

European arrest warrants: providing an effective defence

Introduction to the new ECBA working group

The EU Commission funded project *European arrest warrants: ensuring an effective defence* (JUSTICE: 2012), partnered by JUSTICE, ECBA and the International Commission of Jurists, concluded in its final report that a primary difficulty with defending EAW cases (drawn from case questionnaires and interviews in the member states studied during the project - ten EU members states, extending to 19 where issuing states were considered) is with the quality of defence representation. In many countries publicly funded duty lawyers are engaged at short notice to defend requested persons, with little training, experience or funding to ensure that they are able to effectively represent their clients. This difficulty is compounded by the surrender of the requested person, who is then unable to raise any objection to the quality of the representation they received as a result of now being in the issuing rather than executing state. The report made a number of recommendations for training and networking of defence lawyers to reduce this problem.

The ECBA intends to take two of these recommendations forward as soon as possible.

1) An EU wide defence handbook

What?

The aim of this handbook is to provide a practitioner guide similar to the handbook issued by the EU Council entitled 'How to issue a European arrest warrant'¹ but that will be useful for defence lawyers. It should aim to assist the inexperienced practitioner, who usually is acting through legal aid and therefore will not have access to commercially available practitioner texts or support, but should also be helpful to most practitioners, what ever their experience, as a reminder of how to approach EAWs. Because it is an EU wide handbook it should cover general themes which will be in issue in all member states such as:

- Consent to surrender
- Double criminality
- Serving sentence in the executing state

¹ Available at <http://register.consilium.europa.eu/pdf/en/10/st17/st17195-re01.en10.pdf>

- Grounds for refusal or postponement
- The value of obtaining advice and assistance in the issuing state from a defence lawyer/expert/NGO and how to obtain it
- Case law from CJEU/ECtHR (including Rule 39 cases)/supreme and federal courts of the member states
- Other relevant instruments that could be utilised in an EAW case e.g. European supervision order; transfer of sentenced persons instruments (prisoners and probation measures); framework decision on trials in absentia; directives on the right to interpretation and translation; right to information

The handbook should aim to be of a practical length, approximately 20 pages with an easily navigable layout.

Once the core section is drafted annexes will be provided for member states which will highlight:

- How the framework decision has been implemented nationally
- What defences are available under national law
- Cases of significance
- Practical guidance – who to liaise with for assistance, local experts etc
- It should be available in both the national language and English so that practitioners from other member states can understand how the warrant applies elsewhere. Proposed countries to commence with are Portugal, Greece, Netherlands. These countries were involved in the EAW project; there are lawyers who could help draft the annexes; there is a definite need for the handbook in these jurisdictions.

How?

A team of volunteers will be formed, dividing the drafting work by chapter, and overseen by expert reviewers.

The report will initially be produced as a pdf that can be downloaded from the ECBA website. We aim to provide a forum on the webpage where lawyers can ask questions, exchange information and provide up to date case developments.

The handbook will be regularly updated to reflect any changes in the law and, with any available funding, published periodically.

2) **Peer reviewed database**

What?

The database will comprise a section on the ECBA website with information as to who can provide and advice about the issuing state criminal law in an EAW case. It will highlight domestic criminal experts. It will also showcase to the EU institutions and member states how a dual defence can operate.

The Find a Lawyer format already available on the ECBA website needs a few simple additions to create this resource:

- To indicate someone who is prepared to offer assistance in EAW cases, a symbol can be placed next to their name in the drop-down list for each country. This will operate as a quality mark.
- In order to obtain the mark, two other ECBA (non-committee) members must have proposed them as suitable to act as a criminal law expert in EAW cases. The existing form to submit an application for placement on the Find a Lawyer site will be amended to indicate the proposers' contact details, that they have worked with the lawyer in relation to a cross border case, and when this occurred.
- The lawyer must seek out the proposers in order to obtain the mark, which will be a mechanism to ensure quality and confidence.
- A link to the recommended lawyer's own website c.v. will provide information about their expertise.
- The introductory information on Find a Lawyer can draw attention to and explain the EAW mark

How?

An email will be sent to all ECBA members to invite them to apply for the EAW mark, setting out the requirements that are necessary to achieve it. In order to make this happen quickly, the lawyers in the EAW project could be targeted first as they should

understand the benefit of the mark. When other lawyers see that they have this mark, it will provide an incentive from them to achieve it also.

We invite volunteers with the requisite experience of EAW cases to assist in producing the EAW Handbook, either to draft chapters or review. Please email jblackstock@justice.org.uk if you are interested in this project.

We also ask that you support us in the development of the EAW quality mark on the Find a Lawyer website in order to create a formal structure for dual representation in EAW cases. This does not require you to have undertaken EAW cases, rather you must have expertise in criminal law and procedure in your member state of practice, and be willing to provide this expertise to EAW practitioners upon request.

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