

History

Created in 2002, the European Arrest Warrant (EAW) is a judicial decision issued by one member state to be carried out in another and enforced by the EU. It has been in use since 2004 and was designed to streamline the process of intra-EU **extradition**; when an individual is wanted for custodial sentence or criminal prosecution in another EU member state. Extradition from one EU member state to another used to be a fairly complex practice as EU member states had different rules governing the process; however, it was hoped that the creation of the EAW would simplify and speed this up.

How does the EAW work?

The EAW is the first mechanism to be adopted by EU member states on the principle of mutual recognition of judicial integration. It should only be issued for crimes carrying a maximum penalty of at least 12 months or more or in the instance where a minimum of a four month custodial sentence has been instructed. However, there have been instances where the EAW has been used to extradite individuals for relatively minor offences, for example bicycle theft, and even for acts that would not be considered breaking the law in their home country, which have made the use of this mechanism more controversial.

To use the EAW the country requesting the return of an individual simply fills in an EAW form. The Schengen Information System (SIS) issues an alert and the judicial authority in the relevant country then has a certain number of days to respond. If the person requested to surrender by the EAW consents then the judicial authority has 10 days to respond; however, if the individual does not consent then the authority has 60 days to respond.

Grounds for refusal of cooperation

In certain situations a country doesn't have to comply with an EAW request. For example, if:

- ❖ The EAW has been refused before;
- ❖ The individual has been granted amnesty;
- ❖ The individual is under the age of criminal responsibility in the responding (executing) state.

Calls for reform

With the number of EAWs being issued creeping up annually and their scope of application also appearing to increase, the EAW has attracted growing criticism in recent years. Calls for reform often focus on both the financial costs of the EAW, for example the burden the EAW puts on national police forces and resources, and the human cost, for example the miscarriages of justice that have occurred. There is currently an independent panel (set up by UK Home Secretary Theresa May MP) which is evaluating the current arrangements.

Facts and figures

- ❖ During 2014-15, 138 people wanted by the UK were arrested using the EAW.
- ❖ The EAW has reduced the timeframe for intra-EU extradition from an average of a year, to 16 days when the individual consents, and 50 days when they do not consent.
- ❖ Issuing an EAW costs taxpayers around €25,000 every time.

Arguments

For

- ❖ When member states are already integrated in a number of ways, it makes sense to streamline the judicial processes in terms of extraditions.
- ❖ Member states remain free to make bilateral and multilateral agreements which further simplify and speed up the extradition process.
- ❖ The EAW has assisted in catching high profile criminals on the run, for example a failed London bomber.
- ❖ The EAW can speed up the process of bringing someone to trial in another EU country.

Against

- ❖ Being sent to a foreign country to face trial by a foreign judicial system potentially in a foreign language is not necessarily the best way to achieve justice.
- ❖ There have been a number of high profile miscarriages of justice, which undermines the public's trust in the EAW system.
- ❖ Member states have very different judicial systems; a one-size-fits-all approach to extradition doesn't work.

Julian Assange: a high profile case

An EAW was issued for Julian Assange, the founder of Wikileaks, to be extradited from the UK to Sweden to face allegations of sexual assault. The EAW was issued on 2nd December 2010 and Assange was arrested a few days later and placed under house arrest near London. Two key criticisms used by Assange's defence team were that, firstly, Assange had not been charged with a crime (a necessity for the issuance of an EAW) and secondly, the EAW had been issued by a prosecutor, not an impartial judicial authority as expected under EAW rules. However, the Supreme Court rejected Assange's appeals. Assange then entered the Ecuadorian embassy in London and claimed *political asylum* which has been granted.

Technical Terms

- ❖ **Extradition:** the return of an alleged offender to a state where the offence was committed.
- ❖ **Political Asylum:** protection offered by a country for an individual endangered for political reasons in another.

Links

- ❖ http://www.ejn-crimjust.europa.eu/ejn/EJN_StaticPage.aspx?Bread=12