



Liberal Democrat

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THE EUROPEAN ARREST WARRANT

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Why do we need the European Arrest Warrant?

Building a European area of freedom security and justice is crucial for the EU. Liberal Democrats have been insistent that the freedom and justice parts of that formula must be as well respected as the security content. But of course freedom from crime is also an important aspect of security.

What we have at present is a situation where borders are treated with disdain by major organised criminals in their operations, while too often they are allowed to impede co-operation on law enforcement. Member states cannot tackle cross-border mafia crime and terrorism on a "single state" national basis.

The film 'Veronica Guerrin' portrays the 1996 murder of the Irish investigative reporter who was killed by gangsters because she got too close to the truth about drug-smuggling and money-laundering. At the end of the film the credits explain that the suspected intermediary in arranging the shooting is still fighting extradition from Portugal. This is no doubt at least partly because of delays caused by the present cumbersome, bureaucratic and outdated government-to-government procedures. We can only return fugitive offenders to face trial if there is simplification of red tape surrounding traditional extradition. That is the purpose of the EU European Arrest Warrant (EAW).

EU law enforcement moves: background

The moves towards easier EU cross-border law enforcement through making criminal justice systems interact go back 20 years. There is no intention – contrary to some Eurosceptic scaremongering – to give the EU

competence to dictate the whole of our policing and justice policies or harmonise differences out of existence! Jury trial may be threatened, but the threat comes from no.10 Downing Street, not from the European Commission.

Legal and policing cooperation began in a secret & undemocratic intergovernmental context outside EU structures. It was boosted and brought partly within the EU fold (in Brussels jargon 'Third Pillar' where the European Parliament only gets consulted and lacks real clout) in the 1992 Maastricht and 1997 Amsterdam treaties.

The EU intention is to get an adequate framework for cross-border investigations and prosecutions (e.g. to overcome different rules on evidence, informants, witnesses) and sufficient trust for 'mutual recognition' of each other's judicial decisions. That requires some legislation to get common definitions and similar penalties for serious EU-level crimes e.g. drug-smuggling and race-hate. The European police liaison agency Europol, the European Judicial Network and Eurojust (coordinating prosecutions) also assist.

Focus on extradition in EU

In late 1999 EU leaders, laying out the objectives of criminal law cooperation, called for European Commission proposals for 'fast-track extradition procedures, without prejudice to the principle of a fair trial'. Thus the concept of the EAW pre-dated 9/11, although undoubtedly that accelerated its adoption like that of EU anti-terrorism laws.

Extradition takes place when a person is 'surrendered' to the authorities in another

state for trial or imprisonment. The EAW simplifies & speeds up the process with strict time limits and a judge-to-judge mechanism with normally no ministerial involvement. Liberal Democrats in the EP supported the principle of the scheme though we wanted fair trial guarantees strengthened.

EAW system (e.g. for Belgium/England)

1. Judge in Belgium issues EAW regarding a person suspected of an offence punishable by a custodial sentence of over 1 year or sentenced to prison for more than 4 months.
2. EAW is transmitted to English judge via National Criminal Intelligence Service.
3. Person is arrested by local (note not foreign!) police and detained or bailed.
4. Extradition hearing takes place before a district judge who checks EAW is in order.
5. The person has a right of appeal to the High Court and House of Lords.
6. If the courts agree to execute the warrant, the person will be surrendered.
7. They may be granted bail in Belgium and be able to return to the UK pending trial.

But

8. Normal rule is 'dual criminality' test whereby surrender can be refused if the facts do not constitute a crime in the 'executing' State, an obviously important safeguard for crimes like abortion, blasphemy or euthanasia.

9. **Key controversial innovation:** for 32 serious offences punishable by at least 3 years' imprisonment the dual criminality test is dispensed with e.g. terrorism murder rape, arms drugs & people trafficking, child sexual exploitation & pornography, corruption fraud & money laundering, racism & xenophobia (states to define corresponding national offences). The last one has been ridiculed, but UK has relevant offences (e.g. incitement to racial hatred, possession of racially inflammatory material), and EU legislation is in train. Inclusion of 'swindling' shows difficulty though need for EU definition.

10. British government has foolishly and unnecessarily decided to push through Westminster removal of the dual criminality test for crimes punishable by only 1 year in prison, in typical Whitehall 'gold-plating' of EU laws with Brussels getting the blame.

What protection of civil liberties?

Graham Watson MEP, who drew up the European Parliament's response to the EAW proposal, insisted that suspects' rights should be properly protected. The EAW itself includes certain protections and limitations. It cannot be used where the offence is covered by an amnesty, or where the principle of '*ne bis in idem*' ban on double jeopardy applies (no second trial on the same facts). It can be refused on humanitarian grounds, or where the person enjoys immunity.

But the essential priority is to make a reality of fundamental rights under European Convention of Human Rights (& EU Charter of Fundamental Rights). The EAW is itself acting – as Liberal Democrats urged – as a catalyst to ensure EU-wide high standards, all the more necessary with accession of new States from East & Central Europe.

The European Commission will propose in late 2003 a much-needed Directive on legally enforceable safeguards for defendants e.g. 'letter of rights', legal & consular aid, interpretation. The Planespotters case in Greece showed need for reform though dual criminality test (planespotting is not espionage here!) would have blocked an EAW request. But remember the UK is the only EU state to derogate from ECHR fair trial provisions to detain (terrorist) suspects without charge.

The EAW is not perfect, but a key instrument in the programme of "Euro-justice". It is welcome in forcing criminals to face justice, ending the evasion of the law by virtue of having made it across a border, to swagger on 'Costa del Crime'. But it must be accompanied by an EU common definition of serious crimes and by effective EU-wide fair trial safeguards.

Further reading (incl SL speeches): Lords Hansard 23/4/02 & second reading of Extradition Bill, 1/5/03.

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