issuing state – be prohibited from receiving visits, using a telephone or watch television and use the internet (*beperkingen*; see further *infra* question 16), the amounts mentioned above are raised by €20,- for every day that this was the case. |
| **Poland** | Receiving the compensation and redress for unjustified detention is possible in Poland though those proceedings are not very popular and are rarely used. Receiving the compensation and redress for |

[21] See separate cases:
Spiteri Angelo Frank Paul v L-Avukat Generali (filed before the Civil Court First Hall in its Constitutional Jurisdiction – case 45/2016);
Spiteri Angelo Frank Paul v L-Avukat Generali (filed before the Civil Court First Hall in its Constitutional Jurisdiction – case 23/2016);
Spiteri Angelo Frank Paul v L-Avukat Generali (filed before the Civil Court First Hall – case 360/2016)

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| | unjustified detention is possible if the detention or arrest was undoubtedly wrong. This includes situations when:(1) the arrest or the detention were made unlawfully or (2) when the circumstances known at the time of preventive detention, allow to evaluate the arrest or detention as a fair, however all the circumstances of the case, in particular the content of the final judgment, enable evaluating that the use of this preventive measure was unnecessary. |
| **Portugal** | Please see point 1 a) above. According to Portuguese jurisdiction (namely articles 225 and 462 of the Portuguese Code of Criminal Procedure and Law No. 67/2007 of 31 of December) an arrested person has the right to demand a compensation for the damages suffered, when it is proven that he/she (i) was illegally deprived of freedom, (ii) was not the agent of the crime or (iii) acted justifiably. Gross procedural error may also determine the right to be compensated. Such matter is subject to a civil proceeding. |
| **Romania** | |
| **Slovakia** | According to the Act no. 514/2003 on liability for damage caused by a decision or incorrect official procedure when executing public, in the case Slovakia is an executing state, the compensation for unjustified detention does not apply except the the decision of Slovak authority was unlawful. |
| **Slovenia** | The compensation scheme is the same as in any other case concerning unjustified detention. The basis for a compensation is a written demand to the State attorney's office and if a settlement is not reached the subject must file a civil lawsuit against the Republic of Slovenia. This will be decided in the regular civil proceedings (as any other claim for compensation). |
| **Spain** | No specific compensation exists. One must refer to the general rules on State financial liability concerning the administration of justice's functioning. |
| **Sweden** | Applications for compensation are handled by the Chancellor of Justice. If an application is rejected there is a right to initiate court proceedings. The practice of granting compensation is a restrictive. Compensation may be granted only if deemed evident that the detention decision was taken on incorrect grounds. In this regard two decisions can be mentioned.<br><br>A judgment from the Supreme Court (Judgment of the 22 December 2015, Case T 2177-14) concerned compensation for surrender for the purpose of executing a custodial sentence when the sentence in the issuing state was subsequently abated. The national execution decision had been delivered in absentia and without a prior issuing of a summons to appear in court. As these circumstances were known when the EAW was executed, the Supreme court found that the detention decision was not taken on incorrect grounds. In this regard it shall be mentioned that the Act on executing an EAW has recently been amended; today, the EAW would most likely have been refused.<br><br>In a decision by the Chancellor of Justice (JK Dnr 5655-12-41) the applicant was denied compensation for detention during an execution procedure when surrender was not executed due to a withdrawal by the issuing state. |
| **UK** | **England and Wales**<br>There is no compensation scheme available in the UK for unjustified detention. The only possibility would be to bring a claim against the relevant police force for damages for false imprisonment. To our knowledge, no such claim has been brought arising from an arrest and detention pursuant to a certified EAW. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>There is no compensation for unjustified detention in Northern Ireland per se. The arrest, detention and hearing of a request for extradition is a grounded on the principle of mutual recognition. It is accepted that if the eaw relates to the individual the normal procedure should be followed and the RP is entitled |

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| | to raise a bar to extradition. In the event that a person is detained in error they would have a claim for compensation to the civil courts.<br><br>In the event that the eaw should not have been issued by the issuing state the cause of action would lie in the issuing state. This would be a matter to be pursued by a lawyer in the issuing state, particularly where there has been dual representation.<br><br>This is not a scenario which appears to have arisen in Northern Ireland. |

| **Question 12 - Compensation for unjustified detention**<br><br>*b) What is the experience of defence practitioners in your Member State about the impact of a compensation scheme for unjustified detention (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* | |
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| **Austria** | If Austria is the issuing state, there may be a compensation between 20 and 50 euros per day of detention. Moreover, the compensation is reduced if the suspect has committed a fault himself (e.g. by giving wrong information himself). The amounts awarded are ridiculous. |
| **Belgium** | The compensation schemes for unjustified detention vary so much between the Member states and the subject is of such an importance, that it would legitimately require an European unified regulation, under the form of a Directive or a regulation that would integrate a pertinent solution for restoring the honor and reputation of the unjustified arrested/detained person. |
| **Bulgaria** | No information because of the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | |
| **Cyprus** | There is no information on this topic. There is no case law on compensation relating to unjustified detention through execution of an EAW. |
| **Czech Republic** | The standard compensation scheme for the criminal proceedings apply (the requested person could apply for damages due to the unlawful criminal proceedings requesting in particularly compensation for defence costs, loss of income or immaterial damage). The application for the damages should also include the impacts on the life of the requested person in the executing state (given the lack of damages scheme when CZ is the executing state as described in the answer a)). The Ministry of Justice is assessing the damages application and is usually very restrictive in granting the damages, thus the damaged person has to turn to a court. |
| **Denmark** | Executing and/or issuing of and EAW is enforcement of power in a criminal mater, and per domestic law, there is a possibility of compensation – if acquitted |
| **Estonia** | Generally, same as (a) above. However, the conditions for getting compensation are less restrictive when Estonia was the issuing state, so suspects who have been subjected to unjustified detention actually have a realistic chance of getting some compensation. Compensation is still limited to direct financial loss, and a fixed ceiling of non-monetary damages (equal to about 30 EUR for each day spent in detention). |
| **Finland** | Again, we don't have precedents or legislation regarding this issue specifically concerning the EAW. However, there is a precedent – KKO 2000:1 – in which the Supreme Court stated that the person concerned, who had been detained in the USA on the basis of an extradition request by the Finnish authorities and when the charges were ultimately dismissed in Finland, he was entitled to compensation also for the period of time which he was detained in the US. There's nothing to suggest that this would not be the case when deciding the matter on an EAW basis. Regarding the amounts I refer to the answer above. |
| **France** | As an issuing state, it seems that France couldn't be responsible for unjustified detention decided by foreign authorities. There is no jurisprudence on this point. |
| **Germany** | I don't know about any such case. |
| **Greece** | In case that the requested from the Greek authorities person is acquitted in Greece after the execution of the EAW, the Greek Courts take into account for defining the amount of compensation also the detention time of the requested person in the executing state (see, for instance, the decision No. 5132/2015 of the High Regional Court of Athens). |
| **Hungary** | In this case, it is not relevant whether it was an EAW or arrest on other grounds, if the procedure is terminated or the suspect is released, compensation is payable after the time spent in preliminary arrest upon the claim of the suspect. |

| Ireland | See reply to (a) above. |
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| Italy | There are similar problems. |
| Latvia | See above. |
| Lithuania | No such practice is known, but according to the principles of compensation for unjustified detention, probably Lithuania as the issuing state would pay the compensation. The problem might be that the amounts of compensation in the Lithuanian judicial practice are not very high. And according to the Article 4 of Law on the Compensation for Damages Caused by Illegal Actions of Institutions of Public Authority and Representation of the State and the Government of the Republic of Lithuania, the amounts of compensation possible to get without judicial litigation from the Ministry of Justice are limited to 2900 Euro for pecuniary damages and 1500 Euro for non-pecuniary damages. Such compensation would be realistic if the subjects of the EAW were not found guilty, but it would not be realistic to ask for the compensation when the subjects of the EAW were found guilty, but they claimed that the EAW was not proportional. |
| Luxembourg | Same comments |
| Malta | Again, there is no compensation scheme however one could hypothesize a claim for damages to be brought against the Government of Malta if it can be shown that the exercise of the administrative authority in issuing the EAW was wrongful, abusive or malicious, resulting in pecuniary damage to the person being surrendered.<br><br>A distinction must however be made between wrongful, abusive or malicious behavior on the one hand and disproportionality in the issuing of an EAW on the other hand. Whereas we have highlighted cases of what is felt to be disproportionate EAWs, to be able to consider a scheme whereby one may claim damages, a clear distinction must first be made between the two kinds of behavior, as this would otherwise cause problems whereby all EAWs issued risk becoming subject to claims for unjustified detention. Thus such a scheme would not entertain claims of proportionality, but only claims of wrongful, abusive or malicious behavior. |
| Netherlands | As indicated above, all time spent in surrender detention in the executing state willbe deducted from the time to be served in case of a conviction (see supra question 3b). Similarly, in case of an acquittal, this time qualifies for monetary compensation on an equal footing with time spent in pre-trial detention in the Netherlands (see art. 89, par. 2 of the Dutch Code of Criminal Procedure). |
| Poland | See a) above. |
| Portugal | See previous answer. |
| Romania | |
| Slovakia | In such case according to the Act no. 514/2003 on liability for damage caused by a decision or incorrect official procedure there is a regular compensation scheme for the criminal proceedings apply (the requested person could apply for damages to the unlawful criminal proceedings requesting in particularly compensation for defense costs, loss of income or immaterial damage). The application for damages should include also the impacts on the life of the requested person in the executing state. But in the daily practice the Ministry of Justice usually tries to avoid the responsibility and the compensation procedure lasts a few years. |
| Slovenia | No information. |
| Spain | Please refer to the answer of the previous question. |
| Sweden | Compensation is granted for unjustified detention served in Sweden. The compensation procedure is generally well functioning. |
| UK | **England and Wales**<br>See above. |
| | **Scotland**<br>No information |

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| | **Northern Ireland**<br>No information. |

| **Question 12 - Compensation for unjustified detention**<br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | Yes (it exists a compensation system) and No, since its conditions of application are to restrictive not satisfying enough. |
| **Bulgaria** | No information. |
| **Croatia** | The right to compensation of damages for unjustified detention has person who, due to an error or the unlawful action of state authorities, was ar¬rested or detained without legal grounds, or was provisionally confined, detained or kept in prison for a longer period of time than is prescribed by law. Before bringing a civil action for the compensation of damages, the injured person is bound to submit his request to the Ministry of Justice in order to reach a settlement on the existence of damage and the type and amount of compensation. If the request for the compensation of damages is not accepted or if the Ministry does not decide on it within a term of three months of the request being submitted, the injured person may bring a civil action for the compensation of damages with the court having jurisdiction. If a settlement was only reached on one part of the claim, the injured person may bring a civil action regarding the rest of the claim. A civil action for the compensation of damages shall be brought against the Republic of Croatia. |
| **Cyprus** | No information. |
| **Czech Republic** | Not in my opinion. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | When charges are ultimately dismissed – or even in cases when the person is found guilty but receives a fine or a suspended sentence and has been detained for a longer period of time – the state usually pays compensation without unnecessary hassle. Seeking compensation is quite simple, the State Treasury has specific forms for this, and it makes the decision usually in ca. one month, and if the payment is made later, also penal interest. |
| **France** | No information |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | The amount of the compensation is examined case by case, if no exact loss of income can be proven, there is an average amount which is sentenced. |
| **Ireland** | It obviously would be preferable that persons whose lives have been disrupted by being the subject of a request for surrender which ought not to have been made in the first instance, were restored to the position they would have been in. To wrongfully uproot somebody from their home, job and family for a period of detention, perhaps of a lengthy nature, in the Requesting State, prior to their ultimate acquittal, should be compensatable. |
| **Italy** | No information |
| **Latvia** | No information. |
| **Lithuania** | Good practice is that the victims of unjustified detention could ask for the compensation in the Ministry of Justice without judicial litigation. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Even if for the sake of the argument the detention is unjustified, the detention period itself is brief when Malta is the issuing state. |

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| **Netherlands** | We believe in general, the Dutch compensation system is fair. It should be expanded, however, to also include compensation for detention when, in the end, the surrender cannot take place because an injunction was ordered by the District Court in summary injunction proceedings (see above sub a) |
| **Poland** | It is favorably that wrongly arrested may seek the compensation and redress for unjustified detention. However, the amounts ordered do not correspond to real ailments that a person wrongfully detained had to bear (approx. EUR 25 per day). |
| **Portugal** | As a matter of fact it is very difficult to achieve any kind of compensation for unjustified detention. Although it is legally prevue, there is no tradition to compensate the damages arising for the above situation. This is not only regarding the EAW, but spreads itself for all of the kind of detentions. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | No information. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>See above. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 12 - Compensation for unjustified detention**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
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| **Austria** | Compensation to a suspect should be offered by the executing state. The compensation amount must be sufficient. |
| **Belgium** | See answer b) |
| **Bulgaria** | Court practice is to be changed in the direction of making the compensations more equitable by increasing the amounts thereof. |
| **Croatia** | |
| **Cyprus** | No information. |
| **Czech Republic** | It is advisable to establish the right to damages in EAW proceedings at the EU level (leaving the details up to the national law) and determine in which Member State (issuing or executing) this right applies. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | No specific problems in Finland relating to this. |
| **France** | Practitioners would like European authorities to uniform the different system of compensation for unjustified detention. |
| **Germany** | No. |
| **Greece** | A uniform regulation on a European level would be in the positive direction.<br><br>The issuing state, in which the main process will take place (in case of an EAW for the purpose of prosecution) or where the sentence will be executed (in case of an EAW for the purpose of executing a custodial sentence or detention order), should be responsible for defining the compensation amount in case of a final acquittal of the requested person. |
| **Hungary** | No information. |
| **Ireland** | See reply to (c) above. |
| **Italy** | An increase of the amount of compensation due to the unfair deteinment as a consequence of the violation of fundamental human rights. |
| **Latvia** | In order to submit a civil claim, person shall pay a fee. Amount of the fee depends on the amount of compensation requested. In my opinion, person should be dismissed of paying a state fee, if the person is a victim of unjustified detention through execution of an EAW. |
| **Lithuania** | It would help to ensure the principle of proportionality in issuing the EAW, if it were realistic to claim for compensation when the EAW was not proportional (e.g., when the subjects of the EAW were detained in the executing state, then surrendered, interviewed and released from detention in the issuing state). |
| **Luxembourg** | No information |
| **Malta** | No particular solutions. As suggested above, creating a compensation scheme for unjustified detention would be problematic. Until and unless the issue of proportionality is tackled, proposing a compensation scheme remains a purely academic question as such a scheme will not solve the problem. |
| **Netherlands** | See above sub c. In addition, we believe that issuing State should provide for a compensation scheme in case of a withdrawal of the EAW. |
| **Poland** | The motion for the compensation and redress for unjustified detention must be justified. The obvious illegitimacy of the arrest, as well as evidence of all the costs and ailments arising in this scope shall be indicated. |
| **Portugal** | Because there are no lack of law, or, at least, the actual law should be sufficient to assure the proper compensation. The courts must change the narrow way they impose, to consider the true fact that to an unfair detention, must correspond a proper compensation. |
| **Romania** | |

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| **Slovakia** | |
| **Slovenia** | There should be a specific procedure that would deal only with unjust detention compensation claims (not specifically only with cases concerning EAW). |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>See above. |
| | **Scotland**<br>This is an area which could benefit from a European fund for those affected; ensuring a consistency of approach. |
| | **Northern Ireland**<br>No information. |

| **Question 13 - SIS alerts remaining active**<br>*a) What is the experience of defence practitioners in your Member State about the impact of an active SIS alert on a client where a Member State has already refused to execute an EAW request in respect of that person (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* | |
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| **Austria** | If there is a remaining SIS alert, Austria considers it to be a request for surrender proceedings and surrender detention. If the EAW was refused once, the suspect may therefore still face trouble with the authorities, even though he / she may later on show that the SIS alert was wrong. |
| **Belgium** | Such a case appears to happens quite rarely and when such thing happens contact may be taken with the Belgian Prosecutor's office to solve quickly the matter. |
| **Bulgaria** | No information. |
| **Croatia** | |
| **Cyprus** | Cyprus is not yet part of the Schengen area and therefore there is no relevant experience of Cypriot defence practitioners. In my opinion it is very unfortunate that the SIS alert remains active after the judicial authorities of the executing state refused to execute an EAW. This essentially means that the subject of an EAW can be arrested, detained and face new proceedings for execution of the same EAW in any other Member State of the EU. This may constitute an infringement of the right to liberty and security of the person guaranteed by the European Convention of Human Rights and the Charter of Fundamental Rights of the EU. Article 6.1 of the ECHR provides that criminal a charge must be determined within a reasonable time. The issuing of an arrest warrant falls within the definition of a "criminal charge" according to the case law of the ECtHR. Article 6.1 may be violated if an EAW remains active for an indefinite period of time, after the authorities of a Member State decided against its execution. It would be just and reasonable for the requested person to be removed from the SIS alert once the judicial authorities of a Member State decided not to execute the EAW. |
| **Czech Republic** | When CZ as the executing state refuses to execute the EAW, the EAW is not cancelled as the cancellation has to be done in the issuing state. Therefore, clients are advised to stay on the territory of CZ as they may be arrested and subject to new EAW proceedings, if they move to another Member State while the EAW is still valid. |
| **Denmark** | No information |
| **Estonia** | The problem is serious, and it effectively means that even if Estonia has refused to execute an EAW, the person cannot leave Estonia without the risk of being arrested again in another Member State. |
| **Finland** | Unfortunately (or fortunately) no experience of these kinds of matters in Finland. However, after having discussed the matter with a State Prosecutor, she told me that there had been two quite recent cases in which another Member State had refused to extradite and they had had no impact for the Finnish authorities to handle a new request. |
| **France** | If France has refused to valid an EAW the circumstances of an active SIS alert will not have any effect on the French judges who will consider the first refusal as a precedent. |
| **Germany** | There is no (legal) automatism and acceptance of other member state's decisions. Maybe, it would be easier to achieve a bail solution and/or encourage the court to look at the case very carefulls.. However, the german courts would come to their own decision under german EAW-law. |
| **Greece** | In case that the execution of an EAW is refused by the Greek authorities, the police is informed and the relevant decision about the non-execution of the EAW is noted in the system. That means, that the Greek police authorities will still know that this person is subject to an EAW, but -due to the decision of the Greek judicial authority to refuse the execution of the EAW- they will not arrest him. |
| **Hungary** | In such cases the arrest is proceeded, but the SIRENE offices make a prompt conciliation the data regarding the client and make the statement of facts clear. |
| **Ireland** | The general view in Ireland is that even if a request for surrender is refused in Ireland, there is a danger that the same request could be made in another member state. This has had the effect of restricting |

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| | the travel entitlements of many persons where, for instance, the Irish Court has taken the view that the prison conditions in the Requesting State are so poor as not to justify surrender to that state. There is not a guarantee that a third member state would not make that order.<br><br>A scheme should be introduced to ensure that such orders are respected on a basis akin to *ne bis in idem* and obeyed to support the principle of legal certainty throughout the Union. |
| **Italy** | An Italian national was the subject of an EAW issued by Romania. The Italian Ministry of Justice rejected the request. The Framework decision does not provide guidance on how a third country member state should behave when the receiving State has rejected the request. In this case the Italian national was living in another Member State and he could have been arrested there, because his name was on the SIS. |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | We know indeed that the remaining of the SIS alert is a problem. There was a case when France requested the arrest of a person through an EAW. Thanks to an effective defense and a comprehensive judge, the Luxembourg resident of French nationality was released, after declaring he would comply voluntarily with all requests from a French investigating magistrate to be heard.<br>Two weeks later he was arrested a Francfort airport in Germany, as the SIS alert was still in vigour and this time he was imprisoned until he was remitted to the French authorities. |
| **Malta** | There are little or no problems that can be registered, other than the fact that SIS alerts could pose a serious limitation on intrastate travel. |
| **Netherlands** | - |
| **Poland** | There is a problem of active alerts in the SIS system. On the Polish side it is due to the lack of full synchronization between different institutions, even within a single court.<br><br>Probably the introduction of clear regulations indicating the person responsible for the removal of information and its appropriate timeframe would allow improvement of this system.<br><br>Poland established the shortest term (48h) to provide the original EAW, from the moment of detaining the person prosecuted via the SIS. |
| **Portugal** | There is no official data provided. But it doesn´t seem to be a problem in Portugal. |
| **Romania** | |
| **Slovakia** | It is always an uncertain situation for the person, when the executing state refused to execute the EAW and there is no sureness if the EAW has already been cancelled as the cancellation has to be done by the issuing state. |
| **Slovenia** | These cases do appear from time to time but only very rarely. |
| **Spain** | Negative experience. Unjustified detentions have taken place. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>The experience of defence practitioners is almost universal – there is no mutual recognition of decisions across the EU, and therefore the fact that one member state may have refused to extradite a requested person has no impact on the decision by the NCA to certify a warrant. The view is taken that a court in England will decide the merits of the extradition regardless of the decision of another tribunal in another member state. |
| | **Scotland**<br>Experience of this is limited to advising clients that a decision in their favour not to execute is not necessarily the end of the matter and that they can be arrested elsewhere should they travel beyond this jurisdiction. |

| | **Northern Ireland**<br>No information. |
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| **Question 13 - SIS alerts remaining active**<br><br>*b) What is the experience of defence practitioners in your Member State about the impact of an active SIS alert on a client where a Member State has already refused to execute an EAW request in respect of that person (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* | |
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| **Austria** | The refusal to execute an EAW does to my experience not impact on the existence of the EAW, i.e. the refusal to execute an Austrian EAW does not lead to a revocation of the SIS alert. |
| **Belgium** | Idem as under a) |
| **Bulgaria** | No information because of the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | |
| **Cyprus** | As earlier said the fact that the SIS alert remains active after refusal of the authorities of the executing State to execute the EAW, severely restricts the right to liberty and security of the person who continues to face the danger of arrest and detention in any other Member State of the EU. |
| **Czech Republic** | When the executing state refuses to execute EAW issued by a Czech court, the SIS alert remains active for the purpose of movement of the requested person to another Member State, where the EAW is still applicable. Therefore, clients cannot move in such case freely and are advised to remain in the executing state. Only when the EAW is withdrawn in CZ, the SIS alert is cancelled. |
| **Denmark** | No information |
| **Estonia** | Same as (a) above |
| **Finland** | See above. However, depending on the grounds on why extradition was refused, I would be inclined to suggest that the Finnish authorities could/would withdraw their request. And, if extradition in another Member State is refused, there would always be the possibility of appealing the underlying detention order in Finland, depending obviously on why extradition was refused. We had a decision already in 2007 by the Helsinki Court of Appeal (HelHO 2008:21; http://finlex.fi/fi/oikeus/ho/2008/helho20082112 ) where the Court of Appeal assessed a situation in which a person who had been detained in absentia in Finland for aggravated frauds. The detained person had allegedly committed fraudulent acts against Finnish complainants through his companies in Spain by selling the shares, which in practice were worthless. The detained person in question had already been convicted of the same kind of fraudulent acts in Augsburg, Germany, committed against German complainants, and was currently serving his sentence there. The German court refused extradition due to *ne bis in idem*. The Helsinki Court of Appeal confirmed that it was a question of the same chain of events and that the actions of which the suspect was detained for belonged to a set of concrete circumstances which were inextricably linked together. The detention order was thereby overturned and the Supreme Court, the State Prosecutor having appealed the decision, confirmed this conclusion. It is my understanding that the EAW was thereafter withdrawn. |
| **France** | In this case, it is the practice of the executing member state that will prevail over the willing of French authorities. Nevertheless, it is still possible for the no reject person to invite the SIS system to withdraw all informations about him if one member state has refused to valid the EAW. |
| **Germany** | You always need to solve the basic criminal case of the issuing state. One refusal might ease the possibility of (out of court) settlements in the criminal case. However, german Prosecutor's Offices are do not get to impressed so fast by refusal decisions of other member states. |
| **Greece** | Greek authorities never remove the SIS alert after a decision of another member state not to execute an EAW. |
| **Hungary** | In such cases the arrest is proceeded, but the SIRENE offices make a prompt conciliation the data regarding the client and make the statement of facts clear. |
| **Ireland** | See reply to (a) above. |
| **Italy** | There are similar problems. |

| Latvia | No information. |
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| **Lithuania** | No information. |
| **Luxembourg** | There is no special experience on that topic. The fact that the SIS alert is still in place may be known thanks to dual representation. It is thus of tremendous importance for defense attorneys to liaise with the lawyer in the issuing state , to try and understand the reason for being in the SIS system and try to get rid of the alert if possible. |
| **Malta** | Same as (a) above. |
| **Netherlands** | None. |
| **Poland** | |
| **Portugal** | See answer a) |
| **Romania** | |
| **Slovakia** | Usually the Slovak court remain the EAW valid and therefore the SIS alert remains active for the purpose of movement of the requested person to another Member State where the person could be arrested and there could be started a new EAW procedure. |
| **Slovenia** | No information. |
| **Spain** | Please refer to the answer of the previous question. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>See above. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **<u>Question 13 - SIS alerts remaining active</u>**<br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
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| **Austria** | No information. |
| **Belgium** | Nothing specific to mention |
| **Bulgaria** | No information. |
| **Croatia** | The court shall without delay notify the issuing authority of the final decision to surrender the requested person and also national office S.I.R.E.N.E., police organization unit - the single national contact point for the exchange of additional information related to the data from the Schengen Information System (SIS s ). This organizational unit performs announcement, updates and suspension of international arrest warrants and other writ in the Schengen Information System (SIS), prepare and implement the handover and / or extradite a person, act upon the request of the Member States of the Schengen area and the authorities in the Republic of Croatia, and care, between others, for smooth, rapid and lawful communication between the member states of the Schengen area and the authorities in the Republic of Croatia. |
| **Cyprus** | No information |
| **Czech Republic** | No. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | Not really. |
| **France** | No good practice. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | See reply to (a) above. |
| **Italy** | No Information |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | No. |
| **Portugal** | |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | No information. |
| **Spain** | No. |
| **Sweden** | No information |
| **UK** | **<u>England and Wales</u>**<br>See above. |
| | **<u>Scotland</u>**<br>No information |
| | **<u>Northern Ireland</u>**<br>No information. |

| | **Question 13 - SIS alerts remaining active** |
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| *d)* | *Do you have any solutions to the problems defence practitioners may have encountered?* |
| **Austria** | No information. |
| **Belgium** | SIS are centralized on European level and all solution to eliminate totally any undue remaining SIS is to be ruled at European level. |
| **Bulgaria** | I am not capable to define any problems and to offer respective solutions. |
| **Croatia** | |
| **Cyprus** | No information |
| **Czech Republic** | Cooperation within the dual representation and seeking of cancellation or withdrawing of EAW in the issuing Member State (referring, if possible, also to the grounds of non-execution applied by the executing Member State). |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | In my opinion, if and when mutual trust is something that is considered a very high value, there should be no reason as to why decisions on not to extradite by other Member States should not prevent the case to be handled anew, at least as a starting point. There's really not much left of freedom of movement if a person is refused to be extradited perhaps multiple times by different Member States, but the EAW continues to be in force and the person in question therefore always runs risk of being detained and subject to extradition proceedings when travelling to another Member State. The solution would be to try to extend the mutual trust regime also to EAW cases, obviously bearing in mind that new evidence may appear etc. |
| **France** | As a solution to the lack of coordination between SIS system and the authorities of the Member States, defence practitioners have to request systematically the withdrawal of the SIS alert concerning clients who were targeted by an EAW that has been refused by judges. |
| **Germany** | One could think about a ne bis in idem solution if one member state already has refused extradition in a way that one refusal decision would mean 1. Automatic deletion of the SIS alert 2. No allowance for a new SIS alert / EAW in the same case – wishful thinking. |
| **Greece** | The fact that a SIS alert remains active despite a Member State having already refused to execute an EAW request in respect of a certain person, should not be considered as problematic. The decision of a Member-State not to execute an EAW cannot have a European-wide "ne bis in idem" effect, in a way that prevents the execution of the same EAW in any other state, since such a decision concerns only the prevailing executing state. In this respect, it should be taken into consideration that the grounds for a refusal are often country-related. For instance, an EAW can remain unexecuted in a certain state because in this state the offence is statute-barred or because the described offence is not punishable according to its law (in case of an offence other than the ones described in Art. 2 par. 2 of the FD). That means that the SIS alert should stay active even after the refusal of a Member State to execute the relevant EAW.<br><br>On the other hand, a "ne bis in idem" effect should be accepted in respect of the same member-state that refused to execute the EAW. The member states should guarantee that after a decision by their authorities that refuses the execution of an EAW, the requested person will not be arrested again on the basis of the same EAW in the same state. |
| **Hungary** | No information. |
| **Ireland** | See reply to (a) above. |
| **Italy** | There could be an amendment to the Framework agreement that makes it effective for all member States to respect the decision of the receiving State and not to proceed with the request for arrest. |

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| **Latvia** | No significant problems encountered as the problem is not widely spread in Latvia. |
| **Lithuania** | If one Member State had already refused to execute the EAW request, the information about such refusal with its main arguments should also be included in SIS in order to help the subject of the EAW to defend against the same defects of the EAW in other Member States. |
| **Luxembourg** | No information |
| **Malta** | Nothing to report. |
| **Netherlands** | - |
| **Poland** | |
| **Portugal** | If such a problem occur the only solution it's to clarify as soon as possible, and, certainly, to compensate the defendant for the damages suffered. |
| **Romania** | |
| **Slovakia** | There is a space for a lawyer to ask the issuing Slovak court to withdraw the EAW when it was refused by another Member State. |
| **Slovenia** | No. In Slovenia (at least as an executing state) it seems that this is not an important problem. |
| **Spain** | No solution is available. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>Until such time that decisions to refuse to extradite are mutually recognised in all other member states, the only solution is to deal with the problem at source by identifying a local practitioner familiar with the judicial authority and instruct them to negotiate with the court in an attempt to resolve the matter, either by arranging for the voluntary return of the requested person or in some other way compromising the proceedings. |
| | **Scotland**<br>If a country has judicially determined the matter and refused to execute, that should be the end of the matter. Prosecuting authorities in the issuing state should not be allowed a "second bite at the cherry" and the threat of further proceedings hanging over a person for an indeterminate period is surely unfair. That person is effectively confined to the UK and naturally inhibited from working or conducting business abroad (or enjoying a break from the rain). |
| | **Northern Ireland**<br>No problems encountered |

| **Question 14 - Multiple requests for EAW for the same person**<br><br>*a) What is the experience of defence practitioners in your Member State about the treatment of multiple requests for EAW for the same person (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* | |
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| **Austria** | Austria has transposed Article 16 of the Framework Decision word by word. However, there is no particular experience as regards the practice of multiple requests for EAWs. |
| **Belgium** | The Belgian lawmaker has transposed literally the provision of article 16 of the Framework Decision into the Belgian law EAW (see article 29 of the law of 19 December 2003).<br><br>The Belgian law mentions that the Belgian Prosecutor may request the opinion of Eurojust about the choice to make.<br><br>The Belgian judges follow the factors of choice of article 16 of the Framework Decision since they were thus transposed as such in the Belgian law on the EAW. |
| **Bulgaria** | Article 46 (1) of the EEAWA stipulates that, if multiple requests come from several Member States, then due consideration is to be made of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and the purposes thereof. The rule is obviously a verbatim reproduction of the respective FD provision. I am not capable to provide information about any specific experience of defence practitioners in my country on these issues. |
| **Croatia** | |
| **Cyprus** | No information |
| **Czech Republic** | The Act 104/2013 sets rules for such case (in Section 217). The court assesses conditions for surrender for every EAW. If they are met in case of more EAWs, court determines to which Member State the requested person shall be surrendered. When doing so, the court shall consider all circumstances, in particularly seriousness of criminal offences and crime scenes, dates of issuing the EAWs, their purpose (whether the criminal prosecution or execution of the sentence of imprisonment). The court may at the same time grant consent to surrender the requested person to another Member State. |
| **Denmark** | No information |
| **Estonia** | According to the law, if several states request the surrender of a person, a court shall decide which European arrest warrant is executed. The decision shall be based, primarily, on the seriousness and time and place of commission of the criminal offences committed by the person, the order in which the European arrest warrants were submitted and whether the warrants have been issued for conduct of pre-trial proceedings or for enforcement of a court judgment which has entered into force. If necessary, a court may ask the advice of Eurojust. In practice, there have been no instances of competing requests, so the rules have not been tested. |
| **Finland** | Unfortunately very little experience relating to this. Again, having discussed the matter with a State Prosecutor, she told that she didn't remember any competing requests for the same offence; competing requests have, however, been handled for completely separate offences, but these don't perhaps raise the same kinds of issues. She also told that it would be difficult to predict in advance how competing requests for the same offence would be treated, but perhaps as a general idea, consideration would be given to which country has the most confluences to the offence in question, possibly the position of the complainants etc. |
| **France** | When France is executing state where several requests for EAW for the same person are pending, the situation is ruled by article 695-42, *Code de Procédure Penale*, the *Chambre de l'Instruction* takes the decision. The criteria are regarding 695-42 (Framework decision implemented) seriousness and place of the offences, the respective dates of EAWs and whether the warrant has been issued for the |

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| | purposes of prosecution or for execution of custodial sentence or detention order. The jurisprudence confirms the criteria: *Cassation Criminelle* 24 aout 2012. Article 695-42 also provide for consultation of Eurojust in case of conflict of several EAW. |
| **Germany** | It is in the discretion of the german authorities very difficult to be influenced by defence counsel. |
| **Greece** | In case of multiple EAWs, the responsible authority (i.e. the local Regional High Court) shall decide which EAW will be executed. The criteria that the court should take into consideration are the ones that are described in the Framework Decision: the seriousness and place of the offence, the dates that the EAWs were issued as well as the purpose of the EAW.<br><br>In case of a conflict between an EAW and an extradition request from a non-member-state, responsible authority for the question which request will be fulfilled is the Minister of Justice. He has to take into consideration not only the above criteria but also any criteria that are described in the relevant extradition treaty with the third country.<br><br>No request to Eurojust for additional advice according to Art. 16 of the Framework Decision has ever taken place. |
| **Hungary** | The question is always decided by the competent judge on a case by case basis. |
| **Ireland** | The number of such cases is too few to derive definitive principles from the judgments. While the Court can have regard to the principles set out in Art 16 of the Framework Decision there is neither a dominant policy of giving precedence to the first warrant in time, nor of giving precedence to the warrant in respect of the most serious offence. The views of the subject are not a determining factor either. |
| **Italy** | In Italy, when two or more Member States have issued an EAW towards the same person, the Appeal Court, in order to decide which arrest warrant to apply, has to take into consideration the seriousness of crimes. The Supreme Court has specified that when more EAWs are issued by different authorities of the same issuing country,this same country will have the responsibility to decide to whom of the requesting judges the prisoner should been "given" after the surrender stage (Section. VI, n. 1795, 28April 2008 –5May 2008, Romano). |
| **Latvia** | If a decision on the extradition of a person has been taken, a request received later shall not be satisfied. The state that submitted the request shall be notified thereof. If a decision on the admissibility of extradition has entered into effect at the moment of the receipt of a request of another foreign state, such decision shall not be submitted until the completion of an examination of a request received later. If several foreign states have requested extradition, the Prosecutor General shall, taking into account the nature of the offence, the place of the committing thereof, and the order of the receipt of the requests, determine the state to which the person shall be extradited. |
| **Lithuania** | In such cases the Office of General Prosecutor in the Republic of Lithuania applies the guidelines proposed in Annex II of EUROJUST Annual Report 2004, which specify the criteria to be used for the decision on which competing EAWs should be executed. |
| **Luxembourg** | No information |
| **Malta** | No problems of this kind are encountered. |
| **Netherlands** | It is not uncommon that multiple EAWs relating to the same person are received from the same issuing State. Usually these EAWs concern different facts. The wanted person is arrested on the basis of a SIS-alert and subsequently the issuing State sends multiple EAWs (for example because there were also multiple SIS alerts or there was only one but having checked it turns out the wanted person is sought for in relation to various cases). In exceptional cases multiple EAW are received but they turn out to concern the same set of events. In such a case the Amsterdam District Court will consider the second EAW as a supplement to the first one (see, for example, ECLI:NL:RBAMS:2014:363) |

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| | Multiple EAWs for the same person but from different issuing States are quite rare. In such a case it is up to the prosecutor to decide which EAW should be given preferential treatment. The ADC can only assess whether the prosecution could have reasonably come to its assessment in this regard (art. 26, par. 3 in conjunction with art. 28, par. 4 of the Surrender Act). In practice the prosecution – sanctioned by the ADC – often follows the preference of the respective issuing States (see, for example, ECLI:NL:RBAMS:2011:BQ7172; ECLI:NL:RBAMS:2012:BX0636) or, absent an agreement of the issuing States, the advice of Eurojust (see, for example, ECLI:NL:RBAMS:2005:AS2613). If the EAWs also concern the same facts, preference is given to the issuing State with the most comprehensive prosecution (e.g. because it will also prosecute the wanted person for more and other offences) (See, for example, ECLI:NL:RBAMS:2009:BI3786) |
| **Poland** | There are no specific proceedings in this matter that polish court was obliged to follow. Court makes decision after taking into account the circumstances of the case, seriousness of the crime and the place of its committing, the order of the issued warrants and their purposes. The court deals with all EAW jointly and makes a decision. There are no explicit provisions and guidelines in the scope of basis for decision to make.<br><br>When the next warrant comes after the decision has been made in the first instance on the earlier one, the court shall adjourn the examination of the second warrant till the first decision on EAW becomes valid. In the event that the appeal court quashes the decision and returns for re-examination in further proceedings, both warrants shall be then examined together.<br><br>When polish courts issue more than one EAW for the same person, but for a different acts, courts from executing states, mainly from the UK and Ireland inquire about the circumstances of each case - mainly why the matter was directed to the EAW procedure at that stage then. |
| **Portugal** | No information. But the situation is not frequent at all (we believe). |
| **Romania** | |
| **Slovakia** | According to the Act 154/2010 on EAW the court assesses conditions for surrender for every EAW. If they are met in case of more EAWs, court determines to which Member State the requested person shall be surrendered. When doing so, the court shall consider all circumstances, in particularly seriousness of criminal offences and crime scenes, data of issuing of EAWs, their purpose (whether criminal prosecution or execution of sentence of imprisonment). |
| **Slovenia** | No information – it seems that such cases are very rare. |
| **Spain** | Article 57 LRM regulates this question. This Article specifies that the decision on the priority of the execution will be adopted by the Judge of the Central Court of Instruction, after hearing the Public Prosecutor. This is done taking into account all of the circumstances, especially the relative seriousness and place of the offences, the respective dates of the EAW and also the fact that the warrant has been issued for the purpose of criminal prosecution or deprivation of liberty measures. |
| **Sweden** | Multiple requests transmitted from different member states are coordinated within the competent judicial authority. When choosing which of the EAW:s to be executed, the criteria set out in Article 16 (1) of the Framework Decision are taken into account. |
| **UK** | **England and Wales**<br>Article 16 of the Framework Decision is implemented by s 44 of the Extradition Act 2003. It is not an issue that arises often in practice, and only one reported case has considered the application of s 44 (finding it did not apply where the multiple EAWs were all issued by the same state). |
| | **Scotland**<br>There have been instances of EAW's from different jurisdictionss. In such circumstances the principles of article 16 have been deployed so that priority is given to the jurisdiction where the accused has the |

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| | stronger family ties. In some cases agreement has been reached between jurisdictions through the offices of Eurojust.<br>There have also been cases of several EAW's originating from different courts in the same state. Care must be taken by the courts in ensuring that extradition is granted for specific charges/warrants and not simply on a carte blanche basis<br>There have also been occasions where a state has issued a fresh EAW for the same offence following a refusal on the basis of material change of circumstances. The courts have been very slow to entertain such attempts. |
| | **Northern Ireland**<br>No information. |

| **Question 14 - Multiple requests for EAW for the same person**<br><br>*b) What is the experience of defence practitioners in your Member State about the treatment of multiple requests for EAW for the same person (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* | |
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| **Austria** | There is no particular experience in cases where Austria is one of the issuing states of several EAWs. |
| **Belgium** | Taking into consideration the widely varying practices in the different Member States, all types of choices may occur. An European mandatory guideline/regulation would be a must in that respect. |
| **Bulgaria** | No information because of the fact that the EEAWA rules concerning the procedures of issuing an EAW do not provide for the participation of a defence lawyer in the issuing procedures. |
| **Croatia** | |
| **Cyprus** | No information |
| **Czech Republic** | In any of the criminal proceedings conducted in the Czech Republic an EAW may be issued by a Czech court (if conditions for the issuing are met), therefore, there may be issued multiple EAWs by multiple Czech courts on the same person at one time. |
| **Denmark** | No information |
| **Estonia** | No information |
| **Finland** | Unfortunately no experience regarding this issue. |
| **France** | When France is the issuing state, French authorities are bound by the application of the Framework decision (article 16) of the executing state where the suspect is located. |
| **Germany** | I don’t know about any experience with such a case. |
| **Greece** | No information |
| **Hungary** | The question is always decided by the competent judge on a case by case basis. |
| **Ireland** | See reply to (a) above. |
| **Italy** | It would be useful to have different models for EAWs for a variety of offenses. |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | There is quite an uncertainty about the way multiple requests are being treated. The lack of legal possibilities for a defence attorney to intervene is significant. There is no file that can be accessed and thus the possibilities to intervene and defend the person in question are very limited. |
| **Malta** | No problems of this kind are encountered. |
| **Netherlands** | None. |
| **Poland** | |
| **Portugal** | See a) |
| **Romania** | |
| **Slovakia** | If the there is a reason to issue the EAW against a person who already has an alert in the SIS, it is not an obstacle for the court to issue the EAW. |
| **Slovenia** | No information. |
| **Spain** | No information is available. Normally, it is unknown whether another country has issued an EAW alongside Spain. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>Defence practitioners are rarely, if ever involved in the ‘issue’ of EAWs in the United Kingdom. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 14 - Multiple requests for EAW for the same person**<br>c) *Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | Nothing specific to mention. |
| **Bulgaria** | No information. |
| **Croatia** | If the court finds that the same person satisfies the requirements to surrender on the basis of a European arrest warrant and extradition based on the request of a third country, minister of justice will decide about extradition. A final decision must be provided to all interested countries. |
| **Cyprus** | No information |
| **Czech Republic** | See the answer to the question a). |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | Not really. |
| **France** | No information. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | See reply to (a) above. |
| **Italy** | No information |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | No information |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | No information. |
| **Spain** | No |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>No information |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 14 - Multiple requests for EAW for the same person**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | An European mandatory guideline/regulation would be a must. |
| **Bulgaria** | I am not capable to define any problems and to offer respective solutions. |
| **Croatia** | |
| **Cyprus** | No information |
| **Czech Republic** | No. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | Not really. Again, this is an issue which has been very rarely an issue in Finland. |
| **France** | When Eurojust is questioned on this particular issue, they should officially and contradictory give their opinion. Currently Eurojust's legal opinions are often confidential which is not compatible with the right of defence. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | See reply to (a) above. |
| **Italy** | Necessary to amend the Framework Agreement to allow for the issue of only one EAW to cover a number of offenses with all necessary documentation. |
| **Latvia** | No significant problems encountered. |
| **Lithuania** | No information. |
| **Luxembourg** | A better access to the file would certainly help the defense lawyers. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | |
| **Portugal** | The solution will be the fast access to all necessary information in order to accomplish the legal previsions on multiple requests. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | See answer a). |
| **Spain** | No |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>No information |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>No information. |

| **Question 15 - Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold**<br>*a) What is the experience of defence practitioners in your Member State about the treatment of accessory surrender through an EAW (in both the executing and issuing state, if there is dual representation) when your state is the executing state?* | |
|---|---|
| **Austria** | In Austria, accessory surrender is allowed both for EAWs for prosecution and for enforcement (§ 4 (5) EU-JZG). |
| **Belgium** | The Belgian law on the EAW (art. 13, § 1, in fine) states that the concerned person may renounce to the "rule of specialty" which implicates that (s)he consents to be prosecuted in the issuing State not only for the offence(s) listed in the EAW but also for all other possible offences (see art. 14, §4 of the said law). |
| **Bulgaria** | Article 37a of the EEAWA stipulates that, if one or several offences punishable by a lower sanction than the thresholds set out in law are accessory to another offence which does comply with one of the set thresholds, then it is up to the discretion of the issuing state to surrender the wanted person for the offences punishable by a lower sanction than the thresholds set out in law. I am not aware of any specific experience of defence practitioners in my country as to these issues. |
| **Croatia** | Accessory surrender is not allowed. |
| **Cyprus** | The Framework Decision (2002/584/JHA) makes no provision for accessory surrender in case the period of detention, custody or sentence falls below the threshold of Article 2(1). Cypriot transposing law 133(I)/2004 is a reflection of the Framework Decision. Therefore if Cyprus is the executing state, accessory surrender will not be allowed for any criminal offence which falls below the threshold set out by Article 2(1) of the said Framework Decision. |
| **Czech Republic** | CZ changed its law in this respect in 2014 and execution of EAWs on accessory surrender is now specifically allowed (see the Section 205(3) of Act 104/2013). This change was justified by the legislator by the benefits for the practice (enhances punishing of offenders) and encouraging approach of EU (on the basis of evaluation of EAW procedure), despite the fact that the FD on EAW does not cover such issue. |
| **Denmark** | The courts accept to surrender, if one of the offences meet the requirements |
| **Estonia** | No accessory surrender is allowed |
| **Finland** | Section 4 of the EU Extradition Act provides: "If the request encompasses several acts and the prerequisites referred to in sections 2 or 3 are present for some acts, the request may be granted also in respect of those other acts that are or would be offences according to the law of Finland." So by law it's possible in Finland, but requests are not very common in my understanding. Even though the law states "*may* be granted", I would be inclined to suggest that if no special grounds exist, this is to be read as "*will* be granted". |
| **France** | There is provision, in the framework decision neither in *Code de Procédure Pénale*. There is no case law, which can serve as precedent in this matter. For sure France as executing state would consider that it is not fair to valid an EAW, which doesn't comply with the threshold, but would confirm the EAW validity considering that the "low offense" is accessory. |
| **Germany** | Without having any specific experience with such cases, by secs 1, 78 AICCM Germany would need to apply the 1957 extradition convention in those cases additionally. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | Such offences are severed from the Request and Order unless there is consent otherwise which does arise. |
| **Italy** | No Information |

| | |
|---|---|
| **Latvia** | According to Section 696 (4) of Criminal Procedure Law, if extradition has been requested regarding several criminal offences, but extradition may not be applied for one of such offences because such offence does not comply with the conditions regarding the possible or imposed punishment, the person may also be extradited regarding such criminal offence. |
| **Lithuania** | The Lithuanian courts allow to execute the EAW for several offences as long as at least one of the offences complies with the threshold for the EAW. |
| **Luxembourg** | We do not know of any case concerning accessory surrender in Luxembourg, due to the low number of EAWs. |
| **Malta** | There is little or no experience in this field, however it is expected that there will be no accessory surrender. |
| **Netherlands** | The Dutch Surrender Act does not allow for accessory surrender in case of a prosecution EAW.<br><br>The situation is slightly more complicated in case of an execution EAW. In such a case the fact that surrender for one offence has to be refused for not complying with the threshold does not mean that the surrender as a whole should be refused as long as the prison sentence in question was also imposed for offences that do comply with the threshold. The Amsterdam District Court is of the view that in such a case it is not competent to assess which part of the sentence was imposed for which offence. It is up the issuing State to assess this and limit execution of the sentence to the part resulting from offences for which the surrender was allowed. (see, for example, ECLI:NL:RBAMS:2007:BC9797).<br><br>It goes without saying that this approach can be somewhat confusing for the issuing State and has led to problems in practice. We are aware of at least one case where – had not been for an intervention of the wanted person's lawyer in the issuing State – the wanted person would have served the prison sentence in full. |
| **Poland** | Court in Poland cannot order an execution of the penalty for the offence punishable by a lower sanction than the EAW threshold. Therefore, no accessory surrender is allowed. |
| **Portugal** | According Portuguese Law the EAW only applies to imprisonment sentences with a 12 months maximum limit and the compliment a prison penalty not lower than 4 months. Beside it is also applicable to custodial measures of freedom not below 12 months (see Law 65/2003 article 1). This should be the only relevant accessory penalty. |
| **Romania** | |
| **Slovakia** | According the Article 4 par. 6 of the Act No. 154/2010 on EAW is executing of EAW on accessory surrender now specifically allowed. |
| **Slovenia** | I don't have any specific information regarding this problem but it is safe to assume that the Slovenian courts would decide that no accessory surrender is allowed if it is not specifically provided for in the Framework Decision. |
| **Spain** | If one of the offences complies with the existing threshold to issue an EAW, the EAW is granted also regarding the accessory offences. |
| **Sweden** | Surrender for the purpose of executing a custodial sentence<br>The practice has been established by a judgment by the Supreme court in 2005 (NJA 2005 s 897). According to the judgment an EAW may be executed if the total term of imprisonment for all of the offences exceed four months.<br><br>If the EAW refer to several different offences and if surrender is not possible for all of these, due to e g the principle of dual criminality, an inquiry shall be made to clarify whether the law of the issuing state enables a separation of the penalty imposed for the offences for which surrender may not be executed. If this can be done the EAW may be executed for the remaining offences. If such a separation cannot |

| | be done the legal situation is unclear. The Supreme court has just recently made a reference to the ECJ on the matter (Högsta domstolen decision of the 8 March 2016, case Ö 227-16)<br><br>Surrender for the purpose of conducting a criminal prosecution<br>Sweden applies the practice of accessory surrender in the meaning set out in the question. The conduct is catered for in Chapter 2 Section 2 in the Act on executing an EAW. |
|---|---|
| **UK** | **England and Wales**<br>No provision is made in the Extradition Act 2003 for accessory surrender. Regulations have been enacted that modify the Extradition Act 2003 when multiple offences are included on one EAW (the Extradition Act (Multiple Offences) Order 2003/3150), and these provide that the Judge should examine each offence individually to establish whether or not it is an "extradition offence" (i.e. one that meets the minimum thresholds – see sections 64 and 65 Extradition Act 2003). The difficulty arises in conviction cases where an individual has received an "aggregate sentence" for multiple offences, one or more of which is not an extradition offence. The English courts have taken a pragmatic approach, and held that this does not pose a problem for extradition: the expectation appears to be that the requesting state will comply with their specialty obligations and not require the individual to serve a sentence for any offence for which they have not been extradited. It is questionable whether this is a realistic approach. |
| | **Scotland**<br>Scottish courts will not extradite on the lesser charge. |
| | **Northern Ireland**<br>Paragraph 17A.4 of the Practice Direction (Criminal Proceedings: Various Changes) [2014] 1 W.L.R. 3001 provides guidance on the types of exceptional circumstances where extradition for minor offences may be proportionate.<br><br>The Practice Direction at para 17A.3 – 4 is that there may be exceptional circumstances that mean extradition for minor matters may be proportionate:<br><br>17A.4 The exceptional circumstances referred to above in 17A.3 will include:<br><br>(i) vulnerable victim;<br>(ii) crime committed against someone because of their disability, gender-identity, race, religion or belief, or sexual orientation;<br>(iii) significant premeditation;<br>(iv) multiple counts;<br>(v) extradition also sought for another offence;<br>(vi) previous offending history.<br>This tends to show that the Courts here have sought to rail against the previous approach and allow a conflation of the two warrants. This would seem to be unfair and take advantage of the framework decision oversight. |

| **Question 15 - Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold**<br>*b) What is the experience of defence practitioners in your Member State about the treatment of accessory surrender through an EAW (in both the executing and issuing state, if there is dual representation) when your state is the issuing state?* | |
|---|---|
| **Austria** | To my experience, accessory surrender is also accepted by most executing states if Austria has issued an EAW. |
| **Belgium** | As already duly stressed in the question, there are widely varying practices in the different Member States, so that an European mandatory guideline/regulation would be a must |
| **Bulgaria** | The answer to the above question holds true as to the answer to this question as well. |
| **Croatia** | Accessory surrender is not allowed. |
| **Cyprus** | The prerequisites for the issuing of an EAW are set out in article 7(1) of Cypriot transposing law 133(I)/2004, which is identical with article 2(1) of the Framework Decision (2002/584/JHA). An EAW will not be issued for any criminal offence or sentence which falls below the threshold stipulated in the said article |
| **Czech Republic** | As already mentioned in the previous answer, CZ changed its law in this respect in 2014 and issuing of EAWs for accessory surrender is now specifically allowed (Section 193(4) of Act 104/2013). See the previous answer for justification. |
| **Denmark** | I am not aware, as it is required by DK law that the crime can result in an imprisonment up to 1½ year. DK will therefore not issue EAW for offences with lower sanctions. |
| **Estonia** | No information |
| **Finland** | Again, at this stage the defence practitioners are not very often involved yet. Section 53, Paragraph 4 of the EU Extradition Act states: "If the act that is the basis for the request fulfils the prerequisites provided in paragraph 1 or 2, extradition may be requested also for acts that do not fulfil the prerequisites provided in either paragraph." The Office of the Prosecutor General has drafted a handbook, where it states regarding accessory surrender that as a general rule the offences included in the EAW shall fulfil the maximum penalty requirements. Also, even though a combined punishment for offences under the threshold can, when issuing a combined sentence for them, be above one year of imprisonment, they cannot by themselves form a basis for an EAW. Estonia, with whom Finland has a lot of EAW cases, has announced that they will not surrender for accessory offences, which makes it unnecessary to include these in the EAW. The handbook still refers to the possibility of considering restriction of the pre-trial investigation or making a decision on not to prosecute based on concurrence grounds. |
| **France** | No information. |
| **Germany** | no experience. |
| **Greece** | In the Greek Law there is no certain provision for the question of accessory offences. In practice, issuing an EAW for offences punishable by a lower sanction than the threshold set out in Art. 2 par. 2 of the Framework Decision is not common in Greece. Nevertheless, the Greek authorities have in some cases issued an EAW also for accessory offences of such kind. |
| **Hungary** | No information. |
| **Ireland** | Not sought as a matter of practice. |
| **Italy** | No Information |
| **Latvia** | No information. |
| **Lithuania** | The Office of General Prosecutor in the Republic of Lithuania issues the EAW for several offences as long as at least one of the offences complies with the threshold for the EAW. |

| Luxembourg | We do not know of any case concerning accessory surrender in Luxembourg, due to the low number of EAWs. |
|---|---|
| **Malta** | Same as (a) above. |
| **Netherlands** | As far as we were able to ascertain, the issue of accessory surrender does not cause specific problems in relation to Dutch EAWs. |
| **Poland** | |
| **Portugal** | See a). |
| **Romania** | |
| **Slovakia** | See the answer a). |
| **Slovenia** | No information. |
| **Spain** | It depends on the other Member State's legislation and judicial practice. |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>No provision is made in the Extradition Act 2003 for offences below the threshold levels of seriousness to be treated as extradition offences (see s. 148 Extradition Act 2003). |
| | **Scotland**<br>It would appear that other states tend to delete lesser charges from the EAW |
| | **Northern Ireland**<br>There are a small number of EAW's issued by Northern Ireland and this does not appear to be a live issue. |

| **Question 15 - Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold**<br>*c) Are there any good practices on this matter in your Member State (either as an executing or an issuing state)?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | See answer under point a) |
| **Bulgaria** | No information. |
| **Croatia** | Accessory surrender is not allowed. |
| **Cyprus** | No information. |
| **Czech Republic** | See the previous answers in this topic. |
| **Denmark** | --- |
| **Estonia** | Strict rule according to which surrender is only allowed when a sanction meets the threshold of Article 2(1) of the Framework Decision works well in practice. |
| **Finland** | N/A |
| **France** | No information. |
| **Germany** | No. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | As above. |
| **Italy** | No Information |
| **Latvia** | No information. |
| **Lithuania** | No information. |
| **Luxembourg** | At the time being, there are no good practices in Luxembourg, known by the defence practitioners on this matter. |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | No information. |
| **Spain** | No |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>N/A |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>Not applicable. |

| **Question 15 - Surrender for an offence punishable by a lower sanction than the EAW threshold, when it is accessory to another offence which does comply with the threshold**<br>*d) Do you have any solutions to the problems defence practitioners may have encountered?* | |
|---|---|
| **Austria** | No information. |
| **Belgium** | An European mandatory guideline/regulation in that respect too would be a must. |
| **Bulgaria** | I am not capable to define any problems and to offer respective solutions. |
| **Croatia** | Accessory surrender is not allowed. |
| **Cyprus** | No information. |
| **Czech Republic** | No, the role of defence is more difficult as the surrender may be executed also for less serious cases. |
| **Denmark** | --- |
| **Estonia** | No information |
| **Finland** | I don't believe that this is really an issue in Finland. Usually the main offence(s) for which the person is sought to be extradited to Finland carries a maximum penalty so severe, that the accessory offences have little or no relevance for sentencing. |
| **France** | European authorities have to achieve the Framework decision dated 13 June 2002. |
| **Germany** | apply the 1957 convention. |
| **Greece** | No information |
| **Hungary** | No information. |
| **Ireland** | None |
| **Italy** | No Information |
| **Latvia** | No significant problems encountered. |
| **Lithuania** | In order to avoid different practice in the Member States, it should be clearly regulated in the Framework Decision. |
| **Luxembourg** | No information |
| **Malta** | Nothing to report. |
| **Netherlands** | Not necessarily. |
| **Poland** | |
| **Portugal** | No. |
| **Romania** | |
| **Slovakia** | No. See answer a). |
| **Slovenia** | |
| **Spain** | No |
| **Sweden** | No information |
| **UK** | **England and Wales**<br>Research and comment from other member states on aggregate sentences and specialty would be welcome: if individuals are serving sentences for which they were not extradited, the issue should be revisited by the English courts. |
| | **Scotland**<br>No information |
| | **Northern Ireland**<br>The Practice Direction is a serious impediment. An amendment to the Framework decision to rectify the initial oversight and regularise the position for all member states. |

| **Question 16 – General comments** | |
|---|---|
| **Austria** | No information. |
| **Belgium** | |
| **Bulgaria** | I presume that probably I have not provided fully comprehensive and detailed answers. There are several probable reasons for this. It is to be noted that no official statistics about EAWs exist in Bulgaria to help me to formulate more informative answers. No cost evaluations are made. There is no information about any follow-up monitoring whatsoever on the fulfillment of the recommendations proposed by the Report, especially as far as the introduction of a proportionality test is concerned. Judges I have discussed the matter with are skeptically disposed as to the idea to introduce in one form or another the participation of a defence lawyer in the issuing procedures, which seems to be a major problem in Bulgaria. Court practice is scanty.<br><br>The general conclusion could be that, if amendments to the EEAWA are needed, it is not to be expected that they would be introduced on the initiative of Bulgarian authorities. This could only happen on the basis of respective preceding amendments to the FD. |
| **Croatia** | |
| **Cyprus** | No comments. |
| **Czech Republic** | |
| **Denmark** | Denmark holds opt-outs from European Union policies in relation to security and defence, citizenship, police and justice, and that has some consequences for the Danish answer.<br><br>The implementation of Framework Decision 2002/584/JHA on the European Arrest Warrant I in Denmark done by incorporating the Frame Work Decision in the Danish law regarding extradition (as executing state) following the Framework in respect of requests from EU countries.<br><br>As issuing state proceedings are regulated in our ordinary Administration of Justice Act and the arrested will have the same guaranties as if the suspect was arrest in Denmark. If it do to domestic law is required, that the courts are involved the courts must also be involved before an international request of arrest.<br><br>Directive 2010/64 on the right to interpretation and translation – Directive 2012/13 on the right to information and Directive 2013/48 on the right of access to a lawyer is to a certain degree part of DK law – bu there are parts (important parts) missing, and the directives are no incorporated.<br><br>*<br><br>The dual representation is crucial.<br>For the client: "What situation am I facing?"<br>For the lawyer: Can we trust the information received?<br>If the decision is challenged – what can be argued? |

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|---|---|
| | The lack of information (the missing lawyer in the other country) has as a consequence, that the cases often are postponed with all means. |
| **Estonia** | Whereas the Framework Decision in general provides strict time limits in EAW proceedings, one stage of the proceedings has a serious loophole in this respect: Article 23(2) provides for a strict 10 day limit for a person to be surrendered. However, Articles 23(3) and 23(4) provide for 2 fairly generally worded exceptions which can be used by the authorities in such a way that a person held in detention under an EAW can remain in the executing state essentially indefinitely. There are no guarantees for the person concerned in case those articles are applied -- he/she may not even be informed about what the Member States have agreed under such circumstances, there is no requirement for the authorities to consult the person, there is no possibility to challenge decisions. There is at least one (pending) case in Estonia where this has caused major problems. |
| **Finland** | |
| **France** | No particular comments. |
| **Germany** | In absentia proceedings and quality of guarantee for retrial under art. 5 nr. 1 of the framework decision. |
| **Greece** | Pre-trial detention in the country of the nationality of the requested person<br><br>In case of an EAW with the purpose of prosecution, the requested person must often spend a relevant long time away from the country of his nationality (or his permanent residence) if the issuing State imposes a pre-trial detention. It would be therefore recommended that, in case of an imposition of a pre-trial detention by the issuing state after the execution of an EAW, the accused person has the possibility to be held in the country of his nationality (or his permanent residence), particularly if it is expected that the detention time will last over a certain period of time.<br><br>In this context, it should be noted that the Regional High Court of Athens has refused with a recent decision (No. 2/2016) to execute an EAW –also– on the ground that the requested person, which was a Greek national, should reckon on a long period of pre-trial detention abroad. |
| **Hungary** | |
| **Ireland** | |
| **Italy** | |
| **Latvia** | No additional comments. |
| **Lithuania** | The answers to this questionnaire are based on the interviews of Advocate Mr. Laurynas Bieksa with:<br>Advocate Ms. Ilona Ivasauskaite on 2 May 2016;<br>Advocate Mr. Rolandas Tilindis on 3 May 2016;<br>Advocate Mr. Laimonas Judickas on 6 May 2016;<br>Advocate Mr. Valdemaras Buzinskas on 9 May 2016;<br>Advocate Ms. Ingrida Botyriene on 10 May 2016. |
| **Luxembourg** | In general one has to bear in mind that Luxembourg is a small country. Therefore the number and the variety of origin of EAWs are limited, as well as the number of requests sent by Luxembourg to other countries.<br><br>It was rather difficult to get criminal lawyers contacted who indeed has some significant experience with EAWs. |
| **Malta** | Notwithstanding the overall success, even at local level, of the application of the EAW, this does not mean that the process is free from hurdles. One encounters some serious issues executing EAWs from an EU and local perspective. At EU level, the key issues, which need to be adequately addressed at all times, are proportionality and fair trials. With respect to proportionality, rules have to be properly |

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| | streamlined and a balance sought between procedure and seriousness of the offence such that the EAW should never be used to cover minor offences. One ought to take into account the length of the applicable sentence and the cost benefit of using this mechanism.<br><br>Difficulties have been registered in executing EAWs. There have been situations in which persons wanted in Malta would be forcibly surrendered to Malta from foreign jurisdictions even where that person wanted, effectively rectifies his wrong, or where a person firmly believes that he is being unjustly prosecuted. Thus it would appear that there is a problem when the execution of a warrant may not be suspended or stopped, even when the accused is willing to cooperate. This is intimately linked to a lack of proportionality in the execution of EAWs, or rather the substantial prejudice suffered by the person subject to such EU instruments.<br><br>With regard to the implementation of the EAW Framework Decision, Malta has attracted adverse criticism since the Commission firmly held that Malta had not fully complied in its obligations when transposing the decision. For instance, the report criticized Malta for failing to implement correctly Article 8(1) of the decision relating to the content and the form of the warrant.[22]<br><br>With that being said, the EAWs have led to the surrender of individuals to legal systems which embrace and effectively guarantee the right to a fair trial. This tallies with minimum rights and minimum defence rights for every person within the AFSJ. |
| **Netherlands** | We would also like to draw attention to the following three issues in Dutch practice in executing EAW:<br><br>- A problem often occurring in practice is that the wanted person has already served part of the prison sentence in pre-trial detention in the issuing State. It is not uncommon that the remaining sentence to be served is (far) below the four months minimum as stipulated in the EAW Framework Decision. The Amsterdam District Court takes the view that what matters is not the remaining sentence to be served but the sentenced that was imposed (ECLI:NL:RBAMS:2007:BC9797). In practice this means that a person could be surrendered even though (s)he only has to serve one more day of the sentence. We have doubts if this approach is in line with the Framework Decision and/or the proportionality principle.<br><br>- A similar problem concerns the so-called *Gesamtstrafe* approach of the Amsterdam District Court. The court is of the view that if the court in the issuing state has imposed a separate prison sentence for every single offence in the judgement what matters is not the duration of the individual prison sentences but the total sum. To some extent this approach is understandable if it concerns the same judgement. The ADC also applies the *Gesamtstrafe* theory, however, in cases where the sentences were imposed by totally unrelated judgements or in cases where the law of the issuing State allows for a procedure where – for execution purposes – multiple unrelated judgements are merged and a new sentence (often lower than the totality of the individual sentences) is imposed (see, for example, ECLI:NL:RBAMS:2007:BC9797).<br><br>- As to the application of the refusal ground concerning *in absentia* judgements, it is consistent case law of the Amsterdam District Court that this ground does not apply to judgements following procedures (see ECLI:NL:RBAMS:2013:9883):<br><br>o Where multiple convictions are merged (see above);<br>o Where it is decided that a suspended prison sentence should be executed; |

[22] European Arrest Warrant - Recent Developments: Report with Evidence, 30th Report of Session 2005-2006, European Union Committee, House of Lords, UK. p.3.

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| | o Where it is decided that a decision to grant early release should be revoked;<br>o Where the court at hand only decides on questions of law;<br><br>We have doubts if this approach is in line with the Framework Decision and/or the EU Charter on fundamental rights.<br><br>- Finally, in domestic criminal cases, Dutch law allows for the possibility to prohibit a suspect in pre-trial detention from receiving visits, using a telephone or watch television and use the internet (*beperkingen*). The EAW Framework Decision does not provide for the possibility to make such a request. The Amsterdam District Court, however, has ruled that imposing these restrictive measures is also possible in EAW cases if the issuing State has explicitly requested such measures in the (letter accompanying the) EAW (see, for example, ECLI:NL:RBAMS:2009:BI4378; and ECLI:NL:RBAMS:2014:3389). We have our doubts about this approach and believe that for such an intrusive measure to be in line with the ECHR and the EU Charter on Fundamental Rights, there should be an explicit legal basis in the Framework Decision. |
| **Poland** | The EAW is a valuable tool to fulfill the rules of law. It allows to prosecute the perpetrators at a very large area, covering 28 Member States and thereby reduces chance of the perpetrator's avoiding liability.<br><br>However, this raises certain problems, which relate to the application of provisions concerning the EAW. On the one hand, the EAW allows to search and surrender the perpetrator of the act. On the other hand, its use causes doubts in the application of fundamental legal principles. It happens that the perpetrator of the act is being chased after many years, for the offense with a low degree of social harm, and the cost of such a proceeding is much higher than the object of the crime. Therefore, the provisions relating to proportionality in the application of the EAW should be verified, in order the procedure is used reasonably, though still commonly, as today. |
| **Portugal** | |
| **Romania** | |
| **Slovakia** | |
| **Slovenia** | |
| **Spain** | It is necessary to stress that the principle of proportionality and the respect of the fundamental right to liberty should be guaranteed in this international judicial and criminal cooperation instrument, especially when the EAW is issued on the grounds of an investigation.<br>In this regard, we believe article 38 of Law 23/2014 of 20 November represents a major achievement. In this article the Spanish judge who emits the EAW will be able of requesting the authorisation to the State where the requested person is located in order to take his statement through a request of mutual assistance under the Convention on Mutual Assistance in Criminal Matters between Member States of the EU, of 29 May 2000.<br>If for any type of detention it is necessary to respect human rights and prove, not only the appearance of good law, but also the necessity and proportionality of that measure, it is therefore more necessary in EAW cases where the detained goes through a serious ordeal. First she/he is taken from his residence to Madrid in an arduous journey and after that she/he is transferred to a State which may be foreign for her/him with a judicial system and language which are probably unknown to her/him. The execution of an EAW for the national or resident in the executing State is absolutely devastating, thus being justified for the execution of a sentence (provided that it is not a judgement by default: therefore we are against the Melloni doctrine, with which we disagree), but not being easily justifiable in the cases where the execution is done on the grounds of an investigation, especially when the investigated has |

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| | not been granted the possibility to appear voluntarily. It should be imperative to use the existing cooperation instruments less invasive and less damaging than EAW. |
| **Sweden** | Initial comments<br><br>The Council Framework Decision is implemented into Swedish legislation by different measures. The articles relating to issuing of an EAW is implemented by Förordning (2003:1178) om överlämnande till Sverige – Regulation on issuing an EAW. The articles covering execution of an EAW is implemented by Lag (2003:1156) om överlämnande från Sverige enligt en europeisk arresteringsorder - Act on executing an EAW - and Förordning (2003:1179) om överlämnande från Sverige enligt en europeisk arresteringsorder – Regulation on executing an EAW.<br><br>Based on accessible information it can be concluded that there seems to be a relatively limited use of the EAW in Sweden. Therefore, it has not been possible to identify general standards of applied practice.<br><br>If not stated otherwise, the answers below refer to situations when the EAW is used for the purpose of conducting a criminal prosecution. |
| **UK** | **England and Wales** |
| | **Scotland**<br>None |
| | **Northern Ireland** |