



# Achieving Best Evidence in EAW Cases

Project Funded by EU Commission JLS  
Criminal Justice Programme 2009



# Project Aims

- To identify the problems in the operation of the EAW scheme – especially the need for dual representation
- To link lawyers across the EU and enable dual representation to take place
- To demonstrate to EU members states that changes to national law/the EAW framework decision are necessary
- To demonstrate to the EU that support and funding for defence lawyers is necessary



# Method

- Two year project September 2010 to 2012
- 6 initial member states, leading to 10 by 2<sup>nd</sup> year
- EAW practitioners complete a questionnaire about each case
- Reviewers who are academics in the field of criminal/international/human rights law in each country consider the issues raised in the questionnaires



# Method

- Country teams meet each six months
- Whole team meets for introductory seminar (September 2010) and at the end of year one
- In country meetings with Ministries of Justice and Bar Associations. First meeting planned June 2011 in Poland
- Interim Report to coincide with EU Commission proposal on right to legal representation
- Final report presented at conference September 2012



# Country Teams

- Currently 8 participating countries:  
UK (England and Wales; Scotland)  
Ireland  
Poland  
Netherlands  
Denmark  
Sweden  
Greece



# General Problems with the EAW

- “Mutual Recognition”
- Obtaining information about the offence that is alleged to have been committed
- Lack of proportionality
- Proving human rights concerns about the issuing state
- Satisfying the courts that human rights are engaged at all amongst EU member states



# Findings So Far



# EAWs issued

- Sweden to Denmark
- Sweden to Ireland
- Lithuania to Ireland
- Latvia to Ireland
- UK to Ireland
- Austria to Poland
- Netherlands to Poland
- Italy to UK
- Poland to UK
- Czech Republic to UK
- Denmark and Belgium to Netherlands
- Poland to Netherlands





# Issues in Cases – Legal Aid

- Ranges in executing state. Poland very poor
- No legal aid for issuing state except in UK where treat as expert
- All cases have needed information from issuing state.
- All information (save UK) received through lawyers paid for by requested person/*pro bono*
- Difficult to know quality of advice. ECBA useful guide
- Where no information available, extradition could not be prevented – Austria to Poland



# Issues in Cases – Human rights

- Frequent concern about prison conditions and treatment upon return (Netherlands to Poland; UK to Poland and Czech Republic)
- Disruption to life in country of residence
- Mistrust of system in issuing state



# Issues in Cases

- Unclear reasons for issue of the warrant
- Whether for questioning or for trial
- Conviction warrants for trials *in absentia*
- Real reluctance of courts to refuse requests  
(will there be an impact from *MSS v Belgium and Greece?*)



# More to follow.....

