

European Arrest Warrant Proceedings

The European Arrest Warrant (EAW) is a legal instrument through which one issuing country can order the arrest and return of a suspect or convicted person found in another EU Member State. The Executing State must give effect to that order unless the EAW is invalid or a refusal ground applies.

Because it involves (at least) two countries it is necessary to ensure legal assistance for the requested person in both Issuing and Executing States, as provided by art. 10 Directive 2013/48/EU on the right of access to a lawyer in criminal and EAW proceedings.

The Executing State Lawyer (ESL) should involve an Issuing State Lawyer (ISL) by:

1. finding out if there is already a lawyer appointed in the proceedings in the Issuing State and contacting him or her;
2. if not, contacting a lawyer through available networks, such as ECBA's *Find a Lawyer* facility.

Find a Lawyer

The Find a Lawyer section of our website contains contact details of individual practitioners who confirm that they are experienced criminal defence practitioners who other than their native language speak at least English. If you are looking for a lawyer to help you in your EAW case in the Issuing State, you can browse the list at:

<http://www.ecba.org/contactlist/contacts-search-country.php>
or contact secretariat@ecba.org

Role of the Executing State Lawyer

The role of the ESL is to defend the person in the EAW proceedings in the Executing State, without arguing on the merits of the criminal case being pursued in the Issuing State (this must be done by the ISL in the Issuing State). This involves:

1. checking the formal validity and completeness of the EAW;
2. ascertaining whether refusal grounds apply;
3. ascertaining whether there are alternatives to EAW surrender;
4. advising on the specialty principle;
5. advising, after consulting with client and ISL, on whether it is preferable to consent to surrender or present a defence in the Executing State;
6. seeking release from detention, if appropriate.

The refusal grounds that may be invoked are set out in arts. 3, 4 and 4a of the Framework Decision 2002/584/JHA and in your national implementing legislation. These can include mandatory and discretionary grounds. The ESL may invoke international human rights law to raise other grounds for refusal (e.g. pursuant to rights provided by the EU Charter of Fundamental Rights or European Convention on Human Rights; the EU Treaties; or secondary procedural rights directives).

There may also be the possibility of raising national constitutional issues.

These may relate, for example, to the likely violation of the right to a fair trial, reasonable prison conditions, medical treatment, or family life if the person were returned to the Issuing State. During EAW proceedings in the Executing State, the person subject to EAW proceedings has the following procedural rights under EU law:

1. Right to interpretation/translation (Directive 2010/64/EU)
2. Right to legal assistance and to legal aid in both countries (Directives 2013/48/EU and 2016/1919/EU)
3. Right to be informed on the contents of the EAW and to receive an EAW Letter of Rights (Directive 2012/13/EU)
4. Right to be heard by a judge (FD 2002/584/JHA)*

See the checklist on the back of this leaflet for a reminder of the information that needs to be considered in order to effectively defend an EAW.

Role of the Issuing State Lawyer

The ISL should be engaged long before the requested person is surrendered to the Issuing State. They have a role during both the EAW proceedings and the Issuing State investigation, trial or sentencing phases.

The role of the ISL during EAW proceedings in the Executing State is to assist the client and ESL. This involves, inter alia:

1. ascertaining the status of the criminal case against the requested person in the Issuing State;
2. reviewing whether the EAW is valid, e.g. prematurity, eligibility of alleged offence for surrender;
3. making applications to the Issuing State authorities to withdraw or substitute the EAW, or arrange a voluntary appearance;
4. advising the ESL whether refusal grounds apply;
5. obtaining supportive evidence of the defence to the EAW, either themselves, or directing the ESL to relevant expertise.

If the person is surrendered to the Issuing State, the role of the ISL is inter alia, to:

1. defend the person at pre-trial and trial;
2. if convicted and the person requests it, seek their transfer back to the Executing State, or another state in which they are a national or resident, to serve their sentence;
3. ensure that the specialty rule is complied with;
4. ensure that any assurances given by the Issuing State with respect to the treatment of the requested person during the criminal proceedings and any sentence are complied with.

** These Directives do not currently apply in Denmark.
Directives 2013/48/EU and 2016/1919/EU do not currently apply in Ireland
or the United Kingdom.*

EAW Defence Checklist

Check the EAW form or Schengen-Entry:

- Does it contain all the relevant information required to be a valid document?
- Is the location of the facts in your country or in a third country?
- Ask the court for a translator if the EAW form or Schengen entry is not in your language

Consult with your client and:

- Ask the court for an interpreter if your client cannot speak your language
- Check that your client is actually the requested person identified in the EAW
- Check whether your client has been given an EAW Letter of Rights pursuant to Annex II Directive 2012/13/EU in a language she understands and, if not, ask the court to give her one
- Check that your client has not been tried for the same facts in any other country
- Check whether your client is old enough to be held criminally liable in your country
- Check whether there has been an amnesty for that crime your country
- Check whether the facts are a crime in your country or if they are a “list offence” exempt from dual criminality
- Check whether your client is being or has been prosecuted in your country for the same facts
- If your client could be tried for the EAW facts in your country, check for statute limitation
- Check whether your client has other cases pending in your country or any other country
- If your client is a national or a resident of your country, ask him if he wants to serve his sentence there
- If your client has already been convicted, ask if he was present at his trial or informed of the trial date
- Do not advise to consent or waive the specialty principle without consulting an Issuing State Lawyer
- Ask your client if he has any concerns about returning to the Issuing State (e.g. health, family, fairness of trial, prison conditions)
- Ask your client about his work, social and family ties in your country to apply for release from detention

Contact an Issuing State Lawyer to:

- Consult the case files in the Issuing State
- Advise on the applicable law and procedure
- Check if the EAW can be withdrawn or substituted by other measures (e.g. service of papers, hearing by video-link, payment of fine) or voluntary appearance
- Obtain evidence to support client’s account

For more information, see the ECBA Handbook on the EAW for Defence Lawyers

<http://handbook.ecba-eaw.org/> or contact secretariat@ecba.org



How do I defend an EAW?

European Arrest Warrant: ECBA Essentials for Defence Lawyers

<http://handbook.ecba-eaw.org/>

ECBA

Since its foundation in 1997 the European Criminal Bar Association (ECBA) has become the pre-eminent independent organisation of specialist defence lawyers in all Council of Europe countries. The ECBA aims to promote the fundamental rights of persons under investigation, suspects, accused and convicted persons.