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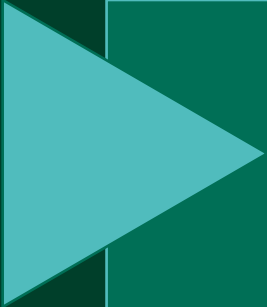


European Arrest Warrant's specific procedural guarantees

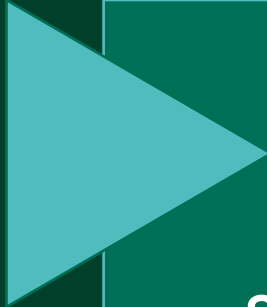


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Agenda



**EAW Framework
Decision provisions**



**Safeguards in
procedural rights
directives**

EAW Framework Decision provisions

Framework Decision 2002/584 on EAW



Article 1

Para. 3

This Framework 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 TEU

Framework Decision 2002/584 on EAW

Recital 12

Surrender may be refused where it is shown that the EAW will cause discrimination on the grounds of:

- ☐ Sex
- ☐ Race
- ☐ Religion
- ☐ Ethnic origin
- ☐ Nationality
- ☐ Language
- ☐ Political opinions
- ☐ Sexual orientation

Research shows that, in practice, the decision to issue an EAW appears to be an automatic response where a person is not a national or a resident of the issuing state, even where there is no evidence that the person is at risk of absconding.



Unequal treatment in the EU in criminal proceedings contradicts the EU principle of non-discrimination

Framework Decision 2002/584 on EAW

Article 11

Para. 1

Where a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the EAW and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

Para. 2

A requested person who is arrested for the purpose of the execution of a EAW shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Safeguards in procedural rights directives

Procedural rights safeguards for suspects or accused persons in criminal proceedings, including subject to European Arrest Warrant proceedings

Directive 2010/48

Interpretation & Translation

Article 3

Para. 6

the executing Member State shall provide any person subject to such proceedings where needed a written translation of the European arrest warrant

Practical obstacles to accessing interpretation services at pre-trial stage of EAW proceedings and other criminal proceedings:



Relying on non professional interpretation services, inadequate assessment of detained person's knowledge of language of procedures...

Directive 2016/800

Children in criminal proceedings

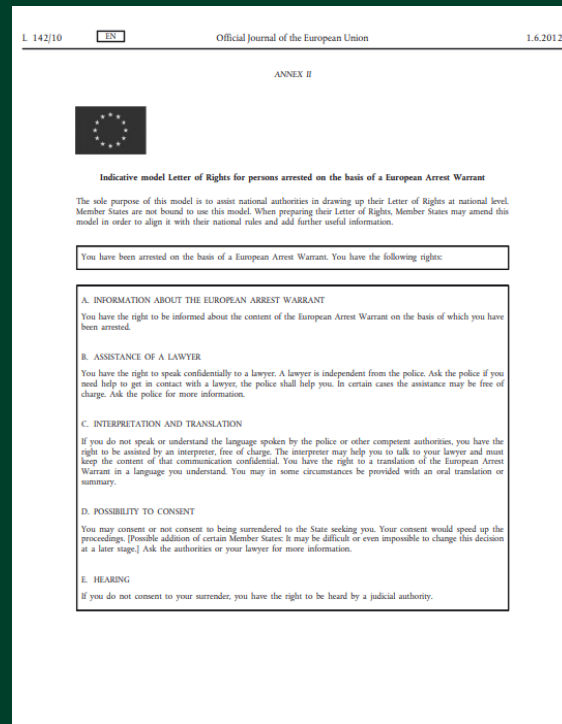
Article 17

Upon the arrest of a child pursuant to EAW proceedings, Member States shall ensure that application of the following rights apply *mutatis mutandis* :

- ☐ Right to information
- ☐ Right of the child to have the parent informed
- ☐ Assistance by a lawyer
- ☐ Right to a medical examination
- ☐ Rights in case of deprivation of liberty
- ☐ Rights of the child to be accompanied by the parent during the proceedings
- ☐ Right to legal aid



Directive 2012/13 Right to Information



Article 5

Member States shall ensure that persons who are arrested for the purpose of the execution of a EAW are provided promptly with an appropriate **Letter of Rights** containing information on their rights.

Directive 2012/13 Right to Information

Access to Case File in criminal proceedings



Relevant provisions from this Directive in relation to access to case file are not applicable in European Arrest Warrants proceedings

"Article 4 (in particular Article 4(3)), Article 6(2) and Article 7(1)) must be interpreted as meaning that the rights referred to therein do not apply to persons who are arrested for the purposes of the execution of a European arrest warrant."



Directive 2012/13

Right to Information

Question:

Does Article 7(1) apply to detention prior the execution of the EAW?



Access to case files in EAW proceedings

C-649/19 - IR

- ❑ a person acquires the status of a “suspect or accused person” only when the person concerned is surrendered to the issuing Member State and can exercise their rights under Directive 2012/13 after surrender.
- ❑ the right of access to the materials of the case does not apply in EAW proceedings. Therefore, a requested person only has the right to information about the EAW and its contents, and information relating to the offence (legal classification, circumstances, penalty imposed).

Directive 2012/13

Right to Information

Access to case files in EAW proceedings Problematic Aspects

Access to case file is related to access to legal assistance in the issuing state.

In practice, it is often not granted until the requested person is brought before the authorities of the issuing state.



This means that the requested person will be detained and transferred to the issuing state , where they will be detained again for days or weeks, before being able to seek access to the case file and challenge the detention and the EAW on which surrender is based.

Added complexity that a person who is arrested in one country pursuant to an EAW will need to have access to:

- 1) the information that the executing Member State has*
- 2) the file in the issuing country.*

Directive 2013/48/EC

Access to a lawyer

Article 10

Para. 4

Dual legal assistance: a requested person has a **double right of access to a lawyer** once he has been arrested in the executing State:

- ☐ right of access to a lawyer in the *executing* State,
- ☐ right to appoint a lawyer in the *issuing* State. The task of the latter lawyer is to assist the lawyer in the executing State by providing him with information and advice



This remains, in practice, a huge challenge for requested persons mostly due to a lack of access to

Information about how to appoint a lawyer in another state and in respect of availability of legal aid. As pointed out by FRA, Competent authorities do inform request persons of their rights but do not provide practical assistance.

Directive 2013/48/EC

Access to a lawyer

Article 12

Para. 1

Remedies

Member States shall ensure that suspects or accused persons in EAW proceedings have an effective remedy under national law in the event of a breach of the rights of access to a lawyer.

Directive 2012/13

Legal aid

Article 5

Dual legal aid ? Yes, but under some conditions

Para. 2

- ☐ the provisions on legal aid for the lawyer in the issuing State should only apply to EAWs issued for the purpose of conducting a criminal prosecution
- ☐ legal aid should only be provided in so far as such aid is necessary to ensure effective access to justice



Recital 21

Directive 2012/13

Legal aid

Article 5 Dual legal aid. Who pays?

The executing and issuing States have to bear the costs of legal aid for assistance by lawyers who have been appointed in their own States.



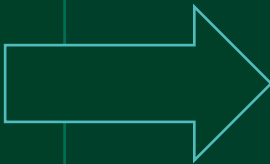
Remedies?



No provisions in the Framework Decision 2002/584 on EAW on remedies for ineffective procedural rights

BUT

Article 47 of the Charter



enshrines the right to effective judicial protection and is binding on all national authorities when implementing the EAW.

Remedies ?

C-648/20 PPU - PI



a person must be afforded effective judicial protection before being surrendered, which “presupposes, therefore, that judicial review of either the European arrest warrant or the judicial decision on which it is based is possible before that warrant is executed.”

this does not require a right to challenge the decision to issue an EAW before surrender.

C-649/19 PPU - IR



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